

As Passed by the House

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Am. H. B. No. 514

**REPRESENTATIVES Seitz, Willamowski, Manning, Grendell, Schmidt,
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Schaffer, Gilb**

A B I L L

To amend sections 1311.01, 1311.04, 1311.19, and 1
1311.25 of the Revised Code to expand the time 2
within which lien rights of subcontractors and 3
materials suppliers are preserved under the 4
Mechanic's Lien Law when a timely notice of 5
commencement is not filed by the owner of an 6
improvement; to establish new criteria for 7
determining whether a notice, affidavit, or other 8
document has been served as required under that 9
law; and to specify that the excavation, cleanup, 10
or removal of hazardous material from realy 11
property is an improvement for purposes of the 12
Mechanic's Lien Law. 13

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

Section 1. That sections 1311.01, 1311.04, 1311.19, and 14
1311.25 of the Revised Code be amended to read as follows: 15

Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the 16

Revised Code:	17
(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.	18 19 20 21 22
(B) "Materialman" <u>or "material supplier"</u> includes any person by whom any materials are furnished in furtherance of an improvement.	23 24 25
(C) "Laborer" includes any mechanic, workman <u>worker</u> , artisan, or other individual who performs labor or work in furtherance of any improvement.	26 27 28
(D) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with any person other than the owner, part owner, or lessee.	29 30 31 32
(E) "Original contractor," except as otherwise provided in section 1311.011 of the Revised Code, includes a construction manager and any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with an owner, part owner, or lessee.	33 34 35 36 37
(F) "Construction manager" means a person with substantial discretion and authority to manage or direct an improvement, provided that the person is in direct privity of contract with the owner, part owner, or lessee of the improvement.	38 39 40 41
(G) "Notice of commencement" means the notice specified in section 1311.04 of the Revised Code.	42 43
(H) "Notice of furnishing" means the notice specified in section 1311.05 of the Revised Code.	44 45
(I) "Materials" means all products and substances including,	46

without limitation, any gasoline, lubricating oil, petroleum 47
products, powder, dynamite, blasting supplies and other 48
explosives, tools, equipment, or machinery furnished in 49
furtherance of an improvement. 50

(J) "Improvement" means constructing, erecting, altering, 51
repairing, demolishing, or removing any building or appurtenance 52
thereto, fixture, bridge, or other structure, and any gas pipeline 53
or well including, but not limited to, a well drilled or 54
constructed for the production of oil or gas; the furnishing of 55
tile for the drainage of any lot or land; the excavation, cleanup, 56
or removal of hazardous material or waste from real property; the 57
enhancement or embellishment of real property by seeding, sodding, 58
or the planting thereon of any shrubs, trees, plants, vines, small 59
fruits, flowers, or nursery stock of any kind; and the grading or 60
filling to establish a grade. 61

(K) "Wages" means the basic hourly rate of pay and all other 62
contractually owed benefits. 63

Sec. 1311.04. (A)(1) Prior to the performance of any labor or 64
work or the furnishing of any materials for an improvement on real 65
property which may give rise to a mechanics' lien under sections 66
1311.01 to 1311.22 of the Revised Code, the owner, part owner, or 67
lessee who contracts for the labor, work, or materials shall 68
record in the office of the county recorder for each county in 69
which the real property to be improved is located a notice of 70
commencement in substantially the form specified in division (B) 71
of this section. 72

(2) Only one notice of commencement is required to be filed 73
for a single improvement and if more than one notice of 74
commencement is filed for a single improvement, all notices filed 75
after the original notice shall be deemed to be amendments to the 76
original notice. If an owner, part owner, or lessee contracts with 77

additional original contractors, lenders, or sureties not 78
identified in the original notice of commencement filed for the 79
improvement, the owner, part owner, or lessee shall amend the 80
original notice of commencement to identify the additional 81
original contractors, lenders, and sureties. The date of the 82
filing of the amended notice is the date of the filing of the 83
original notice of commencement. 84

