

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

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

11 SECTION 2. Section 53.001, Property Code, is amended by
12 amending Subdivisions (2), (3), (4), (8) and (9) to read as
13 follows:

14 (2) "Improvement" includes:

15 (A) a house, building, structure, parking
16 structure, appurtenance, pool, utility, railroad, well, storage
17 facility, abutting sidewalks and streets and utilities in or on
18 those sidewalks and streets, land reclaimed from overflow, and
19 other fixture or modification to real property;

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

22 (C) that work described in section 53.021(d)[wells,
23 ~~cisterns, tanks, reservoirs, or artificial lakes or pools made for~~
24 ~~supplying or storing water;] and~~

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

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

8 (3) "Labor" means:

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

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

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

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

16 (i) incorporated into the work;[-]

17 (ii) used [~~consumed~~] in the direct performance
18 [~~prosecution~~] of the work; [-or]

19 (iii) specially fabricated for an improvement;
20 or

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

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

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

4 (5) "Mechanic's lien" means the lien provided by this
5 chapter.

6 (6) "Original contract" means an agreement to which an
7 owner is a party either directly or by implication of law.

8 (7) "Original contractor" means a person contracting
9 with an owner either directly or through the owner's agent.

10 (8) "Purported original contractor" means an original
11 contractor that either (1) can effectively control the owner or is
12 effectively controlled by the owner through common ownership of
13 voting stock or ownership interests, interlocking directorships,
14 common management, or otherwise or (2) was engaged by the owner
15 for the construction or repair of improvements without a good faith
16 intention of the parties that the purported original contractor
17 was to perform under the contract. In this definition, "owner"
18 does not include a person who has or claims a security interest
19 only.

20 ([§]9) "Residence" means the real property and
21 improvements for a single-family house, duplex, triplex, or
22 quadruplex or a unit in a multiunit structure used for residential
23 purposes in which title to the individual units is transferred to
24 the owners under a condominium or cooperative system that is:

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

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

1 (~~9~~10) "Residential construction contract" means a
2 contract between an owner and a contractor in which the contractor
3 agrees to construct or repair the owner's residence, including
4 improvements appurtenant to the residence.

5 (11~~10~~) "Residential construction project" means a
6 project for the construction or repair of a new or existing
7 residence, including improvements appurtenant to the residence, as
8 provided by a residential construction contract.

9 (12~~11~~) "Retainage" means an amount representing part
10 of a contract payment that is not required to be paid to the
11 claimant within the month following the month in which labor is
12 performed, material is furnished, or specially fabricated material
13 is delivered. ~~[The term does not include retainage under~~
14 ~~Subchapter E.]~~

15 (13~~12~~) "Specially fabricated material" means material
16 fabricated for use as a component of the construction or repair so
17 as to be reasonably unsuitable for use elsewhere.

18 (14~~13~~) "Subcontractor" means a person who has
19 furnished labor or materials to fulfill an obligation to an
20 original contractor or to a subcontractor to perform all or part
21 of the work required by an original contract.

22 (15~~14~~) "Work" means any part of construction or repair
23 of an improvement performed under an original contract.

24 (16~~15~~) "Completion" of an original contract means the
25 actual completion of the work, including any extras or change
26 orders reasonably required or contemplated under the original
27 contract, other than warranty work or replacement or repair of the

1 work performed under the contract.

2 SECTION 3. Section 53.003(a), (b) and (d), Property Code,
3 are amended to read as follows:

4 [~~(a) This section applies to notices required by~~
5 ~~Subchapters B through G and K.]~~

6 (~~(b)~~a) Any notice or other written communication
7 required by this chapter may be delivered (i) in person to the
8 party entitled to the notice or to that party's agent or (ii) via
9 certified mail.

10 [~~, regardless of the manner prescribed by law].~~

11 (~~(c)~~b) If notice is sent by ~~registered or~~ certified mail,
12 deposit or mailing of the notice in the United States mail in the
13 form required constitutes compliance with the notice requirement.
14 This subsection does not apply if the law requires receipt of the
15 notice by the person to whom it is directed.

16 (~~(d)~~c) If a written notice is received by the person
17 entitled to receive it, the method by which the notice was
18 delivered is immaterial.

