

HOUSE BILL 506

IN THE HOUSE

February 1, 1979

Introduced and referred to
Committee on Judiciary.

1 House BILL NO. 506
2 INTRODUCED BY H. Robbins

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO LANDLORDS
5 AND TENANTS AND CREATING A LANDLORD'S LIEN; AMENDING SECTION
6 70-24-430, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Other remedies not affected.
10 The remedy provided in [sections 1 through 8] is in addition
11 to and [sections 1 through 8] does not affect the other
12 remedies provided for in Title 70, chapters 24 through 27.

13 NEW SECTION. Section 2. Landlord's lien. A landlord
14 has a lien on the personal property of a tenant for rent and
15 for damage to the leasehold premises caused by the tenant or
16 a person on the leasehold premises with the tenant's
17 permission.

18 NEW SECTION. Section 3. When landlord's lien
19 attaches. A landlord's lien attaches upon a tenant's default
20 in rent payments or upon a landlord's discovery of damage to
21 the leasehold premises caused by a tenant or a person on the
22 premises with a tenant's permission.

23 NEW SECTION. Section 4. Identification of property
24 subject to landlord's lien. (1) After a landlord's lien
25 attaches, a landlord has a right to enter the leasehold

1 premises for the purpose of identifying a tenant's personal
2 property subject to the lien.

3 (2) Unless a tenant is in the process of moving out of
4 the leasehold premises, a landlord shall give notice of his
5 intent to enter the leasehold premises for the purpose of
6 identifying property subject to a landlord's lien at least
7 24 hours in advance of entry. A notice posted on the main
8 entrance to the leasehold premises is sufficient.

9 (3) A landlord may identify and subject to a
10 landlord's lien only those items of a tenant's personal
11 property that are reasonably calculated to secure the
12 tenant's liability for rent payments and damage to the
13 leasehold premises.

14 NEW SECTION. Section 5. Entry if tenant resists. (1)
15 In no case may a landlord breach the peace in gaining entry
16 to the leasehold premises for the purpose of identifying
17 property subject to a landlord's lien.

18 (2) If a tenant resists entry, a landlord may apply to
19 a district judge or justice of the peace for an order
20 commanding the tenant to provide entry. An order commanding
21 the tenant to provide entry must be granted upon a
22 landlord's affidavit showing that a landlord's lien has
23 attached and that the tenant has denied entry to the
24 leasehold for the purpose of identifying property subject to
25 the lien. Unless the order is not obtained in good faith, a

1 tenant is liable for reasonable attorney's fees and all
 2 court costs involved in obtaining a court order commanding
 3 him to provide entry. Unless the order is not obtained in
 4 good faith, a tenant who disobeys a court order commanding
 5 him to provide entry is guilty of contempt.

6 NEW SECTION. Section 6. Perfection of landlord's
 7 lien. A landlord's lien is perfected by filing a lien
 8 statement in the county where the leasehold premises are
 9 located. A lien statement shall state the name and address
 10 of the landlord, the name and last-known address of the
 11 tenant, the address of the leasehold premises, the amount of
 12 rent due, the amount of damage to the leasehold premises,
 13 and the date of termination of the leasehold. In addition, a
 14 lien statement shall identify the property subject to the
 15 landlord's lien. In no case may a lien statement be filed
 16 more than 90 days after the termination of the leasehold.

17 NEW SECTION. Section 7. Foreclosure of landlord's
 18 lien. A landlord's lien is foreclosed by filing a civil
 19 action in the county where the leasehold premises are
 20 located. Except as otherwise provided, Title 25 is
 21 applicable for purposes of enforcement and foreclosure of a
 22 landlord's lien.

23 NEW SECTION. Section 8. Limitation of action. No
 24 action to foreclose a landlord's lien may be commenced more
 25 than 6 months from the date the lien statement is filed.

1 Section 9. Section 70-24-430, MCA, is amended to read:
 2 "70-24-430. Disposition of personal property abandoned
 3 by tenant after termination. (1) If a tenancy terminates in
 4 any manner except by court order and the landlord reasonably
 5 believes the tenant has abandoned all personal property
 6 which the tenant has left on the premises, the landlord
 7 shall:

8 (a) make reasonable attempts to notify the tenant in
 9 writing that the property must be removed:

10 (i) from the premises; or

11 (ii) from the place of safekeeping if the landlord has
 12 stored the goods as provided in subsection (3) of this
 13 section; and

14 (b) specify a day not less than 15 days after delivery
 15 of a notice mailed by certified mail to the last-known
 16 address of the tenant, at which specified time the property
 17 will be disposed of if not removed.

18 (2) The landlord may dispose of the property by:

19 (a) selling all or part of the property at a public or
 20 private sale; or

21 (b) destroying or otherwise disposing of all or part
 22 of the property if he reasonably believes the value of the
 23 property is so low that the cost of storage or sale exceeds
 24 the reasonable value thereof.

25 (3) After notifying the tenant as required by

1 subsection (1) of this section, the landlord shall store all
 2 goods, chattels, and personal property of the tenant in a
 3 place of safekeeping and shall exercise reasonable care for
 4 the property. The landlord may store the property in a
 5 commercial storage company, in which case the storage cost
 6 includes the actual storage charge plus the cost of removal
 7 of the property to the place of storage.

8 (4) If the tenant, upon receipt of the notice provided
 9 in subsection (1) of this section, responds in writing to
 10 the landlord on or before the day specified in the notice
 11 that he intends to remove his property and does not do so
 12 within 15 days after delivery of the tenant's response, the
 13 tenant's property shall be conclusively presumed to be
 14 abandoned. If the tenant removes the property, the landlord
 15 is entitled to reasonable or actual storage costs for the
 16 period the property remains in safekeeping plus the cost of
 17 removal of the property to the place of storage.

18 (5) The landlord is not responsible for any loss to
 19 the tenant resulting from storage unless the loss is caused
 20 by the landlord's purposeful or negligent act. On the event
 21 of purposeful violation, the landlord is liable for double
 22 damages.

23 (6) A public or private sale authorized by this
 24 section shall be conducted under the provisions of
 25 30-9-504(3).

1 (7) The landlord may deduct from the proceeds of the
 2 sale the reasonable costs of notice, storage, and sale and
 3 must remit to the tenant the remaining proceeds, if any,
 4 together with an itemized accounting. If the tenant cannot
 5 after due diligence be found, the remaining proceeds shall
 6 be deposited with the county treasurer of the county in
 7 which the sale occurred and, if not claimed within 3 years,
 8 shall revert to the general fund of the county available for
 9 general purposes.

10 ~~(8) This section does not apply to property which is~~
 11 ~~the subject of a lien perfected and foreclosed pursuant to~~
 12 ~~[sections 6 and 7]."~~

13 Section 10. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

-End-