

By: Deshotel

H.B. No. 3065

A BILL TO BE ENTITLED

1 AN ACT
2 relating to mechanic's, contractor's, or materialman's liens;
3 authorizing a fee; changing the eligibility for community
4 supervision.

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

6 SECTION 1. Section 3503.051(3), Insurance Code, is amended
7 to read as follows:

8 (3) "Notice of claim" means a written notification by
9 a claimant who makes a claim for payment from the surety
10 company. The term does not include a routine statutory notice
11 required by [~~Section 53.056(b), 53.057, 53.058, 53.252(b), or~~
12 ~~53.253, Property Code, or~~] Section 2253.047, Government Code.

13 SECTION 2. Section 53.001, Property Code, is amended by
14 amending Subdivisions (2), (12), (13), and (14) and adding
15 Subdivisions (2-a), (3-a), (5-a), (5-b), (5-c), (7-a), and (7-b) to
16 read as follows:

17 (2) "Improved" means, in reference to real property,
18 having an improvement, as defined by this section.

19 (2-a) "Improvement" means a house, building, or other
20 improvement to the real property of an owner. The term includes:

21 (A) improvements constructed adjacent to the
22 real property under an original contract with the owner, including
23 [~~abutting~~] sidewalks and streets and utilities in or on those
24 sidewalks and streets;

1 (B) clearing, grubbing, draining, or fencing of
2 land;

3 (C) wells, cisterns, tanks, reservoirs, or
4 artificial lakes or pools made for supplying or storing water;

5 (D) pumps, siphons, and windmills or other
6 machinery or apparatuses used for raising water for stock, domestic
7 use, or irrigation; ~~and~~

8 (E) planting orchard trees, grubbing out
9 orchards and replacing trees, and pruning of orchard trees;

10 (F) levees or embankments erected for the
11 reclamation of overflow land along a river or creek; and

12 (G) railroads.

13 (3-a) "Lien website" means the Internet website
14 established under Subchapter A-1.

15 (5-a) "Notice of commencement" means a notice
16 described by Section 53.125.

17 (5-b) "Notice of demand" means a notice described by
18 Section 53.0521.

19 (5-c) "Notice of furnishing" is a notice required
20 under Section 53.0561.

21 (7-a) "Owner" means a person who owns any interest in
22 real property or an authorized agent, trustee, or receiver of the
23 person.

24 (7-b) "Reputed owner" means a person who is:

25 (A) identified as an owner in a notice of
26 commencement required under this chapter or in an original contract
27 for an improvement; or

1 (B) generally considered or reputed to be the
2 owner of the real property being improved.

3 (12) "Specially fabricated material" means material
4 fabricated for use as a component of the construction or repair of
5 an improvement so as to be reasonably unsuitable for use elsewhere.

6 (13) "Subcontractor" means a person who has furnished
7 labor or materials to fulfill an obligation to an original
8 contractor or to a subcontractor of any tier to perform all or part
9 of the work required by an original contract.

10 (14) "Work" means any part of labor done, material
11 furnished, or materials specially fabricated for the construction
12 or repair of an improvement performed under an original contract.

13 SECTION 3. Section 53.003, Property Code, is amended by
14 amending Subsections (a) and (c) and adding Subsection (e) to read
15 as follows:

16 (a) This section applies to notices required by this chapter
17 [Subchapters B through G and K]. In this section, "notice" includes
18 any written communication required under this chapter.

19 (c) If a notice is sent by registered or certified mail,
20 deposit or mailing of the notice in the United States mail in the
21 form required constitutes compliance with the notice requirement.
22 The effective date of the notice is the date the notice is deposited
23 in the United States mail. This subsection does not apply if the
24 law requires receipt of the notice by the person to whom it is
25 directed.

26 (e) A notice to an owner may be filed on the lien website
27 under the protocols established for the website for receipt of the

1 notice. A notice may be sent by an owner by filing the notice on the
2 lien website or by e-mail with an electronic record of delivery to
3 the e-mail address provided to the owner in a notice of furnishing
4 by a person required to be provided with the notice. The effective
5 date of the notice is the date the notice is sent to the lien website
6 under the website's protocols or the date the e-mail is sent. An
7 e-mail sent to a recipient is prima facie evidence of delivery of a
8 message to an e-mail address to which it is sent.

9 SECTION 4. Subchapter A, Chapter 53, Property Code, is
10 amended by adding Section 53.004 to read as follows:

11 Sec. 53.004. COMPUTATION OF TIME. In computing the period
12 of days in which to provide a notice or to take an action required
13 under this chapter, if the last day of the period is a Saturday,
14 Sunday, or legal holiday, the period is extended to include the next
15 day that is not a Saturday, Sunday, or legal holiday.

16 SECTION 5. Chapter 53, Property Code, is amended by adding
17 Subchapter A-1 to read as follows:

18 SUBCHAPTER A-1. LIEN WEBSITE

19 Sec. 53.011. LIEN WEBSITE. (a) The secretary of state
20 shall establish and maintain a lien website through the state
21 electronic Internet portal, as defined by Section 2054.003,
22 Government Code.

23 (b) The secretary of state may adopt rules and forms
24 necessary to implement this subchapter.

25 Sec. 53.012. POSTING ON LIEN WEBSITE. The lien website must
26 provide an online form for each notice or written communication
27 required by this chapter that complies with the content

1 requirements of this chapter for the notice or communication. The
2 lien website must allow a person to electronically obtain a form and
3 post the notice or written communication on the lien website.

4 Sec. 53.013. SEARCHING LIEN WEBSITE. The lien website must
5 allow a person to search the notices and written communications
6 posted on the website with a full or partial:

7 (1) owner name;

8 (2) project name;

9 (3) project address;

10 (4) project real property legal description;

11 (5) original contractor name; or

12 (6) name of person posting a notice or written
13 communication.

14 Sec. 53.014. FEES. (a) Notwithstanding Section 2054.2591,
15 Government Code, and except as provided by Subsection (b), the
16 secretary of state may not charge a fee for a person to:

17 (1) electronically obtain a form or post a notice or
18 written communication on the lien website; or

19 (2) use the search functions of the lien website.

20 (b) The secretary of state may charge a fee for a person to
21 post a notice of commencement on the lien website.

22 SECTION 6. Section 53.021(a), Property Code, is amended to
23 read as follows:

24 (a) A person has a lien if:

25 (1) the person labors, specially fabricates material,
26 or furnishes labor or materials for construction or repair in this
27 state of an[+]

1 [~~(A) a house, building, or~~] improvement;
2 [~~(B) a levee or embankment to be erected for the~~
3 ~~reclamation of overflow land along a river or creek, or~~
4 [~~(C) a railroad,~~] and

5 (2) the person labors, specially fabricates the
6 material, or furnishes the labor or materials under or arising out
7 [~~by virtue~~] of an express [a] contract or contract implied by law
8 between the person and [with] the owner or the owner's agent,
9 trustee, receiver, contractor, or subcontractor.

10 SECTION 7. Section [53.022](#), Property Code, is amended by
11 amending Subsection (a) and adding Subsections (b-1) and (e) to
12 read as follows:

13 (a) The lien extends to the interest of the owner or the
14 owner's successor in interest to the real property in the house,
15 building, fixtures, or improvements, the land reclaimed from
16 overflow, or the railroad and all of its properties, and to each lot
17 of land necessarily connected or reclaimed.

18 (b-1) If an improvement is constructed on real property that
19 is adjacent to the real property of the owner who entered into the
20 original contract for the improvements and the adjacent property is
21 not owned by the owner, the lien extends only to the real property
22 of the owner and not to the adjacent property.

23 (e) A lien arising from work performed on common elements of
24 a condominium governed by Chapter [81](#) or [82](#) extends to each unit
25 owning an interest in the common elements being improved, and is
26 apportioned based on the relative ownership interests of each unit
27 in the common elements being improved, if:

1 (1) the inception of the lien is after the date the
2 declaration establishing the condominium was recorded; and

3 (2) the work was performed under a contract with the
4 council of owners, the unit owners' association of the condominium,
5 or all of the owners of the units owning an interest in the common
6 elements being improved.

7 SECTION 8. Section 53.024, Property Code, is amended to
8 read as follows:

9 Sec. 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The
10 amount of a lien claimed by a subcontractor may not exceed:

11 (1) an amount equal to the proportion of the total
12 subcontract price, including all additional amounts to which the
13 subcontractor is entitled as an adjustment to the subcontract, that
14 the sum of the labor performed, materials furnished, materials
15 specially fabricated, reasonable overhead costs incurred, and
16 proportionate profit margin bears to the total subcontract price;
17 minus

18 (2) the sum of previous payments received by the
19 claimant on the subcontract.

