



Adopted in House Comm. on Mar 04, 2004

09300HB3994ham001

LRB093 14871 LCB 48303 a

1 AMENDMENT TO HOUSE BILL 3994

2 AMENDMENT NO. _____. Amend House Bill 3994 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, 5, and 21 as follows:

6 (770 ILCS 60/1) (from Ch. 82, par. 1)

7 Sec. 1. Any person who shall by any contract or contracts,
8 express or implied, or partly expressed or implied, with the
9 owner of a lot or tract of land, or with one whom the owner has
10 authorized or knowingly permitted to contract, to improve the
11 lot or tract of land or to manage a structure thereon, or to
12 furnish material, fixtures, apparatus or machinery, forms or
13 form work used in the process of construction where cement,
14 concrete or like material is used for the purpose of or in the
15 building, altering, repairing or ornamenting any house or other
16 building, walk or sidewalk, whether the walk or sidewalk is on
17 the land or bordering thereon, driveway, fence or improvement
18 or appurtenances to the lot or tract of land or connected
19 therewith, and upon, over or under a sidewalk, street or alley
20 adjoining; or fill, sod or excavate such lot or tract of land,
21 or do landscape work thereon or therefor; or raise or lower any
22 house thereon or remove any house thereto, or remove any house
23 or other structure therefrom, or perform any services or incur
24 any expense as an architect, structural engineer, professional

1 engineer, land surveyor or property manager in, for or on a lot
2 or tract of land for any such purpose; or drill any water well
3 thereon; or furnish or perform labor or services as
4 superintendent, time keeper, mechanic, laborer or otherwise,
5 in the building, altering, repairing or ornamenting of the
6 same; or furnish material, fixtures, apparatus, machinery,
7 labor or services, forms or form work used in the process of
8 construction where concrete, cement or like material is used,
9 or drill any water well on the order of his agent, architect,
10 structural engineer or superintendent having charge of the
11 improvements, building, altering, repairing or ornamenting the
12 same, is known under this Act as a contractor, and has a lien
13 upon the whole of such lot or tract of land and upon adjoining
14 or adjacent lots or tracts of land of such owner constituting
15 the same premises and occupied or used in connection with such
16 lot or tract of land as a place of residence or business; and
17 in case the contract relates to 2 or more buildings, on 2 or
18 more lots or tracts of land, upon all such lots and tracts of
19 land and improvements thereon for the amount due to him for
20 such material, fixtures, apparatus, machinery, services or
21 labor, and interest at the rate of 10% per annum from the date
22 the same is due. This lien extends to an estate in fee, for
23 life, for years, or any other estate or any right of
24 redemption, or other interest which the owner may have in the
25 lot or tract of land at the time of making such contract or may
26 subsequently acquire. The taking of additional security by the
27 contractor or sub-contractor is not a waiver of any right of
28 lien which he may have by virtue of this Act, unless made a
29 waiver by express agreement of the parties and the waiver is
30 not prohibited by this Act. This lien attaches as of the date
31 of the contract. A contractor for improvements of an
32 owner-occupied single-family residence must give the owner
33 written notice before filing a lien against any property of the
34 owner.

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

2 (770 ILCS 60/5) (from Ch. 82, par. 5)

3 Sec. 5. It shall be the duty of the contractor to give the
4 owner, and the duty of the owner to require of the contractor,
5 before the owner or his agent, architect, or superintendent
6 shall pay or cause to be paid to the contractor or to his order
7 any moneys or other consideration due or to become due to the
8 contractor, or make or cause to be made to the contractor any
9 advancement of any moneys or any other consideration, a
10 statement in writing, under oath or verified by affidavit, of
11 the names and addresses of all parties furnishing materials and
12 labor and of the amounts due or to become due to each.
13 Merchants and dealers in materials only shall not be required
14 to make statements required in this Section.

15 Each contractor shall provide each owner, either as part of
16 the contract or as a separate printed statement, the following:

17 "THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN
18 STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY
19 PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR."

20 If printed in the contract, the statement shall be set in
21 type that is at least the same size as the largest type used in
22 the body of the contract and is bold face or another font that
23 clearly contrasts with and sets the statement apart from the
24 rest of the body of the contract.

25 It shall be the duty of each contractor or subcontractor
26 who has furnished, or is furnishing, materials or labor for an
27 existing owner-occupied single-family residence, in order to
28 preserve his lien, to notify the occupant either personally or
29 by certified mail, return receipt requested, addressed to the
30 occupant or his agent at the residence within 60 days from his
31 first furnishing materials or labor, that he is supplying
32 materials or labor. Any notice given after 60 days by the
33 contractor or subcontractor, however, shall preserve his lien,

1 but only to the extent that the owner has not been prejudiced
2 by payments made before receipt of the notice.

