

By: Representative Mayo

To: Judiciary B

HOUSE BILL NO. 893

1 AN ACT TO PROVIDE THAT A HOMEOWNER WHO HAS PAID A CONTRACTOR
2 SHALL NOT BE LIABLE FOR ANY CLAIMS BY A SUBCONTRACTOR OF THE
3 CONTRACTOR; TO AMEND SECTIONS 85-7-131, 85-7-135 AND 85-7-181,
4 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** A homeowner who has paid the contractor for any
8 construction to his home or other structure shall have no
9 liability for any amount owed to a subcontractor by a contractor.
10 A subcontractor may only make a claim for any amount owed to such
11 subcontractor against the contractor.

12 **SECTION 2.** Section 85-7-131, Mississippi Code of 1972, is
13 amended as follows:

14 85-7-131. Except as provided by Section 1 of this act, every
15 house, building, water well or structure of any kind, and any
16 fixed machinery, gearing or other fixture that may or may not be
17 used or connected therewith, railroad embankment, erected,
18 constructed, altered or repaired, and every subdivision of
19 property or subdivided property which required services, designs
20 or construction in designing or laying out of streets or
21 subdividing or construction of streets, sewerage, water or other
22 utilities to be furnished by the said subdivision or by the
23 various owners or holders or creators of said subdivision or
24 subdivided property or individual lot or lots in connection
25 therewith, whether inside of a municipality or outside thereof,
26 shall be liable for the debt contracted and owing, for labor done
27 or materials furnished, or architectural engineers' and surveyors'
28 or contractors' service rendered about the erection, construction,

29 alteration or repairs thereof; and debt for such services or
30 construction shall be a lien thereon. The architects, engineers,
31 surveyors, laborers, and materialmen and/or contractors who
32 rendered services and constructed the improvements shall have a
33 lien therefor. Further, as to oil and gas wells, the operator
34 thereof shall have such a lien upon the interest of each
35 nonoperator owner of an interest in the mineral leasehold estate
36 for such nonoperator's proportionate part of such labor, material
37 and services rendered by the operator or for the operator's
38 account in behalf of each nonoperator in the drilling, completion,
39 recompletion, reworking or other operations of such oil and gas
40 well. If such house, building, structure, or fixture be in a
41 city, town or village, the lien shall extend to and cover the
42 entire lot of land on which it stands and the entire curtilage
43 thereto belonging; or, if not in a city, town or village, the lien
44 shall extend to and cover one (1) acre of land on which the same
45 may stand, if there be so much, to be selected by the holder of
46 the lien. If the structure be a water well, the lien shall extend
47 only to all pumps, pipes, equipment therein and all water well
48 appurtenances. If the structure be an oil or gas well, the lien
49 shall extend to the nonoperator's interest in the mineral estate
50 and the fixtures and equipment in the producing unit assigned such
51 well by the State Oil and Gas Board. If the structure be a
52 railroad or railroad embankment, the lien shall extend to and
53 cover the entire roadbed and right-of-way, depots and other
54 buildings used or connected therewith. If the services of the
55 architect, surveyor, engineer, laborers, materialmen or of the
56 contractors shall be upon the whole subdivision, the lien shall
57 extend to and cover the entire subdivision; but if a part only of
58 the land is subdivided and laborers', materialmen's, architects',
59 surveyors' or engineers' services are required and contractors are
60 employed, then the lien shall extend to only that portion of said
61 property upon which the services were required or upon which or in

62 connection with which the work was done or the materials were
63 furnished. Such lien shall take effect as to purchasers or
64 encumbrancers for a valuable consideration without notice thereof,
65 only from the time of commencing suit to enforce the lien, or from
66 the time of filing the contract under which the lien arose, or
67 notice thereof, in the office of the clerk of the chancery court,
68 as hereinafter stated; delivery of material to the job is prima
69 facie evidence of its use therein, and use of water from a water
70 well is prima facie evidence of acceptability of the well. In the
71 case of oil and gas wells, such lien shall take effect as to
72 purchasers or encumbrancers for a valuable consideration without
73 notice thereof, only from the time of filing notice of such lien
74 as provided by Section 85-7-133.

75 **SECTION 3.** Section 85-7-135, Mississippi Code of 1972, is
76 amended as follows:

77 85-7-135. Except as provided in Section 1 of this act, the
78 lien declared in Section 85-7-131 shall exist only in favor of the
79 person employed, or with whom the contract is made to perform such
80 labor or furnish such materials or render such architectural
81 service, and his assigns, and when the contract or employment is
82 made by the owner, or by his agent, representative, guardian or
83 tenant authorized, either expressly or impliedly, by the owner.

84 **SECTION 4.** Section 85-7-181, Mississippi Code of 1972, is
85 amended as follows:

86 85-7-181. Except as provided in Section 1 of this act, when
87 any contractor or master workman shall not pay any person who may
88 have furnished materials used in the erection, construction,
89 alteration, or repair of any house, building, structure, fixture,
90 boat, water craft, railroad, railroad embankment, the amount due
91 by him to any subcontractor therein, or the wages of any
92 journeyman or laborer employed by him therein, any such person,
93 subcontractor, journeyman or laborer may give notice in writing to
94 the owner thereof of the amount due him and claim the benefit of

95 this section; and, thereupon the amount that may be due upon the
96 date of the service of such notice by such owner to the contractor
97 or master workman, shall be bound in the hands of such owner for
98 the payment in full, or if insufficient then pro rata, of all sums
99 due such person, subcontractor, journeyman or laborer who might
100 lawfully have given notice in writing to the owner hereunder, and
101 if after such notice, the contractor or master workman shall bring
102 suit against the owner, the latter may pay into court, the amount
103 due on the contract; and thereupon all persons entitled hereunder,
104 so far as known, shall be made parties and summoned into court to
105 protect their rights, contest the demands of such contractor or
106 master workman and other claimants; and the court shall cause an
107 issue to be made up and tried and direct the payment of the amount
108 found due in accordance with the provisions hereof; or in case any
109 person entitled to the benefits hereof, shall sue the contractor
110 or master workman, such person so suing shall make the owner and
111 all other persons interested, either as contractors, master
112 workmen, subcontractors, laborers, journeymen or materialmen, so
113 far as known, parties to the suit (and any such party not made a
114 party in any suit hereunder authorized may intervene by petition),
115 and, thereupon the owner may pay into the court the amount
116 admitted to be due on the contract or sufficient to pay the sums
117 claimed, and the court shall cause an issue to be made up and
118 award the same to the person lawfully entitled; in either case the
119 owner shall not be liable for costs; but if the owner, when sued,
120 with the contractor or master workman, shall deny any indebtedness
121 sufficient to satisfy the sums claimed and all costs, the court
122 shall, at the instance of any party interested, cause an issue to
123 be made up to ascertain the true amount of such indebtedness and
124 shall give judgment and award costs, and reasonable attorney's
125 fees, according to the rights of the several parties in accordance
126 herewith. In case judgment shall be given against such owner,
127 such judgment shall be a lien, from the date of the original

128 notice, and shall be enforced as other liens provided in this
129 chapter. The owner shall not be liable in any event for a greater
130 amount than the amount contracted for with the contractor.

131 The provisions of this section allowing the award of
132 attorney's fees shall only apply to actions the cause of which
133 accrued on or after July 1, 1987.

134 **SECTION 5.** This act shall take effect and be in force from
135 and after July 1, 2007.