

By: Senator(s) Hopson, Horhn

To: Judiciary, Division A

SENATE BILL NO. 2622

1 AN ACT TO PROVIDE FOR CONTRACTOR LIENS AND THE ENFORCEMENT
2 AND NOTICE OF CONTRACTOR LIENS; TO CREATE NEW SECTION 85-7-301,
3 MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO CREATE NEW
4 SECTION 85-7-303, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LIENS
5 FOR LABOR, SERVICES OR MATERIALS FURNISHED; TO CREATE NEW SECTION
6 85-7-305, MISSISSIPPI CODE OF 1972, TO PROVIDE HOW THE LIENS ARE
7 CREATED AND RECORDED; TO CREATE NEW SECTION 85-7-307, MISSISSIPPI
8 CODE OF 1972, TO REQUIRE CONTRACTORS TO LIST ALL SUBCONTRACTORS,
9 MATERIALMEN, LABORERS AND EMPLOYEES; TO CREATE NEW SECTION
10 85-7-309, MISSISSIPPI CODE OF 1972, TO LIMIT THE RECOVERY OF
11 SUBCONTRACTORS AGAINST A RESIDENTIAL HOMEOWNER UNDER CERTAIN
12 CIRCUMSTANCES; TO CREATE NEW SECTION 85-7-311, MISSISSIPPI CODE OF
13 1972, TO PROVIDE FOR THE ATTACHMENT OF LIENS TO BUILDINGS OR
14 IMPROVEMENTS ON LEASED LAND; TO CREATE NEW SECTION 85-7-313,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISSOLVING OF LIENS;
16 TO CREATE NEW SECTION 85-7-315, MISSISSIPPI CODE OF 1972, TO
17 PROVIDE FOR THE DISCHARGE OF A LIEN BY FILING BOND; TO CREATE NEW
18 SECTION 85-7-317, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
19 RIGHTS OF CERTAIN PROFESSIONALS; TO CREATE NEW SECTION 85-7-319,
20 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE WAIVER AND RELEASE OF
21 LIEN AND BOND RIGHTS; TO CREATE NEW SECTION 85-7-321, MISSISSIPPI
22 CODE OF 1972, TO PROVIDE FOR EXTINGUISHMENT OF LIENS IF NO NOTICE
23 OF COMMENCEMENT IS FILED; TO CREATE NEW SECTION 85-7-323,
24 MISSISSIPPI CODE OF 1972, TO PROVIDE A TIME LIMITATION ON
25 COMMENCING LIEN ACTIONS; TO PROVIDE FOR NOTICE OF CONTEST OF A
26 LIEN; TO CREATE NEW SECTION 85-7-325, MISSISSIPPI CODE OF 1972, TO
27 PROVIDE FOR THE COMPUTATION OF TIME; TO CREATE NEW SECTIONS
28 85-7-327 AND 85-7-329, MISSISSIPPI CODE OF 1972, TO ADDRESS THE
29 PRIORITY OF LIENS; TO CREATE NEW SECTION 85-7-331, MISSISSIPPI
30 CODE OF 1972, TO PROVIDE FOR THE ENFORCEMENT OF JUDGMENTS; TO
31 CREATE NEW SECTION 85-7-333, MISSISSIPPI CODE OF 1972, TO PROVIDE
32 A PENALTY FOR FILING A FALSE LIEN; TO AMEND SECTION 85-7-131,
33 MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 85-7-133,
34 MISSISSIPPI CODE OF 1972, TO CONFORM; TO REPEAL SECTIONS 85-7-181,



35 85-7-183, 85-7-185, 85-7-197, 85-7-199, 85-7-201, 85-5-137 AND
36 85-7-139, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR LIENS ON
37 AMOUNTS DUE A CONTRACTOR AND THE RECORDING THEREOF; AND FOR
38 RELATED PURPOSES.

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

40 **SECTION 1.** The following shall be codified as Section
41 85-7-301, Mississippi Code of 1972:

42 85-7-301. The following words and phrases shall have the
43 meanings ascribed herein unless the context clearly indicates
44 otherwise:

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

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

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

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

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

56 (f) "Materialmen" means all persons furnishing the
57 materials, tools, appliances, machinery, or equipment included in
58 the definition of materials.

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



61 (h) "Registered forester" has the meaning given in
62 Section 73-36-3.

63 (i) "Registered land surveyors" and "registered
64 professional engineers" means land surveyors or professional
65 engineers who are registered as land surveyors or professional
66 engineers under Title 73 at the time of performing, rendering, or
67 furnishing services protected under this article.

68 (j) "Residential property" means single-family and
69 two-family, three-family, and four-family residential real estate.

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

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

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

81 (l) "Subcontractor" means subcontractors having privity
82 of contract with the contractor; "subcontractor" also means
83 subcontractors having privity of contract with a subcontractor
84 having privity of contract with the contractor.



