

## HB0056S01 compared with HB0056

~~{deleted text}~~ shows text that was in HB0056 but was deleted in HB0056S01.

inserted text shows text that was not in HB0056 but was inserted into HB0056S01.

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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: \_\_\_\_\_

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#### 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;
- ▶ ~~{provides that a wrongful lien includes:~~

~~—•~~ establishes an expedited procedure to nullify a preconstruction lien ~~{for~~

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~~which~~ or a construction lien that is invalid because the lien claimant did not file a notice of preconstruction service ~~{under Section 38-1a-401; and~~

~~— a construction lien for which the claimant did not file a preliminary notice under Section 38-1a-501; or a preliminary service; and~~

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

~~{ **38-9-1**, as last amended by Laws of Utah 2010, Chapter 381~~

~~— **38-9-2**, as last amended by Laws of Utah 2012, Chapter 278; ENACTS:~~

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

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

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

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

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

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

(b) that consists of:

(i) one single-family residence; or

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

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

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

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

(i) to cloud the title;

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

(iii) to procure any unjustified advantage or benefit.

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

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

~~(3)~~ A party to~~(4)~~ If the notice of preconstruction lien, or the notice of construction lien, that is the subject of a claim described in Subsection ~~(2)~~(3)~~(b)~~ is for a residential project, a party to the claim may elect to submit the claim to arbitration by filing a notice to submit the claim to binding arbitration with the district court in which the claim was filed if:

(a) the claimant has previously and timely filed a complaint in a district court that includes a claim described in Subsection ~~(2)~~(3)(b);

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

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

~~(4)~~(5) (a) A party who elects arbitration under this section may rescind the election in accordance with Subsection ~~(4)~~(5)(b) if the rescission is made:

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

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

(b) To rescind an election to arbitrate under this Subsection ~~(4)~~(5), a party shall file a notice of the rescission of the election to arbitrate with the district court in which the claim was filed.

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

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(d) A party who elects to arbitrate under this section and then rescinds the election to arbitrate under this Subsection (~~4~~5) may not elect to arbitrate the claim under this section again.

(~~5~~6) If a party rescinds an election to arbitrate in accordance with Subsection (~~4~~5), another party to the claim may elect to submit the claim to arbitration by filing a notice to submit the claim to binding arbitration with the district court in which the claim was filed if:

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

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

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

(~~6~~7) (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.

(b) All parties shall agree on the single arbitrator described in Subsection (~~6~~7)(a) within 60 days after the day on which an answer is filed.

(c) If the parties are unable to agree on a single arbitrator as required under Subsection (~~6~~7)(b), the parties shall select a panel of three arbitrators.

(d) If the parties select a panel of three arbitrators under Subsection (~~6~~7)(c):

(i) each side shall select one arbitrator; and

(ii) the arbitrators selected under Subsection (~~6~~7)(d)(i) shall select one additional arbitrator to be included in the panel.

(~~7~~8) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (~~6~~7)(b); or

(b) if an arbitration panel is selected under Subsection (~~6~~7)(d):

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

(ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (~~6~~7)(d)(ii).

(~~8~~9) Except as otherwise provided in this section or otherwise agreed to by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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(~~9~~10) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

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

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

(d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an arbitration proceeding under this section shall be limited to the discovery available in a tier 1 case under Rule 26, of the Utah Rules of Civil Procedure.

(~~10~~11) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(~~11~~12) An arbitration award issued under this section shall be the final resolution of all excessive notice claims described in Subsection (~~11~~2) between the parties and may be reduced to judgment by the court upon motion and notice unless:

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

(b) the arbitration award has been satisfied.

(~~12~~13) Upon filing a notice requesting a trial de novo under Subsection (~~11~~12):

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

(b) the additional discovery time described in Subsection (~~12~~13)(a)(i) shall run from the day on which the notice requesting a trial de novo is filed; and

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

(~~13~~14) If the plaintiff, as the moving party in a trial de novo requested under Subsection (11), does not obtain a verdict that is at least ~~30%~~10% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.

(~~14~~15) If a defendant, as the moving party in a trial de novo requested under Subsection (11), does not obtain a verdict that is at least ~~30%~~10% less than the arbitration

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award, the defendant is responsible for all of the nonmoving party's costs, including expert witness fees.

~~(15)~~16) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith, as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

~~(16)~~17) All arbitration awards issued under this section shall bear postjudgment interest pursuant to Section 15-1-4.

