

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1872.

Ordered to be printed and recommitted to the Committee on Mines and Mining.

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## **AMENDMENT**

Reported by Mr. ALCORN to the bill (H. R. 1016) to promote the development of the mining resources of the United States, viz:

Strike out all after the enacting clause and insert the following :

3 That all valuable minerals deposits in lands belonging to the  
4 United States, both surveyed and unsurveyed, are hereby de-  
5 clared to be free and open to exploration and purchase, and  
6 the lands in which they are found to occupation and purchase,  
7 by citizens of the United States and those who have declared  
8 their intention to become such, under regulations prescribed  
9 by law, and according to the local customs or rules of miners,  
10 in the several mining districts, so far as the same are appli-  
11 cable and not inconsistent with the laws of the United States.

1       Sec. 2. That mining-claims upon veins or lodes  
2 of quartz or other rock in place bearing gold, silver,  
3 cinnabar, lead, tin, copper, or other valuable deposits  
4 heretofore located shall be governed as to length along the  
5 vein or lode by the customs, regulations, and laws in

6 force at the date of their location. A mining-claim  
7 located after the passage of this act, whether located by  
8 one or more persons, may equal, but shall not exceed, one  
9 thousand five hundred feet in length along the vein or lode;  
10 but no location of a mining-claim shall be made until the  
11 discovery of the vein or lode within the limits of the claim  
12 located. No claim shall extend more than three hundred  
13 feet on each side of the middle of the vein at the surface,  
14 nor shall any claim be limited by any mining regulation to less  
15 than twenty-five feet on each side of the middle of the vein  
16 at the surface, except where adverse rights existing at the  
17 passage of this act shall render such limitation necessary.  
18 The end-lines of each claim shall be parallel to each other.

1       SEC. 3. That the locators of all mining locations hereto-  
2 fore made, or which shall hereafter be made, on any mineral  
3 vein, lode, or ledge, situated on the public domain, their heirs  
4 and assigns, where no adverse claim exists at the passage of  
5 this act, so long as they comply with the laws of the United  
6 States, and with State, territorial, and local regulations not  
7 in conflict with said laws of the United States governing  
8 their possessory title, shall have the exclusive right of posses-  
9 sion and enjoyment of all the surface included within the  
10 lines of their locations, and of all veins, lodes, and ledges  
11 throughout their entire depth, the top or apex of which lies  
12 inside of such surface-lines extended downward vertically,

13 although such veins, lodes, or ledges may so far depart  
14 from a perpendicular in their course downward as to extend  
15 outside the vertical side-lines of said surface locations: *Pro-*  
16 *vided*, That their right of possession to such outside parts of  
17 said veins or ledges shall be confined to such portions thereof  
18 as lie between vertical planes drawn downward as aforesaid,  
19 through the end-lines of their locations, so continued in their  
20 own direction that such planes will intersect such exterior  
21 parts of said veins or ledges: *And provided further*, That  
22 nothing in this section shall authorize the locator or possessor  
23 of a vein or lode which extends in its downward course  
24 beyond the vertical lines of his claim to enter upon the sur-  
25 face of a claim owned or possessed by another.

1       SEC. 4. That where a tunnel is run for the development  
2 of a vein or lode, or for the discovery of mines, the owners  
3 of such tunnel shall have the right of possession of all veins  
4 or lodes within three thousand feet from the mouth of such  
5 tunnel on the line thereof, not previously known to exist,  
6 discovered in such tunnel, to the same extent as if discovered  
7 from the surface; and locations on the line of such tunnel of  
8 veins or lodes not appearing on the surface, made by other  
9 parties after the commencement of the tunnel, and while the  
10 same is being prosecuted with reasonable diligence, shall be  
11 invalid; but failure to prosecute the work on the tunnel for

12 six months shall be considered as an abandonment of the  
13 right to all undiscovered veins on the line of said tunnel.

1       SEC. 5. That the miners of each mining-district may  
2 make rules and regulations not in conflict with the laws of  
3 the United States, or with the laws of the State or Territory  
4 in which the district is situated, governing the location, man-  
5 ner of recording, amount of work necessary to hold posses-  
6 sion of a mining-claim, subject to the following requirements :  
7 The location must be distinctly marked on the ground so that  
8 its boundaries can be readily traced. All records of mining-  
9 claims hereafter made shall contain the name or names of the  
10 locators, the date of the location, and such a description of  
11 the claim or claims located by reference to some natural  
12 object or permanent monument as will identify the claim.  
13 On each claim located after the passage of this act,  
14 and until a patent shall have been issued therefor, not  
15 less than one hundred dollars' worth of labor shall be  
16 performed or improvements made during each year.  
17 On all claims located prior to the passage of this act, ten  
18 dollars' worth of labor shall be performed or improvements  
19 made for each one hundred feet in length along the vein  
20 until a patent shall have been issued therefor; but where  
21 such claims are held in common such expenditure may be  
22 made upon any one claim; and upon a failure to comply  
23 with these conditions, the claim or mine upon which such