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

24 SECTION 4. Section 53.021, Property Code, is amended to read
25 as follows:

26 Sec. 53.021. PERSONS ENTITLED TO LIEN. [~~(a)~~]A person has a
27 lien if [~~+~~]

1 ~~[(1)]~~ the person, under or by virtue of a contract with
2 the owner or the owner's agent, trustee, receiver, contractor, or
3 subcontractor: [~~labors, specially fabricates material, or~~]

4 (a) furnishes labor or materials for construction or repair
5 of an improvement [~~; in this state of:~~

6 ~~(A) a house, building, or improvement;~~

7 ~~(B) a levee or embankment to be erected for~~
8 ~~the reclamation of overflow land along a river or creek; or~~

9 ~~(C) a railroad; and~~

10 ~~(2) the person labors, specially fabricates the~~
11 ~~material, or furnishes the labor or materials under or by virtue~~
12 ~~of a contract with the owner or the owner's agent, trustee,~~
13 ~~receiver, contractor, or subcontractor;.~~

14 ~~(b) A person who~~ specially fabricates material [~~, has~~
15 ~~a lien~~] even if the material is not delivered; [~~.-~~]

16 (c) is a licensed [~~An~~] architect, engineer, or surveyor
17 providing services to who prepares a design, drawing, plan, or
18 plat, survey, or specification; [~~under or by virtue of a written~~
19 ~~contract with the owner or the owner's agent, trustee, or receiver~~
20 ~~in connection with the actual or proposed design, construction, or~~
21 ~~repair of improvements on real property or the location of the~~
22 ~~boundaries of real property has a lien on the property.~~

23 ~~(d) A person who~~ provides labor, plant material, or
24 other supplies for the installation of landscaping for an an [~~house,~~
25 ~~building, or~~] improvement, including the construction of a
26 retention pond, retaining wall, berm, irrigation system, fountain,
27 or other similar installation; [~~, under or by virtue of a written~~

1 ~~contract with the owner or the owner's agent, contractor,~~
2 ~~subcontractor, trustee, or receiver has a lien on the property]or~~

3 (e) ~~[A person who]~~ performs labor as part of, or who
4 furnishes labor or materials for, the demolition of an improvement
5 ~~[structure]~~ on real property ~~[under or by virtue of a written~~
6 ~~contract with the owner of the property or the owner's agent,~~
7 ~~trustee, receiver, contractor, or subcontractor has a lien on the~~
8 ~~property].~~

9 SECTION 5. Section 53.022, Property Code, is amended to read
10 as follows:

11 Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien
12 extends to the ~~[house, building, fixtures, or improvements, the~~
13 ~~land reclaimed from overflow, or the railroad and all of its~~
14 ~~properties,]~~ and to each lot of land necessarily connected ~~[or~~
15 ~~reclaimed].~~

16 (b) The lien does not extend to abutting sidewalks,
17 streets, and utilities that are public property.

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

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

24 SECTION 6. Section 53.023, Property Code, is amended to read
25 as follows:

26 Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures
27 payment for:

1 (1) the labor done or material furnished for the
2 construction, ~~or~~ repair, design, survey, or demolition; or

3 (2) the specially fabricated material, even if the
4 material has not been delivered or incorporated into the
5 construction or repair, less its fair salvage value[~~;~~].

6 ~~(3) the preparation of a plan or plat by an~~
7 ~~architect, engineer, or surveyor in accordance with Section~~
8 ~~53.021(c).]~~

9 SECTION 7. Section 53.026, Property Code, is amended to read
10 as follows:

11 Sec. 53.026. SHAM CONTRACT. (a) A person who furnishes
12 labors or materials, [~~specially fabricates materials, or furnishes~~
13 ~~labor or materials~~] under a direct contractual relationship with
14 a purported original contractor [~~another person~~] is considered to
15 be [~~in direct contractual relationship with the owner and has a~~
16 ~~lien as~~] an original contractor for purposes of perfecting a
17 mechanic's lien.[~~, if:~~

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

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

27 ~~(3) the owner contracted with the other person for~~

1 ~~the construction or repair of a house, building, or improvements~~
2 ~~and the contract was made without good faith intention of the~~
3 ~~parties that the other person was to perform the contract.~~

4 ~~(b) In this section, "owner" does not include a person~~
5 ~~who has or claims a security interest only.]~~

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

8 Sec. 53.052. FILING OF AFFIDAVIT. (a) ~~[Except as provided~~
9 ~~by Subsection (b)]~~ An original contractor claiming the lien must
10 file an affidavit with the county clerk:

11 (1) for projects other than residential construction
12 projects, on or before 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, on or before
16 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), [the] a
20 [person] subcontractor claiming the lien must file an affidavit
21 with the county clerk on or before ~~[of the county in which the~~
22 ~~property is located or into which the railroad extends not later~~
23 ~~than the]~~ 15th day of the fourth ~~[calendar]~~ month after the later
24 of: [day on which the indebtedness accrue]

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

27 (2) the month the subcontractor would normally have been

1 required to deliver the last of specially fabricated materials
2 that have not been actually delivered

3 (c) a subcontractor claiming the lien arising from a
4 residential construction project must file an affidavit with the
5 county clerk on or the 15th day of the third month after the later
6 of:

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

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

12 ~~[(b) A person claiming a lien arising from a residential~~
13 ~~construction project must file an affidavit with the county clerk~~
14 ~~of the county in which the property is located not later than the~~
15 ~~15th day of the third calendar month after the day on which the~~
16 ~~indebtedness accrues.]~~

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

22 (e) An affidavit under this chapter must be filed in the
23 county where the improvements are located. The county clerk shall
24 record the affidavit in records kept for that purpose and shall
25 index and cross-index the affidavit in the names of the claimant,
26 the original contractor, and the owner. Failure of the county
27 clerk to properly record or index a filed affidavit does not

1 invalidate the lien.

2 SECTION 9. Section 53.055, Property Code, is amended to read
3 as follows:

4 Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who
5 files an affidavit must send a copy of the affidavit [~~by registered~~
6 ~~or certified mail~~] to the owner or reputed owner at the owner's
7 last known business or residence address not later than the fifth
8 day after the date the affidavit is filed with the county clerk.

9 (b) If the person is not an original contractor, the
10 person must also send a copy of the affidavit to the original
11 contractor at the original contractor's last known business or
12 residence address within the same period.

13 SECTION 10. Section 53.056, Property Code, is amended to
14 read as follows:

15 Sec. 53.056. [~~DERIVATIVE~~] SUBCONTRACTOR CLAIMANT: NOTICE TO
16 OWNER AND [~~OR~~] ORIGINAL CONTRACTOR. (a) Except as provided in
17 Section 53.057 [~~, by Subchapter K, a claimant other than an original~~
18 ~~contractor~~] a subcontractor claimant must give the notice
19 prescribed by this section for the lien to be valid.

20 (b) For all unpaid labor or materials provided, the
21 subcontractor claimant must send a notice of claim for unpaid labor
22 or materials to the owner or reputed owner and the original
23 contractor. The notice must be sent: [~~(b) If the lien claim~~
24 ~~arises from a debt incurred by a subcontractor, the claimant must~~
25 ~~give to the original contractor written notice of the unpaid~~
26 ~~balance. The claimant must give the notice not later than the~~
27 ~~15th day of the second month following each month in which all or~~

1 ~~part of the claimant's labor was performed or material delivered.~~
2 ~~The claimant must give the same notice to the owner or reputed~~
3 ~~owner and the original contractor not later than the 15th day of~~
4 ~~the third month following each month in which all or part of the~~
5 ~~claimant's labor was performed or material or specially fabricated~~
6 ~~material was delivered.]~~

7 (1) For projects other than residential
8 construction projects, not later than the 15th day of the third
9 month following the month during which the labor or materials were
10 provided or the undelivered specially fabricated materials would
11 normally have been delivered; or

12 (2) for residential construction projects, not
13 later than the 15th day of the second month following the month
14 during which the labor or materials were provided or the
15 undelivered specially fabricated materials would normally have
16 been delivered;

17 ~~[(c) If the lien claim arises from a debt incurred by~~
18 ~~the original contractor, the claimant must give notice to the owner~~
19 ~~or reputed owner, with a copy to the original contractor, in~~
20 ~~accordance with Subsection (b).]~~

21 ~~(d) To authorize the owner to withhold funds under~~
22 ~~Subchapter D, the notice to the owner must state that if the claim~~
23 ~~remains unpaid, the owner may be personally liable and the owner's~~
24 ~~property may be subjected to a lien unless:~~

25 ~~(1) the owner withholds payments from the~~
26 ~~contractor for payment of the claim; or~~

27 ~~(2) the claim is otherwise paid or settled.~~

1 CLAIM FOR UNPAID [CONTRACTUAL] RETAINAGE [CLAIM]. (a) To the
2 extent that a claim for unpaid retainage is not included in whole
3 or in part in a notice provided under section 53.056, a[A]
4 subcontractor claimant whose contract provides for retainage must
5 [claimant may] give notice under this section for the lien for
6 unpaid retainage to be valid.

