

A BILL

Words printed below in *italics* to be omitted. Deletions and words to be inserted inclosed in brackets [].

FOR AN ACT TO PROVIDE FOR THE LEVY OF ATTACHMENT OR EXECUTIONS ON PERSONAL PROPERTY COVERED BY MORTGAGE.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That personal property not exempt from execution, [hereafter] mortgaged, [or
2 heretofore mortgaged when the debt secured thereby is due] may be taken on attachment
3 or execution issued at the suit of a creditor of a mortgagor, but before the property is so
4 taken the officer or plaintiff must pay or tender to the holder of the mortgage the amount
5 of the mortgage debt and interest accrued, *or to accrue*, or must deposit the amount thereof
6 with the clerk of the district court of the county wherein the mortgaged property is found
7 payable to the order of the holder of the mortgage. [When the debt secured by a mortgage
8 hereafter made is not due, as shown by such chattel mortgage, he must also deposit with the
9 clerk interest on the principal sum at the agreed rate specified in the mortgage, for the term
10 of sixty days from the date of deposit; provided, however, if the debt secured fall due in
11 less than sixty days from the date of deposit, then interest shall be deposited only for such
12 shorter period; and when such sums are tendered to the holder of the mortgage, or de-
13 posited with the clerk, the attaching creditor shall be subrogated to all the rights of the
14 holder of the mortgage; and the proceeds from the sale of the mortgaged property shall go
15 first to the discharge of such indebtedness and costs of execution; provided, however, that
16 if the judgment debtor shall pay the debt for which the attachment or execution was
17 issued, the property shall be released, and the creditor shall be entitled to receive money
18 deposited to pay the mortgage debt, and shall have no right or interest in the mortgage, or
19 in the mortgaged property.]

SEC. 2. The holder of the mortgage shall state over his signature [and under oath] on
2 the back of said mortgage the amount due or to become due thereon, and deliver the same
3 to the person paying him said amount. And if said sum has been deposited with the clerk
4 of the district court, the holder of the mortgage shall only receive the amount so stated to
5 be due, and shall surrender to the clerk the mortgage and other evidence of indebttness,
6 and the surplus, if any, shall be returned to the person who made the deposit; [provided,
7 however, that the execution or attaching creditor shall have the right to controvert, in
8 the court from which the process issued, such statement of indebtedness, in the manner
9 provided in other garnishment proceedings, if he give notice in writing to the clerk at the

10 time of the deposit; and the clerk shall hold the deposit until such matter is determined.
11 If the attaching or judgment creditor fail to sustain his claim against the mortgage, he
12 shall pay to the holder of the mortgage, interest.]

SEC. 3. At the sale of said property no bid shall be received for a less sum than the
2 amount then due, or so stated to be due, on said mortgage, together with the costs made by
3 virtue of such levy of attachments or executions and the costs of said sale. And unless
4 there shall be a bid of more than such amount the execution or attachment creditor shall
5 pay the costs made by such levy and sale. If said property shall sell for more than the
6 amount due on said mortgage and the costs aforesaid, the officer shall immediately pay the
7 sum due on said mortgage to the person who paid the same, and shall apply this surplus on
8 the execution or attachment held by him.

SEC. 4. But nothing contained in this act shall in any way affect the right of any creditor
2 to contest for any reason the validity of such mortgage.

[SEC. 5. Upon written demand of a creditor, his agent, or attorney, or of any mortgager
2 of personal property other than exempt property, the person entitled to receive said debt
3 shall deliver to said creditor a statement in writing under oath, which statement shall show
4 the nature and amount of the original debt secured by the mortgage, the date and amount
5 of each payment, if any, which has been made thereon, and an itemized statement of the
6 amount then due and unpaid.]

