

Representative Michael T. Morley proposes the following substitute bill:

ELECTRONIC FILING OF PRELIMINARY

LIEN DOCUMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the Mechanics' Lien statute and enacts provisions for on-line filing of notices of commencement, preliminary notices, and notices of completion.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Occupational and Professional Licensing to contract for the creation and maintenance of a construction notice registry;
- ▶ requires the notice registry to be accessible for filing and reviewing notices of commencement, preliminary notices, and notices of completion;
- ▶ provides for alternative filing;
- ▶ requires that electronic notification and hard-copy printing of electronic receipts be provided;
- ▶ requires the division to establish by rule the fees for filing;
- ▶ creates time requirements for filing notices;
- ▶ requires the assignment to each construction project a unique project number which identifies each construction project;
- ▶ provides requirements for the content of a notice of commencement;
- ▶ provides penalties for failure to file in a timely manner;



- 26 ▶ creates requirements for filing a notice of completion; and
- 27 ▶ requires a sunset review by July 1, 2008.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a severability clause.

32 This bill takes effect on May 1, 2005.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **14-1-20**, as enacted by Chapter 271, Laws of Utah 1989

36 **14-2-5**, as enacted by Chapter 271, Laws of Utah 1989

37 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999

38 **63-56-38.1**, as enacted by Chapter 271, Laws of Utah 1989

39 ENACTS:

40 **38-1-30**, Utah Code Annotated 1953

41 **38-1-31**, Utah Code Annotated 1953

42 **38-1-32**, Utah Code Annotated 1953

43 **38-1-33**, Utah Code Annotated 1953

44 **38-1-34**, Utah Code Annotated 1953

45 **38-1-35**, Utah Code Annotated 1953

46 **38-1-36**, Utah Code Annotated 1953

47 **63-55-238**, Utah Code Annotated 1953

48 REPEALS AND REENACTS:

49 **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001



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

52 Section 1. Section **14-1-20** is amended to read:

53 **14-1-20. Preliminary notice requirement.**

54 Except [~~persons who are in privity of contract with a payment bond principal or except~~]
55 for persons performing labor for wages, any person furnishing labor, service, equipment, or
56 material for which a payment bond claim may be made under this chapter shall provide

57 preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by Section
58 38-1-27. Any person who fails to provide this preliminary notice may not make a payment
59 bond claim under this chapter. The preliminary notice must be provided prior to
60 commencement of any action on the payment bond.

61 Section 2. Section **14-2-5** is amended to read:

62 **14-2-5. Preliminary notice requirement.**

63 Except [~~subcontractors who are in privity of contract with a payment bond principal or~~
64 ~~except~~] for persons performing labor for wages, any person furnishing labor, service,
65 equipment, or material for which a payment bond claim may be made under this chapter shall
66 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
67 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
68 payment bond claim under this chapter. The preliminary notice must be provided prior to
69 commencement of any action on the payment bond.

70 Section 3. Section **38-1-7** is amended to read:

71 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

72 (1) [~~A~~] Except as modified in Section 38-1-27, a person claiming benefits under this
73 chapter shall file for record with the county recorder of the county in which the property, or
74 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
75 from the date:

76 (a) the person last performed labor or service or last furnished equipment or material
77 on a project or improvement for a residence as defined in Section 38-11-102; or

78 (b) of final completion of an original contract not involving a residence as defined in
79 Section 38-11-102.

80 (2) The notice required by Subsection (1) shall contain a statement setting forth:

81 (a) the name of the reputed owner if known or, if not known, the name of the record
82 owner;

83 (b) the name of the person by whom the lien claimant was employed or to whom the
84 lien claimant furnished the equipment or material;

85 (c) the time when the first and last labor or service was performed or the first and last
86 equipment or material was furnished;

87 (d) a description of the property, sufficient for identification;