7 (b) The subcontractor claimant must send the notice of
8 claim for unpaid retainage to the owner or reputed owner and the
9 original contractor not later than the earlier of

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

12 (2) the 30th day after the date the original
13 contract is terminated or abandoned. [instead of or in addition
14 to notice under Section 53.056 or 53.252 if the claimant is to
15 labor, furnish labor or materials, or specially fabricate
16 materials, or has labored, furnished labor or materials or
17 specially fabricated materials, under an agreement with an
18 original contractor or a subcontractor providing for retainage.]

19 (c) The notice must be in substantially the following
20 form:

21 [(b) The claimant must give the owner or reputed owner
22 notice of contractual retainage not later than the earlier of:

23 (1) the 30th day after the date the claimant's
24 agreement providing for retainage is completed, terminated, or
25 abandoned; or

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

1 ~~(b 1) If an agreement for contractual retainage is with~~
2 ~~a subcontractor, the claimant must also give the notice of~~
3 ~~contractual retainage to the original contractor within the period~~
4 ~~prescribed by Subsection (b).~~

5 ~~(c) The notice must generally state the existence of a~~
6 ~~requirement for retainage and contain:~~

7 ~~(1) the name and address of the claimant; and~~

8 ~~(2) if the agreement is with a subcontractor, the~~
9 ~~name and address of the subcontractor.~~

10 ~~(d) The notice must be sent to the last known business~~
11 ~~or residence address of the owner or reputed owner or the original~~
12 ~~contractor, as applicable.~~

13 ~~(e) If a claimant gives notice under this section and~~
14 ~~Section 53.055 or, if the claim relates to a residential~~
15 ~~construction project, under this section and Section 53.252, the~~
16 ~~claimant is not required to give any other notice as to the~~
17 ~~retainage.~~

18 ~~(f) A claimant has a lien on, and the owner is~~
19 ~~personally liable to the claimant for, the retained funds under~~
20 ~~Subchapter E if the claimant:~~

21 ~~(1) gives notice in accordance with this section~~
22 ~~and:~~

23 ~~(A) complies with Subchapter E; or~~

24 ~~(B) files an affidavit claiming a lien not~~
25 ~~later than the earliest of:~~

26 ~~(i) the date required for filing an~~
27 ~~affidavit under Section 53.052;~~

1 ~~may withhold funds immediately on receipt of a copy of the~~
2 ~~claimant's affidavit prepared in accordance with Sections 53.052~~
3 ~~through 53.055.~~

4 ~~(d) If notice is sent under Section 53.058, the owner~~
5 ~~may withhold funds immediately on receipt of the notices sent under~~
6 ~~Subsection (e) of that section. If notice is sent as provided by~~
7 ~~Section 53.253(b), the owner may withhold funds immediately on~~
8 ~~receipt of the notice sent as required by Section 53.252.]~~

9 SECTION 13. Section 53.082, Property Code, is amended to
10 read as follows:

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

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

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

20 SECTION 14. Section 53.084, Property Code, is amended to
21 read as follows:

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

27 (b) If the owner has received ~~[the]~~ a notice~~[s]~~ required

1 by Section 53.056 or 53.057~~[ubchapter C or K]~~, if the lien has
2 been secured, and if the claim has been reduced to final judgment,
3 the owner is liable and the owner's property is subject to a claim
4 for any money paid to the original contractor after the owner was
5 authorized to withhold funds under this subchapter. The owner is
6 liable for that amount in addition to any amount for which he is
7 liable under Subchapter E.

8 SECTION 15. The heading to Subchapter E, Chapter 53, Property
9 Code is amended to read as follows:

10 SUBCHAPTER E. [~~REQUIRED RETAINAGE~~] FUNDS RESERVED FOR THE
11 BENEFIT OF LIEN CLAIMANTS

12 SECTION 16. Section 53.101, Property Code, is amended to
13 read as follows:

14 Sec. 53.101. FUNDS REQUIRED [~~RETAINAGE~~] TO BE RESERVED. (a)
15 During the progress of work under an original contract for which
16 a mechanic's lien may be claimed and for 30 days after the work
17 under such contract is completed, the owner shall [~~retain~~] reserve:

18 (1) 10 percent of the contract price of the work
19 to the owner; or

20 (2) 10 percent of the value of the work, measured
21 by the proportion that the work done bears to the work to be done,
22 using the contract price or, if there is no contract price, using
23 the reasonable value of the completed work.

