

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 491, As Amended

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO NONCONSENSUAL COMMON LAW LIENS; REPEALING CHAPTER 17, TITLE 45,
2 IDAHO CODE, RELATING TO NONCONSENSUAL COMMON LAW LIENS; AND AMENDING
3 CHAPTER 8, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-811,
4 IDAHO CODE, TO DEFINE A TERM, TO PROHIBIT NONCONSENSUAL COMMON LAW LIENS
5 AND TO PROVIDE AN EXEMPTION FROM PENALTIES OR LIABILITY FOR CERTAIN PER-
6 SONS, TO PROVIDE THAT A PROPERTY OWNER MAY PETITION FOR RELEASE AND FILE
7 A COMPLAINT FOR PENALTIES AND TO ESTABLISH PROCEDURES AND FEES FOR SUCH
8 PETITION OR COMPLAINT, AND TO PROVIDE PENALTIES.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Chapter 17, Title 45, Idaho Code, be, and the same is
12 hereby repealed.

13 SECTION 2. That Chapter 8, Title 45, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 45-811, Idaho Code, and to read as follows:

16 45-811. NONCONSENSUAL COMMON LAW LIENS PROHIBITED. (1) For purposes
17 of this section, "nonconsensual common law lien" means a lien that:

- 18 (a) Is not provided for by a specific state or federal statute;
19 (b) Does not depend upon the consent of the owner of the property af-
20 fected for its existence;
21 (c) Is not a court-imposed equitable, judgment or constructive lien;
22 and
23 (d) Is not of a kind commonly used in legitimate commercial transac-
24 tions.

25 (2) Nonconsensual common law liens are hereby prohibited. The state of
26 Idaho shall not recognize or enforce nonconsensual common law liens. Pro-
27 vided however, that if a county clerk or other recording officer accepts for
28 filing or recording a claim of a nonconsensual common law lien, the clerk or
29 officer shall not be penalized or be liable for such filing or recording.

30 (3) Petition to release and complaint for penalties.

31 (a) A person whose real or personal property is subject to a recorded
32 claim of a nonconsensual common law lien may at any time petition the
33 district court of the county in which the claim has been recorded for an
34 order releasing the claim. The petition, which may be heard ex parte,
35 shall be heard as soon as practicable by the court. If it appears from
36 the content of the lien that the lien is a nonconsensual common law lien,
37 the court shall issue an order to the lienor to appear at a date not
38 sooner than fifteen (15) days after the order is made, nor later than
39 thirty (30) days, at which time the lienor must show cause why the claim
40 of lien should not be released. If the lienor does not appear or if the
41 showing of cause is insufficient, the court shall issue an order releas-

1 ing the claim of lien. If good cause is shown by the lienor that the lien
2 is not a nonconsensual common law lien and has a valid basis, the matter
3 shall be set for further proceedings to determine the validity of the
4 lien.

5 (b) A complaint for penalties and other relief awarded pursuant to sub-
6 section (4) of this section may be filed separately or in conjunction
7 with a petition filed under paragraph (a) of this subsection, but such
8 complaint may not be filed any later than ninety (90) days after the
9 hearing on the court's order to show cause as provided in paragraph (a)
10 of this subsection.

11 (c) The filing fee for a petition filed pursuant to paragraph (a) of
12 this subsection shall be thirty-five dollars (\$35.00). The filing fee
13 for a complaint filed pursuant to paragraph (b) of this subsection shall
14 be prescribed by court rule.

15 (4) Penalties.

16 (a) Any person who files or records in the office of a county clerk or
17 recorder, or with the secretary of state, any document attempting to
18 create a nonconsensual common law lien against real or personal prop-
19 erty, and who has refused or failed to withdraw such document upon writ-
20 ten request by the owner of the property, shall be liable to the owner
21 for the sum of not less than five thousand dollars (\$5,000) or for actual
22 damage caused thereby, whichever is greater, together with any court
23 costs and reasonable attorney's fees.

24 (b) Any lienor or other person claiming interest in property under a
25 recorded nonconsensual common law lien against real or personal prop-
26 erty who has refused or failed to record a release or disclaimer of in-
27 terest in such property upon written request by the owner of the prop-
28 erty shall be liable to the owner for the damages, court costs and attor-
29 ney's fees provided in paragraph (a) of this subsection.