

Act No. 147
Public Acts of 2010
Approved by the Governor
August 23, 2010
Filed with the Secretary of State
August 23, 2010
EFFECTIVE DATE: August 23, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Rep. Hammel

ENROLLED HOUSE BILL No. 5830

AN ACT to amend 1980 PA 497, entitled "An act to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for the improvement of real property; to provide for certain defenses with respect thereto; to establish the homeowner construction lien recovery fund; to provide for the powers and duties of certain state officers and agencies; to provide for the assessment of certain occupations; to provide remedies and prescribe penalties; and to repeal acts and parts of acts," by amending the title and sections 104, 106, and 118 (MCL 570.1104, 570.1106, and 570.1118), the title and sections 104 and 106 as amended by 2006 PA 497 and section 118 as amended by 1982 PA 17, and by adding section 118a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for the improvement of real property; to provide for defenses to construction liens; to provide remedies and prescribe penalties; and to repeal acts and parts of acts.

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

(2) "Designee" means the person named by an owner or lessee to receive, on behalf of the owner or lessee, all notices or other instruments required to be furnished under this act. The owner or lessee may name himself or herself as designee. The owner or lessee may not name the contractor as designee. However, a contractor who is providing only architectural or engineering services may be named as designee.

(3) "Fringe benefits and withholdings" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and any other contributions made to or on behalf of an employee.

(4) "General contractor" means a contractor who contracts with an owner or lessee to provide, directly or indirectly through contracts with subcontractors, suppliers, or laborers, substantially all of the improvements to the property described in the notice of commencement.

(5) "Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract.

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

Sec. 106. (1) "Person" means an individual, corporation, partnership, sole proprietorship, association, other legal entity, or any combination thereof.

(2) "Project" means the aggregate of improvements contracted for by the contracting owner.

(3) "Residential structure" means an individual residential condominium unit or a residential building containing not more than 2 residential units, the land on which it is or will be located, and all appurtenances, in which the owner or lessee contracting for the improvement is residing or will reside upon completion of the improvement.

(4) "Subcontractor" means a person, other than a laborer or supplier, who pursuant to a contract between himself or herself and a person other than the owner or lessee performs any part of a contractor's contract for an improvement.

(5) "Supplier" means a person who, pursuant to a contract with a contractor or a subcontractor, leases, rents, or in any other manner provides material or equipment that is used in the improvement of real property.

(6) "Wages" means all earnings of an employee, whether determined on the basis of time, task, piece, commission, or other method of calculation, for labor or services, except fringe benefits and withholdings.

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

(2) In an action to enforce a construction lien through foreclosure, the court shall examine each claim and defense that is presented and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance and their respective priorities. The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party. The court also may allow reasonable attorneys' fees to a prevailing defendant if the court determines the lien claimant's action to enforce a construction lien under this section was vexatious.

Sec. 118a. (1) A claim of construction lien does not attach to a residential structure, to the extent payments have been made, if the owner or lessee files an affidavit with the court stating that the owner or lessee has paid the contractor for the improvement to the residential structure according to the contract, indicating in the affidavit the amount of the payment. The owner or lessee shall attach to the affidavit copies of the contract, any change orders, and any evidence of the payment that the owner or lessee has, including, but not limited to, a canceled check or a credit card or other receipt.

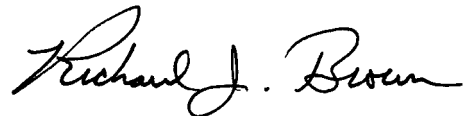
(2) If there is no written contract between the owner or lessee and the contractor as required by section 114, the filing of an affidavit under this section creates a rebuttable presumption that the owner or lessee has paid the contractor for the improvement. The presumption may be overcome only by a showing of clear and convincing evidence to the contrary.

Enacting section 1. Sections 201 to 207, 303, and 304 of the construction lien act, 1980 PA 497, MCL 570.1201 to 570.1207, 570.1303, and 570.1304, are repealed.

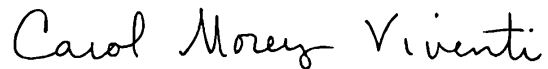
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

- (a) House Bill No. 5831.
- (b) House Bill No. 5832.
- (c) House Bill No. 5833.
- (d) House Bill No. 5834.
- (e) House Bill No. 5835.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor