

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 647

S. P. 288

In Senate, Feb. 2, 1933.

Referred to Committee on Judiciary and 1500 copies ordered printed.
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Jackson of Cumberland.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-
THREE

AN ACT Providing for Mechanics' Lien.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Definitions. In this act, unless the context or subject matter otherwise requires:

“Contract” means an agreement for improving real property, written or unwritten, express or implied, and shall include “extras” as herein defined.

“Contractor” means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as above defined the entire remaining work under such contract.

“Contract price” means the amount agreed upon by the contracting parties for performing all labor and services and furnishing all materials covered by their contract and shall be increased by the price of any “extras” as hereinafter defined, and shall be diminished by any allowances made because of altered specifications or defects in workmanship or materia's or any other breaches of the contract. If no price is agreed upon by the contracting parties this term shall mean the value of all labor, services, or materials covered by their contract, with an increase for any “extras” and a diminution for any allowances, as in the case of an amount agreed upon. When the term “contract price” is used in reference to any

progress payment, this act contemplates that adjustments for "extras" and for breaches of the contract shall be made up to the time of such progress payment.

"Direct contract" means a contract, as above defined, between the owner and any other person.

"Extras" means labor or services performed or materials furnished for improving real property that are authorized by the owner and added to labor, services or materials covered by a previous contract between the same parties.

"Furnish materials" means supply materials which are incorporated in the improvement and those which become normal wastage in construction operations; or specially fabricate materials for incorporation in the improvement; or supply building materials used for the construction and not remaining in the improvement, subject to diminution by the salvage value of such materials; and shall include supplying tools, appliances or machinery for and used on the particular improvement to the extent of the reasonable rental value for the period of actual use (not determinable by the contract for rental unless the owner is a party thereto), but shall not include supplying hand tools. The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement.

"Improve" means build, erect, place, make, alter, remove, repair or demolish any improvement upon, connected with, or beneath the surface of any land, or excavate any land, or furnish materials for any of such purposes, or perform any labor or services upon such improvement; or perform any labor or services or furnish any materials in laying in the adjoining street or alley any pipes, wires, curbs or sidewalks, or in grading, seeding, sodding or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus.

"Improvement" means any building, structure, erection, construction, demolition, excavation, landscaping, or any part thereof existing, built, erected, placed, made or done on land for its permanent benefit.

"Laborer" means any person other than an architect, landscape architect, engineer, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or the labor or services of others.

"Lienor" means any person having a lien upon real property by virtue of this act and includes his successor in interest.

"Materialman" means any person who, under contract, furnishes materials to the owner, contractor, or subcontractor on the site of the im-

provement or for direct delivery to the site of the improvement or who specially fabricates materials for the improvement, and who performs no labor in the installation thereof.

“Owner” means the owner of real property or any interest therein who enters into a contract for the improvement of such real property and who may be the owner in fee of the real property, or of a lesser estate therein, a lessee for a term of years therein, a person having any right, title or interest in the real property which may be sold under legal process, or a vendee in possession under a contract for the purchase of the real property or any such right, title or interest therein.

“Perform,” when used in connection with the words labor or services, means performance by the lienor or by another for him.

“Real property” means the land that is improved and the improvements thereon, including fixtures, including any public building erected or owned by any city, town, county, school district, or other municipal corporation.

“Site of the improvement” means the real property which is being improved and any land immediately adjacent thereto on which labor or services are performed in furtherance of the operations of improving such real property. In case of removal under contract of an improvement from 1 lot, parcel, or tract of land to another, this term means as well the land from which the improvement is removed as that to which it is removed and also the intermediate land over which the removal is made and the land immediately adjacent to each.

“Subcontractor” means a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor’s contract, or who enters into a contract with a subcontractor as above defined, for the performance of any part of such subcontractor’s contract.

“Visible commencement of operations” means the first actual work of improving upon the real property or the first delivery to the site of the improvement of materials which remain thereon until incorporated in the improvement, of such manifest and substantial character as to notify interested persons that the real property is being improved or is about to be improved.

Sec. 2. Liens on real property. A contractor, subcontractor, materialman or laborer shall, subject to his compliance with the provisions of this act and to the limitations of this section and to the provisions of sections 4 and 5 and subject to the priorities established by sections 6 and 21, have a lien on the real property improved for any money that shall be owing to him for labor or services performed or materials furnished in accordance with his contract and with the direct contract. Any person who per-

forms services as architect, landscape architect, or engineer shall, subject to said compliance, limitations and priorities, have a lien on the real property improved for any money that shall be owing to him for his services in preparing plans, specifications or drawings used in connection with improving the real property or for his services in supervising any portion of the work of improving the real property, rendered in accordance with his contract and with the direct contract. The aggregate amount of all liens allowed under this act for performing labor or services or furnishing materials covered by any certain direct contract shall not exceed the amount of the contract price fixed by said direct contract as diminished by the amount of any money "properly paid" by the owner under such contract, according to the meaning of the words "properly paid" as set out in section 5 of this act.

Sec. 3. Attaching date and extent of liens.

1. All liens provided by this act shall relate to and take effect from the time of the visible commencement of operations except that, where demolition is involved in the work of improving, liens other than for demolition shall relate to and take effect from the visible commencement of operations excluding demolition and delivery of materials for such demolition.

2. Except as provided in sections 12 and 13, such liens shall extend to, and only to, the owner's right, title or interest existing at the time of the visible commencement of operations or thereafter acquired in the real property not exceeding 1 acre of land. When an improvement is made by a lessee, in accordance with a contract between such lessee and his lessor, liens shall extend also to the interest of such lessor. If any part of the real property subject to such liens be removed before the discharge thereof, such removal shall not affect the rights of lienors in respect to either the remaining real property or the part so removed.

Sec. 4. Notice to owner by lienors and by statement under oath given by contractor.

1. (A) Excepting a person contracting directly with the owner and excepting a laborer by whomever employed, any lienor, or any prospective lienor may, before beginning, or within 30 days after beginning but not later than the day of completing his labor or services or his furnishing of materials, give to the owner a written notice of intention to claim a lien, hereinafter called a "notice."

(B) Such notice shall state: (1) The person with whom the lienor contracted or by whom he was employed; (2) a description of the real property sufficient for identification; (3) the nature of the labor or services performed or to be performed, or of the materials furnished or to be fur-

nished by such lienor; (4) with substantial accuracy the total amount to be charged therefor, the amount charged for such labor or services performed or materials furnished to date, and the amount paid to the lienor to date; (5) the date of beginning performance of such labor or services or delivery of materials; (6) whether such labor or services or delivery of materials has been completed; and if not, when it is expected to be completed; (7) that such lienor will prosecute a lien for any amount that shall remain owing and unpaid to him for such labor, services or materials; (8) that the right of the owner safely to make payments to the contractor under his contract is restricted by sections 4 and 5 of the mechanics' lien law.

