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**Representatives Widener, Martin, McGregor, R., Wagoner, Seitz, Hartnett,
Allen, Koziura, Hagan, Gibbs, Evans, C., Bulp, Chandler, Coley, Combs,
DeBose, Dolan, Domenick, Flowers, Hughes, Luckie, McGregor, J., Otterman,
Schaffer, Schneider, Smith, G., Williams
Senator Kearney**

—

A B I L L

To amend sections 153.54, 153.57, 1311.01, 1311.011, 1
1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 2
1311.12, 1311.13, 1311.14, 1311.15, 1311.25, 3
1311.26, 1311.261, 1311.28, 1311.29, 1311.32, 4
4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 5
4740.07, 4740.08, 4740.101, 4740.12, 5309.57, and 6
5525.16 and to enact section 4740.15 of the 7
Revised Code to specify that an owner, part owner, 8
or lessee of real property, with respect to a home 9
construction contract, must record a notice of 10
commencement only if required by a lending 11
institution, to stipulate that a notice of 12
commencement for a home construction contract 13
expires six years after it is recorded, to permit 14
court costs and reasonable attorney fees to be 15
included in damages an owner may recover from a 16
lienholder who refuses to release the lien after 17
the owner makes full payment and to stipulate for 18
all types of liens that a mortgage is considered 19
filed first if a mortgage and notice of 20

commencement are filed on the same day, to modify 21
procedures and requirements for contractor 22
licensure by the Ohio Construction Industry 23
Licensing Board, to require that any political 24
subdivision, district, or agency of the state that 25
requires contractor registration and fee payment 26
must require licensure in the contractor's trade 27
by the Construction Industry Licensing Board, and 28
to establish a procedure and penalty when checks 29
in payment of fees are returned unpaid to the 30
Construction Industry Licensing Board. 31

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

Section 1. That sections 153.54, 153.57, 1311.01, 1311.011, 32
1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 1311.13, 33
1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 1311.29, 34
1311.32, 4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 4740.07, 35
4740.08, 4740.101, 4740.12, 5309.57, and 5525.16 be amended and 36
section 4740.15 of the Revised Code be enacted to read as follows: 37

Sec. 153.54. (A) Each person bidding for a contract with the 38
state or any political subdivision, district, institution, or 39
other agency thereof, excluding therefrom the department of 40
transportation, for any public improvement shall file with the 41
bid, a bid guaranty in the form of either: 42

(1) A bond in accordance with division (B) of this section 43
for the full amount of the bid; 44

(2) A certified check, cashier's check, or letter of credit 45
pursuant to Chapter 1305. of the Revised Code, in accordance with 46
division (C) of this section. Any such letter of credit is 47
revocable only at the option of the beneficiary state, political 48

subdivision, district, institution, or agency. The amount of the
certified check, cashier's check, or letter of credit shall be
equal to ten per cent of the bid.

(B) A bid guaranty filed pursuant to division (A)(1) of this
section shall be conditioned to:

(1) Provide that, if the bid is accepted, the bidder, after
the awarding or the recommendation for the award of the contract,
whichever the contracting authority designates, will enter into a
proper contract in accordance with the bid, plans, details,
specifications, and bills of material. If for any reason, other
than as authorized by section 9.31 of the Revised Code or division
(G) of this section, the bidder fails to enter into the contract,
and the contracting authority awards the contract to the next
lowest bidder, the bidder and the surety on the bidder's bond are
liable to the state, political subdivision, district, institution,
or agency for the difference between the bid and that of the next
lowest bidder, or for a penal sum not to exceed ten per cent of
the amount of the bond, whichever is less. If the state, political
subdivision, district, institution, or agency does not award the
contract to the next lowest bidder but resubmits the project for
bidding, the bidder failing to enter into the contract and the
surety on the bidder's bond, except as provided in division (G) of
this section, are liable to the state, political subdivision,
district, institution, or agency for a penal sum not to exceed ten
per cent of the amount of the bid or the costs in connection with
the resubmission of printing new contract documents, required
advertising, and printing and mailing notices to prospective
bidders, whichever is less.

(2) Indemnify the state, political subdivision, district,
institution, or agency against all damage suffered by failure to
perform the contract according to its provisions and in accordance
with the plans, details, specifications, and bills of material

therefor and to pay all lawful claims of subcontractors, 81
~~materialmen~~ material suppliers, and laborers for labor performed 82
or material furnished in carrying forward, performing, or 83
completing the contract; and agree and assent that this 84
undertaking is for the benefit of any subcontractor, ~~materialman~~ 85
material supplier, or laborer having a just claim, as well as for 86
the state, political subdivision, district, institution, or 87
agency. 88

(C)(1) A bid guaranty filed pursuant to division (A)(2) of 89
this section shall be conditioned to provide that if the bid is 90
accepted, the bidder, after the awarding or the recommendation for 91
the award of the contract, whichever the contracting authority 92
designates, will enter into a proper contract in accordance with 93
the bid, plans, details, specifications, and bills of material. If 94
for any reason, other than as authorized by section 9.31 of the 95
Revised Code or division (G) of this section, the bidder fails to 96
enter into the contract, and the contracting authority awards the 97
contract to the next lowest bidder, the bidder is liable to the 98
state, political subdivision, district, institution, or agency for 99
the difference between the bidder's bid and that of the next 100
lowest bidder, or for a penal sum not to exceed ten per cent of 101
the amount of the bid, whichever is less. If the state, political 102
subdivision, district, institution, or agency does not award the 103
contract to the next lowest bidder but resubmits the project for 104
bidding, the bidder failing to enter into the contract, except as 105
provided in division (G) of this section, is liable to the state, 106
political subdivision, district, institution, or agency for a 107
penal sum not to exceed ten per cent of the amount of the bid or 108
the costs in connection with the resubmission, of printing new 109
contract documents, required advertising, and printing and mailing 110
notices to prospective bidders, whichever is less. 111

If the bidder enters into the contract, the bidder, at the 112

time the contract is entered to, shall file a bond for the amount
of the contract to indemnify the state, political subdivision,
district, institution, or agency against all damage suffered by
failure to perform the contract according to its provisions and in
accordance with the plans, details, specifications, and bills of
material therefor and to pay all lawful claims of subcontractors,
~~materialmen~~ material suppliers, and laborers for labor performed
or material furnished in carrying forward, performing, or
completing the contract; and agree and assent that this
undertaking is for the benefit of any subcontractor, ~~materialman~~
material supplier, or laborer having a just claim, as well as for
the state, political subdivision, district, institution, or
agency.

(2) A construction manager who enters into a contract
pursuant to sections 9.33 to 9.333 of the Revised Code, if
required by the public owner at the time the construction manager
enters into the contract, shall file a letter of credit pursuant
to Chapter 1305. of the Revised Code, bond, certified check, or
cashier's check, for the value of the construction management
contract to indemnify the state, political subdivision, district,
institution, or agency against all damage suffered by the
construction manager's failure to perform the contract according
to its provisions, and shall agree and assent that this
undertaking is for the benefit of the state, political
subdivision, district, institution, or agency. A letter of credit
provided by the construction manager is revocable only at the
option of the beneficiary state, political subdivision, district,
institution, or agency.

(D) Where the state, political subdivision, district,
institution, or agency accepts a bid but the bidder fails or
refuses to enter into a proper contract in accordance with the
bid, plans, details, specifications, and bills of material within

ten days after the awarding of the contract, the bidder and the surety on any bond, except as provided in division (G) of this section, are liable for the amount of the difference between the bidder's bid and that of the next lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Where the state, political subdivision, district, institution, or agency then awards the bid to such next lowest bidder and such next lowest bidder also fails or refuses to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material within ten days after the awarding of the contract, the liability of such next lowest bidder, except as provided in division (G) of this section, is the amount of the difference between the bids of such next lowest bidder and the third lowest bidder, but not in excess of the liability specified in division (B)(1) or (C) of this section. Liability on account of an award to any lowest bidder beyond the third lowest bidder shall be determined in like manner.

(E) Notwithstanding division (C) of this section, where the state, political subdivision, district, institution, or agency resubmits the project for bidding, each bidder whose bid was accepted but who failed or refused to enter into a proper contract, except as provided in division (G) of this section, is liable for an equal share of a penal sum in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, but no bidder's liability shall exceed the amount of the bidder's bid guaranty.

(F) All bid guaranties filed pursuant to this section shall be payable to the state, political subdivision, district, institution, or agency, be for the benefit of the state, political subdivision, district, institution, or agency or any person having a right of action thereon, and be deposited with, and held by, the

board, officer, or agent contracting on behalf of the state, 177
political subdivision, district, institution, or agency. All bonds 178
filed pursuant to this section shall be issued by a surety company 179
authorized to do business in this state as surety approved by the 180
board, officer, or agent awarding the contract on behalf of the 181
state, political subdivision, district, institution, or agency. 182

(G) A bidder for a contract with the state or any political 183
subdivision, district, institution, or other agency thereof, 184
excluding therefrom the Ohio department of transportation, for a 185
public improvement costing less than one-half million dollars may 186
withdraw the bid from consideration if the bidder's bid for some 187
other contract with the state or any political subdivision, 188
district, institution, or other agency thereof, excluding 189
therefrom the department of transportation, for the public 190
improvement costing less than one-half million dollars has already 191
been accepted, if the bidder certifies in good faith that the 192
total amount of all the bidder's current contracts is less than 193
one-half million dollars, and if the surety certifies in good 194
faith that the bidder is unable to perform the subsequent contract 195
because to do so would exceed the bidder's bonding capacity. If a 196
bid is withdrawn under authority of this division, the contracting 197
authority may award the contract to the next lowest bidder or 198
reject all bids and resubmit the project for bidding, and neither 199
the bidder nor the surety on the bidder's bond are liable for the 200
difference between the bidder's bid and that of the next lowest 201
bidder, for a penal sum, or for the costs of printing new contract 202
documents, required advertising, and printing and mailing notices 203
to prospective bidders. 204

(H) Bid guaranties filed pursuant to division (A) of this 205
section shall be returned to all unsuccessful bidders immediately 206
after the contract is executed. The bid guaranty filed pursuant to 207
division (A)(2) of this section shall be returned to the 208

successful bidder upon filing of the bond required in division (C) 209
of this section. 210

(I) For the purposes of this section, "next lowest bidder" 211
means, in the case of a political subdivision that has adopted the 212
model Ohio and United States preference requirements promulgated 213
pursuant to division (E) of section 125.11 of the Revised Code, 214
the next lowest bidder that qualifies under those preference 215
requirements. 216

(J) For the purposes of this section and sections 153.56, 217
153.57, and 153.571 of the Revised Code, "public improvement," 218
"subcontractor," "~~materialman~~ material supplier," "laborer," and 219
"materials" have the same meanings as in section 1311.25 of the 220
Revised Code. 221

Sec. 153.57. (A) The bond provided for in division (C)(1) of 222
section 153.54 of the Revised Code shall be in substantially the 223
following form, and recovery of any claimant thereunder shall be 224
subject to sections 153.01 to 153.60 of the Revised Code, to the 225
same extent as if the provisions of those sections were fully 226
incorporated in the bond form: 227

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned 228
..... as principal and 229
as sureties, are hereby held and firmly bound unto 230
..... in the penal sum of dollars, for 231
the payment of which well and truly to be made, we hereby jointly 232
and severally bind ourselves, our heirs, executors, 233
administrators, successors, and assigns. 234

Signed this day of, 235

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas 236
the above named principal did on the day of 237
.....,, enter into a contract with 238

....., which said contract is made a part of this bond 239
the same as though set forth herein; 240

Now, if the said shall well and 241
faithfully do and perform the things agreed by 242
to be done and performed according to the terms of said contract; 243
and shall pay all lawful claims of subcontractors, ~~materialmen~~ 244
material suppliers, and laborers, for labor performed and 245
materials furnished in the carrying forward, performing, or 246
completing of said contract; we agreeing and assenting that this 247
undertaking shall be for the benefit of any ~~materialman~~ material 248
supplier or laborer having a just claim, as well as for the 249
obligee herein; then this obligation shall be void; otherwise the 250
same shall remain in full force and effect; it being expressly 251
understood and agreed that the liability of the surety for any and 252
all claims hereunder shall in no event exceed the penal amount of 253
this obligation as herein stated. 254

The said surety hereby stipulates and agrees that no 255
modifications, omissions, or additions, in or to the terms of the 256
said contract or in or to the plans or specifications therefor 257
shall in any wise affect the obligations of said surety on its 258
bond." 259

(B) The bond provided for in division (C)(2) of section 260
153.54 of the Revised Code shall be in substantially the following 261
form: 262

"KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned 263
..... as principal and as sureties, are hereby 264
held and firmly bound unto in the penal sum of 265
..... dollars, for the payment of which well and truly be 266
made, we hereby jointly and severally bind ourselves, our heirs, 267
executors, administrators, successors, and assigns. 268

Signed this day of, 269

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas 270
the above named principal did on the day of, 271
....., entered into a contract with which said 272
contract is made a part of this bond the same as though set forth 273
herein; 274

Now, if the said shall well and faithfully 275
do and perform the things agreed by to be done and 276
performed according to the terms of the said contract; we agreeing 277
and assenting that this undertaking shall be for the benefit of 278
the obligee herein; then this obligation shall be void; otherwise 279
the same shall remain in full force and effect; it being expressly 280
understood and agreed that the liability of the surety for any and 281
all claims hereunder shall in no event exceed the penal amount of 282
the obligation as herein stated. 283

The surety hereby stipulates and agrees that no 284
modifications, omissions, or additions, in or to the terms of the 285
contract shall in any way affect the obligation of the surety on 286
its bond." 287

Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the 288
Revised Code: 289

(A) "Owner," "part owner," or "lessee" includes all the 290
interests either legal or equitable, which such person may have in 291
the real estate upon which the improvements are made, including 292
the interests held by any person under contracts of purchase, 293
whether in writing or otherwise. 294

(B) "~~Materialman~~ or "~~material~~ Material supplier" includes 295
any person by whom any materials are furnished in furtherance of 296
an improvement. 297