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

9 "NOTICE TO OWNER

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

22 The warning shall be in at least 10 point boldface type.
23 For purposes of this Section, notice by certified mail is
24 considered served at the time of its mailing.

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

26 (770 ILCS 60/21) (from Ch. 82, par. 21)

27 Sec. 21. Subject to the provisions of Section 5, every
28 mechanic, worker or other person who shall furnish any
29 materials, apparatus, machinery or fixtures, or furnish or
30 perform services or labor for the contractor, or shall furnish
31 any material to be employed in the process of construction as a
32 means for assisting in the erection of the building or
33 improvement in what is commonly termed form or form work where

1 concrete, cement or like material is used in whole or in part,
2 shall be known under this Act as a sub-contractor, and shall
3 have a lien for the value thereof, with interest on such amount
4 from the date the same is due, from the same time, on the same
5 property as provided for the contractor, and, also, as against
6 the creditors and assignees, and personal and legal
7 representatives of the contractor, on the material, fixtures,
8 apparatus or machinery furnished, and on the moneys or other
9 considerations due or to become due from the owner under the
10 original contract. If the legal effect of any contract between
11 the owner and contractor is that no lien or claim may be filed
12 or maintained by any one and the waiver is not prohibited by
13 this Act, such provision shall be binding; but the only
14 admissible evidence thereof as against a sub-contractor or
15 material man, shall be proof of actual notice thereof to him
16 before any labor or material is furnished by him; or proof that
17 a duly written and signed stipulation or agreement to that
18 effect has been filed in the office of the recorder of the
19 county or counties where the house, building or other
20 improvement is situated, prior to the commencement of the work
21 upon such house, building or other improvement, or within 10
22 days after the execution of the principal contract or not less
23 than 10 days prior to the contract of the sub-contractor or
24 material man. The recorder shall record the same at length in
25 the order of time of its reception in books provided by him for
26 that purpose, and the recorder shall index the same, in the
27 name of the contractor and in the name of the owner, in books
28 kept for that purpose, and also in the tract or abstract book
29 of the tract, lot, or parcel of land, upon which the house,
30 building or other improvement is located, and the recorder
31 shall receive therefor a fee, such as is provided for the
32 recording of instruments in his office.

33 It shall be the duty of each contractor or subcontractor
34 who has furnished, or is furnishing, materials or labor for an

1 existing owner-occupied single family residence, in order to
2 preserve his lien, to notify the occupant either personally or
3 by certified mail, return receipt requested, addressed to the
4 occupant or his agent of the residence within 60 days from his
5 first furnishing materials or labor, that he is supplying
6 materials or labor; provided, however, that any notice given
7 after 60 days by the contractor or subcontractor shall preserve
8 his lien, but only to the extent that the owner has not been
9 prejudiced by payments made prior to receipt of the notice. The
10 notification shall include a warning to the owner that before
11 any payment is made to the contractor, the owner should receive
12 a waiver of lien executed by each contractor or subcontractor
13 who has furnished materials or labor.

14 The notice shall contain the name and address of the
15 subcontractor or material man, the date he started to work or
16 to deliver materials, the type of work done and to be done or
17 the type of materials delivered and to be delivered, and the
18 name of the contractor requesting the work. The notice shall
19 also contain the following warning:

20 "NOTICE TO OWNER

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

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

1 considered served at the time of its mailing.

2 In no case, except as hereinafter provided, shall the owner
3 be compelled to pay a greater sum for or on account of the
4 completion of such house, building or other improvement than
5 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 and material
15 used in said house, building or other improvement, and the sum
16 named in said original contract, and said difference shall be
17 considered a part of the contract and be subject to a lien. But
18 where the contractor's statement, made as provided in Section
19 5, shows the amount to be paid to the sub-contractor, or party
20 furnishing material, or the sub-contractor's statement, made
21 pursuant to Section 22, shows the amount to become due for
22 material; or notice is given to the owner, as provided in
23 Sections 24 and 25, and thereafter such sub-contract shall be
24 performed, or material to the value of the amount named in such
25 statements or notice, shall be prepared for use and delivery,
26 or delivered without written protest on the part of the owner
27 previous to such performance or delivery, or preparation for
28 delivery, then, and in any of such cases, such sub-contractor
29 or party furnishing or preparing material, regardless of the
30 price named in the original contract, shall have a lien
31 therefor to the extent of the amount named in such statements
32 or notice. In case of default or abandonment by the contractor,
33 the sub-contractor or party furnishing material, shall have and
34 may enforce his lien to the same extent and in the same manner

1 that the contractor may under conditions that arise as provided
2 for in section 4 of this Act, and shall have and may exercise
3 the same rights as are therein provided for the contractor.

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

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