

4/11/14

9:50 A.M.

Chapter No. 487  
14/SS26/R829SG  
W / B/PA

***SENATE BILL NO. 2622***

Originated in Senate  Secretary

SENATE BILL NO. 2622

AN ACT TO PROVIDE FOR CONTRACTOR LIENS AND THE ENFORCEMENT AND NOTICE OF CONTRACTOR LIENS; TO CREATE NEW SECTION 85-7-401, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO CREATE NEW SECTION 85-7-403, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LIENS FOR LABOR, SERVICES OR MATERIALS FURNISHED; TO CREATE NEW SECTION 85-7-405, MISSISSIPPI CODE OF 1972, TO PROVIDE HOW THE LIENS ARE CREATED AND RECORDED; TO CREATE NEW SECTION 85-7-407, MISSISSIPPI CODE OF 1972, TO REQUIRE CONTRACTORS TO LIST ALL SUBCONTRACTORS, MATERIALMEN, LABORERS AND EMPLOYEES; TO CREATE NEW SECTION 85-7-409, MISSISSIPPI CODE OF 1972, TO LIMIT THE RECOVERY OF SUBCONTRACTORS AGAINST A RESIDENTIAL HOMEOWNER UNDER CERTAIN CIRCUMSTANCES; TO CREATE NEW SECTION 85-7-411, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ATTACHMENT OF LIENS TO BUILDINGS OR IMPROVEMENTS ON LEASED LAND; TO CREATE NEW SECTION 85-7-413, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISSOLVING OF LIENS; TO CREATE NEW SECTION 85-7-415, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISCHARGE OF A LIEN BY FILING BOND; TO CREATE NEW SECTION 85-7-417, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE RIGHTS OF CERTAIN PROFESSIONALS; TO CREATE NEW SECTION 85-7-419, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE WAIVER AND RELEASE OF LIEN AND BOND RIGHTS; TO CREATE NEW SECTION 85-7-421, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR EXTINGUISHMENT OF LIENS IF NO NOTICE OF COMMENCEMENT IS FILED; TO CREATE NEW SECTION 85-7-423, MISSISSIPPI CODE OF 1972, TO PROVIDE A TIME LIMITATION ON COMMENCING LIEN ACTIONS; TO PROVIDE FOR NOTICE OF CONTEST OF A LIEN; TO CREATE NEW SECTION 85-7-425, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE COMPUTATION OF TIME; TO CREATE NEW SECTIONS 85-7-427 AND 85-7-429, MISSISSIPPI CODE OF 1972, TO ADDRESS THE PRIORITY OF LIENS; TO CREATE NEW SECTION 85-7-431, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ENFORCEMENT OF JUDGMENTS; TO

CREATE NEW SECTION 85-7-433, MISSISSIPPI CODE OF 1972, TO PROVIDE A PENALTY FOR FILING A FALSE LIEN; TO AMEND SECTIONS 85-7-131, 85-7-133,, 85-7-141, 85-7-143, 85-7-145 AND 85-7-147, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL SECTIONS 85-7-135, 85-7-137, 85-7-139, 85-7-149, 85-7-151, 85-7-181, 85-7-183, 85-7-185, 85-7-197, 85-7-199 AND 85-7-201, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR LIENS ON AMOUNTS DUE A CONTRACTOR AND THE RECORDING THEREOF; AND FOR RELATED PURPOSES.

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

**SECTION 1.** The following shall be codified as Section 85-7-401, Mississippi Code of 1972:

85-7-401. The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(b) "Contractor" means a contractor having privity of contract with the owner or lessee of the real estate.

(c) "Lien action" means a civil action against the owner of improved property to perfect and make permanent the lien created by Section 85-7-403.

(d) "Payment action" means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.

(e) "Professional surveyor" has the meaning given in Section 73-13-71.

(f) "Materials" means materials, tools, appliances, machinery, or equipment used in making improvements to the real estate.

(g) "Materialmen" or "materialman" means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials to a contractor or to a subcontractor in privity with the contractor.

(h) "Professional engineer" has the meaning given in Section 73-13-3.

(i) "Residential property" means single-family and ~~two-family, three-family, and four-family residential real estate.~~

(j) "Statutory overnight delivery" means delivery of a document through the United States Postal Service or through a commercial firm that is regularly engaged in the business of document delivery or document and package delivery in which the sender:

(i) Has directed that delivery be not later than the next business day following the day on which the document is received for delivery by the United States Postal Service or the commercial firm; and

(ii) Receives a receipt acknowledging receipt of the document signed by addressee or an agent of the addressee.

