

House Bill 480

By: Representatives Washburn of the 141st, Jones of the 47th, Carpenter of the 4th, Moore of the 95th, Crowe of the 110th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia
2 Annotated, relating to mechanics and materialmen liens, so as to provide for the creation,
3 declaration, amendment, notice, and priority of liens for labor, services, or materials
4 performed or furnished by registered interior designers; to provide for definitions; to provide
5 for commencement of actions and limitations on amount of such liens; to provide for rights
6 as to liens of partnerships, corporations, and associations made up of or employing registered
7 interior designers; to provide for related matters; to provide for an effective date and for
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
12 relating to mechanics and materialmen liens, is amended by revising Code
13 Section 44-14-360, relating to definitions, as follows:

14 "44-14-360.

15 As used in this part, the term:

16 (.1) 'Business day' means any day that is not a Saturday, Sunday, or legal holiday.

H. B. 480

- 17 (1) 'Contractor' means a contractor having privity of contract with the owner of the real
18 estate.
- 19 (2) 'Land surveyor' ~~means the same as the definition thereof~~ shall have the same meaning
20 as provided in Code Section 43-15-2.
- 21 (2.1) 'Lien action' means a lawsuit, proof of claim in a bankruptcy case, or a binding
22 arbitration.
- 23 (3) 'Materials,' in addition to including those items for which liens are already permitted
24 under this part, means tools, appliances, machinery, or equipment used in making
25 improvements to the real estate, to the extent of the reasonable value or the contracted
26 rental price, whichever is greater, of such tools, appliances, machinery, or equipment.
- 27 (4) 'Materialmen' means all persons furnishing the materials, tools, appliances,
28 machinery, or equipment included in the definition of materials in paragraph (3) of this
29 Code section.
- 30 (5) 'Professional engineer' ~~means the same as the definition thereof~~ shall have the same
31 meaning as provided in Code Section 43-15-2.
- 32 (6) 'Registered forester' ~~means the same as the definition of such term~~ shall have the
33 same meaning as provided in Code Section 12-6-41.
- 34 (7) 'Registered interior designer' shall have the same meaning as provided in Code
35 Section 43-4-1.
- 36 ~~(7)~~(8) 'Registered land surveyors' and 'registered professional engineers' means land
37 surveyors or professional engineers who are registered as land surveyors or professional
38 engineers under Chapter 15 of Title 43 at the time of performing, rendering, or furnishing
39 services protected under this part.
- 40 ~~(8)~~(9) 'Residential property' means single-family and two-family, three-family, and
41 four-family residential real estate.
- 42 ~~(9)~~(10) 'Subcontractor' means, but is not limited to, subcontractors having privity of
43 contract with the contractor."

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SECTION 2.

Said part is further amended by revising Code Section 44-14-361, relating to the creation of liens, property to which lien attaches, and items to be included in lien, as follows:

"44-14-361.

(a) The following persons shall each have a special lien on the real estate, factories, railroads, or other property for which they furnish labor, services, or materials:

(1) All mechanics of every sort who have taken no personal security for work done and material furnished in building, repairing, or improving any real estate of their employers;

(2) All contractors, all subcontractors and all materialmen furnishing material to subcontractors, and all laborers furnishing labor to subcontractors, materialmen, and persons furnishing material for the improvement of real estate;

(3) All registered architects furnishing plans, drawings, designs, or other architectural services on or with respect to any real estate;

(4) All registered foresters performing or furnishing services on or with respect to any real estate;

(5) All registered land surveyors and registered professional engineers performing or furnishing services on or with respect to any real estate;

(6) All contractors, all subcontractors and materialmen furnishing material to subcontractors, and all laborers furnishing labor for subcontractors for building factories, furnishing material for factories, or furnishing machinery for factories;

(7) All machinists and manufacturers of machinery, including corporations engaged in such business, who may furnish or put up any mill or other machinery in any county or who may repair the same;

(8) All contractors to build railroads; ~~and~~

(9) All suppliers furnishing rental tools, appliances, machinery, or equipment for the improvement of real estate; and

70 (10) All registered interior designers furnishing plans, drawings, designs, or other
71 interior design services on or with respect to any real estate.

72 (b) Each special lien specified in subsection (a) of this Code section may attach to the real
73 estate of the owner for which the labor, services, or materials are furnished if they are
74 furnished at the instance of the owner, contractor, or some other person acting for the
75 owner or contractor and shall include the value of work done and materials furnished in any
76 easement or public right of way adjoining said real estate if the work done or materials
77 furnished in the easement or public right of way is for the benefit of said real estate and is
78 within the scope of the owner's contract for improvements to said real estate.

