

CHAPTER NO. 11

SENATE BILL NO. 4

INTRODUCED BY GALT

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 4, 1979	Introduced and referred to Committee on Judiciary. On Motion Senator Galt was added as author to the Pre-Filed Bill.
January 9, 1979	Committee recommend bill do pass as amended. Report adopted.
January 10, 1979	Printed and placed on members' desks.
January 11, 1979	Second Reading, do pass.
January 12, 1979	Considered correctly engrossed.
January 13, 1979	Third Reading, passed. Transmitted to Second House.

IN THE HOUSE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 25, 1979	Committee recommend bill be concurred in as amended and placed on Consent Calendar. Report adopted.
January 26, 1979	Objection to Consent Calendar, referred to Second Reading. Second Reading, concurred in as amended.
January 27, 1979	Third Reading, concurred in as amended.

IN THE SENATE

January 29, 1979

Returned from Second House.
Concurred in as amended.

January 30, 1979

Second Reading, amendments adopted.

January 31, 1979

Third Reading, amendments adopted.

Sent to enrolling.

Reported correctly enrolled.

SENATE BILL NO. 4

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BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS; AMENDING SECTIONS 71-1-213, 71-1-229, 71-3-401, 71-3-1003, AND 71-3-1201, MCA; AND REPEALING SECTIONS 16-2101 THROUGH 16-2104, 45-1112, 45-1113, 52-111, AND 52-213, R.C.M. 1947."

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

Section 1. Section 71-1-213, MCA, is amended to read:

"71-1-213. Discharge or release by other than mortgagee. (1) When such ~~if the~~ discharge or release is made by the personal representative of the mortgagee, it ~~shall~~ ~~must~~ be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where such ~~the~~ mortgage is recorded.

(2) ~~In case such~~ ~~if the~~ discharge or release is made by an assignee, it must be accompanied by the assignment of such ~~the~~ mortgage, unless such ~~the~~ assignment is already of record in the office of the county clerk and recorder where such ~~the~~ mortgage is recorded.

(3) ~~In the event that such~~ ~~if the~~ discharge or release

is executed by an attorney in fact, such ~~the~~ discharge or release ~~shall~~ ~~must~~ have attached to it the power of attorney under which it is made, unless such ~~the~~ power of attorney is already of record in the office of the county clerk and recorder where such ~~the~~ mortgage is recorded.

(4) ~~When such~~ ~~if the~~ discharge or release is executed by the heir or heirs of the mortgagee, such ~~the~~ discharge or release must be accompanied by a certified copy of an order or decree of the ~~a~~ court of competent jurisdiction showing such authority, unless such ~~the~~ order or decree is already of record in the office of the county clerk and recorder where such ~~the~~ mortgage is recorded.

(5) Foreign administrators and executors may satisfy mortgages of record in Montana, ~~provided that~~ ~~if~~ the satisfaction of mortgages ~~be~~ ~~is~~ accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded ~~in connection~~ with the satisfaction of the mortgage. When so presented and recorded, they ~~shall~~ ~~have~~ ~~the satisfaction~~ ~~has~~ the same force and effect as if the mortgage was satisfied by the mortgagee ~~mortgagor~~."

Section 2. Section 71-1-229, MCA, is amended to read:

1 "71-1-229. Possession of lands prior to foreclosure
 2 upon default and during period of redemption. The purchaser
 3 of lands at mortgage foreclosure is not entitled to the
 4 possession thereof as against the ~~execution mortgage~~ debtor
 5 during the period of redemption allowed by law while ~~and~~
 6 ~~execution the mortgage~~ debtor personally occupies the land
 7 as a home for himself and his family. It ~~shall be~~ is
 8 unlawful to insert in any mortgage of real estate any
 9 provision ~~or language~~ intended to constitute a waiver by the
 10 owner of real estate personally occupying land as a home for
 11 himself and family of the provision of this section or any
 12 provision ~~or language~~ intended to give the mortgagee
 13 possession of the land or premises prior to foreclosure upon
 14 default of tax, principal, or interest payments. The
 15 intention hereof being is to insure to such owner the
 16 possession of his land prior to foreclosure and during the
 17 year of redemption."

