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1862

### Amendatory of of an Act Entitled "An Act granting a Lien in favor of Mechanics, in certain cases," approved Nov. 4th, 1861.

Colorado General Assembly

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#### Recommended Citation

Colorado General Assembly, "Amendatory of of an Act Entitled "An Act granting a Lien in favor of Mechanics, in certain cases," approved Nov. 4th, 1861." (1862). *Session Laws 1861-1900*. 251. <https://scholar.law.colorado.edu/session-laws-1861-1900/251>

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AN ACT

AMENDATORY OF AN ACT ENTITLED "AN ACT CONCERNING LICENSE," APPROVED NOV. 6th, 1861.

*Be it enacted by the Council and House of Representatives of Colorado Territory:*

SEC. 1. That if any person carry on or transact any business or occupation without license therefor, when such license is required by any law of this Territory, he shall on conviction thereof, be fined in a sum not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

License must be obtained —by whom.

SEC. 2. This act shall extend to and include all theatres, circusses and shows, where an admission fee is charged for entrance thereto.

Act extends to theatres, shows, etc.

SEC. 3. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theatre, circus or show, on the Sabbath or Lord's day; but any person who shall so offend on such day, shall be fined in a sum not less than fifty, nor more than one hundred dollars, for every such offense.

Public amusements prohibited, when.

Approved August 14th, 1862.

AN ACT

AMENDATORY OF AN ACT ENTITLED "AN ACT GRANTING A LIEN IN FAVOR OF MECHANICS, IN CERTAIN CASES," APPROVED NOV. 4th, 1861.

*Be it enacted by the Council and House of Representatives of Colorado Territory:*

SEC. 1. Any person who may hereafter have a subsisting cause of action to the amount of ten dollars for any labor performed upon any lands, tenements, or hereditaments, or for any materials furnished for any improvements upon any lands, tenements or hereditaments, may at any time within one year next after such cause of action shall have accrued, file his complaint as in other cases, and such complaint shall, in addition to the facts necessary to constitute a cause of action, contain an accurate description and statement of the location of the lands, tenements, or hereditaments upon which the labor was performed, or for the improvements of which the materials were furnished, and shall also allege that

Who may have mechanic's lien.

Shall file complaint.

What the complaint shall state.

Complaint shall constitute lien, when.

Sub-contractors, etc. may have lien, when.

Must serve notice in writing on defendant.

Amount for which plaintiff may have judgment.

Judgment in favor of sub-contractors, etc., a bar to action of contractor

Plaintiff may proceed to judgment, when.

the defendant therein named is the owner of, or has some interest in such lands, tenements, or hereditaments, and that such labor was performed or such materials furnished, pursuant to an agreement, express or implied between the plaintiff and defendant, or his agent; and the said complaint shall, as soon as filed in the office of the clerk of the district court of the proper county, constitute and be a lien upon the property therein described in favor of the plaintiff to the extent of the defendant's title or interest therein.

SEC. 2. Where the complaint does not allege that the labor was performed or the materials furnished, pursuant to an agreement with the defendant, but shall allege that the labor was performed or the materials furnished pursuant to an agreement with some contractor therein named, which contractor was employed by the defendant or his agent, and that the plaintiff was employed by said contractor, and had served a notice in writing upon the defendant or his agent, to the effect that he, the plaintiff, was or had been employed by the said contractor to perform labor thereon, or to furnish materials for the improvement of such lands, tenements, or hereditaments, and relied upon him, the defendant, or upon such lands, tenements, or hereditaments, for his pay, then the filing of such complaint shall constitute and be a lien in favor of the plaintiff, the same as provided in the preceding section, to the amount that the defendant was indebted to the said contractor at the time the said notice was served upon him or his agent, and to the amount in which the defendant became indebted to said contractor after service of said notice and before the expiration of the plaintiff's lien: *Provided*, The amount thus due, or thus becoming due, does not exceed the amount claimed in the plaintiff's complaint, and upon the trial the plaintiff shall have judgment for no more than the sum due from the defendant to the contractor at the time of serving said notice, and the amount which became due after the service of such notice, and when a lien shall be acquired under this section, it shall be a bar to any action by the said contractor for the recovery of his claim for money due him from said defendant, to the amount of the lien, until such claim of lien shall be finally decided, and if decided in favor of the plaintiff, then it shall be to that extent a bar forever.

SEC. 3. The plaintiff may at any time after filing his complaint as above provided, cause a summons and notice to be served on the defendant, and proceed to judgment,

as in other actions, but the lien hereby created shall cease to exist after the expiration of one year from the time the labor was performed, or the materials furnished, unless the summons be issued and served within that time: *Provided*, That if the defendant be absent or concealed, he may be proceeded against in the same manner as is provided for in other cases of absent or concealed defendants.

Lien shall cease to exist, when.

