

## **IC 32-28-3**

### **Chapter 3. Mechanic's Liens**

#### **IC 32-28-3-0.2**

##### **Application of certain amendments to prior law**

Sec. 0.2. (a) The amendments made to IC 32-8-3-1 (before its repeal, now codified at section 1 of this chapter), IC 32-8-3-3 (before its repeal, now codified at section 3 of this chapter), and IC 32-8-3-5 (before its repeal, now codified at section 5 of this chapter) by P.L.53-1999 apply only to contracts and subcontracts entered into after June 30, 1999.

(b) The addition of IC 32-8-3-16 (before its repeal, now codified at section 16 of this chapter), IC 32-8-3-17 (before its repeal, now codified at section 17 of this chapter), and IC 32-8-3-18 (before its repeal, now codified at section 18 of this chapter) by P.L.53-1999 applies only to contracts and subcontracts entered into after June 30, 1999.

*As added by P.L.220-2011, SEC.523.*

#### **IC 32-28-3-1**

##### **Mechanic's liens; persons to whom available; effect of contract provisions; credit transactions; restrictions**

Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

- (1) the erection, alteration, repair, or removal of:
  - (A) a house, mill, manufactory, or other building; or
  - (B) a bridge, reservoir, system of waterworks, or other structure;
- (2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or
- (3) any other earth moving operation;

may have a lien as set forth in this section.

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

- (1) upon the house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:
  - (A) that the person erected, altered, repaired, moved, or removed; or
  - (B) for which the person furnished materials or machinery of any description; and
- (2) on the interest of the owner of the lot or parcel of land:
  - (A) on which the structure or improvement stands; or
  - (B) with which the structure or improvement is connected;

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

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

- (1) machinery;
- (2) tools;
- (3) stock;
- (4) material; or
- (5) finished or unfinished work;

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

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

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

- (1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);
- (2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);
- (3) for the construction, alteration, or repair of property that is:
  - (A) owned, operated, managed, or controlled by a:
    - (i) public utility (as defined in IC 8-1-2-1);
    - (ii) municipally owned utility (as defined in IC 8-1-2-1);
    - (iii) joint agency (as defined in IC 8-1-2.2-2);
    - (iv) rural electric membership corporation formed under IC 8-1-13-4;
    - (v) rural telephone cooperative corporation formed under IC 8-1-17; or
    - (vi) not-for-profit utility (as defined in IC 8-1-2-125);
  - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or
- (4) to prepare property for Class 2 residential construction;

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

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

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

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

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

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

- (1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;
  - (2) index the contract in the name of the:
    - (A) contractor; and
    - (B) owner;
- in books kept for that purpose; and
- (3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

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

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

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

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

- (1) furnish the owner of the real estate:
    - (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
    - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor (if any) or the county assessor;
- with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
- (2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the

first delivery or labor performed.

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

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

*As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.5; P.L.151-2003, SEC.1; P.L.1-2006, SEC.501; P.L.1-2007, SEC.210; P.L.219-2007, SEC.101; P.L.146-2008, SEC.674.*

### **IC 32-28-3-2**

#### **Extent of lien; leased or mortgaged land**

Sec. 2. (a) The entire land upon which the building, erection, or other improvement is situated, including the part of the land not occupied by the building, erection, or improvement, is subject to a lien to the extent of the right, title, and interest of the owner for whose immediate use or benefit the labor was done or material furnished.

(b) If:

(1) the owner has only a leasehold interest; or

(2) the land is encumbered by mortgage;

the lien, so far as concerns the buildings erected by the lienholder, is not impaired by forfeiture of the lease for rent or foreclosure of mortgage. The buildings may be sold to satisfy the lien and may be removed not later than ninety (90) days after the sale by the purchaser.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-3**

#### **Notice of intention to hold lien; filing**

Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

(1) in the recorder's office of the county; and

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

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

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or

an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

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

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

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

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

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

(d) The recorder shall:

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

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

*As added by P.L.2-2002, SEC.13. Amended by P.L.219-2007, SEC.102; P.L.146-2008, SEC.675.*

### **Validity of certain notices of intention to hold lien**

Sec. 4. Any otherwise valid and enforceable statement and notice of intention to hold a lien filed before March 10, 1967, is valid and enforceable.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-5**

#### **Recording notice; priority of lien**

Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 26-1-4-102.5);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

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

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

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
  - (A) owned, operated, managed, or controlled by:
    - (i) a public utility (as defined in IC 8-1-2-1);
    - (ii) a municipally owned utility (as defined in IC 8-1-2-1);
    - (iii) a joint agency (as defined in IC 8-1-2.2-2);
    - (iv) a rural electric membership corporation formed under IC 8-1-13-4;
    - (v) a rural telephone cooperative corporation formed under IC 8-1-17; or
    - (vi) a not-for-profit utility (as defined in IC 8-1-2-125);
  - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

*As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.6;*

*P.L.35-2010, SEC.207.*

### **IC 32-28-3-6**

#### **Enforcement of lien**

Sec. 6. (a) A person may enforce a lien by filing a complaint in the circuit or superior court of the county where the real estate or property that is the subject of the lien is situated. The complaint must be filed not later than one (1) year after:

- (1) the date the statement and notice of intention to hold a lien was recorded under section 3 of this chapter; or
- (2) subject to subsection (c), the expiration of the credit, if a credit is given.

