

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.

