

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Representative Stalnaker**

*As Engrossed: 3/24/95*  
**A Bill**

ACT 1298 OF 1995  
HOUSE BILL 1962

5  
6  
7 **For An Act To Be Entitled**

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE BY  
9 INCORPORATING THE RECOMMENDATIONS OF THE ARKANSAS TASK  
10 FORCE ON MATERIALMEN'S LIEN AND BONDING NOTICE  
11 REQUIREMENTS; AND FOR OTHER PURPOSES."

12  
13 **Subtitle**

14 "TO AMEND THE ARKANSAS CODE BY  
15 INCORPORATING RECOMMENDATIONS OF THE  
16 TASK FORCE ON MATERIALMEN'S LIEN AND  
17 BONDING NOTICE REQUIREMENTS."

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 SECTION 1. Arkansas Code Annotated § 18-44-101 is hereby amended to  
22 read as follows:

23 "18-44-101. Liens on buildings, land, or boats.

24 Every contractor, subcontractor, or material supplier as defined in  
25 § 18-44-107, who supplies labor, services, material, fixtures, engine, boiler,  
26 or machinery in the construction or repair of an improvement to real estate,  
27 or any boat or vessel of any kind, by virtue of a contract with the owner,  
28 proprietor, contractor or subcontractor, or agent thereof, upon complying with  
29 the provisions of this subchapter, shall have, to secure payment, a lien upon  
30 the improvement and up to one (1) acre of land upon which the improvement is  
31 situated, or to the extent of any number of acres of land upon which work has  
32 been done or improvements erected or repaired. If the improvement is to any  
33 boat, or vessel, then the lien shall be upon the boat or vessel to secure the  
34 payment for labor done or materials, fixtures, engine, boiler, or machinery  
35 furnished."

36

1 SECTION 2. Arkansas Code Annotated § 18-44-107 is hereby amended to  
2 read as follows:

3 "18-44-107. Subcontractors.

4 As used in this subchapter, unless the context otherwise requires:

5 (1) Contractor means any person who contracts orally or in writing  
6 directly with a person holding an interest in real estate, or such person's  
7 agent, for the construction of any improvement to or repair of real estate.

8 (2) Subcontractor means any person who supplies labor or services  
9 pursuant to a contract with the contractor, or to a person in direct privity  
10 of contract with such person.

11 (3) Material supplier means any person who supplies materials, goods,  
12 fixtures, or any other tangible item to the contractor, a subcontractor, or an  
13 individual having direct contractual privity with such persons.

14 (4) Person includes an individual, a partnership, a corporation, a  
15 limited liability organization, a trust, or any other business entity  
16 recognized by law."

17

18 SECTION 3. Arkansas Code Annotated § 18-44-108 is hereby amended to  
19 read as follows:

20 "18-44-108. Refusal to list parties doing work or furnishing materials.

21 (a) The owner or proprietor, material supplier, subcontractor, or  
22 anyone interested as mortgagee or trustee in the real estate upon which  
23 improvements are made under this subchapter, may, at any time, apply to the  
24 contractor or subcontractor for the following:

25 (1) A list of all parties doing work or furnishing material for  
26 the buildings and the amount due to each of the persons.

27 (2) Certification that the owner or agent has received the  
28 preliminary notice specified under § 18-44-115.

29 (b) Any contractor or subcontractor who, upon request, refuses or fails  
30 within five (5) business days to give a correct list of the parties furnishing  
31 material or doing labor, and the amount due to each, on the building, or who  
32 falsely certifies that an owner or agent has received the preliminary notice  
33 specified under § 18-44-115, shall be guilty of a misdemeanor and shall be  
34 punished by a fine not exceeding twenty-five hundred dollars (\$2,500)."

35

1 SECTION 4. Arkansas Code Annotated § 18-44-109 is hereby amended to  
2 read as follows:

3 "18-44-109. Unlawful to use materials other than as designated.

4 Any contractor or subcontractor who shall purchase materials on credit  
5 and represent at the time of purchase that they are to be used in a designated  
6 building or other improvement and shall thereafter use, or cause to be used,  
7 the materials in the construction of any building or improvement other than  
8 that designated without the written consent of the person from whom the  
9 materials were purchased, with intent to defraud that person, shall be deemed  
10 guilty of a misdemeanor if the materials were valued at one thousand dollars  
11 (\$1,000 or more) and shall be punished by a fine not exceeding twenty-five  
12 hundred dollars (\$2,500)."