(k) "Subcontractor" means subcontractors having privity of contract with the contractor; "subcontractor" also means subcontractors having privity of contract with a subcontractor having privity of contract with the contractor.

(l) "Registered architect" has the meaning given in Section 73-1-3.

(m) "Design professional" includes professional surveyors, professional engineers and registered architects.

**SECTION 2.** The following shall be codified as Section 85-7-403, Mississippi Code of 1972:

85-7-403. (1) The following persons shall each have a special lien on the real estate or other property for which they furnish labor, services or materials:

(a) ~~All contractors, all subcontractors and all materialmen~~ furnishing material for the improvement of real estate;

(b) All registered architects or professional engineers furnishing plans, drawings, designs, or other architectural or engineering services on or with respect to any real estate;

(c) All registered land surveyors performing or furnishing services on or with respect to any real estate.

(2) Each special lien specified in subsection (1) of this section may attach to the real estate of the owner for which the labor, services or materials are furnished if they are furnished at the instance of the owner, design professional or contractor or a subcontractor having direct privity of contract with a contractor, and shall include the value of work done and labor, services or materials furnished.

(3) Each special lien specified in subsection (1) of this section shall be limited to the amount due and owing the lien

claimant under the terms of its express or oral contract, subcontract or purchase order subject to Section 85-7-405(4).

(4) Each special lien specified in subsection (1) of this section shall include interest on the principal amount due in accordance with Section 75-17-1, 75-17-7 or 75-17-19 as applicable by law.

(5) Notwithstanding any other provision of this article, no ~~lien shall exist in favor of any contractor or subcontractor who is not licensed as required by either Section 31-3-1 et seq., or Section 73-59-1 et seq., or who contracts with any contractor or subcontractor who is not licensed as required.~~ Upon request, any contractor or subcontractor is required to provide any owner, contractor, subcontractor or materialman a copy of that person's current license.

**SECTION 3.** The following shall be codified as Section 85-7-405, Mississippi Code of 1972:

85-7-405. (1) To make good a lien created in Section 85-7-403(1), it must be created and declared in accordance with the following provisions, and on failure of any of them the lien shall not be effective or enforceable:

(a) A substantial compliance by the party claiming the lien with the party's contract, subcontract or purchase order for work performed or labor, services or material provided in the building, repairing, or improving of real estate; for architectural services furnished; for registered land surveying or

registered professional engineering services furnished or performed; or for materials or machinery furnished;

(b) The filing for record of the claim of lien in the office of the clerk of the chancery court of the county where the property is located within ninety (90) days after the claimant's last work performed, labor, services or materials provided, the furnishing of architectural services, or the furnishing or performing of surveying or engineering services. The lien shall include a statement regarding its expiration pursuant to Section 85-7-421(1) and a notice to the owner of the property on which a claim of lien is filed that the owner has the right to contest the lien; the absence of the statement or notice shall invalidate the lien. The claim shall be in substance as follows:

"A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the

premises) for work performed or labor, services provided (or whatever the claim may be).

THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME PERIOD.

NOTICE TO OWNER OF PROPERTY: You have the right to contest this claim of lien pursuant to Mississippi law."

No later than two (2) business days after the claim of lien is filed of record, the lien claimant shall send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; if the property owner is an entity on file with the Secretary of State's office, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement. If the lien claimant is not the contractor, he shall also send a copy of the claim of lien within two (2) business days by registered or certified mail or statutory overnight delivery to the contractor or to the contractor's registered agent.

(c) (i) A payment action for the recovery of the amount of the lien claimant's claim against the party he contracted with shall be commenced in county, circuit or chancery court within one hundred eighty (180) days from the date of filing

for record of the lien claimant's claim of lien. A lis pendens notice shall be filed with the commencement of the action with a copy to the owner and contractor;

(ii) The payment action shall be commenced by summons and complaint. The defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default;

(iii) Nothing in this paragraph (c) shall prejudice the parties' contractual rights to arbitration, as applicable;

(d) (i) The commencement of a payment action under paragraph (c) is not required if the owner has not made payment to the contractor and the lien claimant cannot secure a final judgment against the party with whom the lien claimant contracted because:

1. The party has been adjudicated a bankrupt;
2. If an individual, the party is deceased;

or

3. Payment is not due to the lien claimant under the applicable contract agreement until after payment is received by the party with whom the lien claimant contracted.

(ii) If paragraph (d)(i) of this section applies, the person or persons furnishing labor, services or materials may enforce the lien directly against the property in a lien action against the owner if it is filed within the required time for filing a payment action, with the judgment rendered in the proceeding to be limited to a judgment in rem against the property improved and to impose no personal liability upon the owner of the property. A lis pendens notice shall be filed with the commencement of this lien action with a copy to the owner and the contractor.

