

HOUSE BILL No. 1684

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28.

Synopsis: Liens for unpaid or unsatisfied fringe benefits. Provides that a mechanic's lien and an employee's lien on a strip mine may be obtained for unpaid or unsatisfied fringe benefits and withholdings.

Effective: July 1, 2007.

Lawson L, Niezgodski

January 26, 2007, read first time and referred to Committee on Judiciary.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1684



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 32-28-3-0.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 0.5. As used in this chapter, "fringe benefits and
4 withholdings" means compensation that is due an employee under
5 a written contract or written policy in addition to wages, including:**
6 (1) **holiday pay;**
7 (2) **time off for:**
8 (A) **sickness or injury; or**
9 (B) **personal reasons or vacation;**
10 (3) **bonus pay;**
11 (4) **authorized expenses incurred during the course of**
12 **employment; and**
13 (5) **contributions due to or made on behalf of the employee.**
14 SECTION 2. IC 32-28-3-1, AS AMENDED BY P.L.1-2006,
15 SECTION 501, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) A contractor, a subcontractor,
17 a mechanic, a lessor leasing construction and other equipment and



1 tools, whether or not an operator is also provided by the lessor, a
 2 journeyman, a laborer, or any other person performing labor or
 3 furnishing materials or machinery, including the leasing of equipment
 4 or tools, for:

5 (1) the erection, alteration, repair, or removal of:

6 (A) a house, mill, manufactory, or other building; or

7 (B) a bridge, reservoir, system of waterworks, or other
 8 structure;

9 (2) the construction, alteration, repair, or removal of a walk or
 10 sidewalk located on the land or bordering the land, a stile, a well,
 11 a drain, a drainage ditch, a sewer, or a cistern; or

12 (3) any other earth moving operation;

13 may have a lien as set forth in this section.

14 (b) A person described in subsection (a) may have a lien separately
 15 or jointly: ~~upon the~~:

16 (1) **upon the** house, mill, manufactory, or other building, bridge,
 17 reservoir, system of waterworks, or other structure, sidewalk,
 18 walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

19 (A) that the person erected, altered, repaired, moved, or
 20 removed; or

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

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

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

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

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

28 (c) All claims for wages, **including unpaid or unsatisfied fringe**
 29 **benefits and withholdings**, of mechanics and laborers employed in or
 30 about a shop, mill, wareroom, storeroom, manufactory or structure,
 31 bridge, reservoir, system of waterworks or other structure, sidewalk,
 32 walk, stile, well, drain, drainage ditch, cistern, or any other earth
 33 moving operation shall be a lien on all the:

34 (1) machinery;

35 (2) tools;

36 (3) stock;

37 (4) material; or

38 (5) finished or unfinished work;

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

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

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

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

(2) for 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);

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

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

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

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

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under IC 8-1-13-4;

(v) rural telephone cooperative corporation formed under IC 8-1-17; or

(vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure, or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

(1) be in writing;

(2) contain specific reference by legal description of the real estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection

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1 (e) does not affect a lien for labor, material, or machinery supplied
2 before the filing of the contract with the recorder.

3 (g) Upon the filing of a contract under subsection (f), the recorder
4 shall:

5 (1) record the contract at length in the order of the time it was
6 received in books provided by the recorder for that purpose;

7 (2) index the contract in the name of the:

8 (A) contractor; and

9 (B) owner;

10 in books kept for that purpose; and

11 (3) collect a fee for recording the contract as is provided for the
12 recording of deeds and mortgages.

13 (h) A person, firm, partnership, limited liability company, or
14 corporation that sells or furnishes on credit any material, labor, or
15 machinery for the alteration or repair of an owner occupied single or
16 double family dwelling or the appurtenances or additions to the
17 dwelling to:

18 (1) a contractor, subcontractor, mechanic; or

19 (2) anyone other than the occupying owner or the owner's legal
20 representative;

21 must furnish to the occupying owner of the parcel of land where the
22 material, labor, or machinery is delivered a written notice of the
23 delivery or work and of the existence of lien rights not later than thirty
24 (30) days after the date of first delivery or labor performed. The
25 furnishing of the notice is a condition precedent to the right of
26 acquiring a lien upon the lot or parcel of land or the improvement on
27 the lot or parcel of land.