79 (c) Each special lien specified in subsection (a) of this Code section shall include the
80 amount due and owing the lien claimant under the terms of its express or implied contract,
81 subcontract, or purchase order subject to subsection (e) of Code Section 44-14-361.1.

82 (d) Each special lien specified in subsection (a) of this Code section shall include interest
83 on the principal amount due in accordance with Code Section 7-4-2 or 7-4-16."

84 **SECTION 3.**

85 Said part is further amended by revising Code Section 44-14-361.1, relating to how liens
86 declared and created, amendment, record, commencement of action, notice, priorities,
87 parties, and limitation on aggregate amount of liens, as follows:

88 "44-14-361.1.

89 (a) To make good the liens specified in paragraphs (1) through (8) and (10) of
90 subsection (a) of Code Section 44-14-361, they must be created and declared in accordance
91 with the following provisions, and on failure of any of them the lien shall not be effective
92 or enforceable:

93 (1) A substantial compliance by the party claiming the lien with his or her contract for
94 building, repairing, or improving; for architectural services furnished; for registered
95 forester services furnished or performed; for registered land surveying or registered

96 professional engineering services furnished or performed; ~~or~~ for materials or machinery
97 furnished or set up; or for registered interior design services furnished or performed;
98 (2) The filing for record of his or her claim of lien within 90 days after the completion
99 of the work, the furnishing of the architectural services, or the furnishing or performing
100 of such surveying, ~~or engineering services,~~ or interior design services or within 90 days
101 after the material or machinery is furnished in the office of the clerk of the superior court
102 of the county where the property is located. The lien shall include a statement regarding
103 its expiration pursuant to Code Section 44-14-367 and a notice to the owner of the
104 property on which a claim of lien is filed that such owner has the right to contest the lien;
105 the absence of such statement or notice shall invalidate the lien. The claim shall be in
106 substance as follows:

107 'A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer,
108 registered architect, registered forester, registered land surveyor, registered professional
109 engineer, registered interior designer, or other person (as the case may be) claims a lien
110 in the amount of (specify the amount claimed) on the house, factory, mill, machinery,
111 or railroad (as the case may be) and the premises or real estate on which it is erected or
112 built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction
113 of a claim which became due on (specify the date the claim was due, which is the same
114 as the last date the labor, services, or materials were supplied to the premises) for
115 building, repairing, improving, or furnishing material (or whatever the claim may be).'

116 No later than two business days after the date the claim of lien is filed of record, the lien
117 claimant shall send a true and accurate copy of the claim of lien by registered or certified
118 mail or statutory overnight delivery to the owner of the property or, if the owner's address
119 cannot be found, the contractor, as the agent of the owner; provided, however, that if the
120 property owner is an entity on file with the Secretary of State's Corporations Division,
121 sending a copy of the claim of lien to the entity's address or the registered agent's address
122 shall satisfy this requirement. In all cases in which a notice of commencement is filed

123 with the clerk of the superior court pursuant to subsection (b) of Code
124 Section 44-14-361.5, a lien claimant shall also send a copy of the claim of lien by
125 registered or certified mail or statutory overnight delivery to the contractor at the address
126 shown on the notice of commencement;

127 (3) The commencement of a lien action for the recovery of the amount of the party's
128 claim within 365 days from the date of filing for record of his or her claim of lien. In
129 addition, within 30 days after commencing such lien action, the party claiming the lien
130 shall file a notice with the clerk of the superior court of the county wherein the subject
131 lien was filed. The notice shall contain a caption referring to the then owner of the
132 property against which the lien was filed and referring to a deed or other recorded
133 instrument in the chain of title of the affected property. The notice shall be executed,
134 under oath, by the party claiming the lien or by such party's attorney of record, but failure
135 to execute the notice under oath shall be an amendable defect which may be cured by the
136 party claiming the lien or by such party's attorney without leave of court at any time
137 before entry of the pretrial order and thereafter by leave of court. An amendment of
138 notice pursuant to this Code section shall relate back to the date of filing of the notice.
139 The notice shall identify the court or arbitration venue wherein the lien action is brought;
140 the style and number, if any, of the lien action, including the names of all parties thereto;
141 the date of the filing of the lien action; and the book and page number of the records of
142 the county wherein the subject lien is recorded in the same manner in which liens
143 specified in Code Section 44-14-361 are filed. The clerk of the superior court shall enter
144 on the subject lien so referred to the book and page on which the notice is recorded and
145 shall index such notice in the name of the then purported owner as shown by the caption
146 contained in such notice. A separate lis pendens notice need not be filed with the
147 commencement of this action; and

