

By: Burrows

H.B. No. 3498

A BILL TO BE ENTITLED

AN ACT

relating to mechanic's, contractor's, or materialman's liens.

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

SECTION 1. Sections 53.001(2), (3), (4), (11), (13), and (14), Property Code, are amended to read as follows:

(2) "Improvement" includes:

(A) permanent buildings, structures, parking structures, appurtenances, [abutting sidewalks and] streets, sidewalks, [and] utilities, rails for a rail system, and other similar fixtures on or to be placed on real property [in or on those sidewalks and streets];

(B) clearing, grubbing, draining, or fencing of land as part of a construction project;

(C) plants, landscaping, ponds, and storage facilities provided in conjunction with a construction project [wells, cisterns, tanks, reservoirs, or artificial lakes or pools made for supplying or storing water]; and

(D) designs, drawings, plans, plats, surveys, and specifications provided by licensed architects, engineers, or surveyors [pumps, siphons, and windmills or other machinery or apparatuses used for raising water for stock, domestic use, or irrigation; and

~~[(E) planting orchard trees, grubbing out orchards and replacing trees, and pruning of orchard trees].~~

(3) "Labor" means:

(A) labor used in the direct performance ~~[prosecution]~~ of the construction of improvements; or

(B) professional services used in the direct preparation of a design, drawing, plan, plat, survey, or specification ~~[work]~~.

(4) "Material" means all or part of:

(A) the material, machinery, fixtures, or tools:

(i) incorporated into the work;

(ii) used ~~[, consumed]~~ in the direct performance ~~[prosecution]~~ of the work;

(iii) specially fabricated and suitable only for the work; ~~[r]~~ or

(iv) ordered and delivered for incorporation or use in the work ~~[consumption]~~;

(B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used ~~[or reasonably required and delivered for use]~~ in the direct performance ~~[prosecution]~~ of the work at the site of the construction or repair; or

(C) power, water, fuel, and lubricants used ~~[consumed or ordered and delivered for consumption]~~ in the direct performance ~~[prosecution]~~ of the work.

(11) "Retainage" means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is

1 delivered. [~~The term does not include retainage under Subchapter~~
2 ~~E.~~]

3 (13) "Subcontractor" means a person who has furnished
4 labor or materials to fulfill an obligation to an original
5 contractor or to a subcontractor to perform all or part of the work
6 required by an original contract. The term includes a supplier of
7 specialty fabricated material or of equipment or materials
8 delivered directly to the construction site.

9 (14) "Work" means any part of construction or repair
10 of an improvement performed under an original contract.

11 SECTION 2. Sections 53.003(a) and (c), Property Code, are
12 amended to read as follows:

13 (a) This section applies to notices required by this chapter
14 [~~Subchapters B through G and K~~].

15 (c) If notice is sent by [~~registered or~~] certified mail,
16 deposit or mailing of the notice in the United States mail in the
17 form required constitutes compliance with the notice requirement.
18 This subsection does not apply if the law requires receipt of the
19 notice by the person to whom it is directed.

20 SECTION 3. Sections 53.021(a), (c), and (e), Property Code,
21 are amended to read as follows:

22 (a) A person can claim [~~has~~] a lien under this chapter if [+
23 [~~(1)~~] the person [~~labors, specially fabricates~~
24 ~~material, or~~] furnishes labor or materials for construction or
25 repair [~~in this state~~] of an improvement [+

26 [~~(A) a house, building, or improvement,~~

27 [~~(B) a levee or embankment to be erected for the~~

1 ~~reclamation of overflow land along a river or creek; or~~

2 ~~[(C) a railroad; and~~

3 ~~[(2) the person labors, specially fabricates the~~
4 ~~material, or furnishes the labor or materials]~~ under or by virtue of
5 a contract with the owner or the owner's agent, trustee, receiver,
6 contractor, or subcontractor.

7 (c) A licensed ~~[An]~~ architect, engineer, or surveyor
8 providing services to prepare a design, drawing, plan, plat,
9 survey, or specification ~~[who prepares a plan or plat]~~ under ~~[or by~~
10 ~~virtue of]~~ a written contract can claim ~~[with the owner or the~~
11 ~~owner's agent, trustee, or receiver in connection with the actual~~
12 ~~or proposed design, construction, or repair of improvements on real~~
13 ~~property or the location of the boundaries of real property has]~~ a
14 lien under this chapter ~~[on the property]~~.

15 (e) A person who performs labor as part of, or who furnishes
16 labor or materials for, the demolition of a structure on real
17 property under ~~[or by virtue of]~~ a written contract that is part of
18 a project for the construction of an improvement can claim ~~[with the~~
19 ~~owner of the property or the owner's agent, trustee, receiver,~~
20 ~~contractor, or subcontractor has]~~ a lien under this chapter ~~[on the~~
21 ~~property]~~.

