

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 666

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO FILING OF FEDERAL TAX LIENS; AMENDING CHAPTER 16, TITLE 1, IDAHO  
2 CODE, BY THE ADDITION OF A NEW SECTION 1-1608, IDAHO CODE, TO PROVIDE  
3 THAT NEITHER THE STATE OF IDAHO NOR ANY STATE COURT SHALL DEPRIVE ANY  
4 PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW, AND NEI-  
5 THER SHALL THE STATE OF IDAHO NOR ANY STATE COURT DENY ANY PERSON WITHIN  
6 ITS JURISDICTION EQUAL PROTECTION OF THE LAW AND TO REQUIRE COURT ACTION  
7 BEFORE ATTACHING PROCEEDS FROM A LIEN; AMENDING SECTION 45-202, IDAHO  
8 CODE, TO PROVIDE FOR DUE PROCESS OF LAW WHEN FILING FEDERAL TAX LIENS AND  
9 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 45-203, IDAHO CODE, TO  
10 REQUIRE DUE PROCESS OF LAW BEFORE NOTICE OF ANY LIEN MAY BE FILED AND TO  
11 MAKE A TECHNICAL CORRECTION; PROVIDING SEVERABILITY; AND DECLARING AN  
12 EMERGENCY.  
13

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

15 SECTION 1. That Chapter 16, Title 1, Idaho Code, be, and the same is  
16 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
17 ignated as Section 1-1608, Idaho Code, and to read as follows:

18 1-1608. DUE PROCESS AND EQUAL PROTECTION OF THE LAW. Neither the state  
19 of Idaho nor any state court shall deprive any person of life, liberty or  
20 property without due process of law, and neither shall the state of Idaho nor  
21 any state court deny any person within its jurisdiction equal protection of  
22 the law. Due process of law shall occur in perfecting and attaching proceeds  
23 from a lien if the amount attached is five thousand dollars (\$5,000) or more  
24 by a district court or if the amount attached is less than five thousand dol-  
25 lars (\$5,000) by a magistrate court.

26 SECTION 2. That Section 45-202, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 45-202. PLACE OF FILING. (a) Notices of liens, certificates, and other  
29 notices affecting federal tax liens or other federal liens must be filed in  
30 accordance with this chapter.

31 (b) Notices of liens upon real property for obligations payable to the  
32 United States of America and certificates and notices affecting the liens  
33 shall be recorded in the office of the county recorder of the county in which  
34 the real property subject to the liens is situated, only when due process  
35 of law is followed as stipulated in the United States constitution, bill of  
36 rights, article V: "No person shall ... be deprived of life, liberty, or  
37 property, without due process of law"; and according to the 14th amendment  
38 to the constitution of the United States.

39 (c) Notices of federal liens upon personal property, whether tangible  
40 or intangible, for obligations payable to the United States of America and

1 certificates and notices affecting the liens shall be filed or recorded as  
2 follows except that due process of law is followed according to the United  
3 States constitution, bill of rights, article V: "No person shall ... be de-  
4 prived of life, liberty, or property, without due process of law"; and ac-  
5 ording to the 14th amendment to the constitution of the United States:

6 (1) If the person against whose interest the lien applies is a corpora-  
7 tion or a partnership whose principal executive office is in this state,  
8 as these entities are defined in the internal revenue laws of the United  
9 States, in the office of the secretary of state;

10 (2) If the person against whose interest the lien applies is a trust  
11 that is not covered by paragraph (1) of this subsection, in the office of  
12 the secretary of state;

13 (3) If the person against whose interest the lien applies is the estate  
14 of a decedent, in the office of the secretary of state;

15 (4) In all other cases, in the office of the county recorder of the  
16 county where the person against whose interest the lien applies resides  
17 at the time of filing of the notice of lien.

18 SECTION 3. That Section 45-203, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 45-203. EXECUTION OF NOTICES AND CERTIFICATES. Certification of no-  
21 tices of liens, certificates, or other notices affecting federal liens by  
22 the secretary of the treasury of the United States or his delegate, or by any  
23 official or entity of the United States responsible for filing or certifying  
24 of notice of any other lien, entitles them to be filed and no other attesta-  
25 tion, certification, or ~~acknowledgement~~ acknowledgment is necessary- only  
26 when due process of law is followed as stipulated in the United States con-  
27 stitution, bill of rights, article V: "No person shall ... be deprived of  
28 life, liberty, or property, without due process of law."

29 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared  
30 to be severable and if any provision of this act or the application of such  
31 provision to any person or circumstance is declared invalid for any reason,  
32 such declaration shall not affect the validity of the remaining portions of  
33 this act.

34 SECTION 5. An emergency existing therefor, which emergency is hereby  
35 declared to exist, this act shall be in full force and effect on and after its  
36 passage and approval.