

By: Senator(s) Hopson, Horhn, Jackson
(11th), Simmons (12th)

To: Judiciary, Division A

SENATE BILL NO. 2622
(As Sent to Governor)

1 AN ACT TO PROVIDE FOR CONTRACTOR LIENS AND THE ENFORCEMENT
2 AND NOTICE OF CONTRACTOR LIENS; TO CREATE NEW SECTION 85-7-401,
3 MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO CREATE NEW
4 SECTION 85-7-403, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LIENS
5 FOR LABOR, SERVICES OR MATERIALS FURNISHED; TO CREATE NEW SECTION
6 85-7-405, MISSISSIPPI CODE OF 1972, TO PROVIDE HOW THE LIENS ARE
7 CREATED AND RECORDED; TO CREATE NEW SECTION 85-7-407, MISSISSIPPI
8 CODE OF 1972, TO REQUIRE CONTRACTORS TO LIST ALL SUBCONTRACTORS,
9 MATERIALMEN, LABORERS AND EMPLOYEES; TO CREATE NEW SECTION
10 85-7-409, MISSISSIPPI CODE OF 1972, TO LIMIT THE RECOVERY OF
11 SUBCONTRACTORS AGAINST A RESIDENTIAL HOMEOWNER UNDER CERTAIN
12 CIRCUMSTANCES; TO CREATE NEW SECTION 85-7-411, MISSISSIPPI CODE OF
13 1972, TO PROVIDE FOR THE ATTACHMENT OF LIENS TO BUILDINGS OR
14 IMPROVEMENTS ON LEASED LAND; TO CREATE NEW SECTION 85-7-413,
15 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISSOLVING OF LIENS;
16 TO CREATE NEW SECTION 85-7-415, MISSISSIPPI CODE OF 1972, TO
17 PROVIDE FOR THE DISCHARGE OF A LIEN BY FILING BOND; TO CREATE NEW
18 SECTION 85-7-417, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE
19 RIGHTS OF CERTAIN PROFESSIONALS; TO CREATE NEW SECTION 85-7-419,
20 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE WAIVER AND RELEASE OF
21 LIEN AND BOND RIGHTS; TO CREATE NEW SECTION 85-7-421, MISSISSIPPI
22 CODE OF 1972, TO PROVIDE FOR EXTINGUISHMENT OF LIENS IF NO NOTICE
23 OF COMMENCEMENT IS FILED; TO CREATE NEW SECTION 85-7-423,
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 85-7-425, MISSISSIPPI CODE OF 1972, TO
27 PROVIDE FOR THE COMPUTATION OF TIME; TO CREATE NEW SECTIONS
28 85-7-427 AND 85-7-429, MISSISSIPPI CODE OF 1972, TO ADDRESS THE
29 PRIORITY OF LIENS; TO CREATE NEW SECTION 85-7-431, MISSISSIPPI
30 CODE OF 1972, TO PROVIDE FOR THE ENFORCEMENT OF JUDGMENTS; TO
31 CREATE NEW SECTION 85-7-433, MISSISSIPPI CODE OF 1972, TO PROVIDE
32 A PENALTY FOR FILING A FALSE LIEN; TO AMEND SECTIONS 85-7-131,
33 85-7-133,, 85-7-141, 85-7-143, 85-7-145 AND 85-7-147, MISSISSIPPI
34 CODE OF 1972, TO CONFORM; TO REPEAL SECTIONS 85-7-135, 85-7-137,



35 85-7-139, 85-7-149, 85-7-151, 85-7-181, 85-7-183, 85-7-185,
36 85-7-197, 85-7-199 AND 85-7-201, MISSISSIPPI CODE OF 1972, WHICH
37 PROVIDE FOR LIENS ON AMOUNTS DUE A CONTRACTOR AND THE RECORDING
38 THEREOF; AND FOR 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 85-7-401, Mississippi Code of 1972:

42 85-7-401. 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 or lessee of the real estate.

49 (c) "Lien action" means a civil action against the
50 owner of improved property to perfect and make permanent the lien
51 created by Section 85-7-403.

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

54 (e) "Professional surveyor" has the meaning given in
55 Section 73-13-71.

56 (f) "Materials" means materials, tools, appliances,
57 machinery, or equipment used in making improvements to the real
58 estate.

59 (g) "Materialmen" or "materialman" means all persons
60 furnishing the materials, tools, appliances, machinery, or



61 equipment included in the definition of materials to a contractor
62 or to a subcontractor in privity with the contractor.

63 (h) "Professional engineer" has the meaning given in
64 Section 73-13-3.

65 (i) "Residential property" means single-family and
66 two-family, three-family, and four-family residential real estate.

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

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

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

78 (k) "Subcontractor" means subcontractors having privity
79 of contract with the contractor; "subcontractor" also means
80 subcontractors having privity of contract with a subcontractor
81 having privity of contract with the contractor.

82 (l) "Registered architect" has the meaning given in
83 Section 73-1-3.

84 (m) "Design professional" includes professional
85 surveyors, professional engineers and registered architects.



86 **SECTION 2.** The following shall be codified as Section
87 85-7-403, Mississippi Code of 1972:

88 85-7-403. (1) The following persons shall each have a
89 special lien on the real estate or other property for which they
90 furnish labor, services or materials:

91 (a) All contractors, all subcontractors and all
92 materialmen furnishing material for the improvement of real
93 estate;

94 (b) All registered architects or professional engineers
95 furnishing plans, drawings, designs, or other architectural or
96 engineering services on or with respect to any real estate;

97 (c) All registered land surveyors performing or
98 furnishing services on or with respect to any real estate.

99 (2) Each special lien specified in subsection (1) of this
100 section may attach to the real estate of the owner for which the
101 labor, services or materials are furnished if they are furnished
102 at the instance of the owner, design professional or contractor or
103 a subcontractor having direct privity of contract with a
104 contractor, and shall include the value of work done and labor,
105 services or materials furnished.

