

# SENATE BILL No. 257

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-13.1-2-2; IC 32-28; IC 34-30-2-136.9.

**Synopsis:** Mechanic's liens. Establishes a state construction registry supervised by the office of technology to permit the electronic filing of a mechanic's lien and ancillary documents. Requires the office: (1) to contract with a third party to establish the construction registry; and (2) to establish appropriate user fees. Sets forth filing deadlines and data base requirements. Makes other changes and conforming amendments.

**Effective:** January 1, 2009.

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January 10, 2008, read first time and referred to Committee on Economic Development and Technology.

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Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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## SENATE BILL No. 257



A BILL FOR AN ACT to amend the Indiana Code concerning commercial Law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-13.1-2-2, AS AMENDED BY P.L.2-2007,
- 2 SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JANUARY 1, 2009]: Sec. 2. (a) The office shall do the following:
- 4 (1) Develop and maintain overall strategy and architecture for the
- 5 use of information technology in state government.
- 6 (2) Review state agency budget requests and proposed contracts
- 7 relating to information technology at the request of the budget
- 8 agency.
- 9 (3) Coordinate state information technology master planning.
- 10 (4) Maintain an inventory of significant information technology
- 11 resources and expenditures.
- 12 (5) Manage a computer gateway to carry out or facilitate public,
- 13 educational, and governmental functions.
- 14 (6) Provide technical staff support services for state agencies.
- 15 (7) Provide services that may be requested by the following:
- 16 (A) The judicial department of state government.
- 17 (B) The legislative department of state government.



- 1 (C) A state educational institution.
- 2 (D) A political subdivision (as defined in IC 36-1-2-13).
- 3 (E) A body corporate and politic created by statute.
- 4 (F) An entity created by the state.
- 5 (8) Monitor trends and advances in information technology.
- 6 (9) Review projects, architecture, security, staffing, and
- 7 expenditures.
- 8 (10) Develop and maintain policies, procedures, and guidelines
- 9 for the effective and secure use of information technology in state
- 10 government.
- 11 (11) Advise the state personnel department on guidelines for
- 12 information technology staff for state agencies.
- 13 (12) Conduct periodic management reviews of information
- 14 technology activities within state agencies upon request.
- 15 (13) Seek funding for technology services from the following:
- 16 (A) Grants.
- 17 (B) Federal sources.
- 18 (C) Gifts, donations, and bequests.
- 19 (D) Partnerships with other governmental entities or the
- 20 private sector.
- 21 (E) Appropriations.
- 22 (F) Any other source of funds.
- 23 **(14) Supervise the state construction registry program**
- 24 **established by IC 32-28-3.5-2.**
- 25 ~~(14)~~ (15) Perform other information technology related functions
- 26 and duties as directed by the governor.
- 27 (b) The office may adopt rules under IC 4-22-2 that are necessary
- 28 or appropriate in carrying out its powers and duties.
- 29 SECTION 2. IC 32-28-3-1, AS AMENDED BY P.L.219-2007,
- 30 SECTION 101, IS AMENDED TO READ AS FOLLOWS
- 31 [EFFECTIVE JANUARY 1, 2009]: Sec. 1. (a) A contractor, a
- 32 subcontractor, a mechanic, a lessor leasing construction and other
- 33 equipment and tools, whether or not an operator is also provided by the
- 34 lessor, a journeyman, a laborer, or any other person performing labor
- 35 or furnishing materials or machinery, including the leasing of
- 36 equipment or tools, for:
- 37 (1) the erection, alteration, repair, or removal of:
- 38 (A) a house, mill, manufactory, or other building; or
- 39 (B) a bridge, reservoir, system of waterworks, or other
- 40 structure;
- 41 (2) the construction, alteration, repair, or removal of a walk or
- 42 sidewalk located on the land or bordering the land, a stile, a well,

