

HOUSE BILL NO. 5092

October 08, 2019, Introduced by Rep. Iden and referred to the Committee on Judiciary.

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending section 119 (MCL 570.1119), as amended by 2018 PA 367.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 119. (1) Except as otherwise provided by subsection (4),
2 as between parties entitled to claim construction liens under this
3 act, the liens have equal priority. This subsection applies and the
4 construction liens have equal priority regardless of whether the
5 lien arises at the time of the first actual physical improvement or
6 at the time a notice is recorded under section 107a or 107b.



1 (2) A construction lien under this act has priority over all
2 garnishments for the contract debt made after the lien arises,
3 without regard to the date of recording of the claim of lien.

4 (3) ~~A~~**Except as provided in subsection (7),** a construction
5 lien arising under this act has priority over all other interests,
6 liens, or encumbrances that may attach to the building, structure,
7 or improvement, or on the real property on which the building,
8 structure, or improvement is erected, if the other interests,
9 liens, or encumbrances are recorded after the construction lien
10 arises.

11 (4) A mortgage, lien, encumbrance, or other interest recorded
12 before the construction lien arises has priority over a
13 construction lien arising under this act. The priority of the
14 mortgage exists as to all obligations secured by the mortgage
15 except for indebtedness arising out of advances made after the
16 construction lien arises. An advance made pursuant to the mortgage,
17 but after the construction lien arises, has priority over a
18 construction lien if, for that advance, the mortgagee has received
19 a contractor's sworn statement as provided in section 110, has made
20 disbursements pursuant to the contractor's sworn statement, and has
21 received waivers of lien from the contractor and all
22 subcontractors, laborers, and suppliers who have provided notices
23 of furnishing. The construction lien of a lien claimant not set
24 forth on the sworn statement on which an advance was made is
25 subordinate to the lien of the mortgage, including the advance,
26 unless before the advance the lien claimant provided the designee
27 with a notice of furnishing if required by section 109 or recorded
28 a claim of lien. An advance made after a notice of furnishing has
29 been provided or has been excused as provided in sections 108,



1 108a, and 109 or after a claim of lien has been recorded is
2 subordinate to the construction lien of the lien claimant unless
3 before the advance the mortgagee received from the lien claimant
4 either a full unconditional waiver of lien or a partial
5 unconditional waiver of lien for the full amount due the lien
6 claimant as of the date through which the lien is waived as shown
7 on the lien waiver and the date through which the lien is waived as
8 shown on the partial unconditional waiver is within 30 days before
9 the advance.

10 (5) For purposes of this section, retainage that is not
11 payable under a contract until a certain event happens in addition
12 to an improvement being provided, is not due as of the date the
13 improvement is provided.

14 (6) For purposes of determining priorities under this section,
15 a construction lien arises as follows:

16 (a) Except as provided in subdivision (b), at the time of the
17 first actual physical improvement.

18 (b) As to a lien claimed by a person after the person has
19 recorded a notice under section 107a or 107b, at the time a notice
20 is recorded, subject to any applicable limitation under section
21 107a(4) or 107b(4).

22 **(7) A construction lien under this act does not take priority**
23 **over a perfected security interest in rents under the Michigan**
24 **uniform assignment of rents act.**

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.

27 Enacting section 2. This amendatory act does not take effect
28 unless Senate Bill No.____ or House Bill No. 5086 (request no.
29 01421'19) of the 100th Legislature is enacted into law.

