

Senator Scott K. Jenkins proposes the following substitute bill:

MECHANICS' LIEN AND PAYMENT

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the lien provisions to address mechanics' liens or payment rights including the waiver of such liens or rights.

Highlighted Provisions:

This bill:

- ▶ enacts language addressing waiver or impairment of mechanics' lien rights;
- ▶ creates forms for waiver and release of mechanics' liens or bond rights that may be used to comply with waiver and release requirements;
- ▶ creates forms for restrictive endorsements related to a waiver and release that may be used to comply with waiver and release requirements;
- ▶ addresses when payments are made by checks;
- ▶ addresses the enforcement of accord and satisfactions or settlements;
- ▶ addresses enforcement of waivers and releases not complying with the new provision; and
- ▶ makes the new language applicable to a waiver and release or restrictive endorsement signed on or after January 1, 2007.

Monies Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill takes effect on January 1, 2007.

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **38-1-39**, Utah Code Annotated 1953



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

34 Section 1. Section **38-1-39** is enacted to read:

35 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

36 (1) As used in this section:

37 (a) "Check" means a payment instrument on a depository institution including:

38 (i) a check;

39 (ii) a draft;

40 (iii) an order; or

41 (iv) other instrument.

42 (b) "Depository institution" is as defined in Section 7-1-103.

43 (c) "Lien claimant" means a person that claims a lien under this chapter.

44 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
45 waives or limits the lien claimant's lien rights is enforceable if the lien claimant:

46 (a) (i) executes a waiver and release that is:

47 (A) signed by the lien claimant or the lien claimant's authorized agent; and

48 (B) substantially in the form set forth in Subsection (4); or

49 (ii) includes a restrictive endorsement on a check that is:

50 (A) signed by the lien claimant or the lien claimant's authorized agent; and

51 (B) in substantially the same form set forth in Subsection (4); and

52 (b) receives payment of the amount identified in the waiver and release or check that
53 includes the restrictive endorsement:

54 (A) including payment by a joint payee check; and

55 (B) only to the extent of the payment.

56 (3) (a) Notwithstanding the language of a waiver and release described in Subsection

57 (2), Subsection (3)(b) applies if:

58 (i) the payment given in exchange for any waiver and release of lien is made by check;

59 and

60 (ii) the check fails to clear the depository institution on which it is drawn for any

61 reason.

62 (b) If the conditions of Subsection (3)(a) are met:

63 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal

64 effect; and

65 (ii) the following will not be affected by the lien claimant's execution of the waiver and

66 release:

67 (A) any lien;

68 (B) any lien right;

69 (C) any bond right;

70 (D) any contract right; or

71 (E) any other right to recover payment afforded to the lien claimant in law or equity.

72 (4) A waiver and release given by a lien claimant meets the requirements of this section

73 if it is in substantially the form provided in this Subsection (4) for the circumstance provided in

74 this Subsection (4).

75 (a) (i) A waiver and release may be in substantially the following form if the lien

76 claimant is required to execute a waiver and release in exchange for or to induce the payment

77 of a progress billing:

78 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

79 Property Name: _____

80 Property Location: _____

81 Undersigned's Customer: _____

82 Invoice/Payment Application Number: _____

83 Payment Amount: _____

84 Payment Period: _____

85 To the extent provided below, this document becomes effective to release and the

86 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,

87 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'

88 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above
89 described Property once:

90 (1) the undersigned receives a check in the above referenced Payment Amount payable
91 to the undersigned;

92 (2) the check is properly endorsed; and

93 (3) the check is paid by the depository institution on which it is drawn.

94 This waiver and release applies to a progress payment for the work, materials,
95 equipment, or a combination of work, materials, and equipment furnished by the undersigned
96 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
97 Payment Application, but only to the extent of the Payment Amount. This waiver and release
98 does not apply to any retention withheld; any items, modifications, or changes pending
99 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

100 The undersigned warrants that the undersigned either has already paid or will use the
101 money the undersigned receives from this progress payment promptly to pay in full all the
102 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
103 equipment, or combination of work, materials, and equipment that are the subject of this
104 waiver and release.

105 Dated: _____

106 _____ (Company Name)

107 _____ By: _____

108 _____ Its: _____"

109 (ii) A restrictive endorsement placed on a check to effectuate a waiver and release
110 described in Subsection (4)(a) meets the requirements of this section if it is in substantially the
111 following form:

112 "This check is a progress payment for (property description sufficient for
113 identification). Endorsement of this check is an acknowledgment by the endorser that the
114 waiver and release to which the payment applies is effective to the extent provided in Utah
115 Code Ann. Subsection 38-1-39(4)(a)."

116 (b) (i) A waiver and release may be in substantially the following form if the lien
117 claimant is required to execute a waiver and release in exchange for or to induce the payment
118 of a final billing:

150 the following form:

151 "This check is a final payment for (property description sufficient for identification).

152 Endorsement of this check is an acknowledgment by the endorser that the waiver and release to

153 which the payment applies is effective to the extent provided in Utah Code Ann. Subsection

154 38-1-39(4)(b)."

155 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the

156 enforcement of:

157 (i) an accord and satisfaction regarding a bona fide dispute; or

158 (ii) an agreement made in settlement of an action pending in any court or arbitration.

159 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord

160 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or

161 settlement:

162 (i) is in a writing signed by the lien claimant; and

163 (ii) specifically references the lien rights waived or impaired.

164 (6) A lien waiver or lien release that is not substantially similar to the forms set forth in

165 Subsection (4) is not enforceable under Section 38-1-29.

166 **Section 2. Effective date.**

167 This bill takes effect on January 1, 2007 and applies to a waiver and release or

168 restrictive endorsement signed on or after January 1, 2007.

Fiscal Note
Bill Number SB0161S01

Mechanics' Lien and Payment Amendments

09-Feb-06

7:41 AM

State Impact

No fiscal impact.

Individual and Business Impact

There may be fiscal impact to those effected by the transactions described in the bill. This cannot be quantified at this time.

Office of the Legislative Fiscal Analyst