
IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1871.

Ordered to be printed as amended by the Senate, together with an amendment proposed by Mr. STEWART.

AMENDMENT

Reported by Mr. STEWART, from the Committee on Mines and Mining, to the bill (S. 1103) to define and protect the rights of miners and to encourage the development of mines. Strike out all after the enacting clause and insert the following:

3 That the mineral lands of the public domain, both surveyed
4 and unsurveyed, are hereby declared to be free and open to
5 exploration and occupation by all persons, subject to such
6 regulations as may be prescribed by law, and subject also to
7 the local customs or rules of miners in the several mining
8 districts, so far as the same may not be in conflict with the
9 laws of the United States.

1 SEC. 2. *And be it further enacted,* That the miners of
2 each mining district may determine the length of their mining
3 claims upon veins or lodes of quartz, or other rock in place,
4 bearing gold, silver, cinnabar, lead, tin, or copper, subject to the
5 following limitations: Claims located previous to July twenty-
6 six, eighteen hundred and sixty-six, shall be limited as to

7 extent along the vein or lode by the local laws or customs
8 existing at the date of the location. Single claims located
9 subsequent to July twenty-six, eighteen hundred and sixty-
10 six, shall not exceed two hundred feet in length along the vein
11 or lode, with an additional claim of two hundred feet for dis-
12 covery to the discoverer of the vein or lode. Several persons
13 may locate in common on a vein or lode, each person taking
14 one claim; but no person, except the discoverer, shall locate
15 more than one claim upon the same vein or lode; and the
16 aggregate amount of a location in common made subsequent
17 to July twenty-six, eighteen hundred and sixty-six, shall not
18 exceed three thousand feet in length along the vein or lode.
19 No claim shall extend more than three hundred feet on each
20 side of the middle of the vein at the surface, nor shall any
21 claim be limited by any mining regulation to less than twenty-
22 five feet on each side of the middle of the vein at the surface,
23 except where adverse rights existing at the passage of this
24 act shall render such limitation necessary. The end lines of
25 each claim shall be parallel to each other, and at right angles
26 with the general course of the vein.

1 SEC. 3. *And be it further enacted,* That the locators of
2 all mining locations heretofore made, or which shall hereafter
3 be made, on any mineral vein, lode, or ledge situated on the
4 public domain, their heirs and assigns, where no adverse claim
5 exists at the passage of this act, so long as they comply with

6 the laws of the United States, and with State, territorial, and
7 local regulations, not in conflict therewith, governing their
8 possessory title, shall have the exclusive right of possession and
9 enjoyment of all the surface included within the lines of their
10 locations, and of all veins, lodes, and ledges throughout their
11 entire depth, the top or apex of which lies inside of such
12 surface lines extended downward vertically, although such
13 veins, lodes, or ledges may so far depart from a perpendicular
14 in their course downward as to extend outside the vertical
15 side lines of said surface locations: *Provided*, That their
16 right of possession to such outside parts of said veins or
17 ledges shall be confined to such portions thereof as lie
18 between vertical planes drawn downward as aforesaid,
19 through the end lines of their locations, or locations in com-
20 mon, so continued in their own direction, that such planes
21 will intersect such exterior parts of said veins or ledges: *And*
22 *provided further*, That nothing in this section shall authorize
23 the locator or possessor of a vein or lode which extends in
24 its downward course beyond the vertical lines of his claim
25 to enter upon the surface of a claim owned or possessed by
26 another.

1 SEC. 4. *And be it further enacted*, That where a tunnel
2 is run for the development of a vein or lode, or for discovery
3 of mines, the owners of such tunnel shall have the right of
4 possession of all veins or lodes, not previously known to exist,

5 discovered in such tunnel, to the extent of five hun-
6 dred feet on each side of the same; and locations on the
7 line of such tunnel of veins or lodes not appearing on the
8 surface, made by other parties after the commencement of
9 the tunnel, and while the same is being prosecuted with rea-
10 sonable diligence, shall be invalid.

1 *SEC. 5. And be it further enacted,* That the miners
2 of each mining district may make rules and regulations not
3 in conflict with the laws of the United States or with the
4 laws of the State or Territory in which the district is situ-
5 ated, governing the location, manner of recording, amount of
6 work necessary to hold possession of a mining claim, subject
7 to the following requirements: The location must be distinctly
8 marked on the ground so that its boundaries can be readily
9 traced. All records of mining claims hereafter made shall
10 contain the name or names of the locators, the date of the
11 location, and such a description of the claim or claims located
12 by reference to some natural object or permanent monument
13 as will identify the claim. After the passage of this act, and
14 until a patent shall have been issued, not less than twenty-
15 five dollars' worth of labor shall be expended or improve-
16 ments made upon each claim of two hundred feet during each
17 year; but claimants in common, as defined in the second
18 section of this act, may cause all the labor to be expended for
19 improvements to be made upon any one claim, provided

20 the aggregate amount equals twenty-five dollars a year to
21 each claim of two hundred feet. And upon a failure to
22 comply with this condition, the claim or mine upon which
23 such failure occurred shall be open to relocation in the same
24 manner as if no location of the same had ever been made:
25 *Provided*, That the original locator has not resumed work
26 upon the claim after such failure and before such location.