85 **SECTION 2.** The following shall be codified as Section
86 85-7-303, Mississippi Code of 1972:

87 85-7-303. (1) The following persons shall each have a
88 special lien on the real estate, factories, railroads, or other
89 property for which they furnish labor, services, or materials:

90 (a) All mechanics of every sort who have taken no
91 personal security for work done and material furnished in
92 building, repairing, or improving any real estate of their
93 employers;

94 (b) All contractors, all subcontractors and all
95 materialmen furnishing material to subcontractors, and all
96 laborers furnishing labor to subcontractors, and persons
97 furnishing material for the improvement of real estate;

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

101 (d) All registered foresters performing or furnishing
102 services on or with respect to any real estate;

103 (e) All registered land surveyors performing or
104 furnishing services on or with respect to any real estate;

105 (f) All contractors, all subcontractors and materialmen
106 furnishing material to subcontractors, and all laborers furnishing
107 labor for subcontractors for building factories, furnishing
108 material for factories, or furnishing machinery for factories;



109 (g) All machinists and manufacturers of machinery,
110 including corporations engaged in the business, who may furnish or
111 put up any mill or other machinery in any county or who may repair
112 the same;

113 (h) All contractors to build railroads; and

114 (i) All suppliers furnishing rental tools, appliances,
115 machinery, or equipment for the improvement of real estate.

116 (2) Each special lien specified in subsection (1) of this
117 section may attach to the real estate of the owner for which the
118 labor, services, or materials are furnished if they are furnished
119 at the instance of the owner, contractor, or some other person
120 acting for the owner or contractor and shall include the value of
121 work done and materials furnished in any easement or public right
122 of way adjoining the real estate if the work done or materials
123 furnished in the easement or public right of way is for the
124 benefit of the real estate and is within the scope of the owner's
125 contract for improvements to the real estate.

126 (3) Each special lien specified in subsection (1) of this
127 section shall include the amount due and owing the lien claimant
128 under the terms of its express or implied contract, subcontract or
129 purchase order subject to Section 85-7-305(5).

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



134 (5) Notwithstanding any other provision of this article, no
135 lien shall exist in favor of any contractor, subcontractor, or
136 sub-subcontractor who is unlicensed as required by either Section
137 31-3-1, et seq., or Section 73-59-1 et seq. Notwithstanding any
138 other provision of this article, if a contract is rendered
139 unenforceable because an unlicensed contractor, subcontractor, or
140 sub-subcontractor has not complied when required with Section
141 31-3-1, et seq., or Section 73-59-1 et seq, the unenforceability
142 shall not affect the rights of any other persons to enforce
143 contract, lien, or bond remedies and shall not affect the
144 obligations of a surety that has provided a bond on behalf of the
145 unlicensed contractor, subcontractor, or sub-subcontractor. It
146 shall not be a defense to any claim on a bond or indemnity
147 agreement that the principal or indemnitor is unlicensed as
148 provided in Section 31-3-1, et seq., or Section 73-59-1 et seq.

149 **SECTION 3.** The following shall be codified as Section
150 85-7-305, Mississippi Code of 1972:

151 85-7-305. (1) To make good the liens specified in Section
152 85-7-303(1), they must be created and declared in accordance with
153 the following provisions, and on failure of any of them the lien
154 shall not be effective or enforceable:

155 (a) A substantial compliance by the party claiming the
156 lien with the party's contract for building, repairing, or
157 improving; for architectural services furnished; for registered
158 forester services furnished or performed; for registered land



159 surveying or registered professional engineering services
160 furnished or performed; or for materials or machinery furnished or
161 set up, unless prevented by the owner, the owner's agent or
162 another party outside of the claimant's control;

163 (b) The filing for record of the claim of lien in the
164 office of the clerk of the chancery court of the county where the
165 property is located within ninety (90) days after the claimant's
166 last addition of labor or materials, the furnishing of the
167 architectural services, or the furnishing or performing of the
168 surveying or engineering services, or within ninety (90) days
169 after the material or machinery is furnished. The lien shall
170 include a statement regarding its expiration pursuant to Section
171 85-7-315 and a notice to the owner of the property on which a
172 claim of lien is filed that the owner has the right to contest the
173 lien; the absence of the statement or notice shall invalidate the
174 lien. The claim shall be in substance as follows:

175 "A.B., a mechanic, contractor, subcontractor, materialman,
176 machinist, manufacturer, registered architect, registered
177 forester, registered land surveyor, registered professional
178 engineer, or other person (as the case may be) claims a lien in
179 the amount of (specify the amount claimed) on the house, factory,
180 mill, machinery, or railroad (as the case may be) and the premises
181 or real estate on which it is erected or built, of C.D.
182 (describing the houses, premises, real estate, or railroad), for
183 satisfaction of a claim which became due on (specify the date the



184 claim was due, which is the same as the last date the labor,
185 services, or materials were supplied to the premises) for
186 building, repairing, improving, or furnishing material (or
187 whatever the claim may be).

188 THIS CLAIM OF LIEN EXPIRES AND IS VOID THREE HUNDRED
189 NINETY-FIVE (395) DAYS FROM THE DATE OF FILING OF THE CLAIM OF
190 LIEN IF NO NOTICE OF COMMENCEMENT OF LIEN ACTION IS FILED IN THAT
191 TIME PERIOD.

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

194 No later than two (2) business days after the date the claim
195 of lien is filed of record, the lien claimant shall send a true
196 and accurate copy of the claim of lien by registered or certified
197 mail or statutory overnight delivery to the owner of the property
198 or, if the owner's address cannot be found, the contractor, as the
199 agent of the owner; if the property owner is an entity on file
200 with the Secretary of State's office, sending a copy of the claim
201 of lien to the entity's address or the registered agent's address
202 shall satisfy this requirement. If the lien claimant is not the
203 contractor, he shall also send a copy of the claim of lien within
204 two (2) business days by registered or certified mail or any means
205 creating a written positive acceptance to the contractor or to the
206 contractor's registered agent.

