

- 30 **38-1-9**, as last amended by Laws of Utah 1987, Chapter 50
- 31 **38-1-11**, as last amended by Laws of Utah 2010, Chapter 31
- 32 **38-1-19**, Utah Code Annotated 1953
- 33 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239
- 34 **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50
- 35 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50
- 36 **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76
- 37 **38-1-40**, as last amended by Laws of Utah 2010, Chapter 31

38 ENACTS:

- 39 **38-1-2.1**, Utah Code Annotated 1953
- 40 **38-1-4.7**, Utah Code Annotated 1953
- 41 **38-1-6.7**, Utah Code Annotated 1953
- 42 **38-1-30.5**, Utah Code Annotated 1953
- 43 **76-6-524**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

- 45 **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297
- 46 **38-1-3**, as last amended by Laws of Utah 1994, Chapter 308
- 47 **38-1-29**, as enacted by Laws of Utah 2001, Chapter 229



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

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

51 **38-1-1. Public improvements not subject to chapter -- Exception.**

52 [The provisions of this]

53 Except as provided in Sections 38-1-27, 38-1-30 through 38-1-37, and 38-1-40 relating
54 to the State Construction Registry, this chapter [shall] does not apply to any public [building,
55 structure or] improvement.

56 Section 2. Section **38-1-2** is repealed and reenacted to read:

57 **38-1-2. Definitions.**

58 As used in this chapter:

59 (1) "Anticipated improvement" means the improvement:

60 (a) for which a preconstruction service is performed; and

61 (b) that is anticipated to follow the performing of the preconstruction service.

62 (2) "Applicable county recorder" means the office of the recorder of each county in
63 which any part of the property on which a claimant claims or intends to claim a lien under this
64 chapter is located.

65 (3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
66 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
67 shares or other ownership interest.

68 (4) "Claimant" means a person entitled to claim a lien under this chapter.

69 (5) "Compensation" means the payment of money for a service rendered or an expense
70 incurred, whether based on:

71 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
72 percentage fee, or commission; or

73 (b) a combination of the bases listed in Subsection (5)(a).

74 (6) "Construction service":

75 (a) means to provide labor, material, or equipment for the purpose and during the
76 process of constructing, altering, or repairing an improvement; and

77 (b) includes the scheduling, estimating, staking, supervising, managing, materials
78 testing, inspection, observation, and quality control or assurance involved in constructing,
79 altering, or repairing an improvement.

80 (7) "Construction service lien" means a lien under this chapter for construction service.

81 (8) "General preconstruction contractor" means a claimant, other than an original
82 contractor, who contracts with one or more subcontractors for the subcontractor or
83 subcontractors to provide preconstruction service that the claimant is under contract to provide.

84 (9) "Improvement" means:

85 (a) a building, infrastructure, utility, or other human-made structure or object

86 constructed on or for and affixed to real property; or

87 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
88 referred to in Subsection (9)(a).

89 (10) "Original contract":

90 (a) means a contract between an owner of real property and an original contractor for
91 preconstruction service or construction service; and

92 (b) does not include a contract between an owner-builder and another person.

93 (11) "Original contractor" means a person who contracts with an owner of real property
94 to provide preconstruction service or construction service.

95 (12) "Owner-builder" means an owner of real property who:

96 (a) contracts with one or more other persons for preconstruction service or construction
97 service for an improvement on the owner's real property; and

98 (b) obtains a building permit for the improvement.

99 (13) "Preconstruction service":

100 (a) means to plan or design, or to assist in the planning or design of, an improvement or
101 a proposed improvement:

102 (i) before construction of the improvement commences; and

103 (ii) for compensation separate from any compensation paid or to be paid for
104 construction service for the improvement; and

105 (b) includes consulting, conducting a site investigation or assessment, programming,
106 preconstruction cost or quantity estimating, preconstruction scheduling, performing a
107 preconstruction construction feasibility review, procuring construction services, and preparing
108 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,
109 drawing, specification, or contract document.

110 (14) "Preconstruction service lien" means a lien under this chapter for a
111 preconstruction service.

112 (15) "Subcontractor" means a person who contracts to provide preconstruction service
113 or construction service to a person other than the owner of the real property for which the

114 preconstruction service or construction service is provided.

115 Section 3. Section **38-1-2.1** is enacted to read:

116 **38-1-2.1. Owner-builder original contract.**

117 For purposes of this chapter, an original contract is considered to exist between an
118 owner-builder as owner and the owner-builder as original contractor.

119 Section 4. Section **38-1-3** is repealed and reenacted to read:

120 **38-1-3. Those entitled to lien -- What may be attached.**

121 (1) Subject to the provisions of this chapter, a person who performs preconstruction
122 service or construction service on or for real property has a lien on the real property for the
123 reasonable value of the preconstruction service or construction service, respectively, except as
124 provided in Section 38-11-107.

125 (2) A person may claim a preconstruction service lien and a separate construction
126 service lien on the same real property.

127 (3) (a) A construction service lien may include an amount claimed for a
128 preconstruction service.

129 (b) A preconstruction service lien may not include an amount claimed for construction
130 service.

131 (4) A lien under this chapter attaches only to the interest that the owner or
132 owner-builder has in the real property that is the subject of the lien.

133 Section 5. Section **38-1-4** is amended to read:

134 **38-1-4. Land covered by lien -- Multiple lots occupied by improvement -- What a**
135 **lien attaches to.**

136 [~~The liens granted by~~]

137 (1) A lien under this chapter [~~shall extend~~] extends to and [~~cover so~~] covers as much of
138 the land [~~whereon such building, structure, or~~] on which the improvement [~~shall be~~] is made as
139 [~~may be~~] necessary for the convenient use and occupation of the land. [~~In case any such~~
140 building shall occupy]

141 (2) If an improvement occupies two or more lots or other subdivisions of land, [~~such~~]

142 ~~the~~ lots or subdivisions ~~[shall be]~~ are considered as one for the purposes of this chapter. ~~[The~~
143 ~~liens provided for in]~~

144 (3) A lien under this chapter [shall attach] attaches to all franchises, privileges,
145 appurtenances, ~~[and to all]~~ machinery, and fixtures~~;~~ pertaining to or used in connection with
146 ~~[any such lands, buildings, structures, or improvements]~~ the improvement.