20 SECTION 9. Section 53.026(a), Property Code, is amended to
21 read as follows:

22 (a) Except as provided by Section 53.0561, a [A] person who
23 labors, specially fabricates materials, or furnishes labor or
24 materials under a direct contractual relationship with another
25 person is considered to be in direct contractual relationship with
26 the owner and has a lien as an original contractor, if:

27 (1) the owner [~~contracted with the other person for~~

1 ~~the construction or repair of a house, building, or improvements~~
2 ~~and the owner]~~ can effectively control that other person or that
3 other person can effectively control the owner through ownership of
4 voting stock, interlocking directorships, or otherwise; or

5 (2) the owner contracted with the other person for the
6 construction or repair of a house, building, or improvements [~~and~~
7 ~~that other person can effectively control the owner through~~
8 ~~ownership of voting stock, interlocking directorships, or~~
9 ~~otherwise; or~~

10 [~~(3) the owner contracted with the other person for~~
11 ~~the construction or repair of a house, building, or improvements]~~
12 and the contract was made without good faith intention of the
13 parties that the other person was to perform the contract.

14 SECTION 10. Section 53.052, Property Code, is amended to
15 read as follows:

16 Sec. 53.052. FILING OF LIEN CLAIM AFFIDAVIT. (a) Except as
17 provided by Subsection (b) or Section 53.0521, an original
18 contractor or subcontractor [~~the person~~] claiming a [~~the~~] lien
19 under this chapter must file a lien claim [~~an~~] affidavit as provided
20 by Subsection (c) [~~with the county clerk of the county in which the~~
21 ~~property is located or into which the railroad extends]~~ not later
22 than the 15th day of the fourth calendar month after the date the
23 work under the original contract is completed or the original
24 contract is terminated [~~day on which the indebtedness accrues~~].

25 (b) Except as provided by Section 53.0521, an original
26 contractor or subcontractor [~~A person~~] claiming a lien on [~~arising~~
27 ~~from~~] a residential construction project must file a lien claim

1 ~~[an]~~ affidavit as provided by Subsection (c) [with the county clerk
2 ~~of the county in which the property is located]~~ not later than the
3 15th day of the third calendar month after the date the work under
4 the original contract is completed or the original contract is
5 terminated [day on which the indebtedness accrues].

6 (c) A lien claim affidavit must be filed with the county
7 clerk of the county in which the property is located or into which
8 the railroad extends. The county clerk shall record the affidavit
9 in records kept for that purpose and shall index and cross-index the
10 affidavit in the names of the claimant, the original contractor,
11 and the owner. Failure of the county clerk to properly record or
12 index a filed affidavit does not invalidate the lien.

13 (d) For purposes of this section, an original contract is
14 terminated on the date an owner posts a notice of termination on the
15 lien website. If a notice of commencement has not been filed and
16 posted as required by Section 53.125, the owner must send a notice
17 of termination to each person who has filed a notice of furnishing.

18 SECTION 11. Subchapter C, Chapter 53, Property Code, is
19 amended by adding Section 53.0521 to read as follows:

20 Sec. 53.0521. NOTICE OF DEMAND. (a) If work under an
21 original contract has been completed or the original contract has
22 been terminated, an owner may send a notice of demand to the
23 original contractor or subcontractor requesting the contractor or
24 subcontractor to file a lien claim affidavit. If the notice is
25 based on the termination of the original contract, the notice must
26 state that the original contract was terminated and the date of the
27 termination. An owner may not send the notice before the original

1 contract has been terminated. A notice sent before work under the
2 original contract has been completed is effective only as to a
3 claimant that has completed the claimant's work and is void as to
4 any other claimant.

5 (b) For purposes of this section, an original contract is
6 terminated on the date an owner posts a notice of termination on the
7 lien website. If a notice of commencement has not been filed and
8 posted as required by Section 53.125, the owner must send a notice
9 of termination to each person who has filed a notice of furnishing.

10 (c) Notwithstanding Section 53.003, a notice of demand must
11 be sent by registered or certified mail to a subcontractor at the
12 subcontractor's address provided by the notice of furnishing or to
13 an original contractor at the original contractor's last known
14 address.

15 (d) If an owner sends a notice of demand, a claimant that has
16 completed the claimant's work must, not later than the 30th day
17 after the date the notice of demand is sent, file a lien claim
18 affidavit for a claim the claimant has not included in a previously
19 filed lien claim affidavit.

20 (e) A claimant that has not completed the claimant's work on
21 the date the owner sends a notice of demand must file a lien claim
22 affidavit as provided by Section 53.052(a) or (b), as applicable.

23 (f) An original contractor or subcontractor waives any
24 statutory lien rights that have not been perfected if the
25 contractor or subcontractor does not comply with this section.

26 (g) A notice of demand must be conspicuously printed in bold
27 type and in all capital letters not smaller than 10-point type and

1 must state the following:

2 "NOTICE OF DEMAND

3 "WARNING: THIS NOTICE BRIEFLY SUMMARIZES LEGAL REQUIREMENTS
4 STATED BY SECTION 53.0521, PROPERTY CODE. YOU SHOULD CONSULT AN
5 ATTORNEY TO FULLY UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

6 "THE OWNER IS DEMANDING THAT YOU FILE A LIEN CLAIM AFFIDAVIT
7 NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE WAS SENT TO
8 YOU. IF THE ORIGINAL CONTRACT HAS BEEN TERMINATED OR IF YOU HAVE
9 COMPLETED YOUR WORK, YOU ARE REQUIRED, NOT LATER THAN THE 30TH DAY
10 AFTER THE DATE THIS NOTICE WAS SENT TO YOU, TO FILE YOUR LIEN CLAIM
11 AFFIDAVIT FOR ANY CLAIMS YOU HAVE NOT INCLUDED IN A LIEN CLAIM
12 AFFIDAVIT YOU HAVE PREVIOUSLY FILED OR YOU MAY LOSE ANY STATUTORY
13 LIEN RIGHTS THAT YOU HAVE NOT PREVIOUSLY PERFECTED.

14 "IF THE ORIGINAL CONTRACT IS NOT TERMINATED OR YOU HAVE NOT
15 COMPLETED YOUR WORK, THE DEADLINE TO FILE YOUR LIEN CLAIM AFFIDAVIT
16 IS PROVIDED BY SECTION 53.052(a) OR (b), PROPERTY CODE."

17 SECTION 12. The heading to Section 53.054, Property Code,
18 is amended to read as follows:

19 Sec. 53.054. CONTENTS OF LIEN CLAIM AFFIDAVIT.

20 SECTION 13. Section 53.054, Property Code, is amended by
21 amending Subsections (a) and (c) to read as follows:

22 (a) The lien claim affidavit must be signed by the person
23 claiming the lien or by another person on the claimant's behalf and
24 must contain substantially:

25 (1) a sworn statement of the amount of the claim;

26 (2) the name and last known address of the owner or
27 reputed owner;

1 (3) a general statement of the kind of work done and
2 materials furnished by the claimant [~~and, for a claimant other than~~
3 ~~an original contractor, a statement of each month in which the work~~
4 ~~was done and materials furnished for which payment is requested~~];

5 (4) the name and last known address of the person by
6 whom the claimant was employed or to whom the claimant furnished the
7 materials or labor;

8 (5) the name and last known address of the original
9 contractor;

10 (6) a description, legally sufficient for
11 identification, of the property sought to be charged with the lien;

12 (7) the claimant's name, mailing address, and, if
13 different, physical address; and

14 (8) for a claimant other than an original contractor,
15 a statement identifying the date each notice of furnishing [~~the~~
16 ~~claim~~] was sent to the owner [~~and the method by which the notice was~~
17 ~~sent~~].

18 (c) The affidavit is not required to set forth individual
19 items of work done or material furnished or specially fabricated.
20 The affidavit may use any broad descriptive terms, abbreviations,
21 or symbols customary in the trade to describe the work done or
22 material furnished.