207 (c) The commencement of a lien action for the recovery
208 of the amount of the party's claim against the party he contracted



209 with in county, circuit or chancery court within Three Hundred
210 Sixty Five (365) days from the date of filing for record of his or
211 her claim of lien. In addition, within thirty (30) days after
212 commencing a lien action, the party claiming the lien shall file a
213 notice with the clerk of the chancery court of the county wherein
214 the subject lien was filed, and, in addition, send a copy thereof
215 by any means providing a written positive acceptance thereof to
216 the owner and, if not previously notified in writing of the suit,
217 to the general contractor, or the registered agent of either. The
218 notice shall contain a caption referring to the then-owner of the
219 property against which the lien was filed and referring to a deed
220 or other recorded instrument in the chain of title of the affected
221 property. The notice shall be executed, under oath, by the party
222 claiming the lien or by that party's attorney of record, but
223 failure to execute the notice under oath shall be an amendable
224 defect which may be cured by the party claiming the lien or by the
225 party's attorney without leave of court at any time before entry
226 of the pretrial order and thereafter by leave of court. An
227 amendment of notice pursuant to this section shall relate back to
228 the date of filing of the notice. The notice shall identify the
229 court or arbitration venue wherein the lien action is brought; the
230 style and number, if any, of the lien action, including the names
231 of all parties thereto; the date of the filing of the lien action;
232 and the book and page number of the records of the county where
233 the subject lien is recorded in the same manner in which liens



234 specified in Section 85-7-303 are filed. The clerk of the
235 chancery court shall enter on the subject lien the book and page
236 on which the notice is recorded and shall index the notice in the
237 name of the then-purported owner as shown by the caption contained
238 in the notice. A separate lis pendens notice need not be filed
239 with the commencement of this action; and

240 (d) (i) If any design professional, contractor or
241 subcontractor procuring material, architect's services, registered
242 forester's services, registered land surveyor's services, or
243 registered professional engineer's services, labor, or supplies
244 for the building, repairing, or improving of any real estate,
245 building, or other structure shall abscond or die or leave the
246 state during the required time period for filing a lien action, so
247 that personal jurisdiction cannot be obtained on the contractor or
248 subcontractor in a lien action for the services, material, labor,
249 or supplies, or if the contractor or subcontractor shall be
250 adjudicated a bankrupt, or if, after the filing of a lien action,
251 no final judgment can be obtained against the contractor or the
252 subcontractor for the value of the material, services, labor, or
253 supplies because of the death or adjudication in bankruptcy, or if
254 the contract between the party claiming the lien and the
255 contractor or subcontractor includes a provision preventing
256 payment to the claimant until after the contractor or the
257 subcontractor has received payment, then and in any of these
258 events, the person or persons furnishing material, services,



259 labor, and supplies shall be relieved of the necessity of filing a
260 lien action or obtaining judgment against the contractor or
261 subcontractor as a prerequisite to enforcing a lien against the
262 property improved by the contractor or subcontractor.

263 (ii) Subject to Section 85-7-303, the person or
264 persons furnishing material, services, labor, and supplies may
265 enforce the lien directly against the improved property in a lien
266 action against the owner thereof, if filed within the required
267 time period for filing a lien action, with the judgment rendered
268 in the proceeding to be limited to a judgment in rem against the
269 property improved and to impose no personal liability upon the
270 owner of the property; however, in a lien action for recovery, the
271 owner of the improved real estate who has paid the agreed price or
272 any part of the agreed price, may set up the payment in any lien
273 action brought and prove by competent and relevant evidence that
274 the payments were applied as provided by law, and no judgment
275 shall be rendered against the improved property.

276 (iii) Within thirty (30) days after filing a lien
277 action, the party claiming the lien shall file a notice with the
278 clerk of the chancery court of the county where the lien was
279 filed. The notice shall contain a caption referring to the
280 then-owner of the property against which the lien was filed and
281 referring to a deed or other recorded instrument in the chain of
282 title of the affected property. The notice shall be executed,
283 under oath, by the party claiming the lien or by the party's



284 attorney of record. The notice shall identify the court or
285 arbitration venue where the lien action is brought; the style and
286 number of the lien action, if any, including the names of all
287 parties; the date of the filing of the lien action; and the book
288 and page number of the records of the county where the subject
289 lien is recorded in the same manner in which liens specified in
290 Section 85-7-303 are filed.

291 (iv) The clerk of the chancery court shall enter
292 on the subject lien the book and page on which the notice is
293 recorded and shall index the notice in the name of the
294 then-purported owner as shown by the caption contained in the
295 notice.

296 (v) A separate lis pendens notice need not be
297 filed with the commencement of this action.

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

305 "That certain claim of lien filed by A.B. against property of C.D.
306 on (date) and recorded at book (book#), page (page#) in the lien
307 index of (name of county) County is hereby amended by reducing the
308 amount of the claim of lien to (specify reduced amount claimed).



309 The remaining terms of the original claim of lien are hereby
310 incorporated by reference into this amended claim of lien. This
311 amended claim of lien relates back to the date that the original
312 claim of lien was filed for record."

