

By: Representative Weathersby

To: Judiciary A

## HOUSE BILL NO. 1374

1 AN ACT TO AMEND SECTION 85-7-403, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT WHEN PERSONS HAVE FURNISHED LABOR, SERVICES OR  
3 MATERIALS FOR REAL ESTATE, THE SPECIAL LIEN ON THE REAL ESTATE  
4 SHALL BE AVAILABLE ONLY IF THOSE PERSONS ARE IN DIRECT PRIVACY OF  
5 CONTRACT WITH THE PROPERTY OWNER; TO PROVIDE THAT A SUBCONTRACTOR,  
6 WHO DOES NOT HAVE DIRECT PRIVACY OF CONTRACT WITH A PROPERTY  
7 OWNER, SHALL NOT HAVE A LIEN AGAINST THE PROPERTY OF THE PROPERTY  
8 OWNER WHO HAS MET ALL FINANCIAL OBLIGATIONS TO A CONTRACTOR IF THE  
9 CONTRACTOR HAS FAILED TO PAY THE SUBCONTRACTOR UNDER ANY CONTRACT  
10 THAT REQUIRES THE CONTRACTOR TO MAKE SUCH PAYMENT; TO BRING  
11 FORWARD SECTIONS 85-7-407, 85-7-409, 85-7-415, 85-7-419 AND  
12 87-7-5, MISSISSIPPI CODE OF 1972, WHICH RELATE TO LIENS ON REAL  
13 ESTATE, FOR PURPOSES OF POSSIBLE AMENDMENT; TO AMEND SECTIONS  
14 85-7-405 AND 85-7-413, MISSISSIPPI CODE OF 1972, TO MAKE SOME  
15 MINOR NONSUBSTANTIVE CHANGES; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 85-7-403, Mississippi Code of 1972, is  
18 amended as follows:

19 85-7-403. (1) The following persons shall each have a  
20 special lien on the real estate or other property for which they  
21 furnish labor, services or materials, if they are in direct  
22 privity of contract with the property owner:



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

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

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

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

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

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

(5) Notwithstanding any other provision of this article, no lien shall exist in favor of any contractor or subcontractor who



is not licensed as required by either Section 31-3-1 et seq., or Section 73-59-1 et seq., or who contracts with any contractor or subcontractor who is not licensed as required. Upon request, any contractor or subcontractor is required to provide any owner, contractor, subcontractor or materialman a copy of that person's current license.

(6) If the contractor fails to pay a subcontractor, having direct privity of contract with the contractor, under any contract, subcontract or purchase order that specifically requires the contractor to make such payment, and the property owner has met all financial obligations under his or her contract with the contractor, the contractor shall be liable to the subcontractor for the unpaid amount and the subcontractor shall not have a lien against the property or real estate of the property owner.

**SECTION 2.** Section 85-7-405, Mississippi Code of 1972, is amended as follows:

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

(a) A substantial compliance by the party claiming the lien with the party's contract, subcontract or purchase order for work performed or labor, services or material provided in the building, repairing, or improving of real estate; for architectural services furnished; for registered land surveying or



73 registered professional engineering services furnished or  
74 performed; or for materials or machinery furnished;

75 (b) The filing for record of the claim of lien in the  
76 office of the clerk of the chancery court of the county where the  
77 property is located within ninety (90) days after the claimant's  
78 last work performed, labor, services or materials provided, the  
79 furnishing of architectural services, or the furnishing or  
80 performing of surveying or engineering services. The lien shall  
81 include a statement regarding its expiration pursuant to Section  
82 85-7-421(1) and a notice to the owner of the property on which a  
83 claim of lien is filed that the owner has the right to contest the  
84 lien; the absence of the statement or notice shall invalidate the  
85 lien. The claim shall be in substance as follows:

86 "A.B., a mechanic, contractor, subcontractor, materialman,  
87 machinist, manufacturer, registered architect, registered  
88 forester, registered land surveyor, registered professional  
89 engineer, or other person (as the case may be) claims a lien in  
90 the amount of (specify the amount claimed) on the building,  
91 structure, house, factory, mill, machinery, or railroad (as the  
92 case may be) and the premises or real estate on which it is  
93 erected or built, of C.D. (describing the houses, premises, real  
94 estate, or railroad), for satisfaction of a claim which became due  
95 on (specify the date the claim was due, which is the same as the  
96 last date the labor, services or materials were supplied to the



premises) for work performed or labor, services provided (or whatever the claim may be).

