

# SENATE BILL No. 1371

September 9, 2004, Introduced by Senator BASHAM and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1980 PA 497, entitled "Construction lien act," by amending the title and sections 104, 106, 107, 114, 201, 202, 203, and 204 (MCL 570.1104, 570.1106, 570.1107, 570.1114, 570.1201, 570.1202, 570.1203, and 570.1204), sections 104, 106, 107, 114, and 203 as amended by 1982 PA 17, section 201 as amended by 1984 PA 190, and section 202 as amended by 1981 PA 191, 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 ~~a~~ **the** homeowner construction lien recovery fund; ~~within the department of~~

1 ~~licensing and regulation;~~ to provide for the powers and duties  
2 of certain state officers **and agencies**; to provide for the  
3 ~~assessments~~ **assessment** of certain occupations; to **provide**  
4 **remedies and** prescribe penalties; and to repeal ~~certain~~ acts  
5 and parts of acts.

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

9       (2) "Department" means the department of ~~licensing and~~  
10 ~~regulation~~ **labor and economic growth**.

11       (3) "Designee" means the person named by an owner or lessee  
12 to receive, on behalf of the owner or lessee, all notices or  
13 other instruments whose furnishing is required by this act. The  
14 owner or lessee may name himself or herself as designee. The  
15 owner or lessee may not name the contractor as designee.  
16 However, a contractor who is providing only architectural or  
17 engineering services may be named as designee.

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

24       (5) "Fund" means the homeowner construction lien recovery  
25 fund created ~~under part 2~~ **in section 201**.

26       (6) "General contractor" means a contractor who contracts  
27 with an owner or lessee to provide, directly or indirectly

1 through contracts with subcontractors, suppliers, or laborers,  
2 substantially all of the improvements to the property described  
3 in the notice of commencement.

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

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

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

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

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

27 (4) "Subcontractor" means a person, other than a laborer or

1 supplier, who pursuant to a contract between himself or herself  
2 and a person other than the owner or lessee performs any part of  
3 a contractor's contract for an improvement.

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

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

12 Sec. 107. (1) Each contractor, subcontractor, supplier, or  
13 laborer who provides an improvement to real property ~~shall have~~  
14 **has** a construction lien upon the interest of the owner or lessee  
15 who contracted for the improvement to the real property, as  
16 described in the notice of commencement ~~provided for by~~ **given**  
17 **under** section 108 or 108a, the interest of an owner who has  
18 subordinated his or her interest to the mortgage for the  
19 improvement of the real property, and the interest of an owner  
20 who has required the improvement. A construction lien acquired  
21 pursuant to this act shall not exceed the amount of the lien  
22 claimant's contract less payments made on the contract.

23 (2) A construction lien under this act ~~shall attach~~  
24 **attaches** to the entire interest of the owner or lessee who  
25 contracted for the improvement, including any subsequently  
26 acquired legal or equitable interest.

27 (3) Each contractor, subcontractor, supplier, or laborer who

1 provides an improvement to real property to which the person  
2 contracting for the improvement had no legal title ~~shall have~~  
3 **has** a construction lien upon the improvement for which the  
4 contractor, subcontractor, supplier, or laborer provided labor,  
5 material, or equipment. The forfeiture, surrender, or  
6 termination of any title or interest held by ~~any~~ **an** owner or  
7 lessee who contracted for an improvement to the property, ~~or by~~  
8 ~~any~~ **an** owner who subordinated his or her interest to the  
9 mortgage for the improvement, or ~~by any~~ **an** owner who has  
10 required the improvement ~~shall~~ **does** not defeat the lien of the  
11 contractor, subcontractor, supplier, or laborer upon the  
12 improvement.

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

23 (5) For purposes of this act, if the real property is owned  
24 or leased by more than 1 person, **there is a rebuttable**  
25 **presumption that** an improvement to real property ~~pursuant to~~  
26 **under** a contract ~~which was entered into by~~ **with** an owner or  
27 lessee ~~shall be presumed to have been~~ **was** consented to by any

1 other co-owner or co-lessee. ~~, but the presumption shall in all~~  
2 ~~cases be rebuttable.~~ If enforcement of a construction lien  
3 through foreclosure is sought and the court finds that the  
4 improvement ~~has been~~ **was** consented to by a co-owner or  
5 co-lessee who did not contract for the improvement, the court  
6 shall order the entire interest of that co-owner or co-lessee,  
7 including any subsequently acquired legal or equitable interest,  
8 to be subject to the construction lien. A deficiency judgment  
9 shall not be entered against a noncontracting owner, co-owner,  
10 lessee, or co-lessee.