147 Section 6. Section **38-1-4.7** is enacted to read:

148 **38-1-4.7. Preconstruction service lien -- Priority.**

149 (1) Except as otherwise provided in this chapter, a preconstruction service lien:

150 (a) relates back to and takes effect as of the time a notice of retention under Section
151 38-1-30.5 is filed; and

152 (b) has priority over:

153 (i) any lien, mortgage, or other encumbrance that attaches after the notice of retention
154 is filed; and

155 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and
156 that was unrecorded at the time the notice of retention is filed.

157 (2) A preconstruction service lien is subordinate to an interest securing a bona fide loan
158 if and to the extent that the lien covers preconstruction service provided after the interest
159 securing a bona fide loan is recorded.

160 (3) Preconstruction service is considered complete for any project, project phase, or bid
161 package as of the date that construction service for that project, project phase, or bid package,
162 respectively, commences.

163 Section 7. Section **38-1-5** is amended to read:

164 **38-1-5. Construction service lien -- Priority.**

165 ~~[The liens herein provided for shall relate]~~

166 A construction service lien:

167 (1) relates back to, and [take] takes effect as of, the time of the commencement [to do
168 work or furnish materials] of construction service on the ground for the [structure or]
169 improvement~~;~~; and [shall have]

170 (2) has priority over:

171 (a) any lien, mortgage, or other encumbrance [~~which may have attached subsequently~~
172 ~~to the time when the building, improvement or structure was commenced, work begun, or first~~
173 ~~material furnished] that attaches after the construction service for the improvement commences
174 on the ground; [also over] and~~

175 (b) any lien, mortgage, or other encumbrance of which the [~~lien holder]~~ claimant had
176 no notice and [~~which]~~ that was unrecorded at the time the [building, structure or] construction
177 service for the improvement [was commenced, work begun, or first material furnished]
178 commences on the ground.

179 Section 8. Section **38-1-6.7** is enacted to read:

180 **38-1-6.7. Notice of preconstruction service lien -- Requirements.**

181 (1) Within 90 days after completing a preconstruction service for which a claimant is
182 not paid in full, the claimant shall submit for recording with the applicable county recorder a
183 notice of preconstruction service lien.

184 (2) A claimant who fails to submit a notice of preconstruction service lien as provided
185 in Subsection (1) may not claim a preconstruction service lien.

186 (3) (a) A notice of preconstruction service lien shall include:

187 (i) the claimant's name, mailing address, and telephone number;

188 (ii) a statement that the claimant claims a preconstruction service lien;

189 (iii) the date the claimant's notice of retention was filed;

190 (iv) the name of the person who employed the claimant;

191 (v) a general description of the preconstruction service provided by the claimant;

192 (vi) the date that the claimant last provided preconstruction service;

193 (vii) the name, if known, of the reputed owner of the property on which the
194 preconstruction service lien is claimed or, if not known, the name of the record owner of the
195 property;

196 (viii) a description of the property sufficient for identification;

197 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the

198 claimant;

199 (x) the claimant's signature or the signature of the claimant's authorized agent;

200 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
201 of Documents; and

202 (xii) if the lien is against an owner-occupied residence, as defined in Section
203 38-11-102, a statement meeting the requirements that the Division of Occupational and
204 Professional Licensing has established in accordance with Title 63G, Chapter 3, Utah
205 Administrative Rulemaking Act, describing the steps an owner may take to require a claimant
206 to remove the lien as provided in Section 38-11-107.

207 (b) (i) A claimant who is a general preconstruction contractor may include in a notice
208 of preconstruction service lien the name, address, and telephone number of each subcontractor
209 who is under contract with the claimant to provide preconstruction service that the claimant is
210 under contract to provide.

211 (ii) The inclusion of a subcontractor in a notice of preconstruction service lien filed by
212 another claimant is not a substitute for the subcontractor's own submission of a notice of
213 preconstruction service lien.

214 (4) (a) Within 30 days after a claimant's notice of preconstruction service lien is
215 recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record
216 owner of the real property.

217 (b) If the record owner's address is not readily available to the claimant, the claimant
218 may mail a copy of the notice to the owner's last-known address as it appears on the last
219 completed assessment roll of the county in which the property is located.

220 (c) A claimant's failure to mail a copy of the notice as required in this Subsection (4)
221 precludes the claimant from being awarded costs and attorney fees against the reputed or record
222 owner in an action to enforce the lien.

223 (5) Nothing in this section may be construed to prohibit a claimant from recording a
224 notice of preconstruction service lien before completing the preconstruction service the
225 claimant contracted to provide.

226 Section 9. Section **38-1-7** is amended to read:

227 **38-1-7. Notice of claim for construction service lien -- Contents -- Recording --**
228 **Service on owner of property.**

229 (1) (a) (i) Except as modified in Section 38-1-27, a person claiming [~~benefits under this~~
230 ~~chapter~~] a construction service lien shall file for record with the applicable county recorder [~~of~~
231 ~~the county in which the property, or some part of the property, is situated;~~] a written notice to
232 hold and claim a lien no later than:

233 (A) 180 days after the day on which occurs final completion of the original contract if
234 no notice of completion is filed under Section 38-1-33; or

235 (B) 90 days after the day on which a notice of completion is filed under Section
236 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).

