

By: \_\_\_\_\_ .B. No. \_\_\_\_\_

Substitute the following for \_\_\_\_B. No. \_\_\_\_\_:

By: \_\_\_\_\_ C.S.\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT

2 relating to lender notice to contractors regarding a construction  
3 loan or financing agreement for the improvement of real property  
4 and related procedures for suspending contractors' and  
5 subcontractors' performance.

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

7 SECTION 1. Chapter 28, Property Code, is amended by adding  
8 Section 28.0091 to read as follows:

9 Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS;  
10 SUSPENSION OF PERFORMANCE PENDING CURE. (a) This section applies  
11 only to a lender that provides financing through a construction  
12 loan or under a financing agreement for an improvement to real  
13 property for which the real property or improvement is collateral.

14 (b) For an improvement to real property for which financing  
15 is provided as described by Subsection (a), not later than the 30th  
16 day after the date a contractor begins work to improve the real  
17 property or otherwise provides construction services for the  
18 improvement, the contractor shall provide to the lender the  
19 contractor's name and address and the name of the person to whom any  
20 notice under this section should be sent.

21 (c) Except as provided by Subsection (e), not later than the  
22 seventh day after the date a lender takes an action for which notice  
23 is required by this subsection in response to a particular event  
24 described by this subsection, the lender must give written notice

1 of the action, including the date of the action, to the property  
2 owner and to each contractor providing labor, materials, equipment,  
3 or services for the improvement. Notice under this subsection is  
4 required if the lender:

5 (1) exercises a default remedy provided by statute or  
6 the loan or financing agreement;

7 (2) gives a notice of default to the borrower; or

8 (3) fails to timely fund, wholly or partly, a payment  
9 request submitted in proper form by the borrower or a contractor.

10 (d) Notice to a contractor under Subsection (c) must be sent  
11 by certified mail to the person identified under Subsection (b) and  
12 state that the lender has provided notice to the owner under  
13 Subsection (c) and that the contractor is required by this section  
14 to provide a copy of the notice to each of the contractor's  
15 subcontractors for the purpose of notifying each subcontractor of  
16 the subcontractor's right under this section to suspend  
17 contractually required performance without penalty or liability  
18 for damages until the default is cured or the requested payment is  
19 fully or substantially funded, as applicable.

20 (e) A lender is not required to give notice under Subsection  
21 (c) with respect to an event described by that subsection if, on or  
22 before the seventh day after the date of the occurrence of the  
23 event:

24 (1) the default is cured; or

25 (2) the payment request is fully or substantially  
26 funded.

27 (f) Not later than the third day after the date a contractor

1 receives a notice from a lender under Subsection (c), the  
2 contractor shall give a copy of the written notice to each of the  
3 contractor's subcontractors of the action taken by the lender.

4 (g) Not later than the third day after the date a  
5 subcontractor receives a notice from a contractor under Subsection  
6 (f), the subcontractor shall give a copy of the notice to each of  
7 the subcontractor's subcontractors.

8 (h) If the default for which notice is required by  
9 Subsection (c) is cured or the requested payment described by  
10 Subsection (c) is fully or substantially funded, the lender shall,  
11 not later than the third day after the date the default is cured or  
12 the payment is funded, as applicable, give written notice of the  
13 cure or payment to each contractor.

14 (i) Not later than the third day after the date a contractor  
15 receives a notice of cure or payment under Subsection (h), the  
16 contractor shall give written notice of the cure or payment to each  
17 of the contractor's subcontractors.

18 (j) Not later than the third day after the date a  
19 subcontractor receives a notice of cure or payment under Subsection  
20 (i), the subcontractor shall give written notice of the cure or  
21 payment to each of the subcontractor's subcontractors.

22 (k) After the 10th day after the earliest date on which the  
23 lender takes an action for which notice is required by Subsection  
24 (c), a contractor or subcontractor may suspend contractually  
25 required performance without penalty or liability for damages on  
26 giving the owner written notice of the contractor's or  
27 subcontractor's intent to suspend performance and, if the notice is

1 given by a subcontractor, to the subcontractor's contractor. The  
2 contractor or subcontractor may suspend performance under this  
3 subsection until:

4 (1) the contractor and subcontractor receive a notice  
5 of cure or payment under Subsection (h), (i), or (j); or

6 (2) the lender or the borrower provides the contractor  
7 and subcontractor a written payment guarantee acceptable to the  
8 contractor and subcontractor for all labor, materials, equipment,  
9 or services provided or to be provided for the improvement to real  
10 property after the action is taken.

11 (1) A contractor or subcontractor that has suspended  
12 performance in accordance with this section is entitled to a  
13 reasonable period without penalty to remobilize and recommence  
14 performance after receipt of a notice or payment guarantee  
15 described by Subsection (k).

16 (m) A subcontractor is a third-party beneficiary of a  
17 lender's obligations under Subsection (c) with equal standing to a  
18 contractor to enforce remedies.

19 SECTION 2. The change in law made by this Act applies only  
20 to a construction loan or financing agreement entered into on or  
21 after the effective date of this Act. A construction loan or  
22 financing agreement entered into before the effective date of this  
23 Act is governed by the law in effect immediately before the  
24 effective date of this Act, and that law is continued in effect for  
25 that purpose.

26 SECTION 3. This Act takes effect September 1, 2011.