18 Section 3. Section 71-3-401, MCA, is amended to read:

19 "71-3-401. Who may have lien -- priority. (1) Any
 20 person who performs services for another in the capacity of
 21 a farm or ranch laborer ~~shall have~~ has a lien on all crops
 22 of every kind grown, raised, or harvested by the person for
 23 whom the services were performed during ~~and that time~~ as
 24 security for the payment of any wages due or owing to such
 25 persons for services so performed.

1 (2) ~~Seid~~ The lien ~~shall have~~ has priority over all
 2 other liens, chattel mortgages, or encumbrances excepty
 3 ~~however~~ feed sufficient for 3 months for 1 horse, 2 cows
 4 and their calves, 4 hogs, and 50 domestic fowlsy and seed
 5 grain and threshers' liens. The wages for which a lien may
 6 be claimed ~~shall may~~ not be in excess of ~~\$100~~ \$1,000 or for
 7 a period of time exceeding 60 days next preceding the date
 8 of filing the lien. In case any such person without cause
 9 quits his employment before the expiration of the time for
 10 which he is employed, then he ~~shall is~~ not be entitled to a
 11 lien as herein provided.

12 (3) If several persons have or obtain liens under the
 13 provisions of this part against property of the same
 14 employer, they ~~shall~~ have no priority among themselves but
 15 all must be paid pro rata from the proceeds of any
 16 foreclosure sale according to the provisions of this part."

17 Section 4. Section 71-3-1003, MCA, is amended to read:

18 "71-3-1003. Lien for labor or supplies furnished for
 19 contractor. Any person, partnership, or corporation ~~which~~
 20 ~~shall furnish such that furnishes~~ materials or services as a
 21 subcontractor or to a contractor or a subcontractor or any
 22 person who ~~shall perform such performs~~ labor under a
 23 subcontractor with a contractor or who, as an artisan or day
 24 laborer in the employ of such contractor or subcontractor,
 25 ~~shall perform performs~~ any such labor ~~shall have~~ has a lien

1 upon all the property upon which the lien of an original
 2 contractor may attach to the same extent as an original
 3 contractor, and the lien provided for in this section ~~shall~~
 4 ~~further--extend--and--attach~~ attaches to all materials and
 5 fixtures owned by such original contractor or subcontractor
 6 ~~to--or for whom the labor is performed or materia~~t~~~~ materials
 7 or services furnished and used or employed or furnished to
 8 be used or employed in the drilling or operating of such oil
 9 and gas wells or in the construction of such pipeline."

10 Section 5. Section 71-3-1201, MCA, is amended to read:

11 "71-3-1201. Who may have lien. (1) ~~* If there is an~~
 12 express or implied contract for keeping, feeding, herding,
 13 pasturing, or ranching stock, a ranchman, farmer, agister,
 14 herder, hotelkeeper, livery, boarding, or feed stablekeeper
 15 to whom any horses, mules, cattle, sheep, hogs, or other
 16 stock are entrusted, and there is--a--contract,--express--or
 17 implied,--for--their--keeping,--feeding,--herding,--pasturing,--or
 18 ranching, has a lien upon such stock for the amount due for
 19 keeping, feeding, herding, pasturing, or ranching the ~~same~~
 20 stock and ~~is authorized to may~~ retain possession thereof
 21 until the sum due is paid.

22 (2) Every person who, while lawfully in possession of
 23 an article of personal property, renders any service to the
 24 owner or lawful claimant thereof by labor or skill employed
 25 for the making, repairing, protection, improvement,

1 safekeeping, or carriage thereof has a special lien thereon,
 2 dependent on possession, for the compensation, if any, which
 3 that is due to him from the owner or lawful claimant for
 4 such service and for material, if any, furnished in
 5 connection therewith."

