

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 406**

A bill to amend 1980 PA 497, entitled  
"Construction lien act,"  
by amending section 110 (MCL 570.1110), as amended by 1982 PA  
17.

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

1       Sec. 110. (1) A contractor shall provide a sworn statement  
2 to the owner or lessee in each of the following circumstances:

3       (a) When payment is due to the contractor from the owner or  
4 lessee or when the contractor requests payment from the owner or  
5 lessee.

6       (b) When a demand for the sworn statement has been made by  
7 or on behalf of the owner or lessee.

8       (2) A subcontractor shall provide a sworn statement to the  
9 owner or lessee when a demand for the sworn statement has been  
10 made by or on behalf of the owner or lessee.

1 (3) A subcontractor shall provide a sworn statement to the  
2 contractor when payment is due to the subcontractor from the con-  
3 tractor or when the subcontractor requests payment from the  
4 contractor.

5 (4) The sworn statement shall list each subcontractor and  
6 supplier with whom the person issuing the sworn statement has  
7 contracted relative to the improvement to the real property. The  
8 sworn statement shall contain a list of laborers with whom the  
9 person issuing the sworn statement has contracted relative to the  
10 improvement to the real property and for whom payment for wages  
11 or fringe benefits and withholdings are due but unpaid and the  
12 itemized amount of such wages or fringe benefits and  
13 withholdings. The sworn statement shall be in substantially the  
14 following form:

15

16

**SWORN STATEMENT**

17 State of Michigan)

18 ) ss.

19 County of .....)

20 ..... (DEPONENT), being ~~duly~~ sworn, ~~deposes and~~  
21 ~~says~~ STATES THE FOLLOWING:

22 ~~That~~ ..... is the (contractor) (subcontractor) for an  
23 improvement to the following ~~described~~ real property ~~situated~~  
24 in ..... County, Michigan, described as follows:

25 .....  
26 (insert legal description of property)

27 ~~That the~~ THE following is a statement of each  
28 subcontractor and supplier, and laborer ~~,~~ for ~~which laborer~~  
29 ~~the~~ WHOM payment of wages or fringe benefits and withholdings is

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1 due but unpaid, with whom the (contractor) (subcontractor) has  
2 (contracted) (subcontracted) for performance under the contract  
3 with the owner or lessee ~~thereof~~ OF THE PROPERTY, and ~~that~~  
4 the amounts due to the persons as of the date ~~hereof~~ OF THIS  
5 STATEMENT are correctly and fully set forth opposite their names:  
6 ~~, as follows:~~

7	8	9	10	11	12	13	14	15	16	Amount of
		Name of	subcon-	tractor, Type of	supplier, improve-	Total	Amount	Amount	Balance	laborer
			tractor,	ment	ment	contract	already	currently	to	fringe
			or	furnished	contract	price	paid	owing	complete	benefits
			laborer						wages due	and with-
									(op- but	holdings
									tional) unpaid	due but
										unpaid
15	.....									
16							Totals			

17 (Some columns are not applicable to all persons listed)

18 ~~That the~~ THE contractor has not procured material from, or  
19 subcontracted with, any person other than those set forth ~~above~~  
20 and owes no money for the improvement other than the sums set  
21 forth. ~~above.~~

22 ~~Deponent further says that he or she makes the foregoing~~ I  
23 MAKE THIS statement as the (contractor) (subcontractor) or as  
24 ..... of the (contractor) (subcontractor) ~~for the purpose of~~  
25 ~~representing~~ TO REPRESENT to the owner or lessee of the  
26 ~~above-described premises~~ PROPERTY and his or her agents that  
27 the ~~above-described~~ property is free from claims of construc-  
28 tion liens, or the possibility of construction liens, except as  
29 specifically set forth ~~above~~ IN THIS STATEMENT and except for  
30 claims of construction liens by laborers ~~which~~ THAT may be

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1 provided ~~pursuant to~~ UNDER section 109 of the construction lien  
2 act, ~~Act No. 497 of the Public Acts of 1980, as amended, being~~  
3 ~~section 570.1109 of the Michigan Compiled Laws~~ 1980 PA 497, MCL  
4 570.1109.

5 WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE  
6 ~~ABOVE-DESCRIBED~~ PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT  
7 TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO  
8 HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE  
9 A NOTICE OF FURNISHING ~~PURSUANT TO~~ UNDER SECTION 109 OF THE  
10 CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1109, TO THE DESIGNEE  
11 OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS  
12 DIED.

