

As Introduced

124th General Assembly
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H. B. No. 514

REPRESENTATIVE Seitz

A B I L L

To amend sections 1311.01, 1311.04, 1311.19, and
1311.25 of the Revised Code to expand the time
within which lien rights of subcontractors and
materials suppliers are preserved under the
Mechanic's Lien Law when a timely notice of
commencement is not filed by the owner of an
improvement, and to establish new criteria for
determining whether a notice, affidavit, or other
document has been served as required under that
law.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1311.01, 1311.04, 1311.19, and
1311.25 of the Revised Code be amended to read as follows:

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Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the
Revised Code:

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(A) "Owner," "part owner," or "lessee" includes all the
interests either legal or equitable, which such person may have in
the real estate upon which the improvements are made, including
the interests held by any person under contracts of purchase,
whether in writing or otherwise.

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(B) "Materialman" or "material supplier" includes any person

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by whom any materials are furnished in furtherance of an 21
improvement. 22

(C) "Laborer" includes any mechanic, ~~workman~~ worker, artisan, 23
or other individual who performs labor or work in furtherance of 24
any improvement. 25

(D) "Subcontractor" includes any person who undertakes to 26
construct, alter, erect, improve, repair, demolish, remove, dig, 27
or drill any part of any improvement under a contract with any 28
person other than the owner, part owner, or lessee. 29

(E) "Original contractor," except as otherwise provided in 30
section 1311.011 of the Revised Code, includes a construction 31
manager and any person who undertakes to construct, alter, erect, 32
improve, repair, demolish, remove, dig, or drill any part of any 33
improvement under a contract with an owner, part owner, or lessee. 34

(F) "Construction manager" means a person with substantial 35
discretion and authority to manage or direct an improvement, 36
provided that the person is in direct privity of contract with the 37
owner, part owner, or lessee of the improvement. 38

(G) "Notice of commencement" means the notice specified in 39
section 1311.04 of the Revised Code. 40

(H) "Notice of furnishing" means the notice specified in 41
section 1311.05 of the Revised Code. 42

(I) "Materials" means all products and substances including, 43
without limitation, any gasoline, lubricating oil, petroleum 44
products, powder, dynamite, blasting supplies and other 45
explosives, tools, equipment, or machinery furnished in 46
furtherance of an improvement. 47

(J) "Improvement" means constructing, erecting, altering, 48
repairing, demolishing, or removing any building or appurtenance 49
thereto, fixture, bridge, or other structure, and any gas pipeline 50
or well including, but not limited to, a well drilled or 51

constructed for the production of oil or gas; the furnishing of
tile for the drainage of any lot or land; the enhancement or
embellishment of real property by seeding, sodding, or the
planting thereon of any shrubs, trees, plants, vines, small
fruits, flowers, or nursery stock of any kind; and the grading or
filling to establish a grade.

(K) "Wages" means the basic hourly rate of pay and all other
contractually owed benefits.

Sec. 1311.04. (A)(1) Prior to the performance of any labor or
work or the furnishing of any materials for an improvement on real
property which may give rise to a mechanics' lien under sections
1311.01 to 1311.22 of the Revised Code, the owner, part owner, or
lessee who contracts for the labor, work, or materials shall
record in the office of the county recorder for each county in
which the real property to be improved is located a notice of
commencement in substantially the form specified in division (B)
of this section.

(2) Only one notice of commencement is required to be filed
for a single improvement and if more than one notice of
commencement is filed for a single improvement, all notices filed
after the original notice shall be deemed to be amendments to the
original notice. If an owner, part owner, or lessee contracts with
additional original contractors, lenders, or sureties not
identified in the original notice of commencement filed for the
improvement, the owner, part owner, or lessee shall amend the
original notice of commencement to identify the additional
original contractors, lenders, and sureties. The date of the
filing of the amended notice is the date of the filing of the
original notice of commencement.