28 (i) A person, firm, partnership, limited liability company, or
29 corporation that sells or furnishes on credit material, labor, or
30 machinery for the original construction of a single or double family
31 dwelling for the intended occupancy of the owner upon whose real
32 estate the construction takes place to a contractor, subcontractor,
33 mechanic, or anyone other than the owner or the owner's legal
34 representatives must:

35 (1) furnish the owner of the real estate:

36 (A) as named in the latest entry in the transfer books described
37 in IC 6-1.1-5-4 of the county auditor; or

38 (B) if IC 6-1.1-5-9 applies, as named in the transfer books of
39 the township assessor;

40 with a written notice of the delivery or labor and the existence of
41 lien rights not later than sixty (60) days after the date of the first
42 delivery or labor performed; and

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1 (2) file a copy of the written notice in the recorder's office of the
2 county not later than sixty (60) days after the date of the first
3 delivery or labor performed.

4 The furnishing and filing of the notice is a condition precedent to the
5 right of acquiring a lien upon the real estate or upon the improvement
6 constructed on the real estate.

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

13 SECTION 3. IC 32-28-10-0.5 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter,**
16 **"fringe benefits and withholdings" means compensation that is due**
17 **an employee under a written contract or written policy in addition**
18 **to wages, including:**

- 19 (1) holiday pay;
- 20 (2) time off for:
 - 21 (A) sickness or injury; or
 - 22 (B) personal reasons or vacation;
- 23 (3) bonus pay;
- 24 (4) authorized expenses incurred during the course of
- 25 employment; and
- 26 (5) contributions due to or made on behalf of the employee.

27 SECTION 4. IC 32-28-10-2 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) A person
29 employed and working in and about a strip mine has a lien on:

- 30 (1) the strip mine;
- 31 (2) all machinery and fixtures connected with the strip mine; and
- 32 (3) everything used in and about the strip mine;

33 for **compensation for labor, including unpaid or unsatisfied fringe**
34 **benefits and withholdings**, performed within a two (2) month period
35 preceding the lien. Except as provided in subdivision (b), this lien is
36 superior to and has priority over all other liens. As against each other,
37 these liens have priority in the order in which they accrued.

38 (b) A state tax lien is superior to and has priority over a lien
39 described in subsection (a).

40 (c) A person desiring to acquire an employee lien as described in
41 subsection (a) shall file within sixty (60) days after the time the
42 payment became due in the recorder's office of the county where the

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1 mine is situated a notice of intention to hold a lien upon property for
 2 the amount of the claim. The person filing a lien shall state in the lien
 3 notice the amount of the claim and the name of the coal works, if
 4 known. If the person filing the lien does not know the name of the coal
 5 works, the person shall include in the notice any other designation
 6 describing the location of the mine. The recorder shall immediately
 7 record the notice in the location used for recording mechanic's liens.
 8 The recorder shall receive a fee in accordance with IC 36-2-7-10. If the
 9 mine is located in more than one (1) county, the notice of intention to
 10 hold a lien may be filed in any county where any part of the mine is
 11 located.

12 (d) Suits brought to enforce a lien created under this section must be
 13 brought within one (1) year after the date of filing notice of the lien in
 14 the recorder's office. All judgments rendered on the foreclosure of the
 15 liens must include:

- 16 (1) the amount of the claim found to be due;
- 17 (2) the interest on the claim from the time due; and
- 18 (3) reasonable attorney's fees.

19 The judgment shall be collected without relief from valuation,
 20 appraisalment, or state laws.

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