

Act No. 497  
Public Acts of 2006  
Approved by the Governor  
December 28, 2006  
Filed with the Secretary of State  
December 29, 2006  
EFFECTIVE DATE: January 3, 2007

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

Introduced by Senators Basham, Prusi, Switalski, Scott and Clarke

# **ENROLLED SENATE BILL No. 459**

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 a homeowner construction lien recovery fund within the department of licensing and regulation; to provide for the powers and duties of certain state officers; to provide for the assessments of certain occupations; to prescribe penalties; and to repeal certain acts and parts of acts," by amending the title and sections 104, 106, 107, 114, and 201 (MCL 570.1104, 570.1106, 570.1107, 570.1114, and 570.1201), sections 104, 106, 107, and 114 as amended by 1982 PA 17 and section 201 as amended by 1984 PA 190, and by adding section 114a.

*The People of the State of Michigan enact:*

## 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 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.

(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 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.

(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.

(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.

(7) "Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management,

clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract.

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

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

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

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

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

(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.

(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.

(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. 107. (1) Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, as described in the notice of commencement given under section 108 or 108a, the interest of an owner who has subordinated his or her interest to the mortgage for the improvement of the real property, and the interest of an owner who has required the improvement. A construction lien acquired pursuant to this act shall not exceed the amount of the lien claimant's contract less payments made on the contract.

(2) A construction lien under this act attaches to the entire interest of the owner or lessee who contracted for the improvement, including any subsequently acquired legal or equitable interest.

(3) Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property to which the person contracting for the improvement had no legal title has a construction lien upon the improvement for which the contractor, subcontractor, supplier, or laborer provided labor, material, or equipment. The forfeiture, surrender, or termination of any title or interest held by an owner or lessee who contracted for an improvement to the property, an owner who subordinated his or her interest to the mortgage for the improvement, or an owner who has required the improvement does not defeat the lien of the contractor, subcontractor, supplier, or laborer upon the improvement.

(4) If the rights of a person contracting for an improvement as a land contract vendee or a lessee are forfeited, surrendered, or otherwise terminated, any lien claimant who has provided a notice of furnishing or is excused from providing a notice of furnishing under section 108, 108a, or 109 and who performs the covenants contained in the land contract or lease within 30 days after receiving actual notice of the forfeiture, surrender, or termination is subrogated to the rights of the contracting vendee or lessee as those rights existed immediately before the forfeiture, surrender, or termination.

(5) For purposes of this act, if the real property is owned or leased by more than 1 person, there is a rebuttable presumption that an improvement to real property under a contract with an owner or lessee was consented to by any other co-owner or co-lessee. If enforcement of a construction lien through foreclosure is sought and the court finds that the improvement was consented to by a co-owner or co-lessee who did not contract for the improvement, the court shall order the entire interest of that co-owner or co-lessee, including any subsequently acquired legal or equitable interest, to be subject to the construction lien. A deficiency judgment shall not be entered against a noncontracting owner, co-owner, lessee, or co-lessee.

(6) If the real property of an owner or lessee is subject to multiple construction liens, the sum of the construction liens shall not exceed the amount the owner or lessee agreed to pay the person with whom he or she contracted for the improvement as modified by all additions, deletions, and other amendments, less payments made by or on behalf of the owner or lessee, pursuant to either a contractor's sworn statement or a waiver of lien, in accordance with this act.

(7) After the effective date of the amendatory act that added this subsection, a construction lien of a subcontractor or supplier for an improvement to a residential structure shall only include an amount for interest, including, but not limited to, a time-price differential or a finance charge, if the amount is in accordance with the terms of the contract between the subcontractor or supplier and the contractor or subcontractor and does not include any interest that accrues after 90 days after the claim of lien is recorded.

