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# HOUSE BILL No. 1183

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-28-15; IC 34-30.

**Synopsis:** Abandoned structure liens. Provides that a person who repairs, cleans up, or maintains a neighboring abandoned structure is entitled to a lien on the property, not to exceed the lesser of: (1) the fair market value of the work performed; or (2) \$10,000. Establishes a procedure for creating, filing, and enforcing the lien. Provides that any of the following may repair, clean up, or maintain an abandoned structure (and may assert, file, and enforce a lien) on behalf of one or more property owners whose property bears the specified geographic proximity to an abandoned structure: (1) A neighborhood association. (2) A homeowners association. (3) A community organization. Provides that the lien has priority over: (1) a lien created after it; and (2) a mortgage of a creditor. Specifies that the lien expires if not enforced within one year after the statement and notice of intention to hold a lien is recorded with the county recorder.

**Effective:** July 1, 2013.

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**Smith V**

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January 10, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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# HOUSE BILL No. 1183



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 32-28-15 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]:
- 4 **Chapter 15. Lien for Repair, Cleanup, or Maintenance of**
- 5 **Neighboring Abandoned Property**
- 6 **Sec. 1. This chapter applies only to a Class 2 structure (as**
- 7 **defined in IC 22-12-1-5).**
- 8 **Sec. 2. As used in this chapter, "abandoned structure" has the**
- 9 **meaning set forth in IC 36-7-36-1.**
- 10 **Sec. 3. As used in this chapter, "creditor" has the meaning set**
- 11 **forth in IC 34-30-26-1.**
- 12 **Sec. 4. As used in this chapter, "neighboring abandoned**
- 13 **structure" means an abandoned structure that is located on**
- 14 **property:**
- 15 **(1) that is:**
- 16 **(A) contiguous or geographically adjacent to; or**
- 17 **(B) in contact with;**



1 any point on the border of property owned or occupied by a  
 2 person asserting a lien under this chapter; or  
 3 (2) some part of which is not more than three hundred (300)  
 4 feet from the property line of property owned or occupied by  
 5 a person asserting a lien under this chapter.

6 Sec. 5. As used in this chapter, "owner", with respect to real  
 7 property, has the meaning set forth in IC 36-7-36-4.

8 Sec. 6. (a) A person who repairs, cleans up, or maintains a  
 9 neighboring abandoned structure is entitled to a neighboring  
 10 abandoned structure lien on the structure and the real property on  
 11 which the structure is located, as set forth in this chapter.

12 (b) Notwithstanding section 4 of this chapter, any of the  
 13 following may repair, clean up, or maintain an abandoned  
 14 structure on behalf of one (1) or more property owners whose  
 15 property bears the geographic proximity to an abandoned  
 16 structure set forth in section 4 of this chapter:

17 (1) A neighborhood association, whether incorporated or  
 18 unincorporated, the official geographic boundaries of which  
 19 encompass both:

20 (A) the property of the one (1) or more owners whose  
 21 property bears the geographic proximity to an abandoned  
 22 structure set forth in section 4 of this chapter; and

23 (B) the abandoned structure.

24 (2) A homeowners association (as defined in IC 32-28-14-2)  
 25 for a subdivision that includes both:

26 (A) the property of the one (1) or more owners whose  
 27 property bears the geographic proximity to an abandoned  
 28 structure set forth in section 4 of this chapter; and

29 (B) the abandoned structure.

30 (3) A community organization (as defined in IC 36-7-9-2), the  
 31 official geographic boundaries of which encompass both:

32 (A) the property of the one (1) or more owners whose  
 33 property bears the geographic proximity to an abandoned  
 34 structure set forth in section 4 of this chapter; and

35 (B) the abandoned structure.

36 An entity described in subdivisions (1) through (3) that acts under  
 37 this subsection on behalf of one (1) or more property owners is  
 38 subject to and shall comply with the requirements set forth in this  
 39 chapter that would otherwise apply to the one (1) or more property  
 40 owners on whose behalf the entity acts.

41 (c) Notwithstanding section 4 of this chapter, any of the  
 42 following may assert, file, and enforce a lien under this chapter on

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1 behalf of one (1) or more property owners whose property bears  
 2 the geographic proximity to an abandoned structure set forth in  
 3 section 4 of this chapter:

4 (1) A neighborhood association, whether incorporated or  
 5 unincorporated, the official geographic boundaries of which  
 6 encompass both:

7 (A) the property of the one (1) or more owners whose  
 8 property bears the geographic proximity to an abandoned  
 9 structure set forth in section 4 of this chapter; and

10 (B) the abandoned structure.

11 (2) A homeowners association (as defined in IC 32-28-14-2)  
 12 for a subdivision that includes both:

13 (A) the property of the one (1) or more owners whose  
 14 property bears the geographic proximity to an abandoned  
 15 structure set forth in section 4 of this chapter; and

16 (B) the abandoned structure.

