

# HOUSE RESEARCH

## Bill Summary

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### Overview

A mechanics lien is the kind of lien that builders and material supplier can place on real property if they are not paid for work or supplies they contribute to the property.

The bill (1) changes the criminal penalty for misuse of funds intended to pay subcontractors and material suppliers; and (2) creates a civil cause of action to recover such funds.

1 **Acts constituting theft.** Provides that proceeds of payments received for improvements to real property that are subject to the mechanics lien law are to be held in trust for payment to the subcontractors and suppliers.

Proceeds are not subject to the creditor remedies of garnishment, execution, levy, or attachment. Proceeds need not be kept in a separate account. There is no fiduciary duty by the person who receives the funds, and no right to punitive damages for the person who provides labor or supplies.

Provides that failure to pay the subcontractors and suppliers is theft of the proceeds punishable under section 609.52. The effect of this change is to grade the level of punishment according to the amount stolen (highest penalty: 20 years and/or \$100,000). Under current law, any theft subject to the mechanics lien is punishable as a gross misdemeanor (\$3,000 and/or up to a year incarceration).

If the violation is committed in connection with residential real estate where a contractor is required to be licensed, the officers, directors, and agents of a corporation are guilty of the theft. In the same circumstances, proceeds received as salary, dividend, loan repayment, capital distribution, or otherwise by a shareholder who is not responsible for the theft (1) are a civil liability of the shareholder, and (2) can be recovered under section 2.

Proceeds of the payment received by any shareholder not responsible for the theft are a civil liability of the shareholder and may be recovered and restored to the trust fund.

Specifies that the penalties provided in this subdivision do not apply to a third party who receives a payment in the ordinary course of business.

- 2 **Civil action.** Creates a civil action to recover for a violation of section 1. Costs, disbursements, investigation costs, and attorney fees may be recovered.
- 3 **Proceeds for improvements to property.** Amends the exemptions in the garnishment, levy, and execution law. Adds that payments received by a contractor on behalf of subcontractors and suppliers are exempt from these creditors remedies. The effect is to prevent the contractor's creditors from getting funds held for subcontractors and suppliers.
- 4 **Effective date.** Sections 1 to 3 are effective August 1, 2000, and apply to: (1) crimes on and after that date, and (2) civil causes of action arising on and after that date.