

No. 46

1st Session, 14th Legislature, Alberta
8 Elizabeth II

BILL 46

A Bill respecting Liens of Mechanics, Material Suppliers,
Wage-earners and others

HON MR. MANNING

Printed by L. S. WALL, Printer to the Queen's Most Excellent Majesty,
Edmonton, Alberta, 1960

Explanatory Note

General. This Bill will enact an Act replacing The Mechanics' Lien Act, being chapter 197 of the Revised Statutes. It is, essentially a revision of that Act. Many of the provisions have been reworded to create greater uniformity in language throughout and to remove redundancies and conflicts. The references in the explanatory notes are to the sections and subsections of the present Act on which the new provisions are based.

2. Definitions.

BILL

No. 46 of 1960

An Act respecting Liens of Mechanics, Material Suppliers,
Wage-earners and others

(Assented to _____, 1960)

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

1. This Act may be cited as "*The Mechanics Lien Act, 1960*".

2. In this Act,

- (a) "contractor" means a person contracting with or employed directly by an owner or his agent to do work upon or to furnish material for an improvement, but does not include a labourer;
- (b) "court" means the Supreme Court or a district court, as the case may be, having jurisdiction in the amount claimed in any proceedings under this Act, whether brought in respect of one or more than one lien;
- (c) "improvement" means anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land;
- (d) "labourer" means a person employed for wages in any kind of labour whether employed under a contract of service or not;
- (e) "lienholder" means a person claiming a lien under this Act;
- (f) "owner" means a person having an estate or interest in land at whose request, express or implied, and
 - (i) upon whose credit,
 - (ii) upon whose behalf,
 - (iii) with whose privity and consent, or
 - (iv) for whose direct benefit,work is done upon or material is furnished for an improvement to the land and includes all persons claiming under him whose rights are acquired after the commencement of the work or the furnishing of the material;

3. (1) The present section 5 reworded.

(2) The present 4(1) reworded.

(3) The present 4(2) with the amount changed from \$12 to \$25.
The \$12 figure was established in 1930.

4. (1) The present 6(1) reworded.

(2) Replaces the present 6(4), 50, 52 and 55(1) and applies to all
minerals not just oil and gas.

- (g) "Registrar" means a registrar of a land registration district under *The Land Titles Act*;
- (h) "sub-contractor" means a person not contracting with or employed directly by an owner or his agent for the doing of any work but contracting with or employed by a contractor, or under him by a sub-contractor, but does not include a labourer;
- (i) "wages" means money earned by a labourer for work done, whether by time or as piece work or otherwise;
- (j) "work" includes the performance of services upon the improvement.

Creation and Extent of Lien

3. (1) No agreement deprives any person otherwise entitled to a lien under this Act and not a party to the agreement, of the benefit of the lien and the lien attaches notwithstanding the agreement.

(2) An agreement by a labourer that this Act does not apply or that the remedies provided by it are not to be available for his benefit is against public policy and void.

(3) Subsection (2) does not apply to a manager, officer or foreman or to any person whose wages are more than twenty-five dollars per day.

4. (1) Unless he signs an express agreement to the contrary and subject to subsection (2), a person who

- (a) does or causes to be done any work upon or in respect of an improvement, or
- (b) furnishes any material to be used in an improvement,

for an owner, contractor or sub-contractor has, for so much of the price of the work or material as remains due to him a lien upon the estate or interest of the owner in the land in respect of which the improvement is being made.

(2) Where work is done or materials are furnished

- (a) preparatory to,
- (b) in connection with, or

(c) for an abandonment operation in connection with, the recovery of a mineral, then, notwithstanding that a person holding a particular estate or interest in the mineral concerned has not requested the work to be done or the material to be furnished, the lien given by subsection (1) attaches to all estates and interests in the mineral concerned, other than the estate in fee simple in the mines and minerals unless the person holding the fee simple estate in the mines and minerals has expressly requested the work or the furnishing of material in which case the lien also attaches to the estate in fee simple in the mines

(3) The present 51 made applicable to all minerals not just oil and gas.

5. The present 3 reworded.

6. (1) The present 15(1) revised.

(2) The present 15(2) revised.

(3) New. This provision is added to apply to situations such as construction projects where material is delivered to one place to be used on more than one building and a lien for the total value arises against all the land involved in the project.

7. (1) The present 6(2) but also permitting the contractor or sub-contractor to designate the delivery site.

(2) The present 6(3) reworded.

8. The present 7.

9. The present 11 reworded.

and minerals but not to such person's estate, if any, in the rest of the land.

(3) A lien attaching to an estate or interest in mines and minerals also attaches to the minerals when severed from the land.

5. No lien exists with respect to a public highway or for any work or improvement caused to be done thereon by a municipal corporation.

6. (1) Except as herein provided, a lien does not attach so as to make the owner liable for a greater sum than the sum duly owing by the owner to the contractor.

(2) Except as herein provided, where a lien is claimed by any person other than the contractor, it does not attach so as to make the owner liable for a greater sum than the amount owing to the contractor for whom, or for whose sub-contractor, the work has been done or the material has been furnished.

(3) Where the same lien attaches to estates or interests in more than one lot, block or parcel, as the case may be, in respect of a separate improvement upon each such lot, block or parcel hereinafter referred to as a "lot", the lien does not apply so as to make the owner of any one lot liable in respect of that lot for a sum in excess of the price of the work done or material furnished in respect of the improvement on that lot less a proportionate share of any moneys paid to the person claiming the lien in respect of the work done on or the material furnished for all the lots to which the lien attaches.

7. (1) Material shall be considered to be furnished to be used within the meaning of this Act when it is delivered either on the land upon which it is to be used or on such land or in such place in the immediate vicinity thereof as is designated by the owner or his agent or by the contractor or sub-contractor.

(2) Notwithstanding that any material to be used in an improvement may not have been delivered in strict accordance with subsection (1), where the material is incorporated in the improvement the person furnishing the material has a lien as set out in section 4.

8. The lien created by this Act arises when the work is begun or the first material is furnished.

9. Except as provided in sections 11 and 57 a lien arising by virtue of this Act has priority over any unregistered mortgage and any mortgage that is registered, after the date on which the lien arose, against the land that is subject to the lien.

10. The present 12 with reference to clause 57 added.

11. The present 13 with some rewording.

10. Except as provided in sections 11 and 57 no lien arising by virtue of this Act shall be dealt with in any manner in proceedings on or respecting a mortgage against the land that is subject to the lien.

11. (1) In this section,

- (a) "mortgage" includes charges and encumbrances existing and registered or filed against the land at the date the lien arose,
- (b) "value of improvements", for the purposes of subsection (12), means the difference between the value of mortgaged land immediately before the sale thereof, as determined by the court and the value of the mortgaged land immediately before the lien arose, as determined by the court.

(2) Where work is done or material is furnished for an improvement upon land that is subject to a mortgage

- (a) a lien has priority over the mortgage to the extent of the increase in value of the mortgaged land resulting from the work or improvement and from all subsequent work or improvements, and
- (b) the lien shall not be barred or foreclosed in any proceedings on the mortgage.

(3) Where proceedings on a mortgage of land that is subject to a lien lead to sale or foreclosure, or where proceedings are taken to enforce a lien upon land that is subject to a mortgage, the court shall direct that the land be sold by tender or public auction.

(4) Immediately before a sale by tender or public auction of mortgaged land that is subject to a lien, the court shall, upon proper evidence and on notice to all persons concerned, determine both the value, at that time, of the mortgaged land and the value of the mortgaged land immediately before the lien arose.

(5) A sale of mortgaged land that is subject to a lien shall not be subject to an upset price or reserve bid but no sale of such land shall be made unless the sale is approved and confirmed by the court.

(6) A lienholder and a mortgagee of land that is subject to a lien may tender or bid at a sale of the mortgaged land by tender or public auction but any such tender or bid shall be at least equal to the amount of the value of the mortgaged land immediately before the sale as determined pursuant to subsection (4).

(7) When both a lienholder and a mortgagee submit the same tender or bid at the sale of the mortgaged land, the preference shall be given to the one having the larger claim against the mortgaged land.

(8) Where the mortgaged land is not sold at the sale by tender or public auction, a lienholder or mortgagee, upon notice to the other and to such other persons as the

court may direct, may, within one year from the date the mortgaged land was offered for sale, apply to the court to purchase the mortgaged land at a price not lower than the value of the mortgaged land immediately before the abortive sale, as determined pursuant to subsection (4).

(9) Where more than one person applies under subsection (8) to purchase the mortgaged land at an amount greater than the value of the mortgaged land immediately before the abortive sale, as determined pursuant to subsection (4), the mortgaged land shall be sold to the person offering the highest price.

(10) Where more than one person applies under subsection (8) to purchase the mortgaged land, the preference shall be given, subject to subsection (9), to the one having the larger claim against the mortgaged land.

(11) Upon the sale of the mortgaged property by tender or public auction or pursuant to subsection (8), the purchase moneys shall be paid into court and, subject to subsection (12), shall be paid out to the persons entitled thereto.

(12) Where the proceeds of a sale of mortgaged land by tender or public auction or pursuant to subsection (8) are insufficient to satisfy fully the amounts owing in respect of the lien and the mortgage, the proceeds shall be divided between the lienholder and mortgagee so that the portion of the sale proceeds bearing the same relation to the total sale proceeds as the value of the improvements bears to the value of the mortgaged land immediately before the sale as determined pursuant to subsection (4) will be applied on the lien and the balances of the sale proceeds will be applied on the mortgage.

(13) When, on a distribution of the sale proceeds pursuant to subsection (12), the amount to be applied on either the lien or the mortgage is more than the amount owing in respect of the lien or mortgage, the excess shall be applied on the unsatisfied lien or mortgage, as the case may be.

(14) Where there is more than one lien, the portion of the sale proceeds applied on the lien pursuant to subsection (12) shall be divided among the lienholders in proportion to the amounts by which the improvements in respect of which each lien arose are found by the court to have respectively contributed to the sale price, but lienholders in respect of the same improvements shall share among themselves in the manner provided in section 51.

(15) Where the mortgaged land is not sold when offered for sale by tender or public auction and is not sold pursuant to subsection (8), the mortgaged land may, after the expiration of one year from the date it was last offered for sale by tender or public auction, be again offered for sale at intervals of not less than one year in the same or any other proceedings under the mortgage or lien.

12. (1) The present 21(1) and (2) reworded.

(2) The present 21(7) reworded.

13. The present 19 reworded for greater clarity.

14. (1) The present 10(1) reworded.

(2) The present 10(2) reworded.

(16) This section applies to any sale proceedings pursuant to subsection (15) in the same manner and to the same extent as if the mortgaged land had not previously been offered for sale.

(17) Where all or part of the purchase money under an agreement for sale of land that is subject to a lien has not been paid, then, for the purposes of this section, the unpaid vendor, if the title to the land is registered in his name, shall be deemed to be a mortgagee whose mortgage was registered on the date of execution of the agreement for sale.

12. (1) A lien for the wages of a labourer has priority, to the extent of six weeks' wages, over all claims on that portion of the amount retained as required by section 17 to which the contractor or sub-contractor through whom the lien is derived is entitled, and all such labourers rank *pari passu*.

(2) Any device by an owner, contractor or sub-contractor to defeat the priority given by this Act to a labourer for his wages is against public policy and void.

13. (1) Where work is done or material is furnished in respect of land in which a married person has an estate or interest, if the work is done or the material is furnished with the privity of the spouse of the married person, then, for the purposes of this Act, the spouse shall be conclusively presumed to be acting as the agent of the married person as well as for himself.

