

By: Solomons, et al.

H.B. No. 629

A BILL TO BE ENTITLED

AN ACT

relating to notice required for a mechanic's, contractor's, or materialman's lien in certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 53.103, Property Code, is amended to read as follows:

Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien on the retained funds if the claimant:

(1) sends the notices required by this chapter in the time and manner required; and

(2) files an affidavit claiming a lien not later than the 30th day after the earlier of the date:

(A) the work is completed;

(B) the original contract is terminated; or

(C) the original contractor abandons performance under the original contract.

SECTION 2. Subchapter E, Chapter 53, Property Code, is amended by adding Section 53.107 to read as follows:

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment,

1 has:

2 (1) given notice to the owner as provided by Section
3 53.056, 53.057, or 53.058; or

4 (2) sent to the owner by certified or registered mail a
5 written request for notice of termination or abandonment.

6 (b) The notice must contain:

7 (1) the name and address of the owner;

8 (2) the name and address of the original contractor;

9 (3) a description, legally sufficient for
10 identification, of the real property on which the improvements are
11 located;

12 (4) a general description of the improvements agreed
13 to be furnished under the original contract;

14 (5) a statement that the original contract has been
15 terminated or that performance under the contract has been
16 abandoned;

17 (6) the date of the termination or abandonment; and

18 (7) a conspicuous statement that a claimant may not
19 have a lien on the retained funds unless the claimant files an
20 affidavit claiming a lien not later than the 30th day after the date
21 of the termination or abandonment.

22 (c) A notice sent on or before the 10th day after the date of
23 termination or abandonment is prima facie evidence of the date the
24 original contract was terminated or work was abandoned for purposes
25 of this subchapter.

26 (d) A subcontractor who fails to file a lien affidavit in
27 the time prescribed by Section 53.103(2) has a lien to the extent

1 authorized under this subchapter if:

2 (1) the subcontractor otherwise complies with this
3 chapter; and

4 (2) the owner did not provide the subcontractor notice
5 as required by this section.

6 (e) This section does not apply to a residential
7 construction project.

8 SECTION 3. This Act applies only to a subcontractor who
9 claims a lien as provided by Subchapter E, Chapter 53, Property
10 Code, as amended by this Act, if that claim arises under an original
11 contract entered into on or after the effective date of this Act. A
12 claim that arises under a contract entered into before the
13 effective date of this Act is governed by the law as it existed
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

16 SECTION 4. This Act takes effect September 1, 2005.