

Representative Mike K. McKell proposes the following substitute bill:

MECHANICS LIEN REVISIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions relating to unauthorized and excessive claims of preconstruction and construction liens.

Highlighted Provisions:

This bill:

- ▶ provides that a party to a claim for an excessive notice of preconstruction lien or an excessive notice of construction lien may submit that claim to binding arbitration;
- ▶ creates procedures to initiate, conduct, and appeal an arbitration proceeding to resolve a claim for an excessive notice of preconstruction lien or an excessive notice of construction lien;
- ▶ establishes an expedited procedure to nullify a preconstruction lien or a construction lien that is invalid because the lien claimant did not file a notice of preconstruction service or a preliminary service; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **38-1a-308**, as renumbered and amended by Laws of Utah 2012, Chapter 278

29 ENACTS:

30 **38-1a-805**, Utah Code Annotated 1953



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

32 Section 1. Section **38-1a-308** is amended to read:

33 **38-1a-308. Intentional submission of excessive lien notice -- Criminal and civil**
34 **liability.**

35 (1) As used in this section, "residential project" means a project on real property:

36 (a) for which preconstruction service or construction work is provided; and

37 (b) that consists of:

38 (i) one single-family residence; or

39 (ii) one multi-family residence that contains no more than four units.

40 ~~[(1)]~~ (2) A person is guilty of a class B misdemeanor if:

41 (a) the person intentionally submits for recording a notice of preconstruction lien or
42 notice of construction lien against any property containing a greater demand than the sum due;
43 and
44

45 (b) by submitting the notice, the person intends:

46 (i) to cloud the title;

47 (ii) to exact from the owner or person liable by means of the excessive notice of
48 preconstruction or construction lien more than is due; or

49 (iii) to procure any unjustified advantage or benefit.

50 ~~[(2)]~~ (3) (a) As used in this Subsection ~~[(2)]~~ (3), "third party" means an owner, original
51 contractor, or subcontractor.

52 (b) In addition to any criminal penalty under Subsection ~~[(1)]~~ (2), a person who
53 submits a notice of preconstruction lien or notice of construction lien as described in
54 Subsection ~~[(1)]~~ (2) is liable to a third party who is affected by the ~~[lien]~~ notice of
55 preconstruction lien or the notice of construction lien for twice the amount by which the
56 ~~[excessive]~~ lien notice exceeds the amount actually due or the actual damages incurred by the

57 owner, original contractor, or subcontractor, whichever is greater.

58 (4) A party to a claim described in Subsection (3)(b) may elect to submit the claim to
59 arbitration by filing a notice to submit the claim to binding arbitration in the district court in
60 which the claim was filed if:

61 (a) the notice of preconstruction lien, or the notice of construction lien, that is the
62 subject of the claim is:

63 (i) for a residential project; and

64 (ii) for \$50,000 or less;

65 (b) the claimant has previously and timely filed a complaint in a district court that
66 includes a claim described in Subsection (3)(b);

67 (c) the party files the notice to submit the claim to arbitration no more than 14 days
68 after the day on which an answer to the complaint is filed; and

69 (d) the notice to submit the claim to arbitration is filed while the claim is still pending.

70 (5) (a) A party who elects arbitration under this section may rescind the election in
71 accordance with Subsection (5)(b) if the rescission is made:

72 (i) within 90 days after the day on which the party files the notice to submit the claim
73 to arbitration; and

74 (ii) no less than 30 days before any scheduled arbitration hearing.

75 (b) To rescind an election to arbitrate under this Subsection (5), a party shall file a
76 notice of the rescission of the election to arbitrate with the district court in which the claim was
77 filed.

78 (c) All discovery completed in anticipation of the arbitration hearing shall be available
79 for use by the parties as allowed by the Utah Rules of Civil Procedure and the Utah Rules of
80 Evidence.

81 (d) A party who elects to arbitrate under this section and then rescinds the election to
82 arbitrate under this Subsection (5) may not elect to arbitrate the claim under this section again.

83 (6) If a party rescinds an election to arbitrate in accordance with Subsection (5),
84 another party to the claim may elect to submit the claim to arbitration by filing a notice to
85 submit the claim to binding arbitration with the district court in which the claim was filed if:

86 (a) the party did not previously submit and rescind an election to arbitrate under this
87 section;

88 (b) the notice to submit the claim to arbitration is filed no more than 14 days after the
89 day on which the notice of rescission of the election to arbitrate is filed by another party; and

90 (c) the notice to submit the claim to arbitration is filed while the claim is still pending.

91 (7) (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration
92 under this section shall be resolved by a single arbitrator.

93 (b) All parties shall agree on the single arbitrator described in Subsection (7)(a) within
94 60 days after the day on which an answer is filed.

95 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
96 (7)(b), the parties shall select a panel of three arbitrators.

97 (d) If the parties select a panel of three arbitrators under Subsection (7)(c):

98 (i) each side shall select one arbitrator; and

99 (ii) the arbitrators selected under Subsection (7)(d)(i) shall select one additional
100 arbitrator to be included in the panel.

101 (8) Unless otherwise agreed to in writing:

102 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
103 under Subsection (7)(b); or

104 (b) if an arbitration panel is selected under Subsection (7)(d):

105 (i) each party shall pay the fees and costs of that party's selected arbitrator; and

106 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
107 under Subsection (7)(d)(ii).

