

Introduced: 1/24/79  
Referred: Commerce and  
Judiciary

1 IN THE HOUSE

BY BROWN, PARR, ROGERS, BARNES,  
MOSS AND RANDOLPH

2 HOUSE BILL NO. 24

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mechanics and materialmen's liens;  
7 and providing for an effective date."

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

9 Section 1. AS 34.35.050 is repealed and re-enacted to read:

10 Sec. 34.35.050. LIEN FOR WORK DONE OR MATERIALS FURNISHED. A  
11 person who performs design or supervision services or labor for the  
12 construction, alteration, or repair of, or furnishes material, or rents,  
13 leases, or otherwise supplies equipment for the construction, altera-  
14 tion, or repair of a building or other improvement to real property,  
15 including the clearing, grading, draining, excavating and landscaping of  
16 the real property, has a lien on the building or other improvement for  
17 the work done or material furnished at the instance of the owner or his  
18 agent.

19 \* Sec. 2. AS 34.35.060(a) is repealed and re-enacted to read:

20 (a) A lien created by AS 34.35.050 - 34.35.120 upon land and a  
21 building or other improvement constructed or located upon the land when  
22 altered or repaired is preferred over a lien, mortgage, or other encum-  
23 brance which attaches to the land after

24 (1) the building, improvement, alteration, or repair is  
25 started; or

26 (2) materials for the building, improvement, alteration, or  
27 repair are first furnished and placed upon or adjacent to the land.

28 \* Sec. 3. AS 34.35.060(c) is amended to read:

29 (c) A lien created by AS 34.35.050 - 34.35.120 in favor of a

1 person [AN INDIVIDUAL] actually performing labor upon or furnishing  
2 material used in a building or other improvement in its original con-  
3 struction [OR OF A TRUSTEE OF AN EMPLOYEE BENEFIT TRUST FOR THOSE INDI-  
4 VIDUALS] is preferred to a prior lien, mortgage, or other encumbrance  
5 upon the land on which the building or other improvement is constructed.

6 \* Sec. 4. AS 34.35.070(a) is repealed and re-enacted to read:

7 (a) An original contractor, after the completion of his contract,  
8 and a mechanic, artisan, machinist, builder, lumber merchant, laborer,  
9 or other person, claiming the benefit of AS 34.35.050 - 34.35.120 shall  
10 record a claim with the recorder of the recording district in which a  
11 building or other improvement, or a part of it, is located.

12 \* Sec. 5. AS 34.35.070(c) is repealed and re-enacted to read:

13 (c) The claim shall  
14 (1) contain a true statement of his demand, after deducting  
15 credits and offsets;  
16 (2) contain the name of the owner or reputed owner, if known;  
17 (3) contain the name of the person by whom he was employed or  
18 to whom he furnished the materials;  
19 (4) contain a description of the property to be charged with  
20 the lien sufficient for identification; and  
21 (5) be verified by the oath of the claimant or another person  
22 having knowledge of the facts.

23 \* Sec. 6. AS 34.35.072 is amended to read:

24 Sec. 34.35.072. BOND. If the owner of the property sought to be  
25 charged with a claim of lien under AS 34.35.050 - 34.35.120, or a  
26 [PRIME] contractor or subcontractor disputes the correctness or validity  
27 of the claim of lien brought under AS 34.35.050 - 34.35.120, he may  
28 record either before or after the commencement of an action to enforce  
29 the claim of lien, in the office of the recorder in which district the

1 claim of lien was recorded, a bond executed by a person authorized to  
2 issue surety bonds in this state [UNDER AS 21, A FINANCIAL INSTITUTION  
3 LICENSED UNDER AS 06, OR A NATIONAL BANK AUTHORIZED UNDER THE FEDERAL  
4 BANKING LAWS], in the penal sum equal to one and one-half times the  
5 amount of the claim of lien, which bond shall guarantee the payment of  
6 the sum which the lien claimant may recover on the claim [HAS CLAIMED],  
7 together with the lien claimant's reasonable cost of suit in the action,  
8 if he recovers on the claim of lien. If the owner records a bond under  
9 this section, the property described in the bond is freed from the  
10 effect of a claim of lien under AS 34.35.050 - 34.35.120 and an action  
11 brought to foreclose the claim of lien. The principal on the bond may  
12 be the owner of the property, the [PRIME] contractor or a subcontractor  
13 who is affected by the claim of lien.