24 failure occurred shall be open to relocation in the same man-  
25 ner as if no location of the same had ever been made: *Pro-*  
26 *vided*, That the original locators, their heirs, assigns, or legal  
27 representatives, have not resumed work upon the claim after  
28 such failure and before such location. Upon the failure of  
29 any one of several co-owners to contribute his proportion of  
30 the expenditures required by this act, the co-owners who  
31 have performed the labor or made the improvements may,  
32 at the expiration of the year, give such delinquent co-owner  
33 personal notice, or notice by publication in the newspaper  
34 published nearest the claim, for at least once a week for  
35 ninety days, and if at the expiration of ninety days after  
36 such notice, such delinquent should fail or refuse to contribute  
37 his proportion to comply with this act, his interest in the  
38 claim shall become the property of his co-owners who have  
39 made the required expenditure.

1       SEC. 6. That a patent for any land claimed and located  
2 for valuable deposits may be obtained in the following  
3 manner: Any person, association, or corporation authorized  
4 to locate a claim under this act, having claimed and located a  
5 piece of land for such purposes, who has, or have, complied  
6 with the terms of this act, may file in the proper land-office  
7 an application for a patent, under oath, showing such compli-  
8 ance, together with a plat and field-notes of the claim or  
9 claims in common, made by or under the direction of the

10 United States surveyor general, showing accurately the  
11 boundaries of the claim or claims, which shall be distinctly  
12 marked by monuments on the ground, and shall post a copy  
13 of such plat, together with a notice of such application for a  
14 patent, in a conspicuous place on the land embraced in such  
15 plat previous to the filing of the application for a  
16 patent, and shall file an affidavit of at least two persons that  
17 such notice has been duly posted as aforesaid, and shall file a  
18 copy of said notice in such land-office, and shall thereupon  
19 be entitled to a patent for said land, in the manner follow-  
20 ing: The register of the land-office, upon the filing of such  
21 application, plat, field-notes, notices, and affidavits, shall pub-  
22 lish a notice that such application has been made, for the  
23 period of sixty days, in a newspaper to be by him designated  
24 as published nearest to said claim; and he shall also post such  
25 notice in his office for the same period. The claimant at the  
26 time of filing this application, or at any time thereafter,  
27 within the sixty days of publication, shall file with the regis-  
28 ter a certificate of the United States surveyor general that  
29 five hundred dollars' worth of labor has been expended or  
30 improvements made upon the claim by himself or grantors;  
31 that the plat is correct, with such further description by such  
32 reference to natural objects or permanent monuments as shall  
33 identify the claim, and furnish an accurate description, to be  
34 incorporated in the patent. At the expiration of the sixty

35 days of publication the claimant shall file his affidavit, show-  
36 ing that the plat and notice have been posted in a conspicuous  
37 place on the claim during said period of publication. If no  
38 adverse claim shall have been filed with the register and  
39 the receiver of the proper land-office at the expiration of the  
40 sixty days of publication, it shall be assumed that the appli-  
41 cant is entitled to a patent, upon the payment to the proper  
42 officer of five dollars per acre, and that no adverse claim ex-  
43 ists; and thereafter no objection from third parties to the  
44 issuance of a patent shall be heard, except it be shown that  
45 the applicant has failed to comply with this act.

SEC. 7. That where an adverse claim shall be filed  
2 during the period of publication, it shall be upon oath of  
3 the person or persons making the same, and shall show  
4 the nature, boundaries, and extent of such adverse claim,  
5 and all proceedings, except the publication of notice and  
6 making and filing of the affidavit thereof, shall be stayed  
7 until the controversy shall have been settled or decided  
8 by a court of competent jurisdiction, or the adverse claim  
9 waived. It shall be the duty of the adverse claimant, within  
10 thirty days after filing his claim, to commence proceed-  
11 ings in a court of competent jurisdiction, to determine the  
12 question of the right of possession, and prosecute the same  
13 with reasonable diligence to final judgment; and a failure so  
14 to do shall be a waiver of his adverse claim. After

