

By: Senator(s) Hopson, Horhn

To: Judiciary, Division A

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2622

1 AN ACT TO PROVIDE FOR CONTRACTOR LIENS AND THE ENFORCEMENT  
2 AND NOTICE OF CONTRACTOR LIENS; TO CREATE NEW SECTION 85-7-301,  
3 MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS; TO CREATE NEW  
4 SECTION 85-7-303, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR LIENS  
5 FOR LABOR, SERVICES OR MATERIALS FURNISHED; TO CREATE NEW SECTION  
6 85-7-305, MISSISSIPPI CODE OF 1972, TO PROVIDE HOW THE LIENS ARE  
7 CREATED AND RECORDED; TO CREATE NEW SECTION 85-7-307, MISSISSIPPI  
8 CODE OF 1972, TO REQUIRE CONTRACTORS TO LIST ALL SUBCONTRACTORS,  
9 MATERIALMEN, LABORERS AND EMPLOYEES; TO CREATE NEW SECTION  
10 85-7-309, MISSISSIPPI CODE OF 1972, TO LIMIT THE RECOVERY OF  
11 SUBCONTRACTORS AGAINST A RESIDENTIAL HOMEOWNER UNDER CERTAIN  
12 CIRCUMSTANCES; TO CREATE NEW SECTION 85-7-311, MISSISSIPPI CODE OF  
13 1972, TO PROVIDE FOR THE ATTACHMENT OF LIENS TO BUILDINGS OR  
14 IMPROVEMENTS ON LEASED LAND; TO CREATE NEW SECTION 85-7-313,  
15 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DISSOLVING OF LIENS;  
16 TO CREATE NEW SECTION 85-7-315, MISSISSIPPI CODE OF 1972, TO  
17 PROVIDE FOR THE DISCHARGE OF A LIEN BY FILING BOND; TO CREATE NEW  
18 SECTION 85-7-317, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE  
19 RIGHTS OF CERTAIN PROFESSIONALS; TO CREATE NEW SECTION 85-7-319,  
20 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE WAIVER AND RELEASE OF  
21 LIEN AND BOND RIGHTS; TO CREATE NEW SECTION 85-7-321, MISSISSIPPI  
22 CODE OF 1972, TO PROVIDE FOR EXTINGUISHMENT OF LIENS IF NO NOTICE  
23 OF COMMENCEMENT IS FILED; TO CREATE NEW SECTION 85-7-323,  
24 MISSISSIPPI CODE OF 1972, TO PROVIDE A TIME LIMITATION ON  
25 COMMENCING LIEN ACTIONS; TO PROVIDE FOR NOTICE OF CONTEST OF A  
26 LIEN; TO CREATE NEW SECTION 85-7-325, MISSISSIPPI CODE OF 1972, TO  
27 PROVIDE FOR THE COMPUTATION OF TIME; TO CREATE NEW SECTIONS  
28 85-7-327 AND 85-7-329, MISSISSIPPI CODE OF 1972, TO ADDRESS THE  
29 PRIORITY OF LIENS; TO CREATE NEW SECTION 85-7-331, MISSISSIPPI  
30 CODE OF 1972, TO PROVIDE FOR THE ENFORCEMENT OF JUDGMENTS; TO  
31 CREATE NEW SECTION 85-7-333, MISSISSIPPI CODE OF 1972, TO PROVIDE  
32 A PENALTY FOR FILING A FALSE LIEN; TO AMEND SECTIONS 85-7-131,  
33 85-7-133,, 85-7-141, 85-7-143, 85-7-145 AND 85-7-147, MISSISSIPPI  
34 CODE OF 1972, TO CONFORM; TO REPEAL SECTIONS 85-7-135, 85-7-137,



35 85-7-139, 85-7-149, 85-7-151, 85-7-181, 85-7-183, 85-7-185,  
36 85-7-197, 85-7-199 AND 85-7-201, MISSISSIPPI CODE OF 1972, WHICH  
37 PROVIDE FOR LIENS ON AMOUNTS DUE A CONTRACTOR AND THE RECORDING  
38 THEREOF; AND FOR RELATED PURPOSES.

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

40 **SECTION 1.** The following shall be codified as Section

41 85-7-301, Mississippi Code of 1972:

42 85-7-301. The following words and phrases shall have the  
43 meanings ascribed herein unless the context clearly indicates  
44 otherwise:

45 (a) "Business day" means any day that is not a  
46 Saturday, Sunday, or legal holiday.

47 (b) "Contractor" means a contractor having privity of  
48 contract with the owner or lessee of the real estate.

49 (c) "Lien action" means a civil action against the  
50 owner of improved property to perfect and make permanent the lien  
51 created by Section 85-7-303.

52 (d) "Payment action" means a lawsuit, proof of claim in  
53 a bankruptcy case, or a binding arbitration.

54 (e) "Professional surveyor" has the meaning given in  
55 Section 73-13-71.

56 (f) "Materials" means materials, tools, appliances,  
57 machinery, or equipment used in making improvements to the real  
58 estate.

59 (g) "Materialmen" or "materialman" means all persons  
60 furnishing the materials, tools, appliances, machinery, or



61 equipment included in the definition of materials to a contractor  
62 or to a subcontractor in privity with the contractor.

63 (h) "Professional engineer" has the meaning given in  
64 Section 73-13-3.

65 (i) "Residential property" means single-family and  
66 two-family, three-family, and four-family residential real estate.

