



Sen. John J. Cullerton

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1 AMENDMENT TO SENATE BILL 1930

2 AMENDMENT NO. _____. Amend Senate Bill 1930 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Mechanics Lien Act is amended by changing
5 Sections 1, 2, 3, 5, 7, 11, 13, 21, 21.01, 21.02, 22, 24, 25,
6 26, 28, 30, 32, and 35 as follows:

7 (770 ILCS 60/1) (from Ch. 82, par. 1)

8 Sec. 1. Contractor defined; amount of lien; waiver of lien;
9 attachment of lien; agreement to waive; when not enforceable.

10 (a) Any person who shall by any contract or contracts,
11 express or implied, or partly expressed or implied, with the
12 owner of a lot or tract of land, or with one whom the owner has
13 authorized or knowingly permitted to contract, to improve the
14 lot or tract of land or for the purpose of improving the tract
15 of land, or to manage a structure under construction thereon,
16 is known under this Act as a contractor and has a lien upon the
17 whole of such lot or tract of land and upon adjoining or
18 adjacent lots or tracts of land of such owner constituting the
19 same premises and occupied or used in connection with such lot
20 or tract of land as a place of residence or business; and in
21 case the contract relates to 2 or more buildings, on 2 or more
22 lots or tracts of land, upon all such lots and tracts of land
23 and improvements thereon for the amount due to him or her for

1 the material, fixtures, apparatus, machinery, services or
2 labor, and interest at the rate of 10% per annum from the date
3 the same is due. This lien extends to an estate in fee, for
4 life, for years, or any other estate or any right of redemption
5 or other interest that the owner may have in the lot or tract
6 of land at the time of making such contract or may subsequently
7 acquire and this lien attaches as of the date of the contract.

8 (b) As used in subsection (a) of this Section, "improve"
9 means ~~thereon, or~~ to furnish labor, services, material,
10 fixtures, apparatus or machinery, forms or form work ~~used~~ in
11 the process of construction where cement, concrete or like
12 material is used for the purpose of or in the building,
13 altering, repairing or ornamenting any house or other building,
14 walk or sidewalk, whether the walk or sidewalk is on the land
15 or bordering thereon, driveway, fence or improvement or
16 appurtenances to the lot or tract of land or connected
17 therewith, and upon, over or under a sidewalk, street or alley
18 adjoining; or fill, sod or excavate such lot or tract of land,
19 or do landscape work thereon or therefor; or raise or lower any
20 house thereon or remove any house thereto, or remove any house
21 or other structure therefrom, or perform any services or incur
22 any expense as an architect, structural engineer, professional
23 engineer, land surveyor or property manager in, for or on a lot
24 or tract of land for any such purpose; or drill any water well
25 thereon; or furnish or perform labor or services as
26 superintendent, time keeper, mechanic, laborer or otherwise,
27 in the building, altering, repairing or ornamenting of the
28 same; or furnish material, fixtures, apparatus, machinery,
29 labor or services, forms or form work used in the process of
30 construction where concrete, cement or like material is used,
31 or drill any water well on the order of his agent, architect,
32 structural engineer or superintendent having charge of the
33 improvements, building, altering, repairing or ornamenting the
34 same. ~~, is known under this Act as a contractor, and has a lien~~

1 ~~upon the whole of such lot or tract of land and upon adjoining~~
2 ~~or adjacent lots or tracts of land of such owner constituting~~
3 ~~the same premises and occupied or used in connection with such~~
4 ~~lot or tract of land as a place of residence or business; and~~
5 ~~in case the contract relates to 2 or more buildings, on 2 or~~
6 ~~more lots or tracts of land, upon all such lots and tracts of~~
7 ~~land and improvements thereon for the amount due to him for~~
8 ~~such material, fixtures, apparatus, machinery, services or~~
9 ~~labor, and interest at the rate of 10% per annum from the date~~
10 ~~the same is due. This lien extends to an estate in fee, for~~
11 ~~life, for years, or any other estate or any right of~~
12 ~~redemption, or other interest which the owner may have in the~~
13 ~~lot or tract of land at the time of making such contract or may~~
14 ~~subsequently acquire.~~

15 (c) The taking of additional security by the contractor or
16 sub-contractor is not a waiver of any right of lien which he
17 may have by virtue of this Act, unless made a waiver by express
18 agreement of the parties and the waiver is not prohibited by
19 this Act. ~~This lien attaches as of the date of the contract.~~

20 (d) An agreement to waive any right to enforce or claim any
21 lien under this Act where the agreement is in anticipation of
22 and in consideration for the awarding of a contract or
23 subcontract, either express or implied, to perform work or
24 supply materials for an improvement upon real property is
25 against public policy and unenforceable. This Section does not
26 prohibit release of lien under subsection (b) of Section 35 of
27 this Act or prohibit subordination of the lien, except as
28 provided in Section 21.

29 (Source: P.A. 86-807; 87-361.)