(B) The notice of commencement required under division (A) of 85
this section shall contain, in affidavit form, all of the 86
following information: 87

(1) The legal description of the real property on which the 88
improvement is to be made. For purposes of this division, a 89
description sufficient to describe the real property for the 90
purpose of conveyance, or contained in the instrument by which the 91
owner, part owner, or lessee took title, is a legal description. 92

(2) A brief description of the improvement to be performed on 93
the property containing sufficient specificity to permit lien 94
claimants to identify the improvement; 95

(3) The name, address, and capacity of the owner, part owner, 96
or lessee of the real property contracting for the improvement; 97
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(4) The name and address of the fee owner of the real 99
property, if the person contracting for the improvement is a land 100
contract vendee or lessee; 101

(5) The name and address of the owner's, part owner's, or 102
lessee's designee, if any; 103

(6) The name and address of all original contractors, except 104
that if the notice of commencement is recorded for an improvement 105
involving a single- or double-family dwelling and if more than one 106
original contractor is involved, instead of listing each original 107
contractor, the owner shall state that multiple original 108

contractors are involved in the improvement;	109
(7) The date the owner, part owner, or lessee first executed a contract with an original contractor for the improvement;	110 111
(8) The name and address of all lending institutions which provide financing for the improvements, if any;	112 113
(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;	114 115 116
(10) The following statement:	117
"To Lien Claimants and Subsequent Purchasers:	118
Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanics' lien may preserve the lien by providing a notice of furnishing to the above-named designee and his <u>the above-named designee's</u> original contractor, if any, and by timely recording an affidavit pursuant to section 1311.06 of the Revised Code.	119 120 121 122 123 124 125
A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee, or the person with whom you have contracted."	126 127 128
(11) The name and address of the person preparing the notice;	129 130
(12) An affidavit of the owner, part owner, or lessee or the agent of the owner, part owner, or lessee which verifies the notice.	131 132 133
(C) If the notice of commencement furnished by or for an owner, part owner, or lessee contains incorrect information, the owner, part owner, or lessee is liable for any loss of lien rights of a lien claimant and any actual expenses incurred by the lien claimant in maintaining lien rights, including attorney's fees, if	134 135 136 137 138

the loss and expenses incurred are a direct result of the lien 139
claimant's reliance on the incorrect information. 140

Any lien claimant who has included incorrect information in 141
~~his~~ the claimant's affidavit for a lien under section 1311.06 of 142
the Revised Code, as a result of incorrect information contained 143
in the notice of commencement, may file for record an amended 144
affidavit for a lien. The amended affidavit shall contain all of 145
the information required by section 1311.06 of the Revised Code 146
for an original affidavit. The lien claimant shall serve a copy of 147
the amended affidavit on the owner, part owner, or lessee as 148
provided in section 1311.07 of the Revised Code. The lien claimant 149
may file the amended affidavit for record at any time during the 150
time that the lien acquired by the original affidavit continues in 151
effect under section 1311.13 of the Revised Code. In no event 152
shall the amended affidavit extend such time period. The filing of 153
an amended affidavit does not constitute a waiver of the rights 154
granted by this division. 155

(D) Within ten days after the date a subcontractor, 156
~~materialman~~ material supplier, or laborer serves a written request 157
upon the owner, part owner, or lessee, or designee for a copy of 158
the notice of commencement, the owner, part owner, lessee, or 159
designee shall serve a copy of the notice of commencement to the 160
requesting subcontractor, ~~materialman~~ material supplier, or 161
laborer. 162

(E) Within ten days after the date a subcontractor, 163
~~materialman~~ material supplier, or laborer serves a written request 164
for a copy of the notice of commencement upon the original 165
contractor who has been provided with a notice of commencement 166
from the owner, part owner, or lessee, or designee and with whom 167
the subcontractor, ~~materialman~~ material supplier, or laborer has a 168
direct contract, the original contractor shall serve a copy of the 169
notice of commencement to the requesting subcontractor, 170

