



# HOUSE BILL No. 5918

May 30, 1996, Introduced by Reps. DeLange, Voorhees, Green, Horton, Rhead, Dalman and McNutt and referred to the Committee on Regulatory Affairs.

A bill to amend the title and sections 104, 107, 118, and 304 of Act No. 497 of the Public Acts of 1980, entitled "Construction lien act," sections 104, 107, and 118 as amended by Act No. 17 of the Public Acts of 1982, being sections 570.1104, 570.1107, 570.1118, and 570.1304 of the Michigan Compiled Laws; to add sections 107a and 129; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. The title and sections 104, 107, 118, and 304 of  
2 Act No. 497 of the Public Acts of 1980, sections 104, 107, and  
3 118 as amended by Act No. 17 of the Public Acts of 1982, being  
4 sections 570.1104, 570.1107, 570.1118, and 570.1304 of the  
5 Michigan Compiled Laws, are amended and sections 107a and 129 are  
6 added to read as follows:

## TITLE

1  
2 An act to establish, protect, and enforce by lien the rights  
3 of persons performing labor or providing material or equipment  
4 for the improvement of real property; to provide for certain  
5 defenses with respect ~~thereto~~ TO THOSE LIENS; ~~to establish a~~  
6 ~~homeowner construction lien recovery fund within the department~~  
7 ~~of licensing and regulation;~~ to provide for the powers and  
8 duties of certain state officers; ~~to provide for the assessments~~  
9 ~~of certain occupations;~~ AND to prescribe penalties. ~~, and to~~  
10 ~~repeal certain acts and parts of acts.~~

11 Sec. 104. (1) "Court" means the circuit court in which an  
12 action to enforce a construction lien through foreclosure is  
13 pending.

14 ~~(2) "Department" means the department of licensing and~~  
15 ~~regulation.~~

16 (2) ~~(3)~~ "Designee" means the person named by an owner or  
17 lessee to receive, on behalf of the owner or lessee, all notices  
18 or other instruments whose furnishing is required by this act.  
19 The owner or lessee may name himself or herself as designee. The  
20 owner or lessee ~~may~~ SHALL not name the contractor as designee.  
21 However, a contractor who is providing only architectural or  
22 engineering services may be named as designee.

23 (3) ~~(4)~~ "Fringe benefits and withholdings" means compensa-  
24 tion due an employee ~~pursuant to~~ UNDER a written contract or  
25 written policy for holiday, time off for sickness or injury, time  
26 off for personal reasons or vacation, bonuses, authorized

1 expenses incurred during the course of employment, and ~~any~~ ALL  
2 other contributions made to or on behalf of an employee.

3 ~~(5) "Fund" means the homeowner construction lien recovery~~  
4 ~~fund created under part 2.~~

5 (4) ~~(6)~~ "General contractor" means a contractor who con-  
6 tracts with an owner or lessee to provide, directly or indirectly  
7 through contracts with subcontractors, suppliers, or laborers,  
8 substantially all of the improvements to the property described  
9 in the notice of commencement.

10 (5) ~~(7)~~ "Improvement" means the result of labor or mate-  
11 rial provided UNDER A CONTRACT by a contractor, subcontractor,  
12 supplier, or laborer, including ~~—~~ but not limited to ~~—~~ sur-  
13 veying, engineering and architectural planning, construction man-  
14 agement, clearing, demolishing, excavating, filling, building,  
15 erecting, constructing, altering, repairing, ornamenting, land-  
16 scaping, paving, leasing equipment, or installing or affixing a  
17 fixture or material. ~~—, pursuant to a contract.~~

18 (6) ~~(8)~~ "Laborer" means an individual who, ~~pursuant to~~  
19 UNDER a contract with a contractor or subcontractor, provides an  
20 improvement to real property through the individual's personal  
21 labor.

22 Sec. 107. (1) ~~Each~~ EXCEPT AS PROVIDED IN SECTION 107A,  
23 EACH contractor, subcontractor, supplier, or laborer who provides  
24 an improvement to real property shall have a construction lien  
25 upon the interest of the owner or lessee who contracted for the  
26 improvement to the real property, as described in the notice of  
27 commencement provided for by section 108 or 108a, the interest of

1 an owner who has subordinated his or her interest to the mortgage  
2 for the improvement of the real property, and the interest of an  
3 owner who has required the improvement. A construction lien  
4 acquired ~~pursuant to~~ UNDER this act shall not exceed the amount  
5 of the lien claimant's contract less payments made on the  
6 contract.

