

By: Burrows, Deshotel

H.B. No. 2237

Substitute the following for H.B. No. 2237:

By: Turner of Tarrant

C.S.H.B. No. 2237

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

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

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (3), (4), (8), (11), (13), and (14) and adding Subdivision (7-a) to read as follows:

(2) "Improvement" includes:

(A) a house, building, structure, parking structure, appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets, [and] utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixtures or modifications to real property;

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

(C) machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation; [wells, cisterns, tanks, reservoirs, or artificial

1 ~~lakes or pools made for supplying or storing water];~~

2 (D) work described by Section 53.021(4) [~~pumps,~~
3 ~~siphons, and windmills or other machinery or apparatuses used for~~
4 ~~raising water for stock, domestic use, or irrigation]; and~~

5 (E) a design, drawing, plan, plat, survey, or
6 specification provided by a licensed architect, engineer, or
7 surveyor [~~planting orchard trees, grubbing out orchards and~~
8 ~~replacing trees, and pruning of orchard trees].~~

9 (3) "Labor" means:

10 (A) labor used in the direct performance
11 [~~prosecution~~] of the work; or

12 (B) a professional service used in the direct
13 preparation for the work of a design, drawing, plan, plat, survey,
14 or specification.

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

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

17 (i) incorporated into the work; i

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

20 (iii) specially fabricated for an
21 improvement; [7] or

22 (iv) ordered and delivered for
23 incorporation or use [~~consumption~~];

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

1 or

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

5 (7-a) "Purported original contractor" means an
6 original contractor who can effectively control the owner or is
7 effectively controlled by the owner through common ownership of
8 voting stock or ownership interests, interlocking directorships,
9 common management, or otherwise, or who was engaged by the owner for
10 the construction or repair of improvements without a good faith
11 intention of the parties that the purported original contractor was
12 to perform under the contract. For purposes of this subdivision,
13 the term "owner" does not include a person who has or claims a
14 security interest only.

15 (8) "Residence" means the real property and
16 improvements for a single-family house, duplex, triplex, or
17 quadruplex or a unit in a multiunit structure used for residential
18 purposes in which title to the individual units is transferred to
19 the owners under a condominium or cooperative system that is:

20 (A) owned by one or more adult persons; and

21 (B) used or intended to be used as a dwelling by
22 one of the owners.

23 (11) "Retainage" means an amount representing part of
24 a contract payment that is not required to be paid to the claimant
25 within the month following the month in which labor is performed,
26 material is furnished, or specially fabricated material is
27 delivered. ~~[The term does not include retainage under Subchapter~~

1 E.]

2 (13) "Subcontractor" means a person who labors or has
3 furnished labor or materials to fulfill an obligation to an
4 original contractor or to a subcontractor of any tier to perform all
5 or part of the work required by an original contract.

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

8 SECTION 3. Section 53.003, Property Code, is amended by
9 amending Subsections (b) and (c) and adding Subsection (e) to read
10 as follows:

11 (b) Any notice or other written communication required by
12 this chapter may be delivered:

13 (1) in person to the party entitled to the notice or to
14 that party's agent; or

15 (2) by certified mail [~~, regardless of the manner~~
16 ~~prescribed by law~~].

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

22 (e) In computing the period of days in which to provide a
23 notice or to take any action required under this chapter, if the
24 last day of the period is a Saturday, Sunday, or legal holiday, the
25 period is extended to include the next day that is not a Saturday,
26 Sunday, or legal holiday.

27 SECTION 4. Section 53.021, Property Code, is amended to

1 read as follows:

2 Sec. 53.021. PERSONS ENTITLED TO LIEN. [~~a~~] A person has
3 a lien if~~+~~

4 ~~(1)~~ the person, under a contract with the owner or
5 the owner's agent, trustee, receiver, contractor, or
6 subcontractor:

7 (1) [~~labors, specially fabricates material, or~~]
8 furnishes labor or materials for construction or repair of an
9 improvement; [in this state of:

- 10 ~~[(A) a house, building, or improvement;~~
11 ~~[(B) a levee or embankment to be erected for the~~
12 ~~reclamation of overflow land along a river or creek; or~~
13 ~~[(C) a railroad; and]~~

14 (2) [~~the person labors, specially fabricates the~~
15 ~~material, or furnishes the labor or materials under or by virtue of~~
16 ~~a contract with the owner or the owner's agent, trustee, receiver,~~
17 ~~contractor, or subcontractor.~~

18 ~~[(b) A person who]~~ specially fabricates material, [has a
19 lien] even if the material is not delivered;

20 (3) is a licensed ~~+~~

21 ~~[(c) An]~~ architect, engineer, or surveyor providing
22 services to prepare a design, drawing, [who prepares a] plan, [or]
23 plat, survey, or specification;