(C) Such notice shall be sufficient if it is in substantially the following form:

Notice of Intention to Claim a Lien

Date.....

To

Address

You are hereby notified that the undersigned

is { performing for }
 { furnishing to } name

the { contractor } for improving the following described real property:
 { subcontractor }

.....
.....
.....

certain { labor and }
 { services and } as follows:
 { materials }

.....

.....for which the total charge is \$.....

.....of which the amount of \$.....has

been { performed } to date and the amount of \$.....
 { furnished }

has been paid to date.

The first item thereof { was furnished } on.....
 { will be furnished } date

and such { labor and }
 { services and } { was completed } on
 { delivery of materials } { will be completed }

about.....

date

You are further notified that the undersigned will prosecute a lien against the foregoing described real property for any amount now and hereafter owing and unpaid to the undersigned for such labor, services, or materials.

You are further notified that your right safely to make payments to the contractor under your contract is restricted by sections 4 and 5 of the mechanics' lien law.

Dated.....

.....
Lienor (as materialman, subcontractor, etc.)

(D) Any lienor who shall have given a notice under this subsection within the period above limited may, within such period, amend or supplement such notice by further notice or notices, but no such further notice shall affect the result of anything done by the owner before his receipt of such further notice and in reliance upon a previous notice given by such lienor.

2. (A) Excepting a person contracting directly with the owner and excepting a laborer by whomever employed, any lienor may, at any time after the period mentioned in subsection 1 of this section but before the expiration of the period allowed by section 17 for filing his claim of lien, give the owner such a notice.

(B) Any lienor who shall have given notice in accordance with this subsection may, while he has a subsisting lien covered thereby, amend or supplement such notice by further notice or notices; but no such further notice shall affect the result of anything done by the owner before his receipt of such further notice and in reliance upon a previous notice given by such lienor.

(C) The service in accordance with the terms of sections 19 and 20 of a copy of a claim of lien or of an amendment to a claim of lien shall have the same effect as the giving at that time to the owner of a notice, or amendment or supplement thereto, in accordance with this subsection.

3. When final payment becomes due the contractor from the owner, the contractor shall give to the owner a statement under oath stating, if that be the fact, that all lienors contracting directly with or directly employed by such contractor have been paid in full or, if the fact be otherwise, showing the name of each such lienor who has not been paid in full and the amount due or to become due each for labor or services performed or materials furnished and describing in a general way such labor, services, or materials. The contractor shall have no lien or right of action against the owner for labor or services performed or materials furnished under his contract while in default by reason of not giving the owner such statement under oath.

4. The right of a laborer to a lien and to the priority in allowance thereof provided in section 6 shall not be dependent upon any notice under this section. Subject to the provisions of section 2 as to the aggregate amount for which liens may be allowed and subject to the priorities in allowance established by said section 6, any lien may be perfected without any notice or information of such lien having been given to the owner in accordance with any of the preceding subsections of this section: provided, that nothing in this subsection shall be construed to affect in any way the provisions of sections 15, 17, 19 and 20 of this act.

5. If the real property is held in joint or common ownership, the giving to one of the owners of a notice in accordance with subsections 1 or 2 of this section or of a statement under oath in accordance with subsection 3 of this section shall be deemed the giving of such notice or statement to all of the owners.

Sec. 5. Payments by owner; when properly made.

1. Any money paid by the owner on a direct contract and in accordance with this section, and only money so paid, shall be held to be "properly paid" as these words are used in section 2.

2. The owner may at any time pay to any laborers the whole or any part of the amounts that shall then be due and payable to them respectively for labor or services performed by them and covered by the direct contract.

3. If at any time after deducting all money previously properly paid by the owner on the direct contract there shall remain of the contract price of said contract a sum sufficient to pay all amounts due or to become due (a) to laborers, including those thereafter employed, for labor or services previously or thereafter performed by them and covered by said contract and (b) to all lienors who before that time shall have given notices in accordance with subsection 1 of section 4 for labor, services, or materials, previously or thereafter performed or furnished by them and covered by said contract and by said notices and not covered by waivers of lien, any amounts due or to become due for the same labor, services or materials being included only once in determining the total amount to be retained by the owner, the owner may then pay to any lienor who shall have given notice in accordance with subsection 1 of section 4 the whole or any part of the amount which shall at that time be due and payable to such lienor for labor or services performed or materials furnished by such lienor, and covered by said contract and by such notice and not, to the knowledge of the owner, covered by a waiver of lien.

4. The owner may at any time pay to any lienor the whole or any part of the amount which shall at that time be due and payable to such lienor

for labor, services, or materials performed or furnished by such lienor and covered by the direct contract and covered by a notice previously given by such lienor in accordance with subsection 2 of section 4, or by a copy of a claim of lien previously filed and served in accordance with sections 19 and 20, or by a statement under oath of the contractor previously given in accordance with subsection 3 of section 4, and not, to the knowledge of the owner, covered by a waiver of lien: provided, that there will remain of the contract price of said contract after payment of such money, and after deducting all money previously properly paid by the owner on said contract, a sum sufficient to pay all amounts due or to become due (a) to laborers, including those thereafter employed, for all labor or services previously or thereafter performed by them and covered by said contract, and (b) to all other lienors for all labor, services, or materials, previously or thereafter performed or furnished by such lienors and covered by said contract and by notices previously or thereafter given by such lienors in accordance with subsection 1 of section 4 or by notices previously or thereafter given by such lienors in accordance with subsection 2 of section 4 or by a statement under oath of the contractor previously given in accordance with subsection 3 of section 4 and not covered by waivers of lien, any amounts due or to become due for the same labor, services, or materials being included only once in determining the total amount to be retained by the owner.

5. The owner may at any time pay to any lienors who shall have given notices in accordance with subsection 1 or subsection 2 of section 4 or who shall have been shown as having debts due them respectively in a statement under oath of the contractor given in accordance with subsection 3 of section 4, such sums then due and payable to them respectively for labor, services, or materials performed or furnished by them and covered by the direct contract and by said notices or said statement under oath as shall not exceed the amount for which such lienors would respectively be able ultimately to get liens allowed if such payments were not made.