23 SECTION 14. Section 53.055, Property Code, is amended to
24 read as follows:

25 Sec. 53.055. NOTICE OF FILED LIEN CLAIM AFFIDAVIT. (a) A
26 person who files a lien claim [~~an~~] affidavit must send a copy of the
27 affidavit by registered or certified mail to the owner or reputed

1 owner at the owner's last known business or residence address or
2 file a copy with the lien website not later than the 10th [~~fifth~~]
3 day after the date the affidavit is filed with the county clerk.

4 (b) If the person is not an original contractor, and the
5 person has not filed a copy of the affidavit with the lien website
6 under Subsection (a), the person must also send a copy of the
7 affidavit to the original contractor at the original contractor's
8 last known business or residence address in [~~within~~]
9 manner and time that the affidavit must be sent to the owner under
10 Subsection (a) [~~period~~].

11 SECTION 15. Subchapter C, Chapter 53, Property Code, is
12 amended by adding Section 53.0561 to read as follows:

13 Sec. 53.0561. NOTICE OF FURNISHING. (a) A person who
14 contracts with a person other than the owner and who has a lien as an
15 original contractor under Section 53.026(a) must give a notice of
16 furnishing to the owner or reputed owner for the lien to be valid. A
17 claimant other than an original contractor must give a notice of
18 furnishing to the owner or reputed owner and the original
19 contractor for the claimant's lien to be valid.

20 (b) The notice of furnishing must include:

21 (1) a general description of the labor or material
22 furnished or to be furnished by the claimant and, for specially
23 fabricated material, a separate description of the specially
24 fabricated material, that may include a list of individual items of
25 work or material or use terms, abbreviations, or symbols customary
26 in the trade;

27 (2) the name, address, and telephone number of the

1 claimant;

2 (3) the e-mail address of the claimant, if the
3 claimant wants to receive notices of filings on the lien website;

4 (4) the name, address, and telephone number of the
5 person with whom the claimant contracted to furnish the labor or
6 material;

7 (5) a legal description, street address, or other
8 description that identifies the real property to which the labor or
9 material was furnished or will be furnished; and

10 (6) a conspicuous statement in bold type as follows:

11 "THIS IS NOT A LIEN OR A CLAIM FOR A LIEN. THIS IS ONLY A
12 NOTICE TO THE OWNER THAT A CONTRACTOR IS FURNISHING OR INTENDS TO
13 FURNISH LABOR OR MATERIAL TO THE PROJECT. THIS NOTICE IS REQUIRED TO
14 PRESERVE THE CONTRACTOR'S LIEN RIGHTS UNDER CHAPTER 53, PROPERTY
15 CODE."

16 (c) Except as provided by Subsection (d), the notice of
17 furnishing does not preserve a lien right for labor performed or
18 material furnished or specially fabricated earlier than 45 days
19 before the date the notice is provided as required by this section.

20 (d) If the owner has filed and posted a notice of
21 commencement as required by Section 53.125 before the subcontractor
22 begins performing labor or furnishing or specially fabricating
23 material, the notice of furnishing does not preserve a lien right
24 for labor performed or material furnished or specially fabricated
25 by the subcontractor earlier than 15 days before the date the notice
26 of furnishing is provided.

27 (e) Only one notice of furnishing to an owner is required

1 for all labor or material furnished or to be furnished by each
2 subcontractor. If a subcontractor contracts to perform work for
3 the improvement of the owner's property under more than one
4 original contract, the subcontractor must identify each original
5 contract in the notice of furnishing or must furnish separate
6 notices of furnishing for each original contract.

7 (f) The notice of furnishing is not invalid if, after the
8 date of the notice, the subcontractor furnishes labor or material
9 that is not within the scope of the notice's general description of
10 the labor and material furnished or to be furnished.

11 (g) A notice of furnishing that does not include the
12 subcontractor's e-mail address is not invalid.

13 SECTION 16. Subchapter C, Chapter 53, Property Code, is
14 amended by adding Section 53.059 to read as follows:

15 Sec. 53.059. NOTICE OF COMPLETION. (a) If an owner has
16 filed or has posted on the lien website a notice of commencement as
17 required by Section 53.125 and the work under an original contract
18 has been completed or the original contract has been terminated,
19 the owner may file a notice of completion with the county clerk of
20 the county in which the owner's property is located and post the
21 notice on the lien website. The notice must contain:

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

23 (2) the name and address of each original contractor
24 covered by the notice;

25 (3) a description, legally sufficient for
26 identification, of the real property on which the improvements are
27 located;

1 (4) a description of the work furnished under an
2 original contract covered by the notice;

3 (5) a statement that the work under an original
4 contract covered by the notice has been completed or that the
5 original contract was terminated; and

6 (6) the date of the completion or termination.

7 (b) Not later than the 10th day after the notice of
8 completion is posted on the lien website, the owner must send a copy
9 of the notice:

10 (1) to each original contractor identified in the
11 notice; and

12 (2) by e-mail to each claimant that has sent a notice
13 of furnishing to the owner and has provided an e-mail address to the
14 owner.

15 (c) For purposes of Section 53.052, the later of the date
16 the notice of completion is filed or the date the notice is posted
17 on the lien website is considered the date the work under an
18 original contract identified in the notice is completed or the
19 original contract is terminated. This subsection does not apply to
20 a person to whom the notice of completion was not sent as required
21 by this section.

22 (d) Except as provided by Subsection (e), the notice of
23 completion must contain the following statement in bold type in all
24 capital letters:

25 "A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE
26 CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH
27 DAY OF THE FOURTH MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

1 (e) The notice of completion for a residential construction
2 project must contain the following statement in bold type in all
3 capital letters:

4 "A CLAIMANT WILL LOSE THE RIGHT TO PERFECT A LIEN IF THE
5 CLAIMANT DOES NOT FILE A LIEN CLAIM AFFIDAVIT ON OR BEFORE THE 15TH
6 DAY OF THE THIRD MONTH AFTER THE DATE OF COMPLETION OF THE WORK."

7 SECTION 17. Section 53.081, Property Code, is amended to
8 read as follows:

9 Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF
10 CLAIMANTS. [~~a~~] If a lien claim affidavit is filed by a
11 subcontractor or if an owner receives notice under Section 53.055
12 [~~53.056, 53.057, 53.058, 53.252, or 53.253~~], the owner may withhold
13 from payments due or to become due to the original contractor an
14 amount necessary to pay the claim stated in the lien claim
15 affidavit, except to the extent that the owner is already
16 withholding payment for the amount of the claim from the original
17 contractor as retainage or otherwise [~~for which he receives~~
18 ~~notice~~].

19 [~~(b) If notice is sent in a form that substantially complies~~
20 ~~with Section 53.056 or 53.252, the owner may withhold the funds~~
21 ~~immediately on receipt of the notice.~~

22 [~~(c) If notice is sent under Section 53.057, the owner may~~
23 ~~withhold funds immediately on receipt of a copy of the claimant's~~
24 ~~affidavit prepared in accordance with Sections 53.052 through~~
25 ~~53.055.~~

26 [~~(d) If notice is sent under Section 53.058, the owner may~~
27 ~~withhold funds immediately on receipt of the notices sent under~~

1 ~~Subsection (c) of that section. If notice is sent as provided by~~
2 ~~Section 53.253(b), the owner may withhold funds immediately on~~
3 ~~receipt of the notice sent as required by Section 53.252.]~~

4 SECTION 18. Section 53.082, Property Code, is amended to
5 read as follows:

6 Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. The owner
7 may retain funds under Section 53.081 until [~~Unless~~] payment is
8 made under Section 53.0831 [~~53.083~~] or the claim is otherwise
9 settled or [~~7~~] discharged [~~7, indemnified against~~] under Section
10 53.157 [~~Subchapter H or I, 7~~] or determined to be invalid by a final
11 judgment of a court [~~7, the owner shall retain the funds withheld~~
12 ~~until:~~

13 [~~(1) the time for filing the affidavit of mechanic's~~
14 ~~lien has passed; or~~

15 [~~(2) if a lien affidavit has been filed, until the lien~~
16 ~~claim has been satisfied or released].~~

17 SECTION 19. Subchapter D, Chapter 53, Property Code, is
18 amended by adding Section 53.0831 to read as follows:

19 Sec. 53.0831. DEMAND FOR NOTICE OF DISPUTE; PAYMENT OF
20 CLAIM. (a) If a lien claim affidavit is filed by a claimant, the
21 owner may demand in writing that the original contractor notify the
22 owner of whether the original contractor intends to dispute the
23 claim. The owner shall send a copy of the demand to the claimant and
24 shall furnish the original contractor with a copy of the lien claim
25 affidavit.