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1 a drain, a drainage ditch, a sewer, or a cistern; or  
 2 (3) any other earth moving operation;  
 3 may have a lien as set forth in this section.  
 4 (b) A person described in subsection (a) may have a lien separately  
 5 or jointly:  
 6 (1) upon the house, mill, manufactory, or other building, bridge,  
 7 reservoir, system of waterworks, or other structure, sidewalk,  
 8 walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:  
 9 (A) that the person erected, altered, repaired, moved, or  
 10 removed; or  
 11 (B) for which the person furnished materials or machinery of  
 12 any description; and  
 13 (2) on the interest of the owner of the lot or parcel of land:  
 14 (A) on which the structure or improvement stands; or  
 15 (B) with which the structure or improvement is connected;  
 16 to the extent of the value of any labor done or the material furnished,  
 17 or both, including any use of the leased equipment and tools.  
 18 (c) All claims for wages of mechanics and laborers employed in or  
 19 about a shop, mill, wareroom, storeroom, manufactory or structure,  
 20 bridge, reservoir, system of waterworks or other structure, sidewalk,  
 21 walk, stile, well, drain, drainage ditch, cistern, or any other earth  
 22 moving operation shall be a lien on all the:  
 23 (1) machinery;  
 24 (2) tools;  
 25 (3) stock;  
 26 (4) material; or  
 27 (5) finished or unfinished work;  
 28 located in or about the shop, mill, wareroom, storeroom, manufactory  
 29 or other building, bridge, reservoir, system of waterworks, or other  
 30 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer,  
 31 cistern, or earth used in a business.  
 32 (d) If the person, firm, limited liability company, or corporation  
 33 described in subsection (a) or (c) is in failing circumstances, the claims  
 34 described in this section shall be preferred debts whether a claim or  
 35 notice of lien has been filed.  
 36 (e) Subject to subsection (f), a contract:  
 37 (1) for the construction, alteration, or repair of a Class 2 structure  
 38 (as defined in IC 22-12-1-5);  
 39 (2) for the construction, alteration, or repair of an improvement on  
 40 the same real estate auxiliary to a Class 2 structure (as defined in  
 41 IC 22-12-1-5);  
 42 (3) for the construction, alteration, or repair of property that is:

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1 (A) owned, operated, managed, or controlled by a:  
 2 (i) public utility (as defined in IC 8-1-2-1);  
 3 (ii) municipally owned utility (as defined in IC 8-1-2-1);  
 4 (iii) joint agency (as defined in IC 8-1-2.2-2);  
 5 (iv) rural electric membership corporation formed under  
 6 IC 8-1-13-4;  
 7 (v) rural telephone cooperative corporation formed under  
 8 IC 8-1-17; or  
 9 (vi) not-for-profit utility (as defined in IC 8-1-2-125);  
 10 regulated under IC 8; and  
 11 (B) intended to be used and useful for the production,  
 12 transmission, delivery, or furnishing of heat, light, water,  
 13 telecommunications services, or power to the public; or  
 14 (4) to prepare property for Class 2 residential construction;  
 15 may include a provision or stipulation in the contract of the owner and  
 16 principal contractor that a lien may not attach to the real estate,  
 17 building, structure, or any other improvement of the owner.  
 18 (f) A contract containing a provision or stipulation described in  
 19 subsection (e) must meet the requirements of this subsection to be valid  
 20 against subcontractors, mechanics, journeymen, laborers, or persons  
 21 performing labor upon or furnishing materials or machinery for the  
 22 property or improvement of the owner. The contract must:  
 23 (1) be in writing;  
 24 (2) contain specific reference by legal description of the real  
 25 estate to be improved;  
 26 (3) be acknowledged as provided in the case of deeds; and  
 27 (4) be filed and recorded in the recorder's office of the county in  
 28 which the real estate, building, structure, or other improvement is  
 29 situated with the designated agent (as defined in  
 30 IC 32-28-3.5-1(5)) not more than five (5) days after the date of  
 31 execution of the contract.  
 32 A contract containing a provision or stipulation described in subsection  
 33 (e) does not affect a lien for labor, material, or machinery supplied  
 34 before the filing of the contract with the recorder designated agent.  
 35 (g) Upon the filing of a contract under subsection (f), the recorder  
 36 designated agent shall:  
 37 (1) record the contract at length in the order of the time it was  
 38 received in books provided by the recorder for that purpose data  
 39 base established under IC 32-28-3.5-2(b)(1);  
 40 (2) index the contract in the name of the:  
 41 (A) contractor; and  
 42 (B) owner;

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1           in books kept for that purpose; and  
2           (3) collect a fee for recording the contract. as is provided for the  
3           recording of deeds and mortgages.  
4           (h) A person, firm, partnership, limited liability company, or  
5           corporation that sells or furnishes on credit any material, labor, or  
6           machinery for the alteration or repair of an owner occupied single or  
7           double family dwelling or the appurtenances or additions to the  
8           dwelling to:  
9                (1) a contractor, subcontractor, mechanic; or  
10               (2) anyone other than the occupying owner or the owner's legal  
11               representative;  
12           must furnish to the occupying owner of the parcel of land where the  
13           material, labor, or machinery is delivered a written notice of the  
14           delivery or work and of the existence of lien rights not later than thirty  
15           (30) days after the date of first delivery or labor performed. The  
16           furnishing of the notice is a condition precedent to the right of  
17           acquiring a lien upon the lot or parcel of land or the improvement on  
18           the lot or parcel of land.  
19           (i) A person, firm, partnership, limited liability company, or  
20           corporation that sells or furnishes on credit material, labor, or  
21           machinery for the original construction of a single or double family  
22           dwelling for the intended occupancy of the owner upon whose real  
23           estate the construction takes place to a contractor, subcontractor,  
24           mechanic, or anyone other than the owner or the owner's legal  
25           representatives must:  
26                (†) furnish the owner of the real estate:  
27                    (A) (1) as named in the latest entry in the transfer books  
28                    described in IC 6-1.1-5-4 of the county auditor; or  
29                    (B) (2) if IC 6-1.1-5-9 applies, as named in the transfer books  
30                    of the township assessor or the county assessor;  
31                with a written notice of the delivery or labor and the existence of  
32                lien rights not later than sixty (60) days after the date of the first  
33                delivery or labor performed. and  
34                (2) file a copy of the written notice in the recorder's office of the  
35                county not later than sixty (60) days after the date of the first  
36                delivery or labor performed.  
37           The furnishing and filing of the notice is a condition precedent to the  
38           right of acquiring a lien upon the real estate or upon the improvement  
39           constructed on the real estate.  
40           (j) A lien for material or labor in original construction does not  
41           attach to real estate purchased by an innocent purchaser for value  
42           without notice of a single or double family dwelling for occupancy by

