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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1637

Session of  
2005

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INTRODUCED BY KENNEY, J. TAYLOR, BELFANTI, CALTAGIRONE,  
CRAHALLA, CREIGHTON, DENLINGER, JAMES, KOTIK, PYLE, STABACK,  
THOMAS, WALKO, YOUNGBLOOD, MUSTIO, M. KELLER, BEYER,  
FAIRCHILD, LEH AND BASTIAN, JUNE 6, 2005

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SENATOR SCARNATI, LABOR AND INDUSTRY, IN SENATE, AS AMENDED,  
MAY 1, 2006

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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," further providing for  
4 definitions, for waiver of liens, for effect of waiver of  
5 liens, for rescission of contracts between contractors and  
6 subcontractors, FOR NOTICES BY SUBCONTRACTORS AS CONDITION  
7 PRECEDENT, FOR FILING AND NOTICE OF FILING OF CLAIM and for  
8 priority of liens. <—

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Sections 201 and 401 of the act of August 24,  
12 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of  
13 1963, are amended to read:

14 Section 201. Definitions.--The following words, terms and  
15 phrases when used in this act shall have the meaning ascribed to  
16 them in this section, except where the context clearly indicates  
17 a different meaning:

18 (1) "Improvement" includes any building, structure or other  
19 improvement of whatsoever kind or character erected or

1 constructed on land, together with the fixtures and other  
2 personal property used in fitting up and equipping the same for  
3 the purpose for which it is intended.

4 (2) "Property" means the improvement, the land covered  
5 thereby and the lot or curtilage appurtenant thereto belonging  
6 to the same legal or equitable owner reasonably needed for the  
7 general purposes thereof and forming a part of a single business  
8 or residential plant.

9 (3) "Owner" means an owner in fee, a tenant for life or  
10 years or one having any other estate in or title to property.

11 (4) "Contractor" means one who, by contract with the owner,  
12 express or implied, erects, constructs, alters or repairs an  
13 improvement or any part thereof or furnishes labor, skill or  
14 superintendence thereto; or supplies or hauls materials,  
15 fixtures, machinery or equipment reasonably necessary for and  
16 actually used therein; or any or all of the foregoing, whether  
17 as superintendent, builder or materialman. The term also  
18 includes an architect or engineer who, by contract with the  
19 owner, express or implied, in addition to the preparation of  
20 drawings, specifications and contract documents also  
21 superintends or supervises any such erection, construction,  
22 alteration or repair.

23 (5) "Subcontractor" means one who, by contract with the  
24 contractor, OR PURSUANT TO A CONTRACT WITH A SUBCONTRACTOR IN  
25 DIRECT PRIVITY OF A CONTRACT WITH A CONTRACTOR, express or  
26 implied, erects, constructs, alters or repairs an improvement or  
27 any part thereof; or furnishes labor, skill or superintendence  
28 thereto; or supplies or hauls materials, fixtures, machinery or  
29 equipment reasonably necessary for and actually used therein; or  
30 any or all of the foregoing, whether as superintendent, builder

<—

1 or materialman. The term does not include an architect or  
2 engineer who contracts with a contractor or subcontractor, or a  
3 person who contracts with a ~~subcontractor or with a materialman.~~ <—  
4 [SUBCONTRACTOR OR WITH A] MATERIALMAN OR A PERSON WHO CONTRACTS <—  
5 WITH A SUBCONTRACTOR NOT IN DIRECT PRIVITY OF A CONTRACT WITH A  
6 CONTRACTOR.

7 (6) "Claimant" means a contractor or subcontractor who has  
8 filed or may file a claim under this act for a lien against  
9 property.

10 (7) "Materials" means building materials and supplies of all  
11 kinds, and also includes fixtures, machinery and equipment  
12 reasonably necessary to and incorporated into the improvement.

13 (8) "Completion of the work" means performance of the last  
14 of the labor or delivery of the last of the materials required  
15 by the terms of the claimant's contract or agreement, whichever  
16 last occurs.

17 (9) "Labor" includes the furnishing of skill or  
18 superintendence.

19 (10) "Erection and construction" means the erection and  
20 construction of a new improvement or of a substantial addition  
21 to an existing improvement or any adaptation of an existing  
22 improvement rendering the same fit for a new or distinct use and  
23 effecting a material change in the interior or exterior thereof.

24 (11) "Alteration and repair" means any alteration or repair  
25 of an existing improvement which does not constitute erection or  
26 construction as defined herein.