22 SECTION 4. Sections 53.022(a) and (d), Property Code, are
23 amended to read as follows:

24 (a) The lien extends to the owner's interests in the
25 improvements and to the particularly subdivided real property on
26 which work was performed ~~[house, building, fixtures, or~~
27 ~~improvements, the land reclaimed from overflow, or the railroad and~~

1 ~~all of its properties, and to each lot of land necessarily connected~~
2 ~~or reclaimed].~~

3 (d) A lien against land not subdivided in a city, town, or
4 village extends to not more than 50 acres on which the [~~house,~~
5 ~~building, or~~] improvement is situated or on which the labor was
6 performed.

7 SECTION 5. Section 53.023, Property Code, is amended to
8 read as follows:

9 Sec. 53.023. PAYMENT SECURED BY LIEN. (a) The lien secures
10 payment for:

11 (1) the labor done or material furnished for the
12 construction, [~~or~~] repair, or demolition; or

13 (2) the specially fabricated material, even if the
14 material has not been delivered or incorporated into the
15 construction or repair, less its fair salvage value [~~or~~

16 [~~(3) the preparation of a plan or plat by an architect,~~
17 ~~engineer, or surveyor in accordance with Section 53.021(c)].~~

18 (b) Notwithstanding the foreclosure of a superior lien on
19 real property, a subcontractor that supplied removables for an
20 improvement and that secures a judgment validating the
21 subcontractor's debt and mechanic's lien may obtain an order
22 allowing the subcontractor to remove the amount of removables equal
23 to the amount of the perfected lien interest, based on the fair
24 market value of the removables.

25 SECTION 6. Section 53.026(a), Property Code, is amended to
26 read as follows:

27 (a) A person who [~~labors, specially fabricates materials,~~

1 ~~or~~] furnishes labor or materials under a direct contractual
2 relationship with a purported original contractor may perfect
3 ~~[another person is considered to be in direct contractual~~
4 ~~relationship with the owner and has]~~ a lien by following the
5 procedures to perfect a lien of ~~[as]~~ an original contractor. For
6 purposes of this subsection, a "purported original contractor" is a
7 contractor that ~~[, if:~~

8 ~~[(1)] the owner [contracted with the other person for~~
9 ~~the construction or repair of a house, building, or improvements~~
10 ~~and the owner]~~ can effectively control or that can effectively
11 control the owner ~~[that person]~~ through common ownership, ~~[or]~~
12 voting stock, interlocking directorships, common management, or
13 similar rights of control ~~[otherwise,~~

14 ~~[(2) the owner contracted with the other person for~~
15 ~~the construction or repair of a house, building, or improvements~~
16 ~~and that other person can effectively control the owner through~~
17 ~~ownership of voting stock, interlocking directorships, or~~
18 ~~otherwise, or~~

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

23 SECTION 7. Section [53.052](#), Property Code, is amended to
24 read as follows:

25 Sec. 53.052. FILING OF AFFIDAVIT. (a) Except as provided by
26 Subsection (b), the person claiming the lien, other than a lien for
27 contractual retainage, must file an affidavit with the county clerk

1 ~~[of the county in which the property is located or into which the~~
2 ~~railroad extends]~~ not later than the 15th day of the fourth calendar
3 month after the date the claimant:

- 4 (1) last provided labor or materials; or
5 (2) completed the fabrication of specially fabricated
6 materials that were not delivered to the project site ~~[day on which~~
7 ~~the indebtedness accrues]~~.

8 (b) A person claiming a lien arising from a residential
9 construction project must file an affidavit with the county clerk
10 ~~[of the county in which the property is located]~~ not later than the
11 15th day of the third calendar month after the date the claimant
12 last provided labor or materials ~~[day on which the indebtedness~~
13 ~~accrues]~~.

14 (c) Except as provided by Section 53.107(d), a person
15 claiming a lien for contractual retainage must file an affidavit
16 with the county clerk not later than the 15th day of the third
17 calendar month after the date the original contract under which the
18 person performed was completed, abandoned, or terminated.

19 (d) An affidavit under Subsection (c) must be filed in the
20 county where the improvements are located. The county clerk shall
21 record the affidavit in records kept for that purpose and shall
22 index and cross-index the affidavit in the names of the claimant,
23 the original contractor, and the owner. Failure of the county clerk
24 to properly record or index a filed affidavit does not invalidate
25 the lien.

26 SECTION 8. Section 53.055(a), Property Code, is amended to
27 read as follows:

1 (a) A person who files an affidavit must send a copy of the
2 affidavit by [~~registered or~~] certified mail to the owner or reputed
3 owner at the owner's last known business or residence address not
4 later than the fifth day after the date the affidavit is filed with
5 the county clerk.

6 SECTION 9. The heading to Section 53.056, Property Code, is
7 amended to read as follows:

8 Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND [~~OR~~]
9 ORIGINAL CONTRACTOR.