17 (3) A community organization (as defined in IC 36-7-9-2), the  
 18 official geographic boundaries of which encompass both:

19 (A) the property of the one (1) or more owners whose  
 20 property bears the geographic proximity to an abandoned  
 21 structure set forth in section 4 of this chapter; and

22 (B) the abandoned structure.

23 An entity described in subdivisions (1) through (3) that acts under  
 24 this subsection on behalf of one (1) or more property owners is  
 25 subject to and shall comply with the requirements set forth in this  
 26 chapter that would otherwise apply to the one (1) or more property  
 27 owners on whose behalf the entity acts. The entity may assert, file,  
 28 and enforce a lien under this chapter in its own name, or in the  
 29 name or names of the one (1) or more property owners on whose  
 30 behalf the entity acts. A lien asserted by a homeowners association  
 31 under this subsection on behalf of one (1) or more property owners  
 32 is supplemental and in addition to any lien for common expenses  
 33 that the homeowners association may assert in its own right under  
 34 IC 32-28-14 against the owner of an abandoned structure.

35 Sec. 7. A lien under this chapter may not exceed the lesser of the  
 36 following:

37 (1) The fair market value of the work performed and  
 38 materials used.

39 (2) Ten thousand dollars (\$10,000).

40 Sec. 8. (a) To assert a lien under this chapter, a person must, not  
 41 later than ten (10) days before commencing the repair, cleanup, or  
 42 maintenance of a neighboring abandoned structure, send to the

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1 owner of the neighboring abandoned structure written notice  
 2 asserting the person's intention to repair, clean up, or maintain the  
 3 neighboring abandoned structure.

4 (b) Written notice under this section must be sent by registered  
 5 or certified mail, return receipt requested, to the latest address of  
 6 the owner of the neighboring abandoned structure as shown on the  
 7 property tax records of the county in which the structure is  
 8 located. If the person described in subsection (a) provides evidence  
 9 that the notice under this section was sent by registered or certified  
 10 mail, return receipt requested, and as prescribed by this section, it  
 11 is not necessary that the owner of the neighboring abandoned  
 12 structure accept receipt of the notice for the person described in  
 13 subsection (a) to proceed to assert a lien as allowed under this  
 14 chapter.

15 (c) If the owner of the neighboring abandoned structure does  
 16 not begin repair, cleanup, or maintenance of the neighboring  
 17 abandoned structure not later than seven (7) days after the owner  
 18 receives the notice described in subsection (a), the person described  
 19 in subsection (a) may:

- 20 (1) commence the repair, cleanup, or maintenance of the
- 21 neighboring abandoned structure; and
- 22 (2) proceed to acquire, in the manner set forth in section 9 of
- 23 this chapter, a lien on the neighboring abandoned structure
- 24 for the work performed.

25 In any given calendar year, regardless of the number of occasions  
 26 on which a person described in subsection (a) repairs, cleans up, or  
 27 maintains a neighboring abandoned structure as allowed under  
 28 this chapter, the person described in subsection (a) is required to  
 29 send only one (1) written notice under subsection (a) per calendar  
 30 year to acquire a lien for all work performed by the person to  
 31 repair, clean up, or maintain the neighboring abandoned structure  
 32 during the calendar year. However, to acquire a lien for the work  
 33 performed on each separate occasion, the person described in  
 34 subsection (a) must comply with section 9 of this chapter for each  
 35 lien asserted.

36 (d) Subject to section 14 of this chapter, to acquire a lien under  
 37 this chapter for work performed under subsection (c)(1), a person  
 38 described in subsection (a) is not required to personally perform  
 39 the repair, clean up, or maintenance of the neighboring abandoned  
 40 structure and may employ or otherwise engage a contractor, an  
 41 agent, an employee, or another person to perform the work. A  
 42 person described in:

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1           (1) subsection (a) who repairs, cleans up, or maintains a  
 2           neighboring abandoned structure under subsection (c)(1); or  
 3           (2) section 14(a) of this chapter;  
 4           is immune from civil liability and from claims of civil and criminal  
 5           trespass in connection with the repair, clean up, or maintenance of  
 6           a neighboring abandoned structure under this chapter, to the  
 7           extent provided in IC 34-30-26-5.

8           Sec. 9. (a) A person who wishes to acquire a lien on a  
 9           neighboring abandoned structure under this section must file in  
 10          duplicate a sworn statement and notice of the person's intention to  
 11          hold a lien on the neighboring abandoned structure for the amount  
 12          of the claim:

- 13           (1) in the recorder's office of the county in which the  
 14           neighboring abandoned structure is located; and  
 15           (2) not later than sixty (60) days after performing the repair,  
 16           cleanup, or maintenance on the neighboring abandoned  
 17           structure as described in this chapter.

18          The statement and notice of intention to hold a lien may be verified  
 19          and filed on behalf of a client by an attorney licensed to practice  
 20          law in Indiana.

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

- 23           (1) the amount claimed;  
 24           (2) the name and address of the claimant;  
 25           (3) the:  
 26                (A) name; and  
 27                (B) latest address, as shown on the property tax records of  
 28                the county;  
 29           of the owner of the neighboring abandoned structure; and  
 30           (4) the street and address, if any, of the neighboring  
 31           abandoned structure.

32          A statement and notice filed under this section must also include a  
 33          copy of the written notice mailed to the owner of the neighboring  
 34          abandoned structure under section 8 of this chapter.

35          (c) The recorder shall:

- 36           (1) mail, by first class United States mail and not later than  
 37           three (3) business days after the date of the recording under  
 38           subsection (a), one (1) copy of the statement and notice of  
 39           intention to hold a lien to the owner of the neighboring  
 40           abandoned structure named in the statement and notice;  
 41           (2) post records as to the date of the mailing; and  
 42           (3) collect a fee of two dollars (\$2) from the lien claimant for

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1           each statement and notice that is mailed.

2           The statement and notice must be addressed to the latest address  
3           of the owner of the neighboring abandoned structure, as  
4           specifically set out in the sworn statement and notice of the person  
5           intending to hold a lien upon the neighboring abandoned structure.

6           (d) The recorder shall record the statement and notice of  
7           intention to hold a lien in the miscellaneous record book. The  
8           recorder shall charge a fee for recording the statement and notice  
9           in accordance with IC 36-2-7-10. When the statement and notice of  
10          intention to hold a lien is recorded, the lien is created. The  
11          recorded lien relates back to the date the person began to perform  
12          the repair, cleanup, or maintenance. A lien created under this  
13          chapter has priority over:

14           (1) a lien created after it, including a lien created after it  
15           under this chapter by another person or by the same person  
16           asserting the lien under this section; and

17           (2) a mortgage of a creditor.

18          Sec. 10. A lien under this chapter does not attach to real estate  
19          purchased by an innocent purchaser for value without notice  
20          unless the lien is recorded under section 9 of this chapter before the  
21          deed by which the purchaser takes title is recorded.

22          Sec. 11. (a) A person may enforce a lien created under this  
23          chapter by filing a complaint in the circuit or superior court of the  
24          county where the neighboring abandoned structure that is the  
25          subject of the lien is located. The complaint must be filed not later  
26          than one (1) year after the date the statement and notice of  
27          intention to hold a lien is recorded under section 9 of this chapter.

28          (b) If a lien created under this chapter is not enforced within the  
29          time set forth in subsection (a), the lien is void.

30          (c) If a lien created under this chapter is foreclosed, the court  
31          rendering judgment shall order a sale of the property that is  
32          subject to the lien. The officers making the sale shall sell the  
33          property without any relief from valuation or appraisal laws.

34          Sec. 12. (a) A person whose lien is recorded under this chapter  
35          may be a party to an action to enforce the lien.

36          (b) The court, by judgment, may direct a sale of the land and  
37          building for the satisfaction of the lien and costs. Except as  
38          provided in section 9(d) of this chapter, the sale does not prejudice  
39          the rights of:

40           (1) a prior encumbrance; or

41           (2) an owner or other person who is not a party to the action.

42          (c) If several actions are brought by different claimants with

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1 regard to the same neighboring abandoned structure and are  
 2 pending at the same time, the court may order the actions to be  
 3 consolidated.

4 **Sec. 13. If the proceeds of the sale of property subject to a lien**  
 5 **under this chapter are insufficient to pay all the claimants, the**  
 6 **court shall order the claimants to be paid in proportion to the**  
 7 **amount due each claimant.**

8 **Sec. 14. (a) This section applies to the following:**

9 **(1) Any:**

- 10 **(A) contractor;**
- 11 **(B) agent;**
- 12 **(C) employee; or**
- 13 **(D) other person;**

14 **who is employed or otherwise engaged by a person described**  
 15 **in section 8(a) of this chapter to repair, clean up, or maintain**  
 16 **a neighboring abandoned structure under section 8(d) of this**  
 17 **chapter, or who leases or furnishes any material, equipment,**  
 18 **or machinery to a person described in section 8(a) of this**  
 19 **chapter in connection with the repair, clean up, or**  
 20 **maintenance of a neighboring abandoned structure under this**  
 21 **chapter.**

22 **(2) Any:**

- 23 **(A) subcontractor;**
- 24 **(B) agent;**
- 25 **(C) employee; or**
- 26 **(D) other person;**

