

**SUBSTITUTE FOR
SENATE BILL NO. 405**

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending sections 110, 115, 202, 203, 204, and 206 (MCL
570.1110, 570.1115, 570.1202, 570.1203, 570.1204, and 570.1206),
section 110 as amended by 2001 PA 151, sections 115 and 203 as
amended by 1982 PA 17, and sections 202 and 206 as amended by
1981 PA 191.

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.

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

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

(3) A subcontractor shall provide a sworn statement to the contractor when payment is due to the subcontractor from the contractor or when the subcontractor requests payment from the contractor.

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

SWORN STATEMENT

State of Michigan)

) ss.

County of)

.....(deponent), being sworn, states the following:

..... is the (contractor) (subcontractor) for an improvement to the following real property in County, Michigan, described as follows:

1
 2 (insert legal description of property)

3 The following is a statement of each subcontractor and
 4 supplier, and laborer for whom payment of wages or fringe
 5 benefits and withholdings is due but unpaid, with whom the
 6 (contractor) (subcontractor) has (contracted) (subcontracted) for
 7 performance under the contract with the owner or lessee of the
 8 property, and the amounts due to the persons as of the date of
 9 this statement are correctly and fully set forth opposite their
 10 names:

11 NAME, 12 ADDRESS, 13 AND 14 TELE- 15 PHONE 16 NUMBER							Amount of laborer fringe benefits and with- holdings due but unpaid
17 Name of 18 subcon- 19 trac- 20 tor, 21 sup- 22 plier, 23 or 24 laborer	Type of improve- ment fur- nished	Total con- tract price	Amount already paid	Amount cur- rently owing	Balance to com- plete (op- tional)	Amount of laborer wages due but unpaid	

25

26 Totals

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

28 The contractor has not procured material from, or
 29 subcontracted with, any person other than those set forth and
 30 owes no money for the improvement other than the sums set forth.

31 I make this statement as the (contractor) (subcontractor) or

as of the (contractor) (subcontractor) to represent to the owner or lessee of the property and his or her agents that the property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth in this statement and except for claims of construction liens by laborers that may be provided under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109.

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

ON RECEIPT OF THIS SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE, MUST NOTIFY, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT OF ITS RECEIPT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER NAMED IN THE SWORN STATEMENT MAKES A REQUEST WITHIN 10 DAYS AFTER RECEIVING THE NOTICE, THE OWNER, LESSEE, OR DESIGNEE SHALL GIVE THE REQUESTER A COPY OF THE SWORN STATEMENT.

.....
Deponent

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES

1 AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA
2 497, MCL 570.1110.

3 Subscribed and sworn to before me on (DATE)
4
5 Notary Public, County, Michigan.
6 My commission expires:

7 (5) The contractor or subcontractor is not required to list
8 in the sworn statement material furnished by the contractor or
9 subcontractor out of his or her own inventory that was not
10 purchased specifically for performing the contract.

11 (6) ON RECEIPT OF A SWORN STATEMENT, THE OWNER, LESSEE, OR
12 DESIGNEE SHALL NOTIFY IN WRITING, BY TELEPHONE, OR PERSONALLY
13 EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN
14 STATEMENT OF ITS RECEIPT. WITHIN 10 DAYS AFTER RECEIVING A
15 REQUEST FROM A SUBCONTRACTOR, SUPPLIER, OR LABORER NAMED IN THE
16 SWORN STATEMENT, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE A
17 COPY OF THE SWORN STATEMENT TO THE REQUESTER.

18 (7) ~~—(6)—~~ After the contractor or subcontractor provides the
19 sworn statement, the owner or lessee may withhold or, upon
20 written demand from the contractor, shall withhold ~~—~~ from the
21 amount due or to become due to the contractor or to the
22 subcontractor for work already performed an amount sufficient to
23 pay all sums due to subcontractors, suppliers, or laborers, as
24 shown by the sworn statement, or due to lien claimants who have
25 provided a notice of furnishing under section 109. From the
26 amount withheld, the owner or lessee may directly pay

