

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

SENATE BILL 411

4
5 By: Senator Holt
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For An Act To Be Entitled

8
9 AN ACT TO PROVIDE THAT A MATERIALMEN'S LIEN MAY
10 BE CHALLENGED FOR CLAIMS OF FRAUD, EXTORTION, OR
11 WORTHLESSNESS OF THE UNDERLYING CLAIM; TO
12 AUTHORIZE AN EXPEDITED COURT HEARING; AND TO
13 REDUCE THE BOND REQUIREMENTS TO CONTEST A LIEN;
14 AND FOR OTHER PURPOSES.
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Subtitle

16
17 TO PROVIDE THAT A MATERIALMEN'S LIEN MAY
18 BE CHALLENGED FOR CLAIMS OF FRAUD,
19 EXTORTION, OR WORTHLESSNESS OF THE
20 UNDERLYING CLAIM AND TO AUTHORIZE AN
21 EXPEDITED COURT HEARING.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code § 18-44-114 is amended to read as follows:

27 18-44-114. Notice and service generally - Contest for fraud -
28 expedited hearing.

29 (a)(1)(A) Every person, except the original contractor, who may wish
30 to avail himself of the benefit of the provisions of this subchapter shall
31 give ten (10) days' notice before the filing of the lien, as required in §
32 18-44-117(a), to the owner, owners, or agent, or either of them, that he
33 holds a claim against the building or improvement, setting forth the amount
34 and from whom it is due.

35 (B) However, if the transaction is a direct sale to the
36 property owner, this notice requirement shall not apply and the lien rights



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1 arising under this subchapter shall not be conditioned on delivery and
2 execution of the notice.

3 (2) For purposes of this subsection, a sale shall be considered
4 a direct sale when the owner or owners order the materials from the lien
5 claimant.

6 (b)(1) The notice may be served by any officer authorized by law to
7 serve process in civil actions, by any person who would be a competent
8 witness, or by any form of mail addressed to the person to be served, with a
9 return receipt requested and delivery restricted to the addressee or the
10 agent of the addressee.

11 (2)(A)(i) When served by an officer, his official return
12 endorsed thereon shall be proof thereof.

13 (ii) When served by any other person, the fact of
14 the service shall be verified by affidavit of the person so serving.

15 (B)(i) When served by mail, the service shall be verified
16 by a return receipt signed by the addressee or the agent of the addressee, or
17 a returned envelope, postal document, or affidavit by a postal employee
18 reciting or showing refusal of the notice by the addressee.

19 (ii) If delivery of the mailed notice is refused by
20 the addressee, then the person holding the claim shall immediately mail to
21 the owner, owners, or agent a copy of the notice by first class mail and may
22 proceed to file his lien.

23 (c)(1)(A) If an owner or owner's agent receives notice of the claim
24 for a lien and believes that the lien is a fraudulent claim, that the claim
25 is being pursued purely to extort money, or that the lien is being filed
26 solely to gain a superior bargaining position on a worthless or near-
27 worthless claim, the owner or owner's agent may file a petition with the
28 circuit court and shall be entitled to receive an expedited hearing before
29 the court within ten (10) days of the filing of the objection to the lien
30 claim.

31 (B) If a petition objecting to the lien claim is filed by
32 the owner or the owner's agent receiving the notice, no lien may be filed
33 until the expedited hearing is conducted and the court rules on the
34 objections to the filing of the lien.

35 (2) The owner or owner's agent shall obtain a date for a hearing
36 of the owner's challenge of the validity of the lien and shall give notice of

1 the date, time, and place of the hearing by certified mail, postage prepaid,
2 either to the person claiming the lien or to the person's legal counsel of
3 record.

4 (3)(A) If a hearing is held on the demand of the owner or
5 owner's agent, the owner or owner's agent shall present evidence sufficient
6 to make a prima facie case of the fraudulent claim, extortion claim, or the
7 worthlessness of the lien claim described in the petition. The person
8 claiming the lien shall be entitled to present evidence in rebuttal.

9 (B) If the court decides upon all the evidence that the
10 owner or the owner's agent is likely to succeed on the merits at a full
11 hearing, then the court shall order the clerk to refuse the lien.

12 (C) If the court decides that evidence of fraud,
13 extortion, or worthlessness of the claim is insufficient, then the court may
14 assess the costs for the expedited hearing and attorney's fees against the
15 owner or the owner's agent and the lien may be filed.

16 (4) No expedited action by the court shall be the final
17 adjudication of the parties' rights in the action.

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19 SECTION 2. Arkansas Code § 18-44-118(a), concerning the filing of a
20 bond to contest a lien, is amended to read as follows:

21 (a) In the event any person claiming a lien for labor or materials
22 upon any property shall file such a lien, within the time and in the manner
23 required by law with the circuit clerk or other officer provided by law for
24 the filing of such liens and if the owner of the property, any mortgagee or
25 other person having an interest therein, or any contractor, subcontractor, or
26 other person liable for the payment of such liens shall desire to contest the
27 lien, then the person so desiring to contest the lien may file with the
28 circuit clerk or other officer with whom the lien is filed as required by law
29 a bond with surety, to be approved by the officer in ~~double~~ the amount of the
30 lien claimed. The bond shall be conditioned for the payment of the amount of
31 the lien, or so much thereof as may be established by suit, together with
32 interest and the costs of the action, if upon trial it shall be found that
33 the property was subject to the lien.

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35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that the materialmen's lien

1 procedures are used to secure payment for work done by contractors and
2 construction workers on homes; that the lien procedures are being abused by
3 certain individuals; that new protections against the abuse of the lien
4 procedures must be instituted for the benefit of honest homeowners; that
5 these new protections cannot wait to be implemented; and that this act is
6 immediately necessary because any delay in implementing may harm another
7 innocent homeowner. Therefore, an emergency is declared to exist and this act
8 being immediately necessary for the preservation of the public peace, health,
9 and safety shall become effective on:

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

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

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

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