(C) "Laborer" includes any mechanic, worker, artisan, or 298
other individual who performs labor or work in furtherance of any 299

| | |
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| improvement. | 300 |
| (D) "Subcontractor" includes any person who undertakes to | 301 |
| construct, alter, erect, improve, repair, demolish, remove, dig, | 302 |
| or drill any part of any improvement under a contract with any | 303 |
| person other than the owner, part owner, or lessee. | 304 |
| (E) "Original contractor," except as otherwise provided in | 305 |
| section 1311.011 of the Revised Code, includes a construction | 306 |
| manager and any person who undertakes to construct, alter, erect, | 307 |
| improve, repair, demolish, remove, dig, or drill any part of any | 308 |
| improvement under a contract with an owner, part owner, or lessee. | 309 |
| (F) "Construction manager" means a person with substantial | 310 |
| discretion and authority to manage or direct an improvement, | 311 |
| provided that the person is in direct privity of contract with the | 312 |
| owner, part owner, or lessee of the improvement. | 313 |
| (G) "Notice of commencement" means the notice specified in | 314 |
| section 1311.04 of the Revised Code. | 315 |
| (H) "Notice of furnishing" means the notice specified in | 316 |
| section 1311.05 of the Revised Code. | 317 |
| (I) "Materials" means all products and substances including, | 318 |
| without limitation, any gasoline, lubricating oil, petroleum | 319 |
| products, powder, dynamite, blasting supplies and other | 320 |
| explosives, tools, equipment, or machinery furnished in | 321 |
| furtherance of an improvement. | 322 |
| (J) "Improvement" means constructing, erecting, altering, | 323 |
| repairing, demolishing, or removing any building or appurtenance | 324 |
| thereto, fixture, bridge, or other structure, and any gas pipeline | 325 |
| or well including, but not limited to, a well drilled or | 326 |
| constructed for the production of oil or gas; the furnishing of | 327 |
| tile for the drainage of any lot or land; the excavation, cleanup, | 328 |
| or removal of hazardous material or waste from real property; the | 329 |

enhancement or embellishment of real property by seeding, sodding, 330
or the planting thereon of any shrubs, trees, plants, vines, small 331
fruits, flowers, or nursery stock of any kind; and the grading or 332
filling to establish a grade. 333

(K) "Wages" means the basic hourly rate of pay and all other 334
contractually owed benefits. 335

Sec. 1311.011. (A) As used in this section: 336

(1) "Home construction contract" means a contract entered 337
into between an original contractor and an owner, part owner, or 338
lessee for the improvement of any single- or double-family 339
dwelling or portion of the dwelling or a residential unit of any 340
condominium property that has been submitted to the provisions of 341
Chapter 5311. of the Revised Code; an addition to any land; or the 342
improvement of driveways, sidewalks, swimming pools, porches, 343
garages, carports, landscaping, fences, fallout shelters, siding, 344
roofing, storm windows, awnings, and other improvements that are 345
adjacent to single- or double-family dwellings or upon lands that 346
are adjacent to single- or double-family dwellings or residential 347
units of condominium property, if the dwelling, residential unit 348
of condominium property, or land is used or is intended to be used 349
as a personal residence by the owner, part owner, or lessee. 350

(2) "Home purchase contract" means a contract for the 351
purchase of any single- or double-family dwelling or residential 352
unit of a condominium property that has been subjected to the 353
provisions of Chapter 5311. of the Revised Code if the purchaser 354
uses or intends to use the dwelling, a unit of a double dwelling, 355
or the condominium unit as ~~his~~ the purchaser's personal residence. 356

(3) "Lending institution" means any person that enters into a 357
contract with the owner, part owner, purchaser, or lessee to 358
provide financing for a home construction contract or a home 359

purchase contract, which financing is secured, in whole or in 360
part, by a mortgage on the real estate upon which the improvements 361
contemplated by the home construction contract are to be made or 362
upon the property that is the subject of the home purchase 363
contract, and that makes direct disbursements under the contract 364
to any original contractor or the owner, part owner, purchaser, or 365
lessee. 366

(4) "Original contractor" includes any person with whom the 367
owner, part owner, lessee, or purchaser under a home purchase 368
contract or a home construction contract has directly contracted. 369

(B) Notwithstanding sections 1311.02 to 1311.22 of the 370
Revised Code, all liens, except mortgage liens, that secure 371
payment for labor or work performed or materials furnished in 372
connection with a home construction contract or in connection with 373
a dwelling or residential unit of condominium property, that is 374
the subject of a home purchase contract are subject to the 375
following conditions: 376

(1) No original contractor, subcontractor, ~~materialman~~ 377
material supplier, or laborer has a lien to secure payment for 378
labor or work performed or materials furnished by the contractor, 379
subcontractor, ~~materialman~~ material supplier, or laborer, in 380
connection with a home construction contract between the original 381
contractor and the owner, part owner, or lessee or in connection 382
with a dwelling or residential unit of condominium property, that 383
is the subject of a home purchase contract, if the owner, part 384
owner, or lessee paid the original contractor in full or if the 385
purchaser has paid in full for the amount of the home construction 386
or home purchase contract price, and the payment was made prior to 387
the owner's, part owner's, or lessee's receipt of a copy of an 388
affidavit of mechanics' lien pursuant to section 1311.07 of the 389
Revised Code. 390

An owner, part owner, or lessee may file with the county recorder of the county in which the property that is the subject of a home construction contract or a home purchase contract is situated an affidavit that the owner, part owner, or lessee has made payment in accordance with this division. Except if the owner, part owner, or lessee is guilty of fraud, any lien perfected on the property by any subcontractor, ~~materialman~~ material supplier, or laborer for labor or work performed or for materials furnished is void and the property wholly discharged from the lien, if the lien was perfected after full payment was made in accordance with this division. The recorder shall index and record the affidavit in the same manner that releases of mortgages and other liens are indexed and recorded, and shall receive the same fees for indexing and recording the affidavit that are provided for the recording of leases.

Nothing in this section shall adversely affect a mechanics' lien claimed against a prior owner if the lien is perfected prior to a conveyance under a home purchase contract.

(2) If the original contractor has not been paid in full as provided in division (B)(1) of this section, no subcontractor, ~~materialman~~ material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the subcontractor, ~~materialman~~ material supplier, or laborer for an amount greater than the amount due under the home construction contract that has not been paid to the original contractor for the work, labor, or materials or for an amount greater than the amount of the home purchase contract price that has not been paid to the original contractor. The total amount of all liens for labor or work performed or for materials furnished in connection with a home construction contract that may be enforced in lien foreclosure proceedings shall not exceed the amount due under the home construction contract that has not been paid to the original

contractor or the amount due under the home purchase contract that 423
has not been paid to the original contractor. 424

If the amount due under the home construction contract or 425
under the home purchase contract to the original contractor is 426
insufficient to secure the mechanics' liens of all lien claimants 427
that arose out of the home construction contract or that arose out 428
of a contract in connection with a dwelling or residential unit of 429
condominium property, that is the subject of a home purchase 430
contract, each mechanics' lien shall be secured by a pro rata 431
share of the amount due to the original contractor, except that 432
mechanics' liens filed by laborers have priority. The pro rata 433
share shall be equal to the monetary amount of the amount due to 434
the original contractor that is subject to all valid mechanics' 435
liens on the property that is the subject of the home purchase 436
contract or all valid mechanics' liens under the home construction 437
contract multiplied by a fraction in which the denominator is the 438
total monetary amount of all valid mechanics' liens on the 439
property that is the subject of the home purchase contract or of 440
all valid mechanics' liens that arose out of the home construction 441
contract, and the numerator is the amount claimed to be due by the 442
lien claimant under a contract in connection with a dwelling or 443
residential unit of condominium property, that is the subject of 444
the home purchase contract or under the home construction 445
contract. 446

For the purpose of this section, the amount due under a home 447
construction contract or a home purchase contract is the unpaid 448
balance under the home construction contract or the home purchase 449
contract, minus the cost to complete the contract according to its 450
terms and conditions, including any warranty or repair work. 451

(3) If, after receiving written notice from an owner, part 452
owner, purchaser, or lessee that full payment has been made by the 453
owner, part owner, purchaser, or lessee to the original contractor 454

for the amount of the home construction or home purchase contract 455
and that payment was made prior to the owner's, part owner's, or 456
lessee's receipt of a copy of an affidavit of mechanics' lien 457
pursuant to section 1311.07 of the Revised Code, the lienholder 458
fails within thirty days after receipt of the notice to cause the 459
lien securing payment for the work, labor, or materials to be 460
released of record, the lienholder is liable to the owner, part 461
owner, or lessee for all damages arising from the lienholder's 462
failure to cause the lien to be released. Damages shall include, 463
but are not limited to, court costs and reasonable attorney fees 464
incurred during any litigation between the owner and a lien 465
claimant or lien claimants who have refused to release their liens 466
after receiving a copy of the affidavit referred to in division 467
(B)(1) of this section, or evidence that the cost of completing a 468
home construction contract exceeded, or is reasonably expected to 469
exceed, the balance due the original contractor under the home 470
construction contract as provided in division (B)(2) of this 471
section. 472

(4) No lending institution shall make any payment to any 473
original contractor until the original contractor has given the 474
lending institution the original contractor's affidavit stating: 475

(a) That the original contractor has paid in full for all 476
labor and work performed and for all materials furnished by the 477
original contractor and all subcontractors, ~~materialmen~~ material 478
suppliers, and laborers prior to the date of the closing of the 479
purchase or during and prior to the payment period, except such 480
unpaid claims as the original contractor specifically sets forth 481
and identifies both by claimant and by amount claimed; 482

(b) That no claims exist other than those claims set forth 483
and identified in the affidavit required by division (B)(4) of 484
this section. 485

(5) When making any payment under the home construction 486
contract or on behalf of the owner or part owner under a home 487
purchase contract, the lending institution may accept the 488
affidavit of the original contractor required by division (B)(4) 489
of this section and act in reliance upon it, unless it appears to 490
be fraudulent on its face. The lending institution is not 491
financially liable to the owner, part owner, purchaser, lessee, or 492
any other person for any payments, except for gross negligence or 493
fraud committed by the lending institution in making any payment 494
to the original contractor. 495

After receipt of a written notice of a claim of a right to a 496
mechanic's lien by a lending institution, failure of the lending 497
institution to obtain a lien release from the subcontractor, 498
~~materialman~~ material supplier, or laborer who serves notice of 499
such claim is prima-facie evidence of gross negligence. 500

(6) Any owner, part owner, purchaser, or lessee, who requests 501
an original contractor to supply the affidavit required by 502
division (B)(4) of this section, may withhold any payment that is 503
due under the home construction contract or under the home 504
purchase contract until the original contractor provides the 505
owner, part owner, purchaser, or lessee with the affidavit. The 506
owner's, part owner's, purchaser's, or lessee's remedies and 507
rights under this section shall not be prejudiced by the owner's, 508
part owner's, purchaser's, or lessee's failure to request or to 509
obtain the affidavit provided for in division (B)(4) of this 510
section. 511

(7) An owner, part owner, purchaser, lessee, or lending 512
institution may make payment jointly to the original contractor 513
and to a subcontractor, ~~materialman~~ material supplier, or laborer 514
as a condition to their giving lien releases. 515

(8) If a subcontractor, ~~materialman~~ material supplier, or 516

laborer refuses to supply a lien release to the original 517
contractor, owner, part owner, lessee, or lending institution 518
because the amount of money that the original contractor owes the 519
subcontractor, ~~materialman~~ material supplier, or laborer is in 520
dispute, the owner, part owner, lessee, and lending institution 521
shall withhold from payment to the original contractor an amount 522
of money equal to the amount of money claimed by the 523
subcontractor, ~~materialman~~ material supplier, or laborer. If a 524
subcontractor, ~~materialman~~ material supplier, or laborer refuses 525
within ten days after receipt of a written request from either the 526
original contractor or the lending institution to state the amount 527
due and the last date that the lien claimant performed any labor 528
or work or furnished any material in furtherance of the 529
improvement which gives rise to the lien claimant's lien claim, 530
the amount and the last date shall be stated by the original 531
contractor. The owner, part owner, lessee, and lending institution 532
shall pay the withheld amount of money to the original contractor 533
when any of the following occur: 534

(a) The subcontractor, ~~materialman~~ material supplier, or 535
laborer gives written notice to the owner, part owner, lessee, or 536
lending institution that the amount of money claimed to be due has 537
been paid. 538

(b) The subcontractor, ~~materialman~~ material supplier, or 539
laborer delivers a lien release to the original contractor, owner, 540
part owner, lessee, or lending institution. 541

(c) The original contractor provides the subcontractor, 542
~~materialman~~ material supplier, or laborer with a bond, in a form 543
that is satisfactory to the owner, part owner, lessee, or lending 544
institution and in an amount equal to the amount of money claimed 545
to be due. 546

(d) The time for filing a lien by the subcontractor, 547
~~materialman~~ material supplier, or laborer has expired and no 548

affidavit of lien has been recorded pursuant to section 1311.06 of 549
the Revised Code. 550

(9) Any lien release given pursuant to this section is valid 551
and enforceable without separate consideration for the release. 552

Sec. 1311.02. Every person who performs work or labor upon or 553
furnishes material in furtherance of any improvement undertaken by 554
virtue of a contract, express or implied, with the owner, part 555
owner, or lessee of any interest in real estate, or ~~his~~ the 556
owner's, part owner's, or lessee's authorized agent, and every 557
person who as a subcontractor, laborer, or material ~~man~~ supplier, 558
performs any labor or work or furnishes any material to an 559
original contractor or any subcontractor, in carrying forward, 560
performing, or completing any improvement, has a lien to secure 561
the payment therefor upon the improvement and all interests that 562
the owner, part owner, or lessee may have or subsequently acquire 563
in the land or leasehold to which the improvement was made or 564
removed. 565

Sec. 1311.021. (A) Every person who performs any labor or 566
work upon or furnishes material for digging, drilling, boring, 567
operating, completing, or repairing, any well drilled or 568
constructed for the production of oil or gas or any injection well 569
which furthers the production of oil and gas or which disposes of 570
waste products generated by oil and gas operations, or for 571
altering, repairing, or constructing any oil derrick, oil tank, or 572
leasehold production pipe line by virtue of a contract, express or 573
implied, with the owner or part owner, or ~~his~~ the owner's or part 574
owner's authorized agent, of any oil and gas lease or leasehold 575
estate or, in the event there is no lease or estate, any mineral 576
estate, and every subcontractor, laborer, and ~~materialman~~ material 577
supplier who performs any labor or work or furnishes material to 578
an original contractor or any subcontractor, in carrying forward, 579

performing, or completing the contract, has a lien to secure the 580
payment thereof upon the oil and gas lease or leasehold estate or, 581
in the event there is no lease or estate, any mineral estate, the 582
oil or gas produced therefrom and the proceeds thereof, and upon 583
all material located thereon or used in connection therewith. 584

(B) The lien, insofar as it extends to oil or gas or the 585
proceeds of the sale of oil or gas, is not effective against any 586
purchaser or pipe line carrier of such oil or gas until a copy of 587
the affidavit provided for in section 1311.06 of the Revised Code 588
is delivered to such purchaser or pipe line carrier by certified 589
mail. 590

(C) To the extent not inconsistent with this section, the 591
lien provided by this section is governed by this chapter, and 592
shall be perfected and enforced as other liens as provided by this 593
chapter, except as follows: 594

(1) No owner, part owner, or lessee who contracts for labor 595
or work to be performed or materials furnished for an improvement 596
need prepare, provide, or record a notice of commencement pursuant 597
to section 1311.04 of the Revised Code. 598

(2) No subcontractor or ~~materialman~~ material supplier who 599
performs work or labor upon or furnishes material in furtherance 600
of an improvement need prepare, provide, or serve a notice of 601
furnishing pursuant to section 1311.05 of the Revised Code. 602

(3) The affidavit required to be made and filed by an 603
original contractor, subcontractor, ~~materialman~~ material supplier, 604
or laborer under section 1311.06 of the Revised Code to claim a 605
lien under this section need not include the first date that the 606
lien claimant performed any labor or work or furnished any 607
material to the improvement giving rise to ~~his~~ the claimant's 608
lien. 609

(4) For the purpose of determining issues of priority, liens 610

created under this section are effective from the date the first
visible work or labor is performed or the first materials are
furnished at the site of the improvement.

