

SUBSTITUTE FOR
SENATE BILL NO. 459

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending the title and sections 104, 106, 107, 114, and 201 (MCL
570.1104, 570.1106, 570.1107, 570.1114, and 570.1201), sections
104, 106, 107, and 114 as amended by 1982 PA 17 and section 201 as
amended by 1984 PA 190, and by adding section 114a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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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 certain defenses
with respect thereto; to establish ~~a~~ **THE** homeowner construction
lien recovery fund; ~~within the department of licensing and~~

1 ~~regulation;~~ to provide for the powers and duties of certain state
2 officers **AND AGENCIES**; to provide for the ~~assessments~~ **ASSESSMENT**
3 of certain occupations; to **PROVIDE REMEDIES AND** prescribe
4 penalties; and to repeal ~~certain~~ acts and parts of acts.

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

8 (2) "Department" means the department of ~~licensing and~~
9 ~~regulation~~ **LABOR AND ECONOMIC GROWTH**.

10 (3) "Designee" means the person named by an owner or lessee to
11 receive, on behalf of the owner or lessee, all notices or other
12 instruments whose furnishing is required by this act. The owner or
13 lessee may name himself or herself as designee. The owner or lessee
14 may not name the contractor as designee. However, a contractor who
15 is providing only architectural or engineering services may be
16 named as designee.

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

23 (5) "Fund" means the homeowner construction lien recovery fund
24 created ~~under part 2~~ **IN SECTION 201**.

25 (6) "General contractor" means a contractor who contracts with
26 an owner or lessee to provide, directly or indirectly through
27 contracts with subcontractors, suppliers, or laborers,

1 substantially all of the improvements to the property described in
2 the notice of commencement.

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

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

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

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

19 (3) **"QUALIFYING OFFICER" MEANS AN INDIVIDUAL DESIGNATED AS A**
20 **QUALIFYING OFFICER OF THE CONTRACTOR OR SUBCONTRACTOR IN THE**
21 **RECORDS OF THE DEPARTMENT UNDER ARTICLE 24 OF THE OCCUPATIONAL**
22 **CODE, 1980 PA 299, MCL 339.2401 TO 339.2412.**

23 (4) ~~(3)~~ "Residential structure" means an individual
24 residential condominium unit or a residential building containing
25 not more than 2 residential units, the land on which it is or will
26 be located, and all appurtenances, ~~thereto,~~ in which the owner or
27 lessee contracting for the improvement is residing or will reside

1 upon completion of the improvement.

2 (5) ~~-(4)-~~ "Subcontractor" means a person, other than a laborer
3 or supplier, who pursuant to a contract between himself or herself
4 and a person other than the owner or lessee performs any part of a
5 contractor's contract for an improvement.

6 (6) ~~-(5)-~~ "Supplier" means a person who, pursuant to a
7 contract with a contractor or a subcontractor, leases, rents, or in
8 any other manner provides material or equipment ~~which~~ **THAT** is
9 used in the improvement of real property.

10 (7) ~~-(6)-~~ "Wages" means all earnings of an employee whether
11 determined on the basis of time, task, piece, commission, or other
12 method of calculation for labor or services except ~~those defined~~
13 ~~as~~ fringe benefits and withholdings.

14 Sec. 107. (1) Each contractor, subcontractor, supplier, or
15 laborer who provides an improvement to real property ~~shall have~~
16 **HAS** a construction lien upon the interest of the owner or lessee
17 who contracted for the improvement to the real property, as
18 described in the notice of commencement ~~provided for by~~ **GIVEN**
19 **UNDER** section 108 or 108a, the interest of an owner who has
20 subordinated his or her interest to the mortgage for the
21 improvement of the real property, and the interest of an owner who
22 has required the improvement. A construction lien acquired pursuant
23 to this act shall not exceed the amount of the lien claimant's
24 contract less payments made on the contract.

25 (2) A construction lien under this act ~~shall attach~~ **ATTACHES**
26 to the entire interest of the owner or lessee who contracted for
27 the improvement, including any subsequently acquired legal or

1 equitable interest.