(2) The presumption arising under subsection (1) applies only in respect of that part of the work done or portion of the materials furnished before the person doing the work or furnishing the materials has had actual notice that the spouse is not the agent of the married person who has an estate or interest in the land.

14. (1) Where the estate upon which a lien attaches is a freehold estate for a life or lives or a leasehold estate, then, if the person doing the work or furnishing the material gives to the person holding the fee simple, or his agent, notice in writing of the work to be done or materials to be furnished, the lien also attaches to the estate in fee simple unless the person holding that estate or his agent, within five days after the receipt of the notice, gives notice that he will not be responsible for the doing of the work or the furnishing of the materials.

(2) Where the estate upon which a lien attaches is leasehold, no forfeiture or cancellation of a lease, except for non-payment of rent, is effective to deprive a lienholder of the benefit of the lien, but the lienholder may, in order to avoid forfeiture or termination of the lease for non-payment of rent, pay any rent due or accruing due on the lease and continue the lease to its term and the sums so paid may be added to the claim of the lienholder.

(3) New. Minerals are dealt with in clause 4.

15. The present 14 revised to make it consistent with clause 51, the present 44.

16. (1) The present 22(1).

(2) The present 22(2).

17. (1) The present 16(1) reworded.

(2) The present 16(3) reworded.

(3) The present 16(2).

(4) The present 16(4).

(5) The present 16(5) with references to mortgagee added.

(6) Replaces the present 21(6) with a provision of more general application.

(3) This section applies in respect of land other than minerals.

15. Where any improvement on land in respect of which a lien attaches is wholly or partly destroyed by fire any money received or receivable by the owner by reason of any insurance thereon is subject to all claims for liens to the same extent as if the money had been realized by a sale of the land in proceedings to enforce a lien.

16. (1) During the continuance of a lien no part of the material giving rise to the lien shall be removed to the prejudice of the lien.

(2) Material actually delivered and to be used for any improvement

- (a) is subject to a charge in favour of the person furnishing such material until incorporated in the improvement, and
- (b) is not subject to execution or other process to enforce a debt other than a debt for the purchase of the material due to the person furnishing the same.

17. (1) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract the person primarily liable on the contract shall, when making payment thereunder, retain for the time limited by section 32, an amount equal to twenty per cent of the value of the work actually done.

(2) Where the value of the work to be done exceeds fifteen thousand dollars, the amount to be retained shall be fifteen per cent instead of twenty per cent of the value, or twenty per cent of fifteen thousand dollars, whichever is the greater amount.

(3) The value shall be calculated on the basis of the contract price or, if there is no specific contract price, then on the basis of the actual value of the work done.

(4) Every lien is a charge upon the amount directed by this section to be retained in favour of the lienholder whose lien is derived under the person to whom the moneys so required to be retained are payable.

(5) A payment, other than of the amount required to be retained by this section, made in good faith

- (a) by an owner or mortgagee to a contractor,
- (b) by a contractor to a sub-contractor, or
- (c) by one sub-contractor to another sub-contractor,

before notice in writing of the lien is given to the owner, mortgagee, contractor or sub-contractor, as the case may be, by the lienholder operates as a discharge *pro tanto* of the lien.

(6) Where a contractor or sub-contractor defaults in completing his contract, the amount required to be retained by this section

(7) New. Provides protection for a person who in good faith underestimates the proper amount of the holdback.

18. New. A mortgagee disbursing money for an improvement is placed in the same position as the owner.

19. (1) The present 16(6) in part.

(2) Remainder of present 16(6) changed to allow the person primarily liable or the mortgagee to pay the money into court on his own application without having to wait for proceedings to be commenced against him.

20. The present 17 reworded.

21. The present 18.

- (a) shall not, as against a lienholder, be applied to the completion of the contract or for any other purpose than the satisfaction of liens, and
- (b) when distributed, shall be distributed in the manner prescribed by section 51.

(7) A person who in good faith underestimates the value of the work actually done at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if he provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

18. A mortgagee authorized by the owner to disburse the moneys secured by a mortgage may retain the amount required to be retained by the owner as the person primarily liable on the contract and the retention by the mortgagee of such amount shall be deemed to be a compliance with subsection (1) of section 17 by the owner as the person primarily liable on the contract.

19. (1) Upon the expiration of the time limited by section 32, payment of the amount retained as required by section 17 may be validly made so as to discharge every lien in respect thereof, unless in the meantime a statement of lien has been registered or proceedings have been commenced to enforce a lien.

(2) Where a statement of lien has been registered or proceedings have been commenced to enforce a lien the person primarily liable on the contract or a mortgagee authorized by the owner to disburse the moneys secured by a mortgage may pay the amount retained as required by section 17 into court

- (a) in any proceedings that have been commenced to enforce a lien, or
- (b) on his own application by originating notice of motion,

and payment into court under this provision constitutes a valid payment in discharge of the person primarily liable on the contract to the amount thereof.

20. Where the contract price or the sum agreed to be paid does not consist of a sum of money, then the value of the consideration for the performance of the work is the determining factor in calculating the amount duly owing by the owner pursuant to section 6.

21. (1) Where a lien becomes a charge on the amount required to be retained under section 17 and the contract price is not payable in money, the owner or the person primarily liable on the contract is liable to pay in money the percentage of the value to be retained by him.

22. The present 19.

23. The present 8.

24. The present 33.

25. The present 34.

(2) Where the owner or person primarily liable on the contract desires to avail himself of the provisions of section 19 and pay into court the amount to be retained and the contract price is not payable in money, a judge may, on application by the owner on such notice, if any, as the judge may direct, fix the amount of money that is to be paid into court with respect to the value of the percentage to be retained.