(B) The notice of commencement required under division (A) of
this section shall contain, in affidavit form, all of the

following information:	83
(1) The legal description of the real property on which the improvement is to be made. For purposes of this division, a description sufficient to describe the real property for the purpose of conveyance, or contained in the instrument by which the owner, part owner, or lessee took title, is a legal description.	84 85 86 87 88
(2) A brief description of the improvement to be performed on the property containing sufficient specificity to permit lien claimants to identify the improvement;	89 90 91
(3) The name, address, and capacity of the owner, part owner, or lessee of the real property contracting for the improvement;	92 93 94
(4) The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee;	95 96 97
(5) The name and address of the owner's, part owner's, or lessee's designee, if any;	98 99
(6) The name and address of all original contractors, except that if the notice of commencement is recorded for an improvement involving a single- or double-family dwelling and if more than one original contractor is involved, instead of listing each original contractor, the owner shall state that multiple original contractors are involved in the improvement;	100 101 102 103 104 105
(7) The date the owner, part owner, or lessee first executed a contract with an original contractor for the improvement;	106 107
(8) The name and address of all lending institutions which provide financing for the improvements, if any;	108 109
(9) The name and address of all sureties on any bond which guarantee payment of the original contractor's obligations under the contract for the improvement, if any;	110 111 112

(10) The following statement: 113

"To Lien Claimants and Subsequent Purchasers: 114

Take notice that labor or work is about to begin on or 115
materials are about to be furnished for an improvement to the real 116
property described in this instrument. A person having a 117
mechanics' lien may preserve the lien by providing a notice of 118
furnishing to the above-named designee and ~~his~~ the above-named 119
designee's original contractor, if any, and by timely recording an 120
affidavit pursuant to section 1311.06 of the Revised Code. 121

A copy of this notice may be obtained upon making a written 122
request by certified mail to the above-named owner, part owner, 123
lessee, designee, or the person with whom you have contracted." 124

(11) The name and address of the person preparing the notice; 125

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(12) An affidavit of the owner, part owner, or lessee or the 127
agent of the owner, part owner, or lessee which verifies the 128
notice. 129

(C) If the notice of commencement furnished by or for an 130
owner, part owner, or lessee contains incorrect information, the 131
owner, part owner, or lessee is liable for any loss of lien rights 132
of a lien claimant and any actual expenses incurred by the lien 133
claimant in maintaining lien rights, including attorney's fees, if 134
the loss and expenses incurred are a direct result of the lien 135
claimant's reliance on the incorrect information. 136

Any lien claimant who has included incorrect information in 137
~~his~~ the claimant's affidavit for a lien under section 1311.06 of 138
the Revised Code, as a result of incorrect information contained 139
in the notice of commencement, may file for record an amended 140
affidavit for a lien. The amended affidavit shall contain all of 141
the information required by section 1311.06 of the Revised Code 142
for an original affidavit. The lien claimant shall serve a copy of 143

the amended affidavit on the owner, part owner, or lessee as 144
provided in section 1311.07 of the Revised Code. The lien claimant 145
may file the amended affidavit for record at any time during the 146
time that the lien acquired by the original affidavit continues in 147
effect under section 1311.13 of the Revised Code. In no event 148
shall the amended affidavit extend such time period. The filing of 149
an amended affidavit does not constitute a waiver of the rights 150
granted by this division. 151

(D) Within ten days after the date a subcontractor, 152
~~materialman~~ material supplier, or laborer serves a written request 153
upon the owner, part owner, or lessee, or designee for a copy of 154
the notice of commencement, the owner, part owner, lessee, or 155
designee shall serve a copy of the notice of commencement to the 156
requesting subcontractor, ~~materialman~~ material supplier, or 157
laborer. 158

(E) Within ten days after the date a subcontractor, 159
~~materialman~~ material supplier, or laborer serves a written request 160
for a copy of the notice of commencement upon the original 161
contractor who has been provided with a notice of commencement 162
from the owner, part owner, or lessee, or designee and with whom 163
the subcontractor, ~~materialman~~ material supplier, or laborer has a 164
direct contract, the original contractor shall serve a copy of the 165
notice of commencement to the requesting subcontractor, 166
~~materialman~~ material supplier, or laborer. 167