2 (3) Each contractor, subcontractor, supplier, or laborer who
3 provides an improvement to real property to which the person
4 contracting for the improvement had no legal title ~~shall have~~ **HAS**
5 a construction lien upon the improvement for which the contractor,
6 subcontractor, supplier, or laborer provided labor, material, or
7 equipment. The forfeiture, surrender, or termination of any title
8 or interest held by ~~any~~ **AN** owner or lessee who contracted for an
9 improvement to the property, ~~or by any~~ **AN** owner who subordinated
10 his or her interest to the mortgage for the improvement, or ~~by any~~
11 **AN** owner who has required the improvement ~~shall~~ **DOES** not defeat
12 the lien of the contractor, subcontractor, supplier, or laborer
13 upon the improvement.

14 (4) If the rights of a person contracting for an improvement
15 as a land contract vendee or a lessee are forfeited, surrendered,
16 or otherwise terminated, any lien claimant who has provided a
17 notice of furnishing or is excused from providing a notice of
18 furnishing ~~pursuant to~~ **UNDER** section 108, 108a, or 109 and who
19 performs the covenants contained in the land contract or lease
20 within 30 days after receiving actual notice of the forfeiture,
21 surrender, or termination ~~shall be~~ **IS** subrogated to the rights of
22 the contracting vendee or lessee as those rights existed
23 immediately before the forfeiture, surrender, or termination.

24 (5) For purposes of this act, if the real property is owned or
25 leased by more than 1 person, **THERE IS A REBUTTABLE PRESUMPTION**
26 **THAT** an improvement to real property ~~pursuant to~~ **UNDER** a contract
27 ~~which was entered into by~~ **WITH** an owner or lessee ~~shall be~~

1 ~~presumed to have been~~ **WAS** consented to by any other co-owner or
2 co-lessee. ~~, but the presumption shall in all cases be rebuttable.~~
3 If enforcement of a construction lien through foreclosure is sought
4 and the court finds that the improvement ~~has been~~ **WAS** consented
5 to by a co-owner or co-lessee who did not contract for the
6 improvement, the court shall order the entire interest of that co-
7 owner or co-lessee, including any subsequently acquired legal or
8 equitable interest, to be subject to the construction lien. A
9 deficiency judgment shall not be entered against a noncontracting
10 owner, co-owner, lessee, or co-lessee.

11 (6) If the real property of an owner or lessee is subject to
12 **MULTIPLE** construction liens, the sum of the construction liens
13 shall not exceed the amount ~~which~~ the owner or lessee agreed to
14 pay the person with whom he or she contracted for the improvement
15 as modified by ~~any and~~ all additions, deletions, and ~~any~~ other
16 amendments, less payments made by or on behalf of the owner or
17 lessee, pursuant to either a contractor's sworn statement or a
18 waiver of lien, in accordance with this act.

19 **(7) AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**
20 **THIS SUBSECTION, A CONSTRUCTION LIEN OF A SUBCONTRACTOR OR SUPPLIER**
21 **FOR AN IMPROVEMENT TO A RESIDENTIAL STRUCTURE SHALL ONLY INCLUDE AN**
22 **AMOUNT FOR INTEREST, INCLUDING, BUT NOT LIMITED TO, A TIME-PRICE**
23 **DIFFERENTIAL OR A FINANCE CHARGE, IF THE AMOUNT IS IN ACCORDANCE**
24 **WITH THE TERMS OF THE CONTRACT BETWEEN THE SUBCONTRACTOR OR**
25 **SUPPLIER AND THE CONTRACTOR OR SUBCONTRACTOR AND DOES NOT INCLUDE**
26 **ANY INTEREST THAT ACCRUES AFTER 90 DAYS AFTER THE CLAIM OF LIEN IS**
27 **RECORDED.**

