

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
4

As Engrossed: S3/15/05 S3/29/05

A Bill

SENATE BILL 990

5 By: Senator Holt
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For An Act To Be Entitled

8
9 *AN ACT TO PROVIDE THAT MECHANICS' AND*
10 *MATERIALMEN'S LIENS MAY BE CHALLENGED BY*
11 *DECLARATORY JUDGMENT PROCEEDINGS; TO STANDARDIZE*
12 *NOTICE REQUIREMENTS OF LIEN FILINGS; TO REQUIRE*
13 *LIS PENDENS FILING UPON COMMENCING AN ACTION TO*
14 *FORECLOSE MECHANICS' AND MATERIALMEN'S LIENS; AND*
15 *FOR OTHER PURPOSES.*

Subtitle

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18 *TO PROVIDE THAT MECHANICS' AND*
19 *MATERIALMEN'S LIENS MAY BE CHALLENGED BY*
20 *DECLARATORY JUDGMENT PROCEEDINGS AND TO*
21 *STANDARDIZE NOTICE REQUIREMENTS OF LIEN*
22 *FILINGS.*

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

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

36 (2) ~~This~~ The account shall contain a correct description of the



1 property to be charged with the lien, verified by affidavit.

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

6 (B) The service of the account may be made by any:

7 (i) Officer authorized by law to serve process in
8 civil actions; or

9 (ii) Form of mail addressed to the person to be
10 served with a return receipt requested and delivery restricted to the
11 addressee or the agent of the addressee.

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

14 18-44-118. Filing of bond in contest of lien.

15 (a)(1) In the event any person claiming a lien for labor or materials
16 upon any property shall file such a lien within the time and in the manner
17 required by law with the circuit clerk or other officer provided by law for
18 the filing of such liens and if the owner of the property, any mortgagee or
19 other person having an interest therein, or any contractor, subcontractor, or
20 other person liable for the payment of such liens shall desire to contest the
21 lien, then the person so desiring to contest the lien may file with the
22 circuit clerk or other officer with whom the lien is filed as required by law
23 a bond with surety, to be approved by the officer in double the amount of the
24 lien claimed.

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

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

33 (B) The notice shall be in writing ~~sent by certified mail~~
34 with return receipt requested and served by any:

35 (i) Officer authorized by law to serve process in
36 civil actions; or

1 (ii) Form of mail addressed to the person to be
2 served with a return receipt requested and delivery restricted to the
3 addressee or the agent of the addressee.

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

7 (B) At the expiration of three (3) days, if the person
8 claiming the lien shall not have questioned the sufficiency of the bond or
9 surety or if the clerk finds the same to be sufficient, the clerk shall note
10 the filing of the bond upon the margin of the lien record and the lien shall
11 thereupon be discharged and the claimant shall have recourse only against the
12 principal and surety upon the bond.

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

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

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

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

27 (A) Requiring additional security for the bond;

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

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

32 (f) Nothing in this section shall be construed to limit the right of
33 an owner, mortgagee, or any other person with an interest in the property to
34 contest the lien by declaratory judgment proceedings under § 16-111-101 et
35 seq.

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2 SECTION 3. Arkansas Code 18-44-115(e)(2)(B), concerning notice to
3 owners of commercial real estate being improved, is amended to read as
4 follows:

5 (B)(i) ~~This~~ The notice shall be sent to the owner and to
6 the contractor ~~by registered mail, return receipt requested,~~ before seventy-
7 five (75) days have elapsed from the time that the labor was supplied or the
8 material furnished.

9 (ii) The notice may be served by any:

10 (a) Officer authorized by law to serve process
11 in civil actions; or

12 (b) Form of mail addressed to the person to be
13 served with a return receipt requested and delivery restricted to the
14 addressee or the agent of the addressee.

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16 SECTION 4. Arkansas Code § 18-44-119 is amended to read as follows:
17 18-44-119. Limitation of actions.

18 (a) All actions under this subchapter shall be commenced within
19 fifteen (15) months after filing the lien and prosecuted without unnecessary
20 delay to final judgment.

21 (b) No lien shall continue to exist by virtue of the provisions of
22 this subchapter for more than fifteen (15) months after the lien is filed,
23 unless within that time:

24 (1) ~~an~~ An action shall be instituted as described in this
25 subchapter; and

26 (2) A lis pendens is filed under § 16-59-101 et seq.

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28 /s/ Holt
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