1 subcontractors, suppliers, or laborers the amount they are due as
2 shown by the sworn statement. If the contract provides for
3 payments by the owner to the general contractor in the normal
4 course of construction, but the owner elects to pay lien
5 claimants directly under this section, the first time the owner
6 elects to make payment directly to a lien claimant, he or she
7 shall provide at least 5 business days' notice to the general
8 contractor of the intention to make direct payment. Subsequent
9 direct disbursements to lien claimants need not be preceded by
10 the 5-day notice provided in this section unless the owner first
11 returns to the practice of paying all sums to the general
12 contractor. As between the owner or lessee and the contractor or
13 subcontractor, all payments made under this subsection are
14 considered the same as if paid directly to the contractor or
15 subcontractor. If an amount is withheld under this subsection
16 from the contractor or subcontractor, the owner or lessee, upon
17 request, shall prepare and provide to the contractor or
18 subcontractor an itemized statement of the sums withheld. If an
19 amount is paid directly to a lien claimant under this section,
20 the owner or lessee shall, if requested by the contractor or
21 subcontractor, provide to the contractor or subcontractor an
22 itemized statement of the sums paid.

23 (8) ~~—(7)—~~ An owner, lessee, designee, mortgagee, or
24 contractor may rely on a sworn statement prepared by a party
25 other than himself or herself to avoid the claim of a
26 subcontractor, supplier, or laborer unless the subcontractor,
27 supplier, or laborer has provided a notice of furnishing as

1 required under section 109 or unless the notice of furnishing is
2 excused under section 108 or 108a.

3 (9) ~~—(8)—~~ If a contractor fails to provide a sworn statement
4 to the owner or lessee before recording the contractor's claim of
5 lien, the contractor's construction lien is not invalid. However,
6 the contractor is not entitled to any payment, and a complaint,
7 cross-claim, or counterclaim may not be filed to enforce the
8 construction lien, until the sworn statement has been provided.

9 (10) ~~—(9)—~~ If a subcontractor fails to provide a sworn
10 statement under subsection (2) to the owner or lessee before
11 recording the subcontractor's claim of lien, the subcontractor's
12 construction lien is valid. However, a complaint, cross-claim, or
13 counterclaim may not be filed to enforce the construction lien
14 until the sworn statement has been provided.

15 (11) ~~—(10)—~~ A contractor or subcontractor who desires to
16 draw money and gives or causes to be given to any owner or lessee
17 a sworn statement required by this section that is false, with
18 intent to defraud, is guilty of a crime as follows:

19 (a) If the statement involved is for less than \$200.00, the
20 contractor or subcontractor is guilty of a misdemeanor punishable
21 by imprisonment for not more than 93 days or a fine of not more
22 than \$500.00 or 3 times the statement amount, whichever is
23 greater, or both imprisonment and a fine.

24 (b) If any of the following apply, the contractor or
25 subcontractor is guilty of a misdemeanor punishable by
26 imprisonment for not more than 1 year or a fine of not more than
27 \$2,000.00 or 3 times the statement amount, whichever is greater,

1 or both imprisonment and a fine:

2 (i) The statement involved is for \$200.00 or more but less
3 than \$1,000.00.

4 (ii) The **STATEMENT INVOLVED IS FOR LESS THAN \$200.00 AND THE**
5 contractor or subcontractor ~~violates subdivision (a) and~~ has 1
6 or more prior convictions for committing or attempting to commit
7 an offense under this act.

8 (c) If any of the following apply, the contractor or
9 subcontractor is guilty of a felony punishable by imprisonment
10 for not more than 5 years or a fine of not more than \$10,000.00
11 or 3 times the statement amount, whichever is greater, or both
12 imprisonment and a fine:

13 (i) The statement involved is for \$1,000.00 or more but less
14 than \$20,000.00.

15 (ii) The **STATEMENT INVOLVED IS FOR MORE THAN \$200.00 BUT LESS**
16 **THAN \$1,000.00 AND THE** contractor or subcontractor ~~violates~~
17 ~~subdivision (b) (i) and~~ has 1 or more prior convictions for
18 violating or attempting to violate this act. For purposes of this
19 subparagraph, however, a prior conviction does not include a
20 conviction for ~~violating or attempting to violate~~ **A VIOLATION**
21 **OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a) or (b) (ii).

22 (d) If any of the following apply, the contractor or
23 subcontractor is guilty of a felony punishable by imprisonment
24 for not more than 10 years or a fine of not more than \$15,000.00
25 or 3 times the statement amount, whichever is greater, or both
26 imprisonment and a fine:

27 (i) The statement involved is for \$20,000.00 or more.

