

MECHANICS LIEN REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions relating to unauthorized and excessive claims of preconstruction and construction liens.

Highlighted Provisions:

This bill:

- ▶ provides that a party to a claim for an excessive notice of preconstruction lien or an excessive notice of construction lien may submit that claim to binding arbitration;
- ▶ creates procedures to initiate, conduct, and appeal an arbitration proceeding to resolve a claim for an excessive notice of preconstruction lien or an excessive notice of construction lien;
- ▶ provides that a wrongful lien includes:
 - a preconstruction lien for which the claimant did not file a notice of preconstruction service under Section 38-1a-401; and
 - a construction lien for which the claimant did not file a preliminary notice under Section 38-1a-501; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1a-308, as renumbered and amended by Laws of Utah 2012, Chapter 278

38-9-1, as last amended by Laws of Utah 2010, Chapter 381

38-9-2, as last amended by Laws of Utah 2012, Chapter 278

Be it enacted by the Legislature of the state of Utah:

33 Section 1. Section **38-1a-308** is amended to read:

34 **38-1a-308. Intentional submission of excessive lien notice -- Criminal and civil**
35 **liability.**

36 (1) A person is guilty of a class B misdemeanor if:

37 (a) the person intentionally submits for recording a notice of preconstruction lien or
38 notice of construction lien against any property containing a greater demand than the sum due;
39 and

40 (b) by submitting the notice, the person intends:

41 (i) to cloud the title;

42 (ii) to exact from the owner or person liable by means of the excessive notice of
43 preconstruction or construction lien more than is due; or

44 (iii) to procure any unjustified advantage or benefit.

45 (2) (a) As used in this Subsection (2), "third party" means an owner, original
46 contractor, or subcontractor.

47 (b) In addition to any criminal penalty under Subsection (1), a person who submits a
48 notice of preconstruction lien or notice of construction lien as described in Subsection (1) is
49 liable to a third party who is affected by the ~~[lien]~~ notice of preconstruction lien or the notice of
50 construction lien for twice the amount by which the ~~[excessive]~~ lien notice exceeds the amount
51 actually due or the actual damages incurred by the owner, original contractor, or subcontractor,
52 whichever is greater.

53 (3) A party to a claim described in Subsection (2)(b) may elect to submit the claim to
54 arbitration by filing a notice to submit the claim to binding arbitration with the district court in
55 which the claim was filed if:

56 (a) the claimant has previously and timely filed a complaint in a district court that
57 includes a claim described in Subsection (2)(b);

58 (b) the party files the notice to submit the claim to arbitration no more than 14 days
59 after the day on which an answer to the complaint is filed; and

60 (c) the notice to submit the claim to arbitration is filed while the claim is still pending.

61 (4) (a) A party who elects arbitration under this section may rescind the election in
62 accordance with Subsection (4)(b) if the rescission is made:

63 (i) within 90 days after the day on which the party files the notice to submit the claim

64 to arbitration; and

65 (ii) no less than 30 days before any scheduled arbitration hearing.

66 (b) To rescind an election to arbitrate under this Subsection (2), a party shall file a
67 notice of the rescission of the election to arbitrate with the district court in which the claim was
68 filed.

69 (c) All discovery completed in anticipation of the arbitration hearing shall be available
70 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of
71 Evidence.

72 (d) A party who elects to arbitrate under this section and then rescinds the election to
73 arbitrate under this Subsection (4) may not elect to arbitrate the claim under this section again.

74 (5) If a party rescinds an election to arbitrate in accordance with Subsection (4),
75 another party to the claim may elect to submit the claim to arbitration by filing a notice to
76 submit the claim to binding arbitration with the district court in which the claim was filed if:

77 (a) the party did not previously submit and rescind an election to arbitrate under this
78 section;

79 (b) the notice to submit the claim to arbitration is filed no more than 14 days after the
80 day on which the notice of rescission of the election to arbitrate is filed by another party; and

81 (c) the notice to submit the claim to arbitration is filed while the claim is still pending.

82 (6) (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration
83 under this section shall be resolved by a single arbitrator.

84 (b) All parties shall agree on the single arbitrator described in Subsection (6)(a) within
85 60 days after the day on which an answer is filed.

86 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
87 (6)(b), the parties shall select a panel of three arbitrators.

88 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):

89 (i) each side shall select one arbitrator; and

90 (ii) the arbitrators selected under Subsection (6)(d)(i) shall select one additional
91 arbitrator to be included in the panel.

92 (7) Unless otherwise agreed to in writing:

93 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
94 under Subsection (6)(b); or

95 (b) if an arbitration panel is selected under Subsection (6)(d):

96 (i) each party shall pay the fees and costs of that party's selected arbitrator; and

97 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
98 under Subsection (6)(d)(ii).

99 (8) Except as otherwise provided in this section or otherwise agreed to by the parties,
100 an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter
101 11, Utah Uniform Arbitration Act.

102 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
103 the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

104 (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied
105 liberally with the intent of resolving the claim in a timely and cost-efficient manner.

106 (c) Subject to the provisions of this section, discovery shall be conducted in accordance
107 with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the
108 jurisdiction of the district court in which the claim is filed.

