

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 405

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending sections 110, 115, 202, 203, 204, and 206 (MCL
570.1110, 570.1115, 570.1202, 570.1203, 570.1204, and 570.1206),
section 110 as amended by 2001 PA 151, sections 115 and 203 as
amended by 1982 PA 17, and sections 202 and 206 as amended by
1981 PA 191.

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.

1 (b) When a demand for the sworn statement has been made by
2 or on behalf of the owner or lessee.

3 (2) A subcontractor shall provide a sworn statement to the
4 owner or lessee when a demand for the sworn statement has been
5 made by or on behalf of the owner or lessee **AND THE OWNER OR**
6 **LESSEE HAS COMPLIED WITH THE REQUIREMENTS OF SUBSECTION (6)** .

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

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

21 SWORN STATEMENT

22 State of Michigan)

23) ss.

24 County of)

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

26 is the (contractor) (subcontractor) for an improvement

27 to the following real property in County, Michigan,

1 described as follows:

2

3 (insert legal description of property)

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

12	Name,							Amount
13	ADDRESS,							of
14	AND							laborer
15	TELE-							fringe
16	PHONE							benefits
17	NUMBER							and
18	of							with-
19	subcon-						Amount	holdings
20	trac-						of	due but
21	tor,	Type of	Total	Amount	Amount	Balance	laborer	unpaid
22	sup-	improve-	con-	already	cur-	to com-	wages	unpaid
23	plier,	ment	tract	paid	rently	plete	due	unpaid
24	or	fur-	price		owing	(op-	but	unpaid
25	laborer	nished				tional)	unpaid	unpaid

26

27 Totals

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

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

1 I make this statement as the (contractor) (subcontractor) or
2 as of the (contractor) (subcontractor) to represent to
3 the owner or lessee of the property and his or her agents that
4 the property is free from claims of construction liens, or the
5 possibility of construction liens, except as specifically set
6 forth in this statement and except for claims of construction
7 liens by laborers that may be provided under section 109 of the
8 construction lien act, 1980 PA 497, MCL 570.1109.

9 WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE
10 PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM
11 OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A
12 NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF
13 FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980
14 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE
15 IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

16 ON RECEIPT OF THIS SWORN STATEMENT, THE OWNER OR LESSEE, OR
17 THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS
18 RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH
19 SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF
20 FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS
21 EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR,
22 SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A
23 SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF
24 FURNISHING OR WHO IS NAMED IN THE SWORN STATEMENT MAKES A
25 REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE
26 REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS
27 AFTER RECEIVING THE REQUEST.

1
2

.....
Deponent

3 WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN
4 STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES
5 AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA
6 497, MCL 570.1110.

7 Subscribed and sworn to before me on(DATE)
8
9 Notary Public,..... County, Michigan.

10 My commission expires:

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

15 (6) ON RECEIPT OF A SWORN STATEMENT, THE OWNER, LESSEE, OR
16 DESIGNEE SHALL GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY
17 TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND
18 LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109
19 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR
20 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE
21 SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS
22 PROVIDED A NOTICE OF FURNISHING OR WHO IS NAMED IN THE SWORN
23 STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL
24 PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10
25 BUSINESS DAYS AFTER RECEIVING THE REQUEST.

1 (7) ~~—(6)—~~ After the contractor or subcontractor provides the
2 sworn statement, the owner or lessee may withhold or, upon
3 written demand from the contractor, shall withhold ~~—~~ from the
4 amount due or to become due to the contractor or to the
5 subcontractor for work already performed an amount sufficient to
6 pay all sums due to subcontractors, suppliers, or laborers, as
7 shown by the sworn statement, or due to lien claimants who have
8 provided a notice of furnishing under section 109. From the
9 amount withheld, the owner or lessee may directly pay
10 subcontractors, suppliers, or laborers the amount they are due as
11 shown by the sworn statement. If the contract provides for
12 payments by the owner to the general contractor in the normal
13 course of construction, but the owner elects to pay lien
14 claimants directly under this section, the first time the owner
15 elects to make payment directly to a lien claimant, he or she
16 shall provide at least 5 business days' notice to the general
17 contractor of the intention to make direct payment. Subsequent
18 direct disbursements to lien claimants need not be preceded by
19 the 5-day notice provided in this section unless the owner first
20 returns to the practice of paying all sums to the general
21 contractor. As between the owner or lessee and the contractor or
22 subcontractor, all payments made under this subsection are
23 considered the same as if paid directly to the contractor or
24 subcontractor. If an amount is withheld under this subsection
25 from the contractor or subcontractor, the owner or lessee, upon
26 request, shall prepare and provide to the contractor or
27 subcontractor an itemized statement of the sums withheld. If an

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

12 (9) ~~—(8)—~~ If a contractor fails to provide a sworn statement
13 to 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) ~~—(9)—~~ If a subcontractor fails to provide a sworn
19 statement under subsection (2) to the owner or lessee before
20 recording the subcontractor's claim of lien, the subcontractor's
21 construction lien is valid. However, a complaint, cross-claim, or
22 counterclaim may not be filed to enforce the construction lien
23 until the sworn statement has been provided.