26 (b) If the original contractor does not give the owner and
27 the claimant written notice of the original contractor's intent to

1 dispute the claim before the 30th day after the date of receipt of
2 the demand, the original contractor is considered to agree to the
3 demand and the owner may pay the claim when the claim becomes due.

4 SECTION 20. Subchapter D, Chapter 53, Property Code, is
5 amended by adding Section 53.0841 to read as follows:

6 Sec. 53.0841. PERSONAL LIABILITY FOR LIENS. (a) Except as
7 provided by Subsection (b), an owner is personally liable for the
8 aggregate amount of the liens perfected on the owner's property
9 under this chapter. An owner's personal liability is not affected
10 by a subsequent foreclosure or other transfer of the owner's
11 interest in all or part of the property.

12 (b) Subject to Section 53.122(b), the aggregate amount of
13 liens of the original contractor and the subcontractors may not
14 exceed the contract price of the original contract, as may be
15 modified, for the work. Duplicated claims asserted by claimants
16 within the same chain of contract may not be added more than once in
17 determining the aggregate amount of liens. For purposes of this
18 section, a payment by the owner to the original contractor does not
19 reduce the aggregate liability of the owner for liens.

20 (c) A purchaser of property subject to a lien claim under
21 this chapter is not personally liable for the lien claim in a
22 foreclosure action brought by a claimant, except the purchaser may
23 be held liable for costs and attorney's fees awarded under Section
24 53.156.

25 SECTION 21. The heading to Section 53.085, Property Code,
26 is amended to read as follows:

27 Sec. 53.085. BILLS-PAID AFFIDAVIT REQUIRED.

1 SECTION 22. Section 53.085, Property Code, is amended by
2 amending Subsections (a), (b), (c), and (d) to read as follows:

3 (a) Any person who performs work [~~furnishes labor or~~
4 ~~materials for the construction of improvements on real property~~]
5 shall, if requested and as a condition of payment for such work
6 [~~labor or materials~~], provide to the requesting party, or the
7 party's agent, a bills-paid [~~an~~] affidavit acknowledging the amount
8 claimed for payment and stating that the person has paid each of the
9 person's subcontractors, laborers, or materialmen in full for all
10 labor and materials provided to the person for the construction. In
11 the event, however, that the person has not paid each of the
12 person's subcontractors, laborers, or materialmen in full, the
13 person shall state in the affidavit the amount owed and the name
14 and, if known, the address and telephone number of each
15 subcontractor, laborer, or materialman to whom the payment is owed.

16 (b) The seller of any real property shall, upon request by
17 the purchaser or the purchaser's agent prior to closing of the
18 purchase of the real property, provide to the purchaser or the
19 purchaser's agent, a written affidavit stating that the seller has
20 paid each of the seller's contractors, laborers, or materialmen in
21 full for all labor done and materials provided to the seller through
22 the date specified in the affidavit for any construction or repair
23 of improvements on the real property and that the seller is not
24 indebted to any person, firm, or corporation by reason of any such
25 construction or repair through the date specified in the affidavit.
26 In the event that the seller has not paid each of the seller's
27 contractors, laborers, or materialmen in full for labor done and

1 material provided through the date specified in the affidavit, the
2 seller shall state in the affidavit the amount owed and the name
3 and, if known, the address and telephone number of each contractor,
4 laborer, or materialman to whom the payment is owed.

5 (c) The affidavit may include:

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

10 (2) a warranty or representation that certain bills or
11 classes of bills will be paid by the affiant from funds paid in
12 reliance on the affidavit and an identification of the specific
13 bills that the affiant will not pay from the fund; and

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

17 (d) A person, including a seller, commits an offense if the
18 person intentionally, knowingly, or recklessly makes a false or
19 misleading statement in an affidavit under this section. An
20 offense under this section is a misdemeanor. A person adjudged
21 guilty of an offense under this section shall be punished by a fine
22 not to exceed \$4,000 or confinement in jail for a term not to exceed
23 one year or both a fine and confinement. [~~A person may not receive~~
24 ~~community supervision for the offense.~~]

25 SECTION 23. Section 53.122(a), Property Code, is amended to
26 read as follows:

27 (a) Perfected [~~Except as provided by Subchapter E and~~

1 ~~Section 53.124(e), perfected]~~ mechanic's liens that have the same
2 inception date are on equal footing without reference to the date of
3 filing the lien claim affidavit [~~claiming the lien~~].

4 SECTION 24. Section 53.124, Property Code, is amended by
5 amending Subsections (a), (c), (d), and (e) and adding Subsection
6 (f) to read as follows:

7 (a) Except as provided by Subsection (c) or (e), for
8 purposes of Section 53.123, the time of inception of a mechanic's
9 lien is the commencement of construction or repair of improvements
10 or delivery of materials to the land on which the improvements are
11 to be located and on which the materials are to be used.

12 (c) The later of the date the notice of commencement is
13 filed or is posted on the lien website is the time of inception of a
14 mechanic's lien for the work or material described by the notice
15 that is performed or furnished on or after the later of the date the
16 notice is filed or posted. For work or material performed or
17 furnished before the date a notice of commencement is filed or
18 posted and for work excluded by the notice of commencement, the time
19 of inception of a mechanic's lien is provided by Subsection (a).
20 For work under an original contract entered into after a notice of
21 completion is filed and posted under Section 53.059, the time of
22 inception of a mechanic's lien is the date provided by Subsection
23 (a) or the date a new notice of commencement is posted. [An owner
24 and original contractor may jointly file an affidavit of
25 commencement with the county clerk of the county in which the land
26 is located not later than the 30th day after the date of actual
27 commencement of construction of the improvements or delivery of

1 ~~materials to the land. The affidavit must contain:~~

2 ~~[(1) the name and address of the owner;~~

3 ~~[(2) the name and address of each original contractor,~~
4 ~~known at the time to the owner, that is furnishing labor, service,~~
5 ~~or materials for the construction of the improvements;~~

6 ~~[(3) a description, legally sufficient for~~
7 ~~identification, of the property being improved;~~

8 ~~[(4) the date the work actually commenced; and~~

9 ~~[(5) a general description of the improvement.]~~

10 (d) If a lien, encumbrance, or mortgage securing an interest
11 in the land is filed with the county clerk on or before the date the
12 notice is posted, the lien, encumbrance, or mortgage has priority
13 over a mechanic's lien with a time of inception that is the date of
14 the notice, regardless of the order in which the instruments are
15 filed with the county clerk. ~~[An affidavit filed in compliance with~~
16 ~~this section is prima facie evidence of the date of the commencement~~
17 ~~of the improvement described in the affidavit. The time of~~
18 ~~inception of a mechanic's lien arising from work described in an~~
19 ~~affidavit of commencement is the date of commencement of the work~~
20 ~~stated in the affidavit.]~~

21 (e) The time of inception of a lien that is created under
22 Section 53.021(c) [~~, (d), or (e)~~] is the date of recording of a lien
23 claim ~~[an]~~ affidavit ~~[of lien]~~ under Section 53.052. The priority
24 of a lien claimed by a person entitled to a lien under Section
25 53.021(c) [~~, (d), or (e)~~] with respect to other mechanic's liens is
26 determined by the date of recording. A lien created under Section
27 53.021(c) [~~, (d), or (e)~~] is not valid or enforceable against a

1 grantee or purchaser who acquires an interest in the real property
2 before the time of inception of the lien.

3 (f) Unless the landscaping work for which a person may have
4 a lien under Section 53.021(d) or the demolition services for which
5 a person may have a lien under Section 53.021(e) are included in a
6 notice of commencement, the time of inception of a lien under
7 Section 53.021(d) or (e) is the date of recording of a lien claim
8 affidavit under Section 53.052, and priority is determined by the
9 date of recording. Except as provided by this subsection, a lien
10 created under Section 53.021(d) or (e) is not valid against a
11 grantee or purchaser who acquires an interest in the real property
12 before the time of inception of the lien.

13 SECTION 25. Subchapter F, Chapter 53, Property Code, is
14 amended by adding Section 53.125 to read as follows:

15 Sec. 53.125. NOTICE OF COMMENCEMENT. (a) An owner must
16 file a notice of commencement with the county clerk of the county in
17 which the real property being improved under an original contract
18 is located and post the notice on the lien website. The notice must
19 be acknowledged and be in a form that substantially complies with
20 the following:

21 "NOTICE OF COMMENCEMENT
22 "Improvements will be made to certain real property, and in
23 accordance with Chapter 53, Property Code, the following
24 information is provided by this notice of commencement:

25 "(1) Legal description and, if applicable, street
26 address of property: _____.

