

HOUSE BILL No. 1303

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-8-3-1; IC 32-8-3-16.

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)
(Continued next page)

Effective: July 1, 1998.

Kuzman

January 13, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

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. Makes conforming amendments.

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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.

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HOUSE BILL No. 1303

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,

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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 32-8-3-16 IS ADDED TO THE INDIANA CODE
 39 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 1998]: **Sec. 16. (a) This section does not apply to a residential**
 41 **construction contract:**

42 **(1) for the alteration or repair of an owner occupied single or**



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- 1 **double family dwelling or the appurtenances to the dwelling;**
- 2 **(2) for the original construction of a single or double family**
- 3 **dwelling for the intended occupancy of the owner upon**
- 4 **whose real estate the construction takes place; or**
- 5 **(3) for original construction, alteration, or repair of a single**
- 6 **or multiple family dwelling that is not for the intended**
- 7 **occupancy of the owner.**

8 **(b) The following provisions in a contract for the improvement**
 9 **of real estate in Indiana are void:**

10 **(1) A provision requiring a person described in section 1 of**
 11 **this chapter who furnishes labor, materials, or machinery to**
 12 **waive a right to a construction lien or to a claim against a**
 13 **payment bond before the person is paid for the labor or**
 14 **materials furnished.**

15 **(2) A provision making the contract subject to the laws of**
 16 **another state or requiring that any litigation, arbitration, or**
 17 **other dispute resolution process on the contract occur in**
 18 **another state.**

19 **(3) A provision making a payment to a general contractor**
 20 **from a person who does not have a contractual agreement**
 21 **with the subcontractor or supplier a condition precedent to**
 22 **a general contractor's payment to a subcontractor or**
 23 **supplier. This subdivision does not prohibit contract**
 24 **provisions that may delay a payment to a subcontractor until**
 25 **the contractor receives payment from a person who does not**
 26 **have a contractual agreement with the subcontractor or**
 27 **supplier.**

28 **SECTION 3. [EFFECTIVE JULY 1, 1998] IC 32-8-3-1, as**
 29 **amended by this act, and IC 32-8-3-16, as added by this act, apply**
 30 **only to contracts and subcontracts entered into or renewed after**
 31 **June 30, 1998.**

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