

**As Reported by the Senate Insurance, Commerce and Labor  
Committee**

**126th General Assembly  
Regular Session  
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**Sub. H. B. No. 487**

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

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**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

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

(O) 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 financing for the construction of an improvement, if a mortgage securing financing for the construction of an improvement and notice of commencement for said improvement are recorded on the same day, the mortgage shall be considered recorded before the notice of commencement for purposes of priority described in this section. 1267  
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(H) The recorder may destroy the record of all mechanics' liens which have been recorded for a period of ten years or longer. 1274  
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1276

**Sec. 1311.14.** (A) Except as provided in this section, the lien of a mortgage given in whole or in part to improve real estate, or to pay off prior encumbrances thereon, or both, the proceeds of which are actually used in the improvement in the manner contemplated in sections 1311.02 and 1311.03 of the Revised Code, or to pay off prior encumbrances, or both, and which mortgage contains therein the correct name and address of the mortgagee, together with a covenant between the mortgagor and mortgagee authorizing the mortgagee to do all things provided to be done by the mortgagee under this section, shall be prior to all mechanic's, ~~materialmen's~~ material supplier's, and similar liens and all liens provided for in this chapter that are filed for record after the improvement mortgage is filed for record, to the extent that the proceeds thereof are used and applied for the purposes of and pursuant to this section. Such mortgage is a lien on the premises therein described from the time it is filed for record for the full amount that is ultimately and actually paid out under the mortgage, regardless of the time when the money secured thereby is advanced. 1277  
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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 <del>materialman</del> <u>material supplier</u> or between a subcontractor and another subcontractor, a <del>materialman</del> <u>material supplier</u> , a lower tier subcontractor, or a lower tier <del>materialman</del> <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 <del>materialman</del>	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;	1921 1922
(2) Performs or employs tradespersons who perform construction, improvement, renovation, repair, or maintenance on a construction project with respect to the contractor's trades.	1923 1924 1925
(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.	1926 1927 1928 1929
(D) "Tradesperson" means an individual <u>employed by a contractor</u> who, <del>for compensation,</del> 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.	1930 1931 1932 1933 1934 1935
(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.	1936 1937 1938 1939 1940
<b>Sec. 4740.04.</b> 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:	1941 1942 1943
(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.	1944 1945 1946
(B) Select and contract with one or more persons to do all of the following relative to the examinations:	1947 1948
(1) Prepare, administer, score, and maintain the confidentiality of the examinations;	1949 1950

(2) Be responsible for all the expenses required to fulfill 1951  
division (B)(1) of this section; 1952

(3) Charge an applicant a fee in an amount the administrative 1953  
section of the board authorizes for administering the examination; 1954  
1955

(4) Design the examination for each type of contractor to 1956  
determine an applicant's competence to perform that type of 1957  
contracting. 1958

(C) ~~Issue and renew licenses to individuals who have attained 1959  
at least the minimum score on an examination that the appropriate 1960  
section authorizes for the licensed trade. Hydronics contractors 1961  
shall pass the examinations for both the plumbing section and the 1962  
heating, ventilating, air conditioning, and refrigeration section. 1963  
The appropriate section shall determine whether the individual 1964  
also is qualified as required by section 4740.06 of the Revised 1965  
Code to hold a license as follows: 1966~~

(1) Issue a license to any individual who the appropriate 1967  
section of the board determines is qualified pursuant to section 1968  
4740.06 of the Revised Code to hold a license and has attained a 1969  
score on the examination that the appropriate section authorizes 1970  
for the licensed trade. 1971

(a) Each license shall include a license number and an 1972  
expiration date. 1973

(b) Each license issued to an individual who holds more than 1974  
one valid license shall contain the same license number and 1975  
expiration date as the original license issued to that individual. 1976

(2) Renew licenses for individuals who meet the renewal 1977  
requirements of section 4740.06 of the Revised Code. 1978

