



January 24, 2014

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## SENATE BILL No. 134

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DIGEST OF SB 134 (Updated January 21, 2014 1:50 pm - DI 106)

**Citations Affected:** IC 32-28; IC 34-28; IC 35-43.

**Synopsis:** Fraudulent liens and encumbrances. Makes it a Level 6 felony for a person to file a false lien or a false encumbrance against another person. Allows a court to order certain actions if a lien or encumbrance is fraudulent.

**Effective:** July 1, 2014.

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### Wyss, Arnold J

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January 8, 2014, read first time and referred to Committee on Corrections & Criminal Law.  
January 23, 2014, amended, reported favorably — Do Pass.

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SB 134—LS 6329/DI 107





January 24, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 134

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 32-28-13-9 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) A person who is  
3 injured by a common law lien that is recorded under section 5 of this  
4 chapter may bring a civil action against the lienholder for:  
5 (1) actual damages;  
6 (2) costs; and  
7 (3) reasonable attorney's fees.  
8 (b) A person who knowingly or intentionally:  
9 (1) files a false lien or false encumbrance against another  
10 person or another person's property with knowledge that the  
11 lien or encumbrance is a false lien or false encumbrance; and  
12 (2) files the false lien or false encumbrance in a:  
13 (A) public record; or  
14 (B) private record that is generally available to the public;  
15 commits lien or encumbrance fraud under IC 35-43-5-2(f).  
16 SECTION 2. IC 34-28-9 IS ADDED TO THE INDIANA CODE AS

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1 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2014]:

3 **Chapter 9. Judicial Review of Liens and Encumbrances**

4 **Sec. 1. (a) A person who believes that a false lien or false**  
5 **encumbrance has been filed against the person or the person's real**  
6 **or personal property may file a motion for judicial review of the**  
7 **lien or encumbrance.**

8 **(b) If a court determines that a lien or encumbrance is**  
9 **fraudulent, the court may:**

10 **(1) award the prevailing party all costs related to the review,**  
11 **including:**

12 **(A) filing fees;**

13 **(B) attorney's fees;**

14 **(C) administrative costs; and**

15 **(D) other reasonable costs;**

16 **(2) declare the lien or encumbrance ineffective; and**

17 **(3) order the office or agency that possesses the lien or**  
18 **encumbrance to terminate or purge the lien or encumbrance.**

19 **(c) The division of state court administration shall create,**  
20 **prescribe, or approve a form to assist pro se individuals with a**  
21 **filing described in this section and shall post the form on the**  
22 **division of state court administration's Internet web site.**

23 SECTION 3. IC 35-43-5-2, AS AMENDED BY P.L.158-2013,  
24 SECTION 469, IS AMENDED TO READ AS FOLLOWS  
25 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who knowingly or  
26 intentionally:

27 (1) makes or utters a written instrument in such a manner that it  
28 purports to have been made:

29 (A) by another person;

30 (B) at another time;

31 (C) with different provisions; or

32 (D) by authority of one who did not give authority; or

33 (2) possesses more than one (1) written instrument knowing that  
34 the written instruments were made in a manner that they purport  
35 to have been made:

36 (A) by another person;

37 (B) at another time;

38 (C) with different provisions; or

39 (D) by authority of one who did not give authority;

40 commits counterfeiting, a Level 6 felony.

41 (b) A person who, with intent to defraud:

42 (1) makes or delivers to another person:

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- 1 (A) a false sales receipt;  
 2 (B) a duplicate of a sales receipt; or  
 3 (C) a label or other item with a false universal product code  
 4 (UPC) or other product identification code; or  
 5 (2) places a false universal product code (UPC) or another  
 6 product identification code on property displayed or offered for  
 7 sale;  
 8 commits making or delivering a false sales document, a Level 6 felony.  
 9 (c) A person who, with intent to defraud, possesses:  
 10 (1) a retail sales receipt;  
 11 (2) a label or other item with a universal product code (UPC); or  
 12 (3) a label or other item that contains a product identification code  
 13 that applies to an item other than the item to which the label or  
 14 other item applies;  
 15 commits possession of a fraudulent sales document, a Class A  
 16 misdemeanor. However, the offense is a Level 6 felony if the person  
 17 possesses at least fifteen (15) retail sales receipts, at least fifteen (15)  
 18 labels containing a universal product code (UPC), at least fifteen (15)  
 19 labels containing another product identification code, or at least fifteen  
 20 (15) of any combination of the items described in subdivisions (1)  
 21 through (3).  
 22 (d) A person who, with intent to defraud, makes, utters, or possesses  
 23 a written instrument in such a manner that it purports to have been  
 24 made:  
 25 (1) by another person;  
 26 (2) at another time;  
 27 (3) with different provisions; or  
 28 (4) by authority of one who did not give authority;  
 29 commits forgery, a Level 6 felony.  
 30 (e) This subsection applies to a person who applies for a driver's  
 31 license (as defined in IC 9-13-2-48) or a state identification card (as  
 32 described in IC 9-24-16). A person who:  
 33 (1) knowingly or intentionally uses a false or fictitious name or  
 34 gives a false or fictitious address in an application for a driver's  
 35 license or a state identification card or for a renewal or a duplicate  
 36 of a driver's license or a state identification card; or  
 37 (2) knowingly or intentionally makes a false statement or conceals  
 38 a material fact in an application for a driver's license or a state  
 39 identification card;  
 40 commits application fraud, a Level 6 felony.  
 41 (f) **As used in this subsection, "false lien or false encumbrance"**  
 42 **means a lien or encumbrance that is false or contains a false,**