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1 the purchaser unless notice of intention to hold the lien is recorded  
 2 under section 3 of this chapter before recording the deed by which the  
 3 purchaser takes title.

4 SECTION 3. IC 32-28-3-3, AS AMENDED BY P.L.219-2007,  
 5 SECTION 102, IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JANUARY 1, 2009]: Sec. 3. (a) Except as provided in  
 7 subsection (b), a person who wishes to acquire a lien upon property,  
 8 whether the claim is due or not, must file in duplicate a sworn  
 9 statement and notice of the person's intention to hold a lien upon the  
 10 property for the amount of the claim:

11 (1) ~~in the recorder's office of the county with the designated~~  
 12 **agent (as defined in IC 32-28-3.5-1(5));** and

13 (2) not later than ninety (90) days after performing labor or  
 14 furnishing materials or machinery described in section 1 of this  
 15 chapter.

16 The statement and notice of intention to hold a lien may be verified and  
 17 filed on behalf of a client by an attorney registered with the clerk of the  
 18 supreme court as an attorney in good standing under the requirements  
 19 of the supreme court.

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

28 (1) ~~in the recorder's office of the county with the designated~~  
 29 **agent (as defined in IC 32-28-3.5-1(5));** and

30 (2) not later than sixty (60) days after performing labor or  
 31 furnishing materials or machinery described in section 1 of this  
 32 chapter.

33 The ~~statement and~~ notice of intention to hold a lien may be verified and  
 34 filed on behalf of a client by an attorney registered with the clerk of the  
 35 supreme court as an attorney in good standing under the requirements  
 36 of the supreme court.

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

- 39 (1) the amount claimed;  
 40 (2) the name and address of the claimant;  
 41 (3) the owner's:  
 42 (A) name; and

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

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

16 (d) The recorder designated agent (as defined in  
 17 IC 32-28-3.5-1(5)) shall:

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

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

28 SECTION 4. IC 32-28-3-5 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 5. (a) As used in  
 30 this section, "lender" refers to:

- 31 (1) an individual;
- 32 (2) a supervised financial organization (as defined in
- 33 IC 24-4.5-1-301);
- 34 (3) an insurance company or a pension fund; or
- 35 (4) any other entity that has the authority to make loans.

36 (b) The recorder designated agent (as defined in  
 37 IC 32-28-3.5-1(5)) shall record the statement and notice of intention  
 38 to hold a lien when presented under section 3 of this chapter in the  
 39 ~~miscellaneous record book data base established under~~  
 40 IC 32-28-3.5-2(b)(1). The recorder designated agent shall charge a  
 41 fee for recording the statement and notice, ~~in accordance with~~  
 42 IC 36-2-7-10. When the statement and notice of intention to hold a lien

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1 is recorded, the lien is created. The recorded lien relates back to the  
2 date the mechanic or other person began to perform the labor or furnish  
3 the materials or machinery. Except as provided in subsections (c) and  
4 (d), a lien created under this chapter has priority over a lien created  
5 after it.

6 (c) The lien of a mechanic or materialman does not have priority  
7 over the lien of another mechanic or materialman.

8 (d) The mortgage of a lender has priority over all liens created under  
9 this chapter that are recorded after the date the mortgage was recorded,  
10 to the extent of the funds actually owed to the lender for the specific  
11 project to which the lien rights relate. This subsection does not apply  
12 to a lien that relates to a construction contract for the development,  
13 construction, alteration, or repair of the following:

14 (1) A Class 2 structure (as defined in IC 22-12-1-5).

15 (2) An improvement on the same real estate auxiliary to a Class  
16 2 structure (as defined in IC 22-12-1-5).

17 (3) Property that is:

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

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

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

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

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

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

26 (vi) a not-for-profit utility (as defined in IC 8-1-2-125);  
27 regulated under IC 8; and

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

31 SECTION 5. IC 32-28-3-10 IS AMENDED TO READ AS  
32 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 10. (a) A lien is  
33 void if both of the following occur:

34 (1) The owner of property subject to a mechanic's lien or any  
35 person or corporation having an interest in the property, including  
36 a mortgagee or a lienholder, provides written notice to the owner  
37 or holder of the lien to file an action to foreclose the lien.