24 (4) [~~under or by virtue of a written contract with the~~
25 ~~owner or the owner's agent, trustee, or receiver in connection with~~
26 ~~the actual or proposed design, construction, or repair of~~
27 ~~improvements on real property or the location of the boundaries of~~

1 ~~real property has a lien on the property.~~

2 ~~[(d) A person who]~~ provides labor, plant material, or other
3 supplies for the installation of landscaping for an ~~[a house,~~
4 ~~building, or]~~ improvement, including the construction of a
5 retention pond, retaining wall, berm, irrigation system, fountain,
6 or other similar installation; or

7 (5) ~~[, under or by virtue of a written contract with~~
8 ~~the owner or the owner's agent, contractor, subcontractor, trustee,~~
9 ~~or receiver has a lien on the property.~~

10 ~~[(e) A person who]~~ performs labor as part of, or ~~[who]~~
11 furnishes labor or materials for, the demolition of an improvement
12 ~~[a structure]~~ on real property ~~[under or by virtue of a written~~
13 ~~contract with the owner of the property or the owner's agent,~~
14 ~~trustee, receiver, contractor, or subcontractor has a lien on the~~
15 ~~property].~~

16 SECTION 5. Sections 53.022(a), (c), and (d), Property Code,
17 are amended to read as follows:

18 (a) The lien extends to the ~~[house, building, fixtures, or]~~
19 improvements ~~[, the land reclaimed from overflow, or the railroad~~
20 ~~and all of its properties,]~~ and to each lot of land necessarily
21 connected ~~[or reclaimed].~~

22 (c) A lien against land in a city, town, or village extends
23 to each lot on which the ~~[house, building, or]~~ improvement is
24 situated or on which the labor was performed.

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

1 SECTION 6. Section 53.023, Property Code, is amended to
2 read as follows:

3 Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures
4 payment for:

5 (1) the labor done or material furnished for the
6 construction, ~~[or] repair, design, survey, or demolition; or~~

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

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

12 SECTION 7. Section 53.026(a), Property Code, is amended to
13 read as follows:

14 (a) A person who ~~[labors, specially fabricates materials,~~
15 ~~or] furnishes labor or materials under a direct contractual~~
16 relationship with a purported original contractor ~~[another person]~~
17 is considered to be ~~[in direct contractual relationship with the~~
18 ~~owner and has a lien as]~~ an original contractor for purposes of
19 perfecting a mechanic's lien ~~[, if:~~

20 ~~[(1) the owner contracted with the other person for~~
21 ~~the construction or repair of a house, building, or improvements~~
22 ~~and the owner can effectively control that person through ownership~~
23 ~~of voting stock, interlocking directorships, or otherwise;~~

24 ~~[(2) the owner contracted with the other person for~~
25 ~~the construction or repair of a house, building, or improvements~~
26 ~~and that other person can effectively control the owner through~~
27 ~~ownership of voting stock, interlocking directorships, or~~

1 ~~otherwise, or~~

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

6 SECTION 8. Section 53.052, Property Code, is amended to
7 read as follows:

8 Sec. 53.052. FILING OF AFFIDAVIT. (a) An original
9 contractor claiming the lien must file an affidavit with the county
10 clerk:

11 (1) for projects other than residential construction
12 projects, not later than the 15th day of the fourth month after the
13 month in which the original contractor's work was completed,
14 terminated, or abandoned; or

15 (2) for residential construction projects, not later
16 than the 15th day of the third month after the month in which the
17 original contractor's work was completed, terminated, or
18 abandoned.

19 (b) Except as provided by Subsection (c) or (d) [(b)], a
20 subcontractor [the person] claiming the lien must file an affidavit
21 with the county clerk [of the county in which the property is
22 located or into which the railroad extends] not later than the 15th
23 day of the fourth [calendar] month after the later of:

24 (1) the month the subcontractor last provided labor or
25 materials; or

26 (2) the month the subcontractor would normally have
27 been required to deliver the last of specially fabricated materials

1 that have not been actually delivered [~~day on which the~~
2 ~~indebtedness accrues~~].

3 (c) [~~(b)~~] A subcontractor [~~person~~] claiming a lien arising
4 from a residential construction project must file an affidavit with
5 the county clerk [~~of the county in which the property is located~~]
6 not later than the 15th day of the third [~~calendar~~] month after the
7 later of:

8 (1) the month the subcontractor last provided labor or
9 materials; or

10 (2) the month the subcontractor would normally have
11 been required to deliver the last of specially fabricated materials
12 that have not been actually delivered.

13 (d) A subcontractor claiming a lien for retainage must file
14 an affidavit with the county clerk not later than the 15th day of
15 the third month after the month in which the original contract under
16 which the subcontractor performed was completed, terminated, or
17 abandoned.

