

PENALTY FOR WRONGFUL MECHANICS' LIEN

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

This act modifies the Mechanics' Lien Code and Utah Construction Trades Licensing Act. The act prohibits the recovery of attorneys' fees by a person who has filed a wrongful mechanics' lien. The act provides for civil penalties for filing a mechanics' lien in an amount greater than the actual sum due. The act provides for costs and attorneys' fees in cases where an offer of judgment is unreasonably rejected. The act provides for action against a construction trades license held by a person or entity filing a wrongful mechanics' lien.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

38-1-18, as last amended by Chapter 172, Laws of Utah 1995

38-1-25, as last amended by Chapter 125, Laws of Utah 1997

58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000

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

Section 1. Section **38-1-18** is amended to read:

38-1-18. Attorneys' fees -- Offer of judgment.

(1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in Section 38-1-25 is not entitled to recover attorneys' fees under Subsection (1).

(3) A party against whom any action is brought to enforce a lien under this chapter may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure. If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorneys' fees incurred by the offeror after the offer was made.

Section 2. Section **38-1-25** is amended to read:

38-1-25. Abuse of lien right -- Penalty.

(1) Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed:

~~[(1)]~~ (a) with the intent to cloud the title;

~~[(2)]~~ (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

~~[(3)]~~ (c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property or an original contractor or subcontractor who is affected by the lien for the greater of:

(a) twice the amount by which the wrongful lien exceeds the amount actually due; or

(b) the actual damages incurred by the owner of the property.

Section 3. Section **58-55-501** is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(4) applying for or obtaining a building permit either for oneself or another when not licensed or exempted from licensure as a contractor under this chapter;

- (5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;
- (6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;
- (7) failing to obtain a building permit when required by law or rule;
- (8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;
- (9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;
- (10) allowing one's license to be used by another except as provided by statute or rule;
- (11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;
- (12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;
- (13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;
- (14) employing as an alarm company an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;
- (15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;
- (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

- (a) the building or construction laws of this state or any political subdivision;
- (b) the safety and labor laws applicable to a project;
- (c) any provision of the health laws applicable to a project;
- (d) the workers' compensation insurance laws of the state applicable to a project;
- (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or
- (f) reporting, notification, and filing laws of this state or the federal government;
- (17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter; [~~or~~]
- (18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[~~;~~]; or
- (19) wrongfully filing a mechanics' lien in violation of Section 38-1-25.