

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 580

H.P. 443

House of Representatives, February 11, 2003

An Act Concerning the Fair Application of the Mechanic's Lien Laws

Reference to the Committee on Business, Research and Economic Development suggested
and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative COWGER of Hallowell.
Cosponsored by Senator BROMLEY of Cumberland and
Representatives: DUPREY of Medway, KOFFMAN of Bar Harbor, RECTOR of Thomaston,
ROGERS of Brewer, SMITH of Monmouth, SULLIVAN of Biddeford, SUSLOVIC of
Portland, Senator: HALL of Lincoln.

Be it enacted by the People of the State of Maine as follows:

2
4 **Sec. 1. 10 MRSA §3255, sub-§3,** as enacted by PL 1975, c. 734,
is amended to read:

6 **3. Notice to owner.** If the labor, materials or services
7 were not performed or furnished by a contract with the owner of
8 the property affected, the lien described in this chapter may
9 only be enforced against the property affected to the extent of
10 the balance due to the person with whom the owner has directly
11 contracted to perform or furnish the labor, materials and
12 services on which that lien claim is based. The defense
13 established by this subsection shall is only be available with
14 respect to sums paid by the owner to the person with whom the
15 owner has directly contracted ~~where~~ when payment was made prior
16 to commencement of an action to enforce such lien by the person
17 performing or furnishing labor, materials or services without a
18 contract with the owner or a written notice from the person
19 performing or furnishing labor, materials or services without a
20 contract with the owner ~~which~~ that sets forth a description of
21 the property sufficiently accurate to identify it; the names of
22 the owners; that the person giving notice is going to perform or
23 furnish, is performing or furnishing or has performed or
24 furnished labor, materials or services; that the person giving
25 notice may claim a lien therefor ~~and,~~ which shall must contain
26 the following warning at the top of the notice:

28 Under Maine law, your failure to assure that

30 (name of the claimant giving notice)

32 is paid before further payment by you to (name of
contractor)

34 ~~claimant-giving-notice~~

36 may result in your paying twice.

38 ~~(name-of-contractor)~~

40 ~~paying-twice.~~

42 ~~In no case shall the~~ The total amount due from the owner to those
43 performing or furnishing labor, materials or services without a
44 contract with the owner may not exceed the balance due from the
45 owner to the person with whom he the owner has directly
46 contracted at the time of service of process on the owner in a
47 lien action or receipt of the written notice described above,
48 whichever occurs first.

50

2 If the owner does not reside in the place where the property is
located, but has a known agent therein, notice may be given to
4 the agent or to the owner at the place where he the owner
resides. If the notice provided by this subsection is given, the
6 lien claimant must also comply with the notice requirements of
section 3253 and commence the legal action required by subsection
8 1 to the extent that this compliance is required in order to
preserve his the lien claimant's lien claim.

10 ~~This subsection shall not apply where labor, materials or~~
12 ~~services are performed or furnished to the premises for a~~
business, ~~commercial or industrial purpose unless the owner~~
14 ~~resides on the premises affected.~~

16 SUMMARY

18 The mechanic's lien law permits a subcontractor or material
supplier to collect from a residential customer directly when
20 that subcontractor or material supplier has not been paid by the
general contractor, even if the residential customer has paid the
22 general contractor. Thus, the residential customer may end up
paying twice for services or materials, but only if the
24 residential customer is given prior notice of the possibility
that that customer may have to pay twice. There is no
26 requirement that nonresidential customers be given such prior
notice. This bill eliminates the nonresidential exemption to the
28 prior notice requirement.