237 (ii) For purposes of this Subsection (1), final completion of the original contract, and
238 for purposes of Section 38-1-33, final completion of the project, means:

239 (A) if as a result of work performed under the original contract a permanent certificate
240 of occupancy is required for the work, the date of issuance of a permanent certificate of
241 occupancy by the local government entity having jurisdiction over the construction project;

242 (B) if no certificate of occupancy is required by the local government entity having
243 jurisdiction over the construction project, but as a result of the work performed under the
244 original contract an inspection is required as per state-adopted building codes for the work, the
245 date of the final inspection for the work by the local government entity having jurisdiction over
246 the construction project;

247 (C) if with regard to work performed under the original contract no certificate of
248 occupancy and no final inspection are required as per state-adopted building codes by the local
249 government entity having jurisdiction over the construction project, the date on which there
250 remains no substantial work to be completed to finish the work on the original contract; or

251 (D) if as a result of termination of the original contract prior to the completion of the
252 work defined by the original contract, the compliance agency does not issue a certificate of
253 occupancy or final inspection, the last date on which substantial work was performed under the

254 original contract.

255 (b) Notwithstanding Section 38-1-2, [where] if a subcontractor performs substantial
256 work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that
257 subcontractor's subcontract shall be considered an original contract for the sole purpose of
258 determining:

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

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

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

264 (i) repair work; or

265 (ii) warranty work.

266 (d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract
267 does not occur if work remains to be completed for which the owner is holding payment to
268 ensure completion of that work.

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

270 (i) the name of the reputed owner if known or, if not known, the name of the record
271 owner;

272 (ii) the name of the person:

273 (A) by whom the [lien] claimant was employed; or

274 (B) to whom the [lien] claimant furnished the equipment or material;

275 (iii) the time when:

276 (A) the first and last labor or service was performed; or

277 (B) the first and last equipment or material was furnished;

278 (iv) a description of the property, sufficient for identification;

279 (v) the name, current address, and current phone number of the [lien] claimant;

280 (vi) the amount of the lien claim;

281 (vii) the signature of the [lien] claimant or the [lien] claimant's authorized agent;

282 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
283 Recording of Documents; and
284 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
285 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
286 a lien claimant to remove the lien in accordance with Section 38-11-107.

287 (b) Substantial compliance with the requirements of this chapter is sufficient to hold
288 and claim a lien.

289 (3) (a) Within 30 days after filing the notice of lien, the [~~lien~~] claimant shall deliver or
290 mail by certified mail a copy of the notice of lien to:

291 (i) the reputed owner of the real property; or

292 (ii) the record owner of the real property.

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

297 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
298 precludes the [~~lien~~] claimant from an award of costs and [~~attorneys'~~] attorney fees against the
299 reputed owner or record owner in an action to enforce the lien.

300 (4) The Division of Occupational and Professional Licensing shall make rules
301 governing the form of the statement required under Subsection (2)(a)(ix).

302 Section 10. Section **38-1-9** is amended to read:

303 **38-1-9. Notice imparted by record.**

304 (1) The recorder [~~must~~] shall record [~~the claim~~] each notice of preconstruction service
305 lien under Section 38-1-6.7 and notice to hold and claim a construction service lien under
306 Section 38-1-7 in an index maintained for that purpose.

307 (2) From the time [~~the claim~~] a notice described in Subsection (1) is filed for record, all
308 persons are considered to have notice of [~~the claim~~] it.

309 Section 11. Section **38-1-11** is amended to read:

310 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
311 **Instructions and form affidavit and motion.**

312 (1) As used in this section:

313 (a) "Owner" is as defined in Section 38-11-102.

314 (b) "Residence" is as defined in Section 38-11-102.

315 (2) A [~~lien~~] claimant shall file an action to enforce the lien filed under this chapter:

316 (a) except as provided in Subsection (2)(b), within 180 days after the day on which the
317 [~~lien~~] claimant [~~files~~] files:

318 (i) a notice of preconstruction service lien under Section 38-1-6.7, for a preconstruction
319 service lien; or

320 (ii) a notice of claim under Section 38-1-7, for a construction service lien; or

321 (b) if an owner files for protection under the bankruptcy laws of the United States
322 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the
323 automatic stay under the bankruptcy proceeding is lifted or expires.

324 (3) (a) Within the time period provided for filing in Subsection (2) the [~~lien~~] claimant
325 shall file for record with the county recorder of each county in which the lien is recorded a
326 notice of the pendency of the action, in the manner provided in actions affecting the title or
327 right to possession of real property, or the lien shall be void, except as to persons who have
328 been made parties to the action and persons having actual knowledge of the commencement of
329 the action.

330 (b) The burden of proof is upon the [~~lien~~] claimant and those claiming under the [~~lien~~]
331 claimant to show actual knowledge under Subsection (3)(a).

332 (4) (a) A lien filed under this chapter is automatically and immediately void if an action
333 to enforce the lien is not filed within the time required by this section.

334 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to
335 adjudicate a lien that becomes void under Subsection (4)(a).

336 (5) This section may not be interpreted to impair or affect the right of any person to
337 whom a debt may be due for any work done or materials furnished to maintain a personal

338 action to recover the debt.

339 (6) (a) If a [~~lien~~] claimant files an action to enforce a lien filed under this chapter
340 involving a residence, the lien claimant shall include with the service of the complaint on the
341 owner of the residence:

342 (i) instructions to the owner of the residence relating to the owner's rights under Title
343 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

344 (ii) a form to enable the owner of the residence to specify the grounds upon which the
345 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
346 Lien Recovery Fund Act.

347 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
348 established by rule by the Division of Occupational and Professional Licensing in accordance
349 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

350 (c) If a [~~lien~~] claimant fails to provide to the owner of the residence the instructions
351 and form required by Subsection (6)(a), the [~~lien~~] claimant [~~shall be~~] is barred from
352 maintaining or enforcing the lien upon the residence.

353 (d) Judicial determination of the rights and liabilities of the owner of the residence
354 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
355 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is
356 given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a)
357 and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative
358 Procedures Act, commenced within 30 days of the owner being served summons in the
359 foreclosure action, at the Division of Occupational and Professional Licensing and obtain a
360 certificate of compliance or denial of certificate of compliance, as defined in Section
361 38-11-102.

362 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall
363 send by certified mail to all lien claimants:

364 (i) a copy of the application for a certificate of compliance; and

365 (ii) all materials filed in connection with the application.