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

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

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

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



for record of the lien claimant's claim of lien. A lis pendens notice shall be filed with the commencement of the action with a copy to the owner and contractor;

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

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

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

1. The party has been adjudicated a bankrupt;
2. If an individual, the party is deceased;

or



145                   3. Payment is not due to the lien claimant  
146 under the applicable contract agreement until after payment is  
147 received by the party with whom the lien claimant contracted.

148                   (ii) If \* \* \* subparagraph (i) of this \* \* \*  
149 paragraph (d) applies, the person or persons furnishing labor,  
150 services or materials may enforce the lien directly against the  
151 property in a lien action against the owner if it is filed within  
152 the required time for filing a payment action, with the judgment  
153 rendered in the proceeding to be limited to a judgment in rem  
154 against the property improved and to impose no personal liability  
155 upon the owner of the property. A lis pendens notice shall be  
156 filed with the commencement of this lien action with a copy to the  
157 owner and the contractor.

158                   (iii) Nothing in this paragraph (d) shall impact  
159 or negate the rights and defenses available pursuant to Section  
160 85-7-413 or 85-7-419 \* \* \*;

161                   (e) A claim of lien may be amended at any time to  
162 increase or reduce the amount claimed, and the amended claim of  
163 lien shall relate back to the date of filing for record of the  
164 original claim of lien. An amended claim of lien filed for record  
165 pursuant to this subsection shall be sent to the owner of the  
166 property in the same manner as required for a claim of lien  
167 in \* \* \* paragraph (b) of this subsection and shall be in  
168 substance as follows:



169 "That certain claim of lien filed by A.B. against property of  
170 C.D. on (date) and recorded at book (book#), page (page#) in the  
171 lien index of (name of county) County is hereby amended by  
172 increasing/reducing (cross out one) the amount of the claim of  
173 lien to (specify reduced amount claimed). The remaining terms of  
174 the original claim of lien are hereby incorporated by reference  
175 into this amended claim of lien. This amended claim of lien  
176 relates back to the date that the original claim of lien was filed  
177 for record."

178 (2) (a) The liens specified in Section 85-7-403  
179 ("construction liens") shall be inferior to liens for taxes, but  
180 construction liens shall be superior in priority to all other  
181 liens except as specified in \* \* \* paragraphs (b) and (c) of this  
182 subsection.

183 (b) Except as provided in \* \* \* paragraph (c) of this  
184 subsection, a construction lien shall have priority over all other  
185 liens, deeds of trust, mortgages or encumbrances filed after the  
186 date and time of the filing of the notice of lien in the office of  
187 the chancery clerk of the county in which the land is located.  
188 All liens, deeds of trust, mortgages and encumbrances filed before  
189 the date and time of the filing of the notice of construction lien  
190 shall have priority over the construction lien, whether the work  
191 secured by the lien was performed before or after the filing of  
192 the lien, deed of trust, mortgage or other encumbrance. This  
193 priority will extend to amendments or restatements and assignments





194 of the lien, deed of trust, mortgage and other encumbrance. The  
195 priorities in this subsection are determined by the date and time  
196 of filing and without regard to the actual knowledge of the  
197 parties of unrecorded liens. Enforcement of a construction lien  
198 shall not affect any prior deeds of trust or other liens, and a  
199 purchaser, in connection with the enforcement of a construction  
200 lien, shall take the property subject to any prior liens, deeds of  
201 trust, mortgages or encumbrances of which the purchaser has actual  
202 or constructive notice on the date of the purchase. Foreclosure  
203 of any prior deeds of trust or other liens shall terminate and  
204 extinguish the subordinate construction lien or other interest as  
205 to the land and the buildings and improvements thereon, whether or  
206 not at the time of the foreclosure the construction lien or  
207 interest has been perfected in accordance with the provisions of  
208 this article, and the subordinate lienholder shall have the rights  
209 in any excess proceeds received by the foreclosing lienholder as  
210 provided by law.

