
HOUSE BILL No. 1356

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-3.

Synopsis: Subcontractor liens. Provides that a subcontractor must provide notice of lien rights to a homeowner or the builder of a new home not later than five business days after the labor is performed. Provides that a contractor must pay all subcontractors within five business days after receiving payment from a homeowner or builder. Provides that a builder must disclose to a purchaser all subcontractors used in new home construction. Requires a contractor to provide notice to all subcontractors when the contractor has been paid by a homeowner or builder.

Effective: July 1, 2005.

Brown C, Burton

January 13, 2005, read first time and referred to Committee on Judiciary.

C
O
P
Y



First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

C
O
P
Y

HOUSE BILL No. 1356



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 32-28-3-1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) **Except as**
 3 **provided in section 9.7 of this chapter**, a contractor, a subcontractor,
 4 a mechanic, a lessor leasing construction and other equipment and
 5 tools, whether or not an operator is also provided by the lessor, a
 6 journeyman, a laborer, or any other person performing labor or
 7 furnishing materials or machinery, including the leasing of equipment
 8 or tools, for:
 9 (1) the erection, alteration, repair, or removal of:
 10 (A) a house, mill, manufactory, or other building; or
 11 (B) a bridge, reservoir, system of waterworks, or other
 12 structure;
 13 (2) the construction, alteration, repair, or removal of a walk or
 14 sidewalk located on the land or bordering the land, a stile, a well,
 15 a drain, a drainage ditch, a sewer, or a cistern; or
 16 (3) any other earth moving operation;
 17 may have a lien as set forth in this section.



1 (b) A person described in subsection (a) may have a lien separately
2 or jointly upon the:

3 (1) house, mill, manufactory, or other building, bridge, reservoir,
4 system of waterworks, or other structure, sidewalk, walk, stile,
5 well, drain, drainage ditch, sewer, cistern, or earth:

6 (A) that the person erected, altered, repaired, moved, or
7 removed; or

8 (B) for which the person furnished materials or machinery of
9 any description; and

10 (2) ~~on the~~ interest of the owner of the lot or parcel of land:

11 (A) on which the structure or improvement stands; or

12 (B) with which the structure or improvement is connected;

13 to the extent of the value of any labor done or the material furnished,
14 or both, including any use of the leased equipment and tools.

15 (c) All claims for wages of mechanics and laborers employed in or
16 about a shop, mill, wareroom, storeroom, manufactory or structure,
17 bridge, reservoir, system of waterworks or other structure, sidewalk,
18 walk, stile, well, drain, drainage ditch, cistern, or any other earth
19 moving operation shall be a lien on all the:

20 (1) machinery;

21 (2) tools;

22 (3) stock;

23 (4) material; or

24 (5) finished or unfinished work;

25 located in or about the shop, mill, wareroom, storeroom, manufactory
26 or other building, bridge, reservoir, system of waterworks, or other
27 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,
28 cistern, or earth used in a business.

29 (d) If the person, firm, limited liability company, or corporation
30 described in subsection (a) is in failing circumstances, the claims
31 described in this section shall be preferred debts whether a claim or
32 notice of lien has been filed.

33 (e) Subject to subsection (f), a contract

34 (1) for the construction, alteration, or repair of a Class 2 structure
35 (as defined in IC 22-12-1-5);

36 (2) for the construction, alteration, or repair of an improvement on
37 the same real estate auxiliary to a Class 2 structure (as defined in
38 IC 22-12-1-5);

39 (3) for the construction, alteration, or repair of property that is:

40 (A) owned, operated, managed, or controlled by a:

41 (i) public utility (as defined in IC 8-1-2-1);

42 (ii) municipally owned utility (as defined in IC 8-1-2-1);

