

The Senate Special Judiciary Committee offered the following substitute to SB 362:

A BILL TO BE ENTITLED
AN ACT

To amend Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to liens of mechanics and materialmen, so as to revise provisions stating that a mechanic or materialman who has executed a waiver and release upon payment shall be presumed to have received payment if the mechanic or materialman does not file an affidavit of nonpayment within a certain period of time; to provide that the affidavit of nonpayment shall be sent to the owner or contractor rather than filed; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to liens of mechanics and materialmen, is amended by revising Code Section 44-14-366, relating to prohibited and permitted waivers and releases of liens, as follows:

"44-14-366.

(a) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services, or materials. Any purported waiver or release of lien or bond claim or of this Code section executed or made in advance of furnishing of labor, services, or materials is null, void, and unenforceable.

(b) No oral or written statement by the claimant purporting to waive, release, impair, or otherwise adversely affect a lien or bond claim is enforceable or creates an estoppel or impairment of claim of lien or claim upon a bond unless:

(1) It is pursuant to a waiver and release form duly executed by claimant prescribed below; and

(2) The claimant has received payment for the claim as set forth in subsection (f) of this Code section.

(c) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the following form, in boldface capital letters in at least 12 point font and the priority of such claimant's lien rights, except as to retention, shall upon such payment thereafter run from the day after the date specified in such Interim Waiver and Release upon Payment form:

**'INTERIM WAIVER AND RELEASE
UPON PAYMENT**

**STATE OF GEORGIA
COUNTY OF _____**

**THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN
EMPLOYED BY _____ (NAME OF CONTRACTOR) TO
FURNISH _____ (DESCRIBE MATERIALS AND/OR
LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS
_____ (TITLE OF THE PROJECT OR BUILDING) WHICH
IS LOCATED IN THE CITY OF _____, COUNTY OF
_____, AND IS OWNED BY _____ (NAME OF
OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE
MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE
LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS
OF THE PROJECT.)**

**UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC
AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS
OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED
PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL
BOND THROUGH THE DATE OF _____ (DATE) AND
EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR
MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE
UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID
BUILDING OR PREMISES.**

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, ____.

_____ (SEAL)

(WITNESS)

(ADDRESS)

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU ~~FILE~~ EITHER SEND AN AFFIDAVIT OF NONPAYMENT OR FILE A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.'

Provided, however, that the failure to correctly complete any of the blank spaces in the above form shall not invalidate said form so long as the subject matter of said release may reasonably be determined.

(d) When a claimant is requested to execute a waiver and release in exchange for or in order to induce making of final payment, the waiver and release shall substantially follow the following form in boldface capital letters in at least 12 point font:

**'WAIVER AND RELEASE
UPON FINAL PAYMENT**

STATE OF GEORGIA

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF

_____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

GIVEN UNDER HAND AND SEAL THIS _____ DAY OF _____, ____.

_____ (SEAL)

(WITNESS)

(ADDRESS)

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU ~~FILE~~ EITHER SEND AN AFFIDAVIT OF NONPAYMENT OR FILE A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.'

Provided, however, that the failure to correctly complete any of the blank spaces in the above form shall not invalidate said form so long as the subject matter of said release may reasonably be determined.

(e) Nothing contained in this Code section shall affect:

(1) The enforceability of any subordination of lien rights by a potential lien claimant to the rights of any other party which may have or acquire an interest in all or any part of the real estate, factories, railroads, or other property for which the potential lien claimant has furnished labor, services, or material, even though such subordination is entered into in advance of furnishing labor, services, or material and even though the claimant has not actually received payment in full for its claim;

(2) The enforceability of any waiver of lien rights given in connection with the settlement of a bona fide dispute concerning the amount due the lien claimant for labor, services, or material which have already been furnished;

(3) The validity of a cancellation or release of a recorded claim of lien or preliminary notice of lien rights; or

(4) The provisions of paragraph (2) of subsection (a) of Code Section 44-14-361.2, paragraphs (3) and (4) of subsection (a) and subsections (b) and (c) of Code Section 44-14-361.4, or Code Section 44-14-364.

