

Am. S. B. No. 206
As Passed by the Senate

_____ moved to amend as follows:

In line 1 of the title, after "sections" insert "1311.04," 1

In line 5 of the title, after "sold" insert "and to modify the law 2
governing mechanics' liens" 3

In line 6, after "sections" insert "1311.04," 4

After line 9, insert: 5

"Sec. 1311.04. (A) (1) Prior to the performance of any 6
labor or work or the furnishing of any materials for an 7
improvement on real property which may give rise to a mechanics' 8
lien under sections 1311.01 to 1311.22 of the Revised Code, the 9
owner, part owner, or lessee who contracts for the labor, work, 10
or materials shall record in the office of the county recorder 11
for each county in which the real property to be improved is 12
located a notice of commencement in substantially the form 13
specified in division (B) of this section. 14

(2) Only one notice of commencement is required to be 15
filed for a single improvement and if more than one notice of 16
commencement is filed for a single improvement, all notices 17



filed after the original notice shall be deemed to be amendments 18
to the original notice. If an owner, part owner, or lessee 19
contracts with additional original contractors, lenders, or 20
sureties not identified in the original notice of commencement 21
filed for the improvement, the owner, part owner, or lessee 22
shall amend the original notice of commencement to identify the 23
additional original contractors, lenders, and sureties. The date 24
of the filing of the amended notice is the date of the filing of 25
the original notice of commencement. 26

(B) The notice of commencement required under division (A) 27
of this section shall contain, in affidavit form, all of the 28
following information: 29

(1) The legal description of the real property on which 30
the improvement is to be made. For purposes of this division, a 31
description sufficient to describe the real property for the 32
purpose of conveyance, or contained in the instrument by which 33
the owner, part owner, or lessee took title, is a legal 34
description. 35

(2) A brief description of the improvement to be performed 36
on the property containing sufficient specificity to permit lien 37
claimants to identify the improvement; 38

(3) The name, address, and capacity of the owner, part 39
owner, or lessee of the real property contracting for the 40
improvement; 41

(4) The name and address of the fee owner of the real 42
property, if the person contracting for the improvement is a 43
land contract vendee or lessee; 44

(5) The name and address of the owner's, part owner's, or 45
lessee's designee, if any; 46

(6) The name and address of all original contractors, 47
except that if the notice of commencement is recorded for an 48
improvement involving a single- or double-family dwelling and if 49
more than one original contractor is involved, instead of 50
listing each original contractor, the owner shall state that 51
multiple original contractors are involved in the improvement; 52

(7) The date the owner, part owner, or lessee first 53
executed a contract with an original contractor for the 54
improvement; 55

(8) The name and address of all lending institutions which 56
provide financing for the improvements, if any; 57

(9) The name and address of all sureties on any bond which 58
guarantee payment of the original contractor's obligations under 59
the contract for the improvement, if any; 60

(10) The following statement: 61

"To Lien Claimants and Subsequent Purchasers: 62

Take notice that labor or work is about to begin on or 63
materials are about to be furnished for an improvement to the 64
real property described in this instrument. A person having a 65
mechanics' lien may preserve the lien by providing a notice of 66
furnishing to the above-named designee and the above-named 67
designee's original contractor, if any, and by timely recording 68
an affidavit pursuant to section 1311.06 of the Revised Code. 69

A copy of this notice may be obtained upon making a 70
written request by certified mail to the above-named owner, part 71
owner, lessee, designee, or the person with whom you have 72
contracted." 73

(11) The name and address of the person preparing the 74

notice;	75
<u>(12) The following statement:</u>	76
<u>"The expiration date for this notice of commencement is</u>	77
<u>four years from the date of recording unless a different date is</u>	78
<u>specified herein."</u>	79
(12) (13) An affidavit of the owner, part owner, or lessee	80
or the agent of the owner, part owner, or lessee which verifies	81
the notice.	82
(C) If the notice of commencement furnished by or for an	83
owner, part owner, or lessee contains incorrect information, the	84
owner, part owner, or lessee is liable for any loss of lien	85
rights of a lien claimant and any actual expenses incurred by	86
the lien claimant in maintaining lien rights, including	87
attorney's fees, if the loss and expenses incurred are a direct	88
result of the lien claimant's reliance on the incorrect	89
information.	90
Any lien claimant who has included incorrect information	91
in the claimant's affidavit for a lien under section 1311.06 of	92
the Revised Code, as a result of incorrect information contained	93
in the notice of commencement, may file for record an amended	94
affidavit for a lien. The amended affidavit shall contain all of	95
the information required by section 1311.06 of the Revised Code	96
for an original affidavit. The lien claimant shall serve a copy	97
of the amended affidavit on the owner, part owner, or lessee as	98
provided in section 1311.07 of the Revised Code. The lien	99
claimant may file the amended affidavit for record at any time	100
during the time that the lien acquired by the original affidavit	101
continues in effect under section 1311.13 of the Revised Code.	102
In no event shall the amended affidavit extend such time period.	103