6 Section 6. Repealer. Sections 16-2101 through 16-2104,
 7 45-1112, 45-1113, 52-111, and 52-213, R.C.M. 1947, are
 8 repealed.

-End-

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LC 0002

1979 Legislature
Code Commissioner Bill

SENATE Bill No. 4

TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MORTGAGES, PLEDGES, AND LIENS.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 71-1-213. Context of subsection (5) indicates last word should be "mortgagor" rather than "mortgagee".

Section 2. 71-1-229. Changed "execution debtor" to "mortgage debtor" because the latter is the more accurate and descriptive term.

Section 3. 71-3-401. Inserted "and" in (2) to clarify apparent meaning. Also raised the amount of wages for which a lien may be claimed from \$100 to \$1,000. The 1935 legislature in enacting this law seems to have felt 60 days' wages was the appropriate amount of such a lien, which in 1935 probably was \$100. Now, however, \$100 bears no relation to 60 days' wages.

Section 4. 71-3-1003. Made grammatical change.

Section 5. 71-3-1201. Deleted redundant words in subsection (1).

Section 6. Repeals 16-2101 through 16-2104, 45-1112, 45-1113, 52-111, and 52-213, R.C.M. 1947.

16-2101 through 16-2104. Release of lien on seed grain loans. These sections refer to a 1918 seed grain act, sections 4640 through 4679, R.C.M. 1921, and section 4680 through 4711, R.C.M. 1921, which were repealed by chapter 29, Laws 1935 respectively. 16-2101 et. seq. have no application in current law and are repealed.

45-1112. Shipmaster's lien. This section is an 1895 enactment which has never been amended. It was adopted along with other lien law from the California Civil Code, but seems to have no application in Montana.

45-1113. Seaman's lien. This is also California law which seems to have no application in Montana.

52-111. Foreclosure. This section apparently is referring to the procedure for foreclosing mortgages, but is confusing because it refers to foreclosing the right of redemption of the mortgagor. Under the procedure referred to (in Title 93, R.C.M. 1947) there is no way of circumventing the right of redemption or the redemption period for foreclosing mortgages. At any rate, the section is unnecessary because it merely refers the user to the substantive area of law; it has nothing substantive within itself.

52-213. This section refers and applies to a group of R.C.M. 1935 sections which have been repealed. The section has no application in current law.

Approved by Committee
on Judiciary

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(3) ~~in the event that such~~ if the discharge or release is executed by an attorney in fact, such the discharge or release ~~shall~~ must have attached to it the power of attorney under which it is made unless such the power of attorney is already of record in the office of the county clerk and recorder where such the mortgage is recorded.

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(5) Foreign administrators and executors may satisfy mortgages of record in Montana ~~provided that~~ if the satisfaction of mortgages be is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded ~~in connection with the satisfaction of the mortgage. When so presented and recorded, they shall have~~ the satisfaction has the same force and effect as if the mortgage was satisfied by the mortgagee ~~mortgagor~~

1 **MORTGAGEE."**

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8 law while ~~said--execution the mortgage~~ **EXECUTION** debtor
9 personally occupies the land as a home for himself and his
10 family. It ~~shall-be~~ **is** unlawful to insert in any mortgage of
11 real estate any provision ~~or-language~~ intended to constitute
12 a waiver by the owner of real estate personally occupying
13 land as a home for himself and family of the provision of
14 this section or any provision ~~or-language~~ intended to give
15 the mortgagee possession of the land or premises prior to
16 foreclosure upon default of tax, principal, or interest
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20 "71-3-1003. Lien for labor or supplies furnished for
21 contractor. Any person, partnership, or corporation which
22 ~~shall-furnish-such~~ **that_furnishes** materials or services as a
23 subcontractor or to a contractor or a subcontractor or any
24 person who ~~shall--perform--such~~ **performs** labor under a
25 subcontractor with a contractor or who, as an artisan or day