(5) An owner, part owner, or lessee may request from an
original contractor an affidavit setting forth the name and
address of, a description of labor or work performed or materials
furnished by, and the total amount of the contract and the balance
owed to, all unpaid laborers, subcontractors, and ~~materialmen~~
material suppliers providing labor or work or furnishing material
for the improvement, and the serving of the affidavit after such a
request shall be a condition precedent to any right by the
original contractor to file a lien under this section. If an
owner, part owner, or lessee has not made a request under this
division, the original contractor need not serve an affidavit as
provided in this division to file a lien under this section.

(6)(a) An owner, part owner, or lessee who receives an
affidavit pursuant to division (C)(5) of this section or a notice
pursuant to division (C)(6)(c) of this section may make payment
jointly to the original contractor and any laborers,
subcontractors, and ~~materialmen~~ material suppliers who are listed
in such an affidavit or who serve such a notice for the amount
shown to be unpaid by such affidavit and notices or may require
the original contractor to obtain lien waivers from any such
persons prior to making payment to the original contractor.

(b) No person who fails to serve the owner, part owner, or
lessee with a notice pursuant to division (C)(6)(c) of this
section and who is omitted from an affidavit provided to the
owner, part owner, or lessee pursuant to division (C)(5) of this
section shall have a right to file a lien pursuant to this section
if the owner has paid the full amount due on the contract,
including payment to the parties listed on the affidavit or from
whom notices were received either in the full amount due to such

parties or in such lesser amount as represents their pro-rata 643
portion of the full amount of the contract with the original 644
contractor. 645

(c) Any laborer, subcontractor, or ~~materialman~~ material 646
supplier may serve upon the owner, part owner, or lessee a notice 647
in writing, which notice shall be such as will inform the owner, 648
part owner, or lessee of the improvement, of the nature of the 649
work performed or to be performed, the materials furnished or to 650
be furnished, the amount due or to become due therefor, the 651
identity of the person with whom such laborer, subcontractor, or 652
~~materialman~~ material supplier has contracted, and the identity of 653
the well, oil derrick, oil tank, or leasehold production pipe 654
line, the permit number, and the county upon which such work was 655
or is to be performed or materials were or are to be furnished. 656

(7) The provisions of division (B) of section 1311.15 of the 657
Revised Code shall be applicable with respect to payments to any 658
subcontractors, ~~materialmen~~ material suppliers, or laborers 659
identified on the affidavit provided in division (C)(5) of this 660
section. 661

Sec. 1311.03. Any person who performs labor or work or 662
furnishes material, for the construction, alteration, or repair of 663
any street, turnpike, road, sidewalk, way, drain, ditch, or sewer 664
by virtue of a private contract between ~~him~~ the person and the 665
owner, part owner, or lessee of lands upon which the same may be 666
constructed, altered, or repaired, or of lands abutting thereon, 667
or as subcontractor, laborer, or ~~materialman~~ material supplier, 668
performs labor or work or furnishes material to such original 669
contractor or to any subcontractor in carrying forward or 670
completing such contract, has a lien for the payment thereof 671
against the lands of the owner, part owner, or lessee, upon which 672
the street, turnpike, road, sidewalk, way, drain, or sewer is 673

constructed or upon which any such street, turnpike, road, 674
sidewalk, way, drain, ditch, or sewer abuts, as provided in 675
section 1311.02 of the Revised Code. 676

Sec. 1311.04. (A)(1) Prior to the performance of any labor or 677
work or the furnishing of any materials for an improvement on real 678
property which may give rise to a mechanics' lien under sections 679
1311.01 to 1311.22 of the Revised Code, the owner, part owner, or 680
lessee who contracts for the labor, work, or materials shall 681
record in the office of the county recorder for each county in 682
which the real property to be improved is located a notice of 683
commencement in substantially the form specified in division (B) 684
of this section. 685

(2) Only one notice of commencement is required to be filed 686
for a single improvement and if more than one notice of 687
commencement is filed for a single improvement, all notices filed 688
after the original notice shall be deemed to be amendments to the 689
original notice. If an owner, part owner, or lessee contracts with 690
additional original contractors, lenders, or sureties not 691
identified in the original notice of commencement filed for the 692
improvement, the owner, part owner, or lessee shall amend the 693
original notice of commencement to identify the additional 694
original contractors, lenders, and sureties. The date of the 695
filing of the amended notice is the date of the filing of the 696
original notice of commencement. 697

(B) The notice of commencement required under division (A) of 698
this section shall contain, in affidavit form, all of the 699
following information: 700

(1) The legal description of the real property on which the 701
improvement is to be made. For purposes of this division, a 702
description sufficient to describe the real property for the 703
purpose of conveyance, or contained in the instrument by which the 704

owner, part owner, or lessee took title, is a legal description. 705

(2) A brief description of the improvement to be performed on 706
the property containing sufficient specificity to permit lien 707
claimants to identify the improvement; 708

(3) The name, address, and capacity of the owner, part owner, 709
or lessee of the real property contracting for the improvement; 710

(4) The name and address of the fee owner of the real 711
property, if the person contracting for the improvement is a land 712
contract vendee or lessee; 713

(5) The name and address of the owner's, part owner's, or 714
lessee's designee, if any; 715

(6) The name and address of all original contractors, except 716
that if the notice of commencement is recorded for an improvement 717
involving a single- or double-family dwelling and if more than one 718
original contractor is involved, instead of listing each original 719
contractor, the owner shall state that multiple original 720
contractors are involved in the improvement; 721

(7) The date the owner, part owner, or lessee first executed 722
a contract with an original contractor for the improvement; 723

(8) The name and address of all lending institutions which 724
provide financing for the improvements, if any; 725

(9) The name and address of all sureties on any bond which 726
guarantee payment of the original contractor's obligations under 727
the contract for the improvement, if any; 728

(10) The following statement: 729

"To Lien Claimants and Subsequent Purchasers: 730

Take notice that labor or work is about to begin on or 731
materials are about to be furnished for an improvement to the real 732
property described in this instrument. A person having a 733

mechanics' lien may preserve the lien by providing a notice of 734
furnishing to the above-named designee and the above-named 735
designee's original contractor, if any, and by timely recording an 736
affidavit pursuant to section 1311.06 of the Revised Code. 737

A copy of this notice may be obtained upon making a written 738
request by certified mail to the above-named owner, part owner, 739
lessee, designee, or the person with whom you have contracted." 740

(11) The name and address of the person preparing the notice; 741

(12) An affidavit of the owner, part owner, or lessee or the 742
agent of the owner, part owner, or lessee which verifies the 743
notice. 744

(C) If the notice of commencement furnished by or for an 745
owner, part owner, or lessee contains incorrect information, the 746
owner, part owner, or lessee is liable for any loss of lien rights 747
of a lien claimant and any actual expenses incurred by the lien 748
claimant in maintaining lien rights, including attorney's fees, if 749
the loss and expenses incurred are a direct result of the lien 750
claimant's reliance on the incorrect information. 751

Any lien claimant who has included incorrect information in 752
the claimant's affidavit for a lien under section 1311.06 of the 753
Revised Code, as a result of incorrect information contained in 754
the notice of commencement, may file for record an amended 755
affidavit for a lien. The amended affidavit shall contain all of 756
the information required by section 1311.06 of the Revised Code 757
for an original affidavit. The lien claimant shall serve a copy of 758
the amended affidavit on the owner, part owner, or lessee as 759
provided in section 1311.07 of the Revised Code. The lien claimant 760
may file the amended affidavit for record at any time during the 761
time that the lien acquired by the original affidavit continues in 762
effect under section 1311.13 of the Revised Code. In no event 763
shall the amended affidavit extend such time period. The filing of 764

an amended affidavit does not constitute a waiver of the rights 765
granted by this division. 766

(D) Within ten days after the date a subcontractor, material 767
supplier, or laborer serves a written request upon the owner, part 768
owner, or lessee, or designee for a copy of the notice of 769
commencement, the owner, part owner, lessee, or designee shall 770
serve a copy of the notice of commencement to the requesting 771
subcontractor, material supplier, or laborer. 772

(E) Within ten days after the date a subcontractor, material 773
supplier, or laborer serves a written request for a copy of the 774
notice of commencement upon the original contractor who has been 775
provided with a notice of commencement from the owner, part owner, 776
or lessee, or designee and with whom the subcontractor, material 777
supplier, or laborer has a direct contract, the original 778
contractor shall serve a copy of the notice of commencement to the 779
requesting subcontractor, material supplier, or laborer. 780

(F) Within ten days after the date a subcontractor, material 781
supplier, or laborer serves a written request for a copy of the 782
notice of commencement upon the subcontractor who has been 783
provided with a notice of commencement from the owner, part owner, 784
lessee, designee, or original contractor and with whom the 785
subcontractor, material supplier, or laborer has a direct 786
contract, the subcontractor shall serve a copy of the notice of 787
commencement upon the requesting subcontractor, material supplier, 788
or laborer. 789

(G)(1) Except as provided in division (G)(2) of this section, 790
the owner, part owner, lessee, or designee shall post and maintain 791
posted a copy of the notice of commencement in a conspicuous place 792
on the real property described in the notice during the course of 793
the actual physical improvement to the real property. 794

(2) No owner, part owner, lessee, or designee, has to post a 795

copy of the notice of commencement on the real property described 796
in the notice for an improvement that is the subject of a home 797
purchase contract. 798

(H) The owner, part owner, lessee, or designee shall serve a 799
copy of the notice of commencement upon the original contractor. 800
If the owner, part owner, lessee, or designee fails to serve a 801
copy of the notice of commencement upon the original contractor, 802
the owner, part owner, or lessee is liable to the original 803
contractor for all actual expenses incurred by the original 804
contractor in obtaining the information otherwise provided by the 805
notice of commencement. 806

(I) If the owner, part owner, lessee, or designee fails to 807
record the notice of commencement in accordance with this section, 808
the time within which a subcontractor or material supplier may 809
serve a notice of furnishing as required by section 1311.05 of the 810
Revised Code is extended until twenty-one days after the notice of 811
commencement has been recorded. A subcontractor or material 812
supplier need not serve a notice of furnishing to preserve lien 813
rights for the period before the notice of commencement is 814
recorded. 815

(J) If the owner, part owner, lessee, or designee fails to 816
serve, upon written request, the notice of commencement in 817
accordance with this section, the time within which a 818
subcontractor or material supplier may serve a notice of 819
furnishing as required by section 1311.05 of the Revised Code is 820
extended until twenty-one days after the notice of commencement 821
actually has been served to the subcontractor or material 822
supplier. The owner, part owner, or lessee who fails to serve the 823
notice pursuant to this section is liable to any subcontractor or 824
material supplier who becomes a lien claimant for all actual 825
expenses incurred by the lien claimant in obtaining the 826
information that would have been contained in the notice. 827

(K) If an owner, part owner, lessee, or designee fails to 828
post or maintain a copy of the notice of commencement as required 829
by division (G)(1) of this section, the owner, part owner, or 830
lessee is liable to a subcontractor, material supplier, or laborer 831
who becomes a lien claimant for all actual expenses incurred by 832
the lien claimant in obtaining the information otherwise provided 833
by the posting. 834

(L) If an original contractor or subcontractor who has been 835
provided with a notice of commencement fails to serve a copy of 836
the notice of commencement to any subcontractor, material 837
supplier, or laborer who requests it, the original contractor or 838
subcontractor who fails to serve the copy of the notice is liable 839
to the subcontractor, material supplier, or laborer who made the 840
request for all costs incurred by the subcontractor, material 841
supplier, or laborer in obtaining the information contained in the 842
notice of commencement, provided that an original contractor or 843
subcontractor who fails to provide the notice upon request is not 844
liable under this division to any subcontractor, material 845
supplier, or laborer with whom the original contractor or 846
subcontractor is not in direct privity of contract. 847

(M)(1) If after the first work, labor, or material has been 848
performed on or furnished to the improvement, the owner, part 849
owner, lessee, or designee fails to serve, record, or post a 850
notice of commencement as required by this section, the original 851
contractor may, in writing, request the owner, part owner, lessee, 852
or designee to serve, record, or post the notice. If an owner, 853
part owner, lessee, or the designee of an owner, part owner, or 854
lessee fails or refuses to serve, record, or post a notice of 855
commencement within ten days of receipt of a request, the owner, 856
part owner, or lessee is liable for the owner's, part owner's, or 857
lessee's failure or refusal and for the designee's failure or 858
refusal, without recourse to the original contractor for all 859

damages, costs, and expenses which result from the filing of a 860
valid mechanics' lien to the extent that the lien, damages, costs, 861
and expenses could have been avoided through proper payment. 862

(2) Nothing in this division shall be interpreted as to 863
either of the following: 864

(a) Relieving an original contractor from the duty to pay the 865
original contractor's subcontractors, material suppliers, and 866
laborers for labor or work performed or materials furnished 867
pursuant to a contract directly with the original contractor; 868

(b) Obligating an owner, part owner, or lessee to pay for 869
work or labor performed or materials furnished by subcontractors, 870
material suppliers, or laborers pursuant to direct contracts with 871
the original contractor. 872

(N)(1) If the owner, part owner, or lessee fails to record a 873
notice of commencement or an amended notice, any person holding a 874
mortgage on the real property to be improved may record a notice 875
of commencement or an amended notice on behalf of the owner, part 876
owner, or lessee. If the owner, part owner, or lessee fails to 877
record a notice of commencement or an amended notice within the 878
later of ten days after the performance of any labor or work or 879
the furnishing of any material for an improvement on real property 880
which gives rise to a mechanics' lien under sections 1311.01 to 881
1311.22 of the Revised Code or three days after service of a 882
demand to record the notice or amended notice by the original 883
contractor, the original contractor may record a notice of 884
commencement or an amended notice on behalf of the owner, part 885
owner, or lessee. 886

(2) If the original contractor or a mortgage holder has 887
recorded a notice of commencement or an amended notice on behalf 888
of the owner, part owner, or lessee, the owner, part owner, or 889
lessee is liable to the original contractor or mortgage holder for 890

all costs and expenses incurred in obtaining the information 891
contained in the notice of commencement or an amended notice and 892
all costs incurred in the preparation and recording of the notice 893
of commencement or an amended notice. 894

(3) Unless required to file the notice of commencement or an 895
amended notice on behalf of the owner, part owner, or lessee, the 896
party filing a written notice of commencement or amended notice on 897
behalf of the owner, part owner, or lessee is not liable to the 898
owner, part owner, or lessee for any errors contained in the 899
notice of commencement or amended notice. 900

(4) If a mortgage holder or an original contractor records a 901
notice of commencement or amended notice on behalf of an owner, 902
part owner, or lessee, such fact must be included on the notice or 903
amended notice. 904

