

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 1075

1 AN ACT TO AMEND SECTIONS 85-7-187, 85-7-189 AND 85-7-195,  
2 MISSISSIPPI CODE OF 1972, TO INCLUDE SUBCONTRACTORS ON COMMERCIAL  
3 PROJECTS IN LIEN LAWS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 85-7-187, Mississippi Code of 1972, is  
6 amended as follows:

7 85-7-187. If no suit shall be brought by the obligee within  
8 six months from the completion and final settlement of the  
9 contract, then any person supplying therein labor or materials  
10 shall have a right of action on said bond for his use and benefit  
11 against said contractors or subcontractors on commercial projects  
12 and the sureties thereon and to prosecute same to final judgment  
13 and execution, subject to the rights and demands of the owner.

14 **SECTION 2.** Section 85-7-189, Mississippi Code of 1972, is  
15 amended as follows:

16 85-7-189. When suit is instituted by any such person on a  
17 bond, it shall not be commenced until after the complete  
18 performance of said contract, and final settlement thereof and  
19 shall be commenced within one (1) year after the performance and  
20 final settlement of said contract and not later; provided that if  
21 the contractor or subcontractor on a commercial project quits or  
22 abandons the contract before its completion suit may be instituted  
23 by any such person including the owner on said bond and shall be  
24 commenced within one (1) year after such abandonment and not  
25 later. But said period for the limitation of the institution of  
26 said action shall not begin to run until (a) the obligee shall  
27 have made said final settlement or determined said abandonment and

28 published notice thereof in some newspaper in said county, or if  
29 there be none then in some newspaper having a general circulation  
30 therein; (b) after the written acceptance of the project by the  
31 owner; or (c) after the actual occupancy or use by the owner;  
32 whichever occurs first.

33 **SECTION 3.** Section 85-7-195, Mississippi Code of 1972, is  
34 amended as follows:

35 85-7-195. To all suits instituted under the provisions of  
36 this chapter the parties interested shall be summoned as provided  
37 by Section 85-7-145; provided further that where any contractors'  
38 bond or subcontractors' bond on commercial projects has been  
39 executed and delivered under any of the foregoing sections of this  
40 chapter and the contractor, subcontractor or principal obligor in  
41 said bond, or any one or more of said principal obligors therein  
42 shall be a nonresident or shall remove from the state, or so  
43 conceal himself therein that service of process cannot be directly  
44 made upon him personally, then in such case personal service of  
45 summons for said absent or absconding principal obligor may be  
46 made upon the Insurance Commissioner of the State of Mississippi  
47 in like manner, with the same procedure thereabout, and with the  
48 same effect as process may be served on said commissioner in cases  
49 of a defendant foreign insurance company; and the delivery of any  
50 such bond within this state shall be deemed equivalent to the  
51 appointment, by the principal obligors and by the surety or  
52 sureties therein, of the state Insurance Commissioner or his  
53 successors in office to be the true and lawful attorney of said  
54 obligors upon whom may be served all lawful process in any action  
55 or proceeding arising under said bond when for any one of the  
56 reasons aforesaid the said principal obligors or any one of them  
57 cannot be otherwise served with personal summons in this state,  
58 and the delivery of any bond in this chapter mentioned shall be a  
59 signification of the agreement and power of attorney of the said  
60 principal obligor or obligors and of said sureties that any such

61 process against said principal or principals which is so served  
62 shall be of the same legal force and validity as if served upon  
63 the said principal or principals personally.

64         **SECTION 4.** This act shall take effect and be in force from  
65 and after July 1, 2004.