6. Before paying any money directly to a laborer or other lienor except the contractor the owner shall give the contractor at least 10 days' written warning of his intention to make such payment, stating therein the sum which he intends to pay, and the sum so paid shall not exceed the sum stated in such warning. In case the above procedure is followed and the contractor shall not within such 10 days, or before such payment is made if that be after such 10 days, make to the owner written objection to such payment, the contractor shall be deemed to have consented to such payment. Upon receipt of such warning of intention to make payment the contractor may demand of the owner, and the owner shall furnish

him, a copy of the notice of claim of lien on which the owner proposes to make payment. The only result of the failure of the owner to follow such procedure in making such payment shall be that the contractor shall have the right to recover from the owner, and shall have a lien under this act, for any loss which he may suffer by reason of such failure.

7. Except for such right as the contractor may have under subsection 6 by reason of the failure of the owner to follow the procedure therein stated, any money paid by the owner directly to a lienor shall be treated in the accounts of the parties concerned in the same way as if it had been paid by the owner to the contractor and paid by the contractor, directly if there be no intervening subcontractor, or through any intervening subcontractor or subcontractors, to such lienor.

8. The owner may pay to the contractor any money then due and payable on the direct contract: provided, that there will remain of the contract price of said contract after payment of such money, and after deducting all money previously properly paid by the owner on said contract, a sum sufficient to pay all amounts due or to become due (a) to laborers, including those thereafter employed, for all labor or services previously or thereafter performed by them and covered by said contract, and (b) to all other lienors for all labor, services, or materials, previously or thereafter performed or furnished by such lienors and covered by said contract and by notices previously or thereafter given by such lienors in accordance with subsection 1 of section 4 or by notices previously given by such lienors in accordance with subsection 2 of section 4 or by a statement under oath of the contractor previously given in accordance with subsection 3 of section 4 and not covered by waivers of lien, any amounts due or to become due for the same labor, services, or materials being included only once in determining the total amount to be retained by the owner: and provided, also, that the owner shall prove that such money was paid in good faith in payment, or for application to payment, for labor, services, or materials, previously performed or furnished and covered by said contract. Proof that the owner has paid money to the contractor shall be prima facie proof that it was paid in good faith in payment, or for application to payment, for such labor, services, or materials. Also in case the contractor shall at any time give the owner a receipt or waiver of lien signed by a lienor and covering a sum of money which the owner could then have properly paid to such lienor on the direct contract if the contractor had not paid said sum or obtained a waiver of lien therefor, the owner may then pay said sum to the contractor on said contract.

9. Any money which shall be paid by the owner on the direct contract

to the contractor or any other person for labor, services, or materials performed or furnished by a lienor and covered by said contract, and which shall be received by such lienor, and which would be properly paid if it were paid by the owner directly to such lienor, shall be held to be properly paid.

10. In case any money shall be paid by the owner on the direct contract to the contractor or any other person before such money shall be payable under the terms of the contract or before the labor, services, or materials for which it is paid shall have been performed or furnished, such money, in determining whether or not it was properly paid, shall be treated in the same way as if it were paid at the time when such labor, services, or materials shall have been performed or furnished and such money would have been payable under the terms of the contract had it not been previously paid.

11. Subject only to the provisions of subsections 5 and 9 of this section, the owner shall pay no money on the direct contract after the final payment shall become due by the terms of said contract, and before the contractor has given the owner the statement under oath required by subsection 3 of section 4: provided, however, that in case such statement shall be given to the owner after any money has been so paid by the owner, such money, in determining whether or not it was properly paid, shall be treated in the same way as if it were paid just after the date on which such statement was actually given.

12. If the owner pays any money on the direct contract in reliance upon a statement or statements contained in a statement under oath of the contractor given in accordance with subsection 3 of section 4, and does so in a bona fide belief in the truth of such statement or statements, such money shall be held to be properly paid: provided, that it would be properly paid if such statement or statements were true; but this subsection shall not affect the liens of laborers or liens covered by notices given in accordance with section 4 before the payment of such money by the owner.

13. Any money paid by the owner on the direct contract the payment of which is clearly proved to have caused no detriment to any certain lienor shall be held to have been properly paid as to such lienor; and if any of such money shall be held not properly paid as to any other lienors the entire benefit of its being held not properly paid as to them shall go pro rata to such other lienors.

14. No contractor shall have the right to require the owner to pay any money to him under the direct contract if such money cannot be properly paid by the owner to the contractor in accordance with the preceding subsections of this section.

Sec. 6. Allowance of liens by court within prescribed limitation of aggregate amount. In determining amounts for which liens under any direct contract shall be allowed within the aggregate amount fixed in accordance with sections 2, 4 and 5, the court shall allow such liens in the following classes and in the following order:

1. Liens of all laborers.
2. Liens covered by notices given in compliance with the requirements of subsection 1 of section 4.
3. All other liens except the lien of the contractor.
4. Lien of the contractor.

Should the aggregate amount for which liens under any direct contract may be allowed be less than the total amount of liens under such contract in all classes above mentioned, all liens within any single class shall be allowed for their full amounts before any liens shall be allowed within any subsequent class. Should the amount applicable to the liens of any single class be insufficient to permit all liens within that class to be allowed for their full amounts, each lien shall be allowed for its pro rata share of the aggregate amount applicable to liens of that class; but if the same labor, services, or materials shall be covered by liens of more than one class, such labor, services, or materials shall be allowed for only in the lien of the earliest class by which they shall be covered; and also if the same labor, services, or materials shall be covered by liens of two or more lienors of the same class, such labor, services, or materials shall be allowed for only in the lien of the lienor farthest removed from the contractor.

Sec. 7. Filing by owner of contractor's bond conditioned to pay all liens.

1. If a bond of the contractor, bonding his contract as hereinafter provided, be filed in accordance with this section, then sections 4 and 5 of this act and the limitations upon the amount of recovery by lienors established by section 2 of this act shall not be applicable to the liens of lienors other than the contractor claiming under such contract: provided, however, that if such bond for any reason prove to be uncollectible in whole or in part, then the real property shall, to the extent of such uncollectibility, be subject to the liens of lienors other than the contractor without regard to the limitations upon the rights of such lienors established by section 2, as modified by sections 4 and 5. The return, wholly or partly unsatisfied, of an execution against the surety or sureties shall be sufficient evidence of the uncollectibility to that extent of such bond within the meaning of this section.

2. Said bond shall be the bond of the contractor as principal and of a solvent surety or sureties, approved by a court of competent jurisdiction

or a judge thereof (or if the court be not in session, by the clerk thereof) having jurisdiction of liens under this act in the county in which the real property is situated, in a penal sum not less than 100 per cent of the contract price, and may be conditioned for the faithful performance of the contract by or on behalf of the contractor but shall in any event be conditioned for the payment of liens of all lienors other than the contractor which may be decreed against the real property for labor or services performed or materials furnished under and in pursuance of said contract. Such bond shall be in substantially the following form:

Bond

“Know all men by these presents that we,
as Principal, and as Surety, are held and
firmly bound unto all lienors (as defined in Chapter....., Laws of 19....
of, hereinafter referred to as the Mechanics’ Lien
Act), other than the contractor, who shall perform labor or services or
furnish materials under and by virtue of the contract hereinafter mentioned
and who shall have established liens against the real property mentioned
in said contract, as provided by the terms of the Mechanics’ Lien Act
aforesaid, in the sum of.....Dollars (\$.....),
lawful money of the United States, to be paid in such behalf, for which
payment well and truly to be made, we hereby bind ourselves, our suc-
cessors and assigns, jointly and severally, firmly by these presents.

