



Sen. Elgie R. Sims, Jr.

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10300HB4660sam001

LRB103 38254 LNS 73513 a

1 AMENDMENT TO HOUSE BILL 4660

2 AMENDMENT NO. _____. Amend House Bill 4660 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Mechanics Lien Act is amended by changing
5 Sections 5, 21, and 24 as follows:

6 (770 ILCS 60/5) (from Ch. 82, par. 5)

7 Sec. 5. Statement of contractor and ~~persons furnishing~~
8 ~~labor, services, material, fixtures, apparatus or machinery,~~
9 ~~forms or form work~~ notice to owner of owner-occupied
10 single-family residence ~~waiver; size of type.~~

11 (a) It shall be the duty of the contractor to give the
12 owner, and the duty of the owner to require of the contractor,
13 before the owner or the owner's ~~his~~ agent, architect, or
14 superintendent shall pay or cause to be paid to the contractor
15 or to the contractor's ~~his~~ order any moneys or other
16 consideration due or to become due to the contractor, or make

1 or cause to be made to the contractor any advancement of any
2 moneys or any other consideration, a statement in writing,
3 under oath or verified by affidavit, of the names and
4 addresses of all parties furnishing labor, services, material,
5 fixtures, apparatus or machinery, or forms or form work and of
6 the amounts due or to become due to each. Merchants and dealers
7 in materials only shall not be required to make statements
8 required in this Section.

9 (b) The following shall apply to an owner-occupied
10 single-family residence:

11 (i) Each contractor shall provide the owner or the
12 owner's ~~his or her~~ agent, either as part of the contract or
13 as a separate printed statement given before the owner or
14 the owner's ~~his~~ agent makes the first payment for labor,
15 materials, fixtures, or apparatus or machinery, the
16 following notice in at least 10 point boldface type:

17 "THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A
18 SWORN STATEMENT OF PERSONS FURNISHING LABOR, SERVICES,
19 MATERIAL, FIXTURES, APPARATUS OR MACHINERY, OR FORMS OR
20 FORM WORK BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO
21 THE CONTRACTOR."

22 If the owners of the property are persons living
23 together, the aforesaid statement is conclusively presumed
24 given to each such owners if given to one of them.

25 (ii) (Blank). ~~Each subcontractor who has furnished, or~~
26 ~~is furnishing, labor, services, material, fixtures,~~

1 ~~apparatus or machinery, forms or form work in order to~~
2 ~~preserve his lien, shall notify the occupant either~~
3 ~~personally or by certified mail, return receipt requested,~~
4 ~~addressed to the occupant or his agent at the residence~~
5 ~~within 60 days from his first furnishing labor, services,~~
6 ~~material, fixtures, apparatus or machinery, forms or form~~
7 ~~work, of his agreement to do so.~~

8 ~~The notice shall contain the name and address of the~~
9 ~~subcontractor or material man, the date he started to work~~
10 ~~or to deliver materials, the type of work done and to be~~
11 ~~done or the type of labor, services, material, fixtures,~~
12 ~~apparatus or machinery, forms or form work delivered and~~
13 ~~to be delivered, and the name of the contractor requesting~~
14 ~~the work. The notice shall also contain the following~~
15 ~~warning:~~

16 ~~"NOTICE TO OWNER~~

17 ~~The subcontractor providing this notice has performed~~
18 ~~work for or delivered material to your home improvement~~
19 ~~contractor. These services or materials are being used in~~
20 ~~the improvements to your residence and entitle the~~
21 ~~subcontractor to file a lien against your residence if the~~
22 ~~labor, services, material, fixtures, apparatus or~~
23 ~~machinery, forms or form work are not paid for by your home~~
24 ~~improvement contractor. A lien waiver will be provided to~~
25 ~~your contractor when the subcontractor is paid, and you~~
26 ~~are urged to request this waiver from your contractor when~~

1 ~~paying for your home improvements."~~

2 (iii) (Blank). ~~The statement and the notices required~~
3 ~~by subdivisions (b) (i) and (b) (ii) of this Section shall~~
4 ~~be in at least 10 point boldface type. For purposes of this~~
5 ~~Section, notice by certified mail is considered served at~~
6 ~~the time of its mailing. Any notice given pursuant to~~
7 ~~subdivision (b) (ii) of this Section after 60 days by the~~
8 ~~subcontractor, however, shall preserve his or her lien,~~
9 ~~but only to the extent that the owner has not been~~
10 ~~prejudiced by payments made before receipt of the notice.~~

11 (Source: P.A. 94-627, eff. 1-1-06.)