18 (e) An affidavit under this chapter must be filed in the
19 county where the improvements are located [~~day on which the~~
20 ~~indebtedness accrues~~].

21 [~~(c)~~] The county clerk shall record the affidavit in records
22 kept for that purpose and shall index and cross-index the affidavit
23 in the names of the claimant, the original contractor, and the
24 owner. Failure of the county clerk to properly record or index a
25 filed affidavit does not invalidate the lien.

26 SECTION 9. 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 10. The heading to Section 53.056, Property Code,
7 is amended to read as follows:

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

10 SECTION 11. Section 53.056, Property Code, is amended by
11 amending Subsection (a) and adding Subsections (a-1), (a-2), and
12 (a-3) to read as follows:

13 (a) Except as provided by Section 53.057, a subcontractor
14 [~~Subchapter K, a~~] claimant [~~other than an original contractor~~] must
15 give the notice prescribed by Subsection (a-1) [~~this section~~] for
16 the lien to be valid.

17 (a-1) For all unpaid labor or materials provided, the
18 subcontractor claimant must send a notice of claim for unpaid labor
19 or materials to the owner or reputed owner and the original
20 contractor. The notice must be sent:

21 (1) for projects other than residential construction
22 projects, not later than the 15th day of the third month after the
23 month during which:

24 (A) the labor or materials were provided; or

25 (B) the undelivered specially fabricated
26 materials would normally have been delivered; or

27 (2) for residential construction projects, not later

1 than the 15th day of the second month after the month during which:

2 (A) the labor or materials were provided; or

3 (B) the undelivered specially fabricated
4 materials would normally have been delivered.

5 (a-2) The notice may include an invoice or billing statement
6 and must be in substantially the following form:

7 "NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

8 "WARNING: This notice is provided to preserve lien rights.

9 "Owner's property may be subject to a lien if sufficient funds are
10 not withheld from future payments to the original contractor to
11 cover this debt.

12 "Date: _____

13 "Project description and/or address: _____

14 "Claimant's name: _____

15 "Type of labor or materials provided: _____

16 "Original contractor's name: _____

17 "Party with whom claimant contracted if different from
18 original contractor: _____

19 "Claim amount: _____

20 "_____ (Claimant's contact person)

21 "_____ (Claimant's address)"

22 (a-3) A subcontractor claimant may give to the original
23 contractor a written notice of an unpaid labor or materials invoice
24 that is past due. A notice under this subsection is not required
25 for a lien to be valid.

26 SECTION 12. The heading to Section 53.057, Property Code,
27 is amended to read as follows:

1 Sec. 53.057. SUBCONTRACTOR [~~DERIVATIVE~~] CLAIMANT: NOTICE
2 OF CLAIM FOR UNPAID [~~CONTRACTUAL~~] RETAINAGE [~~CLAIM~~].

3 SECTION 13. Section 53.057, Property Code, is amended by
4 amending Subsections (a) and (f) and adding Subsections (a-1) and
5 (a-2) to read as follows:

6 (a) To the extent that a claim for unpaid retainage is not
7 included wholly or partly in a notice provided under Section
8 53.056, a subcontractor claimant whose contract provides for
9 retainage must [~~A claimant may~~] give notice under this section for a
10 lien for unpaid retainage to be valid [~~instead of or in addition to~~
11 ~~notice under Section 53.056 or 53.252 if the claimant is to labor,~~
12 ~~furnish labor or materials, or specially fabricate materials, or~~
13 ~~has labored, furnished labor or materials, or specially fabricated~~
14 ~~materials, under an agreement with an original contractor or a~~
15 ~~subcontractor providing for retainage].~~

16 (a-1) The subcontractor claimant must send the notice of
17 claim for unpaid retainage to the owner or reputed owner and the
18 original contractor not later than the earlier of:

19 (1) the 30th day after the date the subcontractor
20 claimant's contract is completed, terminated, or abandoned; or

21 (2) the 30th day after the date the original contract
22 is terminated or abandoned.

23 (a-2) The notice may include an invoice or billing statement
24 and must be in substantially the following form:

25 "NOTICE OF CLAIM FOR UNPAID RETAINAGE

26 "WARNING: This notice is provided to preserve lien rights.

27 "Owner's property may be subject to a lien if sufficient funds are

1 not withheld from future payments to the original contractor to
2 cover this debt.