30 (770 ILCS 60/2) (from Ch. 82, par. 2)

31 Sec. 2. Labor, services, material, fixtures, apparatus or
32 machinery, forms or form work furnished by mistake. Any person
33 furnishing labor, services, ~~labor or~~ material, fixtures,

1 apparatus or machinery, forms or form work for the erection of
2 a building, or structure, or improvement, by mistake upon land
3 owned by another than the party contracting as owner, shall
4 have a lien for such labor, services, labor or material,
5 fixtures, apparatus or machinery, forms or form work upon such
6 building, or structure or improvement, and the court, in the
7 enforcement of such lien, shall order and direct such building,
8 structure or improvement to be separately sold under its
9 judgment, and the purchaser may remove the same within such
10 reasonable time as the court may fix.

11 (Source: P.A. 84-452; 84-545.)

12 (770 ILCS 60/3) (from Ch. 82, par. 3)

13 Sec. 3. Labor, services, material, fixtures, apparatus or
14 machinery, forms or form work furnished for lands of married
15 person; lands held by husband and wife. If any such labor,
16 services, material, fixtures, apparatus or machinery, forms or
17 form work ~~or labor~~ are performed upon ~~or materials are~~
18 ~~furnished for~~ lands belonging to any married person, with the
19 married person's knowledge and not against the married person's
20 protest in writing, as provided in Section 1 of this Act, in
21 pursuance of a contract with the spouse of such married person,
22 the person furnishing such labor, services, material,
23 fixtures, apparatus or machinery, forms or form work ~~or~~
24 ~~materials~~ shall have a lien upon such property, the same as if
25 such contract had been made with the married person, and in
26 case the title to such lands upon which improvements are made
27 is held by married persons ~~husband and wife~~ jointly, the lien
28 given by this act shall attach to such lands and improvements,
29 if the improvements be made in pursuance of a contract with
30 both of them, or in pursuance of a contract with either of
31 them, and in such cases no claim of homestead right set up by a
32 husband or wife shall defeat the lien given by this Act. For
33 purposes of this Section, property shall be deemed to be held

1 jointly if title is held by the parties either in tenancy by
2 the entirety or jointly, with right of survivorship and not as
3 tenants in common.

4 (Source: P.A. 78-846.)

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

6 Sec. 5. Statement of persons furnishing labor, services,
7 material, fixtures, apparatus or machinery, forms or form work
8 notice to owner of waiver; size of type.

9 (a) It shall be the duty of the contractor to give the
10 owner, and the duty of the owner to require of the contractor,
11 before the owner or his agent, architect, or superintendent
12 shall pay or cause to be paid to the contractor or to his order
13 any moneys or other consideration due or to become due to the
14 contractor, or make or cause to be made to the contractor any
15 advancement of any moneys or any other consideration, a
16 statement in writing, under oath or verified by affidavit, of
17 the names and addresses of all parties furnishing ~~materials and~~
18 labor, services, material, fixtures, apparatus or machinery,
19 forms or form work and of the amounts due or to become due to
20 each. Merchants and dealers in materials only shall not be
21 required to make statements required in this Section.

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

24 (i) Each contractor shall provide the each owner or his
25 or her agent, either as part of the contract or as a
26 separate printed statement given before the owner or his
27 agent makes the first payment for labor, materials,
28 fixtures, apparatus or machinery, the following:

29 "THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A
30 SWORN STATEMENT OF PERSONS FURNISHING ~~MATERIALS AND LABOR,~~
31 SERVICES, MATERIAL, FIXTURES, APPARATUS OR MACHINERY,
32 FORMS OR FORM WORK BEFORE ANY PAYMENTS ARE REQUIRED TO BE
33 MADE TO THE CONTRACTOR."

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

10 (iii) The statement and the notices required by
11 subdivisions (b)(i) and (b)(ii) of this Section ~~The warning~~
12 shall be in at least 10 point boldface type. For purposes
13 of this Section, notice by certified mail is considered
14 served at the time of its mailing. Any notice given
15 pursuant to subdivision (b)(ii) of this Section after 60
16 days by the subcontractor, however, shall preserve his or
17 her lien, but only to the extent that the owner has not
18 been prejudiced by payments made before receipt of the
19 notice.

20 (Source: P.A. 87-362.)

21 (770 ILCS 60/7) (from Ch. 82, par. 7)

22 Sec. 7. Claim for lien; third parties; errors or
23 overcharges; multiple buildings or lots. No contractor shall be
24 allowed to enforce such lien against or to the prejudice of any
25 other creditor or incumbrancer or purchaser, unless within 4
26 months after completion, or if extra or additional work is done
27 or labor, services, material, fixtures, apparatus or
28 machinery, forms or form work is delivered therefor within 4
29 months after the completion of such extra or additional work or
30 the final delivery of such extra or additional labor, services,
31 material, fixtures, apparatus or machinery, forms or form work,
32 he or she shall either bring an action to enforce his or her
33 lien therefor or shall file in the office of the recorder of

