

PENALTY FOR WRONGFUL MECHANICS'

LIEN

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

This act modifies the Mechanics' Lien Code and Utah Construction Trades Licensing Act.

The act provides for civil penalties for filing a mechanics' lien in an amount greater than the actual sum due. The act provides for action against a construction trades license held by a person or entity filing a wrongful mechanics' lien.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

38-1-25, as last amended by Chapter 125, Laws of Utah 1997

58-55-501, as last amended by Chapters 233 and 317, Laws of Utah 2000

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

Section 1. Section **38-1-25** is amended to read:

38-1-25. Abuse of lien right -- Penalty.

(1) Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed:

~~(1)~~ (a) with the intent to cloud the title;

~~(2)~~ (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

~~(3)~~ (c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property **§ OR AN ORIGINAL CONTRACTOR OR SUBCONTRACTOR WHO IS AFFECTED BY THE LIEN** § for the greater of:

(a) twice the amount **§ [-of] BY WHICH § the wrongful lien § EXCEEDS THE AMOUNT ACTUALLY DUE;** § or

(b) the actual damages incurred by the owner of the property.



28 Section 2. Section **58-55-501** is amended to read:

29 **58-55-501. Unlawful conduct.**

30 Unlawful conduct includes:

31 (1) engaging in a construction trade, acting as a contractor, an alarm business or company,
32 or an alarm company agent, or representing oneself to be engaged in a construction trade or to be
33 acting as a contractor in a construction trade requiring licensure, unless the person doing any of
34 these is appropriately licensed or exempted from licensure under this chapter;

35 (2) acting in a construction trade, as an alarm business or company, or as an alarm
36 company agent beyond the scope of the license held;

37 (3) hiring or employing in any manner an unlicensed person, other than an employee for
38 wages who is not required to be licensed under this chapter, to engage in a construction trade for
39 which licensure is required or to act as a contractor or subcontractor in a construction trade
40 requiring licensure;

41 (4) applying for or obtaining a building permit either for oneself or another when not
42 licensed or exempted from licensure as a contractor under this chapter;

43 (5) issuing a building permit to any person for whom there is no evidence of a current
44 license or exemption from licensure as a contractor under this chapter;

45 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
46 person who is required to be licensed under this chapter but who is not licensed or is otherwise not
47 entitled to obtain or receive the benefit of the building permit;

48 (7) failing to obtain a building permit when required by law or rule;

49 (8) submitting a bid for any work for which a license is required under this chapter by a
50 person not licensed or exempted from licensure as a contractor under this chapter;

51 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
52 an application to obtain or renew a license under this chapter;

53 (10) allowing one's license to be used by another except as provided by statute or rule;

54 (11) doing business under a name other than the name appearing on the license, except as
55 permitted by statute or rule;

56 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
57 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
58 or residential electrician, failing to directly supervise an apprentice under one's supervision or

59 exceeding the number of apprentices one is allowed to have under his supervision;

60 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
61 funds in payment for a specific project from an owner or any other person, which funds are to pay
62 for work performed or materials and services furnished for that specific project, and after receiving
63 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and
64 payable to persons who performed work or furnished materials or services within a reasonable
65 period of time;

66 (14) employing as an alarm company an unlicensed individual as an alarm company agent,
67 except as permitted under the exemption from licensure provisions under Section 58-1-307;

68 (15) if licensed as an alarm company or alarm company agent, filing with the division
69 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false
70 or fraudulent and intended to mislead the division in its consideration of the applicant for
71 licensure;

72 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

- 73 (a) the building or construction laws of this state or any political subdivision;
- 74 (b) the safety and labor laws applicable to a project;
- 75 (c) any provision of the health laws applicable to a project;
- 76 (d) the workers' compensation insurance laws of the state applicable to a project;
- 77 (e) the laws governing withholdings for employee state and federal income taxes,
78 unemployment taxes, FICA, or other required withholdings; or

79 (f) reporting, notification, and filing laws of this state or the federal government;

80 (17) aiding or abetting any person in evading the provisions of this chapter or rules
81 established under the authority of the division to govern this chapter; [~~or~~]

82 (18) engaging in the construction trade or as a contractor for the construction of residences
83 of up to two units when not currently registered or exempt from registration as a qualified
84 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[-];

85 or

86 (19) wrongfully filing a mechanics' lien in violation of Section 38-1-25.

Legislative Review Note
as of 1-19-01 8:31 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel