

**CONFERENCE COMMITTEE REPORT
DIGEST FOR HB 1021**

Citations Affected: IC 34-4-45; IC 34-7-7.

Synopsis: Defenses in certain civil actions. 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 receives a notice to commence suit from the property owner. Creates a defense in an action against a person when the act or omission complained of is an act or omission to further a right to petition the government under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue or an issue of public interest. Provides for the award of attorney's fees and costs to the prevailing party in a proceeding in which the defense is raised. Requires the court in which a motion to dismiss the action is filed to do the following: (1) Treat the motion as a motion for summary judgment. (2) Establish a reasonable time period that does not exceed 180 days to rule on the motion. (3) Specify time limits for the discovery of evidence to respond to material issues raised in the motion. Requires the court to act on the motion to dismiss within 30 days of the discovery of material evidence. Applies the statute prospectively. (This conference committee report adds the defense described above.)

Effective: Upon passage; July 1, 1998.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1021 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 3, after line 41, begin a new paragraph and insert:
2 "SECTION 7. IC 34-4-45 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]:
5 **Chapter 45. Defense in Civil Actions Against Persons Who Act
6 in Furtherance of the Person's Right of Petition or Free Speech
7 Under the Constitution of the United States or the Constitution of
8 the State of Indiana in Connection with a Public Issue**
9 **Sec. 1. (a) This chapter applies to an act in furtherance of a
10 person's right of petition or free speech under the Constitution of
11 the United States or the Constitution of the State of Indiana in
12 connection with a public issue or an issue of public interest that
13 arises after the effective date of this chapter. This chapter does not
14 apply to an action that was filed and is pending on the effective
15 date of this chapter.**
16 **(b) This chapter does not apply to an enforcement action
17 brought in the name of the state of Indiana by the attorney general,
18 a prosecuting attorney, or another attorney acting as a public
19 prosecutor.**
20 **Sec. 2. As used in this chapter, "act in furtherance of a
21 person's right of petition or free speech under the Constitution of
22 the United States or the Constitution of the State of Indiana in
23 connection with a public issue" includes any conduct in
24 furtherance of the exercise of the constitutional right of:**
25 **(1) petition; or**
26 **(2) free speech;**
27 **in connection with a public issue or an issue of public interest.**

1 **Sec. 3. As used in this chapter, "claim" means:**

- 2 (1) a lawsuit;
 3 (2) a cause of action;
 4 (3) a petition;
 5 (4) a complaint;
 6 (5) a cross claim;
 7 (6) a counterclaim; or
 8 (7) any other judicial pleading or filing;

9 that requests legal or equitable relief.

10 **Sec. 4. As used in this chapter, "person" means any of the**
 11 **following:**

- 12 (1) An individual.
 13 (2) Any other legal entity.

14 **Sec. 5. It is a defense in a civil action against a person that the**
 15 **act or omission complained of is:**

- 16 (1) an act or omission of that person in furtherance of the
 17 person's right of petition or free speech under the
 18 Constitution of the United States or the Constitution of the
 19 State of Indiana in connection with a public issue; and
 20 (2) an act or omission taken in good faith and with a
 21 reasonable basis in law and fact.

22 **Sec. 6. All discovery proceedings in the action are stayed upon**
 23 **the filing of a motion to dismiss made under this chapter, except**
 24 **for discovery relevant to the motion.**

25 **Sec. 7. A prevailing defendant on a motion to dismiss made**
 26 **under this chapter is entitled to recover reasonable attorney's fees**
 27 **and costs.**

28 **Sec. 8. If a court finds that a motion to dismiss made under this**
 29 **chapter is:**

- 30 (1) frivolous; or
 31 (2) solely intended to cause unnecessary delay;

32 the plaintiff is entitled to recover reasonable attorney's fees and
 33 costs to answer the motion.

34 **Sec. 9. (a) If a person files a motion to dismiss under this**
 35 **chapter, the court in which the motion is filed shall do the**
 36 **following:**

- 37 (1) Treat the motion as a motion for summary judgment.
 38 (2) Establish a reasonable time period, not to exceed one
 39 hundred eighty (180) days, to expedite and rule on the
 40 motion.
 41 (3) Specify time limits for the discovery of evidence to
 42 respond to material issues raised in the motion.

43 (b) The person who files a motion to dismiss must state with
 44 specificity the public issue or issue of public interest that prompted
 45 the act in furtherance of the person's right of petition or free
 46 speech under the Constitution of the United States or the
 47 Constitution of the State of Indiana.

48 (c) The court shall make its determination based on the facts
 49 contained in the pleadings and affidavits filed and discovered
 50 under the expedited proceeding.

51 (d) The motion to dismiss shall be granted if the court finds

1 that the person filing the motion has proven, by a preponderance
 2 of the evidence, that the act upon which the claim is based is a
 3 lawful act in furtherance of the person's right of petition or free
 4 speech under the Constitution of the United States or the
 5 Constitution of the State of Indiana.

6 (e) The court must act on the motion to dismiss within thirty
 7 (30) days from the submission of evidence made by motion to the
 8 court that is discovered within the specific expedited time period
 9 allowed.