27 "(2) Brief description of work to be performed or

1 materials to be furnished:_____.

2 "(3) Work or materials not included in this notice of
3 commencement:_____.

4 "(4) Owner information or lessee information if the
5 lessee contracted for the work:

6 (A) Name and address:_____.

7 (B) Interest in property (check appropriate
8 box):

9 Fee simple title

10 Lease

11 Other (explain):_____.

12 (C) Name and address of fee simple titleholder to
13 property (if different from owner listed above):_____.

14 "(5) Original contractor(s) for work or designated
15 portions of the work (repeat as necessary):

16 (A) Name and address:_____.

17 (B) Contractor's phone number:_____.

18 "(6) Surety or sureties for original contractor (if
19 applicable, a copy of the payment bond is attached):

20 (A) Name and address:_____.

21 (B) Phone number:_____.

22 "(7) Lender(s) providing financing for the work that
23 is securing a mortgage on or a security interest in the property
24 (repeat as necessary):

25 (A) Name and address:_____.

26 (B) Lender's phone number:_____.

27 "(8) Secretary of state's lien website address:

1 _____.

2 "Date: _____

3 "_____ (Owner name)

4 "By: _____ (Signature)

5 "(Insert acknowledgment)."

6 (b) Incorrect information contained in the notice of
7 commencement furnished by an owner does not adversely affect the
8 rights of a lien claimant reasonably relying on the information
9 against the owner or the property of the owner. If a subcontractor
10 performs labor or furnishes materials or specially fabricated
11 materials described by the notice of commencement and the notice of
12 commencement does not identify the original contractor under which
13 the labor was performed or materials were furnished or specially
14 fabricated at the time the subcontractor first performs the labor
15 or furnishes or specially fabricates the materials, the notice of
16 furnishing by the subcontractor preserves the lien claimant's
17 rights for the period provided by Section 53.0561(c).

18 (c) The owner shall send a copy of the notice of
19 commencement to each subcontractor not later than the fifth day
20 after the date the owner receives a written request for a copy from
21 the subcontractor, unless the subcontractor has received a physical
22 copy of the notice.

23 (d) Unless a notice of commencement has been filed and
24 posted as required by this section, a subcontractor who has not
25 received a physical copy of the notice may request in writing a copy
26 from the original contractor or a subcontractor with whom the
27 requesting subcontractor has privity of contract. If the original

1 contractor or subcontractor has a copy of the notice, the original
2 contractor or subcontractor shall send a copy of the notice to the
3 requesting subcontractor not later than the fifth day after the
4 date of receipt of the written request. If the requesting
5 subcontractor does not receive a copy of the notice as required by
6 this section, the person failing to send the copy under this
7 subsection is liable to the requesting subcontractor for all actual
8 expenses reasonably incurred by the requesting subcontractor in
9 obtaining the information that would have been contained in the
10 notice.

11 (e) A notice of commencement posted on the lien website may
12 be amended by the owner by sending the amended notice to the lien
13 website. The effective date of the amended notice is the date the
14 amended notice is posted on the lien website. The owner shall send
15 notice of the amended notice to contractors who have sent a notice
16 of furnishing to the owner before the effective date of the amended
17 notice of commencement.

18 SECTION 26. Section 53.151(b), Property Code, is amended to
19 read as follows:

20 (b) A surety issuing a payment bond or performance bond in
21 connection with the work [~~improvements~~] has a priority claim over
22 other creditors of its principal to contract funds to the extent of
23 any loss it suffers or incurs. That priority does not excuse the
24 surety from paying any obligations that it may have under its
25 payment bonds.

26 SECTION 27. Section 53.153(a), Property Code, is amended to
27 read as follows:

1 (a) If an affidavit claiming a mechanic's lien is filed by a
2 person other than the original contractor, the original contractor
3 shall defend at the original contractor's ~~his~~ own expense a suit
4 brought on the claim unless the owner is in breach of the owner's
5 contractual obligations to the original contractor under the
6 original contract.

7 SECTION 28. Section 53.154, Property Code, is amended to
8 read as follows:

9 Sec. 53.154. FORECLOSURE. (a) A mechanic's lien may be
10 foreclosed only on judgment of a court of competent jurisdiction
11 foreclosing the lien and ordering the sale of the property subject
12 to the lien.

13 (b) A suit to foreclose the lien must be brought in a court
14 of competent jurisdiction in the county in which the real property
15 that is subject to the lien is located.

16 SECTION 29. Section 53.157, Property Code, is amended to
17 read as follows:

18 Sec. 53.157. DISCHARGE OF LIEN. A mechanic's lien or
19 affidavit claiming a mechanic's lien filed under Section 53.052 may
20 be discharged of record by:

21 (1) recording a lien release signed by the claimant
22 under Section 53.152;

23 (2) failing to institute suit to foreclose the lien
24 [~~in the county in which the property is located~~] within the period
25 prescribed by Section 53.158, 53.175, or 53.208;

26 (3) recording the original or certified copy of a
27 final judgment or decree of a court of competent jurisdiction

1 providing for the discharge;

2 (4) filing the bond and notice in compliance with
3 Subchapter H;

4 (5) filing the bond in compliance with Subchapter I;
5 or

6 (6) recording a certified copy of the order removing
7 the lien under Section 53.160 and a certificate from the clerk of
8 the court that states that no bond or deposit as described by
9 Section 53.161 was filed by the claimant within 30 days after the
10 date the order was entered.

11 SECTION 30. Section 53.158, Property Code, is amended to
12 read as follows:

13 Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN.

14 (a) Except as provided by Subsection (b), suit must be brought to
15 foreclose the lien not later than the first anniversary of [~~within~~
16 ~~two years after~~] the last date [~~day~~] a claimant may file the lien
17 claim affidavit under Section 53.052 [~~or within one year after~~
18 ~~completion, termination, or abandonment of the work under the~~
19 ~~original contract under which the lien is claimed, whichever is~~
20 ~~later~~].

21 (b) The period of limitations under Subsection (a) may be
22 extended to not later than the second anniversary of the last date
23 the claimant may file the affidavit if the claimant enters into a
24 written agreement with the then current record owner of the
25 property to extend the period and files the written agreement with
26 the clerk of the county where all or part of the property is located
27 before the expiration of the period provided by Subsection (a).

1 ~~[For a claim arising from a residential construction project, suit~~
2 ~~must be brought to foreclose the lien within one year after the last~~
3 ~~day a claimant may file a lien affidavit under Section 53.052 or~~
4 ~~within one year after completion, termination, or abandonment of~~
5 ~~the work under the original contract under which the lien is~~
6 ~~claimed, whichever is later.]~~

7 SECTION 31. Section 53.159, Property Code, is amended by
8 amending Subsections (a), (b), (c), (d), and (f) to read as follows:

9 (a) If a notice of commencement has not been filed and
10 posted as required by Section 53.125, an [An] owner, on written
11 request, shall furnish the following information within a
12 reasonable time, but not later than the 10th day after the date the
13 request is received, to any person furnishing labor or materials
14 for the project:

15 (1) a description of the real property being improved
16 legally sufficient to identify it;

17 (2) whether there is a surety bond and if so, the name
18 and last known address of the surety and a copy of the bond;

19 (3) whether there are any prior recorded liens or
20 security interests on the real property being improved and if so,
21 the name and address of the person having the lien or security
22 interest; and

23 (4) the date on which the original contract for the
24 project was executed.

25 (b) If a notice of commencement has not been filed and
26 posted as required by Section 53.125, an [An] original contractor,
27 on written request by a person who furnished work under the original

1 contract, shall furnish to the person the following information
2 within a reasonable time, but not later than the 10th day after the
3 date the request is received:

4 (1) the name and last known address of the person to
5 whom the original contractor furnished labor or materials for the
6 construction project;

7 (2) whether the original contractor has furnished or
8 has been furnished a payment bond for any of the work on the
9 construction project and if so, the name and last known address of
10 the surety and a copy of the bond; and

11 (3) the date on which the original contract for the
12 project was executed.