10 SECTION 10. Section 53.056, Property Code, is amended by
11 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
12 read as follows:

13 (a) A subcontractor [~~Except as provided by Subchapter K, a~~
14 ~~claimant other than an original contractor~~] must give the notices
15 [~~notice~~] prescribed by this section and, if applicable, Section
16 53.057 for the lien to be valid.

17 (a-1) For all labor provided or materials provided or
18 specially fabricated during a month, the subcontractor must send a
19 notice of progress payment debt to the owner or reputed owner and
20 the original contractor by certified mail. The notice must be sent:

21 (1) for debt other than retainage debt, not later than
22 the 15th day of the third month after the date the labor was
23 provided or the materials were provided or specially fabricated; or

24 (2) for residential construction projects, not later
25 than the 15th day of the second month after the date the labor was
26 provided or the materials were provided or specially fabricated.

27 (a-2) The notice must read:

1 "NOTICE OF PROGRESS PAYMENT DEBT

2 "Date: _____

3 "Subcontractor: _____

4 "Original contractor: _____

5 "Party contracting with subcontractor: _____

6 "Months during which labor or materials were provided or
7 special fabrication was completed for which payment has not yet
8 been received: _____

9 "Total debt to date, including retainage:
10 _____

11 "Total debt to date, not including retainage:
12 _____

13 "The subcontractor below provides this notice only to
14 preserve the subcontractor's lien rights.

15 "_____ (Subcontractor's signature)

16 "_____ (Subcontractor's printed name)

17 "_____ (Subcontractor's address)"

18 SECTION 11. The heading to Section [53.057](#), Property Code,
19 is amended to read as follows:

20 Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE FOR ~~[CONTRACTUAL]~~
21 RETAINAGE CLAIM.

22 SECTION 12. Section [53.057](#), Property Code, is amended by
23 amending Subsection (a) and adding Subsection (a-1) to read as
24 follows:

25 (a) A subcontractor whose contract provides for the
26 withholding of retainage must ~~[claimant may]~~ give notice under this
27 section ~~[instead of or]~~ in addition to notice under Section [53.056](#)

1 for the retainage lien to be valid. The subcontractor must send the
2 notice of retainage claim to the owner or reputed owner and the
3 original contractor, by certified mail, not later than the 30th day
4 after the date the subcontractor's contract providing for retainage
5 is completed, terminated, or abandoned [~~or 53.252 if the claimant~~
6 ~~is to labor, furnish labor or materials, or specially fabricate~~
7 ~~materials, or has labored, furnished labor or materials, or~~
8 ~~specially fabricated materials, under an agreement with an original~~
9 ~~contractor or a subcontractor providing for retainage)].~~

10 (a-1) The notice must read:

11 "NOTICE OF RETAINAGE CLAIM

12 "Date: _____

13 "Subcontractor: _____

14 "Original contractor: _____

15 "Party contracting with subcontractor: _____

16 "Amount of subcontractual retainage outstanding:

17 _____

18 "The subcontractor below provides this notice only to
19 preserve the subcontractor's lien rights for retainage.

20 "_____ (Subcontractor's signature)

21 "_____ (Subcontractor's printed name)

22 "_____ (Subcontractor's address)"

23 SECTION 13. Section 53.081(a), Property Code, is amended to
24 read as follows:

25 (a) If an owner receives notice under Section 53.056 or [7]
26 53.057, [~~53.058, 53.252, or 53.253,~~] the owner may withhold from
27 payments to the original contractor an amount necessary to pay the

1 claim for which the owner [~~he~~] receives notice.

2 SECTION 14. Section 53.082, Property Code, is amended to
3 read as follows:

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

9 (1) the time for filing the affidavit of mechanic's
10 lien has passed; or

11 (2) if a lien affidavit has been filed, until the lien
12 claim has been satisfied or released.

13 SECTION 15. Section 53.084, Property Code, is amended to
14 read as follows:

15 Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount
16 described by Subsection (c) [~~required to be retained under~~
17 ~~Subchapter E~~], the owner is not liable for any amount paid to the
18 original contractor before the owner is authorized to withhold
19 funds under this subchapter.

20 (b) If the owner has received a notice [~~the notices~~]
21 required by Section 53.056 or 53.057 [~~Subchapter C or K~~], if the
22 lien has been secured, and if the claim has been reduced to final
23 judgment, the owner is liable and the owner's property is subject to
24 a claim for the amount the owner [~~any money~~] paid to the original
25 contractor after the owner received the notice, which may not
26 exceed the unpaid amount specified in the notice [~~was authorized to~~
27 ~~withhold funds under this subchapter. The owner is liable for that~~

1 ~~amount in addition to any amount for which he is liable under~~
2 ~~Subchapter E].~~

3 (c) An owner is liable and the owner's property is subject
4 to a claim for retainage debts of subcontractors of not more than 10
5 percent of the original contract price if:

6 (1) the owner received the notices under Sections
7 53.056 and 53.057;

8 (2) the owner did not withhold sufficient funds from
9 the original contractor to pay the amount owed; and

10 (3) the claim has been reduced to final judgment.