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

26 SECTION 17. Section 53.102, Property Code, is amended to
27 read as follows:

1 Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS [~~BY~~
2 ~~RETAINAGE~~]. The [~~retained~~] reserved funds secure the payment of
3 artisans and mechanics who perform labor or service and the payment
4 of other persons who furnish material, material and labor, or
5 specially fabricated material for any contractor, subcontractor,
6 agent, or receiver in the performance of the work.

7 SECTION 18. Section 53.103, Property Code, is amended to
8 read as follows:

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

11 (1) sends the notices required by this chapter in
12 the time and manner required; and

13 (2) except as allowed by Section 53.0527(d~~f~~),
14 files an affidavit claiming a lien not later than the 30th day
15 after the earliest of the date:

16 (A) the work is completed;

17 (B) the original contract is terminated; or

18 (C) the original contractor abandons
19 performance under the original contract.

20 SECTION 19. Section 53.104, Property Code, is amended to
21 read as follows:

22 Sec. 53.104. PREFERENCES. (a) Individual artisans and
23 mechanics are entitled to a preference to the [~~retained~~] reserved
24 funds and shall share proportionately to the extent of their claims
25 for wages and fringe benefits earned.

26 (b) After payment of artisans and mechanics who are
27 entitled to a preference under Subsection (a), other participating

1 claimants share proportionately in the balance of the [~~retained~~
2 reserved funds.

3 SECTION 20. Section 53.105, Property Code, is amended to
4 read as follows:

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

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

16 SECTION 21. Section 53.106, Property Code, is amended to
17 read as follows:

18 Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may
19 file with the county clerk of the county in which the property is
20 located an affidavit of completion. The affidavit must contain:

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

22 (2) the name and address of the original
23 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

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

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

18 (c) A copy of the affidavit must also be sent to each
19 person who furnishes labor or materials for the property and who
20 furnishes the owner with a written request for the copy. The owner
21 must furnish the copy to the person not later than the date the
22 affidavit is filed or the 10th day after the date the request is
23 received, whichever is later.

24 (d) [~~Except as provided by this subsection, a~~] An
25 affidavit filed under this section [~~on or before the 10th day after~~
26 ~~the date of completion of the improvements~~] is prima facie evidence
27 of the date the work under the original contract is completed for

1 purposes of this [~~subchapter~~] chapter [~~and Section 53.057~~]. If
2 the affidavit is filed after the 10th day after the date of
3 completion, the date of completion for purposes of this subchapter
4 [~~and Section 53.057~~] is the date the affidavit is filed. This
5 subsection does not apply to a person to whom the affidavit was
6 not sent as required by this section.

7 SECTION 22. Section 53.107 (a) and (b), Property Code, are
8 amended to read as follows:

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

14 (1) given notice to the owner as provided by Section
15 53.056 or [~~7~~] 53.057 [~~., or 53.058~~]; or

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

18 (b) The notice must contain:

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

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

21 (3) a description, legally sufficient for
22 identification, of the real property on which the improvements are
23 located;

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

26 (5) a statement that the original contract has been
27 terminated or that performance under the contract has been

1 abandoned;

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

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

8 SECTION 23. Section 53.155, Property Code, is amended to
9 read as follows:

10 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,~~
11 ~~building,~~] improvement [~~, or any piece of railroad property~~] is
12 sold separately from the land, the officer making the sale shall
13 provide [~~place~~] the purchaser [~~in possession. The purchaser is~~
14 ~~entitled to~~] a reasonable time after the date of purchase within
15 which to remove and take possession of the purchased [~~property~~]
16 improvement.

17 SECTION 24. Section 53.157, Property Code, is amended to
18 read as follows:

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

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

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

27 (3) recording the original or certified copy of a final

1 judgment or decree of a court of competent jurisdiction providing
2 for the discharge;

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

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

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

11 SECTION 25. Section 53.158, Property Code, is amended to
12 read as follows:

13 Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. (a)
14 Except as provided by Subsection (b), suit must be brought to
15 foreclose the lien within [~~two~~] one years after the last day a
16 claimant may file the lien affidavit under Section 53.052 [~~or~~
17 ~~within one year after completion, termination, or abandonment of~~
18 ~~the work under the original contract under which the lien is~~
19 ~~claimed, whichever is later~~].