1 laborer in the employ of such contractor or subcontractor,
 2 ~~shall perform~~ performs any such labor ~~shall have~~ has a lien
 3 upon all the property upon which the lien of an original
 4 contractor may attach to the same extent as an original
 5 contractor, and the lien provided for in this section ~~shall~~
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1 mortgage was satisfied ~~DISCHARGED OR RELEASED~~ by the
2 mortgagee ~~MORTGAGOR MORTGAGEE.~~"

3 Section 2. Section 71-1-229, MCA, is amended to read:

4 "71-1-229. Possession of lands prior to foreclosure
5 upon default and during period of redemption. The purchaser
6 of lands at mortgage foreclosure is not entitled to the
7 possession thereof as against the execution ~~mortgage~~
8 ~~EXECUTION~~ debtor during the period of redemption allowed by
9 law while said--execution ~~the mortgage EXECUTION~~ debtor
10 personally occupies the land as a home for himself and his
11 family. It shall-be ~~is~~ unlawful to insert in any mortgage of
12 real estate any provision or-~~language~~ intended to constitute
13 a waiver by the owner of real estate personally occupying
14 land as a home for himself and family of the provision of
15 this section or any provision or-~~language~~ intended to give
16 the mortgagee possession of the land or premises prior to
17 foreclosure upon default of tax, principal, or interest
18 payments. The intention hereof being ~~is~~ to insure to such
19 owner the possession of his land prior to foreclosure and
20 during the year of redemption."

21 Section 3. Section 71-3-401, MCA, is amended to read:

22 "71-3-401. Who may have lien -- priority. (1) Any
23 person who performs services for another in the capacity of
24 a farm or ranch laborer shall-have ~~has~~ a lien on all crops
25 of every kind grown, raised, or harvested by the person for

1 whom the services were performed during said ~~that~~ time as
2 security for the payment of any wages due or owing to such
3 persons for services so performed.

4 (2) Said ~~the~~ lien shall-have ~~has~~ priority over all
5 other liens, chattel mortgages, or encumbrances except
6 however, feed sufficient for 3 months for ~~1--horse--2 2~~
7 ~~HORSES--8 1 HORSE, 2~~ cows and their calves, ~~4 1/2 4~~ hogs, and
8 ~~50 100 50~~ domestic fowls, ~~1-1 LAMB-2-TURTLE-BOVES, AND-A~~
9 ~~PARTIDGE-IN-A-PEAR-TREE,~~ and seed grain and threshers'
10 liens. The wages for which a lien may be claimed shall ~~may~~
11 not be in excess of ~~\$100 \$1,000~~ or for a period of time
12 exceeding 60 days next preceding the date of filing the
13 lien. In case any such person without cause quits his
14 employment before the expiration of the time for which he is
15 employed, then he shall ~~is~~ not be entitled to a lien as
16 herein provided.

17 (3) If several persons have or obtain liens under the
18 provisions of this part against property of the same
19 employer, they shall have no priority among themselves but
20 all must be paid pro rata from the proceeds of any
21 foreclosure sale according to the provisions of this part."

22 Section 4. Section 71-3-1003, MCA, is amended to read:

23 "71-3-1003. Lien for labor or supplies furnished for
24 contractor. Any person, partnership, or corporation which
25 shall-furnish-such ~~that furnishes~~ materials or services as a

1 subcontractor or to a contractor or a subcontractor or any
 2 person who ~~shall--perform--such~~ performs labor under a
 3 subcontractor with a contractor or who, as an artisan or day
 4 laborer in the employ of such contractor or subcontractor,
 5 ~~shall--perform~~ performs any such labor ~~shall--have~~ has a lien
 6 upon all the property upon which the lien of an original
 7 contractor may attach to the same extent as an original
 8 contractor, and the lien provided for in this section ~~shall~~
 9 ~~further--extend--and--attach~~ attaches to all materials and
 10 fixtures owned by such original contractor or subcontractor
 11 ~~to--or for whom the labor is performed or material~~ materials
 12 or services furnished and used or employed or furnished to
 13 be used or employed in the drilling or operating of such oil
 14 and gas wells or in the construction of such pipeline."