Signed by us and dated this.....day of....., 19....

The condition of the above obligation is such that,

Whereas, the above bounden.....is about to enter
(or has heretofore entered) into a contract with.....
to do work particularly described therein (here describe contract).....

.....
which contract and the plans and specifications therein referred to are
hereby made a part hereof;

NOW, THEREFORE, if the above bounden.....
.....shall fail to pay such lienors
as aforesaid who shall have established liens as aforesaid in accordance
with the said Mechanics’ Lien Act as aforesaid, then the surety on this
bond will pay such liens in accordance with the priority established by
said Mechanics’ Lien Act, to a total amount not exceeding the penal sum
specified in this bond.

This bond is given in accordance with section 7 of the Mechanics’ Lien
Act and said act shall be read into this bond, and this bond shall be in

all respects subject to and be construed in the light of the provisions of section 7 aforesaid.”

Any bond so filed for the protection of lienors shall be deemed to be conditioned in accordance with this section whether or not it is in the form herein set out and whether or not it is in terms so conditioned.

3. The owner shall, at any time before the substantial completion of the improvement covered by his contract, but not afterwards, file said bond with the register of deeds in whose office a claim of lien may be filed. He shall attach to such bond a copy of the contract which shall be, by reference in said bond, made a part thereof. The said register shall note the day, hour and minute of filing upon such bond, and shall record the bond in a book to be known as the “Mechanics’ Lien Bond Book,” which book shall constitute a part of and be kept with the records of such county.

4. The contractor, if he be within the jurisdiction, and his surety or sureties shall be joined as additional defendants or respondents in any action to enforce a lien. If the contractor or his surety or sureties, parties to such action as aforesaid, shall allege that there is still unpaid and owing by the owner to the contractor any part of the contract price under such contract, the court shall determine the amount, if any, so owing and unpaid. A lien when finally decreed in any such action shall stand as a judgment against the contractor and his surety or sureties, defendants or respondents therein, in favor of the lienor as if recovered in a direct action on such bond and the collection thereof may be enforced against the contractor and his surety or sureties as the collection of other judgments in such court, limited only to the penalty of such bond and the order of distribution provided for by section 21, but the court shall stay all proceedings for the sale of the real property pending the issuance and return of an execution against the surety and the principal on such bond. If in such action the court shall determine that there is owing and unpaid to the contractor any part of the contract price, the liens decreed, upon payment of the amounts thereof to the lienors by the contractor or his surety or sureties, shall, to the extent of the remainder of the contract price so found to be owing and unpaid, inure to the benefit of the contractor or his surety or sureties so making payment, and continue against the real property until transferred as provided in section 25 of this act or until satisfied and discharged.

5. Any party to any action for the enforcement of a lien hereunder may, as of right, make application to the court for a consolidation with

such action of all pending actions involving the subject matter of such contract; and thereupon the court shall order such consolidation.

6. No change or alteration of the work, or modification of any such contract between the owner and the contractor, shall release or exonerate any surety or sureties upon any bond given under this section; but the surety or sureties, to the extent of any prejudice to them by any such change, alteration or modification, including anticipation of payments, may in a separate action hold the owner therefor, and further may plead as a defense, pro tanto, to any claim by the owner under said bond any such change, alteration or modification, including anticipation of payments: provided, however, that any such change, alteration or modification which shall operate to increase the contract price by 20 per cent or more shall, unless consented to by the surety or sureties by written consent deposited with the clerk of the county aforesaid, be deemed to be, pro tanto, a new contract, and the original bond filed under this section shall not apply to or answer for liens for labor or services performed or materials furnished for the additional work required by such change, alteration or modification.

Sec. 8. Misapplication of funds shall constitute larceny by embezzlement.

1. For the purpose of this section the net proceeds of a loan shall be deemed to be the amount remaining after deducting from the face value of the loan: (a) The amount of the fees and charges legally and necessarily incident to the procuring of the loan; (b) the amount required to satisfy prior encumbrances against the real property and the fees and charges legally and necessarily incident thereto, if such encumbrances are paid or to be paid with the consent of the lender, from the proceeds of the loan; and (c) the amount of fees and charges for professional services for which liens are not provided by this act and which are bona fide rendered in connection with the improving of the real property.

2. Any owner who procures a loan secured by mortgage or other encumbrance on certain real property, representing that the proceeds thereof are to be used for the purpose of improving such real property and who, with intent to defraud, shall use the net proceeds, as defined in subsection 1 of this section, or any part thereof for any other purpose than to pay for labor or services performed on, or materials furnished for, this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid or while any amount of which he has received notice of nonpayment prescribed by this act remains unpaid, shall be guilty of larceny by embezzlement and shall be

punished in accordance with the provisions of the laws of this state applicable thereto.

3. Any architect, landscape architect, engineer, contractor, subcontractor, or other person who, with intent to defraud, shall use the proceeds of any payment made to him on account of improving certain real property for any other purpose than to pay for labor or services performed on or materials furnished by his order for this specific improvement, while any amount for which he may be or become liable for such labor, services, or materials remains unpaid shall be guilty of larceny by embezzlement and shall be punished in accordance with the provisions of the laws of this state applicable thereto.

Sec. 9. Furnishing false statement shall constitute cheating by false pretences. Any person who, with intent to defraud, furnishes to an owner a statement under oath provided for by subsection 3 of section 4 of this act, knowing that such statement, or any part thereof that is material to any purpose for which such statement is furnished, is false, or who knowingly and falsely omits or states the name of any unpaid lienor or the amount due or to become due such lienor, or makes a false oath to any such statement, shall be guilty of cheating by false pretences and shall be punished in accordance with the provisions of the laws of this state applicable thereto.

Sec. 10. Application of money to materials account.

1. Any owner, contractor or subcontractor in making any payment under or properly applicable to any contract, to one with whom he has a running account, or with whom he has more than 1 contract, or to whom he is otherwise indebted, shall designate the contract under which the payment is made or the items of account to which it is to be applied and if he shall fail to do so or shall make a false designation he shall be liable to any one suffering a loss in consequence, for the amount of such loss. The provisions of this subsection shall in no way derogate from the effect of section 8 of this act.

