

SENATE BILL No. 487

May 9, 2007, Introduced by Senators GARCIA and BASHAM and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending sections 110 and 115 (MCL 570.1110 and 570.1115), as
amended by 2006 PA 572.

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

1 owner or lessee when a demand for the sworn statement has been
 2 made by or on behalf of the owner or lessee and, **IF APPLICABLE**,
 3 the owner or lessee has complied with the requirements of
 4 subsection (6).

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

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

19 **SWORN STATEMENT**

20 State of Michigan)

21) ss.

22 County of)

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

24 is the (contractor) (subcontractor)

25 for an improvement to the following real property in

26 County, Michigan, described as follows:

27

1 (insert legal description of property)

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

| 10 Name, 11 address, 12 and 13 tele- 14 phone 15 number 16 of 17 subcon- 18 trac- 19 tor, 20 sup- 21 plier, 22 or 23 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 | Amount of laborer fringe benefits and with- holdings due but unpaid |
|---|---|---------------------------------|---------------------------|-----------------------------------|--|--|--|
| 24 | | | | | | | |

25 Totals

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

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

30 I make this statement as the (contractor) (subcontractor) or
 31 as of the (contractor) (subcontractor) to represent to
 32 the owner or lessee of the property and his or her agents that
 33 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~~**SHALL** 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.

IF THIS SWORN STATEMENT IS IN REGARD TO A RESIDENTIAL STRUCTURE, ON RECEIPT OF ~~THIS~~**THE** SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO ~~HAS PROVIDED A NOTICE OF FURNISHING OR WHO IS NAMED IN~~**IS ENTITLED TO NOTICE OF RECEIPT OF** THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

.....

Deponent

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

Subscribed and sworn to before me on(DATE)

.....
Notary Public,..... County, Michigan.

My commission expires:

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

(6) On receipt of a sworn statement **REGARDING AN IMPROVEMENT TO A RESIDENTIAL STRUCTURE**, the owner, lessee, or designee shall give notice of its receipt, either in writing, by telephone, or personally, to each subcontractor, supplier, and laborer who has provided a notice of furnishing under section 109 or, if a notice of furnishing is excused under section 108 or 108a, to each subcontractor, supplier, and laborer named in the sworn statement. If a subcontractor, supplier, or laborer ~~who has provided a notice of furnishing or who is named in the sworn statement makes a request~~ **ENTITLED TO NOTICE UNDER THIS SUBSECTION REQUESTS A COPY OF THE SWORN STATEMENT**, the owner, lessee, or designee shall provide the requester a copy ~~of the sworn statement~~ within 10 business days after receiving the

1 request.

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

1 an amount is paid directly to a lien claimant under this section,
2 the owner or lessee shall, if requested by the contractor or
3 subcontractor, provide to the contractor or subcontractor an
4 itemized statement of the sums paid.

5 (8) An owner, lessee, designee, mortgagee, or contractor may
6 rely on a sworn statement prepared by a party other than himself
7 or herself to avoid the claim of a subcontractor, supplier, or
8 laborer unless the subcontractor, supplier, or laborer has
9 provided a notice of furnishing as required under section 109 or
10 unless the notice of furnishing is excused under section 108 or
11 108a.

12 (9) If a contractor fails to provide a sworn statement to
13 the owner or lessee before recording the contractor's claim of
14 lien, the contractor's construction lien is not invalid. However,
15 the contractor is not entitled to any payment, and a complaint,
16 cross-claim, or counterclaim may not be filed to enforce the
17 construction lien, until the sworn statement has been provided.

18 (10) If a subcontractor fails to provide a sworn statement
19 under subsection (2) to the owner or lessee before recording the
20 subcontractor's claim of lien, the subcontractor's construction
21 lien is valid. However, a complaint, cross-claim, or counterclaim
22 may not be filed to enforce the construction lien until the sworn
23 statement has been provided.