1 SEC. 6. *And be it further enacted*, That a patent shall
2 be obtained in the following manner: Any person, association,
3 or corporation in possession of a mining claim or claims in
4 common, who has complied with the mining regulations and
5 the laws of the United States, may file in the local land office
6 an application for a patent showing such compliance, together
7 with a plat of the claim or claims in common; a copy of
8 such plat, together with a notice of intention to apply for a
9 patent, shall also be posted in a conspicuous place on the
10 claim for the period of ninety days. The register of the land
11 office, upon the filing of such application and plat, shall
12 publish a notice, that such application has been made for the
13 period of ninety days, in a newspaper published nearest to
14 said claim, and he shall also post such notice in his office for the
15 same period. The claimant, at the time of filing his applica-
16 tion, or at any time thereafter within the ninety days of publi-
17 cation, shall file with the register a certificate of the United
18 States surveyor general that one thousand dollars' worth of labor

19 has been expended or improvements made upon the claim, by
20 himself or grantors, that the plat is correct, with such further
21 description by such reference to natural objects or perma-
22 nent monuments as shall identify the claim and furnish an
23 accurate description, to be incorporated in the patent. At the
24 expiration of the ninety days of publication, the claimant shall
25 file his affidavit, showing that the plat and notice have been
26 posted in a conspicuous place on the claim during said period
27 of publication. If no adverse claim shall have been filed at
28 the expiration of the ninety days of publication, it shall be
29 assumed that the applicant is entitled to a patent, and that no
30 adverse claims exist, and thereafter no objection from third
31 parties to the issuance of a patent shall be heard except it be
32 shown that the applicant has failed to comply with this act.

1 SEC. 7. *And be it further enacted,* That where an ad-
2 verse claim shall be filed during the period of publication, all
3 proceedings except the publication of notice and making and
4 filing of the affidavit thereof, shall be stayed, until the
5 controversy shall have been settled or decided by a court
6 of competent jurisdiction, or the adverse claim waived.
7 It shall be the duty of the adverse claimant, within
8 thirty days after filing his claim, to commence pro-
9 ceedings in a court of competent jurisdiction to deter-
10 mine the question of the right of possession, and prosecute
11 the same with reasonable diligence to final judgment, and

12 a failure so to do shall be a waiver of his adverse claim.
13 After such judgment shall have been rendered, the party
14 entitled to the possession of the claim, or any portion thereof,
15 may file a certified copy of the judgment roll with the regis-
16 ter of the land office, together with the certificate of the sur-
17 veyor general that the requisite amount of labor has been ex-
18 pended or improvements made thereon, and the description
19 required in other cases, and shall pay to the receiver five dol-
20 lars per acre for his claim, together with the proper fees,
21 whereupon the whole proceedings and the judgment roll shall
22 be certified by the register to the Commissioner of the General
23 Land Office, and a patent shall issue thereon for the claim, or
24 such portion thereof as the applicant shall appear, from the
25 decision of the court, to rightfully possess. If it shall appear
26 from the decision of the court that several parties are entitled to
27 separate and different portions of the claim, each party may pay
28 for his portion of the claim, with the proper fees, and file the
29 certificate and description by the surveyor general, whereupon
30 he register shall certify the proceedings and judgment roll to
31 the Commissioner of the General Land Office as in the pre-
32 ceding case, and patents shall issue to the several parties ac-
33 cording to their respective rights.

1 SEC. 8. *And be it further enacted,* That the descrip-
2 tion of vein or lode claims upon surveyed lands shall desig-
3 nate the location of the claim with reference to the lines of

4 the public surveys, but need not conform therewith; but
5 where a patent shall be issued for vein or lode claims
6 upon unsurveyed lands, the surveyor general in extend-
7 ing the surveys shall adjust the same to the boundaries of
8 such patented claim, according to the plat or description
9 thereof, as in other cases of private claims.

1 SEC. 9. *And be it further enacted,* That sections one,
2 two, three, four, and six of an act entitled "An act granting
3 the right of way to ditch and canal owners over the public
4 lands, and for other purposes," approved July twenty-six,
5 eighteen hundred and sixty-six, are hereby repealed, but such
6 repeal shall not affect existing rights, or prevent claimants
7 now prosecuting their claims for patents from proceeding un-
8 der said act: *Provided,* That this act shall be enforced as to
9 such claims where it is not inconsistent with the act approved
10 July twenty-six, eighteen hundred and sixty-six, aforesaid.