12 (770 ILCS 60/21) (from Ch. 82, par. 21)

13 Sec. 21. Subcontractor ~~Sub-contractor~~ defined; lien of
14 subcontractor ~~sub-contractor~~; notice; size of type; service of
15 notice; amount of lien; default by contractor.

16 (a) Subject to the provisions of Section 5, every
17 mechanic, worker, or other person who shall furnish any labor,
18 services, material, fixtures, apparatus or machinery, or forms
19 or form work for the contractor, or shall furnish any material
20 to be employed in the process of construction as a means for
21 assisting in the erection of the building or improvement in
22 what is commonly termed form or form work where concrete,
23 cement, or like material is used in whole or in part, shall be
24 known under this Act as a subcontractor ~~sub-contractor~~, and
25 shall have a lien for the value thereof, with interest on such

1 amount from the date the same is due, from the same time, on
2 the same property as provided for the contractor, and, also,
3 as against the creditors and assignees, and personal and legal
4 representatives of the contractor, on the material, fixtures,
5 or apparatus or machinery furnished, and on the moneys or
6 other considerations due or to become due from the owner under
7 the original contract.

8 (b) If the legal effect of a provision in any contract
9 between the owner and contractor or contractor and
10 subcontractor is that no lien or claim may be filed or
11 maintained, or that such contractor's lien shall be
12 subordinated to the interests of any other party, and the
13 provision is not prohibited by this Act, such provision shall
14 be binding if made as part of an agreement not prohibited by
15 this Act.

16 (c) It shall be the duty of each subcontractor who has
17 furnished, or is furnishing, labor, services, material,
18 fixtures, apparatus or machinery, or forms or form work for an
19 existing owner-occupied single family residence, in order to
20 preserve the subcontractor's ~~his~~ lien, to notify the occupant
21 either personally or by certified mail, return receipt
22 requested, addressed to the occupant or the occupant's ~~his~~
23 agent of the residence within 60 days from the subcontractor's
24 ~~his~~ first furnishing labor, services, material, fixtures,
25 apparatus or machinery, or forms or form work, that the
26 subcontractor ~~he~~ is supplying labor, services, material,

1 fixtures, apparatus or machinery, or forms or form work
2 provided, however, that any notice given after 60 days by the
3 subcontractor shall preserve the subcontractor's ~~his~~ lien, but
4 only to the extent that the owner has not been prejudiced by
5 payments made prior to receipt of the notice. The notification
6 shall include a warning to the owner that before any payment is
7 made to the contractor, the owner should receive a waiver of
8 lien executed by each subcontractor who has furnished labor,
9 services, material, fixtures, apparatus or machinery, or forms
10 or form work.

11 The notice shall contain the name and address of the
12 subcontractor or material supplier ~~man~~, the date the
13 subcontractor or material supplier ~~he~~ started to work or to
14 deliver materials, the type of work done and to be done or the
15 type of labor, services, materials, fixtures, apparatus or
16 machinery, or forms or form work delivered and to be
17 delivered, and the name of the contractor requesting the work.
18 The notice shall also contain the following warning:

19 "NOTICE TO OWNER

20 The subcontractor providing this notice has performed work
21 for or delivered material to your home improvement contractor.
22 These services or materials are being used in the improvements
23 to your residence and entitle the subcontractor to file a lien
24 against your residence if the labor, services, ~~or~~ materials,
25 fixtures, apparatus or machinery, or forms or form work are
26 not paid for by your home improvement contractor. A lien

1 waiver will be provided to your contractor when the
2 subcontractor is paid, and you are urged to request this
3 waiver from your contractor when paying for your home
4 improvements."

5 Such warning shall be in at least 10 point bold face type.
6 For purposes of this Section, notice by certified mail is
7 considered served at the time of its mailing.

8 (d) In no case, except as hereinafter provided, shall the
9 owner be compelled to pay a greater sum for or on account of
10 the completion of such house, building, or other improvement
11 than the price or sum stipulated in said original contract or
12 agreement, unless payment be made to the contractor or to the
13 contractor's ~~his~~ order, in violation of the rights and
14 interests of the persons intended to be benefited by this Act:
15 Provided, if it shall appear to the court that the owner and
16 contractor fraudulently, and for the purpose of defrauding
17 subcontractors ~~sub-contractors~~ fixed an unreasonably low price
18 in their original contract for the erection or repairing of
19 such house, building, or other improvement, then the court
20 shall ascertain how much of a difference exists between a fair
21 price for labor, services, material, fixtures, apparatus or
22 machinery, or forms or form work used in said house, building
23 or other improvement, and the sum named in said original
24 contract, and said difference shall be considered a part of
25 the contract and be subject to a lien. But where the
26 contractor's statement, made as provided in Section 5, shows

