

SENATE BILL No. 406

April 19, 2001, Introduced by Senator SCHUETTE and referred to the Committee on Judiciary.

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.

01930'01

TLG

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

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						Amount of
8						laborer
9	Name of					fringe
10	subcon-				Balance	Amount of
11	tractor,	Type of			to	laborer
12	supplier,	improve-	Total	Amount	Amount	completewages due
13	or	ment	contract	already	currently	(op- but
14	laborer	furnished	price	paid	owing	tional) 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

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.

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.