

January 28, 1998

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## HOUSE BILL No. 1303

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DIGEST OF HB 1303 (Updated January 27, 1998 2:00 pm - DI 69)

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

**Synopsis:** Construction contracts. Provides that the following provisions in a contract for the improvement of real estate in Indiana, other than a residential construction contract, are void: (1) An agreement that subcontractors, mechanics, journeymen, laborers, or persons performing labor upon, or furnishing materials or machinery for, construction on real estate waive rights to hold a lien or to a claim against a payment bond. (2) Making the contract subject to the laws of another state or requiring that any litigation, arbitration, or other dispute resolution process on the contract occur in another state. (3) Making a payment to a general contractor from a person who does not have a contractual agreement with a subcontractor or supplier a condition precedent to a general contractor's payment to the subcontractor or supplier. Requires a county recorder to mail a copy of a person's notice of intention to acquire a lien on property filed with the  
(Continued next page)

**Effective:** July 1, 1998.

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**Kuzman, Becker**

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January 13, 1998, read first time and referred to Committee on Judiciary.  
January 27, 1998, amended, reported — Do Pass.

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HB 1303—LS 7269/DI 87



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Digest Continued

county recorder to: (1) the property owner named in the notice; and (2) each mortgagee with a mortgage recorded on the property that is the subject of the lien. Makes conforming amendments.

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**HB 1303—LS 7269/DI 87**



January 28, 1998

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.

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## HOUSE BILL No. 1303

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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 32-8-3-1, AS AMENDED BY P.L.145-1994,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 1998]: Sec. 1. (a) That contractors, subcontractors, mechanics,  
4 lessors leasing construction and other equipment and tools, whether or  
5 not an operator is also provided by the lessor, journeymen, laborers and  
6 all other persons performing labor or furnishing materials or  
7 machinery, including the leasing of equipment or tools used, for the  
8 erection, altering, repairing or removing any house, mill, manufactory,  
9 or other building, bridge, reservoir, systems of waterworks, or other  
10 structures, or for construction, altering, repairing, or removing any walk  
11 or sidewalk, whether such walk or sidewalk be on the land or bordering  
12 thereon, stile, well, drain, drainage ditch, sewer or cistern or any other  
13 earth-moving operation may have a lien separately or jointly upon the  
14 house, mill, manufactory or other building, bridge, reservoir, system of  
15 waterworks or other structure, sidewalk, walk, stile, well, drain,

HB 1303—LS 7269/DI 87



1 drainage ditch, sewer or cistern or earth which they may have erected,  
 2 altered, repaired, moved or removed or for which they may have  
 3 furnished materials or machinery of any description, and, on the  
 4 interest of the owner of the lot or parcel of land on which it stands or  
 5 with which it is connected to the extent of the value of any labor done,  
 6 material furnished, or either, including any use of such leased  
 7 equipment and tools, and all claims for wages of mechanics and  
 8 laborers employed in or about any shop, mill, wareroom, storeroom,  
 9 manufactory or structure, bridge, reservoir, system of waterworks or  
 10 other structure, sidewalk, walk, stile, well, drain, drainage ditch or  
 11 cistern or any other earth-moving operation shall be a lien on all the  
 12 machinery, tools, stock or material, work finished or unfinished,  
 13 located in or about such shop, mill, wareroom, storeroom, manufactory  
 14 or other building, bridge, reservoir, system of waterworks, or other  
 15 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, or  
 16 cistern, or earth or used in ~~the a~~ business. ~~thereof, and should~~

17 **(b) If the person, firm, limited liability company, or corporation be**  
 18 **described in subsection (a) is** in failing circumstances, the ~~above~~  
 19 ~~mentioned~~ claims **described in subsection (a)** shall be preferred debts  
 20 whether a claim or notice of lien has been filed or not.

21 **(c) This subsection applies to a residential construction**  
 22 **contract described in section 16(a) of this chapter.** No provision or  
 23 stipulation in the contract of the owner and principal contractor that no  
 24 lien shall attach to the real estate, building, structure or any other  
 25 improvement of the owner shall be valid against subcontractors,  
 26 mechanics, journeymen, laborers or persons performing labor upon or  
 27 furnishing materials or machinery for such property or improvement of  
 28 the owner, unless the contract containing such provision or stipulation  
 29 shall be in writing, and shall contain specific reference, by legal  
 30 description of the real estate to be improved and shall be acknowledged  
 31 as provided in case of deeds and filed and recorded in the recorder's  
 32 office of the county in which such real estate, building, structure or  
 33 other improvement is situated not more than five (5) days after the date  
 34 of execution of such contract. The contract herein provided for shall be  
 35 without effect upon labor, material or machinery supplied prior to the  
 36 time of the filing with the recorder of said contract. The recorder shall  
 37 record such contract at length in the order of time of its reception in  
 38 books provided by him for that purpose, and the recorder shall index  
 39 the same in the name of the contractor and in the name of the owner,  
 40 in books kept for that purpose, and said recorder shall receive therefor  
 41 a fee such as is provided for the recording of deeds and mortgages in  
 42 his office.