313 (2) (a) The liens specified in Section 85-7-303 shall be
314 inferior to liens for taxes, to the general and special liens of
315 laborers, to the general lien of landlords of rent when a distress
316 warrant is issued out and levied, and to other general liens when
317 actual notice of the general lien of landlords and others has been
318 communicated before the work was done or materials or services
319 furnished; but the liens provided for in Section 85-7-303 shall be
320 superior to all other liens not excepted by this subsection.

321 (b) A lien as to the land and buildings, or
322 improvements thereon, shall have priority over all other liens,
323 deeds of trust, mortgages or encumbrances created subsequent to
324 the commencement of work on the building or improvement. All
325 liens, deed of trust, mortgages and encumbrances created before
326 the commencement of the work shall have priority over all liens
327 for the work. Enforcement of a lien of a mechanic, materialman or
328 other person created by Section 85-7-303 shall not affect any
329 prior deeds of trust or other lien, and the purchaser in
330 connection with the enforcement of the lien created by Section
331 85-7-303 shall take the property subject to any prior liens, deeds
332 of trust, mortgages or encumbrances of which the purchaser has
333 actual or constructive notice on the date of the purchase.



334 Foreclosure of any prior deeds of trust or other lien shall
335 terminate and extinguish the subordinate construction lien or
336 other interest as to the land and the buildings and improvements
337 thereon, whether or not at the time of the foreclosure the lien or
338 interest has been perfected in accordance with the provisions of
339 this article, and the mechanic, materialman or other person
340 thereafter shall have, to the extent of his lawful claim under
341 this article, the statutory right of redemption afforded under
342 applicable redemption laws to a judgment creditor whose judgment
343 was recorded on the date the work was commenced and the rights in
344 any excess proceeds received by the foreclosing lienholder as
345 provided by law.

346 (3) (a) Following compliance with the requirements of
347 subsection (1) of this section, in any proceeding against the
348 owner brought by any materialman, by any mechanic, by any laborer,
349 by any subcontractor, by any professional engineer, or by any
350 mechanic of any sort employed by any subcontractor or by any
351 materialmen furnishing material to any subcontractor, or by any
352 laborer furnishing labor to any subcontractor, to enforce a lien
353 against the property, the contractor or design professional having
354 a direct contractual relationship with the subcontractor or
355 professional engineer shall not be a necessary party, but may be
356 made a party. In any proceedings brought by any mechanic employed
357 by any subcontractor, by any materialmen furnishing material to
358 any subcontractor, or by any laborer furnishing labor to any



359 subcontractor, the subcontractor shall not be a necessary party,
360 but may be made a party. The design professional, contractor or
361 subcontractor, or all of them, may intervene in the proceedings at
362 any time before judgment for the purpose of resisting the
363 establishment of the lien or of asserting against the lienor any
364 claim of the contractor or subcontractor growing out of or related
365 to the transaction upon which the asserted lien is based.

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

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

379 (d) All liens arising under Section 85-7-303, except in
380 favor of the original contractor, design professional or surveyor,
381 shall stand on an equal footing, and be first paid out of the
382 proceeds of the sale of the property, or money collected from the
383 owner; and if the proceeds and money are insufficient to satisfy



384 the liens in full, the same shall be distributed pro rata among
385 the claimants thereof.

386 (4) In no event shall the aggregate amount of liens set up
387 by Section 85-7-303 exceed the contract price of the improvements
388 made or services performed.

389 (5) The filing fees for a claim of materialman's or
390 mechanic's lien and any related document created pursuant to this
391 section, including, but not limited to, a notice of commencement
392 of action, shall be the amount set for liens on real estate and
393 personal property.

394 **SECTION 4.** The following shall be codified as Section
395 85-7-307, Mississippi Code of 1972:

396 85-7-307. (1) The contractor shall, when so requested in
397 writing by the owner, the receipt of which can be shown by
398 positive acceptance, furnish to the owner or proprietor a complete
399 list of all subcontractors and materialmen. If the contractor
400 willfully fails or refuses to furnish the list or to give the
401 information to the owner within a reasonable time, or fails to pay
402 any materialman or subcontractor in direct privity with him in
403 accordance with any contract made with the owner or proprietor
404 specifically requiring him to do so, he shall thereby forfeit his
405 right to a lien under this article.

406 (2) When a claimant is requested to execute a waiver and
407 release in exchange for or to induce the making of an interim or
408 final payment, in accordance with Section 85-7-319(3) or (4), and



409 does so, if the owner is induced thereby to make the payment to
410 the design professional, contractor or subcontractor, as the case
411 may be, and the design professional, contractor or subcontractor,
412 without good cause, willfully fails or refuses to pay the claimant
413 the amount claimed as set forth in the waiver and release, then
414 the design professional, contractor or subcontractor, as the case
415 may be, shall be liable to the claimant in the amount of three (3)
416 times the amount claimed on the face of the waiver and release.

417 (3) The provisions of this section do not apply to single
418 family residential construction.

419 **SECTION 5.** The following shall be codified as Section
420 85-7-309, Mississippi Code of 1972:

421 85-7-309. (1) As to single family residential construction
422 only, payment made by or on behalf of the owner to a contractor or
423 design professional in privity with the owner, for the work of a
424 subcontractor, materialman, professional engineer or professional
425 surveyor, shall be an absolute defense to any claim of lien made
426 by the subcontractor, materialman, professional engineer or
427 professional surveyor, (a) but only to the extent of the payment
428 actually made by or on behalf of the owner to the contractor or
429 design professional in privity with the owner, and (b) only to the
430 extent the owner has not received a pre-lien notice in accordance
431 with subsection (2) of this section before the payment.