106 (3) Each special lien specified in subsection (1) of this
107 section shall be limited to the amount due and owing the lien
108 claimant under the terms of its express or oral contract,
109 subcontract or purchase order subject to Section 85-7-405(4).



110 (4) Each special lien specified in subsection (1) of this
111 section shall include interest on the principal amount due in
112 accordance with Section 75-17-1, 75-17-7 or 75-17-19 as applicable
113 by law.

114 (5) Notwithstanding any other provision of this article, no
115 lien shall exist in favor of any contractor or subcontractor who
116 is not licensed as required by either Section 31-3-1 et seq., or
117 Section 73-59-1 et seq., or who contracts with any contractor or
118 subcontractor who is not licensed as required. Upon request, any
119 contractor or subcontractor is required to provide any owner,
120 contractor, subcontractor or materialman a copy of that person's
121 current license.

122 **SECTION 3.** The following shall be codified as Section
123 85-7-405, Mississippi Code of 1972:

124 85-7-405. (1) To make good a lien created in Section
125 85-7-403(1), it must be created and declared in accordance with
126 the following provisions, and on failure of any of them the lien
127 shall not be effective or enforceable:

128 (a) A substantial compliance by the party claiming the
129 lien with the party's contract, subcontract or purchase order for
130 work performed or labor, services or material provided in the
131 building, repairing, or improving of real estate; for
132 architectural services furnished; for registered land surveying or
133 registered professional engineering services furnished or
134 performed; or for materials or machinery furnished;



135 (b) The filing for record of the claim of lien in the
136 office of the clerk of the chancery court of the county where the
137 property is located within ninety (90) days after the claimant's
138 last work performed, labor, services or materials provided, the
139 furnishing of architectural services, or the furnishing or
140 performing of surveying or engineering services. The lien shall
141 include a statement regarding its expiration pursuant to Section
142 85-7-421(1) and a notice to the owner of the property on which a
143 claim of lien is filed that the owner has the right to contest the
144 lien; the absence of the statement or notice shall invalidate the
145 lien. The claim shall be in substance as follows:

146 "A.B., a mechanic, contractor, subcontractor, materialman,
147 machinist, manufacturer, registered architect, registered
148 forester, registered land surveyor, registered professional
149 engineer, or other person (as the case may be) claims a lien in
150 the amount of (specify the amount claimed) on the building,
151 structure, house, factory, mill, machinery, or railroad (as the
152 case may be) and the premises or real estate on which it is
153 erected or built, of C.D. (describing the houses, premises, real
154 estate, or railroad), for satisfaction of a claim which became due
155 on (specify the date the claim was due, which is the same as the
156 last date the labor, services or materials were supplied to the
157 premises) for work performed or labor, services provided (or
158 whatever the claim may be).



159 THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY
160 (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A
161 PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME
162 PERIOD.

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

165 No later than two (2) business days after the claim of lien
166 is filed of record, the lien claimant shall send a true and
167 accurate copy of the claim of lien by registered or certified mail
168 or statutory overnight delivery to the owner of the property or,
169 if the owner's address cannot be found, the contractor, as the
170 agent of the owner; if the property owner is an entity on file
171 with the Secretary of State's office, sending a copy of the claim
172 of lien to the entity's address or the registered agent's address
173 shall satisfy this requirement. If the lien claimant is not the
174 contractor, he shall also send a copy of the claim of lien within
175 two (2) business days by registered or certified mail or statutory
176 overnight delivery to the contractor or to the contractor's
177 registered agent.

178 (c) (i) A payment action for the recovery of the
179 amount of the lien claimant's claim against the party he
180 contracted with shall be commenced in county, circuit or chancery
181 court within one hundred eighty (180) days from the date of filing
182 for record of the lien claimant's claim of lien. A lis pendens



183 notice shall be filed with the commencement of the action with a
184 copy to the owner and contractor;

185 (ii) The payment action shall be commenced by
186 summons and complaint. The defendants shall be summoned, as in
187 other actions at law, to appear and defend the action; and in case
188 any necessary party defendant shall be a nonresident of or absent
189 from the state, or cannot be found, he may be made a party by
190 publication, as in cases of nonresident or absent defendants in
191 chancery, requiring him to appear on a day to be therein named;
192 and in default of appearance, the same proceedings shall be had as
193 if the defendant had been duly summoned and made default;

194 (iii) Nothing in this paragraph (c) shall
195 prejudice the parties' contractual rights to arbitration, as
196 applicable;

197 (d) (i) The commencement of a payment action under
198 paragraph (c) is not required if the owner has not made payment to
199 the contractor and the lien claimant cannot secure a final
200 judgment against the party with whom the lien claimant contracted
201 because:

202 1. The party has been adjudicated a bankrupt;

203 2. If an individual, the party is deceased;

204 or

205 3. Payment is not due to the lien claimant
206 under the applicable contract agreement until after payment is
207 received by the party with whom the lien claimant contracted.



208 (ii) If paragraph (d)(i) of this section applies,
209 the person or persons furnishing labor, services or materials may
210 enforce the lien directly against the property in a lien action
211 against the owner if it is filed within the required time for
212 filing a payment action, with the judgment rendered in the
213 proceeding to be limited to a judgment in rem against the property
214 improved and to impose no personal liability upon the owner of the
215 property. A lis pendens notice shall be filed with the
216 commencement of this lien action with a copy to the owner and the
217 contractor.

218 (iii) Nothing in this paragraph (d) shall impact
219 or negate the rights and defenses available pursuant to Section
220 85-7-413 or 85-7-419.