7 (2) A construction lien under this act shall attach to the  
8 entire interest of the owner or lessee who contracted for the  
9 improvement, including ~~any~~ A subsequently acquired legal or  
10 equitable interest.

11 (3) Each contractor, subcontractor, supplier, or laborer who  
12 provides an improvement to real property to which the person con-  
13 tracting for the improvement had no legal title shall have a con-  
14 struction lien upon the improvement for which the contractor,  
15 subcontractor, supplier, or laborer provided labor, material, or  
16 equipment. The forfeiture, surrender, or termination of ~~any~~ A  
17 title or AN interest held by ~~any~~ AN owner or lessee who con-  
18 tracted for an improvement to the property or by ~~any~~ AN owner  
19 who subordinated his or her interest to the mortgage for the  
20 improvement, or by ~~any~~ AN owner who has required the improve-  
21 ment shall not defeat the lien of the contractor, subcontractor,  
22 supplier, or laborer upon the improvement.

23 (4) If the rights of a person contracting for an improvement  
24 as a land contract vendee or a lessee are forfeited, surrendered,  
25 or otherwise terminated, ~~any~~ A lien claimant who has provided a  
26 notice of furnishing or is excused from providing a notice of  
27 furnishing ~~pursuant to~~ UNDER section 108, 108a, or 109 and who

1 performs the covenants contained in the land contract or lease  
2 within 30 days after receiving actual notice of the forfeiture,  
3 surrender, or termination shall be subrogated to the rights of  
4 the contracting vendee or lessee as those rights existed immedi-  
5 ately before the forfeiture, surrender, or termination.

6 (5) For purposes of this act, if ~~the~~ real property is  
7 owned or leased by more than 1 person, an improvement to THE real  
8 property ~~pursuant to~~ UNDER a contract ~~which~~ THAT was entered  
9 into by an owner or lessee ~~shall be~~ IS REBUTTABLY presumed to  
10 have been consented to by ~~any~~ EVERY other co-owner or co-lessee  
11 ~~but the presumption shall in all cases be rebuttable~~ OF THAT  
12 PROPERTY. If enforcement of a construction lien through foreclo-  
13 sure is sought and the court finds that the improvement has been  
14 consented to by a co-owner or co-lessee who did not contract for  
15 the improvement, the court shall order the entire interest of  
16 that co-owner or co-lessee, including ~~any~~ A subsequently  
17 acquired legal or equitable interest, to be subject to the con-  
18 struction lien. A deficiency judgment shall not be entered  
19 against a noncontracting owner, co-owner, lessee, or co-lessee.

20 (6) If the real property of an owner or lessee is subject to  
21 construction liens, the sum of the construction liens shall not  
22 exceed the amount which the owner or lessee agreed to pay the  
23 person with whom he or she contracted for the improvement as mod-  
24 ified by ~~any and all~~ additions, deletions, ~~and any~~ OR other  
25 amendments, less payments made by or on behalf of the owner or  
26 lessee, pursuant to either a contractor's sworn statement or a  
27 waiver of lien, in accordance with this act.

1           SEC. 107A. (1) A CLAIM OF CONSTRUCTION LIEN SHALL NOT  
2 ATTACH TO A RESIDENTIAL STRUCTURE, TO THE EXTENT PAYMENTS HAVE  
3 BEEN MADE, IF THE OWNER OR LESSEE FILES AN AFFIDAVIT WITH THE  
4 COURT INDICATING THAT THE OWNER OR LESSEE HAS PAID THE CONTRACTOR  
5 FOR THE IMPROVEMENT TO THE RESIDENTIAL STRUCTURE AND THE AMOUNT  
6 OF THE PAYMENT.

7           (2) IN THE ABSENCE OF A WRITTEN CONTRACT PURSUANT TO SECTION  
8 114, THE FILING OF AN AFFIDAVIT UNDER THIS SECTION CREATES A  
9 REBUTTABLE PRESUMPTION THAT THE OWNER OR LESSEE HAS PAID THE CON-  
10 TRACTOR FOR THE IMPROVEMENT. THE PRESUMPTION MAY BE OVERCOME  
11 ONLY BY A SHOWING OF CLEAR AND CONVINCING EVIDENCE TO THE  
12 CONTRARY.

