

By: Representative Smith (39th)

To: Judiciary B

HOUSE BILL NO. 996

1 AN ACT TO AMEND SECTION 85-7-181, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR A LIEN ON CERTAIN COMMERCIAL REAL PROPERTY FOR THE
3 AMOUNT DUE A SUBCONTRACTOR OR SUPPLIER OF THE CONTRACTOR FOR WORK
4 PERFORMED OR MATERIALS FURNISHED IN MAKING IMPROVEMENTS THEREON;
5 TO PRESCRIBE THE PROCEDURE BY WHICH SUCH LIEN MAY BE ENFORCED; TO
6 PROVIDE FOR A PAYMENT OR PERFORMANCE BOND IN LIEU OF THE LIEN; AND
7 FOR RELATED PURPOSES.

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

9 SECTION 1. Section 85-7-181, Mississippi Code of 1972, is
10 amended as follows:

11 85-7-181. (1) Except as otherwise provided herein, there
12 shall be a lien on every lot of ground or tract of land, together
13 with all improvements thereon, upon which any structure or other
14 improvement is erected, constructed, altered or repaired, in favor
15 of subcontractors of the contractor and suppliers of the
16 contractor who perform work or furnish materials for such
17 structure or other improvement. The lien rights afforded under
18 this section shall not apply to claims of subcontractors or
19 suppliers in any case in which the contract between the owner and
20 contractor is less than Twenty-five Thousand Dollars (\$25,000.00),
21 or in any case in which the structure or improvement is made to a
22 one- to four-family dwelling, a water well, an oil and gas well or
23 railroad or railroad embankment.

24 (a) If the structure or improvement is in a city, town
25 or village, the lien shall extend to and cover the entire lot of
26 land on which it stands.

27 (b) If the structure or improvement is not in a city,
28 town or village, the lien shall extend to and cover the entire

29 parcel of land on which the structure stands.

30 (c) If the services of the subcontractor or supplier
31 are rendered upon a subdivision, the lien shall extend to and
32 cover the entire subdivision; however, if only a part of the land
33 is subdivided and the services of suppliers or subcontractors of
34 the contractor are required, then the lien shall extend to only
35 that portion of the property which is subdivided.

36 (2) The lien provided for in subsection (1) shall take
37 effect, as to purchasers or encumbrancers for a valuable
38 consideration without notice thereof, only from the time of filing
39 of a claim of lien in the office of the clerk of the chancery
40 court as provided for in this section, except that the lien of a
41 deed of trust securing a construction loan recorded prior to the
42 filing of a claim of lien as provided herein shall have priority
43 over any lien claimant under this section.

44 (3) Delivery of material to the job is prima facie evidence
45 of its use therein.

46 (4) Every subcontractor or supplier who has furnished labor
47 or material used in the construction of the structure or other
48 improvement and who has not been paid before the expiration of a
49 period of forty-five (45) days after the date of the last payment
50 period for labor performed by him or materials furnished by him
51 shall have the right to file suit to enforce a lien against the
52 property on which the structure or other improvement is
53 constructed in the amount due and owing for work performed or
54 materials furnished or both work and materials; provided that:

55 (a) Within fifteen (15) days from commencing to perform
56 work at or furnish materials to the construction site in
57 accordance with the terms and provisions of the contract, such
58 subcontractor or supplier provides the notice of lien right set
59 forth in subsection (5) of this section to the owner or owners of
60 the land, to any lender having a recorded mortgage or deed of
61 trust on the land upon which such structure or other improvement

is located, and to the contractor; and

(b) Within forty-five (45) days of the date the first payment draw was due, such subcontractor or supplier:

(i) Files a claim of lien in the office of the chancery clerk of the county where the project is located; and

(ii) Provides a copy of such claim of lien to the owner or owners of the land, to any lender having a recorded mortgage or deed of trust on the property upon which such structure or other improvement is located, and to the contractor; provided, however, that no claim of lien may be filed prior to the date the labor is performed or material furnished to the property.

(5) The notice of lien right to the owner, lender and contractor required by subsection (4)(a) of this section shall be given in writing by the subcontractor or supplier to the owner, or one (1) of the owners if more than one (1), at the owner's residence or any place where the owner maintains an office or conducts business, to the lender at the address of the lender disclosed on the recorded mortgage or deed of trust, or if no such address appears, then at the principal office of the lender, and to the contractor at the contractor's principal office. Such notice may be personally delivered by the subcontractor or supplier or it may be mailed by certified mail, return receipt requested, postage prepaid, to the owner, or one (1) of them, and to the lender and contractor. The failure to serve the notice of lien right, or to timely serve it, shall be a complete defense to enforcement of a lien by any person. The serving of the notice of lien right shall not dispense with recording the claim of lien required by subsection (4)(b) of this section. The notice of lien right shall not be a lien, cloud or encumbrance on the real property. Such notice of lien right may be given in the following form, which shall be sufficient:

"WARNING TO OWNER: UNDER MISSISSIPPI LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR

95 PROPERTY AND YOUR PAYING TWICE.

96 TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN
97 RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

98 NOTICE TO OWNER

99 To _____, owner or lender:

100 Take notice, that the undersigned is about to furnish (or has
101 within fifteen (15) days furnished) _____, your
102 contractor, certain material or performed certain subcontract work
103 or both for the construction, repair or alteration of the
104 structure or other improvement being constructed on the following
105 described property:

106 _____
107 _____

108 and there will become due to the undersigned on account thereof
109 the price of said material or subcontract work or both, for the
110 payment of which the undersigned will claim a lien.

