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H*3187

H*3187 (Rat #0097, Act #0040 of 2009) General Bill, By Chalk and Willis

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29-5-26 SO AS TO PROVIDE A PERSON WHO PROVIDES CERTAIN LANDSCAPE SERVICES MAY HAVE A MECHANICS' LIEN ON THE REAL ESTATE WHERE THE LANDSCAPE SERVICES WERE PROVIDED, AND TO DEFINE LANDSCAPE SERVICES; BY ADDING SECTION 29-5-15 SO AS TO PROVIDE THE MANNER BY WHICH A CONTRACTOR MUST FILE A MECHANICS' LIEN AND A PENALTY FOR FILING A FRIVOLOUS MECHANICS' LIEN; TO AMEND SECTION 29-5-120, RELATING TO THE DISSOLUTION OF LIENS NOT TIMELY BROUGHT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A MECHANICS' LIEN MAY BE RELEASED BY A COURT; AND TO AMEND SECTION 40-59-30, AS AMENDED, RELATING TO LICENSE REQUIREMENTS, ENFORCEMENT OF CONTRACTS, AND RESTRAINING ORDERS, SO AS TO PROVIDE A PENALTY FOR FAILING TO REGISTER WITH THE COMMISSION BEFORE ENGAGING OR OFFERING TO ENGAGE IN THE BUSINESS OF RESIDENTIAL BUILDING, AMONG OTHER THINGS. - ratified title

12/16/08	House	Prefiled
12/16/08	House	Referred to Committee on Labor, Commerce and Industry
01/13/09	House	Introduced and read first time HJ-83
01/13/09	House	Referred to Committee on Labor, Commerce and Industry HJ-83
02/18/09	House	Committee report: Favorable Labor, Commerce and Industry HJ-6
02/24/09	House	Member(s) request name added as sponsor: Willis
02/24/09	House	Read second time HJ-31
02/24/09	House	Roll call Yeas-103 Nays-2 HJ-31
02/26/09	House	Read third time and sent to Senate HJ-12
03/03/09	Senate	Introduced and read first time SJ-12
03/03/09	Senate	Referred to Committee on Banking and Insurance SJ-12
04/28/09	Senate	Committee report: Favorable with amendment Banking and Insurance SJ-21
04/29/09		Scrivener's error corrected
04/29/09	Senate	Committee Amendment Adopted SJ-24
04/29/09	Senate	Amended SJ-24
04/29/09	Senate	Read second time SJ-24
04/30/09		Scrivener's error corrected

05/14/09 Senate Read third time and returned to House with
amendments SJ-23
05/20/09 House Concurred in Senate amendment and enrolled HJ-44
05/20/09 House Roll call Yeas-111 Nays-0 HJ-44
05/27/09 Ratified R 97
06/02/09 Signed By Governor
06/11/09 Effective date 06/02/09
06/12/09 Act No. 40

VERSIONS OF THIS BILL

12/16/2008
2/18/2009
4/28/2009
4/29/2009
4/29/2009-A
4/30/2009

●H. 3187

(A40, R97, H3187)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29-5-26 SO AS TO PROVIDE A PERSON WHO PROVIDES CERTAIN LANDSCAPE SERVICES MAY HAVE A MECHANICS' LIEN ON THE REAL ESTATE WHERE THE LANDSCAPE SERVICES WERE PROVIDED, AND TO DEFINE LANDSCAPE SERVICES; BY ADDING SECTION 29-5-15 SO AS TO PROVIDE THE MANNER BY WHICH A CONTRACTOR MUST FILE A MECHANICS' LIEN AND A PENALTY FOR FILING A FRIVOLOUS MECHANICS' LIEN; TO AMEND SECTION 29-5-120, RELATING TO THE DISSOLUTION OF LIENS NOT TIMELY BROUGHT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A MECHANICS' LIEN MAY BE RELEASED BY A COURT; AND TO AMEND SECTION 40-59-30, AS AMENDED, RELATING TO LICENSE REQUIREMENTS, ENFORCEMENT OF CONTRACTS, AND RESTRAINING ORDERS, SO AS TO PROVIDE A PENALTY FOR FAILING TO REGISTER WITH THE COMMISSION BEFORE ENGAGING OR OFFERING TO ENGAGE IN THE BUSINESS OF RESIDENTIAL BUILDING, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

Mechanics' lien for landscape services; landscape services defined

SECTION 1. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-26. (A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to whom a debt is due for his performance of the landscaping service has a mechanics' lien on the real estate to secure payment of debt due to him as provided by Section 29-5-10 and Section 29-5-20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or

(3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure."

Mechanics' lien filing requirements; penalty for frivolous lien

SECTION 2. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-15. (A) To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both."

Release of mechanics' lien under certain conditions

SECTION 3. Section 29-5-120 of the 1976 Code is amended to read:

"Section 29-5-120. (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish

labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information."

License requirement; enforcement of contracts; restraining orders

SECTION 4. Section 40-59-30 of the 1976 Code is amended to read:

"Section 40-59-30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

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