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

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

8 (c) Notwithstanding Section 16.069, Civil Practice and
9 Remedies Code, or any other law, if suit is pursued solely to
10 discharge a lien because limitations have expired to bring a lien
11 foreclosure suit, the lien claimant's rights to pursue a suit to
12 foreclose a lien are not revived.

13 SECTION 26. Section 53.160(b)(1) and (c), Property Code, are
14 amended to read as follows:

15 (b) The grounds for objecting to the validity or
16 enforceability of the claim or lien for purposes of the motion are
17 limited to the following:

18 (1) notice of claim was not timely furnished to
19 the owner or original contractor as required by Section 53.056 or
20 [~~7 53.057, 53.058, 53.252, or 53.253~~];

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

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

25 (4) the deadlines for perfecting a lien claim for
26 retainage under this chapter have expired and the owner complied
27 with the requirements of Section 53.101 and paid the retainage and

1 all other funds owed to the original contractor before:

2 (A) the claimant perfected the lien claim;

3 and

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

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

10 (6) when the lien affidavit was filed on homestead
11 property:

12 (A) no contract was executed or filed as
13 required by Section 53.254;

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

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

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

20 (c) The claimant is not required to file a response.
21 The claimant and any other party that has appeared in the
22 proceeding must be notified by at least [~~21~~]30 days before the
23 date of the hearing on the motion. A motion may not be heard
24 before the [~~21st~~] 30th day after the date the claimant answers or
25 appears in the proceeding. The claimant will be allowed expedited
26 discovery regarding information relevant to the issues listed in
27 subsection (b).

1 SECTION 27. Section 53.173(c), Property Code, is amended to
2 read as follows:

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

8 SECTION 28. Section 53.205(a), Property Code, is amended to
9 read as follows:

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

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

14 (2) perfected in the manner prescribed by Section
15 53.206.

16 SECTION 29. Section 53.206, Property Code, is amended to
17 read as follows:

18 Sec. 53.206. PERFECTION OF CLAIM. (a) To perfect a claim
19 against a bond in a manner other than that prescribed by Subchapter
20 C [~~or K~~] for fixing a lien, a person must [~~+~~

21 ~~(1)~~] give notice under Sections 53.056 and 53.057
22 to the original contractor and surety on the bond, except as
23 otherwise provided in subsection (b). [~~all applicable notices under~~
24 ~~the appropriate subchapter; and~~

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

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

3 ~~(1)] give notice to the surety under Section 53.057~~
4 if [~~, unless~~] the claimant has a direct contractual relationship
5 with the original contractor [~~and the agreed retainage is in~~
6 ~~excess of 10 percent of the contract.~~;

7 ~~(2) give notice to the surety under Section~~
8 ~~53.058(b) or, if the claim relates to a residential construction~~
9 ~~project, under Section 53.253(e); or~~

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

11 (c) A claimant that provides the notices described
12 herein need not file an affidavit claiming a mechanic's lien in
13 order to perfect its claim under the bond. [~~For the claim to be~~
14 ~~valid, a person must give notice in the time and manner required~~
15 ~~by this section, but the content of the notices need only provide~~
16 ~~fair notice of the amount and the nature of the claim asserted.]~~

17 (d) A person satisfies the requirements of this section
18 relating to providing notice to the surety if the person mails the
19 notice by certified ~~or registered~~ mail to the surety:

20 (1) at the address stated on the bond or on an
21 attachment to the bond;

22 (2) at the address on file with the Texas
23 Department of Insurance; or

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

25 SECTION 30. Section 53.207(a), Property Code, is amended to
26 read as follows:

27 (a) If the owner receives any of the notices or a lien is

1 fixed under this chapter [~~Subchapter C or K~~], the owner shall mail
2 to the surety on the bond a copy of all notices received.