(iii) Nothing in this paragraph (d) shall impact or negate the rights and defenses available pursuant to Section 85-7-413 or 85-7-419.

(e) A claim of lien may be amended at any time to increase or reduce the amount claimed, and the amended claim of lien shall relate back to the date of filing for record of the original claim of lien. An amended claim of lien filed for record pursuant to this subsection shall be sent to the owner of the property in the same manner as required for a claim of lien in subsection (1)(b) of this section and shall be in substance as follows:

"That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county) County is hereby amended by increasing/reducing (cross out one) the amount of the claim of lien to (specify reduced amount claimed). The remaining terms of the original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien ~~relates back to the date that the original claim of lien was filed~~ for record."

(2) (a) The liens specified in Section 85-7-403 ("construction liens") shall be inferior to liens for taxes, but construction liens shall be superior in priority to all other liens except as specified in subsection (2)(b) and (c).

(b) Except as provided in subsection (2)(c), a construction lien shall have priority over all other liens, deeds of trust, mortgages or encumbrances filed after the date and time of the filing of the notice of lien in the office of the chancery clerk of the county in which the land is located. All liens, deeds of trust, mortgages and encumbrances filed before the date and time of the filing of the notice of construction lien shall have priority over the construction lien, whether the work secured by the lien was performed before or after the filing of the lien, deed of trust, mortgage or other encumbrance. This priority will extend to amendments or restatements and assignments of the lien, deed of trust, mortgage and other encumbrance. The priorities in

this subsection are determined by the date and time of filing and without regard to the actual knowledge of the parties of unrecorded liens. Enforcement of a construction lien shall not affect any prior deeds of trust or other liens, and a purchaser, in connection with the enforcement of a construction lien, shall take the property subject to any prior liens, deeds of trust, mortgages or encumbrances of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior deeds of trust or other liens shall terminate and extinguish the subordinate construction lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of the foreclosure the construction lien or interest has been perfected in accordance with the provisions of this article, and the subordinate lienholder shall have the rights in any excess proceeds received by the foreclosing lienholder as provided by law.

(c) A deed of trust, mortgage, assignment of leases and rents, fixture filing or other security agreement affecting real property is a construction mortgage to the extent it secures a loan or loans for the purpose of financing the repair or construction of an improvement on the real property, which may include the acquisition cost of the real property. A construction lien is subordinate to a construction mortgage if the construction mortgage is filed in the land records before a notice of a claim of lien is filed pursuant to Section 85-7-405 and the lender,

secured party, mortgagee, beneficiary or holder of the construction mortgage obtained either: (i) an affidavit or sworn statement from the owner to the effect that no work has been performed on, or materials delivered to, the real property; or (ii) an affidavit or sworn statement from the contractor, or owner if there is no contractor, as provided in Section 85-7-413(1)(b) regarding payment for work, materials or services provided. A construction mortgage has this priority for all loan advances secured thereby regardless of whether the advances are made before or after the filing of a notice of a construction lien, and this priority will extend to amendments, restatements and refinancings of the construction mortgage.

(3) (a) Following compliance with the requirements of subsection (1) of this section, in any proceeding against the owner to enforce a lien created by Section 85-7-403 against the property, the party having a direct contractual relationship with the lien claimant shall not be a necessary party, but may be made a party. The design professional, contractor or subcontractor, or all of them, may intervene in the proceedings at any time before judgment for the purpose of resisting the establishment of the lien or of asserting against the lien claimant any claim of the contractor or subcontractor growing out of or related to the contract, subcontract or purchase order upon which the asserted lien is based.

(b) Any party to an action against the owner to enforce a lien against the property, by appropriate plea, may put in issue the fact of indebtedness or the existence of the lien, or both, and may interpose any other defense or join any counterclaim applicable to the action; and if the court by its finding, or the jury by their verdict, as the case may be, ascertain that the plaintiff has a lien as claimed, judgment shall be entered for the amount secured thereby, plus interest and costs, against the party liable for the same.

(c) The court, in its discretion, may award reasonable costs, interest and attorney's fees to the prevailing party in an action against the owner to enforce a lien against the property.

(d) All liens arising under Section 85-7-403 shall have an equal priority, and be first paid out of the proceeds of the sale of the property, or money collected from the owner; and if the proceeds and money are insufficient to satisfy the liens in full, the proceeds and money shall be distributed pro rata among the claimants thereof or as otherwise ordered by the court.