67 (j) "Statutory overnight delivery" means delivery of a  
68 document through the United States Postal Service or through a  
69 commercial firm that is regularly engaged in the business of  
70 document delivery or document and package delivery in which the  
71 sender:

72 (i) Has directed that delivery be not later than  
73 the next business day following the day on which the document is  
74 received for delivery by the United States Postal Service or the  
75 commercial firm; and

76 (ii) Receives a receipt acknowledging receipt of  
77 the document signed by addressee or an agent of the addressee.

78 (k) "Subcontractor" means subcontractors having privity  
79 of contract with the contractor; "subcontractor" also means  
80 subcontractors having privity of contract with a subcontractor  
81 having privity of contract with the contractor.

82 (l) "Registered architect" has the meaning given in  
83 Section 73-1-3.

84 (m) "Design professional" includes professional  
85 surveyors, professional engineers and registered architects.



86           **SECTION 2.** The following shall be codified as Section  
87 85-7-303, Mississippi Code of 1972:

88           85-7-303. (1) The following persons shall each have a  
89 special lien on the real estate or other property for which they  
90 furnish labor, services or materials:

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

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

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

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

106           (3) Each special lien specified in subsection (1) of this  
107 section shall be limited to the amount due and owing the lien  
108 claimant under the terms of its express or oral contract,  
109 subcontract or purchase order subject to Section 85-7-305(4).



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

114 (5) Notwithstanding any other provision of this article, no  
115 lien shall exist in favor of any contractor or subcontractor who  
116 is not licensed as required by either Section 31-3-1 et seq., or  
117 Section 73-59-1 et seq., or who contracts with any contractor or  
118 subcontractor who is not licensed as required. Upon request, any  
119 contractor or subcontractor is required to provide any owner,  
120 contractor, subcontractor or materialman a copy of that person's  
121 current license.

122 **SECTION 3.** The following shall be codified as Section  
123 85-7-305, Mississippi Code of 1972:

124 85-7-305. (1) To make good a lien created in Section  
125 85-7-303(1), it must be created and declared in accordance with  
126 the following provisions, and on failure of any of them the lien  
127 shall not be effective or enforceable:

128 (a) A substantial compliance by the party claiming the  
129 lien with the party's contract, subcontract or purchase order for  
130 work performed or labor, services or material provided in the  
131 building, repairing, or improving of real estate; for  
132 architectural services furnished; for registered land surveying or  
133 registered professional engineering services furnished or  
134 performed; or for materials or machinery furnished;



135 (b) The filing for record of the claim of lien in the  
136 office of the clerk of the chancery court of the county where the  
137 property is located within ninety (90) days after the claimant's  
138 last work performed, labor, services or materials provided, the  
139 furnishing of architectural services, or the furnishing or  
140 performing of surveying or engineering services, or within ninety  
141 (90) days after material is furnished. The lien shall include a  
142 statement regarding its expiration pursuant to Section 85-7-321(1)  
143 and a notice to the owner of the property on which a claim of lien  
144 is filed that the owner has the right to contest the lien; the  
145 absence of the statement or notice shall invalidate the lien. The  
146 claim shall be in substance as follows:

147 "A.B., a mechanic, contractor, subcontractor, materialman,  
148 machinist, manufacturer, registered architect, registered  
149 forester, registered land surveyor, registered professional  
150 engineer, or other person (as the case may be) claims a lien in  
151 the amount of (specify the amount claimed) on the building,  
152 structure, house, factory, mill, machinery, or railroad (as the  
153 case may be) and the premises or real estate on which it is  
154 erected or built, of C.D. (describing the houses, premises, real  
155 estate, or railroad), for satisfaction of a claim which became due  
156 on (specify the date the claim was due, which is the same as the  
157 last date the labor, services or materials were supplied to the  
158 premises) for work performed or labor, services provided (or  
159 whatever the claim may be).



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

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

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

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



184 notice shall be filed with the commencement of the action with a  
185 copy to the owner and contractor;

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

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

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

203 1. The party has been adjudicated a bankrupt;

204 2. If an individual, the party is deceased;

205 or

206 3. Payment is not due to the lien claimant  
207 under the applicable contract agreement until after payment is  
208 received by the party with whom the lien claimant contracted.





209 (ii) If paragraph (d)(i) of this section applies,  
210 the person or persons furnishing labor, services or materials may  
211 enforce the lien directly against the property in a lien action  
212 against the owner if it is filed within the required time for  
213 filing a payment action, with the judgment rendered in the  
214 proceeding to be limited to a judgment in rem against the property  
215 improved and to impose no personal liability upon the owner of the  
216 property. A lis pendens notice shall be filed with the  
217 commencement of this lien action with a copy to the owner and the  
218 contractor.

219 (iii) Nothing in this paragraph (d) shall impact  
220 or negate the rights and defenses available pursuant to Section  
221 85-7-313 or 85-7-319.

222 (e) A claim of lien may be amended at any time to  
223 increase or reduce the amount claimed, and the amended claim of  
224 lien shall relate back to the date of filing for record of the  
225 original claim of lien. An amended claim of lien filed for record  
226 pursuant to this subsection shall be sent to the owner of the  
227 property in the same manner as required for a claim of lien in  
228 subsection (1)(b) of this section and shall be in substance as  
229 follows:

230 "That certain claim of lien filed by A.B. against property of  
231 C.D. on (date) and recorded at book (book#), page (page#) in the  
232 lien index of (name of county) County is hereby amended by  
233 increasing/reducing (cross out one) the amount of the claim of



234 lien to (specify reduced amount claimed). The remaining terms of  
235 the original claim of lien are hereby incorporated by reference  
236 into this amended claim of lien. This amended claim of lien  
237 relates back to the date that the original claim of lien was filed  
238 for record."