27 (12) "Erection, construction, alteration or repair"  
28 includes:

29 (a) Demolition, removal of improvements, excavation,  
30 grading, filling, paving and landscaping, when such work is

1 incidental to the erection, construction, alteration or repair;

2 (b) Initial fitting up and equipping of the improvement with  
3 fixtures, machinery and equipment suitable to the purposes for  
4 which the erection, construction, alteration or repair was  
5 intended; and

6 (c) Furnishing, excavating for, laying, relaying, stringing  
7 and restringing rails, ties, pipes, poles and wires, whether on  
8 the property improved or upon other property, in order to supply  
9 services to the improvement.

10 (13) "Prothonotary" means the prothonotary of the court or  
11 courts of common pleas of the county or counties in which the  
12 improvement is situate.

13 ~~(14) "Residential building" means any of the following,~~ <—  
14 ~~including accessory structures:~~

15 ~~(a) a detached one family dwelling;~~

16 ~~(b) a detached two family dwelling; or~~

17 ~~(c) a multiple single family dwelling which is not more than~~  
18 ~~three stories in height and which has a separate means of~~  
19 ~~egress.~~

20 ~~Section 401. Waiver of Lien by Claimant. A contractor or~~  
21 ~~subcontractor may waive his right to file a claim against~~  
22 ~~property on which there is a residential building by a written~~  
23 ~~instrument signed by him or by any conduct which operates~~  
24 ~~equitably to estop such contractor or subcontractor from filing~~  
25 ~~a claim.~~

26 ~~(14) "RESIDENTIAL BUILDING" MEANS PROPERTY ON WHICH THERE IS~~ <—  
27 ~~A RESIDENTIAL BUILDING, OR WHICH IS ZONED OR OTHERWISE APPROVED~~  
28 ~~FOR RESIDENTIAL DEVELOPMENT, PLANNED DEVELOPMENT OR AGRICULTURAL~~  
29 ~~USE, OR FOR WHICH A RESIDENTIAL SUBDIVISION PLAN OR PLANNED~~  
30 ~~RESIDENTIAL DEVELOPMENT PLAN HAS RECEIVED PRELIMINARY, TENTATIVE~~

1 OR FINAL APPROVAL PURSUANT TO THE ACT OF JULY 31, 1968 (P.L.805,  
2 NO.247), KNOWN AS THE "PENNSYLVANIA MUNICIPALITIES PLANNING  
3 CODE."

4 [SECTION 401. WAIVER OF LIEN BY CLAIMANT.--A CONTRACTOR OR  
5 SUBCONTRACTOR MAY WAIVE HIS RIGHT TO FILE A CLAIM BY A WRITTEN  
6 INSTRUMENT SIGNED BY HIM OR BY ANY CONDUCT WHICH OPERATES  
7 EQUITABLY TO ESTOP SUCH CONTRACTOR OR SUBCONTRACTOR FROM FILING  
8 A CLAIM.]

9 SECTION 401. WAIVER OF LIEN BY CLAIMANT.--

10 (A) RESIDENTIAL BUILDINGS.

11 (1) A CONTRACTOR MAY WAIVE HIS RIGHT TO FILE A CLAIM AGAINST  
12 PROPERTY FOR THE ERECTION, CONSTRUCTION, ALTERATION OR REPAIR OF  
13 A RESIDENTIAL BUILDING, IN WHICH THE TOTAL CONTRACT PRICE  
14 BETWEEN THE OWNER AND THE CONTRACTOR IS LESS THAN ONE MILLION  
15 DOLLARS (\$1,000,000), BY A WRITTEN INSTRUMENT SIGNED BY HIM OR  
16 BY ANY CONDUCT WHICH OPERATES EQUITABLY TO ESTOP SUCH CONTRACTOR  
17 FROM FILING A CLAIM.

18 (2) (I) A SUBCONTRACTOR MAY WAIVE HIS RIGHT TO FILE A CLAIM  
19 AGAINST PROPERTY FOR THE ERECTION, CONSTRUCTION, ALTERATION OR  
20 REPAIR OF A RESIDENTIAL BUILDING, IN WHICH THE TOTAL CONTRACT  
21 PRICE BETWEEN THE OWNER AND THE CONTRACTOR IS LESS THAN ONE  
22 MILLION DOLLARS (\$1,000,000), BY A WRITTEN INSTRUMENT SIGNED BY  
23 HIM OR BY ANY CONDUCT WHICH OPERATES EQUITABLY TO ESTOP HIM FROM  
24 FILING A CLAIM.