(0) This section does not apply to ~~any improvement made~~ 905
~~pursuant to~~ a home construction contract as defined in section 906
1311.011 of the Revised Code, except that when a lending 907
institution as defined in division (A)(3) of section 1311.011 of 908
the Revised Code requires that a notice of commencement be 909
recorded as part of the financing for a home construction 910
contract, which is secured in whole or in part by a mortgage on 911
real estate upon which the improvements are to be constructed, the 912
owner, part owner, or lessee may file a notice of commencement 913
pursuant to this section by recording the notice of commencement 914
in the county recorder's office of the county where the owner, 915
part owner, or lessee's property is located. If the property is 916
located in more than one county, the owner, part owner, or lessee 917
shall record the notice of commencement in the county recorders' 918
office of each county in which the property is located. 919

If the owner, part owner, or lessee files a notice of 920
commencement pursuant to this division, the attachment, 921

continuance, and priority provisions of section 1311.13 of the 922
Revised Code apply to that improvement, but the notice of 923
furnishing requirements specified in section 1311.05 of the 924
Revised Code do not apply to that improvement. 925

(P) The county recorder of the county where a notice of 926
commencement is filed for record shall endorse the date and hour 927
of its filing and cause it to be recorded as mechanics' liens are 928
recorded, and collect the same fees for recording the notice of 929
commencement as are provided in section 317.32 of the Revised 930
Code. The recorder shall index the real property described in the 931
notice of commencement and shall index the names of all owners, 932
part owners, lessees, and land contract vendees in the direct 933
index and the names of all original contractors in the reverse 934
index as provided for in section 317.18 of the Revised Code. 935

(Q) Notwithstanding this section, if the owner, part owner, 936
or lessee is a telephone company, an electric light company, a gas 937
company, a water works company, all as defined in section 4905.03 938
of the Revised Code, or a subsidiary or affiliate thereof, the 939
owner, part owner, or lessee may, but is not required to, record a 940
notice of commencement pursuant to division (A) of this section, 941
and is not required to serve, post, and provide copies of a notice 942
of commencement pursuant to divisions (D), (G), and (H) of this 943
section unless such owner, part owner, or lessee elects to record 944
the notice of commencement. If the owner, part owner, or lessee 945
elects to record the notice of commencement and the improvement 946
extends beyond one parcel of real property or one county, the 947
owner, part owner, or lessee may, in lieu of using the legal 948
description required in division (B)(1) of this section, use a 949
description which reasonably describes the real property on which 950
the improvement is to be made. Any description used other than the 951
description specified in division (B)(1) of this section shall 952
refer to the township and county in which the improvement is 953

located, the name and route number of any local, state, or federal 954
highway near the improvement, if any, the post office address of 955
the real property, if any, and the name by which the owner, part 956
owner, or lessee refers to the improvement. 957

If an owner, part owner, or lessee elects not to record, 958
serve, post, or provide copies of a notice of commencement 959
pursuant to divisions (A), (D), (G)(1), and (H) of this section, 960
the owner, part owner, or lessee is subject to all applicable 961
liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N) 962
of this section. 963

(R) If an owner, part owner, lessee, or designee fails to 964
record a notice of commencement in accordance with this section, 965
no subcontractor or material supplier who performs labor or work 966
upon or furnishes material in furtherance of that improvement has 967
to serve a notice of furnishing in accordance with section 1311.05 968
of the Revised Code in order to preserve the subcontractor's or 969
material supplier's lien rights. 970

(S) A notice of commencement filed as provided herein expires 971
six years after its filing date unless the notice of commencement 972
or amendments made to the notice of commencement specify 973
otherwise. 974

Sec. 1311.05. (A) Except as provided in section 1311.04 of 975
the Revised Code and this section, a subcontractor or ~~materialman~~ 976
material supplier who performs labor or work upon or furnishes 977
material in furtherance of an improvement to real property and who 978
wishes to preserve ~~his~~ the subcontractor's or material supplier's 979
lien rights shall serve a notice of furnishing, if any person has 980
recorded a notice of commencement in accordance with section 981
1311.04 of the Revised Code, upon the owner's, part owner's, or 982
lessee's designee named in the notice of commencement or amended 983
notice and the original contractor under the original contract 984

pursuant to which ~~he~~ the subcontractor or material supplier is 985
performing labor or work or furnishing materials, as named in the 986
notice of commencement or amended notice and at the address listed 987
in the notice or amended notice at any time after the recording of 988
the notice of commencement or amended notice but within twenty-one 989
days after performing the first labor or work or furnishing the 990
first materials or within the extended time period provided for in 991
division (I) or (J) of section 1311.04 of the Revised Code. If an 992
owner, part owner, or lessee has not named a designee in the 993
notice of commencement or amended notice or if the designee has 994
died or otherwise has ceased to exist, the subcontractor or 995
~~materialman~~ material supplier shall serve the notice of furnishing 996
upon the owner, part owner, or lessee named in the notice of 997
commencement. If no designee is named or if the designee has died 998
or otherwise has ceased to exist, and if more than one owner is 999
named in the notice of commencement, service of the notice of 1000
furnishing to the first owner, part owner, or lessee named in the 1001
notice of commencement is sufficient. No original contractor has 1002
to serve a notice of furnishing to preserve lien rights arising 1003
from a contract with an owner, part owner, or lessee. No 1004
~~materialman~~ material supplier who is in direct privity of contract 1005
with an owner, part owner, or lessee has to serve a notice of 1006
furnishing upon the owner, part owner, or lessee or designee in 1007
order to preserve ~~his~~ the material supplier's lien rights. No 1008
subcontractor or ~~materialman~~ material supplier who is in direct 1009
privity of contract with the original contractor has to serve a 1010
notice of furnishing upon the original contractor in order to 1011
preserve ~~his~~ the subcontractor's or material supplier's lien 1012
rights. 1013

If any person has recorded a notice of commencement in 1014
accordance with section 1311.04 of the Revised Code for an 1015
improvement involving a single- or double-family dwelling and if 1016
that notice states that multiple original contractors are involved 1017

in the improvement, a subcontractor or ~~materialman~~ material
supplier does not have to serve a notice of furnishing upon any
original contractor in order to preserve ~~his~~ the subcontractor's
or material supplier's lien rights.

A subcontractor or ~~materialman~~ material supplier who serves a
notice of furnishing in conformity with this section does not have
to serve an amended notice of furnishing on any party if ~~he~~ the
subcontractor or material supplier receives an amended notice of
commencement subsequent to service of ~~his~~ the subcontractor's or
material supplier's notice of furnishing. If a subcontractor or
~~materialman~~ material supplier serves a notice of furnishing based
upon information contained in any notice of commencement or
amended notice of commencement relative to the improvement for
which ~~he~~ the subcontractor or material supplier performs labor or
work or furnishes material, the notice of furnishing is deemed
effective even if the notice of commencement already has been
amended or is amended in the future.

If a lender is named in the notice of commencement or amended
notice, a subcontractor or ~~materialman~~ material supplier may serve
a copy of the notice of furnishing upon the lender at the address
listed in the notice or amended notice, provided that no
subcontractor or ~~materialman~~ material supplier is required to
serve a copy of the notice of furnishing upon the lender to
preserve ~~his~~ the subcontractor's or material supplier's lien
rights. The receipt of a notice of furnishing by a lender imposes
no duty upon the lender by implication or otherwise with respect
to the disbursement of any loan proceeds or the payment to any
subcontractor, ~~materialman~~ material supplier, or any other person.

(B) The notice of furnishing shall be in substantially the
following form:

"Notice of Furnishing

(For use in connection with improvements

| | |
|--|------|
| to property other than public improvements) | 1050 |
| To: | 1051 |
| (Name of owner, part owner, or lessee or designee | 1052 |
| from the notice of commencement) | 1053 |
| | 1054 |
| (Address from the notice of commencement) | 1055 |
| To: | 1056 |
| (Name of original contractor from notice of commencement) | 1057 |
| (Address of original contractor from notice of commencement) | 1058 |
| Please take notice that the undersigned is performing certain | 1059 |
| labor or work or furnishing certain materials to | 1060 |
|(name and | 1061 |
| address of other contracting party)..... in | 1062 |
| connection with the improvement to the real property located at | 1063 |
| The labor, work, or materials were | 1064 |
| performed or furnished first or will be performed or furnished | 1065 |
| first on (date). | 1066 |
| WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' | 1067 |
| LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES | 1068 |
| UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT | 1069 |
| YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO | 1070 |
| YOUR PROPERTY. | 1071 |
| | 1072 |
| (Name and address of lien claimant) | 1073 |
| By | 1074 |
| (Name and capacity of party signing | 1075 |
| for lien claimant) | 1076 |
| | 1077 |
| (Address of party signing) | 1078 |
| Date: " | 1079 |
| (C) The description of the location of the property required | 1080 |

in the notice of furnishing is sufficient if it reasonably 1081
identifies the real property upon which the labor or work is 1082
performed or for which the material is furnished. 1083

(D)(1) Except as provided in division (D)(2) of this section, 1084
a notice of furnishing served more than twenty-one days after a 1085
subcontractor or ~~materialman~~ material supplier who is required by 1086
this section to serve a notice of furnishing, first performed 1087
labor or work or furnished material at the site of the improvement 1088
preserves the subcontractor's or ~~materialman's~~ material supplier's 1089
lien rights for amounts owing for labor and work performed and 1090
materials furnished within the twenty-one-day period immediately 1091
preceding service of the notice of furnishing and thereafter, but 1092
does not revive any prior lien rights for labor or work performed 1093
or materials furnished prior to the twenty-one days immediately 1094
preceding service of the notice of furnishing. 1095

(2) A notice of furnishing served within the applicable 1096
period provided for in section 1311.04 of the Revised Code 1097
preserves the subcontractor's or ~~materialman's~~ material supplier's 1098
lien rights for amounts owing for labor and work performed and 1099
materials furnished from the date the labor or work was first 1100
performed or materials were first furnished through the date of 1101
service of the notice of furnishing and thereafter. A notice of 1102
furnishing served after the applicable period provided for in 1103
section 1311.04 of the Revised Code does not revive any prior lien 1104
rights for labor or work performed or materials furnished prior to 1105
the twenty-one days immediately preceding service of the notice of 1106
furnishing. 1107

(E) This section does not apply to any improvement made 1108
pursuant to a home construction contract as defined in section 1109
1311.011 of the Revised Code. 1110

(F) A notice of furnishing, even if served upon a mortgagee 1111

of real property to be improved, does not constitute a written
notice of a lien or encumbrance under section 5301.232 or a
written notice of a claim of a right to a mechanics' lien under
division (B)(5) of section 1311.011 of the Revised Code.

(G) No laborer must serve a notice of furnishing in
accordance with this section to preserve lien rights.

(H) No subcontractor or ~~materialman~~ material supplier who
performs labor or work upon or furnishes material in furtherance
of an improvement has to serve a notice of furnishing in
accordance with this section in order to preserve ~~his~~ the
subcontractor's or material supplier's lien rights if the owner,
part owner, or lessee who contracted for the labor, work, or
materials fails to record a notice of commencement in accordance
with section 1311.04 of the Revised Code.

(I) If a notice of commencement is filed as provided in
division (O) of section 1311.04 of the Revised Code, the
subcontractors and material suppliers working on or providing
materials to the improvement shall not be required to serve
notices of furnishing as provided in division (A) of section
1311.05 of the Revised Code hereinabove in order to preserve lien
rights.

Sec. 1311.12. (A) A mechanic's lien for furnishing materials
arises under sections 1311.01 to 1311.22 of the Revised Code only
if the materials are:

(1) Furnished with the intent, as evidenced by the contract
of sale, the delivery order, delivery to the site by the claimant
or at the claimant's direction, or by other evidence, that the
materials be used in the course of the improvement with which the
lien arises;

(2) Incorporated in the improvement or consumed as normal

wastage in the course of the improvement; 1142

(3) Specifically fabricated for incorporation in the 1143
improvements and not readily resalable in the ordinary course of 1144
the fabricator's business even if not actually incorporated in the 1145
improvement; 1146

(4) Used for the improvement or for the operation of 1147
machinery or equipment used in the course of the improvement and 1148
not remaining in the improvement, subject to diminution by the 1149
salvage value of those materials; or 1150

(5) Tools or machinery used on the particular improvement, 1151
subject to division (C) of this section. 1152

(B) The delivery of materials to the site of the improvement, 1153
whether or not by the claimant, creates a conclusive presumption 1154
that the materials were used in the course of the improvement or 1155
were incorporated into the improvement. 1156

(C) A mechanics' lien for furnishing tools or machinery which 1157
arises under division (A)(5) of this section is limited to either 1158
of the following: 1159

(1) If the tools or machinery are rented, the lien is for the 1160
reasonable rental value for the period of actual use and any 1161
reasonable period of nonuse taken into account in the rental 1162
contract. 1163

(2) If the tools or machinery are purchased, the lien is for 1164
the price, but the lien only arises if the tools or machinery were 1165
purchased for use in the course of the particular improvement and 1166
have no substantial value to the purchaser after the completion of 1167
the improvement on which they were used. 1168

(D) All of the deliveries or the sales, or both, by a ~~lien~~ 1169
~~claimant~~ material supplier of materials, including tools and 1170
machinery to or for an improvement, as ordered or purchased by an 1171

owner, original contractor, or subcontractor, shall give rise to 1172
one mechanics' lien for the unpaid portion of the sales to that 1173
owner, original contractor, or subcontractor. Nothing in this 1174
division shall prohibit the filing of more than one lien if a 1175
material supplier sold materials to more than one owner, original 1176
contractor, or subcontractor for the same improvement. 1177

Sec. 1311.13. (A)(1) ~~Liens~~ All liens under sections 1311.01 1178
to 1311.22 of the Revised Code for labor or work performed or 1179
materials furnished to the same improvement prior to the recording 1180
of the notice of commencement pursuant to section 1311.04 of the 1181
Revised Code are effective from the date the first visible work or 1182
labor is performed or the first materials are furnished by the 1183
first original contractor, subcontractor, ~~materialman~~ material 1184
supplier, or laborer ~~at the site of~~ to work, labor on, or provide 1185
materials to the improvement. 1186

(2) Except as provided in division (A)(3) of this section, 1187
liens under sections 1311.01 to 1311.22 of the Revised Code for 1188
labor or work performed or materials furnished after the recording 1189
of a notice of commencement pursuant to section 1311.04 of the 1190
Revised Code are effective from the date of the recording of the 1191
notice of commencement. 1192

(3) Notwithstanding division (A)(2) of this section, if there 1193
is a valid and recorded lien with an effective date described in 1194
division (A)(1) of this section which has not been released at the 1195
time a lien is filed by a laborer after the recording of the 1196
notice of commencement or if a valid lien against the improvement 1197
pursuant to division (A)(1) of this section is filed subsequent to 1198
the filing of a laborer's lien, the lien of the laborer is 1199
effective from the date the first visible labor or work was 1200
performed or materials were furnished by the original contractor, 1201
subcontractor, ~~materialman~~ material supplier, or laborer at the 1202

site of the improvement. 1203

(B)(1) Except for the liens of laborers as provided in 1204
division (B)(2) of this section, a lien securing the claim of a 1205
claimant who has performed labor or work or furnished materials 1206
both prior to and after the recording of the notice of 1207
commencement pursuant to section 1311.04 of the Revised Code has 1208
two effective dates. That portion of the lien which arises from 1209
labor or work performed or materials furnished prior to the filing 1210
of the notice of commencement has the effective date described in 1211
division (A)(1) of this section and that portion of the lien which 1212
arises from labor or work performed or materials furnished on or 1213
after the filing of the notice of commencement has the effective 1214
date described in division (A)(2) of this section. Any payment 1215
received by the lien claimant both before and after the filing of 1216
a lien shall be applied first to the labor or work performed or 1217
materials furnished prior to the filing of the notice of 1218
commencement, and then to labor or work performed or materials 1219
furnished on and after the filing of the notice of commencement. 1220

