



February 18, 2009

HOUSE BILL No. 1077

DIGEST OF HB 1077 (Updated February 11, 2009 2:52 pm - DI 107)

Citations Affected: IC 32-28; IC 32-33.

Synopsis: Special tool liens. Establishes possession and ownership rights in special tools used for the fabrication of certain metal parts. Specifies procedures that must be used to establish a lien on certain special tools. Provides that a common law lien is void under certain circumstances.

Effective: Upon passage.

Cheatham, Smith M

January 7, 2009, read first time and referred to Committee on Judiciary.
February 17, 2009, amended, reported — Do Pass.

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HB 1077—LS 6393/DI 69+



February 18, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1077



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 32-28-13-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This chapter
3 provides the procedure for filing and releasing a common law lien.

4 (b) This chapter does not create a common law lien. A common law
5 lien does not exist against the property of a public official for the
6 performance or nonperformance of the public official's official duty. A
7 person asserting a common law lien must prove the existence of the
8 lien as prescribed by the common law of Indiana.

9 (c) **Unless a common law lien becomes void at an earlier date**
10 **under section 6(b) of this chapter, a common law lien is void if the**
11 **common law lienholder fails to commence a suit on the common**
12 **law lien within one hundred eighty (180) days after the date the**
13 **common law lien is recorded under this chapter.**

14 SECTION 2. IC 32-33-16-0.5 IS ADDED TO THE INDIANA
15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
16 [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. This chapter does not**
17 **apply to a special tool under IC 32-33-20.**

HB 1077—LS 6393/DI 69+



1 SECTION 3. IC 32-33-20 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 20. Special Tool Liens**

5 **Sec. 1. As used in this chapter, "customer" means a person who:**

- 6 (1) causes a special tool builder to design, develop,
- 7 manufacture, assemble for sale, or otherwise make a special
- 8 tool for use in the design, development, manufacture,
- 9 assembly, or fabrication of parts; or

- 10 (2) causes an end user to use a special tool to design, develop,
- 11 manufacture, assemble, or fabricate a product.

12 **Sec. 2. As used in this chapter, "end user" means a person who**
13 **uses a special tool as part of the person's manufacturing process.**

14 **Sec. 3. As used in this chapter, "special tool" means tools, dies,**
15 **jigs, gauges, gauging fixtures, special machinery, cutting tools,**
16 **injection molds, or metal castings manufactured by a special tool**
17 **builder.**

18 **Sec. 4. As used in this chapter, "special tool builder" means a**
19 **person who designs, develops, manufactures, or assembles special**
20 **tools for sale.**

21 **Sec. 5 (a) This section does not apply if an end user retains title**
22 **to and possession of a special tool.**

23 **(b) Unless otherwise agreed in writing, if a customer does not**
24 **claim possession of a special tool from an end user within three (3)**
25 **years after the date the special tool is last used by the end user, at**
26 **the option of the end user, all rights, title, and interest in the special**
27 **tool may be transferred by operation of law to the end user for the**
28 **purpose of destroying the special tool.**

29 **(c) After the three (3) year period described in subsection (b)**
30 **expires, if an end user chooses to have all rights, title, and interest**
31 **in a special tool transferred to the end user, the end user shall send**
32 **written notice by registered mail, return receipt requested, to:**

- 33 (1) an address designated in writing by the customer; or
- 34 (2) if the customer has not designated an address in writing,
- 35 to the customer's last known address;

36 **that indicates the end user intends to terminate the customer's**
37 **rights, title, and interest in the special tool by having all rights,**
38 **title, and interest in the special tool transferred to the end user**
39 **under this section.**

40 **(d) If a customer does not:**

- 41 (1) claim possession of the special tool within one hundred
- 42 twenty (120) days after the date the end user receives the

