

HOUSE BILL No. 5741

February 21, 2002, Introduced by Reps. Pappageorge, Gosselin, DeRossett, Kowall, Kuipers, Koetje, Vander Veen, Godchaux and Scranton and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending the title and sections 104, 107, 114, 201, 202, and
203 (MCL 570.1104, 570.1107, 570.1114, 570.1201, 570.1202, and
570.1203), sections 104, 107, 114, and 203 as amended by 1982
PA 17, section 201 as amended by 1984 PA 190, and section 202 as
amended by 1981 PA 191, and by adding section 114a.

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 certain
defenses with respect thereto; to establish a homeowner
construction lien recovery fund within the department of
~~licensing and regulation~~ CONSUMER AND INDUSTRY SERVICES; to

1 provide for the powers and duties of certain state officers AND
2 AGENCIES; to provide for the assessments of certain occupations;
3 to PROVIDE FOR REMEDIES AND prescribe penalties; and to repeal
4 ~~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~~ CONSUMER AND INDUSTRY SERVICES.

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

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

23 (5) "Fund" means the homeowner construction lien recovery
24 fund created under part 2.

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

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

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

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

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

25 (2) A construction lien under this act shall attach to the
26 entire interest of the owner or lessee who contracted for the

1 improvement, including any subsequently acquired legal or
2 equitable interest.

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

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

25 (5) For purposes of this act, if the real property is owned
26 or leased by more than 1 person, an improvement to real property
27 pursuant to a contract which was entered into by an owner or

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

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

19 (7) THE CONSTRUCTION LIEN OF A SUPPLIER OR SUBCONTRACTOR FOR
20 AN IMPROVEMENT TO A RESIDENTIAL STRUCTURE RECORDED ON OR AFTER
21 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSEC-
22 TION SHALL NOT INCLUDE ITEMS OF CONTRACT INTEREST CHARGED OR
23 ASSESSED PURSUANT TO THE CONTRACT BETWEEN THE SUPPLIER OR SUBCON-
24 TRACTOR AND THE GENERAL CONTRACTOR. FOR PURPOSES OF THIS SUBSEC-
25 TION, "ITEMS OF CONTRACT INTEREST" INCLUDES, BUT IS NOT LIMITED
26 TO, TIME-PRICE DIFFERENTIALS, FINANCE CHARGES, OR ANY OTHER TERM

1 UNDER WHICH INTEREST IS CHARGED OR ASSESSED UNDER THE CONTRACT
2 BETWEEN THE SUPPLIER OR SUBCONTRACTOR AND THE GENERAL CONTRACTOR.

3 Sec. 114. A contractor shall not have a right to a con-
4 struction lien upon the interest of any owner or lessee in a res-
5 idential structure unless the contractor has provided an improve-
6 ment to the residential structure pursuant to a written contract
7 between the owner or lessee and the contractor. ~~and any~~ ANY
8 amendments or additions to the contract also shall be in
9 writing. The contract required by this section shall contain a
10 statement, in type no smaller than that of the body of the con-
11 tract, setting forth all of the following:

12 (a) That a residential builder or a residential maintenance
13 and alteration contractor is required to be licensed under arti-
14 cle 24 of ~~Act 299 of the Public Acts of 1980, as amended, being~~
15 ~~sections 339.2401 to 339.2412 of the Michigan Compiled Laws~~ THE
16 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2401 TO 339.2412. That
17 an electrician is required to be licensed under ~~Act No. 217 of~~
18 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~
19 ~~338.892 of the Michigan Compiled Laws~~ THE ELECTRICAL ADMINISTRA-
20 TIVE ACT, 1956 PA 217, MCL 338.881 TO 338.892. That a plumber is
21 required to be licensed under ~~Act No. 266 of the Public Acts of~~
22 ~~1929, as amended, being sections 338.901 to 338.917 of the~~
23 ~~Michigan Compiled Laws~~ 1929 PA 266, MCL 338.901 TO 338.917.
24 THAT A MECHANICAL CONTRACTOR IS REQUIRED TO BE LICENSED UNDER THE
25 FORBES MECHANICAL CONTRACTORS ACT, 1984 PA 192, MCL 338.971 TO
26 338.988.

1 (b) If the contractor is required to be licensed to provide
2 the contracted improvement, that the contractor is ~~so~~ PROPERLY
3 licensed.

4 (c) ~~if~~ THAT IF a license is required FOR THE CONTRACTED
5 IMPROVEMENTS, the contractor's license number IS PROVIDED.

6 SEC. 114A. (1) IF A CONSTRUCTION LIEN HAS BEEN PLACED ON
7 RESIDENTIAL PROPERTY AND THE PARTY WHO PLACED THE LIEN WAS NOT
8 PROPERLY LICENSED AS REQUIRED UNDER SECTION 114, THE OWNER OR
9 LESSEE OF THE RESIDENTIAL PROPERTY OR ANY PARTY THAT IS AFFECTED
10 BY THE LIEN MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDIC-
11 TION UNDER THIS SECTION TO HAVE THE LIEN REMOVED.