- 88 (e) the name, current address, and current phone number of the lien claimant;
- 89 (f) the signature of the lien claimant or the lien claimant's authorized agent;
- 90 (g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
91 of Documents; and
- 92 (h) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
93 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
94 a lien claimant to remove the lien in accordance with Section 38-11-107.
- 95 (3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required
96 for any notice filed after April 29, 1985, and before April 24, 1989.
- 97 (4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
98 mail by certified mail a copy of the notice of lien to:
- 99 (i) the reputed owner of the real property; or
- 100 (ii) the record owner of the real property.
- 101 (b) If the record owner's current address is not readily available to the lien claimant, the
102 copy of the claim may be mailed to the last-known address of the record owner, using the
103 names and addresses appearing on the last completed real property assessment rolls of the
104 county where the affected property is located.
- 105 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
106 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
107 owner or record owner in an action to enforce the lien.
- 108 (5) The Division of Occupational and Professional Licensing shall make rules
109 governing the form of the statement required under Subsection (2)(h).
- 110 Section 4. Section **38-1-27** is repealed and reenacted to read:
- 111 **38-1-27. Construction notice registry -- Form and contents of notice of**
112 **commencement, preliminary notice, and notice of completion.**
- 113 (1) As used in this section and Sections 38-1-30 through 38-1-35:
- 114 (a) "Database" means the Construction Notice Registry Database created in this
115 section.
- 116 (b) "Designated agent" means the third party the Division of Occupational and
117 Professional Licensing contracts with to create and maintain the Construction Notice Registry
118 Database. The designated agent is not an agency, instrumentality, or a political subdivision of

119 the state.

120 (c) "Division" means the Division of Occupational and Professional Licensing.

121 (d) "Program" means the Construction Notice Registry Database Program created in
122 this section.

123 (2) Subject to receiving adequate funding through a legislative appropriation and
124 contracting with an approved third party vendor who meets the requirements of Sections
125 38-1-30 through 38-1-35, there is created the Construction Notice Registry Database Program
126 which shall:

127 (a) assist in protecting public health, safety, and welfare and promote a fair working
128 environment;

129 (b) be overseen by the Division of Occupational and Professional Licensing with the
130 assistance of the designated agent;

131 (c) provide a central repository for notices of commencement, preliminary notices, and
132 notices of completion filed in connection with all privately owned construction projects as well
133 as all state and local government owned construction projects throughout Utah;

134 (d) be accessible for filing and review of notices of commencement, preliminary
135 notices, and notices of completion via the program Internet website;

136 (e) accommodate electronic filing of such notices as well as provide for alternate filing
137 by U.S. mail, telefax, telephone, or any other alternate method as provided by rule
138 promulgated by the division;

139 (f) provide electronic notification for up to three e-mail addresses for each interested
140 person or company who requests notice from the construction notice registry as well as provide
141 alternate means of notification for those persons who make alternate filings, including U.S.
142 mail, telefax, or any other method as prescribed by rule promulgated by the division; and

143 (g) provide hard-copy printing of electronic receipts for individual filings evidencing
144 the date and time of individual filings as well as the content of individual filings.

145 (3) Persons interested in a construction project may request notice of filings related to
146 the project. The registry shall be indexed by owner name, original contractor name, project
147 name, project address, parcel number, project number, and any other identifier that the division
148 considers reasonably appropriate and established by rule.

149 (4) The division shall establish by rule the filing fees for notices of commencement,

150 preliminary notices, notices of completion, and requests for notice, which fees shall not exceed
151 the amount reasonably necessary to create and maintain the construction notice registry. The
152 fees established by the division may vary by method of filing if one form of filing is more
153 costly than other forms of filing.

154 Section 5. Section **38-1-30** is enacted to read:

155 **38-1-30. Third party contract -- Designated agent.**

156 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah
157 Procurement Code, with a third party to establish and maintain the database for the purposes
158 established under this part.

159 (2) The third party under contract under this section is the division's designated agent,
160 and shall develop and maintain a database from the information provided by local government
161 entities issuing building permits, original contractors, subcontractors, and other interested
162 persons. The division and the designated agent shall design, develop, and test the database for
163 full implementation on May 1, 2005.