148 (4) In the event any contractor or subcontractor procuring material, architect's services,
149 registered forester's services, registered land surveyor's services, registered interior

150 designer's services, or registered professional engineer's services, labor, or supplies for
151 the building, repairing, or improving of any real estate, building, or other structure shall
152 abscond or die or leave the state during the required time period for filing a lien action,
153 so that personal jurisdiction cannot be obtained on the contractor or subcontractor in a
154 lien action for the services, material, labor, or supplies, or if the contractor or
155 subcontractor shall be adjudicated a bankrupt, or if, after the filing of a lien action, no
156 final judgment can be obtained against him or her for the value of such material, services,
157 labor, or supplies because of his or her death, adjudication in bankruptcy, or the contract
158 between the party claiming the lien and the contractor or subcontractor includes a
159 provision preventing payment to the claimant until after the contractor or the
160 subcontractor has received payment, then and in any of these events, the person or
161 persons furnishing material, services, labor, and supplies shall be relieved of the necessity
162 of filing a lien action or obtaining judgment against the contractor or subcontractor as a
163 prerequisite to enforcing a lien against the property improved by the contractor or
164 subcontractor. Subject to Code Section 44-14-361, the person or persons furnishing
165 material, services, labor, and supplies may enforce the lien directly against the property
166 so improved in a lien action against the owner thereof, if filed within the required time
167 period for filing a lien action, with the judgment rendered in any such proceeding to be
168 limited to a judgment in rem against the property improved and to impose no personal
169 liability upon the owner of the property; provided, however, that in such lien action for
170 recovery, the owner of the real estate improved, who has paid the agreed price or any part
171 of same, may set up the payment in any lien action brought and prove by competent and
172 relevant evidence that the payments were applied as provided by law, and no judgment
173 shall be rendered against the property improved. Within 30 days after filing such lien
174 action, the party claiming the lien shall file a notice with the clerk of the superior court
175 of the county wherein the subject lien was filed. The notice shall contain a caption
176 referring to the then owner of the property against which the lien was filed and referring

177 to a deed or other recorded instrument in the chain of title of the affected property. The
178 notice shall be executed, under oath, by the party claiming the lien or by his or her
179 attorney of record. The notice shall identify the court or arbitration venue wherein the
180 lien action is brought; the style and number of the lien action, if any, including the names
181 of all parties thereto; the date of the filing of the lien action; and the book and page
182 number of the records of the county wherein the subject lien is recorded in the same
183 manner in which liens specified in Code Section 44-14-361 are filed. The clerk of the
184 superior court shall enter on the subject lien so referred to the book and page on which
185 the notice is recorded and shall index such notice in the name of the then purported owner
186 as shown by the caption contained in such notice. A separate lis pendens notice need not
187 be filed with the commencement of this action.

188 (a.1) A claim of lien may be amended at any time to reduce the amount claimed, and such
189 amended claim of lien shall relate back to the date of filing for record of the original claim
190 of lien. An amended claim of lien filed for record pursuant to this subsection shall be in
191 substance as follows:

192 'That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded
193 at book (book#), page (page#) in the lien index of (name of county) County is hereby
194 amended by reducing the amount of such claim of lien to (specify reduced amount
195 claimed). The remaining terms of such original claim of lien are hereby incorporated by
196 reference into this amended claim of lien. This amended claim of lien relates back to the
197 date that such original claim of lien was filed for record.'

198 and shall be sent to the owner of the property in the same manner as required for a claim
199 of lien in paragraph (2) of subsection (a) of this Code section.

200 (b) As between themselves, the liens provided for in Code Section 44-14-361 shall rank
201 according to the date filed; but all of the liens mentioned in this Code section for repairs,
202 building, or furnishing materials or services, upon the same property, shall, as to each

203 other, be of the same date when declared and filed for record within 90 days after the work
204 is done or before that time.

205 (c) The liens specified in Code Section 44-14-361 shall be inferior to liens for taxes, to the
206 general and special liens of laborers, to the general lien of landlords of rent when a distress
207 warrant is issued out and levied, to claims for purchase money due persons who have only
208 given bonds for titles, and to other general liens when actual notice of the general lien of
209 landlords and others has been communicated before the work was done or materials or
210 services furnished; but the liens provided for in Code Section 44-14-361 shall be superior
211 to all other liens not excepted by this subsection.

