

**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;
- ▶ 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



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

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

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

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

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

38 (b) that consists of:

39 (i) one single-family residence; or

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

41 ~~[(1)]~~ (2) A person is guilty of a class B misdemeanor if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (b) All parties shall agree on the single arbitrator described in Subsection (7)(a) within  
91 60 days after the day on which an answer is filed.

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

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

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

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

98 (8) Unless otherwise agreed to in writing:

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

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

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

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

105 (9) Except as otherwise provided in this section or otherwise agreed to by the parties,  
106 an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter  
107 11, Utah Uniform Arbitration Act.

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

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

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

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

118 (11) A written decision by a single arbitrator or by a majority of the arbitration panel

119 shall constitute a final decision.

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

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

125 (b) the arbitration award has been satisfied.

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

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

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

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

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

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

139 (16) If a district court determines, upon a motion of the nonmoving party, that the  
140 moving party's use of the trial de novo process was filed in bad faith, as defined in Section  
141 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

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

145 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**  
146 **construction lien -- Expedited proceeding.**

147 (1) An owner of an interest in a project property that is subject to a recorded  
148 preconstruction lien or a recorded construction lien may petition the district court in the county  
149 in which the project property is located for summary relief to nullify the preconstruction lien or

150 the construction lien if the owner claims that the preconstruction lien or the construction lien is  
151 invalid because:

152 (a) the lien claimant did not timely file a notice of preconstruction service under  
153 Section 38-1a-401; or

154 (b) the lien claimant did not timely file a preliminary notice under Section 38-1a-501.

155 (2) A petition under Subsection (1) shall:

156 (a) state with specificity the claim that the lien claimant's preconstruction loan or the  
157 claimant's construction lien is invalid because the lien claimant did not file a notice of  
158 preconstruction service or a preliminary notice, as applicable; and

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

160 (3) (a) If the court finds that a petition does not meet the requirements described in  
161 Subsection (2), the court may dismiss the petition without a hearing.

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

166 (4) (a) If the court grants a hearing, within three days after the day on which the court  
167 schedules the hearing, the petitioner shall serve on the lien claimant, in accordance with the  
168 Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's  
169 order granting the expedited hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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