

Representative Michael T. Morley proposes the following substitute bill:

ELECTRONIC FILING OF PRELIMINARY

LIEN DOCUMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the Mechanics' Lien statute and enacts provisions for on-line filing of notices of commencement, preliminary notices, and notices of completion.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Occupational and Professional Licensing to contract for the creation and maintenance of a construction notice registry;
- ▶ requires the notice registry to be accessible for filing and reviewing notices of commencement, preliminary notices, and notices of completion;
- ▶ provides for alternative filing;
- ▶ requires that electronic notification and hard-copy printing of electronic receipts be provided;
- ▶ requires the division to establish by rule the fees for filing;
- ▶ creates time requirements for filing notices;
- ▶ requires the assignment to each construction project a unique project number which identifies each construction project;
- ▶ provides requirements for the content of a notice of commencement;
- ▶ provides penalties for failure to file in a timely manner; and



26 ▶ creates requirements for filing a notice of completion.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a severability clause.

31 This bill takes effect on May 1, 2005.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **14-1-20**, as enacted by Chapter 271, Laws of Utah 1989

35 **14-2-5**, as enacted by Chapter 271, Laws of Utah 1989

36 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999

37 **63-56-38.1**, as enacted by Chapter 271, Laws of Utah 1989

38 ENACTS:

39 **38-1-30**, Utah Code Annotated 1953

40 **38-1-31**, Utah Code Annotated 1953

41 **38-1-32**, Utah Code Annotated 1953

42 **38-1-33**, Utah Code Annotated 1953

43 **38-1-34**, Utah Code Annotated 1953

44 **38-1-35**, Utah Code Annotated 1953

45 REPEALS AND REENACTS:

46 **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001



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

49 Section 1. Section **14-1-20** is amended to read:

50 **14-1-20. Preliminary notice requirement.**

51 Except persons who are in privity of contract with a payment bond principal or except
52 for persons performing labor for wages, any person furnishing labor, service, equipment, or
53 material for which a payment bond claim may be made under this chapter shall provide
54 preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by Section
55 38-1-27. Any person who fails to provide this preliminary notice may not make a payment
56 bond claim under this chapter. The preliminary notice must be provided prior to

57 commencement of any action on the payment bond.

58 Section 2. Section **14-2-5** is amended to read:

59 **14-2-5. Preliminary notice requirement.**

60 Except subcontractors who are in privity of contract with a payment bond principal or
61 except for persons performing labor for wages, any person furnishing labor, service,
62 equipment, or material for which a payment bond claim may be made under this chapter shall
63 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
64 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
65 payment bond claim under this chapter. The preliminary notice must be provided prior to
66 commencement of any action on the payment bond.

67 Section 3. Section **38-1-7** is amended to read:

68 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

69 (1) [A] Except as modified in Section 38-1-27, a person claiming benefits under this
70 chapter shall file for record with the county recorder of the county in which the property, or
71 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
72 from the date:

73 (a) the person last performed labor or service or last furnished equipment or material
74 on a project or improvement for a residence as defined in Section 38-11-102; or

75 (b) of final completion of an original contract not involving a residence as defined in
76 Section 38-11-102.

77 (2) The notice required by Subsection (1) shall contain a statement setting forth:

78 (a) the name of the reputed owner if known or, if not known, the name of the record
79 owner;

80 (b) the name of the person by whom the lien claimant was employed or to whom the
81 lien claimant furnished the equipment or material;

82 (c) the time when the first and last labor or service was performed or the first and last
83 equipment or material was furnished;

84 (d) a description of the property, sufficient for identification;

85 (e) the name, current address, and current phone number of the lien claimant;

86 (f) the signature of the lien claimant or the lien claimant's authorized agent;

87 (g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording

88 of Documents; and

89 (h) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
90 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
91 a lien claimant to remove the lien in accordance with Section 38-11-107.

92 (3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required
93 for any notice filed after April 29, 1985, and before April 24, 1989.

94 (4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
95 mail by certified mail a copy of the notice of lien to:

- 96 (i) the reputed owner of the real property; or
- 97 (ii) the record owner of the real property.

98 (b) If the record owner's current address is not readily available to the lien claimant, the
99 copy of the claim may be mailed to the last-known address of the record owner, using the
100 names and addresses appearing on the last completed real property assessment rolls of the
101 county where the affected property is located.

102 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
103 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
104 owner or record owner in an action to enforce the lien.

105 (5) The Division of Occupational and Professional Licensing shall make rules
106 governing the form of the statement required under Subsection (2)(h).