24 (11) ~~—(10)—~~ A contractor or subcontractor who desires to
25 draw money and gives or causes to be given to any owner or lessee
26 a sworn statement required by this section that is false, with
27 intent to 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 ~~violates subdivision (a) and~~ has 1
15 or more prior convictions for committing or attempting to commit
16 an offense under this act.

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

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

24 (ii) The **STATEMENT INVOLVED IS FOR MORE THAN \$200.00 BUT LESS**
25 **THAN \$1,000.00 AND THE** contractor or subcontractor ~~violates~~
26 ~~subdivision (b) (i) and~~ has 1 or more prior convictions for
27 violating or attempting to violate this act. For purposes of this

1 subparagraph, however, a prior conviction does not include a
2 conviction for ~~violating or attempting to violate~~ **A VIOLATION**
3 **OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a) or (b) (ii).

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

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

10 (ii) The **STATEMENT INVOLVED IS FOR \$1,000.00 OR MORE BUT LESS**
11 **THAN \$20,000.00 AND THE** contractor or subcontractor ~~violates~~
12 ~~subdivision (c) (i) and~~ has 2 or more prior convictions for
13 committing or attempting to commit an offense under this act. For
14 purposes of this subparagraph, however, a prior conviction does
15 not include a conviction for ~~violating or attempting to violate~~
16 **A VIOLATION OR ATTEMPTED VIOLATION DESCRIBED IN** subdivision (a)
17 or (b) (ii).

18 (12) ~~(11) Statements~~ **FOR PURPOSES OF SUBSECTION (11),**
19 **STATEMENTS** involved in separate incidents pursuant to a scheme or
20 course of conduct within any 12-month period may be aggregated to
21 determine the total amount involved in the statements.

22 (13) ~~(12)~~ If the prosecuting attorney intends to seek an
23 enhanced sentence **FOR A VIOLATION UNDER THIS SECTION** based upon
24 the defendant having 1 or more prior convictions, the prosecuting
25 attorney shall include ~~on~~ **IN** the complaint and information a
26 statement listing the prior conviction or convictions. The
27 existence of the defendant's prior conviction or convictions

1 shall be determined by the court, without a jury, at sentencing
2 or at a separate hearing for that purpose before sentencing. The
3 existence of a prior conviction may be established by any
4 evidence relevant for that purpose, including, but not limited
5 to, 1 or more of the following:

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

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

9 (c) Information contained in a presentence report.

10 (d) The defendant's statement.

11 **(14)** ~~—(13)—~~ If the sentence for a conviction under this
12 section is enhanced by 1 or more convictions, those prior
13 convictions shall not be used to further enhance the sentence for
14 the conviction pursuant to section 10, 11, or 12 of chapter IX of
15 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
16 and 769.12.

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

27 (2) A lien claimant who receives full payment for his or her

Senate Bill No. 405 (H-1) as amended December 12, 2006

1 contract shall provide to the owner, lessee, or designee a full
2 unconditional waiver of lien.

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

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

11 (5) For purposes of this act, retainage ~~which~~ **THAT** is not
12 payable under a contract until the happening of a certain event
13 in addition to the providing of an improvement ~~—~~ is not due as
14 of the date of the providing of the improvement.