22. Where an owner, mortgagee, contractor or sub-contractor

- (a) makes a payment to a person entitled to a lien for or on account of a debt justly due to the person for work done or materials furnished and for which the owner, mortgagee, contractor or sub-contractor is not primarily liable on the contract, and
- (b) within three days afterwards gives written notice of the payment to the person primarily liable on the contract or his agent,

the payment shall be deemed to be a payment on his contract generally to the contractor or sub-contractor primarily liable on the contract, but not so as to affect the percentage to be retained by the owner as provided by section 17.

23. The right of a lienholder may be assigned by an instrument in writing and, if not assigned, passes upon his death to his personal representative.

24. (1) A lien is not merged, waived, paid, satisfied, prejudiced or destroyed by

- (a) the taking of any security,
- (b) the acceptance of a promissory note or bill of exchange,
- (c) the taking of any acknowledgment of the claim,
- (d) the giving of time for payment, or
- (e) the taking of any proceedings for the recovery of a personal judgment,

unless the lienholder agrees in writing that such an action is to have that effect.

(2) Where a promissory note or bill of exchange issued in respect of the claim of a lienholder has been negotiated, the lienholder does not thereby lose his lien if he is the holder of the promissory note or bill of exchange

- (a) at the time of beginning proceedings to enforce the lien, or
- (b) at the time of proving his claim therein, where proceedings are brought by another lienholder.

25. Where the period of credit in respect of a claim has not expired or where there has been an extension of time for payment of the claim, then, if proceedings are

26. The present 35.

commenced by any other person to enforce a lien against the same property, the lienholder may, nevertheless, prove and obtain payment of his claim therein as if the period of credit or the extended time had expired.

Right to Information

26. (1) A lienholder may at a reasonable time demand of the owner or his agent the production for inspection of

- (a) the contract or agreement with the contractor in respect of which work has been, is being or is to be done, or in respect of which materials have been, are being or are to be furnished, if the contract or agreement is in writing, or
- (b) if the contract or agreement is not in writing, the terms of the contract or agreement and the state of the accounts between the owner and contractor.

(2) Where the owner or his agent at the time of the demand or within a reasonable time thereafter

- (a) does not produce the written contract or agreement, or
- (b) if the contract or agreement is not in writing,
 - (i) does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement, or
 - (ii) knowingly and falsely states the terms of the contract or agreement or the amount due or unpaid thereon,

then, if the lienholder sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of his lien.

(3) A lienholder may at any reasonable time demand of a mortgagee or his agent or unpaid vendor or his agent

- (a) the terms of any mortgage on the land or any agreement for the purchase of the land in respect of which the work is or is to be done or in respect of which materials have been or are to be furnished, and
- (b) a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be.

(4) Where the mortgagee or vendor or his agent fails to inform the lienholder at the time of the demand or within a reasonable time thereafter

- (a) of the terms of the mortgage or agreement, and
- (b) of the amount owing thereon,

then, if the lienholder sustains loss by the refusal or neglect or by reason of any misstatement by the mortgagee or vendor of the terms thereof or amount owing thereon,

27. (1) The present 23(1) in part.

(2) The remainder of present 23(1) and 23(2) with rewording.
The address for service now must be in Alberta.

(3) The present 53.

(4) The present 23(3).

(5) The present 23(4) but revised to make it clear that an agent
of a corporation may take the affidavit.

(6) The present 23(5).

(7) The present 23(7).

the mortgagee or vendor is liable to him in an action for the amount of the loss, or in proceedings taken under this Act for the enforcement of his lien.

(5) The court may on summary application at any time before or after proceedings are commenced for the enforcement of the lien make an order requiring

- (a) the owner or his agent,
- (b) the mortgagee or his agent, or
- (c) the unpaid vendor or his agent,

as the case may be, to produce and allow a lienholder to inspect any contract or agreement or mortgage or agreement for sale, upon such terms as to costs as the court may deem just.

Registration of Lien

27. (1) A lien may be registered in the land titles office of the land registration district in which the land is situate by filing with the Registrar a statement of lien in Form 1 of the Schedule.

(2) The statement of lien shall set out

- (a) the name and residence of
 - (i) the lienholder,
 - (ii) the owner or alleged owner, and
 - (iii) the person for whom the work was or is being done or the materials were or are being furnished,
- (b) the time within which the work was or is to be done or the materials were or are to be furnished,
- (c) a short description of the work done or to be done or of the materials furnished or to be furnished,
- (d) the sum claimed as due or to become due,
- (e) a description, sufficient for registration, of the land and estate or interest therein to be charged, and
- (f) an address for service of the lienholder within the Province.

(3) In the case of a lien arising in connection with an oil or gas well it is not necessary to set out in the statement of lien the name of the owner or alleged owner of the oil or gas well.

(4) The statement of lien shall be verified by an affidavit, in Form 2 in the Schedule, of the lienholder or of his agent or assignee.

(5) Where the statement of lien is made by a corporation, it shall be verified by the affidavit of an officer or employee of the corporation or its agent.

(6) Where the affidavit is made by some person other than the lienholder, it shall state that such person has a personal knowledge of the matters required to be verified.

(7) A Registrar shall be supplied with printed forms of such statements of lien and affidavits, in blank, which

(8) The present 27(7).

(9) The present 23(9).

(10) The present 23(10).

28. The present 27 reworded.

29. Combines the present 24 and 25 into one section. The address for service must now be in Alberta.

30. The present 26.

31. The present 6(5) reworded.

shall be supplied to every person requesting the same and desiring to register a lien.

(8) A Registrar shall decide whether his office is or is not the appropriate office for the registration of the statement of lien and shall direct the applicant accordingly.

(9) No lien shall be registered unless the claim or joined claims amount to or aggregate twenty dollars or more.

(10) The Registrar shall, in accordance with *The Land Titles Act*, register the lien as an encumbrance against the estate or interest in the land affected, or if the land affected has not been registered under *The Land Titles Act* and section 56 does not apply thereto, he shall make a record of the lien in a book or such other manner as he deems advisable.