13 (c) A subcontractor, on written request by an owner of the
14 property being improved, the original contractor, a surety on a
15 bond covering the original contract, or any person furnishing work
16 under the subcontract, shall furnish to the person the following
17 information within a reasonable time, but not later than the 10th
18 day after the date the request is received:

19 (1) the name and last known address of each person from
20 whom the subcontractor purchased labor or materials for the
21 construction project, other than those materials that were
22 furnished to the project from the subcontractor's inventory;

23 (2) the name and last known address of each person to
24 whom the subcontractor furnished labor or materials for the
25 construction project; ~~and~~

26 (3) whether the subcontractor has furnished or has
27 been furnished a payment bond for any of the work on the

1 construction project and if so, the name and last known address of
2 the surety and a copy of the bond; and

3 (4) the date the subcontractor first performed labor,
4 furnished materials, or specially fabricated materials for the
5 construction project for which any claim for payment is being
6 sought.

7 (d) Not later than the 30th day after the date a written
8 request is received from the owner, the contractor under whom a
9 claim of lien or under whom a bond is made, or a surety on a bond on
10 which a claim is made, a claimant for a lien or under a bond shall
11 furnish to the requesting person a copy of any applicable written
12 agreement, purchase order, or contract and any billing, statement,
13 or payment request of the claimant reflecting the amount claimed
14 and the work performed by the claimant for which the claim is made.
15 ~~[If requested, the claimant shall provide the estimated amount due~~
16 ~~for each calendar month in which the claimant has performed labor or~~
17 ~~furnished materials.]~~

18 (f) A person, other than a claimant requested to furnish
19 information under Subsection (d), who fails to furnish information
20 as required by this section not posted on the lien website is liable
21 to the requesting person for that person's reasonable and necessary
22 costs incurred in procuring the requested information.

23 SECTION 32. Section 53.160, Property Code, is amended by
24 amending Subsections (b) and (c) to read as follows:

25 (b) The grounds for objecting to the validity or
26 enforceability of the claim or lien for purposes of the motion are
27 limited to the following:

1 (1) notice of furnishing [~~claim~~] was not furnished to
2 the owner or original contractor as required by Section 53.0561
3 [~~53.056, 53.057, 53.058, 53.252, or 53.253~~];

4 (2) a lien claim [~~an~~] affidavit [~~claiming a lien~~]
5 failed to comply with Section 53.054 or was not filed as required by
6 Section 53.052;

7 (3) notice of the filed lien claim affidavit was not
8 furnished to the owner or original contractor as required by
9 Section 53.055 and the owner or original contractor was materially
10 prejudiced by the violation;

11 (4) [~~the deadlines for perfecting a lien claim for~~
12 ~~retainage under this chapter have expired and the owner complied~~
13 ~~with the requirements of Section 53.101 and paid the retainage and~~
14 ~~all other funds owed to the original contractor before.~~

15 [~~(A) the claimant perfected the lien claim, and~~

16 [~~(B) the owner received a notice of the claim as~~
17 ~~required by this chapter,~~

18 [~~(5) all funds subject to the notice of a claim to the~~
19 ~~owner and a notice regarding the retainage have been deposited in~~
20 ~~the registry of the court and the owner has no additional liability~~
21 ~~to the claimant,~~

22 [~~(6)~~] when the lien claim affidavit was filed on
23 homestead property:

24 (A) no contract was executed or filed as required
25 by Section 53.254; or

26 (B) the lien claim affidavit [~~claiming a lien~~]
27 failed to contain the notice as required by Section 53.254; [~~or~~

1 [~~(C) the notice of the claim failed to include~~
2 ~~the statement required by Section 53.254,~~] and

3 (5) [~~(7)~~] the claimant executed a valid and
4 enforceable waiver or release of the claim or lien claimed in the
5 affidavit.

6 (c) The claimant is not required to file a response. The
7 claimant and any other party that has appeared in the proceeding
8 must be notified not later than the 21st day [~~by at least 21 days~~]
9 before the date of the hearing on the motion. A motion may not be
10 heard before the 21st day after the date the claimant answers or
11 appears in the proceeding.

12 SECTION 33. Section 53.161(f), Property Code, is amended to
13 read as follows:

14 (f) If the claimant fails to file the bond or the deposit in
15 lieu of the bond in compliance with this section, the owner may
16 file:

17 (1) a certified copy of the order; and

18 (2) a certificate from the clerk of the court stating
19 that:

20 (A) no bond or deposit in lieu of the bond was
21 filed before the later of:

22 (i) the 30th day [~~within 30 days~~] after the
23 date the order was entered by the court; or

24 (ii) the date ordered by the court under
25 Subsection (b); and

26 (B) no order staying the order to remove the lien
27 was entered by the court.

1 SECTION 34. Section [53.172](#), Property Code, is amended to
2 read as follows:

3 Sec. 53.172. BOND REQUIREMENTS. The bond must:

4 (1) describe the property on which the liens are
5 claimed;

6 (2) refer to each lien claimed in a manner sufficient
7 to identify it;

8 (3) be in an amount that is double the amount of the
9 liens referred to in the bond unless the total amount claimed in the
10 liens exceeds \$60,000 [~~\$40,000~~], in which case the bond must be in
11 an amount that is the greater of 1-1/2 times the amount of the liens
12 or the sum of \$60,000 [~~\$40,000~~] and the amount of the liens;

13 (4) be payable to the parties claiming the liens;

14 (5) be executed by:

15 (A) the party filing the bond as principal; and

16 (B) a corporate surety authorized and admitted to
17 do business under the law in this state and licensed by this state
18 to execute the bond as surety, subject to Section [3503.005](#),
19 Insurance Code [~~1, Chapter 87, Acts of the 56th Legislature,~~
20 ~~Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance~~
21 ~~Code)~~]; and

22 (6) be conditioned substantially that the principal
23 and sureties will pay to the named obligees or to their assignees
24 the amount that the named obligees would have been entitled to
25 recover if their claims had been proved to be valid and enforceable
26 liens on the property.

27 SECTION 35. Section [53.201](#)(b), Property Code, is amended to

1 read as follows:

2 (b) If a valid bond is filed, a claimant may not file suit
3 against the owner or the owner's property and the owner is not
4 authorized to withhold funds or pay a claimant on demand [~~relieved~~
5 ~~of obligations~~] under Subchapter D [~~or E~~].

6 SECTION 36. Section 53.202, Property Code, is amended to
7 read as follows:

8 Sec. 53.202. BOND REQUIREMENTS. The bond must:

9 (1) be in a penal sum at least equal to the total of the
10 original contract amount;

11 (2) be in favor of the owner;

12 (3) have the written approval of the owner endorsed on
13 it;

14 (4) be executed by:

15 (A) the original contractor as principal; and

16 (B) a corporate surety authorized and admitted to
17 do business in this state and licensed by this state to execute
18 bonds as surety, subject to Section 3503.005, Insurance Code [~~17~~
19 ~~Chapter 87, Acts of the 56th Legislature, Regular Session, 1959~~
20 ~~(Article 7.19-1, Vernon's Texas Insurance Code)~~];

21 (5) be conditioned on prompt payment for all labor,
22 subcontracts, materials, specially fabricated materials, and
23 normal and usual extras not exceeding 15 percent of the contract
24 price; and

25 (6) clearly and prominently display on the bond or on
26 an attachment to the bond:

27 (A) the name, mailing address, physical address,

1 and telephone number, including the area code, of the surety
2 company to which any notice of claim should be sent; or

3 (B) the toll-free telephone number maintained by
4 the Texas Department of Insurance under Subchapter B, Chapter 521,
5 Insurance Code, and a statement that the address of the surety
6 company to which any notice of claim should be sent may be obtained
7 from the Texas Department of Insurance by calling the toll-free
8 telephone number.

9 SECTION 37. Section 53.206, Property Code, is amended by
10 amending Subsections (a) and (b) to read as follows:

11 (a) To perfect a claim against a bond in a manner other than
12 that prescribed by Subchapter C or K for fixing a lien, a person
13 must:

14 (1) give to the original contractor a notice of
15 furnishing, unless the person has contracted directly with the
16 original contractor [~~all applicable notices under the appropriate~~
17 ~~subchapter~~]; and

18 (2) give to the surety on the bond a written notice of
19 the amount and nature of the claim and a copy of the notice to the
20 original contractor within the time period required for filing a
21 lien claim affidavit under Section 53.052 [~~instead of the owner,~~
22 ~~all notices under the appropriate subchapter required to be given~~
23 ~~to the owner~~].