3 "Date: _____

4 "Project description and/or address: _____

5 "Claimant's name: _____

6 "Type of labor or materials provided: _____

7 "Original contractor's name: _____

8 "Party with whom claimant contracted if different from
9 original contractor: _____

10 "Total retainage unpaid: _____

11 "_____ (Claimant's contact person)

12 "_____ (Claimant's address)"

13 (f) A claimant has a lien on, and the owner is personally
14 liable to the claimant for, the reserved [~~retained~~] funds under
15 Subchapter E if the claimant:

16 (1) gives notice in accordance with this section and:

17 (A) complies with Subchapter E; or

18 (B) files an affidavit claiming a lien not later
19 than [~~the earliest of:~~

20 [~~(i)~~] the date required for filing an
21 affidavit under the applicable provision of Section 53.052 [+

22 [~~(ii) the 40th day after the date stated in~~
23 ~~an affidavit of completion as the date of completion of the work~~
24 ~~under the original contract, if the owner sent the claimant notice~~
25 ~~of an affidavit of completion in the time and manner required,~~

26 [~~(iii) the 40th day after the date of~~
27 ~~termination or abandonment of the original contract, if the owner~~

1 ~~sent the claimant a notice of such termination or abandonment in the~~
2 ~~time and manner required; or~~
3 ~~[(iv) the 30th day after the date the owner~~
4 ~~sent to the claimant to the claimant's address provided in the~~
5 ~~notice for contractual retainage, as required under Subsection (c),~~
6 ~~a written notice of demand for the claimant to file the affidavit~~
7 ~~claiming a lien]; and~~

8 (2) gives the notice of the filed affidavit as
9 required by Section 53.055.

10 SECTION 14. Section 53.081(a), Property Code, is amended to
11 read as follows:

12 (a) If an owner receives notice under Section 53.056 or ~~[7]~~
13 ~~53.057, [53.058, 53.252, or 53.253,]~~ the owner may immediately
14 withhold from payments to the original contractor an amount
15 necessary to pay the claim for which the owner ~~[he]~~ receives notice.
16 The withholding may be in addition to any reserve funds.

17 SECTION 15. Section 53.082, Property Code, is amended to
18 read as follows:

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

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

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

1 SECTION 16. Section 53.084, Property Code, is amended to
2 read as follows:

3 Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount
4 the owner fails to reserve [~~required to be retained~~] under
5 Subchapter E, the owner is not liable for any amount paid to the
6 original contractor before the owner is authorized to withhold
7 funds under this subchapter.

8 (b) If the owner has received a notice [~~the notices~~]
9 required by Section 53.056 or 53.057 [~~Subchapter C or K~~], if the
10 lien has been secured, and if the claim has been reduced to final
11 judgment, the owner is liable and the owner's property is subject to
12 a claim for any money paid to the original contractor after the
13 owner was authorized to withhold funds under this subchapter. The
14 owner is liable for that amount in addition to any amount for which
15 the owner [~~he~~] is liable under Subchapter E.

16 SECTION 17. The heading to Subchapter E, Chapter 53,
17 Property Code, is amended to read as follows:

18 SUBCHAPTER E. FUNDS RESERVED [~~REQUIRED RETAINAGE~~] FOR BENEFIT OF
19 LIEN CLAIMANTS

20 SECTION 18. Sections 53.101, 53.102, 53.103, 53.104, and
21 53.105, Property Code, are amended to read as follows:

22 Sec. 53.101. FUNDS REQUIRED TO BE RESERVED [~~RETAINAGE~~].

23 (a) During the progress of work under an original contract for
24 which a mechanic's lien may be claimed and for 30 days after the
25 work under the contract is completed, the owner shall reserve
26 [~~retain~~]:

27 (1) 10 percent of the contract price of the work to the

1 owner; or

2 (2) 10 percent of the value of the work, measured by
3 the proportion that the work done bears to the work to be done,
4 using the contract price or, if there is no contract price, using
5 the reasonable value of the completed work.

6 (b) In this section, "owner" includes the owner's agent,
7 trustee, or receiver.

8 Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS [~~RETAINAGE~~].
9 The reserved [~~retained~~] funds secure the payment of artisans and
10 mechanics who perform labor or service and the payment of other
11 persons who furnish material, material and labor, or specially
12 fabricated material for any contractor, subcontractor, agent, or
13 receiver in the performance of the work.

14 Sec. 53.103. LIEN ON RESERVED [~~RETAINED~~] FUNDS. A claimant
15 has a lien on the reserved [~~retained~~] funds if the claimant:

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

18 (2) except as allowed by Section [53.057\(f\)](#), files an
19 affidavit claiming a lien not later than the 30th day after the
20 earliest of the date:

21 (A) the work is completed;

22 (B) the original contract is terminated; or

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

25 Sec. 53.104. PREFERENCES. (a) Individual artisans and
26 mechanics are entitled to a preference to the reserved [~~retained~~]
27 funds and shall share proportionately to the extent of their claims

1 for wages and fringe benefits earned.

2 (b) After payment of artisans and mechanics who are entitled
3 to a preference under Subsection (a), other participating claimants
4 share proportionately in the balance of the reserved [~~retained~~]
5 funds.