C
o
p
y



1 (iii) joint agency (as defined in IC 8-1-2.2-2);
 2 (iv) rural electric membership corporation formed under
 3 IC 8-1-13-4;
 4 (v) rural telephone cooperative corporation formed under
 5 IC 8-1-17; or
 6 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
 7 regulated under IC 8; and
 8 (B) intended to be used and useful for the production,
 9 transmission, delivery, or furnishing of heat, light, water,
 10 telecommunications services, or power to the public; or
 11 (4) to prepare property for Class 2 residential construction;
 12 may include a provision or stipulation in the contract of the owner and
 13 principal contractor that a lien may not attach to the real estate,
 14 building, structure or any other improvement of the owner.
 15 (f) A contract containing a provision or stipulation described in
 16 subsection (e) must meet the requirements of this subsection to be valid
 17 against subcontractors, mechanics, journeymen, laborers, or persons
 18 performing labor upon or furnishing materials or machinery for the
 19 property or improvement of the owner. The contract must:
 20 (1) be in writing;
 21 (2) contain specific reference by legal description of the real
 22 estate to be improved;
 23 (3) be acknowledged as provided in the case of deeds; and
 24 (4) be filed and recorded in the recorder's office of the county in
 25 which the real estate, building, structure, or other improvement is
 26 situated not more than five (5) days after the date of execution of
 27 the contract.
 28 A contract containing a provision or stipulation described in subsection
 29 (e) does not affect a lien for labor, material, or machinery supplied
 30 before the filing of the contract with the recorder.
 31 (g) Upon the filing of a contract under subsection (f), the recorder
 32 shall:
 33 (1) record the contract at length in the order of the time it was
 34 received in books provided by the recorder for that purpose;
 35 (2) index the contract in the name of the:
 36 (A) contractor; and
 37 (B) owner;
 38 in books kept for that purpose; and
 39 (3) collect a fee for recording the contract as is provided for the
 40 recording of deeds and mortgages.
 41 (h) A person, firm, partnership, limited liability company, or
 42 corporation that sells or furnishes on credit any material, labor, or

COPY



1 machinery for the alteration or repair of an owner occupied single or
 2 double family dwelling or the appurtenances or additions to the
 3 dwelling to:

- 4 (1) a contractor, subcontractor, mechanic; or
 5 (2) anyone other than the occupying owner or the owner's legal
 6 representative;

7 must furnish to the occupying owner of the parcel of land where the
 8 material, labor, or machinery is delivered a written notice of the
 9 delivery or work and of the existence of lien rights not later than ~~thirty~~
 10 ~~(30)~~ **five (5) business** days after the date of first delivery or labor
 11 performed. The furnishing of the notice is a condition precedent to the
 12 right of acquiring a lien upon the lot or parcel of land or the
 13 improvement on the lot or parcel of land.

14 (i) A person, firm, partnership, limited liability company, or
 15 corporation that sells or furnishes on credit 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 a contractor, subcontractor,
 19 mechanic, or anyone other than the owner or the owner's legal
 20 representatives must:

- 21 (1) furnish the owner of the real estate:
 22 (A) as named in the latest entry in the transfer books described
 23 in IC 6-1.1-5-4 of the county auditor; or
 24 (B) if IC 6-1.1-5-9 applies, as named in the transfer books of
 25 the township assessor;

26 with a written notice of the delivery or labor and the existence of
 27 lien rights not later than ~~sixty (60)~~ **five (5) business** days after the
 28 date of the first delivery or labor performed; and

- 29 (2) file a copy of the written notice in the recorder's office of the
 30 county not later than ~~sixty (60)~~ **five (5) business** days after the
 31 date of the first delivery or labor performed.

32 (j) The furnishing and filing of the notice of **lien rights under**
 33 **subsection (h) or (i)** is a condition precedent to the right of acquiring
 34 a lien upon the real estate or upon the improvement constructed on the
 35 real estate.

36 (k) **A copy of the notice of lien rights under subsection (h) or (i)**
 37 **must list:**

- 38 (1) **the name and address of the:**
 39 (A) **property owner;**
 40 (B) **subcontractor; and**
 41 (C) **contractor; and**
 42 (2) **a description of the:**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (A) material;
- (B) labor; or
- (C) machinery;

used for the alteration or repair of the owner's property.

