



**Am. H.B. 514**  
124th General Assembly  
(As Passed by the General Assembly)

**Reps. Seitz, Willamowski, Manning, Grendell, Schmidt, Schneider, Clancy, Niehaus, Lendrum, Salerno, Womer Benjamin, Distel, Setzer, Britton, Roman, Allen, Stapleton, Hagan, Kearns, Hoops, Husted, Buehrer, G. Smith, Flowers, Collier, Faber, Calvert, Williams, Barrett, Schaffer, Gilb**

**Sens. Nein, Blessing**

**Effective date: \***

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**ACT SUMMARY**

- Specifically provides that a subcontractor or material supplier need not serve a notice of furnishing to preserve lien rights for the period before a notice of commencement is recorded by the owner, part owner, or lessee of the real estate upon which improvements are made, or by a designee of any of them.
- Provides that a notice, affidavit, or other document required to be served under the Lien Law is considered served, and that service is complete on the date of receipt, if either the person served acknowledges receipt of, or it can be proved by a preponderance of evidence that the person being served actually received, the notice, affidavit, or other document.
- Expands the definition of "improvement" for purposes of the private sector Mechanics' Lien Law to include the excavation, cleanup, or removal of hazardous material or waste from real property.

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

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## **CONTENT AND OPERATION**

### **Background**

Under continuing law generally, if an owner, part owner, or lessee of real property has recorded a notice of commencement for an improvement to that property as specified under the private sector Mechanics' Lien Law (R.C. sections 1311.02 to 1311.22), a subcontractor or materialman who performs labor or work upon or furnishes material in furtherance of the improvement and who wishes to preserve lien rights, must serve a notice of furnishing upon the owner's, part owner's, or lessee's designee and upon the original contractor named in the notice of commencement at the address listed in the notice. With specified exceptions, the notice of furnishing must be served at any time after the recording of the notice of commencement or amended notice but within 21 days after performing the first labor or work or furnishing the first materials or within an extended time period. If the owner, part owner, lessee, or designee fails to record the notice of commencement, the time within which a subcontractor or materialman may serve a notice of furnishing is extended until 21 days after the notice of commencement has been recorded.

### **Service of notice of furnishing**

The act specifies that a subcontractor or material supplier (gender neutralized term) need not serve a notice of furnishing to preserve lien rights for the period before a notice of commencement is recorded (R.C. 1311.04(I)).

### **Service of notices, affidavits, or copies generally**

Except for notice to commence suit on a lien, any notice, affidavit, or other document required to be served under the continuing Lien Law (R.C. Chapter 1311.) must be served by one of the following means (R.C. 1311.19(A)):

- (1) By the sheriff of the county in which the person to be served resides or maintains the person's principal place of business, in a method provided in the Ohio Rules of Civil Procedure.
- (2) By certified or registered mail, overnight delivery service, hand delivery, or any other method that includes a written evidence of receipt;
- (3) By the means provided in the General Corporation Law (R.C. Chapter 1701.) if the person is a corporation.

Under continuing law, service is complete upon receipt by the party being served, except that: (a) service upon a corporation is complete as described in the

General Corporation Law, and (b) for purposes of serving a notice of furnishing under the private sector Mechanics' Lien Law and the public improvements Mechanics' Lien Law (R.C. sections 1311.25 to 1311.32), if service is made by certified mail, service is complete on the date of the mailing. However, if service is attempted upon an owner, part owner, lessee, or designee at the address contained in the notice of commencement and if the document is returned unclaimed or refused, service is complete when first attempted. (R.C. 1311.19(B).)

Under the act, a notice, affidavit, or other document required to be served under the Mechanics' Lien Law is considered served, whether or not it was served by the means described in (1), (2), or (3) above, and service is complete on the date the notice, affidavit, or other document is received, if *either* of the following is true (R.C. 1311.19(C)):

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

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

Under the act a notice, affidavit, or other document to which the above provision applies is presumed to have been received three days after the date of the mailing of the notice, affidavit, or other document, unless a written acknowledgement, receipt, or other evidence provides proof to the contrary (R.C. 1311.19(C)).

### **Definition of "improvement"**

Under the continuing private sector Mechanics' Lien Law, "improvement" is defined to mean constructing, erecting, altering, repairing, demolishing, or removing any building or appurtenance thereto, fixture, bridge, or other structure, and any gas pipeline or well including, but not limited to, a well drilled or constructed for the production of oil or gas; the furnishing of tile for the drainage of any lot or land; the enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any shrubs, trees, plants, vines, small fruits, flowers, or nursery stock of any kind; and the grading or filling to establish a grade. The act expands this definition to include the excavation, cleanup, or removal of hazardous material or waste from real property. (R.C. 1311.01(J).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-19-02	p. 1415
Reported, H. Civil and Commercial Law	04-24-02	pp. 1717-1718
Passed House (96-0)	05-15-02	p. 1769
Reported, S. Insurance, Commerce, and Labor	11-13-02	p. 2109
Passed Senate (32-0)	11-13-02	p. 2112
Concurrence	11-13-02	p. 2112

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