

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 2. If and only if Senate Bill 1930 of the 94th General Assembly becomes law in the form in which it passed the Senate, the Mechanics Lien Act is amended by changing Section 21 as follows:

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

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

(a) Subject to the provisions of Section 5, every mechanic, worker or other person who shall furnish any labor, services, material, fixtures, apparatus or machinery, forms or form work for the contractor, or shall furnish any material to be employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed form or form work where concrete, cement or like material is used in whole or in part, shall be known under this Act as a sub-contractor, and shall have a lien for the value thereof, with interest on such amount from the date the same is due, from the same time, on the same property as provided for the contractor, and, also, as against the creditors and assignees, and personal and legal representatives of the contractor, on the material, fixtures, apparatus or machinery furnished, and on the moneys or other considerations due or to become due from the owner under the original contract.

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

the interests of any other party, such provision shall be binding; but the only admissible evidence thereof as against a subcontractor or material supplier, shall be proof of actual notice thereof to him or her before his or her contract is entered into. Such ~~waiver or~~ subordination provision shall not be binding on the subcontractor unless set forth in its entirety in writing in the contract between the contractor and subcontractor or material supplier.

(c) It shall be the duty of each subcontractor who has furnished, or is furnishing, labor, services, material, fixtures, apparatus or machinery, forms or form work for an existing owner-occupied single family residence, in order to preserve his lien, to notify the occupant either personally or by certified mail, return receipt requested, addressed to the occupant or his agent of the residence within 60 days from his first furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work, that he is supplying labor, services, material, fixtures, apparatus or machinery, forms or form work provided, however, that any notice given after 60 days by the subcontractor shall preserve his lien, but only to the extent that the owner has not been prejudiced by payments made prior to receipt of the notice. The notification shall include a warning to the owner that before any payment is made to the contractor, the owner should receive a waiver of lien executed by each subcontractor who has furnished labor, services, material, fixtures, apparatus or machinery, forms or form work.

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

"NOTICE TO OWNER

The subcontractor providing this notice has performed work for or delivered material to your home improvement contractor.

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

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

(d) In no case, except as hereinafter provided, shall the owner be compelled to pay a greater sum for or on account of the completion of such house, building or other improvement than the price or sum stipulated in said original contract or agreement, unless payment be made to the contractor or to his order, in violation of the rights and interests of the persons intended to be benefited by this act: Provided, if it shall appear to the court that the owner and contractor fraudulently, and for the purpose of defrauding sub-contractors fixed an unreasonably low price in their original contract for the erection or repairing of such house, building or other improvement, then the court shall ascertain how much of a difference exists between a fair price for labor, services, material, fixtures, apparatus or machinery, forms or form work used in said house, building or other improvement, and the sum named in said original contract, and said difference shall be considered a part of the contract and be subject to a lien. But where the contractor's statement, made as provided in Section 5, shows the amount to be paid to the sub-contractor, or party furnishing material, or the sub-contractor's statement, made pursuant to Section 22, shows the amount to become due for material; or notice is given to the owner, as provided in Sections 24 and 25, and thereafter such sub-contract shall be performed, or material to the value of the amount named in such statements or notice, shall be prepared for use and delivery, or delivered without written protest on the part of the owner

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

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

(Source: P.A. 87-361; 87-362; 87-895; 87-1180; 88-45; 94SB1930eng.)

Section 5. The Tool and Die Lien Act is amended by changing Sections 1, 2, 3, 5, and 6 and by adding Sections 4.1 and 5.1 as follows:

(770 ILCS 105/1) (from Ch. 82, par. 351)

Sec. 1. Lien.

(A) Plastic or metal processors or persons conducting a plastic or metal processing business shall have a lien on the tools, dies, molds, jigs, fixtures, forms or patterns in their possession belonging to a customer, for the balance due them from such customer for plastic or metal processing work, and for all materials related to such work. The processor may

retain possession of the tool, die, mold, jig, fixture, form or pattern until such balance is paid, subject only to a security interest properly perfected pursuant to Article 9 of the Uniform Commercial Code.

(B) A toolmaker has a lien on all special tools produced by it and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the special tool produced by it until the toolmaker is paid in full all amounts due the toolmaker for the production of the special tool. For the purpose of this subsection:

(1) the lien attaches when the special tool is delivered from the toolmaker to the customer;

(2) the amount of the lien is the amount that a customer or processor owes the toolmaker for the fabrication, repair, or modification of the special tool;
and

(3) the toolmaker retains the lien even if the toolmaker is not a possession of the special tool for which the lien is claimed.

(Source: P.A. 85-381.)