25 (II) A SUBCONTRACTOR MAY WAIVE HIS RIGHT TO FILE A CLAIM  
26 AGAINST THE PROPERTY, IRRESPECTIVE OF THE CONTRACT PRICE BETWEEN  
27 THE OWNER AND THE CONTRACTOR, OF A RESIDENTIAL BUILDING BY A  
28 WRITTEN INSTRUMENT SIGNED BY HIM OR BY ANY CONDUCT WHICH  
29 OPERATES EQUITABLY TO ESTOP HIM FROM FILING A CLAIM, PROVIDED  
30 THE CONTRACTOR HAS POSTED A BOND GUARANTEEING PAYMENT FOR LABOR

1 AND MATERIALS PROVIDED BY SUBCONTRACTORS.

2 (B) NON-RESIDENTIAL BUILDINGS.

3 (1) EXCEPT AS PROVIDED IN SUBSECTION (A)(1), A WAIVER BY A  
4 CONTRACTOR OF LIEN RIGHTS IS AGAINST PUBLIC POLICY, UNLAWFUL AND  
5 VOID, UNLESS GIVEN IN CONSIDERATION FOR PAYMENT FOR THE WORK,  
6 SERVICES, MATERIALS OR EQUIPMENT PROVIDED AND ONLY TO THE EXTENT  
7 THAT SUCH PAYMENT IS ACTUALLY RECEIVED.

8 (2) EXCEPT AS PROVIDED IN SUBSECTION (A)(2), A WAIVER BY A  
9 SUBCONTRACTOR OF LIEN RIGHTS IS AGAINST PUBLIC POLICY, UNLAWFUL  
10 AND VOID, UNLESS GIVEN IN CONSIDERATION FOR PAYMENT FOR THE  
11 WORK, SERVICES, MATERIALS OR EQUIPMENT PROVIDED AND ONLY TO THE  
12 EXTENT THAT SUCH PAYMENT IS ACTUALLY RECEIVED, OR UNLESS THE  
13 CONTRACTOR HAS POSTED A BOND GUARANTEEING PAYMENT FOR LABOR AND  
14 MATERIALS PROVIDED BY SUBCONTRACTORS.

15 Section 2. Section 402 of the act, amended October 8, 2004  
16 (P.L.806, No.96), is amended to read:

17 Section 402. Waiver by Contractor; Effect on  
18 Subcontractor.--

19 ~~(a) General Rule. A written contract between the owner of~~ <—  
20 ~~property on which there is a residential building and a~~

21 (A) GENERAL RULE.--[A] PROVIDED LIEN RIGHTS MAY BE WAIVED AS <—  
22 SET FORTH UNDER SECTION 401, A WRITTEN CONTRACT BETWEEN THE  
23 OWNER AND A contractor, or a separate written instrument signed  
24 by the contractor, which provides that no claim shall be filed  
25 by anyone, shall be binding: but the only admissible evidence  
26 thereof, as against a subcontractor, shall be proof of actual  
27 notice thereof to him before any labor or materials were  
28 furnished by him; or proof that such contract or separate  
29 written instrument was filed in the office of the prothonotary  
30 prior to the commencement of the work upon the ground or within

1 ten (10) days after the execution of the principal contract or  
2 not less than ten (10) days prior to the contract with the  
3 claimant subcontractor, indexed in the name of the contractor as  
4 defendant and the owner as plaintiff and also in the name of the  
5 contractor as plaintiff and the owner as defendant. The only  
6 admissible evidence that such a provision has, notwithstanding  
7 its filing, been waived in favor of any subcontractor, shall be  
8 a written agreement to that effect signed by all those who,  
9 under the contract, have an adverse interest to the  
10 subcontractor's allegation.

11 (b) Electronic Indexing. Notwithstanding the indexing  
12 requirements of subsection (a) in offices of the prothonotary in  
13 which such a written contract between the owner and contractor  
14 or separate written instrument is indexed electronically by  
15 means of a computer system or similar system such that the names  
16 of the contractor and owner are electronically retrievable  
17 regardless of whether the parties are designated as plaintiff or  
18 defendant, the contract or separate written instrument filed  
19 with the office of the prothonotary under subsection (a) may be  
20 indexed in the name of the contractor as defendant and the owner  
21 as plaintiff or in the name of the contractor as plaintiff and  
22 the owner as defendant.