366 (f) The Division of Occupational and Professional Licensing shall notify all [lien]
367 claimants listed in an owner's application for a certificate of compliance under Subsection
368 (6)(d) of the issuance or denial of a certificate of compliance.

369 (7) The written notice requirement applies to liens filed on or after July 1, 2004.
370 Section 12. Section **38-1-19** is amended to read:

371 **38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected.**

372 [~~When any~~] (1) If a subcontractor [~~shall have~~] has actually begun to furnish [~~labor or~~
373 ~~materials~~] preconstruction service or construction service for which [~~he~~] the subcontractor is
374 entitled to a lien [~~no~~], a payment to the original contractor [~~shall~~] may not impair or defeat
375 [~~such~~] the lien[; ~~and no~~].

376 (2) An alteration of [~~any~~] a contract [~~shall~~] may not affect [~~any~~] a lien acquired under
377 [~~the provisions of~~] this chapter.

378 Section 13. Section **38-1-27** is amended to read:

379 **38-1-27. State Construction Registry -- Applicable definitions -- Filings with**
380 **database.**

381 (1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

382 (a) "Alternate filing" means a legible and complete filing made in a manner established
383 by the division under Subsection (2)(e) other than an electronic filing.

384 (b) "Cancel" means to indicate that a filing is no longer given effect.

385 (c) "Construction project[;]" or "project[;]" [~~or "improvement"~~] means all labor,
386 equipment, and materials provided:

387 (i) under an original contract; or

388 (ii) by, or under contracts with, an owner-builder.

389 (d) "Database" means the State Construction Registry created in this section.

390 (e) (i) "Designated agent" means the third party the Division of Occupational and
391 Professional Licensing contracts with to create and maintain the State Construction Registry.

392 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
393 the state.

- 394 (f) "Division" means the Division of Occupational and Professional Licensing.
- 395 (g) "Entry number" means the reference number that:
- 396 (i) the designated agent assigns to each notice or other document filed with the
- 397 database; and
- 398 (ii) is unique for each notice or other document.
- 399 [~~(g)~~] (h) "Interested person" means a person who may be affected by a construction
- 400 project.
- 401 [~~(h)~~] (i) "Program" means the State Construction Registry Program created in this
- 402 section.
- 403 (2) Subject to receiving adequate funding through a legislative appropriation and
- 404 contracting with an approved third party vendor who meets the requirements of Sections
- 405 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:
- 406 (a) (i) assist in protecting public health, safety, and welfare; and
- 407 (ii) promote a fair working environment;
- 408 (b) be overseen by the division with the assistance of the designated agent;
- 409 (c) provide a central repository for notices of commencement, preliminary notices, and
- 410 notices of completion filed in connection with all privately owned construction projects as well
- 411 as all state and local government owned construction projects throughout Utah;
- 412 (d) [~~be~~] make accessible [~~for filing and review~~], by way of the program Internet
- 413 website, the filing and review of:
- 414 (i) notices of retention;
- 415 [~~(i)~~] (ii) notices of commencement;
- 416 [~~(ii)~~] (iii) preliminary notices;
- 417 [~~(iii)~~] (iv) a notice of intent to file notice of final completion;
- 418 [~~(iv)~~] (v) a notice for remaining amounts due to complete the contract; and
- 419 [~~(v)~~] (vi) notices of completion;
- 420 (e) accommodate:
- 421 (i) electronic filing of the notices described in Subsection (2)(d); and

422 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
423 or any other alternate method as provided by rule made by the division in accordance with Title
424 63G, Chapter 3, Utah Administrative Rulemaking Act;

425 (f) (i) provide electronic notification for up to three email addresses for each interested
426 person or company who requests notice from the construction notice registry; and

427 (ii) provide alternate means of notification for a person who makes an alternate filing,
428 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in
429 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

430 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
431 the date and time of the individual filing and the content of the individual filing.

432 (3) (a) The designated agent shall provide notice of all other filings for a project to any
433 person who files a notice of commencement, preliminary notice, or notice of completion for
434 that project, unless the person:

435 (i) requests that the person not receive notice of other filings; or

436 (ii) does not provide the designated agent with the person's contact information in a
437 manner that adequately informs the designated agent.

438 (b) An interested person may request notice of filings related to a project.

439 (c) The database shall be indexed by:

440 (i) owner name;

441 (ii) original contractor name;

442 (iii) subdivision, development, or other project name, if any;

443 (iv) project address;

444 (v) lot or parcel number;

445 (vi) unique project number assigned by the designated agent; and

446 (vii) any other identifier that the division considers reasonably appropriate in
447 collaboration with the designated agent.

448 (4) (a) In accordance with the process required by Section 63J-1-504, the division shall
449 establish the fees for:

450 (i) a notice of retention;
451 [~~(i)~~] (ii) a notice of commencement;
452 [~~(ii)~~] (iii) a preliminary notice;
453 [~~(iii)~~] (iv) a notice of intent to file notice of final completion;
454 [~~(iv)~~] (v) a notice for remaining amounts due to complete the contract;
455 [~~(v)~~] (vi) a notice of completion;
456 [~~(vi)~~] (vii) a request for notice;
457 [~~(vii)~~] (viii) providing a required notice by an alternate method of delivery;
458 [~~(viii)~~] (ix) a duplicate receipt of a filing; and
459 [~~(ix)~~] (x) account setup for a person who wishes to be billed periodically for filings
460 with the database.

461 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably
462 necessary to create and maintain the database.

463 (c) The fees established by the division may vary by method of filing if one form of
464 filing is more costly to process than another form of filing.

465 (d) The division may provide by contract that the designated agent may retain all fees
466 collected by the designated agent except that the designated agent shall remit to the division the
467 cost of the division's oversight under Subsection (2)(b).

468 (5) (a) The database is classified as a public record under Title 63G, Chapter 2,
469 Government Records Access and Management Act, unless otherwise classified by the division.