15 such judgment shall have been rendered, the party en-  
16 titled to the possession of the claim, or any portion  
17 thereof, may, without giving further notice, file a certi-  
18 fied copy of the judgment-roll with the register of the land-  
19 office, together with the certificate of the surveyor general  
20 that the requisite amount of labor has been expended, or  
21 improvements made thereon, and the description required in  
22 other cases, and shall pay to the receiver five dollars per  
23 acre for his claim, together with the proper fees, whereupon  
24 the whole proceedings and the judgment-roll shall be certified  
25 by the register to the Commissioner of the General Land-  
26 Office, and a patent shall issue thereon for the claim, or such  
27 portion thereof as the applicant shall appear, from the decis-  
28 ion of the court, to rightfully possess. If it shall appear from  
29 the decision of the court that several parties are entitled to  
30 separate and different portions of the claim, each party may  
31 pay for his portion of the claim, with the proper fees, and  
32 file the certificate and description by the surveyor general,  
33 whereupon the register shall certify the proceedings and  
34 judgment-roll to the Commissioner of the General Land-Office,  
35 as in the preceding case, and patents shall issue to the several  
36 parties according to their respective rights. Proof of citizen-  
37 ship under this act, or the acts of July twenty-sixth, eighteen  
38 hundred and sixty-six, and July ninth, eighteen hundred and  
39 seventy, in the case of an individual, may consist of his own



40 affidavit thereof, and in case of an association of persons un-  
41 incorporated, of the affidavit of their authorized agent, made  
42 on his own knowledge or upon information and belief, and in  
43 case of a corporation organized under the laws of the United  
44 States, or of any State or Territory of the United States, by  
45 the filing of a certified copy of their charter or certificate of  
46 incorporation; and nothing herein contained shall be con-  
47 strued to prevent the alienation of the title conveyed by a  
48 patent for a mining-claim to any person whatever.

1       SEC. 8. That the description of vein or lode claims, upon  
2 surveyed lands, shall designate the location of the claim with  
3 reference to the lines of the public surveys, but need not con-  
4 form therewith; but where a patent shall be issued as afore-  
5 said for claims upon unsurveyed lands, the surveyor general,  
6 in extending the surveys, shall adjust the same to the bounda-  
7 ries of such patented claim, according to the plat or description  
8 thereof, but so as in no case to interfere with or change the  
9 location of any such patented claim.

1       SEC. 9. That sections one, two, three, four, and six of  
2 an act entitled "An act granting the right of way to ditch  
3 and canal owners over the public lands, and for other pur-  
4 poses," approved July twenty-sixth, eighteen hundred and  
5 sixty-six, are hereby repealed, but such repeal shall not affect  
6 existing rights. Applications for patents for mining-claims  
7 now pending may be prosecuted to a final decision in the  
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8 General Land-Office ; but in such cases where adverse rights  
9 are not affected thereby, patents may issue in pursuance of  
10 the provisions of this act ; and all patents for mining-claims  
11 heretofore issued under the act of July twenty-sixth, eighteen  
12 hundred and sixty-six, shall convey all the rights and privi-  
13 leges conferred by this act where no adverse rights exist at  
14 the time of the passage of this act.

1       SEC. 10. That the act entitled "An act to amend an act  
2 granting the right of way to ditch and canal owners over the pub-  
3 lic lands, and for other purposes," approved July ninth, eighteen  
4 hundred and seventy, shall be and remain in full force, except as  
5 to the proceedings to obtain a patent, which shall be similar  
6 to the proceedings prescribed by sections six and seven of  
7 this act for obtaining patents to vein or lode claims ; but  
8 where said placer-claims shall be upon surveyed lands, and  
9 conform to legal subdivisions, no further survey or plat shall  
10 be required, and joint entries shall be allowed for contiguous  
11 claims, as provided in said act ; but where said claims cannot  
12 be conformed to legal subdivisions, survey and plat shall be  
13 made as on unsurveyed lands: *Provided*, That proceedings  
14 now pending may be prosecuted to their final determination  
15 under existing laws ; but the provisions of this act, when not  
16 in conflict with existing laws, shall apply to such cases.

1       SEC. 11. That where the same person, association, or  
2 corporation is in possession of a placer-claim, and also a

3 vein or lode included within the boundaries thereof, appli-  
4 cation shall be made for a patent for the placer-claim, with the  
5 statement that it includes such vein or lode, and in such case  
6 (subject to the provisions of this act and the act entitled "An  
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 ninth, eighteen hundred and seventy) a  
10 patent shall issue for the placer-claim, including such vein  
11 or lode, upon the payment of five dollars per acre for such  
12 vein or lode claim, and twenty-five feet of surface on each  
13 side thereof. The remainder of the placer-claim, or any  
14 placer-claim not embracing any vein or lode claim, shall be  
15 paid for at the rate of two dollars and fifty cents per acre,  
16 together with all costs of proceedings; and where a vein  
17 or lode, such as is described in the second section of this  
18 act, is known to exist within the boundaries of a placer-  
19 claim, an application for a patent for such placer-claim  
20 which does not include an application for the vein or lode  
21 claim shall be construed as a conclusive declaration that the  
22 claimant of the placer-claim has no right of possession of  
23 the vein or lode claim; but where the existence of a vein  
24 or lode in a placer-claim is not known, a patent for the  
25 placer-claim shall convey all valuable mineral and other  
26 deposits within the boundaries thereof.