1 the county in which the building, erection or other improvement
2 to be charged with the lien is situated, a claim for lien,
3 verified by the affidavit of himself or herself, or his or her
4 agent or employee, which shall consist of a brief statement of
5 the claimant's contract, the balance due after allowing all
6 credits, and a sufficiently correct description of the lot,
7 lots or tracts of land to identify the same. Such claim for
8 lien may be filed at any time after the claimant's contract is
9 made, and as to the owner may be filed at any time after the
10 contract is made and within 2 years after the completion of the
11 contract, or the completion of any extra work or the furnishing
12 of any extra labor, services, material, fixtures, apparatus or
13 machinery, forms or form work thereunder, and as to such owner
14 may be amended at any time before the final judgment. No such
15 lien shall be defeated to the proper amount thereof because of
16 an error or overcharging on the part of any person claiming a
17 lien therefor under this Act, unless it shall be shown that
18 such error or overcharge is made with intent to defraud; nor
19 shall any such lien for material be defeated because of lack of
20 proof that the material after the delivery thereof, actually
21 entered into the construction of such building or improvement,
22 although it be shown that such material was not actually used
23 in the construction of such building or improvement; provided,
24 that ~~Provided,~~ it is shown that such material was delivered
25 either to the owner or his or her agent for that building or
26 improvement, to be used in that building or improvement, or at
27 the place where said building or improvement was being
28 constructed, for the purpose of being used in construction or
29 for the purpose of being employed in the process of
30 construction as a means for assisting in the erection of the
31 building or improvement in what is commonly termed forms or
32 form work where concrete, cement or like material is used, in
33 whole or in part.

34 In case of the construction of a number of buildings under

1 contract between the same parties, it shall be sufficient in
2 order to establish such lien for material, if it be shown that
3 such material was in good faith delivered at one of these
4 buildings for the purpose of being used in the construction of
5 any one or all of such buildings, or delivered to the owner or
6 his or her agent for such buildings, to be used therein; and
7 such lien for such material shall attach to all of said
8 buildings, together with the land upon which the same are being
9 constructed, the same as in a single building or improvement.
10 In the event the contract relates to 2 or more buildings on 2
11 or more lots or tracts of land, then all of these buildings and
12 lots or tracts of land may be included in one statement of
13 claims for a lien.

14 A statement that a party is a subcontractor shall not
15 constitute an admission by the lien claimant that its status is
16 that of subcontractor if it is later determined that the party
17 with whom the lien claimant contracted was the owner or an
18 agent of the owner.

19 (Source: P.A. 83-358.)

20 (770 ILCS 60/11) (from Ch. 82, par. 11)

21 Sec. 11. Averments in pleading; parties; dismissal;
22 notice.

23 (a) Any pleading asserting a claim for lien ~~The complaint~~
24 shall contain (i) a brief statement of the contract or
25 contracts to which the person (hereinafter called the
26 "claimant") asserting a claim for lien in the pleading is a
27 party and by the terms of which the claimant is employed to
28 furnish lienable services or material for the real property
29 (herein called the "premises"), (ii) the date when the contract
30 or contracts were dated or entered into, (iii) the date on
31 which the claimant's work, labor or material labor, services,
32 material, fixtures, apparatus or machinery, forms or form work
33 was last performed or furnished, whether the claimant completed

1 furnishing or performing its work, labor and material labor,
2 services, material, fixtures, apparatus or machinery, forms or
3 form work and if not why, (iv) ~~on which it is founded, the~~
4 date, when made, and when completed, if not completed, why, and
5 it shall also set forth the amount due and unpaid to the
6 claimant, (v), a description of the premises, and (vi) ~~premises~~
7 which are subject to the lien, and such other facts as may be
8 necessary for ~~to~~ a full understanding of the rights of the
9 parties. Where plans and specifications are by reference made a
10 part of a ~~the~~ contract that is required to be alleged in a
11 pleading, it shall not be necessary to set the same out in the
12 pleading ~~pleadings~~ or attached as exhibits, but the same may be
13 produced on the trial of the suit. It shall not be necessary to
14 include a statement of any contract to which the claimant is
15 not a contracting party.

16 (b) Each claimant shall make as parties to its pleading
17 (hereinafter called "necessary parties") the owner of the
18 premises, the contractor, all persons in the chain of contracts
19 between the claimant and the owner, all persons who have
20 asserted or may assert liens against the premises under this
21 Act, and any other person against whose interest in the
22 premises the claimant asserts a claim.

23 (c) Necessary parties whose claims or interests are not
24 disclosed by a document recorded at the time a proper lis
25 pendens of the action under Section 2-1901 of the Code of Civil
26 Procedure has been recorded (or if the action is instituted as
27 a mortgage foreclosure at the time a proper notice of
28 foreclosure under Section 15-1503 of the Code of Civil
29 Procedure has been recorded) may be named and made parties
30 under the description of "unknown necessary parties". Persons
31 other than unknown necessary parties who may be interested in
32 the premises but whose identities are unknown to the claimant
33 may be named and made parties to the action under the
34 description of "unknown owners".