2. When a payment for materials is made to a subcontractor or materialman such subcontractor or materialman shall demand of the person making such payment a designation of the account and the items of account to which such payment is to apply. In any case where a claim of lien for materials furnished is made by a subcontractor or materialman, it shall be a defense to such claim to prove that a payment made by the owner to the contractor for such materials has been paid over to such subcontractor or materialman, and to prove also that when such payment was received by such subcontractor or materialman he did not demand a designation of the account and of the items of account to which such

payment was to be applied or, receiving a designation of its application to the account for such materials, he failed to apply such payment in accordance therewith.

Sec. 11. Repossession of materials not used. If for any reason the completion of an improvement is abandoned, or though the improvement is completed, materials delivered are not used therefor, a person who has delivered materials for the improvement which have not been incorporated therein and for which he has not received payment may repossess and remove such materials; and thereupon he shall have no lien on the real property or improvements and no right under paragraph 1 of section 26 against persons secondarily liable, for the price thereof, but shall have the same rights in regard to the materials as if he had never parted with the possession. This right to repossess and remove the materials shall not be affected by their sale, encumbrance, attachment, or transfer from the site of the improvement, except that, if the materials have been so transferred, the right to repossess them shall not be effective as against a purchaser or encumbrancer thereof in good faith whose interest therein shall have arisen since such transfer from the site of the improvement, or as against a creditor attaching after such transfer. The right of repossession and removal given by this section shall extend only to materials whose purchase price does not exceed the amount remaining due to the person repossessing; but where materials have been partly paid for, the person delivering them may repossess them as allowed in this section on refunding the part of the purchase price which has been paid.

Sec. 12. Liens for improving land in which the contracting party has no interest. When the person contracting for improving real property has no interest as owner in the land, no lien shall attach to the land, except as provided in section 13; but if removal of such improvement from the land is practicable, the lien of a lienor shall attach to the improvement on which he has performed labor or services or for which he has furnished materials. The court, in the enforcement of such lien, shall order such improvement to be separately sold and the purchaser may remove it within such reasonable time as the court may fix. The purchase price for such improvement shall be paid into court. The owner of the land upon which the improvement was made may demand that the land be restored to substantially its condition before the improvement was commenced, in which case the court shall order its restoration and the reasonable charge therefor shall be first paid out of such purchase price and the remainder shall be paid to lienors and other encumbrancers in accordance with their respective rights.

Sec. 13. Liens for improving real property under contract with husband

or wife on property of the other or of both. When the contract for improving real property is made with a husband or wife who is not separated and living apart from his or her spouse and the property is owned by the other or by both, the husband or wife who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title or interest of the other in said property to liens under this act unless such other shall, within 10 days after learning of such contract, give the contractor and file with the register of deeds of the county in which the property is situated written notice of his or her objection thereto.

Sec. 14. Insurance proceeds liable for demands. The proceeds of any insurance which by the terms of the policy are payable to the owner of real property improved and actually received or to be received by him because of the damage, destruction or removal by fire or other casualty of an improvement on which lienors have performed labor or services or for which they have furnished materials, shall, after the owner has been reimbursed therefrom for premiums paid by him, if any, for such insurance, be subject to liens provided by this act to the same extent and in the same manner and order of priority as the real property would have been had such improvement not been so damaged, destroyed or removed. The proceeds of any insurance which by the terms of the policy are payable to a contractor or subcontractor, and actually received or to be received by him because of the damage, destruction or removal by fire or other casualty of an improvement on which he has performed labor or services or for which he has furnished materials, shall, after such contractor or subcontractor has been reimbursed therefrom for premiums paid by him, if any, for such insurance, be liable for the payment of demands for labor or services performed or materials furnished by his order and for which he is liable in the same manner and under the same conditions as payments to him under his contract would have been had such improvement not been so damaged, destroyed or removed. The insurer may, unless enjoined by a court of competent jurisdiction, pay the proceeds of any such policy of insurance to the assured named in such policy and thereupon any liability of the insurer under this act shall cease. Such named assured to whom payment of the proceeds of such policy is made shall be deemed a trustee of such proceeds for the purposes designated by this section.

Sec. 15. Contents of claim of lien. For the purpose of perfecting his lien a lienor shall file a claim of lien which shall state:

1. If the lienor is an individual, his name and residence or place of business; if the lienor is a partnership, the names of the partners and the business address of such firm; if the lienor is a domestic corporation, its

name and its principal place of business within the state; and if the lienor is a foreign corporation, its name and its principal place of business within the state or if it has none, its principal place of business without the state.

2. The name of the person with whom the lienor contracted or by whom he was employed.

3. The labor or services performed or materials furnished and the contract price thereof. Materials specially fabricated for incorporation in the improvement but not so incorporated, and the contract price thereof, shall be separately stated in the claim of lien.

4. The real property subject to the lien, with a description thereof sufficient for identification; and if in a city, town or village, its location by street and number, if known.

5. The name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owner as far as known to the lienor.

6. The time when the last item of labor or service was performed or of materials was furnished.

7. The amount unpaid to the lienor for such labor or services, or materials.

8. The claim of lien shall be signed and verified on personal oath by the lienor or, in the case of a partnership lienor, by one of the partners, or, in the case of a corporate lienor, by the lienor's agent acquainted with the facts stated therein.

The omission of any of the foregoing details, or errors in such claim of lien shall not, within the discretion of the trial court, prevent the enforcement of such lien as against one who has not been adversely affected to a substantial extent by such omission or error. Such claim of lien shall be sufficient if it is in substantially the following form:

Claim of Lien

State of }
County of } ss.

.....
(name of lienor)

.....
(residence or business address of lienor)

being duly sworn says that in pursuance of a contract with.....

.....
(name of lienor's employer or person with whom he contracted)

he { performed } the following { labor and
 { furnished } { services and
 { materials

.....
(here describe the labor or services performed or materials furnished. Describe specially fabricated materials separately.)
.....
.....

to the value of.....

(state contract price)

on the following described real property.....

(describe real property sufficiently

for identification, giving street and number if known)
.....

owned by

(name of owner against whose interest lien is claimed)

whose interest in such real property is.....

(state owner's interest, fee simple,

life estate, leasehold, if known)

He further says that the last item of { labor
services
materials

was { performed }
{ furnished } on the.....day of....., 19.... and,

of the contract price stated, there is unpaid the amount of.....

(state amount unpaid)

for which amount he claims a lien on the real property herein described.

.....
(signature of lienor)

Subscribed and sworn to before me this.....day of.....,
19....

.....
(notary public)

.....
county, state.

My commission expires.....