(2) A lien filed by a laborer for labor or work performed 1221
both prior to and after the recording of the notice of 1222
commencement pursuant to section 1311.04 of the Revised Code has 1223
one effective date as described in division (A)(1) of this 1224
section. 1225

(C) Liens under sections 1311.01 to 1311.22 of the Revised 1226
Code continue in force for six years after an affidavit is filed 1227
in the office of the county recorder under section 1311.06 of the 1228
Revised Code. If an action is brought to enforce the lien within 1229
that time, the lien continues in force until final adjudication 1230
thereof. 1231

(D) If several liens are obtained by several persons upon the 1232
same improvement they have no priority among themselves, except as 1233
follows: 1234

(1) Liens which have an effective date described in division 1235
(A)(1) of this section have priority over all other liens, except 1236
for liens described in divisions (A)(3), (B)(2), or (D)(2) of this 1237
section, to the extent of the value of the work and labor 1238
performed and materials furnished prior to the recording of the 1239
notice of commencement pursuant to section 1311.04 of the Revised 1240
Code. 1241

(2) Liens filed by laborers have priority over all other 1242
liens whether the labor or work was performed before or after the 1243
recording of the notice of commencement pursuant to section 1244
1311.04 of the Revised Code. 1245

(E)(1) Except as provided in division (E)(2) of this section, 1246
liens which have an effective date described in division (A)(1) of 1247
this section shall be preferred to the extent of the value of the 1248
labor or work performed or materials furnished prior to the 1249
recording of the notice of commencement, to all other titles, 1250
liens, or encumbrances which may attach to or upon the improvement 1251
or to or upon the land upon which it is situated, which either 1252
shall be given or recorded subsequent to the effective date of the 1253
liens described in division (A)(1) of this section. 1254

(2) Liens recorded by laborers which have an effective date 1255
described in division (A)(1) or (3) of this section shall be 1256
preferred to all other titles, liens, or encumbrances which may 1257
attach to or upon the improvement or to or upon the land upon 1258
which it is situated which are given or recorded subsequent to the 1259
effective date of such laborers' liens. 1260

(F) Liens which have an effective date described in division 1261
(A)(2) of this section shall be preferred to all other titles, 1262
liens, or encumbrances which may attach to or upon such 1263
improvement or to or upon the land upon which it is situated, 1264
which either are given or recorded subsequent to the recording of 1265

the notice of commencement. 1266

(G) Unless otherwise stipulated in a mortgage securing 1267
financing for the construction of an improvement, if a mortgage 1268
securing financing for the construction of an improvement and 1269
notice of commencement for said improvement are recorded on the 1270
same day, the mortgage shall be considered recorded before the 1271
notice of commencement for purposes of priority described in this 1272
section. 1273

(H) The recorder may destroy the record of all mechanics' 1274
liens which have been recorded for a period of ten years or 1275
longer. 1276

Sec. 1311.14. (A) Except as provided in this section, the 1277
lien of a mortgage given in whole or in part to improve real 1278
estate, or to pay off prior encumbrances thereon, or both, the 1279
proceeds of which are actually used in the improvement in the 1280
manner contemplated in sections 1311.02 and 1311.03 of the Revised 1281
Code, or to pay off prior encumbrances, or both, and which 1282
mortgage contains therein the correct name and address of the 1283
mortgagee, together with a covenant between the mortgagor and 1284
mortgagee authorizing the mortgagee to do all things provided to 1285
be done by the mortgagee under this section, shall be prior to all 1286
mechanic's, ~~materialmen's~~ material supplier's, and similar liens 1287
and all liens provided for in this chapter that are filed for 1288
record after the improvement mortgage is filed for record, to the 1289
extent that the proceeds thereof are used and applied for the 1290
purposes of and pursuant to this section. Such mortgage is a lien 1291
on the premises therein described from the time it is filed for 1292
record for the full amount that is ultimately and actually paid 1293
out under the mortgage, regardless of the time when the money 1294
secured thereby is advanced. 1295

Any laborer or ~~materialman~~ material supplier who claims or at 1296

any time can claim a right of lien on the premises for any labor 1297
or work performed or to be performed or for material furnished or 1298
to be furnished for the improvement, may serve a written notice on 1299
the mortgagee, which notice shall show the kind and nature of the 1300
labor or work performed or to be performed, or both, and of the 1301
material furnished or to be furnished, or both, and the amount 1302
claimed or to be claimed therefor, and a description of the 1303
premises upon which the labor or work has been or is to be 1304
performed or to which the material has been or is to be furnished, 1305
and the amount claimed therefor. 1306

(B) The mortgagee need not pay out any of the mortgage fund 1307
for fifteen days after filing the mortgage. At the end of such 1308
period, ~~he~~ the mortgagee may refuse to go forward with the loan or 1309
to pay out the fund, in which case, if no funds have been 1310
advanced, ~~he~~ the mortgagee shall make, execute, and deliver to the 1311
mortgagor, or to the county recorder to be recorded, a proper 1312
release of the mortgage, but if the mortgagee elects to complete 1313
the loan, ~~he~~ the mortgagee shall, in order to obtain the priority 1314
set forth in this section, distribute the mortgage fund in the 1315
following order: 1316

~~(A)~~(1) The mortgagee may at any time pay off the prior 1317
encumbrance, or withhold the amount thereof for that purpose. 1318

~~(B)~~(2) Out of the residue of the fund, the mortgagee may at 1319
any time retain sufficient funds to complete the improvement, 1320
according to the original plans, specifications, and contracts, 1321
and within the original contract price. 1322

~~(C)~~(3) The mortgagee may from time to time pay out on the 1323
owner's order, directly to the original contractor or 1324
subcontractor, or directly to the owner ~~himself~~ if ~~he~~ the owner is 1325
~~his~~ the owner's own contractor, such sums as the owner certifies 1326
to be necessary to meet and pay labor payrolls for the 1327
improvement. 1328

~~(D)~~(4) The mortgagee shall pay on the order of the owner, the 1329
accounts of the ~~materialmen~~ material suppliers and laborers who 1330
have filed with the mortgagee a written notice as provided in this 1331
section, the amounts due for labor or work then performed and 1332
material then furnished for the improvement; and shall retain out 1333
of the mortgage fund such money to become due as is shown by the 1334
notice served and shall hold such money, and shall pay on the 1335
order of the owner, the amounts due to such persons who have 1336
served such notices, if the mortgagee has sufficient money in ~~his~~ 1337
the mortgagee's hands to do so and also to complete the 1338
improvement; but if the mortgagee has funds in ~~his~~ the mortgagee's 1339
hands insufficient to pay all such laborers and ~~materialmen~~ 1340
material suppliers in full and to complete the improvement, ~~he~~ the 1341
mortgagee shall retain sufficient money to complete the 1342
improvement and to distribute the balance pro rata among the 1343
~~materialmen~~ material suppliers and laborers who have filed such 1344
notices. 1345

~~(E)~~(5) If the owner refuses to issue an order to pay the 1346
amount of the notice filed, the mortgagee shall retain the whole 1347
amount claimed until the proper amount has been agreed upon or 1348
judicially determined, provided that the mortgagee may withhold 1349
sufficient funds to complete the improvement. 1350

~~(F)~~(6) The mortgagee shall pay out on the owners' order, 1351
directly to ~~materialmen~~ material suppliers or laborers who have 1352
performed labor or work or furnished material for the improvement. 1353

~~(G)~~(7) The mortgagee shall pay the balance of the mortgage 1354
fund after the improvement is completed to the owner, or to 1355
whomsoever the owner directs. 1356

In case the mortgagee pays out the fund otherwise than as 1357
provided in this section, then the lien of the mortgage to the 1358
extent that the funds had been otherwise paid, is subsequent to 1359

liens of original contractors, subcontractors, ~~materialmen~~ 1360
material suppliers, and laborers; but in no case is such a 1361
mortgagee obligated to pay or liable at law for more than the 1362
principal of the mortgage. 1363

All payments and distributions made by the mortgagee as 1364
provided in this section shall be considered the same as if paid 1365
to the owner, part owner, lessee, or mortgagor under the mortgage, 1366
and as if paid to the original contractor, and when paid pursuant 1367
to this section there is no further liability on the part of the 1368
mortgagee. This chapter does not require the mortgagee to 1369
ascertain by affidavit or otherwise the respective claims of 1370
original contractors, subcontractors, laborers, or ~~materialmen~~ 1371
material suppliers, or to determine priorities among lien 1372
claimants. 1373

The mortgagee is not responsible for a mistake of the owner 1374
in determining priorities, or for any failure of the payee 1375
properly to distribute funds paid on the written order of the 1376
owner. 1377

(C) Any original contractor, subcontractor, ~~materialman~~ 1378
material supplier, or laborer may at any time serve on any 1379
mortgagee a written request demanding to know the exact balance of 1380
the mortgage fund in ~~his~~ the mortgagee's possession and the 1381
aggregate amount included in the notices filed with the mortgagee 1382
at the time of the receipt of such notice. The mortgagee shall 1383
correctly inform the person serving the notice of the exact 1384
balance and the aggregate amount included in the notices filed. If 1385
the mortgagee fails to inform the original contractor, 1386
subcontractor, ~~materialman~~ material supplier, or laborer serving 1387
the written demand of the exact balance of the mortgage fund in 1388
~~his~~ the mortgagee's possession at the time of the receipt of the 1389
notice, the mortgagee is liable to the original contractor, 1390
subcontractor, ~~materialman~~ material supplier, and laborer making 1391

such demand, each time ~~he~~ the mortgagee fails to comply with such 1392
demand, in the sum of one hundred dollars. 1393

This section, as to mortgages contemplated by this section, 1394
controls over all other sections of the Revised Code relating to 1395
mechanic's, ~~materialmen's~~ material supplier's, contractor's, 1396
subcontractor's, laborer's, and all liens that can be had under 1397
this chapter, and shall be liberally construed in favor of such 1398
mortgagees, a substantial compliance by such mortgagees being 1399
sufficient. 1400

Sec. 1311.15. (A) The lien of a subcontractor is superior to 1401
any already taken or to be taken by the original contractor in 1402
respect of the same labor, work, or material, and the liens of 1403
laborers, ~~materialmen~~ material suppliers, and subcontractors to an 1404
original contractor or subcontractor, are superior to any lien 1405
already taken or to be taken by such original contractor or 1406
subcontractor indebted to them in respect of such labor, work, or 1407
material. An assignment or transfer by the original contractor or 1408
subcontractor, of ~~his~~ the contract with the owner or original 1409
contractor, as well as all proceedings in attachment, or 1410
otherwise, against the original contractor or subcontractor, to 1411
subject or encumber ~~his~~ the original contractor's or 1412
subcontractor's interest in such contract, is subject to the 1413
claims of every laborer, subcontractor, or ~~materialman~~ material 1414
supplier who performs any labor or work or furnishes any material 1415
in furtherance of any improvement in accordance with this chapter. 1416

(B)(1) An owner, part owner, lessee, or public authority may 1417
pay directly the claim of any subcontractor or ~~materialman~~ 1418
material supplier who serves a notice of furnishing pursuant to 1419
section 1311.05 or 1311.261 of the Revised Code, or the claim of 1420
any laborer. If the owner, part owner, lessee, or public authority 1421
pays such claim, ~~he~~ the owner, part owner, lessee, or public 1422

authority has a right to a setoff or credit, in an amount equal to 1423
the amount paid, against the original contractor or principal 1424
contractor who employed the subcontractor, ~~materialman~~ material 1425
supplier, or laborer paid by the owner, part owner, lessee, or 1426
public authority under division (B)(1) of this section. 1427

(2) A principal contractor, an original contractor, or a 1428
subcontractor may pay directly the claim of any subcontractor or 1429
~~materialman~~ material supplier who serves a notice of furnishing 1430
pursuant to section 1311.05 or 1311.261 of the Revised Code, or 1431
the claim of any laborer. ~~If the~~ A principal contractor, original 1432
contractor, or subcontractor who pays such a claim, ~~he~~ has a right 1433
to a setoff or credit, in an amount equal to the amount paid, 1434
against the subcontractor who employed the subcontractor, 1435
~~materialman~~ material supplier, or laborer paid by the principal 1436
contractor, original contractor, or subcontractor under division 1437
(B)(2) of this section. 1438

(C) The failure of an original or principal contractor, 1439
subcontractor, ~~materialman~~ material supplier, or laborer to 1440
properly exercise ~~his~~ the rights ~~under~~ provided by this chapter 1441
does not limit ~~his~~ the right to pursue any other legal or 1442
equitable remedy. 1443

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the 1444
Revised Code: 1445

(A) "Public improvement" means any construction, 1446
reconstruction, improvement, enlargement, alteration, demolition, 1447
or repair of a building, highway, drainage system, water system, 1448
road, street, alley, sewer, ditch, sewage disposal plant, water 1449
works, and any other structure or work of any nature by a public 1450
authority. 1451

(B) "Public authority" includes the state, and a county, 1452
township, municipal corporation, school district, or other 1453

political subdivision of the state, and any public agency, 1454
authority, board, commission, instrumentality, or special district 1455
of or in the state or a county, township, municipal corporation, 1456
school district, or other political subdivision of the state, and 1457
any officer or agent thereof. 1458

(C) "~~Materialman~~ or "~~material~~ Material supplier" includes 1459
any person by whom any materials are furnished in furtherance of a 1460
public improvement. 1461

(D) "Laborer" includes any mechanic, worker, artisan, or 1462
other individual who performs labor or work in furtherance of any 1463
public improvement. 1464

(E) "Subcontractor" includes any person who undertakes to 1465
construct, alter, erect, improve, repair, demolish, remove, dig, 1466
or drill any part of any public improvement under a contract with 1467
any person other than the public authority. 1468

(F) "Principal contractor" includes any person who undertakes 1469
to construct, alter, erect, improve, repair, demolish, remove, 1470
dig, or drill any part of any public improvement under a contract 1471
with a public authority. 1472

(G) "Materials" means all products and substances including, 1473
without limitation, any gasoline, lubricating oil, petroleum 1474
products, powder, dynamite, blasting supplies and other 1475
explosives, tools, equipment, or machinery furnished in 1476
furtherance of a public improvement. 1477

(H) "Wages" has the same meaning as "prevailing wage" in 1478
division (E) of section 4115.03 of the Revised Code. 1479

(I) "Notice of commencement" means the notice specified in 1480
section 1311.252 of the Revised Code. 1481

(J) "Notice of furnishing" means the notice specified in 1482
section 1311.261 of the Revised Code. 1483

Sec. 1311.26. Any subcontractor, ~~materialman~~ material supplier, or laborer who is performing or has performed labor or work or is furnishing or has furnished material for any public improvement provided for in a contract between the public authority and a principal contractor, and under a contract between the subcontractor, ~~materialman~~ material supplier, or laborer and a principal contractor or subcontractor, at any time, not to exceed one hundred twenty days from the performance of the last labor or work or furnishing of the last material, may serve the public authority an affidavit stating the amount due and unpaid for the labor and work performed and material furnished, when the last of the labor or work was performed and when the last of the material was furnished with all credits and setoffs thereon, and the post-office address of the claimant. If a claimant serves an affidavit under this section, ~~he~~ the claimant shall serve the affidavit to the representative of the public authority named in the notice of commencement.

