

THE PRE-EMPTION ACT OF 1841

27th Congress, 5 Stat., Ch. 16, at p. 453 (1841)

CHAP. XVI.—*An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan, over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the net proceeds of the sales of the public lands, which, subsequent to the day aforesaid, shall be made within the limits of each of said States respectively: *Provided,* That the sum so allowed to the said States, respectively, shall be in no wise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

SEC. 2. *And be it further enacted,* That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the States aforesaid, the residue of the nett proceeds, which nett proceeds shall be ascertained by deducting from the gross proceeds all the expenditures of the year for the following objects: salaries and expenses on account of the General Land Office; expenses for surveying public lands; salaries and expenses in the surveyor general's offices; salaries, commissions, and allowances to the registers and receivers; the five per centum to new States, of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December shall be divided among the twenty-six States of the Union and the District of Columbia, and the Territories of Wisconsin, Iowa, and Florida, according to their respective federal representative population as ascertained by the last census, to be applied by the

Legislatures of the said States to such purposes as the said Legislatures may direct: *Provided*, That the distributive share to which the District of Columbia shall be entitled, shall be applied to free schools, or education in some other form, as Congress may direct: *And provided, also*, That nothing herein contained shall be construed to the prejudice of future applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands, on reasonable terms, to the States within which they lie, or to make such future disposition of the public lands, or any part thereof, as Congress may deem expedient.

SEC. 3. *And be it further enacted*, That the several sums of money received in the Treasury as the nett proceeds of the sales of the public lands shall be paid at the Treasury half yearly on the first day of January and July in each year, during the operation of this act, to such person or persons as the respective Legislatures of the said States and Territories, or the Governors thereof, in case the Legislatures shall have made no such appointment, shall authorize and direct to receive the same.

SEC. 4. *And be it further enacted*, That any sum of money, which at any time may become due, and payable to any State of the Union, or to the District of Columbia, by virtue of this act, as the portion of the said State or District, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt, due, and payable from the said State or District, to the United States: *Provided*, That this shall not be construed to extend to the sums deposited with the States under the act of Congress of twenty-third June, eighteen hundred and thirty-six, entitled “an act to regulate the deposits of the public money,” nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the Revolutionary war.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force until otherwise provided by law, unless the United States shall become involved in war with any foreign Power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: *Provided, nevertheless*, That if, prior to the expiration of this act, any new State or States shall be admitted into the Union, there be assigned to such new State or States, the proportion of

the proceeds accruing after their admission into the Union, to which such State or States may be entitled, upon the principles of this act, together with what such State or States may be entitled to by virtue of compacts to be made on their admission into the Union.

SEC. 6. *And be it further enacted,* That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless Congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the nett proceeds of the sales of the public lands shall be distributed among the several States, shall, from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, any thing in this act to the contrary notwithstanding: *Provided,* That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the provisions of the act of March second one thousand eight hundred and thirty-three, entitled, “An act to modify the act of the fourteenth of July one thousand eight hundred and thirty-two, and all other acts imposing duties on imports,” and beyond the rate of duty fixed by that act, to wit: twenty per cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until this cause of its suspension shall be removed, and when removed, if not prevented by other provisions of this act, such distribution shall be resumed.

SEC. 7. *And be it further enacted,* That the Secretary of the Treasury may continue any land district in which is situated the seat of government of any one of the States, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance may be required by public convenience, or in order to close the land system in such State at a convenient point, under the provisions of the act on that subject, approved twelfth June, one thousand eight hundred and forty.

SEC. 8. *And be it further enacted,* That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: *Provided,* that to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States, to be made within their limits respectively in such manner as the Legislatures thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively, shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

SEC. 9. *And be it further enacted,* That the lands herein granted to the States above named shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the net proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the States aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

SEC. 10. *And be it further enacted,* That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as

required by the naturalization laws, who since the first day of June, A. D. eighteen hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby, authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-rabbit creek, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. *And be it further enacted,* That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the Secretary of the Treasury of the United States.

SEC. 12. *And be it further enacted,* That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted;* That before any person claiming the benefit of this act shall be allowed to enter such lands; he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part, to the benefit of any person except himself or herself, and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void.

And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 14. *And be it further enacted,* That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be, appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

SEC. 15. *And be it further enacted,* That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of the same, and in the last within thirty days next after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

SEC. 16. *And be it further enacted,* That the two per cent. of the net proceeds of the lands sold, or that may hereafter be sold, by the United States in the State of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," and all acts supplemental thereto reserved for the making of a road or roads leading

to said State, be, and the same is hereby relinquished to the State of Mississippi, payable in two equal instalments; the first to be paid on the first of May, eighteen hundred and forty-two, and the other on the first of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue, after said period: *Provided*, That the Legislature of said State shall first pass an act, declaring their acceptance of said relinquishment in full of said fund, accrued and accruing, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad, leading from Brandon, in the State of Mississippi, to the eastern boundary of said State, in the direction, as near as may be, of the towns of Selma, Cahaba, and Montgomery, in the State of Alabama.

SEC. 17. *And be it further enacted*, That the two per cent. of the net proceeds of the lands sold by the United States, in the State of Alabama, since the first day of September, eighteen hundred and nineteen, and reserved by the act entitled “An act to enable the people of the Alabama Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States,” for the making of a road or roads leading to the said State, be, and the same is hereby, relinquished to the said State of Alabama, payable in two equal instalments, the first to be paid on the first day of May, eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may thereafter accrue: *Provided*, That the Legislature of said State shall first pass an act, declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the Legislature of Alabama, to the connection, by some means of internal improvements of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochie river, opposite West Point, in Georgia, across the State of Alabama, in a direction to Jackson in the State of Mississippi.

APPROVED, September 4, 1841.

The Pre-emption Act of 1841 was repealed by §4 of the Land Revision Act of 1891, 26 Stat. at Large, ch. 561, p. 1095 (March 3, 1891).

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