13           (3) A PERSON WHO HAS RECORDED A CLAIM OF LIEN AND WHO IS  
14 PRECLUDED FROM RECOVERING A CONSTRUCTION LIEN UNDER SUBSECTION  
15 (1) MAY RECOVER FROM THE CONTRACTOR OR SUBCONTRACTOR THE AMOUNT  
16 FOR WHICH THE LIEN IS ESTABLISHED. A PERSON WHO SEEKS RECOVERY  
17 UNDER THIS SUBSECTION SHALL ESTABLISH ALL OF THE FOLLOWING:

18           (A) THAT HE OR SHE WOULD BE ENTITLED TO A CONSTRUCTION LIEN  
19 ON A RESIDENTIAL STRUCTURE EXCEPT FOR THE DEFENSE PROVIDED IN  
20 SUBSECTION (1).

21           (B) THAT PAYMENT WAS MADE BY THE OWNER OR LESSEE TO THE CON-  
22 TRACTOR OR SUBCONTRACTOR.

23           (C) THAT THE CONTRACTOR OR SUBCONTRACTOR HAS RETAINED OR  
24 USED THE PROCEEDS OR ANY PART OF THE PROCEEDS PAID TO THE CON-  
25 TRACTOR OR SUBCONTRACTOR WITHOUT HAVING PAID THE PERSON CLAIMING  
26 THE CONSTRUCTION LIEN.

1 (D) THAT HE OR SHE HAS COMPLIED WITH ANY APPLICABLE  
2 LICENSING ACTS.

3 (E) THAT HE OR SHE HAS MADE A REASONABLE EFFORT TO OBTAIN  
4 PAYMENT FROM THE CONTRACTOR OR SUBCONTRACTOR.

5 (F) THAT THE CONTRACTOR OR THE SUBCONTRACTOR, WITH WHOM THE  
6 PERSON CLAIMING THE CONSTRUCTION LIEN CONTRACTED, IS LICENSED IF  
7 REQUIRED BY LAW TO BE LICENSED.

8 Sec. 118. (1) An action to enforce a construction lien  
9 through foreclosure shall be brought in the circuit court for the  
10 county where the real property described in the claim of lien is  
11 located. If the real property is located in more than 1 county  
12 or judicial circuit, the action may be brought in any of the  
13 counties where the real property is located. An action to  
14 enforce a construction lien through foreclosure shall be equita-  
15 ble in nature. A construction lien also may be enforced by a  
16 cross-claim or counterclaim timely filed in a pending action  
17 involving title to, or foreclosure of mortgages or encumbrances  
18 on, real property.

19 (2) In each action in which enforcement of a construction  
20 lien through foreclosure is sought, the court shall examine each  
21 claim and defense that is presented, and determine the amount, if  
22 any, due to each lien claimant or to any mortgagee or holder of  
23 an encumbrance, and their respective priorities. The court may  
24 allow reasonable attorneys' fees to a lien claimant who is the  
25 prevailing party. The court also may allow reasonable attorneys'  
26 fees to a prevailing defendant if the court determines the lien  
27 claimant's action to enforce a construction lien under this

1 section was vexatious. ~~Attorneys' fees allowed under this~~  
2 ~~section shall not be paid from the homeowner construction lien~~  
3 ~~recovery fund created under part 2.~~

4 SEC. 129. (1) A PERSON SHALL NOT SUBMIT FALSE INFORMATION  
5 TO OBTAIN A LIEN UNDER THIS ACT OR TO OBTAIN A BENEFIT OF A LIEN  
6 UNDER THIS ACT.

7 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A  
8 FELONY PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000.00, IMPRISON-  
9 MENT FOR NOT MORE THAN 10 YEARS, OR BOTH.

10 Sec. 304. ~~(1)~~ The legislature shall create a joint review  
11 committee composed of members of the standing committee responsi-  
12 ble for the consideration of construction lien legislation in  
13 each house and members of the legislative council. ~~The joint~~  
14 ~~review committee shall initiate a review of the functions,~~  
15 ~~responsibilities, and performance of the fund not later than~~  
16 ~~February 1, 1985.~~

17 ~~(2) The joint review committee shall report to the legisla-~~  
18 ~~ture not later than September 30, 1985, recommending continua-~~  
19 ~~tion, termination, or alteration of the fund.~~

20 Section 2. Section 304 of Act No. 497 of the Public Acts of  
21 1980, being section 570.1304 of the Michigan Compiled Laws, and  
22 part 2 of Act No. 497 of the Public Acts of 1980, being sections  
23 570.1201 to 570.1207 of the Michigan Compiled Laws, are  
24 repealed.