221 (e) A claim of lien may be amended at any time to
222 increase or reduce the amount claimed, and the amended claim of
223 lien shall relate back to the date of filing for record of the
224 original claim of lien. An amended claim of lien filed for record
225 pursuant to this subsection shall be sent to the owner of the
226 property in the same manner as required for a claim of lien in
227 subsection (1)(b) of this section and shall be in substance as
228 follows:

229 "That certain claim of lien filed by A.B. against property of
230 C.D. on (date) and recorded at book (book#), page (page#) in the
231 lien index of (name of county) County is hereby amended by
232 increasing/reducing (cross out one) the amount of the claim of



233 lien to (specify reduced amount claimed). The remaining terms of
234 the original claim of lien are hereby incorporated by reference
235 into this amended claim of lien. This amended claim of lien
236 relates back to the date that the original claim of lien was filed
237 for record."

238 (2) (a) The liens specified in Section 85-7-403
239 ("construction liens") shall be inferior to liens for taxes, but
240 construction liens shall be superior in priority to all other
241 liens except as specified in subsection (2)(b) and (c).

242 (b) Except as provided in subsection (2)(c), a
243 construction lien shall have priority over all other liens, deeds
244 of trust, mortgages or encumbrances filed after the date and time
245 of the filing of the notice of lien in the office of the chancery
246 clerk of the county in which the land is located. All liens,
247 deeds of trust, mortgages and encumbrances filed before the date
248 and time of the filing of the notice of construction lien shall
249 have priority over the construction lien, whether the work secured
250 by the lien was performed before or after the filing of the lien,
251 deed of trust, mortgage or other encumbrance. This priority will
252 extend to amendments or restatements and assignments of the lien,
253 deed of trust, mortgage and other encumbrance. The priorities in
254 this subsection are determined by the date and time of filing and
255 without regard to the actual knowledge of the parties of
256 unrecorded liens. Enforcement of a construction lien shall not
257 affect any prior deeds of trust or other liens, and a purchaser,



258 in connection with the enforcement of a construction lien, shall
259 take the property subject to any prior liens, deeds of trust,
260 mortgages or encumbrances of which the purchaser has actual or
261 constructive notice on the date of the purchase. Foreclosure of
262 any prior deeds of trust or other liens shall terminate and
263 extinguish the subordinate construction lien or other interest as
264 to the land and the buildings and improvements thereon, whether or
265 not at the time of the foreclosure the construction lien or
266 interest has been perfected in accordance with the provisions of
267 this article, and the subordinate lienholder shall have the rights
268 in any excess proceeds received by the foreclosing lienholder as
269 provided by law.

270 (c) A deed of trust, mortgage, assignment of leases and
271 rents, fixture filing or other security agreement affecting real
272 property is a construction mortgage to the extent it secures a
273 loan or loans for the purpose of financing the repair or
274 construction of an improvement on the real property, which may
275 include the acquisition cost of the real property. A construction
276 lien is subordinate to a construction mortgage if the construction
277 mortgage is filed in the land records before a notice of a claim
278 of lien is filed pursuant to Section 85-7-405 and the lender,
279 secured party, mortgagee, beneficiary or holder of the
280 construction mortgage obtained either: (i) an affidavit or sworn
281 statement from the owner to the effect that no work has been
282 performed on, or materials delivered to, the real property; or



283 (ii) an affidavit or sworn statement from the contractor, or owner
284 if there is no contractor, as provided in Section 85-7-413(1) (b)
285 regarding payment for work, materials or services provided. A
286 construction mortgage has this priority for all loan advances
287 secured thereby regardless of whether the advances are made before
288 or after the filing of a notice of a construction lien, and this
289 priority will extend to amendments, restatements and refinancings
290 of the construction mortgage.

291 (3) (a) Following compliance with the requirements of
292 subsection (1) of this section, in any proceeding against the
293 owner to enforce a lien created by Section 85-7-403 against the
294 property, the party having a direct contractual relationship with
295 the lien claimant shall not be a necessary party, but may be made
296 a party. The design professional, contractor or subcontractor, or
297 all of them, may intervene in the proceedings at any time before
298 judgment for the purpose of resisting the establishment of the
299 lien or of asserting against the lien claimant any claim of the
300 contractor or subcontractor growing out of or related to the
301 contract, subcontract or purchase order upon which the asserted
302 lien is based.

303 (b) Any party to an action against the owner to enforce
304 a lien against the property, by appropriate plea, may put in issue
305 the fact of indebtedness or the existence of the lien, or both,
306 and may interpose any other defense or join any counterclaim
307 applicable to the action; and if the court by its finding, or the



308 jury by their verdict, as the case may be, ascertain that the
309 plaintiff has a lien as claimed, judgment shall be entered for the
310 amount secured thereby, plus interest and costs, against the party
311 liable for the same.

312 (c) The court, in its discretion, may award reasonable
313 costs, interest and attorney's fees to the prevailing party in an
314 action against the owner to enforce a lien against the property.

315 (d) All liens arising under Section 85-7-403 shall have
316 an equal priority, and be first paid out of the proceeds of the
317 sale of the property, or money collected from the owner; and if
318 the proceeds and money are insufficient to satisfy the liens in
319 full, the proceeds and money shall be distributed pro rata among
320 the claimants thereof or as otherwise ordered by the court.

321 (4) In no event shall the aggregate amount of liens created
322 by Section 85-7-403 exceed the contract price as determined by the
323 terms of the contract or other agreement between the owner and
324 contractor for the improvements made or services performed.

325 (5) (a) If payments have been made in reliance upon either
326 lien waivers issued by lien claimants pursuant to Section
327 85-7-413(1) (a) or sworn written statements of the contractor
328 pursuant to Section 85-7-413(1) (b), the aggregate amount of liens
329 created by Section 85-7-403 in favor of subcontractors and
330 materialmen who are not in privity of contract with the owner
331 shall not exceed the unpaid balance of the contract price under
332 the terms of the contract or agreement between the owner and the



333 contractor at the time the first notice of lien is filed pursuant
334 to this section.