38 (2) The owner or holder of the lien fails to file an action to  
39 foreclose the lien in the county where the property is located not  
40 later than thirty (30) days after receiving the notice.

41 However, this section does not prevent the claim from being collected  
42 as other claims are collected by law.

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1 (b) A person who gives notice under subsection (a)(1) by registered  
 2 or certified mail to the lienholder at the address given in the recorded  
 3 statement and notice of intention to hold a lien may file an affidavit of  
 4 service of the notice to file an action to foreclose the lien with the  
 5 recorder of the county in which the property is located **designated**  
 6 **agent (as defined in IC 32-28-3.5-1(5))**. The affidavit must state the  
 7 following:

- 8 (1) The facts of the notice.  
 9 (2) That more than thirty (30) days have passed since the notice  
 10 was received by the lienholder.  
 11 (3) That no action for foreclosure of the lien is pending.  
 12 (4) That no unsatisfied judgment has been rendered on the lien.

13 (c) The **recorder designated agent (as defined in**  
 14 **IC 32-28-3.5-1(5))** shall:

- 15 (1) record the affidavit of service in the ~~miscellaneous record~~  
 16 ~~book of the recorder's office data base established under~~  
 17 **IC 32-28-3.5-2(b)(1)**; and  
 18 (2) certify ~~on the face of the record~~ any lien that is fully released.

19 When the **recorder designated agent (as defined in IC 32-28-3.5-1(5))**  
 20 records the affidavit and certifies the record under this subsection, the  
 21 real estate described in the lien is released from the lien.

22 SECTION 6. IC 32-28-3-13 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 13. A person who  
 24 desires to acquire the lien provided for in section 12 of this chapter  
 25 must give notice of the person's intention to hold the lien by causing the  
 26 notice to be recorded ~~in the recorder's office of the county in which the~~  
 27 ~~work was done or material furnished by the designated agent (as~~  
 28 **defined in IC 32-28-3.5-1(5))** in the same manner and within the same  
 29 time as provided in this chapter for giving notice of a mechanic's lien.  
 30 A person who gives notice within the proper time may enforce the lien  
 31 in the same manner as mechanic's liens are enforced. The suit must be  
 32 brought within one (1) year after the time the notice was filed. ~~in the~~  
 33 ~~recorder's office.~~

34 SECTION 7. IC 32-28-3.5 IS ADDED TO THE INDIANA CODE  
 35 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 36 JANUARY 1, 2009]:

37 **Chapter 3.5. Construction Liens**

38 **Sec. 1. The following definitions apply throughout this chapter:**

- 39 (1) "Alternate filing" means a legible and complete filing that  
 40 is:

- 41 (A) not an electronic filing; and  
 42 (B) made in accordance with rules adopted by the office

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- under section 2(b)(3) of this chapter.
- (2) "Cancel" means to indicate that a filing is no longer given effect.
- (3) "Construction project" means the providing of all labor, equipment, and materials that are provided:
  - (A) under an original contract; or
  - (B) by, or under contracts with, an owner-builder.
- (4) "Data base" means the data base established and maintained for purposes of the state construction registry program established by section 2 of this chapter.
- (5) "Designated agent" means a third party with which the office contracts to establish, operate, and maintain the data base.
- (6) "Final completion" means:
  - (A) if as a result of work performed under the original contract a permanent certificate of occupancy is required for the work, the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project;
  - (B) if no certificate of occupancy is required by the local government entity having jurisdiction over the construction project, but as a result of the work performed under the original contract an inspection is required, the date of the final inspection for the work by the local government entity having jurisdiction over the construction project; or
  - (C) if, with regard to the work performed under the original contract, no certificate of occupancy and no final inspection are required by the local government entity having jurisdiction over the construction project, the date on which there remains no substantial work to be completed to finish work under the original contract.
- (7) "Interested person" means a person who may be affected by a construction project.
- (8) "Office" refers to the office of technology established by IC 4-13.1-2-1.
- (9) "Original contract" means a contract between an original contractor and the owner of real property to furnish labor, equipment, or materials to the real property. The term does not include a contract between an owner-builder and another person.
- (10) "Original contractor" means, except for a person who

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contracts with an owner-builder, a person who does work or furnishes materials by contract, express or implied, with the owner of real property.

(11) "Owner-builder" means an owner of real property who obtains a building permit for work on the owner's property that will consist of more than one (1) contract between the owner and any other person.

(12) "Program" means the state construction registry program established by section 2 of this chapter.

(13) "Project" means a construction project.

(14) "Subcontractor" means any person who is not an original contractor and who does work or furnishes materials.

Sec. 2. (a) The state construction registry program is established under the supervision of the office.