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

19 (7) **After the effective date of the amendatory act that**  
20 **added this subsection, a construction lien of a subcontractor or**  
21 **supplier for an improvement to a residential structure shall not**  
22 **include an amount charged or assessed under the contract between**  
23 **the subcontractor or supplier and the general contractor for**  
24 **interest on the unpaid principal amount due, a time-price**  
25 **differential, a finance charge, or any other item of interest.**

26 Sec. 114. A contractor ~~shall~~ **does** not have a right to a  
27 construction lien ~~upon~~ **on** the interest of ~~any~~ **an** owner or

1 lessee in a residential structure unless the contractor has  
2 provided an improvement to the residential structure pursuant to  
3 a written contract between the owner or lessee and the contractor  
4 and any amendments or additions to the contract **are** also ~~shall~~  
5 ~~be~~ in writing. The contract required by this section shall  
6 contain a statement, in type no smaller than that of the body of  
7 the contract, ~~setting forth~~ **stating** all of the following:

8 (a) That a residential builder or a residential maintenance  
9 and alteration contractor is required to be licensed under  
10 article 24 of ~~Act 299 of the Public Acts of 1980, as amended,~~  
11 ~~being sections 339.2401 to 339.2412 of the Michigan Compiled~~  
12 ~~Laws~~ **the occupational code, 1980 PA 299, MCL 339.2401 to**  
13 **339.2412.** That an electrician is required to be licensed under  
14 ~~Act No. 217 of the Public Acts of 1956, as amended, being~~  
15 ~~sections 338.881 to 338.892 of the Michigan Compiled Laws~~ **the**  
16 **electrical administrative act, 1956 PA 217, MCL 338.881 to**  
17 **338.892.** That a ~~plumber~~ **plumbing contractor** is required to be  
18 licensed under ~~Act No. 266 of the Public Acts of 1929, as~~  
19 ~~amended, being sections 338.901 to 338.917 of the Michigan~~  
20 ~~Compiled Laws~~ **the state plumbing act, 2002 PA 733, MCL 338.3511**  
21 **to 338.3569.** That a mechanical contractor is required to be  
22 licensed under the Forbes mechanical contractors act, 1984 PA  
23 192, MCL 338.971 to 338.988.

24 (b) If the contractor is required to be licensed to provide  
25 the contracted improvement, that the contractor is ~~so~~ licensed  
26 **and the contractor's license number.**

27 ~~(c) If a license is required, the contractor's license~~

1 number.

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

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

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

16       Sec. 201. (1) ~~A~~ The homeowner construction lien recovery  
17 fund is created within the department. ~~of licensing and~~  
18 ~~regulation.~~ The fund shall be self-supporting and shall ~~consist~~  
19 ~~of assessments charged in the following manner~~ be funded as  
20 follows:

21       (a) ~~Except as provided in subsection (4), when applying for~~  
22 ~~renewal licensure for 1982 and when applying for initial~~  
23 ~~licensure, each of the following persons shall be assessed in~~ In  
24 addition to the license fee, a ~~fee of \$50.00 for deposit in the~~  
25 ~~fund~~ person who applies for 1 of the following shall pay a fee  
26 of \$10.00 and a person who applies to renew 1 of the following  
27 shall pay a fee of \$10.00 for each year that the renewed license



1 will be valid:

2 (i) A ~~person applying for a~~ residential builders license  
 3 or a residential maintenance and alteration contractor's license  
 4 under article 24 of the occupational code, ~~Act No. 299 of the~~  
 5 ~~Public Acts of 1980, as amended, being sections 339.2401 to~~  
 6 ~~339.2412 of the Michigan Compiled Laws 1980 PA 299, MCL 339.2401~~  
 7 ~~to 339.2412.~~

8 (ii) ~~A person applying for an~~ **An** electrical contractor's  
 9 license under the electrical administrative act, ~~Act No. 217 of~~  
 10 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~  
 11 ~~338.892 of the Michigan Compiled Laws 1956 PA 217, MCL 338.881~~  
 12 ~~to 338.892.~~

13 (iii) A ~~person applying for an authorized master plumber's~~  
 14 **plumbing contractor's** license under ~~Act No. 266 of the Public~~  
 15 ~~Acts of 1929, as amended, being sections 338.901 to 338.917 of~~  
 16 ~~the Michigan Compiled Laws, which license authorizes the securing~~  
 17 ~~of plumbing installation permits~~ **the state plumbing act, 2002 PA**  
 18 **733, MCL 338.3511 to 338.3569.**

19 (iv) A ~~person applying for a~~ **mechanical contractor's**  
 20 license under the **Forbes** mechanical contractors act, **1984 PA 192,**  
 21 **MCL 338.971 to 338.988.**