1 (d) A claimant may, in its, his or her discretion, make as
2 parties (hereinafter called "permissible parties") to the
3 action any other persons having a legal, equitable or
4 possessory interest in or claim to the whole or any part of the
5 premises, but failure to make any such permissible party a
6 party to the action shall not defeat the lien, but the claim of
7 each claimant asserting a lien claim under this Act in the
8 action shall be subject to the interest of such permissible
9 party not made a party, and the action shall not adversely
10 affect the interest of any such permissible party not made a
11 party and not served with notice by summons or publication in
12 the action as provided in this Act.

13 (e) The plaintiff shall cause notice to be given to all
14 such necessary parties or cause them to be served by summons or
15 by publication in like manner and upon the same conditions as
16 in other civil actions, and the plaintiff's failure to do so,
17 shall be grounds for judgment against him, her, or it on the
18 merits. A claimant other than the plaintiff asserting a claim
19 in the action under this Act shall also cause notice to be
20 given to or cause summons to be served upon any necessary
21 parties who have not been joined to the action, and his, her,
22 or its failure to do so shall be grounds for judgment against
23 him, her or it on the merits. Process may issue and service by
24 publication may be had against those persons so named under the
25 descriptions of "unknown necessary parties" or "unknown
26 owners", and judgments entered against them shall be of the
27 same effect as though they had been designated by and served
28 under their proper names, provided that any judgment shall only
29 bind any person served by publication with respect to their
30 interests in the premises and liens asserted or assertable
31 against the premises under this Act. A person who has been
32 properly served in the action by summons or by publication by
33 any claimant shall be deemed properly served by all claimants
34 in the action regardless of whether such persons have been

1 served before or after such claimants or any of them shall have
2 appeared, filed their pleadings or become parties to the
3 action, provided that nothing in this Section 11 shall excuse a
4 claimant from joining all necessary parties to the claimant's
5 pleading, whether as named parties, unknown necessary parties,
6 or unknown owners, within the time permitted by this Act.
7 Nothing in this Section 11 shall prevent service by publication
8 in any proceeding brought under this Act where authorized by
9 this act in like manner and upon the same conditions as in
10 other civil actions.

11 (f) Any necessary party or permissible party who has not
12 been joined to the action under his, her, or its proper name,
13 may, upon application of such party ~~The plaintiff shall make~~
14 ~~all parties interested, of whose interest he is notified or has~~
15 ~~knowledge, parties defendant, and summons shall issue and~~
16 ~~service thereof be had as in other civil actions; and when any~~
17 ~~defendant resides or has gone out of the State, or on inquiry~~
18 ~~cannot be found, or is concealed within this State, so that~~
19 ~~process cannot be served on him, the plaintiff shall cause a~~
20 ~~notice to be given to him, or cause a copy of the complaint to~~
21 ~~be served upon him, in like manner and upon the same conditions~~
22 ~~as is provided in other civil actions, and his failure to so~~
23 ~~act with regard to summons or notice shall be ground for~~
24 ~~judgment against him as upon the merits. The same rule shall~~
25 ~~prevail with counterclaimants with regard to any person of~~
26 ~~whose interest they have knowledge, and who are not already~~
27 ~~parties to the suit or action. Parties in interest, within the~~
28 ~~meaning of this act, shall include persons entitled to liens~~
29 ~~thereunder whose claims are not, as well as are, due at the~~
30 ~~time of the commencement of suit, and such claim shall be~~
31 ~~allowed subject to a reduction of interest from the date of~~
32 ~~judgment to the time the claim is due; also all persons who may~~
33 ~~have any valid claim to the whole or any part of the premises~~
34 ~~upon which a lien may be attempted to be enforced under the~~

1 ~~provisions thereof, or who are interested in the subject matter~~
2 ~~of the suit. Any such persons may, on application~~ to the court
3 wherein the action ~~suit~~ is pending, be made or become a party
4 ~~parties~~ at any time before final judgment, but such joinder
5 shall not give such party any substantive rights not otherwise
6 provided by law, or excuse failure to comply with the
7 provisions of any applicable law.

8 (g) No action under the provisions of this act shall be
9 voluntarily dismissed by the party bringing it without due
10 notice to all parties to ~~before~~ the action, ~~court~~ and upon
11 leave of court for ~~upon~~ good cause shown and upon terms
12 approved ~~designated~~ by the court.

13 (Source: P.A. 79-1358.)

14 (770 ILCS 60/13) (from Ch. 82, par. 13)

15 Sec. 13. Defendant shall answer as in other civil actions.

16 (a) The owner may make any defense against the contractor
17 by way of counter claim that he could in any civil action for
18 the payment of money, and may have the same right of recovery
19 on proof of such in excess of the claim of the contractor
20 against the contractor only, but for matters not growing out of
21 the contract recovery shall be without prejudice to the rights
22 of the sub-contractors thereunder for payment out of the
23 contract price or fund.