239 (2) (a) The liens specified in Section 85-7-303  
240 ("construction liens") shall be inferior to liens for taxes, but  
241 construction liens shall be superior in priority to all other  
242 liens except as specified in subsection (2)(b) and (c).

243 (b) Except as provided in subsection (2)(c), a  
244 construction lien shall have priority over all other liens, deeds  
245 of trust, mortgages or encumbrances filed after the date and time  
246 of the filing of the notice of lien in the office of the chancery  
247 clerk of the county in which the land is located. All liens,  
248 deeds of trust, mortgages and encumbrances filed before the date  
249 and time of the notice of construction lien shall have priority  
250 over the construction lien, whether the work secured by the lien  
251 was performed before or after the filing of the lien, deed of  
252 trust, mortgage or other encumbrance. This priority will extend  
253 to amendments or restatements and assignments of the lien, deed of  
254 trust, mortgage and other encumbrance. The priorities in this  
255 subsection are determined by the date and time of filing and  
256 without regard to the actual knowledge of the parties of  
257 unrecorded liens. Enforcement of a construction lien shall not  
258 affect any prior deeds of trust or other liens, and a purchaser,



259 in connection with the enforcement of a construction lien, shall  
260 take the property subject to any prior liens, deeds of trust,  
261 mortgages or encumbrances of which the purchaser has actual or  
262 constructive notice on the date of the purchase. Foreclosure of  
263 any prior deeds of trust or other liens shall terminate and  
264 extinguish the subordinate construction lien or other interest as  
265 to the land and the buildings and improvements thereon, whether or  
266 not at the time of the foreclosure the construction lien or  
267 interest has been perfected in accordance with the provisions of  
268 this article, and the subordinate lienholder shall have the rights  
269 in any excess proceeds received by the foreclosing lienholder as  
270 provided by law.

271 (c) If a deed of trust, mortgage, assignment of leases  
272 or rents, fixture filing or other instrument securing a loan for  
273 construction of improvements on land (each a "construction deed of  
274 trust"), is filed in the land records in the office of the  
275 chancery clerk of the county in which the land is located before  
276 the filing of a construction lien, and the lender obtains the  
277 affidavit or sworn statement from the owner regarding payment of  
278 contractors as provided in Section 85-7-313, the construction deed  
279 of trust, and all advances of the loan for construction and  
280 related expenses, shall have priority over any subsequently filed  
281 construction liens.

282 (3) (a) Following compliance with the requirements of  
283 subsection (1) of this section, in any proceeding against the



284 owner to enforce a lien created by Section 85-7-303 against the  
285 property, the party having a direct contractual relationship with  
286 the lien claimant shall not be a necessary party, but may be made  
287 a party. The design professional, contractor or subcontractor, or  
288 all of them, may intervene in the proceedings at any time before  
289 judgment for the purpose of resisting the establishment of the  
290 lienor of asserting against the lienor any claim of the contractor  
291 or subcontractor growing out of or related to the contract,  
292 subcontract or purchase order upon which the asserted lien is  
293 based.

294 (b) Any party to an action against the owner to enforce  
295 a lien against the property, by appropriate plea, may put in issue  
296 the fact of indebtedness or the existence of the lien, or both,  
297 and may interpose any other defense or join any counterclaim  
298 applicable to the action; and if the court by its finding, or the  
299 jury by their verdict, as the case may be, ascertain that the  
300 plaintiff has a lien as claimed, judgment shall be entered for the  
301 amount secured thereby, plus interest and costs, against the party  
302 liable for the same.

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

306 (d) All liens arising under Section 85-7-303 shall have  
307 an equal priority, and be first paid out of the proceeds of the  
308 sale of the property, or money collected from the owner; and if



309 the proceeds and money are insufficient to satisfy the liens in  
310 full, the proceeds and money shall be distributed pro rata among  
311 the claimants thereof or as otherwise ordered by the court.

312 (4) In no event shall the aggregate amount of liens created  
313 by Section 85-7-303 exceed the contract price as determined by the  
314 terms of the contract or other agreement between the owner and  
315 contractor for the improvements made or services performed.

316 **SECTION 4.** The following shall be codified as Section  
317 85-7-307, Mississippi Code of 1972:

318 85-7-307. (1) Upon the written request of the property  
319 owner by registered or certified mail or statutory overnight  
320 delivery, the contractor shall furnish to the owner a complete  
321 list of all subcontractors and materialmen and upon written  
322 request from the contractor, all subcontractors shall provide the  
323 same information. If the contractor or subcontractor willfully  
324 fails or refuses to furnish the list or to give the information to  
325 the owner or contractor within a reasonable time, he shall thereby  
326 forfeit his right to a lien under this article. Similarly, if the  
327 contractor or subcontractor fails to pay any materialman or  
328 subcontractor in direct privity with him in accordance with any  
329 contract, subcontract or purchase order specifically requiring him  
330 to do so, he shall thereby forfeit his right to a lien under this  
331 article.

332 (2) For any person having a right to a lien pursuant to  
333 Section 85-7-303 who does not have privity of contract with the



334 contractor, or, if there is no contractor, with the owner, and is  
335 providing labor, services or materials for the improvement of  
336 property, within thirty (30) days following the first delivery of  
337 labor, services or materials to the property, the person shall  
338 give a written notice to the contractor, or, if there is no  
339 contractor, to the owner, either by e-mail with a confirmed  
340 receipt, registered or certified mail, or statutory overnight  
341 delivery setting forth the following:

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

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

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

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

351 If the person not in privity of contract with the contractor  
352 fails to provide the required notice to the contractor, he shall  
353 thereby forfeit his right to a lien under this article. The  
354 notice to the contractor required by this section shall not apply  
355 to residential construction.