11 (d) Multiple claimants for retainage are entitled to a pro
12 rata share of the claim amount allowed under Subsection (c).

13 SECTION 16. The heading to Subchapter E, Chapter 53,
14 Property Code, is amended to read as follows:

15 SUBCHAPTER E. TERMINATION OR ABANDONMENT OF CONTRACT [~~REQUIRED~~
16 ~~RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS~~]

17 SECTION 17. Sections 53.107(a), (b), and (d), Property
18 Code, are amended to read as follows:

19 (a) Not later than the 10th day after the date an original
20 contract is terminated or the original contractor abandons
21 performance under the original contract, the owner shall give
22 notice to each subcontractor who, before the date of termination or
23 abandonment, has:

24 (1) given notice to the owner as provided by Section
25 53.056 or [~~7~~] 53.057 [~~7~~ ~~or~~ ~~53.058~~]; or

26 (2) sent to the owner by certified [~~or registered~~]
27 mail a written request for notice of termination or abandonment.

1 (b) The notice must contain:

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

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

4 (3) a description, legally sufficient for
5 identification, of the real property on which the improvements are
6 located;

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

9 (5) a statement that the original contract has been
10 terminated or that performance under the contract has been
11 abandoned; and

12 (6) the date of the termination or abandonment [~~and~~

13 [~~(7) a conspicuous statement that a claimant may not~~
14 ~~have a lien on the retained funds unless the claimant files an~~
15 ~~affidavit claiming a lien not later than the 40th day after the date~~
16 ~~of the termination or abandonment].~~

17 (d) If an owner is required to send a notice to a
18 subcontractor under this section and fails to send the notice, the
19 subcontractor's deadline to file an affidavit for contractual
20 retainage under Section 53.052 is the last business day of the
21 fourth calendar month after the date the original contract was
22 terminated or abandoned [~~subcontractor is not required to comply~~
23 ~~with Section 53.057 to claim retainage and may claim a lien by~~
24 ~~filing a lien affidavit as prescribed by Section 53.052].~~

25 SECTION 18. Section 53.122(a), Property Code, is amended to
26 read as follows:

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

1 53.124(e), perfected mechanic's liens are on equal footing without
2 reference to the date of filing the affidavit claiming the lien.

3 SECTION 19. Section 53.123(a), Property Code, is amended to
4 read as follows:

5 (a) Except as provided by this section, a mechanic's lien
6 attaches to an improvement [~~the house, building, improvements, or~~
7 ~~railroad property~~] in preference to any prior lien, encumbrance, or
8 mortgage on the land on which it is located, and the person
9 enforcing the lien may have the [~~house, building,~~ improvement [~~7~~
10 ~~or any piece of the railroad property~~] sold separately.

11 SECTION 20. Section 53.124(e), Property Code, is amended to
12 read as follows:

13 (e) The time of inception of a lien that is created under
14 Section 53.021(c) [~~7-(d)7~~] or (e) is the date of recording of an
15 affidavit of lien under Section 53.052. The priority of a lien
16 claimed by a person entitled to a lien under Section 53.021(c) [~~7~~
17 ~~(d)7~~] or (e) with respect to other mechanic's liens is determined by
18 the date of recording. A lien created under Section 53.021(c) [~~7~~
19 ~~(d)7~~] or (e) is not valid or enforceable against a grantee or
20 purchaser who acquires an interest in the real property before the
21 time of inception of the lien.

22 SECTION 21. Section 53.155, Property Code, is amended to
23 read as follows:

24 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,7~~
25 ~~building7~~] improvement [~~7~~] or any piece of the improvement
26 [~~railroad property~~] is sold separately, the officer making the sale
27 shall place the purchaser in possession. The purchaser is entitled

1 to a reasonable time after the date of purchase within which to
2 remove the purchased improvement [~~property~~].

3 SECTION 22. Section 53.157, Property Code, is amended to
4 read as follows:

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

8 (1) recording a lien release signed by the claimant
9 under Section 53.152;

10 (2) failing to institute suit to foreclose the lien in
11 the county in which the improvement [~~property~~] is located within
12 the period prescribed by Section 53.158 or [~~7~~] 53.175 [~~, or 53.208~~];

13 (3) recording the original or certified copy of a
14 final judgment or decree of a court of competent jurisdiction
15 providing for the discharge;

16 (4) filing the bond and notice in compliance with
17 Subchapter H;

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

20 (6) recording a certified copy of the order removing
21 the lien under Section 53.160 [~~and a certificate from the clerk of~~
22 ~~the court that states that no bond or deposit as described by~~
23 ~~Section 53.161 was filed by the claimant within 30 days after the~~
24 ~~date the order was entered~~].