The filing of an amended affidavit does not constitute a waiver 104
of the rights granted by this division. 105

(D) Within ten days after the date a subcontractor, 106
material supplier, or laborer serves a written request upon the 107
owner, part owner, or lessee, or designee for a copy of the 108
notice of commencement, the owner, part owner, lessee, or 109
designee shall serve a copy of the notice of commencement to the 110
requesting subcontractor, material supplier, or laborer. 111

(E) Within ten days after the date a subcontractor, 112
material supplier, or laborer serves a written request for a 113
copy of the notice of commencement upon the original contractor 114
who has been provided with a notice of commencement from the 115
owner, part owner, or lessee, or designee and with whom the 116
subcontractor, material supplier, or laborer has a direct 117
contract, the original contractor shall serve a copy of the 118
notice of commencement to the requesting subcontractor, material 119
supplier, or laborer. 120

(F) Within ten days after the date a subcontractor, 121
material supplier, or laborer serves a written request for a 122
copy of the notice of commencement upon the subcontractor who 123
has been provided with a notice of commencement from the owner, 124
part owner, lessee, designee, or original contractor and with 125
whom the subcontractor, material supplier, or laborer has a 126
direct contract, the subcontractor shall serve a copy of the 127
notice of commencement upon the requesting subcontractor, 128
material supplier, or laborer. 129

(G) (1) Except as provided in division (G) (2) of this 130
section, the owner, part owner, lessee, or designee shall post 131
and maintain posted a copy of the notice of commencement in a 132
conspicuous place on the real property described in the notice 133

during the course of the actual physical improvement to the real property. 134
135

(2) No owner, part owner, lessee, or designee, has to post 136
a copy of the notice of commencement on the real property 137
described in the notice for an improvement that is the subject 138
of a home purchase contract. 139

(H) The owner, part owner, lessee, or designee shall serve 140
a copy of the notice of commencement upon the original 141
contractor. If the owner, part owner, lessee, or designee fails 142
to serve a copy of the notice of commencement upon the original 143
contractor, the owner, part owner, or lessee is liable to the 144
original contractor for all actual expenses incurred by the 145
original contractor in obtaining the information otherwise 146
provided by the notice of commencement. 147

(I) If the owner, part owner, lessee, or designee fails to 148
record the notice of commencement in accordance with this 149
section, the time within which a subcontractor or material 150
supplier may serve a notice of furnishing as required by section 151
1311.05 of the Revised Code is extended until twenty-one days 152
after the notice of commencement has been recorded. A 153
subcontractor or material supplier need not serve a notice of 154
furnishing to preserve lien rights for the period before the 155
notice of commencement is recorded. 156

(J) If the owner, part owner, lessee, or designee fails to 157
serve, upon written request, the notice of commencement in 158
accordance with this section, the time within which a 159
subcontractor or material supplier may serve a notice of 160
furnishing as required by section 1311.05 of the Revised Code is 161
extended until twenty-one days after the notice of commencement 162
actually has been served to the subcontractor or material 163

supplier. The owner, part owner, or lessee who fails to serve 164
the notice pursuant to this section is liable to any 165
subcontractor or material supplier who becomes a lien claimant 166
for all actual expenses incurred by the lien claimant in 167
obtaining the information that would have been contained in the 168
notice. 169

(K) If an owner, part owner, lessee, or designee fails to 170
post or maintain a copy of the notice of commencement as 171
required by division (G)(1) of this section, the owner, part 172
owner, or lessee is liable to a subcontractor, material 173
supplier, or laborer who becomes a lien claimant for all actual 174
expenses incurred by the lien claimant in obtaining the 175
information otherwise provided by the posting. 176

(L) If an original contractor or subcontractor who has 177
been provided with a notice of commencement fails to serve a 178
copy of the notice of commencement to any subcontractor, 179
material supplier, or laborer who requests it, the original 180
contractor or subcontractor who fails to serve the copy of the 181
notice is liable to the subcontractor, material supplier, or 182
laborer who made the request for all costs incurred by the 183
subcontractor, material supplier, or laborer in obtaining the 184
information contained in the notice of commencement, provided 185
that an original contractor or subcontractor who fails to 186
provide the notice upon request is not liable under this 187
division to any subcontractor, material supplier, or laborer 188
with whom the original contractor or subcontractor is not in 189
direct privity of contract. 190