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

19 (7) **SUBJECT TO SUBSECTION (8), AN OWNER, LESSEE, OR DESIGNEE**
20 **[SHALL] NOT RELY ON A FULL OR PARTIAL UNCONDITIONAL OR CONDITIONAL**
21 **WAIVER OF LIEN PROVIDED BY A PERSON OTHER THAN THE LIEN CLAIMANT**
22 **NAMED IN THE WAIVER IF THE LIEN CLAIMANT HAS EITHER FILED A**
23 **NOTICE OF FURNISHING UNDER SECTION 109 OR IS EXCUSED FROM FILING**
24 **A NOTICE OF FURNISHING UNDER SECTION 108 OR 108A UNLESS THE**
25 **OWNER, LESSEE, OR DESIGNEE HAS FIRST VERIFIED THE AUTHENTICITY OF**
26 **THE LIEN WAIVER WITH THE LIEN CLAIMANT EITHER IN WRITING, BY**
27 **TELEPHONE, OR PERSONALLY.**

1 **BY SIGNING THIS WAIVER** waive my/our construction lien to the
2 amount of \$, for labor/materials provided
3 through

4 (date)

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

8 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**
9 **DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US**
10 **OR IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,**
11 **OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF**
12 **US, THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT**
13 **CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR**
14 **PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.**

15
16
17 (signature of lien claimant)

18 Signed on: Address:
19 (date)
20 Telephone:

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

22 (b) **PARTIAL CONDITIONAL WAIVER**

23 I/we have a contract with to
24 (other contracting party)

25 provide for the improvement to the property
26 described as:, and hereby

27 **BY SIGNING THIS WAIVER** waive my/our construction lien to the
28 amount of \$, for labor/materials provided
29 through.....

30 (date)

31 This waiver, together with all previous waivers, if any,

1 (circle one) does does not cover all amounts due to me/us for
2 contract improvement provided through the date shown above.
3 This waiver is conditioned on actual payment of the amount
4 shown above.

5 IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S
6 DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR
7 IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE, OR
8 DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF US,
9 THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT
10 CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR
11 PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.

12
13
14 (signature of lien claimant)

15 Signed on: Address:
16 (date)
17 Telephone:

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

19 (c) **FULL UNCONDITIONAL WAIVER**

20 My/our contract with to
21 (other contracting party)
22 provide for the improvement of the property
23 described as: ~~having~~ **HAS** been
24 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER,** all my/our
25 construction lien rights against ~~such~~ **THE DESCRIBED** property
26 are ~~hereby~~ waived and released.

27 IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S
28 DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR
29 IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,
30 OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF
31 US, THE 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 Signed on: Address:
7 (date)
8 Telephone:

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

10 (d) **FULL CONDITIONAL WAIVER**

11 My/our contract with to
12 (other contracting party)

13 provide for the improvement of the property
14 described as: ~~having~~ **HAS** been
15 fully paid and satisfied. ~~—~~ **BY SIGNING THIS WAIVER**, all my/our
16 construction lien rights against ~~such~~ **THE DESCRIBED** property
17 are ~~hereby~~ waived and released.

18 This waiver is conditioned on actual payment of
19 **IF THE OWNER OR LESSEE OF THE PROPERTY OR THE OWNER'S OR LESSEE'S**
20 **DESIGNEE HAS RECEIVED A NOTICE OF FURNISHING FROM ME/ONE OF US OR**
21 **IF I/WE ARE NOT REQUIRED TO PROVIDE ONE, AND THE OWNER, LESSEE,**
22 **OR DESIGNEE HAS NOT RECEIVED THIS WAIVER DIRECTLY FROM ME/ONE OF**
23 **US, THE OWNER, LESSEE, OR DESIGNEE MAY NOT RELY UPON IT WITHOUT**
24 **CONTACTING ME/ONE OF US, EITHER IN WRITING, BY TELEPHONE, OR**
25 **PERSONALLY, TO VERIFY THAT IT IS AUTHENTIC.**

26
27
28 (signature of lien claimant)

29 Signed on: Address:
30 (date)
31 Telephone:

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

2 Sec. 202. (1) The director of ~~licensing and regulation~~ **THE**
3 **DEPARTMENT** shall manage the ~~affairs of the fund pursuant~~ **FUND**
4 **ACCORDING** to this act. A detailed financial statement of the
5 condition of the fund shall be published by the director
6 annually. ~~This~~ **THE** fund shall be subject to an audit by the
7 auditor general. The state treasurer shall deposit or invest
8 money from the fund, in the same manner **AS** and subject to all
9 provisions of law ~~with respect~~ **THAT APPLY** to the deposit or
10 investment of state funds by the state treasurer, and interest
11 earned shall be credited to the fund. The unexpended fund balance
12 shall carry forward to the new fiscal year at the end of each
13 fiscal year.

