

No. 2014-142

AN ACT

HB 473

Amending the act of August 24, 1963 (P.L.1175, No.497), entitled "An act to codify, amend, revise and consolidate the laws relating to mechanics' liens," further providing for definitions; and providing for State Construction Notices Directory, for failure to file notice of furnishing, for notice of commencement and notice of furnishing, for notice of completion for informational purposes, for notice and for prohibition.

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

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

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

* * *

(16) "Department" means the Department of General Services.

(17) "Directory" means the State Construction Notices Directory in section 501.1.

(18) "Searchable project" means a project consisting of the erection and construction, or alteration or repair, of an improvement costing a minimum of one million five hundred thousand dollars (\$1,500,000).

(19) "Construction notice" means the following notices related to a searchable project:

(i) a Notice of Commencement;

(ii) a Notice of Furnishing;

(iii) a Notice of Completion; or

(iv) a Notice of Nonpayment.

(20) "Searchable project owner" means the owner of record of real property that is a searchable project. The term shall include the owner's agent.

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

Section 501.1. State Construction Notices Directory.—

(a) Directory. The department shall provide for an Internet website to be known as the State Construction Notices Directory to serve as a standardized Statewide system for filing construction notices.

(b) Operational Date. The directory shall be operational by December 31, 2016. The department may establish a later effective date if it provides sufficient reasons for the delay in the implementation of the directory in a notice to the chairman and minority chairman of the Labor and Industry Committee of the Senate and the chairman and minority chairman of the Labor and Industry Committee of the House of Representatives.

(c) Notification. No later than one hundred twenty (120) days after the implementation of the directory, the department shall publish notice in the

Pennsylvania Bulletin advising the public of implementation of the directory and instructions on its use. The department shall place the notice and instructions on its Internet website and take other reasonable measures to inform the general public and the construction industry of the directory and its purpose.

(d) Fees. The following shall apply:

(1) The department shall establish fees for notices filed by the searchable project owner.

(2) Fees under paragraph (1) may not in the aggregate exceed the amount reasonably necessary to implement, operate and maintain the directory.

(e) Publishing of Notices. The directory shall:

(1) Make Notices of Commencement filed under section 501.3(a) available for a searchable project in a job-site specific format. A unique identifying number shall be assigned to each Notice of Commencement that is filed. A notice under this paragraph shall be searchable by searchable project owner name, contractor name, property address and unique identifying number.

(2) Provide copies of the filings of Notice of Furnishing under section 501.3(b) to a searchable project owner who files a notice of commencement under section 501.3(a).

(3) Provide certified hard copy printing of electronic receipts upon request for a filing under section 501.3 of a Notice of Commencement or Notice of Furnishing. The certified hard copy shall include the date, time and content of the individual filing.

(4) List all Notices of Furnishing and Notices of Completion filed with respect to a particular Notice of Commencement.

(5) Provide a verification process to allow persons filing required notices or requests for notices in the directory to confirm the proper indexing and linkage of their filings.

(f) Index. The directory must be primarily indexed by county.

Section 501.2. Failure to File Notice of Furnishing.—A contract for a searchable project shall include written notice that failure to file a Notice of Furnishing under section 501.3(b) will result in the loss of lien rights. The notice shall be as follows:

A subcontractor that fails to file a Notice of Furnishing on the Department of General Services' publicly accessible Internet website as required by the act of August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963.

Section 501.3. Notice of Commencement and Notice of Furnishing.—

(a) Notice of Commencement.

(1) Prior to the commencement of labor, work or the furnishing of materials for a searchable project that may give rise to a mechanics' lien under this act, the searchable project owner or agent of the searchable project owner may file a Notice of Commencement with the directory.

(2) A contractor may act as agent for the searchable project owner and file a Notice of Commencement for the searchable project owner of a searchable project if specifically authorized by contract and the searchable project owner assumes responsibility for the contractor's actions.

(3) The notice must include the following:

(i) Full name, address and e-mail address of the contractor.

(ii) Full name and location of the searchable project.

(iii) The county in which the searchable project is located.

(iv) The legal description of the property upon which the improvements are being made, including the tax identification number of each parcel included in the searchable project.

(v) Full name, address and e-mail address of the searchable project owner of record of the property and the searchable project being constructed.

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

(vii) The unique identifying number that is assigned to the Notice of Commencement pursuant to section 501.1(e)(1).

(4) The searchable project owner shall also conspicuously post a copy of the Notice of Commencement at the site of a searchable project before physical work commences on the project to include the unique identifying number assigned under section 501.1(e)(1). The searchable project owner shall take reasonable measures to ensure that the Notice of Commencement remains posted at the searchable project site until completion of the project. For the purposes of this paragraph, the term "reasonable measures" means the reposting of notice by the searchable project owner within forty-eight (48) hours after becoming aware of or being notified verbally, in writing or by e-mail that the notice is not posted.

(5) The searchable project owner and the contractor shall make reasonable efforts to ensure that the Notice of Commencement is made part of contract documents provided to all subcontractors awarded work on the searchable project.

(b) Notice of Furnishing. A subcontractor that performs work or services or provides material in furtherance of a searchable project shall comply with the following if a Notice of Commencement has been filed and posted in accordance with subsection (a):

(1) File a Notice of Furnishing with the directory within forty-five (45) days after first performing work or services at the job site or first providing materials to the job site in connection with the searchable project.

(2) The notice under paragraph (1) must contain the following:

(i) A general description of the labor or materials furnished.

(ii) Full name and address of the person supplying the services or items under subparagraph (i).

(iii) Full name and address of the person that contracted for the services or items under subparagraph (i).

(iv) A description sufficient to identify the searchable project, based on the description in the Notice of Commencement.