(4) In no event shall the aggregate amount of liens created by Section 85-7-403 exceed the contract price as determined by the terms of the contract or other agreement between the owner and contractor for the improvements made or services performed.

(5) (a) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1)(a) or sworn written statements of the contractor

pursuant to Section 85-7-413(1)(b), the aggregate amount of liens created by Section 85-7-403 in favor of subcontractors and materialmen who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the contractor at the time the first notice of lien is filed pursuant to this section.

~~(b) If payments have been made in reliance upon either~~ lien waivers issued by lien claimants pursuant to Section 85-7-413(1)(a) or sworn written statements of the contractor pursuant to Section 85-7-413(1)(b), the aggregate amount of liens created by Section 85-7-403 in favor of design professionals who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the design professional who is in privity of contract with the owner at the time the first notice of lien is filed pursuant to this section.

**SECTION 4.** The following shall be codified as Section 85-7-407, Mississippi Code of 1972:

85-7-407. (1) Upon the written request of the property owner by registered or certified mail or statutory overnight delivery, the contractor shall furnish to the owner a complete list of all subcontractors and materialmen and upon written request from the contractor, all subcontractors shall provide the same information. If the contractor or subcontractor willfully

fails or refuses to furnish the list or to give the information to the owner or contractor within a reasonable time, he shall thereby forfeit his right to a lien under this article. Similarly, if the contractor or subcontractor fails to pay any materialman or subcontractor in direct privity with him in accordance with any contract, subcontract or purchase order specifically requiring him to do so, he shall thereby forfeit his right to a lien under this article.

(2) For any person having a right to a lien pursuant to Section 85-7-403 who does not have privity of contract with the contractor, or, if there is no contractor, with the owner, and is providing labor, services or materials for the improvement of property, within thirty (30) days following the first delivery of labor, services or materials to the property, the person shall give a written notice to the contractor, or, if there is no contractor, to the owner, either by e-mail with a confirmed receipt, registered or certified mail, or statutory overnight delivery setting forth the following:

(a) The name, address, and telephone number of the person providing labor, services or materials;

(b) The name and address of each person at whose instance the labor, services or materials are being furnished;

(c) The name of the project and location of the project to which labor, services or materials are provided; and

(d) A description of the labor, services or materials being provided and, if known, the contract price or anticipated value of the labor, services or materials to be provided.

If the person not in privity of contract with the contractor fails to provide the required notice to the contractor, he shall thereby forfeit his right to a lien under this article.

(3) When a claimant is requested to execute a waiver and release in exchange for or to induce the making of an interim or final payment in accordance with Section 85-7-419(2) or (3), and does so, if payment is made pursuant to the waiver and release and the design professional, contractor or subcontractor, without good cause, in turn willfully fails or refuses to pay the claimant the amount claimed as set forth in the waiver and release, then the design professional, contractor or subcontractor, as the case may be, shall be liable to the claimant in the amount of three (3) times the amount claimed on the face of the waiver and release. Good cause includes, but is not limited to, any defense available pursuant to the terms of the applicable contract, subcontract or purchase order.

(4) The provisions of this section do not apply to single-family residential construction.

**SECTION 5.** The following shall be codified as Section 85-7-409, Mississippi Code of 1972:

85-7-409. (1) As to single-family residential construction only, payment made by or on behalf of the owner to a contractor or

design professional in privity with the owner, for the work of a subcontractor, materialman, professional engineer or professional surveyor, shall be an absolute defense to any claim of lien made by the subcontractor, materialman, professional engineer or professional surveyor, (a) but only to the extent of the payment actually made by or on behalf of the owner to the contractor or design professional in privity with the owner, and (b) only to the extent the owner has not received a pre-lien notice in accordance with subsection (2) of this section before the payment.

(2) As to single-family residential construction only, as a condition precedent of any right to a special lien under Section 85-7-403 in favor of a subcontractor, materialman or design professional not in privity with the owner, the claimant must provide the owner a pre-lien written notice at least ten (10) days before filing a claim of lien under Section 85-7-405, which can be evidenced by any reliable means of delivery.

(3) The claimant's written notice required in subsection (2) shall be in substantially the same form as the Pre-Lien Notice set forth in Section 85-7-433(5).

**SECTION 6.** The following shall be codified as Section 85-7-411, Mississippi Code of 1972:

85-7-411. (1) (a) When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to the

building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee is bound.

(b) If the lien can be enforced by a sale of the building or improvement, the purchaser may, at his election, (i) become entitled to the possession of the demised premises, and to remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or (ii) he may, within sixty (60) days after the sale, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property.