14 (2) The department may employ ~~such~~ office clerical and
15 professional help and claims investigators as ~~are~~ necessary to
16 carry out ~~the provisions of~~ this act. The attorney general
17 shall assign members of his or her staff and may supplement that
18 staff by contracting with ~~those~~ private attorneys as ~~are~~
19 necessary to adequately defend ~~the~~ actions against the fund.
20 All wages, professional fees, and other administrative
21 expenditures necessary for operation and defense of the fund,
22 including legal counsel, shall be charged to and payable from the
23 fund. Except ~~as provided in subsection (3)~~ **FOR LEGAL COUNSEL**
24 **FEES, THE AMOUNT PAID IN A FISCAL YEAR FOR** wages, professional
25 fees, and other administrative expenditures ~~necessary for the~~
26 ~~operation of the fund~~ shall not exceed 20% of ~~funds collected~~

1 by the fund in the previous fiscal year **THE AVERAGE OF THE**
 2 **ENDING BALANCES IN THE FUND FOR THE PREVIOUS 2 FISCAL YEARS.**

3 ~~—— (3) If the \$50.00 fee is not assessed against license~~
 4 ~~applications and renewals during a year under section 201, the~~
 5 ~~limitation on fund expenditures provided in subsection (2) shall~~
 6 ~~be calculated on the basis of the closest previous year in which~~
 7 ~~the \$50.00 fee was assessed and collected for license application~~
 8 ~~and renewals under section 201.~~

9 Sec. 203. (1) A claim of construction lien ~~shall~~ **DOES** not
 10 attach to a residential structure, to the extent payments have
 11 been made, if the owner or lessee files an affidavit with the
 12 court indicating that the owner or lessee has done all of the
 13 following:

14 (a) Paid the contractor for the improvement to the
 15 residential structure ~~and~~ **ACCORDING TO THE CONTRACT, INDICATING**
 16 **IN THE AFFIDAVIT** the amount of the payment. **THE OWNER OR LESSEE**
 17 **SHALL ATTACH TO THE AFFIDAVIT COPIES OF THE CONTRACT, ANY CHANGE**
 18 **ORDERS, AND ANY EVIDENCE OF THE PAYMENT THAT THE OWNER OR LESSEE**
 19 **HAS, INCLUDING, BUT NOT LIMITED TO, A CANCELED CHECK OR A CREDIT**
 20 **CARD OR OTHER RECEIPT.**

21 (b) Not colluded with any person to obtain a payment from
 22 the fund.

23 (c) Cooperated and will continue to cooperate with the
 24 department in the defense of the fund.

25 (2) ~~In the absence of a~~ **IF THERE IS NO** written contract
 26 ~~pursuant to~~ **AS REQUIRED BY** section 114, the filing of an
 27 affidavit under this section ~~shall create~~ **CREATES** a rebuttable

1 presumption that the owner or lessee has paid the contractor for
2 the improvement. The presumption may be overcome only by a
3 showing of clear and convincing evidence to the contrary.

4 (3) Subject to section 204, a person who has recorded a
5 claim of lien and who is precluded from ~~recovering~~ **HAVING** a
6 construction lien under subsection (1) may recover from the fund
7 the amount ~~for which the lien is established~~ **HE OR SHE WOULD**
8 **HAVE BEEN ENTITLED TO RECOVER BUT FOR SUBSECTION (1)**. A person
9 who seeks recovery from the fund shall establish all of the
10 following:

11 (a) That he or she would be entitled to a construction lien
12 on a residential structure except for the defense provided in
13 subsection (1).

14 (b) That payment was made by the owner or lessee to the
15 contractor or subcontractor.

16 (c) That the contractor or subcontractor has retained or
17 used the proceeds or any part of the proceeds paid to the
18 contractor or subcontractor without having paid the person
19 claiming the construction lien.

20 (d) That he or she has complied with section 201.

21 (e) That he or she has not colluded with another person to
22 obtain a payment from the fund.

23 (f) That he or she has complied with any applicable
24 licensing acts.

25 (g) That he or she has made a reasonable effort to obtain
26 payment from the contractor or subcontractor.

27 (h) That the contractor or ~~the~~ subcontractor ~~—~~ with whom

1 the person claiming the construction lien contracted ~~with,~~ is
2 licensed if required by law to be licensed.

3 (I) THAT THE CONTRACTOR OR SUBCONTRACTOR WITH WHOM THE
4 PERSON CLAIMING THE CONSTRUCTION LIEN CONTRACTED IS THE SAME
5 INDIVIDUAL OR LEGAL ENTITY WITH WHOM THE OWNER OR LESSEE
6 CONTRACTED.

