

Senate Bill 362

By: Senators Weber of the 40th and Seabaugh of the 28th

A BILL TO BE ENTITLED
AN ACT

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

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
11 relating to liens of mechanics and materialmen, is amended by revising Code Section
12 44-14-366, relating to prohibited and permitted waivers and releases of liens, as follows:

13 "44-14-366.

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

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

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

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

25 (c) When a claimant is requested to execute a waiver and release in exchange for or in
26 order to induce payment other than final payment, the waiver and release shall substantially

27 follow the following form, in boldface capital letters in at least 12 point font, and the
28 priority of such claimant's lien rights, except as to retention, shall upon such payment
29 thereafter run from the day after the date specified in such Interim Waiver and Release
30 upon Payment form:

31 **'INTERIM WAIVER AND RELEASE**
32 **UPON PAYMENT**

33 **STATE OF GEORGIA**

34 **COUNTY OF _____**

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

43 _____
44 _____
45 _____

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

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

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

61 _____ (SEAL)

62 _____

63 _____

64 (WITNESS)

65 _____

66 (ADDRESS)

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

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

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

82 **'WAIVER AND RELEASE**
83 **UPON FINAL PAYMENT**

84 **STATE OF GEORGIA**
85 **COUNTY OF _____**

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

94 _____
95 _____

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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.)**

**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 AN AFFIDAVIT OF NONPAYMENT OR 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

132 in advance of furnishing labor, services, or material and even though the claimant has not
133 actually received payment in full for its claim;

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

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

139 (4) The provisions of paragraph (2) of subsection (a) of Code Section 44-14-361.2,
140 paragraphs (3) and (4) of subsection (a) and subsections (b) and (c) of Code Section
141 44-14-361.4, or Code Section 44-14-364.

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

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

146 (A) Actual receipt of funds; or

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

149 ~~(C) Sixty days after the date of the execution of the waiver and release, unless prior to~~
150 ~~the expiration of said 60 day period the claimant files a claim of lien or files in the~~
151 ~~county in which the property is located an affidavit of nonpayment, using substantially~~
152 ~~the following form in boldface capital letters in at least 12 point font:~~

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

155 ~~STATE OF GEORGIA~~

156 ~~COUNTY OF _____~~

157 ~~THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN~~

158 ~~EMPLOYED BY _____ (NAME OF~~

159 ~~CONTRACTOR) TO FURNISH _____ (DESCRIBE~~

160 ~~MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF~~

161 ~~IMPROVEMENTS KNOWN AS _____ (TITLE OF THE~~

162 ~~PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF~~

163 ~~_____, COUNTY OF _____, AND IS OWNED BY~~

164 ~~_____ (NAME OF OWNER) AND MORE~~

165 ~~PARTICULARLY DESCRIBED AS FOLLOWS:~~

166 _____
 167 _____
 168 _____

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

173 ~~PURSUANT TO O.C.G.A. SECTION 44-14-366 THE UNDERSIGNED~~
 174 ~~EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS~~
 175 ~~PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN~~
 176 ~~SAID WAIVER AND RELEASE (\$ _____) HAS NOT BEEN PAID, AND THE~~
 177 ~~UNDERSIGNED HEREBY GIVES NOTICE OF SUCH NONPAYMENT.~~
 178 ~~THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE~~
 179 ~~UNDERSIGNED, THIS _____ DAY OF _____, _____.~~

180 _____ (SEAL)
 181 CLAIMANT'S SIGNATURE

182 ~~SWORN TO AND EXECUTED~~
 183 ~~IN THE PRESENCE OF:~~

184 _____
 185 WITNESS

186 _____
 187 NOTARY PUBLIC

188 ~~WITHIN SEVEN DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT,~~
 189 ~~THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY~~
 190 ~~REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT~~
 191 ~~DELIVERY TO THE OWNER OF THE PROPERTY. IF THE FILING PARTY~~
 192 ~~IS NOT IN PRIVITY OF CONTRACT WITH THE PROPERTY OWNER AND~~
 193 ~~A NOTICE OF COMMENCEMENT IS FILED FOR THE IMPROVEMENT ON~~
 194 ~~THE PROPERTY FOR WHICH THE FILING PARTY'S LABOR, SERVICES,~~
 195 ~~OR MATERIALS WERE FURNISHED, A COPY OF THE AFFIDAVIT SHALL~~
 196 ~~BE SENT TO THE CONTRACTOR AT THE ADDRESS SHOWN ON THE~~
 197 ~~NOTICE OF COMMENCEMENT. WHENEVER THE OWNER OF THE~~
 198 ~~PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S~~
 199 ~~CORPORATIONS DIVISION, SENDING A COPY OF THE LIEN TO THE~~
 200 ~~COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON~~

201 ~~FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED~~
 202 ~~SUFFICIENT.~~

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

208 ~~(4)~~(3) Nothing in this Code section shall shorten the time within which to file a claim of
 209 lien.

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

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

214 **SECTION 2.**

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

217 **SECTION 3.**

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