(ii) The **STATEMENT INVOLVED IS FOR \$1,000.00 OR MORE BUT LESS THAN \$20,000.00 AND THE** contractor or subcontractor ~~violates subdivision (c) (i) and~~ has 2 or more prior convictions for committing or attempting to commit an offense under this act. For purposes of this subparagraph, however, a prior conviction does not include a conviction for ~~violating or attempting to violate~~ **A VIOLATION OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a) or (b) (ii) .

(12) ~~—(11) Statements—~~ **FOR PURPOSES OF SUBSECTION (11),** **STATEMENTS** involved in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total amount involved in the statements.

(13) ~~—(12)—~~ If the prosecuting attorney intends to seek an enhanced sentence **FOR A VIOLATION UNDER THIS SECTION** based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include ~~on~~ **IN** the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

1 (d) The defendant's statement.

2 (14) ~~—(13)—~~ If the sentence for a conviction under this
3 section is enhanced by 1 or more convictions, those prior
4 convictions shall not be used to further enhance the sentence for
5 the conviction pursuant to section 10, 11, or 12 of chapter IX of
6 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
7 and 769.12.

8 Sec. 115. (1) A person shall not require, as part of any
9 contract for an improvement, that the right to a construction
10 lien be waived in advance of work performed. A waiver obtained as
11 part of a contract for an improvement is contrary to public
12 policy, and shall be invalid, except to the extent that payment
13 for labor and material furnished was actually made to the person
14 giving the waiver. Acceptance by a lien claimant of a promissory
15 note or other evidence of indebtedness from an owner, lessee, or
16 contractor shall not of itself serve to waive or discharge
17 otherwise valid construction lien rights.

18 (2) A lien claimant who receives full payment for his or her
19 contract shall provide to the owner, lessee, or designee a full
20 unconditional waiver of lien.

21 (3) A lien claimant who receives partial payment for his or
22 her contract shall provide to the owner, lessee, or designee a
23 partial unconditional waiver of the lien for the amount which the
24 lien claimant has received, if the owner, lessee, or designee
25 requests the partial unconditional waiver.

26 (4) A partial conditional waiver of lien or a full
27 conditional waiver of lien shall be effective upon payment of the

1 amount indicated in the waiver.

2 (5) For purposes of this act, retainage ~~which~~ **THAT** is not
3 payable under a contract until the happening of a certain event
4 in addition to the providing of an improvement ~~—~~ is not due as
5 of the date of the providing of the improvement.

6 (6) A waiver of a lien under this section shall be effective
7 when a person makes payment relying on the waiver unless at the
8 time payment was made the person making the payment has written
9 notice that the consideration for the waiver has failed.

10 (7) **SUBJECT TO SUBSECTION (8), AN OWNER, LESSEE, OR DESIGNEE**
11 **SHALL NOT ACCEPT A FULL OR PARTIAL UNCONDITIONAL OR CONDITIONAL**
12 **WAIVER OF LIEN FROM A PERSON OTHER THAN THE LIEN CLAIMANT NAMED**
13 **IN THE WAIVER, UNLESS THE OWNER, LESSEE, OR DESIGNEE FIRST**
14 **CONTACTS THE LIEN CLAIMANT NAMED IN THE WAIVER TO VERIFY ITS**
15 **AUTHENTICITY.**

16 (8) ~~—(7)—~~ An agent who is authorized to prepare and serve a
17 notice of furnishing ~~on behalf of a laborer or group of laborers~~
18 ~~or an agent who is authorized~~ **OR** to prepare, record, and serve a
19 claim of lien on behalf of a laborer or group of laborers is
20 automatically authorized to provide **AND RESPONSIBLE FOR PROVIDING**
21 waivers of lien, unless or until the laborer or group of laborers
22 notifies the designee in writing that someone other than ~~a~~
23 ~~previously authorized~~ **THE** agent is ~~duly~~ authorized to provide
24 appropriate waivers. ~~An agent who is authorized to prepare and~~
25 ~~serve a notice of furnishing or a claim of lien on behalf of a~~
26 ~~laborer or group of laborers shall be responsible for providing~~
27 ~~waivers on behalf of such laborer or laborers pursuant to this~~

~~section. An agent who is authorized to prepare and serve a claim of lien on behalf of a laborer or group of laborers shall be responsible for providing waivers of lien on behalf of such laborer or laborers pursuant to this section.~~ An individual laborer may also provide waivers ~~pursuant to~~ **UNDER** this section instead of the agent.

