

By: Senator(s) Harkins, Dearing

To: Business and Financial  
Institutions

SENATE BILL NO. 2425

1 AN ACT TO REENACT SECTIONS 85-7-501 THROUGH 85-7-525,  
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE "COMMERCIAL REAL ESTATE  
3 BROKER LIEN ACT"; TO REPEAL SECTION 85-7-527, MISSISSIPPI CODE OF  
4 1972, WHICH PROVIDES FOR THE REPEAL OF SECTIONS 85-7-501 THROUGH  
5 85-7-525, KNOWN AS THE "COMMERCIAL REAL ESTATE BROKER LIEN ACT";  
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 85-7-501, Mississippi Code of 1972, is  
9 reenacted as follows:

10 85-7-501. This article shall be known and may be cited as  
11 the "Commercial Real Estate Broker Lien Act."

12 **SECTION 2.** Section 85-7-503, Mississippi Code of 1972, is  
13 reenacted as follows:

14 85-7-503. As used in this article, the following terms have  
15 the following meanings:

16 (a) "Broker" means a real estate broker licensed  
17 pursuant to Section 73-35-3(1).

18 (b) "Broker services" means services for which a  
19 license issued by the Mississippi Real Estate Commission is  
20 required under Section 73-35-1 et seq.



21 (c) "Commercial real estate" means any real property or  
22 any and every interest or estate in land, including leaseholds,  
23 timeshares and condominiums, whether corporeal or incorporeal,  
24 freehold or nonfreehold, but excluding oil, gas or mineral leases  
25 and any other mineral leasehold, mineral estate or mineral  
26 interest of any nature whatsoever, which at the time the property  
27 or interest is made the subject of an agreement for broker  
28 services:

29 (i) Is lawfully used primarily for sales, office,  
30 research, institutional, warehouse, manufacturing, industrial or  
31 mining purposes or for multifamily residential purposes involving  
32 five (5) or more dwelling units; or

33 (ii) May lawfully be used for any of the purposes  
34 listed in this paragraph (c) by a duly enacted zoning ordinance or  
35 which is the subject of an official application or petition to  
36 amend the applicable zoning ordinance to permit any of the uses  
37 listed in this paragraph (c) which is under consideration by the  
38 government agency with authority to approve the amendment; or

39 (iii) Is in good faith intended to be immediately  
40 used for any of the purposes listed in this paragraph (c) by the  
41 parties to any contract, lease, option or offer to make any  
42 contract, lease, or option.

43 (d) "Compensation" means any compensation that is due a  
44 broker for performance of broker services.



45 (e) "Lien claimant" means a broker claiming a lien  
46 under this article.

47 (f) "Owner" means the owner of record of any interest  
48 in commercial real estate.

49 **SECTION 3.** Section 85-7-505, Mississippi Code of 1972, is  
50 reenacted as follows:

51 85-7-505. (1) A broker shall have a lien upon commercial  
52 real estate in the amount that the broker is due under a written  
53 agreement for broker services signed by the owner or signed by the  
54 owner's duly authorized agent, if:

55 (a) The broker has performed under the provisions of  
56 the agreement;

57 (b) The written agreement for broker services clearly  
58 sets forth the broker's duties to the owner; and

59 (c) The written agreement for broker services sets  
60 forth the conditions upon which the compensation shall be earned  
61 and the amount of the compensation.

62 (2) The lien under this section shall be available only to  
63 the broker named in the instrument signed by the owner or the  
64 owner's duly authorized agent.

65 (3) A broker's lien is not valid or enforceable against a  
66 grantee or purchaser of an interest in the commercial real estate  
67 conveyed by the person owing the compensation if the grantee or  
68 purchaser is taking the property without existing tenants or  
69 leases covered by a written agreement for broker services if the



70 deed or instrument transferring the interest is recorded before  
71 the broker's notice of lien is recorded.