28. (1) A substantial compliance with section 27 is sufficient and a lien shall not be invalidated by failure to comply with any requirements of section 27 unless, in the opinion of the court, the owner, contractor, sub-contractor, mortgagee or some other person is prejudiced thereby.

(2) Where, in the opinion of the court a person is prejudiced by a failure to comply with section 27, the lien shall be invalidated only to the extent that such person is prejudiced by the default.

(3) Nothing in this section dispenses with the requirement of registration of a lien.

29. (1) A lienholder may change his address for service within the Province by delivering to the Registrar of the appropriate land registration district a notice of change of address for service in Form 3 of the Schedule.

(2) The Registrar shall

(a) upon receipt of a notice of change of address for service, and

(b) upon receipt of his proper fee,

enter the notice of change of address in the day book and make a memorandum setting forth the new address for service upon the registered statement of lien.

30. Where a lienholder desires to register a lien against a railway, it is a sufficient description of the land to describe it as the land of the railway company.

31. A person who has a lien against an estate or interest in minerals only and who registers a lien against an estate or interest in the land to which his lien does not attach is liable for legal and other costs and any damages incurred by or resulting to the owner of any estate or interest in the land by reason of the wrongful registration of the lien against his estate or interest.

32. The present 28 reworded to remove a seeming conflict with the present 7. The present wording suggests that a claim of lien may be filed before the lien arises. Subsection (3) is revised to also provide 120 days for filing a lien for services as is provided in subsections (1) and (2). Subsection (5) is new. It is intended to prevent a lien being revived after its expiry by the expediency of not doing something that should have been done.

33. The present 29(1).

32. (1) A lien in favour of a contractor or a sub-contractor in cases not otherwise provided for, may be registered at any time up to the completion or abandonment of the contract or sub-contract, as the case may be, and

(a) within thirty-five days after completion or abandonment, or,

(b) where the improvement in respect of which the lien arises is an oil or gas well or an oil or gas pipe line, within one hundred and twenty days after completion or abandonment.

(2) A claim of lien for materials may be registered at any time during the furnishing of the materials and

(a) within thirty-five days after the last of the materials is furnished, or

(b) where the improvement in respect of which the lien arises is an oil or gas well or an oil or gas pipe line, within one hundred and twenty days after the last of the materials is furnished.

(3) A lien for the performance of services may be registered at any time during the performance of the services and

(a) within thirty-five days after the performance of the services is completed, or

(b) where the improvement in respect of which the lien arises is an oil or gas well or an oil or gas pipe line, within one hundred and twenty days after the performance of the services is completed.

(4) A lien for wages may be registered at any time during the performance of the work for which the wages are claimed and

(a) within thirty-five days after the completion of the work, or

(b) in the case of a lien for wages owing for work in, at or about a mine, within sixty days after the completion of the work.

(5) Where, in respect of work done on or material furnished for an improvement,

(a) something is improperly done, or

(b) something that should have been done is not done, at the time when the thing should have been done and if at a later date the thing improperly done is put right or the thing not done is done, the doing of the thing at the later date shall not be deemed to be the completion of the work or the furnishing of the last materials so as to enable a person to extend the time limited by this section for registering a lien.

Expiry and Discharge of Lien

33. Where a lien is not registered within the time limited by section 32, the lien ceases to exist.

34. (1) The present 29(2) reworded.

(2) The present 29(5) in part.

(3) The remainder of present 29(5).

(4) The present 29(4) reworded.

35. (1) The present 29(7) reworded.

(2) The present 29(8) reworded.

(3) The present 29(9).

(4) New—at present the registration appears to continue in existence forever.

36. Replaces the present 29(3), 29(6) and 36(2) and simplifies the procedure in respect of certificates of lis pendens.

34. (1) A lien in respect of which a statement of lien is registered ceases to exist thirty days after a notice in Form 4 of the Schedule is

- (a) served on the lienholder in the manner processes are usually served, or
- (b) sent to the lienholder by registered mail at his latest address for service registered in the land titles office.

(2) The court may, upon an *ex parte* application, shorten the thirty day period provided in subsection (1) to such shorter period as it deems adequate.

(3) A copy of the order of the court made pursuant to subsection (2) shall be served with the notice provided under subsection (1).

(4) Service in accordance with subsection (1) of the notice and order, if any, shall be proved to the satisfaction of the Registrar.

35. (1) A lien in respect of which a statement of lien is registered in accordance with this Act ceases to exist six years from the date of registration unless before the expiration of that period, but not more than two months before the end of that period, the lienholder or a person claiming through or under him causes to be filed in the appropriate land titles office a renewal statement in Form 6 in the Schedule.

(2) The renewal statement shall be verified by affidavit and set out the interest of the lienholder and the amount still owing for principal and interest.

(3) The Registrar shall file the renewal statement and make a memorandum of the filing upon the appropriate certificate of title.

(4) Where a renewal statement is filed pursuant to subsection (1), the lien in respect of which the statement of lien and renewal statement are registered ceases to exist six years from the date of filing of the renewal statement.

36. (1) Notwithstanding section 34 or section 35, a lien in respect of which a statement of lien is registered does not cease to exist if, at any time before the lien expires, the lienholder

- (a) takes proceedings in court to enforce his lien, and
- (b) files or causes to be filed a certificate of *lis pendens* in Form 5 in the Schedule in the appropriate land titles office.

(2) The clerk of the court in which the proceedings are begun may grant a certificate of *lis pendens* to any lienholder who is a party to the proceedings.

(3) Any lienholder who is a party to the proceedings may cause a certificate of *lis pendens* to be filed in the appropriate land titles office on his own behalf or on behalf of

37. (1) The present 30(1) with a form of statement authorized.

(2) New. A registrar of land titles is given authority to cancel registration of a claim of lien when it expires.

(3) Replaces the present 31(2) and the present 30(2) in part.

(4) Replaces the present 30(2).

38. (1) The present 31(1) reworded.

(2) The present 31(3).