470 (b) A request for information submitted to the designated agent is not subject to Title
471 63G, Chapter 2, Government Records Access and Management Act.

472 (c) Information contained in a public record contained in the database shall be
473 requested from the designated agent.

474 (d) The designated agent may charge a commercially reasonable fee allowed by the
475 designated agent's contract with the division for providing information under Subsection (5)(c).

476 (e) Notwithstanding Title 63G, Chapter 2, Government Records Access and
477 Management Act, if information is available in a public record contained in the database, a

478 person may not request the information from the division.

479 (f) (i) A person may request information that is not a public record contained in the
480 database from the division in accordance with Title 63G, Chapter 2, Government Records
481 Access and Management Act.

482 (ii) The division shall inform the designated agent of how to direct inquiries made to
483 the designated agent for information that is not a public record contained in the database.

484 (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,
485 Administrative Procedures Act:

486 (a) the filing of a notice permitted by this chapter;

487 (b) the rejection of a filing permitted by this chapter; or

488 (c) other action by the designated agent in connection with a filing of any notice
489 permitted by this chapter.

490 (7) The division and the designated agent need not determine the timeliness of any
491 notice before filing the notice in the database.

492 (8) (a) A person who is delinquent on the payment of a fee established under
493 Subsection (4) may not file a notice with the database.

494 (b) A determination that a person is delinquent on the payment of a fee for filing
495 established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4,
496 Administrative Procedures Act.

497 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the
498 method of that person's payment of fees for filing notices with the database after issuance of the
499 order.

500 (9) If a notice is filed by a third party on behalf of another, the notice is considered to
501 be filed by the person on whose behalf the notice is filed.

502 (10) A person filing a notice of commencement, preliminary notice, or notice of
503 completion is responsible for verifying the accuracy of information entered into the database,
504 whether the person files electronically or by alternate or third party filing.

505 Section 14. Section **38-1-29** is repealed and reenacted to read:

506 **38-1-29. No waiver of rights -- Exception -- Payment applied first to**
507 **preconstruction service lien.**

508 (1) (a) A right or privilege under this chapter may not be waived or limited by contract.

509 (b) A provision of a contract purporting to waive or limit a right or privilege under this
510 chapter is void.

511 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part,
512 a lien right under this chapter in consideration of payment as provided in Section 38-1-39.

513 (3) Unless an agreement waiving or limiting a lien right expressly provides that a
514 payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a
515 person claiming or included within a preconstruction service lien and a construction service
516 lien shall be applied first to the preconstruction service lien until paid in full.

517 Section 15. Section **38-1-30.5** is enacted to read:

518 **38-1-30.5. Notice of retention.**

519 (1) (a) A person who, under Section 38-1-3, is entitled to a preconstruction service lien
520 on real property under this chapter shall file a notice of retention with the database no later than
521 20 days after the person commences performing preconstruction service for the anticipated
522 improvement on the real property.

523 (b) A person who fails to file a timely notice of retention as required in this section
524 may not hold a valid preconstruction service lien under this chapter.

525 (c) A timely filed notice of retention is effective as to each preconstruction service that
526 the person filing the notice performs for the anticipated improvement under an original
527 contract, including preconstruction service that the person performs for more than one general
528 preconstruction contractor under the same original contract.

529 (d) A notice of retention filed for preconstruction service performed or to be performed
530 under an original contract for an anticipated improvement on real property is not valid for
531 preconstruction service performed or to be performed under a separate original contract for an
532 anticipated improvement on the same real property.

533 (e) A notice of retention that is timely filed with the database with respect to an

534 anticipated improvement is considered to have been filed at the same time as the earliest timely
535 filed preliminary notice for that anticipated improvement.

536 (f) A notice of retention shall include:

537 (i) the name, address, telephone number, and email address of the person performing
538 the preconstruction service;

539 (ii) the name, address, telephone number, and email address of the person who
540 employed the person performing the preconstruction service;

541 (iii) a general description of the preconstruction service the person provided or will
542 provide;

543 (iv) the name of the record or reputed owner of the property for which the
544 preconstruction service is or will be provided;

545 (v) the name of the county in which the property on which the anticipated improvement
546 will occur is located;

547 (vi) (A) the tax parcel identification number of each parcel included in that property; or

548 (B) the entry number of a previously filed notice of retention that includes the tax
549 parcel identification number of each parcel included in that property; and

550 (vii) a statement that the person filing the notice intends to hold and claim a
551 preconstruction service lien if the person is not paid for the preconstruction service the person
552 performs.

553 (g) (i) A claimant who is a general preconstruction contractor may include in a notice
554 of retention the name, address, and telephone number of each subcontractor who is under
555 contract with the claimant to provide preconstruction service that the claimant is under contract
556 to provide.

557 (ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is
558 not a substitute for the subcontractor's own submission of a notice of retention.

559 (2) (a) Unless a person indicates to the division or designated agent that the person
560 does not wish to receive a notice under this section, the designated agent shall provide
561 electronic notification of the filing of a notice of retention or alternate filing to:

562 (i) the person filing the notice of retention; and
563 (ii) each person who has requested a notice concerning the anticipated improvement.

564 (b) A person to whom notice is required to be provided under Subsection (2)(a) is
565 responsible to provide an email address, mailing address, or telefax number to which notice
566 may be sent and for the accuracy of the email address, mailing address, or telefax number.

567 (c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending
568 the notice to the email address, mailing address, or telefax number provided to the designated
569 agent, whether or not the notice is actually received.

570 (3) The burden is on the person filing the notice of retention to prove that the person
571 has substantially complied with the requirements of this section.

572 (4) (a) Subject to Subsection (4)(b), a person required by this section to file a notice of
573 retention is required to give only one notice for each anticipated improvement.

574 (b) If a person performs preconstruction service under more than one original contract,
575 the person shall file a notice of retention for preconstruction service performed under each
576 original contract.