Sec. 16. Single claim of lien sufficient. Where the amount demanded is for labor or services performed or materials furnished for more than 1 improvement on a single lot, parcel, or tract of land, or for a single improvement on contiguous or adjacent lots, parcels, or tracts of land, or for more than 1 improvement to be operated as a single plant but located on separate lots, parcels, or tracts of land, and made or to be made in each case under the same direct contract or contracts, a lienor shall be required

to file only 1 claim of lien covering his entire demand against such real property. If 2 or more lots, parcels, or tracts of land are improved under the same direct contract or contracts and the improvements are not to be operated as a single plant, a lienor shall, in claiming a lien, apportion his contract price between the several lots, parcels, or tracts of land and improvements thereon upon which he has performed labor or services or for which he has furnished materials and shall file a separate claim of lien for the amount demanded against each lot, parcel, or tract of land and the improvements thereon. In such latter case proof of delivery, at the order of the purchaser, to any of such lots, of material to be used in 1 or more of such improvements shall, prima facie, be sufficient proof of delivery to support a lien on any of such lots.

Sec. 17. Filing of claim of lien. The claim of lien may be filed at any time during the progress of the work or thereafter but not later than 3 months after the final performance of the labor or services or the final furnishing of the materials by the lienor, dating from the last item of labor or service performed or of materials furnished by him. The claim of lien shall be filed in the office of the register of deeds in which the real property is situated. If such real property is situated in 2 or more counties, the claim of lien shall be filed in the office of the register of each of such counties. The filing of the claim of lien as herein provided shall be constructive notice to all persons of the contents and effect of such claim. The register of each county shall provide and keep a book to be called the "Mechanics' Lien Docket," which shall be suitably ruled in columns headed "owners," "lienors," "property," "amount," "time of filing," "proceedings had," in each of which he shall enter the particulars of the claim of lien properly belonging therein. The date, hour and minute of the filing of each claim of lien shall be entered in the proper column. The names of the owners shall be arranged in such book in alphabetical order. The validity of the lien and the right to file a claim therefor shall not be affected by the insolvency, bankruptcy or death of the owner before the claim of the lien is filed.

Sec. 18. Amendment of claim of lien. Any claim of lien filed as provided in this act may be amended at any time during the period allowed for filing such claim of lien, if such claim of lien and amendment are filed in good faith: provided, however, that such amendment shall not have the effect of causing any interested person to suffer any detriment by having acted in good faith in reliance upon such claim of lien as originally filed. Any amendment of the claim of lien shall be filed in the same manner as is provided for the filing of the original claim of lien.

Sec. 19. Manner of serving copies of claims of lien and amendments,

and of assignments. Service of copies of claims of lien and amendments thereto, and of assignments of liens and claims of lien, required by sections 20 and 23 respectively of this act, shall be made as follows:

1. If on a natural person:

Within ten (10) days after the instrument is filed,

(a) actual service

by delivering the copy to him personally or by depositing it in the mail, registered and with postage prepaid, addressed to him at his usual place of abode or place of business within or without the state;

or, if within such ten (10) days such service is found to be impracticable, within the next succeeding ten (10) days,

(b) substituted service

by delivering the copy to his agent or attorney, or by affixing it conspicuously on the real property.

2. If on a corporation:

Within ten (10) days after the instrument is filed,

(a) actual service

either by delivering the copy to the president, vice-president, secretary, treasurer, cashier, director, or managing agent of the corporation personally within the state; or by depositing it in the mail, registered and with postage prepaid, addressed to the corporation at its principal place of business within or without the state; or

(b) statutory service

by serving it in such manner as is provided by law for the service of legal process;

or, if within such ten (10) days such service is found to be impracticable, within the next succeeding ten (10) days,

(c) substituted service

by affixing the copy conspicuously on the real property.

Sec. 20. Service of copy of claim of lien.

1. After the claim of lien or any amendment thereto is filed for record a copy of such claim of lien or amendment shall be served upon the owner in the manner provided in section 19 of this act. Failure by any lienor so to serve or delay beyond the time allowed for so serving a copy of his claim of lien or any amendment thereto shall render his claim of lien voidable to the extent that such failure or delay is shown to have been prejudicial to the owner.

2. Service upon the owner of such copy of the claim of lien or amendment shall, in addition to notifying the owner of the filing of such claim of

lien, have the same effect as the giving of a notice to the owner by a lienor in accordance with the provisions of subsection 2 of section 4.

Sec. 21. Priority of liens. Liens provided by this act shall have priority over a conveyance, mortgage, building loan contract, attachment, judgment, or other encumbrance or demand against such real property which was not recorded, docketed or filed at the time of the visible commencement of operations. All liens provided by this act except those of laborers shall, subject to the provisions of sections 4, 5 and 6 of this act, be on a parity and shall be settled pro rata; all liens of laborers shall be on a parity one with another and shall have preference over all other liens under this act.

Sec. 22. Duration of lien. No lien provided by this act shall continue for a longer period than 1 year after the claim of lien has been filed unless within that time an action to enforce the lien is commenced in a court of competent jurisdiction and a notice of the pendency of such action is filed with the register of deeds in which the claim of lien is filed, containing the names of the parties to the action, the object of the action, a description of the real property and improvements affected thereby, and the time of filing the claim of lien. If a lienor having a subsisting lien is made a party defendant in an action to enforce another lien provided by this act, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section for bringing action to enforce such defendant's lien, the lien of such defendant is thereby continued. Such action shall be deemed an action to enforce the lien of such defendant lienor. The failure to file a notice of pendency of action shall not abate the action as to any person liable for the payment of the debt specified in the claim of lien and the action may be prosecuted to judgment against such person. Where a lien is transferred to a cash deposit or to a bond as provided in section 25 of this act a notice of pendency of action need not be filed.

Sec. 23. Assignment of lien. After a claim of lien has been filed as prescribed in this act, the lien may be assigned by a written instrument signed and acknowledged by the lienor, at any time before the discharge thereof. Such assignment shall contain the names and places of residence of the assignor and assignee, the amount of the lien and the date of filing the claim of lien, and may be filed for record in the office where the claim of lien is filed. The facts relating to such assignment and the names of the assignor and assignee shall be entered by the proper officer in the book where the claim of lien is entered and opposite the entry thereof. After the assignment is filed for record a copy thereof as notice of the assignment shall be served in the manner provided by section 19 of this act upon the owner and upon the person from whom the amount is owing. Unless such assignment

is filed for record the assignee need not be made a defendant in an action to foreclose a mortgage, lien or other encumbrance. A payment made to the assignor on account of such assigned lien, without notice of such assignment and before the same is filed for record, shall be valid and of full force and effect as against the assignee thereof. Except as provided herein, the failure to file an assignment shall not affect its validity.