3 SECTION 31. Section 53.208(a), Property Code, is amended to
4 read as follows:

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

8 SECTION 32. Section 53.232, Property Code, is amended to
9 read as follows:

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

13 (1) the officials of the state, county, town, or
14 municipality whose duty it is to pay the contractor; and

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

17 SECTION 33. Section 53.238, Property Code, is amended to
18 read as follows:

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

23 SECTION 34. The heading to Section 53.254, Property Code, is
24 amended to read as follows:

25 Sec. 53.254. CONTRACTUAL REQUIREMENTS TO LIEN A HOMESTEAD.

26 SECTION 35. Section 53.254(g), Property Code, is amended to
27 read as follows:

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

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

8 (1) after receiving notice of the unpaid claim
9 from the claimant, you fail to withhold payment to your contractor
10 that is sufficient to cover the unpaid claim until the dispute is
11 resolved; or

12 (2) during construction and for 30 days after
13 completion of your contractor's work [~~construction~~], you fail to
14 [~~retain~~] reserve 10 percent of the contract price or 10 percent of
15 the value of the work performed by your contractor.

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

26 SECTION 36. Section 53.255(b), Property Code, is amended to
27 read as follows:

1 (b) The disclosure statement must read substantially similar
2 to the following:

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

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

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

17 "GET IT IN WRITING. Make sure that you have a written
18 agreement with your contractor that includes: (1) a description of
19 the work the contractor is to perform; (2) the required or
20 estimated time for completion of the work; (3) the cost of the
21 work or how the cost will be determined; and (4) the procedure and
22 method of payment, including provisions for statutory [~~retainer~~]
23 reservation of funds and conditions for final payment. If your
24 contractor made a promise, warranty, or representation to you
25 concerning the work the contractor is to perform, make sure that
26 promise, warranty, or representation is specified in the written
27 agreement. An oral promise that is not included in the written

1 agreement may not be enforceable under Texas law.

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

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

22 "MONITOR THE WORK. Lenders and governmental authorities may
23 inspect the work in progress from time to time for their own
24 purposes. These inspections are not intended as quality control
25 inspections. Quality control is a matter for you and your
26 contractor. To ensure that your home is being constructed in
27 accordance with your wishes and specifications, you should inspect

1 the work yourself or have your own independent inspector review
2 the work in progress.

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

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

19 (1) If you receive a written notice from a subcontractor
20 or supplier, you should withhold payment from your contractor for
21 the amount of the claim stated in the notice until the dispute
22 between your contractor and the subcontractor or supplier is
23 resolved. If your lender is disbursing money directly to your
24 contractor, you should immediately provide a copy of the notice to
25 your lender and instruct the lender to withhold payment in the
26 amount of the claim stated in the notice. If you continue to pay
27 the contractor after receiving the written notice without

1 withholding the amount of the claim, you may be liable and your
2 property may be subject to a lien for the amount you failed to
3 withhold.

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

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

23 "SOME CLAIMS MAY NOT BE VALID. When you receive a written
24 notice of a claim or when a mechanic's lien affidavit is filed on
25 your property, you should know your legal rights and
26 responsibilities regarding the claim. Not all claims are valid.
27 A notice of a claim by a subcontractor or supplier is required to

1 be sent, and the mechanic's lien affidavit is required to be filed,
2 within strict time periods. The notice and the affidavit must
3 contain certain information. All claimants may not fully comply
4 with the legal requirements to collect on a claim. If you have
5 paid the contractor in full before receiving a notice of a claim
6 and have [~~fully complied with the law regarding statutory~~
7 ~~retainage~~] withheld the ten percent of the price or value of work,
8 you may not be liable for that claim. Accordingly, you should
9 consult your attorney when you receive a written notice of a claim
10 to determine the true extent of your liability or potential
11 liability for that claim.

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

25 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
26 a title insurance policy to insure that the title to your property
27 and the existing improvements on your property are free from liens

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

9 (c) The failure of a contractor to comply with this
10 section does not invalidate a lien under this chapter, a contract
11 lien, or a deed of trust.

12 SECTION 37. Section 53.281(b), Property Code, is amended to
13 read as follows:

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

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

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

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

23 SECTION 38. The following provisions of the Property Code
24 are repealed:

25 (1) Section 53.053;

26 (2) Section 53.058;

27 (3) Section 53.083;

1 (4) Section 53.252; and

2 (5) Section 53.253.

3 SECTION 39. The changes in law made by this Act apply only
4 to an original contract entered into on or after the effective
5 date of this Act. An original contract entered into before the
6 effective date of this Act is governed by the law as it existed
7 immediately before the effective date of this Act, and that law is
8 continued in effect for that purpose.

9 SECTION 40. This Act takes effect September 1, 2021.