

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 364 Session of
1991

INTRODUCED BY COHEN, BUNT, McGEEHAN, J. TAYLOR, BELARDI, ITKIN,
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GIGLIOTTI, KRUSZEWSKI, R. C. WRIGHT, LAUGHLIN AND RICHARDSON,
FEBRUARY 11, 1991

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 11, 1991

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," adding and amending
4 definitions; further providing for rights to a lien, for
5 certain cases when a lien is not allowed, for assignment of
6 claims, for waivers of liens, for owner's right to limit
7 claims, for contents of claims, for owner's right to retain
8 funds, for notice of claims, for contractor's duties, and for
9 owner's additional remedies; and requiring notice of claim by
10 a laborer.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 201(5) and (6) of the act of August 24,
14 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of
15 1963, are amended and the section is amended by adding clauses
16 to read:

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

1 * * *

2 (5) "Subcontractor" means one who, by contract with the
3 contractor, express or implied, erects, constructs, alters or
4 repairs an improvement or any part thereof; or furnishes labor,
5 skill or superintendence thereto; or supplies or hauls
6 materials, fixtures, machinery or equipment reasonably necessary
7 for and actually used therein; or any or all of the foregoing,
8 whether as superintendent, builder or materialman. The term does
9 not include an architect or engineer who contracts with a
10 contractor or subcontractor, or a person who contracts with a
11 subcontractor, other than a sub-subcontractor or a laborer, or
12 with a materialman.

13 (6) "Claimant" means a contractor [or], subcontractor, sub-
14 subcontractor or laborer who has filed or may file a claim under
15 this act for a lien against property.

16 * * *

17 (14) "Sub-subcontractor" means one who, by contract with a
18 subcontractor, express or implied, erects, constructs, alters or
19 repairs an improvement or any part thereof; supplies or hauls
20 materials, fixtures, machinery or equipment reasonably necessary
21 for and actually used therein; or any or all of the foregoing,
22 whether as superintendent, builder or materialman. The term does
23 not include an architect or engineer who contracts with a sub-
24 subcontractor or a person who contracts with a sub-
25 subcontractor, other than a laborer, or with a materialman.

26 (15) "Laborer" means a person who, acting as an employe of a
27 contractor, subcontractor or sub-subcontractor, performs labor
28 upon or bestows skills or other necessary services in connection
29 with the erection, construction, alteration or repair of an
30 improvement.

1 Section 2. Sections 301 and 303 of the act are amended to
2 read:

3 Section 301. Right to Lien; Amount.--Every improvement and
4 the estate or title of the owner in the property shall be
5 subject to a lien, to be perfected as herein provided, for the
6 payment of all debts due by the owner to the contractor [or], by
7 the contractor to any of his subcontractors, by the
8 subcontractor to any of his sub-subcontractors or by an owner,
9 contractor, subcontractor or sub-subcontractor to a laborer for
10 labor or materials furnished in the erection or construction, or
11 the alteration or repair of the improvement, provided that the
12 amount of the claim, other than amounts determined by
13 apportionment under section 306(b) of this act, shall exceed
14 five hundred dollars (\$500). Laborers' claims against an owner,
15 contractor, subcontractor or sub-subcontractor may be
16 consolidated, and the five hundred dollar (\$500) threshold shall
17 apply to laborers' claims in the aggregate.

18 Section 303. Lien Not Allowed in Certain Cases.--

19 [(a) Persons Other Than Contractors or Subcontractors. No
20 lien shall be allowed in favor of any person other than a
21 contractor or subcontractor, as defined herein, even though such
22 person furnishes labor or materials to an improvement.]

23 (b) Public Purpose. No lien shall be allowed for labor or
24 materials furnished for a purely public purpose.

25 (c) Conveyance Prior to Lien. If the property be conveyed in
26 good faith and for a valuable consideration prior to the filing
27 of a claim for alterations or repairs, the lien shall be wholly
28 lost.

29 (d) Leasehold Premises. No lien shall be allowed against the
30 estate of an owner in fee by reason of any consent given by such

1 owner to a tenant to improve the leased premises except to the
2 extent the improvements enhance the value of the owner's estate,
3 or unless it shall appear in writing signed by such owner that
4 the erection, construction, alteration or repair was in fact for
5 the immediate use and benefit of the owner.