14 \* Sec. 7. AS 34.35.090 is amended to read:

15 Sec. 34.35.090. PAYMENT TO CONTRACTOR. A payment by the owner of  
16 a building or structure to an original [A PRIME] contractor or subcon-  
17 tractor, made before 90 days from the completion of the building, is not  
18 valid to defeat or discharge a lien created by AS 34.35.050 - 34.35.120  
19 in favor of a workman, laborer, lumber merchant, or materialman [OTHER  
20 CLAIMANTS], unless the payment is distributed among the workmen,  
21 laborers, lumber merchants, or materialmen [OTHER CLAIMANTS]. If a  
22 payment is distributed in part only, then the payment is valid only to  
23 the extent it is distributed.

24 \* Sec. 8. AS 34.35.095(a) is amended to read:

25 (a) A [PRIME] contractor may recover upon a lien recorded by him  
26 only the amount due to him according to the terms of his contract, after  
27 deducting all claims of other persons [CLAIMING THROUGH HIM] for work  
28 done and materials furnished.

29 \* Sec. 9. AS 34.35.100(a) is amended to read:

1 (a) Where a lien is recorded under AS 34.35.050 - 34.35.120 for  
2 work done or materials furnished to a [PRIME] contractor, the [PRIME]  
3 contractor shall defend an action at his own expense, and during the  
4 pendency of the action the owner may withhold from the [PRIME] contrac-  
5 tor the amount of money for which the lien is recorded.

6 \* Sec. 10. AS 34.35.100(b) is amended to read:

7 (b) If judgment is given against the owner or his property upon  
8 the liens, the owner may deduct from the amount due or to become due by  
9 him to the [PRIME] contractor the amount of the judgment and costs.

10 \* Sec. 11. AS 34.35.100(c) is amended to read:

11 (c) If the amount of the judgment and costs exceeds the amount due  
12 by the owner to the [PRIME] contractor, or if the owner settles with  
13 that contractor in full, the owner may recover back from the [PRIME]  
14 contractor an amount paid by the owner in excess of the contract price,  
15 and for which the [PRIME] contractor was originally liable.

16 \* Sec. 12. AS 34.35.110(a) is amended to read:

17 (a) An action to enforce a lien created by AS 34.35.050 - 34.35.-  
18 120 shall be brought in the superior court. The pleadings, process,  
19 practice, and procedure are the same as in other cases. If the proceeds  
20 of a sale are insufficient to pay all lienholders under AS 34.35.050 -  
21 34.35.120, the liens of all persons other than the original contractor  
22 and subcontractors shall first be paid in full, or pro rata if the  
23 proceeds are insufficient to pay them in full. Out of the remainder  
24 the subcontractors shall be paid in full, or pro rata if the remainder  
25 is insufficient to pay them in full, and the balance shall be paid to  
26 the original contractor. Each claimant is entitled to execution for the  
27 balance due him after distribution. The clerk of the superior court,  
28 upon demand, shall issue the execution after the return of the officer  
29 making the execution showing the balance due.

1 \* Sec. 13. AS 34.35.495 is amended to read:

2           Sec. 34.35.495. WAIVER OF LIEN. No [EXCEPT AS PROVIDED UNDER AS  
3           34.35.117 and 34.35.119, NO] agreement by a person mentioned in AS  
4           34.35.010 - 34.35.425 to waive his right to acquire a lien provided in  
5           AS 34.35.010 - 34.35.425 is valid.

6 \* Sec. 14. The repeal of AS 34.35.040, 34.35.060(b) and 34.35.070(d) and  
7 (e) enacted in sec. 19 of ch. 175, SLA 1978 is repealed and the provisions of  
8 those former sections are revived.

9 \* Sec. 15. AS 34.07.110(b), AS 34.35.062 - 34.35.067, 34.35.071, 34.35.-  
10 095(b) and (c), 34.35.112, 34.35.117 - 34.35.119, and 34.35.120(3) - (15) are  
11 repealed.

12 \* Sec. 16. This Act takes effect immediately in accordance with AS 01.-  
13 10.070(c).

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