

SENATE BILL No. 548

May 7, 2009, Introduced by Senators BASHAM, GARCIA, GLEASON and JANSEN and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1980 PA 497, entitled
"Construction lien act,"
by amending section 203 (MCL 570.1203), as amended by 2006 PA 572.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 203. (1) A claim of construction lien does not attach to
2 a residential structure, to the extent payments have been made, if
3 the owner or lessee files an affidavit with the court indicating
4 that the owner or lessee has done all of the following:

5 (a) Paid the contractor for the improvement to the residential
6 structure according to the contract, indicating in the affidavit
7 the amount of the payment. The owner or lessee shall attach to the
8 affidavit copies of the contract, any change orders, and any
9 evidence of the payment that the owner or lessee has, including,

1 but not limited to, a canceled check or a credit card or other
2 receipt.

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

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

7 (2) If there is no written contract as required by section
8 114, the filing of an affidavit under this section creates a
9 rebuttable presumption that the owner or lessee has paid the
10 contractor for the improvement. The presumption may be overcome
11 only by a showing of clear and convincing evidence to the contrary.

12 (3) Subject to section 204, a person who has recorded a claim
13 of lien and who is precluded from having a construction lien under
14 subsection (1) may recover from the fund the amount he or she would
15 have been entitled to recover but for subsection (1). A person who
16 seeks recovery from the fund shall establish all of the following:

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

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

22 (c) That the contractor or subcontractor has retained or used
23 the proceeds or any part of the proceeds paid to the contractor or
24 subcontractor without having paid the person claiming the
25 construction lien.

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

27 (e) That he or she has not colluded with another person to

1 obtain a payment from the fund.

2 (f) That he or she has complied with any applicable licensing
3 acts.

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

6 (h) That the contractor or subcontractor with whom the person
7 claiming the construction lien contracted is licensed if required
8 by law to be licensed.

9 (i) That the contractor or subcontractor with whom the person
10 claiming the construction lien contracted is the same individual or
11 legal entity with whom the owner or lessee contracted.

12 (j) If the person claiming the construction lien is a
13 supplier, that he or she has documentary proof that, unless the
14 supplier had provided material or equipment to the contractor or
15 subcontractor within the preceding year, before he or she provided
16 the material or equipment that is the subject of the lien without
17 obtaining advance payment in full, he or she did both of the
18 following:

19 (i) Required the contractor or subcontractor to whom he or she
20 provided the material or equipment to complete and submit a credit
21 application.

22 (ii) Before beginning to supply material or equipment to the
23 contractor or subcontractor without obtaining advance payment in
24 full, did either of the following, as applicable:

25 (A) If the contractor or subcontractor is a corporation whose
26 shares are publicly traded, obtained a report on the contractor or
27 subcontractor from a nationally or regionally recognized

1 organization that provides credit ratings of businesses to
2 determine the financial stability of the contractor or
3 subcontractor.

4 (B) If sub-subparagraph (A) does not apply, did both of the
5 following:

6 (I) Obtained a credit report on the owner or qualifying
7 officer or the principal partners, officers, shareholders, or
8 members of the contractor or subcontractor to determine the
9 financial stability of the contractor or subcontractor.

10 (II) If the contractor or subcontractor is less than 4 years
11 old, obtained a personal guaranty from the owner or 1 or more of
12 the partners, officers, directors, managing members, trustees, or
13 shareholders of the contractor or subcontractor.

14 (k) If the person claiming the construction lien is a supplier
15 seeking to recover for material or equipment supplied to a
16 contractor or subcontractor without obtaining advance payment in
17 full, that a credit report obtained by the supplier on the
18 contractor or subcontractor did not disclose any of the following:

19 (i) That the contractor or subcontractor was, at the time of
20 the application, or had been, within 2 years before the
21 application, insolvent.

22 (ii) That the contractor or subcontractor was, at the time of
23 the application, subject to a receivership.

24 (iii) Total delinquent judgments of more than \$1,000.00.

25 (4) A subcontractor, supplier, or laborer who seeks
26 enforcement of a construction lien on a residential structure
27 through foreclosure shall join the fund as a defendant in the

1 foreclosure action within the period provided in section 117(1).

2 The subcontractor, supplier, or laborer shall serve a summons and
3 complaint on the office of the fund administrator within the
4 department by certified or registered mail or by leaving a copy at
5 the office. The failure to serve a summons and complaint under this
6 subsection bars recovery from the fund. ~~After a defendant is served~~

7 ~~with a summons and complaint in an action to foreclose a~~
8 ~~construction lien, the department may intervene in the action as a~~
9 ~~party defendant with respect to other construction liens. A LIEN~~

10 **CLAIMANT WHO IS NOT A MEMBER OF THE FUND IS NOT REQUIRED TO JOIN**
11 **THE FUND AS A DEFENDANT OR SERVE THE SUMMONS AND COMPLAINT ON THE**
12 **OFFICE OF THE FUND ADMINISTRATOR UNDER THIS SECTION.**

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

16 (6) A payment from the fund shall not include interest on the
17 unpaid principal amount due, including, but not limited to, a time-
18 price differential or a finance charge, that accrued after 90 days
19 after the claim of lien was recorded.

20 (7) A payment from the fund to a supplier shall not include
21 money due for material or equipment supplied to a contractor or
22 subcontractor without obtaining advance payment in full if either
23 of the following applies:

24 (a) The contractor or subcontractor was delinquent in paying
25 the supplier for material or equipment for more than the following
26 number of days after the first business day of the month following
27 the shipment of the material or equipment:

1 (i) In 2007, 180 days.

2 (ii) In 2008, 150 days.

3 (iii) In 2009, 120 days.

4 (iv) In 2010 and each year after 2010, 90 days.

5 (b) The contractor or subcontractor was indebted to the
6 supplier in an amount equal to or more than the credit limit
7 established by the supplier for the contractor or subcontractor at
8 the time the material or equipment was supplied.

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