72 **SECTION 4.** Section 85-7-507, Mississippi Code of 1972, is  
73 reenacted as follows:

74 85-7-507. A lien authorized by this article attaches to the  
75 commercial real estate only when the lien claimant files a timely  
76 notice of the lien in the office of the chancery clerk in the  
77 county in which the commercial real estate is located. A notice  
78 of lien is timely if it is filed after the claimant's performance  
79 under the written agreement for broker services and before the  
80 conveyance or transfer of the commercial real estate that is the  
81 subject of the lien, except in cases where payments of  
82 compensation are due in installments or upon renewal. When  
83 payment of compensation to a broker is due in installments or upon  
84 renewal under the written agreement for broker services, a portion  
85 of which is due or may become due after the conveyance or transfer  
86 of the commercial real estate, a single claim for a lien filed  
87 before transfer or conveyance of the commercial real estate  
88 claiming all compensation due in installments or upon renewal  
89 shall be valid and enforceable for a period of one (1) year from  
90 the date of filing as it pertains to payments due after the  
91 transfer or conveyance; however, as payments or partial payments  
92 of compensation are received, the broker shall provide partial  
93 releases for those payments, thereby reducing the amount due the  
94 broker under the broker's lien. The notice of single claim for a



95 lien may be renewed for a period of one (1) year by the filing of  
96 a renewal notice meeting the requirements of this article before  
97 the expiration of the expiring notice, and may be likewise renewed  
98 from year to year so long as installments of compensation or  
99 renewal compensation are due. Notwithstanding any notice of  
100 single claim for a lien filed, when payment of compensation to a  
101 broker is due in installments or contingent upon renewals under  
102 the written agreement for broker services, a portion of which is  
103 or would be due after the conveyance or transfer of the commercial  
104 real estate, any notice of lien for those payments due or becoming  
105 due after the transfer or conveyance may be recorded after the  
106 transfer or conveyance of the commercial real estate and within  
107 ninety (90) days of the date on which the payment is due; in that  
108 case the lien shall be effective as a lien against the  
109 transferee's interest in the commercial real estate as of the date  
110 filed and, in the case of a lease or transfer of a nonfreehold  
111 interest, the lien shall be effective as a lien against the  
112 owner's interest in the commercial real estate as of the date  
113 filed.

114       **SECTION 5.** Section 85-7-509, Mississippi Code of 1972, is  
115 reenacted as follows:

116       85-7-509. (1) A lien notice under this article shall be  
117 signed by the lien claimant and shall contain an attestation by  
118 the lien claimant that the information contained in the notice is



119 true and accurate to the best of the lien claimant's knowledge and  
120 belief.

121 (2) The lien notice shall include all of the following  
122 information:

123 (a) The name of the lien claimant;

124 (b) The name of the owner;

125 (c) A description of the commercial real estate upon  
126 which the lien is being claimed;

127 (d) The amount for which the lien is claimed and  
128 whether the amount is due in installments; and

129 (e) The claimant's grounds for the lien, including a  
130 reference to the written agreement for broker services that is the  
131 basis for the lien. It is not necessary that the written  
132 agreement for broker services be attached to the notice.

133 (3) The chancery clerk shall index properly filed liens in  
134 the "Notice of Construction Liens" record maintained in his office  
135 as provided under Section 85-7-133.

136 **SECTION 6.** Section 85-7-511, Mississippi Code of 1972, is  
137 reenacted as follows:

138 85-7-511. Any lien claimant who files a lien on commercial  
139 real estate under the provisions of this article shall mail a copy  
140 of the notice of the lien to the owner(s) of the commercial real  
141 estate by certified mail, return receipt requested, or shall serve  
142 a copy of the notice of the lien in accordance with any of the  
143 provisions for service of process set forth in the Mississippi



144 Rules of Civil Procedure, as amended from time to time. The lien  
145 claimant shall file proof of service with the chancery clerk. The  
146 lien is void if the lien claimant does not file and serve the lien  
147 as provided in this section.

