



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**REVISE HOMEOWNER'S
CONSTRUCTION LIEN
PROVISIONS**

House Bill 5741

**Sponsor: Rep. John Pappageorge
Committee: Regulatory Reform**

Complete to 10-29-02

A SUMMARY OF HOUSE BILL 5741 AS INTRODUCED 2-21-02

The Construction Lien Act, Public Act 497 of 1980, created the Homeowner Construction Lien Recovery Fund that is administered by the Department of Consumer and Industry Services. The purpose of the act and the fund is to protect homeowners, subcontractors and laborers, and materials suppliers in situations in which a homeowner has, in good faith, paid a licensed contractor for materials and labor but the contractor fails to pay for materials or to compensate subcontractors or laborers for work performed. Under the law, subcontractors, laborers, and materials suppliers may collect on their claims from the construction lien recovery fund, which is funded by \$50 assessments on new applicants for licenses in the building trades (residential builders and maintenance and alteration contractors, electrical contractors, mechanical contractors, and master plumbers).

House Bill 5741 would amend the Construction Lien Act in the following ways:

- The bill would specify that the construction lien of a supplier or subcontractor for an improvement to a residential structure recorded on or after the effective date of the bill would not include items of contract interest charged according to the contract between the supplier or subcontractor and the general contractor. "Items of contract interest" would be defined to mean such things as time-price differentials, finance charges, or any other term under which interest is charged or assessed.

- Currently, the law says that a contractor does not have a right to a construction lien upon the interest of the property owner unless the contractor has provided an improvement to the property under a written contract between the owner and the contractor. The contract must contain a statement noting, among other things, that residential builders and residential maintenance and alteration contractors are required to be licensed under the Occupational Code, that electricians are required to be licensed under the Electrical Administrative Act, and that plumbers are required to be licensed under the plumbing code. The bill would add language specifying that such a contract would also have to note that mechanical contractors are required to be licensed under the Forbes Mechanical Contractors Act.

- The bill would add language allowing the owner or lessee of residential property (or other party affected by a lien) to bring an action in a court of competent jurisdiction, when a lien is placed on such property by a party who was not properly licensed as required in the act, to have the lien removed. If the court found that the construction lien was invalid because the contractor was not properly licensed, the court would order the lien removed and award costs and actual

attorney fees to the party who brought the action. Further, the bill would specify that a person or contractor could not bring or maintain a claim, action, or counterclaim under this provision for the collection of compensation for the performance of an act or contract for which a license is required without alleging and proving that the person or contractor was licensed as required during the performance of the act or contract. (Note: This provision is reportedly for the purpose of addressing a 2001 Michigan Court of Appeals decision, *Stokes v Millen Roofing*, that allowed an unlicensed builder to file a lien against a homeowner. That decision was reversed by the Michigan Supreme Court in July, 2002.)

- Under current law, licensees pay a \$50 assessment upon initial licensure, and laborers pay a fee of \$15 if they make a recovery from the fund. Nonlicensees may also become members of the fund upon payment of a \$50 fee. The bill would require nonlicensee members of the fund to notify the department in writing of a change of individual, firm, or corporate name, DBA name, or change of address within 30 days of the change.

- The act provides that a person is not entitled to recover from the fund unless he or she has paid into the fund as required by the law. The act also provides that if, on December 1 of any year, the balance in the fund is less than \$1 million, the director of the department may require an additional assessment of up to \$50. The bill would add language specifying that if an additional assessment is required, a person would not be entitled to recover from the fund unless he or she has paid that additional assessment by the date designated by the department.

- The bill would add language specifying that a contractor who seeks recovery from the fund would have to establish that he or she had a written contract with the homeowner for the improvement that gave rise to the lien.

MCL 570.1104 et al.

Analyst: D. Martens

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