22 (b) A laborer who seeks to recover from the fund **for the**  
 23 **first time** shall not be required to pay a fee until he or she  
 24 obtains a recovery from the fund, at which time a fee of \$15.00  
 25 shall be withheld by the fund from the laborer's final recovery.  
 26 ~~However, in no event shall the total amount withheld by the fund~~  
 27 ~~from a laborer in a 1-year period exceed \$50.00.~~

1 (c) Except for persons described in subdivisions (a) and  
2 (b), all other lien claimants may become members of the fund by  
3 paying a fee of \$50.00 prior to the date of the lien claimant's  
4 contract for the improvement to ~~the~~ a residential structure.  
5 ~~A lien claimant under this subdivision shall not pay a fee of~~  
6 ~~more than \$50.00 in a calendar year.~~ If the lien claimant is a  
7 supplier that conducts business from more than 1 retail location,  
8 each retail location shall be treated as a separate person for  
9 purposes of paying fees and renewal fees for fund membership.

10 (d) A person who has paid a fee under subdivision (b) or (c)  
11 shall pay a renewal fee as follows:

12 (i) If the person paid the initial fee on or before June 1,  
13 2002, a renewal fee of \$50.00 shall be paid on or before June 1,  
14 2005, and a renewal fee of \$50.00 on or before June 1 of every  
15 third year after the first renewal payment.

16 (ii) If the person paid the initial fee after June 1, 2002,  
17 a renewal fee of \$50.00 on or before the first June 1 following  
18 the third anniversary date of the initial payment, plus a  
19 proportional amount for the portion of the year from that  
20 anniversary date to June 1, and a renewal fee of \$50.00 on or  
21 before June 1 of every third year after the first renewal  
22 payment.

23 (2) ~~If, on December 1 of any year, the balance in the fund~~  
24 ~~is less than \$1,000,000.00, the director of licensing and~~  
25 ~~regulation may require an additional assessment or payment, not~~  
26 ~~to exceed \$50.00, from each of the persons described in~~  
27 ~~subsection (1)(a) and (c), unless, within 30 legislative days~~

1 ~~after the director requires an additional assessment, the~~  
2 ~~legislature, by majority vote of the members elected and serving~~  
3 ~~in both houses by record roll call vote, adopts a concurrent~~  
4 ~~resolution to prohibit the additional assessment. As used in~~  
5 ~~this subsection "legislative day" means a day on which the senate~~  
6 ~~and house is called to order and a quorum of the senate and house~~  
7 ~~is present. A person may pay a renewal fee under subsection~~  
8 ~~(1) (d) after the date on which it is due, but is not entitled to~~  
9 ~~recover from the fund for an improvement made after the due date~~  
10 ~~and before the renewal fee is paid.~~

11 (3) A person who becomes a member of the fund by paying a  
12 fee under subsection (1) shall notify the department division  
13 that administers the fund, in writing, of a change in the  
14 person's name, address, or form of business organization within  
15 30 days of the change. Proof that a notice or other document was  
16 mailed or, if another method of delivery is required by law or  
17 rule, delivered by that other method to a member at the last  
18 address that the member provided to the fund administrator is  
19 conclusive proof that the notice or document was received by the  
20 member.

21 (4) ~~(3)~~ A person ~~shall~~ is not ~~be~~ entitled to recover  
22 from the fund unless ~~he or she~~ the person has paid into the  
23 fund as required by this ~~section~~ act.

24 ~~(4) Notwithstanding subsection (1) (a), a person shall not~~  
25 ~~be assessed more than \$50.00 in an assessment period regardless~~  
26 ~~of the number of licenses applied for or held.~~

27 Sec. 202. (1) The director of ~~licensing and regulation~~

1 **the department** shall manage the ~~affairs of the fund pursuant~~  
2 **fund according** to this act. A detailed financial statement of  
3 the condition of the fund shall be published by the director  
4 annually. ~~This~~ **The** fund shall be subject to an audit by the  
5 auditor general. The state treasurer shall deposit or invest  
6 money from the fund, in the same manner **as** and subject to all  
7 provisions of law ~~with respect~~ **that apply** to the deposit or  
8 investment of state funds by the state treasurer, and interest  
9 earned shall be credited to the fund. The unexpended fund  
10 balance shall carry forward to the new fiscal year at the end of  
11 each fiscal year.

