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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 473 Session of  
2013

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JANUARY 30, 2013

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 30, 2013

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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; and providing for State Construction Notices  
5 Directory and for notice of commencement and furnishing  
6 requirements.

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

9 Section 1. Section 201 of the act of August 24, 1963  
10 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, is  
11 amended by adding paragraphs to read:

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

16 \* \* \*

17 (15) "Department" means the Department of Labor and  
18 Industry.

19 (16) "Directory" means the State Construction Notices

1 Directory in section 501.1.

2 Section 2. The act is amended by adding sections to read:

3 Section 501.1. State Construction Notices Directory.--

4 (a) Establishment of Directory. The department shall  
5 establish an Internet website to be known as the State  
6 Construction Notices Directory.

7 (b) Third-party Administration. The department may contract  
8 with a third-party vendor to establish and administer the  
9 Internet website.

10 (c) Purpose of Directory. The directory shall:

11 (1) Serve primarily as a means for contractors and  
12 subcontractors to readily locate notices of commencement filed  
13 under section 501.2(a).

14 (2) Act as a central Statewide repository for notices filed  
15 under section 501.2.

16 (d) Operational Date. The department shall have the  
17 directory operational on July 1, 2015. The department may,  
18 however, establish a later effective date, if it provides  
19 sufficient reasons for the delay in the implementation of the  
20 program in a notice to the chairman and minority chairman of the  
21 Labor and Industry Committee of the Senate and the chairman and  
22 minority chairman of the Labor and Industry Committee of the  
23 House of Representatives.

24 (e) Public Awareness. When appropriate, the department shall  
25 publish notice in the Pennsylvania Bulletin advising the public  
26 of plans for and the existence of the directory. The department  
27 shall take reasonable measures to inform the general public of  
28 the directory and its purpose.

29 (f) Directory Fees. The department may assess filing fees to  
30 owners filing notices under section 501.2(a) to cover the costs

1 of administration. If a contracted third-party vendor is  
2 administering the website, the assessed fees must be designated  
3 in the contract. The department shall:

4 (1) Consider the fee levels in awarding a contract.

5 (2) Ensure the fee levels are as favorable as possible to  
6 users.

7 (g) Posting of Notices. The directory shall:

8 (1) Make public notices filed under section 501.2 in a job  
9 site specific format.

10 (2) Provide copies of the filings of notice of furnishing  
11 under section 501.2(b) to an owner who files a notice of  
12 commencement under section 501.2(a).

13 (3) Provide hard copy printing of electronic receipts for an  
14 individual filing evidencing the date and time of the individual  
15 filing and the content of the individual filing.

16 (4) List the notices of furnishing filed with a notice of  
17 commencement.

18 (h) Index. The directory must be primarily indexed by  
19 county, and a notice of commencement filed with the directory  
20 shall be searchable by owner name, contractor name, property  
21 address or other identifying features that the department  
22 believes are necessary.

23 Section 501.2. Notice of Commencement and Furnishing  
24 Requirements.--

25 (a) Notice of Commencement.

26 (1) Prior to commencing labor or work or furnishing  
27 materials for an improvement on real property that may give rise  
28 to a mechanics' lien under this act, the owner or agent of the  
29 owner may file a notice of commencement with the State  
30 Construction Notices Directory. The notice must include the

1 following:

2 (i) Name, address and e-mail address of the contractor.

3 (ii) Name and location of the project being constructed.

4 (iii) Legal description of the property upon which the  
5 improvements are being made.

6 (iv) Name, address and e-mail address of the legal record  
7 owner of the property.

8 (v) Name, address and e-mail address of the person other  
9 than the owner at whose direction the improvements are being  
10 made, if that person is not the true legal record owner of the  
11 property.

12 (vi) If applicable, the name, address and e-mail address of  
13 a surety for the performance and payment bonds.

14 (2) The owner shall conspicuously post a copy of the notice  
15 at the project site before physical work commences upon the  
16 property, and the owner shall take reasonable measures to insure  
17 that the copy of the notice of commencement remains posted at  
18 the project site for the duration of the project. For the  
19 purposes of this paragraph, the term "reasonable measures" means  
20 the reposting of notice by the owner within 48 hours after being  
21 notified in writing or e-mail that the notice is not posted.