SEC. 4. The lien hereby created by the filing of a complaint shall be as effectual as liens created by judgment of courts of record, and if the plaintiff shall recover judgment upon his complaint, the lands, tenements and hereditaments therein described, or any interest therein, either in law or equity, which the defendant had therein at the time of securing such lien, and any interest whatever, either in law or equity, which the defendant shall have acquired therein, after such lien was secured, shall be liable to sale by virtue of any execution issued thereon, and if the property described in such complaint be not sufficient to satisfy such execution, or if the defendant was not the owner, or had not sufficient interest therein, any other property of the defendant not exempted from sale on execution, may be sold to satisfy such execution, and if there shall be judgment in favor of more than one plaintiff against the same defendant, by virtue of a lien acquired under this act on the property of such defendant, be insufficient to satisfy all of said judgments, then said plaintiff[s] shall be paid *pro rata* according to the amount of their several judgments, and there shall be no priority of right as between the liens pending under the same contract, at the time of rendering the first judgment under said contract.

Effect of lien.

Upon judgment obtained, execution may issue.

If property described in complaint be not sufficient other property liable.

Judgment rendered in favor of more than one plaintiff to be paid *pro rata*, when.

SEC. 5. The district courts of this Territory shall have jurisdiction in all actions and proceedings under this act, whatever may be the amount in controversy, and they are hereby authorized to make all orders and decrees, which may be necessary for the effectual enforcement of the remedies herein provided.

District Courts, only, to have jurisdiction.

SEC. 6. When any person who shall have filed his complaint pursuant to the provisions of this act, shall have received satisfaction for his claim, and the legal costs of his proceedings therein, he shall upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction therein, within six days after such payment or tender, enter satisfaction of his demand in the office where his complaint is filed, which shall forever thereafter discharge, defeat and release the

Plaintiff shall enter up satisfaction, when.

Penalty for refusing to enter up satisfaction when the same has been obtained.

same, and if such person having received satisfaction as herein specified, shall within six days after request, and payment of costs as aforesaid, fail, neglect or refuse to enter satisfaction as aforesaid, he shall forfeit and pay to the party aggrieved, double the amount of damage which he shall have sustained in consequence of his refusal or neglect.

Interest shall accrue from the time of filing complaint.

SEC. 7. In all cases under the provisions of this act, whenever judgment shall be rendered in favor of the plaintiff, such judgment shall include interest from the time of filing such complaint, together with the costs of suit.

Lien may be had upon personal property, when

SEC. 8. Any person who shall make, alter or bestow labor on any article of personal property at the request of the owner or legal possessor thereof, shall have a lien on such property so made, altered or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials furnished, and such person may hold and retain possession of the same until such just and reasonable charges shall be paid, and if they be not paid within three months after the labor shall have been performed, or the materials furnished, such person having such lien may proceed to sell the property by him so made, altered or repaired, or upon which labor has been bestowed, at public auction, by giving public notice of such sale by advertisement for two weeks in some newspaper published in the county, or if there be no such paper in the county, then by posting up notices of such sale in three of the most public places in the county, two weeks before the time of sale, and the proceedings [proceeds] of such sale shall be applied, first, to the discharge of such lien and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof: *Providing*, The provisions of this and the following sections shall not interfere with any special agreement of parties.

Property may be sold at auction, when.

Common carriers and warehousemen and bailees may have lien.

SEC. 9. Any person who is a common carrier, or any person who shall, at the request of the owner or lawful possessor of any personal property, carry, convey or transport the same from one place to another, and any person who shall safely keep or store any personal property at the request of the owner, or legal possessor thereof, shall have the same lien, and the same power of sale for the satisfaction of his reasonable charges, upon the same condition and restriction as provided in the preceding section.

SEC. 10. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Approved Aug. 15th, 1862.

### AN ACT

AMENDATORY OF AN ACT ENTITLED "AN ACT TO CREATE A LIEN IN FAVOR OF RANCHMEN AND OTHERS.

*Be it enacted by the Council and House of Representatives of Colorado Territory:*

SECTION 1. That section two of the above entitled act is hereby repealed. Repealing  
Section 2.

Approved August 8th, 1862.

### AN ACT

TO ORGANIZE THE MILITIA OF COLORADO TERRITORY, AND TO REPEAL THE ACT ENTITLED "AN ACT TO ORGANIZE THE MILITIA," APPROVED OCT. 18th, 1861.

*Be it enacted by the Council and House of Representatives of Colorado Territory:*

SECTION 1. That all able bodied white male citizens, between the ages of twenty-one and forty-five years, except such as are exempted by the laws of the United States, and this act, shall be enrolled as the reserve militia, liable to perform military duty, in certain cases, as hereinafter prescribed. Who are  
liable to mil-  
itary duty.

SEC. 2. The following persons are exempted from such enrollment, to wit: The Executive and Judicial officers of this Territory, Quakers, clergymen, lunatics, idiots, sheriffs, constables, clerks of courts, justices of the peace, and all United States officers. Who are ex-  
empt from  
military  
duty.

SEC. 3. The Territory shall be divided into two divisions, as follows, viz: by a line running due east and west through the same, which shall pass through the town of Bradford, the country lying north of said line constituting the first, and that south of it the second division. Territory  
divided into  
divisions.

SEC. 4. The Governor shall be Commander-in-Chief, and shall have power, by and with the consent of the Council, to appoint one Major General for each division, and may supply any vacancy therein, during the recess Governor  
commander-  
in-chief;  
powers.