~~materialman~~ material supplier, or laborer. 171

(F) Within ten days after the date a subcontractor, 172
~~materialman~~ material supplier, or laborer serves a written request 173
for a copy of the notice of commencement upon the subcontractor 174
who has been provided with a notice of commencement from the 175
owner, part owner, lessee, designee, or original contractor and 176
with whom the subcontractor, ~~materialman~~ material supplier, or 177
laborer has a direct contract, the subcontractor shall serve a 178
copy of the notice of commencement upon the requesting 179
subcontractor, ~~materialman~~ material supplier, or laborer. 180

(G)(1) Except as provided in division (G)(2) of this section, 181
the owner, part owner, lessee, or designee shall post and maintain 182
posted a copy of the notice of commencement in a conspicuous place 183
on the real property described in the notice during the course of 184
the actual physical improvement to the real property. 185

(2) No owner, part owner, lessee, or designee, has to post a 187
copy of the notice of commencement on the real property described 188
in the notice for an improvement that is the subject of a home 189
purchase contract. 190

(H) The owner, part owner, lessee, or designee shall serve a 191
copy of the notice of commencement upon the original contractor. 192
If the owner, part owner, lessee, or designee fails to serve a 193
copy of the notice of commencement upon the original contractor, 194
the owner, part owner, or lessee is liable to the original 195
contractor for all actual expenses incurred by the original 196
contractor in obtaining the information otherwise provided by the 197
notice of commencement. 198

(I) If the owner, part owner, lessee, or designee fails to 199
record the notice of commencement in accordance with this section, 200
the time within which a subcontractor or ~~materialman~~ material 201
supplier may serve a notice of furnishing as required by section 202

1311.05 of the Revised Code is extended until twenty-one days 203
after the notice of commencement has been recorded. A 204
subcontractor or material supplier need not serve a notice of 205
furnishing to preserve lien rights for the period before the 206
notice of commencement is recorded. 207

(J) If the owner, part owner, lessee, or designee fails to 208
serve, upon written request, the notice of commencement in 209
accordance with this section, the time within which a 210
subcontractor or ~~materialman~~ material supplier may serve a notice 211
of furnishing as required by section 1311.05 of the Revised Code 212
is extended until twenty-one days after the notice of commencement 213
actually has been served to the subcontractor or ~~materialman~~ 214
material supplier. The owner, part owner, or lessee who fails to 215
serve the notice pursuant to this section is liable to any 216
subcontractor or ~~materialman~~ material supplier who becomes a lien 217
claimant for all actual expenses incurred by the lien claimant in 218
obtaining the information that would have been contained in the 219
notice. 220

(K) If an owner, part owner, lessee, or designee fails to 221
post or maintain a copy of the notice of commencement as required 222
by division (G)(1) of this section, the owner, part owner, or 223
lessee is liable to a subcontractor, ~~materialman~~ material 224
supplier, or laborer who becomes a lien claimant for all actual 225
expenses incurred by the lien claimant in obtaining the 226
information otherwise provided by the posting. 227

(L) If an original contractor or subcontractor who has been 228
provided with a notice of commencement fails to serve a copy of 229
the notice of commencement to any subcontractor, ~~materialman~~ 230
material supplier, or laborer who requests it, the original 231
contractor or subcontractor who fails to serve the copy of the 232
notice is liable to the subcontractor, ~~materialman~~ material 233
supplier, or laborer who made the request for all costs incurred 234

by the subcontractor, ~~materialman~~ material supplier, or laborer in 235
obtaining the information contained in the notice of commencement, 236
provided that an original contractor or subcontractor who fails to 237
provide the notice upon request is not liable under this division 238
to any subcontractor, ~~materialman~~ material supplier, or laborer 239
with whom ~~he~~ the original contractor or subcontractor is not in 240
direct privity of contract. 241