25 SECTION 23. Section 53.158, Property Code, is amended by
26 amending Subsection (a) and adding Subsection (a-1) to read as
27 follows:

1 (a) Suit [~~Except as provided by Subsection (b), suit~~] must
2 be brought to foreclose the lien not later than the first
3 anniversary of [~~within two years after~~] the date [~~last day~~] a
4 claimant filed [~~may file~~] the lien affidavit under Section 53.052
5 [~~or within one year after completion, termination, or abandonment~~
6 ~~of the work under the original contract under which the lien is~~
7 ~~claimed, whichever is later~~].

8 (a-1) Notwithstanding Section 16.069, Civil Practice and
9 Remedies Code, or any other law, if suit is brought for an order
10 finding that limitations have expired on bringing a lien
11 foreclosure suit, the lien claimant's rights to pursue a suit to
12 foreclose a lien are not revived.

13 SECTION 24. Sections 53.159(a) and (f), Property Code, are
14 amended to read as follows:

15 (a) An owner or original contractor, on written request,
16 shall furnish the following information [~~within a reasonable time,~~
17 ~~but~~] not later than the 10th day after the date the request is
18 received[~~7~~] to any person furnishing labor or materials for the
19 project:

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

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

24 (3) whether there are any prior recorded liens or
25 security interests on the real property being improved and if so,
26 the name and address of the person having the lien or security
27 interest; and

1 (4) the date on which the original contract for the
2 project was executed.

3 (f) A person [~~other than a claimant requested to furnish~~
4 ~~information under Subsection (d),~~] who fails to furnish information
5 as required by this section is liable to the requesting person for
6 that person's reasonable and necessary costs incurred in procuring
7 the requested information.

8 SECTION 25. Sections 53.160(a), (b), (c), and (e), Property
9 Code, are amended to read as follows:

10 (a) An owner or original contractor may bring suit [~~In a~~
11 ~~suit brought to foreclose a lien or~~] to declare a claim or lien
12 invalid or unenforceable [~~, a party objecting to the validity or~~
13 ~~enforceability of the claim or lien may file a motion to remove the~~
14 ~~claim or lien~~]. The original petition or subsequent motion must [~~be~~
15 ~~verified and~~] state the legal and factual basis for objecting to the
16 validity or enforceability of the claim or lien and must [~~. The~~
17 ~~motion may~~] be accompanied by supporting affidavits.

18 (b) The grounds for objecting to the validity or
19 enforceability of the claim or lien for purposes of the motion are
20 limited to the following:

21 (1) notice of claim was not timely furnished to the
22 owner or original contractor as required by Section 53.056 or [~~]~~
23 53.057 [~~, 53.058, 53.252, or 53.253~~];

24 (2) an affidavit claiming a lien failed to comply with
25 Section 53.054 or was not filed as required by Section 53.052;

26 (3) notice of the filed affidavit was not furnished to
27 the owner or original contractor as required by Section 53.055;

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

5 ~~[(A) the claimant perfected the lien claim; and~~

6 ~~[(B) the owner received a notice of the claim as~~
7 ~~required by this chapter;~~

8 ~~[(5)]~~ all funds subject to the notice of a claim to the
9 owner and a notice regarding the retainage have been deposited in
10 the registry of the court and the owner has no additional liability
11 to the claimant;

12 (5) ~~[(6)]~~ when the lien affidavit was filed on
13 homestead property:

14 (A) no contract was executed or filed as required
15 by Section 53.254;

16 (B) the affidavit claiming a lien failed to
17 contain the notice as required by Section 53.254; or

18 (C) the notice of the claim failed to include the
19 statement required by Section 53.254; and

20 (6) ~~[(7)]~~ the claimant executed a ~~[valid and~~
21 ~~enforceable]~~ waiver or release of the claim or lien claimed in the
22 affidavit.

23 (c) The claimant is not required to file a response. The
24 claimant and any other party that has appeared in the proceeding
25 must be notified by at least 30 ~~[21]~~ days before the date of the
26 hearing on the motion. ~~[A motion may not be heard before the 21st~~
27 ~~day after the date the claimant answers or appears in the~~

1 ~~proceeding.]~~

2 (e) The court shall promptly determine a motion to remove a
 3 claim or lien under this section under the same standards as a
 4 motion for summary judgment. If the court determines that the
 5 movant is not entitled to remove the lien, the court shall enter an
 6 order denying the motion. If the court determines that the movant is
 7 entitled to remove the lien, the court shall enter an order removing
 8 the lien claimed in the lien affidavit. The order is appealable if
 9 the order is the final order in the case [~~A party to the proceeding~~
 10 ~~may not file an interlocutory appeal from the court's order~~].