12 (2) IF THE COURT FINDS THAT THE CONSTRUCTION LIEN WAS
13 INVALID BECAUSE THE RESIDENTIAL CONTRACTOR WAS NOT PROPERLY
14 LICENSED AS REQUIRED UNDER SECTION 114, THE COURT SHALL ORDER THE
15 LIEN REMOVED FROM THE PROPERTY AND AWARD THE PARTY THAT BRINGS
16 THE ACTION UNDER THIS SECTION COSTS AND ACTUAL ATTORNEY FEES.

17 (3) A PERSON, A QUALIFYING OFFICER FOR A CORPORATION, A COR-
18 PORATION, OR A MEMBER OF THE RESIDENTIAL BUILDER OR RESIDENTIAL
19 MAINTENANCE AND ALTERATION CONTRACTOR THAT FILED THE CONSTRUCTION
20 LIEN SHALL NOT BRING OR MAINTAIN A CLAIM, ACTION, OR COUNTERCLAIM
21 UNDER THIS SECTION FOR THE COLLECTION OF COMPENSATION FOR THE
22 PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH A LICENSE IS REQUIRED
23 UNDER SECTION 114 WITHOUT ALLEGING AND PROVING THAT THE PERSON,
24 CORPORATION, OR CONTRACTOR WAS LICENSED AS REQUIRED UNDER SECTION
25 114 DURING THE PERFORMANCE OF THE ACT OR CONTRACT.

26 Sec. 201. (1) A homeowner construction lien recovery fund
27 is created within the department. ~~of licensing and regulation.~~

1 The fund shall be self-supporting and shall consist of
2 assessments charged in the following manner:

3 (a) Except as provided in subsection (4), when applying for
4 renewal licensure for 1982 and when applying for initial licen-
5 sure, each of the following persons shall be assessed in addition
6 to the license fee, a fee of \$50.00 for deposit in the fund:

7 (i) A person applying for a residential builders license or
8 a residential maintenance and alteration contractor's license
9 under article 24 of the occupational code, ~~Act No. 299 of the~~
10 ~~Public Acts of 1980, as amended, being sections 339.2401 to~~
11 ~~339.2412 of the Michigan Compiled Laws~~ 1980 PA 299, MCL 339.2401
12 TO 339.2412.

13 (ii) A person applying for an electrical contractor's
14 license under the electrical administrative act, ~~Act No. 217 of~~
15 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~
16 ~~338.892 of the Michigan Compiled Laws~~ 1956 PA 217, MCL 338.881
17 TO 338.892.

18 (iii) A person applying for an authorized master plumber's
19 license under ~~Act No. 266 of the Public Acts of 1929, as~~
20 ~~amended, being sections 338.901 to 338.917 of the Michigan~~
21 ~~Compiled Laws~~ 1929 PA 266, MCL 338.901 TO 338.917, which license
22 authorizes the securing of plumbing installation permits.

23 (iv) A person applying for a license under the FORBES
24 mechanical contractors act, 1984 PA 192, MCL 338.971 TO 338.988.

25 (b) A laborer who seeks to recover from the fund shall not
26 be required to pay a fee until he or she obtains a recovery from
27 the fund, at which time a fee of \$15.00 shall be withheld by the

1 fund from the laborer's final recovery. However, in no event
2 shall the total amount withheld by the fund from a laborer in a
3 1-year period exceed \$50.00.

4 (c) Except for persons described in subdivisions (a) and
5 (b), all other lien claimants may become members of the fund by
6 paying a fee of \$50.00 prior to the date of the lien claimant's
7 contract for the improvement to the residential structure. A
8 lien claimant under this subdivision shall not pay a fee of more
9 than \$50.00 in a calendar year. NONLICENSEE MEMBERS OF THE FUND
10 SHALL NOTIFY THE DEPARTMENT IN WRITING OF A CHANGE OF INDIVIDUAL,
11 FIRM, OR CORPORATE NAME, DBA NAME, OR CHANGE OF ADDRESS WITHIN 30
12 DAYS OF THE CHANGE.

13 (2) If, on December 1 of any year, the balance in the fund
14 is less than \$1,000,000.00, the director of ~~licensing and~~
15 ~~regulation~~ THE DEPARTMENT may require an additional assessment
16 or payment, not to exceed \$50.00, from each of the persons
17 described in subsection (1)(a) and (c), unless, within 30 legis-
18 lative days after the director requires an additional assessment,
19 the legislature, by majority vote of the members elected and
20 serving in both houses by record roll call vote, adopts a concur-
21 rent resolution to prohibit the additional assessment. As used
22 in this subsection "legislative day" means a day on which the
23 senate and house is called to order and a quorum of the senate
24 and house is present.

25 (3) A person shall not be entitled to recover from the fund
26 unless he or she has paid into the fund as required by this
27 section. IF AN ADDITIONAL ASSESSMENT OR PAYMENT IS REQUIRED

1 UNDER SUBSECTION (2), A PERSON SHALL NOT BE ENTITLED TO RECOVER
2 FROM THE FUND UNLESS HE OR SHE HAS PAID THE ASSESSMENT OR PAYMENT
3 BY THE DATE DESIGNATED BY THE DEPARTMENT.