148         **SECTION 7.** Section 85-7-513, Mississippi Code of 1972, is  
149 reenacted as follows:

150         85-7-513. A lien claimant may bring suit to enforce a lien  
151 that attaches under the provisions of this article in any court of  
152 competent jurisdiction in the county where the commercial real  
153 estate is located. The lien claimant shall begin proceedings  
154 within one (1) year after filing the notice of lien, and failure  
155 to begin proceedings within the one (1) year shall extinguish the  
156 lien. If a claim is based upon an option to acquire an interest  
157 in commercial real estate, the lien claimant shall begin  
158 proceedings within one (1) year of the option to purchase being  
159 exercised. A claim for the same lien extinguished under this  
160 section may not be asserted in any later proceeding. A lender  
161 shall not be made a party to any suit to enforce a lien under this  
162 article unless the lender has willfully caused the nonpayment of  
163 the compensation giving rise to the lien.

164         **SECTION 8.** Section 85-7-515, Mississippi Code of 1972, is  
165 reenacted as follows:

166         85-7-515. (1) A complaint filed under the provisions of  
167 this article shall contain all of the following:



168 (a) A statement of the terms of the written agreement  
169 for broker services on which the lien is based or a copy of the  
170 written contract or agreement;

171 (b) The date when the written agreement for broker  
172 services was made;

173 (c) A description of the services performed;

174 (d) The amount due and unpaid;

175 (e) A description of the property that is subject to  
176 the lien; and

177 (f) Any other facts necessary for a full understanding  
178 of the rights of the parties.

179 (2) The plaintiff shall file the action against all parties  
180 that have an interest of record in the commercial real estate;  
181 provided that a lender shall not be made a party to any suit to  
182 enforce a lien under this article unless the lender has willfully  
183 caused the nonpayment of the compensation giving rise to the lien.  
184 A foreclosure action for a lien claimed under this article shall  
185 be brought under the provisions of this section.

186 (3) Upon filing a complaint, the plaintiff shall file with  
187 the chancery clerk of each county where the commercial real  
188 estate, or any part thereof, is situated a lis pendens notice in  
189 accordance with Section 11-47-3.

190 **SECTION 9.** Section 85-7-517, Mississippi Code of 1972, is  
191 reenacted as follows:





192           85-7-517. If a notice of lien has been filed with the  
193 chancery clerk and the claim has been paid in full or in part, or  
194 if a condition occurs that would preclude the lien claimant from  
195 receiving compensation, in whole or in part, under the terms of  
196 the written agreement for broker services on which the lien is  
197 based, the lien claimant shall promptly, and in no event more than  
198 thirty (30) days after a properly served written demand of the  
199 owner, lienee, or other authorized agent, file with the chancery  
200 clerk and serve upon the owner(s) of record a written release,  
201 partial release or satisfaction of the lien. If a lien claimant  
202 fails to file a suit to enforce the lien within the time  
203 prescribed by this article or fails to file an answer in a pending  
204 suit to enforce a lien within thirty (30) days after a properly  
205 served written demand of the owner, lienee, or other authorized  
206 agent, the lien shall be extinguished. Service of the demand  
207 shall be by registered or certified mail, return receipt  
208 requested, or by personal service under the Mississippi Rules of  
209 Civil Procedure, as amended from time to time. The claimant shall  
210 promptly file proof of properly served written demand with the  
211 chancery clerk. The provisions of this section shall not extend  
212 to any other deadline provided by law for the filing of any  
213 pleadings or for the foreclosure of any lien governed by this  
214 article.

215           **SECTION 10.** Section 85-7-519, Mississippi Code of 1972, is  
216 reenacted as follows:



217           85-7-519. The costs of any proceeding brought to enforce a  
218 lien filed under this article, including reasonable attorneys'  
219 fees and prejudgment interest due to the prevailing party, shall  
220 be paid by the nonprevailing party or parties. If more than one  
221 (1) party is responsible for costs, fees and prejudgment interest,  
222 the costs, fees and prejudgment interest shall be equitably  
223 apportioned by the court among the responsible parties.