6 Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RESERVE FUNDS
7 [~~RETAIN~~]. (a) If the owner fails or refuses to comply with this
8 subchapter, the claimants complying with Subchapter C or this
9 subchapter have a lien, at least to the extent of the amount that
10 should have been reserved [~~retained~~] from the original contract
11 under which they are claiming, against the improvements [~~house,~~
12 ~~building, structure, fixture, or improvement~~] and all of its
13 properties and against the lot or lots of land necessarily
14 connected.

15 (b) The claimants share the lien proportionately in
16 accordance with the preference provided by Section 53.104.

17 SECTION 19. Sections 53.106(a), (b), and (d), Property
18 Code, are amended to read as follows:

19 (a) An owner may file with the county clerk of the county in
20 which the property is located an affidavit of completion. The
21 affidavit must contain:

- 22 (1) the name and address of the owner;
- 23 (2) the name and address of the original contractor;
- 24 (3) a description, legally sufficient for
25 identification, of the real property on which the improvements are
26 located;
- 27 (4) a description of the improvements furnished under

1 the original contract;

2 (5) a statement that the improvements under the
3 original contract have been completed and the date of completion;
4 and

5 (6) a conspicuous statement that a claimant may not
6 have a lien on retained funds unless the claimant files an affidavit
7 claiming a lien in the time and manner required by this chapter [~~not~~
8 ~~later than the 40th day after the date the work under the original~~
9 ~~contract is completed~~].

10 (b) A copy of the affidavit must be sent [~~by certified or~~
11 ~~registered mail~~] to the original contractor [~~not later than the~~
12 ~~date the affidavit is filed~~] and to each claimant who sends a notice
13 [~~of lien liability~~] to the owner under Section 53.056 or [~~7~~] 53.057
14 [~~, 53.058, 53.252, or 53.253~~] not later than the third day after the
15 date the affidavit is filed or the 10th day after the date the owner
16 receives the notice of lien liability, whichever is later.

17 (d) An [~~Except as provided by this subsection, an~~] affidavit
18 filed under this section [~~on or before the 10th day after the date~~
19 ~~of completion of the improvements~~] is prima facie evidence of the
20 date the work under the original contract is completed for purposes
21 of this chapter [~~subchapter and Section 53.057~~]. If the affidavit
22 is filed after the 10th day after the date of completion, the date
23 of completion for purposes of this subchapter [~~and Section 53.057~~]
24 is the date the affidavit is filed. This subsection does not apply
25 to a person to whom the affidavit was not sent as required by this
26 section.

27 SECTION 20. Sections 53.107(a) and (b), Property Code, are

1 amended to read as follows:

2 (a) Not later than the 10th day after the date an original
3 contract is terminated or the original contractor abandons
4 performance under the original contract, the owner shall give
5 notice to each subcontractor who, before the date of termination or
6 abandonment, has:

7 (1) given notice to the owner as provided by Section
8 53.056 or ~~[7] 53.057 [7, or 53.058]~~; or

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

11 (b) The notice must contain:

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

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

14 (3) a description, legally sufficient for
15 identification, of the real property on which the improvements are
16 located;

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

19 (5) a statement that the original contract has been
20 terminated or that performance under the contract has been
21 abandoned;

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

23 (7) a conspicuous statement that a claimant may not
24 have a lien on the retained funds unless the claimant files an
25 affidavit claiming a lien in the time and manner required by this
26 chapter ~~[not later than the 40th day after the date of the~~
27 ~~termination or abandonment]~~.

1 SECTION 21. Section 53.155, Property Code, is amended to
2 read as follows:

3 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,~~
4 ~~building,~~] improvement [~~, or any piece of railroad property~~] is
5 sold separately from the land, the officer making the sale shall
6 provide [~~place~~] the purchaser [~~in possession. The purchaser is~~
7 ~~entitled to~~] a reasonable time after the date of purchase within
8 which to remove and take possession of the purchased improvement
9 [~~property~~].

10 SECTION 22. Section 53.157, Property Code, is amended to
11 read as follows:

12 Sec. 53.157. DISCHARGE OF LIEN. An [~~A mechanic's lien or~~]
13 affidavit claiming a mechanic's lien filed under Section 53.052 may
14 be discharged of record by:

15 (1) recording a lien release signed by the claimant
16 under Section 53.152;

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

20 (3) recording the original or certified copy of a
21 final judgment or decree of a court of competent jurisdiction
22 providing for the discharge;

23 (4) filing the bond and notice in compliance with
24 Subchapter H;

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

27 (6) recording a certified copy of the order removing

1 the lien under Section [53.160](#), provided [~~and a certificate from the~~
2 ~~clerk of the court that states~~] that no bond or deposit as described
3 by Section [53.161](#) was filed by the claimant within 30 days after the
4 date the order was entered.

