

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of Senate Bill No. 411

"TO PROVIDE THAT A MATERIALMEN'S LIEN MAY BE CHALLENGED FOR CLAIMS
OF FRAUD, EXTORTION, OR WORTHLESSNESS OF THE UNDERLYING CLAIM AND
TO AUTHORIZE AN EXPEDITED COURT HEARING."

Amendment No. 1 to Senate Bill No. 411.

Amend Senate Bill No. 411 as originally introduced:

Delete Sections 1., 2., and 3., of the bill and substitute new sections to the bill to read as follows:

“SECTION 1. Arkansas Code § 18-44-117(a), concerning the filing of the materialmen’s lien, is amended to read as follows:

(a)(1) It shall be the duty of every person who wishes to avail himself of the provisions of this subchapter to file, with the clerk of the circuit court of the county in which the building, erection, or other improvement to be charged with the lien is situated and within one hundred twenty (120) days after the things specified in this subchapter shall have been furnished or the work or labor done or performed, a just and true account of the demand due or owing to him after allowing all credits. This account shall contain a correct description of the property to be charged with the lien, verified by affidavit.

(2)(A) The person claiming the lien shall serve a file-marked copy of the account upon the owner of the property at the mailing address contained in the records of the tax assessor for that property owner and the account shall disclose that a claim for lien has been filed.

(B) The service of the account may be made by any form of mail addressed to the person to be served, with a return receipt requested and delivery restricted to the addressee or the agent of the addressee.

SECTION 2. Arkansas Code § 18-44-118 is amended to read as follows:
18-44-118. Filing of bond in contest of lien - Alternative contest .

(a) In the event any person claiming a lien for labor or materials upon any property shall file such a lien, within the time and in the manner required by law with the circuit clerk or other officer provided by law for the filing of such liens and if the owner of the property, any mortgagee or other person having an interest therein, or any contractor, subcontractor, or other person liable for the payment of such liens shall desire to contest the lien, then the person so desiring to contest the lien may file with the



circuit clerk or other officer with whom the lien is filed as required by law a bond with surety, to be approved by the officer in double the amount of the lien claimed. The bond shall be conditioned for the payment of the amount of the lien, or so much thereof as may be established by suit, together with interest and the costs of the action, if upon trial it shall be found that the property was subject to the lien.

(b) Upon the filing of the bond, if the circuit clerk or other officer before whom it is filed approves the surety, he shall give to the person claiming the lien, at his last known address, three (3) days' notice of the filing of the bond. The notice shall be in writing sent by certified mail with return receipt requested. Within that time, the person claiming the lien may appear and question the sufficiency of the surety or form of the bond. At the expiration of three (3) days, if the person claiming the lien shall not have questioned the sufficiency of the bond or surety or if the clerk finds the same to be sufficient, the clerk shall note the filing of the bond upon the margin of the lien record; the lien thereof shall thereupon be discharged and the claimant shall have recourse only against the principal and surety upon the bond.

(c) If no action to enforce the lien shall be filed within the time prescribed by law for the enforcement of liens against the surety, the bond shall be null and void, but, if any action shall be timely commenced, the surety shall be liable in like manner as the principal.

(d) If the clerk shall determine that the bond tendered is insufficient, the person tendering the bond shall have twenty-four (24) hours within which to tender a sufficient bond, and, unless a sufficient bond shall be so tendered, the lien shall remain in full force and effect.

(e) Any party aggrieved by the acceptance or rejection of the bond may apply to any court of competent jurisdiction by an action which is appropriate. The court shall have jurisdiction to enter an interlocutory order, upon notice as required by law, as may be necessary for the protection of the parties by requiring additional security for the bond, by reinstating the lien in default thereof, pending trial and hearing, or by requiring acceptance of the bond as may be necessary for the protection of the parties.

(f)(1) As an alternative procedure, if an owner of residential property or that owner's agent receives notice of the filing of a lien against residential property and believes that the lien is a fraudulent claim, that the claim is being pursued purely to extort money, or that the lien is being filed solely to gain a superior bargaining position on a worthless or near-worthless claim, the owner of the residential property or owner's agent may file a petition objecting to the lien with the circuit court of the county in which the property is located and shall receive an expedited hearing before the court within thirty (30) days of the service of the petition upon the person claiming the lien.

(2) After obtaining service of the petition objecting to the lien upon the person claiming the lien, the owner or owner's agent shall obtain a date for the hearing on the owner's challenge of the validity of the lien and shall give notice of the date, time, and place of the hearing by certified mail, postage prepaid, either to the person claiming the lien or the person's legal counsel of record.

(3)(A) If the court decides for the petitioner at a hearing, then the court shall order the clerk to discharge the lien.

(B) If the court decides for the lien claimant, then court

may assess the costs for the expedited hearing and attorney's fees against the owner or the owner's agent and the lien shall remain intact.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that owners and developers of commercial real estate are knowledgeable and sophisticated in construction law and know how to protect themselves against the imposition of mechanics' and materialmen's liens; that consumers who construct or improve residential real estate containing four (4) or fewer units do not possess that same level of knowledge and awareness; that materialmen's lien procedures are used to secure payment for work done by contractors and construction workers on homes; that the lien procedures are being abused by certain individuals; that new protections against the abuse of the lien procedures must be instituted for the benefit of honest homeowners; that these new protections cannot wait to be implemented; and that this act is immediately necessary because any delay in implementing may harm another innocent homeowner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Holt
EAN/VJF - 040920031108
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Secretary