39. Replaces the present 36(1). The present provision indicates that proceedings are not commenced until a certificate of lis pendens is also filed at the land titles office.

40. (1) The present 37(1).

himself and all or any other lienholders who are parties to the proceedings.

(4) Where a certificate of *lis pendens* is filed in accordance with this section, any lien in respect of which it is filed continues to exist until the proceedings are concluded.

37. (1) Upon receiving a notification in Form 7 in the Schedule signed by the claimant or his agent stating that the lien has been satisfied, the Registrar shall cancel the registration of the statement of lien registered by such party.

(2) Upon receiving proof satisfactory to him that, in accordance with section 34 or 35, a lien in respect of which a statement of lien is registered has ceased to exist the Registrar may cancel the registration of the lien.

(3) Upon receiving a certified copy of an order or judgment of a court ordering the cancellation of the registration of a lien, the Registrar shall cancel the registration of the lien and any certificate of *lis pendens* filed in connection therewith.

(4) Upon receiving a certificate under the seal of the clerk of a court stating that pursuant to an order or judgment of the court

(a) the amount due by an owner in respect of a lien has been ascertained and paid into court, or

(b) the land, improvement or material has been sold in satisfaction of the lien,

and the registration of the lien is thereby ordered to be cancelled, the Registrar shall cancel the registration of the lien and any certificate of *lis pendens* filed in connection therewith.

38. (1) The court may, upon application by originating notice,

(a) order that the registration of a lien be cancelled upon the giving of security for or the payment into court of the amount of the claim and such costs as the judge may fix, or

(b) order that the registration of a lien be cancelled on any proper ground.

(2) Money paid into court replaces the land discharged and is subject to the claim of all persons for liens to the same extent as if the money had been realized by a sale of the land in an action to enforce the lien.

Enforcement of Lien

39. Proceedings to enforce a lien may be commenced either by a statement of claim or by originating notice.

40. (1) The statement of claim or originating notice shall be served upon all persons who by the records of the land

(2) The present 37(4).

(3) The present 38(1).

(4) The present 37(5).

41. The present 20.

42. (1) The present 21 (3).

(2) The present 21(4).

(3) The present 21(5).

43. Replaces the present 39 and 40.

44. The present 38(4).

45. (1) The present 38(3).

(2) Replaces the present 41(1).

titles office appear to have an interest in the land in question and upon such other persons as the court may direct.

(2) A lienholder served with a statement of claim or originating notice is a party to the proceedings.

(3) A lienholder who is a party to the proceedings shall file in the office of the clerk or deputy clerk of the court in which the proceedings are pending detailed particulars of his lien, which shall be verified by affidavit.

(4) A lienholder who fails to appear at the hearing shall, upon proof of service of notice upon him, lose his lien.

41. Subject to subsection (2) of section 6, a sub-contractor may enforce his lien notwithstanding the non-completion or abandonment of the contract by a contractor or sub-contractor under whom he claims.

42. (1) Subject to subsection (2) of section 6, a labourer may enforce a lien in respect of an unfulfilled contract or sub-contract and notwithstanding anything to the contrary in this Act, a labourer may serve a notice of motion, returnable before a judge not less than four days after service thereof, on the proper parties asking for judgment on his lien.

(2) The notice of motion shall be accompanied by particulars of the labourer's lien, verified by affidavit.

(3) Where the contract or sub-contract has not been completed when the lien is claimed by a labourer, the amount required to be retained by section 17 shall be calculated on the value of the work done by the contractor or sub-contractor by whom the labourer is employed, having regard to the contract price, if any.

43. Where more than one action is commenced in respect of the same land the court, upon the application of a lienholder or other interested person, may in its discretion

(a) give the conduct of the proceedings to any lienholder, or

(b) consolidate all the causes of action into one cause and give the conduct of the proceedings to any plaintiff.

44. Except as provided in this Act no interlocutory proceedings are permitted without the consent of the court and upon proof that such proceedings are in the interests of justice.

45. (1) The procedure in adjudicating upon the claims shall be of a summary character, so far as is possible, having regard to the amount and nature of the liens in question and the enforcement thereof at the least expense.

(2) The court shall decide all questions that are necessary to be tried in order to dispose completely of the action

(3) The present 41(10).

46. (1) The present 41(3).

(2) The present 41(4).

(3) Combines the present 41(5) and 22(3).

47. The present 41(9).

48. The present 42.

49. The present 43.

and to adjust the rights and liabilities of the parties concerned.

(3) Where a claimant fails to establish a valid lien he may nevertheless recover a personal judgment against a party to the proceedings for any sum that is due to such claimant and that he might recover in an action against such party.

46. (1) The court may in its judgment order that the estate or interest in land that is charged with a lien be sold.

(2) When a judgment orders a sale the court

- (a) may direct that the sale take place at any time after the judgment, allowing a reasonable time for advertising the sale, and
- (b) may make all necessary orders for the completion of the sale and the vesting of the estate or interest in the purchaser.

(3) The court may also direct the sale and removal of any materials.

47. Where sufficient money to satisfy the judgment and costs is not realized from the sale the court shall certify

- (a) the amount of the deficiency,
- (b) the names of the persons who are entitled to recover the deficiency, and
- (c) the persons by the judgment adjudged to pay the same,

and the persons so entitled may enforce payment by execution or otherwise as a judgment of the court.

48. (1) The court may, on the application of a judgment creditor made at any time before the sale of the property, appoint a receiver to take charge of the property and to rent or operate it on such terms and conditions as the receiver thinks fit.

(2) The proceeds received by a receiver appointed under subsection (1) shall, after deduction of all rates, taxes, insurance or other expense necessary for the maintenance of the property including the costs of management, be applied in such manner as may be directed by the court.

49. (1) Where the work performed or material furnished in respect of which the lien arose results in the creation of an improvement consisting of a structure, erection or building, then notwithstanding

- (a) that such structure, erection or building may be affixed to or have become part of the land, or
- (b) the provisions of section 11,

the court, if of the opinion that having regard to the value of the improvement and the amount owing on the lien it is proper to do so, may, upon application of the lienholder in

50. (1) The present 41(6).