24 (b) In any proceedings to enforce a lien on account of
25 wages due for labor the claimant need file only an affidavit
26 giving the amount due, between what dates the labor was
27 performed and the kind of labor performed, and the court shall
28 direct the amount due for wages as therein specified to be paid
29 within a short day to be fixed by the court, unless within 10
30 days after the filing of the claim the amount claimed is
31 contested by the owner or some other party to the suit. The
32 party making such contest shall file an affidavit which shall
33 state his defense to the allowance of the claim, and the court

1 shall proceed at once to hear the evidence, and determine the
2 merits of the claim, and in the event the allowance for wages
3 is not paid within the time fixed by the court, the court shall
4 order the premises sold to pay the amount in such manner as it
5 directs.

6 (Source: P.A. 79-1358.)

7 (770 ILCS 60/21) (from Ch. 82, par. 21)

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

11 (a) Subject to the provisions of Section 5, every mechanic,
12 worker or other person who shall furnish any labor, services,
13 material, fixtures ~~materials~~, apparatus or, machinery, forms
14 or form work ~~or fixtures, or furnish or perform services or~~
15 ~~labor~~ 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,
26 apparatus or machinery furnished, and on the moneys or other
27 considerations due or to become due from the owner under the
28 original contract.

29 (b) If the legal effect of any contract between the owner
30 and contractor is that no lien or claim may be filed or
31 maintained by any one and the waiver is not prohibited by this
32 Act, or that such contractor's lien shall be subordinated to
33 the interests of any other party, such provision shall be

1 binding; but the only admissible evidence thereof as against a
2 subcontractor ~~sub-contractor~~ or material supplier ~~man~~, shall
3 be proof of actual notice thereof to him or her before his or
4 her contract is entered into. Such waiver or subordination
5 provision shall not be binding on the subcontractor unless set
6 forth in its entirety in writing in the contract between the
7 contractor and subcontractor or material supplier. ~~before any~~
8 ~~labor or material is furnished by him; or proof that a duly~~
9 ~~written and signed stipulation or agreement to that effect has~~
10 ~~been filed in the office of the recorder of the county or~~
11 ~~counties where the house, building or other improvement is~~
12 ~~situated, prior to the commencement of the work upon such~~
13 ~~house, building or other improvement, or within 10 days after~~
14 ~~the execution of the principal contract or not less than 10~~
15 ~~days prior to the contract of the sub contractor or material~~
16 ~~man. The recorder shall record the same at length in the order~~
17 ~~of time of its reception in books provided by him for that~~
18 ~~purpose, and the recorder shall index the same, in the name of~~
19 ~~the contractor and in the name of the owner, in books kept for~~
20 ~~that purpose, and also in the tract or abstract book of the~~
21 ~~tract, lot, or parcel of land, upon which the house, building~~
22 ~~or other improvement is located, and the recorder shall receive~~
23 ~~therefor a fee, such as is provided for the recording of~~
24 ~~instruments in his office.~~

25 (c) It shall be the duty of each subcontractor who has
26 furnished, or is furnishing, ~~materials or labor,~~ services,
27 material, fixtures, apparatus or machinery, forms or form work
28 for an existing owner-occupied single family residence, in
29 order to preserve his lien, to notify the occupant either
30 personally or by certified mail, return receipt requested,
31 addressed to the occupant or his agent of the residence within
32 60 days from his first furnishing ~~materials or labor,~~ services,
33 material, fixtures, apparatus or machinery, forms or form work,
34 that he is supplying labor, services, material, fixtures,

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

11 The notice shall contain the name and address of the
12 subcontractor or material man, the date he started to work or
13 to deliver materials, the type of work done and to be done or
14 the type of materials delivered and to be delivered, and the
15 name of the contractor requesting the work. The notice shall
16 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 (d) In no case, except as hereinafter provided, shall the
31 owner be compelled to pay a greater sum for or on account of
32 the completion of such house, building or other improvement
33 than the price or sum stipulated in said original contract or
34 agreement, unless payment be made to the contractor or to his

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

33 (e) Any provision in a contract, agreement, or
34 understanding, when payment from a contractor to a

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

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

10 (770 ILCS 60/21.01) (from Ch. 82, par. 21.01)

11 Sec. 21.01. Failure of contractor to pay sub-contractor;
12 fraud; penalty. Any contractor, or if the contractor is a
13 corporation any officer or employee thereof, who with intent to
14 defraud induces a subcontractor, as defined in Section 21, to
15 execute and deliver a waiver of lien for the purpose of
16 enabling the contractor to obtain ~~final~~ payment under his
17 contract and upon the representation that the contractor will,
18 from such ~~final~~ payment, pay the subcontractor the amount due
19 the subcontractor, and who willfully fails to pay the
20 subcontractor in full within 30 days after such ~~final~~ payment
21 shall be guilty of a Class A misdemeanor.

22 (Source: P.A. 77-2705.)