356 (3) When a claimant is requested to execute a waiver and  
357 release in exchange for or to induce the making of an interim or  
358 final payment in accordance with Section 85-7-319(2) or (3), and



359 does so, if payment is made pursuant to the waiver and release and  
360 the design professional, contractor or subcontractor, without good  
361 cause, in turn willfully fails or refuses to pay the claimant the  
362 amount claimed as set forth in the waiver and release, then the  
363 design professional, contractor or subcontractor, as the case may  
364 be, shall be liable to the claimant in the amount of three (3)  
365 times the amount claimed on the face of the waiver and release.  
366 Good cause includes, but is not limited to, any defense available  
367 pursuant to the terms of the applicable contract, subcontract or  
368 purchase order.

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

371 **SECTION 5.** The following shall be codified as Section  
372 85-7-309, Mississippi Code of 1972:

373 85-7-309. (1) As to single-family residential construction  
374 only, payment made by or on behalf of the owner to a contractor or  
375 design professional in privity with the owner, for the work of a  
376 subcontractor, materialman, professional engineer or professional  
377 surveyor, shall be an absolute defense to any claim of lien made  
378 by the subcontractor, materialman, professional engineer or  
379 professional surveyor, (a) but only to the extent of the payment  
380 actually made by or on behalf of the owner to the contractor or  
381 design professional in privity with the owner, and (b) only to the  
382 extent the owner has not received a pre-lien notice in accordance  
383 with subsection (2) of this section before the payment.



384 (2) As to single-family residential construction only, as a  
385 condition precedent of any right to a special lien under Section  
386 85-7-303 in favor of a subcontractor, materialman or design  
387 professional not in privity with the owner, the claimant must  
388 provide the owner a pre-lien written notice at least ten (10) days  
389 before filing a claim of lien under Section 85-7-305.

390 **SECTION 6.** The following shall be codified as Section  
391 85-7-311, Mississippi Code of 1972:

392 85-7-311. (1) (a) When the building or improvement is  
393 erected under or by virtue of any contract with a lessee in  
394 possession, and the erection thereof is not in violation of the  
395 terms or conditions of the lease, the lien shall attach to the  
396 building or improvement, and to the unexpired term of the lease,  
397 and the holder of the lien shall have the right to avoid a  
398 forfeiture of the lease by paying rent to the lessor, as it  
399 becomes due and payable, or by the performance of any other act or  
400 duty to which the lessee is bound.

401 (b) If the lien can be enforced by a sale of the  
402 building or improvement, the purchaser may, at his election, (i)  
403 become entitled to the possession of the demised premises, and to  
404 remain therein for the unexpired term, by paying rent to the  
405 lessor, or performing any other act or duty to which the lessee  
406 was bound, as if he were the assignee of the lease; or (ii) he  
407 may, within sixty (60) days after the sale, remove the building or  
408 improvement from the premises, but only to the extent that it is





409 detachable from the real property without injury to the real  
410 property; and if he elects to take possession and to remain  
411 therein until the expiration of the term of the lease, he may,  
412 within a reasonable time after the expiration of the term, remove  
413 the building or improvement from the premises, but only to the  
414 extent that it is detachable from the real property without injury  
415 to the real property.

416 (c) If, before a sale, the holder of the lien has made  
417 any payments of rent, or other pecuniary compensation to the  
418 lessor, which ought to have been paid by the lessee, he shall be  
419 reimbursed for the payments from the proceeds of the sale.

420 (2) When a lien attaches under subsection (1) of this  
421 section, the lessor, at any time before a sale of the property,  
422 shall have a right to discharge the lien by paying to the holder  
423 the amount secured thereby, including costs and all monies he may  
424 have paid to the lessor to prevent a forfeiture of the lease, and,  
425 after a sale, he shall have the right to prevent the removal of  
426 the building or improvement from the premises by paying to the  
427 purchaser the value of the building or improvement; and upon the  
428 payment, either to the holder of the lien or to the purchaser, the  
429 building or improvement shall become the property of the lessor.

430 (3) Notwithstanding subsections (1) and (2) of this section,  
431 unless done by the written consent of the owner, only the building  
432 or improvements erected, and then only to the extent that they are  
433 detachable from the real property without injury to the real



434 property, as well as the estate of the tenant in the land, shall  
435 be subject to the lien.

436 **SECTION 7.** The following shall be codified as Section  
437 85-7-313, Mississippi Code of 1972:

438 85-7-313. (1) The special lien specified in Section  
439 85-7-303(1) shall be dissolved and unenforceable if the owner,  
440 purchaser from owner, or lender providing construction or purchase  
441 money or any other loan secured by real estate shows that:

442 (a) Payment or release of funds was made in reliance  
443 upon a lien waiver issued by lien claimant pursuant to Section  
444 85-7-319; or

445 (b) Payment or release of funds was made in reliance  
446 upon a sworn written statement of the contractor, when conveying  
447 title in a bona fide sale or securing funds in a loan transaction,  
448 that the agreed price or reasonable value of the labor, services  
449 or materials has been paid or waived in writing by the lien  
450 claimant. If the sworn written statement, as required by the  
451 paragraph (b), is willfully and falsely made, then all parties  
452 injured thereby shall have a right of action against the maker of  
453 the sworn written statement for damages in the amount of three (3)  
454 times their actual damages sustained on account of the willfully  
455 and falsely made sworn written statement.