212 (d) In any proceeding brought by any materialman, by any mechanic, by any laborer, by
213 any subcontractor, or by any mechanic of any sort employed by any subcontractor or by
214 any materialmen furnishing material to any subcontractor, or by any laborer furnishing
215 labor to any subcontractor, to enforce such a lien, the contractor having a direct contractual
216 relationship with the subcontractor shall not be a necessary party; but he or she may be
217 made a party. In any proceedings brought by any mechanic employed by any
218 subcontractor, by any materialmen furnishing material to any subcontractor, or by any
219 laborer furnishing labor to any subcontractor, the subcontractor shall not be a necessary
220 party; but he or she may be made a party. The contractor or subcontractor or both may
221 intervene in the proceedings at any time before judgment for the purpose of resisting the
222 establishment of the lien or of asserting against the lienor any claim of the contractor or
223 subcontractor growing out of or related to the transaction upon which the asserted lien is
224 based.

225 (e) In no event shall the aggregate amount of liens set up by Code Section 44-14-361
226 exceed the contract price of the improvements made or services performed.

227 (f) The filing fees for a claim of materialman's or mechanic's lien and any related
228 document created pursuant to this Code section, including but not limited to a notice of

229 commencement of action, shall be the amount set by Code Section 15-6-77 for liens on real
230 estate and personal property."

231 **SECTION 4.**

232 Said part is further amended by revising Code Section 44-14-361.3, relating to preliminary
233 notice of lien, form, notice to contractor, filing, and necessity of preliminary notice, as
234 follows:

235 "44-14-361.3.

236 (a) Prior to filing a claim of lien, a person having a lien under paragraphs (1) through (8)
237 and (10) of subsection (a) of Code Section 44-14-361 may at such person's option file a
238 preliminary notice of lien rights. The preliminary notice of lien rights in order to be
239 effective shall:

240 (1) Be filed with the clerk of superior court of the county in which the real estate is
241 located within 30 days after the date a party delivered any materials or provided any labor
242 or services for which a lien may be claimed;

243 (2) State the name, address, and telephone number of the potential lien claimant;

244 (3) State the name and address of the contractor or other person at whose instance the
245 labor, services, or materials were furnished;

246 (4) State the name of the owner of the real estate and include a description sufficient to
247 identify the real estate against which the lien is or may be claimed; and

248 (5) Include a general description of the labor, services, or materials furnished or to be
249 furnished.

250 (b) A party filing a preliminary notice of lien rights except a contractor shall, within seven
251 days of filing the notice, send by registered or certified mail or statutory overnight delivery
252 a copy of the notice to the contractor on the property named in the notice or to the owner
253 of the property. The lien claimant may rely on the building permit issued on the property
254 for the name of the contractor.

255 (c) The clerk of each superior court shall maintain within the records of that office a record
256 separate from all other real estate records in which preliminary notices specified in
257 subsection (a) of this Code section and affidavits specified in subsection (c) of Code
258 Section 44-14-361.4 shall be filed. Each such notice and affidavit shall be indexed under
259 the name of the owner as contained in the preliminary notice. The clerk shall collect a
260 filing fee of \$5.00 for the filing of each preliminary notice.

261 (d) A person having a lien under paragraphs (1) through (8) and (10) of subsection (a) of
262 Code Section 44-14-361 may enforce the lien without filing a preliminary notice of lien."

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SECTION 5.

264 Said part is further amended by revising Code Section 44-14-365, relating to rights as to liens
265 of partnerships, corporations, and associations made up of or employing registered architects,
266 foresters, land surveyors, or professional engineers, as follows:

267 "44-14-365.

268 If services are performed or furnished with respect to any real estate by any registered
269 architect, registered forester, registered land surveyor, ~~or~~ registered professional engineer,
270 or registered interior designer who is a member of a partnership or who is an agent or
271 employee of a corporation or an association and the contract for the services is made for
272 or on behalf of the owner with the partnership or corporation or association, the
273 partnership, corporation, or association shall be entitled to all the privileges and benefits
274 of Code Sections 44-14-361 and 44-14-362, just as if the partnership, corporation, or
275 association was a registered architect, a registered forester, ~~a registered professional~~
276 ~~engineer, or a registered land surveyor,~~ a registered professional engineer, or a registered
277 interior designer."

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SECTION 6.

279 This Act shall become effective upon its approval by the Governor or upon its becoming law
280 without such approval and shall apply to labor, services, or materials performed or furnished
281 by registered interior designers on or after such date.

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SECTION 7.

283 All laws and parts of laws in conflict with this Act are repealed.