6 (e) Security Interests. No lien shall be allowed for that
7 portion of a debt representing the contract price of any
8 materials against which the claimant holds or has claimed a
9 security interest under the Pennsylvania Uniform Commercial Code
10 or to which he has reserved title or the right to reacquire
11 title.

12 Section 3. The act is amended by adding a section to read:

13 Section 308. Assignment of Claims.--A lien and the right to
14 recover therefor are assignable. Notice, in writing, of the
15 assignment may be served on the owner of the property affected.
16 Payments made by the owner before service of the notice shall
17 discharge the debt up to the amount paid. The assignee may file
18 claims for the liens and may bring an action to enforce them.

19 Section 4. Sections 401, 402 and 405 of the act are amended
20 to read:

21 Section 401. Waiver of Lien by Claimant.--A contractor [or],
22 subcontractor, sub-subcontractor or laborer may waive his right
23 to file a claim by a written instrument signed by him or by any
24 conduct which operates equitably to estop [such contractor or
25 subcontractor] him from filing a claim. A waiver by a laborer
26 who is represented by a labor union is not binding unless it is
27 also agreed to, in writing, by his union.

28 Section 402. Waiver by Contractor; Effect on Subcontractor
29 or Laborer.--

30 (a) Proof of Notice of Waiver. A written contract between

1 the owner and contractor, or a separate written instrument
2 signed by the contractor, which provides that no claim shall be
3 filed by anyone, shall be binding[; but the] on each party other
4 than a laborer, so long as payments are made from the owner to
5 the contractor, from the contractor to the subcontractor, from
6 the subcontractor to the sub-subcontractor in accordance with
7 the contract. A payment withheld in violation of the contract
8 renders the waiver null and void with respect to an adversely
9 affected party to the extent of the withheld payment. The only
10 admissible evidence [thereof] of a waiver, as against a
11 subcontractor or sub-subcontractor, shall be proof of actual
12 notice thereof to him before any labor or materials were
13 furnished by him; or proof that such contract or separate
14 written instrument was filed in the office of the prothonotary
15 prior to the commencement of the work upon the ground or within
16 ten (10) days after the execution of the principal contract or
17 not less than ten (10) days prior to the contract with the
18 claimant subcontractor, indexed in the name of the contractor as
19 defendant and the owner as plaintiff and also in the name of the
20 contractor as plaintiff and the owner as defendant. The only
21 admissible evidence that such a provision has, notwithstanding
22 its filing, been waived in favor of any subcontractor or sub-
23 subcontractor, shall be a written agreement to that effect
24 signed by all those who, under the contract, have an adverse
25 interest to the subcontractor's or sub-subcontractor's
26 allegation.

27 (b) Proof of Notice to Laborer. A waiver such as described
28 in subsection (a) shall be binding upon a laborer; but the only
29 admissible evidence thereof, as against a laborer, shall be
30 proof of actual notice thereof to him before he performs any

1 labor.

2 Section 405. Right of Owner to Limit Claims to Unpaid
3 Balance of Contract Price.--

4 (a) Excessive Claims. Where there has been no waiver of
5 liens and the claims of subcontractors, sub-subcontractors or
6 laborers exceed in the aggregate the unpaid balance of the
7 contract price specified in the contract between the owner and
8 the contractor, then if the subcontractor, sub-subcontractor or
9 laborer has actual notice of the total amount of said contract
10 price and of its provisions for the time or times for payment
11 thereof before any labor or materials were furnished by him, or
12 if such contract or the pertinent provisions thereof were filed
13 in the office of the prothonotary in the time and manner
14 provided in section 402, each claim shall, upon application of
15 the owner, be limited to its pro-rata share of the contract
16 price remaining unpaid, or which should have remained unpaid,
17 whichever is greatest in amount at the time notice of intention
18 to file a claim was first given to the owner, such notice
19 inuring to the benefit of all claimants.

20 (b) Claims of Laborers. Claims of laborers shall be limited
21 to the contract price remaining unpaid, or which should have
22 remained unpaid, whichever is greatest in amount at the time
23 notice of intention to file a claim was first given to the
24 owner, on the contract between the owner and contractor for
25 laborers employed by the contractor or on the contract between
26 the contractor and subcontractor for laborers employed by the
27 subcontractor.

28 Section 5. The act is amended by adding sections to read:

29 Section 501.1. Notice by Sub-Subcontractor as Condition
30 Precedent.--

1 (a) Preliminary Notice in the Case of Alteration and Repair.

