House Bill 480 (AS PASSED HOUSE AND SENATE)
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

To amend various titles of the Official Code of Georgia Annotated so as to change certain provisions related to certain professions licensed in this state; to amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, so as to revise qualifications to become an applicant for a real estate broker's license; to amend Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to mechanics and materialmen liens, so as to provide for the creation, declaration, amendment, notice, and priority of liens for labor, services, or materials performed or furnished by registered interior designers; to provide for definitions; to provide for commencement of actions and limitations on amount of such liens; to provide for rights as to liens of partnerships, corporations, and associations made up of or employing registered interior designers; to provide for related matters; to provide for an effective date and for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, is amended by revising paragraph (4) of subsection (c) of Code
Section 43-40-8, relating to qualifications of licensees, course of study for licensed salespersons, lapse, reinstatement, renewal, continuing education, and standards for courses, as follows:

"(4) Have maintained a salesperson's license in active status for at least three of the five years immediately preceding the filing of an application to become a broker or have maintained a broker's license in active status for at least five years to become a broker;"

SECTION 2.

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

"44-14-360.

As used in this part, the term:

(1) 'Business day' means any day that is not a Saturday, Sunday, or legal holiday.
(2) 'Contractor' means a contractor having privity of contract with the owner of the real estate.
(2.1) 'Land surveyor' means the same as the definition thereof shall have the same meaning as provided in Code Section 43-15-2.
(2.1) 'Lien action' means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.
(3) 'Materials,' in addition to including those items for which liens are already permitted under this part, means tools, appliances, machinery, or equipment used in making improvements to the real estate, to the extent of the reasonable value or the contracted rental price, whichever is greater, of such tools, appliances, machinery, or equipment.
(4) 'Materialmen' means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials in paragraph (3) of this Code section.

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(5) 'Professional engineer' means the same as the definition thereof shall have the same meaning as provided in Code Section 43-15-2.

(6) 'Registered forester' means the same as the definition of such term shall have the same meaning as provided in Code Section 12-6-41.

(7) 'Registered interior designer' shall have the same meaning as provided in Code Section 43-4-1.

(7)(8) 'Registered land surveyors' and 'registered professional engineers' means land surveyors or professional engineers who are registered as land surveyors or professional engineers under Chapter 15 of Title 43 at the time of performing, rendering, or furnishing services protected under this part.

(8)(9) 'Residential property' means single-family and two-family, three-family, and four-family residential real estate.

(9)(10) 'Subcontractor' means, but is not limited to, subcontractors having privity of contract with the contractor."

SECTION 3.

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

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

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

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

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

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

"44-14-361.1.

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

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

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

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

No later than two business days after the date the claim of lien is filed of record, the lien claimant shall send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; provided, however, that if the property owner is an entity on file with the Secretary of State's Corporations Division, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement. In all cases in which a notice of commencement is filed with the clerk of the superior court pursuant to subsection (b) of Code Section 44-14-361.5, a lien claimant shall also send a copy of the claim of lien by registered or certified mail or statutory overnight delivery to the contractor at the address shown on the notice of commencement;

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

(4) In the event any contractor or subcontractor procuring material, architect's services, registered forester's services, registered land surveyor's services, registered interior designer's services, or registered professional engineer's services, labor, or supplies for the building, repairing, or improving of any real estate, building, or other structure shall abscond or die or leave the state during the required time period for filing a lien action, so that personal jurisdiction cannot be obtained on the contractor or subcontractor in a lien action for the services, material, labor, or supplies, or if the contractor or subcontractor shall be adjudicated a bankrupt, or if, after the filing of a lien action, no final judgment can be obtained against him or her for the value of such material, services, labor, or supplies because of his or her death, adjudication in bankruptcy, or the contract between the party claiming the lien and the contractor or subcontractor includes a provision preventing payment to the claimant until after the contractor or the subcontractor has received payment, then and in any of these events, the person or persons furnishing material, services, labor, and supplies shall be relieved of the necessity of filing a lien action or obtaining judgment against the contractor or subcontractor as a prerequisite to enforcing a lien against the property improved by the contractor or subcontractor. Subject to Code Section 44-14-361, the person or persons furnishing
material, services, labor, and supplies may enforce the lien directly against the property
so improved in a lien action against the owner thereof, if filed within the required time
period for filing a lien action, with the judgment rendered in any such proceeding to be
limited to a judgment in rem against the property improved and to impose no personal
liability upon the owner of the property; provided, however, that in such lien action for
recovery, the owner of the real estate improved, who has paid the agreed price or any part
of same, may set up the payment in any lien action brought and prove by competent and
relevant evidence that the payments were applied as provided by law, and no judgment
shall be rendered against the property improved. Within 30 days after filing such lien
action, the party claiming the lien shall file a notice with the clerk of the superior court
of the county wherein the subject lien was filed. The notice shall contain a caption
referring to the then owner of the property against which the lien was filed and referring
to a deed or other recorded instrument in the chain of title of the affected property. The
notice shall be executed, under oath, by the party claiming the lien or by his or her
attorney of record. The notice shall identify the court or arbitration venue wherein the
lien action is brought; the style and number of the lien action, if any, including the names
of all parties thereto; the date of the filing of the lien action; and the book and page
number of the records of the county wherein the subject lien is recorded in the same
manner in which liens specified in Code Section 44-14-361 are filed. The clerk of the
superior court shall enter on the subject lien so referred to the book and page on which
the notice is recorded and shall index such notice in the name of the then purported owner
as shown by the caption contained in such notice. A separate lis pendens notice need not
be filed with the commencement of this action.

(a.1) A claim of lien may be amended at any time to reduce the amount claimed, and such
amended claim of lien shall relate back to the date of filing for record of the original claim
of lien. An amended claim of lien filed for record pursuant to this subsection shall be in
substance as follows:
That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county) County is hereby amended by reducing the amount of such claim of lien to (specify reduced amount claimed). The remaining terms of such original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien relates back to the date that such original claim of lien was filed for record.'

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

(b) As between themselves, the liens provided for in Code Section 44-14-361 shall rank according to the date filed; but all of the liens mentioned in this Code section for repairs, building, or furnishing materials or services, upon the same property, shall, as to each other, be of the same date when declared and filed for record within 90 days after the work is done or before that time.

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

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

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

(f) The filing fees for a claim of materialman's or mechanic's lien and any related document created pursuant to this Code section, including but not limited to a notice of commencement of action, shall be the amount set by Code Section 15-6-77 for liens on real estate and personal property."

SECTION 5.

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

"44-14-361.3.

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

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

(2) State the name, address, and telephone number of the potential lien claimant;
(3) State the name and address of the contractor or other person at whose instance the labor, services, or materials were furnished;

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

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

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

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

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

SECTION 6.

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

"44-14-365.

If services are performed or furnished with respect to any real estate by any registered architect, registered forester, registered land surveyor, or registered professional engineer,

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or registered interior designer who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation, or association shall be entitled to all the privileges and benefits of Code Sections 44-14-361 and 44-14-362, just as if the partnership, corporation, or association was a registered architect, a registered forester, a registered professional engineer, or a registered land surveyor, a registered professional engineer, or a registered interior designer."

SECTION 7.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and Sections 2 through 8 of this Act shall apply to labor, services, or materials performed or furnished by registered interior designers on or after such date.

SECTION 8.

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