432 (2) As to single family residential construction only, as a
433 condition precedent of any right to a special lien under Section



434 85-7-303 in favor of a subcontractor, materialman, design
435 professional, professional engineer or professional surveyor in
436 privity with the owner, the claimant must provide the owner a
437 pre-lien written notice at least ten (10) days before filing a
438 claim of lien under Section 85-7-305 of this article.

439 **SECTION 6.** The following shall be codified as Section
440 85-7-311, Mississippi Code of 1972:

441 85-7-311. (1) (a) When the building or improvement is
442 erected under or by virtue of any contract with a lessee in
443 possession, and the erection thereof is not in violation of the
444 terms or conditions of the lease, the lien shall attach to the
445 building or improvement, and to the unexpired term of the lease,
446 and the holder of the lien shall have the right to avoid a
447 forfeiture of the lease by paying rent to the lessor, as it
448 becomes due and payable, or by the performance of any other act or
449 duty to which the lessee may be bound.

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



459 property; and if he elects to take possession and to remain
460 therein until the expiration of the term of the lease, he may,
461 within a reasonable time after the expiration of the term, remove
462 the building or improvement from the premises, but only to the
463 extent that it is detachable from the real property without injury
464 to the real property.

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

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

479 (3) Notwithstanding subsections (1) and (2) of this section,
480 unless done by the written consent of the owner, only the building
481 or improvements erected, and then only to the extent that they are
482 detachable from the real property without injury to the real



483 property, as well as the estate of the tenant in the land, shall
484 be subject to the lien.

485 **SECTION 7.** The following shall be codified as Section
486 85-7-313, Mississippi Code of 1972:

487 85-7-313. (1) The special lien specified in Section
488 85-7-303(1) shall be dissolved if the owner, purchaser from owner,
489 or lender providing construction or purchase money or any other
490 loan secured by real estate shows that:

491 (a) The lien has been waived in writing by lien
492 claimant; or

493 (b) (i) They or any of them have obtained the sworn
494 written statement of the contractor or person other than the owner
495 at whose instance the labor, services, or materials were
496 furnished, or the owner when conveying title in a bona fide sale
497 or loan transaction, that the agreed price or reasonable value of
498 the labor, services, or materials has been paid or waived in
499 writing by the lien claimant; and

500 (ii) When the sworn written statement was obtained
501 or given as a part of a transaction:

502 1. Involving a conveyance of title in a bona
503 fide sale;

504 2. Involving a loan in which the real estate
505 is to secure repayment of the loan; or

506 3. Where final disbursement of the contract
507 price is made by the owner to the contractor, there was not of



508 record, at the time of the settlement of the transaction, a valid
509 claim of lien which had not been previously canceled, dissolved,
510 or expired.

511 (2) As used in this section, the term:

512 (a) "Person other than the owner" shall not include a
513 subcontractor.

514 (b) "Final disbursement" of the contract price means
515 payment of the agreed price between the owner and contractor for
516 the improvements made upon the real estate or the reasonable value
517 of the labor, services, and materials incorporated in the
518 improvements upon the real estate and shall include payment of the
519 balance of the contract price to an escrow agent.

520 (3) If the sworn written statement, as required by
521 subsection(1)(b)(i) of this section, is willfully and falsely
522 made, then all parties injured thereby shall have a right of
523 action against the maker of the sworn written statement for
524 damages in the amount of three (3) times their actual damages
525 sustained on account of the willfully and falsely made sworn
526 written statement.

527 **SECTION 8.** The following shall be codified as Section
528 85-7-315, Mississippi Code of 1972:

529 85-7-315. (1) When any person entitled under this article to
530 claim a lien against any real estate located in this state files a
531 lien in the office of the clerk of the chancery court of the
532 county in which the real estate is located, the owner of the real



533 estate or the contractor employed to improve the property may,
534 before or after foreclosure proceedings are instituted, discharge
535 the lien upon the approval of a bond by the clerk of the chancery
536 court. The bond shall be conditioned to pay to the holder of the
537 lien the sum that may be found to be due the holder upon the trial
538 of any lien action that may be filed by the lienholder to recover
539 the amount of the claim within three hundred sixty-five (365) days
540 from the time the claim of lien is filed. The bond shall be one
541 hundred ten percent (110%) of the amount claimed under that lien
542 and shall be either a bond with good security approved by the
543 clerk of the chancery court or a cash bond. An owner or
544 contractor may be required to provide supporting data to the clerk
545 to prove the value of domiciled property when the property serves
546 as a bond to discharge a lien provided for in this section. Upon
547 the approval by the clerk of the bond provided for in this
548 section, the real estate shall be discharged from the lien. For
549 purposes of this subsection, the term "domicile" means the
550 established, fixed, permanent, or ordinary dwelling place of the
551 owner.