456 (3) In a lien action, the owner of the improved real estate  
457 may show payment made in good-faith reliance as a defense to a  
458 lien action against the improved property by the lien claimant for



459 the amount paid pursuant to subsection (1)(a) or (b): (a) upon  
460 receipt of a lien waiver pursuant to subsection (1)(a), or (b)  
461 upon receipt of a sworn written statement pursuant to subsection  
462 (1)(b). However, the defense to a lien action provided by  
463 subsection (1)(a) and (b) of this section shall only apply in the  
464 event there existed no valid claim of lien which had not been  
465 previously canceled, dissolved or expired on the date of payment  
466 or release of funds.

467 **SECTION 8.** The following shall be codified as Section  
468 85-7-315, Mississippi Code of 1972:

469 85-7-315. (1) When any person entitled under this article  
470 to claim a lien against any real estate located in this state  
471 files a lien in the office of the clerk of the chancery court of  
472 the county in which the real estate is located, the owner of the  
473 real estate or the contractor employed to improve the property  
474 may, before or after foreclosure proceedings are instituted,  
475 discharge the lien upon the approval of a bond by the clerk of the  
476 chancery court. The bond shall be conditioned to pay to the  
477 holder of the lien the sum that may be found to be due the holder  
478 upon the trial of any payment action that may be filed by the  
479 lienholder to recover the amount of the claim within one hundred  
480 eighty (180) days from the time the claim of lien is filed or as  
481 otherwise required by Section 85-7-323. The bond shall be one  
482 hundred ten percent (110%) of the amount claimed under that lien  
483 and shall be either a cash bond or a bond with good security



484 approved by the clerk of the chancery court and issued by any  
485 surety company authorized to do business in the State of  
486 Mississippi. Upon approval by the clerk of the bond, the real  
487 estate shall be discharged from the lien.

488 (2) Within seven (7) days of filing the bond required by  
489 subsection (1) of this section and any attachments, the party  
490 filing the bond shall send a notice of filing the bond and a copy  
491 of the bond by registered or certified mail or statutory overnight  
492 delivery to the lien claimant at the address stated on the lien  
493 or, if no address is shown for the lien claimant, to the person  
494 shown as having filed the lien on behalf of the claimant at the  
495 indicated address of the person or, if the bond is filed by a  
496 contractor, to the owner of the property; however, if the lien  
497 claimant or the owner is an entity on file with the Secretary of  
498 State's office, sending the notice of filing the bond and a copy  
499 of the bond to the company's address or the registered agent's  
500 address on file with the Secretary of State shall be deemed  
501 sufficient; failure to send the notice of filing the bond and copy  
502 of the bond shall not invalidate the bond for purposes of  
503 discharge of a claim of lien under this section. With respect to  
504 bonds secured by property, the clerk shall not accept any real  
505 property bond unless the real property is scheduled in an attached  
506 affidavit setting forth a description of the property and  
507 indicating the record owner thereof, including any liens and  
508 encumbrances and amounts thereof, the market value, and the value



509 of the sureties' interest therein, which affidavit shall be  
510 executed by the owner or owners of the interest; the bond and  
511 affidavit shall be recorded in the same manner and at the same  
512 cost as other deeds of real property. So long as the bond exists,  
513 it shall constitute a lien against the property described in the  
514 attached affidavit.

515 (3) The clerk of the chancery court shall have the right to  
516 rely upon the amount specified in the claim of lien in determining  
517 the sufficiency of any bond to discharge under this section. The  
518 failure to specify both the amount claimed due under the lien and  
519 the date the claim was due shall result in the lien not  
520 constituting notice for any purposes.

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

524 **SECTION 9.** The following shall be codified as Section  
525 85-7-317, Mississippi Code of 1972:

526 85-7-317. If services are performed or furnished with  
527 respect to any real estate by any design professional who is a  
528 member of a partnership or who is an agent or employee of a  
529 corporation or an association and the contract for the services is  
530 made for or on behalf of the owner with the partnership or  
531 corporation or association, the partnership, corporation or  
532 association shall be entitled to all the privileges and benefits



533 of Section 85-7-303, just as if the partnership, corporation or  
534 association were a design professional.

535 **SECTION 10.** The following shall be codified as Section  
536 85-7-319, Mississippi Code of 1972:

537 85-7-319. (1) A right to claim a lien or to claim upon a  
538 bond may not be waived in advance of furnishing of labor, services  
539 or materials. Any purported waiver or release of lien, bond claim  
540 or this article executed or made in advance of furnishing labor,  
541 services or materials is null, void and unenforceable.

542 (2) When a claimant is requested to execute a waiver and  
543 release in exchange for or in order to induce payment other than  
544 final payment, the waiver and release shall substantially follow  
545 the Interim Waiver and Release upon Payment form set forth in  
546 Section 85-7-333(1). The failure to correctly complete any of the  
547 blank spaces in the referenced form does not invalidate the form  
548 if the subject matter of the release reasonably may be determined.

549 (3) When a claimant is requested to execute a waiver and  
550 release in exchange for or in order to induce making of final  
551 payment, the waiver and release shall substantially follow the  
552 Waiver and Release upon Final Payment form set forth in Section  
553 85-7-333(2). The failure to correctly complete any of the blank  
554 spaces in the referenced form does not invalidate the form if the  
555 subject matter of the release reasonably may be determined.

556 (4) Nothing contained in this section shall affect:



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

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

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

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

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

577 (i) Actual receipt of funds;

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

580 (iii) Sixty (60) days after the date of the  
581 execution of the waiver and release, unless before the expiration



582 of the sixty-day period the claimant files in the county in which  
583 the property is located an affidavit of nonpayment, using  
584 substantially the affidavit of nonpayment form set forth in  
585 Section 85-7-333(3).