335 (b) If payments have been made in reliance upon either
336 lien waivers issued by lien claimants pursuant to Section
337 85-7-413(1) (a) or sworn written statements of the contractor
338 pursuant to Section 85-7-413(1) (b), the aggregate amount of liens
339 created by Section 85-7-403 in favor of design professionals who
340 are not in privity of contract with the owner shall not exceed the
341 unpaid balance of the contract price under the terms of the
342 contract or agreement between the owner and the design
343 professional who is in privity of contract with the owner at the
344 time the first notice of lien is filed pursuant to this section.

345 **SECTION 4.** The following shall be codified as Section
346 85-7-407, Mississippi Code of 1972:

347 85-7-407. (1) Upon the written request of the property
348 owner by registered or certified mail or statutory overnight
349 delivery, the contractor shall furnish to the owner a complete
350 list of all subcontractors and materialmen and upon written
351 request from the contractor, all subcontractors shall provide the
352 same information. If the contractor or subcontractor willfully
353 fails or refuses to furnish the list or to give the information to
354 the owner or contractor within a reasonable time, he shall thereby
355 forfeit his right to a lien under this article. Similarly, if the
356 contractor or subcontractor fails to pay any materialman or
357 subcontractor in direct privity with him in accordance with any



358 contract, subcontract or purchase order specifically requiring him
359 to do so, he shall thereby forfeit his right to a lien under this
360 article.

361 (2) For any person having a right to a lien pursuant to
362 Section 85-7-403 who does not have privity of contract with the
363 contractor, or, if there is no contractor, with the owner, and is
364 providing labor, services or materials for the improvement of
365 property, within thirty (30) days following the first delivery of
366 labor, services or materials to the property, the person shall
367 give a written notice to the contractor, or, if there is no
368 contractor, to the owner, either by e-mail with a confirmed
369 receipt, registered or certified mail, or statutory overnight
370 delivery setting forth the following:

371 (a) The name, address, and telephone number of the
372 person providing labor, services or materials;

373 (b) The name and address of each person at whose
374 instance the labor, services or materials are being furnished;

375 (c) The name of the project and location of the project
376 to which labor, services or materials are provided; and

377 (d) A description of the labor, services or materials
378 being provided and, if known, the contract price or anticipated
379 value of the labor, services or materials to be provided.

380 If the person not in privity of contract with the contractor
381 fails to provide the required notice to the contractor, he shall
382 thereby forfeit his right to a lien under this article.



383 (3) When a claimant is requested to execute a waiver and
384 release in exchange for or to induce the making of an interim or
385 final payment in accordance with Section 85-7-419(2) or (3), and
386 does so, if payment is made pursuant to the waiver and release and
387 the design professional, contractor or subcontractor, without good
388 cause, in turn willfully fails or refuses to pay the claimant the
389 amount claimed as set forth in the waiver and release, then the
390 design professional, contractor or subcontractor, as the case may
391 be, shall be liable to the claimant in the amount of three (3)
392 times the amount claimed on the face of the waiver and release.
393 Good cause includes, but is not limited to, any defense available
394 pursuant to the terms of the applicable contract, subcontract or
395 purchase order.

396 (4) The provisions of this section do not apply to
397 single-family residential construction.

398 **SECTION 5.** The following shall be codified as Section
399 85-7-409, Mississippi Code of 1972:

400 85-7-409. (1) As to single-family residential construction
401 only, payment made by or on behalf of the owner to a contractor or
402 design professional in privity with the owner, for the work of a
403 subcontractor, materialman, professional engineer or professional
404 surveyor, shall be an absolute defense to any claim of lien made
405 by the subcontractor, materialman, professional engineer or
406 professional surveyor, (a) but only to the extent of the payment
407 actually made by or on behalf of the owner to the contractor or



408 design professional in privity with the owner, and (b) only to the
409 extent the owner has not received a pre-lien notice in accordance
410 with subsection (2) of this section before the payment.

411 (2) As to single-family residential construction only, as a
412 condition precedent of any right to a special lien under Section
413 85-7-403 in favor of a subcontractor, materialman or design
414 professional not in privity with the owner, the claimant must
415 provide the owner a pre-lien written notice at least ten (10) days
416 before filing a claim of lien under Section 85-7-405, which can be
417 evidenced by any reliable means of delivery.

418 (3) The claimant's written notice required in subsection (2)
419 shall be in substantially the same form as the Pre-Lien Notice set
420 forth in Section 85-7-433(5).

421 **SECTION 6.** The following shall be codified as Section
422 85-7-411, Mississippi Code of 1972:

423 85-7-411. (1) (a) When the building or improvement is
424 erected under or by virtue of any contract with a lessee in
425 possession, and the erection thereof is not in violation of the
426 terms or conditions of the lease, the lien shall attach to the
427 building or improvement, and to the unexpired term of the lease,
428 and the holder of the lien shall have the right to avoid a
429 forfeiture of the lease by paying rent to the lessor, as it
430 becomes due and payable, or by the performance of any other act or
431 duty to which the lessee is bound.



432 (b) If the lien can be enforced by a sale of the
433 building or improvement, the purchaser may, at his election, (i)
434 become entitled to the possession of the demised premises, and to
435 remain therein for the unexpired term, by paying rent to the
436 lessor, or performing any other act or duty to which the lessee
437 was bound, as if he were the assignee of the lease; or (ii) he
438 may, within sixty (60) days after the sale, remove the building or
439 improvement from the premises, but only to the extent that it is
440 detachable from the real property without injury to the real
441 property; and if he elects to take possession and to remain
442 therein until the expiration of the term of the lease, he may,
443 within a reasonable time after the expiration of the term, remove
444 the building or improvement from the premises, but only to the
445 extent that it is detachable from the real property without injury
446 to the real property.

