



House of Representatives

General Assembly

File No. 99

February Session, 2010

Substitute House Bill No. 5137

House of Representatives, March 23, 2010

The Committee on General Law reported through REP. SHAPIRO of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING HOME IMPROVEMENT SUBCONTRACTOR LIENS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-429 of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2010*):

4 (a) No home improvement contract shall be valid or enforceable
5 against an owner unless it: (1) Is in writing, (2) is signed by the owner
6 and the contractor, (3) contains the entire agreement between the
7 owner and the contractor, (4) contains the date of the transaction, (5)
8 contains the name and address of the contractor and the contractor's
9 registration number, (6) contains a notice of the owner's cancellation
10 rights in accordance with the provisions of chapter 740, (7) contains a
11 starting date and completion date, (8) is entered into by a registered
12 salesman or registered contractor, [and] (9) includes a provision
13 disclosing each corporation, limited liability company, partnership,
14 sole proprietorship or other legal entity, which is or has been a home

15 improvement contractor pursuant to the provisions of this chapter or a
16 new home construction contractor pursuant to the provisions of
17 chapter 399a, in which the owner or owners of the home improvement
18 contractor are or have been a shareholder, member, partner, or owner
19 during the previous five years, and (10) includes a provision requiring
20 the home improvement contractor to provide the owner with valid,
21 signed lien waivers, prior to such contractor receiving final payment
22 under the contract, from all subcontractors of such home improvement
23 contractor who have provided services, materials or improvements to
24 the property that is the subject of the home improvement contract.
25 Each change in the terms and conditions of a contract shall be in
26 writing and shall be signed by the owner and contractor, except that
27 the commissioner may, by regulation, dispense with the necessity for
28 complying with the requirement that each change in a home
29 improvement contract shall be in writing and signed by the owner and
30 contractor.

31 (b) No home improvement contract shall be valid if it includes any
32 provision obligating the owner to instruct the home improvement
33 contractor, by a date determined by such contractor, that periodic
34 home improvements are not to be performed unless it also includes a
35 provision requiring the contractor to remind the owner of that
36 obligation by means of a card or letter mailed to the owner and
37 postmarked not earlier than twenty days, and not later than ten days,
38 prior to such date.

39 (c) The contractor shall provide and deliver to the owner, without
40 charge, a completed copy of the home improvement contract at the
41 time such contract is executed.

42 (d) The commissioner may, by regulation, require the inclusion of
43 additional contractual provisions.

44 (e) Each home improvement contract entered into shall be
45 considered a home solicitation sale pursuant to chapter 740 and shall
46 be subject to the requirements of said chapter regardless of the location
47 of the transaction or of the signing of the contract. Each home

48 improvement contract in which the owner agrees to repay the
49 contractor an amount loaned or advanced to the owner by the
50 contractor for the purposes of paying for the goods and services
51 provided in such contract, or which contains a finance charge, (1) shall
52 set forth the information required to be disclosed pursuant to the
53 Truth-in-Lending Act, sections 36a-675 to 36a-685, inclusive, (2) shall
54 allow the owner to pay off in advance the full amount due and obtain
55 a partial refund of any unearned finance charge, and (3) may contain a
56 finance charge set at a rate of not more than the rate allowed for loans
57 pursuant to section 37-4. As used in this subsection, "finance charge"
58 means the amount in excess of the cash price for goods and services
59 under the home improvement contract to be paid by the owner for the
60 privilege of paying the contract price in installments over a period of
61 time.

62 (f) Nothing in this section shall preclude a contractor who has
63 complied with subdivisions (1), (2), (6), (7) and (8) of subsection (a) of
64 this section from the recovery of payment for work performed based
65 on the reasonable value of services which were requested by the
66 owner, provided the court determines that it would be inequitable to
67 deny such recovery.

68 (g) Any owner who institutes an action for failure of a home
69 improvement contractor to provide lien waivers pursuant to
70 subdivision (10) of subsection (a) of this section shall be entitled to
71 recover court costs and reasonable attorney's fees if such owner
72 prevails in such action.

73 Sec 2. (NEW) (Effective October 1, 2010) If the court discharges a
74 mechanic's lien because a valid lien waiver has been provided to an
75 owner pursuant to subdivision (10) of subsection (a) of section 20-429
76 of the general statutes, as amended by this act, the court shall award
77 the applicant for the discharge of the mechanic's lien court costs and
78 reasonable attorney's fees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	20-429
Sec 2	<i>October 1, 2010</i>	New section

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which alters what must be provided in a home improvement contract, results in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5137*****AN ACT CONCERNING HOME IMPROVEMENT SUBCONTRACTOR LIENS.*****SUMMARY:**

This bill requires home improvement contracts to include a provision requiring contractors, before receiving final payment, to give homeowners valid, signed mechanic's lien waivers from all subcontractors who provided services, materials, or improvements to the property.

The bill entitles homeowners to court costs and reasonable attorney's fees if they successfully sue a contractor for failure to provide lien waivers. If the contractor or a subcontractor places a mechanic's lien on the property after signing a lien waiver and the court discharges the lien because the homeowner provides a valid lien waiver, the court must award the owner court costs and reasonable attorney's fees.

EFFECTIVE DATE: October 1, 2010

BACKGROUND***Mechanic's Lien Law***

A mechanic's lien is a security interest in the title to a property for the benefit of those who supplied labor or materials to improve the property. The law allows anyone who "has a claim for more than \$10 for material furnished or services rendered" related to improvements to real property to file a certificate of a mechanic's lien. A mechanic's lien cannot attach in favor of a subcontractor for more than the amount that the owner has agreed to pay (CGS §§ 49-33 to 49-40a).

Discharge of Mechanic's Lien

By law, a property owner may apply to Superior Court for a hearing to determine whether a mechanic's lien should be discharged or reduced. The court must notify the lienor and set a hearing date. The law specifies the form for the application, order, and summons (CGS § 49-35a).

At the hearing, the burden is on the contractor, subcontractor, or supplier to show that there is probable cause to uphold the validity of the lien. Anyone entitled to notice can appear and be heard and prove that the validity of the lien should not be sustained or that the amount is excessive and should be reduced (CGS § 49-35b).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 3 (03/09/2010)