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

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

595 (e) Except as provided in Section 85-7-313, a waiver  
596 and release provided in accordance with this section shall be  
597 suspended upon the filing of an affidavit of nonpayment until  
598 payment in full has been received. The affidavit of nonpayment  
599 shall not affect the enforceability of the owner's defenses  
600 available pursuant to Section 85-7-313, if any.

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

604 **SECTION 11.** The following shall be codified as Section  
605 87-5-321, Mississippi Code of 1972:





606           87-5-321. (1) Failure of a lien claimant to commence a lien  
607 action to collect the amount of his or her claim within one  
608 hundred eighty (180) days from the date of filing the lien renders  
609 the claim of lien unenforceable. Any lien filed shall include on  
610 the face of the lien the following statement in at least 12 point  
611 bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED  
612 EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF  
613 A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD." Failure to  
614 include the required language shall invalidate the lien and  
615 prevent it from being filed. No release or voiding of the liens  
616 shall be required. A lien shall expire sooner and be disregarded  
617 once it is determined that no notice of commencement was timely  
618 filed in response to a notice of contest pursuant to Section  
619 85-7-323.

620           (2) Whenever any lien has been fully satisfied, the holder  
621 thereof shall file a cancellation of it in the record in the  
622 office of the chancery clerk.

623           (3) Any holder of a lien, who, after having been fully paid,  
624 fails for fifteen (15) days after demand in writing to file a  
625 cancellation as provided in subsection (1) of this section, shall  
626 be liable to any person thereby injured for the amount of the  
627 injury, which shall not be less than Five Hundred Dollars  
628 (\$500.00) per day that the required cancellation is not timely  
629 filed, plus reasonable attorney's fees and costs.



630           **SECTION 12.** The following shall be codified as Section  
631 85-7-323, Mississippi Code of 1972:

632           85-7-323. (1) An owner or an owner's agent or attorney, or  
633 the contractor or contractor's agent or attorney, may elect to  
634 shorten the time prescribed in which to commence a payment action  
635 to enforce any claim of lien by recording in the chancery clerk's  
636 office a notice in substantially the form set forth in Section  
637 85-7-333(4), along with proof of delivery to the lien claimant.

638           (2) The clerk of the chancery court shall cross-reference  
639 the notice of contest of lien to the lien. The owner or the  
640 owner's agent or attorney, or the contractor or the contractor's  
641 agent or attorney, shall send a copy of the notice of contest of  
642 lien by registered or certified mail or statutory overnight  
643 delivery to the lien claimant at the address noted on the face of  
644 the lien within seven (7) days of filing. Service shall be deemed  
645 complete upon mailing.

646           (3) The lien shall be extinguished by law upon the earlier  
647 of ninety (90) days after the filing of the notice of contest of  
648 lien, or one hundred eighty (180) days from the date of lien  
649 filing if no payment action is filed in that time period. No  
650 release or voiding of the liens shall be required. This  
651 subsection shall not be construed to extend the time in which a  
652 payment action must begin.

653           **SECTION 13.** The following shall be codified as Section  
654 85-7-325, Mississippi Code of 1972:



655           85-7-325. The computation of time under this article shall  
656 be determined pursuant to Section 1-3-67.

657           **SECTION 14.** The following shall be codified as Section  
658 85-7-327, Mississippi Code of 1972:

659           85-7-327. (1) Judgments establishing the lien, and ordering  
660 the property sold for the satisfaction thereof, may be enforced by  
661 special writ of execution as set forth in Section 85-7-153.

662           (2) The delivery of possession by the person claiming the  
663 lien shall not affect his lien.

664           **SECTION 15.** The following shall be codified as Section  
665 85-7-329, Mississippi Code of 1972:

666           85-7-329. (1) Any person who shall falsely and knowingly  
667 file the claim of lien provided in this act without just cause  
668 shall be liable to every party injured thereby for a penalty equal  
669 to three (3) times the full amount for which the claim was filed,  
670 to be recovered in an action by any party so injured at any time  
671 within one hundred eighty (180) days from the filing of the claim  
672 of lien.

673           (2) Any person whose rights may be adversely affected by  
674 wrongful filing of a claim of lien, as provided by this article  
675 may, in addition to the remedies set forth in subsection (1) of  
676 this section, apply, upon seven (7) days' notice, to the circuit,  
677 county or chancery court, to expunge or vacate the claim of lien,  
678 in accordance with Rule 81(d)(2) of the Mississippi Rules of Civil  
679 Procedure.



680           **SECTION 16.** The following shall be codified as Section  
681 85-7-331, Mississippi Code of 1972:  
682           85-7-331. Where a contractor gives a payment bond providing  
683 payment protection to subcontractors and material suppliers to the  
684 full extent provided by the Mississippi Little Miller Act found at  
685 Section 31-5-51, the payment bond shall be in substitution for the  
686 liens provided for a subcontractor or materialman in this article.  
687 The contractor's right to a lien is not affected by the provision  
688 of a bond.

689           **SECTION 17.** The following shall be codified as Section  
690 85-7-333, Mississippi Code of 1972:  
691           85-7-333. (1) The following form is the Interim Waiver and  
692 Release Upon Payment form referred to in Section 85-7-319:

693                           INTERIM WAIVER AND RELEASE UPON PAYMENT  
694 STATE OF MISSISSIPPI  
695 COUNTY OF \_\_\_\_\_  
696           THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
697 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
698 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
699 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
700 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
701 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
702 FOLLOWS:



703 (DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE  
704 BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT  
705 DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)  
706 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
707 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
708 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
709 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF  
710 \_\_\_\_\_ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE  
711 MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON  
712 ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE  
713 UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING  
714 OR PREMISES.

715 GIVEN UNDER MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF

716 \_\_\_\_\_, \_\_\_\_\_.