27 **who leases or furnishes any labor, services, material,**  
 28 **equipment, or machinery to a person described in subdivision**  
 29 **(1) in connection with the repair, clean up, or maintenance of**  
 30 **a neighboring abandoned structure under this chapter.**

31 **(b) If:**

32 **(1) either:**

- 33 **(A) the person described in section 8(a) of this chapter; or**
- 34 **(B) a person described in subsection (a)(1);**

35 **is indebted to a person described in subsection (a) for labor,**  
 36 **services, material, equipment, or machinery provided by a**  
 37 **person described in subsection (a) in connection with the**  
 38 **repair, clean up, or maintenance of a neighboring abandoned**  
 39 **structure under this chapter; and**

40 **(2) the person described in subsection (a) holds the owner of**  
 41 **the neighboring abandoned structure responsible for the**  
 42 **indebtedness;**

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1 the person described in subsection (a) may assert a claim in the  
 2 same manner and under the same conditions that a claim may be  
 3 asserted by a subcontractor, lessor, journeyman, or laborer under  
 4 IC 32-28-3-9.

5 Sec. 15. (a) A lien created under this chapter is void if both of  
 6 the following occur:

7 (1) The owner of the property subject to the lien or any  
 8 person having an interest in the property, including:

9 (A) a creditor in a mortgage to which the property is  
 10 subject; or

11 (B) another lienholder;

12 provides written notice to the owner or holder of the lien  
 13 created under this chapter to file an action to foreclose the  
 14 lien.

15 (2) The owner or holder of the lien created under this chapter  
 16 fails to file an action to foreclose the lien in the county where  
 17 the property is located not later than thirty (30) days after  
 18 receiving the notice described in subdivision (1).

19 (b) If a lien is void under subsection (a), a person who gives  
 20 notice under subsection (a)(1) by registered or certified mail,  
 21 return receipt requested, to the lienholder at the address given  
 22 under section 9(b)(2) of this chapter in the recorded statement and  
 23 notice of intention to hold a lien may file an affidavit of service of  
 24 the notice described in subsection (a)(1) with the recorder of the  
 25 county in which the property is located. The affidavit must state  
 26 the following:

27 (1) The facts of the notice under subsection (a)(1).

28 (2) That more than thirty (30) days have passed since the  
 29 notice was received by the lienholder.

30 (3) That no action to foreclose the lien is pending.

31 (4) That no unsatisfied judgment has been rendered on the  
 32 lien.

33 (c) The recorder shall:

34 (1) record the affidavit of service in the miscellaneous record  
 35 book of the recorder's office; and

36 (2) certify on the face of the record any lien that is fully  
 37 released.

38 When the recorder records the affidavit and certifies the record  
 39 under this subsection, the property described in the lien is released  
 40 from the lien.

41 Sec. 16. (a) In an action to foreclose a lien created under this  
 42 chapter:

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1           **(1) the defendant or owner of the property subject to the lien;**  
 2           **or**  
 3           **(2) any person having an interest in the property subject to**  
 4           **the lien, including:**  
 5               **(A) a creditor in a mortgage to which the property is**  
 6               **subject; or**  
 7               **(B) another lienholder;**  
 8           **may file in the action a written undertaking with surety to be**  
 9           **approved by the court.**  
 10          **(b) An undertaking filed under this section must provide that**  
 11          **the person filing the undertaking will pay any judgment that may**  
 12          **be recovered in the action to foreclose the lien, including costs and**  
 13          **attorney's fees allowed by the court, if the claim on which the**  
 14          **judgment is based is found by the court to have been a lien on the**  
 15          **property at the time the action was filed.**  
 16          **(c) If an undertaking described in subsection (b) is filed and**  
 17          **approved by the court:**  
 18               **(1) the court shall enter an order releasing the property from**  
 19               **the lien; and**  
 20               **(2) the property shall be discharged from the lien.**  
 21          **Sec. 17. In an action to enforce a lien under this chapter, a**  
 22          **plaintiff or lienholder who recovers a judgment in any sum is**  
 23          **entitled to recover reasonable attorney's fees. The court shall enter**  
 24          **the attorney's fees as a part of the judgment.**  
 25          **SECTION 2. IC 34-30-2-136.8 IS ADDED TO THE INDIANA**  
 26          **CODE AS A NEW SECTION TO READ AS FOLLOWS**  
 27          **[EFFECTIVE JULY 1, 2013]: Sec. 136.8. IC 32-28-15-8(d)**  
 28          **(Concerning work performed on abandoned property).**  
 29          **SECTION 3. IC 34-30-26-7 IS ADDED TO THE INDIANA CODE**  
 30          **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
 31          **1, 2013]: Sec. 7. This chapter may not be construed to limit,**  
 32          **restrict, or affect in any way the right of any person to claim, file,**  
 33          **or enforce a lien under IC 32-28-15.**

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