⌘ (I) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 2. IC 32-28-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien 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.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than ~~sixty (60)~~ **five (5) business** days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien 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.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

C
o
p
y



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

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

- 19 (d) The recorder shall:
- 20 (1) mail, first class, one (1) of the duplicates of the statement and
- 21 notice of intention to hold a lien to the owner named in the
- 22 statement and notice not later than three (3) business days after
- 23 recordation;
- 24 (2) post records as to the date of the mailing; and
- 25 (3) collect a fee of two dollars (\$2) from the lien claimant for each
- 26 statement and notice that is mailed.

27 The statement and notice shall be addressed to the latest address of the
 28 owner as specifically set out in the sworn statement and notice of the
 29 person intending to hold a lien upon the property.

30 SECTION 3. IC 32-28-3-9 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) **Except as**
 32 **provided in section 9.7 of this chapter**, this section applies to a:

- 33 (1) subcontractor;
- 34 (2) lessor leasing construction and other equipment and tools,
- 35 regardless of whether an operator is also provided by the lessor;
- 36 (3) journeyman; or
- 37 (4) laborer;
- 38 employed or leasing any equipment or tools used by the lessee in
- 39 erecting, altering, repairing, or removing any house, mill, manufactory
- 40 or other building, or bridge, reservoir, system of waterworks, or other
- 41 structure or earth moving, or in furnishing any material or machinery
- 42 for these activities.

C
o
p
y



1 (b) Except as provided in section 12 of this chapter, in order to
 2 acquire and hold a lien, a person described in subsection (a) must give
 3 to the property owner, or if the property owner is absent, to the property
 4 owner's agent, written notice particularly setting forth the amount of the
 5 person's claim and services rendered for which:

- 6 (1) the person's employer or lessee is indebted to the person; and
 7 (2) the person holds the property owner responsible.

8 (c) Subject to subsections (d) and (e), the property owner is liable
 9 for the person's claim.

10 (d) The property owner is liable to a person described in subsection
 11 (a) for not more than the amount that is due and may later become due
 12 from the owner to the employer or lessee.

13 (e) A person described in subsection (a) may recover the amount of
 14 the person's claim if, after the amounts of other claims that have
 15 priority are subtracted from the amount due from the property owner
 16 to the employer or lessee, the remainder of the amount due from the
 17 property owner to the employer or lessee is sufficient to pay the amount
 18 of the person's claim.

19 (f) This section applies to a person described in subsection (a) who
 20 gives written notice, to the property owner or, if the property owner is
 21 absent, to the owner's agent, before labor is performed or materials or
 22 machinery is furnished. The notice must particularly set forth the
 23 amount of:

- 24 (1) labor the person has contracted to perform; or

25 (2) materials or machinery the person has contracted to furnish;
 26 for the employer or lessee in erecting, altering, repairing, or removing
 27 any of the buildings or other structures described in subsection (a). A
 28 person described in subsection (a) has the same rights and remedies
 29 against the property owner for the amount of the labor performed by the
 30 person or materials or machinery furnished by the person after the
 31 notice is given, as are provided in this chapter for persons who serve
 32 notice after performing the labor or furnishing the materials or
 33 machinery.

34 (g) If an action is brought against a property owner under this
 35 section, all subcontractors, equipment lessors leasing equipment,
 36 journeymen, and laborers who have:

- 37 (1) performed labor or furnished materials or machinery; and
 38 (2) given notice under this section;

39 may become parties to the action. If, upon final judgment against the
 40 property owner the amount recovered and collected is not sufficient to
 41 pay the claimants in full, the amount recovered and collected shall be
 42 divided among the claimants pro rata.

C
O
P
Y



SECTION 4. IC 32-28-3-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.3. (a) This section applies to the:**

- (1) construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);**
- (2) construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and**
- (3) preparation of property for Class 2 residential construction;**

that begins after June 30, 2005.

