

**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:
  - a preconstruction lien for which the 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; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **38-1a-308**, as renumbered and amended by Laws of Utah 2012, Chapter 278

31 **38-9-1**, as last amended by Laws of Utah 2010, Chapter 381

32 **38-9-2**, as last amended by Laws of Utah 2012, Chapter 278



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

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

36 **38-1a-308. Intentional submission of excessive lien notice -- Criminal and civil**  
37 **liability.**

38 (1) A person is guilty of a class B misdemeanor if:

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

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

43 (i) to cloud the title;

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

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

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

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

55 (3) A party to a claim described in Subsection (2)(b) may elect to submit the claim to  
56 arbitration by filing a notice to submit the claim to binding arbitration with the district court in  
57 which the claim was filed if:

58 (a) the claimant has previously and timely filed a complaint in a district court that

59 includes a claim described in Subsection (2)(b);

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (b) All parties shall agree on the single arbitrator described in Subsection (6)(a) within  
87 60 days after the day on which an answer is filed.

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

90 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):  
91 (i) each side shall select one arbitrator; and  
92 (ii) the arbitrators selected under Subsection (6)(d)(i) shall select one additional  
93 arbitrator to be included in the panel.  
94 (7) Unless otherwise agreed to in writing:  
95 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected  
96 under Subsection (6)(b); or  
97 (b) if an arbitration panel is selected under Subsection (6)(d):  
98 (i) each party shall pay the fees and costs of that party's selected arbitrator; and  
99 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected  
100 under Subsection (6)(d)(ii).  
101 (8) Except as otherwise provided in this section or otherwise agreed to by the parties,  
102 an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter  
103 11, Utah Uniform Arbitration Act.  
104 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and  
105 the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.  
106 (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied  
107 liberally with the intent of resolving the claim in a timely and cost-efficient manner.  
108 (c) Subject to the provisions of this section, discovery shall be conducted in accordance  
109 with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the  
110 jurisdiction of the district court in which the claim is filed.  
111 (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an  
112 arbitration proceeding under this section shall be limited to the discovery available in a tier 1  
113 case under Rule 26, of the Utah Rules of Civil Procedure.  
114 (10) A written decision by a single arbitrator or by a majority of the arbitration panel  
115 shall constitute a final decision.  
116 (11) An arbitration award issued under this section shall be the final resolution of all  
117 excessive notice claims described in Subsection (1) between the parties and may be reduced to  
118 judgment by the court upon motion and notice unless:  
119 (a) either party, within 20 days after the day on which the arbitration award is served,  
120 files a notice requesting a trial de novo in the district court in which the claim was filed; or

121 (b) the arbitration award has been satisfied.

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

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

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

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

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

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

135 (15) If a district court determines, upon a motion of the nonmoving party, that the  
136 moving party's use of the trial de novo process was filed in bad faith, as defined in Section  
137 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

140 Section 2. Section 38-9-1 is amended to read:

141 **38-9-1. Definitions.**

142 As used in this chapter:

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

146 (2) "Lien claimant" means a person claiming an interest in real property who offers a  
147 document for recording or filing with any county recorder in the state asserting a lien, or notice  
148 of interest, or other claim of interest in [certain] real property.

149 (3) "Owner" means a person who has a vested ownership interest in certain real  
150 property.

151 (4) (a) "Record interest holder" means a person who holds or possesses a present,

152 lawful property interest in [certain] real property, including an owner, titleholder, mortgagee,  
153 trustee, or beneficial owner, and whose name and interest in that real property appears in the  
154 county recorder's records for the county in which the property is located.

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

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

160 (6) (a) "Wrongful lien" means any document that purports to create a lien, notice of  
161 interest, or encumbrance on an owner's interest in certain real property and at the time it is  
162 recorded is not:

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

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

166 [(c)] (iii) signed by or authorized pursuant to a document signed by the owner of the  
167 real property.

168 (b) "Wrongful lien" includes:

169 (i) a preconstruction lien for which the claimant did not file a notice of preconstruction  
170 service under Section 38-1a-401; and

171 (ii) a construction lien for which the claimant did not file a preliminary notice under  
172 Section 38-1a-501.

173 Section 3. Section 38-9-2 is amended to read:

174 **38-9-2. Scope.**

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

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

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

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

186 (3) This chapter does not apply to a person entitled to a preconstruction or construction  
187 lien ~~[under]~~, as described in Section 38-1a-301, who:

188 (a) (i) files a notice of preconstruction service under Section 38-1a-401; or

189 (ii) files a preliminary notice under Section 38-1a-501; and

190 (b) ~~[files]~~ records a lien ~~[pursuant to]~~ that corresponds to a notice described in  
191 Subsection (3)(a)(i) or (ii), in accordance with Title 38, Chapter 1a, Preconstruction and  
192 Construction Liens.

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**Legislative Review Note**  
**as of 12-30-13 1:20 PM**

**Office of Legislative Research and General Counsel**