23 Section 3. Sections 405, 501, 502 and 508 of the act are  
24 amended to read:

25 Section 405. Right of Owner to Limit Claims to Unpaid  
26 Balance of Contract Price.--Where [there has been no waiver of  
27 liens and] the claims of subcontractors exceed in the aggregate  
28 the unpaid balance of the contract price specified in the  
29 contract between the owner and the contractor, then if the  
30 subcontractor has actual notice of the total amount of said

1 contract price and of its provisions for the time or times for  
2 payment thereof before any labor or materials were furnished by  
3 him, or if such contract or the pertinent provisions thereof  
4 were filed in the office of the prothonotary in the time and  
5 manner provided in section 402, each claim shall, upon  
6 application of the owner, be limited to its pro-rata share of  
7 the contract price remaining unpaid, or which should have  
8 remained unpaid, whichever is greatest in amount at the time  
9 notice of intention to file a claim was first given to the  
10 owner, such notice inuring to the benefit of all claimants.

11 SECTION 501. FORMAL NOTICES BY SUBCONTRACTOR AS CONDITION  
12 PRECEDENT.-- <—

13 [(A) PRELIMINARY NOTICE IN CASE OF ALTERATION AND REPAIR. NO  
14 CLAIM BY A SUBCONTRACTOR FOR ALTERATIONS OR REPAIRS SHALL BE  
15 VALID UNLESS, IN ADDITION TO THE FORMAL NOTICE REQUIRED BY  
16 SUBSECTION (B) OF THIS SECTION, HE SHALL HAVE GIVEN TO THE  
17 OWNER, ON OR BEFORE THE DATE OF COMPLETION OF HIS WORK, A  
18 WRITTEN PRELIMINARY NOTICE OF HIS INTENTION TO FILE A CLAIM IF  
19 THE AMOUNT DUE OR TO BECOME DUE IS NOT PAID. THE NOTICE NEED SET  
20 FORTH ONLY THE NAME OF THE SUBCONTRACTOR, THE CONTRACTOR, A  
21 GENERAL DESCRIPTION OF THE PROPERTY AGAINST WHICH THE CLAIM IS  
22 TO BE FILED, THE AMOUNT THEN DUE OR TO BECOME DUE, AND A  
23 STATEMENT OF INTENTION TO FILE A CLAIM THEREFOR.

24 (B) FORMAL NOTICE IN ALL CASES BY SUBCONTRACTOR.]

25 (B) TIME PERIOD OF FORMAL NOTICE. NO CLAIM BY A  
26 SUBCONTRACTOR, WHETHER FOR ERECTION OR CONSTRUCTION OR FOR  
27 ALTERATIONS OR REPAIRS, SHALL BE VALID UNLESS, AT LEAST THIRTY  
28 (30) DAYS BEFORE THE SAME IS FILED, HE SHALL HAVE GIVEN TO THE  
29 OWNER A FORMAL WRITTEN NOTICE OF HIS INTENTION TO FILE A CLAIM,  
30 EXCEPT THAT SUCH NOTICE SHALL NOT BE REQUIRED WHERE THE CLAIM IS



1 FILED PURSUANT TO A RULE TO DO SO AS PROVIDED BY SECTION 506.

2 (C) CONTENTS OF FORMAL NOTICE. THE FORMAL NOTICE SHALL  
3 STATE:

4 (1) THE NAME OF THE PARTY CLAIMANT;

5 (2) THE NAME OF THE PERSON WITH WHOM HE CONTRACTED;

6 (3) THE AMOUNT CLAIMED TO BE DUE;

7 (4) THE GENERAL NATURE AND CHARACTER OF THE LABOR OR  
8 MATERIALS FURNISHED;

9 (5) THE DATE OF COMPLETION OF THE WORK FOR WHICH HIS CLAIM  
10 IS MADE;

11 (6) A BRIEF DESCRIPTION SUFFICIENT TO IDENTIFY THE PROPERTY  
12 CLAIMED TO BE SUBJECT TO THE LIEN; AND

13 (7) THE DATE ON WHICH PRELIMINARY NOTICE OF INTENTION TO  
14 FILE A CLAIM WAS GIVEN WHERE SUCH NOTICE IS REQUIRED BY  
15 SUBSECTION (A) OF THIS SECTION, AND A COPY THEREOF.

