

# HB0830



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0830

Introduced 2/7/2007, by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

770 ILCS 60/21

from Ch. 82, par. 21

Amends the Mechanic Lien Act. Provides that in a breach of contract action (at present, only in actions for payment of a claim under the Mechanics Lien Act) a provision in a contract that conditions a payment to a contractor or subcontractor on payment by another party is not a defense. Effective immediately.

LRB095 05101 AJO 25170 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 provisions of Section 5, every mechanic,  
11 worker or other person who shall furnish any labor, services,  
12 material, fixtures, apparatus or machinery, forms or form work  
13 for the contractor, or shall furnish any material to be  
14 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 or for breach of contract against the party. For the  
20 purpose of this Section, "contractor" also includes  
21 subcontractor or supplier. The provisions of Public Act 87-1180  
22 shall be construed as declarative of existing law and not as a  
23 new enactment.

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

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.