13

14 SECTION 5. Arkansas Code Annotated § 18-44-110 is hereby amended to  
15 read as follows:

16 "18-44-110. Preference over prior liens - Exception.

17 (a) (1) The liens for labor performed or material or fixtures furnished,  
18 as provided for in this subchapter, shall have equal priority toward each  
19 other without regard to the date of filing the account or lien or the date  
20 when the particular labor or material was performed or furnished. All such  
21 liens shall date from the time that the construction or repair first  
22 commences.

23 (2) Construction or repair commences when there is a visible  
24 manifestation of activity on real estate that would lead a reasonable person  
25 to believe that construction or repair of an improvement to the real estate  
26 has begun or will soon begin, including but not limited to the following:

27 (A) Delivery of a significant amount of lumber, bricks,  
28 pipe, tile, or other building material to the site; or

29 (B) Grading or excavating the site; or

30 (C) Laying out lines or grade stakes; or

31 (D) Demolition in an existing structure.

32 (3) In all cases where a sale shall be ordered and the property  
33 sold, and the proceeds arising from the sale are not sufficient to discharge  
34 in full all the liens against the property without reference to the date of  
35 filing the account or lien, the proceeds shall be paid pro rata on the

1 respective liens.

2           (b)(1) The liens for labor performed or materials or fixtures  
3 furnished, as provided for in this subchapter, shall attach to the improvement  
4 on which the labor was performed or the materials or fixtures were furnished  
5 in preference to any encumbrance existing on the real estate prior to the  
6 commencement of construction or repair of the improvement. In all cases where  
7 the prior encumbrance was given for the purpose of funding construction or  
8 repair of the improvement, that lien shall have priority over all liens given  
9 by this subchapter.

10           (2) The liens, as provided for in this subchapter, shall be  
11 enforced by foreclosure, as further provided for in this subchapter, and the  
12 property ordered sold subject to the lien of the prior encumbrance on the real  
13 estate.

14           (c) The lien for labor performed and materials or fixtures furnished,  
15 as provided for in this subchapter, shall have priority over all other  
16 encumbrances that attach to the real estate or improvements thereon subsequent  
17 to commencement of construction or repair."

18

19           SECTION 6. Arkansas Code Annotated §§ 18-44-111 and 18-44-112 are  
20 hereby repealed.

21

22           SECTION 7. Arkansas Code Annotated § 18-44-115 is hereby amended to  
23 read as follows:

24           "18-44-115. Notice to owner by contractor.

25           (a) *No lien may be acquired by virtue of this subchapter unless the*  
26 *owner or his authorized agent has received, by personal delivery or by*  
27 *certified mail, a copy of the notice set out in subsection (c) of this*  
28 *section. The notice required by this section shall not require the signature*  
29 *of the owner or his authorized agent in instances where the notice is*  
30 *delivered by certified mail.*

31           (b) It shall be the duty of the contractor to give the owner or his  
32 authorized agent the notice set out in subsection (d) of this section on  
33 behalf of all potential lien claimants under his contract prior to the  
34 supplying of any materials or fixtures. Any potential lien claimant may also  
35 give notice. However, no lien may be claimed by any supplier of material or

1 fixtures unless the owner or agent has received at least one (1) copy of the  
2 notice, which need not have been given by the particular lien claimant.

3 (c) The notice set forth in this subsection may be incorporated into  
4 the contract, or affixed thereto, and shall be conspicuous, worded exactly as  
5 stated, in all capital letters, and shall read as follows:

6 IMPORTANT NOTICE TO OWNER

7 I UNDERSTAND THAT EACH PERSON SUPPLYING MATERIAL OR FIXTURES IS ENTITLED  
8 TO A LIEN AGAINST PROPERTY IF NOT PAID IN FULL FOR MATERIALS USED TO IMPROVE  
9 THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE  
10 CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE  
11 PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE  
12 CONTRACTOR IN THE AMOUNT OF THE COST OF ANY MATERIALS OR LABOR NOT PAID FOR. I  
13 KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO  
14 ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS UNDER THE CONTRACT, AND I MAY  
15 CHECK WITH THEM TO DETERMINE IF ALL MATERIALS FURNISHED FOR THE PROPERTY HAVE  
16 BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY  
17 ALL SUPPLIERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES PROVIDED  
18 UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER HAS  
19 NOT BEEN PAID, I MAY PAY THE SUPPLIER AND CONTRACTOR WITH A CHECK MADE PAYABLE  
20 TO THEM JOINTLY.

21 SIGNED: .....

22 .....