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

451 (2) When a lien attaches under subsection (1) of this
452 section, the lessor, at any time before a sale of the property,
453 shall have a right to discharge the lien by paying to the holder
454 the amount secured thereby, including costs and all monies he may
455 have paid to the lessor to prevent a forfeiture of the lease, and,
456 after a sale, he shall have the right to prevent the removal of



457 the building or improvement from the premises by paying to the
458 purchaser the value of the building or improvement; and upon the
459 payment, either to the holder of the lien or to the purchaser, the
460 building or improvement shall become the property of the lessor.

461 (3) Notwithstanding subsections (1) and (2) of this section,
462 unless done by the written consent of the owner, only the building
463 or improvements erected, and then only to the extent that they are
464 detachable from the real property without injury to the real
465 property, as well as the estate of the tenant in the land, shall
466 be subject to the lien.

467 **SECTION 7.** The following shall be codified as Section
468 85-7-413, Mississippi Code of 1972:

469 85-7-413. (1) The special lien specified in Section
470 85-7-403(1) shall be dissolved and unenforceable if the owner,
471 purchaser from owner, or lender providing construction or purchase
472 money or any other loan secured by real estate shows that:

473 (a) Payment or release of funds was made by the owner,
474 purchaser or lender in reliance upon a lien waiver issued by the
475 lien claimant pursuant to Section 85-7-419; or

476 (b) Payment or release of funds was made by the owner,
477 purchaser or lender in reliance upon a sworn written statement of
478 the contractor that the agreed price or reasonable value of the
479 labor, services or materials has been paid or waived in writing by
480 the lien claimant. If the sworn written statement, as required by
481 the paragraph (b), is falsely and knowingly made, then all parties



482 injured thereby shall have a right of action against the maker of
483 the sworn written statement for damages in the amount of three (3)
484 times their actual damages sustained on account of the willfully
485 and falsely made sworn written statement.

486 (2) In a lien action, the owner of the improved real estate
487 shall have a defense to the extent of any payment for the work,
488 materials or services that are the subject of the lien made to a
489 contractor or design professional in privity of contract with the
490 owner or to a subcontractor in good-faith reliance upon receipt of
491 a lien waiver pursuant to subsection (1) (a), or upon receipt of a
492 sworn written statement pursuant to subsection (1) (b), and before
493 receipt of notice of the filing by the lien claimant of a notice
494 of lien pursuant to Section 85-7-405 or an affidavit of nonpayment
495 pursuant to Section 85-7-419(5) (b).

496 **SECTION 8.** The following shall be codified as Section
497 85-7-415, Mississippi Code of 1972:

498 85-7-415. (1) When any person entitled under this article
499 to claim a lien against any real estate located in this state
500 files a lien in the office of the clerk of the chancery court of
501 the county in which the real estate is located, the owner of the
502 real estate or the contractor or subcontractor employed to improve
503 the property may, before or after foreclosure proceedings are
504 instituted, discharge the lien upon the approval of a bond by the
505 clerk of the chancery court. The bond shall be conditioned to pay
506 to the holder of the lien the sum that may be found to be due the



507 holder upon the trial of any payment action that may be filed by
508 the lienholder to recover the amount of the claim within one
509 hundred eighty (180) days from the time the claim of lien is filed
510 or as otherwise required by Section 85-7-423. The bond shall be
511 one hundred ten percent (110%) of the amount claimed under that
512 lien and shall be either a cash bond or a bond with good security
513 approved by the clerk of the chancery court and issued by any
514 surety company authorized to do business in the State of
515 Mississippi. Upon approval by the clerk of the bond, the real
516 estate shall be discharged from the lien.

517 (2) Within seven (7) days of filing the bond required by
518 subsection (1) of this section and any attachments, the party
519 filing the bond shall send a notice of filing the bond and a copy
520 of the bond by registered or certified mail or statutory overnight
521 delivery to the lien claimant at the address stated on the lien
522 or, if no address is shown for the lien claimant, to the person
523 shown as having filed the lien on behalf of the claimant at the
524 indicated address of the person and, if the bond is filed by a
525 contractor or subcontractor, to the owner of the property and the
526 contractor; however, if the lien claimant or the owner or
527 contractor is an entity on file with the Secretary of State's
528 office, sending the notice of filing the bond and a copy of the
529 bond to the company's address or the registered agent's address on
530 file with the Secretary of State shall be deemed sufficient;
531 failure to send the notice of filing the bond and copy of the bond



532 shall not invalidate the bond for purposes of discharge of a claim
533 of lien under this section. With respect to bonds secured by
534 property, the clerk shall not accept any real property bond unless
535 the real property is scheduled in an attached affidavit setting
536 forth a description of the property and indicating the record
537 owner thereof, including any liens and encumbrances and amounts
538 thereof, the market value, and the value of the sureties' interest
539 therein, which affidavit shall be executed by the owner or owners
540 of the interest; the bond and affidavit shall be recorded in the
541 same manner and at the same cost as other deeds of real property.
542 So long as the bond exists, it shall constitute a lien against the
543 property described in the attached affidavit.

544 (3) The clerk of the chancery court shall have the right to
545 rely upon the amount specified in the claim of lien in determining
546 the sufficiency of any bond to discharge under this section. The
547 failure to specify both the amount claimed due under the lien and
548 the date the claim was due shall result in the lien not
549 constituting notice for any purposes.

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

553 **SECTION 9.** The following shall be codified as Section
554 85-7-417, Mississippi Code of 1972:

555 85-7-417. If services are performed or furnished with
556 respect to any real estate by any design professional who is a



557 member of a partnership or who is an agent or employee of a
558 corporation or an association and the contract for the services is
559 made for or on behalf of the owner with the partnership or
560 corporation or association, the partnership, corporation or
561 association shall be entitled to all the privileges and benefits
562 of Section 85-7-403, just as if the partnership, corporation or
563 association were a design professional.

