

Lambert
Boettger
Frais

SSB 1109

Judiciary

led.

SF/HF 303

SENATE/HOUSE FILE

BY (PROPOSED DEPARTMENT OF
ELDER AFFAIRS BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act requiring that the clerk of the district court confirm
2 that notice has been given to required parties prior to the
3 filing of a nonstatutory lien.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section ~~172~~ Section 575.1, Code 1999, is amended to read as
2 follows:

3 575.1 NONSTATUTORY LIENS.

4 1. A person claiming a common law lien, an equitable
5 servitude lien, or a lien of similar nature which is other
6 than a statutory lien, shall first give notice to any legal
7 and equitable owners and persons in possession of the real or
8 personal property against which the lien is sought.

9 a. If the lien is filed by an owner of the real or
10 personal property, notice shall first be given to any person
11 with a lien or other interest in the property.

12 b. The notice shall be given pursuant to the Iowa rules of
13 civil procedure.

14 2. Prior to the filing of the lien in any office of record
15 in the county where the real or personal property is located,
16 the following shall occur:

17 a. The clerk of the district court shall confirm that all
18 notices required pursuant to subsection 1 have been given.

19 b. The district court in such county shall hold a hearing
20 to determine the validity of the lien.

21 (1) Pendency of such a proceeding shall not be indexed
22 under section 617.10 and shall not constitute lis pendens or
23 constructive notice to third persons under sections 617.11
24 through 617.15.

25 (2) A bona fide purchaser takes title to the real or
26 personal property free of any claims arising from such
27 proceeding unless proper filing is made in the office of the
28 county recorder as provided in this section.

29 (3) The person claiming the lien is required to prove the
30 validity of the lien by a preponderance of the evidence.

31 (4) If the court determines the person claiming the lien
32 has willfully and maliciously proceeded, a judgment may be
33 entered against the person claiming the lien in favor of any
34 resisting party for reasonable damages, including actual
35 damages, costs, and reasonable attorneys' fees incurred by the

1 resisting party.

2 3. A lien, as described in this section, shall not be
3 filed in any office of record other than as provided in this
4 section and if such lien is filed other than as provided in
5 this section, the lien shall be null and void and of no force
6 or effect.

7 4. If, after hearing the district court enters an order
8 determining the lien to be valid, the person claiming the lien
9 shall file a certified copy of the order in the office of the
10 county recorder where the real or personal property is
11 located.

12 5. An appeal from the district court arising from such
13 proceeding is by certiorari.

14 EXPLANATION

15 This bill requires, before the clerk of the district court
16 permits the filing of a nonstatutory lien under Code section
17 575.1, that the clerk confirm that the required notices have
18 been given to the necessary parties.

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TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF ELDER AFFAIRS
BETTY L. GRANDQUIST, EXECUTIVE DIRECTOR

MEMORANDUM

TO: 1999 General Assembly

FROM: Betty Grandquist 
Executive Director

RE: Nonstatutory Lien Bill

DATE: Wednesday, January 06, 1999

Attached please find a prefiled bill from the Department of Elder Affairs. This was the first priority bill of the 1998 Older Iowans' Legislature.

Currently, anyone who is owed a sum of money may put a lien against anyone who owns property. No verification of address or name is needed. As written, this bill would require that the person filing the lien must notify the real property owner 30 days in advance by registered letter mailed to the last known address.

This measure would eliminate unnecessary costs to an innocent party in the event that they would want to sell their property. The costs being lawyer fees to remove the lien that was incorrectly placed on their property.

This bill was introduced during the 1998 General Assembly as SF 2336. It passed the Senate by a 48-0 vote and died in the House Judiciary Committee.

Should you have any questions regarding this prefiled bill request, you may contact Stephanie Laudner, Legislative Liaison, at 281-4658.

Thank you for your consideration in this matter.

SENATE FILE 303
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1109)

Passed Senate, (P.588) Date 3/15/99 Passed House, (P.1062) Date 4/6/99
Vote: Ayes 47 Nays 0 Vote: Ayes 96 Nays 0
Approved April 16, 1999

A BILL FOR

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S.F. 303

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AN ACT

REQUIRING THAT THE CLERK OF THE DISTRICT COURT CONFIRM THAT NOTICE HAS BEEN GIVEN TO REQUIRED PARTIES PRIOR TO THE FILING OF A NONSTATUTORY LIEN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 575.1, Code 1999, is amended to read as follows:

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a. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property.

b. The notice shall be given pursuant to the Iowa rules of civil procedure.

2. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the following shall occur:

a. The clerk of the district court shall confirm that all notices required pursuant to subsection 1 have been given.

b. The district court in such county shall hold a hearing to determine the validity of the lien.

(1) Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute lis pendens or constructive notice to third persons under sections 617.11 through 617.15.

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(3) The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence.

(4) If the court determines the person claiming the lien has willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party.

3. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect.

4. If, after hearing the district court enters an order determining the lien to be valid, the person claiming the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located.

Senate File 303, p. 3

5. An appeal from the district court arising from such proceeding is by certiorari.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 303, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 16, 1999

THOMAS J. VILSACK
Governor