

1 IN THE HOUSE

BY MR. PRATT

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HOUSE BILL NO. 415

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SECOND LEGISLATURE - SECOND SESSION

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A BILL

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For an Act entitled: "An Act relating to actions to enforce a mechanic's or materialmen's lien; providing for a defense and counterclaim against a person filing a lien in bad faith; and permitting costs against an unsuccessful lien claimant."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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Section 1. Sec. 26-1-13, ACLA 1949, is amended to read:

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Sec. 26-1-13. ACTIONS TO ENFORCE LIENS: COUNTERCLAIM

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AGAINST BAD FAITH CLAIMANT: APPLICATION OF PROCEEDS OF SALE:

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EXECUTION FOR BALANCE DUE CLAIMANT. Actions to enforce the

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liens created by this code shall be brought before the

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superior [DISTRICT] court, and the pleadings, process, prac-

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tice, and other proceedings shall be the same as in other

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cases; provided that the issue of the bad faith of a lien

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claimant in filing a lien against the defendant's property

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may be raised in the defendant's answer and a counterclaim may

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be maintained for the amount of damages sustained by the defen-

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dant because of the lien. Damages may include: (1) any loss

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of value to the property attributable to the lien; or (2) the

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actual loss of money expended preparatory to selling the pro-

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perty to an actual buyer and the loss of profits of the sale

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if the filing of the lien has prevented the defendant from

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tendering a marketable title; or (3) any other item of damage

1 directly attributable to the lien. When the lien claimant is
2 successful and [IN CASE] the proceeds of any sale under this
3 code shall be insufficient to pay all lien holders under it,
4 the liens of all persons other than the original contractor
5 (and subcontractors) shall first be paid in full, or pro rata
6 if the proceeds be insufficient to pay them in full; and out
7 of the remainder, if any, the subcontractor shall be paid in
8 full, or pro rata if the remainder be insufficient to pay
9 them in full, and the remainder, if any, shall be paid to the
10 original contractor; and each claimant shall be entitled to
11 execution for any balance due him after such distribution,
12 such execution to be issued by the clerk of the superior
13 [DISTRICT] court, upon demand, after the return of the mar-
14 shal or other officer making the sale showing such balance due.

15 In all actions under this chapter the superior [DISTRICT]
16 court shall, upon entering judgment for the plaintiff, allow
17 as a part of the costs all moneys paid for the filing and
18 recording of the lien, and also a reasonable amount as
19 attorney's fees. A defendant who has successfully defended
20 the action is entitled to receive his costs and reasonable
21 attorney's fees from the plaintiff. All actions to enforce
22 any lien created by this code shall have preference upon the
23 calendar of civil actions brought before the superior
24 [DISTRICT] court and shall be tried without unnecessary delay.

25 In all actions to enforce any lien created by this chap-
26 ter all persons personally liable and all lien holders whose
27 claims have been filed for record under the provisions of
28 section six hundred and ninety-five shall, and all other
29 persons interested in the matter in controversy or in the

1 property sought to be charged with the lien may, be made
2 parties; but such as are not made parties shall not be bound
3 by such proceedings. The proceedings upon the foreclosure
4 of the liens created by this code shall be, as nearly as
5 possible, made to conform to the proceedings of a foreclosure
6 of a mortgage lien upon real property.
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