2 No claim by a sub-subcontractor for alterations or repairs shall
3 be valid unless, in addition to the formal notice required by
4 subsection (b), he shall have given to the owner, on or before
5 the date of completion of his work, a written preliminary notice
6 of his intention to file a claim of the amount due or to become
7 due is not paid. The notice need set forth only the name of the
8 sub-subcontractor, the subcontractor, the contractor, a general
9 description of the property against which the claim is to be
10 filed, the amount then due or to become due and a statement of
11 intention to file a claim therefor.

12 (b) Formal Notice in All Cases by Sub-Subcontractor. No

13 claim by a sub-subcontractor, whether for erection or
14 construction or for alterations or repairs, shall be valid
15 unless, at least thirty (30) days before the same is filed, he
16 shall have given to the owner a formal written notice of his
17 intention to file a claim, except that such notice is not
18 required if the claim is filed under a rule to do so as provided
19 by section 506.

20 (c) Contents of Formal Notice. The formal notice shall

21 contain:

22 (1) The name of the party claimant.

23 (2) The name of the person with whom he contracted.

24 (3) The amount claimed to be due.

25 (4) The general nature and character of the labor or
26 materials furnished.

27 (5) The date of completion of the work for which his claim
28 is made.

29 (6) A brief description sufficient to identify the property
30 claimed to be subject to the lien.

1 (7) The date when preliminary notice of intention to file a
2 claim was given, if preliminary notice is required under
3 subsection (a), along with a copy of the preliminary notice.

4 (d) Optional Form of Formal Notice. The notice required
5 under subsection (c) may consist of a copy of the claim intended
6 to be filed and a statement that the claimant intends to file
7 the original claim on a date specified.

8 (e) Service of Notice. A notice required under this section
9 may be served by mail on the owner or his agent, by an adult in
10 the same manner as a writ of summons in assumpsit, or by posting
11 upon a conspicuous public part of the improvement.

12 Section 501.2. Notice by Laborer as Condition Precedent.

13 (a) Formal Notice in All Cases by Laborer. No claim by a
14 laborer shall be valid unless, at least thirty (30) days before
15 the same is filed, he shall have given to the owner a formal
16 written notice of his intention to file a claim, except that
17 such notice shall not be required where the claim is filed
18 pursuant to a rule to do so as provided by section 506.

19 (b) Contents of Formal Notice. The formal notice shall
20 state:

21 (1) The name of the party claimant.

22 (2) The name of the contractor, subcontractor or sub-
23 subcontractor by whom he was employed.

24 (3) The amount claimed to be due.

25 (4) The general nature and character of the labor he
26 performed.

27 (5) The date of completion of the work for which his claim
28 is made.

29 (6) A brief description sufficient to identify the property
30 claimed to be subject to the lien.

1 (c) Service of Notice. The notices provided by this section
2 may be served by first class, registered or certified mail on
3 the owner or his agent or by an adult in the same manner as a
4 writ of summons in assumpsit, or, if service cannot be so made,
5 then by posting upon a conspicuous public part of the
6 improvement.

7 Section 6. Sections 503, 506, 601, 602, 603 and 604 of the
8 act are amended to read:

9 Section 503. Contents of Claim.--The claim shall state:

10 (1) the name of the party claimant, and whether he files as
11 contractor [or], subcontractor or sub-subcontractor;

12 (2) the name and address of the owner or reputed owner;

13 (3) the date of completion of the claimant's work;

14 (4) if filed by a subcontractor, the name of the person with
15 whom he contracted, and the dates on which preliminary notice,
16 if required, and of formal notice of intention to file a claim
17 was given;

18 (5) if filed by a contractor under a contract or contracts
19 for an agreed sum, an identification of the contract and a
20 general statement of the kind and character of the labor or
21 materials furnished;

22 (6) in all other cases than that set forth in clause (5) of
23 this section, a detailed statement of the kind and character of
24 the labor or materials furnished, or both, and the prices
25 charged for each thereof;

26 (7) the amount or sum claimed to be due; [and]

27 (8) such description of the improvement and of the property
28 claimed to be subject to the lien as may be reasonably necessary
29 to identify them[.];

30 (9) if filed by a sub-subcontractor, the name of the

1 subcontractor by whom he was employed and the date on which
2 preliminary notice, if required, and formal notice of intention
3 to file a claim were given; and

4 (10) if filed by a laborer, the name of the contractor,
5 subcontractor or sub-subcontractor by whom he was employed and
6 the date on which formal notice of intention to file a claim was
7 given.