(F) Within ten days after the date a subcontractor, 168
~~materialman~~ material supplier, or laborer serves a written request 169
for a copy of the notice of commencement upon the subcontractor 170
who has been provided with a notice of commencement from the 171
owner, part owner, lessee, designee, or original contractor and 172
with whom the subcontractor, ~~materialman~~ material supplier, or 173
laborer has a direct contract, the subcontractor shall serve a 174
copy of the notice of commencement upon the requesting 175

subcontractor, ~~materialman~~ material supplier, or laborer. 176

(G)(1) Except as provided in division (G)(2) of this section, 177
the owner, part owner, lessee, or designee shall post and maintain 178
posted a copy of the notice of commencement in a conspicuous place 179
on the real property described in the notice during the course of 180
the actual physical improvement to the real property. 181

(2) No owner, part owner, lessee, or designee, has to post a 183
copy of the notice of commencement on the real property described 184
in the notice for an improvement that is the subject of a home 185
purchase contract. 186

(H) The owner, part owner, lessee, or designee shall serve a 187
copy of the notice of commencement upon the original contractor. 188
If the owner, part owner, lessee, or designee fails to serve a 189
copy of the notice of commencement upon the original contractor, 190
the owner, part owner, or lessee is liable to the original 191
contractor for all actual expenses incurred by the original 192
contractor in obtaining the information otherwise provided by the 193
notice of commencement. 194

(I) If the owner, part owner, lessee, or designee fails to 195
record the notice of commencement in accordance with this section, 196
the time within which a subcontractor or ~~materialman~~ material 197
supplier may serve a notice of furnishing as required by section 198
1311.05 of the Revised Code is extended until twenty-one days 199
after the notice of commencement has been recorded. A 200
subcontractor or material supplier need not serve a notice of 201
furnishing to preserve lien rights for the period before the 202
notice of commencement is recorded. 203

(J) If the owner, part owner, lessee, or designee fails to 204
serve, upon written request, the notice of commencement in 205
accordance with this section, the time within which a 206
subcontractor or ~~materialman~~ material supplier may serve a notice 207

of furnishing as required by section 1311.05 of the Revised Code 208
is extended until twenty-one days after the notice of commencement 209
actually has been served to the subcontractor or ~~materialman~~ 210
material supplier. The owner, part owner, or lessee who fails to 211
serve the notice pursuant to this section is liable to any 212
subcontractor or ~~materialman~~ material supplier who becomes a lien 213
claimant for all actual expenses incurred by the lien claimant in 214
obtaining the information that would have been contained in the 215
notice. 216

(K) If an owner, part owner, lessee, or designee fails to 217
post or maintain a copy of the notice of commencement as required 218
by division (G)(1) of this section, the owner, part owner, or 219
lessee is liable to a subcontractor, ~~materialman~~ material 220
supplier, or laborer who becomes a lien claimant for all actual 221
expenses incurred by the lien claimant in obtaining the 222
information otherwise provided by the posting. 223

(L) If an original contractor or subcontractor who has been 224
provided with a notice of commencement fails to serve a copy of 225
the notice of commencement to any subcontractor, ~~materialman~~ 226
material supplier, or laborer who requests it, the original 227
contractor or subcontractor who fails to serve the copy of the 228
notice is liable to the subcontractor, ~~materialman~~ material 229
supplier, or laborer who made the request for all costs incurred 230
by the subcontractor, ~~materialman~~ material supplier, or laborer in 231
obtaining the information contained in the notice of commencement, 232
provided that an original contractor or subcontractor who fails to 233
provide the notice upon request is not liable under this division 234
to any subcontractor, ~~materialman~~ material supplier, or laborer 235
with whom ~~he~~ the original contractor or subcontractor is not in 236
direct privity of contract. 237

(M)(1) If after the first work, labor, or material has been 238
performed on or furnished to the improvement, the owner, part 239

owner, lessee, or designee fails to serve, record, or post a
notice of commencement as required by this section, the original
contractor may, in writing, request the owner, part owner, lessee,
or designee to serve, record, or post the notice. If an owner,
part owner, lessee, or ~~his~~ the designee of an owner, part owner,
or lessee fails or refuses to serve, record, or post a notice of
commencement within ten days of receipt of a request, the owner,
part owner, or lessee is liable for ~~his~~ the owner's, part owner's,
or lessee's failure or refusal and for the designee's failure or
refusal, without recourse to the original contractor for all
damages, costs, and expenses which result from the filing of a
valid mechanics' lien to the extent that the lien, damages, costs,
and expenses could have been avoided through proper payment.