5 SECTION 23. Section [53.158](#), Property Code, is amended by
6 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
7 read as follows:

8 (a) Except as provided by Subsection (a-2) [~~(b)~~], suit must
9 be brought to foreclose the lien not later than the first
10 anniversary of [~~within two years after~~] the last day a claimant may
11 file the lien affidavit under Section [53.052](#) [~~or within one year~~
12 ~~after completion, termination, or abandonment of the work under the~~
13 ~~original contract under which the lien is claimed, whichever is~~
14 ~~later~~].

15 (a-1) Notwithstanding Section [16.069](#), Civil Practice and
16 Remedies Code, or any other law, if suit is pursued solely to
17 discharge a lien because limitations have expired on bringing a
18 lien foreclosure suit, the lien claimant's rights to pursue a suit
19 to foreclose a lien are not revived.

20 (a-2) The limitations period established under Subsection
21 (a) may be extended to not later than the second anniversary of the
22 date the claimant filed the lien affidavit under Section [53.052](#) if,
23 before the expiration of the limitations period established under
24 Subsection (a), the claimant enters into a written agreement with
25 the then-current record owner of the property to extend the
26 limitations period. The agreement must be recorded with the clerk
27 of the same county where the lien was recorded and is considered to

1 be notice of the extension to any subsequent purchaser.

2 SECTION 24. Sections 53.160(b) and (c), Property Code, are
3 amended to read as follows:

4 (b) The grounds for objecting to the validity or
5 enforceability of the claim or lien for purposes of the motion are
6 limited to the following:

7 (1) notice of claim was not timely furnished to the
8 owner or original contractor as required by Section 53.056 or [7]
9 53.057 [~~53.058, 53.252, or 53.253~~];

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

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

14 (4) the deadlines for perfecting a lien claim for
15 retainage under this chapter have expired and the owner complied
16 with the requirements of Section 53.101 and paid the retainage and
17 all other funds owed to the original contractor before:

18 (A) the claimant perfected the lien claim; and

19 (B) the owner received a notice of the claim as
20 required by this chapter;

21 (5) all funds subject to the notice of a claim to the
22 owner and a notice regarding the retainage have been deposited in
23 the registry of the court and the owner has no additional liability
24 to the claimant;

25 (6) when the lien affidavit was filed on homestead
26 property:

27 (A) no contract was executed or filed as required

1 by Section 53.254;

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

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

6 (7) the claimant executed a valid and enforceable
7 waiver or release of the claim or lien claimed in the affidavit.

8 (c) The claimant is not required to file a response. The
9 claimant and any other party that has appeared in the proceeding
10 must be notified by at least 30 [~~21~~] days before the date of the
11 hearing on the motion. A motion may not be heard before the 30th
12 [~~21st~~] day after the date the claimant answers or appears in the
13 proceeding. The claimant must be allowed expedited discovery
14 regarding information relevant to the issues listed under
15 Subsection (b).

16 SECTION 25. Section 53.173(c), Property Code, is amended to
17 read as follows:

18 (c) The notice must be served on each obligee by mailing a
19 copy of the notice and the bond to the obligee by certified [~~United~~
20 ~~States~~] mail[, ~~return receipt requested,~~] addressed to the claimant
21 at the address stated in the lien affidavit for the obligee.

22 SECTION 26. Section 53.205(a), Property Code, is amended to
23 read as follows:

24 (a) The bond protects all persons with a claim that is:

25 (1) perfected in the manner prescribed for fixing a
26 lien under Subchapter C [~~or, if the claim relates to a residential~~
27 ~~construction project, under Subchapter K~~]; or

1 (2) perfected in the manner prescribed by Section
2 53.206.

3 SECTION 27. Section 53.206, Property Code, is amended to
4 read as follows:

5 Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided
6 by Subsection (b), to [~~To~~] perfect a claim against a bond in a
7 manner other than that prescribed by Subchapter C [~~or K~~] for fixing
8 a lien, a person must [~~+~~

9 [~~(1)~~] give notice under Sections 53.056 and 53.057 to
10 the original contractor and surety on the bond [~~all applicable~~
11 ~~notices under the appropriate subchapter, and~~

12 [~~(2)~~ ~~give to the surety on the bond, instead of the~~
13 ~~owner, all notices under the appropriate subchapter required to be~~
14 ~~given to the owner~~].

