

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 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 990

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; TO REDUCE
13 THE BOND REQUIREMENTS TO CONTEST A LIEN; AND FOR
14 OTHER PURPOSES.

Subtitle

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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 or herself of the provisions of this subchapter to file, with the
30 clerk of the circuit court of the county in which the building, erection, or
31 other improvement to be charged with the lien is situated and within one
32 hundred twenty (120) days after the things specified in this subchapter shall
33 have been furnished or the work or labor done or performed, a just and true
34 account of the demand due or owing to him or her after allowing all credits.

35 (2) ~~This~~ The account shall contain a correct description of the
36 property to be charged with the lien, verified by affidavit.



1 (3)(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 county tax assessor for the property owner,
 4 and the account shall disclose that a claim for a 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 – Alternate lien contest.

11 (a)(1) 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.

21 (2) The bond shall be conditioned for the payment of the amount
 22 of the lien, or so much thereof as may be established by suit, together with
 23 interest and the costs of the action, if upon trial it shall be found that
 24 the property was subject to the lien.

25 (b)(1)(A) Upon the filing of the bond, if the circuit clerk or other
 26 officer before whom it is filed approves the surety, he or she shall give to
 27 the person claiming the lien, at his or her last known address, three (3)
 28 days' notice of the filing of the bond.

29 (B) The notice shall be in writing sent by certified mail
 30 with return receipt requested.

31 (2)(A) Within the three (3) days' notice the person claiming the
 32 lien may appear and question the sufficiency of the surety or form of the
 33 bond.

34 (B) At the expiration of three (3) days, if the person
 35 claiming the lien shall not have questioned the sufficiency of the bond or
 36 surety or if the clerk finds the same to be sufficient, the clerk shall note

1 the filing of the bond upon the margin of the lien record and the lien shall
2 thereupon be discharged and the claimant shall have recourse only against the
3 principal and surety upon the bond.

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

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

12 (e)(1) Any party aggrieved by the acceptance or rejection of the bond
13 may apply to any court of competent jurisdiction by an action which is
14 appropriate.

15 (2) Upon notice as required by law, the court shall have
16 jurisdiction to enter an interlocutory order as may be necessary for the
17 protection of the parties by:

18 (A) Requiring additional security for the bond;

19 (B) Reinstating the lien in default thereof, pending trial
20 and hearing; or

21 (C) Requiring acceptance of the bond as may be necessary
22 for the protection of the parties.

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

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

1 (3)(A) If the court decides the case in favor of the owner or
2 owner's agent, then the court shall order the clerk to discharge the lien.

3 (B) If the court decides the case in favor of the person
4 claiming the lien, then the court may assess costs and attorney's fees
5 against the owner or the owner's agent and shall not order the lien
6 discharged.

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

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

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

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

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