(c) If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed for the payments from the proceeds of the sale.

(2) When a lien attaches under subsection (1) of this section, the lessor, at any time before a sale of the property, shall have a right to discharge the lien by paying to the holder the amount secured thereby, including costs and all monies he may have paid to the lessor to prevent a forfeiture of the lease, and, after a sale, he shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of the building or improvement; and upon the payment, either to the holder of the lien or to the purchaser, the building or improvement shall become the property of the lessor.

(3) Notwithstanding subsections (1) and (2) of this section, unless done by the written consent of the owner, only the building or improvements erected, and then only to the extent that they are detachable from the real property without injury to the real property, as well as the estate of the tenant in the land, shall be subject to the lien.

**SECTION 7.** The following shall be codified as Section 85-7-413, Mississippi Code of 1972:

85-7-413. (1) The special lien specified in Section 85-7-403(1) shall be dissolved and unenforceable if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

(a) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a lien waiver issued by the lien claimant pursuant to Section 85-7-419; or

(b) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a sworn written statement of the contractor that the agreed price or reasonable value of the labor, services or materials has been paid or waived in writing by the lien claimant. If the sworn written statement, as required by the paragraph (b), is falsely and knowingly made, then all parties injured thereby shall have a right of action against the maker of the sworn written statement for damages in the amount of three (3) times their actual damages sustained on account of the willfully and falsely made sworn written statement.

(2) In a lien action, the owner of the improved real estate shall have a defense to the extent of any payment for the work, materials or services that are the subject of the lien made to a contractor or design professional in privity of contract with the owner or to a subcontractor in good-faith reliance upon receipt of a lien waiver pursuant to subsection (1)(a), or upon receipt of a sworn written statement pursuant to subsection (1)(b), and before receipt of notice of the filing by the lien claimant of a notice of lien pursuant to Section 85-7-405 or an affidavit of nonpayment pursuant to Section 85-7-419(5)(b).

**SECTION 8.** The following shall be codified as Section 85-7-415, Mississippi Code of 1972:

85-7-415. (1) When any person entitled under this article to claim a lien against any real estate located in this state files a lien in the office of the clerk of the chancery court of

the county in which the real estate is located, the owner of the real estate or the contractor or subcontractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of the chancery court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any payment action that may be filed by the lienholder to recover the amount of the claim within one hundred eighty (180) days from the time the claim of lien is filed or as otherwise required by Section 85-7-423. The bond shall be one hundred ten percent (110%) of the amount claimed under that lien and shall be either a cash bond or a bond with good security approved by the clerk of the chancery court and issued by any surety company authorized to do business in the State of Mississippi. Upon approval by the clerk of the bond, the real estate shall be discharged from the lien.

(2) Within seven (7) days of filing the bond required by subsection (1) of this section and any attachments, the party filing the bond shall send a notice of filing the bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the address stated on the lien or, if no address is shown for the lien claimant, to the person shown as having filed the lien on behalf of the claimant at the indicated address of the person and, if the bond is filed by a contractor or subcontractor, to the owner of the property and the

contractor; however, if the lien claimant or the owner or contractor is an entity on file with the Secretary of State's office, sending the notice of filing the bond and a copy of the bond to the company's address or the registered agent's address on file with the Secretary of State shall be deemed sufficient; failure to send the notice of filing the bond and copy of the bond shall not invalidate the bond for purposes of discharge of a claim of lien under this section. With respect to bonds secured by property, the clerk shall not accept any real property bond unless the real property is scheduled in an attached affidavit setting forth a description of the property and indicating the record owner thereof, including any liens and encumbrances and amounts thereof, the market value, and the value of the sureties' interest therein, which affidavit shall be executed by the owner or owners of the interest; the bond and affidavit shall be recorded in the same manner and at the same cost as other deeds of real property. So long as the bond exists, it shall constitute a lien against the property described in the attached affidavit.

(3) The clerk of the chancery court shall have the right to rely upon the amount specified in the claim of lien in determining the sufficiency of any bond to discharge under this section. The failure to specify both the amount claimed due under the lien and the date the claim was due shall result in the lien not constituting notice for any purposes.

(4) The clerk of the chancery court shall be held harmless for good faith regarding any discretionary act in connection with approval of any bond provided for in this section.

**SECTION 9.** The following shall be codified as Section 85-7-417, Mississippi Code of 1972:

85-7-417. If services are performed or furnished with respect to any real estate by any design professional who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation or association shall be entitled to all the privileges and benefits of Section 85-7-403, just as if the partnership, corporation or association were a design professional.