717 \_\_\_\_\_ (SEAL)

718 \_\_\_\_\_

719 \_\_\_\_\_

720 (WITNESS)

721 \_\_\_\_\_

722 (ADDRESS)

723 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL  
724 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED  
725 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY  
726 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN  
727 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION



728 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE  
729 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM  
730 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION  
731 85-7-319, MISSISSIPPI CODE OF 1972.

732 (2) The following form is the Waiver and Release Upon Final  
733 Payment form referred to in Section 85-7-319:

734 WAIVER AND RELEASE UPON FINAL PAYMENT

735 STATE OF MISSISSIPPI

736 COUNTY OF \_\_\_\_\_

737 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
738 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
739 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN  
740 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
741 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
742 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
743 FOLLOWS:

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

747 UPON THE RECEIPT OF THE SUM OF \$ \_\_\_\_\_, THE MECHANIC  
748 AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS  
749 OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY  
750 RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR  
751 OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON  
752 ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.



753 GIVEN UNDER MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF

754 \_\_\_\_\_, \_\_\_\_.

755 \_\_\_\_\_ (SEAL)

756 \_\_\_\_\_

757 \_\_\_\_\_

758 (WITNESS)

759 \_\_\_\_\_

760 (ADDRESS)

761 NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL  
762 BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED  
763 ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY  
764 (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN  
765 AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION  
766 OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE  
767 LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM  
768 UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION  
769 85-7-319, MISSISSIPPI CODE OF 1972.

770 (3) The following form is the Affidavit of Nonpayment  
771 referred to in Section 85-7-319:

772 AFFIDAVIT OF NONPAYMENT

773 STATE OF MISSISSIPPI

774 COUNTY OF \_\_\_\_\_

775 THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED  
776 BY \_\_\_\_\_ (NAME OF CONTRACTOR) TO FURNISH \_\_\_\_\_ (DESCRIBE  
777 MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN



778 AS \_\_\_\_\_ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED  
779 IN THE CITY OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, AND IS OWNED BY  
780 \_\_\_\_\_ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS  
781 FOLLOWS:

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

785 PURSUANT TO SECTION 85-7-319 THE UNDERSIGNED EXECUTED A LIEN  
786 WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED \_\_\_\_\_,  
787 \_\_\_\_\_. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$ \_\_\_\_\_)  
788 HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE  
789 NONPAYMENT.

790 THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE  
791 UNDERSIGNED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_.

792 \_\_\_\_\_ (SEAL)

793 CLAIMANT'S SIGNATURE \_\_\_\_\_

794 SWORN TO AND EXECUTED IN THE PRESENCE OF:

795 \_\_\_\_\_

796 WITNESS

797 \_\_\_\_\_

798 NOTARY PUBLIC

799 WITHIN SEVEN (7) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,  
800 THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED  
801 OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF  
802 THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON





803 FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE  
804 AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S  
805 ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED  
806 SUFFICIENT.

807 (4) The following form is the Notice of Contest of Lien form  
808 referred to in Section 85-7-323:

809 NOTICE OF CONTEST OF LIEN

810 TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

811 YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF  
812 LIEN FILED BY YOU ON \_\_\_\_\_ 20\_\_\_\_, AND RECORDED IN \_\_\_\_\_  
813 BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE PUBLIC RECORDS OF  
814 \_\_\_\_\_ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY  
815 \_\_\_\_\_, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A LIEN  
816 ACTION TO ENFORCE YOUR LIEN IS LIMITED TO SIXTY (60) DAYS FROM  
817 RECEIPT OF THIS NOTICE. THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

818 THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO  
819 NOT: (1) COMMENCE A LIEN ACTION FOR RECOVERY OF THE AMOUNT OF THE  
820 LIEN CLAIM PURSUANT TO SECTION 85-7-305, MISSISSIPPI CODE OF 1972,  
821 WITHIN SIXTY (60) DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A  
822 NOTICE OF COMMENCEMENT OF LIEN ACTION WITHIN THIRTY (30) DAYS OF  
823 FILING THE ABOVE-REFERENCED LIEN ACTION.

824 SIGNED: \_\_\_\_\_

825 (OWNER, CONTRACTOR, AGENT OR ATTORNEY)

826 **SECTION 18.** Section 85-7-131, Mississippi Code of 1972, is  
827 amended as follows:



828           85-7-131. \* \* \* As to oil and gas wells, the operator  
829 thereof shall have such a lien upon the interest of each  
830 nonoperator owner of an interest in the mineral leasehold estate  
831 for such nonoperator's proportionate part of such labor, material  
832 and services rendered by the operator or for the operator's  
833 account \* \* \* on behalf of each nonoperator in the drilling,  
834 completion, recompletion, reworking or other operations of such  
835 oil and gas well. If such house, building, structure, or fixture  
836 be in a city, town or village, the lien shall extend to and cover  
837 the entire lot of land on which it stands and the entire curtilage  
838 thereto belonging; or, if not in a city, town or village, the lien  
839 shall extend to and cover one (1) acre of land on which the same  
840 may stand, if there be so much, to be selected by the holder of  
841 the lien. If the structure be a water well, the lien shall extend  
842 only to all pumps, pipes, equipment therein and all water well  
843 appurtenances. If the structure be an oil or gas well, the lien  
844 shall extend to the nonoperator's interest in the mineral estate  
845 and the fixtures and equipment in the producing unit assigned such  
846 well by the State Oil and Gas Board. If the structure be a  
847 railroad or railroad embankment, the lien shall extend to and  
848 cover the entire roadbed and right-of-way, depots and other  
849 buildings used or connected therewith. If the services of the  
850 architect, surveyor, engineer, laborers, materialmen, rental or  
851 lease equipment suppliers or of the contractors shall be upon the  
852 whole subdivision, the lien shall extend to and cover the entire



