

SUBSTITUTE FOR
HOUSE BILL NO. 5830

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending the title and sections 104, 106, and 118 (MCL 570.1104,
570.1106, and 570.1118), the title and sections 104 and 106 as
amended by 2006 PA 497 and section 118 as amended by 1982 PA 17,
and by adding section 118a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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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 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 CONSTRUCTION LIENS**; to provide remedies and
 prescribe penalties; and to repeal acts and parts of acts.

Sec. 104. (1) "Court" means the circuit court in which an
 action to enforce a construction lien through foreclosure is
 pending.

~~— (2) "Department" means the department of labor and economic~~
~~growth.~~

(2) ~~(3)~~ "Designee" means the person named by an owner or
 lessee to receive, on behalf of the owner or lessee, all notices or
 other instruments ~~whose furnishing is required by~~ **TO BE FURNISHED**
UNDER this act. The owner or lessee may name himself or herself as
 designee. The owner or lessee may not name the contractor as
 designee. However, a contractor who is providing only architectural
 or engineering services may be named as designee.

(3) ~~(4)~~ "Fringe benefits and withholdings" means compensation
 due an employee pursuant to a written contract or written policy
 for holiday, time off for sickness or injury, time off for personal
 reasons or vacation, bonuses, authorized expenses incurred during
 the course of employment, and any other contributions made to or on
 behalf of an employee.

~~— (5) "Fund" means the homeowner construction lien recovery fund~~
~~created in section 201.~~

(4) ~~(6)~~ "General contractor" means a contractor who contracts
 with an owner or lessee to provide, directly or indirectly through
 contracts with subcontractors, suppliers, or laborers,
 substantially all of the improvements to the property described in

1 the notice of commencement.

2 (5) ~~(7)~~—"Improvement" means the result of labor or material
3 provided by a contractor, subcontractor, supplier, or laborer,
4 including, but not limited to, surveying, engineering and
5 architectural planning, construction management, clearing,
6 demolishing, excavating, filling, building, erecting, constructing,
7 altering, repairing, ornamenting, landscaping, paving, leasing
8 equipment, or installing or affixing a fixture or material,
9 pursuant to a contract.

10 (6) ~~(8)~~—"Laborer" means an individual who, pursuant to a
11 contract with a contractor or subcontractor, provides an
12 improvement to real property through the individual's personal
13 labor.

14 Sec. 106. (1) "Person" means an individual, corporation,
15 partnership, sole proprietorship, association, other legal entity,
16 or any combination thereof.

17 (2) "Project" means the aggregate of improvements contracted
18 for by the contracting owner.

19 ~~— (3) "Qualifying officer" means an individual designated as a~~
20 ~~qualifying officer of the contractor or subcontractor in the~~
21 ~~records of the department under article 24 of the occupational~~
22 ~~code, 1980 PA 299, MCL 339.2401 to 339.2412.~~

23 (3) ~~(4)~~—"Residential structure" means an individual
24 residential condominium unit or a residential building containing
25 not more than 2 residential units, the land on which it is or will
26 be located, and all appurtenances, in which the owner or lessee
27 contracting for the improvement is residing or will reside upon

1 completion of the improvement.

2 (4) ~~(5)~~—"Subcontractor" means a person, other than a laborer
3 or supplier, who pursuant to a contract between himself or herself
4 and a person other than the owner or lessee performs any part of a
5 contractor's contract for an improvement.

6 (5) ~~(6)~~—"Supplier" means a person who, pursuant to a contract
7 with a contractor or a subcontractor, leases, rents, or in any
8 other manner provides material or equipment that is used in the
9 improvement of real property.

10 (6) ~~(7)~~—"Wages" means all earnings of an employee, whether
11 determined on the basis of time, task, piece, commission, or other
12 method of calculation, for labor or services, except fringe
13 benefits and withholdings.

14 Sec. 118. (1) An action to enforce a construction lien through
15 foreclosure shall be brought in the circuit court for the county
16 where the real property described in the claim of lien is located.
17 If the real property is located in more than 1 county or judicial
18 circuit, the action may be brought in any of the counties where the
19 real property is located. An action to enforce a construction lien
20 through foreclosure ~~shall be~~ **IS** equitable in nature. A construction
21 lien also may be enforced by a cross-claim or counterclaim timely
22 filed in a pending action involving title to, or foreclosure of
23 mortgages or encumbrances on, real property.

24 (2) In ~~each~~ **AN** action in which enforcement of **TO ENFORCE** a
25 construction lien through foreclosure, ~~is sought,~~ the court shall
26 examine each claim and defense that is presented ~~,~~ and determine
27 the amount, if any, due to each lien claimant or to any mortgagee

1 or holder of an encumbrance, and their respective priorities. The
2 court may allow reasonable attorneys' fees to a lien claimant who
3 is the prevailing party. The court also may allow reasonable
4 attorneys' fees to a prevailing defendant if the court determines
5 the lien claimant's action to enforce a construction lien under
6 this section was vexatious. ~~Attorneys' fees allowed under this~~
7 ~~section shall not be paid from the homeowner construction lien~~
8 ~~recovery fund created under part 2.~~

9 SEC. 118A. (1) A CLAIM OF CONSTRUCTION LIEN DOES NOT ATTACH TO
10 A RESIDENTIAL STRUCTURE, TO THE EXTENT PAYMENTS HAVE BEEN MADE, IF
11 THE OWNER OR LESSEE FILES AN AFFIDAVIT WITH THE COURT STATING THAT
12 THE OWNER OR LESSEE HAS PAID THE CONTRACTOR FOR THE IMPROVEMENT TO
13 THE RESIDENTIAL STRUCTURE ACCORDING TO THE CONTRACT, INDICATING IN
14 THE AFFIDAVIT THE AMOUNT OF THE PAYMENT. THE OWNER OR LESSEE SHALL
15 ATTACH TO THE AFFIDAVIT COPIES OF THE CONTRACT, ANY CHANGE ORDERS,
16 AND ANY EVIDENCE OF THE PAYMENT THAT THE OWNER OR LESSEE HAS,
17 INCLUDING, BUT NOT LIMITED TO, A CANCELED CHECK OR A CREDIT CARD OR
18 OTHER RECEIPT.

19 (2) IF THERE IS NO WRITTEN CONTRACT BETWEEN THE OWNER OR
20 LESSEE AND THE CONTRACTOR AS REQUIRED BY SECTION 114, THE FILING OF
21 AN AFFIDAVIT UNDER THIS SECTION CREATES A REBUTTABLE PRESUMPTION
22 THAT THE OWNER OR LESSEE HAS PAID THE CONTRACTOR FOR THE
23 IMPROVEMENT. THE PRESUMPTION MAY BE OVERCOME ONLY BY A SHOWING OF
24 CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.

25 Enacting section 1. Sections 201 to 207, 303, and 304 of the
26 construction lien act, 1980 PA 497, MCL 570.1201 to 570.1207,
27 570.1303, and 570.1304, are repealed.

1 Enacting section 2. This amendatory act does not take effect
2 unless all of the following bills of the 95th Legislature are
3 enacted into law:

4 (a) Senate Bill No.____ (request no. 04360'09 d *) or House
5 Bill No. 5831.

6 (b) Senate Bill No.____ (request no. 04360'09 e *) or House
7 Bill No. 5832.

8 (c) Senate Bill No.____ (request no. 04360'09 f *) or House
9 Bill No. 5833.

10 (d) Senate Bill No.____ (request no. 04360'09 g *) or House
11 Bill No. 5834.

12 (e) Senate Bill No. ____ (request no. 04360'09 k *) or House
13 Bill No. 5835.