(M) (1) If after the first work, labor, or material has 191
been performed on or furnished to the improvement, the owner, 192
part owner, lessee, or designee fails to serve, record, or post 193

a notice of commencement as required by this section, the 194
original contractor may, in writing, request the owner, part 195
owner, lessee, or designee to serve, record, or post the notice. 196
If an owner, part owner, lessee, or the designee of an owner, 197
part owner, or lessee fails or refuses to serve, record, or post 198
a notice of commencement within ten days of receipt of a 199
request, the owner, part owner, or lessee is liable for the 200
owner's, part owner's, or lessee's failure or refusal and for 201
the designee's failure or refusal, without recourse to the 202
original contractor for all damages, costs, and expenses which 203
result from the filing of a valid mechanics' lien to the extent 204
that the lien, damages, costs, and expenses could have been 205
avoided through proper payment. 206

(2) Nothing in this division shall be interpreted as to 207
either of the following: 208

(a) Relieving an original contractor from the duty to pay 209
the original contractor's subcontractors, material suppliers, 210
and laborers for labor or work performed or materials furnished 211
pursuant to a contract directly with the original contractor; 212

(b) Obligating an owner, part owner, or lessee to pay for 213
work or labor performed or materials furnished by 214
subcontractors, material suppliers, or laborers pursuant to 215
direct contracts with the original contractor. 216

(N) (1) If the owner, part owner, or lessee fails to record 217
a notice of commencement or an amended notice, any person 218
holding a mortgage on the real property to be improved may 219
record a notice of commencement or an amended notice on behalf 220
of the owner, part owner, or lessee. If the owner, part owner, 221
or lessee fails to record a notice of commencement or an amended 222
notice within the later of ten days after the performance of any 223

labor or work or the furnishing of any material for an 224
improvement on real property which gives rise to a mechanics' 225
lien under sections 1311.01 to 1311.22 of the Revised Code or 226
three days after service of a demand to record the notice or 227
amended notice by the original contractor, the original 228
contractor may record a notice of commencement or an amended 229
notice on behalf of the owner, part owner, or lessee. 230

(2) If the original contractor or a mortgage holder has 231
recorded a notice of commencement or an amended notice on behalf 232
of the owner, part owner, or lessee, the owner, part owner, or 233
lessee is liable to the original contractor or mortgage holder 234
for all costs and expenses incurred in obtaining the information 235
contained in the notice of commencement or an amended notice and 236
all costs incurred in the preparation and recording of the 237
notice of commencement or an amended notice. 238

(3) Unless required to file the notice of commencement or 239
an amended notice on behalf of the owner, part owner, or lessee, 240
the party filing a written notice of commencement or amended 241
notice on behalf of the owner, part owner, or lessee is not 242
liable to the owner, part owner, or lessee for any errors 243
contained in the notice of commencement or amended notice. 244

(4) If a mortgage holder or an original contractor records 245
a notice of commencement or amended notice on behalf of an 246
owner, part owner, or lessee, such fact must be included on the 247
notice or amended notice. 248

(O) This section does not apply to a home construction 249
contract as defined in section 1311.011 of the Revised Code, 250
except that when a lending institution as defined in division 251
(A) (3) of section 1311.011 of the Revised Code requires that a 252
notice of commencement be recorded as part of the financing for 253

a home construction contract, which is secured in whole or in part by a mortgage on real estate upon which the improvements are to be constructed, the owner, part owner, or lessee may file a notice of commencement pursuant to this section by recording the notice of commencement in the county recorder's office of the county where the owner, part owner, or lessee's property is located. If the property is located in more than one county, the owner, part owner, or lessee shall record the notice of commencement in the county recorders' office of each county in which the property is located.

If the owner, part owner, or lessee files a notice of commencement pursuant to this division, the attachment, continuance, and priority provisions of section 1311.13 of the Revised Code apply to that improvement, but the notice of furnishing requirements specified in section 1311.05 of the Revised Code do not apply to that improvement.

(P) The county recorder of the county where a notice of commencement is filed for record shall endorse the date and hour of its filing and cause it to be recorded as mechanics' liens are recorded, and collect the same fees for recording the notice of commencement as are provided in section 317.32 of the Revised Code. The recorder shall index the real property described in the notice of commencement and shall index the names of all owners, part owners, lessees, and land contract vendees in the direct index and the names of all original contractors in the reverse index as provided for in section 317.18 of the Revised Code.