8 Section 506. Rule to File Claim.--

9 (a) Entry of Rule; Effect. At any time after the completion
10 of the work by a subcontractor or by a sub-subcontractor, any
11 owner or contractor may file a rule or rules, as of course, in
12 the court in which said claim may be filed requiring the party
13 named therein to file his claim within thirty (30) days after
14 notice of said rule or be forever barred from so doing. The rule
15 shall be entered by the prothonotary upon the judgment index and
16 in the mechanics' lien docket. Failure to file a claim within
17 the time specified shall operate to wholly defeat the right to
18 do so. If a claim be filed, it shall be entered as of the court,
19 term and number of the rule to file the same.

20 (b) Effect of Claim Filed by Subcontractor or by Sub-
21 Subcontractor. Where a claim is filed by a subcontractor or by a
22 sub-subcontractor in response to such rule, the owner may give
23 written notice thereof to the contractor in the manner set forth
24 by section 602 of this act, and upon the giving of such notice
25 the owner may avail himself of the remedies provided by sections
26 601 and 604 of this act and the contractor shall be subject to
27 the duties set forth by section 603 of this act.

28 Section 601. Owner's Right to Retain Funds of Contractor.--

29 An owner who has been served with a notice of intention to file
30 or a notice of the filing of a claim by a subcontractor, sub-

1 subcontractor or a laborer may retain out of any moneys due or
2 to become due to the contractor named therein, a sum sufficient
3 to protect the owner from loss until such time as the claim is
4 finally settled, released, defeated or discharged.

5 Section 602. Notice to Contractor of Claim.--

6 (a) An owner served with a notice as provided by section 601
7 may, and if he has retained any funds due the contractor shall,
8 give written notice thereof to the contractor named.

9 (b) The notice shall state:

10 (1) the name of the subcontractor, sub-subcontractor or
11 laborer, the amount of the claim and the amount withheld, if
12 any, by the owner;

13 (2) that unless the contractor within thirty (30) days from
14 service of the notice settles, undertakes to defend, or secures
15 against the claim as provided by section 603, the owner may
16 avail himself of the remedies provided by section 604.

17 (c) The notice may be given by the owner or his agent to the
18 contractor personally, or to the contractor's manager, executive
19 or principal officer or other agent, or if none of these persons
20 can be found, by sending a copy of the notice by first class,
21 registered or certified mail to the contractor at his last known
22 office address.

23 Section 603. Contractor's Duties on Receipt of Notice.--Upon
24 service of the notice provided by section 602, the contractor
25 shall within thirty (30) days from the contractor's receipt of
26 notice:

27 (1) settle or discharge the claim of the subcontractor, sub-
28 subcontractor or laborer and furnish to the owner a written copy
29 of a waiver, release or satisfaction thereof, signed by the
30 claimant; or

1 (2) agree in writing to undertake to defend against said
2 claim, and if the owner has not retained sufficient funds to
3 protect him against loss, furnish the owner additional approved
4 security to protect the owner from loss in the event the defense
5 should be abandoned by the contractor or should not prevail; or

6 (3) furnish to the owner approved security in an amount
7 sufficient to protect the owner from loss on account of said
8 claim.

9 Section 604. Additional Remedies of Owner.--Should the
10 contractor fail to settle, discharge or defend or secure against
11 the claim, as provided by this act, the owner may:

12 (1) pay the claim of the subcontractor, sub-subcontractor or
13 laborer, upon which payment the owner shall be subrogated to the
14 rights of the subcontractor against the contractor; to the
15 rights of the sub-subcontractor against the contractor or
16 subcontractor, as the case may be; or to the rights of the
17 laborer against the contractor, subcontractor or sub-
18 subcontractor, as the case may be, together with any instrument
19 or other collateral security held by the subcontractor, sub-
20 subcontractor or laborer for the payment thereof; or

21 (2) undertake a defense against said claim in which case the
22 contractor shall be liable to the owner for all costs, expenses
23 and charges incurred in such defense, including reasonable
24 attorneys' fees, whether said defense be successful or not, but
25 the undertaking of such defense shall not affect the right of
26 the owner to retain funds of the contractor under section 601
27 until the subcontractor's, sub-subcontractor's or laborer's
28 claim is finally defeated or discharged.

29 Section 7. This act shall take effect in 60 days.