

Original sponsor: Commerce Committee
by request

Offered: 4/25/79
Referred: Finance

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

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HOUSE CS FOR SENATE BILL NO. 234

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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* Section 1. AS 34.35.050 is amended by adding a new subsection to read:

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(b) The delivery of materials to the site of the building or other
improvement, whether by the claimant or another person, creates the
presumption that the materials were incorporated in the construction,
alteration or repair of the building or other improvement.

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* Sec. 2. AS 34.35.064(a) is amended to read:

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(a) After [AT ANY TIME AFTER] entering into a contract, a claimant
may [OTHER THAN A PRIME CONTRACTOR OR AN INDIVIDUAL AS DEFINED IN AS
34.35.120(10) SHALL] give a notice of right to lien to the owner and the
lender. The notice of right to lien shall be in writing, state that it
is a notice of a right to assert a lien against a building or other
improvement for labor, materials, services, or equipment furnished in
connection with construction, alteration, or repair of the building or
other improvement, and contain

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(1) a legal description sufficient for identification of the
real property upon which the building or other improvement is located;

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(2) the name of the owner;

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(3) the name and address of the claimant;

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(4) the name and address of the person with whom the claimant
contracted;

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(5) a general description of the labor, materials, services,

1 or equipment provided or to be provided;

2 (6) a statement that the claimant may be entitled to record a
3 claim of lien; and

4 (7) the following statement in type no smaller than that used
5 in providing the information required by (1) - (6) of this subsection:

6 WARNING: Unless provision has been made for payment of this claim,
7 you may be liable for payment directly to this claimant, notwith-
8 standing the fact that payment has been made to a prime contractor
9 or other party.

10 * Sec. 3. AS 34.35 is amended by adding a new section to read:

11 Sec. 34.35.068. TIME PERIODS FOR CLAIMING LIENS. (a) If a notice
12 of completion is not recorded by the owner as provided in AS 34.35.071,
13 a claim of lien shall be recorded not later than 90 days after the
14 claimant

15 (1) completes his construction contract; or

16 (2) ceases to furnish labor, material, services or equipment
17 for the construction, alteration or repair of the owner's property.

18 (b) If a notice of completion is recorded by the owner as provided
19 in AS 34.35.071,

20 (1) the following shall record a claim of lien or a notice of
21 right to lien not later than 15 days after the notice of completion is
22 recorded:

23 (A) a claimant who has received advance notification of
24 the date that the notice of completion would be recorded as pro-
25 vided in AS 34.35.071(a)(2);

26 (B) a claimant who has not given a notice of right to
27 lien as permitted in AS 34.35.064;

28 (2) the following shall record a claim of lien not later than
29 the time specified in (a)(1) and (2) of this section:

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(A) a claimant who records a notice of right to lien within the period specified in (1) of this subsection;

(B) a claimant who has given a notice of right to lien but who has not received advance notice of the date that the notice of completion is recorded by the owner as provided in AS 34.35.-071(a)(2).

(c) A claim of lien is enforceable only if recorded by a claimant within the time specified in (a) or (b) of this section.

* Sec. 4. AS 34.35.070(a) is amended to read:

(a) A claimant [MAY RECORD A CLAIM OF LIEN AFTER A NOTICE OF RIGHT TO LIEN IS GIVEN BY THAT CLAIMANT EXCEPT THAT A CLAIMANT WHO IS NOT REQUIRED TO GIVE A NOTICE OF RIGHT TO LIEN UNDER AS 34.35.064(a)] may record a claim of lien after entering into a contract for the construction, alteration, or repair of a building or improvement. A claim of lien may not be recorded later than the time specified under AS 34.35.-068 [(b) OF THIS SECTION].

* Sec. 5. AS 34.35.095(a) is amended to read:

(a) Except as provided in (c) of this section, a claimant [A PRIME CONTRACTOR] may recover upon a lien recorded by him only the amount due to him according to the terms of his contract, after deducting all claims of other persons claiming through him for work done and materials furnished.

* Sec. 6. AS 34.35.112 is amended to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under AS 34.35.050(1);

1 (2) the trustees of employment benefit trusts for persons
2 described in (1) of this subsection;

3 (3) all materialmen [OTHER THAN PRIME CONTRACTORS OR SUB-
4 CONTRACTORS];

5 (4) subcontractors, including prime contractors other than
6 the general contractor and persons described in AS 34.35.050(5);

7 (5) the general contractor.

8 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
9 sale of the property are insufficient to pay the lien claims of all
10 persons who have recorded a claim of lien,

11 (1) the liens of all individuals with lien rights under
12 AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds
13 are insufficient to pay them in full;

14 (2) the liens of trustees of employment benefit trusts for
15 persons described in (1) of this subsection shall be paid in full or pro
16 rata if the proceeds are insufficient to pay them in full;

17 (3) the liens of materialmen [, OTHER THAN A PRIME CONTRACTOR
18 OR SUBCONTRACTOR,] shall be paid in full or pro rata if the proceeds are
19 insufficient to pay them in full;

20 (4) out of the remainder the subcontractors, including prime
21 contractors other than the general contractor, shall be paid in full, or
22 pro rata if the remainder is insufficient to pay them in full; and

23 (5) the balance shall be paid to the general contractor; a
24 general contractor is entitled to execution for the balance due him
25 after distribution.

26 * Sec. 7. AS 34.35 is amended by adding a new section to read:

27 Sec. 34.35.114. OBLIGATION OF CLAIMANT AND LENDER TO PROVIDE
28 INFORMATION. (a) A prime contractor, on request, shall provide the
29 following information within five days to any person entitled to claim a

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(1) a description of the real property being improved sufficient to identify the property;

(2) the name and address of the owner with whom the prime contractor contracted;

(3) the name and address of the lender providing construction financing; and

(4) whether there is a payment bond and, if so, the name of the surety.

(b) At the request of any person who may claim a lien through him, a claimant other than a prime contractor shall provide within five days, the name of the person who contracted for the furnishing by the claimant of the labor, materials, services or equipment from which a lien claim may arise.

(c) A lender who receives a notice of right to lien which contains a legal description of the owner's real property different from that on file with the lender shall, within five working days after receiving the notice, advise the sender in writing of the deficiencies in the notice of right to lien.

(d) A person who wilfully fails to provide information as required by this section or who wilfully furnishes incorrect information which causes a claimant to fail to realize on a lien is liable to the requesting party for actual damages or \$200, whichever is greater.

* Sec. 8. AS 34.35.120(14) and (15) are amended to read:

(14) "prime contractor" means a person who enters into a contract directly with an owner to furnish labor, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property and does not include a material-
man;

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(15) "subcontractor" means a person who enters into a contract with a prime contractor to furnish labor, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property and does not include a materialman.

* Sec. 9. AS 34.35.120 is amended by adding a new paragraph to read:

(16) "materialman" means a person who furnishes materials used in the construction, alteration or repair of the owner's real property.

* Sec. 10. AS 34.35.070(b), 34.35.071(c) and 34.35.095(b) are repealed.

* Sec. 11. This Act takes effect January 1, 1980.