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1 return receipt of the notice sent under subsection (c); or
 2 (2) make other arrangements with the end user for storage of
 3 the special tool within one hundred twenty (120) days after
 4 the date the end user receives the return receipt of the notice
 5 sent under subsection (c);
 6 all rights, title, and interest of the customer in the special tool are
 7 transferred by operation of law to the end user for the purpose of
 8 destroying the special tool.
 9 (e) This section may not be construed to:
 10 (1) affect a right of a customer under a:
 11 (A) federal patent or copyright law; or
 12 (B) state or federal law concerning unfair competition; or
 13 (2) grant a customer rights, title, or interest in a special tool.
 14 Sec. 6. (a) An end user has a lien, dependent on possession, on
 15 any special tool in the end user's possession belonging to a
 16 customer for the amount due the end user from the customer for:
 17 (1) metal fabrication work performed with the special tool; or
 18 (2) making or improving the special tool.
 19 (b) An end user may retain possession of the special tool until
 20 the amount due is paid.
 21 Sec. 7. (a) Before enforcing a lien created under section 6 of this
 22 chapter, the end user must give written notice to the customer that
 23 is:
 24 (1) delivered personally; or
 25 (2) sent by registered mail to the last known address of the
 26 customer.
 27 (b) The notice required under subsection (a) must:
 28 (1) state that a lien is claimed for the amount due for:
 29 (A) metal fabrication work; or
 30 (B) making or improving the special tool; and
 31 (2) include a demand for payment.
 32 Sec. 8. If an end user has not been paid the amount due within
 33 ninety (90) days after the date the notice is received by the
 34 customer as provided in section 7 of this chapter, the end user may
 35 sell the special tool at a public auction if:
 36 (1) the special tool is still in the end user's possession; and
 37 (2) the end user complies with section 9 of this chapter.
 38 Sec. 9. (a) Before an end user may sell a special tool, the end
 39 user must notify:
 40 (1) the customer; and
 41 (2) any person whose security interest in the special tool is
 42 perfected by filing;

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1 by registered mail, return receipt requested, that the end user
2 intends to sell the special tool.

3 (b) The notice required under subsection (a) must include the
4 following information:

- 5 (1) The end user's intention to sell the special tool sixty (60)
- 6 days after the date the customer receives the notice.
- 7 (2) A description of the special tool to be sold.
- 8 (3) The date, time, and place of the sale.
- 9 (4) An itemized statement for the amount due.
- 10 (5) A statement that the product produced by the special tool
- 11 complies with the quality and quantity ordered.

12 (c) If:

- 13 (1) there is no return of the receipt of the mailing; or
- 14 (2) the postal service returns the notice as being
- 15 undeliverable;

16 the end user shall publish notice of the end user's intention to sell
17 the special tool in a newspaper of general circulation in the place
18 where the special tool is being held for sale by the end user and in
19 the place of the customer's last known address. The notice must
20 include a description of the special tool and the name of the
21 customer.

22 (d) If a customer disagrees that the product produced by the
23 special tool complies with the quality and quantity ordered, the
24 customer shall notify the end user in writing by registered mail,
25 return receipt requested, that the product produced by the special
26 tool did not meet the quality or quantity of product ordered. An
27 end user who receives a notice under this subsection may not sell
28 the special tool until the dispute is resolved.

29 Sec. 10. (a) If a sale of a special tool under section 8 of this
30 chapter is for a sum greater than the amount of the lien:

- 31 (1) the proceeds shall be paid first to the prior lienholder who
- 32 has a perfected lien in an amount sufficient to satisfy the
- 33 lienholder's interest;
- 34 (2) any remainder after payment is made under subdivision
- 35 (1) shall be paid to the end user who possesses a lien under
- 36 this chapter in an amount sufficient to extinguish that
- 37 interest; and
- 38 (3) any remainder after payment is made under subdivision
- 39 (2) shall be paid to the customer.

40 (b) A sale may not be made under this chapter if it would violate
41 a right a customer has under federal patent or copyright law.

42 Sec. 11. (a) A special tool builder may permanently record on

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every special tool that the special tool builder fabricates, repairs, or modifies the special tool builder's name and address.

(b) A special tool builder may file a financing statement in accordance with IC 26-1-9.1-502 to perfect the special tool builder's lien under subsection (c).

(c) A special tool builder has a lien on any special tool identified under subsection (a). The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool. The information that the special tool builder is required to record on the special tool under subsection (a) constitutes actual and constructive notice of the special tool builder's lien on the special tool.

(d) The special tool builder's lien attaches under this section when actual or constructive notice is received. The special tool builder retains a lien that attaches under this section even if the special tool builder is not in physical possession of the special tool for which the lien is claimed.

(e) A lien under this section remains valid until the occurrence of the earliest of the following:

- (1) The special tool builder is paid the amount owed by the customer or end user.
- (2) The customer receives a verified statement from the end user that the end user has paid the amount for which the lien is claimed.
- (3) The financing statement is terminated.

