



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4215

Introduced 1/26/2004, by Renee Kosel

SYNOPSIS AS INTRODUCED:

770 ILCS 60/21

from Ch. 82, par. 21

Amends the Mechanics Lien Act. Requires a subcontractor, in order to preserve his or her lien, to file for a mechanics lien within 60 days from his or her first furnishing of materials or labor or within 60 days of substantial completion of the construction of the commercial structure for which the subcontractor furnished the materials or labor.

LRB093 15763 LCB 41373 b

1 AN ACT concerning liens.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mechanics Lien Act is amended by changing
5 Section 21 as follows:

6 (770 ILCS 60/21) (from Ch. 82, par. 21)

7 Sec. 21. Subject to the provisions of Section 5, every
8 mechanic, worker or other person who shall furnish any
9 materials, apparatus, machinery or fixtures, or furnish or
10 perform services or labor for the contractor, or shall furnish
11 any material to be employed in the process of construction as a
12 means for assisting in the erection of the building or
13 improvement in what is commonly termed form or form work where
14 concrete, cement or like material is used in whole or in part,
15 shall be known under this Act as a sub-contractor, and shall
16 have a lien for the value thereof, with interest on such amount
17 from the date the same is due, from the same time, on the same
18 property as provided for the contractor, and, also, as against
19 the creditors and assignees, and personal and legal
20 representatives of the contractor, on the material, fixtures,
21 apparatus or machinery furnished, and on the moneys or other
22 considerations due or to become due from the owner under the
23 original contract. If the legal effect of any contract between
24 the owner and contractor is that no lien or claim may be filed
25 or maintained by any one and the waiver is not prohibited by
26 this Act, such provision shall be binding; but the only
27 admissible evidence thereof as against a sub-contractor or
28 material person ~~man~~, shall be proof of actual notice thereof to
29 him or her before any labor or material is furnished by him or
30 her; or proof that a duly written and signed stipulation or
31 agreement to that effect has been filed in the office of the
32 recorder of the county or counties where the house, building or

1 other improvement is situated, prior to the commencement of the
2 work upon such house, building or other improvement, or within
3 10 days after the execution of the principal contract or not
4 less than 10 days prior to the contract of the sub-contractor
5 or material person ~~man~~. The recorder shall record the same at
6 length in the order of time of its reception in books provided
7 by him or her for that purpose, and the recorder shall index
8 the same, in the name of the contractor and in the name of the
9 owner, in books kept for that purpose, and also in the tract or
10 abstract book of the tract, lot, or parcel of land, upon which
11 the house, building or other improvement is located, and the
12 recorder shall receive therefor a fee, such as is provided for
13 the recording of instruments in his or her office.

14 It shall be the duty of each subcontractor who has
15 furnished, or is furnishing, materials or labor for an existing
16 owner-occupied single family residence, in order to preserve
17 his or her lien, to notify the occupant either personally or by
18 certified mail, return receipt requested, addressed to the
19 occupant or his or her agent of the residence within 60 days
20 from his or her first furnishing materials or labor, that he or
21 she is supplying materials or labor; provided, however, that
22 any notice given after 60 days by the subcontractor shall
23 preserve his or her lien, but only to the extent that the owner
24 has not been prejudiced by payments made prior to receipt of
25 the notice. The notification shall include a warning to the
26 owner that before any payment is made to the contractor, the
27 owner should receive a waiver of lien executed by each
28 subcontractor who has furnished materials or labor.

29 It shall be the duty of each subcontractor who has
30 furnished, or is furnishing, materials or labor for an existing
31 commercial structure, in order to preserve his or her lien, to
32 notify the owner of the commercial structure either personally
33 or by certified mail, return receipt requested, addressed to
34 the owner or his or her agent of the commercial structure
35 within 60 days from his or her first furnishing materials or
36 labor or within 60 days of substantial completion of the

1 construction of the commercial structure for which the
2 materials or labor were furnished, that he or she is supplying
3 materials or labor; provided, however, that any notice given
4 after 60 days from substantial completion by the subcontractor
5 shall preserve his or her lien, but only to the extent that the
6 owner has not been prejudiced by payments made prior to receipt
7 of the notice. The notification shall include a warning to the
8 owner that before any payment is made to the contractor, the
9 owner should receive a waiver of lien executed by each
10 subcontractor who has furnished materials or labor.

11 The notice shall contain the name and address of the
12 subcontractor or material person ~~man~~, the date he or she
13 started to work or to deliver materials, the type of work done
14 and to be done or the type of materials delivered and to be
15 delivered, and the name of the contractor requesting the work.
16 The notice shall also contain the following warning:

17 "NOTICE TO OWNER

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

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

30 In no case, except as hereinafter provided, shall the owner
31 be compelled to pay a greater sum for or on account of the
32 completion of such house, building or other improvement than
33 the price or sum stipulated in said original contract or
34 agreement, unless payment be made to the contractor or to his
35 or her order, in violation of the rights and interests of the
36 persons intended to be benefited by this act: Provided, if it

1 shall appear to the court that the owner and contractor
2 fraudulently, and for the purpose of defrauding
3 sub-contractors fixed an unreasonably low price in their
4 original contract for the erection or repairing of such house,
5 building or other improvement, then the court shall ascertain
6 how much of a difference exists between a fair price for labor
7 and material used in said house, building or other improvement,
8 and the sum named in said original contract, and said
9 difference shall be considered a part of the contract and be
10 subject to a lien. But where the contractor's statement, made
11 as provided in Section 5, shows the amount to be paid to the
12 sub-contractor, or party furnishing material, or the
13 sub-contractor's statement, made pursuant to Section 22, shows
14 the amount to become due for material; or notice is given to
15 the owner, as provided in Sections 24 and 25, and thereafter
16 such sub-contract shall be performed, or material to the value
17 of the amount named in such statements or notice, shall be
18 prepared for use and delivery, or delivered without written
19 protest on the part of the owner previous to such performance
20 or delivery, or preparation for delivery, then, and in any of
21 such cases, such sub-contractor or party furnishing or
22 preparing material, regardless of the price named in the
23 original contract, shall have a lien therefor to the extent of
24 the amount named in such statements or notice. In case of
25 default or abandonment by the contractor, the sub-contractor or
26 party furnishing material, shall have and may enforce his or
27 her lien to the same extent and in the same manner that the
28 contractor may under conditions that arise as provided for in
29 section 4 of this Act, and shall have and may exercise the same
30 rights as are therein provided for the contractor.

31 Any provision in a contract, agreement, or understanding,
32 when payment from a contractor to a subcontractor or supplier
33 is conditioned upon receipt of the payment from any other party
34 including a private or public owner, shall not be a defense by
35 the party responsible for payment to a claim brought under
36 Section 21, 22, 23, or 28 of this Act against the party. For

1 the purpose of this Section, "contractor" also includes
2 subcontractor or supplier. The provisions of Public Act 87-1180
3 shall be construed as declarative of existing law and not as a
4 new enactment.

5 (Source: P.A. 87-361; 87-362; 87-895; 87-1180; 88-45.)