24 (b) To perfect a claim under this section, a person is not
25 required to [~~+~~

26 [~~(1) give notice to the surety under Section 53.057,~~
27 ~~unless the claimant has a direct contractual relationship with the~~

1 ~~original contractor and the agreed retainage is in excess of 10~~
2 ~~percent of the contract,~~

3 ~~[(2) give notice to the surety under Section 53.058(b)~~
4 ~~or, if the claim relates to a residential construction project,~~
5 ~~under Section 53.253(c); or~~

6 ~~[(3)]~~ file any affidavit with the county clerk.

7 SECTION 38. Section 53.255(b), Property Code, is amended to
8 read as follows:

9 (b) The disclosure statement must read substantially
10 similar to the following:

11 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You
12 are about to enter into a transaction to build a new home or remodel
13 existing residential property. Texas law requires your contractor
14 to provide you with this brief overview of some of your rights,
15 responsibilities, and risks in this transaction.

16 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
17 not require you to convey your real property to your contractor as a
18 condition to the agreement for the construction of improvements on
19 your property.

20 "KNOW YOUR CONTRACTOR. Before you enter into your agreement
21 for the construction of improvements to your real property, make
22 sure that you have investigated your contractor. Obtain and verify
23 references from other people who have used the contractor for the
24 type and size of construction project on your property.

25 "GET IT IN WRITING. Make sure that you have a written
26 agreement with your contractor that includes: (1) a description of
27 the work the contractor is to perform; (2) the required or

1 estimated time for completion of the work; (3) the cost of the work
2 or how the cost will be determined; and (4) the procedure and
3 method of payment, including [~~provisions for statutory retainage~~
4 ~~and~~] conditions for final payment. If your contractor made a
5 promise, warranty, or representation to you concerning the work the
6 contractor is to perform, make sure that promise, warranty, or
7 representation is specified in the written agreement. An oral
8 promise that is not included in the written agreement may not be
9 enforceable under Texas law.

10 "READ BEFORE YOU SIGN. Do not sign any document before you
11 have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN
12 UNTRUE STATEMENT. Take your time in reviewing documents. If you
13 borrow money from a lender to pay for the improvements, you are
14 entitled to have the loan closing documents furnished to you for
15 review at least one business day before the closing. Do not waive
16 this requirement unless a bona fide emergency or another good cause
17 exists, and make sure you understand the documents before you sign
18 them. If you fail to comply with the terms of the documents, you
19 could lose your property. You are entitled to have your own
20 attorney review any documents. If you have any question about the
21 meaning of a document, consult an attorney.

22 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
23 construction commences, your contractor is required to provide you
24 with a list of the subcontractors and suppliers the contractor
25 intends to use on your project. Your contractor is required to
26 supply updated information on any subcontractors and suppliers
27 added after the list is provided. Your contractor is not required

1 to supply this information if you sign a written waiver of your
2 rights to receive this information.

3 "MONITOR THE WORK. Lenders and governmental authorities may
4 inspect the work in progress from time to time for their own
5 purposes. These inspections are not intended as quality control
6 inspections. Quality control is a matter for you and your
7 contractor. To ensure that your home is being constructed in
8 accordance with your wishes and specifications, you should inspect
9 the work yourself or have your own independent inspector review the
10 work in progress.

11 "MONITOR PAYMENTS. If you use a lender, your lender is
12 required to provide you with a periodic statement showing the money
13 disbursed by the lender from the proceeds of your loan. Each time
14 your contractor requests payment from you or your lender for work
15 performed, your contractor is also required to furnish you with a
16 disbursement statement that lists the name and address of each
17 subcontractor or supplier that the contractor intends to pay from
18 the requested funds. Review these statements and make sure that the
19 money is being properly disbursed.

20 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if
21 a subcontractor or supplier who furnishes labor or materials for
22 the construction of improvements on your property is not paid, you
23 may be [~~become~~] liable and your property may be subject to a lien
24 for the unpaid amount, even if you have not contracted directly with
25 the subcontractor or supplier. To minimize your [~~avoid~~] liability,
26 you should take the following actions:

27 (1) If you receive a written notice from a

1 subcontractor or supplier that describes the labor or materials to
2 be furnished for your improvements (referred to as a "notice of
3 furnishing"), you should keep that notice in a safe place for at
4 least four months after the completion of your improvements [~~you~~
5 ~~should withhold payment from your contractor for the amount of the~~
6 ~~claim stated in the notice until the dispute between your~~
7 ~~contractor and the subcontractor or supplier is resolved]. If your~~
8 lender is disbursing money directly to your contractor, you should
9 immediately provide a copy of the notice of furnishing to your
10 lender [~~and instruct the lender to withhold payment in the amount of~~
11 ~~the claim stated in the notice. If you continue to pay the~~
12 ~~contractor after receiving the written notice without withholding~~
13 ~~the amount of the claim, you may be liable and your property may be~~
14 ~~subject to a lien for the amount you failed to withhold]. Confirm
15 that your contractor has received a copy of each notice of
16 furnishing.~~

17 (2) As a condition to each payment to be made to the
18 contractor, including the final payment, you may require the
19 contractor to furnish a lien waiver from each subcontractor or
20 supplier who sent a notice of furnishing, conditioned only on
21 receipt of payment to the subcontractor in the amount specified by
22 the lien waiver. The lien waiver should be in the form required by
23 statute (Chapter 53, Property Code). [~~During construction and for~~
24 ~~30 days after final completion, termination, or abandonment of the~~
25 ~~contract by the contractor, you should withhold or cause your~~
26 ~~lender to withhold 10 percent of the amount of payments made for the~~
27 ~~work performed by your contractor. This is sometimes referred to as~~

1 ~~"statutory retainage." If you choose not to withhold the 10 percent~~
2 ~~for at least 30 days after final completion, termination, or~~
3 ~~abandonment of the contract by the contractor and if a valid claim~~
4 ~~is timely made by a claimant and your contractor fails to pay the~~
5 ~~claim, you may be personally liable and your property may be subject~~
6 ~~to a lien up to the amount that you failed to withhold.]~~

7 "If a claim is not paid within a certain time period, the
8 claimant is required to file a mechanic's lien affidavit in the real
9 property records in the county where the property is located. A
10 mechanic's lien affidavit is not a lien on your property, but the
11 filing of the affidavit could result in a court imposing a lien on
12 your property if the claimant is successful in litigation to
13 enforce the lien claim.

14 "SOME CLAIMS MAY NOT BE VALID. When [~~you receive a written~~
15 ~~notice of a claim or when~~] a mechanic's lien affidavit is filed on
16 your property, you should know your legal rights and
17 responsibilities regarding the claim. Not all claims are valid. In
18 order to perfect a valid lien, [A notice of a claim by] a
19 subcontractor or supplier is required to send you a notice of
20 furnishing and a copy of the subcontractor's or supplier's recorded
21 [be sent, and the] mechanic's lien affidavit [is required to be
22 filed,] within strict time periods. The notice of furnishing and
23 the affidavit must contain certain information. All claimants may
24 not fully comply with the legal requirements to collect on a claim.
25 If your property is a homestead and you did not enter into a written
26 contract with your contractor that complies with the statutory
27 requirements for a lien on a homestead, your contractor, the

1 subcontractor, or the supplier may not claim a valid lien on your
2 property. [~~If you have paid the contractor in full before receiving~~
3 ~~a notice of a claim and have fully complied with the law regarding~~
4 ~~statutory retainage, you may not be liable for that claim.~~]
5 Accordingly, you should consult your attorney when you receive a
6 written notice of a claim to determine the true extent of your
7 liability or potential liability for that claim.

8 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. [~~When you~~
9 ~~receive a notice of claim, do not release withheld funds without~~
10 ~~obtaining a signed and notarized release of lien and claim from the~~
11 ~~claimant.~~] You can [~~also~~] reduce the risk of having a claim filed by
12 a subcontractor or supplier by requiring as a condition of each
13 payment made by you or your lender that your contractor furnish you
14 with an affidavit stating that all bills have been paid. Under
15 Texas law, on final completion of the work and before final payment,
16 the contractor is required to furnish you with an affidavit stating
17 that all bills have been paid. If the contractor discloses any
18 unpaid bill in the affidavit, you should withhold payment in the
19 amount of the unpaid bill until you receive a waiver of lien or
20 release from that subcontractor or supplier.