107 Section 4. Section **38-1-27** is repealed and reenacted to read:

108 **38-1-27. Construction notice registry -- Form and contents of notice of**
109 **commencement, preliminary notice and notice of completion.**

110 (1) As used in this section and Sections 38-1-30 through 38-1-35:

111 (a) "Database" means the Construction Notice Registry Database created in this
112 section.

113 (b) "Designated agent" means the third party the Division of Occupational and
114 Professional Licensing contracts with to create and maintain the Construction Notice Registry
115 Database.

116 (c) "Division" means the Division of Occupational and Professional Licensing.

117 (d) "Program" means the Construction Notice Registry Database Program created in
118 this section.

119 (2) There is created the Construction Notice Registry Database Program which shall:

120 (a) assist in protecting public health, safety, and welfare and promote a fair working
121 environment;

122 (b) be overseen by the Division of Occupational and Professional Licensing with the
123 assistance of the designated agent;

124 (c) provide a central repository for notices of commencement, preliminary notices, and
125 notices of completion filed in connection with all privately owned construction projects as well
126 as all state and local government owned construction projects throughout Utah;

127 (d) be accessible for filing and review of notices of commencement, preliminary
128 notices, and notices of completion via the program Internet web site;

129 (e) accommodate electronic filing of such notices as well as provide for alternate filing
130 by U.S. mail, telefax, telephone, or any other alternate method as provided by rule
131 promulgated by the division;

132 (f) provide electronic notification for up to three e-mail addresses for each interested
133 person or company who requests notice from the construction notice registry as well as provide
134 alternate means of notification for those persons who make alternate filings, including U.S.
135 mail, telefax, or any other method as prescribed by rule promulgated by the division; and

136 (g) provide hard-copy printing of electronic receipts for individual filings evidencing
137 the date and time of individual filings as well as the content of individual filings.

138 (3) Persons interested in a construction project may request notice of filings related to
139 the project. The registry shall be indexed by owner name, original contractor name, project
140 name, project address, parcel number, project number, and any other identifier that the division
141 considers reasonably appropriate and established by rule.

142 (4) The division shall establish by rule the filing fees for notices of commencement,
143 preliminary notices, notices of completion, and requests for notice, which fees shall not exceed
144 the amount reasonably necessary to create and maintain the construction notice registry. The
145 fees established by the division may vary by method of filing if one form of filing is more
146 costly than other forms of filing.

147 Section 5. Section **38-1-30** is enacted to read:

148 **38-1-30. Third party contract -- Designated agent.**

149 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah

150 Procurement Code, with a third party to establish and maintain the database for the purposes
151 established under this part.

152 (2) The third party under contract under this section is the division's designated agent,
153 and shall develop and maintain a database from the information provided by local government
154 entities issuing building permits, original contractors, subcontractors, and other interested
155 persons. The division and the designated agent shall design, develop, and test the database for
156 full implementation on May 1, 2005.

157 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
158 division shall make rules and develop procedures for the division to oversee and enforce this
159 part and for the third party agent to administer this part.

160 (4) (a) The designated agent shall archive computer data files at least semiannually for
161 auditing purposes.

162 (b) The division may audit the designated agent's administration of the database as
163 often as it considers necessary.

164 (5) The designated agent shall carry errors and omissions insurance in the amounts
165 established by rule by the division.

166 Section 6. Section **38-1-31** is enacted to read:

167 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
168 **Commencement of Work.**

169 (1) (a) For construction projects where a building permit is issued, within 15 days after
170 the issuance of such permit, the local government entity issuing that permit shall input the data
171 and electronically transmit the permit information to the construction notice registry via the
172 Internet or computer modem and such information shall form the basis of a notice of
173 commencement.

174 (b) For construction projects where a building permit is not issued, within 15 days after
175 commencement of physical construction work at the project site, the original contractor shall
176 file a notice of commencement with the construction notice registry.

177 (c) An owner of construction, a lender, surety, or other interested party may file a
178 notice of commencement with the designated agent within the prescribed time set forth in
179 Subsection (1)(a).

180 (d) If duplicate notices of commencement are filed, they shall be combined into one

181 notice for each project. The designated agent shall assign each construction project a unique
182 project number which identifies each construction project and can be associated with all
183 notices of commencement, preliminary notices, and notices of completion.

184 (e) A notice of commencement is effective as to all work, materials, and equipment
185 furnished to the construction project after the filing of the notice of commencement. A notice
186 of commencement is effective only as to the work, materials, or equipment furnished to the
187 construction project provided subsequent to the filing of the notice of commencement.