(2) Nothing in this division shall be interpreted as to
either of the following:

(a) Relieving an original contractor from ~~his~~ the duty to pay
~~his~~ the original contractor's subcontractors, ~~materialmen~~ material
suppliers, and laborers for labor or work performed or materials
furnished pursuant to a contract directly with the original
contractor;

(b) Obligating an owner, part owner, or lessee to pay for
work or labor performed or materials furnished by subcontractors,
~~materialmen~~ material suppliers, or laborers pursuant to direct
contracts with the original contractor.

(N)(1) If the owner, part owner, or lessee fails to record a
notice of commencement or an amended notice, any person holding a
mortgage on the real property to be improved may record a notice
of commencement or an amended notice on behalf of the owner, part
owner, or lessee. If the owner, part owner, or lessee fails to
record a notice of commencement or an amended notice within the
later of ten days after the performance of any labor or work or
the furnishing of any material for an improvement on real property

which gives rise to a mechanics' lien under sections 1311.01 to
1311.22 of the Revised Code or three days after service of a
demand to record the notice or amended notice by the original
contractor, the original contractor may record a notice of
commencement or an amended notice on behalf of the owner, part
owner, or lessee.

(2) If the original contractor or a mortgage holder has
recorded a notice of commencement or an amended notice on behalf
of the owner, part owner, or lessee, the owner, part owner, or
lessee is liable to the original contractor or mortgage holder for
all costs and expenses incurred in obtaining the information
contained in the notice of commencement or an amended notice and
all costs incurred in the preparation and recording of the notice
of commencement or an amended notice.

(3) Unless required to file the notice of commencement or an
amended notice on behalf of the owner, part owner, or lessee, the
party filing a written notice of commencement or amended notice on
behalf of the owner, part owner, or lessee is not liable to the
owner, part owner, or lessee for any errors contained in the
notice of commencement or amended notice.

(4) If a mortgage holder or an original contractor records a
notice of commencement or amended notice on behalf of an owner,
part owner, or lessee, such fact must be included on the notice or
amended notice.

(O) This section does not apply to any improvement made
pursuant to a home construction contract as defined in section
1311.011 of the Revised Code.

(P) The county recorder of the county where a notice of
commencement is filed for record shall endorse the date and hour
of its filing and cause it to be recorded as mechanics' liens are
recorded, and collect the same fees for recording the notice of

commencement as are provided in section 317.32 of the Revised
Code. The recorder shall index the real property described in the
notice of commencement and shall index the names of all owners,
part owners, lessees, and land contract vendees in the direct
index and the names of all original contractors in the reverse
index as provided for in section 317.18 of the Revised Code.

(Q) Notwithstanding this section, if the owner, part owner,
or lessee is a telephone company, an electric light company, a gas
company, a water works company, all as defined in section 4905.03
of the Revised Code, or a subsidiary or affiliate thereof, the
owner, part owner, or lessee may, but is not required to, record a
notice of commencement pursuant to division (A) of this section,
and is not required to serve, post, and provide copies of a notice
of commencement pursuant to divisions (D), (G), and (H) of this
section unless such owner, part owner, or lessee elects to record
the notice of commencement. If the owner, part owner, or lessee
elects to record the notice of commencement and the improvement
extends beyond one parcel of real property or one county, the
owner, part owner, or lessee may, in lieu of using the legal
description required in division (B)(1) of this section, use a
description which reasonably describes the real property on which
the improvement is to be made. Any description used other than the
description specified in division (B)(1) of this section shall
refer to the township and county in which the improvement is
located, the name and route number of any local, state, or federal
highway near the improvement, if any, the post office address of
the real property, if any, and the name by which the owner, part
owner, or lessee refers to the improvement.

