

A BILL

FOR AN ACT TO SUBJECT MORTGAGED PERSONAL PROPERTY TO WRITS OF ATTACHMENT AND EXECUTION.

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

SECTION 1. That any writ of attachment or execution may be levied upon any mortgaged
 2 personal property which would be subject to such levy but for the mortgage thereon, after
 3 the debt secured by such mortgage shall become due, if the creditor causing such writ of
 4 attachment or execution to issue shall first pay to the person entitled thereto, or in case
 5 such person fail or refuse to receive the same when tendered, or in case he cannot be found
 6 in any county in which the mortgaged property or some part thereof is kept, then to the
 7 clerk of the District Court of the county in which said property upon which it is proposed
 8 to levy or some part thereof shall be habitually kept, to be held by said clerk subject to the
 9 order of the person entitled thereto, the full amount of the actual indebtedness secured by
 10 said mortgage, together with fifty cents additional for the use of said clerk. Upon receiving
 11 such payment the clerk shall forthwith notify the person entitled thereto of the date and
 12 amount of such payment and on what account received.

SEC. 2. The payment authorized by section one of this act, shall vest in the attaching or
 2 execution creditor the title to the debt secured by the mortgage at the time of such pay-
 3 ment and shall merge the lien of the mortgage in the lien acquired by the levy of the writ
 4 of attachment or execution. The amount of such debt, which shall be presumed to be the
 5 amount paid by said creditor as aforesaid, unless controverted as hereinafter provided,
 6 shall be first satisfied from the proceeds of the mortgaged property. In case the mortgagor,
 7 his assign, or legal representative, shall controvert the debt or any part thereof, claimed to
 8 be due and paid, he shall before the sale of the property deliver to the officer serving legal
 9 process, a statement in writing under oath, showing the amount, if any, due and secured by
 10 the mortgage at the date of the payment by the attachment or execution creditor and the
 11 facts in regard to the mortgage debt. Said officer shall, upon receiving such verified state-
 12 ment, attach the same to the writ of attachment or execution and shall return the same,
 13 together with the amount of the mortgage debt as claimed by the attachment or execution
 14 creditor to the clerk of court or justice from which said process issued. The amount act-
 15 ually due and secured by the mortgage at the date of the payment by such creditor may be
 16 ascertained by an action brought by any claimant of the money returned to the clerk or
 17 justice as aforesaid, in the county where such money is held, to which action all adverse

18 claimants shall be made parties defendant, or by an action brought against the officer serving
19 the process after he shall have been served with the verified statement in writing showing
20 the amount, if anything, due as herein provided. And after receiving such verified state-
21 ment the officer may require an indemnifying bond as in other cases of levy upon personal
22 property and notice of ownership.

SEC. 3. Upon the demand of the attachment or execution creditor, his attorney or agent,
2 and the payment to him of fifty cents for costs, 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. 4. 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. This act being deemed of immediate importance shall take effect and be in force
2 from and after its publication in the Iowa State Register and Des Moines Leader, news-
3 papers printed at Des Moines, Iowa.

By WILKIN.]

[SENATE FILE No. 71.—JUDICIARY.]

A BILL

FOR AN ACT PROVIDING FOR THE LEVY OF WRITS OF ATTACHMENT AND
EXECUTIONS UPON MORTGAGED CHATTELS IN CERTAIN CASES.

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

SECTION 1. Upon payment or tender of the amount due and secured to the mortgagee,
2 under a mortgage of chattel property not exempt from execution in the hands of the mort-
3 gator, such property after the mortgagor is in default shall be subject to the levy of a writ
4 of attachment or execution and may be treated as if not mortgaged subject only to the pay-
5 ment of the valid indebtedness secured thereon to the mortgagee.

SEC. 2. This act being deemed of immediate importance, shall be in force from and after
2 its publication in the Iowa State Register and Iowa State Leader, newspapers published in
3 Des Moines, Iowa.