(M)(1) If after the first work, labor, or material has been 242
performed on or furnished to the improvement, the owner, part 243
owner, lessee, or designee fails to serve, record, or post a 244
notice of commencement as required by this section, the original 245
contractor may, in writing, request the owner, part owner, lessee, 246
or designee to serve, record, or post the notice. If an owner, 247
part owner, lessee, or ~~his~~ the designee of an owner, part owner, 248
or lessee fails or refuses to serve, record, or post a notice of 249
commencement within ten days of receipt of a request, the owner, 250
part owner, or lessee is liable for ~~his~~ the owner's, part owner's, 251
or lessee's failure or refusal and for the designee's failure or 252
refusal, without recourse to the original contractor for all 253
damages, costs, and expenses which result from the filing of a 254
valid mechanics' lien to the extent that the lien, damages, costs, 255
and expenses could have been avoided through proper payment. 256

(2) Nothing in this division shall be interpreted as to 257
either of the following: 258

(a) Relieving an original contractor from ~~his~~ the duty to pay 259
~~his~~ the original contractor's subcontractors, ~~materialmen~~ material 260
suppliers, and laborers for labor or work performed or materials 261
furnished pursuant to a contract directly with the original 262
contractor; 263

(b) Obligating an owner, part owner, or lessee to pay for 264
work or labor performed or materials furnished by subcontractors, 265
~~materialmen~~ material suppliers, or laborers pursuant to direct 266

contracts with the original contractor. 267

(N)(1) If the owner, part owner, or lessee fails to record a 268
notice of commencement or an amended notice, any person holding a 269
mortgage on the real property to be improved may record a notice 270
of commencement or an amended notice on behalf of the owner, part 271
owner, or lessee. If the owner, part owner, or lessee fails to 272
record a notice of commencement or an amended notice within the 273
later of ten days after the performance of any labor or work or 274
the furnishing of any material for an improvement on real property 275
which gives rise to a mechanics' lien under sections 1311.01 to 276
1311.22 of the Revised Code or three days after service of a 277
demand to record the notice or amended notice by the original 278
contractor, the original contractor may record a notice of 279
commencement or an amended notice on behalf of the owner, part 280
owner, or lessee. 281

(2) If the original contractor or a mortgage holder has 282
recorded a notice of commencement or an amended notice on behalf 283
of the owner, part owner, or lessee, the owner, part owner, or 284
lessee is liable to the original contractor or mortgage holder for 285
all costs and expenses incurred in obtaining the information 286
contained in the notice of commencement or an amended notice and 287
all costs incurred in the preparation and recording of the notice 288
of commencement or an amended notice. 289

(3) Unless required to file the notice of commencement or an 290
amended notice on behalf of the owner, part owner, or lessee, the 291
party filing a written notice of commencement or amended notice on 292
behalf of the owner, part owner, or lessee is not liable to the 293
owner, part owner, or lessee for any errors contained in the 294
notice of commencement or amended notice. 295

(4) If a mortgage holder or an original contractor records a 296
notice of commencement or amended notice on behalf of an owner, 297
part owner, or lessee, such fact must be included on the notice or 298

amended notice.

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(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.

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(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.

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(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

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located, the name and route number of any local, state, or federal 331
highway near the improvement, if any, the post office address of 332
the real property, if any, and the name by which the owner, part 333
owner, or lessee refers to the improvement. 334

If an owner, part owner, or lessee elects not to record, 335
serve, post, or provide copies of a notice of commencement 336
pursuant to divisions (A), (D), (G)(1), and (H) of this section, 337
~~he~~ the owner, part owner, or lessee is subject to all applicable 338
liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N) 339
of this section. 340

(R) If an owner, part owner, lessee, or designee fails to 341
record a notice of commencement in accordance with this section, 342
no subcontractor or ~~materialman~~ material supplier who performs 343
labor or work upon or furnishes material in furtherance of that 344
improvement has to serve a notice of furnishing in accordance with 345
section 1311.05 of the Revised Code in order to preserve ~~his~~ the 346
subcontractor's or material supplier's lien rights. 347

Sec. 1311.19. (A) Except as otherwise provided in section 348
1311.11 of the Revised Code and division (C) of this section, any 349
notice, affidavit, or other document required to be served under 350
this chapter shall be served by one of the following means: 351