13 .....  
14 Deponent

15 WARNING TO DEPONENT: A PERSON ~~WHO WITH INTENT TO~~  
16 ~~DEFRAUD,~~ GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS  
17 SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE  
18 CONSTRUCTION LIEN ACT, ~~ACT NO. 497 OF THE PUBLIC ACTS OF 1980,~~  
19 ~~AS AMENDED, BEING SECTION 570.1110 OF THE MICHIGAN COMPILED LAWS~~  
20 1980 PA 497, MCL 570.1110.

21 Subscribed and sworn to before me ON ~~this .....~~ day of  
22 ~~....., 19.....~~ ..... (DATE)

23 .....  
24 Notary Public, ..... County, Michigan.

25 My commission expires: .....

26 (5) The contractor or subcontractor ~~shall~~ IS not ~~be~~  
27 required to list in the sworn statement material furnished by the  
28 contractor or subcontractor out of his or her own inventory ~~,~~

1 ~~and which has~~ THAT WAS not ~~been~~ purchased specifically for  
2 ~~the purpose of~~ performing the contract.

3       (6) After the contractor or subcontractor provides the sworn  
4 statement, the owner or lessee may withhold or, upon written  
5 demand from the contractor shall withhold, from the amount ~~which~~  
6 ~~is~~ due or to become due to the contractor or to the subcontrac-  
7 tor for work already performed ~~,~~ an amount sufficient to pay  
8 all sums ~~which are~~ due to subcontractors, ~~or to~~ suppliers, or  
9 ~~to~~ laborers, as shown by the sworn statement, or ~~which is~~ due  
10 to lien claimants who have provided a notice of furnishing  
11 ~~pursuant to~~ UNDER section 109. From the amount withheld, the  
12 owner or lessee may directly pay subcontractors, suppliers, or  
13 laborers the amount they are due as shown by the sworn  
14 statement. If the contract provides for payments by the owner to  
15 the general contractor ~~, if any,~~ in the normal course of con-  
16 struction, but the owner elects to pay lien claimants directly  
17 ~~pursuant to~~ UNDER this section, the first time the owner elects  
18 to make payment directly to a lien claimant, he or she shall pro-  
19 vide at least 5 business days' notice to the general contractor  
20 of the intention to make direct payment. Subsequent direct dis-  
21 bursements to lien claimants need not be preceded by the 5-day  
22 notice provided in this section unless the owner first returns to  
23 the practice of paying all sums to the general contractor. As  
24 between the owner or lessee and the contractor or subcontractor,  
25 all payments made ~~pursuant to~~ UNDER this subsection ~~shall be~~  
26 ARE considered the same as if paid directly to the contractor or  
27 subcontractor. If an amount is withheld ~~pursuant to~~ UNDER this

1 subsection from the contractor or subcontractor, the owner or  
2 lessee, upon request, shall prepare and provide to the contractor  
3 or subcontractor an itemized statement of the sums withheld. If  
4 an amount is paid directly to a lien claimant ~~pursuant to~~ UNDER  
5 this section, the owner or lessee shall, if requested by the con-  
6 tractor or subcontractor, provide to the contractor or subcon-  
7 tractor an itemized statement of the sums paid.

8       (7) An owner, lessee, designee, mortgagee, or contractor may  
9 rely on a sworn statement prepared by a party other than himself  
10 or herself to avoid the claim of a subcontractor, supplier, or  
11 laborer unless the subcontractor, supplier, or laborer has pro-  
12 vided a notice of furnishing as required ~~by~~ UNDER section 109  
13 or unless the notice of furnishing is excused ~~pursuant to~~ UNDER  
14 section 108 or 108a.

15       (8) If a contractor fails to provide a sworn statement to  
16 the owner or lessee ~~prior to the~~ BEFORE recording ~~of~~ the  
17 contractor's claim of lien, the contractor's construction lien  
18 ~~shall~~ IS not ~~be~~ invalid. However, the contractor ~~shall~~ IS  
19 not ~~be~~ entitled to any payment, and a complaint, cross-claim,  
20 or counterclaim may not be filed to enforce the construction  
21 lien, until the sworn statement has been provided.

22       (9) If a subcontractor fails to provide a sworn statement  
23 ~~pursuant to~~ UNDER subsection (2) to the owner or lessee ~~prior~~  
24 ~~to the~~ BEFORE recording ~~of~~ the subcontractor's claim of lien,  
25 the subcontractor's construction lien ~~shall not be invalid~~ IS  
26 VALID. However, a complaint, cross-claim, or counterclaim may

1 not be filed to enforce the construction lien until the sworn  
2 statement has been provided.