22 (b) Notice of Furnishing. A subcontractor that performs work  
23 or services or provides material in furtherance of an  
24 improvement to property shall, if a notice of commencement has  
25 been properly and timely filed under subsection (a), as a  
26 condition of retaining lien rights under section 301:

27 (1) Have a positive duty to monitor the State Construction  
28 Notices Directory to identify appropriate notices of  
29 commencement.

30 (2) Substantially comply with the following to file a notice

1 of furnishing:

2 (i) Subject to subparagraph (v) (A), the subcontractor shall  
3 file notice upon the owner within twenty (20) days after first  
4 performing work or services or first providing materials in  
5 connection with the improvement of the property.

6 (ii) The notice must be served in one of the following  
7 manners:

8 (A) Certified mail to the owner's address.

9 (B) Personal delivery to the owner. Evidence of delivery  
10 must be an acknowledgment signed by the owner.

11 (C) Filing of notice on the State Construction Notices  
12 Directory.

13 (iii) The notice must contain, at a minimum, the following:

14 (A) A general description of the labor, skill, materials,  
15 fixtures, machinery or tools furnished.

16 (B) Name and address of the person supplying items in clause  
17 (A).

18 (C) Name and address of the person that contracted for the  
19 items in clause (A).

20 (D) A description sufficient to identify the property which  
21 is being improved.

22 (iv) The notice must be substantially in the following form:

23 Notice of Furnishing

24 (For use in connection with improvements to property other  
25 than public improvements)

26 TO: \_\_\_\_\_

27 (Name of owner)

28 \_\_\_\_\_

29 (Address of owner)

30 Please take notice that the undersigned is performing

1 certain work or labor or furnishing certain materials  
2 to \_\_\_\_\_ (Name and address of other contracting  
3 party) in connection with the improvement to the real property  
4 located at \_\_\_\_\_ . The labor, work or materials  
5 were performed or furnished first, or will be furnished first on  
6 (date).

7 \_\_\_\_\_  
8 (Name and Address of Lien Claimant

9 By

10 (Name and capacity of party signing for lien claimant)

11 \_\_\_\_\_  
12 (Address of Signing Party)

13 \_\_\_\_\_  
14 (Date)

15 (v) Filing of a notice under this subsection preserves the  
16 lien rights of a subcontractor in compliance with this act as  
17 follows:

18 (A) For amounts owing for work and services performed and  
19 materials furnished from the date the work or services were  
20 first performed or materials were first furnished through the  
21 date of service of the notice of furnishing and thereafter.

22 (B) A notice delivered outside the time frame under  
23 subparagraph (i) preserves the right to file a lien which is  
24 only enforceable for the services or materials furnished within  
25 the period of twenty (20) days before the date on which notice  
26 is given and thereafter.

27 (vi) If a subcontractor does not substantially comply with  
28 this subsection, the subcontractor forfeits the right to file a  
29 lien claim.

30 (c) Construction. Subsection (b) may not be interpreted to

1 affect the ability of a subcontractor or contractor to waive his  
2 lien rights under sections 401 and 402.

3 (d) Public Policy.

4 (1) It is against public policy and unlawful for a  
5 contractor or subcontractor to request or require that a  
6 subcontractor not file a notice of furnishing as required to  
7 maintain his lien rights, in order that the subcontractor may  
8 enter into or maintain a contract for work or furnishing of  
9 materials on an improvement.

10 (2) A subcontractor has the right to file a lien for the  
11 work and services performed and the materials furnished under  
12 this act, irrespective of compliance with section 501.2(b), if  
13 he proves that the failure to comply with section 501.2(b) was  
14 directly the result of a contractor or subcontractor violating  
15 paragraph (1).

16 Section 3. The addition of section 501.2 of the act shall  
17 take effect July 1, 2015, or on the date designated by the  
18 Department of Labor and Industry.

19 Section 4. This act shall take effect in 60 days.