23 (770 ILCS 60/21.02)

24 Sec. 21.02. Construction Trust Funds. ~~trust funds.~~

25 (a) Money held in trust; trustees. Any owner, contractor,
26 subcontractor, or supplier of any tier who requests or requires
27 the execution and delivery of a waiver of mechanics lien by any
28 person who furnishes labor, services, material, fixtures,
29 apparatus or machinery, forms or form work ~~or materials~~ for the
30 improvement of a lot or a tract of land in exchange for payment
31 or the promise of payment, shall hold in trust the sums
32 received by such person as the result of ~~unpaid sums subject to~~

1 the waiver of mechanics lien, as trustee for the person who
2 furnished the labor, services, material, fixtures, apparatus
3 or machinery, forms or form work or the person otherwise
4 entitled to payment in exchange for such waiver. ~~or materials.~~

5 (b) How trust moneys held; commingling. Nothing contained
6 in this Section shall be construed as requiring moneys held in
7 trust by an owner, contractor, subcontractor, or material
8 supplier under this Section to be placed in a separate account.
9 If an owner, contractor, subcontractor, or material supplier
10 commingles moneys held in trust under this Section with other
11 moneys, the mere commingling of the moneys does not constitute
12 a violation of this Section.

13 (c) Violation of this Section. Any owner, contractor,
14 subcontractor, or material supplier who knowingly retains or
15 used ~~uses~~ the moneys held in trust under this Section or any
16 part thereof, for any purpose other than to pay those ~~persons~~
17 for whom the moneys are held in trust, shall be liable to any
18 person who successfully enforces his or her rights under this
19 Section for all damages sustained by that person.

20 (Source: P.A. 90-208, eff. 7-25-97.)

21 (770 ILCS 60/22) (from Ch. 82, par. 22)

22 Sec. 22. Partners or joint contractors; sub-letting of
23 contract; statement by sub-contractor; failure to provide;
24 penalty. Whenever, after a contract has been made, the
25 contractor shall associate one or more persons as partners or
26 joint contractors, in carrying out the same, or any part
27 thereof, the lien for ~~materials or labor,~~ services, material,
28 fixtures, apparatus or machinery, forms or form work furnished
29 by a sub-contractor to such contractor and his partners or
30 associates, as originally agreed upon, shall continue the same
31 as if the sub-contract had been made with all of said partners.
32 When the contractor shall sub-let his contract or a specific
33 portion thereof to a sub-contractor, the party furnishing

1 ~~material to or performing~~ labor, services, material, fixtures,
2 apparatus or machinery, forms or form work for such
3 sub-contractor shall have a lien therefor; and may enforce his
4 lien in the same manner as is herein provided for the
5 enforcement of liens by sub-contractors. Any sub-contractor
6 shall, as often as requested in writing by the owner, or
7 contractor, or the agent of either, make out and give to such
8 owner, contractor or agent, a statement of the persons
9 furnishing labor, services, material, fixtures, apparatus or
10 machinery, forms or form work ~~material and labor~~, giving their
11 names and how much, if anything, is due or to become due to
12 each of them, and which statement shall be made under oath if
13 required. If any sub-contractor shall fail to furnish such
14 statement within 5 days after such demand, he shall forfeit to
15 such owner or contractor the sum of \$50 for every offense,
16 which may be recovered in a civil action and shall have no
17 right of action against either owner or contractor until he
18 shall furnish such statement, and the lien of such
19 sub-contractor shall be subject to the liens of all other
20 creditors.

21 (Source: P.A. 76-1381.)

22 (770 ILCS 60/24) (from Ch. 82, par. 24)

23 Sec. 24. Written notice by sub-contractor; service; when
24 notice not necessary; form of notice.

25 (a) Sub-contractors, or parties ~~party~~ furnishing labor, ~~or~~
26 materials, fixtures, apparatus, machinery, or services, may at
27 any time after making his or her contract with the contractor,
28 and shall within 90 days after the completion thereof, or, if
29 extra or additional work or material is delivered thereafter,
30 within 90 days after the date of completion of such extra or
31 additional work or final delivery of such extra or additional
32 material, cause a written notice of his or her claim and the
33 amount due or to become due thereunder, to be sent by

1 registered or certified mail, with return receipt requested,
2 and delivery limited to addressee only, to or personally served
3 on the owner of record or his agent or architect, or the
4 superintendent having charge of the building or improvement and
5 to the lending agency, if known; ~~however, if the lot or lots~~
6 ~~and tract or tracts of land in question are registered under~~
7 ~~the provisions of "An Act concerning land titles", approved May~~
8 ~~1, 1897, as amended, the notice shall not be served as above~~
9 ~~stated, but shall be filed in the office of the registrar of~~
10 ~~titles of the county in which such lot or lots and tract or~~
11 ~~tracts of land are situated,~~ and such notice shall not be
12 necessary when the sworn statement of the contractor or
13 subcontractor provided for herein shall serve to give the owner
14 notice of the amount due and to whom due, but where such
15 statement is incorrect as to the amount, the subcontractor or
16 material man named shall be protected to the extent of the
17 amount named therein as due or to become due to him or her. For
18 purposes of this Section, notice by registered or certified
19 mail is considered served at the time of its mailing.

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

28 Dated at this day of,

29 (Signature).....

