

By: Representative Smith (39th)

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 996

1 AN ACT TO AMEND SECTION 85-7-181, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR A LIEN ON CERTAIN COMMERCIAL REAL PROPERTY FOR THE
3 AMOUNT DUE A SUBCONTRACTOR OR SUPPLIER OF THE CONTRACTOR FOR WORK
4 PERFORMED OR MATERIALS FURNISHED IN MAKING IMPROVEMENTS THEREON;
5 TO PRESCRIBE THE PROCEDURE BY WHICH SUCH LIEN MAY BE ENFORCED; TO
6 PROVIDE FOR A PAYMENT OR PERFORMANCE BOND IN LIEU OF THE LIEN; AND
7 FOR RELATED PURPOSES.

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

9 SECTION 1. Section 85-7-181, Mississippi Code of 1972, is
10 amended as follows:

11 85-7-181. (1) Except as otherwise provided herein, there
12 shall be a lien on every lot of ground or tract of land, together
13 with all improvements thereon, upon which any structure or other
14 improvement is erected, constructed, altered or repaired, in favor
15 of subcontractors of the contractor and suppliers of the
16 contractor who perform work or furnish materials for such
17 structure or other improvement. The lien rights afforded under
18 this section shall not apply to claims of subcontractors or
19 suppliers in any case in which the contract between the owner and
20 contractor is less than Twenty-five Thousand Dollars (\$25,000.00),
21 or in any case in which the structure or improvement is made to a
22 one- to four-family dwelling, a water well, an oil and gas well or
23 railroad or railroad embankment.

24 (a) If the structure or improvement is in a city, town
25 or village, the lien shall extend to and cover the entire lot of
26 land on which it stands.

27 (b) If the structure or improvement is not in a city,
28 town or village, the lien shall extend to and cover the entire

29 parcel of land on which the structure stands.

30 (2) The lien provided for in subsection (1) shall take
31 effect, as to purchasers or encumbrancers for a valuable
32 consideration without notice thereof, only from the time of filing
33 of a claim of lien in the office of the clerk of the chancery
34 court as provided for in this section, except that the lien of a
35 deed of trust securing a construction loan recorded prior to the
36 filing of a claim of lien as provided herein shall have priority
37 over any lien claimant under this section.

38 (3) Delivery of material to the job is prima facie evidence
39 of its use therein.

40 (4) Every subcontractor or supplier who has furnished labor
41 or material used in the construction of the structure or other
42 improvement and who has not been paid before the expiration of a
43 period of forty-five (45) days after the date of the last payment
44 period for labor performed by him or materials furnished by him
45 shall have the right to file suit to enforce a lien against the
46 property on which the structure or other improvement is
47 constructed in the amount due and owing for work performed or
48 materials furnished or both work and materials; provided that:

49 (a) Within fifteen (15) days from commencing to perform
50 work at or furnish materials to the construction site in
51 accordance with the terms and provisions of the contract, such
52 subcontractor or supplier provides the notice of lien right set
53 forth in subsection (5) of this section to the owner or owners of
54 the land, to any lender having a recorded mortgage or deed of
55 trust on the land upon which such structure or other improvement
56 is located, and to the contractor; and

57 (b) Within forty-five (45) days of the date the first
58 payment draw was due, such subcontractor or supplier:

59 (i) Files a claim of lien in the office of the
60 chancery clerk of the county where the project is located; and

61 (ii) Provides a copy of such claim of lien to the

owner or owners of the land, to any lender having a recorded mortgage or deed of trust on the property upon which such structure or other improvement is located, and to the contractor; provided, however, that no claim of lien may be filed prior to the date the labor is performed or material furnished to the property.

(5) The notice of lien right to the owner, lender and contractor required by subsection (4)(a) of this section shall be given in writing by the subcontractor or supplier to the owner, or one (1) of the owners if more than one (1), at the owner's residence or any place where the owner maintains an office or conducts business, to the lender at the address of the lender disclosed on the recorded mortgage or deed of trust, or if no such address appears, then at the principal office of the lender, and to the contractor at the contractor's principal office. Such notice may be personally delivered by the subcontractor or supplier or it may be mailed by certified mail, return receipt requested, postage prepaid, to the owner, or one (1) of them, and to the lender and contractor. The failure to serve the notice of lien right, or to timely serve it, shall be a complete defense to enforcement of a lien by any person. The serving of the notice of lien right shall not dispense with recording the claim of lien required by subsection (4)(b) of this section. The notice of lien right shall not be a lien, cloud or encumbrance on the real property. Such notice of lien right may be given in the following form, which shall be sufficient:

"WARNING TO OWNER: UNDER MISSISSIPPI LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To _____, owner or lender:

Take notice, that the undersigned is about to furnish (or has

within fifteen (15) days furnished) _____, your
contractor, certain material or performed certain subcontract work
or both for the construction, repair or alteration of the
structure or other improvement being constructed on the following
described property:

and there will become due to the undersigned on account thereof
the price of said material or subcontract work or both, for the
payment of which the undersigned will claim a lien.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Mississippi's laws, those who work on your property or
provide materials and are not paid have a right to enforce their
claim for payment against your property. This claim is known as a
construction lien.

If your contractor fails to pay subcontractors or material
suppliers or neglects to make other legally required payments, the
people who are owed money may look to your property for payment,
EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

PROTECT YOURSELF: This Notice to Owner may result in a lien
against your property unless all those supplying a Notice to Owner
have been paid."

(6) The claim of lien required by subsection (4)(b) of this
section shall be filed and recorded in the chancery clerk's office
where the land is located in accordance with Section 85-7-133,
Mississippi Code of 1972, provided that there shall be no right
nor requirement of a lienholder under this section to file a
contract pursuant to Section 85-7-139, Mississippi Code of 1972.

(7) Notwithstanding anything to the contrary contained
herein, the amount claimed in a suit to enforce a lien under this
act is subject to contractual provisions or conditions imposed
upon the lien claimant.

(8) No suit may be maintained by a subcontractor or supplier

to enforce the lien provided hereunder unless the notices required by this section shall have been given and filed, respectively, within the time required.

(9) The persons protected by this lien statute, subject to the notice provisions set forth above, are subcontractors and material suppliers of the contractor.

(10) A suit to enforce a lien arising under this act shall be commenced within the time and in the manner provided by Section 85-7-141, Mississippi Code of 1972; shall be conducted in accordance with Sections 85-7-143, 85-7-145, 85-7-147, 85-7-149, 85-7-151, 85-7-153, 85-7-155 and 85-7-157, Mississippi Code of 1972; and shall be maintainable even though the general or primary contractor has been paid in full if such contractor has not paid the person entitled to enforce lien rights under this section; provided that such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing the claim of lien in the office of the clerk of the chancery court as hereinabove stated, except that the lien of a deed of trust securing a construction loan recorded prior to the time of filing a claim of lien as provided herein shall have priority over the claim of any lien claimant under this section.

(11) If such structure or other improvement upon which a lien is claimed hereunder is erected, constructed, altered or repaired at the instance of a tenant, guardian or other person not the owner of the land, only the building, structure or improvement, and the estate of the tenant or such other person, in the land, shall be subject to such lien, unless the same be done by the written consent of the owner. Whenever the contract is performed at the instance of a tenant, guardian or other person who is not the owner of the land, then the reference in this act to owner shall mean the tenant, guardian or other person who is not the owner of the land, as applicable.

161 (12) Venue on any suit under this section shall lie in the
162 county in which the structure or other improvement is located or
163 in the county in which service of process may be obtained upon the
164 owner.

165 (13) As used in this section, "contractor" means the person
166 or persons having a contract or contracts with the owner;
167 "subcontractor" or "supplier" means any person or entity having a
168 direct contract with the "contractor." No lien rights are
169 afforded hereunder to anyone other than those defined herein as
170 "subcontractor" or "supplier" to the contractor.

171 SECTION 2. If a payment or payment and performance bond with
172 sufficient surety in an amount equal to the cost of construction
173 of such structure or other improvement is provided by the
174 contractor covering the claims of subcontractors and suppliers to
175 the contractor, then subcontractors or suppliers to the contractor
176 shall have a claim solely under the bond and not against the
177 owner's property. In accordance with Section 85-7-185,
178 Mississippi Code of 1972, such bond shall cover the claims of
179 subcontractors or suppliers regardless of whether so expressly
180 stated in the bond and suit on the bond shall be brought by a
181 subcontractor or supplier in accordance with the provisions of
182 Sections 85-7-187 through 85-7-195, Mississippi Code of 1972. The
183 bond herein provided for may be made by any surety company
184 authorized to do business in the State of Mississippi; provided,
185 however, that when separate payment and performance bonds are
186 provided, the claims of subcontractors and suppliers shall be
187 covered solely by the payment bond. Filing and recording of a
188 bond claim is not required.

189 Any rights in favor of other parties provided in any such
190 bond shall be valid and enforceable in accordance with the terms
191 of such bond.

192 A supplier or subcontractor supplying labor or materials or
193 both for the structure or other improvement shall, upon request to

the contractor and surety, be furnished with a certified copy of the contract between the contractor and owner and bonds executed by the contractor and surety.

SECTION 3. In the event that the contractor does not provide a bond in accordance with Section 2 of this act, and in the further event that a subcontractor or supplier claiming a lien for labor or materials upon any property shall submit a notice of lien right and file a lien within the time and in the manner prescribed above, then the owner of such property, or any mortgagee or other person asserting an interest in such property, or any contractor, subcontractor or other person who may be liable for the payment of said lien, shall have the right to file in the construction lien book in the land records of the chancery clerk where the project is constructed a bond for one and one-half (1-1/2) times the amount of said lien claimed with sufficient surety, conditioned upon the obligor's satisfying any judgment that may be rendered in favor of the person asserting said lien. The bond herein provided for may be made by any surety company authorized to do business in the State of Mississippi. Upon the filing of such bond, the lien upon the property covered by the bond shall be discharged. If such bond is filed, the person asserting the lien may make the obligor on the bond party to any action to enforce his claim, and any judgment recovered by such claimant may be against the obligor on the bond, as well as against any other party liable to the claimant.

SECTION 4. Any attempted contractual waiver of the rights afforded by this act shall be void and unenforceable. The provisions of this act are cumulative and supplemental to all other laws of this state.

SECTION 5. This act shall take effect and be in force from and after July 1, 1999.