(f)(1) When a waiver and release provided for in this Code section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(2) Such amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(A) Actual receipt of funds;

(B) Execution by the claimant of a separate written acknowledgment of payment in full; or

(C) Sixty days after the date of the execution of the waiver and release, unless prior to the expiration of said 60 day period the claimant files a claim of lien or ~~files in the county in which the property is located~~ sends an affidavit of nonpayment, by registered or certified mail or statutory overnight delivery, to the owner of the property or, if the owner's address cannot be found, to the contractor as agent for the owner. Whenever the owner of the property is an entity on file with the Secretary of State's Corporations Division, sending a copy of the affidavit to the company's address or the registered agent's address on file with the Secretary of State shall satisfy this requirement. If the filing party is not in privity of contract with the property owner and a notice of commencement is filed for the improvement on the property for which the filing party's labor, services, or materials were furnished, a copy of the affidavit shall also be sent by registered or certified mail or statutory overnight delivery to the contractor at the address shown on the notice of commencement. Such affidavit of nonpayment shall be in using substantially the following form in boldface capital letters in at least 12 point font:

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'AFFIDAVIT OF NONPAYMENT UNDER
O.C.G.A. SECTION 44-14-366

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STATE OF GEORGIA
COUNTY OF _____
THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN
EMPLOYED BY _____ (NAME OF
CONTRACTOR) TO FURNISH _____ (DESCRIBE
MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF
IMPROVEMENTS KNOWN AS _____ (TITLE OF THE
PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF
_____, COUNTY OF _____, AND IS OWNED BY
_____ (NAME OF OWNER) AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

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(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS
WERE MADE BY USING EITHER A METES AND BOUNDS
DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT
NUMBER, OR STREET ADDRESS OF THE PROJECT.)
PURSUANT TO O.C.G.A. SECTION 44-14-366 THE UNDERSIGNED
EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS
PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN
SAID WAIVER AND RELEASE (\$_____) HAS NOT BEEN PAID, AND THE
UNDERSIGNED HEREBY GIVES NOTICE OF SUCH NONPAYMENT.
THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE
UNDERSIGNED, THIS _____ DAY OF _____, ____.

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_____(SEAL)
CLAIMANT'S SIGNATURE

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SWORN TO AND EXECUTED
IN THE PRESENCE OF:

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WITNESS

NOTARY PUBLIC

~~WITHIN SEVEN DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT~~
~~THE PRESCRIBED TIME, THE FILING PARTY CLAIMANT SHALL SEND~~
~~A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR~~
~~STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE~~
~~PROPERTY OR, IF THE OWNER'S ADDRESS CANNOT BE FOUND, TO THE~~
~~CONTRACTOR AS AGENT FOR THE OWNER. IF THE FILING PARTY IS~~
~~NOT IN PRIVITY OF CONTRACT WITH THE PROPERTY OWNER AND A~~
~~NOTICE OF COMMENCEMENT IS FILED FOR THE IMPROVEMENT ON~~
~~THE PROPERTY FOR WHICH THE FILING PARTY'S LABOR, SERVICES,~~
~~OR MATERIALS WERE FURNISHED, A COPY OF THE AFFIDAVIT SHALL~~
~~BE SENT TO THE CONTRACTOR AT THE ADDRESS SHOWN ON THE~~
~~NOTICE OF COMMENCEMENT. WHENEVER THE OWNER OF THE~~
~~PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S~~
~~CORPORATIONS DIVISION, SENDING A COPY OF THE LIEN TO THE~~
~~COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON~~
~~FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED~~
~~SUFFICIENT.'~~

(3) A claimant who is paid, in full, the amount set forth in the waiver and release form after ~~filing~~ sending an affidavit of nonpayment shall upon request execute ~~in recordable form~~ an affidavit swearing that payment in full has been received which shall be sent in the same manner and to the same parties as the affidavit of nonpayment. Upon ~~recordation~~ sending thereof ~~in the county in which the Affidavit of Nonpayment was recorded~~, the affidavit of nonpayment to which it relates shall be deemed void.

(4) Nothing in this Code section shall shorten the time within which to file a claim of lien.

(5) A waiver and release provided in this Code section shall be suspended upon ~~filing~~ the timely sending of an affidavit of nonpayment until payment in full has been received.

(6) The claimant may rely upon the information contained in the waiver and release form when completing for ~~filing~~ sending the affidavit of nonpayment or claim of lien."

SECTION 2.

This Act shall become effective on July 1, 2010, and shall apply with respect to any waiver and release upon payment executed on or after that effective date.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.