(9) ~~(8)~~ The following forms shall be used in substantially the following format ~~in executing~~ **TO EXECUTE** waivers of construction liens:

(a) **PARTIAL UNCONDITIONAL WAIVER**

I/we have a contract with to
(other contracting party)

provide for the improvement to the property described as, and ~~hereby~~

BY SIGNING THIS WAIVER waive my/our construction lien to the amount of \$, for labor/materials provided through

(date)

This waiver, together with all previous waivers, if any, (circle one) does does not cover all amounts due to me/us for contract improvement provided through the date shown above.

IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S DESIGNEE DOES NOT RECEIVE THIS WAIVER DIRECTLY FROM ME/ONE OF US, THE OWNER, LESSEE, OR DESIGNEE MUST CONTACT ME/ONE OF US DIRECTLY TO VERIFY THAT IT IS AUTHENTIC.

.....

.....

(signature of lien claimant)

Signed on: Address:

1 (date)

2 Telephone:

3 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

4 (b) **PARTIAL CONDITIONAL WAIVER**

5 I/we have a contract with to

6 (other contracting party)

7 provide for the improvement to the property

8 described as:, and hereby

9 **BY SIGNING THIS WAIVER** waive my/our construction lien to the

10 amount of \$, for labor/materials provided

11 through.....

12 (date)

13 This waiver, together with all previous waivers, if any,

14 (circle one) does does not cover all amounts due to me/us for

15 contract improvement provided through the date shown above.

16 This waiver is conditioned on actual payment of the amount

17 shown above.

18 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**

19 **DESIGNEE DOES NOT RECEIVE THIS WAIVER DIRECTLY FROM ME/ONE OF**

20 **US, THE OWNER, LESSEE, OR DESIGNEE MUST CONTACT ME/ONE OF US**

21 **DIRECTLY TO VERIFY THAT IT IS AUTHENTIC.**

22

23

24 (signature of lien claimant)

25 Signed on: Address:

26 (date)

27 Telephone:

28 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

29 (c) **FULL UNCONDITIONAL WAIVER**

30 My/our contract with to

31 (other contracting party)

1 provide for the improvement of the property
 2 described as: ~~having~~ **HAS** been
 3 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER**, all my/our
 4 construction lien rights against ~~such~~ **THE DESCRIBED** property
 5 are ~~hereby~~ waived and released.

6 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**
 7 **DESIGNEE DOES NOT RECEIVE THIS WAIVER DIRECTLY FROM ME/ONE OF**
 8 **US, THE OWNER, LESSEE, OR DESIGNEE MUST CONTACT ME/ONE OF US**
 9 **DIRECTLY TO VERIFY THAT IT IS AUTHENTIC.**

10
 11
 12 (signature of lien claimant)
 13 Signed on: Address:
 14 (date)
 15 Telephone:

16 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

17 (d) **FULL CONDITIONAL WAIVER**

18 My/our contract with to
 19 (other contracting party)
 20 provide for the improvement of the property
 21 described as: ~~having~~ **HAS** been
 22 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER**, all my/our
 23 construction lien rights against ~~such~~ **THE DESCRIBED** property
 24 are ~~hereby~~ waived and released.

25 This waiver is conditioned on actual payment of

26 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**
 27 **DESIGNEE DOES NOT RECEIVE THIS WAIVER DIRECTLY FROM ME/ONE OF**
 28 **US, THE OWNER, LESSEE, OR DESIGNEE MUST CONTACT ME/ONE OF US**
 29 **DIRECTLY TO VERIFY THAT IT IS AUTHENTIC.**

30
 31

1 (signature of lien claimant)
 2 Signed on: Address:
 3 (date)
 4 Telephone:

5 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

6 Sec. 202. (1) The director of ~~licensing and regulation~~ **THE**
 7 **DEPARTMENT** shall manage the ~~affairs of the fund pursuant~~ **FUND**
 8 **ACCORDING** to this act. A detailed financial statement of the
 9 condition of the fund shall be published by the director
 10 annually. ~~This~~ **THE** fund shall be subject to an audit by the
 11 auditor general. The state treasurer shall deposit or invest
 12 money from the fund, in the same manner **AS** and subject to all
 13 provisions of law ~~with respect~~ **THAT APPLY** to the deposit or
 14 investment of state funds by the state treasurer, and interest
 15 earned shall be credited to the fund. The unexpended fund balance
 16 shall carry forward to the new fiscal year at the end of each
 17 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
 21 shall assign members of his or her staff and may supplement that
 22 staff by contracting with ~~those~~ private attorneys as ~~are~~
 23 necessary to adequately defend ~~the~~ actions against the fund.
 24 All wages, professional fees, and other administrative
 25 expenditures necessary for operation and defense of the fund,
 26 including legal counsel, shall be charged to and payable from the
 27 fund. Except ~~as provided in subsection (3)~~ **FOR LEGAL COUNSEL**

1 FEES, THE AMOUNT PAID IN A FISCAL YEAR FOR wages, professional
2 fees, and other administrative expenditures ~~necessary for the~~
3 ~~operation of the fund~~ shall not exceed 20% of ~~funds collected~~
4 ~~by the fund in the previous fiscal year~~ **THE AVERAGE OF THE**
5 **ENDING BALANCES IN THE FUND FOR THE PREVIOUS 2 FISCAL YEARS.**

6 ~~—— (3) If the \$50.00 fee is not assessed against license~~
7 ~~applications and renewals during a year under section 201, the~~
8 ~~limitation on fund expenditures provided in subsection (2) shall~~
9 ~~be calculated on the basis of the closest previous year in which~~
10 ~~the \$50.00 fee was assessed and collected for license application~~
11 ~~and renewals under section 201.~~

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

17 (a) Paid the contractor for the improvement to the
18 residential structure ~~and~~ **ACCORDING TO THE CONTRACT, INDICATING**
19 **IN THE AFFIDAVIT** the amount of the payment. **THE OWNER OR LESSEE**
20 **SHALL ATTACH TO THE AFFIDAVIT COPIES OF THE CONTRACT, ANY CHANGE**
21 **ORDERS, AND ANY EVIDENCE OF THE PAYMENT THAT THE OWNER OR LESSEE**
22 **HAS, INCLUDING, BUT NOT LIMITED TO, A CANCELED CHECK OR A CREDIT**
23 **CARD OR OTHER RECEIPT.**

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

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

1 (2) ~~In the absence of a~~ **IF THERE IS NO** written contract
2 ~~pursuant to~~ **AS REQUIRED BY** section 114, the filing of an
3 affidavit under this section ~~shall create~~ **CREATES** a rebuttable
4 presumption that the owner or lessee has paid the contractor for
5 the improvement. The presumption may be overcome only by a
6 showing of clear and convincing evidence to the contrary.

7 (3) Subject to section 204, a person who has recorded a
8 claim of lien and who is precluded from ~~recovering~~ **HAVING** a
9 construction lien under subsection (1) may recover from the fund
10 the amount ~~for which the lien is established~~ **HE OR SHE WOULD**
11 **HAVE BEEN ENTITLED TO RECOVER BUT FOR SUBSECTION (1)**. A person
12 who seeks recovery from the fund shall establish all of the
13 following:

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

17 (b) That payment was made by the owner or lessee to the
18 contractor or subcontractor.

19 (c) That the contractor or subcontractor has retained or
20 used the proceeds or any part of the proceeds paid to the
21 contractor or subcontractor without having paid the person
22 claiming the construction lien.

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

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

26 (f) That he or she has complied with any applicable
27 licensing acts.

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

3 (h) That the contractor or ~~the~~ subcontractor ~~—~~ with whom
4 the person claiming the construction lien contracted ~~with,~~ is
5 licensed if required by law to be licensed.

6 (I) THAT THE CONTRACTOR OR SUBCONTRACTOR WITH WHOM THE
7 PERSON CLAIMING THE CONSTRUCTION LIEN CONTRACTED IS THE SAME
8 INDIVIDUAL OR LEGAL ENTITY WITH WHOM THE OWNER OR LESSEE
9 CONTRACTED.

