

House Bill 1221

By: Representatives Gambill of the 15th, Cantrell of the 22nd, Washburn of the 141st, Camp of the 131st, Crowe of the 110th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 44-14-361.1 of the Official Code of Georgia Annotated, relating to
2 how liens declared and created, amendment, record, commencement of action, notice,
3 priorities, parties, and limitation on aggregate amount of liens, so as to require that lien
4 filings for amounts of \$10,000.00 and less include certain additional documentation; to
5 provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 44-14-361.1 of the Official Code of Georgia Annotated, relating to how liens
9 declared and created, amendment, record, commencement of action, notice, priorities,
10 parties, and limitation on aggregate amount of liens, is amended by revising subsection (a)
11 as follows:

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

16 (1) A substantial compliance by the party claiming the lien with his or her contract for
17 building, repairing, or improving; for architectural services furnished; for registered
18 forester services furnished or performed; for registered land surveying or registered
19 professional engineering services furnished or performed; for materials or machinery
20 furnished or set up; or for registered interior design services furnished or performed;

21 (2)(A) The filing for record of his or her claim of lien within 90 days after the
22 completion of the work, the furnishing of the architectural services, or the furnishing
23 or performing of such surveying, engineering services, or interior design services or
24 within 90 days after the material or machinery is furnished in the office of the clerk of
25 the superior court of the county where the property is located. The lien shall include
26 a statement regarding its expiration pursuant to Code Section 44-14-367 and a notice
27 to the owner of the property on which a claim of lien is filed that such owner has the
28 right to contest the lien; the absence of such statement or notice shall invalidate the lien.

29 The claim shall be in substance as follows:

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

39 No later than two business days after the date the claim of lien is filed of record, the lien
40 claimant shall send a true and accurate copy of the claim of lien by registered or
41 certified mail or statutory overnight delivery to the owner of the property or, if the
42 owner's address cannot be found, the contractor, as the agent of the owner; provided,

43 however, that if the property owner is an entity on file with the Secretary of State's
44 Corporations Division, sending a copy of the claim of lien to the entity's address or the
45 registered agent's address shall satisfy this requirement. In all cases in which a notice
46 of commencement is filed with the clerk of the superior court pursuant to subsection (b)
47 of Code Section 44-14-361.5, a lien claimant shall also send a copy of the claim of lien
48 by registered or certified mail or statutory overnight delivery to the contractor at the
49 address shown on the notice of commencement; and

50 (B) In addition to the requirements set forth in subparagraph (A) of this paragraph, any
51 lien filed with the clerk of the superior court by a lien claimant in the amount
52 of \$10,000.00 or less shall include a copy of the contract on which the claim is based
53 and a copy of a letter demanding payment be sent by registered or certified mail or
54 statutory overnight delivery by the claimant to the owner of the property or, if the
55 owner's address cannot be found, to the contractor, as the agent of the owner; provided,
56 however, that if the property owner is an entity on file with the Secretary of State's
57 Corporations Division, sending a copy of the claim of lien to the entity's address or the
58 registered agent's address shall satisfy this requirement;

59 (3) The commencement of a lien action for the recovery of the amount of the party's
60 claim within 365 days from the date of filing for record of his or her claim of lien. In
61 addition, within 30 days after commencing such lien action, the party claiming the lien
62 shall file a notice with the clerk of the superior court of the county wherein the subject
63 lien was filed. The notice shall contain a caption referring to the then owner of the
64 property against which the lien was filed and referring to a deed or other recorded
65 instrument in the chain of title of the affected property. The notice shall be executed,
66 under oath, by the party claiming the lien or by such party's attorney of record, but failure
67 to execute the notice under oath shall be an amendable defect which may be cured by the
68 party claiming the lien or by such party's attorney without leave of court at any time
69 before entry of the pretrial order and thereafter by leave of court. An amendment of

70 notice pursuant to this Code section shall relate back to the date of filing of the notice.
71 The notice shall identify the court or arbitration venue wherein the lien action is brought;
72 the style and number, if any, of the lien action, including the names of all parties thereto;
73 the date of the filing of the lien action; and the book and page number of the records of
74 the county wherein the subject lien is recorded in the same manner in which liens
75 specified in Code Section 44-14-361 are filed. The clerk of the superior court shall enter
76 on the subject lien so referred to the book and page on which the notice is recorded and
77 shall index such notice in the name of the then purported owner as shown by the caption
78 contained in such notice. A separate lis pendens notice need not be filed with the
79 commencement of this action; and

80 (4) In the event any contractor or subcontractor procuring material, architect's services,
81 registered forester's services, registered land surveyor's services, registered interior
82 designer's services, or registered professional engineer's services, labor, or supplies for
83 the building, repairing, or improving of any real estate, building, or other structure shall
84 abscond or die or leave the state during the required time period for filing a lien action,
85 so that personal jurisdiction cannot be obtained on the contractor or subcontractor in a
86 lien action for the services, material, labor, or supplies, or if the contractor or
87 subcontractor shall be adjudicated a bankrupt, or if, after the filing of a lien action, no
88 final judgment can be obtained against him or her for the value of such material, services,
89 labor, or supplies because of his or her death, adjudication in bankruptcy, or the contract
90 between the party claiming the lien and the contractor or subcontractor includes a
91 provision preventing payment to the claimant until after the contractor or the
92 subcontractor has received payment, then and in any of these events, the person or
93 persons furnishing material, services, labor, and supplies shall be relieved of the necessity
94 of filing a lien action or obtaining judgment against the contractor or subcontractor as a
95 prerequisite to enforcing a lien against the property improved by the contractor or
96 subcontractor. Subject to Code Section 44-14-361, the person or persons furnishing

97 material, services, labor, and supplies may enforce the lien directly against the property
98 so improved in a lien action against the owner thereof, if filed within the required time
99 period for filing a lien action, with the judgment rendered in any such proceeding to be
100 limited to a judgment in rem against the property improved and to impose no personal
101 liability upon the owner of the property; provided, however, that in such lien action for
102 recovery, the owner of the real estate improved, who has paid the agreed price or any part
103 of same, may set up the payment in any lien action brought and prove by competent and
104 relevant evidence that the payments were applied as provided by law, and no judgment
105 shall be rendered against the property improved. Within 30 days after filing such lien
106 action, the party claiming the lien shall file a notice with the clerk of the superior court
107 of the county wherein the subject lien was filed. The notice shall contain a caption
108 referring to the then owner of the property against which the lien was filed and referring
109 to a deed or other recorded instrument in the chain of title of the affected property. The
110 notice shall be executed, under oath, by the party claiming the lien or by his or her
111 attorney of record. The notice shall identify the court or arbitration venue wherein the
112 lien action is brought; the style and number of the lien action, if any, including the names
113 of all parties thereto; the date of the filing of the lien action; and the book and page
114 number of the records of the county wherein the subject lien is recorded in the same
115 manner in which liens specified in Code Section 44-14-361 are filed. The clerk of the
116 superior court shall enter on the subject lien so referred to the book and page on which
117 the notice is recorded and shall index such notice in the name of the then purported owner
118 as shown by the caption contained in such notice. A separate lis pendens notice need not
119 be filed with the commencement of this action."

120

SECTION 2.

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