552 (2) Within seven (7) days of filing the bond required by
553 subsection (1) of this section and any attachments, the party
554 filing the bond shall send a notice of filing the bond and a copy
555 of the bond by registered or certified mail or statutory overnight
556 delivery to the lien claimant at the address stated on the lien
557 or, if no address is shown for the lien claimant, to the person



558 shown as having filed the lien on behalf of the claimant at the
559 indicated address of the person or, if the bond is filed by a
560 contractor, to the owner of the property; however, if the lien
561 claimant or the owner is an entity on file with the Secretary of
562 State's office, sending the notice of filing the bond and a copy
563 of the bond to the company's address or the registered agent's
564 address on file with the Secretary of State shall be deemed
565 sufficient; failure to send the notice of filing the bond and copy
566 of the bond shall not invalidate the bond for purposes of
567 discharge of a claim of lien under this section. With respect to
568 property bonds, the clerk shall not accept any real property bond
569 unless the real property is scheduled in an attached affidavit
570 setting forth a description of the property and indicating the
571 record owner thereof, including any liens and encumbrances and
572 amounts thereof, the market value, and the value of the sureties'
573 interest therein, which affidavit shall be executed by the owner
574 or owners of the interest; the bond and affidavit shall be
575 recorded in the same manner and at the same cost as other deeds of
576 real property. So long as the bond exists, it shall constitute a
577 lien against the property described in the attached affidavit.

578 (3) The clerk of the chancery court shall have the right to
579 rely upon the amount specified in the claim of lien in determining
580 the sufficiency of any bond to discharge under this section. The
581 failure to specify both the amount claimed due under the lien and



582 the date the claim was due shall result in the lien not
583 constituting notice for any purposes.

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

587 **SECTION 9.** The following shall be codified as Section
588 85-7-317, Mississippi Code of 1972:

589 85-7-317. If services are performed or furnished with
590 respect to any real estate by any registered architect, registered
591 forester, registered land surveyor, or registered professional
592 engineer who is a member of a partnership or who is an agent or
593 employee of a corporation or an association and the contract for
594 the services is made for or on behalf of the owner with the
595 partnership or corporation or association, the partnership,
596 corporation, or association shall be entitled to all the
597 privileges and benefits of Section 85-7-303, just as if the
598 partnership, corporation, or association was a registered
599 architect, a registered forester, a registered professional
600 engineer or a registered land surveyor.

601 **SECTION 10.** The following shall be codified as Section
602 85-7-319, Mississippi Code of 1972:

603 85-7-319. (1) A right to claim a lien or to claim upon a
604 bond may not be waived in advance of furnishing of labor,
605 services, or materials. Any purported waiver or release of lien
606 or bond claim or of this section executed or made in advance of



607 furnishing of labor, services, or materials is null, void, and
608 unenforceable.

609 (2) No oral or written statement by the claimant purporting
610 to waive, release, impair, or otherwise adversely affect a lien or
611 bond claim is enforceable or creates an estoppel or impairment of
612 claim of lien or claim upon a bond unless:

613 (a) It is pursuant to a waiver and release form duly
614 executed by claimant prescribed below; and

615 (b) The claimant has received payment for the claim as
616 set forth in subsection (6) of this section.

617 (3) When a claimant is requested to execute a waiver and
618 release in exchange for or in order to induce payment other than
619 final payment, the waiver and release shall substantially follow
620 the following form, in boldface capital letters in at least 12
621 point font, and the priority of the claimant's lien rights, except
622 as to retention, shall upon the payment thereafter run from the
623 day after the date specified in the Interim Waiver and Release
624 upon Payment form:

625 INTERIM WAIVER AND RELEASE UPON PAYMENT

626 STATE OF MISSISSIPPI

627 COUNTY OF _____

628 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED
629 BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE
630 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN
631 AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED



632 IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY
633 _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS
634 FOLLOWS:

635 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
636 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
637 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
638 UPON THE RECEIPT OF THE SUM OF \$ _____, THE MECHANIC AND/OR
639 MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF
640 LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
641 AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF
642 _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE
643 MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
644 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE
645 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING
646 OR PREMISES.

647 GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____,
648 _____.

649 _____ (SEAL)

650 _____

651 _____

652 (WITNESS)

653 _____

654 (ADDRESS)

655 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL
656 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED



657 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY
658 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN
659 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION
660 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE
661 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM
662 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER Section
663 85-7-319, Mississippi Code of 1972.

664 However, the failure to correctly complete any of the blank
665 spaces in the above form shall not invalidate the form if the
666 subject matter of the release may reasonably be determined.

667 (4) When a claimant is requested to execute a waiver and
668 release in exchange for or in order to induce making of final
669 payment, the waiver and release shall substantially follow the
670 following form in boldface capital letters in at least 12 point
671 font:

672 WAIVER AND RELEASE UPON FINAL PAYMENT

673 STATE OF MISSISSIPPI

674 COUNTY OF _____

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



682 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
683 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
684 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
685 UPON THE RECEIPT OF THE SUM OF \$ _____, THE MECHANIC AND/OR
686 MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF
687 LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS
688 AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR
689 MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT
690 OF SAID CONTRACTOR FOR SAID PROPERTY.

691 GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____,
692 ____.

693 _____ (SEAL)

694 _____

695 _____

696 (WITNESS)

697 _____

698 (ADDRESS)

699 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL
700 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
701 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY
702 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN
703 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION
704 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE
705 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM



706 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER Section
707 85-7-319, Mississippi Code of 1972.

