

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) Subject to receiving adequate funding through a legislative appropriation and
120 contracting with an approved third party vendor who meets the requirements of Sections
121 38-1-30 through 38-1-35, there is created the Construction Notice Registry Database Program
122 which shall:

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

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

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

130 (d) be accessible for filing and review of notices of commencement, preliminary
131 notices, and notices of completion via the program Internet website;

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

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

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

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

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

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

151 **38-1-30. Third party contract -- Designated agent.**

152 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah
153 Procurement Code, with a third party to establish and maintain the database for the purposes
154 established under this part.

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

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

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

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

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

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

170 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
171 **commencement of work.**

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

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

180 (c) An owner of construction, a lender, surety, or other interested party may file a

181 notice of commencement with the designated agent within the prescribed time set forth in
182 Subsection (1)(a).

183 (d) If duplicate notices of commencement are filed, they shall be combined into one
184 notice for each project. The designated agent shall assign each construction project a unique
185 project number which identifies each construction project and can be associated with all
186 notices of commencement, preliminary notices, and notices of completion.

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

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

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

194 (b) the name and address of the:

195 (i) original contractor;

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

198 (iii) project address if the project can be reasonably identified by an address or the
199 name and general description of the location of the project if the project cannot be reasonably
200 identified by an address;

201 (c) a general description of the project;

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

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

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

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

212 the project.

213 (5) The burden is upon any person seeking to enforce the notice of commencement to
214 prove that the notice of commencement is filed timely and meets all of the requirements herein.

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

216 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

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

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

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

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

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

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

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

238 (iv) the address of the project or improvement or a description of the location of the
239 project or improvement.

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

243 who have requested such notice for the project.

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

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

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

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

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

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

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

263 **38-1-33. Notice of completion.**

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

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

272 (ii) if no certificate of occupancy is required by the local government entity having
273 jurisdiction over the construction project, but as a result of the work performed under the

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

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

283 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
284 Subsection 38-1-7(1); and

285 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
286 Subsection 38-1-7(1) for that subcontractor's work.

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

288 (i) repair work;

289 (ii) warranty work; or

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

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

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

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

305 valid.

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

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

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

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

318 **38-1-34. Abuse of construction notice registry -- Penalty.**

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

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

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

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

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

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

330 **38-1-35. State not liable.**

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

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

335 **63-56-38.1. Preliminary notice requirement.**

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

343 Section 12. **Severability clause.**

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

347 Section 13. **Effective date.**

348 This bill takes effect on May 1, 2005.