One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

Sec. 1311.261. (A)(1) Every subcontractor and ~~materialman~~ material supplier who wishes to exercise ~~his~~ the subcontractor's or material supplier's rights under sections 1311.25 to 1311.32 of the Revised Code regarding claims for labor or work performed or materials furnished in furtherance of a public improvement shall serve a notice of furnishing, in accordance with division (B) of this section, on the principal contractor whose contract with the public authority is the contract under which the subcontractor or

~~materialman~~ material supplier is performing labor or work or 1515
furnishing materials within twenty-one days after the date that 1516
the subcontractor or ~~materialman~~ material supplier first performed 1517
labor or work or furnished materials on the site of the public 1518
improvement, except that no subcontractor or ~~materialman~~ material 1519
supplier who is in direct privity of contract with the principal 1520
contractor need provide the notice. 1521

(2) A subcontractor or ~~materialman~~ material supplier may 1522
serve the principal contractor with a notice of furnishing 1523
pursuant to this section more than twenty-one days after the 1524
subcontractor or ~~materialman~~ material supplier first performed 1525
labor or work or furnished materials on the site of the public 1526
improvement. If a subcontractor or ~~materialman~~ material supplier 1527
serves the notice, the subcontractor or ~~materialman~~ material 1528
supplier shall have the rights of sections 1311.25 to 1311.32 of 1529
the Revised Code with regard to only amounts owed for labor and 1530
work performed and materials furnished during and after the 1531
twenty-one days immediately preceding service of the notice of 1532
furnishing. 1533

(B) The notice of furnishing shall be in substantially the 1534
following form: 1535

"Notice of Furnishing 1536

(For use in connection with public improvements) 1537

To: 1538

(Name of principal contractor) 1539

..... 1540

Address of principal contractor) 1541

The undersigned notifies you that ~~he~~ the undersigned has 1542
furnished or performed or will furnish or perform (describe labor, 1543
work, or materials) for the improvement of real property 1544
identified as (property description or address) under order given 1545

by (name of subcontractor or ~~materialman~~ material supplier). The 1546
labor, work, or materials were first furnished or performed or 1547
will be furnished or performed on (date). 1548

..... 1549
(Signature of subcontractor or ~~materialman~~ material supplier) 1550

..... 1551
(Address of subcontractor or ~~materialman~~ material supplier) 1552

..... 1553
(Date)." 1554

(C) Each principal contractor and each subcontractor, on the 1555
date of entering into any agreement with a subcontractor or 1556
~~materialman~~ material supplier, shall provide, in writing, to the 1557
subcontractor or ~~materialman~~ material supplier, the name and 1558
address of the public authority. 1559

(D) Each principal contractor and each subcontractor, on the 1560
date of entering into any agreement with a subcontractor or 1561
~~materialman~~ material supplier, shall provide, in writing, to the 1562
subcontractor or ~~materialman~~ material supplier, the name and 1563
address of the principal contractor. 1564

(E) If the principal contractor or subcontractor fails to 1565
provide the name and address of the public authority or the 1566
principal contractor to those in direct privity of contract and 1567
that failure results in the loss of rights under this section, the 1568
affected person may bring an action in any court of common pleas 1569
which would otherwise have jurisdiction over the action against 1570
the person who failed to furnish the information for any damages 1571
resulting from the loss of rights under this section. 1572

(F) No laborer must serve a notice in accordance with this 1573
section to preserve lien rights under sections 1311.25 to 1311.32 1574
of the Revised Code. 1575

Sec. 1311.28. Upon receiving the affidavit required by 1576

section 1311.26 of the Revised Code, the public authority shall 1577
detain from the principal contractor or from the balance of the 1578
funds remaining in the contract with the principal contractor, an 1579
amount, up to the balance remaining in the contract, that does not 1580
in the aggregate exceed the claim or claims. 1581

The public authority shall not detain any amount requested by 1582
a claimant who is required by section 1311.261 of the Revised Code 1583
to serve a notice of furnishing, unless the claimant has provided 1584
to the public authority a copy of the notice of furnishing and a 1585
sworn statement as to the date the notice of furnishing was served 1586
to the principal contractor, or by a claimant who is a laborer, 1587
unless the laborer serves an affidavit upon the public authority 1588
pursuant to section 1311.26 of the Revised Code. 1589

The public authority shall place any detained funds in an 1590
escrow account as provided for under section 153.63 of the Revised 1591
Code, to be released at the times, in the amounts, and to the 1592
persons ordered by a court of competent jurisdiction or by 1593
agreement of the principal contractor and the subcontractor, 1594
~~materialman~~ material supplier, or laborer who filed the affidavit 1595
provided for in section 1311.26 of the Revised Code or upon a 1596
failure to commence suit as provided in section 1311.311 of the 1597
Revised Code. 1598

Sec. 1311.29. A subcontractor, ~~materialman~~ material supplier, 1599
laborer, or person who serves the affidavit pursuant to section 1600
1311.26 of the Revised Code, in order to notify other 1601
subcontractors, ~~materialmen~~ material suppliers, and laborers, 1602
within thirty days thereafter, shall file for record a copy of the 1603
affidavit with the county recorder of the county where the public 1604
improvement is situated or with the county recorder of each of the 1605
counties where the public improvement is situated if the public 1606
improvement is situated in more than one county. The filing for 1607

record of the affidavit with the county recorders gives such 1608
subcontractor, ~~materialman~~ material supplier, laborer, or person 1609
filing the affidavit as provided in section 1311.26 of the Revised 1610
Code, a preference, as to payments subsequently due from the 1611
public authority, over such of ~~his~~ the other subcontractors, 1612
~~materialmen~~ material suppliers, and laborers who have failed, 1613
prior to the date any such payment is due, to file the affidavit 1614
provided for in section 1311.26 of the Revised Code, and to file 1615
for record the copy thereof with the county recorders as provided 1616
in this section. On detained funds, such claimants have no 1617
priority among themselves, but payment thereon shall be made to 1618
them in amounts prorated according to the amount of the 1619
then-existing valid claim of each. The failure of any claimant to 1620
file for record a copy of the affidavit with the county recorders 1621
does not affect the validity of ~~his~~ the claimant's amount claimed 1622
with respect to persons other than such of ~~his~~ the claimant's 1623
other subcontractors, ~~materialmen~~ material suppliers, and laborers 1624
who have filed for record copies of their affidavits with the 1625
county recorders, and, against detained funds, such claimants who 1626
have failed to make such filing for record with the county 1627
recorders have no priority among themselves, but, after all claims 1628
having preference over theirs have been paid, payment shall be 1629
made to them in amounts prorated according to the amount of the 1630
then-existing valid claim of each. 1631

The recorder shall endorse upon every affidavit the date and 1632
hour of its filing, and record every affidavit filed for record. 1633
For recording or making a copy of the affidavit or certificate of 1634
the date of such filing for record, the recorder is entitled to 1635
the same fees as are provided for in section 317.32 of the Revised 1636
Code. 1637

Sec. 1311.32. The duty to pay to claimants the amounts and in 1638
the order of preference, as provided in sections 1311.29 and 1639

1311.31 of the Revised Code, may be enforced by an action in the court of common pleas or the subcontractor, ~~materialman~~ material supplier, or laborer may, when the amounts are due, recover through the public authority in the court of common pleas the whole or a pro rata amount of ~~his~~ the subcontractor's, material supplier's, or laborer's claim or estimate, not exceeding in any case the balance due to the principal contractor. Either of these actions shall be brought in the county in which the public property involved is situated, except that actions against state officers shall be brought only in Franklin county. The court shall resolve all disputes concerning whether the affidavit filed pursuant to section 1311.26 of the Revised Code has been perfected and concerning priorities, that may arise from enforcement of the affidavit or the bond that secures the affidavit, pursuant to section 1311.311 of the Revised Code.

Sec. 4113.61. (A)(1) If a subcontractor or ~~materialman~~ material supplier submits an application or request for payment or an invoice for materials to a contractor in sufficient time to allow the contractor to include the application, request, or invoice in ~~his~~ the contractor's own pay request submitted to an owner, the contractor, within ten calendar days after receipt of payment from the owner for improvements to property, shall pay to the:

(a) Subcontractor, an amount that is equal to the percentage of completion of the subcontractor's contract allowed by the owner for the amount of labor or work performed;

(b) ~~Materialman~~ Material supplier, an amount that is equal to all or that portion of the invoice for materials which represents the materials furnished by the ~~materialman~~ material supplier.

The contractor may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order

between the contractor and the subcontractor or ~~materialman~~ 1671
material supplier, and may withhold amounts that may be necessary 1672
to resolve disputed liens or claims involving the work or labor 1673
performed or material furnished by the subcontractor or 1674
~~materialman~~ material supplier. 1675

If the contractor fails to comply with division (A)(1) of 1676
this section, the contractor shall pay the subcontractor or 1677
~~materialman~~ material supplier, in addition to the payment due, 1678
interest in the amount of eighteen per cent per annum of the 1679
payment due, beginning on the eleventh day following the receipt 1680
of payment from the owner and ending on the date of full payment 1681
of the payment due plus interest to the subcontractor or 1682
~~materialman~~ material supplier. 1683

(2) If a lower tier subcontractor or lower tier ~~materialman~~ 1684
material supplier submits an application or request for payment or 1685
an invoice for materials to a subcontractor, ~~materialman~~ material 1686
supplier, or other lower tier subcontractor or lower tier 1687
~~materialman~~ material supplier in sufficient time to allow the 1688
subcontractor, ~~materialman~~ material supplier, or other lower tier 1689
subcontractor or lower tier ~~materialman~~ material supplier to 1690
include the application, request, or invoice in ~~his~~ the 1691
subcontractor's, material supplier's, or other lower tier 1692
subcontractor's or lower tier material supplier's own pay request 1693
submitted to a contractor, other subcontractor, ~~materialman~~ 1694
material supplier, lower tier subcontractor, or lower tier 1695
~~materialman~~ material supplier, the subcontractor, ~~materialman~~ 1696
material supplier, or other lower tier subcontractor or lower tier 1697
~~materialman~~ material supplier, within ten calendar days after 1698
receipt of payment from the contractor, other subcontractor, 1699
~~materialman~~ material supplier, lower tier subcontractor, or lower 1700
tier ~~materialman~~ material supplier for improvements to property, 1701
shall pay to the: 1702

(a) Lower tier subcontractor, an amount that is equal to the 1703
percentage of completion of the lower tier subcontractor's 1704
contract allowed by the owner for the amount of labor or work 1705
performed; 1706

(b) Lower tier ~~materialman~~ material supplier, an amount that 1707
is equal to all or that portion of the invoice for materials which 1708
represents the materials furnished by the lower tier ~~materialman~~ 1709
material supplier. 1710

The subcontractor, ~~materialman~~ material supplier, lower tier 1711
subcontractor, or lower tier ~~materialman~~ material supplier may 1712
reduce the amount paid by any retainage provision contained in the 1713
contract, invoice, or purchase order between the subcontractor, 1714
~~materialman~~ material supplier, lower tier subcontractor, or lower 1715
tier ~~materialman~~ material supplier and the lower tier 1716
subcontractor or lower tier ~~materialman~~ material supplier, and may 1717
withhold amounts that may be necessary to resolve disputed liens 1718
or claims involving the work or labor performed or material 1719
furnished by the lower tier subcontractor or lower tier 1720
~~materialman~~ material supplier. 1721

If the subcontractor, ~~materialman~~ material supplier, lower 1722
tier subcontractor, or lower tier ~~materialman~~ material supplier 1723
fails to comply with division (A)(2) of this section, the 1724
subcontractor, ~~materialman~~ material supplier, lower tier 1725
subcontractor, or lower tier ~~materialman~~ material supplier shall 1726
pay the lower tier subcontractor or lower tier ~~materialman~~ 1727
material supplier, in addition to the payment due, interest in the 1728
amount of eighteen per cent per annum of the payment due, 1729
beginning on the eleventh day following the receipt of payment 1730
from the contractor, other subcontractor, ~~materialman~~ material 1731
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1732
material supplier and ending on the date of full payment of the 1733
payment due plus interest to the lower tier subcontractor or lower 1734

tier ~~materialman~~ material supplier. 1735

(3) If a contractor receives any final retainage from the 1736
owner for improvements to property, the contractor shall pay from 1737
that retainage each subcontractor and ~~materialman his~~ material 1738
supplier the subcontractor's or material supplier's proportion of 1739
the retainage, within ten calendar days after receipt of the 1740
retainage from the owner, or within the time period provided in a 1741
contract, invoice, or purchase order between the contractor and 1742
the subcontractor or ~~materialman~~ material supplier, whichever time 1743
period is shorter, provided that the contractor has determined 1744
that the subcontractor's or ~~materialman's~~ material supplier's 1745
work, labor, and materials have been satisfactorily performed or 1746
furnished and that the owner has approved the subcontractor's or 1747
~~materialman's~~ material supplier's work, labor, and materials. 1748

If the contractor fails to pay a subcontractor or ~~materialman~~ 1749
material supplier within the appropriate time period, the 1750
contractor shall pay the subcontractor or ~~materialman~~ material 1751
supplier, in addition to the retainage due, interest in the amount 1752
of eighteen per cent per annum of the retainage due, beginning on 1753
the eleventh day following the receipt of the retainage from the 1754
owner and ending on the date of full payment of the retainage due 1755
plus interest to the subcontractor or ~~materialman~~ material 1756
supplier. 1757

(4) If a subcontractor, ~~materialman~~ material supplier, lower 1758
tier subcontractor, or lower tier ~~materialman~~ material supplier 1759
receives any final retainage from the contractor or other 1760
subcontractor, lower tier subcontractor, or lower tier ~~materialman~~ 1761
material supplier for improvements to property, the subcontractor, 1762
~~materialman~~ material supplier, lower tier subcontractor, or lower 1763
tier ~~materialman~~ material supplier shall pay from that retainage 1764
each lower tier subcontractor or lower tier ~~materialman his~~ the 1765
lower tier subcontractor's or lower tier material supplier's 1766

proportion of the retainage, within ten calendar days after 1767
receipt of payment from the contractor or other subcontractor, 1768
lower tier subcontractor, or lower tier ~~materialman~~ material 1769
supplier, or within the time period provided in a contract, 1770
invoice, or purchase order between the subcontractor, ~~materialman~~ 1771
material supplier, lower tier subcontractor, or lower tier 1772
~~materialman~~ material supplier and the lower tier subcontractor or 1773
lower tier ~~materialman~~ material supplier, whichever time period is 1774
shorter, provided that the subcontractor, ~~materialman~~ material 1775
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1776
material supplier has determined that the lower tier 1777
subcontractor's or lower tier ~~materialman's~~ material supplier's 1778
work, labor, and materials have been satisfactorily performed or 1779
furnished and that the owner has approved the lower tier 1780
subcontractor's or lower tier ~~materialman's~~ material supplier's 1781
work, labor, and materials. 1782