577 (5) (a) An owner of property that is the subject of an anticipated improvement, an
578 original contractor, a subcontractor, or another interested person who believes that a notice of
579 retention has been erroneously filed may request from the person who filed the notice evidence
580 establishing the validity of the notice of retention.

581 (b) Within 10 days after a request under Subsection (5)(a), the person who filed the
582 notice of retention shall provide the requesting person proof that the notice of retention is valid.

583 (c) If the person who filed the notice of retention does not provide timely proof of the
584 validity of the notice of retention, that person shall immediately cancel the notice of retention
585 from the database in the manner prescribed by the division by rule.

586 (6) A person filing a notice of retention by alternate filing is responsible for verifying
587 and changing any incorrect information in the notice of retention before the expiration of the
588 period during which the notice is required to be filed.

589 Section 16. Section **38-1-31** is amended to read:

590 **38-1-31. Building permit -- Notice of commencement of work.**

591 (1) (a) (i) (A) For a construction project where a building permit is issued to an original
592 contractor or owner-builder, no later than 15 days after the issuance of the building permit:

593 (I) the local government entity issuing that building permit shall input the building
594 permit application and transmit the building permit information to the database electronically
595 by way of the Internet or computer modem or by any other means; or

596 (II) the original contractor for construction service, owner, or owner-builder may file a
597 notice of commencement with the database whether or not a building permit is issued or a
598 notice of commencement is filed under Subsection (1)(a)(i)(A)(I).

599 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a
600 notice of commencement.

601 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is
602 responsible for the accuracy of the information in the building permit.

603 (iii) For the purposes of classifying a record under Title 63G, Chapter 2, Government
604 Records Access and Management Act, building permit information transmitted from a local
605 governmental entity to the database shall be classified in the database by the division
606 notwithstanding the local governmental entity's classification of the building permit
607 information.

608 (b) No later than 15 days after commencement of physical construction work at the
609 project site, the original contractor for construction service, owner, or owner-builder may file a
610 notice of commencement with the database whether or not a building permit is issued or a
611 notice of commencement is filed under Subsection (1)(a).

612 (c) An original contractor for construction service, owner, or owner-builder may file a
613 notice of commencement with the designated agent prior to the time frames established in
614 Subsections (1)(a) and (b).

615 (d) An owner of construction or an original contractor for construction service may file
616 a notice of commencement with the designated agent within the time prescribed by Subsections
617 (1)(a) and (b).

618 (e) (i) If duplicate notices of commencement are filed, they shall be combined into one
619 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
620 commencement for the project.

621 (ii) A duplicate notice of commencement that is untimely filed relates back under
622 Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.

623 (iii) Duplicate notices of commencement shall be automatically linked by the
624 designated agent.

625 (f) The designated agent shall assign each construction project a unique project number
626 that:

627 (i) identifies each construction project; and

628 (ii) can be associated with all notices of commencement, preliminary notices, and
629 notices of completion.

630 (g) A notice of commencement is effective only as to any labor, service, equipment,
631 and material furnished to the construction project that is furnished subsequent to the filing of
632 the notice of commencement.

633 (2) (a) A notice of commencement shall include the following:

634 (i) the name and address of the owner of the project;

635 (ii) the name and address of the:

636 (A) original contractor for construction service; and

637 (B) surety providing any payment bond for the project, or if none exists, a statement
638 that a payment bond was not required for the work being performed; and

639 (iii) (A) the project address if the project can be reasonably identified by an address; or

640 (B) the name and general description of the location of the project if the project cannot
641 be reasonably identified by an address.

642 (b) A notice of commencement may include:

643 (i) a general description of the project; or

644 (ii) the lot or parcel number, and any subdivision, development, or other project name,
645 of the real property upon which the project is to be constructed if the project is subject to

646 mechanics' liens.

647 (c) A notice of commencement need not include all of the items listed in Subsection
648 (2)(a) if:

649 (i) a building permit is issued for the project; and

650 (ii) all items listed in Subsection (2)(a) that are available on the building permit are
651 included in the notice of commencement.

652 (3) If a notice of commencement for a construction project is not filed within the time
653 set forth in Subsections(1)(a) and (b), the following do not apply:

654 (a) Section 38-1-32; and

655 (b) Section 38-1-33.

656 (4) (a) Unless a person indicates to the division or designated agent that the person
657 does not wish to receive a notice under this section, electronic notice of the filing of a notice of
658 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:

659 (i) all persons who have filed notices of commencement for the project; and

660 (ii) all interested persons who have requested notices concerning the project.

661 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

662 (A) providing an email address, mailing address, or telefax number to which a notice
663 required by Subsection (4)(a) is to be sent; and

664 (B) the accuracy of any email address, mailing address, or telefax number to which
665 notice is to be sent.

666 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it
667 sends the notice to the email address, mailing address, or telefax number provided to the
668 designated agent whether or not the notice is actually received.

669 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to
670 verify the accuracy of information in the notice of commencement and prove that the notice of
671 commencement is filed timely and meets all of the requirements in this section.

672 (b) A substantial inaccuracy in a notice of commencement renders the notice of
673 commencement unenforceable.

674 (c) A person filing a notice of commencement by alternate filing is responsible for
675 verifying and changing any incorrect information in the notice of commencement before the
676 expiration of the time period during which the notice is required to be filed.

677 (6) At the time a building permit is obtained, each original contractor for construction
678 service shall conspicuously post at the project site a copy of the building permit obtained for
679 the project.

680 Section 17. Section **38-1-32** is amended to read:

681 **38-1-32. Preliminary notice by subcontractor.**

682 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or
683 a laborer compensated with wages, a subcontractor for construction service shall file a
684 preliminary notice with the database by the later of:

685 (A) 20 days after commencement of its own work or the commencement of furnishing
686 labor, service, equipment, and material to a construction project; or

687 (B) 20 days after the filing of a notice of commencement if the subcontractor's work
688 commences before the filing of the first notice of commencement.

689 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is
690 effective as to all labor, service, equipment, and material furnished to the construction project,
691 including labor, service, equipment, and material provided to more than one contractor or
692 subcontractor.