10 (J) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A
11 SUPPLIER, THAT HE OR SHE HAS DOCUMENTARY PROOF THAT, UNLESS THE
12 SUPPLIER HAD PROVIDED MATERIAL OR EQUIPMENT TO THE CONTRACTOR OR
13 SUBCONTRACTOR WITHIN THE PRECEDING YEAR, BEFORE HE OR SHE
14 PROVIDED THE MATERIAL OR EQUIPMENT THAT IS THE SUBJECT OF THE
15 LIEN WITHOUT OBTAINING ADVANCE PAYMENT IN FULL, HE OR SHE DID
16 BOTH OF THE FOLLOWING:

17 (i) REQUIRED THE CONTRACTOR OR SUBCONTRACTOR TO WHOM HE OR
18 SHE PROVIDED THE MATERIAL OR EQUIPMENT TO COMPLETE AND SUBMIT A
19 CREDIT APPLICATION.

20 (ii) BEFORE BEGINNING TO SUPPLY MATERIAL OR EQUIPMENT TO THE
21 CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN
22 FULL, DID EITHER OF THE FOLLOWING, AS APPLICABLE:

23 (A) IF THE CONTRACTOR OR SUBCONTRACTOR IS A CORPORATION
24 WHOSE SHARES ARE PUBLICLY TRADED, OBTAINED A REPORT ON THE
25 CONTRACTOR OR SUBCONTRACTOR FROM A NATIONALLY RECOGNIZED
26 ORGANIZATION THAT PROVIDES CREDIT RATINGS OF BUSINESSES TO
27 DETERMINE THE FINANCIAL STABILITY OF THE CONTRACTOR OR

1 SUBCONTRACTOR.

2 (B) IF SUB-SUBPARAGRAPH (A) DOES NOT APPLY, DID BOTH OF THE
3 FOLLOWING:

4 (I) OBTAINED A CREDIT REPORT ON THE OWNER OR QUALIFYING
5 OFFICER OR THE PRINCIPAL PARTNERS, OFFICERS, SHAREHOLDERS, OR
6 MEMBERS OF THE CONTRACTOR OR SUBCONTRACTOR TO DETERMINE THE
7 FINANCIAL STABILITY OF THE CONTRACTOR OR SUBCONTRACTOR.

8 (II) OBTAINED A PERSONAL GUARANTY FROM THE OWNER OR 1 OR
9 MORE OF THE PARTNERS, OFFICERS, DIRECTORS, MANAGING MEMBERS,
10 TRUSTEES, OR SHAREHOLDERS OF THE CONTRACTOR OR SUBCONTRACTOR.

11 (K) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A
12 SUPPLIER SEEKING TO RECOVER FOR MATERIAL OR EQUIPMENT SUPPLIED TO
13 A CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT
14 IN FULL, THAT A CREDIT REPORT OBTAINED BY THE SUPPLIER ON THE
15 CONTRACTOR OR SUBCONTRACTOR DID NOT DISCLOSE ANY OF THE
16 FOLLOWING:

17 (i) THAT THE CONTRACTOR OR SUBCONTRACTOR HAD BECOME
18 INSOLVENT.

19 (ii) THAT THE CONTRACTOR OR SUBCONTRACTOR WAS SUBJECT TO A
20 RECEIVERSHIP.

21 (iii) AN UNSATISFIED JUDGMENT.

22 (iv) AN OUTSTANDING TAX LIEN.

23 (4) A subcontractor, supplier, or laborer who seeks
24 enforcement of a construction lien on a residential structure
25 through foreclosure shall join the fund as a defendant in the
26 foreclosure action ~~—and—~~ **WITHIN THE PERIOD PROVIDED IN SECTION**
27 **117(1). THE SUBCONTRACTOR, SUPPLIER, OR LABORER SHALL SERVE a**

1 summons and complaint ~~shall be served~~ on the ~~director~~ **OFFICE**
 2 **OF THE FUND ADMINISTRATOR WITHIN THE DEPARTMENT** by certified or
 3 registered mail ~~—~~ or by leaving a copy ~~thereof~~ at the office.
 4 ~~of the director.~~ The failure to serve a summons and complaint
 5 ~~upon the fund shall constitute a bar to~~ **UNDER THIS SUBSECTION**
 6 **BARS** recovery from the fund. After ~~service upon the defendant of~~
 7 **A DEFENDANT IS SERVED WITH** a summons and complaint in an action
 8 ~~in which enforcement of~~ **TO FORECLOSE** a construction lien,
 9 ~~through foreclosure is sought,~~ the department may intervene in
 10 the action as a party defendant with respect to other
 11 construction liens.