(Q) Notwithstanding this section, if the owner, part owner, or lessee is a telephone company, an electric light company, a gas company, a water works company, all as defined in

section 4905.03 of the Revised Code, or a subsidiary or 284
affiliate thereof, the owner, part owner, or lessee may, but is 285
not required to, record a notice of commencement pursuant to 286
division (A) of this section, and is not required to serve, 287
post, and provide copies of a notice of commencement pursuant to 288
divisions (D), (G), and (H) of this section unless such owner, 289
part owner, or lessee elects to record the notice of 290
commencement. If the owner, part owner, or lessee elects to 291
record the notice of commencement and the improvement extends 292
beyond one parcel of real property or one county, the owner, 293
part owner, or lessee may, in lieu of using the legal 294
description required in division (B)(1) of this section, use a 295
description which reasonably describes the real property on 296
which the improvement is to be made. Any description used other 297
than the description specified in division (B)(1) of this 298
section shall refer to the township and county in which the 299
improvement is located, the name and route number of any local, 300
state, or federal highway near the improvement, if any, the post 301
office address of the real property, if any, and the name by 302
which the owner, part owner, or lessee refers to the 303
improvement. 304

If an owner, part owner, or lessee elects not to record, 305
serve, post, or provide copies of a notice of commencement 306
pursuant to divisions (A), (D), (G)(1), and (H) of this section, 307
the owner, part owner, or lessee is subject to all applicable 308
liabilities pursuant to divisions (C), (H), (J), (K), (M), and 309
(N) of this section. 310

(R) If an owner, part owner, lessee, or designee fails to 311
record a notice of commencement in accordance with this section, 312
no subcontractor or material supplier who performs labor or work 313
upon or furnishes material in furtherance of that improvement 314

has to serve a notice of furnishing in accordance with section 315
1311.05 of the Revised Code in order to preserve the 316
subcontractor's or material supplier's lien rights. 317

(S) A notice of commencement filed as provided herein 318
expires ~~six~~four years after its filing date unless the notice 319
of commencement or amendments made to the notice of commencement 320
specify otherwise. 321

(T) (1) An owner, part owner, or lessee of real property 322
who contracts for an improvement, or that person's agent may, 323
upon completion of the improvement, submit an affidavit to the 324
office of the county recorder for each county in which the real 325
property that was improved is located stating all of the 326
following: 327

(a) The name, address, and capacity of the owner, part 328
owner, or lessee, or the agent of the owner, part owner, or 329
lessee of the real property; 330

(b) The recording reference for the previously filed 331
notice of commencement; 332

(c) That the improvement is complete. 333

(2) Upon receipt of an affidavit described in division (T) 334
(1) of this section, the county recorder of the county where the 335
affidavit is submitted shall indicate in the official records 336
that the notice of commencement has expired. 337

(3) The owner, part owner, or lessee of the real property 338
who contracted for the improvement shall serve a copy of the 339
recorded affidavit submitted pursuant to division (T) (1) of this 340
section, by regular mail, upon the original contractor as well 341
as any subcontractor or lower tier project participant that 342

served a notice of furnishing pursuant to section 1311.05 of the 343
Revised Code. 344

(4) Service, lack of service, or a deficiency in service 345
of the recorded affidavit under division (T) (3) of this section 346
does not: 347

(a) Affect the expiration of the notice of commencement; 348

(b) Extend the rights of any party seeking to file an 349
affidavit of mechanic's lien; 350

(c) Affect any time periods or other rights, requirements, 351
or limitations that are set forth in this chapter. 352

(U) The expiration of a notice of commencement pursuant to 353
division (S) or (T) (2) of this section does not affect the 354
attachment, continuance, or priority of any lien under sections 355
1311.13, 1311.14, and 1311.15 of the Revised Code." 356

In line 464, after "sections" insert "1311.04," 357

The motion was _____ agreed to.

SYNOPSIS 358

Mechanics' liens 359

R.C. 1311.04 360

Changes the default expiration date of a notice of 361
commencement from six years to four years. 362

Requires the notice to contain the statement: "The 363
expiration date for this notice of commencement is four years 364

from the date of recording unless a different date is specified 365
herein." 366

Allows the person who contracted for the improvement, upon 367
its completion, to request that the county recorder indicate 368
that the notice of commencement is expired. Requires the person 369
to serve notice, by regular mail, of such a request on the 370
original contractor, subcontractor, and lower tier project 371
participant that served a notice of furnishing. 372

Specifies that the expiration of a notice of commencement 373
does not affect the attachment, continuance, or priority of any 374
lien. 375

Specifies that the owner's failure to serve an affidavit 376
on a contractor of an improvement does not affect the owner's 377
rights or requirements set forth in Chapter 1311. 378