If an owner, part owner, or lessee elects not to record,
serve, post, or provide copies of a notice of commencement
pursuant to divisions (A), (D), (G)(1), and (H) of this section,
he the owner, part owner, or lessee is subject to all applicable

liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N) 335
of this section. 336

(R) If an owner, part owner, lessee, or designee fails to 337
record a notice of commencement in accordance with this section, 338
no subcontractor or ~~materialman~~ material supplier who performs 339
labor or work upon or furnishes material in furtherance of that 340
improvement has to serve a notice of furnishing in accordance with 341
section 1311.05 of the Revised Code in order to preserve ~~his~~ the 342
subcontractor's or material supplier's lien rights. 343

Sec. 1311.19. (A) Except as otherwise provided in section 344
1311.11 of the Revised Code and division (C) of this section, any 345
notice, affidavit, or other document required to be served under 346
this chapter shall be served by one of the following means: 347

(1) The sheriff of the county in which the person to be 348
served resides or maintains ~~his~~ the person's principal place of 349
business, in one or more of the methods provided in the Ohio Rules 350
of Civil Procedure. The sheriff may charge reasonable fees for 351
such service. 352

(2) Certified or registered mail, overnight delivery service, 353
hand delivery, or any other method which includes a written 354
evidence of receipt; 355

(3) The means provided in division (H) of section 1701.07 of 356
the Revised Code, if the person is a corporation. 357

(B) For purposes of this chapter, service is complete upon 358
receipt by the party being served except as provided in division 359
(H) of section 1701.07 of the Revised Code and except, for the 360
purposes of sections 1311.05 and 1311.261 of the Revised Code, if 361
service of a notice of furnishing is made by certified mail, 362
service is complete on the date of the mailing. If the service is 363
attempted upon an owner, part owner, or lessee, or designee, at 364
the address contained in the notice of commencement required by 365

section 1311.04 of the Revised Code, and if the notice, affidavit,
or other document is returned unclaimed or refused, service is
complete when first attempted.

(C) A notice, affidavit, or other document required to be
served under this chapter is considered served, whether or not the
notice, affidavit, or other document was served by the means
described in divisions (A)(1) to (3) of this section, and service
is complete on the date the notice, affidavit, or other document
is received, if either of the following is true regarding the
notice, affidavit, or other document:

(1) The person served acknowledges receipt of the notice,
affidavit, or other document.

(2) It can be proved by a preponderance of evidence that the
person being served actually received the notice, affidavit, or
other document.

A notice, affidavit, or other document to which this division
applies is presumed to have been received three days after the
date of the mailing of the notice, affidavit, or other document,
unless a written acknowledgement, receipt, or other evidence
provides proof to the contrary.

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the
Revised Code:

(A) "Public improvement" means any construction,
reconstruction, improvement, enlargement, alteration, demolition,
or repair of a building, highway, drainage system, water system,
road, street, alley, sewer, ditch, sewage disposal plant, water
works, and any other structure or work of any nature by a public
authority.

(B) "Public authority" includes the state, and a county,
township, municipal corporation, school district, or other

political subdivision of the state, and any public agency,
authority, board, commission, instrumentality, or special district
of or in the state or a county, township, municipal corporation,
school district, or other political subdivision of the state, and
any officer or agent thereof.

(C) "Materialman" or "material supplier" includes any person
by whom any materials are furnished in furtherance of a public
improvement.

(D) "Laborer" includes any mechanic, ~~workman~~ worker, artisan,
or other individual who performs labor or work in furtherance of
any public improvement.

(E) "Subcontractor" includes any person who undertakes to
construct, alter, erect, improve, repair, demolish, remove, dig,
or drill any part of any public improvement under a contract with
any person other than the public authority.

(F) "Principal contractor" includes any person who undertakes
to construct, alter, erect, improve, repair, demolish, remove,
dig, or drill any part of any public improvement under a contract
with a public authority.

(G) "Materials" means all products and substances including,
without limitation, any gasoline, lubricating oil, petroleum
products, powder, dynamite, blasting supplies and other
explosives, tools, equipment, or machinery furnished in
furtherance of a public improvement.

(H) "Wages" has the same meaning as "prevailing wage" in
division (E) of section 4115.03 of the Revised Code.

(I) "Notice of commencement" means the notice specified in
section 1311.252 of the Revised Code.

(J) "Notice of furnishing" means the notice specified in
section 1311.261 of the Revised Code.

Section 2. That existing sections 1311.01, 1311.04, 1311.19,	426
and 1311.25 of the Revised Code are hereby repealed.	427