

SB1215



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB1215

Introduced 2/18/2005, by Sen. John J. Cullerton - Emil Jones, Jr.

SYNOPSIS AS INTRODUCED:

770 ILCS 60/21

from Ch. 82, par. 21

Amends the Mechanics Lien Act. Makes a technical change in a Section concerning a sub-contractor's lien.

LRB094 04858 LCB 34887 b

A BILL FOR

1 AN ACT concerning civil law.

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 ~~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 man, shall be proof of actual notice thereof to him
29 before any labor or material is furnished by him; or proof that
30 a duly written and signed stipulation or agreement to that
31 effect has been filed in the office of the recorder of the
32 county or counties where the house, building or other

1 improvement is situated, prior to the commencement of the work
2 upon such house, building or other improvement, or within 10
3 days after the execution of the principal contract or not less
4 than 10 days prior to the contract of the sub-contractor or
5 material man. The recorder shall record the same at length in
6 the order of time of its reception in books provided by him for
7 that purpose, and the recorder shall index the same, in the
8 name of the contractor and in the name of the owner, in books
9 kept for that purpose, and also in the tract or abstract book
10 of the tract, lot, or parcel of land, upon which the house,
11 building or other improvement is located, and the recorder
12 shall receive therefor a fee, such as is provided for the
13 recording of instruments in his 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 lien, to notify the occupant either personally or by
18 certified mail, return receipt requested, addressed to the
19 occupant or his agent of the residence within 60 days from his
20 first furnishing materials or labor, that he is supplying
21 materials or labor; provided, however, that any notice given
22 after 60 days by the subcontractor shall preserve his lien, but
23 only to the extent that the owner has not been prejudiced by
24 payments made prior to receipt of the notice. The notification
25 shall include a warning to the owner that before any payment is
26 made to the contractor, the owner should receive a waiver of
27 lien executed by each subcontractor who has furnished materials
28 or labor.

29 The notice shall contain the name and address of the
30 subcontractor or material man, the date he started to work or
31 to deliver materials, the type of work done and to be done or
32 the type of materials delivered and to be delivered, and the
33 name of the contractor requesting the work. The notice shall
34 also contain the following warning:

35 "NOTICE TO OWNER

36 The subcontractor providing this notice has performed work

1 for or delivered material to your home improvement contractor.
2 These services or materials are being used in the improvements
3 to your residence and entitle the subcontractor to file a lien
4 against your residence if the services or materials are not
5 paid for by your home improvement contractor. A lien waiver
6 will be provided to your contractor when the subcontractor is
7 paid, and you are urged to request this waiver from your
8 contractor when paying for your home improvements."

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

12 In no case, except as hereinafter provided, shall the owner
13 be compelled to pay a greater sum for or on account of the
14 completion of such house, building or other improvement than
15 the price or sum stipulated in said original contract or
16 agreement, unless payment be made to the contractor or to his
17 order, in violation of the rights and interests of the persons
18 intended to be benefited by this act: Provided, if it shall
19 appear to the court that the owner and contractor fraudulently,
20 and for the purpose of defrauding sub-contractors fixed an
21 unreasonably low price in their original contract for the
22 erection or repairing of such house, building or other
23 improvement, then the court shall ascertain how much of a
24 difference exists between a fair price for labor and material
25 used in said house, building or other improvement, and the sum
26 named in said original contract, and said difference shall be
27 considered a part of the contract and be subject to a lien. But
28 where the contractor's statement, made as provided in Section
29 5, shows the amount to be paid to the sub-contractor, or party
30 furnishing material, or the sub-contractor's statement, made
31 pursuant to Section 22, shows the amount to become due for
32 material; or notice is given to the owner, as provided in
33 Sections 24 and 25, and thereafter such sub-contract shall be
34 performed, or material to the value of the amount named in such
35 statements or notice, shall be prepared for use and delivery,
36 or delivered without written protest on the part of the owner

1 previous to such performance or delivery, or preparation for
2 delivery, then, and in any of such cases, such sub-contractor
3 or party furnishing or preparing material, regardless of the
4 price named in the original contract, shall have a lien
5 therefor to the extent of the amount named in such statements
6 or notice. In case of default or abandonment by the contractor,
7 the sub-contractor or party furnishing material, shall have and
8 may enforce his lien to the same extent and in the same manner
9 that the contractor may under conditions that arise as provided
10 for in section 4 of this Act, and shall have and may exercise
11 the same rights as are therein provided for the contractor.

12 Any provision in a contract, agreement, or understanding,
13 when payment from a contractor to a subcontractor or supplier
14 is conditioned upon receipt of the payment from any other party
15 including a private or public owner, shall not be a defense by
16 the party responsible for payment to a claim brought under
17 Section 21, 22, 23, or 28 of this Act against the party. For
18 the purpose of this Section, "contractor" also includes
19 subcontractor or supplier. The provisions of Public Act 87-1180
20 shall be construed as declarative of existing law and not as a
21 new enactment.

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