

# HOUSE . . . . . No. 567.

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Bill accompanying the petition of Herbert L. Baker for an amendment of the law relative to liens on buildings and land. Joint Judiciary. January 24.

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## Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Five.

### AN ACT

Relative to Liens for Materials furnished in the Erection,  
Alteration or Repair of Buildings.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. When materials are furnished and actu  
2 ally used in the erection, alteration or repair of a build-  
3 ing or structure upon real estate, and the owner of the  
4 property is not the purchaser of such materials, the  
5 person furnishing the same before so doing may give  
6 notice in writing to said owner that he intends to claim a  
7 lien for his materials, and if the person furnishing the  
8 same fails to give notice, such person shall have a lien  
9 subject to liens for labor and liens for materials when  
10 such notice has been given, and to the extent hereinafter  
11 provided.

1    SECTION 2. The provisions of law now existing for  
2 the enforcement of liens upon buildings and land shall  
3 apply, so far as the same are applicable, to liens created  
4 by this act, except as hereinafter provided.

1    SECTION 3. Any lien created by this act shall not be  
2 enforceable to such an extent as to compel the owner of  
3 the property to pay an amount in excess of the contract  
4 price between such owner and the person purchasing  
5 said materials.

1    SECTION 4. Whenever a statement is filed in the reg-  
2 istry of deeds claiming a lien for materials furnished,  
3 under the provisions of this act, the owner of the property  
4 to be affected by said lien, upon receipt of notice of  
5 such filing, shall withhold from the contractor purchasing  
6 said materials the amount for which said lien is claimed,  
7 pending proceedings to establish said lien.

1    SECTION 5. Any person to whom a debt is due for  
2 materials furnished in the erection, alteration or repair-  
3 ing of a building or structure upon real estate by virtue  
4 of an agreement or by consent of a person with whom  
5 the owner of such real estate has made a contract or  
6 agreement for the erection, alteration or repairs of such  
7 building or structure, may, at any time within thirty  
8 days from the date of delivery of the last materials,  
9 demand of such owner or his authorized agent the  
10 manner, condition and terms of the contract or agree-  
11 ment by which said building or structure is being  
12 erected, altered or repaired.

13    If such owner or his agent shall not, within a reasonable  
14 time thereafter, in writing, inform the person making  
15 such demand of the terms of the conditions as aforesaid  
16 of such contract or agreement, or shall falsely state the

17 same, and if the person making such demand shall sus-  
18 tain loss by reason of such refusal or neglect or false  
19 statement, the said owner shall be liable to the party  
20 making such demand in an action of tort for the amount  
21 of such loss.

1 SECTION 6. At the hearing on the petition to enforce  
2 a lien under this act the petitioner or any other of the  
3 creditors may examine the owner and the contractor as  
4 to the terms of the contract or amounts paid and agreed  
5 to be paid, the amount of work done and materials  
6 furnished under contract, and the petitioner and other  
7 creditors desiring to do so may prove their claims for  
8 materials furnished or to be furnished.

9 The court shall make such order requiring the owner  
10 to withhold from making any further payments to the  
11 contractor, and directing him to pay over such sums as  
12 it may find due and unpaid or such sums as may here-  
13 after be due and payable to the petitioner and the other  
14 creditors who may prove their claims as aforesaid, at  
15 such times and in such manner and amounts as it may  
16 determine, but having regard to the superior liens of  
17 persons who have furnished labor in the erection, altera-  
18 tion or repairing of such building or structure, and may  
19 make such orders and decrees and judgments as it may  
20 deem necessary and proper to that end, and may issue  
21 execution against the owner in favor of any creditor,  
22 but the owner shall recover his costs against the con-  
23 tractor and all said judgments shall be subject thereto.

1 SECTION 7. The said court on such petition may make  
2 inquiry into whether any payments have been made by  
3 the owner to the contractor in advance of the time when  
4 due under said contract, and if it shall be found that  
5 they had been made by collusion between the owner and

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6 contractor, and with intent to delay and defraud creditors  
7 or avoiding the provisions of this act, may disallow the  
8 same and require the owner to pay in the same manner  
9 as if they had not been made.

1 SECTION 8. When the amount claimed does not ex-  
2 ceed one thousand dollars suit may be brought in any  
3 police, district or municipal courts having jurisdiction in  
4 the city or town where the building or structure is situ-  
5 ated. Such police, district or municipal court shall have  
6 and use like process and authority within its jurisdiction  
7 as are conferred by this act on the superior court, and  
8 parties shall have like rights to appeal as now exist in  
9 civil cases.

1 SECTION 9. This act shall not affect any existing con-  
2 tract, and nothing in this act shall prevent all rights of  
3 lien under chapter one hundred ninety-one of the Public  
4 Statutes; and the court may settle and determine the  
5 equities of all the parties and decide as to the extent and  
6 priority of the claims of all parties to the action and upon  
7 every counter claim or set-off alleged therein.

1 SECTION 10. Section three of chapter one hundred  
2 ninety-one of the Public Statutes is hereby repealed.

1 SECTION 11. This act shall take effect upon its passage.