If the subcontractor, ~~materialman~~ material supplier, lower 1783
tier subcontractor, or lower tier ~~materialman~~ material supplier 1784
fails to pay the lower tier subcontractor or lower tier 1785
~~materialman~~ material supplier within the appropriate time period, 1786
the subcontractor, ~~materialman~~ material supplier, lower tier 1787
subcontractor, or lower tier ~~materialman~~ material supplier shall 1788
pay the lower tier subcontractor or lower tier ~~materialman~~ 1789
material supplier, in addition to the retainage due, interest in 1790
the amount of eighteen per cent per annum of the retainage due, 1791
beginning on the eleventh day following the receipt of the 1792
retainage from the contractor or other subcontractor, lower tier 1793
subcontractor, or lower tier ~~materialman~~ material supplier and 1794
ending on the date of full payment of the retainage due plus 1795
interest to the lower tier subcontractor or lower tier ~~materialman~~ 1796
material supplier. 1797

(5) A contractor, subcontractor, or lower tier subcontractor 1798

shall pay a laborer wages due within ten days of payment of any 1799
application or request for payment or the receipt of any retainage 1800
from an owner, contractor, subcontractor, or lower tier 1801
subcontractor. 1802

If the contractor, subcontractor, or lower tier subcontractor 1803
fails to pay the laborer wages due within the appropriate time 1804
period, the contractor, subcontractor, or lower tier subcontractor 1805
shall pay the laborer, in addition to the wages due, interest in 1806
the amount of eighteen per cent per annum of the wages due, 1807
beginning on the eleventh day following the receipt of payment 1808
from the owner, contractor, subcontractor, or lower tier 1809
subcontractor and ending on the date of full payment of the wages 1810
due plus interest to the laborer. 1811

(B)(1) If a contractor, subcontractor, ~~materialman~~ material 1812
supplier, lower tier subcontractor, or lower tier ~~materialman~~ 1813
material supplier has not made payment in compliance with division 1814
(A)(1), (2), (3), (4), or (5) of this section within thirty days 1815
after payment is due, a subcontractor, ~~materialman~~ material 1816
supplier, lower tier subcontractor, lower tier ~~materialman~~ 1817
material supplier, or laborer may file a civil action to recover 1818
the amount due plus the interest provided in those divisions. If 1819
the court finds in the civil action that a contractor, 1820
subcontractor, ~~materialman~~ material supplier, lower tier 1821
subcontractor, or lower tier ~~materialman~~ material supplier has not 1822
made payment in compliance with those divisions, the court shall 1823
award the interest specified in those divisions, in addition to 1824
the amount due. Except as provided in division (B)(3) of this 1825
section, the court shall award the prevailing party reasonable 1826
attorney fees and court costs. 1827

(2) In making a determination to award attorney fees under 1828
division (B)(1) of this section, the court shall consider all 1829
relevant factors, including but not limited to the following: 1830

| | |
|--|--|
| (a) The presence or absence of good faith allegations or defenses asserted by the parties; | 1831 1832 |
| (b) The proportion of the amount of recovery as it relates to the amount demanded; | 1833 1834 |
| (c) The nature of the services rendered and the time expended in rendering the services. | 1835 1836 |
| (3) The court shall not award attorney fees under division (B)(1) of this section if the court determines, following a hearing on the payment of attorney fees, that the payment of attorney fees to the prevailing party would be inequitable. | 1837 1838 1839 1840 |
| (C) This section does not apply to any construction or improvement of any single-, two-, or three-family detached dwelling houses. | 1841 1842 1843 |
| (D)(1) No provision of this section regarding entitlement to interest, attorney fees, or court costs may be waived by agreement and any such term in any contract or agreement is void and unenforceable as against public policy. | 1844 1845 1846 1847 |
| (2) This section shall not be construed as impairing or affecting, in any way, the terms and conditions of any contract, invoice, purchase order, or any other agreement between a contractor and a subcontractor or a materialman <u>material supplier</u> or between a subcontractor and another subcontractor, a materialman <u>material supplier</u> , a lower tier subcontractor, or a lower tier materialman <u>material supplier</u> , except that if such terms and conditions contain time periods which are longer than any of the time periods specified in divisions (A)(1), (2), (3), (4), and (5) of this section or interest at a percentage less than the interest stated in those divisions, then the provisions of this section shall prevail over such terms and conditions. | 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 |
| (E) Notwithstanding the definition of lower tier materialman | 1860 |

material supplier in this section, a person is not a lower tier 1861
~~materialman~~ material supplier unless the materials supplied by ~~him~~ 1862
the person are: 1863

(1) Furnished with the intent, as evidenced by the contract 1864
of sale, the delivery order, delivery to the site, or by other 1865
evidence that the materials are to be used on a particular 1866
structure or improvement; 1867

(2) Incorporated in the improvement or consumed as normal 1868
wastage in the course of the improvement; or 1869

(3) Specifically fabricated for incorporation in the 1870
improvement and not readily resalable in the ordinary course of 1871
the fabricator's business even if not actually incorporated in the 1872
improvement. 1873

(F) As used in this section: 1874

(1) "Contractor" means any person who undertakes to 1875
construct, alter, erect, improve, repair, demolish, remove, dig, 1876
or drill any part of a structure or improvement under a contract 1877
with an owner, or a "construction manager" as that term is defined 1878
in section 9.33 of the Revised Code. 1879

(2) "Laborer," "~~materialman~~ material supplier," 1880
"subcontractor," and "wages" have the same meanings as in section 1881
1311.01 of the Revised Code. 1882

(3) "Lower tier subcontractor" means a subcontractor who is 1883
not in privity of contract with a contractor but is in privity of 1884
contract with another subcontractor. 1885

(4) "Lower tier ~~materialman~~ material supplier" means a 1886
~~materialman~~ material supplier who is not in privity of contract 1887
with a contractor but is in privity of contract with another 1888
subcontractor or a ~~materialman~~ material supplier. 1889

(5) "Wages due" means the wages due to a laborer as of the 1890

date a contractor or subcontractor receives payment for any 1891
application or request for payment or retainage from any owner, 1892
contractor, or subcontractor. 1893

(6) "Owner" includes the state, and a county, township, 1894
municipal corporation, school district, or other political 1895
subdivision of the state, and any public agency, authority, board, 1896
commission, instrumentality, or special district of or in the 1897
state or a county, township, municipal corporation, school 1898
district, or other political subdivision of the state, and any 1899
officer or agent thereof and relates to all the interests either 1900
legal or equitable, which a person may have in the real estate 1901
upon which improvements are made, including interests held by any 1902
person under contracts of purchase, whether in writing or 1903
otherwise. 1904

Sec. 4740.01. As used in this chapter: 1905

(A) "License" means a license the Ohio construction industry 1906
licensing board issues to an individual as a heating, ventilating, 1907
and air conditioning contractor, refrigeration contractor, 1908
electrical contractor, plumbing contractor, or hydronics 1909
contractor. 1910

(B) "Contractor" means any individual or business entity that 1911
satisfies both of the following: 1912

(1) For compensation, directs, supervises, or has 1913
responsibility for the means, method, and manner of construction, 1914
improvement, renovation, repair, ~~testing~~, or maintenance on a 1915
construction project with respect to one or more trades and who 1916
offers, identifies, advertises, or otherwise holds out or 1917
represents that the individual or business entity is permitted or 1918
qualified to perform, direct, supervise, or have responsibility 1919
for the means, method, and manner of construction, improvement, 1920

renovation, repair, or maintenance with respect to one or more trades on a construction project;

(2) Performs or employs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades.

(C) "Licensed trade" means a trade performed by a heating, ventilating, and air conditioning contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, or a hydronics contractor.

(D) "Tradesperson" means an individual employed by a contractor who, ~~for compensation,~~ engages in construction, improvement, renovation, repair, or maintenance of buildings or structures without assuming responsibility for the means, method, or manner of that construction, improvement, renovation, repair, or maintenance.

(E) "Construction project" means a construction project involving a building or structure subject to Chapter 3781. of the Revised Code and the rules adopted under that chapter, but not an industrialized unit or a residential building as defined in section 3781.06 of the Revised Code.

Sec. 4740.04. The administrative section of the Ohio construction industry licensing board is responsible for the administration of this chapter and shall do all of the following:

(A) Schedule the contractor examinations each of the other sections of the board directs. Each type of examination shall be held at least four times per year.

(B) Select and contract with one or more persons to do all of the following relative to the examinations:

(1) Prepare, administer, score, and maintain the confidentiality of the examinations;

(2) Be responsible for all the expenses required to fulfill
division (B)(1) of this section;

(3) Charge an applicant a fee in an amount the administrative
section of the board authorizes for administering the examination;

(4) Design the examination for each type of contractor to
determine an applicant's competence to perform that type of
contracting.

(C) ~~Issue and renew licenses to individuals who have attained
at least the minimum score on an examination that the appropriate
section authorizes for the licensed trade. Hydronics contractors
shall pass the examinations for both the plumbing section and the
heating, ventilating, air conditioning, and refrigeration section.
The appropriate section shall determine whether the individual
also is qualified as required by section 4740.06 of the Revised
Code to hold a license as follows:~~

(1) Issue a license to any individual who the appropriate
section of the board determines is qualified pursuant to section
4740.06 of the Revised Code to hold a license and has attained a
score on the examination that the appropriate section authorizes
for the licensed trade.

(a) Each license shall include a license number and an
expiration date.

(b) Each license issued to an individual who holds more than
one valid license shall contain the same license number and
expiration date as the original license issued to that individual.

(2) Renew licenses for individuals who meet the renewal
requirements of section 4740.06 of the Revised Code.

(D) Make an annual written report to the director of commerce
on proceedings had by or before the board for the previous year

and make an annual statement of all money received and expended by
the board during the year; 1981
1982

(E) Keep a record containing the name, address, the date on
which the board issues or renews a license to, and the license
number of, every heating, ventilating, and air conditioning
contractor, refrigeration contractor, electrical contractor,
plumbing contractor, and hydronics contractor issued a license
pursuant to this chapter; 1983
1984
1985
1986
1987
1988

(F) Regulate a contractor's use and display of a license
issued pursuant to this chapter and of any information contained
in that license; 1989
1990
1991

(G) Adopt rules in accordance with Chapter 119. of the
Revised Code as necessary to properly discharge the administrative
section's duties under this chapter. The rules shall include, but
not be limited to, the following: 1992
1993
1994
1995

(1) Application procedures for examinations; 1996

(2) Specifications for continuing education requirements for
license renewal that address all of the following: 1997
1998

~~(a) Criteria for continuing education courses conducted
pursuant to this chapter;~~ 1999
2000

~~(b) A requirement that individuals holding a an individual
who holds any number of valid and unexpired license licenses
accrue a total of ten hours of continuing education courses per
year;~~ 2001
2002
2003
2004

~~(c) A requirement that persons seeking approval to provide
continuing education courses submit the required information to
the appropriate section of the board at least thirty days, but not
more than one year, prior to the date on which the course is
proposed to be offered;~~ 2005
2006
2007
2008
2009

~~(d) A prohibition against any person providing a continuing~~ 2010

| | |
|--|------|
| education course unless the administrative section of the board | 2011 |
| approved that person not more than one year prior to the date the | 2012 |
| course is offered; | 2013 |
| (e)(b) Fees the board charges to persons who provide | 2014 |
| continuing education courses, in an amount of twenty-five dollars | 2015 |
| annually for each person approved to provide courses, not more | 2016 |
| than ten dollars plus one dollar per credit hour for each course | 2017 |
| offered, and one dollar per credit hour of instruction per | 2018 |
| attendee; | 2019 |
| (f)(c) A provision limiting approval of continuing education | 2020 |
| courses to one year. | 2021 |
| (H) Adopt any continuing education curriculum as the other | 2022 |
| sections of the board establish or approve pursuant to division | 2023 |
| (C) of section 4740.05 of the Revised Code; | 2024 |
| (I) Grant approval to a person or entity to offer continuing | 2025 |
| education courses pursuant to rules the board adopts; | 2026 |
| (J) Keep a record of its proceedings and do all things | 2027 |
| necessary to carry out this chapter. | 2028 |
| Sec. 4740.05. (A) Each section of the Ohio construction | 2029 |
| industry licensing board, other than the administrative section, | 2030 |
| shall do all of the following: | 2031 |
| (1) Adopt rules in accordance with Chapter 119. of the | 2032 |
| Revised Code that are limited to the following: | 2033 |
| (a) Criteria for the section to use in evaluating the | 2034 |
| qualifications of an individual; | 2035 |
| (b) Criteria for the section to use in deciding whether to | 2036 |
| authorize the administrative section to issue, renew, suspend, | 2037 |
| revoke, or refuse to issue or renew a license; | 2038 |
| (c) The determinations and approvals the section makes under | 2039 |

| | |
|---|------|
| the reciprocity provision of section 4740.08 of the Revised Code; | 2040 |
| <u>(d) Criteria for continuing education courses conducted</u> | 2041 |
| <u>pursuant to this chapter;</u> | 2042 |
| <u>(e) A requirement that persons seeking approval to provide</u> | 2043 |
| <u>continuing education courses submit the required information to</u> | 2044 |
| <u>the appropriate section of the board at least thirty days, but not</u> | 2045 |
| <u>more than one year, prior to the date on which the course is</u> | 2046 |
| <u>proposed to be offered;</u> | 2047 |
| <u>(f) A prohibition against any person providing a continuing</u> | 2048 |
| <u>education course unless the administrative section of the board</u> | 2049 |
| <u>approved that person not more than one year prior to the date the</u> | 2050 |
| <u>course is offered.</u> | 2051 |
| (2) Investigate allegations in reference to violations of | 2052 |
| this chapter and the rules adopted pursuant to it that pertain to | 2053 |
| the section and determine by rule a procedure to conduct | 2054 |
| investigations and hearings on these allegations; | 2055 |
| (3) Maintain a record of its proceedings; | 2056 |
| (4) <u>Grant approval to a person to offer continuing education</u> | 2057 |
| <u>courses pursuant to rules the board adopts;</u> | 2058 |
| <u>(5) As required, do all things necessary to carry out this</u> | 2059 |
| <u>chapter.</u> | 2060 |
| (B) In accordance with rules they establish, the trade | 2061 |
| sections of the board shall authorize the administrative section | 2062 |
| to issue, renew, suspend, revoke, or refuse to issue or renew | 2063 |
| licenses for the classes of contractors for which each has primary | 2064 |
| responsibility as set forth in section 4740.02 of the Revised | 2065 |
| Code. | 2066 |
| (C) Each trade section of the board shall establish or | 2067 |
| approve a continuing education curriculum for license renewal for | 2068 |
| each class of contractors for which the section has primary | 2069 |

responsibility. No curriculum may require ~~that~~ more than five 2070
hours ~~out of the ten total required~~ per year ~~be~~ in specific course 2071
requirements. No contractor may be required to take more than ten 2072
hours per year in continuing education courses. The ten hours 2073
shall be the aggregate of hours of continuing education for all 2074
licenses the contractor holds. 2075

