

SENATE BILL NO. 219

INTRODUCED BY M. CUFFE

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A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE NOTIFICATION PERIOD FOR CONTRACTORS AND SUBCONTRACTORS TO FILE A CONSTRUCTION LIEN; AMENDING SECTION 71-3-531, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required -- exceptions. (1) The following are not required to give notice of the right to claim a lien as required by this section:

- (a) an original contractor who furnishes services or materials directly to the owner at the owner's request;
- (b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;
- (c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and
- (d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), the notice may not be given later than ~~20~~ 60 calendar days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the ~~20-day~~ 60-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner.

1 If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the
2 45-day period before the date on which notice is given.

3 (5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or
4 delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed.
5 If the notice is delivered personally to the contracting owner, written acknowledgment of receipt must be obtained
6 from the contracting owner. A person may not claim a construction lien unless the person has complied with this
7 subsection.

8 (6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which
9 the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by
10 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to
11 claim a lien is given to the contracting owner. The notice filed with the clerk and recorder must be signed by the
12 person filing the notice or by a person authorized to sign for the person filing the notice.

13 (b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.
14 A notice filed electronically with the clerk and recorder must be electronically signed by the person filing the notice
15 or by a person authorized to sign for the person filing the notice.

16 (c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from
17 the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim
18 a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice
19 lapses. The clerk and recorder may remove the notice from the public record when it lapses.

20 (d) A continuation of the notice must be signed by the person who filed the original notice of the right to
21 claim a lien or by a person authorized to sign for the person who filed the original notice of the right to claim a lien
22 and must include:

- 23 (i) the clerk and recorder's file number of the original notice;
24 (ii) the date on which the original notice was filed; and
25 (iii) the name of the person to whom the original notice was given.

26 (e) If a notice of the right to claim a lien is required under this section, a person may not claim a
27 construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or
28 an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

29 (7) A contracting owner shall provide in the construction contract with the original contractor:

30 (a) a street address or legal description that is sufficient to identify the real estate being improved; and

1 (b) the name and address of the contracting owner.

2 (8) At the request of any subcontractor or material supplier who may claim a lien through an original
3 contractor providing services or materials to a contracting owner, the original contractor shall furnish to the
4 requestor within 5 business days:

5 (a) a street address or legal description sufficient to identify the real estate being improved; and

6 (b) the name and address of the contracting owner."

7
8 NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective on passage and
9 approval and applies to contracts signed on or after [the effective date of this act].

10 - END -