**SECTION 10.** The following shall be codified as Section 85-7-419, Mississippi Code of 1972:

85-7-419. (1) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services or materials. Any purported waiver or release of lien, bond claim or this article executed or made in advance of furnishing labor, services or materials is null, void and unenforceable.

(2) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the Interim Waiver and Release upon Payment form set forth in

Section 85-7-433(1). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(3) When a claimant is requested to execute a waiver and release in exchange for or in order to induce making of final payment, the waiver and release shall substantially follow the Waiver and Release upon Final Payment form set forth in Section ~~85-7-433(2)~~. ~~The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.~~

(4) Nothing contained in this section shall affect:

(a) The enforceability of any subordination of lien rights by a potential lien claimant to the rights of any other party which may have or acquire an interest in all or any part of the real estate or other property for which the potential lien claimant has furnished labor, services or material, even though the subordination is entered into in advance of furnishing labor, services or material, and even though the claimant has not actually received payment in full for its claim;

(b) The enforceability of any waiver of lien rights given in connection with the settlement of a bona fide dispute concerning the amount due the lien claimant for labor, services or material which have already been furnished; or

(c) The validity of a cancellation or release of a recorded claim of lien.

(5) (a) When a waiver and release provided for in this section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(b) Amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(i) Actual receipt of funds;

(ii) Execution by the claimant of a separate written acknowledgment of payment in full; or

(iii) Sixty (60) days after the date of the execution of the waiver and release, unless before the expiration of the sixty-day period the claimant files in the county in which the property is located an affidavit of nonpayment, using substantially the affidavit of nonpayment form set forth in Section 85-7-433(3), and sends a true and accurate copy of the affidavit of nonpayment to the owner of the property in the manner provided in Section 85-7-405 for sending a notice of a claim of lien to the owner.

(c) A claimant who is paid, in full, the amount set forth in the waiver and release form after filing an affidavit of nonpayment shall upon request execute in recordable form an affidavit swearing that payment in full has been received. Upon recordation thereof in the county in which the affidavit of nonpayment was recorded, the affidavit of nonpayment to which it relates shall be deemed void.

(d) Nothing in this section shall shorten the time within which to file a claim of lien.

(e) Except as provided in Section 85-7-413, a waiver and release provided in accordance with this section shall be suspended upon the filing of an affidavit of nonpayment until payment in full has been received. However, an affidavit of nonpayment shall not affect dissolution of the claimant's lien or ~~the availability or enforceability of any owner's defenses~~ pursuant to Section 85-7-413, if applicable.

(f) The claimant may rely upon the information contained in the waiver and release form when completing for filing the affidavit of nonpayment.

**SECTION 11.** The following shall be codified as Section 85-7-421, Mississippi Code of 1972:

85-7-421. (1) Failure of a lien claimant to commence a payment action to collect the amount of his or her claim within one hundred eighty (180) days from the date of filing the lien renders the claim of lien unenforceable. Any lien filed shall include on the face of the lien the following statement in at least 12 point bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD." Failure to include the required language shall invalidate the lien and prevent it from being filed. No release or voiding of the liens shall be required. A lien shall expire sooner and be

disregarded once it is determined that no notice of commencement was timely filed in response to a notice of contest pursuant to Section 85-7-423.

(2) Whenever any lien has been fully satisfied, the holder thereof shall file a cancellation of it in the record in the office of the chancery clerk.

(3) Any holder of a lien, who, after having been fully paid, fails for fifteen (15) days after demand in writing to file a cancellation as provided in subsection (1) of this section, shall be liable to any person thereby injured for the amount of the injury, which shall not be less than Five Hundred Dollars (\$500.00) per day that the required cancellation is not timely filed, plus reasonable attorney's fees and costs.

**SECTION 12.** The following shall be codified as Section 85-7-423, Mississippi Code of 1972:

85-7-423. (1) An owner or an owner's agent or attorney, or the contractor or contractor's agent or attorney, may elect to shorten the time prescribed in which to commence a payment action to enforce any claim of lien by recording in the chancery clerk's office a notice in substantially the form set forth in Section 85-7-433(4), along with proof of delivery to the lien claimant.

(2) The clerk of the chancery court shall cross-reference the notice of contest of lien to the lien. The owner or the owner's agent or attorney, or the contractor or the contractor's agent or attorney, shall send a copy of the notice of contest of

lien by registered or certified mail or statutory overnight delivery to the lien claimant at the address noted on the face of the lien within seven (7) days of filing. Service shall be deemed complete upon mailing.

(3) The lien shall be extinguished by law upon the earlier of ninety (90) days after the filing of the notice of contest of lien, or one hundred eighty (180) days from the date of lien filing if no payment action is filed in that time period. No release or voiding of the liens shall be required. This subsection shall not be construed to extend the time in which a payment action must begin.

**SECTION 13.** The following shall be codified as Section 85-7-425, Mississippi Code of 1972:

85-7-425. The computation of time under this article shall be determined pursuant to Section 1-3-67.

**SECTION 14.** The following shall be codified as Section 85-7-427, Mississippi Code of 1972:

85-7-427. (1) Judgments establishing the lien, and ordering the property sold for the satisfaction thereof, may be enforced by special writ of execution as set forth in Section 85-7-153.

(2) The delivery of possession by the person claiming the lien shall not affect his lien.

**SECTION 15.** The following shall be codified as Section 85-7-429, Mississippi Code of 1972:

85-7-429. (1) Any person who shall falsely and knowingly file the claim of lien provided in this act without just cause shall be liable to every party injured thereby for a penalty equal to three (3) times the full amount for which the claim was filed, to be recovered in an action by any party so injured at any time within one hundred eighty (180) days from the filing of the claim of lien.

~~(2) Any person whose rights may be adversely affected by wrongful filing of a claim of lien, as provided by this article may, in addition to the remedies set forth in subsection (1) of this section, apply, upon seven (7) days' notice, to the circuit, county or chancery court, to expunge or vacate the claim of lien, in accordance with Rule 81(d)(2) of the Mississippi Rules of Civil Procedure.~~

**SECTION 16.** The following shall be codified as Section 85-7-431, Mississippi Code of 1972:

85-7-431. Where a contractor gives a payment bond providing payment protection to subcontractors and material suppliers to the full extent provided by the Mississippi Little Miller Act found at Section 31-5-51, the payment bond shall be in substitution for the liens provided for a subcontractor or materialman in this article. The contractor's right to a lien is not affected by the provision of a bond.

**SECTION 17.** The following shall be codified as Section 85-7-433, Mississippi Code of 1972:

85-7-433. (1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

SIGNATURE

BY: \_\_\_\_\_  
(PRINT NAME)

ITS: \_\_\_\_\_  
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
\_\_\_\_\_, 20\_\_.

NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE

MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

\_\_\_\_\_  
SIGNATURE

BY: \_\_\_\_\_  
(PRINT NAME)

ITS: \_\_\_\_\_  
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

\_\_\_\_\_  
SIGNATURE

BY: \_\_\_\_\_  
(PRINT NAME)

ITS: \_\_\_\_\_  
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(3) The following form is the Affidavit of Nonpayment referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

~~(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)~~

PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED \_\_\_\_\_, \_\_\_\_\_. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$ \_\_\_\_\_) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE NONPAYMENT.

THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED.

\_\_\_\_\_

SIGNATURE

BY: \_\_\_\_\_

(PRINT NAME)

ITS: \_\_\_\_\_

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

NOTARY PUBLIC

WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

(4) The following form is the Notice of Contest of Lien form referred to in Section 85-7-423:

NOTICE OF CONTEST OF LIEN

STATE OF MISSISSIPPI

COUNTY OF \_\_\_\_\_

TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON \_\_\_\_\_ 20\_\_\_, AND RECORDED IN \_\_\_\_\_ BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE PUBLIC RECORDS OF \_\_\_\_\_ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY \_\_\_\_\_, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE. THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF 1972, WITHIN SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A NOTICE OF COMMENCEMENT OF PAYMENT ACTION WITHIN THIRTY (30) DAYS OF FILING THE ABOVE-REFERENCED PAYMENT ACTION.

---

SIGNATURE

BY: \_\_\_\_\_

(PRINT NAME)

ITS: \_\_\_\_\_

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

---

NOTARY PUBLIC

(5) The following form is the Pre-Lien Notice form referred to in Section 85-7-409(3):

PRE-LIEN NOTICE TO OWNER

TO: [NAME AND ADDRESS OF OWNER]

TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972, WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY COMMONLY KNOWN AS \_\_\_\_\_

("THE PROPERTY"), FOR THE SUM OF \$ \_\_\_\_\_ FOR WHICH THE  
UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF  
SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM  
THE DATE HEREOF.

SO NOTIFIED, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

LIEN CLAIMANT: \_\_\_\_\_  
(PRINT NAME)

BY: \_\_\_\_\_  
(SIGNATURE)

ITS: \_\_\_\_\_  
(PRINT TITLE)

**SECTION 18.** Section 85-7-131, Mississippi Code of 1972, is  
amended as follows:

85-7-131. Every \* \* \* water well or \* \* \* oil and gas well,  
and any fixed machinery, gearing or other fixture that may or may  
not be used or connected therewith, \* \* \* shall be liable  
for \* \* \* services or construction and the debt shall be a lien  
thereon. \* \* \* As to oil and gas wells, the operator thereof  
shall have \* \* \* a lien upon the interest of each nonoperator  
owner of an interest in the mineral leasehold estate for \* \* \* the  
nonoperator's proportionate part of \* \* \* the labor, material and  
services rendered by the operator or for the operator's  
account \* \* \* on behalf of each nonoperator in the drilling,  
completion, recompletion, reworking or other operations of \* \* \*  
the oil and gas well. \* \* \* If the structure \* \* \* is a water

well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure \* \* \* is an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned \* \* \* to the well by the State Oil and Gas Board. \* \* \* The lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, ~~only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, \* \* \* the lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of \* \* \* the lien as provided by Section 85-7-133.~~

**SECTION 19.** Section 85-7-133, Mississippi Code of 1972, is amended as follows:

85-7-133. Each of the several chancery clerks of this state shall provide in his office, as a part of the land records of his county, a record entitled "Notice of \* \* \* Liens" wherein notices under Section 85-7-131 shall be filed and recorded, and \* \* \* the liens \* \* \* shall not take effect \* \* \* until some notation \* \* \* of the lien is filed and recorded in \* \* \* the record showing a

description of the property involved, the name of the lienor or lienors, the date of filing, if and where suit is filed, and if and where contract is filed or recorded.

**SECTION 20.** Section 85-7-141, Mississippi Code of 1972, is amended as follows:

85-7-141. Any person entitled to and desiring to have the benefit of \* \* \* a lien under Section 85-7-131 shall commence his suit in the circuit or county court of the county in which the property or some part thereof is situated, if the principal of his demand exceeds Two Hundred Dollars (\$200.00), within twelve (12) months next after the time when the money due and claimed by the suit became due and payable following the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action, and not after; and the suit shall be commenced by petition, describing with reasonable certainty the property upon which the lien is averred to exist, and setting out the nature of the contract and indebtedness, and the amount thereof; and the plaintiff shall file therewith in all cases, except where the whole work or materials, or both, were furnished in pursuance of a written contract for an aggregate price, a bill of particulars exhibiting the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished; and such suits shall be docketed and conducted as other suits in \* \* \* that court, and may be tried at the first term.

**SECTION 21.** Section 85-7-143, Mississippi Code of 1972, is amended as follows:

85-7-143. All persons having an interest in the controversy, and all persons claiming liens on the same property, by virtue of \* \* \* Section 85-7-131, shall be made parties to the suit; and should any necessary or proper party be omitted, he may be brought in by amendment, on his own application or that of any other party interested; and claims of several parties having liens on the same property may be joined in the same action.

**SECTION 22.** Section 85-7-145, Mississippi Code of 1972, is amended as follows:

85-7-145. In all actions to enforce a lien granted by Section 85-7-131, the defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if \* \* \* the defendant had been duly summoned and made default.

**SECTION 23.** Section 85-7-147, Mississippi Code of 1972, is amended as follows:

85-7-147. In all actions to enforce a lien granted by Section 85-7-131, the defendants, or any of them, by answer to the petition, may make any defense they may have against the demand of

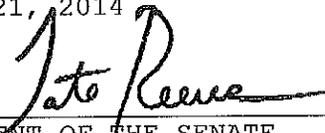
the plaintiff, and also any counterclaim against him touching the subject-matter of the suit. And should any defendant claim to have a lien upon the same property, for materials furnished or labor done thereon, he may present the \* \* \* lien by his answer; and the cause shall be at issue without a replication, and the parties shall be confined at the trial to the cause of action and defense set forth in the pleadings.

**SECTION 24.** Sections 85-7-135, 85-7-137, 85-7-139, 85-7-149, 85-7-151, 85-7-181, 85-7-183, 85-7-185, 85-7-197, 85-7-199 and 85-7-201, Mississippi Code of 1972, which provide for liens on amounts due a contractor and the filing thereof, are repealed.

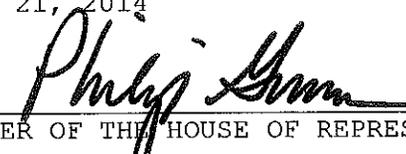
**SECTION 25.** The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972.

**SECTION 26.** This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE  
March 21, 2014

  
\_\_\_\_\_  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 21, 2014

  
\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
\_\_\_\_\_  
GOVERNOR

4/11/14

9:50 AM