



Sen. John J. Cullerton

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09400HB0566sam002

LRB094 05756 LCB 46629 a

1 AMENDMENT TO HOUSE BILL 566

2 AMENDMENT NO. _____. Amend House Bill 566 on page 1, by
3 inserting after line 3 the following:

4 "Section 2. If and only if Senate Bill 1930 of the 94th
5 General Assembly becomes law in the form in which it passed the
6 Senate, the Mechanics Lien Act is amended by changing Section
7 21 as follows:

8 (770 ILCS 60/21) (from Ch. 82, par. 21)

9 Sec. 21. Sub-contractor defined; lien of sub-contractor;
10 notice; size of type; service of notice; amount of lien;
11 default by contractor.

12 (a) Subject to the provisions of Section 5, every mechanic,
13 worker or other person who shall furnish any labor, services,
14 material, fixtures, apparatus or machinery, forms or form work
15 for the contractor, or shall furnish any material to be
16 employed in the process of construction as a means for
17 assisting in the erection of the building or improvement in
18 what is commonly termed form or form work where concrete,
19 cement or like material is used in whole or in part, shall be
20 known under this Act as a sub-contractor, and shall have a lien
21 for the value thereof, with interest on such amount from the
22 date the same is due, from the same time, on the same property
23 as provided for the contractor, and, also, as against the
24 creditors and assignees, and personal and legal
25 representatives of the contractor, on the material, fixtures,

1 apparatus or machinery furnished, and on the moneys or other
2 considerations due or to become due from the owner under the
3 original contract.

4 (b) If the legal effect of any contract between the owner
5 and contractor is that no lien or claim may be filed or
6 maintained by any one and the waiver is not prohibited by this
7 Act, or that such contractor's lien shall be subordinated to
8 the interests of any other party, such provision shall be
9 binding; but the only admissible evidence thereof as against a
10 subcontractor or material supplier, shall be proof of actual
11 notice thereof to him or her before his or her contract is
12 entered into. Such ~~waiver or~~ subordination provision shall not
13 be binding on the subcontractor unless set forth in its
14 entirety in writing in the contract between the contractor and
15 subcontractor or material supplier.

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, forms or form work for an
19 existing owner-occupied single family residence, in order to
20 preserve his lien, to notify the occupant either personally or
21 by certified mail, return receipt requested, addressed to the
22 occupant or his agent of the residence within 60 days from his
23 first furnishing labor, services, material, fixtures,
24 apparatus or machinery, forms or form work, that he is
25 supplying labor, services, material, fixtures, apparatus or
26 machinery, forms or form work provided, however, that any
27 notice given after 60 days by the subcontractor shall preserve
28 his lien, but only to the extent that the owner has not been
29 prejudiced by payments made prior to receipt of the notice. The
30 notification shall include a warning to the owner that before
31 any payment is made to the contractor, the owner should receive
32 a waiver of lien executed by each subcontractor who has
33 furnished labor, services, material, fixtures, apparatus or
34 machinery, forms or form work.

1 The notice shall contain the name and address of the
2 subcontractor or material man, the date he started to work or
3 to deliver materials, the type of work done and to be done or
4 the type of materials delivered and to be delivered, and the
5 name of the contractor requesting the work. The notice shall
6 also contain the following warning:

7 "NOTICE TO OWNER

8 The subcontractor providing this notice has performed work
9 for or delivered material to your home improvement contractor.
10 These services or materials are being used in the improvements
11 to your residence and entitle the subcontractor to file a lien
12 against your residence if the services or materials are not
13 paid for by your home improvement contractor. A lien waiver
14 will be provided to your contractor when the subcontractor is
15 paid, and you are urged to request this waiver from your
16 contractor when paying for your home improvements."

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

20 (d) In no case, except as hereinafter provided, shall the
21 owner be compelled to pay a greater sum for or on account of
22 the completion of such house, building or other improvement
23 than the price or sum stipulated in said original contract or
24 agreement, unless payment be made to the contractor or to his
25 order, in violation of the rights and interests of the persons
26 intended to be benefited by this act: Provided, if it shall
27 appear to the court that the owner and contractor fraudulently,
28 and for the purpose of defrauding sub-contractors fixed an
29 unreasonably low price in their original contract for the
30 erection or repairing of such house, building or other
31 improvement, then the court shall ascertain how much of a
32 difference exists between a fair price for labor, services,
33 material, fixtures, apparatus or machinery, forms or form work
34 used in said house, building or other improvement, and the sum

1 named in said original contract, and said difference shall be
2 considered a part of the contract and be subject to a lien. But
3 where the contractor's statement, made as provided in Section
4 5, shows the amount to be paid to the sub-contractor, or party
5 furnishing material, or the sub-contractor's statement, made
6 pursuant to Section 22, shows the amount to become due for
7 material; or notice is given to the owner, as provided in
8 Sections 24 and 25, and thereafter such sub-contract shall be
9 performed, or material to the value of the amount named in such
10 statements or notice, shall be prepared for use and delivery,
11 or delivered without written protest on the part of the owner
12 previous to such performance or delivery, or preparation for
13 delivery, then, and in any of such cases, such sub-contractor
14 or party furnishing or preparing material, regardless of the
15 price named in the original contract, shall have a lien
16 therefor to the extent of the amount named in such statements
17 or notice. In case of default or abandonment by the contractor,
18 the sub-contractor or party furnishing material, shall have and
19 may enforce his lien to the same extent and in the same manner
20 that the contractor may under conditions that arise as provided
21 for in Section 4 of this Act, and shall have and may exercise
22 the same rights as are therein provided for the 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
27 owner, shall not be a defense by the party responsible for
28 payment to a claim brought under Section 21, 22, 23, or 28 of
29 this Act against the party. For the purpose of this Section,
30 "contractor" also includes subcontractor or supplier. The
31 provisions of Public Act 87-1180 shall be construed as
32 declarative of existing law and not as a new enactment.

33 (Source: P.A. 87-361; 87-362; 87-895; 87-1180; 88-45;
34 94SB1930eng.)".