24 (11) A contractor or subcontractor who desires to draw money
25 and gives or causes to be given to any owner or lessee a sworn
26 statement required by this section that is false, with intent to
27 defraud, is guilty of a crime as follows:

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

6 (b) If any of the following apply, the contractor or
7 subcontractor is guilty of a misdemeanor punishable by
8 imprisonment for not more than 1 year or a fine of not more than
9 \$2,000.00 or 3 times the statement amount, whichever is greater,
10 or both imprisonment and a fine:

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

13 (ii) The statement involved is for less than \$200.00 and the
14 contractor or subcontractor has 1 or more prior convictions for
15 committing or attempting to commit an offense under this act.

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

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

23 (ii) The statement involved is for more than \$200.00 but less
24 than \$1,000.00 and the contractor or subcontractor has 1 or more
25 prior convictions for violating or attempting to violate this
26 act. For purposes of this subparagraph, however, a prior
27 conviction does not include a conviction for a violation or

1 attempted violation described in subdivision (a) or (b) (ii) .

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

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

8 (ii) The statement involved is for \$1,000.00 or more but less
9 than \$20,000.00 and the contractor or subcontractor has 2 or more
10 prior convictions for committing or attempting to commit an
11 offense under this act. For purposes of this subparagraph,
12 however, a prior conviction does not include a conviction for a
13 violation or attempted violation described in subdivision (a) or
14 (b) (ii) .

15 (12) For purposes of subsection (11), statements involved in
16 separate incidents pursuant to a scheme or course of conduct
17 within any 12-month period may be aggregated to determine the
18 total amount involved in the statements.

19 (13) If the prosecuting attorney intends to seek an enhanced
20 sentence for a violation under this section based upon the
21 defendant having 1 or more prior convictions, the prosecuting
22 attorney shall include in the complaint and information a
23 statement listing the prior conviction or convictions. The
24 existence of the defendant's prior conviction or convictions
25 shall be determined by the court, without a jury, at sentencing
26 or at a separate hearing for that purpose before sentencing. The
27 existence of a prior conviction may be established by any

1 evidence relevant for that purpose, including, but not limited
2 to, 1 or more of the following:

3 (a) A copy of the judgment of conviction.

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

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

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

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

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

26 (3) A lien claimant who receives partial payment for his or
27 her contract shall provide to the owner, lessee, or designee a

1 partial unconditional waiver of the lien for the amount which the
2 lien claimant has received, if the owner, lessee, or designee
3 requests the partial unconditional waiver.

4 (4) A partial conditional waiver of lien or a full
5 conditional waiver of lien shall be effective upon payment of the
6 amount indicated in the waiver.

7 (5) For purposes of this act, retainage that is not payable
8 under a contract until the happening of a certain event in
9 addition to the providing of an improvement is not due as of the
10 date of the providing of the improvement.

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

15 (7) Subject to subsection (8), **IF THE IMPROVEMENT IS**
16 **PROVIDED TO PROPERTY THAT IS A RESIDENTIAL STRUCTURE**, an owner,
17 lessee, or designee shall not rely on a full or partial
18 unconditional or conditional waiver of lien provided by a person
19 other than the lien claimant named in the waiver if the lien
20 claimant has either filed a notice of furnishing under section
21 109 or is excused from filing a notice of furnishing under
22 section 108 or 108a unless the owner, lessee, or designee has
23 first verified the authenticity of the lien waiver with the lien
24 claimant either in writing, by telephone, or personally.

25 (8) An agent who is authorized to prepare and serve a notice
26 of furnishing or to prepare, record, and serve a claim of lien on
27 behalf of a laborer or group of laborers is automatically

1 authorized to provide and responsible for providing waivers of
 2 lien, unless or until the laborer or group of laborers notifies
 3 the designee in writing that someone other than the agent is
 4 authorized to provide appropriate waivers. An individual laborer
 5 may also provide waivers under this section instead of the agent.

6 (9) The following forms shall be used in substantially the
 7 following format to execute waivers of construction liens:

8 (a) **PARTIAL UNCONDITIONAL WAIVER**

9
 10 I/we have a contract with to
 11 (other contracting party)
 12 provide for the improvement to the property
 13 described as, and
 14 by signing this waiver waive my/our construction lien to the
 15 amount of \$, for labor/materials provided
 16 through
 17 (date)

18
 19 This waiver, together with all previous waivers, if any, (circle
 20 one) does does not cover all amounts due to me/us for
 21 contract improvement provided through the date shown above.