1 Sec. 114. A contractor ~~shall~~ **DOES** not have a right to a
2 construction lien ~~upon~~ **ON** the interest of ~~any~~ **AN** owner or
3 lessee in a residential structure unless the contractor has
4 provided an improvement to the residential structure pursuant to a
5 written contract between the owner or lessee and the contractor and
6 any amendments or additions to the contract **ARE** also ~~shall be~~ in
7 writing. The contract required by this section shall contain a
8 statement, in type no smaller than that of the body of the
9 contract, ~~setting forth~~ **STATING** all of the following:

10 (a) That a residential builder or a residential maintenance
11 and alteration contractor is required to be licensed under article
12 24 of ~~Act 299 of the Public Acts of 1980, as amended, being~~
13 ~~sections 339.2401 to 339.2412 of the Michigan Compiled Laws~~ **THE**
14 **OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2401 TO 339.2412.** That an
15 electrician is required to be licensed under ~~Act No. 217 of the~~
16 ~~Public Acts of 1956, as amended, being sections 338.881 to 338.892~~
17 ~~of the Michigan Compiled Laws~~ **THE ELECTRICAL ADMINISTRATIVE ACT,**
18 **1956 PA 217, MCL 338.881 TO 338.892.** That a ~~plumber~~ **PLUMBING**
19 **CONTRACTOR** is required to be licensed under ~~Act No. 266 of the~~
20 ~~Public Acts of 1929, as amended, being sections 338.901 to 338.917~~
21 ~~of the Michigan Compiled Laws~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
22 **MCL 338.3511 TO 338.3569. THAT A MECHANICAL CONTRACTOR IS REQUIRED**
23 **TO BE LICENSED UNDER THE FORBES MECHANICAL CONTRACTORS ACT, 1984 PA**
24 **192, MCL 338.971 TO 338.988.**

25 (b) If the contractor is required to be licensed to provide
26 the contracted improvement, that the contractor is ~~so~~ licensed
27 **AND THE CONTRACTOR'S LICENSE NUMBER.**

1 ~~_____ (c) If a license is required, the contractor's license~~
 2 ~~number.~~

3 SEC. 114A. (1) THE OWNER OF RESIDENTIAL PROPERTY ON WHICH A
 4 CONSTRUCTION LIEN HAS BEEN RECORDED BY A PERSON WHO WAS NOT
 5 LICENSED AS DESCRIBED IN SECTION 114, OR ANY PERSON AFFECTED BY THE
 6 LIEN, MAY BRING AN ACTION TO DISCHARGE THE LIEN.

7 (2) IF THE COURT IN AN ACTION UNDER SUBSECTION (1) DETERMINES
 8 THAT THE PERSON WHO RECORDED THE LIEN WAS NOT LICENSED AS REQUIRED,
 9 THE PERSON IS LIABLE TO THE PERSON WHO BROUGHT THE ACTION FOR ALL
 10 DAMAGES THAT RESULT FROM THE RECORDING AND ANY ATTEMPTS TO ENFORCE
 11 THE LIEN, INCLUDING ACTUAL COSTS AND ATTORNEY FEES.

12 (3) A PERSON WHO BRINGS AN ACTION TO RECOVER FOR THE
 13 PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH A LICENSE IS REQUIRED
 14 AS DESCRIBED IN SECTION 114 SHALL ALLEGE IN THE COMPLAINT AND HAS
 15 THE BURDEN OF PROVING THAT HE OR SHE WAS PROPERLY LICENSED.

16 Sec. 201. (1) ~~A~~ THE homeowner construction lien recovery
 17 fund is created within the department. ~~of licensing and~~
 18 ~~regulation.~~ The fund shall be self-supporting and shall ~~consist~~
 19 ~~of assessments charged in the following manner~~ BE FUNDED AS
 20 FOLLOWS:

21 (a) ~~Except as provided in subsection (4), when applying for~~
 22 ~~renewal licensure for 1982 and when applying for initial licensure,~~
 23 ~~each of the following persons shall be assessed in~~ IN addition to
 24 the license fee, a ~~fee of \$50.00 for deposit in the fund~~ PERSON
 25 WHO APPLIES FOR 1 OF THE FOLLOWING SHALL PAY A FEE OF \$10.00 AND,
 26 SUBJECT TO SUBSECTION (6), A PERSON WHO APPLIES TO RENEW 1 OF THE
 27 FOLLOWING SHALL PAY A FEE OF \$10.00 FOR EACH YEAR THAT THE RENEWED