[SEC. 6. The refusal of the person entitled to receive said mortgage debt, or his failure
2 within a reasonable time after demand to deliver to the attachment or execution creditor,
3 or to his attorney or agent, the statement required by the third section of this act, is hereby
4 declared to be a misdemeanor, and willfully swearing to a greater amount of mortgage debt
5 than is actually due shall be deemed perjury. The person who fails or refuses to comply
6 with the requirements of the third section of this act shall also be liable to the attachment
7 or execution creditor for all damages which shall result from such refusal or failure and for
8 reasonable attorneys' fees and costs in any action brought to recover such damages, or to
9 ascertain the amount of the mortgage debt.]

SEC. 5. *Any person who shall state falsely the amount due or to become due on said mortgage indebtedness
2 and receive the same, shall be deemed guilty of obtaining money under false pretenses, and shall be punished as
3 provided in section 4073 of the Code.*

[Com on
Judiciary

[SUBSTITUTE FOR HOUSE FILE No. 77.

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ON PERSONAL PROPERTY COVERED BY MORTGAGE.

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2 on attachment or execution issued at the suit of a creditor of a mortgagor, but before the
3 property is so taken the officer or plaintiff must pay or tender to the holder of the mort-
4 gage the amount of the mortgage debt and interest accrued or to accrue, or must deposit
5 the amount thereof with the clerk of the district court of the county wherein the mort-
6 gaged property is found payable to the order of the holder of the mortgage.

SEC. 2. The holder of the mortgage shall state over his signature on the back of said
2 mortgage the amount due or to become due thereon, and deliver the same to the person pay-
3 ing him said amount. And if said sum has been deposited with the clerk of the district
4 court, the holder of the mortgage shall only receive the amount so stated to be due, and the
5 surplus, if any, shall be returned to the person who made the deposit.

SEC. 3. At the sale of said property no bid shall be received for a less sum than the
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3 virtue of such levy of attachments or executions and the costs of said sale. And unless
4 there shall be a bid of more than such amount the execution or attachment creditor shall
5 pay the costs made by such levy and sale. If said property shall sell for more than the
6 amount due on said mortgage and the costs aforesaid, the officer shall immediately pay the
7 sum due on said mortgage to the person who paid the same and shall apply this surplus on
8 the execution or attachment held by him.

SEC. 4. But nothing contained in this act shall in any way affect the right of any creditor
2 to contest for any reason the validity of such mortgage.

SEC. 5. Any person who shall state falsely the amount due or to become due on said mort-
2 gage indebtedness and receive the same, shall be deemed guilty of obtaining money under
3 false pretenses, and shall be punished as provided in section 4073 of the Code.

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SECTION 1. That personal property mortgaged may be taken on attachment or execution
2 issued at the suit of a creditor of the mortgagor; but before the property is so taken the
3 officer must pay or tender to the mortgagee the amount of the mortgage debt and interest,
4 or must deposit the amount thereof with the county clerk of the county wherein the mort-
5 gaged property is found, payable to the order of the mortgagee.

SEC. 2. The mortgagee shall state over his signature on the back of said mortgage the
2 amount due thereon, and deliver the same to the person paying him said amount, and if
3 said sum has been deposited with the county clerk, the mortgagee shall only receive the
4 amount so stated to be due, and the surplus, if any, shall be returned to the person who
5 made the deposit.

SEC. 3. At the sale of said property no bid shall be received for a less sum than the
2 amount then due on said mortgage, together with the costs made by virtue of such levy
3 of attachment or execution, and the costs of said sale. And unless there shall be a bid of
4 more than such amount, the execution or attachment creditor shall pay the costs made by
5 such levy and sale. If said property shall sell for more than the amount due on said mort-
6 gage and the costs aforesaid, the officer shall immediately pay the sum due on said mort-
7 gage to the person who paid the same, and shall apply the surplus on the execution or
8 attachment held by him.

SEC. 4. Any person who shall, knowingly, state falsely the amount due on said mort-
2 gage, shall be deemed guilty of obtaining money under false pretenses, and shall be pun-
3 ished accordingly.