Sec. 12. To enforce a lien that attaches under section 11 of this chapter, a special tool builder must give notice of the lien in writing to the customer and the end user. The notice must:

- (1) be delivered personally or by certified mail, return receipt requested, to the last known address of the customer and to the last known address of the end user; and
- (2) state:
 - (A) that a lien is claimed;
 - (B) the amount that the special tool builder claims it is owed for fabrication, repair, or modification of the special tool; and
 - (C) a demand for payment.

Sec. 13. (a) Subject to section 14 of this chapter, if a special tool builder has not been paid the amount claimed in the notice required under section 12 of this chapter within ninety (90) days after the date the notice required under section 12 of this chapter

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1 has been received by the customer and the end user, the special tool
2 builder:

- 3 (1) has a right to possession of the special tool; and
- 4 (2) may enforce the right to possession of the special tool by
5 judgment, foreclosure, or any available judicial procedure.

6 (b) The special tool builder may do one (1) or more of the
7 following:

- 8 (1) Take possession of the special tool. The special tool builder
9 may take possession without judicial process if possession can
10 be taken without breach of the peace.
- 11 (2) Sell the special tool in a public auction.

12 Sec. 14. (a) Before a special tool builder may sell a special tool
13 for which a lien is claimed and for which the required notice has
14 been sent under section 12 of this chapter, the special tool builder
15 must notify the customer, the end user, and all other persons that
16 have a perfected security interest in the special tool under
17 IC 26-1-9.1-501 through IC 26-1-9.1-527, by certified mail, return
18 receipt requested, of all the following:

- 19 (1) The special tool builder's intention to sell the special tool
20 sixty (60) days after the receipt of the notice.
- 21 (2) A description of the special tool to be sold.
- 22 (3) The last known location of the special tool.
- 23 (4) The time and place of the sale.
- 24 (5) An itemized statement of the amount due.
- 25 (6) A statement that the special tool was accepted and the
26 acceptance was not subsequently rejected.

27 (b) If:

- 28 (1) there is no return of the receipt of the mailing; or
- 29 (2) the postal service returns the notice as being
30 undeliverable;

31 the special tool builder shall publish notice of the special tool
32 builder's intention to sell the special tool in a newspaper of general
33 circulation in the place where the special tool was last known to be
34 located, in the place of the customer's last known address, and in
35 the place of the end user's last known address. The published
36 notice must include a description of the special tool and the name
37 of the customer and the end user.

38 (c) If a customer or an end user against whom the lien is
39 asserted disagrees that the special tool was accepted or that the
40 acceptance was not subsequently rejected, the customer or end
41 user shall notify the special tool builder in writing by certified mail,
42 return receipt requested, that the special tool was not accepted or

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1 that the acceptance was subsequently rejected. A special tool
2 builder who receives notice under this subsection may not sell the
3 special tool until the dispute is resolved.

4 Sec. 15. (a) If the proceeds of the sale under section 13 of this
5 chapter are greater than the amount of the lien:

6 (1) the proceeds shall be paid first to the special tool builder
7 in the amount necessary to satisfy the lien; and

8 (2) all proceeds in excess of the lien shall be paid to the
9 customer.

10 (b) A sale may not be made or possession may not be obtained
11 under section 13 of this chapter if the sale or possession would
12 violate any right a customer or an end user has under federal
13 patent, bankruptcy, or copyright law.

14 SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1077, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-28-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien as prescribed by the common law of Indiana.

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter."

Page 1, line 13, delete "metal".

Page 1, line 15, delete "metal".

Page 2, line 2, after "tools," insert "**injection molds,**".

Page 4, line 28, delete "shall" and insert "**may**".

Page 4, line 31, delete "shall" and insert "**may**".

Page 4, line 32, delete "the IC 26-1-9.1-502." and insert "**IC 26-1-9.1-502 to perfect the special tool builder's lien under subsection (c).**".

Page 4, line 36, delete ":" and insert "**information that the special tool builder is required to record on the special tool under subsection (a) constitutes actual and constructive notice of the special tool builder's lien on the special tool.**".

Page 4, delete lines 37 through 41.

Page 6, after line 41, begin a new paragraph and insert:

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"SECTION 4. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1077 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 11, nays 0.

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