564 **SECTION 10.** The following shall be codified as Section
565 85-7-419, Mississippi Code of 1972:

566 85-7-419. (1) A right to claim a lien or to claim upon a
567 bond may not be waived in advance of furnishing of labor, services
568 or materials. Any purported waiver or release of lien, bond claim
569 or this article executed or made in advance of furnishing labor,
570 services or materials is null, void and unenforceable.

571 (2) When a claimant is requested to execute a waiver and
572 release in exchange for or in order to induce payment other than
573 final payment, the waiver and release shall substantially follow
574 the Interim Waiver and Release upon Payment form set forth in
575 Section 85-7-433(1). The failure to correctly complete any of the
576 blank spaces in the referenced form does not invalidate the form
577 if the subject matter of the release reasonably may be determined.

578 (3) When a claimant is requested to execute a waiver and
579 release in exchange for or in order to induce making of final
580 payment, the waiver and release shall substantially follow the
581 Waiver and Release upon Final Payment form set forth in Section



582 85-7-433(2). The failure to correctly complete any of the blank
583 spaces in the referenced form does not invalidate the form if the
584 subject matter of the release reasonably may be determined.

585 (4) Nothing contained in this section shall affect:

586 (a) The enforceability of any subordination of lien
587 rights by a potential lien claimant to the rights of any other
588 party which may have or acquire an interest in all or any part of
589 the real estate or other property for which the potential lien
590 claimant has furnished labor, services or material, even though
591 the subordination is entered into in advance of furnishing labor,
592 services or material, and even though the claimant has not
593 actually received payment in full for its claim;

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

598 (c) The validity of a cancellation or release of a
599 recorded claim of lien.

600 (5) (a) When a waiver and release provided for in this
601 section is executed by the claimant, it shall be binding against
602 the claimant for all purposes, subject only to payment in full of
603 the amount set forth in the waiver and release.

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

606 (i) Actual receipt of funds;



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

609 (iii) Sixty (60) days after the date of the
610 execution of the waiver and release, unless before the expiration
611 of the sixty-day period the claimant files in the county in which
612 the property is located an affidavit of nonpayment, using
613 substantially the affidavit of nonpayment form set forth in
614 Section 85-7-433(3), and sends a true and accurate copy of the
615 affidavit of nonpayment to the owner of the property in the manner
616 provided in Section 85-7-405 for sending a notice of a claim of
617 lien to the owner.

618 (c) A claimant who is paid, in full, the amount set
619 forth in the waiver and release form after filing an affidavit of
620 nonpayment shall upon request execute in recordable form an
621 affidavit swearing that payment in full has been received. Upon
622 recordation thereof in the county in which the affidavit of
623 nonpayment was recorded, the affidavit of nonpayment to which it
624 relates shall be deemed void.

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

627 (e) Except as provided in Section 85-7-413, a waiver
628 and release provided in accordance with this section shall be
629 suspended upon the filing of an affidavit of nonpayment until
630 payment in full has been received. However, an affidavit of
631 nonpayment shall not affect dissolution of the claimant's lien or



632 the availability or enforceability of any owner's defenses
633 pursuant to Section 85-7-413, if applicable.

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

637 **SECTION 11.** The following shall be codified as Section
638 85-7-421, Mississippi Code of 1972:

639 85-7-421. (1) Failure of a lien claimant to commence a
640 payment action to collect the amount of his or her claim within
641 one hundred eighty (180) days from the date of filing the lien
642 renders the claim of lien unenforceable. Any lien filed shall
643 include on the face of the lien the following statement in at
644 least 12 point bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID
645 ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM
646 OF LIEN IF A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD."
647 Failure to include the required language shall invalidate the lien
648 and prevent it from being filed. No release or voiding of the
649 liens shall be required. A lien shall expire sooner and be
650 disregarded once it is determined that no notice of commencement
651 was timely filed in response to a notice of contest pursuant to
652 Section 85-7-423.

653 (2) Whenever any lien has been fully satisfied, the holder
654 thereof shall file a cancellation of it in the record in the
655 office of the chancery clerk.



656 (3) Any holder of a lien, who, after having been fully paid,
657 fails for fifteen (15) days after demand in writing to file a
658 cancellation as provided in subsection (1) of this section, shall
659 be liable to any person thereby injured for the amount of the
660 injury, which shall not be less than Five Hundred Dollars
661 (\$500.00) per day that the required cancellation is not timely
662 filed, plus reasonable attorney's fees and costs.

663 **SECTION 12.** The following shall be codified as Section
664 85-7-423, Mississippi Code of 1972:

665 85-7-423. (1) An owner or an owner's agent or attorney, or
666 the contractor or contractor's agent or attorney, may elect to
667 shorten the time prescribed in which to commence a payment action
668 to enforce any claim of lien by recording in the chancery clerk's
669 office a notice in substantially the form set forth in Section
670 85-7-433(4), along with proof of delivery to the lien claimant.

671 (2) The clerk of the chancery court shall cross-reference
672 the notice of contest of lien to the lien. The owner or the
673 owner's agent or attorney, or the contractor or the contractor's
674 agent or attorney, shall send a copy of the notice of contest of
675 lien by registered or certified mail or statutory overnight
676 delivery to the lien claimant at the address noted on the face of
677 the lien within seven (7) days of filing. Service shall be deemed
678 complete upon mailing.

679 (3) The lien shall be extinguished by law upon the earlier
680 of ninety (90) days after the filing of the notice of contest of



681 lien, or one hundred eighty (180) days from the date of lien
682 filing if no payment action is filed in that time period. No
683 release or voiding of the liens shall be required. This
684 subsection shall not be construed to extend the time in which a
685 payment action must begin.

686 **SECTION 13.** The following shall be codified as Section
687 85-7-425, Mississippi Code of 1972:

688 85-7-425. The computation of time under this article shall
689 be determined pursuant to Section 1-3-67.