1 SEC. 10. *And be it further enacted,* That the "Act to
2 amend an act granting the right of way to ditch and canal
3 owners over the public lands, and for other purposes," ap-
4 proved July nine, eighteen hundred and seventy, shall be
5 and remain in full force, except as to the proceedings to ob-
6 tain a patent, which shall be similar to the proceedings pre-
7 scribed by sections six and seven of this act for obtaining
8 patents to vein or lode claims; but where said placer-claims
9 shall be upon surveyed lands, and conform to legal subdivis-

10 ions, no further survey or plat shall be required, and joint en-
11 tries shall be allowed for contiguous claims, as provided in said
12 act: *Provided*, That proceedings now pending may be prose-
13 cuted to their final determination under existing laws; but the
14 provisions of this act, when not in conflict with existing laws,
15 shall apply to such cases.

1 SEC. 11. *And be it further enacted*, That where the same
2 person, association, or corporation is in possession of a placer-
3 claim and also a vein or lode included within the boundaries
4 thereof, application shall be made for a patent for the placer-
5 claim, with the statement that it includes such vein or lode,
6 and in such case (subject to the provisions of this act and the
7 “ Act to amend an act granting the right of way to ditch and
8 canal owners over the public lands, and for other purposes,”
9 approved July nine, eighteen hundred and seventy) a patent
10 shall issue for the placer-claim, including such vein or
11 lode, upon the payment of five dollars per acre for such vein
12 or lode claim, and one hundred feet of surface on each side
13 thereof. The balance of the placer-claim shall be paid
14 for at the rate of two dollars and fifty cents per acre, and
15 where a vein or lode, such as is described in the second sec-
16 tion of this act, is known to exist within the boundaries of a
17 placer-claim, an application for a patent for such placer-claim
18 which does not include an application for the vein or lode
19 claim, shall be construed as a conclusive declaration that the

20 claimant of the placer-claim has no right of possession of the
21 vein or lode claim; but where the existence of a vein or lode
22 in a placer-claim is not known, a patent for the placer-claim
23 shall convey all minerals within the boundaries thereof.

1 SEC. 12. *And be it further enacted,* That the surveyor
2 general of the United States may appoint in each land
3 district containing mineral lands as many competent
4 surveyors as shall apply for appointment to survey
5 mining claims. The expenses of the survey of vein
6 or lode claims and the subdivision of placer-claims into
7 smaller quantities than one hundred and sixty acres, together
8 with the cost of publication of notices, shall be paid by the
9 applicants, and they shall be at liberty to obtain the same at
10 the most reasonable rates, and they shall also be at liberty to
11 employ any United States deputy surveyor to make the sur-
12 vey. The Commissioner of the General Land Office shall
13 also have power to establish the maximum charges for surveys
14 and publication of notices under this act; and in case of ex-
15 cessive charges for publication, he may designate any news-
16 paper published in a land district where mines are situated
17 for the publication of mining notices in such district, and fix
18 the rates to be charged by such paper; and to the end that
19 the Commissioner may be fully informed on the subject, each
20 applicant shall file with the register a sworn statement of
21 all charges and fees paid by said applicant for publica-

22 tion and surveys, together with all fees and money
23 paid the register and receiver of the land office,
24 which statement shall be transmitted with the other papers
25 in the case to the Commissioner of the General Land Office.
26 The fees of the registers and receivers shall be the same as
27 in other cases for similar services. But nothing in this act
28 shall be construed to repeal, impair, or in any way affect the
29 provisions of the "Act granting to A. Sutro the right of way
30 and other privileges to aid in the construction of a draining
31 and exploring tunnel to the Comstock lode, in the State of
32 Nevada," approved July twenty-five, eighteen hundred and
33 sixty-six.

AMENDMENT

Proposed by Mr. STEWART, viz: Insert at the end of the bill the following:

1 *Provided*, That nothing in this act shall be construed to
2 enlarge or affect the rights of either party in regard to any
3 property in controversy at the time of the passage of the act
4 entitled "An act granting the right of way to ditch and canal
5 owners over the public lands, and for other purposes," ap-
6 proved July twenty-six, eighteen hundred and sixty-six, nor
7 shall this act affect any right acquired under said act.

This document is courtesy of the South West Oregon Mining Association
www.miningrights.org

For authenticity, this document utilizes original images from the original
government record housed by the Library of Congress.

This document was prepared by Kerby Jackson
www.kerbyjackson.com

Document prepared: December 16th, 2010