7 (J) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A
8 SUPPLIER, THAT HE OR SHE HAS DOCUMENTARY PROOF THAT, UNLESS THE
9 SUPPLIER HAD PROVIDED MATERIAL OR EQUIPMENT TO THE CONTRACTOR OR
10 SUBCONTRACTOR WITHIN THE PRECEDING YEAR, BEFORE HE OR SHE
11 PROVIDED THE MATERIAL OR EQUIPMENT THAT IS THE SUBJECT OF THE
12 LIEN WITHOUT OBTAINING ADVANCE PAYMENT IN FULL, HE OR SHE DID
13 BOTH OF THE FOLLOWING:

14 (i) REQUIRED THE CONTRACTOR OR SUBCONTRACTOR TO WHOM HE OR
15 SHE PROVIDED THE MATERIAL OR EQUIPMENT TO COMPLETE AND SUBMIT A
16 CREDIT APPLICATION.

17 (ii) BEFORE BEGINNING TO SUPPLY MATERIAL OR EQUIPMENT TO THE
18 CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN
19 FULL, DID EITHER OF THE FOLLOWING, AS APPLICABLE:

20 (A) IF THE CONTRACTOR OR SUBCONTRACTOR IS A CORPORATION
21 WHOSE SHARES ARE PUBLICLY TRADED, OBTAINED A REPORT ON THE
22 CONTRACTOR OR SUBCONTRACTOR FROM A NATIONALLY OR REGIONALLY
23 RECOGNIZED ORGANIZATION THAT PROVIDES CREDIT RATINGS OF
24 BUSINESSES TO DETERMINE THE FINANCIAL STABILITY OF THE CONTRACTOR
25 OR SUBCONTRACTOR.

26 (B) IF SUB-SUBPARAGRAPH (A) DOES NOT APPLY, DID BOTH OF THE
27 FOLLOWING:

1 (I) OBTAINED A CREDIT REPORT ON THE OWNER OR QUALIFYING
2 OFFICER OR THE PRINCIPAL PARTNERS, OFFICERS, SHAREHOLDERS, OR
3 MEMBERS OF THE CONTRACTOR OR SUBCONTRACTOR TO DETERMINE THE
4 FINANCIAL STABILITY OF THE CONTRACTOR OR SUBCONTRACTOR.

5 (II) IF THE CONTRACTOR OR SUBCONTRACTOR IS LESS THAN 4 YEARS
6 OLD, OBTAINED A PERSONAL GUARANTY FROM THE OWNER OR 1 OR MORE OF
7 THE PARTNERS, OFFICERS, DIRECTORS, MANAGING MEMBERS, TRUSTEES, OR
8 SHAREHOLDERS OF THE CONTRACTOR OR SUBCONTRACTOR.

9 (K) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A
10 SUPPLIER SEEKING TO RECOVER FOR MATERIAL OR EQUIPMENT SUPPLIED TO
11 A CONTRACTOR OR SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT
12 IN FULL, THAT A CREDIT REPORT OBTAINED BY THE SUPPLIER ON THE
13 CONTRACTOR OR SUBCONTRACTOR DID NOT DISCLOSE ANY OF THE
14 FOLLOWING:

15 (i) THAT THE CONTRACTOR OR SUBCONTRACTOR WAS, AT THE TIME OF
16 THE APPLICATION, OR HAD BEEN, WITHIN 2 YEARS BEFORE THE
17 APPLICATION, INSOLVENT.

18 (ii) THAT THE CONTRACTOR OR SUBCONTRACTOR WAS, AT THE TIME OF
19 THE APPLICATION, SUBJECT TO A RECEIVERSHIP.

20 (iii) TOTAL DELINQUENT JUDGMENTS OF MORE THAN \$1,000.00.

21 (4) A subcontractor, supplier, or laborer who seeks
22 enforcement of a construction lien on a residential structure
23 through foreclosure shall join the fund as a defendant in the
24 foreclosure action ~~—, and—~~ WITHIN THE PERIOD PROVIDED IN SECTION
25 117(1). THE SUBCONTRACTOR, SUPPLIER, OR LABORER SHALL SERVE a
26 summons and complaint ~~—shall be served—~~ on the ~~—director—~~ OFFICE
27 OF THE FUND ADMINISTRATOR WITHIN THE DEPARTMENT by certified or

1 registered mail ~~—~~ or by leaving a copy ~~thereof~~ at the office.
2 ~~of the director.~~ The failure to serve a summons and complaint
3 ~~upon the fund shall constitute a bar to~~ **UNDER THIS SUBSECTION**
4 **BARS** recovery from the fund. After ~~service upon the defendant of~~
5 **A DEFENDANT IS SERVED WITH** a summons and complaint in an action
6 ~~in which enforcement of~~ **TO FORECLOSE** a construction lien,
7 ~~through foreclosure is sought,~~ the department may intervene in
8 the action as a party defendant with respect to other
9 construction liens.

