

HOUSE BILL No. 5830

February 17, 2010, Introduced by Rep. Hammel and referred to the Committee on Appropriations.

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 to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to establish, protect, and enforce by lien the rights
3 of persons performing labor or providing material or equipment for
4 the improvement of real property; to provide for ~~certain defenses~~
5 ~~with respect thereto; to establish the homeowner construction lien~~
6 ~~recovery fund; to provide for the powers and duties of certain~~
7 ~~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 the notice of commencement.

1 (5) ~~(7)~~—"Improvement" means the result of labor or material
2 provided by a contractor, subcontractor, supplier, or laborer,
3 including, but not limited to, surveying, engineering and
4 architectural planning, construction management, clearing,
5 demolishing, excavating, filling, building, erecting, constructing,
6 altering, repairing, ornamenting, landscaping, paving, leasing
7 equipment, or installing or affixing a fixture or material,
8 pursuant to a contract.

9 (6) ~~(8)~~—"Laborer" means an individual who, pursuant to a
10 contract with a contractor or subcontractor, provides an
11 improvement to real property through the individual's personal
12 labor.

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

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

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

22 (3) ~~(4)~~—"Residential structure" means an individual
23 residential condominium unit or a residential building containing
24 not more than 2 residential units, the land on which it is or will
25 be located, and all appurtenances, in which the owner or lessee
26 contracting for the improvement is residing or will reside upon
27 completion of the improvement.

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

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

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

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

(2) In ~~each~~ **AN** action ~~in which enforcement of~~ **TO ENFORCE** a construction lien through foreclosure, ~~is sought,~~ the court shall examine each claim and defense that is presented, ~~—~~ and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance, ~~—~~ and their respective priorities. The

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

8 Enacting section 1. Sections 201 to 207, 303, and 304 of the
9 construction lien act, 1980 PA 496, MCL 570.1201 to 1207, 1303, and
10 1304, are repealed.

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

14 (a) Senate Bill No. ____ or House Bill No. 5831(request no.
15 04360'09 d *).

16 (b) Senate Bill No. ____ or House Bill No. 5832(request no.
17 04360'09 e *).

18 (c) Senate Bill No. ____ or House Bill No. 5833(request no.
19 04360'09 f *).

20 (d) Senate Bill No. ____ or House Bill No. 5834(request no.
21 04360'09 g *).

22 (e) Senate Bill No ____ or House Bill No. 5835(request no.
23 04360'09 k *).