Sec. 24. Discharge of lien. A lien provided by this act may be discharged by any of the following methods:

1. By entering notice of satisfaction of the lien upon the margin of the record thereof in the Mechanics' Lien Docket in the office of the register of deeds. This notice shall be signed by the lienor or his lawful representative and attested by said register.

2. By the certificate of the lienor, duly acknowledged or proved and filed in the office where the claim of lien is filed, stating that the lien is satisfied and may be cancelled of record.

3. By failure to begin an action to enforce the lien within 1 year from the time of filing the claim of lien, unless an action be begun within the same period to foreclose a mortgage or to enforce another lien provided by this act upon the same real property and a notice of pendency of such action is filed.

4. By an order of a court of competent jurisdiction as provided in this subsection. At the instance of the owner or contractor the court shall issue upon the lienor a rule to show cause within 30 days why his lien should not be enforced by action or vacated and cancelled of record. Upon failure of the lienor satisfactorily to show cause the court shall forthwith either order the lienor to commence action to enforce his lien, or order the register of deeds to record cancellation of the lien.

5. By filing in the office of the register of deeds in which the real property is situated, a transcript of a judgment or decree of a court of competent jurisdiction together with proof of service of due notice of entry thereof, showing a final determination of the action in favor of the owner of the real property against which the lien was claimed.

Sec. 25. Transfer of lien to security substituted for real property. A lien provided by this act may be transferred from real property to other security by either of the following methods:

1. By depositing with the register of deeds in whose office the claim of lien is filed, at any time before an action is commenced to enforce the lien, a sum of money equal to the amount demanded in such claim of lien plus an amount estimated by said register as sufficient to cover interest to the date of settlement of the demand and the cost of prosecuting such action; or after such action is commenced by a payment into court after

at least 5 days' notice to all parties to the action of such sum of money as in the judgment of the court or a judge thereof will be sufficient to pay any judgment or decree which may be recovered in such action. Upon any such payment the register of deeds shall forthwith enter upon the Mechanics' Lien Docket against the claim of lien for the transfer of which such moneys were paid, the words "Transferred to deposit" and such lien shall thenceforth until satisfied, dismissed or discharged be secured by such deposit. A deposit of money made as provided in this section shall be paid to lienors under the judgment or decree of the court in accordance with their respective rights. Any excess of the deposit over the aggregate amount of such judgments or decrees, or if liens are otherwise satisfied, the full amount of such deposit shall be repaid to the party making the deposit, or to his successor in title thereto. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of law relative to the payment of money into court and the disposition of such money by the order of the court. An order for the payment of such money to the persons entitled thereto may be made by any court of competent jurisdiction having jurisdiction of the parties. If application for such order is made by a lienor it shall be on notice to the depositor or his successor in title; if made by the depositor or his successor in title, then on notice to the lienor.

2. By the owner or contractor, either before or after the beginning of the action, executing a bond with two or more sureties who shall be freeholders, such bond to be payable to this state for the benefit of the lienor whose lien is sought to be transferred. The liability of each of said sureties shall be such sum as the court or a judge thereof may direct but not less than the amount demanded in the claim of lien plus an amount estimated by the court or judge as sufficient to cover interest to the date of settlement of the demand, and the costs of prosecuting such action. The bond shall be conditioned for the payment of any judgment or decree which may be rendered for the satisfaction of the lien. Each surety shall certify under oath on the bond that he is the owner of unencumbered real estate situated in the county in which the real property improved is situated, equal in value to the penal amount of the bond, describing such real estate and giving the valuation thereof as it appears in the records of the office of the assessor of taxes. Such bond shall be filed in the office where the claim of lien is filed and shall be a lien on such real estate of the sureties from the time of filing such bond until all conditions of such bond have been fulfilled. The register of deeds shall endorse upon such bond the date, hour and minute of filing and shall index and record the same in the Mechanics' Lien Docket. The bond when recorded shall be left on

file in such office. A copy of the bond with notice that the sureties will justify before the court or a judge thereof, at the time and place therein mentioned, shall be served upon the lienor or his attorney of record not less than 5 days before such time. The premises described in the claim of lien as the lienor's residence or place of business shall be deemed to be his said residence or place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary. The execution of any such bond by any corporation authorized by the laws of this state to transact surety business shall be equivalent to the execution of said bond by two sureties who are freeholders and no justification or notice thereof shall be necessary, nor shall the above provision making the bond a lien on the real estate of the sureties apply in the case of such corporate surety. Upon the approval of the bond by the court or judge an order shall be made by such court or judge transferring such lien to the bond and directing the register of deeds in whose office the claim of lien is filed to enter upon the Mechanics' Lien Docket against the claim of lien for the transfer of which such bond is executed, the words "Transferred to bond" and such lien shall thenceforth until satisfied, dismissed or discharged be secured by such bond. The court shall make an order releasing the surety or sureties from all liability under the bond upon proof of the satisfaction, dismissal or discharge of the lien. The court may also release any surety from all liability under the terms of the bond on the substitution of other surety approved by the court or judge as above provided.

Sec. 26. Copy of contract and statements of account may be demanded.

1. A copy of the contract of a contractor or subcontractor and a statement of the amount due or to become due thereon, shall be furnished by the owner or contractor, party thereto, upon demand of a lienor contracting with or employed by the other party to such contract. If, upon such demand, the owner or contractor refuses or neglects to furnish such copy of the contract or such statement, or wilfully and falsely states the amount due or to become due under such contract, and such lienor has not been paid the amount of his demand against a contractor or subcontractor under such contract, the lienor may proceed to judgment and execution thereon against the person primarily liable for the debt. If the execution is returned wholly or partly unsatisfied, the owner or contractor of whom such copy or statement was demanded shall be liable for the loss sustained by the lienor by reason of such refusal, neglect or false statement, and in the case of the owner the lien of such lienor, perfected as prescribed in this act, against the real property improved for the labor or services performed

or materials furnished after such demand shall exist to the same extent and be enforced in the same manner as if such labor, services, or materials had been directly performed for or furnished to such owner. The information contained in such copy or statement furnished pursuant to such demand shall be binding upon the owner or contractor furnishing it unless actual notice of any modification is given within reasonable time to the person demanding the copy or statement.

2. The owner, at the time any payment is to be made by him to the contractor or direct to a lienor, may in writing demand of any lienor a written statement under oath of his account showing the nature of the labor or services performed and to be performed, the materials furnished and to be furnished, the amount paid on account to date, the amount due, and the amount to become due. Failure or refusal to furnish such statement within 10 days after receipt of demand shall deprive the person so failing or refusing to furnish such statement of his lien. Any person who furnishes a wilfully false or fraudulent statement of his account shall be deprived of his lien to the extent that such statement has prejudiced the rights of another interested party.