108 (9) Except as otherwise provided in this section or otherwise agreed to by the parties,
109 an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter
110 11, Utah Uniform Arbitration Act.

111 (10) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
112 the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

113 (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied
114 liberally with the intent of resolving the claim in a timely and cost-efficient manner.

115 (c) Subject to the provisions of this section, discovery shall be conducted in accordance
116 with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the
117 jurisdiction of the district court in which the claim is filed.

118 (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an

119 arbitration proceeding under this section shall be limited to the discovery available in a tier 1
120 case under Rule 26, of the Utah Rules of Civil Procedure.

121 (11) A written decision by a single arbitrator or by a majority of the arbitration panel
122 shall constitute a final decision.

123 (12) An arbitration award issued under this section shall be the final resolution of all
124 excessive notice claims described in Subsection (2) between the parties and may be reduced to
125 judgment by the court upon motion and notice unless:

126 (a) either party, within 20 days after the day on which the arbitration award is served,
127 files a notice requesting a trial de novo in the district court in which the claim was filed; or

128 (b) the arbitration award has been satisfied.

129 (13) Upon filing a notice requesting a trial de novo under Subsection (12):

130 (a) unless otherwise stipulated to by the parties or ordered by the court, the parties are
131 allowed an additional 60 days for discovery;

132 (b) the additional discovery time described in Subsection (13)(a)(i) shall run from the
133 day on which the notice requesting a trial de novo is filed; and

134 (c) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
135 Procedure and the Utah Rules of Evidence in the district court.

136 (14) If the plaintiff, as the moving party in a trial de novo requested under Subsection
137 (11), does not obtain a verdict that is at least 10% greater than the arbitration award, the
138 plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.

139 (15) If a defendant, as the moving party in a trial de novo requested under Subsection
140 (11), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant
141 is responsible for all of the nonmoving party's costs, including expert witness fees.

142 (16) If a district court determines, upon a motion of the nonmoving party, that the
143 moving party's use of the trial de novo process was filed in bad faith, as defined in Section
144 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

145 (17) All arbitration awards issued under this section shall bear postjudgment interest
146 pursuant to Section 15-1-4.

147 Section 2. Section **38-1a-805** is enacted to read:

148 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**
149 **construction lien -- Expedited proceeding.**

- 150 (1) An owner of an interest in a project property that is subject to a recorded
151 preconstruction lien or a recorded construction lien ~~H→ that is not cancelled or withdrawn ←H~~
151a may petition the district court in the county
152 in which the project property is located for summary relief to nullify the preconstruction lien or
153 the construction lien if the owner claims that the preconstruction lien or the construction lien is
154 invalid because:
- 155 (a) the lien claimant did not timely file a notice of preconstruction service under
156 Section [38-1a-401](#); or
- 157 (b) the lien claimant did not timely file a preliminary notice under Section [38-1a-501](#).
- 158 (2) A petition under Subsection (1) shall:
- 159 (a) state with specificity the claim that the lien claimant's preconstruction lien or the
160 lien claimant's construction lien is invalid because the lien claimant did not file a notice of
161 preconstruction service or a preliminary notice, as applicable;
- 162 (b) be supported by a sworn affidavit of the petitioner; and
- 163 (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure,
164 within three business days after the day on which the petitioner files the petition in the district
165 court.
- 166 (3) (a) If the court finds that a petition does not meet the requirements described in
167 Subsection (2), the court may dismiss the petition without a hearing.
- 168 (b) If the court finds that a petition meets the requirements described in Subsection (2),
169 the court shall schedule an expedited hearing to determine whether the preconstruction lien or
170 the construction lien is invalid because the lien claimant failed to file a notice of
171 preconstruction service or a preliminary notice, as applicable.
- 172 (4) (a) If the court grants a hearing, within three business days after the day on which
173 the court schedules the hearing ~~H→ and at least seven business days before the day on which the~~
173a hearing is scheduled ←H , the petitioner shall serve on the lien claimant, in accordance
174 with the Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of
175 the court's order granting the expedited hearing.
- 176 (b) The lien claimant may attend the hearing and contest the petition.
- 177 (5) An expedited proceeding under this section may only determine:
- 178 (a) whether the lien claimant filed a notice of preconstruction service or a preliminary
179 notice; and
- 180 (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary

181 notice, whether the lien claimant's preconstruction lien or construction lien is valid.

182 (6) (a) If, following a hearing, the court determines that the preconstruction lien or the
183 construction lien is invalid, the court shall issue an order that:

184 (i) contains a legal description of the property;

185 (ii) declares the preconstruction lien or the construction lien void ab initio;

186 (iii) releases the property from the lien; and

187 (iv) awards costs and reasonable attorney fees to the petitioner.

188 (b) The petitioner may submit a copy of an order issued under Subsection (6)(a) to the
189 county recorder for recording.

190 (7) (a) If, following a hearing, the court determines that the preconstruction lien or the
191 construction lien is valid, the court shall ~~it~~ :

191a (i) ~~it~~ dismiss the petition ~~it~~ ; ~~it~~ and ~~it~~ [may]

191b (ii) ~~it~~ award costs and
192 reasonable attorney fees to the lien claimant.

193 (b) The dismissal order shall contain a legal description of the property.

194 (c) The lien claimant may submit a copy of the dismissal order to the county recorder
195 for recording.

196 (8) If a petition under this section contains a claim for damages, the proceedings related
197 to the claim for damages may not be expedited under this section.