15 Section 5. Section 71-3-1201, MCA, is amended to read:

16 "71-3-1201. who may have lien. (1) * ~~If there is an~~
 17 ~~express or implied contract for keeping, feeding, herding,~~
 18 ~~pasturing, or ranching stock,~~ a ranchman, farmer, agister,
 19 herder, hotelkeeper, livery, boarding, or feed stablekeeper
 20 to whom any horses, mules, cattle, sheep, hogs, or other
 21 stock are entrusted, ~~and there is a contract, express or~~
 22 ~~implied, for their keeping, feeding, herding, pasturing, or~~
 23 ~~ranching,~~ has a lien upon such stock for the amount due for
 24 keeping, feeding, herding, pasturing, or ranching the same
 25 ~~stock and is authorized to~~ may retain possession thereof

1 until the sum due is paid.

2 (2) Every person who, while lawfully in possession of
 3 an article of personal property, renders any service to the
 4 owner or lawful claimant thereof by labor or skill employed
 5 for the making, repairing, protection, improvement,
 6 safekeeping, or carriage thereof has a special lien thereon,
 7 dependent on possession, for the compensation, if any, which
 8 ~~that~~ is due to him from the owner or lawful claimant for
 9 such service and for material, if any, furnished in
 10 connection therewith."

11 Section 6. Repealer. Sections ~~16-2101 through 16-2104,~~
 12 ~~45-1112, 45-1113, AND 52-111, and 52-213,~~ R.C.M. 1947, are
 13 repealed.

-End-

January 9, 1979

STANDING COMMITTEE REPORT

That Senate Bill No. 4 be amended as follows:

1. Title, line 8.
Strike: "16-2101 through 16-2104"
2. Title, line 9.
Following: "45-1113,"
Insert: "and"
Following: "52-111"
Strike: "and 52-213,"
3. Page 2, line 24.
Strike: "mortgagor"
Insert: "mortgagee"
4. Page 3, line 4
Strike: "mortgage"
Insert: "execution"
5. Page 3, line 6.
Strike: "the mortgage"
Insert: "execution"
6. Page 6, line 6.
Strike: "16-2101 through 16-2104,"
7. Page 6, line 7.
Following: "45-113,"
Insert: "and"
Following: "52-111,"
Strike: "and 52-213,"

January 24, 1979

HOUSE OF REPRESENTATIVES

The Judiciary Committee amendments to SENATE BILL NO. 4.

1. Page 2, line 14.

Following: "may"

Strike: "satisfy"

Insert: "discharge or release"

2. Page 2, line 16.

Following: line 15

Strike: "satisfaction"

Insert: "discharge or release"

3. Page 2, line 22.

Following: "with the"

Strike: "satisfaction"

Insert: "discharge or release"

4. Page 2, line 24.

Following: "the"

Strike: "satisfaction"

Insert: "discharge or release"

5. Page 2, line 25.

Following: "was"

Strike: "satisfied"

Insert: "discharged or released"

6. Page 4, line 5.

Following: "months for"

Strike: "1 horse, 2"

Insert: "2 horses, 8"

7. Page 4, line 6.

Following: "calves,"

Strike: "4:"

Insert: "12"

Following: "hogs, and"

Strike: "50"

Insert: "100"

Following: "fowls,"

Insert: ", 1 lamb, 2 turtle doves, and a partridge in a pear tree;"

AND AS AMENDED BE CONCURRED IN

A motion was made and passed unanimously to place
SENATE BILL NO. 4 on the CONSENT CALENDAR.

January 26, 1979

HOUSE OF REPRESENTATIVES

Committee of the Whole amendments to House Committee on Judiciary
Report on Senate Bill No. 4, dated Jan. 24, 1979.

1. Amendments 6 and 7.

Strike: amendments 6 and 7 in their entirety

And as amended, be concurred in.