(D) Make an annual written report to the director of commerce 1979  
on proceedings had by or before the board for the previous year 1980

and make an annual statement of all money received and expended by	1981
the board during the year;	1982
(E) Keep a record containing the name, address, the date on	1983
which the board issues or renews a license to, and the license	1984
number of, every heating, ventilating, and air conditioning	1985
contractor, refrigeration contractor, electrical contractor,	1986
plumbing contractor, and hydronics contractor issued a license	1987
pursuant to this chapter;	1988
(F) Regulate a contractor's use and display of a license	1989
issued pursuant to this chapter and of any information contained	1990
in that license;	1991
(G) Adopt rules in accordance with Chapter 119. of the	1992
Revised Code as necessary to properly discharge the administrative	1993
section's duties under this chapter. The rules shall include, but	1994
not be limited to, the following:	1995
(1) Application procedures for examinations;	1996
(2) Specifications for continuing education requirements for	1997
license renewal that address all of the following:	1998
(a) <del>Criteria for continuing education courses conducted</del>	1999
<del>pursuant to this chapter;</del>	2000
<del>(b) A requirement that individuals holding a</del> <u>an individual</u>	2001
<u>who holds any number of</u> valid and unexpired <del>license</del> <u>licenses</u>	2002
accrue <u>a total of</u> ten hours of continuing education courses per	2003
year;	2004
<del>(c) A requirement that persons seeking approval to provide</del>	2005
<del>continuing education courses submit the required information to</del>	2006
<del>the appropriate section of the board at least thirty days, but not</del>	2007
<del>more than one year, prior to the date on which the course is</del>	2008
<del>proposed to be offered;</del>	2009
<del>(d) A prohibition against any person providing a continuing</del>	2010

<del>education course unless the administrative section of the board</del>	2011
<del>approved that person not more than one year prior to the date the</del>	2012
<del>course is offered;</del>	2013
<del>(e)(b) Fees the board charges to persons who provide</del>	2014
<del>continuing education courses, in an amount of twenty-five dollars</del>	2015
<del>annually for each person approved to provide courses, not more</del>	2016
<del>than ten dollars plus one dollar per credit hour for each course</del>	2017
<del>offered, and one dollar per credit hour of instruction per</del>	2018
<del>attendee;</del>	2019
<del>(f)(c) A provision limiting approval of continuing education</del>	2020
<del>courses to one year.</del>	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
<del>(I) Grant approval to a person or entity to offer continuing</del>	2025
<del>education courses pursuant to rules the board adopts;</del>	2026
<del>(J) Keep a record of its proceedings and do all things</del>	2027
<del>necessary to carry out this chapter.</del>	2028
<b>Sec. 4740.05.</b> (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

(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) <del>Each license expires one year after the date of issue.</del>	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. 2313

(B) In no case is the state liable for damages sustained in 2314  
the construction of any work, improvement, or project under this 2315  
chapter and Chapters 5501., 5503., 5511., 5513., 5515., 5516., 2316  
5517., 5519., 5521., 5523., 5527., 5528., 5529., 5531., 5533., and 2317  
5535. of the Revised Code. 2318

This section does not require the director to take bonds as 2319  
described in division (A) of this section in connection with any 2320  
force account work, but the director may require those bonds in 2321  
connection with force account work. 2322

If any bonds taken under this section are executed by a 2323  
surety company, the director may not approve such bonds unless 2324  
there is attached a certificate of the superintendent of insurance 2325  
that the company is authorized to transact business in this state, 2326  
and a copy of the power of attorney of the agent of the company. 2327  
The superintendent, upon request, shall issue to any licensed 2328  
agent of such company the certificate without charge. 2329

The bonds required to be taken under this section shall be 2330  
executed by the same surety, approved by the director as to 2331  
sufficiency of the sureties, and be in the form prescribed by the 2332  
attorney general. 2333

(C) Any person to whom any money is due for labor or work 2334  
performed or materials furnished in connection with a work, 2335  
improvement, or project, at any time after performing the labor or 2336  
furnishing the materials but not later than ninety days after the 2337  
acceptance of the work, improvement, or project by the director, 2338  
may furnish to the sureties on the payment bond a statement of the 2339  
amount due the person. If the indebtedness is not paid in full at 2340  
the expiration of sixty days after the statement is furnished, the 2341  
person may commence an action in the person's own name upon the 2342  
bond as provided in sections 2307.06 and 2307.07 of the Revised 2343

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