1 **LICENSE WILL BE VALID:**

2 (i) A ~~person applying for a~~ residential builders license or a
3 residential maintenance and alteration contractor's license under
4 article 24 of the occupational code, ~~Act No. 299 of the Public~~
5 ~~Acts of 1980, as amended, being sections 339.2401 to 339.2412 of~~
6 ~~the Michigan Compiled Laws~~ **1980 PA 299, MCL 339.2401 TO 339.2412.**

7 (ii) ~~A person applying for an~~ **AN** electrical contractor's
8 license under the electrical administrative act, ~~Act No. 217 of~~
9 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~
10 ~~338.892 of the Michigan Compiled Laws~~ **1956 PA 217, MCL 338.881 TO**
11 **338.892.**

12 (iii) A ~~person applying for an authorized master plumber's~~
13 **PLUMBING CONTRACTOR'S** license under ~~Act No. 266 of the Public Acts~~
14 ~~of 1929, as amended, being sections 338.901 to 338.917 of the~~
15 ~~Michigan Compiled Laws, which license authorizes the securing of~~
16 ~~plumbing installation permits~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
17 **MCL 338.3511 TO 338.3569.**

18 (iv) A ~~person applying for a~~ **MECHANICAL CONTRACTOR'S** license
19 under the **FORBES** mechanical contractors act, **1984 PA 192, MCL**
20 **338.971 TO 338.988.**

21 (b) A laborer who seeks to recover from the fund **FOR THE FIRST**
22 **TIME** shall not be required to pay a fee until he or she obtains a
23 recovery from the fund, at which time a fee of \$15.00 shall be
24 withheld by the fund from the laborer's final recovery. ~~However,~~
25 ~~in no event shall the total amount withheld by the fund from a~~
26 ~~laborer in a 1 year period exceed \$50.00.~~

27 (c) Except for persons described in subdivisions (a) and (b),

1 all other lien claimants may become members of the fund by paying a
2 fee of \$50.00 prior to the date of the lien claimant's contract for
3 the improvement to ~~the~~ A residential structure. ~~A lien claimant~~
4 ~~under this subdivision shall not pay a fee of more than \$50.00 in a~~
5 ~~calendar year.~~ IF THE LIEN CLAIMANT IS A SUPPLIER THAT CONDUCTS
6 BUSINESS FROM MORE THAN 1 RETAIL LOCATION, EACH RETAIL LOCATION
7 SHALL BE TREATED AS A SEPARATE PERSON FOR PURPOSES OF PAYING FEES
8 AND RENEWAL FEES FOR FUND MEMBERSHIP.

9 (D) SUBJECT TO SUBSECTION (6), A PERSON WHO HAS PAID A FEE
10 UNDER SUBDIVISION (B) OR (C) SHALL PAY A RENEWAL FEE AS FOLLOWS:

11 (i) IF THE PERSON PAID THE INITIAL FEE ON OR BEFORE JUNE 1,
12 2006, A RENEWAL FEE OF \$30.00 ON OR BEFORE JUNE 1, 2009, AND A
13 RENEWAL FEE OF \$30.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER
14 THE FIRST RENEWAL PAYMENT.

15 (ii) IF THE PERSON PAID THE INITIAL FEE AFTER JUNE 1, 2006, A
16 RENEWAL FEE OF \$30.00 ON OR BEFORE THE FIRST JUNE 1 FOLLOWING THE
17 THIRD ANNIVERSARY DATE OF THE INITIAL PAYMENT AND A RENEWAL FEE OF
18 \$30.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER THE FIRST
19 RENEWAL PAYMENT.