30 (b) The serving of notice pursuant to subsection (a) of
31 this Section shall not constitute an admission by the lien
32 claimant that its status is that of subcontractor if it is
33 later determined that the party with whom the lien claimant
34 contracted was the owner or an agent of the owner.

1 (Source: P.A. 84-551.)

2 (770 ILCS 60/25) (from Ch. 82, par. 25)

3 Sec. 25. Notice to persons not found or not residing in
4 county.

5 (a) In all cases where the owner of record, his or her
6 agent, architect, or superintendent or lending agency, if
7 known, cannot, upon reasonable diligence, be found in the
8 county in which said improvement is made, or shall not reside
9 therein, the sub-contractor or person furnishing labor,
10 services, material materials, fixtures, apparatus or
11 machinery, forms labor or form work services may give notice to
12 such persons who cannot be found by filing within 90 days after
13 the completion of his or her contract with the contractor, or
14 if extra or additional work or material is delivered
15 thereafter, within 90 days after the date of completion of such
16 extra or additional work or final delivery of such extra or
17 additional material, by filing in the office of the recorder
18 ~~against the person making the contract and the owner~~ a claim
19 for lien verified by the affidavit of himself or herself, or
20 his or her, agent or employee, which shall consist of a brief
21 statement of his or her contract or demand, and the balance due
22 after allowing all credits, and a sufficient correct
23 description of the lot, lots or tract of land to identify the
24 same. An itemized account shall not be necessary.

25 (b) The notice recorded pursuant to subsection (a) of this
26 Section shall satisfy the notice requirements of Section 24 of
27 this Act only as to any owner of record, his or her agent,
28 architect, superintendent, or lending agency, if known, who or
29 which cannot, upon reasonable diligence, be found or shall not
30 reside in the county in which said improvement is made. In the
31 event that notice is recorded as provided herein, if such
32 notice complies with Section 7 of this Act it shall also be
33 deemed a claim for lien recorded pursuant to Section 7 of this

1 Act.

2 (c) The recording of notice pursuant to subsection (a) of
3 this Section shall not constitute an admission by the lien
4 claimant that its status is that of subcontractor if it is
5 later determined that the party with whom the lien claimant
6 contracted was the owner or an agent of the owner.

7 (Source: P.A. 83-358.)

8 (770 ILCS 60/26) (from Ch. 82, par. 26)

9 Sec. 26. Claim for wages as laborer preferred. The claim of
10 any person for wages ~~as a laborer~~ under Sections ~~section~~
11 ~~fifteen, 21~~ ~~twenty-one~~ and 22 ~~twenty-two~~ of this Act shall be a
12 preferred lien.

13 (Source: Laws 1903, p. 230.)

14 (770 ILCS 60/28) (from Ch. 82, par. 28)

15 Sec. 28. Suits by laborers, materialmen or
16 sub-contractors. If any money due to the laborers, materialmen,
17 or sub-contractors be not paid within 10 days after his notice
18 is served as provided in sections 5, 24, and 25, ~~and 27,~~ then
19 such person may ~~either~~ file a claim for lien or file a
20 complaint and enforce such lien within the same limits as to
21 time and in such other manner as hereinbefore provided for the
22 contractor in section 7 and sections 9 to 20 inclusive, of this
23 Act, or he may sue the owner and contractor jointly for the
24 amount due in the circuit court, and a personal judgment may be
25 rendered therein, as in other cases. In such actions, as in
26 suits to enforce the lien, the owner shall be liable to the
27 plaintiff for no more than the pro rata share that such person
28 would be entitled to with other sub-contractors out of the
29 funds due to the contractor from the owner or one knowingly
30 permitted by the owner to ~~under the~~ contract for such
31 improvements and the contractor ~~between them,~~ except as
32 hereinbefore provided for laborers and materialmen, and such

1 action shall be maintained against the owner only in case the
2 plaintiff establishes a right to the lien. All suits and
3 actions by sub-contractors shall be against both contractor and
4 owner jointly, and no judgment shall be rendered therein until
5 both are duly brought before the court by process or
6 publication, and such process may be served and publication
7 made as to all persons except the owners as in other civil
8 actions. All such judgments, where the lien is established
9 shall be against both jointly, but shall be enforced against
10 the owner only to the extent that he is liable under his
11 contract as by this Act provided, and shall recite the date
12 from which the lien thereof attached according to the
13 provisions of Sections 1 to 20 of this Act; but this shall not
14 preclude a judgment against the contractor, personally, where
15 the lien is defeated.

16 (Source: P.A. 79-1358.)