109 (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an
110 arbitration proceeding under this section shall be limited to the discovery available in a tier 1
111 case under Rule 26, Utah Rules of Civil Procedure.

112 (10) A written decision by a single arbitrator or by a majority of the arbitration panel
113 shall constitute a final decision.

114 (11) An arbitration award issued under this section shall be the final resolution of all
115 excessive notice claims described in Subsection (1) between the parties and may be reduced to
116 judgment by the court upon motion and notice unless:

117 (a) either party, within 20 days after the day on which the arbitration award is served,
118 files a notice requesting a trial de novo in the district court in which the claim was filed; or

119 (b) the arbitration award has been satisfied.

120 (12) Upon filing a notice requesting a trial de novo under Subsection (11):

121 (a) unless otherwise stipulated to by the parties or ordered by the court, the parties are
122 allowed an additional 60 days for discovery;

123 (b) the additional discovery time described in Subsection (12)(a)(i) shall run from the
124 day on which the notice requesting a trial de novo is filed; and

125 (c) the claim shall proceed through litigation pursuant to the Utah Rules of Civil

126 Procedure and Utah Rules of Evidence in the district court.

127 (13) If the plaintiff, as the moving party in a trial de novo requested under Subsection
128 (11), does not obtain a verdict that is at least 30% greater than the arbitration award, the
129 plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.

130 (14) If a defendant, as the moving party in a trial de novo requested under Subsection
131 (11), does not obtain a verdict that is at least 30% less than the arbitration award, the defendant
132 is responsible for all of the nonmoving party's costs, including expert witness fees.

133 (15) If a district court determines, upon a motion of the nonmoving party, that the
134 moving party's use of the trial de novo process was filed in bad faith, as defined in Section
135 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

136 (16) All arbitration awards issued under this section shall bear postjudgment interest
137 pursuant to Section 15-1-4.

138 Section 2. Section **38-9-1** is amended to read:

139 **38-9-1. Definitions.**

140 As used in this chapter:

141 (1) "Interest holder" means a person who holds or possesses a present, lawful property
142 interest in certain real property, including an owner, title holder, mortgagee, trustee, or
143 beneficial owner.

144 (2) "Lien claimant" means a person claiming an interest in real property who offers a
145 document for recording or filing with any county recorder in the state asserting a lien, or notice
146 of interest, or other claim of interest in [certain] real property.

147 (3) "Owner" means a person who has a vested ownership interest in certain real
148 property.

149 (4) (a) "Record interest holder" means a person who holds or possesses a present,
150 lawful property interest in [certain] real property, including an owner, titleholder, mortgagee,
151 trustee, or beneficial owner, and whose name and interest in that real property appears in the
152 county recorder's records for the county in which the property is located.

153 (b) "Record interest holder" includes any grantor in the chain of the title in [certain]
154 real property.

155 (5) "Record owner" means an owner whose name and ownership interest in certain real
156 property is recorded or filed in the county recorder's records for the county in which the

157 property is located.

158 (6) (a) "Wrongful lien" means any document that purports to create a lien, notice of
159 interest, or encumbrance on an owner's interest in certain real property and at the time it is
160 recorded is not:

161 ~~[(a)]~~ (i) expressly authorized by this chapter or another state or federal statute;

162 ~~[(b)]~~ (ii) authorized by or contained in an order or judgment of a court of competent
163 jurisdiction in the state; or

164 ~~[(c)]~~ (iii) signed by or authorized pursuant to a document signed by the owner of the
165 real property.

166 (b) "Wrongful lien" includes:

167 (i) a preconstruction lien for which the claimant did not file a notice of preconstruction
168 service under Section 38-1a-401; and

169 (ii) a construction lien for which the claimant did not file a preliminary notice under
170 Section 38-1a-501.

171 Section 3. Section **38-9-2** is amended to read:

172 **38-9-2. Scope.**

173 ~~[(1)(a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any~~
174 ~~recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or~~
175 ~~after May 5, 1997.]~~

176 ~~[(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless~~
177 ~~of the date the lien was recorded or filed.]~~

178 ~~[(c) (1) [Notwithstanding Subsections (1)(a) and (b), the provisions of this] This~~
179 ~~chapter [applicable to the filing of a notice of interest do] does not apply to a notice of interest~~
180 ~~filed before May 5, 2008.~~

181 (2) ~~[The provisions of this chapter shall not prevent a person from filing] This chapter~~
182 ~~does not apply to a lis pendens recorded in accordance with Section 78B-6-1303 [or] and does~~
183 ~~not prevent a person from seeking any other relief permitted by law.~~

184 (3) This chapter does not apply to a person entitled to a preconstruction or construction
185 lien ~~[under]~~, as described in Section 38-1a-301, who:

186 (a) (i) files a notice of preconstruction service under Section 38-1a-401; or

187 (ii) files a preliminary notice under Section 38-1a-501; and

188 (b) [files] records a lien [pursuant to] that corresponds to a notice described in
189 Subsection (3)(a)(i) or (ii), in accordance with Title 38, Chapter 1a, Preconstruction and
190 Construction.

Legislative Review Note
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Office of Legislative Research and General Counsel