20 (2) ~~If, on December 1 of any year, the balance in the fund is~~
21 ~~less than \$1,000,000.00, the director of licensing and regulation~~
22 ~~may require an additional assessment or payment, not to exceed~~
23 ~~\$50.00, from each of the persons described in subsection (1) (a) and~~
24 ~~(c), unless, within 30 legislative days after the director requires~~
25 ~~an additional assessment, the legislature, by majority vote of the~~
26 ~~members elected and serving in both houses by record roll call~~
27 ~~vote, adopts a concurrent resolution to prohibit the additional~~

1 ~~assessment. As used in this subsection "legislative day" means a~~
2 ~~day on which the senate and house is called to order and a quorum~~
3 ~~of the senate and house is present. A PERSON MAY PAY A RENEWAL FEE~~
4 UNDER SUBSECTION (1) (D) AFTER THE DATE ON WHICH IT IS DUE, BUT IS
5 NOT ENTITLED TO RECOVER FROM THE FUND FOR AN IMPROVEMENT MADE AFTER
6 THE DUE DATE AND BEFORE THE RENEWAL FEE IS PAID.

7 (3) A PERSON WHO BECOMES A MEMBER OF THE FUND BY PAYING A FEE
8 UNDER SUBSECTION (1) SHALL NOTIFY THE DEPARTMENT DIVISION THAT
9 ADMINISTERS THE FUND AND, IF REQUIRED BY LAW, THE APPROPRIATE
10 LICENSING AGENCY, IN WRITING, OF A CHANGE IN THE PERSON'S NAME,
11 ADDRESS, OR FORM OF BUSINESS ORGANIZATION WITHIN 30 DAYS OF THE
12 CHANGE. PROOF THAT A NOTICE OR OTHER DOCUMENT RELATED TO THIS ACT
13 WAS MAILED OR, IF ANOTHER METHOD OF DELIVERY IS REQUIRED BY LAW OR
14 RULE, DELIVERED BY THAT OTHER METHOD TO A MEMBER AT THE LAST
15 ADDRESS THAT THE MEMBER PROVIDED TO THE FUND ADMINISTRATOR IS
16 CONCLUSIVE PROOF THAT THE NOTICE OR DOCUMENT WAS RECEIVED BY THE
17 MEMBER.

18 (4) AT LEAST 30 DAYS BEFORE THE DATE THAT A RENEWAL PAYMENT
19 UNDER SUBSECTION (1) (D) IS DUE, THE DEPARTMENT SHALL SEND A NOTICE
20 OF THE AMOUNT THAT WILL BE DUE AND THE PAYMENT DUE DATE TO THE
21 PERSON WHO PAID THE FEE UNDER SUBSECTION (1) (B) OR (C). THE NOTICE
22 SHALL BE SENT BY ORDINARY MAIL TO THE LAST ADDRESS THAT THE PERSON
23 PROVIDED TO THE FUND ADMINISTRATOR.

24 (5) ~~—(3)—~~ A person ~~shall~~ IS not ~~be~~ entitled to recover
25 from the fund unless ~~he or she~~ THE PERSON has paid into the fund
26 as required by this ~~section~~ ACT.

27 ~~—(4) Notwithstanding subsection (1) (a), a person shall not be~~

1 ~~assessed more than \$50.00 in an assessment period regardless of the~~
2 ~~number of licenses applied for or held.~~

3 (6) IF ON DECEMBER 1 OF ANY YEAR THE BALANCE IN THE FUND IS
4 MORE THAN \$6,000,000.00, A RENEWAL FEE UNDER SUBSECTION (1) WITH A
5 DUE DATE AFTER JANUARY 1 OF THE FOLLOWING YEAR IS NOT DUE. IF ON
6 ANY SUBSEQUENT DECEMBER 1 THE BALANCE IN THE FUND IS LESS THAN
7 \$4,000,000.00, RENEWAL FEES UNDER SUBSECTION (1) ARE DUE AFTER
8 JANUARY 1 OF THE FOLLOWING YEAR.

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. 405 of the 93rd Legislature is enacted into
11 law.