10 (f) If a court does not act within the thirty (30) days provided
 11 in subsection (e), the person filing the motion may appeal the
 12 matter based on the court's failure to rule on the motion.

13 **Sec. 10. The remedy provided by this chapter is in addition to**
 14 **other remedies provided by law.**

15 SECTION 8. IC 34-7-7 IS ADDED TO THE INDIANA CODE AS
 16 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 1998]:

18 **Chapter 7. Defense in Civil Actions Against Persons Who Act**
 19 **in Furtherance of the Person's Right of Petition or Free Speech**
 20 **Under the Constitution of the United States or the Constitution of**
 21 **the State of Indiana in Connection with a Public Issue**

22 **Sec. 1. (a) This chapter applies to an act in furtherance of a**
 23 **person's right of petition or free speech under the Constitution of**
 24 **the United States or the Constitution of the State of Indiana in**
 25 **connection with a public issue or an issue of public interest that**
 26 **arises after June 30, 1998. This chapter does not apply to an action**
 27 **that was filed and is pending before July 1, 1998.**

28 **(b) This chapter does not apply to an enforcement action**
 29 **brought in the name of the state of Indiana by the attorney general,**
 30 **a prosecuting attorney, or another attorney acting as a public**
 31 **prosecutor.**

32 **Sec. 2. As used in this chapter, "act in furtherance of a**
 33 **person's right of petition or free speech under the Constitution of**
 34 **the United States or the Constitution of the State of Indiana in**
 35 **connection with a public issue" includes any conduct in**
 36 **furtherance of the exercise of the constitutional right of:**

37 (1) petition; or

38 (2) free speech;

39 **in connection with a public issue or an issue of public interest.**

40 **Sec. 3. As used in this chapter, "claim" means:**

41 (1) a lawsuit;

42 (2) a cause of action;

43 (3) a petition;

44 (4) a complaint;

45 (5) a cross claim;

46 (6) a counterclaim; or

47 (7) any other judicial pleading or filing;

48 **that requests legal or equitable relief.**

49 **Sec. 4. As used in this chapter, "person" means any of the**
 50 **following:**

51 (1) An individual.

1 (2) Any other legal entity.

2 **Sec. 5. It is a defense in a civil action against a person that the**
3 **act or omission complained of is:**

4 (1) an act or omission of that person in furtherance of the
5 person's right of petition or free speech under the
6 Constitution of the United States or the Constitution of the
7 State of Indiana in connection with a public issue; and

8 (2) an act or omission taken in good faith and with a
9 reasonable basis in law and fact.

10 **Sec. 6. All discovery proceedings in the action are stayed upon**
11 **the filing of a motion to dismiss made under this chapter, except**
12 **for discovery relevant to the motion.**

13 **Sec. 7. A prevailing defendant on a motion to dismiss made**
14 **under this chapter is entitled to recover reasonable attorney's fees**
15 **and costs.**

16 **Sec. 8. If a court finds that a motion to dismiss made under this**
17 **chapter is:**

18 (1) frivolous; or

19 (2) solely intended to cause unnecessary delay;

20 **the plaintiff is entitled to recover reasonable attorney's fees and**
21 **costs to answer the motion.**

22 **Sec. 9. (a) If a person files a motion to dismiss under this**
23 **chapter, the court in which the motion is filed shall do the**
24 **following:**

25 (1) Treat the motion as a motion for summary judgment.

26 (2) Establish a reasonable time period, not to exceed one
27 hundred eighty (180) days, to expedite and rule on the
28 motion.

29 (3) Specify time limits for the discovery of evidence to
30 respond to material issues raised in the motion.

31 (b) The person who files a motion to dismiss must state with
32 specificity the public issue or issue of public interest that prompted
33 the act in furtherance of the person's right of petition or free
34 speech under the Constitution of the United States or the
35 Constitution of the State of Indiana.

36 (c) The court shall make its determination based on the facts
37 contained in the pleadings and affidavits filed and discovered
38 under the expedited proceeding.

39 (d) The motion to dismiss shall be granted if the court finds
40 that the person filing the motion has proven, by a preponderance
41 of the evidence, that the act upon which the claim is based is a
42 lawful act in furtherance of the person's right of petition or free
43 speech under the Constitution of the United States or the
44 Constitution of the State of Indiana.

45 (e) The court must act on the motion to dismiss within thirty
46 (30) days from the submission of evidence made by motion to the
47 court that is discovered within the specific expedited time period
48 allowed.

49 (f) If a court does not act within the thirty (30) days provided
50 in subsection (e), the person filing the motion may appeal the
51 matter based on the court's failure to rule on the motion.

1 **Sec. 10. The remedy provided by this chapter is in addition to**
2 **other remedies provided by law.**

3 **SECTION 9. An emergency is declared for this act."**

4 Renumber all SECTIONS consecutively.

(Reference is to EHB 1021 as printed February 13, 1998.)

Conference Committee Report
on
House Bill 1021

Signed by:

Senator Landske

Representative Alevizos

Senator Alexa

Representative Foley

Senate Conferees

House Conferees