

2A:44-124.1

LEGISLATIVE HISTORY CHECKLIST

WJSA 2A:44-124.1 (Mechanic liens--Waiver of right to file void and unenforceable)

LAWS OF 1979 CHAPTER 301

Bill No. A1144

Sponsor(s) Newman, Doyle and Garvin

Date Introduced April 20, 1978

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes according to Governor's recommendations
Date of Passage: Assembly Oct. 19, 1978

Amendments denoted by asterisks

Re-enacted Dec. 10, 1979

Senate May 21, 1979

Re-enacted Jan. 3, 1980

Date of approval Jan. 17, 1980

Following statements are attached if available:

Sponsor statement Yes (Below)

Committee Statement: Assembly Yes

Senate No

Fiscal Note No

Veto message Yes

Message on signing No

Following were printed:

Reports No

Hearings No

Sponsor's statement:

This bill provides that any contract waiver of the right to file or enforce any mechanic's lien whether in a private or public construction project, is void as against public policy and unenforceable.

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ASSEMBLY, No. 1144

STATE OF NEW JERSEY

INTRODUCED APRIL 20, 1978

By Assemblymen NEWMAN, DOYLE and Assemblywoman GARVIN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning the unenforceability of waivers of the right to file or enforce mechanic's liens and supplementing chapter 44 of Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. ***[**Any provision of any contract or other agreement whereby
2 the right to file or enforce any lien created under article 10 or
3 article 11 of this chapter is waived, shall be void as against public
4 policy and unenforceable. This section shall not preclude a require-
5 ment for a written release of a mechanic's lien executed and
6 delivered by a contractor, subcontractor, material supplier, or
7 laborer simultaneously with or after payment for the labor per-
8 formed or the materials furnished has been made to such con-
9 tractor, subcontractor, materialman or laborer.**]*** *Any provision*
10 *of any contract or other agreement whereby the rights afforded by*
11 *article 10 or article 11 of this chapter are waived must be in writing,*
12 *conspicuous, and signed by each party to be bound by the waiver.**

1 2. This act shall take effect ***[immediately]*** *45 days following*
2 *enactment. This act shall apply to all contracts or other agree-*
3 *ments executed on or after the effective date*.*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1144

—◆—
STATE OF NEW JERSEY
—◆—

DATED: SEPTEMBER 18, 1978

This bill provides that any contract containing a waiver of the right to file or enforce any mechanic's lien is void.

Although mechanics' liens are now available to subcontractors under present law, many general contractors have required that subcontractors sign a contractual waiver of this right in order to work on a project.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT
ASSEMBLY BILL NO. 1144

December 3, 1979

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 1144, with my objections, for reconsideration.

This bill would declare all agreements to waive the right to file or enforce a mechanic's lien created under article 10 or article 11 of chapter 44 of Title 2A of the New Jersey Statutes void as against public policy. The bill would change current case law, which treats the lien right as a "personal privilege" of the laborer or materialman which may be knowingly waived. General Electric Corp. v. E. Fred Sulzer and Co., 86 N.J. Super. 520, 529 (L. Div. 1965), aff'd 92 N.J. Super. 210 (App. Div. 1966).

I see no reason for a broad prohibition of lien waivers. Such agreements, when negotiated at arms length, can be justified by important economic and business reasons. In order to ensure that such agreements are entered into knowingly, I recommend that the bill be amended to require the waiver to be in writing and conspicuous.

Accordingly, I herewith return Assembly Bill No. 1144 for reconsideration and recommend that it be amended as follows:

Page 1, Section 1, Lines 1-9: Omit entirely and insert:

"Any provision of any contract or other agreement whereby the rights afforded by article 10 or article 11 of this chapter are waived must be in writing, conspicuous, and signed by each party to be bound by the waiver."

Page 1, Section 2, Line 1: Omit "Immediately" and insert "45 days following enactment. This act shall apply to all contracts or other agreements executed on or after the effective date."

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Harold L. Hodes

CHI STAFF, SECRETARY