(1) The sheriff of the county in which the person to be 352
served resides or maintains ~~his~~ the person's principal place of 353
business, in one or more of the methods provided in the Ohio Rules 354
of Civil Procedure. The sheriff may charge reasonable fees for 355
such service. 356

(2) Certified or registered mail, overnight delivery service, 357
hand delivery, or any other method which includes a written 358
evidence of receipt; 359

(3) The means provided in division (H) of section 1701.07 of 360

the Revised Code, if the person is a corporation. 361

(B) For purposes of this chapter, service is complete upon 362
receipt by the party being served except as provided in division 363
(H) of section 1701.07 of the Revised Code and except, for the 364
purposes of sections 1311.05 and 1311.261 of the Revised Code, if 365
service of a notice of furnishing is made by certified mail, 366
service is complete on the date of the mailing. If the service is 367
attempted upon an owner, part owner, or lessee, or designee, at 368
the address contained in the notice of commencement required by 369
section 1311.04 of the Revised Code, and if the notice, affidavit, 370
or other document is returned unclaimed or refused, service is 371
complete when first attempted. 372

(C) A notice, affidavit, or other document required to be 373
served under this chapter is considered served, whether or not the 374
notice, affidavit, or other document was served by the means 375
described in divisions (A)(1) to (3) of this section, and service 376
is complete on the date the notice, affidavit, or other document 377
is received, if either of the following is true regarding the 378
notice, affidavit, or other document: 379

(1) The person served acknowledges receipt of the notice, 380
affidavit, or other document. 381

(2) It can be proved by a preponderance of evidence that the 382
person being served actually received the notice, affidavit, or 383
other document. 384

A notice, affidavit, or other document to which this division 385
applies is presumed to have been received three days after the 386
date of the mailing of the notice, affidavit, or other document, 387
unless a written acknowledgement, receipt, or other evidence 388
provides proof to the contrary. 389

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the 390

Revised Code:	391
(A) "Public improvement" means any construction,	392
reconstruction, improvement, enlargement, alteration, demolition,	393
or repair of a building, highway, drainage system, water system,	394
road, street, alley, sewer, ditch, sewage disposal plant, water	395
works, and any other structure or work of any nature by a public	396
authority.	397
(B) "Public authority" includes the state, and a county,	398
township, municipal corporation, school district, or other	399
political subdivision of the state, and any public agency,	400
authority, board, commission, instrumentality, or special district	401
of or in the state or a county, township, municipal corporation,	402
school district, or other political subdivision of the state, and	403
any officer or agent thereof.	404
(C) "Materialman" or " <u>material supplier</u> " includes any person	405
by whom any materials are furnished in furtherance of a public	406
improvement.	407
(D) "Laborer" includes any mechanic, workman <u>worker</u> , artisan,	408
or other individual who performs labor or work in furtherance of	409
any public improvement.	410
(E) "Subcontractor" includes any person who undertakes to	411
construct, alter, erect, improve, repair, demolish, remove, dig,	412
or drill any part of any public improvement under a contract with	413
any person other than the public authority.	414
(F) "Principal contractor" includes any person who undertakes	415
to construct, alter, erect, improve, repair, demolish, remove,	416
dig, or drill any part of any public improvement under a contract	417
with a public authority.	418
(G) "Materials" means all products and substances including,	419
without limitation, any gasoline, lubricating oil, petroleum	420
products, powder, dynamite, blasting supplies and other	421

explosives, tools, equipment, or machinery furnished in 422
furtherance of a public improvement. 423

(H) "Wages" has the same meaning as "prevailing wage" in 424
division (E) of section 4115.03 of the Revised Code. 425

(I) "Notice of commencement" means the notice specified in 426
section 1311.252 of the Revised Code. 427

(J) "Notice of furnishing" means the notice specified in 428
section 1311.261 of the Revised Code. 429

Section 2. That existing sections 1311.01, 1311.04, 1311.19, 430
and 1311.25 of the Revised Code are hereby repealed. 431