22
 23 If **THE IMPROVEMENT IS PROVIDED TO PROPERTY THAT IS A**
 24 **RESIDENTIAL STRUCTURE AND IF** the owner or lessee of the
 25 property or the owner's or lessee's designee has received a
 26 notice of furnishing from me/one of us or if I/we are not
 27 required to provide one, and the owner, lessee, or designee
 28 has not received this waiver directly from me/one of us, the
 29 owner, lessee, or designee may not rely upon it without
 30 contacting me/one of us, either in writing, by telephone, or

1 personally, to verify that it is authentic.

2
 3
 4 (signature of lien claimant)

5
 6 Signed on: Address:
 7 (date)
 8
 9 Telephone:
 10

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

12
 13 (b) **PARTIAL CONDITIONAL WAIVER**

14
 15 I/we have a contract with to
 16 (other contracting party)
 17 provide for the improvement to the property
 18 described as:, and
 19 by signing this waiver waive my/our construction lien to the
 20 amount of \$, for labor/materials provided
 21 through.....
 22 (date)

23
 24 This waiver, together with all previous waivers, if any,
 25 (circle one) does does not cover all amounts due to me/us
 26 for contract improvement provided through the date shown above.
 27 This waiver is conditioned on actual payment of the amount
 28 shown above.
 29

30 If **THE IMPROVEMENT IS PROVIDED TO PROPERTY THAT IS A**
 31 **RESIDENTIAL STRUCTURE AND IF** the owner or lessee of the
 32 property or the owner's or lessee's designee has received a
 33 notice of furnishing from me/one of us or if I/we are not

1 required to provide one, and the owner, lessee, or designee
 2 has not received this waiver directly from me/one of us, the
 3 owner, lessee, or designee may not rely upon it without
 4 contacting me/one of us, either in writing, by telephone, or
 5 personally, to verify that it is authentic.

6
 7
 8 (signature of lien claimant)

9
 10 Signed on: Address:
 11 (date)
 12
 13 Telephone:
 14

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

16
 17 (c) **FULL UNCONDITIONAL WAIVER**

18
 19 My/our contract with to
 20 (other contracting party)
 21 provide for the improvement of the property
 22 described as: has been
 23 fully paid and satisfied. By signing this waiver, all my/our
 24 construction lien rights against the described property
 25 are waived and released.
 26

27 If **THE IMPROVEMENT IS PROVIDED TO PROPERTY THAT IS A**
 28 **RESIDENTIAL STRUCTURE AND IF** the owner or lessee of the
 29 property or the owner's or lessee's designee has received a
 30 notice of furnishing from me/one of us or if I/we are not
 31 required to provide one, and the owner, lessee, or designee
 32 has not received this waiver directly from me/one of us, the
 33 owner, lessee, or designee may not rely upon it without

1 contacting me/one of us, either in writing, by telephone, or
 2 personally, to verify that it is authentic.

3
 4
 5 (signature of lien claimant)

6
 7 Signed on: Address:
 8 (date)
 9
 10 Telephone:

11
 12 **DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.**

13
 14 (d) **FULL CONDITIONAL WAIVER**

15
 16 My/our contract with to
 17 (other contracting party)
 18 provide for the improvement of the property
 19 described as: has been
 20 fully paid and satisfied. By signing this waiver, all my/our
 21 construction lien rights against the described property
 22 are waived and released.

23
 24 This waiver is conditioned on actual payment of
 25

26 If **THE IMPROVEMENT IS PROVIDED TO PROPERTY THAT IS A**
 27 **RESIDENTIAL STRUCTURE AND IF** the owner or lessee of the
 28 property or the owner's or lessee's designee has received a
 29 notice of furnishing from me/one of us or if I/we are not
 30 required to provide one, and the owner, lessee, or designee
 31 has not received this waiver directly from me/one of us, the
 32 owner, lessee, or designee may not rely upon it without
 33 contacting me/one of us, either in writing, by telephone, or

1 personally, to verify that it is authentic.

2
 3
 4 (signature of lien claimant)

5
 6 Signed on: Address:
 7 (date)
 8
 9 Telephone:
 10

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