

By: Orr

H.B. No. 1456

A BILL TO BE ENTITLED

AN ACT

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

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

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

(c) The affidavit may include:

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

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

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

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

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

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Any waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is 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

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; or

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

19 (b) This section does not affect the enforceability of an
20 accord and satisfaction regarding a bona fide dispute or any
21 agreement made in settlement of an action pending in any court if
22 the accord and satisfaction or agreement made in settlement makes
23 specific reference to the lien or payment bond claim.

24 Sec. 53.283. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT
25 BOND CLAIM. (a) A waiver and release given by a claimant or
26 potential claimant is unenforceable unless it substantially
27 complies with the applicable form described by Subsections (b)-(e).

1 (b) If a claimant or potential claimant is required to
2 execute a waiver and release in exchange for or to induce the
3 payment of a progress payment and is not paid in exchange for the
4 waiver and release or if a single payee check or joint payee check
5 is given in exchange for the waiver and release, the waiver and
6 release must read:

7 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

8 "Project _____

9 "Job No. _____

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

23 "This release covers a progress payment for all labor,
24 services, equipment, or materials furnished to the property or to
25 _____ (person with whom signer contracted) as
26 indicated in the attached statement(s) or progress payment
27 request(s), except for unpaid retention, pending modifications and

1 changes, or other items furnished. The unpaid retention, pending
2 modifications and changes, and other items furnished as of this
3 date total \$_____.

4 "Before any recipient of this document relies on this
5 document, the recipient should verify evidence of payment to the
6 signer.

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

13 "Date _____

14 "_____ (Company name)

15 "By _____ (Signature)

16 "_____ (Title)"

17 (c) If a claimant or potential claimant is required to
18 execute an unconditional waiver and release to prove the receipt of
19 good and sufficient funds for a progress payment and the claimant or
20 potential claimant asserts in the waiver and release that the
21 claimant or potential claimant has been paid the progress payment,
22 the waiver and release must:

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

26 "NOTICE:

27 "This document waives rights unconditionally and states that

1 you have been paid for giving up those rights. This document may be
2 enforceable against you if you sign it, even if you have not been
3 paid. If you have not been paid, use a conditional release form.";
4 and

5 (2) below the notice, read:

6 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

7 "Project _____

8 "Job No. _____

9 "The signer of this document has been paid and has received a
10 progress payment in the sum of \$_____ for all labor,
11 services, equipment, or materials furnished to the property or to
12 _____ (person with whom signer contracted) on the
13 property of _____ (owner) located at
14 _____ (location) to the following extent:
15 _____ (job description). The signer therefore
16 waives and releases any mechanic's lien right, any right arising
17 from a payment bond that complies with a state or federal statute,
18 any common law payment bond right, any claim for payment, and any
19 rights under any similar ordinance, rule, or statute related to
20 claim or payment rights for persons in the signer's position that
21 the signer has on the above referenced project to the following
22 extent:

23 "This release covers a progress payment for all labor,
24 services, equipment, or materials furnished to the property or to
25 _____ (person with whom signer contracted) as
26 indicated in the attached statement(s) or progress payment
27 request(s), except for unpaid retention, pending modifications and

1 changes, or other items furnished. The unpaid retention, pending
2 modifications and changes, and other items furnished as of this
3 date total \$_____.

4 "The signer warrants that the signer has already paid or will
5 use the funds received from this progress 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 in regard to the attached
9 statement(s) or progress payment request(s).

10 "Date _____

11 "_____ (Company name)

12 "By _____ (Signature)

13 "_____ (Title)"

14 (d) If a claimant or potential claimant is required to
15 execute a waiver and release in exchange for or to induce the
16 payment of a final payment and is not paid in good and sufficient
17 funds in exchange for the waiver and release or if a single payee
18 check or joint payee check is given in exchange for the waiver and
19 release, the waiver and release must read:

20 "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

21 "Project _____

22 "Job No. _____

23 "On receipt by the signer of this document of a check from
24 _____ (maker of check) in the sum of \$_____
25 payable to _____ (payee or payees of check) and
26 when the check has been properly endorsed and has been paid by the
27 bank on which it is drawn, this document becomes effective to

1 release any mechanic's lien right, any right arising from a payment
2 bond that complies with a state or federal statute, any common law
3 payment bond right, any claim for payment, and any rights under any
4 similar ordinance, rule, or statute related to claim or payment
5 rights for persons in the signer's position that the signer has on
6 the property of _____ (owner) located at
7 _____ (location) to the following extent:
8 _____ (job description).

9 "This release covers the final payment to the signer for all
10 labor, services, equipment, or materials furnished to the property
11 or to _____ (person with whom signer contracted),
12 except for claims for disputed work in the amount of \$_____.

13 "Before any recipient of this document relies on this
14 document, the recipient should verify evidence of payment to the
15 signer.

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

22 "Date _____

23 "_____ (Company name)

24 "By _____ (Signature)

25 "_____ (Title)"

26 (e) If a claimant or potential claimant is required to
27 execute an unconditional waiver and release to prove the receipt of

1 good and sufficient funds for a final payment and the claimant or
2 potential claimant asserts in the waiver and release that the
3 claimant or potential claimant has been paid the final payment, the
4 waiver and release must:

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

8 "NOTICE:

9 "This document waives rights unconditionally and states that
10 you have been paid for giving up those rights. This document may be
11 enforceable against you if you sign it, even if you have not been
12 paid. If you have not been paid, use a conditional release form.";
13 and

14 (2) below the notice, read:

15 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

16 "Project _____

17 "Job No. _____

18 "The signer of this document has been paid in full for all
19 labor, services, equipment, or materials furnished to the property
20 or to _____ (person with whom signer contracted) on
21 the property of _____ (owner) located at
22 _____ (location) to the following extent:

23 _____ (job description). The signer therefore
24 waives and releases any mechanic's lien right, any right arising
25 from a payment bond that complies with a state or federal statute,
26 any common law payment bond right, any claim for payment, and any
27 rights under any similar ordinance, rule, or statute related to

1 claim or payment rights for persons in the signer's position,
2 except for claims for disputed work in the amount of \$_____.

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

9 "Date _____

10 "_____ (Company name)

11 "By _____ (Signature)

12 "_____ (Title)"

13 Sec. 53.284. ATTEMPTED COMPLIANCE. (a) A waiver or release
14 shall be construed to comply with this subchapter and is
15 enforceable in the same manner as a waiver and release under this
16 subchapter if the waiver or release:

17 (1) is furnished in attempted compliance with this
18 subchapter; or

19 (2) evidences by its terms intent to comply with this
20 subchapter.

21 (b) Any provision in any waiver or release furnished in
22 attempted compliance with this subchapter that expands or restricts
23 the rights or liabilities provided under this subchapter shall be
24 disregarded and the provisions of this subchapter shall be read
25 into that waiver or release.

26 Sec. 53.285. PUBLIC POLICY. (a) Notwithstanding any other
27 law and except as provided by Section 53.282, any contract,

1 agreement, or understanding purporting to waive the right to file
2 or enforce any lien or claim created under this chapter is void as
3 against public policy.

4 (b) This subchapter does not apply to a written agreement to
5 subordinate, release, or satisfy all or part of a lien claimed after
6 a notice of lien has been filed.

7 SECTION 3. The changes in law made by this Act apply only to
8 a contract executed on or after September 1, 2011. A contract
9 executed before September 1, 2011, is covered by the law applicable
10 to the contract immediately before the effective date of this Act,
11 and the former law is continued in effect for that purpose.

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