

SB1118



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1118

Introduced 2/8/2011, by Sen. John J. Cullerton

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.

LRB097 04834 AJ0 44873 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. Sub-contractor defined; lien of sub-contractor;
8 notice; size of type; service of notice; amount of lien;
9 default by contractor.

10 (a) Subject to the ~~the~~ provisions of Section 5, every
11 mechanic, worker or other person who shall furnish any labor,
12 services, material, fixtures, apparatus or machinery, forms or
13 form work for the contractor, or shall furnish any material to
14 be employed in the process of construction as a means for
15 assisting in the erection of the building or improvement in
16 what is commonly termed form or form work where concrete,
17 cement or like material is used in whole or in part, shall be
18 known under this Act as a sub-contractor, and shall have a lien
19 for the value thereof, with interest on such amount from the
20 date the same is due, from the same time, on the same property
21 as provided for the contractor, and, also, as against the
22 creditors and assignees, and personal and legal
23 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 subordination provision shall not be binding
13 on the subcontractor unless set forth in its entirety in
14 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

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

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

15 "NOTICE TO OWNER

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

25 Such warning shall be in at least 10 point bold face type.
26 For purposes of this Section, notice by certified mail is

1 considered served at the time of its mailing.

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

1 or delivered without written protest on the part of the owner
2 previous to such performance or delivery, or preparation for
3 delivery, then, and in any of such cases, such sub-contractor
4 or party furnishing or preparing material, regardless of the
5 price named in the original contract, shall have a lien
6 therefor to the extent of the amount named in such statements
7 or notice. In case of default or abandonment by the contractor,
8 the sub-contractor or party furnishing material, shall have and
9 may enforce his lien to the same extent and in the same manner
10 that the contractor may under conditions that arise as provided
11 for in Section 4 of this Act, and shall have and may exercise
12 the same rights as are therein provided for the contractor.

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

23 (Source: P.A. 94-615, eff. 1-1-06; 94-627, eff. 1-1-06.)