(2) The present 41(7).

51. The present 44 with some rewording.

proceedings to enforce the lien or in any other proceedings affecting the lien, order such structure, erection or building removed and sold and the proceeds of such sale applied on the lien that arose in respect of such improvement.

(2) If the proceeds of the sale exceed the amount owing, the excess shall be applied in the same manner as the proceeds of the sale of the land and improvements remaining thereon would be applied.

50. (1) At any time before the amount realized in the proceedings for the satisfaction of liens has been distributed, a lienholder who has not been served with notice of the proceedings may, on application to the court and on such terms as to costs and otherwise as may be just, be allowed to prove his lien.

(2) Where a lien under subsection (1) is proved and allowed the court shall amend the judgment to include the lien.

51. (1) All moneys realized by proceedings under this Act, including any money received or receivable by the owner by reason of any insurance thereon as mentioned in section 15 and subject thereto, shall be applied and distributed in the following order, that is to say:

- (a) in paying the costs of all lienholders
 - (i) of and incidental to the proceedings, and
 - (ii) of registering and proving the liens;
- (b) in paying six weeks' wages, if so much is owing, of all labourers employed by the owner, contractor or sub-contractor;
- (c) in paying the several amounts owing to other lienholders other than the contractor;
- (d) in paying the amount owing to the contractor.

(2) Each class of lienholders shall as between themselves rank without preference for their several amounts and the portion of the said moneys available for distribution to each class shall be distributed among the lienholders in such class proportionately according to the amounts of their respective claims as proved.

(3) Where a balance remains after all the amounts set out in subsection (1) have been paid, the balance shall be paid to the owners or other persons legally entitled thereto.

(4) Where a labourer has more than six weeks' wages owing to him by a sub-contractor, contractor or owner, the court

- (a) shall cause the sum additional to six weeks' wages to be deducted out of any sum actually coming to the sub-contractor, contractor or owner under a distribution pursuant to subsection (1), and
- (b) shall order the same to be paid to the labourer.

52. The present 45.

53. The present 46.

54. The present 47.

55. The present 48 revised to conform to the procedure for making rules under The Judicature Act and The District Courts Act.

52. (1) An appeal lies to the Appellate Division of the Supreme Court from the decision of the court hereunder in all matters where the amount of the lien or the total amount of the liens joined in one action or proceedings is two hundred dollars or more.

(2) Where the amount of the lien or the total amount of the liens joined is less than two hundred dollars the decision of the court of first instance is final.

Fees and Costs

53. No fees shall be payable to a Registrar or to a court

- (a) in connection with the registration or discharge of any proceedings taken by a labourer to realize a claim for wages under this Act, or
- (b) on the filing of an order, record or judgment or other proceeding in connection therewith.

54. When it appears to the court in a proceeding to enforce a lien under this Act that the proceedings have arisen from the failure of an owner or contractor

- (a) to fulfil the terms of his contract of engagement for the work in respect of which the liens are sought to be enforced, or
- (b) to comply with the provisions of this Act,

the court may order the owner and contractor, or either of them, to pay all the costs of the proceedings in addition to the amount of the contract or sub-contract or wages due by him or them to any contractor, sub-contractor or labourer and may order a final judgment against the contractor and owner, or either of them, in default for such costs.

55. (1) The Lieutenant Governor in Council

- (a) may make general rules not inconsistent with this Act to expedite and facilitate the business before any court under this Act, and to advance the interests of suitors therein, and
- (b) may prescribe a tariff of costs
 - (i) as between parties, and
 - (ii) as between solicitor and client,
 payable for services rendered in respect of a lien under this Act,

or may authorize the judges of the Supreme Court to make and promulgate such rules.

(2) After the making thereof, the tariff shall be laid upon the table of the Legislative Assembly at its next ensuing session, and unless or until it is disallowed by resolution of the Legislative Assembly it has the same effect as if enacted hereby.

56. (1) The present 55(1) revised, and see clause 4(2).

(2) The present 29(11), 32 and 55(3) combined.

57. This clause incorporates into this Bill the present law relating to N.H.A. mortgages as set out in The National Housing Loans Act (Alberta) R.S.A. 1955, c. 220, s. 5.

58. Transitional provision.

Lien on Minerals Held from the Crown

56. (1) Where a lien attaches to an estate or interest in minerals held directly from the Crown in right of Alberta and the estate or interest

(a) is less than a fee simple estate, and

(b) is not registered under *The Land Titles Act*,

the statement of lien shall be filed with the Minister of Mines and Minerals and not with the Registrar.

(2) The provisions of this Act apply *mutatis mutandis* to all claims of lien registered with the Minister of Mines and Minerals in accordance with this section.

National Housing Loans

57. (1) The provisions of this section apply only to land subject to a mortgage made pursuant to the *National Housing Act* (Canada) or the *National Housing Act, 1954* (Canada) and to the rights of lienholders and the holder of such mortgage.

(2) Subject to the provisions of subsection (3) and for the purpose of ascertaining the respective priorities of charges upon the estate or interest of the owner, the lien and all mortgages rank according to the dates of their respective registrations in the proper land titles office, but no mortgage has any priority over a lien in respect of advances or payments made by the mortgagee after the date of registration of the lien or after the mortgagee has notice of the existence of the lien.

(3) Any mortgage existing in fact before the lien arises has only priority over the lien in respect of the value at the date of the proceedings to enforce the lien of the mortgaged premises as they existed immediately before the lien arose, but no such mortgage has priority over a lien in respect of advances or payments made by the mortgagee after the date upon which the lien arose.

(4) Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee takes the place of the property so destroyed and, after satisfying any prior mortgage to the extent set out in subsection (3), is subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in proceedings to enforce the lien.