15 (b) To perfect a claim for retainage under this section, a
16 claimant [~~person~~] is not required to [~~+~~

17 [~~(1)~~] give notice to the surety under Section 53.057
18 if [~~, unless~~] the claimant has a direct contractual relationship
19 with the original contractor [~~and the agreed retainage is in excess~~
20 ~~of 10 percent of the contract,~~

21 [~~(2)~~ ~~give notice to the surety under Section 53.058(b)~~
22 ~~or, if the claim relates to a residential construction project,~~
23 ~~under Section 53.253(c), or~~

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

25 (c) A claimant that provides the notices described by this
26 section is not required to file an affidavit claiming a mechanic's
27 lien to perfect a claim under the bond [~~For the claim to be valid, a~~

1 ~~person must give notice in the time and manner required by this~~
2 ~~section, but the content of the notices need only provide fair~~
3 ~~notice of the amount and the nature of the claim asserted].~~

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 28. Section 53.207(a), Property Code, is amended to
13 read as follows:

14 (a) If the owner receives any of the notices or a lien is
15 fixed under this chapter [~~Subchapter C or K~~], the owner shall mail
16 to the surety on the bond a copy of all notices received.

17 SECTION 29. Section 53.208(a), Property Code, is amended to
18 read as follows:

19 (a) A claimant may sue the principal and surety on the bond
20 either jointly or severally, if the [~~his~~] claim remains unpaid for
21 60 days after the claimant perfects the claim.

22 SECTION 30. Section 53.232, Property Code, is amended to
23 read as follows:

24 Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien
25 claimant must send written notice of his claim by [~~registered or~~]
26 certified mail to:

27 (1) the officials of the state, county, town, or

1 municipality whose duty it is to pay the contractor; and

2 (2) the contractor at the contractor's last known
3 business or residence address.

4 SECTION 31. Section 53.238, Property Code, is amended to
5 read as follows:

6 Sec. 53.238. NOTICE OF BOND. The official with whom the
7 bond is filed shall send an exact copy of the bond by [~~registered~~
8 ~~mail~~ or] certified mail, return receipt requested, to all
9 claimants.

10 SECTION 32. The heading to Section 53.254, Property Code,
11 is amended to read as follows:

12 Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON
13 HOMESTEAD.

14 SECTION 33. Section 53.254(g), Property Code, is amended to
15 read as follows:

16 (g) For the lien on a homestead to be valid, the notice
17 required to be given to the owner under Subchapter C [~~Section~~
18 ~~53.252~~] must include or have attached the following statement:

19 "If a subcontractor or supplier who furnishes materials or
20 performs labor for construction of improvements on your property is
21 not paid, your property may be subject to a lien for the unpaid
22 amount if:

23 (1) after receiving notice of the unpaid claim from
24 the claimant, you fail to withhold payment to your contractor that
25 is sufficient to cover the unpaid claim until the dispute is
26 resolved; or

27 (2) during construction and for 30 days after

1 completion of your contractor's work [~~construction~~], you fail to
2 reserve [~~retain~~] 10 percent of the contract price or 10 percent of
3 the value of the work performed by your contractor.

4 "If you have complied with the law regarding the reservation
5 of 10 percent of the contract price or value of work [~~retainage~~] and
6 you have withheld payment to the contractor sufficient to cover any
7 written notice of claim and have paid that amount, if any, to the
8 claimant, any lien claim filed on your property by a subcontractor
9 or supplier, other than a person who contracted directly with you,
10 will not be a valid lien on your property. In addition, except for
11 the required 10 percent reservation [~~retainage~~], you are not liable
12 to a subcontractor or supplier for any amount paid to your
13 contractor before you received written notice of the claim."

14 SECTION 34. Section 53.255(b), Property Code, is amended to
15 read as follows:

16 (b) The disclosure statement must read substantially
17 similar to the following:

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

23 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
24 not require you to convey your real property to your contractor as a
25 condition to the agreement for the construction of improvements on
26 your property.

27 "KNOW YOUR CONTRACTOR. Before you enter into your agreement

1 for the construction of improvements to your real property, make
2 sure that you have investigated your contractor. Obtain and verify
3 references from other people who have used the contractor for the
4 type and size of construction project on your property.

5 "GET IT IN WRITING. Make sure that you have a written
6 agreement with your contractor that includes: (1) a description of
7 the work the contractor is to perform; (2) the required or
8 estimated time for completion of the work; (3) the cost of the work
9 or how the cost will be determined; and (4) the procedure and
10 method of payment, including provisions for statutory reservation
11 of funds [~~retainage~~] and conditions for final payment. If your
12 contractor made a promise, warranty, or representation to you
13 concerning the work the contractor is to perform, make sure that
14 promise, warranty, or representation is specified in the written
15 agreement. An oral promise that is not included in the written
16 agreement may not be enforceable under Texas law.

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

1 meaning of a document, consult an attorney.

2 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
3 construction commences, your contractor is required to provide you
4 with a list of the subcontractors and suppliers the contractor
5 intends to use on your project. Your contractor is required to
6 supply updated information on any subcontractors and suppliers
7 added after the list is provided. Your contractor is not required
8 to supply this information if you sign a written waiver of your
9 rights to receive this information.