708 However, the failure to correctly complete any of the blank spaces
709 in the above form shall not invalidate the form if the subject
710 matter of the release may reasonably be determined.

711 (5) Nothing contained in this section shall affect:

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

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

724 (c) The validity of a cancellation or release of a
725 recorded claim of lien or preliminary notice of lien rights; or

726 (d) The provisions of Section 85-7-313(1)(b), or
727 Section 85-7-315.

728 (6) (a) When a waiver and release provided for in this
729 section is executed by the claimant, it shall be binding against



730 the claimant for all purposes, subject only to payment in full of
731 the amount set forth in the waiver and release.

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

734 (i) Actual receipt of funds;

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

737 (iii) Sixty (60) days after the date of the
738 execution of the waiver and release, unless before the expiration
739 of the sixty-day period the claimant files in the county in which
740 the property is located an affidavit of nonpayment, using
741 substantially the following form in boldface capital letters in at
742 least 12-point font:

743 AFFIDAVIT OF NONPAYMENT UNDER SECTION 85-7-319

744 STATE OF MISSISSIPPI

745 COUNTY OF _____

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



753 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
754 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
755 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)
756 PURSUANT TO SECTION 85-7-319 THE UNDERSIGNED EXECUTED A LIEN
757 WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____,
758 _____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$_____))
759 HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE
760 NONPAYMENT.

761 THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE
762 UNDERSIGNED, THIS _____ DAY OF _____, ____.

763 _____ (SEAL)

764 CLAIMANT'S SIGNATURE

765 SWORN TO AND EXECUTED

766 IN THE PRESENCE OF:

767 _____

768 WITNESS

769 _____

770 NOTARY PUBLIC

771 WITHIN SEVEN (7) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,
772 THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED
773 OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF
774 THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON
775 FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE
776 AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S



777 ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED
778 SUFFICIENT."

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

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

788 (e) A waiver and release provided in this section shall
789 be suspended upon filing of an affidavit of nonpayment until
790 payment in full has been received.

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

794 **SECTION 11.** The following shall be codified as Section
795 87-5-321, Mississippi Code of 1972:

796 87-5-321. (1) Failure of a lien claimant to commence a lien
797 action to collect the amount of his or her claim within three
798 hundred sixty-five (365) days from the date of filing the lien, or
799 failure of the lien claimant to file the statutory notice of
800 commencement of lien action in the county where the property is
801 located, renders the claim of lien unenforceable. A claim of lien



802 may be disregarded if no notice of commencement of lien action was
803 filed within three hundred ninety-five (395) days from the date
804 the claim of lien was filed. Any lien filed shall include on the
805 face of the lien the following statement in at least 12 point bold
806 font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID THREE HUNDRED
807 NINETY-FIVE (395) DAYS FROM THE DATE OF FILING OF THE CLAIM OF
808 LIEN IF NO NOTICE OF COMMENCEMENT OF LIEN ACTION IS FILED IN THAT
809 TIME PERIOD." Failure to include the required language shall
810 invalidate the lien and prevent it from being filed. No release
811 or voiding of the liens shall be required. A lien shall expire
812 sooner and be disregarded once it is determined that no notice of
813 commencement was timely filed in response to a notice of contest
814 pursuant to Section 85-7-323.

815 (2) Whenever any lien has been fully satisfied, the holder
816 thereof must file a cancellation of the same in the record in the
817 office of the chancery Clerk.

818 (3) Any holder of a lien, who, after having been fully paid
819 fails for thirty (30) days after demand in writing to so file a
820 cancellation as provided in subsection (1) of this section shall
821 be liable to any person thereby injured to the amount of the
822 injury, which shall not be less than Five Hundred Dollars
823 (\$500.00) plus reasonable attorney's fees and costs.

824 **SECTION 12.** The following shall be codified as Section
825 85-7-323, Mississippi Code of 1972:



826 85-7-323. (1) An owner or an owner's agent or attorney, or
827 the contractor or contractor's agent or attorney, may elect to
828 shorten the time prescribed in which to commence a lien action to
829 enforce any claim of lien by recording in the chancery clerk's
830 office a notice in substantially the following form, in boldface
831 capital letters in at least 12 point font, along with proof of
832 delivery upon the lien claimant:

833 "NOTICE OF CONTEST OF LIEN

834 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

835 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN
836 FILED BY YOU ON _____ 20____, AND RECORDED IN _____ BOOK
837 _____, PAGE _____ OF THE PUBLIC RECORDS OF _____
838 COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY _____, AND
839 THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A LIEN ACTION TO
840 ENFORCE YOUR LIEN IS LIMITED TO 60 DAYS FROM RECEIPT OF THIS
841 NOTICE. THIS _____ DAY OF _____, 20____.

842 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT:
843 (1) COMMENCE A LIEN ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN
844 CLAIM PURSUANT TO SECTION 85-7-305, MISSISSIPPI CODE OF 1972,
845 WITHIN 60 DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A NOTICE
846 OF COMMENCEMENT OF LIEN ACTION WITHIN 30 DAYS OF FILING THE
847 ABOVE-REFERENCED LIEN ACTION.

