

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

As Engrossed: 3/24/95

A Bill

HOUSE BILL 1962

4 By: Representative Stalnaker

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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

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Subtitle

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

1

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

4 "18-44-107. Subcontractors.

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

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

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

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

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

19

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

22 "18-44-108. Refusal to list parties doing work or furnishing
23 materials.

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

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

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

32 (b) Any contractor or subcontractor who, upon request, refuses or
33 fails within five (5) business days to give a correct list of the parties
34 furnishing material or doing labor, and the amount due to each, on the
35 building, or who falsely certifies that an owner or agent has received the

1 preliminary notice specified under § 18-44-115, shall be guilty of a
2 misdemeanor and shall be punished by a fine not exceeding twenty-five hundred
3 dollars (\$2,500)."

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

7 "18-44-109. Unlawful to use materials other than as designated.

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

17

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

20 "18-44-110. Preference over prior liens - Exception.

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

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

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

33 (B) Grading or excavating the site; or

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

35 (D) Demolition in an existing structure.

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

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

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

18 (c) The lien for labor performed and materials or fixtures furnished,
19 as provided for in this subchapter, shall have priority over all other
20 encumbrances that attach to the real estate or improvements thereon
21 subsequent to commencement of construction or repair."
22

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

25
26 SECTION 7. Arkansas Code Annotated § 18-44-115 is hereby amended to
27 read as follows:

28 "18-44-115. Notice to owner by contractor.

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

35 (b) It shall be the duty of the contractor to give the owner or his

1 authorized agent the notice set out in subsection (d) of this section on
2 behalf of all potential lien claimants under his contract prior to the
3 supplying of any materials or fixtures. Any potential lien claimant may also
4 give notice. However, no lien may be claimed by any supplier of material or
5 fixtures unless the owner or agent has received at least one (1) copy of the
6 notice, which need not have been given by the particular lien claimant.

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

10 IMPORTANT NOTICE TO OWNER

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

25 SIGNED:.....

26
27 ADDRESS OF PROPERTY

28 DATE:

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

31
32 CONTRACTOR

33 (d) If the contractor supplies a performance and payment bond or if
34 the transaction is a direct sale to the property owner, the notice
35 requirement of subsection (a) of this section shall not apply and the lien

1 rights arising under this subchapter shall not be conditioned on the delivery
2 and execution of the notice. A sale shall be a direct sale only if the owner
3 orders the materials from the lien claimant or authorizes another person to
4 do so. (e)(1) The General Assembly hereby finds that owners and
5 developers of commercial real estate are generally knowledgeable and
6 sophisticated in construction law, are aware that unpaid suppliers of labor
7 and material are entitled to assert liens against the real estate if unpaid,
8 and know how to protect themselves against the imposition of mechanics_ and
9 material suppliers_ liens. The General Assembly further finds that consumers
10 who construct or improve residential real estate containing four (4) or fewer
11 units generally do not possess the same level of knowledge and awareness and
12 need to be informed of their rights and responsibilities. Because supplying
13 the notice specified in § 18-44-115(d) imposes a substantial burden on
14 material suppliers, the notice requirement mandated under subsection (c) of
15 this section as a condition precedent to the imposition of a material
16 supplier_s lien shall only apply to construction of or improvement to
17 residential real estate containing four (4) or fewer units.

18 (2) *No material supplier or laborer shall be entitled to a lien unless*
19 *the material supplier or laborer notifies the owner of the commercial real*
20 *estate being improved, in writing, that such material supplier or laborer is*
21 *currently entitled to payment but has not been paid. This notice shall be*
22 *sent to the owner and to the contractor by registered mail, return receipt*
23 *requested, before seventy-five (75) days have elapsed from the time that the*
24 *labor was supplied or the material furnished. Such notice shall contain the*
25 *following information:*

26 (A) *A general description of the labor, service, or material*
27 *furnished, and the amount due and unpaid;*

28 (B) *The name and address of the person furnishing the labor, service,*
29 *or materials;*

30 (C) *The name of the person who contracted for purchase of the labor,*
31 *service, or materials;*

32 (D) *A description of the jobsite sufficient for identification;*

33 *and*

34 (E) *The following statement set out in boldface type:*

35 **NOTICE TO PROPERTY OWNER**

1 IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT AN
2 IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE
3 PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH
4 FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED.
5 THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY
6 WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED
7 PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK
8 PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY.

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

12

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

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16 SECTION 9. Arkansas Code Annotated § 18-44-128 is hereby amended to
17 read as follows:

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

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

27

28 SECTION 10. Arkansas Code Annotated §§ 18-44-129 and 18-44-130 are
29 hereby repealed.

30

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

33 "18-44-134. Landscaping services and supplies.

34 (a)(1) Every person who shall do or perform landscaping services or
35 provide landscaping supplies on any land, building, erection, or improvement

1 upon land, under or by virtue of any written agreement for performance with
2 the owner or his agent thereof shall have a lien upon the land, building,
3 erection, or improvement to the extent of the agreed contract price or a
4 reasonable price for those services.

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

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

11

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

14 "18-44-135. Jointly owned property.

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

17

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

20 "16-13-304. Jurisdiction.

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

25 (b) Notwithstanding the provisions of the Arkansas Juvenile Code of
26 1989, § 9-27-301 et seq., or any other enactment which might be interpreted
27 otherwise, the chancery court or any division of chancery court shall have
28 jurisdiction for all cases and matters relating to paternity.

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

32

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

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2 SECTION 15. If any provision of this act or the application thereof to
3 any person or circumstance is held invalid, such invalidity shall not affect
4 other provisions or applications of the act which can be given effect without
5 the invalid provision or application, and to this end the provisions of this
6 act are declared to be severable.

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

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/s/Rep. Stalnaker