

Regular Session, 2012

HOUSE BILL NO. 450

BY REPRESENTATIVE ABRAMSON

PRIVILEGES/LIENS: Provide for a one-year time limitation within which to file a suit to enforce a Private Works Act privilege

1 AN ACT

2 To amend and reenact R.S. 9:4823(A)(introductory paragraph) and (2), 4831(A), 4833(E),
3 4835(A) and (B), 4862(B)(3), 4865(C), 4872(A) and (B), and 4885(C), relative to
4 claims and privileges; to provide for a one-year time limitation within which to file
5 a suit to enforce a Private Works Act privilege; to provide with respect to a notice
6 of pendency of action; to provide for technical corrections; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:4823(A)(introductory paragraph) and (2) are hereby amended and
10 reenacted to read as follows:

11 §4823. Extinguishment of claims and privileges

12 A. A privilege ~~given~~ provided by R.S. 9:4801, a claim against the owner and
13 the privilege securing it ~~granted~~ provided by R.S. 9:4802, or a claim against the
14 contractor ~~granted~~ provided by R.S. 9:4802 is extinguished if:

15 * * *

16 (2) The claimant or holder of the privilege does not institute an action against
17 the owner for the enforcement of the claim or privilege within one year after ~~the~~
18 ~~expiration of the time given by R.S. 9:4822 for~~ filing the statement of claim or
19 privilege to preserve it; or

20 * * *

Section 2. R.S. 9:4831(A), 4833(E), 4835(A) and (B), 4862(B)(3), 4865(C), 4872(A) and (B), and 4885(C) are hereby amended and reenacted to read as follows:

§4831. Filing; ~~where and how made~~ place of filing; contents

A. The filing of a notice of contract, notice of termination, statement of a claim or privilege, or notice of ~~lis pendens~~ pendency of action required or permitted to be filed under the provisions of this Part is accomplished when it is filed for registry with the recorder of mortgages of the parish in which the work is to be performed. The recorder of mortgages shall inscribe all such acts in the mortgage records.

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§4833. Request to cancel the inscription of claims and privileges; cancellation; ~~his~~ pendens notice of pendency of action

* * *

E. The effect of filing for recordation of a statement of claim or privilege and the privilege preserved by it shall cease as to third persons unless a notice of ~~his~~ pendens pendency of action in accordance with Article 3752 of the Code of Civil Procedure, identifying the suit required to be filed by R.S. 9:4823 is filed within one year after the date of filing the statement of claim or privilege. In addition to the requirements of Article 3752 of the Code of Civil Procedure, the notice of ~~his~~ pendens pendency of action shall contain a reference to the notice of contract, if one is filed, or a reference to the recorded statement of claim or privilege if a notice of contract is not filed.

* * *

§4835. Filing of bond or other security; cancellation of statement of claim or privilege or notice of ~~lis pendens~~

A. If a statement of claim or privilege or a notice of ~~his~~ pendens pendency of action is filed, any interested party may deposit with the recorder of mortgages either a bond of a lawful surety company authorized to do business in the state or cash, certified funds, or a federally insured certificate of deposit to guarantee

1 payment of the obligation secured by the privilege or that portion as may be lawfully
2 due together with interest, costs, and ~~attorney's~~ attorney fees to which the claimant
3 may be entitled up to a total amount of one hundred twenty-five percent of the
4 principal amount of the claim as asserted in the statement of claim or privilege or
5 such a suit. A surety shall not have the benefit of division or discussion.

6 B. If the recorder of mortgages finds the amount of the cash, certified funds,
7 or certificate of deposit or the terms and amount of a bond deposited with him to be
8 in conformity with this Section, he shall note his approval on the bond and make note
9 of either the bond or of the cash, certified funds, or certificate of deposit in the
10 margin of the statement of claim or privilege or notice of ~~his pendency~~ pendency of
11 action as it is recorded in the mortgage records and cancel the statement of claim or
12 privilege or the notice of ~~his pendency~~ pendency of action from his records by making
13 an appropriate notation in the margin of the recorded statement or notice. The bond
14 shall not be recorded but shall be retained by the recorder of mortgages as a part of
15 his records.

16 * * *

17 §4862. Privilege for labor, services, or supplies

18 * * *

19 B. The privilege created by this Part is accessory to and secures only the
20 following:

21 * * *

22 (3) The cost of preparing and filing the statement of privilege and notice of
23 ~~his pendency~~ pendency of action authorized by this Part.

24 * * *

25 §4865. Cessation of effect as to certain third persons

26 * * *

27 C. The privilege shall also cease to have effect against third persons who are
28 not parties to the action instituted pursuant to the provisions of Subsection B of this
29 Section unless the claimant files a notice of ~~his pendency~~ pendency of action in the
30 mortgage records of the parish where the property is located or lawfully seizes the

property subject to the privilege within thirty days after institution of the action unless the property subject to the privilege is a drilling or other rig.

* * *

§4872. Filing of bond or other security; cancellation of statement of privilege or notice of ~~his pendens~~ pendency of action

A. If a statement of privilege or a notice of ~~his pendens~~ pendency of action is filed, any interested person may deposit with the recorder of mortgages of the parish where the operating interest is located a bond of a lawful surety company authorized to do business in the state or cash, certified funds, or a federally insured certificate of deposit. The bond or deposit shall be not less than one hundred twenty-five percent of the principal amount of the obligation claimed in the notice and shall guarantee payment up to such amount of the claimant's obligations secured by the privilege or such portion thereof as is lawfully due.

B. If the recorder of mortgages finds that the terms and amount of the bond or deposit is in conformity with this Section, he shall note his approval of the bond or of the deposit, in the margin of the claimant's statement of privilege and in the margin of the notice of ~~his pendens~~ pendency of action where they are recorded and shall then cancel them from his records by making an appropriate notation in the margins of their recordation. A bond deposited with the recorder shall not be recorded but shall be retained by the recorder of mortgages as a part of his records.

* * *

§4885. Cessation of effect as to certain third persons

* * *

C. The privilege ceases to have effect against a third person who is not a party to the action instituted pursuant to the provisions of Subsection B of this Section unless the creditor files a notice of ~~his pendens~~ pendency of action in the mortgage records of the parish where the property is located or lawfully seizes the property subject to the privilege within thirty days after institution of the action.

* * *

1 Section 3. The provisions of Section 1 of this Act shall become effective on August
2 1, 2013, and the provisions of Section 2 of this Act shall become effective on August 1,
3 2012.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Abramson

HB No. 450

Abstract: Provides that a claimant under the Private Works Act must file suit to enforce his claim or privilege within one year after filing his statement of claim or privilege.

Present law provides that a person shall file a statement of their claim or privilege within 30 days after filing of the notice of termination, if notice of contract is filed properly and the privilege is granted by R.S. 9:4802, or within 60 days after filing of the notice of termination for others.

Present law provides that a claimant under the Private Works Act must file suit within one year after the expiration of the time established by R.S. 9:4822.

Proposed law changes present law to require a claimant under the Private Works Act to file suit to enforce his claim or privilege within one year after filing his statement of claim or privilege. Further provides for a change in terminology to allow for consistency throughout present law.

Provisions of Section 1 of this Act are effective on Aug. 1, 2013; Provisions of Section 2 of this Act are effective Aug. 1, 2012.

(Amends R.S. 9:4823(A)(intro. para.) and (2), 4831(A), 4833(E), 4835(A) and (B), 4862(B)(3), 4865(C), 4872(A) and (B), and 4885(C))