(b) As used in this section, "subcontractor" means an individual, a partnership, a firm, a limited liability company, a corporation, or another person to whom a contractor sublets part of a contract.

(c) A contractor shall pay a subcontractor for all work and materials used

- (1) in the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);**
- (2) in the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); and**
- (3) to prepare property for Class 2 residential construction;**

not later than five (5) business days after the contractor receives payment for the contract.

(d) A subcontractor may file an action against the prime contractor to recover any unpaid claims due under a contract between the prime contractor and the subcontractor if the prime contractor fails to pay the subcontractor as described in subsection (c).

(e) An action under subsection (d) may be filed in a circuit or superior court with jurisdiction in the county where the property for which the subcontractor provided work or materials is located.

SECTION 5. IC 32-28-3-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9.5. (a) As used in this section, "builder" means a person who constructs new homes for sale, including the construction of new homes on land owned by home buyers.**

(b) As used in this section, "closing" means a transfer of an interest described in a new home by a deed, installment sales contract, or lease.

(c) As used in this section, "lender" refers to:

**C
O
P
Y**



- 1 **(1) an individual;**
- 2 **(2) a supervised financial organization (as defined in**
- 3 **IC 24-4.5-1-301);**
- 4 **(3) an insurance company or a pension fund; or**
- 5 **(4) any other entity that has the authority to make loans.**
- 6 **(d) As used in this section, "subcontractor" means an**
- 7 **individual, a partnership, a firm, a limited liability company, a**
- 8 **corporation, or another person to whom a contractor sublets part**
- 9 **of a contract.**
- 10 **(e) Before closing, a builder shall disclose to a person**
- 11 **purchasing a new home all subcontractors used to construct the**
- 12 **home.**
- 13 **(f) Except as provided in subsection (g), before closing, a builder**
- 14 **shall provide proof that all subcontractors used in the construction**
- 15 **of the home have been paid in full to the:**
- 16 **(1) person purchasing the new home; and**
- 17 **(2) lender of the person described in subdivision (1).**
- 18 **(g) If a builder cannot prove that all subcontractors used in the**
- 19 **construction of the home have been paid in full, the lender of the**
- 20 **person purchasing the home may hold funds owed to any**
- 21 **subcontractor. The lender may pay the subcontractor with the**
- 22 **funds or must reimburse the builder if the builder provides proof**
- 23 **that the subcontractor has been paid.**
- 24 **SECTION 6. IC 32-28-3-9.7 IS ADDED TO THE INDIANA CODE**
- 25 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
- 26 **1, 2005]: Sec. 9.7. (a) This section applies to:**
- 27 **(1) construction, alteration, or repair of a Class 2 structure**
- 28 **(as defined in IC 22-12-1-5);**
- 29 **(2) construction, alteration, or repair of an improvement on**
- 30 **the same real estate auxiliary to a Class 2 structure (as**
- 31 **defined in IC 22-12-1-5); and**
- 32 **(3) preparation of property for Class 2 residential**
- 33 **construction;**
- 34 **that begins after June 30, 2005.**
- 35 **(b) A contractor must provide notice to a subcontractor that the**
- 36 **contractor has received the full payment for the contract the**
- 37 **subcontractor was employed under not later than one (1) business**
- 38 **day after receiving the payment.**
- 39 **(c) A contractor must pay a subcontractor the amount due to**
- 40 **the subcontractor not later than five (5) business days after giving**
- 41 **the subcontractor the notice required under subsection (b).**
- 42 **(d) If a subcontractor places a lien on a property because the**

**C
o
p
y**



1 **subcontractor has not been timely paid under subsection (c), the**
2 **owner of the property with the lien may bring an action against the**
3 **contractor:**

- 4 **(1) to require the contractor to pay the subcontractor; and**
5 **(2) for all court and attorney's fees.**

6 **(e) An action under subsection (d) may be filed in a circuit or**
7 **superior court with jurisdiction in the county where the property**
8 **for which the subcontractor provided work or materials is located.**

C
O
P
Y