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

15 (6) **A PAYMENT FROM THE FUND SHALL NOT INCLUDE INTEREST ON**
 16 **THE UNPAID PRINCIPAL AMOUNT DUE, INCLUDING, BUT NOT LIMITED TO, A**
 17 **TIME-PRICE DIFFERENTIAL OR A FINANCE CHARGE, THAT ACCRUED AFTER**
 18 **90 DAYS AFTER THE CLAIM OF LIEN WAS RECORDED.**

19 (7) **A PAYMENT FROM THE FUND TO A SUPPLIER SHALL NOT INCLUDE**
 20 **MONEY DUE FOR MATERIAL OR EQUIPMENT SUPPLIED TO A CONTRACTOR OR**
 21 **SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN FULL IF EITHER**
 22 **OF THE FOLLOWING APPLIES:**

23 (A) **THE CONTRACTOR OR SUBCONTRACTOR WAS MORE THAN 90 DAYS**
 24 **DELINQUENT IN PAYING AN INDEBTEDNESS TO THE SUPPLIER AT THE TIME**
 25 **THE MATERIAL OR EQUIPMENT WAS SUPPLIED. FOR PURPOSES OF THIS**
 26 **SUBDIVISION, IT IS IRRELEVANT THAT THERE WAS A DELINQUENCY OF**
 27 **MORE THAN 90 DAYS IF THE DELINQUENCY IS 90 DAYS OR LESS AT THE**

1 TIME THE MATERIAL OR EQUIPMENT IS SUPPLIED.

2 (B) THE CONTRACTOR OR SUBCONTRACTOR WAS INDEBTED TO THE
3 SUPPLIER IN AN AMOUNT EQUAL TO OR MORE THAN THE CREDIT LIMIT
4 ESTABLISHED BY THE SUPPLIER FOR THE CONTRACTOR OR SUBCONTRACTOR
5 AT THE TIME THE MATERIAL OR EQUIPMENT WAS SUPPLIED.

6 (8) ~~-(6)-~~ Payment from the fund shall be made only if the
7 court finds that a subcontractor, supplier, or laborer is
8 entitled to payment from the fund. Subject to section 204, after
9 the judgment has become final the department shall pay the amount
10 of the judgment out of the fund.

11 Sec. 204. The department shall not pay out of the fund to
12 subcontractors, suppliers, and laborers more than ~~-\$75,000.00~~
13 \$100,000.00 per residential structure. When it appears that the
14 amount claimed from the fund ~~—~~ with respect to a residential
15 structure ~~—~~ will exceed ~~-\$75,000.00~~ \$100,000.00, the
16 department may delay payment until the total amount to be paid
17 can be ascertained. If the total amount payable to
18 subcontractors, suppliers, and laborers exceeds ~~-\$75,000.00~~
19 \$100,000.00, they shall be paid their proportional shares of that
20 amount.

21 Sec. 206. (1) THE DEPARTMENT SHALL MAINTAIN A WEBSITE. IF
22 THE DEPARTMENT MAKES A PAYMENT FROM THE FUND AS THE RESULT OF A
23 CONTRACTOR'S FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, THE
24 DEPARTMENT SHALL POST ON THE WEBSITE THE NAME AND LICENSE NUMBER
25 OF THE CONTRACTOR AND THE NAME AND LICENSE NUMBER OF ANY
26 QUALIFYING OFFICER OF THE CONTRACTOR. THE WEBSITE SHALL BE
27 DESIGNED TO ALLOW A VISITOR TO SEARCH THE POSTED NAMES AND

1 **LICENSE NUMBERS OF CONTRACTORS AND QUALIFYING OFFICERS.**

2 (2) If the department makes a payment from the fund as the
3 result of a licensee's failure to pay a lien claimant, the
4 department shall enter a complaint against the licensee with the
5 appropriate licensing agency to be addressed by the disciplinary
6 proceedings under the appropriate licensing law.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No. 459 of the 93rd Legislature is enacted
9 into law.