11 SECTION 26. Sections 53.161(a) and (g), Property Code, are
 12 amended to read as follows:

13 (a) In the order removing a lien, the court shall set the
 14 amount of security that the claimant may provide in order to
 15 preserve the potential validity of the lien claim on appeal [~~stay~~
 16 ~~the removal of the claim or lien~~]. The amount of the security [~~sum~~]
 17 must be at least 75 percent of the [~~an~~] amount of the lien claim plus
 18 [~~that the court determines is~~] a reasonable estimate of the costs
 19 and attorney's fees the movant is likely to incur in the appeal
 20 [~~proceeding~~] to determine the validity or enforceability of the
 21 lien. [~~The sum may not exceed the amount of the lien claim.~~]

22 (g) If an appeal is not taken or if the bond or deposit is
 23 not timely made, the [~~The~~] claim or lien is removed and extinguished
 24 as to a creditor or subsequent purchaser for valuable consideration
 25 who obtains an interest in the property [~~after the certified copy of~~
 26 ~~the order and certificate of the clerk of the court are filed with~~
 27 ~~the county clerk. The removal of the lien does not constitute a~~

1 ~~release of the liability of the owner, if any, to the claimant].~~

2 SECTION 27. Section 53.205(a), Property Code, is amended to
3 read as follows:

4 (a) The bond protects all persons with a claim that is [+
5 ~~(1)]~~ perfected in the manner prescribed for fixing a
6 lien ~~[under Subchapter C or, if the claim relates to a residential~~
7 ~~construction project, under Subchapter K; or~~
8 ~~(2)]~~ perfected in the manner prescribed by Section
9 53.206].

10 SECTION 28. Sections 53.206(a), (b), and (d), Property
11 Code, are amended to read as follows:

12 (a) To perfect a claim against a bond in a manner other than
13 that prescribed by Subchapter C ~~[or K]~~ for fixing a lien, a person
14 must [+

15 ~~(1)]~~ give to the original contractor and surety on
16 the bond all applicable notices under the appropriate subchapter [+
17 ~~and~~

18 ~~(2)]~~ ~~give to the surety on the bond, instead of the~~
19 ~~owner, all notices under the appropriate subchapter required to be~~
20 ~~given to the owner].~~

21 (b) To perfect a claim under this section, a person is not
22 required to [+

23 ~~(1)]~~ ~~give notice to the surety under Section 53.057,~~
24 ~~unless the claimant has a direct contractual relationship with the~~
25 ~~original contractor and the agreed retainage is in excess of 10~~
26 ~~percent of the contract,~~

27 ~~(2)]~~ ~~give notice to the surety under Section 53.058(b)~~

1 ~~or, if the claim relates to a residential construction project,~~
2 ~~under Section 53.253(c); or~~

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

4 (d) A person satisfies the requirements of this section
5 relating to providing notice to the surety if the person mails the
6 notice by certified ~~[or registered]~~ mail to the surety:

7 (1) at the address stated on the bond or on an
8 attachment to the bond;

9 (2) at the address on file with the Texas Department of
10 Insurance; or

11 (3) at any other address allowed by law.

12 SECTION 29. Section 53.207, Property Code, is amended to
13 read as follows:

14 Sec. 53.207. FAILURE TO SEND [OWNER'S] NOTICE OF CLAIM TO
15 SURETY. ~~[(a)]~~ If the owner receives any of the notices or a lien is
16 fixed under this chapter ~~[Subchapter C or K]~~, the failure ~~[owner~~
17 ~~shall mail to the surety on the bond a copy of all notices received.~~

18 ~~[(b) Failure]~~ of the owner to send copies of notices to the
19 surety does not relieve the surety of any liability under the bond
20 if the claimant has complied with the requirements of this
21 subchapter, nor does that failure impose any liability on the
22 owner.

23 SECTION 30. The heading to Section 53.254, Property Code,
24 is amended to read as follows:

25 Sec. 53.254. CONTRACT REQUIREMENTS FOR LIEN ON HOMESTEAD.

26 SECTION 31. Section 53.254(g), Property Code, is amended to
27 read as follows:

1 (g) For the lien on a homestead to be valid, a ~~[the]~~ notice
2 must ~~[required to]~~ be given to the owner with the original contract
3 and ~~[under Section 53.252]~~ must include or have attached the
4 following statement:

5 "If a subcontractor or supplier who furnishes materials or
6 performs labor for construction of improvements on your property is
7 not paid, your property may be subject to a lien for the unpaid
8 amount if~~+~~

9 ~~[(1)]~~ after receiving notice of the unpaid claim from
10 the claimant, you fail to withhold payment to your contractor that
11 is sufficient to cover the unpaid claim until the dispute is
12 resolved. Additionally, you may be liable for up to an additional
13 10 percent of the price of the original contract for contractual
14 retainage claims" ~~[, or~~

15 ~~[(2) during construction and for 30 days after~~
16 ~~completion of construction, you fail to retain 10 percent of the~~
17 ~~contract price or 10 percent of the value of the work performed by~~
18 ~~your contractor].~~