164 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
165 division shall make rules and develop procedures for the division to oversee and enforce this
166 part and for the third party agent to administer this part.

167 (4) (a) The designated agent shall archive computer data files at least semiannually for
168 auditing purposes. The division shall make rules to allow the designated agent, unless
169 requested otherwise by an interested party for a particular project, to periodically archive and
170 purge completed or inactive projects from the database:

171 (i) no earlier than one year after a notice of commencement is filed for a particular
172 project; or

173 (ii) if no notice of commencement is filed, no earlier than two years after the last filing
174 activity for a particular project.

175 (b) The division may audit the designated agent's administration of the database as
176 often as it considers necessary.

177 (5) The designated agent shall carry errors and omissions insurance in the amounts
178 established by rule by the division.

179 Section 6. Section **38-1-31** is enacted to read:

180 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**

181 **commencement of work.**

182 (1) (a) For construction projects where a building permit is issued, within ten days after
183 the issuance of such permit, the local government entity issuing that permit shall input the data
184 and electronically transmit the permit information to the construction notice registry via the
185 Internet or computer modem and such information shall form the basis of a notice of
186 commencement.

187 (b) For construction projects where a building permit is not issued, within 15 days after
188 commencement of physical construction work at the project site, the original contractor shall
189 file a notice of commencement with the construction notice registry.

190 (c) An owner of construction, a lender, surety, or other interested party may file a
191 notice of commencement with the designated agent within the prescribed time set forth in
192 Subsection (1)(a).

193 (d) If duplicate notices of commencement are filed, they shall be combined into one
194 notice for each project. The designated agent shall assign each construction project a unique
195 project number which identifies each construction project and can be associated with all
196 notices of commencement, preliminary notices, and notices of completion.

197 (e) A notice of commencement is effective as to all work, materials, and equipment
198 furnished to the construction project after the filing of the notice of commencement. A notice
199 of commencement is effective only as to the work, materials, or equipment furnished to the
200 construction project provided subsequent to the filing of the notice of commencement.

201 (2) The content of a notice of commencement shall include the following if available
202 on a building permit:

203 (a) the name and address of the owner of the project or improvement;

204 (b) the name and address of the:

205 (i) original contractor;

206 (ii) surety providing any payment bond for the project or improvement, or if none
207 exists, a statement that a payment bond was not required for the work being performed; and

208 (iii) project address if the project can be reasonably identified by an address or the
209 name and general description of the location of the project if the project cannot be reasonably
210 identified by an address;

211 (c) a general description of the project;

212 (d) the parcel number of the real property upon which the project is to be constructed if
213 the project is subject to mechanics' liens; and

214 (e) a legal description of the property on which the project is located if the project is
215 subject to mechanics' liens.

216 (3) Failure to file any notice of commencement for a construction project suspends the
217 operation of the preliminary notice provisions and notice of completion provisions set forth
218 below.

219 (4) Electronic notice of the filing of a notice of commencement or alternate notice as
220 prescribed in Subsection (1), shall be provided to all persons who have filed notices of
221 commencement for the project and to all interested parties who have requested such notice for
222 the project.

223 (5) The burden is upon any person seeking to enforce the notice of commencement to
224 prove that the notice of commencement is filed timely and meets all of the requirements herein.

225 (6) At the time a building permit is obtained, each original contractor shall
226 conspicuously post at the project site a copy of each building permit obtained for the project
227 improvement.

228 Section 7. Section **38-1-32** is enacted to read:

229 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

230 (1) (a) Within 20 days after commencement of its own work or the commencement of
231 furnishing materials or equipment to a construction project, a subcontractor or supplier shall
232 file a preliminary notice with the construction notice registry. A preliminary notice filed within
233 the 20-day period is effective as to all work, materials, and equipment furnished to the
234 construction project.

235 (b) If a subcontractor or supplier files a preliminary notice after the 20-day period
236 prescribed above, the preliminary notice becomes effective as of the preliminary notice.