10 (5) The attorney general shall make every reasonable effort
11 to defend the fund and may assert any defense to a claim of lien
12 that would have been available to the owner or lessee.

13 (6) **A PAYMENT FROM THE FUND SHALL NOT INCLUDE INTEREST ON**
14 **THE UNPAID PRINCIPAL AMOUNT DUE, INCLUDING, BUT NOT LIMITED TO, A**
15 **TIME-PRICE DIFFERENTIAL OR A FINANCE CHARGE, THAT ACCRUED AFTER**
16 **90 DAYS AFTER THE CLAIM OF LIEN WAS RECORDED.**

17 (7) **A PAYMENT FROM THE FUND TO A SUPPLIER SHALL NOT INCLUDE**
18 **MONEY DUE FOR MATERIAL OR EQUIPMENT SUPPLIED TO A CONTRACTOR OR**
19 **SUBCONTRACTOR WITHOUT OBTAINING ADVANCE PAYMENT IN FULL IF EITHER**
20 **OF THE FOLLOWING APPLIES:**

21 (A) **THE CONTRACTOR OR SUBCONTRACTOR WAS DELINQUENT IN PAYING**
22 **THE SUPPLIER FOR MATERIAL OR EQUIPMENT FOR MORE THAN THE**
23 **FOLLOWING NUMBER OF DAYS AFTER THE FIRST BUSINESS DAY OF THE**
24 **MONTH FOLLOWING THE SHIPMENT OF THE MATERIAL OR EQUIPMENT:**

25 (i) **IN 2007, 180 DAYS.**

26 (ii) **IN 2008, 150 DAYS.**

27 (iii) **IN 2009, 120 DAYS.**

1 (iv) IN 2010 AND EACH YEAR AFTER 2010, 90 DAYS.

2 (B) THE CONTRACTOR OR SUBCONTRACTOR WAS INDEBTED TO THE
3 SUPPLIER IN AN AMOUNT EQUAL TO OR MORE THAN THE CREDIT LIMIT
4 ESTABLISHED BY THE SUPPLIER FOR THE CONTRACTOR OR SUBCONTRACTOR
5 AT THE TIME THE MATERIAL OR EQUIPMENT WAS SUPPLIED.

6 (8) ~~-(6)-~~ Payment from the fund shall be made only if the
7 court finds that a subcontractor, supplier, or laborer is
8 entitled to payment from the fund. Subject to section 204, after
9 the judgment has become final the department shall pay the amount
10 of the judgment out of the fund.

11 Sec. 204. The department shall not pay out of the fund to
12 subcontractors, suppliers, and laborers more than ~~-\$75,000.00~~
13 \$100,000.00 per residential structure. When it appears that the
14 amount claimed from the fund ~~—,~~ with respect to a residential
15 structure ~~—,~~ will exceed ~~-\$75,000.00~~ \$100,000.00, the
16 department may delay payment until the total amount to be paid
17 can be ascertained. If the total amount payable to
18 subcontractors, suppliers, and laborers exceeds ~~-\$75,000.00~~
19 \$100,000.00, they shall be paid their proportional shares of that
20 amount.

21 Sec. 206. (1) THE DEPARTMENT SHALL MAINTAIN A WEBSITE. IF
22 THE DEPARTMENT MAKES A PAYMENT FROM THE FUND AS THE RESULT OF A
23 CONTRACTOR'S FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, THE
24 DEPARTMENT SHALL POST ON THE WEBSITE THE NAME AND LICENSE NUMBER
25 OF THE CONTRACTOR AND THE NAME AND LICENSE NUMBER OF ANY
26 QUALIFYING OFFICER OF THE CONTRACTOR. THE WEBSITE SHALL BE
27 DESIGNED TO ALLOW A VISITOR TO SEARCH THE POSTED NAMES AND

1 **LICENSE NUMBERS OF CONTRACTORS AND QUALIFYING OFFICERS.**

2 (2) If the department makes a payment from the fund as the
3 result of a licensee's failure to pay a lien claimant, the
4 department shall enter a complaint against the licensee with the
5 appropriate licensing agency to be addressed by the disciplinary
6 proceedings under the appropriate licensing law.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No. 459 of the 93rd Legislature is enacted
9 into law.