693 (iii) (A) If more than one notice of commencement is filed for a project, a person may
694 attach a preliminary notice to any notice of commencement filed for the project by a party
695 authorized in Section 38-1-31.

696 (B) A preliminary notice attached to an untimely notice of commencement is valid if
697 there is also a valid and timely notice of commencement for the project filed by a party
698 authorized in Section 38-1-31.

699 (b) If a person files a preliminary notice after the period prescribed by Subsection
700 (1)(a), the preliminary notice becomes effective five days after the day on which the
701 preliminary notice is filed.

702 (c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within
703 the period required by Subsection (1)(a) precludes a person from maintaining any claim for
704 compensation earned for performance of labor or service or supply of materials or equipment
705 furnished to the construction project before the expiration of five days after the late filing of a
706 preliminary notice, except as against the person with whom the person contracted.

707 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter
708 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

709 (B) A county recorder need not verify that a valid preliminary notice is filed when a
710 person files a notice to hold and claim a lien under Section 38-1-7.

711 (ii) The content of a preliminary notice shall include:

712 (A) the building permit number for the project, or the number assigned to the project
713 by the designated agent;

714 (B) the name, address, and telephone number of the person furnishing the labor,
715 service, equipment, or material;

716 (C) the name and address of the person who contracted with the claimant for the
717 furnishing of the labor, service, equipment, or material;

718 (D) the name of the record or reputed owner of the project;

719 (E) the name of the original contractor for construction service under which the
720 claimant is performing or will perform its work; and

721 (F) the address of the project or a description of the location of the project.

722 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor for
723 construction service shall provide the person with the building permit number for the project,
724 or the number assigned to the project by the designated agent.

725 (e) If a person provides labor, service, equipment, or material before the filing of a
726 notice of commencement and the notice of commencement is filed more than 15 days after the
727 day on which the person providing labor, service, equipment, or material begins work on the
728 project, the person providing labor, service, equipment, or material need not file a preliminary
729 notice to maintain the person's right to hold a lien under this chapter or any other right,

730 including a right referenced under Subsection (1)(c).

731 (2) (a) (i) Unless a person indicates to the division or designated agent that the person
732 does not wish to receive a notice under this section, electronic notification of the filing of a
733 preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

734 (A) the person filing the preliminary notice;

735 (B) each person that filed a notice of commencement for the project; and

736 (C) all interested persons who have requested notices concerning the project.

737 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

738 (A) providing an email address, mailing address, or telefax number to which a notice
739 required by Subsection (2)(a) is to be sent; and

740 (B) the accuracy of any email address, mailing address, or telefax number to which
741 notice is to be sent.

742 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it
743 sends the notice to the email address, mailing address, or telefax number provided to the
744 designated agent whether or not the notice is actually received.

745 (b) The burden is upon the person filing the preliminary notice to prove that the person
746 has substantially complied with the requirements of this section.

747 (c) Subject to Subsection (2)(d), a person required by this section to give preliminary
748 notice is only required to give one notice for each project.

749 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
750 more than one original contract for construction service, the notice requirements must be met
751 with respect to the labor, service, equipment, or material furnished under each original contract.

752 (3) (a) If a construction project owner, original contractor, or subcontractor for
753 construction service, or other interested person believes that a preliminary notice has been filed
754 erroneously, that owner, original contractor, subcontractor, or other interested person can
755 request from the person who filed the preliminary notice evidence establishing the validity of
756 the preliminary notice.

757 (b) Within 10 days after the request described in Subsection (3)(a), the person or entity

758 that filed the preliminary notice shall provide the requesting person or entity proof that the
759 preliminary notice is valid.

760 (c) If the person or entity that filed the preliminary notice does not provide proof of the
761 validity of the preliminary notice, that person or entity shall immediately cancel the preliminary
762 notice from the database in any manner prescribed by the division pursuant to rule.

763 (4) A person filing a preliminary notice by alternate filing is responsible for verifying
764 and changing any incorrect information in the preliminary notice before the expiration of the
765 time period during which the notice is required to be filed.

766 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,
767 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

768 Section 18. Section **38-1-33** is amended to read:

769 **38-1-33. Notice of completion.**

770 (1) (a) Upon final completion of a construction project, and in accordance with Section
771 38-1-40, the following with a construction project registered with the database may file a notice
772 of completion with the database:

- 773 (i) an owner of the construction project;
774 (ii) an original contractor ~~[of the]~~ for construction ~~[project]~~ service;
775 (iii) a lender that has provided financing for the construction project;
776 (iv) a surety that has provided bonding for the construction project; or
777 (v) a title company issuing a title insurance policy on the construction project.

778 (b) Notwithstanding Section 38-1-2, if a subcontractor for construction service
779 performs substantial work after the applicable dates established by Subsection (1)(a), that
780 subcontractor's subcontract is considered an original contract for construction service for the
781 sole purpose of determining:

- 782 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
783 Subsection 38-1-7(1); and
784 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
785 Subsection 38-1-7(1) for that subcontractor's work.

786 (c) A notice of completion shall include:

787 (i) the building permit number for the project, or the number assigned to the project by
788 the designated agent;

789 (ii) the name, address, and telephone number of the person filing the notice of
790 completion;

791 (iii) the name of the original contractor for ~~[the project]~~ construction service;

792 (iv) the address of the project or a description of the location of the project;

793 (v) the date on which final completion is alleged to have occurred; and

794 (vi) the method used to determine final completion.

795 (d) For purposes of this section, final completion of the original contract does not occur
796 if work remains to be completed for which the owner is holding payment to ensure completion
797 of the work.

798 (e) (i) Unless a person indicates to the division or designated agent that the person does
799 not wish to receive a notice under this section, electronic notification of the filing of a notice of
800 completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

801 (A) each person that filed a notice of commencement for the project;

802 (B) each person that filed preliminary notice for the project; and

803 (C) all interested persons who have requested notices concerning the project.