237 (c) Failure to file a preliminary notice within the 20-day period as prescribed above
238 precludes a subcontractor or supplier from filing any claim for compensation earned for
239 performance of work or supply of materials or equipment furnished to the construction project
240 before the expiration of five days after the filing of a preliminary notice, except as against the
241 person with whom the subcontractor or supplier contracted.

242 (d) The preliminary notice must be filed before a notice of lien is filed with the county

243 recorder pursuant to Section 38-1-7. The content of a preliminary notice shall include the
244 following:

245 (i) the name, address, and telephone number of the person furnishing the labor, service,
246 equipment, or material;

247 (ii) the name and address of the person who contracted with the claimant for the
248 furnishing of the labor, service, equipment, or material;

249 (iii) the name of the record or reputed owner of the project or improvement; and

250 (iv) the address of the project or improvement or a description of the location of the
251 project or improvement.

252 (2) (a) Electronic notification of the filing of a preliminary notice or alternate notice as
253 prescribed in Subsection (1), shall be provided to the person filing the preliminary notice, to
254 each person that filed a notice of commencement for the project, and to all interested parties
255 who have requested such notice for the project.

256 (b) The burden is upon the person filing the preliminary notice to prove that the
257 preliminary notice is filed timely and substantially meets all of the requirements herein.

258 (c) Subject to Subsection (2)(d), a person required by this section to give preliminary
259 notice is only required to give one notice for each project or improvement, which may include
260 an entire structure of a scheme of improvements.

261 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
262 more than one original contract, the notice requirements must be met with respect to the labor,
263 service, equipment, or materials furnished under each original contract. If the labor, service,
264 equipment, or material is furnished pursuant to more than one subcontract under one original
265 contract, the subcontractor or supplier shall identify all persons to whom the labor, service,
266 equipment, or material is furnished who are known at the time the preliminary notice is filed.

267 (3) (a) If a construction project owner, original contractor, subcontractor, or other
268 interested person believes that a preliminary notice has been filed erroneously, that owner,
269 original contractor, subcontractor, or other interested person can request evidence establishing
270 the validity of the preliminary notice.

271 (b) Within ten days after the request, the person or entity that filed the preliminary
272 notice shall provide the requesting person or entity proof that the preliminary notice is valid.

273 (c) If the person or entity that filed the preliminary notice cannot provide proof of the

274 validity of the preliminary notice, that person or entity shall immediately remove the
275 preliminary notice from the construction notice registry.

276 Section 8. Section **38-1-33** is enacted to read:

277 **38-1-33. Notice of completion.**

278 (1) (a) Upon final completion of a construction project, an owner of a construction
279 project, an original contractor, a lender that has provided financing for the construction project,
280 or surety that has provided bonding for the construction project, may file a notice of completion
281 with the construction notice registry. Final completion, for purposes of this Subsection (1),
282 shall mean:

283 (i) if as a result of work performed under the original contract a permanent certificate
284 of occupancy is required for such work, the date of issuance of a permanent certificate of
285 occupancy by the local government entity having jurisdiction over the construction project;

286 (ii) if no certificate of occupancy is required by the local government entity having
287 jurisdiction over the construction project, but as a result of the work performed under the
288 original contract an inspection is required for such work, the date of the final inspection for
289 such work by the local government entity having jurisdiction over the construction project; or

290 (iii) if with regard to the work performed under the original contract no certificate of
291 occupancy and no final inspection are required by the local government entity having
292 jurisdiction over the construction project, the date on which there remains no substantial work
293 to be completed to finish such work on the original contract.

294 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work
295 after the applicable dates established by Subsections (1)(a)(i) and (ii), that subcontractor's
296 subcontract shall be considered an original contract for the sole purpose of determining:

297 (i) the subcontractor's time frame to file a notice to hold and claim a lien under
298 Subsection 38-1-7(1); and

299 (ii) the original contractor's time frame to file a notice to hold and claim a lien under
300 Subsection 38-1-7(1) for that subcontractor's work.

301 (c) For purposes of this section, the term "substantial work" does not include:

302 (i) repair work;

303 (ii) warranty work; or

304 (iii) work for which the project owner is not holding payment to ensure completion of

305 that work.