853 subdivision; but if a part only of the land is subdivided and  
854 laborers', materialmen's, rental or lease equipment suppliers',  
855 architects', surveyors' or engineers' services are required and  
856 contractors are employed, then the lien shall extend to only that  
857 portion of said property upon which the services were required or  
858 upon which or in connection with which the work was done or the  
859 materials or rental or lease equipment were furnished. Such lien  
860 shall take effect as to purchasers or encumbrancers for a valuable  
861 consideration without notice thereof, only from the time of  
862 commencing suit to enforce the lien, or from the time of filing  
863 the contract under which the lien arose, or notice thereof, in the  
864 office of the clerk of the chancery court, as hereinafter stated;  
865 delivery of material to the job is prima facie evidence of its use  
866 therein, and use of water from a water well is prima facie  
867 evidence of acceptability of the well. In the case of oil and gas  
868 wells, such lien shall take effect as to purchasers or  
869 encumbrancers for a valuable consideration without notice thereof,  
870 only from the time of filing notice of such lien as provided by  
871 Section 85-7-133.

872       **SECTION 19.** Section 85-7-133, Mississippi Code of 1972, is  
873 amended as follows:

874       85-7-133. Each of the several chancery clerks of this state  
875 shall provide in his office, as a part of the land records of his  
876 county, a record entitled "Notice of \* \* \* Oil and Gas Liens"  
877 wherein notices under Section 85-7-131 shall be filed and



878 recorded, and such liens, as provided hereunder, shall not take  
879 effect unless and until some notation thereof shall be filed and  
880 recorded in said record showing a description of the property  
881 involved, the name of the lienor or lienors, the date of filing,  
882 if and where suit is filed, and if and where contract is filed or  
883 recorded.

884         **SECTION 20.** Section 85-7-141, Mississippi Code of 1972, is  
885 amended as follows:

886         85-7-141. Any person entitled to and desiring to have the  
887 benefit of \* \* \* an oil and gas lien under Section 85-7-131 shall  
888 commence his suit in the circuit or county court of the county in  
889 which the property or some part thereof is situated, if the  
890 principal of his demand exceeds Two Hundred Dollars (\$200.00),  
891 within twelve (12) months next after the time when the money due  
892 and claimed by the suit became due and payable following the day  
893 on which the last of the labor was performed or material or rental  
894 or lease equipment was supplied by the person bringing the action,  
895 and not after; and the suit shall be commenced by petition,  
896 describing with reasonable certainty the property upon which the  
897 lien is averred to exist, and setting out the nature of the  
898 contract and indebtedness, and the amount thereof; and the  
899 plaintiff shall file therewith in all cases, except where the  
900 whole work or materials, or both, were furnished in pursuance of a  
901 written contract for an aggregate price, a bill of particulars  
902 exhibiting the amount and kind of labor performed, and of



903 materials furnished, and the prices at which and times when the  
904 same were performed and furnished; and such suits shall be  
905 docketed and conducted as other suits in said court, and may be  
906 tried at the first term.

907         **SECTION 21.** Section 85-7-143, Mississippi Code of 1972, is  
908 amended as follows:

909         85-7-143. All persons having an interest in the controversy,  
910 and all persons claiming liens on the same property, by virtue  
911 of \* \* \* Section 85-7-131, shall be made parties to the suit; and  
912 should any necessary or proper party be omitted, he may be brought  
913 in by amendment, on his own application or that of any other party  
914 interested; and claims of several parties having liens on the same  
915 property may be joined in the same action.

916         **SECTION 22.** Section 85-7-145, Mississippi Code of 1972, is  
917 amended as follows:

918         85-7-145. In all actions to enforce an oil and gas lien  
919 granted by Section 85-7-131, the defendants shall be summoned, as  
920 in other actions at law, to appear and defend the action; and in  
921 case any necessary party defendant shall be a nonresident of or  
922 absent from the state, or cannot be found, he may be made a party  
923 by publication, as in cases of nonresident or absent defendants in  
924 chancery, requiring him to appear on a day to be therein named;  
925 and in default of appearance, the same proceedings shall be had as  
926 if such defendant had been duly summoned and made default.



927           **SECTION 23.** Section 85-7-147, Mississippi Code of 1972, is  
928 amended as follows:

929           85-7-147. In all actions to enforce an oil and gas lien  
930 granted by Section 85-7-131, the defendants, or any of them, by  
931 answer to the petition, may make any defense they may have against  
932 the demand of the plaintiff, and also any counterclaim against him  
933 touching the subject-matter of the suit. And should any defendant  
934 claim to have a lien upon the same property, for materials  
935 furnished or labor done thereon, he may present the same by his  
936 answer; and the cause shall be at issue without a replication, and  
937 the parties shall be confined at the trial to the cause of action  
938 and defense set forth in the pleadings.

939           **SECTION 24.** Sections 85-7-135, 85-7-137, 85-7-139, 85-7-149,  
940 85-7-151, 85-7-181, 85-7-183, 85-7-185, 85-7-197, 85-7-199 and  
941 85-7-201, Mississippi Code of 1972, which provide for liens on  
942 amounts due a contractor and the filing thereof, are repealed.

943           **SECTION 25.** The codifier is directed to codify Sections 1  
944 through 17 as a separate article within Title 85, Chapter 7,  
945 Mississippi Code of 1972.

946           **SECTION 26.** This act shall take effect and be in force from  
947 and after its passage.

