

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2180 Session of
1978

INTRODUCED BY KOWALYSHYN, REED, BERSON, SCIRICA AND MEBUS,
MARCH 15, 1978

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 1978

AN ACT

1 Amending the act of August 24, 1963 (P.L.1175, No.497), entitled
2 "An act to codify, amend, revise and consolidate the laws
3 relating to mechanics' liens," increasing the amount of the
4 minimum claim, requiring the filing of a payment bond when
5 the right to a claim is waived and setting forth the terms of
6 the bond.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 301 and subsection (b) of section 306,
10 act of August 24, 1963 (P.L.1175, No.497), known as the
11 "Mechanics' Lien Law of 1963," are amended to read:

12 Section 301. Right to Lien; Amount.--Every improvement and
13 the estate or title of the owner in the property shall be
14 subject to a lien, to be perfected as herein provided, for the
15 payment of all debts due by the owner to the contractor or by
16 the contractor to any of his subcontractors for labor or
17 materials furnished in the erection or construction, or the
18 alteration or repair of the improvement, provided that the
19 amount of the claim, other than amounts determined by
20 apportionment under section 306 (b) of this act, shall exceed

1 [five hundred dollars (\$500)] one thousand dollars (\$1,000).

2 Section 306. Consolidation or Apportionment of Claims.--

3 * * *

4 (b) Apportionment of Claims. Where a debt is incurred for
5 labor or materials furnished by the same claimant for work upon
6 several different improvements which do not form all or part of
7 a single business or residential plant, the claimant shall file
8 separate claims with respect to each such improvement, with the
9 amount of each claim determined by apportionment of the total
10 debt to the several improvements, and in such case, the amount
11 of each separate claim may be less than [five hundred dollars
12 (\$500)] one thousand dollars (\$1,000), provided that the total
13 debt exceeds [five hundred dollars (\$500)] one thousand dollars
14 (\$1,000). In no other case shall an apportioned claim be
15 allowed.

16 Section 2. The act is amended by adding a section to read:

17 Section 408. Payment Bond.--

18 (a) Except as provided in subsection (g) of this section,
19 the waiver of a right to file a claim under sections 401, 402 or
20 403 of this act shall not be effective unless the owner shall
21 have filed simultaneously in the office of the prothonotary in
22 the county in which work is to be performed a payment bond with
23 corporate surety as hereinafter provided in subsection (b) of
24 this section or cash security in an amount not less than one
25 hundred percent (100%) of the amount of the contract between the
26 owner and contractor for the improvement. Said amount of
27 contract shall be stated in the waiver. Such security shall be
28 solely for the protection of the contractor and his
29 subcontractors, as well as insuring to third parties relying
30 thereon, and shall be conditioned on the prompt payment to them

1 for all labor or materials furnished by them in the erection or
2 construction or the alteration or repair of the improvement,
3 provided the amount of the claim is in excess of the minimum
4 amount set forth in section 301 of this act. "Labor or
5 materials" shall include public utility services and reasonable
6 rentals of equipment, but only for periods when the equipment
7 rental is actually used at the site.

8 (b) The payment bond shall be executed by one or more surety
9 companies legally authorized to do business in the Commonwealth
10 of Pennsylvania on a form filed with and approved by the
11 Insurance Commissioner of Pennsylvania for this purpose and
12 shall be payable to the contractor and his subcontractors.

13 (c) Any contractor or subcontractor who has performed labor
14 or furnished materials in the prosecution of the work provided
15 under a contract for which a payment bond or cash security has
16 been filed as provided in subsection (a) of this section and who
17 has not been paid in full therefore before the expiration of
18 ninety (90) days after the day on which the contractor or
19 subcontractor performed the last of such labor or furnished the
20 last of such material for which he claims payments, may bring an
21 action on such payment bond or cash security in his own name, in
22 assumpsit, to recover any amount due him for such labor or
23 material, and may prosecute such action to final judgment and
24 have execution on the judgment.

25 (d) No such action may be commenced after the expiration of
26 one (1) year from the day on which the last of the labor was
27 performed or material was supplied for the payment of which such
28 action is brought by the claimant, except that as to claims by
29 subcontractors, in the event that the claimant was entitled to
30 payment under its contract with the contractor upon the

1 occurrence of a contingency or event other than, or in addition
2 to, completion of the work under its contract with the
3 contractor, then and in that event, no action may be commenced
4 after the expiration of one (1) year from the date of the
5 occurrence of such contingency or event. A claimant may bring an
6 action on the bond or cash security only if he has given written
7 notice to the party from whom payment is claimed and corporate
8 surety within ninety (90) days from the date on which the
9 claimant performed the last of the labor or furnished the last
10 of the material for which he claims payment, stating with
11 substantial accuracy the amount claimed and the name of the
12 person for whom the work was performed or to whom the material
13 was furnished. Notice shall be served by registered or certified
14 mail, postage prepaid, in an envelope addressed to the party
15 from whom payment is claimed at any place where its office is
16 regularly maintained for the transaction of business or to the
17 surety, at its principal place of business, or served in any
18 manner in which legal process may be served in the manner now or
19 hereafter provided by law for the service of a summons, except
20 that such service need not be made by a public officer.

21 (e) The owner shall furnish a certified copy of any payment
22 bond to any contractor or subcontractor who makes an application
23 for such a copy provided the applicant for such a copy pays the
24 cost of reproduction to any owner demanding such payment.

25 (f) Every action on a payment bond or the cash security as
26 provided in this section shall be brought either in the
27 appropriate court of a county where the contract, or any part
28 thereof, for which the bond or security was given to be
29 performed or such other county as the statutes of the
30 Commonwealth of Pennsylvania shall provide or in the United

1 States District Court for the district in which the improvement,
2 or any part thereof, is situated, and not elsewhere.

3 (g) The provisions of this section shall not apply where the
4 right to file a claim arises in connection with the furnishing
5 of labor or materials when the total cost for the erection,
6 construction, alteration or repair of any improvement is less
7 than two hundred thousand dollars (\$200,000).

8 (h) The filing of a bond or security pursuant to this
9 section shall create a conclusive presumption relating to the
10 validity and enforceability of the waiver notwithstanding any
11 subsequent inadequacy, unenforceability or validity of said bond
12 or security.

13 Section 3. This act shall take effect in 90 days.