690 **SECTION 14.** The following shall be codified as Section
691 85-7-427, Mississippi Code of 1972:

692 85-7-427. (1) Judgments establishing the lien, and ordering
693 the property sold for the satisfaction thereof, may be enforced by
694 special writ of execution as set forth in Section 85-7-153.

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

697 **SECTION 15.** The following shall be codified as Section
698 85-7-429, Mississippi Code of 1972:

699 85-7-429. (1) Any person who shall falsely and knowingly
700 file the claim of lien provided in this act without just cause
701 shall be liable to every party injured thereby for a penalty equal
702 to three (3) times the full amount for which the claim was filed,
703 to be recovered in an action by any party so injured at any time
704 within one hundred eighty (180) days from the filing of the claim
705 of lien.



706 (2) Any person whose rights may be adversely affected by
707 wrongful filing of a claim of lien, as provided by this article
708 may, in addition to the remedies set forth in subsection (1) of
709 this section, apply, upon seven (7) days' notice, to the circuit,
710 county or chancery court, to expunge or vacate the claim of lien,
711 in accordance with Rule 81(d) (2) of the Mississippi Rules of Civil
712 Procedure.

713 **SECTION 16.** The following shall be codified as Section
714 85-7-431, Mississippi Code of 1972:

715 85-7-431. Where a contractor gives a payment bond providing
716 payment protection to subcontractors and material suppliers to the
717 full extent provided by the Mississippi Little Miller Act found at
718 Section 31-5-51, the payment bond shall be in substitution for the
719 liens provided for a subcontractor or materialman in this article.
720 The contractor's right to a lien is not affected by the provision
721 of a bond.

722 **SECTION 17.** The following shall be codified as Section
723 85-7-433, Mississippi Code of 1972:

724 85-7-433. (1) The following form is the Interim Waiver and
725 Release Upon Payment form referred to in Section 85-7-419:

726 INTERIM WAIVER AND RELEASE UPON PAYMENT

727 STATE OF MISSISSIPPI

728 COUNTY OF _____

729 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED

730 BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE



731 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN
732 AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED
733 IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY
734 _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS
735 FOLLOWS:

736 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
737 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
738 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

739 UPON THE RECEIPT OF THE SUM OF \$ _____, THE MECHANIC
740 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
741 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY
742 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF
743 _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE
744 MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
745 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE
746 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING
747 OR PREMISES.

748 _____

749 SIGNATURE

750 BY: _____

751 (PRINT NAME)

752 ITS: _____

753 (PRINT TITLE)

754 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF

755 _____, 20__.



756 _____

757 NOTARY PUBLIC

758 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL
759 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
760 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY
761 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN
762 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION
763 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE
764 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM
765 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION
766 85-7-419, MISSISSIPPI CODE OF 1972.

767 (2) The following form is the Waiver and Release Upon Final
768 Payment form referred to in Section 85-7-419:

769 WAIVER AND RELEASE UPON FINAL PAYMENT

770 STATE OF MISSISSIPPI

771 COUNTY OF _____

772 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED
773 BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE
774 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN
775 AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED
776 IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY
777 _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS
778 FOLLOWS:



779 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
780 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
781 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

782 UPON THE RECEIPT OF THE SUM OF \$ _____, THE MECHANIC
783 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
784 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY
785 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR
786 OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON
787 ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

788 _____

789 SIGNATURE

790 BY: _____

791 (PRINT NAME)

792 ITS: _____

793 (PRINT TITLE)

794 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF
795 _____, 20__.

796 _____

797 NOTARY PUBLIC

798 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL
799 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED
800 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY
801 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN
802 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION
803 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE



804 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM
805 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION
806 85-7-419, MISSISSIPPI CODE OF 1972.

807 _____

808 SIGNATURE

809 BY: _____

810 (PRINT NAME)

811 ITS: _____

812 (PRINT TITLE)

813 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF

814 _____, 20__.

815 _____

816 NOTARY PUBLIC

817 (3) The following form is the Affidavit of Nonpayment
818 referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

820 STATE OF MISSISSIPPI

821 COUNTY OF _____

822 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED

823 BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE

824 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN

825 AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED

826 IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY

827 _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS

828 FOLLOWS:



829 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
830 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
831 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

832 PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN
833 WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____,
834 _____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$_____))
835 HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE
836 NONPAYMENT.

837 THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE
838 UNDERSIGNED.

839 _____

840 SIGNATURE

841 BY: _____

842 (PRINT NAME)

843 ITS: _____

844 (PRINT TITLE)

845 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF

846 _____, 20__.

847 _____

848 NOTARY PUBLIC

849 WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,
850 THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED
851 OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF
852 THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON
853 FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE



854 AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S
855 ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED
856 SUFFICIENT.

857 (4) The following form is the Notice of Contest of Lien form
858 referred to in Section 85-7-423:

859 NOTICE OF CONTEST OF LIEN

860 STATE OF MISSISSIPPI

861 COUNTY OF _____

862 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

863 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF
864 LIEN FILED BY YOU ON _____ 20____, AND RECORDED IN _____
865 BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF
866 _____ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY
867 _____, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A
868 PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO SIXTY (60) DAYS
869 FROM RECEIPT OF THIS NOTICE. THIS _____ DAY OF _____,
870 20____.

871 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO
872 NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF
873 THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF
874 1972, WITHIN SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE; AND (2)
875 FILE A NOTICE OF COMMENCEMENT OF PAYMENT ACTION WITHIN THIRTY (30)
876 DAYS OF FILING THE ABOVE-REFERENCED PAYMENT ACTION.

877 _____

878 SIGNATURE



879 BY: _____

880 (PRINT NAME)

881 ITS: _____

882 (PRINT TITLE)

883 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF

884 _____, 20__.