19 ~~["If you have complied with the law regarding the 10 percent~~
20 ~~retainage and you have withheld payment to the contractor~~
21 ~~sufficient to cover any written notice of claim and have paid that~~
22 ~~amount, if any, to the claimant, any lien claim filed on your~~
23 ~~property by a subcontractor or supplier, other than a person who~~
24 ~~contracted directly with you, will not be a valid lien on your~~
25 ~~property. In addition, except for the required 10 percent~~
26 ~~retainage, you are not liable to a subcontractor or supplier for any~~
27 ~~amount paid to your contractor before you received written notice~~

1 ~~of the claim."]~~

2 SECTION 32. Section 53.255(b), Property Code, is amended to
3 read as follows:

4 (b) The disclosure statement must read substantially
5 similar to the following:

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

11 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
12 not require you to convey your real property to your contractor as a
13 condition to the agreement for the construction of improvements on
14 your property.

15 "KNOW YOUR CONTRACTOR. Before you enter into your agreement
16 for the construction of improvements to your real property, make
17 sure that you have investigated your contractor. Obtain and verify
18 references from other people who have used the contractor for the
19 type and size of construction project on your property.

20 "GET IT IN WRITING. Make sure that you have a written
21 agreement with your contractor that includes: (1) a description of
22 the work the contractor is to perform; (2) the required or
23 estimated time for completion of the work; (3) the cost of the work
24 or how the cost will be determined; and (4) the procedure and
25 method of payment, including provisions for ~~statutory~~ retainage
26 and conditions for final payment. If your contractor made a
27 promise, warranty, or representation to you concerning the work the

1 contractor is to perform, make sure that promise, warranty, or
2 representation is specified in the written agreement. An oral
3 promise that is not included in the written agreement may not be
4 enforceable under Texas law.

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

17 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
18 construction commences, your contractor is required to provide you
19 with a list of the subcontractors and suppliers the contractor
20 intends to use on your project. Your contractor is required to
21 supply updated information on any subcontractors and suppliers
22 added after the list is provided. Your contractor is not required
23 to supply this information if you sign a written waiver of your
24 rights to receive this information.

25 "MONITOR THE WORK. Lenders and governmental authorities may
26 inspect the work in progress from time to time for their own
27 purposes. These inspections are not intended as quality control

1 inspections. Quality control is a matter for you and your
2 contractor. To ensure that your home is being constructed in
3 accordance with your wishes and specifications, you should inspect
4 the work yourself or have your own independent inspector review the
5 work in progress.

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

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

22 (1) If you receive a written notice from a
23 subcontractor or supplier, you should withhold payment from your
24 contractor for the amount of the claim stated in the notice until
25 the dispute between your contractor and the subcontractor or
26 supplier is resolved. If your lender is disbursing money directly
27 to your contractor, you should immediately provide a copy of the

1 notice to your lender and instruct the lender to withhold payment in
2 the amount of the claim stated in the notice. If you continue to pay
3 the contractor after receiving the written notice without
4 withholding the amount of the claim, you may be liable and your
5 property may be subject to a lien for the amount you failed to
6 withhold.

7 (2) During construction and for 30 days after final
8 completion, termination, or abandonment of the contract by the
9 contractor, you should withhold or cause your lender to withhold
10 the greater of the amount you are required to withhold under the
11 contract or an amount equal to 10 percent of the amount of payments
12 made for the work performed by your contractor. This is [~~sometimes~~
13 referred to as [~~statutory~~] retainage.[¹] If you choose not to
14 withhold at least [~~the~~] 10 percent for at least 30 days after final
15 completion, termination, or abandonment of the contract by the
16 contractor and if a valid claim is timely made by a claimant and
17 your contractor fails to pay the claim, you may be personally liable
18 and your property may be subject to a lien up to the amount that you
19 failed to withhold.

20 "If a claim is not paid within a certain time period, the
21 claimant is required to file a mechanic's lien affidavit in the real
22 property records in the county where the property is located. A
23 mechanic's lien affidavit is not a lien on your property, but the
24 filing of the affidavit could result in a court imposing a lien on
25 your property if the claimant is successful in litigation to
26 enforce the lien claim.

27 "SOME CLAIMS MAY NOT BE VALID. When you receive a written

1 notice of a claim or when a mechanic's lien affidavit is filed on
2 your property, you should know your legal rights and
3 responsibilities regarding the claim. Not all claims are valid. A
4 notice of a claim by a subcontractor or supplier is required to be
5 sent, and the mechanic's lien affidavit is required to be filed,
6 within strict time periods. The notice and the affidavit must
7 contain certain information. All claimants may not fully comply
8 with the legal requirements to collect on a claim. If you have paid
9 the contractor in full before receiving a notice of a claim and have
10 fully complied with the law regarding [~~statutory~~] retainage, you
11 may not be liable for that claim. Accordingly, you should consult
12 your attorney when you receive a written notice of a claim to
13 determine the true extent of your liability or potential liability
14 for that claim.