(b) Except as provided in subsection (c), if a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) A credit does not extend the time for filing an action to enforce the lien under subsection (a)(2) unless:

- (1) the terms of the credit are in writing;
- (2) the credit was executed by:
  - (A) the lienholder; and
  - (B) all owners of record; and
- (3) the credit was recorded:
  - (A) in the same manner as the original statement and notice of intention to hold a lien; and
  - (B) not later than one (1) year after the date the statement and notice of intention to hold a lien was recorded.

(d) If the lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the property subject to the lien. The officers making the sale shall sell the property without any relief from valuation or appraisal laws.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-7**

#### **Sale to satisfy lien; consolidation of actions**

Sec. 7. (a) A person whose lien is recorded under this chapter may be a party to an action to enforce a lien.

(b) The court may, by judgment, direct a sale of the land and building for the satisfaction of the liens and costs. The sale shall not prejudice the rights of:

- (1) a prior encumbrance; or
- (2) an owner or other person who is not a party to the action.

(c) If several actions are brought by different claimants and are pending at the same time, the court may order the actions to be consolidated.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-8**

#### **Insufficient proceeds of sale**

Sec. 8. If the proceeds of the sale of the property subject to a lien are insufficient to pay all the claimants, the court shall order the claimants to be paid in proportion to the amount due each claimant.

*As added by P.L.2-2002, SEC.13.*

**IC 32-28-3-9**

**Subcontractor's, journeyman's, or laborer's liens; notice; actions**

Sec. 9. (a) This section applies to a:

- (1) subcontractor;
- (2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;
- (3) journeyman; or
- (4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery for these activities.

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

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

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

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

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

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

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



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

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

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

*As added by P.L.2-2002, SEC.13. Amended by P.L.1-2010, SEC.129.*

### **IC 32-28-3-10**

#### **Notice to commence suit; affidavit of service**

Sec. 10. (a) A lien is void if both of the following occur:

- (1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.
- (2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice.

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

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

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

(c) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and
- (2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-11**

#### **Undertaking to pay judgment and cost**

Sec. 11. (a) In an action to foreclose a lien:

- (1) the defendant or owner of the property subject to the lien; or
- (2) any person having an interest in the property subject to the

lien, including a mortgagee or other lienholder; may file in the action a written undertaking with surety to be approved by the court.

(b) An undertaking filed under this section must provide that the person filing it will pay any judgment that may be recovered in the action to foreclose the lien, including costs and attorney's fees allowed by the court, if the claim on which the judgment is founded is found by the court to have been a lien on the property at the time the action was filed.

(c) If an undertaking is filed and approved by the court:

(1) the court shall enter an order releasing the property from the lien; and

(2) the property shall be discharged from the lien.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-12**

#### **Railroads; labor and materials; lien**

Sec. 12. (a) This section applies to a person who:

(1) performs work or labor such as:

(A) grading;

(B) building embankments;

(C) making excavations for track;

(D) building:

(i) bridges;

(ii) trestlework;

(iii) works of masonry;

(iv) fencing; or

(v) other structures; or

(E) performs work of any kind;

in the construction or repair of a railroad or part of a railroad in Indiana; or

(2) furnishes material for:

(A) a bridge, trestlework, work of masonry, fence, or other structure; or

(B) use in the construction or repair of a railroad or part of a railroad;

in Indiana.

(b) The work, labor, or material described in subsection (a) may be provided under a contract:

(1) with the railroad corporation building, repairing, or owning the railroad; or

(2) with a person, corporation, or company engaged as:

(A) lessee;

(B) contractor;

(C) subcontractor; or

(D) agent;

of the railroad corporation in the work of constructing or repairing the railroad or part of the railroad in Indiana.

(c) A person to whom this section applies may have a lien to the extent of the work or labor performed, or material furnished, or both,

upon:

- (1) the right-of-way and franchises of the railroad corporation;  
and
- (2) the works and structures as set forth in this section that may be upon the right-of-way and franchise of the railroad corporation;

within the limits of the county in which the work or labor may be performed or the material may be furnished.