3 (10) A contractor or subcontractor who ~~, with intent to~~  
4 ~~defraud,~~ DESIRES TO DRAW MONEY AND gives or causes to be given  
5 to any owner or lessee ~~, when he or she desires to draw money,~~  
6 a sworn statement ~~as~~ required by this section ~~, which~~ THAT is  
7 ~~in fact~~ false, WITH INTENT TO DEFRAUD, is guilty of a  
8 ~~misdemeanor if~~ CRIME AS FOLLOWS:

9 (A) IF the statement involved is for ~~\$100.00 or~~ less ~~and~~  
10 ~~a felony if it is for more than \$100.00~~ THAN \$200.00, THE CON-  
11 TRACTOR OR SUBCONTRACTOR IS GUILTY OF A MISDEMEANOR PUNISHABLE BY  
12 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN  
13 \$500.00 OR 3 TIMES THE STATEMENT AMOUNT, WHICHEVER IS GREATER, OR  
14 BOTH IMPRISONMENT AND A FINE.

15 (B) IF ANY OF THE FOLLOWING APPLY, THE CONTRACTOR OR SUBCON-  
16 TRACTOR IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR  
17 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$2,000.00 OR 3  
18 TIMES THE STATEMENT AMOUNT, WHICHEVER IS GREATER, OR BOTH IMPRIS-  
19 ONMENT AND A FINE:

20 (i) THE STATEMENT INVOLVED IS FOR \$200.00 OR MORE BUT LESS  
21 THAN \$1,000.00.

22 (ii) THE CONTRACTOR OR SUBCONTRACTOR VIOLATES SUBDIVISION  
23 (A) AND HAS 1 OR MORE PRIOR CONVICTIONS FOR COMMITTING OR  
24 ATTEMPTING TO COMMIT AN OFFENSE UNDER THIS ACT.

25 (C) IF ANY OF THE FOLLOWING APPLY, THE CONTRACTOR OR SUBCON-  
26 TRACTOR IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT  
27 MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN \$10,000.00 OR 3

1 TIMES THE STATEMENT AMOUNT, WHICHEVER IS GREATER, OR BOTH  
2 IMPRISONMENT AND A FINE:

3       (i) THE STATEMENT INVOLVED IS FOR \$1,000.00 OR MORE BUT LESS  
4 THAN \$20,000.00.

5       (ii) THE CONTRACTOR OR SUBCONTRACTOR VIOLATES  
6 SUBDIVISION (B)(i) AND HAS 1 OR MORE PRIOR CONVICTIONS FOR VIO-  
7 LATING OR ATTEMPTING TO VIOLATE THIS ACT. FOR PURPOSES OF THIS  
8 SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CON-  
9 VICTION FOR VIOLATING OR ATTEMPTING TO VIOLATE SUBDIVISION (A) OR  
10 (B)(ii).

11       (D) IF ANY OF THE FOLLOWING APPLY, THE CONTRACTOR OR SUBCON-  
12 TRACTOR IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT  
13 MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN \$15,000.00 OR 3  
14 TIMES THE STATEMENT AMOUNT, WHICHEVER IS GREATER, OR BOTH IMPRIS-  
15 ONMENT AND A FINE:

16       (i) THE STATEMENT INVOLVED IS FOR \$20,000.00 OR MORE.

17       (ii) THE CONTRACTOR OR SUBCONTRACTOR VIOLATES  
18 SUBDIVISION (C)(i) AND HAS 2 OR MORE PRIOR CONVICTIONS FOR COM-  
19 MITTING OR ATTEMPTING TO COMMIT AN OFFENSE UNDER THIS ACT. FOR  
20 PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION DOES  
21 NOT INCLUDE A CONVICTION FOR VIOLATING OR ATTEMPTING TO VIOLATE  
22 SUBDIVISION (A) OR (B)(ii).

23       (11) STATEMENTS INVOLVED IN SEPARATE INCIDENTS PURSUANT TO A  
24 SCHEME OR COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE  
25 AGGREGATED TO DETERMINE THE TOTAL AMOUNT INVOLVED IN THE  
26 STATEMENTS.



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1 (12) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED  
2 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR  
3 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COM-  
4 PLAIN AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION  
5 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVIC-  
6 TION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A  
7 JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE  
8 BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE  
9 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,  
10 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

11 (A) A COPY OF THE JUDGMENT OF CONVICTION.

12 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR  
13 SENTENCING.

14 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

15 (D) THE DEFENDANT'S STATEMENT.

16 (13) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS  
17 ENHANCED BY 1 OR MORE CONVICTIONS, THOSE PRIOR CONVICTIONS SHALL  
18 NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE CONVICTION  
19 PURSUANT TO SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF  
20 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.

21 Enacting section 1. This amendatory act takes effect  
22 [January 1, 2002].