111 IMPORTANT INFORMATION FOR YOUR PROTECTION

112 Under Mississippi's laws, those who work on your property or
113 provide materials and are not paid have a right to enforce their
114 claim for payment against your property. This claim is known as a
115 construction lien.

116 If your contractor fails to pay subcontractors or material
117 suppliers or neglects to make other legally required payments, the
118 people who are owed money may look to your property for payment,
119 EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.

120 PROTECT YOURSELF: This Notice to Owner may result in a lien
121 against your property unless all those supplying a Notice to Owner
122 have been paid."

123 (6) The claim of lien required by subsection (4)(b) of this
124 section shall be filed and recorded in the chancery clerk's office
125 where the land is located in accordance with Section 85-7-133,
126 Mississippi Code of 1972, provided that there shall be no right
127 nor requirement of a lienholder under this section to file a

contract pursuant to Section 85-7-139, Mississippi Code of 1972.

(7) Notwithstanding anything to the contrary contained herein, the amount claimed in a suit to enforce a lien under this act is subject to contractual provisions or conditions imposed upon the lien claimant.

(8) No suit may be maintained by a subcontractor or supplier to enforce the lien provided hereunder unless the notices required by this section shall have been given and filed, respectively, within the time required.

(9) The persons protected by this lien statute, subject to the notice provisions set forth above, are subcontractors and material suppliers of the contractor.

(10) A suit to enforce a lien arising under this act shall be commenced within the time and in the manner provided by Section 85-7-141, Mississippi Code of 1972; shall be conducted in accordance with Sections 85-7-143, 85-7-145, 85-7-147, 85-7-149, 85-7-151, 85-7-153, 85-7-155 and 85-7-157, Mississippi Code of 1972; and shall be maintainable even though the general or primary contractor has been paid in full if such contractor has not paid the person entitled to enforce lien rights under this section; provided that such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing the claim of lien in the office of the clerk of the chancery court as hereinabove stated, except that the lien of a deed of trust securing a construction loan recorded prior to the time of filing a claim of lien as provided herein shall have priority over the claim of any lien claimant under this section.

(11) If such structure or other improvement upon which a lien is claimed hereunder is erected, constructed, altered or repaired at the instance of a tenant, guardian or other person not the owner of the land, only the building, structure or improvement, and the estate of the tenant or such other person, in

the land, shall be subject to such lien, unless the same be done by the written consent of the owner. Whenever the contract is performed at the instance of a tenant, guardian or other person who is not the owner of the land, then the reference in this act to owner shall mean the tenant, guardian or other person who is not the owner of the land, as applicable.

(12) Venue on any suit under this section shall lie in the county in which the structure or other improvement is located or in the county in which service of process may be obtained upon the owner.

(13) As used in this section, "contractor" means the person or persons having a contract or contracts with the owner; "subcontractor" or "supplier" means any person or entity having a direct contract with the "contractor." No lien rights are afforded hereunder to anyone other than those defined herein as "subcontractor" or "supplier" to the contractor.

SECTION 2. If a payment or payment and performance bond with sufficient surety in an amount equal to the cost of construction of such structure or other improvement is provided by the contractor covering the claims of subcontractors and suppliers to the contractor, then subcontractors or suppliers to the contractor shall have a claim solely under the bond and not against the owner's property. In accordance with Section 85-7-185, Mississippi Code of 1972, such bond shall cover the claims of subcontractors or suppliers regardless of whether so expressly stated in the bond and suit on the bond shall be brought by a subcontractor or supplier in accordance with the provisions of Sections 85-7-187 through 85-7-195, Mississippi Code of 1972. The bond herein provided for may be made by any surety company authorized to do business in the State of Mississippi; provided, however, that when separate payment and performance bonds are provided, the claims of subcontractors and suppliers shall be covered solely by the payment bond. Filing and recording of a

194 bond claim is not required.

195 Any rights in favor of other parties provided in any such
196 bond shall be valid and enforceable in accordance with the terms
197 of such bond.

198 A supplier or subcontractor supplying labor or materials or
199 both for the structure or other improvement shall, upon request to
200 the contractor and surety, be furnished with a certified copy of
201 the contract between the contractor and owner and bonds executed
202 by the contractor and surety.

203 SECTION 3. In the event that the contractor does not provide
204 a bond in accordance with Section 2 of this act, and in the
205 further event that a subcontractor or supplier claiming a lien for
206 labor or materials upon any property shall submit a notice of lien
207 right and file a lien within the time and in the manner prescribed
208 above, then the owner of such property, or any mortgagee or other
209 person asserting an interest in such property, or any contractor,
210 subcontractor or other person who may be liable for the payment of
211 said lien, shall have the right to file in the construction lien
212 book in the land records of the chancery clerk where the project
213 is constructed a bond for one and one-half (1-1/2) times the
214 amount of said lien claimed with sufficient surety, conditioned
215 upon the obligor's satisfying any judgment that may be rendered in
216 favor of the person asserting said lien. The bond herein provided
217 for may be made by any surety company authorized to do business in
218 the State of Mississippi. Upon the filing of such bond, the lien
219 upon the property covered by the bond shall be discharged. If
220 such bond is filed, the person asserting the lien may make the
221 obligor on the bond party to any action to enforce his claim, and
222 any judgment recovered by such claimant may be against the obligor
223 on the bond, as well as against any other party liable to the
224 claimant.

225 SECTION 4. Any attempted contractual waiver of the rights
226 afforded by this act shall be void and unenforceable. The

227 provisions of this act are cumulative and supplemental to all
228 other laws of this state.

229 SECTION 5. This act shall take effect and be in force from
230 and after July 1, 1999.