Sec. 114. A contractor does not have a right to a construction lien on the interest of an owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract are also in writing. The contract required by this section shall contain a statement, in type no smaller than that of the body of the contract, stating all of the following:

(a) That a residential builder or a residential maintenance and alteration contractor is required to be licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412. That an electrician is required to be licensed under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892. That a plumbing contractor is required to be licensed under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569. That a mechanical contractor is required to be licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(b) If the contractor is required to be licensed to provide the contracted improvement, that the contractor is licensed and the contractor's license number.

Sec. 114a. (1) The owner of residential property on which a construction lien has been recorded by a person who was not licensed as described in section 114, or any person affected by the lien, may bring an action to discharge the lien.

(2) If the court in an action under subsection (1) determines that the person who recorded the lien was not licensed as required, the person is liable to the person who brought the action for all damages that result from the recording and any attempts to enforce the lien, including actual costs and attorney fees.

(3) A person who brings an action to recover for the performance of an act or contract for which a license is required as described in section 114 shall allege in the complaint and has the burden of proving that he or she was properly licensed.

Sec. 201. (1) The homeowner construction lien recovery fund is created within the department. The fund shall be self-supporting and shall be funded as follows:

(a) In addition to the license fee, a person who applies for 1 of the following shall pay a fee of \$10.00 and, subject to subsection (6), a person who applies to renew 1 of the following shall pay a fee of \$10.00 for each year that the renewed license will be valid:

(i) A residential builders license or a residential maintenance and alteration contractor's license under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

(ii) An electrical contractor's license under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892.

(iii) A plumbing contractor's license under the state plumbing act, 2002 PA 733, MCL 338.3511 to 338.3569.

(iv) A mechanical contractor's license under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988.

(b) A laborer who seeks to recover from the fund for the first time shall not be required to pay a fee until he or she obtains a recovery from the fund, at which time a fee of \$15.00 shall be withheld by the fund from the laborer's final recovery.

(c) Except for persons described in subdivisions (a) and (b), all other lien claimants may become members of the fund by paying a fee of \$50.00 prior to the date of the lien claimant's contract for the improvement to a residential structure. If the lien claimant is a supplier that conducts business from more than 1 retail location, each retail location shall be treated as a separate person for purposes of paying fees and renewal fees for fund membership.

(d) Subject to subsection (6), a person who has paid a fee under subdivision (b) or (c) shall pay a renewal fee as follows:

(i) If the person paid the initial fee on or before June 1, 2006, a renewal fee of \$30.00 on or before June 1, 2009, and a renewal fee of \$30.00 on or before June 1 of every third year after the first renewal payment.

(ii) If the person paid the initial fee after June 1, 2006, a renewal fee of \$30.00 on or before the first June 1 following the third anniversary date of the initial payment and a renewal fee of \$30.00 on or before June 1 of every third year after the first renewal payment.

(2) A person may pay a renewal fee under subsection (1)(d) after the date on which it is due, but is not entitled to recover from the fund for an improvement made after the due date and before the renewal fee is paid.

(3) A person who becomes a member of the fund by paying a fee under subsection (1) shall notify the department division that administers the fund and, if required by law, the appropriate licensing agency, in writing, of a change in the person's name, address, or form of business organization within 30 days of the change. Proof that a notice or other document related to this act was mailed or, if another method of delivery is required by law or rule, delivered by that other method to a member at the last address that the member provided to the fund administrator is conclusive proof that the notice or document was received by the member.

(4) At least 30 days before the date that a renewal payment under subsection (1)(d) is due, the department shall send a notice of the amount that will be due and the payment due date to the person who paid the fee under subsection (1)(b) or (c). The notice shall be sent by ordinary mail to the last address that the person provided to the fund administrator.

(5) A person is not entitled to recover from the fund unless the person has paid into the fund as required by this act.

(6) If on December 1 of any year the balance in the fund is more than \$6,000,000.00, a renewal fee under subsection (1) with a due date after January 1 of the following year is not due. If on any subsequent December 1 the balance in the fund is less than \$4,000,000.00, renewal fees under subsection (1) are due after January 1 of the following year.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 405 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor