AN ACT

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

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

SECTION 1. Section 53.021(d), Property Code, is amended to read as follows:

(d) A person who provides labor, plant material, or other supplies for the installation of landscaping for a house, building, or improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation, under or by virtue of a written contract with the owner or the owner's agent, contractor, subcontractor, trustee, or receiver has a lien on the property.

SECTION 2. Section 53.085(c), Property Code, is amended to read as follows:

(c) The affidavit may include:

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

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

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reliance on the affidavit; and

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

SECTION 3. Chapter 53, Property Code, is amended by adding Subchapter L to read as follows:

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

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

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

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

(2) the waiver and release is signed by the claimant or the claimant's authorized agent and notarized; and

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

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to waive, release, or otherwise adversely affect a lien or payment bond claim is not enforceable and does not create an estoppel or impairment of a lien or payment bond claim unless:

(1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;
the claimant has actually received payment in good
and sufficient funds in full for the lien or payment bond claim; or

(3) the statement is:

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

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

(b) The filing of a lien rendered unenforceable by a lien
waiver under Subsection (a)(3) does not violate Section 12.002,
Civil Practice and Remedies Code, unless:

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

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

(c) Subsection (a)(3) does not apply to a person who
supplies only material, and not labor, for the construction,
remodel, or repair of a single-family house, townhouse, or duplex
or for land development related to a single-family house,
townhouse, or duplex.

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

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT
BOND CLAIM. (a) A waiver and release given by a claimant or
potential claimant is unenforceable unless it substantially
complies with the applicable form described by Subsections (b)-(e).

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

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project ___________________
"Job No. ___________________

"On receipt by the signer of this document of a check from
________________ (maker of check) in the sum of $__________ payable
to ____________________ (payee or payees of check) and when the
check has been properly endorsed and has been paid by the bank on
which it is drawn, this document becomes effective to release any
mechanic's lien right, any right arising from a payment bond that
complies with a state or federal statute, any common law payment
bond right, any claim for payment, and any rights under any similar
ordinance, rule, or statute related to claim or payment rights for
persons in the signer's position that the signer has on the
property of ______________ (owner) located at __________________ (location) to the following extent: ______________ (job description).

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

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

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

"Date ____________________________
_________________________________ (Company name)
"By ______________________________ (Signature)
"_________________________________ (Title)"

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

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

"NOTICE:

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

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project ___________________

"Job No. ___________________

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

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

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

"Date ____________________________

"_________________________________ (Company name)

"By ______________________________ (Signature)

"_________________________________ (Title)"

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

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project_____________________

"Job No.____________________

"On receipt by the signer of this document of a check from
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payable to _____________________ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____________________ (owner) located at ________________________ (location) to the following extent: ________________________ (job description).

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

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

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

"Date____________________________

"______________________________ (Company name)

"By ______________________________ (Signature)
(e) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

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

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

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project __________________

"Job No. __________________

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to __________________ (person with whom signer contracted) on the property of __________________ (owner) located at __________________ (location) to the following extent: __________________ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising
from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

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

"Date__________________________
"_________________________________ (Company name)
"By______________________________ (Signature)
"_________________________________ (Title)"

Sec. 53.285. ATTEMPTED COMPLIANCE. (a) A waiver or release shall be construed to comply with this subchapter and is enforceable in the same manner as a waiver and release under this subchapter if the waiver or release:

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

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

(b) Any provision in any waiver or release furnished in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this subchapter shall be disregarded and the provisions of this subchapter shall be read into that waiver or release.
Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

(1) an accord and satisfaction of an identified dispute;

(2) an agreement concerning an action pending in any court or arbitration proceeding; or

(3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

SECTION 4. Section 53.021(d), Property Code, as amended by this Act, applies only to a lien claim arising under or by virtue of a contract entered into on or after the effective date of this Act. A lien claim arising under or by virtue of a contract entered into before the effective date of this Act is governed by the law applicable to the claim immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. Section 53.085(c), Property Code, as amended by this Act, and Subchapter L, Chapter 53, Property Code, as added by this Act, apply only to a contract executed on or after January 1, 2012. A contract executed before January 1, 2012, is covered by the law applicable to the contract immediately before the effective date.
date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect January 1, 2012.
H.B. No. 1456

President of the Senate Speaker of the House

I certify that H.B. No. 1456 was passed by the House on May 5, 2011, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

______________________________
Chief Clerk of the House

I certify that H.B. No. 1456 was passed by the Senate on May 24, 2011, by the following vote: Yeas 31, Nays 0.

______________________________
Secretary of the Senate

APPROVED: ______________________

Date

______________________________
Governor