

By: Orr

H.B. No. 1456

Substitute the following for H.B. No. 1456:

By: Quintanilla

C.S.H.B. No. 1456

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the waiver and release of a mechanic's, contractor's, or  
3 materialman's lien or payment bond claim.

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

5 SECTION 1. Section 53.085(c), Property Code, is amended to  
6 read as follows:

7 (c) The affidavit may include:

8 (1) a waiver or release of lien rights or payment bond  
9 claims by the affiant that is conditioned on the receipt of actual  
10 payment or collection of funds when payment is made by check or  
11 draft, as provided by Subchapter L;

12 (2) a warranty or representation that certain bills or  
13 classes of bills will be paid by the affiant from funds paid in  
14 reliance on the affidavit; and

15 (3) an indemnification by the affiant for any loss or  
16 expense resulting from false or incorrect information in the  
17 affidavit.

18 SECTION 2. Chapter 53, Property Code, is amended by adding  
19 Subchapter L to read as follows:

20 SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

21 Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND  
22 CLAIM. (a) Any waiver and release of a lien or payment bond claim  
23 under this chapter is unenforceable unless a waiver and release is  
24 executed and delivered in accordance with this subchapter.

1       (b) A waiver and release is effective to release the owner,  
2 the owner's property, the contractor, and the surety on a payment  
3 bond from claims and liens only if:

4           (1) the waiver and release substantially complies with  
5 one of the forms prescribed by this subchapter;

6           (2) the waiver and release is signed by the claimant or  
7 the claimant's authorized agent and notarized; and

8           (3) in the case of a conditional release, evidence of  
9 payment to the claimant exists.

10       Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT  
11 OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to  
12 waive, release, or otherwise adversely affect a lien or payment  
13 bond claim is not enforceable and does not create an estoppel or  
14 impairment of a lien or payment bond claim unless:

15           (1) the statement is in writing and complies with this  
16 subchapter;

17           (2) the claimant has actually received payment in good  
18 and sufficient funds in full for the lien or payment bond claim; or

19           (3) the statement is:

20                   (A) in a written original contract or subcontract  
21 for the construction, remodel, or repair of a single-family house  
22 or duplex; and

23                   (B) made before labor or materials are provided  
24 under the original contract or subcontract and a good faith dispute  
25 exists regarding the quality of the labor or material provided by  
26 the original contractor or subcontractor that has resulted in the  
27 nonpayment of the original contractor or subcontractor.

1       (b) This section does not affect the enforceability of an  
2 accord and satisfaction regarding a bona fide dispute or any  
3 agreement made in settlement of an action pending in any court if  
4 the accord and satisfaction or agreement made in settlement makes  
5 specific reference to the lien or payment bond claim.

6       (c) The filing of a lien rendered unenforceable by a lien  
7 waiver under Subsection (a)(3) does not violate Section 12.002,  
8 Civil Practice and Remedies Code.

9       Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT  
10 REQUIRED. A person may not require a claimant or potential claimant  
11 to execute an unconditional waiver and release for a progress  
12 payment or final payment amount unless the claimant or potential  
13 claimant received payment in that amount in good and sufficient  
14 funds.

15       Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT  
16 BOND CLAIM. (a) A waiver and release given by a claimant or  
17 potential claimant is unenforceable unless it substantially  
18 complies with the applicable form described by Subsections (b)-(e).

19       (b) If a claimant or potential claimant is required to  
20 execute a waiver and release in exchange for or to induce the  
21 payment of a progress payment and is not paid in exchange for the  
22 waiver and release or if a single payee check or joint payee check  
23 is given in exchange for the waiver and release, the waiver and  
24 release must read:

25       "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

26 "Project \_\_\_\_\_

27 "Job No. \_\_\_\_\_

1       "On receipt by the signer of this document of a check from  
2 \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable  
3 to \_\_\_\_\_ (payee or payees of check) and when the  
4 check has been properly endorsed and has been paid by the bank on  
5 which it is drawn, this document becomes effective to release any  
6 mechanic's lien right, any right arising from a payment bond that  
7 complies with a state or federal statute, any common law payment  
8 bond right, any claim for payment, and any rights under any similar  
9 ordinance, rule, or statute related to claim or payment rights for  
10 persons in the signer's position that the signer has on the  
11 property of \_\_\_\_\_ (owner) located at  
12 \_\_\_\_\_ (location) to the following extent:  
13 \_\_\_\_\_ (job description).