211 (c) A deed of trust, mortgage, assignment of leases and  
212 rents, fixture filing or other security agreement affecting real  
213 property is a construction mortgage to the extent it secures a  
214 loan or loans for the purpose of financing the repair or  
215 construction of an improvement on the real property, which may  
216 include the acquisition cost of the real property. A construction  
217 lien is subordinate to a construction mortgage if the construction  
218 mortgage is filed in the land records before a notice of a claim



219 of lien is filed pursuant to \* \* \* this section and the lender,  
220 secured party, mortgagee, beneficiary or holder of the  
221 construction mortgage obtained either: (i) an affidavit or sworn  
222 statement from the owner to the effect that no work has been  
223 performed on, or materials delivered to, the real property; or  
224 (ii) an affidavit or sworn statement from the contractor, or owner  
225 if there is no contractor, as provided in Section 85-7-413(1) (b)  
226 regarding payment for work, materials or services provided. A  
227 construction mortgage has this priority for all loan advances  
228 secured thereby regardless of whether the advances are made before  
229 or after the filing of a notice of a construction lien, and this  
230 priority will extend to amendments, restatements and refinancings  
231 of the construction mortgage.

232 (3) (a) Following compliance with the requirements of  
233 subsection (1) of this section, in any proceeding against the  
234 owner to enforce a lien created by Section 85-7-403 against the  
235 property, the party having a direct contractual relationship with  
236 the lien claimant shall not be a necessary party, but may be made  
237 a party. The design professional, contractor or subcontractor, or  
238 all of them, may intervene in the proceedings at any time before  
239 judgment for the purpose of resisting the establishment of the  
240 lien or of asserting against the lien claimant any claim of the  
241 contractor or subcontractor growing out of or related to the  
242 contract, subcontract or purchase order upon which the asserted  
243 lien is based.



244 (b) Any party to an action against the owner to enforce  
245 a lien against the property, by appropriate plea, may put in issue  
246 the fact of indebtedness or the existence of the lien, or both,  
247 and may interpose any other defense or join any counterclaim  
248 applicable to the action; and if the court by its finding, or the  
249 jury by their verdict, as the case may be, ascertain that the  
250 plaintiff has a lien as claimed, judgment shall be entered for the  
251 amount secured thereby, plus interest and costs, against the party  
252 liable for the same.

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

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

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

266 (5) (a) If payments have been made in reliance upon either  
267 lien waivers issued by lien claimants pursuant to Section  
268 85-7-413(1)(a) or sworn written statements of the contractor



pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of subcontractors and materialmen who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the contractor at the time the first notice of lien is filed pursuant to this section.

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

**SECTION 3.** Section 85-7-407, Mississippi Code of 1972, is brought forward as follows:

85-7-407. (1) Upon the written request of the property owner by registered or certified mail or statutory overnight delivery, the contractor shall furnish to the owner a complete list of all subcontractors and materialmen and upon written request from the contractor, all subcontractors shall provide the same information. If the contractor or subcontractor willfully



fails or refuses to furnish the list or to give the information to the owner or contractor within a reasonable time, he shall thereby forfeit his right to a lien under this article. Similarly, if the contractor or subcontractor fails to pay any materialman or subcontractor in direct privity with him in accordance with any contract, subcontract or purchase order specifically requiring him to do so, he shall thereby forfeit his right to a lien under this article.

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

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

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

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



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

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

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

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

**SECTION 4.** Section 85-7-409, Mississippi Code of 1972, is brought forward as follows:

85-7-409. (1) As to single-family residential construction only, payment made by or on behalf of the owner to a contractor or



343 design professional in privity with the owner, for the work of a  
344 subcontractor, materialman, professional engineer or professional  
345 surveyor, shall be an absolute defense to any claim of lien made  
346 by the subcontractor, materialman, professional engineer or  
347 professional surveyor, (a) but only to the extent of the payment  
348 actually made by or on behalf of the owner to the contractor or  
349 design professional in privity with the owner, and (b) only to the  
350 extent the owner has not received a pre-lien notice in accordance  
351 with subsection (2) of this section before the payment.

352 (2) As to single-family residential construction only, as a  
353 condition precedent of any right to a special lien under Section  
354 85-7-403 in favor of a subcontractor, materialman or design  
355 professional not in privity with the owner, the claimant must  
356 provide the owner a pre-lien written notice at least ten (10) days  
357 before filing a claim of lien under Section 85-7-405, which can be  
358 evidenced by any reliable means of delivery.