(b) The following requirements apply to the program:

(1) The program shall provide a central data base and repository for:

- (A) notices of commencement;
- (B) preliminary notices; and
- (C) notices of completion;

concerning construction projects. The program shall require that the user confirm the accuracy of the data entered.

(2) The program shall accommodate electronic filing of notices.

(3) The program shall accommodate alternate filing of notices in accordance with rules adopted by the office.

(4) The program shall provide notification by electronic mail for each interested person who requests notification.

(5) The program shall provide an alternate means of notification in accordance with rules adopted by the office.

(6) The program shall provide a hard copy printout of an electronic receipt for an individual who makes a filing. The printout must include:

- (A) the date of the filing;
- (B) the time of the filing; and
- (C) the contents of the filing.

(7) The program shall provide notice of all other filings for a project to any person who files a:

- (A) notice of commencement;
- (B) preliminary notice; or
- (C) notice of completion;

for the project, unless the person requests not to receive

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- 1 notice or fails to provide the program with contact
- 2 information sufficient to permit the person to receive notice.
- 3 (8) The program shall provide notice of other filings related
- 4 to a project to an interested person who requests notification.
- 5 (9) The data base shall be indexed to permit searching by:
- 6 (A) the name of an owner;
- 7 (B) the name of the original contractor;
- 8 (C) the name of the subdivision, development, or other
- 9 project name, if any;
- 10 (D) the address of the project;
- 11 (E) the lot or parcel number;
- 12 (F) the unique project number assigned by the program;
- 13 and
- 14 (G) any other identifier selected by the office.

15 **Sec. 3. (a) The office shall adopt a schedule of fees consistent**

16 **with IC 5-14-3 for:**

- 17 (1) filing a notice of commencement;
- 18 (2) filing a preliminary notice;
- 19 (3) filing a notice of completion;
- 20 (4) a request for notification;
- 21 (5) providing a required notice by an alternate method of
- 22 delivery;
- 23 (6) a duplicate receipt of a filing;
- 24 (7) establishing a billing account for a person; and
- 25 (8) the provision of any other necessary services.

26 (b) Fees authorized under this section must be sufficient to cover

27 the expenses of providing necessary services and of establishing,

28 operating, and maintaining the data base. The fees may not exceed

29 the amount reasonably required to provide necessary services and

30 to create, maintain, and operate the program and the data base.

31 The office may establish different fees for different methods of

32 filing.

33 (c) A person who is delinquent in the payment of a fee required

34 under this section may not file a notice with the program.

35 (d) The office may provide by contract that the designated agent

36 may retain fees collected by the designated agent.

37 **Sec. 4. A person who files a notice of commencement,**

38 **preliminary notice, or notice of completion is responsible for**

39 **verifying the accuracy and completeness of the information entered**

40 **into the data base.**

41 **Sec. 5. The office shall contract with a designated agent to**

42 **operate, establish, and maintain the data base. The office is**

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1 responsible for ensuring compliance with a contract entered into  
2 under this section. If the operation of the data base is transferred  
3 to a new designated agent, the office shall act as custodian of the  
4 data.

5 Sec. 6. (a) Not later than fifteen (15) days after the issuance of  
6 a building permit, the owner-builder or an original contractor of  
7 a construction project must file a notice of commencement with the  
8 data base and pay the applicable filing fee.

9 (b) The person who files the notice of commencement is  
10 responsible for the accuracy of the information contained in the  
11 notice.

12 (c) For a construction project for which a building permit is not  
13 issued, not later than fifteen (15) days after the commencement of  
14 physical construction work at the project site, the owner-builder  
15 must file a notice of commencement with the data base.

16 (d) If duplicate notices of commencement are filed, they shall be  
17 combined or linked in the data base into one (1) notice for each  
18 project once the program receives notice of the duplication. A filed  
19 notice relates back to the date of the earliest filed notice of  
20 commencement for the project. A duplicate notice of  
21 commencement that is untimely filed relates back if the earlier  
22 filed notice of commencement is timely filed.

23 (e) The program shall assign each construction project a unique  
24 project number that identifies each construction project and that  
25 can be associated with all notices of commencement, preliminary  
26 notices, and notices of completion.

27 (f) A notice of commencement is effective only as to any labor,  
28 service, equipment, and material furnished to the construction  
29 project after the filing of the notice of commencement.

30 (g) Except as provided in subsection (i), a notice of  
31 commencement must include the following:

- 32 (1) The name and address of the owner of the project.
- 33 (2) The name and address of the original contractor.
- 34 (3) The name and address of the surety providing any  
35 payment bond for the project, or if none exists, a statement  
36 that a payment bond was not required for the work being  
37 performed.
- 38 (4) The contractor's license number, if applicable.
- 39 (5) The project address.
- 40 (6) A specific reference by legal description of the real estate  
41 to be improved.