(770 ILCS 105/2) (from Ch. 82, par. 352)

Sec. 2. Definitions. For purposes of this Act:

(A) The term "processor" means any individual or entity including, but not limited to, a tool or die maker, who contracted with, or uses a tool, die, mold, jig, fixture, form or pattern to manufacture, assemble, or otherwise make a plastic or metal product or products for a customer.

(B) The term "customer" means any individual or entity who contracted with, or caused a plastic or metal processor to use a tool, die, mold, jig, fixture, form or pattern to manufacture, assemble, or otherwise make plastic or metal components or products.

(C) The term "special tool" means a tool, die, mold, jig, fixture, form, ~~or~~ pattern, or part used to manufacture, assemble, or otherwise make plastic or metal components or

products.

(D) The term "toolmaker" means a person including, but not limited to, a mold builder, model maker, patternmaker, molder, die maker, metal former, jig and fixture builder, die sinker, die caster, mold designer, mold programmer, die designer, die programmer, and mold or die engineer, that fabricates, cuts, casts, forms, or designs molds for the plastic industry or dies for the metal forming industry.

(Source: P.A. 85-381.)

(770 ILCS 105/3) (from Ch. 82, par. 353)

Sec. 3. Notice. Before enforcing a ~~such~~ lien as provided for in subsection (A) of Section 1 of this Act, an initial notice in writing shall be given to the customer, either delivered personally or sent by registered mail to the last known address of the customer. This notice shall state that a lien is claimed in the amount therein set forth or thereto attached for processing work contracted or performed for the customer. This notice shall also include a demand for payment.

Before enforcing a lien as provided in subsection (B) of Section 1 of this Act, an initial notice in writing shall be given to the customer and processor, either delivered personally or sent by registered mail to the last known address of the customer and the processor. The notice shall state that a lien is claimed in the amount set forth in or attached to the notice for the fabrication, repair, or modification of the special tool. The notice shall also include a demand for payment.

(Source: P.A. 85-381.)

(770 ILCS 105/4.1 new)

Sec. 4.1. Possession of special tool. If the toolmaker has not been paid the amount claimed in the notice within 90 days after the initial notice is received by the customer and by the processor, the toolmaker has a right to possession of the special tool and may do the following:

(1) enforce the right to possession of the special tool by judgement, foreclosure, or any available judicial procedure;

(2) commence a civil action in circuit court to enforce the lien, including by obtaining a judgment for the amount owed and a judgment permitting the special tool to be sold at an execution sale;

(3) take possession of the special tool, if possession without judicial process can be done without breach of the peace; and

(4) sell the special tool in a public auction.

A toolmaker that suffers damages under this Act may obtain appropriate legal and equitable relief, including damages, in a civil action. The court shall award the toolmaker that is the prevailing party reasonable attorney's fees, court costs, and expenses related to enforcement of the lien.

(770 ILCS 105/5) (from Ch. 82, par. 355)

Sec. 5. Second notice; publication; sale by processor.

(A) Before a processor may sell the die, mold or special tool, the processor shall provide a second written notification to the customer, by registered mail, return receipt requested. The second notice shall include the following information:

(1) The processor's intention to sell the die, mold, or special tool;

(2) A description of the die, mold, or special tool to be sold;

(3) The time and place of the sale; and

(4) An itemized statement for the amount due.

(B) In addition to this notification by mail, the processor shall publish in a newspaper of general circulation in the place where the die, mold, or special tool is being held for sale by the processor, notice of the processor's intention to sell the die, mold, or special tool. The notice shall include a description of the die, mold, or special tool and name of the customer.

(Source: P.A. 85-381.)

(770 ILCS 105/5.1 new)

Sec. 5.1. Second notice; publication; sale by toolmaker.

(A) Before a toolmaker may sell the special tool, the toolmaker shall provide a second written notification to the customer and processor, by registered mail, return receipt requested. The second notice shall include the following information:

- (1) the toolmaker's intention to sell the special tool;
- (2) a description of the special tool to be sold;
- (3) the time and place of the sale; and
- (4) an itemized statement for the amount due.

(B) In addition to this notification by mail, the toolmaker shall publish in a newspaper of general circulation in the place where the special tool is being held for sale by the toolmaker, notice of the toolmaker's intention to sell the special tool. The notice shall include a description of the special tool and name of the customer and processor.

(770 ILCS 105/6) (from Ch. 82, par. 356)

Sec. 6. Inspection. (A) Prior to the sale of any die, mold or special tool in accordance with this Act, such item must be available for inspection, upon request, by members of the public during normal business hours for a period of at least 2 weeks prior to the sale.

(B) If the sale is for a sum greater than the amount of the lien, the excess shall be paid to any prior lienholder and any remainder to the customer and the processor.

(C) A sale shall not be made or a possession shall not be obtained under this Act if it would be in violation of any right of a customer or a processor under federal patent, bankruptcy, or copyright law.

(Source: P.A. 85-381.)