188 (2) The content of a notice of commencement shall include the following if available
189 on a building permit:

190 (a) the name and address of the owner of the project or improvement;

191 (b) the name and address of the:

192 (i) original contractor;

193 (ii) surety providing any payment bond for the project or improvement, or if none
194 exists, a statement that a payment bond was not required for the work being performed; and

195 (iii) project address if the project can be reasonably identified by an address or the
196 name and general description of the location of the project if the project cannot be reasonably
197 identified by an address;

198 (c) a general description of the project;

199 (d) the parcel number of the real property upon which the project is to be constructed if
200 the project is subject to mechanics' liens; and

201 (e) a legal description of the property on which the project is located if the project is
202 subject to mechanics' liens.

203 (3) Failure to file any notice of commencement for a construction project suspends the
204 operation of the preliminary notice provisions and notice of completion provisions set forth
205 below.

206 (4) Electronic notice of the filing of a notice of commencement or alternate notice as
207 prescribed in Subsection (1), shall be provided to all persons who have filed notices of
208 commencement for the project and to all interested parties who have requested such notice for
209 the project.

210 (5) The burden is upon the person filing the notice of commencement to prove that the
211 notice of commencement is filed timely and meets all of the requirements herein.

212 Section 7. Section **38-1-32** is enacted to read:

213 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

214 (1) (a) Within 20 days after commencement of its own work or the commencement of
215 furnishing materials or equipment to a construction project, a subcontractor or supplier shall
216 file a preliminary notice with the construction notice registry. A preliminary notice filed within
217 the 20-day period is effective as to all work, materials, and equipment furnished to the
218 construction project.

219 (b) If a subcontractor or supplier files a preliminary notice after the 20-day period
220 prescribed above, the preliminary notice becomes effective as of five days after the filing of the
221 preliminary notice.

222 (c) Failure to file a preliminary notice within the 20-day period as prescribed above
223 precludes a subcontractor or supplier from filing any claim for compensation earned for
224 performance of work or supply of materials or equipment furnished to the construction project
225 before the expiration of five days after the filing of a preliminary notice, except as against the
226 person with whom the subcontractor or supplier contracted.

227 (d) The preliminary notice must be filed before a notice of lien is filed with the county
228 recorder pursuant to Section 38-1-7. The content of a preliminary notice shall include the
229 following:

230 (i) the name, address, and telephone number of the person furnishing the labor, service,
231 equipment, or material;

232 (ii) the name and address of the person who contracted with the claimant for the
233 furnishing of the labor, service, equipment, or material;

234 (iii) the name of the record or reputed owner of the project or improvement;

235 (iv) the name of the original contractor under which the claimant is performing or will
236 perform its work; and

237 (v) the address of the project or improvement or a description of the location of the
238 project or improvement.

239 (2) (a) Electronic notification of the filing of a preliminary notice or alternate notice as
240 prescribed in Subsection (1), shall be provided to the person filing the preliminary notice, to
241 each person that filed a notice of commencement for the project, and to all interested parties
242 who have requested such notice for the project.

243 (b) The burden is upon the person filing the preliminary notice to prove that the
244 preliminary notice is filed timely and substantially meets all of the requirements herein.

245 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
246 notice is only required to give one notice for each project or improvement, which may include
247 an entire structure of a scheme of improvements.

248 (d) If the labor, service, equipment, or material is furnished pursuant to contracts with
249 more than one subcontractor or with more than one original contractor, the notice requirements
250 must be met with respect to the labor, service, equipment, or materials furnished to each
251 subcontractor or original contractor.

252 (3) (a) If a construction project owner, original contractor, subcontractor, or other
253 interested person believes that a preliminary notice has been filed erroneously, that owner,
254 original contractor, subcontractor, or other interested person can request evidence establishing
255 the validity of the preliminary notice.

256 (b) Within ten days after the request, the person or entity that filed the preliminary
257 notice shall provide the requesting person or entity proof that the preliminary notice is valid.

258 (c) If the person or entity that filed the preliminary notice cannot provide proof of the
259 validity of the preliminary notice, that person or entity shall immediately remove the
260 preliminary notice from the construction notice registry.

