

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 H4/12/05

A Bill

SENATE BILL 990

5 By: Senator Holt
6
7

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

16
17
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.*

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

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 SECTION 2. Arkansas Code § 18-44-118 is amended to read as follows:
4 18-44-118. Filing of bond in contest of lien.

5 (a)(1) In the event any person claiming a lien for labor or materials
6 upon any property shall file such a lien within the time and in the manner
7 required by law with the circuit clerk or other officer provided by law for
8 the filing of such liens and if the owner of the property, any mortgagee or
9 other person having an interest therein, or any contractor, subcontractor, or
10 other person liable for the payment of such liens shall desire to contest the
11 lien, then the person so desiring to contest the lien may file with the
12 circuit clerk or other officer with whom the lien is filed as required by law
13 a bond with surety, to be approved by the officer in double the amount of the
14 lien claimed.

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

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

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

25 (i) Officer authorized by law to serve process in
26 civil actions; or

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

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

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

1 thereupon be discharged and the claimant shall have recourse only against the
2 principal and surety upon the bond.

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

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

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

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

17 (A) Requiring additional security for the bond;

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

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

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

26
27
28 *SECTION 3. Arkansas Code 18-44-115(e)(2)(B), concerning notice to*
29 *owners of commercial real estate being improved, is amended to read as*
30 *follows:*

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

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

36 (a) Officer authorized by law to serve process

1 in civil actions; or

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

5
6 SECTION 4. Arkansas Code § 18-44-119 is amended to read as follows:
7 18-44-119. Limitation of actions.

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

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

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

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

17
18 SECTION 5. Arkansas Code § 18-44-114(a), concerning notice to a
19 property owner prior to filing a mechanic's lien, is amended to read as
20 follows:

21 ~~(a)(1)(A) Every person, except the original contractor, who may wish~~
22 ~~to avail himself or herself of the benefit of the provisions of this~~
23 ~~subchapter shall give ten (10) days' notice before the filing of the lien, as~~
24 ~~required in § 18-44-117(a), to the owner, owners, or agent, or either of~~
25 ~~them, that he or she holds a claim against the building or improvement,~~
26 ~~setting forth the amount and from whom it is due.~~

27 ~~(B) However, if the transaction is a direct sale to the property~~
28 ~~owner, this notice requirement shall not apply and the lien rights arising~~
29 ~~under this subchapter shall not be conditioned on delivery and execution of~~
30 ~~the notice.~~

31 ~~(2) For purposes of this subsection, a sale shall be considered~~
32 ~~a direct sale when the owner or owners order the materials from the lien~~
33 ~~claimant.~~

34
35 /s/ Holt
36