Section 2. Section ~~{38-9-1}~~38-1a-805 is ~~{amended}~~enacted to read:

### ~~{38-9-1. Definitions:~~

#### ~~As used in this chapter:~~

~~(1) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner:~~

~~(2) "Lien claimant" means a person claiming}~~38-1a-805. Failure to file notice -- Petition to nullify preconstruction or construction lien -- Expedited proceeding.

(1) An owner of an interest in {real}a project property {who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in [certain] real property:

~~(3) "Owner" means a person who has a vested ownership interest in certain real property:~~

~~(4) (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest in [certain] real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose name and interest in that real property appears in the county recorder's records for}~~that is subject to a recorded preconstruction lien or a recorded construction lien may petition the district court in the county in which the ~~{property is located.~~

~~(b) "Record interest holder" includes any grantor in the chain of the title in [certain] real property:~~

~~(5) "Record owner" means an owner whose name and ownership interest in certain real property is recorded or filed in the county recorder's records for the county in which the}~~project property is located{.

~~(6) (a) "Wrongful lien" means any document that purports to create a lien, notice of~~

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~~interest, or encumbrance on an owner's interest in certain real property and at the time it is recorded is not:~~

~~—— [(a)] (i) expressly authorized by this chapter or another state or federal statute;~~

~~—— [(b)] (ii) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or~~

~~—— [(c)] (iii) signed by or authorized pursuant to a document signed by the owner of the real property;~~

~~—— (b) "Wrongful lien" includes:~~

~~—— (i) a preconstruction lien for which the} for summary relief to nullify the preconstruction lien or the construction lien if the owner claims that the preconstruction lien or the construction lien is invalid because:~~

~~(a) the lien claimant did not timely file a notice of preconstruction service under Section 38-1a-401; ~~{and}or~~~~

~~~~{ii}b~~ ~~{a construction}the~~ lien~~{ for which the}~~ claimant did not timely file a preliminary notice under Section 38-1a-501.~~

~~{Section 3. Section **38-9-2** is amended to read:~~

~~—— **38-9-2. Scope:**~~

~~—— [(1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or after May 5, 1997.]~~

~~—— [(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.]~~

~~—— [(c)] (1) [Notwithstanding Subsections (1)(a) and (b), the provisions of this] This chapter [applicable to the filing of a notice of interest do] does not apply to a notice of interest filed before May 5, 2008.~~

~~—— (2) [The provisions of this chapter shall not prevent a person from filing] This chapter does not apply to a lis pendens recorded in accordance with Section 78B-6-1303 [or] and does not prevent a person from seeking any other relief permitted by law.~~

~~—— (3) This chapter does not apply to a person entitled to a} (2) A petition under Subsection (1) shall:~~

~~(a) state with specificity the claim that the lien claimant's preconstruction loan or the~~

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claimant's construction lien ~~{[under], as described in Section 38-1a-301, who:~~

~~— (a) (i) files;~~ is invalid because the lien claimant did not file a notice of preconstruction service ~~{under Section 38-1a-401; } or {~~

~~— (ii) files;~~ a preliminary notice ~~{ under Section 38-1a-501; and~~

~~— (b) [files] records a lien [pursuant to] that corresponds to a notice}, as applicable; and~~

(b) be supported by a sworn affidavit of the petitioner.

(3) (a) If the court finds that a petition does not meet the requirements described in Subsection (~~{3}(a)(i) or (ii)}~~2), the court may dismiss the petition without a hearing.

(b) If the court finds that a petition meets the requirements described in Subsection (2), the court shall schedule an expedited hearing to determine whether the preconstruction lien or the construction lien is invalid because the lien claimant failed to file a notice of preconstruction service or a preliminary notice, as applicable.

(4) (a) If the court grants a hearing, within three days after the day on which the court schedules the hearing, the petitioner shall serve on the lien claimant, in accordance with ~~{ Title 38, Chapter 1a, Preconstruction and Construction Liens;~~

### Legislative Review Note

~~— as of 12-30-13 1:20 PM~~

~~Office of Legislative Research and General Counsel;~~ the Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's order granting the expedited hearing.

(b) The lien claimant may attend the hearing and contest the petition.

(5) An expedited proceeding under this section may only determine:

(a) whether the lien claimant filed a notice of preconstruction service or a preliminary notice; and

(b) if the lien claimant failed to file a notice of preconstruction service or a preliminary notice, whether the lien claimant's preconstruction lien or construction lien is valid.



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

(i) contains a legal description of the property;

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

(iii) releases the property from the lien; and

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

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

(7) (a) If, following a hearing, the court determines that the preconstruction lien or the construction lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney fees to the lien claimant.

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

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

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