42 (h) A notice of commencement must include:

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- 1           **(1) a general description of the project; and**
- 2           **(2) the lot or parcel number, and any subdivision,**
- 3           **development, or other project name of the real property upon**
- 4           **which the project is to be constructed if the project is subject**
- 5           **to liens.**
- 6           **(i) A notice of commencement is not required to include all of**
- 7           **the items listed in subsection (g) if:**
  - 8               **(1) a building permit is issued for the project; and**
  - 9               **(2) all items listed in subsection (g) that are available on the**
  - 10              **building permit are included in the notice of commencement.**
- 11           **(j) Unless a person indicates to the program that the person does**
- 12           **not wish to receive a notice under this section, electronic notice of**
- 13           **the filing of a notice of commencement or alternate notice shall be**
- 14           **provided to:**
  - 15               **(1) every person who has filed a notice of commencement for**
  - 16               **the project; and**
  - 17               **(2) any interested person who has requested a notice for the**
  - 18               **project as provided by law.**
- 19           **(k) A person to whom notice is required to be provided under**
- 20           **subsection (j) is responsible for:**
  - 21               **(1) providing an electronic mail address, mailing address, or**
  - 22               **fax number to which a notice required under subsection (j) is**
  - 23               **to be sent; and**
  - 24               **(2) the accuracy of the electronic mail address, mailing**
  - 25               **address, or fax number provided under subdivision (1).**
- 26           **(l) The burden is upon any person seeking to enforce a notice of**
- 27           **commencement to verify the accuracy of information in the notice**
- 28           **of commencement and prove that the notice of commencement was**
- 29           **filed timely and meets all of the requirements in this section. A**
- 30           **substantial inaccuracy in a notice of commencement renders the**
- 31           **notice of commencement unenforceable.**
- 32           **(m) A person filing a notice of commencement by alternate filing**
- 33           **is responsible for verifying and changing any incorrect information**
- 34           **in the notice of commencement before the expiration of the time**
- 35           **period during which the notice of commencement is required to be**
- 36           **filed.**
- 37           **(n) At the time a building permit is obtained, each original**
- 38           **contractor must conspicuously post at the project site a copy of the**
- 39           **building permit and notice of commencement obtained for the**
- 40           **project.**
- 41           **Sec. 7. (a) This section does not apply if a notice of**
- 42           **commencement is not timely filed in accordance with section 6 of**

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this chapter.

(b) Except for a person who has a contract with an owner or an owner-builder, a subcontractor must file a preliminary notice with the data base not later than the later of:

(1) twenty (20) days after commencement of the subcontractor's own work or the commencement of furnishing labor, service, equipment, and material to the construction project; or

(2) twenty (20) days after a notice of commencement has been filed with the data base.

(c) A preliminary notice filed within the period described in subsection (b) is effective as to all labor, service, equipment, and material furnished to the construction project, including labor, service, equipment, and material provided to more than one (1) contractor or subcontractor.

(d) If more than one (1) notice of commencement is filed for a project, a person may attach a preliminary notice to any of the notices of commencement filed for the project. A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement filed for the project to which the preliminary notice may attach.

(e) If a person files a preliminary notice after the period prescribed by subsection (b), the preliminary notice becomes effective five (5) days after the day on which the preliminary notice is filed.

(f) The failure of a person to file a preliminary notice within the period set forth in subsection (b) precludes the person from maintaining any claim against any person other than the person with whom the person contracted for compensation earned for performance of labor or service or supply of materials or equipment furnished to the construction project before the expiration of five (5) days after the late filing of the preliminary notice.

(g) If a person who is required to file a preliminary notice under this chapter fails to file the preliminary notice, that person may not hold a valid lien under this chapter. The designated agent is not required to verify that a valid preliminary notice has been filed when a person files a notice to hold and claim a lien under IC 32-28-3.

(h) A preliminary notice must include the following information:

(1) the building permit number for the project, or the number

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- 1 assigned to the project by the program;
- 2 (2) the name, address, and telephone number of the person
- 3 furnishing the labor, service, equipment, or material for the
- 4 project;
- 5 (3) the name and address of the person who contracted with
- 6 the claimant for the furnishing of the labor, service,
- 7 equipment, or material;
- 8 (4) the name of the record or reputed owner of the project;
- 9 (5) the name of the original contractor under which the
- 10 claimant is performing or will perform the claimant's work;
- 11 (6) the date work on the project started; and
- 12 (7) the address of the project.
- 13 (i) Upon request by a subcontractor described in subsection (b),
- 14 an original contractor must provide the subcontractor with the
- 15 building permit number for the project, or the number assigned to
- 16 the project by the program.
- 17 (j) Unless a person indicates to the program that the person does
- 18 not wish to receive a notice under this section, electronic notice of
- 19 the filing of a preliminary notice or alternate notice shall be
- 20 provided to:
- 21 (1) every person who has filed a notice of commencement for
- 22 the project; and
- 23 (2) any interested person who has requested a notice for the
- 24 project as provided by law.
- 25 (k) A person to whom notice is required to be provided under
- 26 subsection (j) is responsible for:
- 27 (1) providing an electronic mail address, mailing address, or
- 28 fax number to which a notice required under subsection (j) is
- 29 to be sent; and
- 30 (2) the accuracy of the electronic mail address, mailing
- 31 address, or fax number provided under subdivision (1).
- 32 (l) The burden is upon any person seeking to enforce a
- 33 preliminary notice to verify the accuracy of information in the
- 34 preliminary notice and prove that the preliminary notice was filed
- 35 timely and meets all of the requirements in this section. A
- 36 substantial inaccuracy in a preliminary notice renders the
- 37 preliminary notice unenforceable.
- 38 (m) A person filing a preliminary notice by alternate filing is
- 39 responsible for verifying and changing any incorrect information
- 40 in the preliminary notice before the expiration of the time period
- 41 during which the preliminary notice is required to be filed.
- 42 (n) If labor, service, equipment, or material is furnished under

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1 more than one (1) original contract, the notice requirements set  
 2 forth in this section must be met with respect to the labor, service,  
 3 equipment, or material furnished under each original contract.  
 4 (o) If an owner-builder, original contractor, subcontractor, or  
 5 other interested person believes that a preliminary notice has been  
 6 filed erroneously, the owner-builder, original contractor,  
 7 subcontractor, or other interested person may request from the  
 8 person who filed the preliminary notice evidence establishing the  
 9 validity of the preliminary notice.  
 10 (p) Not later than ten (10) days after a request described in  
 11 subsection (o), the person or entity that filed the preliminary notice  
 12 must provide the requesting person or entity proof that the  
 13 preliminary notice is valid.  
 14 (q) If the person or entity that filed a preliminary notice does  
 15 not provide proof of the validity of the preliminary notice under  
 16 subsection (p), the person or entity shall immediately cancel the  
 17 preliminary notice from the data base in the method prescribed by  
 18 the office in rules adopted by the office under this chapter.  
 19 (r) A person filing a preliminary notice by alternate filing is  
 20 responsible for verifying and changing any incorrect information  
 21 in the preliminary notice before the expiration of the time period  
 22 during which the preliminary notice is required to be filed.  
 23 Sec. 8. (a) This section does not apply if a notice of  
 24 commencement is not timely filed in accordance with section 6 of  
 25 this chapter.  
 26 (b) Upon final completion of a construction project:  
 27 (1) an owner-builder or an original contractor must file a  
 28 notice of completion with the program; and  
 29 (2) a lender that has provided financing for the construction  
 30 project, a surety that has provided bonding for the  
 31 construction project, or a title company issuing a policy on the  
 32 construction project may file a notice of completion.  
 33 (c) If a subcontractor performs substantial work after the final  
 34 completion of a construction project, the subcontractor's  
 35 subcontract shall be considered an original contract for the sole  
 36 purpose of determining:  
 37 (1) the time within which the subcontractor may file a notice  
 38 to hold and claim a lien under IC 32-28-3; and  
 39 (2) the time within which the original contractor may file a  
 40 notice to hold and claim a lien under IC 32-28-3 for the  
 41 subcontractor's work.  
 42 However, for the purposes of this subsection, substantial work does

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not include repair work or work performed under the terms of a warranty.

(d) A notice of completion must include the following information:

- (1) The building permit number for the project, or the number assigned to the project by the program.
- (2) The name, address, and telephone number of the person filing the notice of completion.
- (3) The name of the original contractor for the project.
- (4) The address of the project, or a general description of the location of the project if the project cannot be reasonably identified by an address.
- (5) The date on which final completion is alleged to have occurred.
- (6) The method used to determine final completion.

However, completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of the work.

(e) Unless a person indicates to the program that the person does not wish to receive a notice under this section, electronic notice of the filing of a notice of completion or alternate notice shall be provided to:

- (1) every person who filed a notice of commencement for the project;
- (2) every person who filed a preliminary notice for the project; and
- (3) any interested person who has requested a notice for the project as provided by law.

(f) A person to whom notice is required to be provided under subsection (e) is responsible for:

- (1) providing an electronic mail address, mailing address, or fax number to which a notice required under subsection (e) is to be sent; and
- (2) the accuracy of the electronic mail address, mailing address, or fax number provided under subdivision (1).

(g) A person filing a notice of completion by alternate filing is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the preliminary notice is required to be filed.

(h) Upon the filing of a notice of completion, the time periods for filing a preliminary notice described in section 7 of this chapter are modified so that an additional preliminary notice must be filed:

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(1) after notice of completion; and  
(2) not later than ten (10) days after the day on which the notice of completion is filed.

(i) A subcontract that is considered an original contract for purposes of this section does not create a requirement for an additional preliminary notice if a preliminary notice has already been filed for the labor, service, equipment, and material furnished to the subcontractor if the subcontractor performs substantial work.