(5) Section 5 of *The National Housing Loans Act* (Alberta), being chapter 220 of the Revised Statutes of Alberta, 1955, is hereby repealed.

58. (1) Subject to subsection (2), *The Mechanics' Lien Act*, being chapter 197 of the Revised Statutes, is repealed.

(2) The provisions of chapter 197 of the Revised Stat-

59. Commencement to be upon proclamation.

utes continue in effect and apply, notwithstanding its repeal by this Act, to any lien registered in a land titles office before the commencement of this Act.

59. This Act comes into force upon a date to be fixed by proclamation of the Lieutenant Governor in Council.

SCHEDULE

FORM 1

(Section 27)

STATEMENT OF LIEN

(Name of claimant) of *(residence of claimant)* (if claimant is a representative or assignee set out the facts) claims a lien upon the estate of *(name and residence of the owner of the land upon which the lien is claimed)* in the undermentioned land, in respect of the following work or material, that is to say: *(give a short description of the nature of the work done or to be done or the material furnished or to be furnished)* which work was or is to be done or material was or is to be furnished for *(name and residence of person upon whose request the work is done or the material is furnished)* on or before the..... day of....., 19.....

The amount claimed due or to become due is..... dollars. The following is a short description of the land to be charged *(set out concise legal description)*.

The address for service of the said..... is....., in the Province of Alberta.

Dated at.....this.....day of....., 19.....

.....
(Signature of Claimant)

FORM 2

(Section 27)

AFFIDAVIT VERIFYING CLAIM

I,of.....in the Province of..... *(Occupation)*....., named in the above or annexed statement, make oath that the said claim is true.

or

I,of the.....of..... in the Province of..... *(Occupation)*..... make oath and say:

(1) That I am the (assignee) agent of the above named claimant and have full knowledge of the facts set forth in the above or annexed statement.

(2) That the said claim is true.

SWORN before me at.....
 of
 in the Province of Alberta,
 this..... day of
 19.....
 (A Commissioner for Oaths)

or

Province of Alberta } We,
 Canada } of
 To Wit: } in the Province of.....

..... (Occupation)
 named in the above or annexed statement make oath and
 each for himself makes oath that the said claim so far as
 it relates to him, is true.

SWORN before me at.....
 in the Province of Alberta }
 SEVERALLY this }
 day of, 19..... }
 (A Commissioner for Oaths)

FORM 3

(Section 29)

NOTICE OF CHANGE OF ADDRESS FOR SERVICE

To the Registrar of the..... Alberta Land Registration
 District:

Take notice that I hereby change my address for service
 as stated in my statement of lien (or in my last registered
 notice of change of address for service) dated the.....
 day of, 19....., and registered in the land
 titles office for the..... Alberta Land Registration
 District on the..... day of, 19....., as
 No..... affecting the land described as
 follows:

and appoint.....in the Province of
Alberta as my address for service.

Dated at the.....of.....in the Province of
Alberta, this.....day of....., 19.....

.....
(Signature of Claimant or
his Agent)

FORM 4

(Section 34)

NOTICE TO TAKE PROCEEDINGS

To.....(at the address filed in
the land titles office).

Take notice that the lien filed by you in the land titles
office for the.....Alberta Land Registration District
on the.....day of....., 19....., and
registered as D.B. No.....shall cease to exist
under the provisions of *The Mechanics Lien Act, 1960*,
unless, within days from the date of
service of this notice on you, you take proceedings in court
to enforce such lien and cause a certificate thereof to be
filed as required by the Act.

Dated at.....this.....day of.....,
19.....

.....
(Name of person by whom or on
whose behalf notice is given)

FORM 5

(Section 35)

CERTIFICATE OF LIS PENDENS

To the Registrar.....Alberta Land Registration
District:

This is to certify that proceedings have been taken in
court to enforce a certain lien filed by.....against
..... (*here describe lands*), which lien was
filed pursuant to *The Mechanics Lien Act, 1960*, on the
.....day of....., 19..... and
registered as D.B. No.....

Dated at.....this.....day of.....,
19.....

.....
(Clerk of the Court)

FORM 6
(Section 35)

RENEWAL STATEMENT

Renewal statement setting out the interest of the lienholder and the balance due on the lien dated the..... day of, 19....., and registered by of in the office of the Registrar of Land Titles for the Alberta Land Registration District on the day of, 19....., against.....
(*here insert legal description of land affected by the lien*).

Amount of lien	\$.....
Interest (if any) to date of statement	\$.....
Balance still owing	\$.....

.....
(*Signature of Lienholder,
Agent, as the case may be*)

I, of the lienholder mentioned in the foregoing statement (*or the agent of the lienholder, or as the case may be*) make oath and say as follows:

That the foregoing statement is true and that the amount stated therein as the balance is still owing to me under the said lien.

SWORN before me at..... in the Province of Alberta, this..... day of....., 19..... (<i>A Commissioner for Oaths</i>)	}
---	---	-------------------------

FORM 7
(Section 37)

DISCHARGE OF CLAIM OF LIEN

To the Registrar of the..... Alberta Land Registration District:

I, acknowledge to have received all the moneys due or to become due under the claim of lien made by..... as lien claimant, upon the following land, that is to say:

.....
which said statement of lien bears the date the.....

day of....., 19....., and was registered in the
land titles office for the..... Alberta Land Registration
District at..... minutes past..... o'clock in the
..... noon of the..... day of....., 19....., in
book number..... at folio number..... as in-
strument number.....

And Declare that the said claim of lien has..... been
assigned or transferred..... and that I am
entitled by law to receive the money.

Wherefore the said claim of lien is hereby wholly dis-
charged.

In witness whereof I have hereunto set my hand this
..... day of....., 19.....

Witness:

No. 46

FIRST SESSION

FOURTEENTH LEGISLATURE

8 ELIZABETH II

1960

BILL

An Act respecting Liens of
Mechanics, Material Suppliers,
Wage-earners and others

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