261 Section 8. Section **38-1-33** is enacted to read:

262 **38-1-33. Notice of completion.**

263 (1) (a) Upon final completion of a construction project, an owner of a construction
264 project, an original contractor, a lender that has provided financing for the construction project,
265 or surety that has provided bonding for the construction project, may file a notice of completion
266 with the construction notice registry. Final completion, for purposes of this Subsection (1),
267 shall mean:

268 (i) if as a result of work performed under the original contract a permanent certificate
269 of occupancy is required for such work, the date of issuance of a permanent certificate of
270 occupancy by the local government entity having jurisdiction over the construction project;

271 (ii) if no certificate of occupancy is required by the local government entity having
272 jurisdiction over the construction project, but as a result of the work performed under the
273 original contract an inspection is required for such work, the date of the final inspection for

274 such work by the local government entity having jurisdiction over the construction project; or
275 (iii) if with regard to the work performed under the original contract no certificate of
276 occupancy and no final inspection are required by the local government entity having
277 jurisdiction over the construction project, the date on which there remains no substantial work
278 to be completed to finish such work on the original contract.

279 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work
280 after the applicable dates established by Subsection (1)(a)(i) and (ii), that subcontractor's
281 subcontract shall be considered an original contract for the sole purpose of determining:

282 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien
283 under Subsection (1); and

284 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien
285 under Subsection (1) for that subcontractor's work.

286 (c) For purposes of this section, the term "substantial work" does not include:

287 (i) repair work;

288 (ii) warranty work; or

289 (iii) work for which the project owner is not holding payment to ensure completion of
290 that work.

291 (d) Electronic notification of the filing of a notice of completion or alternate notice as
292 prescribed in Subsection (17)(a), shall be provided to each person that filed a notice of
293 commencement for the project, to each person that filed preliminary notice for the project, and
294 to all interested parties who have requested notice for the project. Upon the filing of a notice of
295 completion, the time periods for filing preliminary notices stated in Section 38-1-27 are
296 modified such that all preliminary notices shall be filed subsequent to the notice of completion
297 and shall be filed within ten days from the date the notice of completion is filed.

298 (2) (a) If a construction project owner, original contractor, subcontractor, or other
299 interested person believes that a notice of completion has been filed erroneously, that owner,
300 original contractor, subcontractor, or other interested person can request evidence establishing
301 the validity of the notice of completion.

302 (b) Within ten days after the request, the person or entity that filed the notice of
303 completion shall provide the requesting person or entity proof that the notice of completion is
304 valid.

305 (c) If the person or entity that filed the notice of completion cannot provide proof of the
306 validity of the notice of completion, that person or entity shall immediately remove the notice
307 of completion from the construction notice registry.

308 (3) The provisions of this section which amend the dates in Section 38-1-27 shall
309 become effective for construction projects commenced on or after May 1, 2005. The previous
310 Section 38-1-27 shall apply to all construction projects commenced prior to May 1, 2005,
311 according to its terms.

312 (4) The provisions of this section requiring the division to contract with the designated
313 agent and those which relate to the design, development, and testing of the database shall be
314 effective as of the date signed by the governor. The remaining provisions of this section shall
315 become effective on May 1, 2005.

316 Section 9. Section **38-1-34** is enacted to read:

317 **38-1-34. Abuse of construction notice registry -- Penalty.**

318 (1) A person abuses the construction notice registry if that person records a notice in
319 the construction notice registry:

320 (a) without a good faith basis for doing so;

321 (b) with the intent to exact more than is due from the project owner or any other
322 interested party; or

323 (c) to procure an unjustified advantage or benefit.

324 (2) A person who violates Subsection (1) is liable to the owner of the construction
325 project, an original contractor, a subcontractor, or any interest party who is affected by the
326 notice for twice the amount of the actual damages incurred by such party or \$2,000, whichever
327 is greater.

328 Section 10. Section **38-1-35** is enacted to read:

329 **38-1-35. State not liable.**

330 The state and the state's agencies, instrumentalities, and political subdivisions are not
331 liable for any errors in receiving, recording, maintaining and reporting any notices or
332 information in the construction notice registry.

333 Section 11. Section **63-56-38.1** is amended to read:

334 **63-56-38.1. Preliminary notice requirement.**

335 Except subcontractors who are in privity of contract with a payment bond principal or

336 except for persons performing labor for wages, any person furnishing labor, service,
337 equipment, or material for which a payment bond claim may be made under this chapter shall
338 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
339 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
340 payment bond claim under this chapter. The preliminary notice must be provided prior to
341 commencement of any action on the payment bond.

342 **Section 12. Severability clause.**

343 If any provision of this chapter is held invalid or unconstitutional by a court of
344 competent jurisdiction, the invalidity shall not affect the other provisions of this chapter which
345 can be given effect without the invalid or unconstitutional provision.

346 **Section 13. Effective date.**

347 This bill takes effect on May 1, 2005