16 THE NOTICE MAY CONSIST OF A COPY OF THE CLAIM INTENDED TO BE  
17 FILED, TOGETHER WITH A STATEMENT THAT THE CLAIMANT INTENDS TO  
18 FILE THE ORIGINAL OR A COUNTERPART THEREOF.

19 (D) SERVICE OF NOTICE. THE NOTICES PROVIDED BY THIS SECTION  
20 MAY BE SERVED BY FIRST CLASS, REGISTERED OR CERTIFIED MAIL ON  
21 THE OWNER OR HIS AGENT OR BY AN ADULT IN THE SAME MANNER AS A  
22 WRIT OF SUMMONS IN ASSUMPSIT, OR IF SERVICE CANNOT BE SO MADE  
23 THEN BY POSTING UPON A CONSPICUOUS PUBLIC PART OF THE  
24 IMPROVEMENT.

25 SECTION 502. FILING AND NOTICE OF FILING OF CLAIM.--

26 (A) PERFECTION OF LIEN. TO PERFECT A LIEN, EVERY CLAIMANT  
27 MUST:

28 (1) FILE A CLAIM WITH THE PROTHONOTARY AS PROVIDED BY THIS  
29 ACT WITHIN [FOUR (4)] SIX (6) MONTHS AFTER THE COMPLETION OF HIS  
30 WORK; AND

(2) SERVE WRITTEN NOTICE OF SUCH FILING UPON THE OWNER  
WITHIN ONE (1) MONTH AFTER FILING, GIVING THE COURT, TERM AND  
NUMBER AND DATE OF FILING OF THE CLAIM. AN AFFIDAVIT OF SERVICE  
OF NOTICE, OR THE ACCEPTANCE OF SERVICE, SHALL BE FILED WITHIN  
TWENTY (20) DAYS AFTER SERVICE SETTING FORTH THE DATE AND MANNER  
OF SERVICE. FAILURE TO SERVE SUCH NOTICE OR TO FILE THE  
AFFIDAVIT OR ACCEPTANCE OF SERVICE WITHIN THE TIMES SPECIFIED  
SHALL BE SUFFICIENT GROUND FOR STRIKING OFF THE CLAIM.

(B) VENUE; PROPERTY IN MORE THAN ONE COUNTY. WHERE THE  
IMPROVEMENT IS LOCATED IN MORE THAN ONE COUNTY, THE CLAIM MAY BE  
FILED IN ANY ONE OR MORE OF SAID COUNTIES, BUT SHALL BE  
EFFECTIVE ONLY AS TO THE PART OF THE PROPERTY IN THE COUNTY IN  
WHICH IT HAS BEEN FILED.

(C) MANNER OF SERVICE. SERVICE OF THE NOTICE OF FILING OF  
CLAIM SHALL BE MADE BY AN ADULT IN THE SAME MANNER AS A WRIT OF  
SUMMONS IN ASSUMPSIT, OR IF SERVICE CANNOT BE SO MADE THEN BY  
POSTING UPON A CONSPICUOUS PUBLIC PART OF THE IMPROVEMENT.

Section 508. Priority of Lien.--The lien of a claim filed  
under this act shall take effect and have priority as follows:

(a) [In] Except as set forth in subsection (c), in the case  
of the erection or construction of an improvement, as of the  
date of the visible commencement upon the ground of the work of  
erecting or constructing the improvement[; and].

(b) [In] Except as set forth in subsection (c), in the case  
of the alteration or repair of an improvement, as of the date of  
the filing of the claim.

~~(c) In the case of a claim filed by a subcontractor under~~ <—  
~~section 501, the lien obtained under subsection (a) or (b) shall~~  
~~be subordinate to any of the following:~~

(C) ANY LIEN OBTAINED UNDER THIS ACT BY A CONTRACTOR OR <—

1 SUBCONTRACTOR SHALL BE SUBORDINATE TO EITHER OF THE FOLLOWING:

2 (1) A purchase money mortgage, as defined in 42 Pa.C.S. §  
3 8141(1) (relating to time from which liens have priority).

4 (2) An open-end mortgage, as defined in 42 Pa.C.S. § 8143(f)  
5 (relating to open-end mortgages), the proceeds of which are used  
6 to pay all or part of the cost of completing erection,  
7 construction, alteration or repair of the mortgaged premises  
8 secured by the open-end mortgage.

9 Section 4. The amendment or addition of sections 201(14),  
10 401 and 402 of the act shall apply to contracts entered into on  
11 or after the effective date of this section.

12 Section 5. This act shall take effect January 1, 2007.