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

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

27 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if

1 a subcontractor or supplier who furnishes labor or materials for
2 the construction of improvements on your property is not paid, you
3 may become liable and your property may be subject to a lien for the
4 unpaid amount, even if you have not contracted directly with the
5 subcontractor or supplier. To avoid liability, you should take the
6 following actions:

7 (1) If you receive a written notice from a
8 subcontractor or supplier, you should withhold payment from your
9 contractor for the amount of the claim stated in the notice until
10 the dispute between your contractor and the subcontractor or
11 supplier is resolved. If your lender is disbursing money directly
12 to your contractor, you should immediately provide a copy of the
13 notice to your lender and instruct the lender to withhold payment in
14 the amount of the claim stated in the notice. If you continue to pay
15 the contractor after receiving the written notice without
16 withholding the amount of the claim, you may be liable and your
17 property may be subject to a lien for the amount you failed to
18 withhold.

19 (2) During construction and for 30 days after final
20 completion, termination, or abandonment of the contract by the
21 contractor, you should reserve [~~withhold~~] or cause your lender to
22 reserve [~~withhold~~] 10 percent of the amount of payments made for the
23 work performed by your contractor. [~~This is sometimes referred to~~
24 ~~as 'statutory retainage.'~~] If you choose not to reserve [~~withhold~~]
25 the 10 percent for at least 30 days after final completion,
26 termination, or abandonment of the contract by the contractor and
27 if a valid claim is timely made by a claimant and your contractor

1 fails to pay the claim, you may be personally liable and your
2 property may be subject to a lien up to the amount that you failed to
3 reserve ~~[withhold]~~.

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

11 "SOME CLAIMS MAY NOT BE VALID. When you receive a written
12 notice of a claim or when a mechanic's lien affidavit is filed on
13 your property, you should know your legal rights and
14 responsibilities regarding the claim. Not all claims are valid. A
15 notice of a claim by a subcontractor or supplier is required to be
16 sent, and the mechanic's lien affidavit is required to be filed,
17 within strict time periods. The notice and the affidavit must
18 contain certain information. All claimants may not fully comply
19 with the legal requirements to collect on a claim. If you have paid
20 the contractor in full before receiving a notice of a claim and have
21 withheld the 10 percent of the contract price or value of work
22 ~~[fully complied with the law regarding statutory retainage]~~, you
23 may not be liable for that claim. Accordingly, you should consult
24 your attorney when you receive a written notice of a claim to
25 determine the true extent of your liability or potential liability
26 for that claim.

27 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you

1 receive a notice of claim, do not release withheld funds without
2 obtaining a signed and notarized release of lien and claim from the
3 claimant. You can also reduce the risk of having a claim filed by a
4 subcontractor or supplier by requiring as a condition of each
5 payment made by you or your lender that your contractor furnish you
6 with an affidavit stating that all bills have been paid. Under
7 Texas law, on final completion of the work and before final payment,
8 the contractor is required to furnish you with an affidavit stating
9 that all bills have been paid. If the contractor discloses any
10 unpaid bill in the affidavit, you should withhold payment in the
11 amount of the unpaid bill until you receive a waiver of lien or
12 release from that subcontractor or supplier.

13 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
14 a title insurance policy to insure that the title to your property
15 and the existing improvements on your property are free from liens
16 claimed by subcontractors and suppliers. If your policy is issued
17 before the improvements are completed and covers the value of the
18 improvements to be completed, you should obtain, on the completion
19 of the improvements and as a condition of your final payment,
20 a 'completion of improvements' policy endorsement. This
21 endorsement will protect your property from liens claimed by
22 subcontractors and suppliers that may arise from the date the
23 original title policy is issued to the date of the endorsement."

24 SECTION 35. Section [53.281\(b\)](#), Property Code, is amended to
25 read as follows:

26 (b) A waiver and release is effective to release the owner,
27 the owner's property, the contractor, and the surety on a payment

1 bond from claims and liens only if:

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

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

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

8 SECTION 36. The following provisions of the Property Code
9 are repealed:

10 (1) Section 53.003(a);

11 (2) Section 53.026(b);

12 (3) Section 53.053;

13 (4) Sections 53.056(b), (c), (d), (e), and (f);

14 (5) Sections 53.057(b), (b-1), (c), (d), (e), and (g);

15 (6) Section 53.058;

16 (7) Sections 53.081(b), (c), and (d);

17 (8) Section 53.083;

18 (9) Section 53.158(b); and

19 (10) Sections 53.252 and 53.253.

20 SECTION 37. The changes in law made by this Act apply only
21 to an original contract entered into on or after the effective date
22 of this Act. An original contract entered into before the effective
23 date of this Act is governed by the law as it existed immediately
24 before the effective date of this Act, and that law is continued in
25 effect for that purpose.

26 SECTION 38. This Act takes effect September 1, 2021.