12 (2) The department may employ ~~such~~ office clerical and  
13 professional help and claims investigators as ~~are~~ necessary to  
14 carry out ~~the provisions of~~ this act. The attorney general  
15 shall assign members of his or her staff and may supplement that  
16 staff by contracting with ~~these~~ private attorneys as ~~are~~  
17 necessary to adequately defend ~~the~~ actions against the fund.  
18 All wages, professional fees, and other administrative  
19 expenditures necessary for operation and defense of the fund,  
20 including legal counsel, shall be charged to and payable from the  
21 fund. Except ~~as provided in subsection (3)~~ **for legal counsel**  
22 **fees, the amount paid in a fiscal year for wages, professional**  
23 **fees, and other administrative expenditures** ~~necessary for the~~  
24 ~~operation of the fund~~ shall not exceed 20% of ~~funds collected~~  
25 ~~by the fund in the previous fiscal year~~ **the average of the**  
26 **ending balances in the fund for the previous 2 fiscal years.**

27 ~~(3) If the \$50.00 fee is not assessed against license~~

1 ~~applications and renewals during a year under section 201, the~~  
2 ~~limitation on fund expenditures provided in subsection (2) shall~~  
3 ~~be calculated on the basis of the closest previous year in which~~  
4 ~~the \$50.00 fee was assessed and collected for license application~~  
5 ~~and renewals under section 201.~~

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

11       (a) Paid the contractor for the improvement to the  
12 residential structure, ~~and~~ **indicating in the affidavit** the  
13 amount of the payment.

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

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

18       (2) ~~In the absence of a~~ **If there is no** written contract  
19 ~~pursuant to~~ **as required by** section 114, the filing of an  
20 affidavit under this section ~~shall create~~ **creates** a rebuttable  
21 presumption that the owner or lessee has paid the contractor for  
22 the improvement. The presumption may be overcome only by a  
23 showing of clear and convincing evidence to the contrary.

24       (3) Subject to section 204, a person who has recorded a  
25 claim of lien and who is precluded from ~~recovering~~ **having** a  
26 construction lien under subsection (1) may recover from the fund  
27 the amount ~~for which the lien is established~~ **he or she would**

1 **have been entitled to recover but for subsection (1).** A person  
2 who seeks recovery from the fund shall establish all of the  
3 following:

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

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

9 (c) That the contractor or subcontractor has retained or  
10 used the proceeds or any part of the proceeds paid to the  
11 contractor or subcontractor without having paid the person  
12 claiming the construction lien.

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

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

16 (f) That he or she has complied with any applicable  
17 licensing acts.

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

20 (h) That the contractor or ~~the~~ subcontractor ~~—~~ with whom  
21 the person claiming the construction lien contracted ~~with,~~ is  
22 licensed if required by law to be licensed.

23 **(i) That the contractor or subcontractor with whom the**  
24 **person claiming the construction lien contracted is the same**  
25 **individual or legal entity with whom the owner or lessee**  
26 **contracted.**

27 (4) A subcontractor, supplier, or laborer who seeks

1 enforcement of a construction lien on a residential structure  
2 through foreclosure shall join the fund as a defendant in the  
3 foreclosure action ~~—~~ and **serve** a summons and complaint ~~shall~~  
4 ~~be served~~ on the ~~director~~ **office of the fund administrator**  
5 **within the department** by certified or registered mail ~~—~~ or by  
6 leaving a copy ~~thereof~~ at the office. ~~of the director.~~ The  
7 failure to serve a summons and complaint ~~upon the fund shall~~  
8 ~~constitute a bar to~~ **under this subsection bars** recovery from the  
9 fund. After ~~service upon the defendant of~~ **a defendant is**  
10 **served with** a summons and complaint in an action ~~in which~~  
11 ~~enforcement of~~ **to foreclose** a construction lien, ~~through~~  
12 ~~foreclosure is sought,~~ the department may intervene in the  
13 action as a party defendant with respect to other construction  
14 liens.

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

18 (6) Payment from the fund shall be made only if the court  
19 finds that a subcontractor, supplier, or laborer is entitled to  
20 payment from the fund. Subject to section 204, after the  
21 judgment has become final the department shall pay the amount of  
22 the judgment out of the fund.

23 Sec. 204. (1) **A payment from the fund shall not include an**  
24 **amount for interest on the unpaid principal amount due, a**  
25 **time-price differential, a finance charge, or any other form of**  
26 **interest.**

27 (2) The department shall not pay out of the fund to

1 subcontractors, suppliers, and laborers more than \$75,000.00 per  
2 residential structure. When it appears that the amount claimed  
3 from the fund ~~—~~ with respect to a residential structure ~~—~~  
4 will exceed \$75,000.00, the department may delay payment until  
5 the total amount to be paid can be ascertained. If the total  
6 amount payable to subcontractors, suppliers, and laborers exceeds  
7 \$75,000.00, they shall be paid their proportional shares of that  
8 amount.