

By: Representative Upshaw

To: Judiciary B

HOUSE BILL NO. 1398

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

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

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

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

24 (2) The lien provided for in subsection (1) shall take
25 effect, as to purchasers or encumbrances for a valuable
26 consideration without notice thereof, only from the time of filing
27 of a claim of lien in the office of the clerk of the chancery
28 court as provided for in this section, except that the lien of a
29 deed of trust securing a construction loan recorded prior to the

30 filing of a claim of lien as provided herein shall have priority
31 over any lien claimant under this section.

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

34 (4) Every subcontractor or supplier who has furnished labor
35 or material used in the construction of the structure or other
36 improvement and who has not been paid before the expiration of a
37 period of forty-five (45) days after the date of the last payment
38 period for labor performed by him or materials furnished by him
39 shall have the right to file suit to enforce a lien against all
40 monies remaining on the structure or other improvement from which
41 has been constructed in the amount due and owing for work
42 performed or materials furnished or both work and materials,
43 provided that:

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

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

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

54 (5) The notice of lien right to the owner, lender and
55 contractor required by subsection (4)(a) of this section shall be
56 given in writing by the subcontractor or supplier to the owner, or
57 one (1) of the owners if more than one (1), at the owner's
58 residence or any place where the owner maintains an office or
59 conducts business, to the lender at the address of the lender
60 disclosed on the recorded mortgage or deed of trust, or if no such
61 address appears, then at the principal office of the lender, and
62 to the contractor at the contractor's principal office. Such

63 notice may be personally delivered by the subcontractor or
64 supplier or it may be mailed by certified mail, return receipt
65 requested, postage prepaid, to the owner, or one (1) of them, and
66 to the lender and contractor. The failure to serve the notice of
67 lien right, or to timely serve it, shall be a complete defense to
68 enforcement of a lien by any person. The serving of the notice of
69 lien right shall not dispense with recording the claim of lien
70 required by subsection (4)(b) of this section. The notice of lien
71 right shall not be a lien, cloud or encumbrance on the real
72 property. Such notice of lien right may be given in the following
73 form, which shall be sufficient:

74 **NOTICE TO OWNER**

75 To _____, owner or lender:

76 Take notice, that the undersigned is about to furnish (or has
77 within fifteen (15) days furnished) _____, your
78 contractor, certain material or performed certain subcontract work
79 or both for the construction, repair or alteration of the
80 structure or other improvement being constructed on the following
81 described property:

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

86 **IMPORTANT INFORMATION FOR YOUR PROTECTION**

87 If your contractor fails to pay any and all subcontractors or
88 material suppliers without just cause or neglects to make other
89 legally required payments, you, the landowner, may be included in
90 legal action to remedy payment, however, and to avoid such
91 conflict be it enacted with this legislation that if landowner is
92 provided written affidavit from the prime contractor before
93 subsequent payments are required that evidences prior payment to
94 subcontractors for goods and/or services have been made, such lien
95 or further legal encumbrance that shall stem from such failure to

96 pay said subcontractors and/or material suppliers shall be null
97 and void.

98 Under Mississippi's laws, those who work on your property or
99 provide materials and are not paid have a right to enforce their
100 claim for payment against all monies due at time of lien.

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

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

111 (8) No suit may be maintained by a subcontractor or supplier
112 to enforce the lien provided hereunder unless the notices required
113 by this section shall have been given and filed, respectively,
114 within the time required.

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

118 (10) This construction lien shall not eliminate the
119 subcontractors and material suppliers right to stop payment.

120 (11) A suit to enforce a lien rising under this act shall be
121 commenced within the time and in the manner provided by Section
122 85-7-141, shall be conducted in accordance with Sections 85-7-143,
123 85-7-145, 85-7-147, 85-7-149, 85-7-151, 85-7-153, 85-7-155 and
124 85-7-157; and shall be maintainable even though the general or
125 primary contractor has been paid in full if such contractor has
126 not paid the person entitled to enforce lien rights under this
127 section; provided that such lien shall take effect as to
128 purchasers or encumbrances for a valuable consideration without

129 notice thereof, only from the time of filing the claim of lien in
130 the office of the clerk of the chancery court as hereinabove
131 stated, except that the lien of a deed of trust securing a
132 construction loan recorded prior to the time of filing a claim of
133 lien as provided herein shall have priority over the claim of any
134 lien claimant under this section.

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

146 (13) Venue on any suit under this section shall lie in the
147 county in which the structure or other improvement is located or
148 in the county in which service of process may be obtained upon the
149 owner.

150 (14) As used in this section, "contractor" means the person
151 or persons having a contract or contracts with the owner,
152 "subcontractor" or "supplier" means any person or entity having a
153 direct contract with the "contractor." No lien rights are
154 afforded hereunder to anyone other than those defined herein as
155 "subcontractor" or "supplier" to the contractor.

156 **SECTION 2.** In the event that the contractor does not provide
157 a bond in accordance with Section 2 of this act, and in the
158 further event that a subcontractor or supplier claiming a lien for
159 labor or materials upon any property shall submit a notice of lien
160 right and file a lien within the time and in the manner prescribed
161 above, then the owner of such property, or any mortgagee or other

162 person asserting an interest in such property, or any contractor,
163 subcontractor or other person who may be liable for the payment of
164 said lien, shall have the right to file in the construction lien
165 book in the land records of the chancery clerk where the project
166 is constructed a bond for one and one-half (1 1/2) times the
167 amount of said lien claimed with sufficient surety, conditioned
168 upon the obligor's satisfying any judgment that may be rendered in
169 favor of the person asserting said lien. the bond herein provided
170 for may be made by any surety company authorized to do business in
171 the State of Mississippi. Upon the filing of such bond, the lien
172 upon the property covered by the bond shall be discharged. If
173 such bond is filed, the person asserting the lien may make the
174 obligor on the bond party to any action to enforce his claim, and
175 any judgment recovered by such claimant may be against the obligor
176 on the bond, as well as against any other party liable to the
177 claimant.

178 **SECTION 3.** Any attempted contractual waiver of the rights
179 afforded by this act shall be void and unenforceable. The
180 provisions of this act are cumulative and supplemental to all
181 other laws of this state.

182 **SECTION 4.** This act shall take effect and be in force from
183 and after July 1, 2005.