1 the amount to be paid to the subcontractor ~~sub-contractor~~, or
2 party furnishing material, or the subcontractor's
3 ~~sub-contractor's~~ statement, made pursuant to Section 22, shows
4 the amount to become due for material; or notice is given to
5 the owner, as provided in Sections 24 and 25, and thereafter
6 such subcontractor ~~sub-contract~~ shall be performed, or
7 material to the value of the amount named in such statements or
8 notice, shall be prepared for use and delivery, or delivered
9 without written protest on the part of the owner previous to
10 such performance or delivery, or preparation for delivery,
11 then, and in any of such cases, such subcontractor
12 ~~sub-contractor~~ or party furnishing or preparing material,
13 regardless of the price named in the original contract, shall
14 have a lien therefor to the extent of the amount named in such
15 statements or notice. In case of default or abandonment by the
16 contractor, the subcontractor ~~sub-contractor~~ or party
17 furnishing material, shall have and may enforce the
18 subcontractor's ~~his~~ lien to the same extent and in the same
19 manner that the contractor may under conditions that arise as
20 provided for in Section 4 of this Act, and shall have and may
21 exercise the same rights as are therein provided for the
22 contractor.

23 (e) Any provision in a contract, agreement, or
24 understanding, when payment from a contractor to a
25 subcontractor or supplier is conditioned upon receipt of the
26 payment from any other party including a private or public

1 owner, shall not be a defense by the party responsible for
2 payment to a claim brought under Section 21, 22, 23, or 28 of
3 this Act against the party. For the purpose of this Section,
4 "contractor" also includes subcontractor or supplier. The
5 provisions of Public Act 87-1180 shall be construed as
6 declarative of existing law and not as a new enactment.

7 (Source: P.A. 98-764, eff. 7-16-14.)

8 (770 ILCS 60/24) (from Ch. 82, par. 24)

9 Sec. 24. Written notice by subcontractor ~~sub-contractor~~;
10 service; when notice not necessary; form of notice.

11 (a) Subcontractors ~~Sub-contractors~~, or parties furnishing
12 labor, materials, fixtures, apparatus, machinery, or services,
13 may at any time after making his or her contract with the
14 contractor, and shall within 90 days after the completion
15 thereof, or, if extra or additional work or material is
16 delivered thereafter, within 90 days after the date of
17 completion of such extra or additional work or final delivery
18 of such extra or additional material, cause a written notice
19 of his or her claim and the amount due or to become due
20 thereunder, to be provided to the owner of record or the owner
21 of record's agent or architect, or the superintendent having
22 charge of the building or improvement and to the lending
23 agency, if known, with the written notice to be sent by: (i)
24 registered or certified mail, with return receipt requested;
25 (ii) a nationally recognized delivery company with tracking

1 service; or (iii) personal service. Notice shall be considered
2 served at the time the written notice is placed with the
3 delivery service or in the mail. The , and delivery limited to
4 addressee only, to or personally served on the owner of record
5 or his agent or architect, or the superintendent having charge
6 of the building or improvement and to the lending agency, if
7 known; and such notice shall not be necessary when the sworn
8 statement of the contractor or subcontractor provided for
9 herein shall serve to give the owner notice of the amount due
10 and to whom due, but where such statement is incorrect as to
11 the amount, the subcontractor or material man named shall be
12 protected to the extent of the amount named therein as due or
13 to become due to him or her. ~~For purposes of this Section,~~
14 ~~notice by registered or certified mail is considered served at~~
15 ~~the time of its mailing.~~

16 The form of such notice may be as follows: To (name of
17 owner): You are hereby notified that I have been employed by
18 (the name of contractor) to (state here what was the contract
19 or what was done, or to be done, or what the claim is for)
20 under his or her contract with you, on your property at (here
21 give substantial description of the property) and that there
22 was due to me, or is to become due (as the case may be)
23 therefor, the sum of \$.....

24 Dated at this day of,

25 (Signature).....

26 (b) The serving of notice pursuant to subsection (a) of

1 this Section shall not constitute an admission by the lien
2 claimant that its status is that of subcontractor if it is
3 later determined that the party with whom the lien claimant
4 contracted was the owner or an agent of the owner.

5 (Source: P.A. 94-627, eff. 1-1-06.)".