885 _____

886 NOTARY PUBLIC

887 (5) The following form is the Pre-Lien Notice form referred
888 to in Section 85-7-409(3):

889 PRE-LIEN NOTICE TO OWNER

890 TO: [NAME AND ADDRESS OF OWNER]

891 TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT

892 TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972,

893 WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED

894 LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY

895 COMMONLY KNOWN AS _____

896 ("THE PROPERTY"), FOR THE SUM OF \$ _____ FOR WHICH THE

897 UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF

898 SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM

899 THE DATE HEREOF.

900 SO NOTIFIED, THIS THE ____ DAY OF _____, 20__.

901 LIEN CLAIMANT: _____

902 (PRINT NAME)

903 BY: _____



904 (SIGNATURE)

905 ITS: _____

906 (PRINT TITLE)

907 **SECTION 18.** Section 85-7-131, Mississippi Code of 1972, is
908 amended as follows:

909 85-7-131. Every * * * water well or * * * oil and gas well,
910 and any fixed machinery, gearing or other fixture that may or may
911 not be used or connected therewith, * * * shall be liable
912 for * * * services or construction and the debt shall be a lien
913 thereon. * * * As to oil and gas wells, the operator thereof
914 shall have * * * a lien upon the interest of each nonoperator
915 owner of an interest in the mineral leasehold estate for * * * the
916 nonoperator's proportionate part of * * * the labor, material and
917 services rendered by the operator or for the operator's
918 account * * * on behalf of each nonoperator in the drilling,
919 completion, recompletion, reworking or other operations of * * *
920 the oil and gas well. * * * If the structure * * * is a water
921 well, the lien shall extend only to all pumps, pipes, equipment
922 therein and all water well appurtenances. If the structure * * *
923 is an oil or gas well, the lien shall extend to the nonoperator's
924 interest in the mineral estate and the fixtures and equipment in
925 the producing unit assigned * * * to the well by the State Oil and
926 Gas Board. * * * The lien shall take effect, as to purchasers or
927 encumbrancers for a valuable consideration without notice thereof,
928 only from the time of commencing suit to enforce the lien, or from



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

938 **SECTION 19.** Section 85-7-133, Mississippi Code of 1972, is
939 amended as follows:

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

949 **SECTION 20.** Section 85-7-141, Mississippi Code of 1972, is
950 amended as follows:

951 85-7-141. Any person entitled to and desiring to have the
952 benefit of * * * a lien under Section 85-7-131 shall commence his
953 suit in the circuit or county court of the county in which the



954 property or some part thereof is situated, if the principal of his
955 demand exceeds Two Hundred Dollars (\$200.00), within twelve (12)
956 months next after the time when the money due and claimed by the
957 suit became due and payable following the day on which the last of
958 the labor was performed or material or rental or lease equipment
959 was supplied by the person bringing the action, and not after; and
960 the suit shall be commenced by petition, describing with
961 reasonable certainty the property upon which the lien is averred
962 to exist, and setting out the nature of the contract and
963 indebtedness, and the amount thereof; and the plaintiff shall file
964 therewith in all cases, except where the whole work or materials,
965 or both, were furnished in pursuance of a written contract for an
966 aggregate price, a bill of particulars exhibiting the amount and
967 kind of labor performed, and of materials furnished, and the
968 prices at which and times when the same were performed and
969 furnished; and such suits shall be docketed and conducted as other
970 suits in * * * that court, and may be tried at the first term.

971 **SECTION 21.** Section 85-7-143, Mississippi Code of 1972, is
972 amended as follows:

973 85-7-143. All persons having an interest in the controversy,
974 and all persons claiming liens on the same property, by virtue
975 of * * * Section 85-7-131, shall be made parties to the suit; and
976 should any necessary or proper party be omitted, he may be brought
977 in by amendment, on his own application or that of any other party



978 interested; and claims of several parties having liens on the same
979 property may be joined in the same action.

980 **SECTION 22.** Section 85-7-145, Mississippi Code of 1972, is
981 amended as follows:

982 85-7-145. In all actions to enforce a lien granted by
983 Section 85-7-131, the defendants shall be summoned, as in other
984 actions at law, to appear and defend the action; and in case any
985 necessary party defendant shall be a nonresident of or absent from
986 the state, or cannot be found, he may be made a party by
987 publication, as in cases of nonresident or absent defendants in
988 chancery, requiring him to appear on a day to be therein named;
989 and in default of appearance, the same proceedings shall be had as
990 if * * * the defendant had been duly summoned and made default.

991 **SECTION 23.** Section 85-7-147, Mississippi Code of 1972, is
992 amended as follows:

993 85-7-147. In all actions to enforce a lien granted by
994 Section 85-7-131, the defendants, or any of them, by answer to the
995 petition, may make any defense they may have against the demand of
996 the plaintiff, and also any counterclaim against him touching the
997 subject-matter of the suit. And should any defendant claim to
998 have a lien upon the same property, for materials furnished or
999 labor done thereon, he may present the * * * lien by his answer;
1000 and the cause shall be at issue without a replication, and the
1001 parties shall be confined at the trial to the cause of action and
1002 defense set forth in the pleadings.



1003 **SECTION 24.** Sections 85-7-135, 85-7-137, 85-7-139, 85-7-149,
1004 85-7-151, 85-7-181, 85-7-183, 85-7-185, 85-7-197, 85-7-199 and
1005 85-7-201, Mississippi Code of 1972, which provide for liens on
1006 amounts due a contractor and the filing thereof, are repealed.

1007 **SECTION 25.** The codifier is directed to codify Sections 1
1008 through 17 as a separate article within Title 85, Chapter 7,
1009 Mississippi Code of 1972.

1010 **SECTION 26.** This act shall take effect and be in force from
1011 and after its passage.