14       "This release covers a progress payment for all labor,  
15 services, equipment, or materials furnished to the property or to  
16 \_\_\_\_\_ (person with whom signer contracted) as  
17 indicated in the attached statement(s) or progress payment  
18 request(s), except for unpaid retention, pending modifications and  
19 changes, or other items furnished.

20       "Before any recipient of this document relies on this  
21 document, the recipient should verify evidence of payment to the  
22 signer.

23       "The signer warrants that the signer has already paid or will  
24 use the funds received from this progress payment to promptly pay in  
25 full all of the signer's laborers, subcontractors, materialmen, and  
26 suppliers for all work, materials, equipment, or services provided  
27 for or to the above referenced project in regard to the attached

1 statement(s) or progress payment request(s).

2 "Date \_\_\_\_\_"

3 "\_\_\_\_\_ (Company name)"

4 "By \_\_\_\_\_ (Signature)"

5 "\_\_\_\_\_ (Title)"

6 (c) If a claimant or potential claimant is required to  
7 execute an unconditional waiver and release to prove the receipt of  
8 good and sufficient funds for a progress payment and the claimant or  
9 potential claimant asserts in the waiver and release that the  
10 claimant or potential claimant has been paid the progress payment,  
11 the waiver and release must:

12 (1) contain a notice at the top of the document,  
13 printed in bold type at least as large as the largest type used in  
14 the document, but not smaller than 10-point type, that reads:

15 "NOTICE:

16 "This document waives rights unconditionally and states that  
17 you have been paid for giving up those rights. This document may be  
18 enforceable against you if you sign it, even if you have not been  
19 paid. It is unlawful for a person to require you to sign this  
20 document if you have not been paid the payment amount set forth  
21 below. If you have not been paid, use a conditional release form.";  
22 and

23 (2) below the notice, read:

24 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT"

25 "Project \_\_\_\_\_"

26 "Job No. \_\_\_\_\_"

27 "The signer of this document has been paid and has received a

1 progress payment in the sum of \$\_\_\_\_\_ for all labor,  
 2 services, equipment, or materials furnished to the property or to  
 3 \_\_\_\_\_ (person with whom signer contracted) on the  
 4 property of \_\_\_\_\_ (owner) located at  
 5 \_\_\_\_\_ (location) to the following extent:  
 6 \_\_\_\_\_ (job description). The signer therefore  
 7 waives and releases any mechanic's lien right, any right arising  
 8 from a payment bond that complies with a state or federal statute,  
 9 any common law payment bond right, any claim for payment, and any  
 10 rights under any similar ordinance, rule, or statute related to  
 11 claim or payment rights for persons in the signer's position that  
 12 the signer has on the above referenced project to the following  
 13 extent:

14 "This release covers a progress payment for all labor,  
 15 services, equipment, or materials furnished to the property or to  
 16 \_\_\_\_\_ (person with whom signer contracted) as  
 17 indicated in the attached statement(s) or progress payment  
 18 request(s), except for unpaid retention, pending modifications and  
 19 changes, or other items furnished.

20 "The signer warrants that the signer has already paid or will  
 21 use the funds received from this progress payment to promptly pay in  
 22 full all of the signer's laborers, subcontractors, materialmen, and  
 23 suppliers for all work, materials, equipment, or services provided  
 24 for or to the above referenced project in regard to the attached  
 25 statement(s) or progress payment request(s).

