

Act No. 28
Public Acts of 2007
Approved by the Governor
June 28, 2007
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Senators Garcia and Basham

ENROLLED SENATE BILL No. 487

AN ACT to amend 1980 PA 497, entitled "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 the homeowner construction lien recovery fund; to provide for the powers and duties of certain state officers and agencies; to provide for the assessment of certain occupations; to provide remedies and prescribe penalties; and to repeal acts and parts of acts," 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:

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

(a) When payment is due to the contractor from the owner or lessee or when the contractor requests payment from the owner or 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 and, if applicable, the owner or lessee has complied with the requirements of subsection (6).

(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) 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

(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 entitled to notice under this subsection requests a copy of the sworn statement, the owner, lessee, or designee shall provide the requester a copy within 10 business days after receiving the request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) 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) 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 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.

(d) The defendant's statement.

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

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

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

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

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

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

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

(7) Subject to subsection (8), if the improvement is provided to property that is a residential structure, an owner, lessee, or designee shall not rely on a full or partial unconditional or conditional waiver of lien provided by a person other than the lien claimant named in the waiver if the lien claimant has either filed a notice of furnishing under section 109 or is excused from filing a notice of furnishing under section 108 or 108a unless the owner, lessee, or designee has first verified the authenticity of the lien waiver with the lien claimant either in writing, by telephone, or personally.

(8) An agent who is authorized to prepare and serve a notice of furnishing or to prepare, record, and serve a claim of lien on behalf of a laborer or group of laborers is automatically authorized to provide and responsible for providing waivers of lien, unless or until the laborer or group of laborers notifies the designee in writing that someone other than the agent is authorized to provide appropriate waivers. An individual laborer may also provide waivers under this section instead of the agent.

(9) The following forms shall be used in substantially the following format 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
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 improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

.....
.....
(signature of lien claimant)

Signed on: Address:
(date)
Telephone:

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

(b) **PARTIAL CONDITIONAL WAIVER**

I/we have a contract with to
(other contracting party)
provide for the improvement to the property
described as: , and
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. This waiver is conditioned on actual payment of the amount shown above.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

.....
.....
(signature of lien claimant)

Signed on: Address:
(date)
Telephone:

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

(c)

FULL UNCONDITIONAL WAIVER

My/our contract with to
(other contracting party)

provide for the improvement of the property
described as: has been
fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are
waived and released.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or
the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to
provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner,
lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally,
to verify that it is authentic.

.....
.....
(signature of lien claimant)

Signed on:
(date)

Address:
.....
Telephone:

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

(d)

FULL CONDITIONAL WAIVER

My/our contract with to
(other contracting party)

provide for the improvement of the property
described as: has been
fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are
waived and released.

This waiver is conditioned on actual payment of

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or
the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to
provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner,
lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally,
to verify that it is authentic.

.....
.....
(signature of lien claimant)

Signed on:
(date)

Address:
.....
Telephone:

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

This act is ordered to take immediate effect.

Carol Morey-Viventi

Secretary of the Senate

Richard J. Beem

Clerk of the House of Representatives

Approved _____

Governor