1        **fictitious, or fraudulent statement or representation. A person who**  
2        **knowingly or intentionally:**  
3            **(1) files a false lien or false encumbrance against another**  
4            **person or another person's property with knowledge that the**  
5            **lien or encumbrance is a false lien or false encumbrance; and**  
6            **(2) files the false lien or false encumbrance in a:**  
7                    **(A) public record; or**  
8                    **(B) private record that is generally available to the public;**  
9        **commits lien or encumbrance fraud, a Level 6 felony. The court**  
10       **may order a person who knowingly or intentionally commits lien**  
11       **or encumbrance fraud to pay treble damages.**



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 134, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

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

"SECTION 1. IC 32-28-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) A person who is injured by a common law lien that is recorded under section 5 of this chapter may bring a civil action against the lienholder for:

- (1) actual damages;
- (2) costs; and
- (3) reasonable attorney's fees.

**(b) A person who knowingly or intentionally:**

- (1) files a false lien or false encumbrance against another person or another person's property with knowledge that the lien or encumbrance is a false lien or false encumbrance; and**
- (2) files the false lien or false encumbrance in a:**

**(A) public record; or**

**(B) private record that is generally available to the public; commits lien or encumbrance fraud under IC 35-43-5-2(f)."**

Page 2, delete lines 8 through 21, begin a new paragraph and insert:

"SECTION 3. IC 35-43-5-2, AS AMENDED BY P.L.158-2013, SECTION 469, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) A person who knowingly or intentionally:

(1) makes or utters a written instrument in such a manner that it purports to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority; or

(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority;

commits counterfeiting, a Level 6 felony.

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- (b) A person who, with intent to defraud:
- (1) makes or delivers to another person:
    - (A) a false sales receipt;
    - (B) a duplicate of a sales receipt; or
    - (C) a label or other item with a false universal product code (UPC) or other product identification code; or
  - (2) places a false universal product code (UPC) or another product identification code on property displayed or offered for sale;

commits making or delivering a false sales document, a Level 6 felony.

- (c) A person who, with intent to defraud, possesses:
- (1) a retail sales receipt;
  - (2) a label or other item with a universal product code (UPC); or
  - (3) a label or other item that contains a product identification code that applies to an item other than the item to which the label or other item applies;

commits possession of a fraudulent sales document, a Class A misdemeanor. However, the offense is a Level 6 felony if the person possesses at least fifteen (15) retail sales receipts, at least fifteen (15) labels containing a universal product code (UPC), at least fifteen (15) labels containing another product identification code, or at least fifteen (15) of any combination of the items described in subdivisions (1) through (3).

(d) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

- (1) by another person;
- (2) at another time;
- (3) with different provisions; or
- (4) by authority of one who did not give authority;

commits forgery, a Level 6 felony.

(e) This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48) or a state identification card (as described in IC 9-24-16). A person who:

- (1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or a state identification card or for a renewal or a duplicate of a driver's license or a state identification card; or
- (2) knowingly or intentionally makes a false statement or conceals a material fact in an application for a driver's license or a state identification card;

commits application fraud, a Level 6 felony.





**(f) As used in this subsection, "false lien or false encumbrance" means a lien or encumbrance that is false or contains a false, fictitious, or fraudulent statement or representation. A person who knowingly or intentionally:**

**(1) files a false lien or false encumbrance against another person or another person's property with knowledge that the lien or encumbrance is a false lien or false encumbrance; and**

**(2) files the false lien or false encumbrance in a:**

**(A) public record; or**

**(B) private record that is generally available to the public; commits lien or encumbrance fraud, a Level 6 felony. The court may order a person who knowingly or intentionally commits lien or encumbrance fraud to pay treble damages."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 134 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 10, Nays 0.