4 (4) Notwithstanding subsection (1)(a), a person shall not be
5 assessed more than \$50.00 in an assessment period regardless of
6 the number of licenses applied for or held.

7 Sec. 202. (1) The director of ~~licensing and regulation~~
8 THE DEPARTMENT shall manage the affairs of the fund ~~pursuant to~~
9 UNDER this act. A detailed financial statement of the condition
10 of the fund shall be published by the director OF THE DEPARTMENT
11 annually. This fund shall be subject to an audit by the auditor
12 general. The state treasurer shall deposit or invest money from
13 the fund, in the same manner and subject to all provisions of law
14 with respect to the deposit or investment of state funds by the
15 state treasurer, and interest earned shall be credited to the
16 fund. The unexpended fund balance shall carry forward to the new
17 fiscal year at the end of each fiscal year.

18 (2) The department may employ ~~such~~ office clerical and
19 professional help and claims investigators ~~as are~~ necessary to
20 carry out the provisions of this act. The attorney general shall
21 assign members of his or her staff and may supplement that staff
22 by contracting with ~~those~~ private attorneys ~~as are~~ necessary
23 to adequately defend the actions against the fund. All wages,
24 professional fees, and other administrative expenditures neces-
25 sary for operation and defense of the fund including legal coun-
26 sel shall be charged to and payable from the fund. Except as
27 provided in subsection (3), wages, professional fees, and other

1 administrative expenditures necessary for the operation of the
2 fund shall not exceed 20% of funds collected by the fund in the
3 previous fiscal year.

4 (3) If the \$50.00 fee is not assessed against license appli-
5 cations and renewals during a year under section 201, the limita-
6 tion on fund expenditures provided in subsection (2) shall be
7 calculated on the basis of the closest previous year in which the
8 \$50.00 fee was assessed and collected for license application and
9 renewals under section 201.

10 Sec. 203. (1) A claim of construction lien shall not attach
11 to a residential structure, to the extent payments have been
12 made, if the owner or lessee files an affidavit with the court
13 indicating that the owner or lessee has done all of the
14 following:

15 (a) Paid the contractor for the improvement to the residen-
16 tial structure and the amount of the payment.

17 (b) Not colluded with any person to obtain a payment from
18 the fund.

19 (c) Cooperated and will continue to cooperate with the
20 department in the defense of the fund.

21 (2) In the absence of a written contract pursuant to section
22 114, the filing of an affidavit under this section shall create a
23 rebuttable presumption that the owner or lessee has paid the con-
24 tractor for the improvement. The presumption may be overcome
25 only by a showing of clear and convincing evidence to the
26 contrary.

1 (3) Subject to section 204, a person who has recorded a
2 claim of lien and who is precluded from recovering a construction
3 lien under subsection (1) may recover from the fund the amount
4 for which the lien is established. A person who seeks recovery
5 from the fund shall establish all of the following:

6 (a) That he or she would be entitled to a construction lien
7 on a residential structure except for the defense provided in
8 subsection (1).

9 (b) That payment was made by the owner or lessee to the con-
10 tractor or subcontractor.

11 (c) That the contractor or subcontractor has retained or
12 used the proceeds or any part of the proceeds paid to the con-
13 tractor or subcontractor without having paid the person claiming
14 the construction lien.

15 (d) That he or she has complied with section 201.

16 (e) That he or she has not colluded with another person to
17 obtain a payment from the fund.

18 (f) That he or she has complied with any applicable licens-
19 ing acts.

20 (g) That he or she has made a reasonable effort to obtain
21 payment from the contractor or subcontractor.

22 (h) That the contractor or the subcontractor, with whom the
23 person claiming the construction lien contracted, ~~with,~~ is
24 licensed if required by law to be licensed AND THAT THE CONTRAC-
25 TOR HAD A WRITTEN CONTRACT WITH THE HOMEOWNER FOR THE IMPROVEMENT
26 THAT GAVE RISE TO THE LIEN.

1 (4) A subcontractor, supplier, or laborer who seeks
2 enforcement of a construction lien on a residential structure
3 through foreclosure shall join the fund as a defendant in the
4 foreclosure action, and a summons and complaint shall be served
5 on the ~~director~~ FUND by certified or registered mail, or by
6 leaving a copy thereof at the office of the ~~director~~ FUND. The
7 failure to serve a summons and complaint upon the fund shall con-
8 stitute a bar to recovery from the fund. After service upon the
9 defendant of a summons and complaint in an action in which
10 enforcement of a construction lien through foreclosure is sought,
11 the department may intervene in the action as a party defendant
12 with respect to other construction liens.

13 (5) The attorney general shall make every reasonable effort
14 to defend the fund and may assert any defense to a claim of lien
15 that would have been available to the owner or lessee.

16 (6) Payment from the fund shall be made only if the court
17 finds that a subcontractor, supplier, or laborer is entitled to
18 payment from the fund. Subject to section 204, after the judg-
19 ment has become final the department shall pay the amount of the
20 judgment out of the fund.