848 SIGNED: _____

849 (OWNER, CONTRACTOR, AGENT OR ATTORNEY) "



850 (2) The clerk of the chancery court shall cross-reference
851 the notice of contest of lien to the lien. The owner or the
852 owner's agent or attorney, or the contractor or the contractor's
853 agent or attorney, shall send a copy of the notice of contest of
854 lien within seven (7) days of filing by registered or certified
855 mail or statutory overnight delivery to the lien claimant at the
856 address noted on the face of the lien. Service shall be deemed
857 complete upon mailing.

858 (3) The lien shall be extinguished by law ninety (90) days
859 after the filing of the notice of contest of lien if no notice of
860 commencement of lien action is filed in that time period. No
861 release or voiding of the liens shall be required. This
862 subsection shall not be construed to extend the time in which a
863 lien action must begin.

864 **SECTION 13.** The following shall be codified as Section
865 85-7-325, Mississippi Code of 1972:

866 85-7-325. The computation of time under this article shall
867 be determined pursuant to Section 1-3-67.

868 **SECTION 14.** The following shall be codified as Section
869 85-7-327, Mississippi Code of 1972:

870 85-7-327. (1) Judgments establishing the lien, and ordering
871 the property sold for the satisfaction thereof, may be enforced by
872 special writ of execution as set forth in Section 85-7-153.

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



875 **SECTION 15.** The following shall be codified as Section
876 85-7-329, Mississippi Code of 1972:

877 85-7-329. (1) Any person who shall falsely and knowingly
878 file the claim of lien provided in this act without just cause
879 shall be liable to every party injured thereby for a penalty equal
880 to two (2) times the full amount for which the claim was filed, to
881 be recovered in an action by any party so injured at any time
882 within six (6) months from the filing.

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

889 **SECTION 16.** Section 85-7-131, Mississippi Code of 1972, is
890 amended as follows:

891 85-7-131. * * * Gas to oil and gas wells, the operator
892 thereof shall have such a lien upon the interest of each
893 nonoperator owner of an interest in the mineral leasehold estate
894 for such nonoperator's proportionate part of such labor, material
895 and services rendered by the operator or for the operator's
896 account * * * on behalf of each nonoperator in the drilling,
897 completion, recompletion, reworking or other operations of such
898 oil and gas well. If such house, building, structure, or fixture
899 be in a city, town or village, the lien shall extend to and cover



900 the entire lot of land on which it stands and the entire curtilage
901 thereto belonging; or, if not in a city, town or village, the lien
902 shall extend to and cover one (1) acre of land on which the same
903 may stand, if there be so much, to be selected by the holder of
904 the lien. If the structure be a water well, the lien shall extend
905 only to all pumps, pipes, equipment therein and all water well
906 appurtenances. If the structure be an oil or gas well, the lien
907 shall extend to the nonoperator's interest in the mineral estate
908 and the fixtures and equipment in the producing unit assigned such
909 well by the State Oil and Gas Board. If the structure be a
910 railroad or railroad embankment, the lien shall extend to and
911 cover the entire roadbed and right-of-way, depots and other
912 buildings used or connected therewith. If the services of the
913 architect, surveyor, engineer, laborers, materialmen, rental or
914 lease equipment suppliers or of the contractors shall be upon the
915 whole subdivision, the lien shall extend to and cover the entire
916 subdivision; but if a part only of the land is subdivided and
917 laborers', materialmen's, rental or lease equipment suppliers',
918 architects', surveyors' or engineers' services are required and
919 contractors are employed, then the lien shall extend to only that
920 portion of said property upon which the services were required or
921 upon which or in connection with which the work was done or the
922 materials or rental or lease equipment were furnished. Such lien
923 shall take effect as to purchasers or encumbrancers for a valuable
924 consideration without notice thereof, only from the time of



925 commencing suit to enforce the lien, or from the time of filing
926 the contract under which the lien arose, or notice thereof, in the
927 office of the clerk of the chancery court, as hereinafter stated;
928 delivery of material to the job is prima facie evidence of its use
929 therein, and use of water from a water well is prima facie
930 evidence of acceptability of the well. In the case of oil and gas
931 wells, such lien shall take effect as to purchasers or
932 encumbrancers for a valuable consideration without notice thereof,
933 only from the time of filing notice of such lien as provided by
934 Section 85-7-133.

935 **SECTION 17.** Section 85-7-133, Mississippi Code of 1972, is
936 amended as follows:

937 85-7-133. Each of the several chancery clerks of this state
938 shall provide in his office, as a part of the land records of his
939 county, a record entitled "Notice of * * * Oil and Gas Liens"
940 wherein notices under Section 85-7-131 shall be filed and
941 recorded, and such liens, as provided hereunder, shall not take
942 effect unless and until some notation thereof shall be filed and
943 recorded in said record showing a description of the property
944 involved, the name of the lienor or lienors, the date of filing,
945 if and where suit is filed, and if and where contract is filed or
946 recorded.

947 **SECTION 18.** Sections 85-7-181, 85-7-183, 85-7-185, 85-7-197,
948 85-7-199, 85-7-201, 85-5-137 and 85-7-139, Mississippi Code of



949 1972, which provide for liens on amounts due a contractor and the
950 filing thereof, are repealed.

951 **SECTION 19.** The codifier is directed to codify Sections 1
952 through 15 as a separate article within Title 85, Chapter 7,
953 Mississippi Code of 1972.

954 **SECTION 20.** This act shall take effect and be in force from
955 and after its passage.