804 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:

805 (A) providing an email address, mailing address, or telefax number to which a notice
806 required by this Subsection (1)(e) is to be sent; and

807 (B) the accuracy of any email address, mailing address, or telefax number to which
808 notice is to be sent.

809 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it
810 sends the notice to the email address, mailing address, or telefax number provided to the
811 designated agent, whether or not the notice is actually received.

812 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary
813 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed

814 subsequent to the notice of completion and within 10 days from the day on which the notice of
815 completion is filed.

816 (f) A subcontract that is considered an original contract for construction service for
817 purposes of this section does not create a requirement for an additional preliminary notice if a
818 preliminary notice has already been given for the labor, service, equipment, and material
819 furnished to the subcontractor who performs substantial work.

820 (2) (a) If a construction project owner, original contractor, or subcontractor for
821 construction service, or other interested person believes that a notice of completion has been
822 filed erroneously, that owner, original contractor, subcontractor, or other interested person can
823 request from the person who filed the notice of completion evidence establishing the validity of
824 the notice of completion.

825 (b) Within 10 days after the request described in Subsection (2)(a), the person who
826 filed the notice of completion shall provide the requesting person proof that the notice of
827 completion is valid.

828 (c) If the person that filed the notice of completion does not provide proof of the
829 validity of the notice of completion, that person shall immediately cancel the notice of
830 completion from the database in any manner prescribed by the division pursuant to rule.

831 (3) A person filing a notice of completion by alternate filing is responsible for verifying
832 and changing any incorrect information in the notice of completion before the expiration of the
833 time period during which the notice is required to be filed.

834 Section 19. Section **38-1-40** is amended to read:

835 **38-1-40. Notice of intent to obtain final completion.**

836 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project
837 that is registered with the database, or a contractor of a commercial nonresidential construction
838 project that is registered with the database under Section 38-1-33, shall file with the database a
839 notice of intent to obtain final completion as provided in this section if:

840 (a) the completion of performance time under the original contract for construction
841 service is greater than 120 days;

842 (b) the total original construction contract price exceeds \$500,000; and

843 (c) the contractor or owner has not obtained a payment bond in accordance with
844 Section 14-2-1.

845 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before
846 the day on which the owner or contractor of a commercial nonresidential construction project
847 files or could have filed a notice of completion under Section 38-1-33.

848 (3) A person supplying labor, materials, or services to an owner, a contractor, or
849 subcontractor who files a notice of intent in accordance with Subsection (1) shall file an
850 amendment to the person's preliminary notice previously filed by the person as required in
851 Section 38-1-32:

852 (a) that includes:

853 (i) a good faith estimate of the total amount remaining due to complete the contract,
854 purchase order, or agreement relating to the person's approved labor, approved materials, and
855 approved services;

856 (ii) the identification of each contractor or subcontractor with whom the person has a
857 contract or contracts for supplying project labor, materials, or services; and

858 (iii) a separate statement of all known amounts or categories of work in dispute; and

859 (b) no later than 20 days after the day on which the owner or contractor files a notice of
860 intent.

861 (4) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
862 with, or is exempt from, the provisions of Section 38-1-22, may demand a statement of
863 adequate assurance from the owner, contractor, or subcontractor with whom the person has
864 privity of contract no later than 10 days after the day on which the person files a balance
865 statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is
866 in privity of contract with the person.

867 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a
868 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,
869 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the

870 person filing for the adequate assurances or that will become due in order to complete a
871 construction project.

872 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver
873 copies of the demand to the owner and contractor:

874 (i) by hand delivery with a responsible party's acknowledgment of receipt;

875 (ii) by certified mail with a return receipt; or

876 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

877 (5) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
878 with, or is exempt from, the provisions of Section 38-1-32 may bring a legal action against a
879 party with whom the person is in privity of contract, including a request for injunctive or
880 declaratory relief, to determine the adequacy of an owner's, with whom the demanding person
881 contracted, contractor's, with whom the demanding person contracted, or subcontractor's, with
882 whom the demanding person contracted, funds if, after the person demands adequate assurance
883 in accordance with the requirements of this section:

884 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the
885 owner, contractor, or subcontractor has sufficient available funds, or access to financing or
886 other sufficient available funds, to pay for the completion of the demanding person's approved
887 work on the construction project; or

888 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access
889 to financing or other sufficient available funds, to pay for the completion of the demanding
890 person's approved work on the construction project.

891 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide
892 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,
893 contractor, or subcontractor to post adequate security with the court sufficient to assure timely
894 payment of the remaining contract balance for the approved work of the person seeking
895 adequate assurance, including:

896 (i) cash;

897 (ii) a bond;

898 (iii) an irrevocable letter of credit;
899 (iv) property;
900 (v) financing; or
901 (vi) another form of security approved by the court.

902 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the
903 person files a balance statement described in Subsection (3):

904 (i) that misrepresents the amount due under the contract; and
905 (ii) with the intent to:
906 (A) charge an owner, contractor, or subcontractor more than the actual amount due; or
907 (B) procure any other unfair advantage or benefit on the person's behalf.

908 (b) The civil penalty described in Subsection (6)(a) is the greater of:
909 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds
910 the amount actually remaining due under the contract for completion of construction; or
911 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

912 (7) A court shall award reasonable attorney fees to a prevailing party for an action
913 brought under this section.

914 (8) Failure to comply with the requirements established in this section does not affect
915 any other requirement or right under this chapter.

916 (9) A person who has not complied with, or is not exempt from, the provisions of
917 Section 38-1-32 may not be entitled to a right or a remedy provided in this section.

918 (10) This section does not create a cause of action against a person with whom the
919 demanding party is not in privity of contract.

920 Section 20. Section **76-6-524** is enacted to read:

921 **76-6-524. Falsifying information for preconstruction service lien purposes.**
922 A person who knowingly falsifies information for the purpose of obtaining priority of a
923 preconstruction service lien under Title 38, Chapter 1, Mechanics' Liens, is guilty of a class B
924 misdemeanor.