224           **SECTION 11.** Section 85-7-521, Mississippi Code of 1972, is  
225 reenacted as follows:

226           85-7-521. Unless an alternative procedure is available and  
227 is acceptable to the transferee in a real estate transaction, any  
228 claim of lien on commercial real estate filed under this article  
229 may be discharged by any of the following methods:

230           (a) The lien claimant of record, the claimant's lawful  
231 agent, or the claimant's duly authorized attorney-in-fact, in the  
232 presence of the chancery clerk or a notary public, may acknowledge  
233 in writing the satisfaction of the claim of lien on the commercial  
234 real estate indebtedness and file the same with the chancery  
235 clerk, after which the chancery clerk shall enter on the record of  
236 the claim of lien on the commercial real estate the acknowledgment  
237 of satisfaction.

238           (b) The owner may exhibit an instrument of satisfaction  
239 signed and acknowledged by the lien claimant of record in the  
240 presence of the chancery clerk or a notary public, which  
241 instrument states that the claim of lien on the commercial real



242 estate indebtedness has been paid or satisfied, after which the  
243 chancery clerk shall cancel the claim of lien on the commercial  
244 real estate by entry of satisfaction on the record of the claim of  
245 lien on the commercial real estate.

246 (c) By failure to enforce the claim of lien on the  
247 commercial real estate within the time prescribed by this article.

248 (d) By filing in the office of the chancery clerk the  
249 original or attested copy of a judgment or decree of a court of  
250 competent jurisdiction showing that the action by the claimant to  
251 enforce the claim of lien on the commercial real estate has been  
252 dismissed or finally determined adversely to the claimant.

253 (e) Whenever funds in an amount equal to one hundred  
254 twenty-five percent (125%) of the amount of the claim of lien on  
255 the commercial real estate are deposited with the chancery clerk  
256 to be applied to any payment finally determined to be due, after  
257 which the chancery clerk shall cancel the claim of lien on the  
258 commercial real estate. Thereafter, the lien of the claimant  
259 shall remain in place and be fully enforceable as to the funds  
260 deposited with the chancery clerk, but the lien upon the  
261 commercial real property shall be deemed released.

262 (f) Whenever a corporate surety bond, in an amount  
263 equal to one hundred twenty-five percent (125%) of the amount of  
264 the claim of lien on the commercial real estate and conditioned  
265 upon the payment of the amount finally determined to be due in  
266 satisfaction of the claim of lien on the commercial real estate is



267 deposited with the chancery clerk, after which the chancery clerk  
268 shall cancel the claim of lien on the commercial real estate.  
269 Thereafter, the lien of the claimant shall remain in place and be  
270 fully enforceable as to the funds deposited with the chancery  
271 clerk, but the lien upon the commercial real property shall be  
272 deemed released.

273 (g) By failure to file a written release or  
274 satisfaction of a lien when required by this article or to timely  
275 file or take other action required by this article.

276 **SECTION 12.** Section 85-7-523, Mississippi Code of 1972, is  
277 reenacted as follows:

278 85-7-523. Any broker who falsely and maliciously files or  
279 causes to be filed a notice of lien under this article that brings  
280 in question or disparages the title to property may be held liable  
281 in a civil action for damages, in which case damages shall be  
282 recoverable up to two (2) times the amount of monetary damages  
283 caused by the broker's false and malicious acts, in addition to  
284 any other damages.

285 **SECTION 13.** Section 85-7-525, Mississippi Code of 1972, is  
286 reenacted as follows:

287 85-7-525. All deeds of trust or mortgages, all purchase  
288 money mortgages and all liens for ad valorem taxes, regardless of  
289 when recorded, and all other liens afforded priority by law or  
290 recorded before the recording of the broker's lien provided by  
291 this article shall have priority over the broker's lien.



292           **SECTION 14.** Section 85-7-527, Mississippi Code of 1972,  
293 which repeals Sections 85-7-501 through 85-7-527, is hereby  
294 repealed.

295           **SECTION 15.** This act shall take effect and be in force from  
296 and after July 1, 2017.