(j) If an owner-builder, original contractor, subcontractor, or other interested person believes that a notice of completion has been filed erroneously, the owner, original contractor, subcontractor, or other interested person may request from the person who filed the notice of completion evidence establishing the validity of the notice of completion.

(k) Not later than ten (10) days after a request described in subsection (j), the person who filed the notice of completion must provide the requesting person proof that the notice of completion is valid.

(l) If the person who filed a notice of completion does not provide proof of the validity of the notice of completion under subsection (k), the person shall immediately cancel the notice of completion from the data base in any manner prescribed by law.

(m) Notwithstanding IC 32-28-3, a person claiming benefits under this chapter shall file for record with the designated agent a written notice to hold and claim a lien not later than:

- (1) ninety (90) days after the day on which a notice of completion is filed under this section; or
- (2) one hundred eighty (180) days after the day on which final completion occurs, if no notice of completion is filed under this section.

Sec. 9. (a) Information contained in the data base is a public record.

(b) The designated agent shall permit a person who wishes to inspect records maintained in the data base to inspect the records in the same manner as if the records were maintained by a public agency under IC 5-14-3.

(c) The designated agent may charge a fee consistent with fees described in IC 5-14-3 (including a fee for enhanced access under IC 5-14-3-3.5 and IC 5-14-3-3.6) to a person who wishes to inspect or copy records contained in the data base.

Sec. 10. (a) Except as provided in subsection (b) or (c), a

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1 **designated agent is immune from civil liability based on an act or**  
2 **omission relating to the provision of necessary services or the**  
3 **establishment, operation, or maintenance of the data base.**

4 **(b) A designated agent is civilly liable for an act or omission that**  
5 **amounts to gross negligence or willful or wanton misconduct.**

6 **(c) If the contract between the office and a designated agent**  
7 **requires the designated agent to accept civil liability for certain**  
8 **acts or omissions relating to the provision of necessary services or**  
9 **the establishment, operation, or maintenance of the data base, the**  
10 **designated agent is civilly liable in accordance with the terms of the**  
11 **contract.**

12 **Sec. 11. The office may adopt rules under IC 4-22-2 to**  
13 **administer this chapter.**

14 SECTION 8. IC 32-28-6-1 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1. (a) If:

16 (1) a person owns or has an interest in real estate to which a  
17 mechanic's lien has been attached;

18 (2) the debt secured by the lien has satisfied or paid; and

19 (3) the person who owns or has an interest in the encumbered real  
20 estate demands that the lien be released;

21 the lienholder shall release the lien within fifteen (15) days after the  
22 demand.

23 (b) If the lienholder does not release the lien within fifteen (15) days  
24 after the demand, the lienholder is liable to the person who owns or has  
25 an interest in the real estate to which the mechanic's lien has been  
26 attached for the greater of:

27 (1) actual damages; or

28 (2) liquidated damages in the sum of ten dollars (\$10) per day  
29 from the fifteenth day until the release or expiration of the lien.

30 (c) A person who owns or who has an interest in real estate to which  
31 a mechanic's lien has been attached may, at any time thirteen (13)  
32 months after the date of the filing of the notice of the lien, file ~~in the~~  
33 ~~office of the recorder of the county in which the real estate is situated~~  
34 **with the designated agent (as defined in IC 32-28-3.5-1(5))** an  
35 affidavit stating that no suit for the foreclosure of the lien is pending  
36 and that no unsatisfied judgment has been rendered on the lien.

37 SECTION 9. IC 32-28-6-2 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. If a person who  
39 owns or has an interest in real estate encumbered by a mechanic's lien  
40 files the affidavit described in section 1(c) of this chapter, the ~~recorder~~  
41 ~~of the county in which the encumbered real estate is situated~~  
42 **designated agent (as defined in IC 32-28-3.5-1(5))** shall immediately

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1 record the affidavit and certify ~~on the record of the lien~~ that the  
2 mechanic's lien is fully satisfied and that the real estate described in the  
3 mechanic's lien is released from the lien. The fee of the ~~recorder~~  
4 **designated agent (as defined in IC 32-28-3.5-1(5))** for the filing and  
5 recording of the affidavit shall be an amount prescribed by law and  
6 shall be paid by the person filing the affidavit.

7 SECTION 10. IC 34-30-2-136.9 IS ADDED TO THE INDIANA  
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
9 [EFFECTIVE JANUARY 1, 2009]: **Sec. 136.9. IC 32-28-3.5-10**  
10 **(Concerning the act or omission of a designated agent, as defined**  
11 **in IC 32-28-3.5-1, relating to the provision of necessary services or**  
12 **the establishment, operation, or maintenance of the data base**  
13 **established and maintained for purposes of the state construction**  
14 **registry program under IC 32-28-3.5-2).**

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