

HOUSE BILL No. 1021

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-8-39.

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 newly recognized common law lien. 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. Provides that a recording official: (1) may refuse to accept for recording a
(Continued next page)

Effective: July 1, 1998.

Foley, Alevizos

January 6, 1998, read first time and referred to Committee on Judiciary.



Digest Continued

common law lien against a public official based upon the public official's performance or nonperformance of an official duty; and (2) may not be held liable for accepting or refusing to accept for recording a common law lien against a public official. 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. (The introduced version of this bill was prepared by the probate code study commission.)



Introduced

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 [EFFECTIVE
3 JULY 1, 1998]: **Sec. 2.2. "Public official" means an individual who**
4 **holds office in or is an employee of the executive, judicial, or**
5 **legislative branch of the state or federal government or a political**
6 **subdivision of either of those governments. The term includes an**
7 **official or employee of any university, college, or other educational**
8 **institution established in Indiana for the purpose of providing**
9 **programs of collegiate or university education or other post-high**
10 **school education and that is supported in whole or in part by**
11 **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 [EFFECTIVE
14 JULY 1, 1998]: **Sec. 2.7. (a) This chapter shall be construed as**
15 **providing the procedure for filing and releasing a common law lien.**

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1 **(b) This chapter may not be construed as creating a newly**
 2 **recognized common law lien. A person asserting a common law lien**
 3 **must prove the existence of the lien as prescribed by the common**
 4 **law of Indiana.**

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

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

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

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

18 (3) The statement must set forth:

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

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

22 (C) the name of the property owner;

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

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

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

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

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

39 (d) The statement of intention to hold a common law lien required
 40 under subsection (b) may be verified and filed on behalf of a client by an
 41 attorney registered with the clerk of the supreme court as an attorney in
 42 good standing under the requirements of the supreme court.



1 SECTION 4. IC 32-8-39-3.5 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 1998]: Sec. 3.5. (a) **The secretary of state or a county
 4 recorder may refuse to record a common law lien filed against the
 5 property of a public official based upon the public official's
 6 performance or nonperformance of an official duty.**

7 (b) **The secretary of state or a county recorder may not be held
 8 liable for:**

9 (1) **accepting; or**

10 (2) **refusing to accept;**

11 **for recording a common law lien filed against the property of a
 12 public official based upon the public official's performance or
 13 nonperformance of an official duty.**

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

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

26 SECTION 6. IC 32-8-39-5, AS AMENDED BY P.L.211-1996,
 27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 1998]: Sec. 5. (a) If a lienholder fails to commence suit after
 29 notice to commence suit is sent under section 4 of this chapter, a property
 30 owner may file an affidavit of service of notice to commence suit with the
 31 recorder of the county in which the statement of intention to hold a
 32 common law lien was recorded. The affidavit must:

33 (1) include:

34 (A) the date the notice to commence suit was received by the
 35 lienholder;

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

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

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



- 1 (E) a cross-reference specifying the record of the county
2 recorder containing the statement of intention to hold a
3 common law lien; and
4 (2) have attached to it a copy of:
5 (A) the notice to commence suit that was sent to the lienholder
6 under section 4 of this chapter; and
7 (B) the return receipt of the notice to commence suit.
8 (b) The property against which the lien has been filed is released
9 from the common law lien when the county recorder:
10 (1) records the affidavit of service of notice to commence suit in the
11 miscellaneous record book of the recorder's office; and
12 (2) certifies in the county recorder's records that the lien is
13 released.
14 (c) The county recorder shall collect a fee for filing the affidavit of
15 service of notice to commence suit under the fee schedule established in
16 IC 36-2-7-10.