21 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
22 a title insurance policy to insure that the title to your property
23 and the existing improvements on your property are free from liens
24 claimed by subcontractors and suppliers. If your policy is issued
25 before the improvements are completed and covers the value of the
26 improvements to be completed, you should obtain, on the completion
27 of the improvements and as a condition of your final payment,

1 a 'completion of improvements' policy endorsement. This
2 endorsement will protect your property from liens claimed by
3 subcontractors and suppliers that may arise from the date the
4 original title policy is issued to the date of the endorsement."

5 SECTION 39. Section 53.259, Property Code, is amended by
6 amending Subsections (a) and (c) to read as follows:

7 (a) As a condition of final payment under a residential
8 construction contract, the original contractor shall, at the time
9 the final payment is tendered, execute and deliver to the owner, or
10 the owner's agent, an affidavit acknowledging the amount claimed
11 for payment and stating that the original contractor has paid each
12 person in full for all labor and materials used in the construction
13 of improvements on the real property. If the original contractor
14 has not paid each person in full, the original contractor shall
15 state in the affidavit the amount owed and the name and, if known,
16 the address and telephone number of each person to whom a payment is
17 owed.

18 (c) A person commits an offense if the person intentionally,
19 knowingly, or recklessly makes a false or misleading statement in
20 an affidavit under this section. An offense under this section is a
21 misdemeanor. A person adjudged guilty of an offense under this
22 section shall be punished by a fine not to exceed \$4,000 or
23 confinement in jail for a term not to exceed one year or both a fine
24 and confinement. [~~A person may not receive community supervision~~
25 ~~for the offense.~~]

26 SECTION 40. Section 53.281, Property Code, is amended to
27 read as follows:

1 Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND
2 CLAIM. (a) Except as provided by Section 53.287, any [~~Any~~] waiver
3 and release of a lien or payment bond claim under this chapter is
4 unenforceable unless a waiver and release is executed and delivered
5 in accordance with this subchapter.

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

9 (1) the waiver and release substantially complies with
10 one of the forms prescribed by Section 53.284;

11 (2) the waiver and release is signed by the claimant or
12 the claimant's authorized agent and acknowledged [~~notarized~~]; and

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

15 (c) A waiver and release that substantially complies with a
16 form required by Section 53.284 may be combined with a bills-paid
17 affidavit that substantially conforms to the requirements of
18 Section 53.085 or 53.259.

19 SECTION 41. Section 53.283, Property Code, is amended to
20 read as follows:

21 Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT
22 REQUIRED. (a) A person may not require a claimant or potential
23 claimant to execute an unconditional waiver and release for a
24 progress payment or final payment amount unless the claimant or
25 potential claimant received payment in that amount in good and
26 sufficient funds.

27 (b) Notwithstanding Subsection (a), a contractual

1 requirement for a claimant to waive or release the claimant's lien
2 rights under this chapter before performance of the work for which
3 the claim for payment is asserted is void.

4 (c) A claimant may tender an unconditional waiver and
5 release for payment before the actual receipt of a payment to be
6 delivered in trust to an attorney, title insurance company, title
7 insurance agent, or federally insured financial institution acting
8 as an escrow agent. The escrow agent may deliver the waiver and
9 release only after the claimant has confirmed receipt of payment in
10 good and sufficient funds.

11 SECTION 42. Section 53.284, Property Code, is amended by
12 amending Subsections (b), (c), (d), and (e) and adding Subsection
13 (f) to read as follows:

14 (b) 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 progress payment and is not paid in exchange for the
17 waiver and release or if a single payee check or joint payee check
18 is given in exchange for the waiver and release, the waiver and
19 release must read:

20 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS 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 \$_____ payable
25 to _____ (payee or payees of check) and when the
26 check has been properly endorsed and has been paid by the bank on
27 which it is drawn, this document becomes effective to release any

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

9 "This release covers a progress payment for all labor,
10 services, equipment, or materials furnished to the property or to
11 _____ (person with whom signer contracted) as
12 indicated in the attached statement(s) or progress payment
13 request(s), except for unpaid retention or [~~r~~] pending
14 modifications and changes [~~, or other items furnished~~].

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

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

24 "Date _____

25 "_____ (Company name)

26 "By _____ (Signature)

27 "_____ (Title)

1 "(Insert acknowledgment)"

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

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

11 "NOTICE:

12 "This document waives rights unconditionally and states that
13 you have been paid for giving up those rights. It is prohibited for
14 a person to require you to sign this document if you have not been
15 paid the payment amount set forth below. If you have not been paid,
16 use a conditional release form."; and

17 (2) below the notice, read:

18 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

19 "Project _____

20 "Job No. _____

21 "The signer of this document has been paid and has received a
22 progress payment in the sum of \$_____ for all labor,
23 services, equipment, or materials furnished to the property or to
24 _____ (person with whom signer contracted) on the
25 property of _____ (owner) located at
26 _____ (location) for ~~to~~ the following project
27 ~~[extent]~~: _____ (project ~~[job]~~ description). The

1 signer therefore waives and releases any mechanic's lien right, any
2 right arising from a payment bond that complies with a state or
3 federal statute, any common law payment bond right, any claim for
4 payment, and any rights under any similar ordinance, rule, or
5 statute related to claim or payment rights for persons in the
6 signer's position that the signer has on the above referenced
7 project to the following extent:

8 "This release covers a progress payment for all labor,
9 services, equipment, or materials furnished to the property or to
10 _____ (person with whom signer contracted) as
11 indicated in the attached statement(s) or progress payment
12 request(s), except for unpaid retention or [~~7~~] pending
13 modifications and changes [~~7, or other items furnished~~].

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

20 "Date _____

21 "_____ (Company name)

22 "By _____ (Signature)

23 "_____ (Title)

24 "(Insert acknowledgment)"

25 (d) If a claimant or potential claimant is required to
26 execute a waiver and release in exchange for or to induce the
27 payment of a final payment and is not paid in good and sufficient

1 funds in exchange for the waiver and release or if a single payee
2 check or joint payee check is given in exchange for the waiver and
3 release, the waiver and release must read:

4 "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

5 "Project _____

6 "Job No. _____

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

20 "This release covers the final payment to the signer for all
21 labor, services, equipment, or materials furnished to the property
22 or to _____ (person with whom signer contracted).

23 "Before any recipient of this document relies on this
24 document, the recipient should verify evidence of payment to the
25 signer.

26 "The signer warrants that the signer has already paid or will
27 use the funds received from this final payment to promptly pay in

1 full all of the signer's laborers, subcontractors, materialmen, and
2 suppliers for all work, materials, equipment, or services provided
3 for or to the above referenced project up to the date of this waiver
4 and release.

5 "Date _____

6 "_____ (Company name)

7 "By _____ (Signature)

8 "_____ (Title)

9 "(Insert acknowledgment)"

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

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

19 "NOTICE:

20 "This document waives rights unconditionally and states that
21 you have been paid for giving up those rights. It is prohibited for
22 a person to require you to sign this document if you have not been
23 paid the payment amount set forth below. If you have not been paid,
24 use a conditional release form."; and

25 (2) below the notice, read:

26 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

27 "Project _____

1 "Job No. _____

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

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

20 "Date _____

21 "_____ (Company name)

22 "By _____ (Signature)

23 "_____ (Title)

24 "(Insert acknowledgment)"

25 (f) If the owner has filed and posted a notice of
26 commencement as required by Section 53.125, the owner may require,
27 as a condition for final payment, a claimant who has filed a notice

1 of furnishing to file with the lien website a conditional waiver and
2 release on final payment described by Subsection (d).

3 SECTION 43. The following provisions of the Property Code
4 are repealed:

- 5 (1) Section 53.001(11);
- 6 (2) Section 53.022(b);
- 7 (3) Section 53.025;
- 8 (4) Section 53.053;
- 9 (5) Section 53.056;
- 10 (6) Section 53.057;
- 11 (7) Section 53.058;
- 12 (8) Section 53.083;
- 13 (9) Section 53.084;
- 14 (10) Subchapter E, Chapter 53;
- 15 (11) Section 53.206(c);
- 16 (12) Section 53.252;
- 17 (13) Section 53.253; and
- 18 (14) Section 53.254(g).

19 SECTION 44. The changes in law made by this Act apply only
20 to an original contract entered into on or after the effective date
21 of this Act. An original contract entered into before the effective
22 date of this Act is governed by the law as it existed immediately
23 before the effective date of this Act, and that law is continued in
24 effect for that purpose.

25 SECTION 45. This Act takes effect May 1, 2018.