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By: **Senator Ferguson**

Introduced and read first time: February 3, 1999

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Mechanics' Liens - Subcontractors and Homeowners - Burden of Proof at**  
3 **Interlocutory Stage**

4 FOR the purpose of ~~clarifying~~ establishing that during the interlocutory stage of a  
5 mechanic's lien case between a homeowner and a subcontractor, the  
6 subcontractor is not required to show that the homeowner is indebted to the  
7 contractor; providing for the application of this Act; and generally relating to  
8 mechanics' liens.

9 BY repealing and reenacting, without amendments,  
10 Article - Real Property  
11 Section 9-104(a)(2)  
12 Annotated Code of Maryland  
13 (1996 Replacement Volume and 1998 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article - Real Property  
16 Section 9-106  
17 Annotated Code of Maryland  
18 (1996 Replacement Volume and 1998 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

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**Article - Real Property**

2 9-104.

3 (a) (2) A subcontractor doing work or furnishing materials or both for or  
4 about a single family dwelling being erected on the owner's land for his own residence  
5 is not entitled to a lien under this subtitle unless, within 120 days after doing work or  
6 furnishing materials for or about that single family dwelling, the subcontractor gives  
7 written notice of an intention to claim a lien in accordance with subsection (a)(1) of  
8 this section and the owner has not made full payment to the contractor prior to  
9 receiving the notice.

10 9-106.

11 (a) (1) When a petition to establish a mechanic's lien is filed, the court shall  
12 review the pleadings and documents on file and may require the petitioner to  
13 supplement or explain any of the matters therein set forth. If the court determines  
14 that the lien should attach, it shall pass an order that directs the owner to show cause  
15 within 15 days from the date of service on the owner of a copy of the order, together  
16 with copies of the pleadings and documents on file, why a lien upon the land or  
17 building and for the amount described in the petition should not attach. Additionally,  
18 the order shall inform the owner that:

19 (i) He may appear at the time stated in the order and present  
20 evidence in his behalf or may file a counteraffidavit at or before that time; and

21 (ii) If he fails to appear and present evidence or file a  
22 counteraffidavit, the facts in the affidavit supporting the petitioner's claim shall be  
23 deemed admitted and a lien may attach to the land or buildings described in the  
24 petition.

25 (2) If the owner desires to controvert any statement of fact contained in  
26 the affidavit supporting the petitioner's claim, he must file an affidavit in support of  
27 his answer showing cause. The failure to file such opposing affidavit shall constitute  
28 an admission for the purposes of the proceedings of all statements of fact in the  
29 affidavit supporting the petitioner's claim, but shall not constitute an admission that  
30 such petition or affidavit in support thereof is legally sufficient.

31 (3) An answer showing cause why a lien should not be established in the  
32 amount claimed shall be set down for hearing at the earliest possible time.

33 (b) (1) If the pleadings, affidavits and admissions on file, and the evidence,  
34 if any, show that there is no genuine dispute as to any material fact and that the lien  
35 should attach as a matter of law, then a final order shall be entered establishing the  
36 lien for want of any cause shown to the contrary. Further, if it appears that there is no  
37 genuine dispute as to any portion of the lien claim, then the validity of that portion  
38 shall be established and the action shall proceed only on the disputed amount of the  
39 lien claim.

1 (2) If the pleadings, affidavits and admissions on file and the evidence, if  
 2 any, show that there is no genuine dispute as to any material fact and that the  
 3 petitioner failed to establish his right to a lien as a matter of law, then a final order  
 4 shall be entered denying the lien for cause shown.

5 (3) (I) If the court determines from the pleadings, affidavits and  
 6 admissions on file, and the evidence, if any, that the lien should not attach, or should  
 7 not attach in the amount claimed, as a matter of law, by any final order, but that  
 8 there is probable cause to believe the petitioner is entitled to a lien, the court shall  
 9 enter an interlocutory order which:

10 (i) 1. Establishes the lien;

11 (ii) 2. Describes the boundaries of the land and the buildings to  
 12 which the lien attaches;

13 (iii) 3. States the amount of the claim for which probable cause is  
 14 found;

15 (iv) 4. Specifies the amount of a bond that the owner may file to  
 16 have the land and building released from the lien;

17 (v) 5. May require the claimant to file a bond in an amount that  
 18 the court believes sufficient for damages, including reasonable attorney's fees; and

19 (vi) 6. Assigns a date for the trial of all the matters at issue in  
 20 the action, which shall be within a period of six months. The owner or any other  
 21 person interested in the property, however, may, at any time, move to have the lien  
 22 established by the interlocutory order modified or dissolved.

23 (4) (II) UNLESS THE COURT FINDS FROM THE PLEADINGS, AFFIDAVITS  
 24 AND ADMISSIONS ON FILE, AND THE EVIDENCE, IF ANY, THAT THE OWNER HAS MADE  
 25 FULL PAYMENT TO THE CONTRACTOR IN ACCORDANCE WITH § 9-104(A)(2) OF THIS  
 26 SUBTITLE, THE COURT SHALL ENTER AN INTERLOCUTORY LIEN ON BEHALF OF A  
 27 SUBCONTRACTOR PETITIONER WITHOUT REQUIRING THE SUBCONTRACTOR TO  
 28 PROVE THAT THE OWNER IS INDEBTED TO THE CONTRACTOR.

29 (c) The amount of and the surety on any bond shall be determined and  
 30 approved pursuant to the Maryland Rules except as set forth in this subtitle. The  
 31 petitioner, or any other person interested in the property, however, if not satisfied  
 32 with the sufficiency of a surety or with the amount of any bond given, may, at any  
 33 time before entry of a final decree, apply to the court for an order requiring an  
 34 additional bond, and upon notice to the other parties involved, the court may order  
 35 the giving of such additional bond as it may deem proper. In lieu of filing bond, any  
 36 party may deposit money in an amount equal to the amount of the bond which would  
 37 otherwise be required, pursuant to the Maryland Rules.

38 (d) Until a final order is entered either establishing or denying the lien, the  
 39 action shall proceed to trial on all matters at issue, as in the case of any other  
 40 proceedings in equity.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to all  
2 contracts formed on or after October 1, 1999.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 1999.