

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
4

As Engrossed: S4/9/03
A Bill

SENATE BILL 411

5 By: Senator Holt
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8 **For An Act To Be Entitled**

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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16 **Subtitle**

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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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 *SECTION 1. Arkansas Code § 18-44-117(a), concerning the filing of the*
27 *materialmen's lien, is amended to read as follows:*

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



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

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

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9 SECTION 2. Arkansas Code § 18-44-118 is amended to read as follows:

10 18-44-118. Filing of bond in contest of lien - Alternative contest .

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

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

36 (c) If no action to enforce the lien shall be filed within the time

1 prescribed by law for the enforcement of liens against the surety, the bond
2 shall be null and void, but, if any action shall be timely commenced, the
3 surety shall be liable in like manner as the principal.

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

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

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

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

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

33 (B) If the court decides for the lien claimant, then court
34 may assess the costs for the expedited hearing and attorney's fees against
35 the owner or the owner's agent and the lien shall remain intact.

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