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

362 **SECTION 5.** Section 85-7-413, Mississippi Code of 1972, is  
363 amended as follows:

364 85-7-413. (1) The special lien specified in Section  
365 85-7-403(1) shall be dissolved and unenforceable if the owner,  
366 purchaser from owner, or lender providing construction or purchase  
367 money or any other loan secured by real estate shows that:



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

(b) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a sworn written statement of the contractor that the agreed price or reasonable value of the labor, services or materials has been paid or waived in writing by the lien claimant. If the sworn written statement, as required by \* \* \* this paragraph (b), is falsely and knowingly made, then all parties injured thereby shall have a right of action against the maker of the sworn written statement for damages in the amount of three (3) times their actual damages sustained on account of the willfully and falsely made sworn written statement.

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

**SECTION 6.** Section 85-7-415, Mississippi Code of 1972, is brought forward as follows:





85-7-415. (1) When any person entitled under this article to claim a lien against any real estate located in this state files a lien in the office of the clerk of the chancery court of the county in which the real estate is located, the owner of the real estate or the contractor or subcontractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of the chancery court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any payment action that may be filed by the lienholder to recover the amount of the claim within one hundred eighty (180) days from the time the claim of lien is filed or as otherwise required by Section 85-7-423. The bond shall be one hundred ten percent (110%) of the amount claimed under that lien and shall be either a cash bond or a bond with good security approved by the clerk of the chancery court and issued by any surety company authorized to do business in the State of Mississippi. Upon approval by the clerk of the bond, the real estate shall be discharged from the lien.

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



418 shown as having filed the lien on behalf of the claimant at the  
419 indicated address of the person and, if the bond is filed by a  
420 contractor or subcontractor, to the owner of the property and the  
421 contractor; however, if the lien claimant or the owner or  
422 contractor is an entity on file with the Secretary of State's  
423 office, sending the notice of filing the bond and a copy of the  
424 bond to the company's address or the registered agent's address on  
425 file with the Secretary of State shall be deemed sufficient;  
426 failure to send the notice of filing the bond and copy of the bond  
427 shall not invalidate the bond for purposes of discharge of a claim  
428 of lien under this section. With respect to bonds secured by  
429 property, the clerk shall not accept any real property bond unless  
430 the real property is scheduled in an attached affidavit setting  
431 forth a description of the property and indicating the record  
432 owner thereof, including any liens and encumbrances and amounts  
433 thereof, the market value, and the value of the sureties' interest  
434 therein, which affidavit shall be executed by the owner or owners  
435 of the interest; the bond and affidavit shall be recorded in the  
436 same manner and at the same cost as other deeds of real property.  
437 So long as the bond exists, it shall constitute a lien against the  
438 property described in the attached affidavit.

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



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

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

**SECTION 7.** Section 85-7-419, Mississippi Code of 1972, is  
brought forward as follows:

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

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

(3) When a claimant is requested to execute a waiver and  
release in exchange for or in order to induce making of final  
payment, the waiver and release shall substantially follow the  
Waiver and Release upon Final Payment form set forth in Section  
85-7-433(2). The failure to correctly complete any of the blank



spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(4) Nothing contained in this section shall affect:

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

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

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

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

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

(i) Actual receipt of funds;



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

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

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

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

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



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

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

**SECTION 8.** Section 87-7-5, Mississippi Code of 1972, is brought forward as follows:

87-7-5. When a contractor receives any payment from the owner under a construction contract, other than a public construction contract, the contractor shall, upon receipt of that payment, pay each subcontractor and material supplier in proportion to the percentage of work completed by each such subcontractor and material supplier. If for any reason the contractor receives less than the full payment due from the owner, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make any payment to his subcontractors and material suppliers within fifteen (15) days after the receipt of payment from the owner under the construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, a penalty in the amount of one-half of one percent (1/2 of 1%) per day of the delinquency, calculated from the expiration of the fifteen-day period until



541 fully paid. The total penalty shall not exceed fifteen percent  
542 (15%) of the outstanding balance due. The provisions of this  
543 section shall not be applicable to contracts for the construction  
544 of single-family dwellings.

545       **SECTION 9.** This act shall take effect and be in force from  
546 and after July 1, 2019.