17 (770 ILCS 60/30) (from Ch. 82, par. 30)

18 Sec. 30. Multiple liens; insufficient funds; hearing;
19 judgment. If there are several liens under sections 21 and 22
20 of this Act upon the same premises, and the owner or any person
21 having such a lien shall fear that there is not a sufficient
22 amount coming to the contractor to pay all such liens, the ~~such~~
23 owner or any one or more persons having such lien may file his,
24 her or their complaint in the circuit court of the proper
25 county, stating such fact and such other facts as may be
26 sufficient to a full understanding of the rights of the
27 parties. The contractor and all persons having liens upon or
28 who are interested in the premises, so far as the same are
29 known to or can be ascertained by the plaintiff, upon diligent
30 inquiry shall be made parties. Upon the hearing the court shall
31 find the amount due from the owner to the contractor, and the
32 amount due to each of the persons having liens, and in case the
33 amount found to be due to the contractor shall be insufficient

1 to discharge all the liens in full, the amount so found in
2 favor of the contractor shall be divided between the persons
3 entitled to such liens pro rata after the payment of all claims
4 for wages in proportion to the amounts so found to be due them
5 respectively. If the amount so found to be due to the
6 contractor shall be sufficient to pay the liens in full, the
7 same shall be so ordered. The premises may be sold as in other
8 cases under this Act. The parties to such action shall
9 prosecute the same under like requirements as are directed in
10 section 11 of this Act, and all persons who shall be duly
11 notified of such proceedings, and who shall fail to prove their
12 claims, whether the same be in judgment against the owner or
13 not, shall forever lose the benefit of and be precluded from
14 their liens and all claims against the owner. Upon the filing
15 of such complaint the court may, on the motion of any person
16 interested, and shall, upon final judgment stay further
17 proceedings upon any action against the owner on account of
18 such liens, and costs in such cases shall be adjusted as
19 provided for in section 17 of this Act.

20 (Source: P.A. 81-251.)

21 (770 ILCS 60/32) (from Ch. 82, par. 32)

22 Sec. 32. Payments to contractor by owner. No payments to
23 the contractor or to his order of any money or other
24 considerations due or to become due to the contractor shall be
25 regarded as rightfully made, as against the sub-contractor,
26 laborer, or party furnishing labor, services, material,
27 fixtures, apparatus or machinery, forms or form work ~~or~~
28 ~~materials,~~ if made by the owner without exercising and
29 enforcing the rights and powers conferred upon him in Sections
30 5, 21 and 22 of this Act.

31 (Source: P.A. 80-1333.)

32 (770 ILCS 60/35) (from Ch. 82, par. 35)

1 Sec. 35. Satisfaction or release; recording; neglect;
2 penalty. Whenever a claim for lien has been filed with the
3 recorder ~~or the Registrar~~ of deeds ~~Titles~~, either by the
4 contractor or sub-contractor, and is paid ~~before October 1,~~
5 ~~1973,~~ with cost of filing same, or where there is a failure to
6 institute suit to enforce the same after demand~~,~~ as provided in
7 the preceding section~~,~~ within the time by this Act limited~~,~~ the
8 person filing the same or some one by him duly authorized in
9 writing so to do, shall acknowledge satisfaction or release
10 thereof, in writing, on written demand of the owner, lienor, or
11 any person interested in the real estate, or his or her agent
12 or attorney, and on neglect to do so for 10 days after such
13 written demand he or she shall be liable to the owner for the
14 sum of \$2,500, ~~\$25,~~ which may be recovered in a civil action
15 together with the costs and the reasonable attorney's fees of
16 the owner, lienor, or other person interested in the real
17 estate, or his or her agent or attorney incurred in bringing
18 such action.

19 **(b)** Such a satisfaction or release of lien may be filed
20 with the recorder ~~or Registrar~~ of deeds ~~Titles~~ in whose office
21 the claim for lien had been filed and when so filed shall
22 forever thereafter discharge and release the claim for lien and
23 shall bar all actions brought or to be brought thereupon.

24 **(c)** ~~Whenever a claim for lien has been filed with the~~
25 ~~recorder or the Registrar of Titles, either by the contractor~~
26 ~~or sub-contractor, and is paid after October 1, 1973 with cost~~
27 ~~of filing such claim for lien, the person filing the claim or~~
28 ~~someone by him duly authorized in writing so to do shall, upon~~
29 ~~receipt of the satisfaction of such claim deliver a release of~~
30 ~~lien in writing to the owner within 30 days after receipt of~~
31 ~~payment or shall be liable to the owner for the sum of \$100~~
32 ~~which may be recovered in a civil action.~~ The release of lien
33 shall have the following imprinted thereon in bold letters at
34 least 1/4 inch in height: "FOR THE PROTECTION OF THE OWNER,

1 THIS RELEASE SHOULD BE FILED WITH THE RECORDER ~~OR THE REGISTRAR~~
2 ~~OF TITLES~~ IN WHOSE OFFICE THE CLAIM FOR LIEN WAS FILED." The
3 Recorder ~~or the Registrar of Titles~~ in whose office the claim
4 for lien had been filed, upon receipt of a release and the
5 payment of the recording ~~or registration~~ fee, shall record ~~or~~
6 ~~register~~ the release.

7 (Source: P.A. 83-358.)

8 (770 ILCS 60/1.1 rep.) (from Ch. 82, par. 1.1)

9 Section 10. The Mechanics Lien Act is amended by repealing
10 Section 1.1."