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1 (d) Any person, firm, partnership, limited liability company, or  
 2 corporation ~~who that~~ sells or furnishes on credit any material, labor or  
 3 machinery for the alteration or repair of any owner-occupied single or  
 4 double family dwelling or the appurtenances or additions ~~thereto, to~~  
 5 **the dwelling**, to any contractor, subcontractor, mechanic or anyone  
 6 other than the occupying owner or ~~his the owner's~~ legal representative  
 7 shall furnish to the occupying owner of ~~said the~~ parcel of land where  
 8 the material, labor or machinery is delivered, a written notice of the  
 9 delivery or work and of the existence of lien rights, within thirty (30)  
 10 days from the date of first delivery or labor performed. The furnishing  
 11 of ~~such the~~ notice shall be a condition precedent to the right of  
 12 acquiring a lien upon ~~such the~~ lot or parcel of land or the improvement  
 13 ~~thereon: on the lot or parcel of land.~~

14 (e) Any person, firm, partnership, limited liability company, or  
 15 corporation ~~who that~~ sells or furnishes on credit any material, labor or  
 16 machinery, for the original construction of a single or double family  
 17 dwelling for the intended occupancy of the owner upon whose real  
 18 estate the construction takes place to any contractor, subcontractor,  
 19 mechanic, or anyone other than the owner or ~~his the owner's~~ legal  
 20 representatives shall furnish the owner of the real estate as named in  
 21 the latest entry in the transfer books described in IC 6-1.1-5-4 of the  
 22 county auditor, or if IC 6-1.1-5-9 applies, the transfer books of the  
 23 township assessor with a written notice of the delivery or labor and the  
 24 existence of lien rights within sixty (60) days from the date of the first  
 25 delivery or labor performed and shall file a copy of the written notice  
 26 in the recorder's office of the county within sixty (60) days from the  
 27 date of the first delivery or labor performed. The furnishing of such  
 28 notice shall be a condition precedent to the right of acquiring a lien  
 29 upon ~~such the~~ real estate or upon the improvement constructed ~~thereon:~~  
 30 **on the real estate.**

31 (f) ~~No~~ A lien for material or labor in original construction ~~shall~~  
 32 **may not** attach to real estate purchased by an innocent purchaser for  
 33 value without notice, ~~provided said if the~~ purchase is of a single or  
 34 double family dwelling for occupancy by the purchaser, unless notice  
 35 of intention to hold ~~such the~~ lien ~~be is~~ recorded as provided in this  
 36 chapter prior to the recording of the deed by which ~~such the~~ purchaser  
 37 takes title.

38 SECTION 2. IC 32-8-3-3, AS AMENDED BY P.L.145-1994,  
 39 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 1998]: Sec. 3. (a) Any person who wishes to acquire a lien  
 41 upon any property, whether the claim is due or not, shall file in the  
 42 recorder's office of the county at any time within sixty (60) days after

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1 performing labor or furnishing materials or machinery described in  
 2 section 1 of this chapter, a sworn statement ~~in duplicate~~ of the person's  
 3 intention to hold a lien upon the property for the amount of the claim.  
 4 **The person shall file with the recorder one (1) copy of the**  
 5 **statement and one (1) copy for each person who receives notice**  
 6 **under subsection (b).** The statement must specifically set forth:

- 7 (1) the amount claimed;  
 8 (2) the name and address of the claimant and the name of the  
 9 owner;  
 10 (3) the latest address of the owner as shown on the property tax  
 11 records of the county; and  
 12 (4) the legal description, street and number, if any, of the lot or  
 13 land on which the house, mill, manufactory or other buildings,  
 14 bridge, reservoir, system of waterworks or other structure may  
 15 stand or be connected with or to which it may be removed.

16 The name of the owner and legal description of the lot or land will be  
 17 sufficient if they are substantially as set forth in the latest entry in the  
 18 transfer books described in IC 6-1.1-5-4 of the county auditor or, if  
 19 IC 6-1.1-5-9 applies, the transfer books of the township assessor at the  
 20 time of filing of the notice of intention to hold a lien.