26 "Date \_\_\_\_\_

27 "\_\_\_\_\_ (Company name)

1        "By \_\_\_\_\_ (Signature)

2        "\_\_\_\_\_ (Title)"

3        (d) If a claimant or potential claimant is required to  
4 execute a waiver and release in exchange for or to induce the  
5 payment of a final payment and is not paid in good and sufficient  
6 funds in exchange for the waiver and release or if a single payee  
7 check or joint payee check is given in exchange for the waiver and  
8 release, the waiver and release must read:

9            "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

10 "Project \_\_\_\_\_

11 "Job No. \_\_\_\_\_

12        "On receipt by the signer of this document of a check from  
13 \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_  
14 payable to \_\_\_\_\_ (payee or payees of check) and  
15 when the check has been properly endorsed and has been paid by the  
16 bank on which it is drawn, this document becomes effective to  
17 release any mechanic's lien right, any right arising from a payment  
18 bond that complies with a state or federal statute, any common law  
19 payment bond right, any claim for payment, and any rights under any  
20 similar ordinance, rule, or statute related to claim or payment  
21 rights for persons in the signer's position that the signer has on  
22 the property of \_\_\_\_\_ (owner) located at  
23 \_\_\_\_\_ (location) to the following extent:  
24 \_\_\_\_\_ (job description).

25        "This release covers the final payment to the signer for all  
26 labor, services, equipment, or materials furnished to the property  
27 or to \_\_\_\_\_ (person with whom signer contracted).

1 "Before any recipient of this document relies on this  
2 document, the recipient should verify evidence of payment to the  
3 signer.

4 "The signer warrants that the signer has already paid or will  
5 use the funds received from this final payment to promptly pay in  
6 full all of the signer's laborers, subcontractors, materialmen, and  
7 suppliers for all work, materials, equipment, or services provided  
8 for or to the above referenced project up to the date of this waiver  
9 and release.

10 "Date \_\_\_\_\_

11 "\_\_\_\_\_ (Company name)

12 "By \_\_\_\_\_ (Signature)

13 "\_\_\_\_\_ (Title)"

14 (e) If a claimant or potential claimant is required to  
15 execute an unconditional waiver and release to prove the receipt of  
16 good and sufficient funds for a final payment and the claimant or  
17 potential claimant asserts in the waiver and release that the  
18 claimant or potential claimant has been paid the final payment, the  
19 waiver and release must:

20 (1) contain a notice at the top of the document,  
21 printed in bold type at least as large as the largest type used in  
22 the document, but not smaller than 10-point type, that reads:

23 "NOTICE:

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25 you have been paid for giving up those rights. This document may be  
26 enforceable against you if you sign it, even if you have not been  
27 paid. It is unlawful for a person to require you to sign this



1 document if you have not been paid the payment amount set forth  
2 below. If you have not been paid, use a conditional release form.";  
3 and

4 (2) below the notice, read:

5 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

6 "Project \_\_\_\_\_

7 "Job No. \_\_\_\_\_

8 "The signer of this document has been paid in full for all  
9 labor, services, equipment, or materials furnished to the property  
10 or to \_\_\_\_\_ (person with whom signer contracted) on  
11 the property of \_\_\_\_\_ (owner) located at  
12 \_\_\_\_\_ (location) to the following extent:

13 \_\_\_\_\_ (job description). The signer therefore  
14 waives and releases any mechanic's lien right, any right arising  
15 from a payment bond that complies with a state or federal statute,  
16 any common law payment bond right, any claim for payment, and any  
17 rights under any similar ordinance, rule, or statute related to  
18 claim or payment rights for persons in the signer's position.

19 "The signer warrants that the signer has already paid or will  
20 use the funds received from this final payment to promptly pay in  
21 full all of the signer's laborers, subcontractors, materialmen, and  
22 suppliers for all work, materials, equipment, or services provided  
23 for or to the above referenced project up to the date of this waiver  
24 and release.

25 "Date \_\_\_\_\_

26 "\_\_\_\_\_ (Company name)

27 "By \_\_\_\_\_ (Signature)



1 and the former law is continued in effect for that purpose.

2 SECTION 4. This Act takes effect September 1, 2011.