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

1 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
2 a title insurance policy to insure that the title to your property
3 and the existing improvements on your property are free from liens
4 claimed by subcontractors and suppliers. If your policy is issued
5 before the improvements are completed and covers the value of the
6 improvements to be completed, you should obtain, on the completion
7 of the improvements and as a condition of your final payment, a
8 'completion of improvements' policy endorsement. This endorsement
9 will protect your property from liens claimed by subcontractors and
10 suppliers that may arise from the date the original title policy is
11 issued to the date of the endorsement."

12 SECTION 33. Section 53.281(b), Property Code, is amended to
13 read as follows:

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

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

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

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

23 SECTION 34. Sections 53.282(a) and (b), Property Code, are
24 amended to read as follows:

25 (a) A statement purporting to waive, release, or otherwise
26 adversely affect a lien or payment bond claim is not enforceable and
27 does not create an estoppel or impairment of a lien or payment bond

1 claim unless:

2 (1) the statement is in writing and substantially
3 complies with a form prescribed by Section 53.284;

4 (2) for a conditional lien waiver, the claimant has
5 actually received payment in good and sufficient funds in full for
6 the lien or payment bond claim; or

7 (3) the statement is:

8 (A) in a written original contract or subcontract
9 for the construction, remodel, or repair of a single-family house,
10 townhouse, or duplex or for land development related to a
11 single-family house, townhouse, or duplex; and

12 (B) made before labor or materials are provided
13 under the original contract or subcontract.

14 (b) The filing of a lien rendered unenforceable by a lien
15 waiver under Subsection (a)(3) is a violation of ~~[does not violate]~~
16 Section 12.002, Civil Practice and Remedies Code~~[, unless:~~

17 ~~[(1) an owner or original contractor sends a written~~
18 ~~explanation of the basis for nonpayment, evidence of the~~
19 ~~contractual waiver of lien rights, and a notice of request for~~
20 ~~release of the lien to the claimant at the claimant's address stated~~
21 ~~in the lien affidavit; and~~

22 ~~[(2) the lien claimant does not release the filed lien~~
23 ~~affidavit on or before the 14th day after the date the owner or the~~
24 ~~original contractor sends the items required by Subdivision (1)].~~

25 SECTION 35. Sections 53.284(b) and (c), Property Code, are
26 amended to read as follows:

27 (b) If a claimant or potential claimant is required to

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

6 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

7 "Project _____

8 "Job No. _____

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

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

1 following open matters: _____.

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

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

11 "Date _____

12 "_____ (Company name)

13 "By _____ (Signature)

14 "_____ (Title)"

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

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

24 "NOTICE:

25 "This document waives rights unconditionally and states that
26 you have been paid for giving up those rights. It is prohibited for
27 a person to require you to sign this document if you have not been

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

3 (2) below the notice, read:

4 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

5 "Project _____

6 "Job No. _____

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

21 "This release covers a progress payment for all labor,
22 services, equipment, or materials furnished to the property or to
23 _____ (person with whom signer contracted) as
24 indicated in the attached statement(s) or progress payment
25 request(s), except for unpaid retention, pending modifications and
26 changes, or other items furnished. This excludes retainage and the
27 following open matters:_____.

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

7 "Date _____

8 "_____ (Company name)

9 "By _____ (Signature)

10 "_____ (Title)"

11 SECTION 36. The following provisions of the Property Code
12 are repealed:

- 13 (1) Sections 53.021(b) and (d);
- 14 (2) Section 53.022(c);
- 15 (3) Section 53.026(b);
- 16 (4) Section 53.053;
- 17 (5) Sections 53.056(b), (c), (d), (e), and (f);
- 18 (6) Sections 53.057(b), (b-1), (c), (d), (e), (f), and
19 (g);
- 20 (7) Section 53.058;
- 21 (8) Sections 53.081(b), (c), and (d);
- 22 (9) Section 53.083;
- 23 (10) Sections 53.101, 53.102, 53.103, 53.104, 53.105,
24 and 53.106;
- 25 (11) Section 53.107(e);
- 26 (12) Section 53.158(b);
- 27 (13) Sections 53.159(b), (c), (d), and (e);

- 1 (14) Section 53.160(f);
- 2 (15) Sections 53.161(b) and (f);
- 3 (16) Section 53.162;
- 4 (17) Sections 53.203(d) and (e);
- 5 (18) Section 53.205(b);
- 6 (19) Section 53.206(c);
- 7 (20) Sections 53.252 and 53.253; and
- 8 (21) Section 53.283.

9 SECTION 37. The changes in law made by this Act apply only
10 to an original contract entered into on or after the effective date
11 of this Act. An original contract entered into before the effective
12 date of this Act is governed by the law as it existed immediately
13 before the effective date of this Act, and that law is continued in
14 effect for that purpose.

15 SECTION 38. This Act takes effect September 1, 2019.