

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 491

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 RELIEF AND TO ES-  
7 TABLISH PROCEDURES REGARDING SUCH PETITION, AND TO PROVIDE PENALTIES.  
8

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

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11 hereby repealed.

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

15 45-811. NONCONSENSUAL COMMON LAW LIENS PROHIBITED. (1) For purposes  
16 of this section, "nonconsensual common law lien" means a lien that:

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

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

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

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

1 cause is shown by the lienor that the lien is not a nonconsensual common  
2 law lien and has a valid basis, the matter shall be set for further pro-  
3 ceedings to determine the validity of the lien.

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

10 (4) Penalties.

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

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