Sec. 4740.06. (A) Any individual who applies for a license 2076
shall file a written application with the appropriate section of 2077
the Ohio construction industry licensing board, accompanied with 2078
the application fee as determined pursuant to section 4740.09 of 2079
the Revised Code. The individual shall file the application not 2080
more than sixty days nor less than thirty days prior to the date 2081
of the examination. The application shall be on the form the 2082
section prescribes and verified by the applicant's oath. The 2083
applicant shall provide information satisfactory to the section 2084
showing that the applicant meets the requirements of division (B) 2085
of this section. 2086

(B) To qualify to take an examination, an individual shall: 2087

(1) Be at least eighteen years of age; 2088

(2) Be a United States citizen or legal alien who produces 2089
valid documentation to demonstrate the individual is a legal 2090
resident of the United States; 2091

(3) Either have been a tradesperson in the type of licensed 2092
trade for which the application is filed for not less than five 2093
years immediately prior to the date the application is filed, be 2094
~~an~~ a currently registered engineer, have in this state with three 2095
years of business experience in the construction industry in the 2096
trade for which the engineer is applying to take an examination, 2097
or have other experience acceptable to the appropriate section of 2098
the board; 2099

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| (4) Maintain contractor's liability insurance, including | 2100 |
| without limitation, complete operations coverage, in an amount the | 2101 |
| appropriate section of the board determines; | 2102 |
| (5) Not have done any of the following: | 2103 |
| (a) Been convicted of or pleaded guilty to a misdemeanor | 2104 |
| involving moral turpitude or of any felony; | 2105 |
| (b) Violated this chapter or any rule adopted pursuant to it; | 2106 |
| (c) Obtained or renewed a license issued pursuant to this | 2107 |
| chapter, or any order, ruling, or authorization of the board or a | 2108 |
| section of the board by fraud, misrepresentation, or deception; | 2109 |
| (d) Engaged in fraud, misrepresentation, or deception in the | 2110 |
| conduct of business. | 2111 |
| (C) When an applicant for licensure as a contractor in a | 2112 |
| licensed trade meets the qualifications set forth in division (B) | 2113 |
| of this section and passes the required examination, the | 2114 |
| appropriate section of the board, within ninety days after the | 2115 |
| application was filed, shall authorize the administrative section | 2116 |
| of the board to license the applicant for the type of contractor's | 2117 |
| license for which the applicant qualifies. A section of the board | 2118 |
| may withdraw its authorization to the administrative section for | 2119 |
| issuance of a license for good cause shown, on the condition that | 2120 |
| notice of that withdrawal is given prior to the administrative | 2121 |
| section's issuance of the license. | 2122 |
| (D) Each license expires one year after the date of issue. | 2123 |
| <u>All licenses a contractor holds pursuant to this chapter shall</u> | 2124 |
| <u>expire annually on the same date, which shall be the expiration</u> | 2125 |
| <u>date of the original license the contractor holds.</u> An individual | 2126 |
| holding a valid, unexpired license may renew the license, without | 2127 |
| reexamination, by submitting an application to the appropriate | 2128 |
| section of the board not more than ninety calendar days before the | 2129 |

expiration of the license, along with the renewal fee the section 2130
requires and proof of compliance with the applicable continuing 2131
education requirements. The applicant shall provide information in 2132
the renewal application satisfactory to demonstrate to the 2133
appropriate section that the applicant continues to meet the 2134
requirements of division (B) of this section. 2135

Upon application and within one calendar year after a license 2136
has expired, a section may waive any of the requirements for 2137
renewal of a license upon finding that an applicant substantially 2138
meets the renewal requirements or that failure to timely apply for 2139
renewal is due to excusable neglect. A section that waives 2140
requirements for renewal of a license may impose conditions upon 2141
the licensee and assess a late filing fee of not more than double 2142
the usual renewal fee. An applicant shall satisfy any condition 2143
the section imposes before a license is reissued. 2144

(E) An individual holding a valid license may request the 2145
section of the board that authorized that license to place the 2146
license in inactive status under conditions, and for a period of 2147
time, as that section determines. 2148

(F) Except for the ninety-day extension provided for a 2149
license assigned to a business entity under division (D) of 2150
section 4740.07 of the Revised Code, a license held by an 2151
individual immediately terminates upon the death of the 2152
individual. 2153

(G) Nothing in any license issued by the Ohio construction 2154
industry licensing board shall be construed to limit or eliminate 2155
any requirement of or any license issued by the Ohio fire marshal. 2156

Sec. 4740.07. (A) Except as otherwise provided in this 2157
section, the administrative section of the Ohio construction 2158
industry licensing board shall issue and renew all licenses under 2159
this chapter in the name of the individual who meets the 2160

requirements of section 4740.06 of the Revised Code. 2161

(B) Any individual may request, at the time of applying for a 2162
license or at any time thereafter, that the individual's license 2163
be assigned to a business entity with whom the individual is 2164
associated as a full-time officer, proprietor, partner, or 2165
employee. If the individual is issued or holds a license and meets 2166
the requirements of this section for the assignment of the license 2167
to a business entity, the administrative section shall assign the 2168
license to and issue a license in the name of the business entity. 2169
The license assigned and issued to a business entity under this 2170
division shall state the name and position of the individual who 2171
assigned the license to the business entity. 2172

(C) During the period a business entity holds a license 2173
issued under division (B) of this section, the administrative 2174
section shall not issue another license to the individual who 2175
assigned the license to the business entity for the same type of 2176
contracting for which the business entity utilizes the assigned 2177
license. 2178

(D)(1) If an individual who assigned a license to a business 2179
entity ceases to be associated with the business entity for any 2180
reason, including the death of the individual, the individual or 2181
business entity immediately shall notify the appropriate section 2182
of the board of the date on which the individual ceased to be 2183
associated with the business entity. A license assigned to a 2184
business entity is invalid ninety calendar days after the date on 2185
which the individual who assigned the license ceases to be 2186
associated with the business entity or at an earlier time to which 2187
the business entity and the individual agree. 2188

(2) If a license assigned to a business entity becomes 2189
invalid pursuant to division (D)(1) of this section and another 2190
individual has assigned a license to the business entity for the 2191

same type of contracting for which the invalidated license had 2192
been assigned, the business entity may continue to operate under 2193
the other assigned license. 2194

(E) Any work a business entity conducts under a license 2195
assigned under this section is deemed to be conducted under the 2196
personal supervision of the individual named in the license and 2197
any violation of any term of the license is deemed to have been 2198
committed by the individual named in the license. 2199

For the period of time during which more than one license for 2200
the same type of contracting is assigned to a business entity, any 2201
work the business entity conducts under any of those licenses is 2202
deemed to be conducted under the personal supervision of the 2203
individuals named in those licenses and any violation of any term 2204
of any license is deemed to have been committed by the individuals 2205
named in all of the licenses. 2206

(F) No individual who assigns a license to a business entity 2207
shall assign a license for the same type of contracting to another 2208
business entity until ~~after ninety days after the individual~~ 2209
~~ceases to be associated with the business entity to which the~~ 2210
~~individual had assigned a license~~ the original license assigned is 2211
invalid pursuant to division (D) of this section. 2212

(G) Any individual who assigns a license to a business entity 2213
under this section shall be actively engaged in business as the 2214
type of contractor for which the license is issued and be readily 2215
available for consultation with the business entity to which the 2216
license is assigned. 2217

(H) No license assigned under this section shall be assigned 2218
to more than one business entity at a time. 2219

Sec. 4740.08. When a written reciprocity agreement between 2220
the states exists, and an individual who is registered, licensed, 2221

or certified in another state applies to the appropriate section 2222
of the Ohio construction industry licensing board submits a copy 2223
of the reciprocity agreement, and pays the licensure fee 2224
determined pursuant to section 4740.09 of the Revised Code, the 2225
appropriate section of the board shall authorize the 2226
administrative section to issue, without examination, a license to 2227
that individual if the appropriate section of the board 2228
determines, pursuant to rules it adopts, that the requirements for 2229
registration, licensure, or certification under the laws of the 2230
other state are substantially equal to the requirements for 2231
licensure in this state and that the other state extends similar 2232
reciprocity to persons licensed under this chapter. The 2233
appropriate section of the board may withdraw its authorization to 2234
the administrative section for issuance of a license for good 2235
cause prior to the administrative section's issuance of the 2236
license. 2237

Sec. 4740.101. On receipt of a notice pursuant to section 2238
3123.43 of the Revised Code, the construction industry licensing 2239
board shall comply with sections 3123.41 to 3123.50 of the Revised 2240
Code and any applicable rules adopted under section 3123.63 of the 2241
Revised Code with respect to a ~~certificate~~ license issued pursuant 2242
to this chapter. 2243

Sec. 4740.12. ~~Nothing~~ (A) No political subdivision, district, 2244
or agency of the state may adopt an ordinance or rule that 2245
requires contractor registration and the assessment of a 2246
registration or license fee unless that ordinance or rule also 2247
requires any contractor who registers and pays the registration or 2248
license fee to be licensed in the contractor's trade pursuant to 2249
this chapter. 2250

(B) Except as provided in division (A) of this section, 2251

nothing in this chapter shall be construed to limit the operation 2252
of any statute or rule of this state or any ordinance or rule of 2253
any political subdivision, district, or agency of the state that 2254
does either of the following: 2255

~~(A)~~(1) Regulates the installation, repair, maintenance, or 2256
alteration of plumbing systems, hydronics systems, electrical 2257
systems, heating, ventilating, and air conditioning systems, or 2258
refrigeration systems; 2259

~~(B)~~(2) Requires the registration and assessment of a 2260
registration or license fee of tradespersons who perform heating, 2261
ventilating, and air conditioning, refrigeration, electrical, 2262
plumbing, or hydronics construction, improvement, renovation, 2263
repair, or maintenance. 2264

Sec. 4740.15. If a check or other draft instrument used to 2265
pay any fee required by this chapter is returned as unpaid for 2266
insufficient funds or any other reason, the board secretary shall 2267
notify the licensee that the check or other draft instrument was 2268
returned and that the licensee's license will be canceled unless 2269
the licensee, within fifteen days after the mailing of the notice, 2270
submits the fee and a penalty in an amount the board establishes 2271
by rules it adopts pursuant to Chapter 119. of the Revised Code. 2272
If the licensee does not submit the fee and the penalty within the 2273
time specified, or if any check or other draft instrument used to 2274
pay either the fee or the penalty is returned to the board 2275
secretary for insufficient funds or any other reason, the license 2276
shall be canceled immediately without a hearing and the licensee 2277
shall cease activity as a licensee under this chapter until both 2278
the fee and the penalty have been paid. 2279

Sec. 5309.57. Whenever any attested account to obtain a 2280
mechanic's, ~~materialman's~~ material supplier's, or laborer's lien 2281

is filed in the office of the county recorder by which a lien is 2282
sought to be obtained upon any registered land, the county 2283
recorder shall forthwith make notation and enter a memorial 2284
thereof upon the folium of the register where the last certificate 2285
of title to the land is registered, stating the name of the 2286
claimant, amount claimed, volume and folium of the record where 2287
recorded, and the exact time when said memorial was entered. No 2288
lien shall attach to said land until such notation is entered by 2289
the recorder. 2290

The recorder may, upon written application of the registered 2291
owner, cancel from any certificate of title, a mechanic's lien 2292
which has remained uncanceled for six years and one day from the 2293
date of registration of said lien, provided that no notice of any 2294
suit affecting said lien has been noted upon the register. 2295

Sec. 5525.16. (A) Before entering into a contract, the 2296
director of transportation shall require a contract performance 2297
bond and a payment bond with sufficient sureties, as follows: 2298

(1) A contract performance bond in an amount equal to one 2299
hundred per cent of the estimated cost of the work, conditioned, 2300
among other things, that the contractor will perform the work upon 2301
the terms proposed, within the time prescribed, and in accordance 2302
with the plans and specifications, will indemnify the state 2303
against any damage that may result from any failure of the 2304
contractor to so perform, and, further, in case of a grade 2305
separation will indemnify any railroad company involved against 2306
any damage that may result by reason of the negligence of the 2307
contractor in making the improvement. 2308

(2) A payment bond in an amount equal to one hundred per cent 2309
of the estimated cost of the work, conditioned for the payment by 2310
the contractor and all subcontractors for labor or work performed 2311
or materials furnished in connection with the work, improvement, 2312

or project involved.

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(B) In no case is the state liable for damages sustained in the construction of any work, improvement, or project under this chapter and Chapters 5501., 5503., 5511., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code.

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This section does not require the director to take bonds as described in division (A) of this section in connection with any force account work, but the director may require those bonds in connection with force account work.

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If any bonds taken under this section are executed by a surety company, the director may not approve such bonds unless there is attached a certificate of the superintendent of insurance that the company is authorized to transact business in this state, and a copy of the power of attorney of the agent of the company. The superintendent, upon request, shall issue to any licensed agent of such company the certificate without charge.

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The bonds required to be taken under this section shall be executed by the same surety, approved by the director as to sufficiency of the sureties, and be in the form prescribed by the attorney general.

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(C) Any person to whom any money is due for labor or work performed or materials furnished in connection with a work, improvement, or project, at any time after performing the labor or furnishing the materials but not later than ninety days after the acceptance of the work, improvement, or project by the director, may furnish to the sureties on the payment bond a statement of the amount due the person. If the indebtedness is not paid in full at the expiration of sixty days after the statement is furnished, the person may commence an action in the person's own name upon the bond as provided in sections 2307.06 and 2307.07 of the Revised

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Code. 2344

An action shall not be commenced against the sureties on a 2345
payment bond until sixty days after the furnishing of the 2346
statement described in this section or, notwithstanding section 2347
2305.12 of the Revised Code, later than one year after the date of 2348
the acceptance of the work, improvement, or project. 2349

(D) As used in this section, "improvement," "subcontractor," 2350
"materialman material supplier," and "materials" have the same 2351
meanings as in section 1311.01 of the Revised Code, and 2352
"contractor" has the same meaning as "original contractor" as 2353
defined in that section. 2354

Section 2. That existing sections 153.54, 153.57, 1311.01, 2355
1311.011, 1311.02, 1311.021, 1311.03, 1311.04, 1311.05, 1311.12, 2356
1311.13, 1311.14, 1311.15, 1311.25, 1311.26, 1311.261, 1311.28, 2357
1311.29, 1311.32, 4113.61, 4740.01, 4740.04, 4740.05, 4740.06, 2358
4740.07, 4740.08, 4740.101, 4740.12, 5309.57, and 5525.16 of the 2359
Revised Code are hereby repealed. 2360