(d) A person performing work or labor or furnishing materials under a contract described in subsection (b)(2) is not required to give notice to the railroad corporation under section 9 of this chapter in order to acquire and hold a lien for labor performed or material furnished under the provisions of this section. The performance of the labor or the furnishing of the materials is sufficient notice to the railroad corporation. A lien that is acquired as set forth in this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

(e) A person who, in doing business with a railroad company, has constructed a building or other improvement on a portion of the railroad right-of-way adjacent to the person's place of business may have a lien to the extent of the fair market value of the improvement on that portion of the right-of-way. The lien may be acquired and enforced:

- (1) upon abandonment of the right-of-way by the railroad company; and
- (2) against the successors in title of the railroad company.

This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-13**

#### **Notice of intention to hold lien**

Sec. 13. A person who desires to acquire the lien provided for in section 12 of this chapter must give notice of the person's intention to hold the lien by causing the notice to be recorded in the recorder's office of the county in which the work was done or material furnished in the same manner and within the same time as provided in this chapter for giving notice of a mechanic's lien. A person who gives notice within the proper time may enforce the lien in the same manner as mechanic's liens are enforced. The suit must be brought within one (1) year after the time the notice was filed in the recorder's office.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-14**

#### **Attorney's fees**

Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, a plaintiff or lienholder who

recovers a judgment in any sum is entitled to recover reasonable attorney's fees. The court shall enter the attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor, material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

*As added by P.L.2-2002, SEC.13. Amended by P.L.1-2007, SEC.211.*

#### **IC 32-28-3-15 Version a**

##### **Accepting payment for labor or materials subject to outstanding indebtedness**

*Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.*

Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

- (A) construction;
- (B) repair; or
- (C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

- (A) labor, including the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;
- (B) services;
- (C) material; or
- (D) machinery;

used or employed in the construction, repair, or remodeling;

(4) fails:

- (A) at the time of receiving the payment; and
- (B) with intent to defraud;

to notify in writing the person from whom the payment was received of the existence of the outstanding indebtedness; and

(5) causes the person from whom the payment was received to suffer a loss by failing under subdivision (4) to notify the person of the existence of the outstanding indebtedness;

commits a Class D felony.

*As added by P.L.2-2002, SEC.13.*

#### **IC 32-28-3-15 Version b**

##### **Accepting payment for labor or materials subject to outstanding indebtedness**

*Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.*

Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

- (A) construction;
- (B) repair; or
- (C) remodeling;

of a building, structure, or other work;

(2) accepts payment for the labor, services, material, or machinery furnished and supplied;

(3) at the time of receiving the payment, knows that the person is indebted to another for:

- (A) labor, including the cost of renting or leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor;
- (B) services;
- (C) material; or
- (D) machinery;

used or employed in the construction, repair, or remodeling;

(4) fails:

- (A) at the time of receiving the payment; and
- (B) with intent to defraud;

to notify in writing the person from whom the payment was received of the existence of the outstanding indebtedness; and

(5) causes the person from whom the payment was received to suffer a loss by failing under subdivision (4) to notify the person of the existence of the outstanding indebtedness;

commits a Level 6 felony.

*As added by P.L.2-2002, SEC.13. Amended by P.L.158-2013, SEC.332.*

### **IC 32-28-3-16**

#### **Waiver of right to a lien voiding contract**

Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

(1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(2) property that is:

- (A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, rural telephone cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and
- (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section

1 of this chapter who furnishes labor, materials, or machinery to waive a right to:

- (1) a lien against real estate; or
- (2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

*As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.7.*

### **IC 32-28-3-17**

#### **Provision that contract subject to laws of another state void**

Sec. 17. A provision in a contract for the improvement of real estate in Indiana is void if the provision:

- (1) makes the contract subject to the laws of another state; or
- (2) requires litigation, arbitration, or other dispute resolution process on the contract occur in another state.

*As added by P.L.2-2002, SEC.13.*

### **IC 32-28-3-18**

#### **Receipt of payment from third person not limiting right to lien**

Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
  - (A) owned, operated, managed, or controlled by a:
    - (i) public utility (as defined in IC 8-1-2-1);
    - (ii) municipally owned utility (as defined in IC 8-1-2-1);
    - (iii) joint agency (as defined in IC 8-1-2.2-2);
    - (iv) rural electric membership corporation formed under IC 8-1-13-4;
    - (v) rural telephone cooperative corporation formed under IC 8-1-17; or
    - (vi) not-for-profit utility (as defined in IC 8-1-2-125);
  - regulated under IC 8; and
  - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.
- (c) An obligor's receipt of payment from a third person may not:
  - (1) be a condition precedent to;
  - (2) limit; or
  - (3) be a defense to;

the provider's right to record or foreclose a lien against the real estate

that was improved by the provider's labor, material, or equipment.  
*As added by P.L.2-2002, SEC.13. Amended by P.L.101-2002, SEC.8.*