23 ADDRESS OF PROPERTY

24 DATE: . . . . .

25 I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER OR AGENT  
26 OF THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

27 .....

28 CONTRACTOR

29 (d) If the contractor supplies a performance and payment bond or if the  
30 transaction is a direct sale to the property owner, the notice requirement of  
31 subsection (a) of this section shall not apply and the lien rights arising  
32 under this subchapter shall not be conditioned on the delivery and execution  
33 of the notice. A sale shall be a direct sale only if the owner orders the  
34 materials from the lien claimant or authorizes another person to do so.

35 (e) (1) The General Assembly hereby finds that owners and developers of



1 THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY  
2 WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED  
3 PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK  
4 PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY.

5 (3) Any contractor who fails to give the notice required by this  
6 subsection shall be guilty of a misdemeanor and shall be punished by a fine  
7 not exceeding one thousand dollars (\$1,000)."

8  
9 SECTION 8. Arkansas Code Annotated §§ 18-44-120 and 18-44-121 are hereby  
10 repealed.

11  
12 SECTION 9. Arkansas Code Annotated § 18-44-128 is hereby amended to  
13 read as follows:

14 "18-44-128. Attorney's fee.

15 *When any contractor, subcontractor, or material supplier who has filed a*  
16 *lien, as provided for in this chapter, gives notice thereof to the debtor or*  
17 *owner of property which has been subjected to the lien in writing sent by*  
18 *registered or certified mail and the claim has not been paid within twenty*  
19 *(20) days from the date of the mailing and if the contractor, subcontractor,*  
20 *or material supplier is required to sue for the enforcement of his claim, the*  
21 *court shall allow the successful party in the action a reasonable attorney's*  
22 *fee in addition to other relief to which he may be entitled."*

23  
24 SECTION 10. Arkansas Code Annotated §§ 18-44-129 and 18-44-130 are  
25 hereby repealed.

26  
27 SECTION 11. Title 18, Chapter 44, Subchapter 1 of the Arkansas Code  
28 Annotated is hereby amended by adding a new section to read as follows:

29 "18-44-134. Landscaping services and supplies.

30 (a) (1) Every person who shall do or perform landscaping services or  
31 provide landscaping supplies on any land, building, erection, or improvement  
32 upon land, under or by virtue of any written agreement for performance with  
33 the owner or his agent thereof shall have a lien upon the land, building,  
34 erection, or improvement to the extent of the agreed contract price or a  
35 reasonable price for those services.

1           (2) However, the lien does not attach to the land, building,  
2 erection, or improvement unless and until the lien is duly filed of record  
3 with the circuit clerk and recorder in the county in which the land, building,  
4 erection, or improvement is located.

5           (b) This recorded lien will be enforced in the same manner as a  
6 mechanic's or contractor's lien."

7

8           SECTION 12. Title 18, Chapter 44, Subchapter 1 of the Arkansas Code  
9 Annotated is hereby amended by adding a new section to read as follows:

10          "18-44-135. Jointly owned property.

11          In the event that property is jointly owned, the signature of one (1) of  
12 the owners is sufficient for the purposes of this chapter."

13

14          SECTION 13. Arkansas Code Annotated § 16-13-304 is hereby amended to  
15 read as follows:

16          "16-13-304. Jurisdiction.

17          (a) Chancery courts shall have original jurisdiction in all matters in  
18 equity as fully as that exercised by the circuit courts of this state in  
19 counties where no separate chancery courts have been established prior to  
20 April 27, 1903.

21          (b) Notwithstanding the provisions of the Arkansas Juvenile Code of  
22 1989, § 9-27-301 et seq., or any other enactment which might be interpreted  
23 otherwise, the chancery court or any division of chancery court shall have  
24 jurisdiction for all cases and matters relating to paternity.

25          (c) The chancery court of the county where the property is situated on  
26 which a lien created under Title 18, Chapter 44 of the Arkansas Code Annotated  
27 is attached shall have exclusive jurisdiction to enforce the lien."

28

29          SECTION 14. All provisions of this act of a general and permanent  
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
31 Code Revision Commission shall incorporate the same in the Code.

32

33          SECTION 15. If any provision of this act or the application thereof to  
34 any person or circumstance is held invalid, such invalidity shall not affect  
35 other provisions or applications of the act which can be given effect without



1 the invalid provision or application, and to this end the provisions of this  
2 act are declared to be severable.

3

4 SECTION 16. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

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*/s/Rep. Stalnaker*

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APPROVED: 4-14-95