

## HOUSE BILL No. 1021

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DIGEST OF HB 1021 (Updated January 15, 1998 11:06 am - DI 69)

**Citations Affected:** IC 32-8.

**Synopsis:** Common law liens. Defines who a public official is for purposes of common law liens. Specifies that the provisions for filing and releasing a common law lien do not create a common law lien. Specifies that a common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. Specifies that a person asserting a common law lien must prove the existence of the lien as prescribed by the common law of Indiana. Requires a statement of intention to hold a common law lien to include a statement of the legal basis upon which the person filing the statement asserts the right to hold the common law lien. Reduces the time period for a lienholder to commence suit upon the common law lien from 60 days to 30 days from the day the lienholder  
(Continued next page)

**Effective:** July 1, 1998.

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**Foley, Alevizos, Richardson**

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January 6, 1998, read first time and referred to Committee on Judiciary.  
January 20, 1998, amended, reported — Do Pass.

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HB 1021—LS 6239/DI 92+



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receives a notice to commence suit from the property owner. (The introduced version of this bill was prepared by the probate code study commission.)

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HB 1021—LS 6239/DI 92+



Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## HOUSE BILL No. 1021

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-8-39-2.2 IS ADDED TO THE INDIANA  
2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 1998]: **Sec. 2.2. "Public official" means an**  
4 **individual who holds office in or is an employee of the executive,**  
5 **judicial, or legislative branch of the state or federal government or**  
6 **a political subdivision of either of those governments. The term**  
7 **includes an official or employee of any university, college, or other**  
8 **educational institution established in Indiana for the purpose of**  
9 **providing programs of collegiate or university education or other**  
10 **post-high school education and that is supported in whole or in**  
11 **part by appropriations made by the general assembly.**

12 SECTION 2. IC 32-8-39-2.7 IS ADDED TO THE INDIANA  
13 CODE AS A NEW SECTION TO READ AS FOLLOWS  
14 [EFFECTIVE JULY 1, 1998]: **Sec. 2.7. (a) This chapter provides the**  
15 **procedure for filing and releasing a common law lien.**

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1           **(b) This chapter does not create a common law lien. No**  
 2 **common law lien exists against the property of a public official for**  
 3 **the performance or nonperformance of the public official's official**  
 4 **duty. A person asserting a common law lien must prove the**  
 5 **existence of the lien as prescribed by the common law of Indiana.**

6           SECTION 3. IC 32-8-39-3, AS ADDED BY P.L.277-1995,  
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 1998]: Sec. 3. (a) A person who wishes to record a common  
 9 law lien shall file with the county recorder of a county in which the real  
 10 or personal property against which the common law lien is to be held  
 11 is located a statement of the person's intention to hold a common law  
 12 lien against the real or personal property.

13           (b) A statement of intention to hold a common law lien must meet  
 14 all of the following requirements:

15           (1) Except as provided in subsection (d), the person filing the  
 16 statement must swear or affirm that the facts contained in the  
 17 statement are true to the best of the person's knowledge.

18           (2) The statement must be filed in duplicate.

19           (3) The statement must set forth:

20                   (A) the amount claimed to be owed by the property owner  
 21 to the lienholder;

22                   (B) the name and address of the lienholder;

23                   (C) the name of the property owner;

24                   (D) the last address of the property owner as shown on the  
 25 property tax records of the county;

26                   (E) the legal description and street and number, if any, of  
 27 the real property against which the common law lien is  
 28 filed; ~~and~~

29                   (F) a full description of the personal property against which  
 30 the common law lien is filed, including the location of the  
 31 personal property; **and**

32                   **(G) the legal basis upon which the person asserts the**  
 33 **right to hold the common law lien.**

34           (c) The recorder shall send by first class mail one (1) of the  
 35 duplicate statements filed under subsection (b) to the property owner  
 36 at the address listed in the statement within three (3) business days  
 37 after the statement is recorded. The county recorder shall record the  
 38 date the statement is mailed to the property owner under this  
 39 subsection. The county recorder shall collect a fee of two dollars (\$2)  
 40 from the lienholder for each statement that is mailed under this  
 41 subsection.

42           (d) The statement of intention to hold a common law lien required

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1 under subsection (b) may be verified and filed on behalf of a client by  
 2 an attorney registered with the clerk of the supreme court as an attorney  
 3 in good standing under the requirements of the supreme court.

4 SECTION 4. IC 32-8-39-4, AS AMENDED BY P.L.211-1996,  
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 1998]: Sec. 4. (a) A property owner may send to the lienholder  
 7 a notice requiring the lienholder to commence suit on the common law  
 8 lien. The notice to commence suit must be made by registered or  
 9 certified mail to the lienholder at the address given in the lienholder's  
 10 statement filed under section 3 of this chapter.

11 (b) If the lienholder fails to commence suit within ~~sixty (60)~~ **thirty**  
 12 **(30)** days after receiving the notice to commence suit, the common law  
 13 lien is void. To release the common law lien from the property the  
 14 property owner shall comply with the requirements of section 5 of this  
 15 chapter.

16 SECTION 5. IC 32-8-39-5, AS AMENDED BY P.L.211-1996,  
 17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 1998]: Sec. 5. (a) If a lienholder fails to commence suit after  
 19 notice to commence suit is sent under section 4 of this chapter, a  
 20 property owner may file an affidavit of service of notice to commence  
 21 suit with the recorder of the county in which the statement of intention  
 22 to hold a common law lien was recorded. The affidavit must:

23 (1) include:

24 (A) the date the notice to commence suit was received by  
 25 the lienholder;

26 (B) a statement that at least ~~sixty (60)~~ **thirty (30)** days have  
 27 elapsed from the date the notice to commence suit was  
 28 received by the lienholder;

29 (C) a statement that a suit for foreclosure of the common  
 30 law lien has not been filed and is not pending;

31 (D) a statement that an unsatisfied judgment has not been  
 32 rendered on the common law lien; and

33 (E) a cross-reference specifying the record of the county  
 34 recorder containing the statement of intention to hold a  
 35 common law lien; and

36 (2) have attached to it a copy of:

37 (A) the notice to commence suit that was sent to the  
 38 lienholder under section 4 of this chapter; and

39 (B) the return receipt of the notice to commence suit.

40 (b) The property against which the lien has been filed is released  
 41 from the common law lien when the county recorder:

42 (1) records the affidavit of service of notice to commence suit in

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1           the miscellaneous record book of the recorder's office; and  
2           (2) certifies in the county recorder's records that the lien is  
3           released.  
4           (c) The county recorder shall collect a fee for filing the affidavit  
5           of service of notice to commence suit under the fee schedule  
6           established in IC 36-2-7-10.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1021, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, delete "shall be construed as".

Page 1, line 15, delete "providing" and insert "**provides**".

Page 2, line 1, delete "may not be construed as creating" and insert "**does not create**".

Page 2, line 1, delete "newly".

Page 2, line 2, delete "recognized".

Page 2, line 2, after "." insert "**No common law lien exists against the property of a public official for the performance or nonperformance of the public official's official duty.**".

Page 3, delete lines 1 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1021 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 13, nays 0.

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