1        SEC. 12. That the surveyor general of the United

2 States may appoint in each land-district containing mineral  
3 lands as many competent surveyors as shall apply for  
4 appointment to survey mining-claims. The expenses of the  
5 survey of vein or lode claims, and the survey and subdivision  
6 of placer-claims into smaller quantities than one hundred and  
7 sixty acres, together with the cost of publication of notices,  
8 shall be paid by the applicants, and they shall be at liberty  
9 to obtain the same at the most reasonable rates, and they  
10 shall also be at liberty to employ any United States deputy  
11 surveyor to make the survey. The Commissioner of the Gen-  
12 eral Land-Office shall also have power to establish the max-  
13 imum charges for surveys and publication of notices under  
14 this act; and, in case of excessive charges for publication, he  
15 may designate any newspaper published in a land-district  
16 where mines are situated for the publication of mining-notices  
17 in such district, and fix the rates to be charged by such paper;  
18 and, to the end that the Commissioner may be fully informed  
19 on the subject, each applicant shall file with the register a  
20 sworn statement of all charges and fees paid by said applicant  
21 for publication and surveys, together with all fees and money  
22 paid the register and the receiver of the land-office, which state-  
23 ment shall be transmitted, with the other papers in the case,  
24 to the Commissioner of the General Land-Office. The fees  
25 of the register and the receiver shall be five dollars each for  
26 filing and acting upon each application for patent or adverse

27 claim filed, and they shall be allowed the amount fixed by  
28 law for reducing testimony to writing, when done in the  
29 land-office, such fees and allowances to be paid by the respect-  
30 ive parties; and no other fees shall be charged by them in  
31 such cases. Nothing in this act shall be construed to enlarge  
32 or affect the rights of either party in regard to any prop-  
33 erty in controversy at the time of the passage of this  
34 act, or of the act entitled "An act granting the right of way  
35 to ditch and canal owners over the public lands, and for  
36 other purposes," approved July twenty-sixth, eighteen hun-  
37 dred and sixty-six, nor shall this act affect any right acquired  
38 under said act; and nothing in this act shall be construed to  
39 repeal, impair, or in any way affect the provisions of the act  
40 entitled "An act granting to A. Sutro the right of way and  
41 other privileges to aid in the construction of a draining and  
42 exploring tunnel to the Comstock lode, in the State of Ne-  
43 vada," approved July twenty-fifth, eighteen hundred and  
44 sixty-six.

1       SEC. 13. That all affidavits required to be made under  
2 this act, or the act of which it is amendatory, may be  
3 verified before any officer authorized to administer oaths  
4 within the land-district where the claims may be situated,  
5 and all testimony and proofs may be taken before any such  
6 officer, and, when duly certified by the officer taking the  
7 same, shall have the same force and effect as if taken before

8 the register and the receiver of the land-office. In cases of  
9 contest as to the mineral or agricultural character of land, the  
10 testimony and proofs may be taken as herein provided on  
11 personal notice of at least ten days to the opposing party ;  
12 or if said party cannot be found, then by publication of at  
13 least once a week for thirty days in a newspaper, to be  
14 designated by the register of the land-office as published  
15 nearest to the location of such land ; and the register shall  
16 require proof that such notice has been given.

1       SEC. 14. That where two or more veins intersect or  
2 cross each other, priority of title shall govern, and such prior  
3 location shall be entitled to all ore or mineral contained  
4 within the space of intersection: *Provided, however,* That  
5 the subsequent location shall have the right of way through  
6 said space of intersection for the purposes of the convenient  
7 working of the said mine: *And provided also,* That where  
8 two or more veins unite, the oldest or prior location shall take  
9 the vein below the point of union, including all the space of  
10 intersection.

1       SEC. 15. That where non-mineral land not contiguous  
2 to the vein or lode is used or occupied by the proprietor of  
3 such vein or lode for mining or milling purposes, such non-  
4 adjacent surface ground may be embraced and included in  
5 an application for a patent for such vein or lode, and the  
6 same may be patented therewith, subject to the same pre-

7 liminary requirements as to survey and notice as are appli-  
8 cable under this act to veins or lodes: *Provided*, That no  
9 location hereafter made of such non-adjacent land shall  
10 exceed five acres, and payment for the same must be  
11 made at the same rate as fixed by this act for the superficies  
12 of the lode. The owner of a quartz-mill or reduction-works,  
13 not owning a mine in connection therewith, may also receive  
14 a patent for his mill-site, as provided in this section.

1       SEC. 16. That all acts and parts of acts inconsistent  
2 herewith are hereby repealed: *Provided*, That nothing con-  
3 tained in this act shall be construed to impair, in any way,  
4 rights or interests in mining property acquired under existing  
5 laws.

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