21 **(b) The recorder shall mail first class:**

- 22 **(1) one (1) ~~of the duplicates~~ copy of the notice** to the owner  
 23 **named in the notice; and**  
 24 **(2) one (1) copy of the notice to each mortgagee with a**  
 25 **mortgage recorded:**

- 26 **(A) on the property that is the subject of the lien; and**  
 27 **(B) not less than sixty (60) days before the date the**  
 28 **notice of intention to hold a lien is filed;**

29 within three (3) business days after recordation and post records as to  
 30 the date of this action. The notice **under subsection (b)(1)** shall be  
 31 addressed to the latest address of the owner as specifically set out in the  
 32 sworn statement of the person intending to hold a lien upon the  
 33 property. The recorder shall be entitled to a fee of two dollars (\$2) to  
 34 be collected from the lien claimant for each notice that is mailed.

35 **(c) The failure of a mortgagee to receive notice under**  
 36 **subsection (b)(2) may not otherwise invalidate the notice of**  
 37 **intention to hold a lien by any person other than the mortgagee.**

38 ~~(b)~~ **(d)** The statement required by subsection (a) may be verified  
 39 and filed on behalf of a client by an attorney registered with the clerk  
 40 of the supreme court as an attorney in good standing under the  
 41 requirements of the supreme court.

42 SECTION 3. IC 32-8-3-16 IS ADDED TO THE INDIANA CODE



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1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 2 1, 1998]: **Sec. 16. (a) This section does not apply to a residential  
 3 construction contract:**  
 4 (1) for the alteration or repair of an owner occupied single or  
 5 double family dwelling or the appurtenances to the dwelling;  
 6 (2) for the original construction of a single or double family  
 7 dwelling for the intended occupancy of the owner upon  
 8 whose real estate the construction takes place; or  
 9 (3) for original construction, alteration, or repair of a single  
 10 or multiple family dwelling that is not for the intended  
 11 occupancy of the owner.  
 12 (b) The following provisions in a contract for the improvement  
 13 of real estate in Indiana are void:  
 14 (1) A provision requiring a person described in section 1 of  
 15 this chapter who furnishes labor, materials, or machinery to  
 16 waive a right to a construction lien or to a claim against a  
 17 payment bond before the person is paid for the labor or  
 18 materials furnished.  
 19 (2) A provision making the contract subject to the laws of  
 20 another state or requiring that any litigation, arbitration, or  
 21 other dispute resolution process on the contract occur in  
 22 another state.  
 23 (3) A provision making a payment to a general contractor  
 24 from a person who does not have a contractual agreement  
 25 with the subcontractor or supplier a condition precedent to  
 26 a general contractor's payment to a subcontractor or  
 27 supplier. This subdivision does not prohibit contract  
 28 provisions that may delay a payment to a subcontractor until  
 29 the contractor receives payment from a person who does not  
 30 have a contractual agreement with the subcontractor or  
 31 supplier.  
 32 SECTION 4. [EFFECTIVE JULY 1, 1998] IC 32-8-3-1, as  
 33 amended by this act, and IC 32-8-3-16, as added by this act, apply  
 34 only to contracts and subcontracts entered into or renewed after  
 35 June 30, 1998.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1303, 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 3, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 2. IC 32-8-3-3, AS AMENDED BY P.L.145-1994, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) Any person who wishes to acquire a lien upon any property, whether the claim is due or not, shall file in the recorder's office of the county at any time within sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter, a sworn statement ~~in duplicate~~ of the person's intention to hold a lien upon the property for the amount of the claim. **The person shall file with the recorder one (1) copy of the statement and one (1) copy for each person who receives notice under subsection (b).** The statement must specifically set forth:

- (1) the amount claimed;
- (2) the name and address of the claimant and the name of the owner;
- (3) the latest address of the owner as shown on the property tax records of the county; and
- (4) the legal description, street and number, if any, of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

**(b)** The recorder shall mail first class:

- (1) one (1) ~~of the duplicates~~ **copy of the notice** to the owner named in the notice; **and**
- (2) **one (1) copy of the notice to each mortgagee with a mortgage recorded:**
  - (A) **on the property that is the subject of the lien; and**
  - (B) **not less than sixty (60) days before the date the notice of intention to hold a lien is filed;**

within three (3) business days after recordation and post records as to the date of this action. The notice **under subsection (b)(1)** shall be

HB 1303—LS 7269/DI 87



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addressed to the latest address of the owner as specifically set out in the sworn statement of the person intending to hold a lien upon the property. The recorder shall be entitled to a fee of two dollars (\$2) to be collected from the lien claimant for each notice that is mailed.

**(c) The failure of a mortgagee to receive notice under subsection (b)(2) may not otherwise invalidate the notice of intention to hold a lien by any person other than the mortgagee.**

~~(b)~~ (d) The statement required by subsection (a) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to House Bill 1303 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 8, nays 5.

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