Sec. 27. Waiver of liens. The acceptance by the lienor of an unsecured note or notes for all or any part of the amount of his demand shall not constitute a waiver of his lien therefor, unless expressly so agreed in writing, nor shall it in any way affect the period for filing the claim of lien under section 17 hereof. Any person other than a laborer may as a part of his contract waive in writing his lien under this act, but a laborer may not waive his lien.

Sec. 28. Materials not attachable for debts of purchaser. Whenever materials have been furnished to improve real property and payment therefor has not been made, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price thereof, so long as in good faith the same are about to be applied to improve the real property; but if the owner has made payment for materials furnished and the materialman has not received payment therefor, such materials shall not be subject to attachment, execution, or other legal process to enforce the debt due for the purchase price thereof.

Sec. 29. Judgments in case of failure to establish liens; award of personal judgments by court or referee; deficiency judgments. If a lienor shall fail, for any reason, to establish a lien for the full amount found to be due him in an action under the provisions of this act, he may, in addition to the lien decreed in his favor, recover a judgment or decree in such action for such sums in excess of the lien as are due him or which he

might recover in an action on a contract, against any party to the action from whom such sums are due him. A court or referee, in any action heretofore or hereafter brought may, either before or after the adjudication of the demand, award a money judgment or decree in favor of any party. This shall not preclude the rendition of other judgments or decrees in the action. If, upon the sale of the real property under judgment or decree of a court of competent jurisdiction, there is a deficiency of proceeds to pay the amount of such judgment or decree, the judgment or decree may be enforced for the deficiency against any person liable therefor. Any payment made on account of any judgment or decree in favor of a party shall be credited on any other judgment or decree rendered in favor of that party in the same action.

Sec. 30. Act governs liens on future contracts only. This act shall apply to such liens only as arise under direct contracts under which visible commencement of operations takes place after the date when this act becomes effective. Neither section 38 nor any other provision of this act shall apply to liens arising under earlier contracts.

Sec. 31. Enforcement of liens. The liens provided by this act may be enforced against the real property specified in the claim of lien and which is subject thereto and against any person liable for the debt upon which the lien is founded, as prescribed in sections 29-43, inclusive of chapter 105 of the revised statutes.

Sec. 32. Action at law not barred. Except as herein otherwise expressly provided, nothing in this act contained shall be construed to prevent any lienor under any contract from maintaining an action thereon at law in like manner as if he had no lien for the security of his debt and the bringing of such action shall not prejudice his rights under this act.

Sec. 33. Construction of act. In all matters of procedure this act is to be construed liberally to secure the beneficial intents and purposes thereof.

Sec. 34. Short title. This act may be cited as the "Uniform Mechanics' Lien Act."

Sec. 35. Constitutionality. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 36. Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 37. Liens may be preserved and enforced by bill in equity; neces-

sary allegations of bill; other lienors may join and be made parties, also mortgagees. The lien mentioned in this act may be enforced by bill in equity against the debtor and owner of the property affected, and all other parties interested therein which said bill shall be filed with the clerk of courts in the county where the real property improved is situated.

The bill shall state that the plaintiff claims a lien on the real property improved for services or labor performed or materials furnished in improving said real property; that plaintiff has filed his claim of lien in accordance with section 17 of this act and has caused notice thereof to be given in accordance with section 19 of this act, copy of which claim of lien shall be attached to said bill in equity. And the bill shall pray that the property be sold and the proceeds applied to the discharge of said lien. Two or more lienors may join in filing and prosecuting such a bill. Other lienors may be made parties; other lienors may become parties and enforce their liens on said property provided their petitions therefor, setting forth their claims, as hereinbefore required, be filed with said clerk of courts, and notice of the pendency of such action be filed, in accordance with the requirements of section 22 of this act. The court may consolidate 2 or more bills claiming liens on the same property, into 1 proceeding, if justice shall so require. Any mortgagees or other person having a claim upon, or interested legally or equitably in said property, may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceedings.

Sec. 38. Amount may be determined by jury trial, or otherwise. The court shall determine the amount for which each lienor has a lien upon the property, by jury trial, if either party so requests in bill, petition or answer, otherwise in such manner as the court shall direct. And such determination shall be conclusive as to the fact and amount of the lien subject to appeal and exceptions according to the practice in equity. Any lienor may contest another lienor's claim upon issues framed under direction of the court.

Sec. 39. Court may decree that property be sold; redemption. If it is determined that the parties or any of them, claiming a lien, have a lien upon said real property improved, the court may decree that said property, or such interest in it as is subject to the liens, or any of them, shall be sold, and shall prescribe the place, time, terms, manner, and conditions of such sale; any justice, in term time or vacation, may order an adjournment of such sale from time to time; and a deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within 3 months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court

may provide in the order of sale, that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land, on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The court may make such decree in regard to costs as is equitable.

Sec. 40. Liens mentioned in this act may be enforced by action at law. In addition to the remedy hereinbefore provided, the liens mentioned in this act may be enforced in actions at law, commenced in any court having jurisdiction in the county where the property on which a lien is claimed, is situated, which said action shall be commenced and a notice of the pendency thereof filed with the register of deeds in the county in which the claim of lien is filed, in accordance with section 22 of this act.

Sec. 41. Proceedings pending at the same time may be transferred to one court. When 2 or more proceedings, either at law or in equity, are pending at the same time, in whatever court or courts, to enforce liens on the same real property improved, upon petition of any lienor who has commenced such proceedings, or of the owner of the real property improved, a justice of the supreme judicial court, after notice and hearing, in term time or vacation, may, if justice requires it, order all such actions to be transferred either to the supreme judicial court or to the superior court as he may determine, and require the parties in all such proceedings, in whatever court commenced, to plead in equity, substantially in the manner prescribed in section thirty-seven, and thereafter all the proceedings shall be in accordance with the provisions of said section and the 3 following sections; and while such petition is pending all such actions shall stand continued.

Sec. 42. Property may be taken and sold on execution to satisfy judgment; proceedings when 2 or more are rendered at same time; redemption. When a judgment is rendered in any suit authorized by this chapter, against the interest of the owner of any real property improved, said interest shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If 2 or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has commenced an action at law as aforesaid, or who has filed his bill in equity as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments, and all lienors notifying such officer otherwise direct, shall thereupon sell said property as aforesaid, and after deducting the fees and expenses of sale, shall return the

balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made, may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall paid to the person or persons legally or equitably entitled thereto.

Sec. 43. Inconsistent laws repealed. All acts or parts of acts inconsistent with this act are hereby repealed.