(3) The notice under paragraph (1) must be substantially in the following form:

Notice of Furnishing

To:

(Name of searchable project owner)

.....
(Address of searchable project owner)

(Notice of Commencement Number)

Please take notice that the undersigned is performing certain work or labor or furnishing certain materials to (Name and address of other contracting party) in connection with the improvement to the real property located at..... The labor, work or materials were performed or furnished first, or will be furnished first, on (date).

.....
(Name and Address of Lien Claimant)

By

(Name and capacity of party signing for lien claimant)

.....
(Address of Signing Party)

.....
(Date)

(c) Construction. A subcontractor that fails to substantially comply with this section forfeits the right to file a lien claim.

Section 501.4. Notice of Completion for Informational Purposes Only.—

(a) General Rule. Within forty-five (45) days of the actual completion of work on a searchable project, a searchable project owner may file a Notice of Completion in the directory to be indexed with the original Notice of Commencement. The notice shall be transmitted via the directory to all subcontractors who have filed Notices of Furnishing. For the purposes of this paragraph, the term "actual completion of work" shall mean the following:

(1) The issuance of an occupancy permit to the searchable project owner, or his agent, and the acceptance by the searchable project owner, or his agent, of the work accompanied by cessation of all work on the searchable project; or

(2) The cessation of all work on the searchable project for thirty (30) consecutive days, provided that work is not resumed under the same contract.

(b) Nonpayment. Subcontractors who have not received full payment for their work, or for goods or services, on a searchable project may file a Notice of Nonpayment with the searchable project owner or the searchable project owner's agent or the subcontractor in the directory for informational purposes only. The failure to file a Notice of Nonpayment by a subcontractor shall not be construed to affect or limit their rights under this act. Filing of a Notice of Nonpayment shall not relieve a subcontractor from complying with other written notice requirements under this act.

(c) Court. A Notice of Completion shall not be considered by a court in determining compliance with timing requirements under this act or in

determining the completion date for a timing purpose, including limitation periods or warranty obligations.

(d) Effect. The filing of a Notice of Completion is purely precatory and is not dispositive of any relationship among the parties.

Section 501.5. Notice.—

(a) Notification. The directory shall provide notification of a filing of a notice under sections 501.3 and 501.4 to a person who requests notification of the filing of a notice for a searchable project.

(b) Requests. A person who requests the directory to provide the person with official copies of notification of the filing of a notice for a searchable project shall:

(1) provide an e-mail address, mailing address or telefax number to which notification may be sent; and

(2) be responsible for the accuracy of the e-mail address, mailing address or telefax number.

(c) Requirements. A person shall be considered to have requested notification under this section if the person files, with respect to the same searchable project that relates to the required notice, any of the following:

(1) A Notice of Commencement.

(2) A Notice of Furnishing.

(3) A Notice of Completion.

(d) Notification requirements. Notification requirements shall be fulfilled by the directory by sending the official notification to the e-mail address, mailing address or telefax number that the person provides.

(e) Official notification. A person filing a Notice of Commencement, Notice of Furnishing, Notice of Completion or related notice must verify the accuracy of information entered into the directory, regardless of whether the person files electronically, by alternate means or through a third party.

(f) Information. Each notice or other document submitted to the directory must contain:

(1) The name of the county in which the searchable project property to which the notice or other document applies is located.

(2) The tax identification number of each parcel included in the project property.

(3) The number of the building permit for the searchable project on the project property.

Section 501.6. Prohibition.—

(a) Unlawful Acts. It shall be unlawful for a searchable project owner or the searchable project owner's agent, a contractor or subcontractor to suggest, request, encourage or require that a subcontractor not file a Notice of Furnishing as a condition of entering into, continuing, receiving or maintaining a contract for work or furnishing of materials on a searchable project. A person that violates this subsection commits a misdemeanor of the second degree.

(b) Lien by subcontractor. A subcontractor has the right to file a lien for the work and services performed and the materials furnished under this act, irrespective of compliance with section 501.3(b), if the subcontractor proves that the failure to comply with section 501.3(b) was

directly the result of a searchable project owner, the searchable project owner's agent or the contractor violating subsection (a).

(c) Cause of Action. A subcontractor shall have a civil cause of action if the subcontractor proves that failure to comply with section 501.3(b) was the result of a searchable project owner or searchable project owner's agent, or a contractor or subcontractor, violating subsection (a) in order to recover damages for any loss or injury sustained as a result of the violation from a person who commits a violation. The civil cause of action shall only be applied to the entity that violates subsection (a). A court of competent jurisdiction may award to the subcontractor actual damages arising from the violation, reasonable attorneys fees and court costs.

(d) Abuse. A person abuses the directory if the person files a notice in the directory:

(1) Without a good faith reason to do so.

(2) With the intent to exact more payment than is due from the searchable project owner or other party.

(3) To obtain an unjustified advantage or benefit.

(e) Damages. A person who abuses the directory under subsection (d) shall be liable for the amount of actual damages or \$2,000, whichever is greater.

Section 3. The notice provisions of sections 501.2, 501.3, 501.4 and 501.5 of the act shall apply to projects commenced on or after the operational date of the directory.

Section 4. The Department of General Services may designate the operational date of the State Construction Notices Directory under section 501.1(b). If the Department of General Services designates an operational date other than December 31, 2016, it shall transmit the designation to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

Section 5. This act shall take effect as follows:

(1) Section 4 of this act and this section shall take effect immediately.

(2) The notice provisions of sections 501.2, 501.3, 501.4 and 501.5 of the act shall take effect December 31, 2016, or on the date of publication of the operational date in the Pennsylvania Bulletin under section 4 of this act.

(3) The remainder of this act shall take effect in 30 days.

APPROVED—The 14th day of October, A.D. 2014

TOM CORBETT