306 (d) Electronic notification of the filing of a notice of completion or alternate notice as
307 prescribed in Subsection (1)(a), shall be provided to each person that filed a notice of
308 commencement for the project, to each person that filed preliminary notice for the project, and
309 to all interested parties who have requested notice for the project. Upon the filing of a notice of
310 completion, the time periods for filing preliminary notices stated in Section 38-1-27 are
311 modified such that all preliminary notices shall be filed subsequent to the notice of completion
312 and shall be filed within ten days from the date the notice of completion is filed.

313 (2) (a) If a construction project owner, original contractor, subcontractor, or other
314 interested person believes that a notice of completion has been filed erroneously, that owner,
315 original contractor, subcontractor, or other interested person can request evidence establishing
316 the validity of the notice of completion.

317 (b) Within ten days after the request, the person or entity that filed the notice of
318 completion shall provide the requesting person or entity proof that the notice of completion is
319 valid.

320 (c) If the person or entity that filed the notice of completion cannot provide proof of the
321 validity of the notice of completion, that person or entity shall immediately remove the notice
322 of completion from the construction notice registry.

323 (3) The provisions of this section which amend the dates in Section 38-1-27 shall
324 become effective for construction projects commenced on or after May 1, 2005. The previous
325 Section 38-1-27 shall apply to all construction projects commenced prior to May 1, 2005,
326 according to its terms.

327 (4) The provisions of this section requiring the division to contract with the designated
328 agent and those which relate to the design, development, and testing of the database shall be
329 effective as of the date signed by the governor. The remaining provisions of this section shall
330 become effective on May 1, 2005.

331 Section 9. Section **38-1-34** is enacted to read:

332 **38-1-34. Abuse of construction notice registry -- Penalty.**

333 (1) A person abuses the construction notice registry if that person records a notice in
334 the construction notice registry:

335 (a) without a good faith basis for doing so;

336 (b) with the intent to exact more than is due from the project owner or any other
337 interested party; or

338 (c) to procure an unjustified advantage or benefit.

339 (2) A person who violates Subsection (1) is liable to the owner of the construction
340 project, an original contractor, a subcontractor, or any interested party who is affected by the
341 notice for twice the amount of the actual damages incurred by such party or \$2,000, whichever
342 is greater.

343 Section 10. Section **38-1-35** is enacted to read:

344 **38-1-35. State not liable.**

345 The state and the state's agencies, instrumentalities, and political subdivisions are not
346 liable for any errors in receiving, recording, maintaining, and reporting any notices or
347 information in the construction notice registry.

348 Section 11. Section **38-1-36** is enacted to read:

349 **38-1-36. Construction notice does not impart notice.**

350 The filing of a document in the construction notice registry is not intended to impart
351 notice to all persons of the content of the document within the meaning of Section 57-3-102
352 and shall not constitute constructive notice of matters relating to real property to purchasers for
353 value and without knowledge.

354 Section 12. Section **63-55-238** is enacted to read:

355 **63-55-238. Repeal dates, Title 38.**

356 Section 38-1-27 and Sections 38-1-30 through 38-1-36, dealing with the electronic
357 filing of preliminary lien documents, are repealed July 1, 2008.

358 Section 13. Section **63-56-38.1** is amended to read:

359 **63-56-38.1. Preliminary notice requirement.**

360 Except [~~subcontractors who are in privity of contract with a payment bond principal or~~
361 ~~except~~] for persons performing labor for wages, any person furnishing labor, service,
362 equipment, or material for which a payment bond claim may be made under this chapter shall
363 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
364 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
365 payment bond claim under this chapter. The preliminary notice must be provided prior to
366 commencement of any action on the payment bond.

367 Section 14. **Severability clause.**

368 If any provision of this chapter is held invalid or unconstitutional by a court of
369 competent jurisdiction, the invalidity shall not affect the other provisions of this chapter which
370 can be given effect without the invalid or unconstitutional provision.

371 Section 15. **Effective date.**

372 This bill takes effect on May 1, 2005.