

By: Senator(s) Hopson

To: Judiciary, Division A

SENATE BILL NO. 2364

1 AN ACT TO AMEND SECTION 85-7-433, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE "NOTICE OF CONTEST OF LIEN" FORM TO CLARIFY THE TIME  
3 IN WHICH THE NOTICE IS TO BE FILED AND TO CONFORM THE FORM TO  
4 SECTION 85-7-423; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 85-7-433, Mississippi Code of 1972, is  
7 amended as follows:

8 85-7-433. (1) The following form is the Interim Waiver and  
9 Release Upon Payment form referred to in Section 85-7-419:

10 INTERIM WAIVER AND RELEASE UPON PAYMENT

11 STATE OF MISSISSIPPI

12 COUNTY OF \_\_\_\_\_

13 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED

14 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE

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

16 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED

17 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY

18 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS

19 FOLLOWS:



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

23 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
24 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
25 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
26 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF  
27 \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE  
28 MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON  
29 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE  
30 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING  
31 OR PREMISES.

32 \_\_\_\_\_

33 SIGNATURE

34 BY: \_\_\_\_\_

35 (PRINT NAME)

36 ITS: \_\_\_\_\_

37 (PRINT TITLE)

38 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
39 \_\_\_\_\_, 20\_\_.

40 \_\_\_\_\_

41 NOTARY PUBLIC

42 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL  
43 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED  
44 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY



45 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN  
46 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION  
47 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE  
48 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM  
49 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION  
50 85-7-419, MISSISSIPPI CODE OF 1972.

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

53 WAIVER AND RELEASE UPON FINAL PAYMENT

54 STATE OF MISSISSIPPI

55 COUNTY OF \_\_\_\_\_

56 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
57 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
58 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
59 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
60 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
61 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
62 FOLLOWS:

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

66 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
67 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
68 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
69 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR



70 OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON  
71 ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

72 \_\_\_\_\_

73 SIGNATURE

74 BY: \_\_\_\_\_

75 (PRINT NAME)

76 ITS: \_\_\_\_\_

77 (PRINT TITLE)

78 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
79 \_\_\_\_\_, 20\_\_.

80 \_\_\_\_\_

81 NOTARY PUBLIC

82 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL  
83 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED  
84 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY  
85 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN  
86 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION  
87 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE  
88 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM  
89 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION  
90 85-7-419, MISSISSIPPI CODE OF 1972.

91 \_\_\_\_\_

92 SIGNATURE

93 BY: \_\_\_\_\_

94 (PRINT NAME)



95 ITS: \_\_\_\_\_

96 (PRINT TITLE)

97 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF

98 \_\_\_\_\_, 20\_\_.

99 \_\_\_\_\_

100 NOTARY PUBLIC

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

103 AFFIDAVIT OF NONPAYMENT

104 STATE OF MISSISSIPPI

105 COUNTY OF \_\_\_\_\_

106 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
107 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
108 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
109 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
110 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
111 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
112 FOLLOWS:

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

116 PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN  
117 WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED \_\_\_\_\_,  
118 \_\_\_\_\_. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$ \_\_\_\_\_)



119 HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE  
120 NONPAYMENT.

121 THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE  
122 UNDERSIGNED.

123 \_\_\_\_\_

124 SIGNATURE

125 BY: \_\_\_\_\_

126 (PRINT NAME)

127 ITS: \_\_\_\_\_

128 (PRINT TITLE)

129 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF

130 \_\_\_\_\_, 20\_\_.

131 \_\_\_\_\_

132 NOTARY PUBLIC

133 WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,  
134 THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED  
135 OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF  
136 THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON  
137 FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE  
138 AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S  
139 ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED  
140 SUFFICIENT.

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

143 NOTICE OF CONTEST OF LIEN



144 STATE OF MISSISSIPPI

145 COUNTY OF \_\_\_\_\_

146 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

147 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF  
148 LIEN FILED BY YOU ON \_\_\_\_\_ 20\_\_\_\_, AND RECORDED IN \_\_\_\_\_  
149 BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE PUBLIC RECORDS OF  
150 \_\_\_\_\_ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY  
151 \_\_\_\_\_, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A  
152 PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO \* \* \* NINETY  
153 (90) DAYS FROM RECEIPT OF THIS NOTICE. THIS \_\_\_\_\_ DAY OF  
154 \_\_\_\_\_, 20\_\_\_\_.

155 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO  
156 NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF  
157 THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF  
158 1972, WITHIN \* \* \* NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE;  
159 AND (2) FILE A LIS PENDENS NOTICE OF \* \* \* THE PAYMENT  
160 ACTION \* \* \* WITH THE CHANCERY CLERK UPON COMMENCEMENT OF THE  
161 PAYMENT ACTION WITH A COPY TO THE LIEN CLAIMANT, OWNER AND  
162 CONTRACTOR.

163 \_\_\_\_\_  
164 SIGNATURE

165 BY: \_\_\_\_\_  
166 (PRINT NAME)

167 ITS: \_\_\_\_\_  
168 (PRINT TITLE)



169 SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE \_\_\_\_ DAY OF  
170 \_\_\_\_\_, 20\_\_.

171 \_\_\_\_\_  
172 NOTARY PUBLIC

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

175 PRE-LIEN NOTICE TO OWNER

176 TO: [NAME AND ADDRESS OF OWNER]

177 TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT  
178 TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972,  
179 WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED  
180 LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY  
181 COMMONLY KNOWN AS \_\_\_\_\_  
182 ("THE PROPERTY"), FOR THE SUM OF \$ \_\_\_\_\_ FOR WHICH THE  
183 UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF  
184 SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM  
185 THE DATE HEREOF.

186 SO NOTIFIED, THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

187 LIEN CLAIMANT: \_\_\_\_\_

188 (PRINT NAME)

189 BY: \_\_\_\_\_

190 (SIGNATURE)

191 ITS: \_\_\_\_\_

192 (PRINT TITLE)





193           **SECTION 2.** This act shall take effect and be in force from  
194 and after July 1, 2015.

