

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; and



26 ▶ creates requirements for filing a notice of completion.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a severability clause.

31 This bill takes effect on May 1, 2005.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **14-1-20**, as enacted by Chapter 271, Laws of Utah 1989

35 **14-2-5**, as enacted by Chapter 271, Laws of Utah 1989

36 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999

37 **63-56-38.1**, as enacted by Chapter 271, Laws of Utah 1989

38 ENACTS:

39 **38-1-30**, Utah Code Annotated 1953

40 **38-1-31**, Utah Code Annotated 1953

41 **38-1-32**, Utah Code Annotated 1953

42 **38-1-33**, Utah Code Annotated 1953

43 **38-1-34**, Utah Code Annotated 1953

44 **38-1-35**, Utah Code Annotated 1953

45 **38-1-36**, Utah Code Annotated 1953

46 REPEALS AND REENACTS:

47 **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001



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

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

51 **14-1-20. Preliminary notice requirement.**

52 Except [~~persons who are in privity of contract with a payment bond principal or except~~]

53 for persons performing labor for wages, any person furnishing labor, service, equipment, or

54 material for which a payment bond claim may be made under this chapter shall provide

55 preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by Section

56 38-1-27. Any person who fails to provide this preliminary notice may not make a payment

57 bond claim under this chapter. The preliminary notice must be provided prior to
58 commencement of any action on the payment bond.

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

60 **14-2-5. Preliminary notice requirement.**

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

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

69 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

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

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

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

79 (a) the name of the reputed owner if known or, if not known, the name of the record
80 owner;

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

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

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

86 (e) the name, current address, and current phone number of the lien claimant;

87 (f) the signature of the lien claimant or the lien claimant's authorized agent;

88 (g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
89 of Documents; and

90 (h) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
91 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
92 a lien claimant to remove the lien in accordance with Section 38-11-107.

93 (3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required
94 for any notice filed after April 29, 1985, and before April 24, 1989.

95 (4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
96 mail by certified mail a copy of the notice of lien to:

97 (i) the reputed owner of the real property; or

98 (ii) the record owner of the real property.

99 (b) If the record owner's current address is not readily available to the lien claimant, the
100 copy of the claim may be mailed to the last-known address of the record owner, using the
101 names and addresses appearing on the last completed real property assessment rolls of the
102 county where the affected property is located.

103 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
104 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
105 owner or record owner in an action to enforce the lien.

106 (5) The Division of Occupational and Professional Licensing shall make rules
107 governing the form of the statement required under Subsection (2)(h).

108 Section 4. Section **38-1-27** is repealed and reenacted to read:

109 **38-1-27. Construction notice registry -- Form and contents of notice of**
110 **commencement, preliminary notice, and notice of completion.**

111 (1) As used in this section and Sections 38-1-30 through 38-1-35:

112 (a) "Database" means the Construction Notice Registry Database created in this
113 section.

114 (b) "Designated agent" means the third party the Division of Occupational and
115 Professional Licensing contracts with to create and maintain the Construction Notice Registry
116 Database.

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

118 (d) "Program" means the Construction Notice Registry Database Program created in

119 this section.

120 (2) Subject to receiving adequate funding through a legislative appropriation and
121 contracting with an approved third party vendor who meets the requirements of Sections
122 38-1-30 through 38-1-35, there is created the Construction Notice Registry Database Program
123 which shall:

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

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

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

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

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

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

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

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

146 (4) The division shall establish by rule the filing fees for notices of commencement,
147 preliminary notices, notices of completion, and requests for notice, which fees shall not exceed
148 the amount reasonably necessary to create and maintain the construction notice registry. The
149 fees established by the division may vary by method of filing if one form of filing is more

150 costly than other forms of filing.

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

152 **38-1-30. Third party contract -- Designated agent.**

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

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

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

164 (4) (a) The designated agent shall archive computer data files at least semiannually for
165 auditing purposes.

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

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

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

171 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
172 **commencement of work.**

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

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

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

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

188 (e) A notice of commencement is effective as to all work, materials, and equipment
189 furnished to the construction project after the filing of the notice of commencement. A notice
190 of commencement is effective only as to the work, materials, or equipment furnished to the
191 construction project provided subsequent to the filing of the notice of commencement.

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

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

195 (b) the name and address of the:

196 (i) original contractor;

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

199 (iii) project address if the project can be reasonably identified by an address or the
200 name and general description of the location of the project if the project cannot be reasonably
201 identified by an address;

202 (c) a general description of the project;

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

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

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

210 (4) Electronic notice of the filing of a notice of commencement or alternate notice as
211 prescribed in Subsection (1), shall be provided to all persons who have filed notices of

212 commencement for the project and to all interested parties who have requested such notice for
213 the project.

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

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

217 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

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

223 (b) If a subcontractor or supplier files a preliminary notice after the 20-day period
224 prescribed above, the preliminary notice becomes effective as of five days after the filing of the
225 preliminary notice.

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

231 (d) The preliminary notice must be filed before a notice of lien is filed with the county
232 recorder pursuant to Section 38-1-7. The content of a preliminary notice shall include the
233 following:

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

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

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

239 (iv) the address of the project or improvement or a description of the location of the
240 project or improvement.

241 (2) (a) Electronic notification of the filing of a preliminary notice or alternate notice as
242 prescribed in Subsection (1), shall be provided to the person filing the preliminary notice, to

243 each person that filed a notice of commencement for the project, and to all interested parties
244 who have requested such notice for the project.

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

247 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
248 notice is only required to give one notice for each project or improvement, which may include
249 an entire structure of a scheme of improvements.

250 (d) If the labor, service, equipment, or material is furnished pursuant to contracts with
251 more than one subcontractor or with more than one original contractor, the notice requirements
252 must be met with respect to the labor, service, equipment, or materials furnished to each
253 subcontractor or original contractor.

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

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

260 (c) If the person or entity that filed the preliminary notice cannot provide proof of the
261 validity of the preliminary notice, that person or entity shall immediately remove the
262 preliminary notice from the construction notice registry.

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

264 **38-1-33. Notice of completion.**

265 (1) (a) Upon final completion of a construction project, an owner of a construction
266 project, an original contractor, a lender that has provided financing for the construction project,
267 or surety that has provided bonding for the construction project, may file a notice of completion
268 with the construction notice registry. Final completion, for purposes of this Subsection (1),
269 shall mean:

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

273 (ii) if no certificate of occupancy is required by the local government entity having

274 jurisdiction over the construction project, but as a result of the work performed under the
275 original contract an inspection is required for such work, the date of the final inspection for
276 such work by the local government entity having jurisdiction over the construction project; or
277 (iii) if with regard to the work performed under the original contract no certificate of
278 occupancy and no final inspection are required by the local government entity having
279 jurisdiction over the construction project, the date on which there remains no substantial work
280 to be completed to finish such work on the original contract.

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

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

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

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

289 (i) repair work;

290 (ii) warranty work; or

291 (iii) work for which the project owner is not holding payment to ensure completion of
292 that work.

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

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

304 (b) Within ten days after the request, the person or entity that filed the notice of

305 completion shall provide the requesting person or entity proof that the notice of completion is
306 valid.

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

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

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

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

319 **38-1-34. Abuse of construction notice registry -- Penalty.**

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

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

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

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

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

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

331 **38-1-35. State not liable.**

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

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

336 **38-1-36. Construction notice does not impart notice.**

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

341 Section 12. Section ~~63-56-38.1~~ is amended to read:

342 **63-56-38.1. Preliminary notice requirement.**

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

350 Section 13. **Severability clause.**

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

354 Section 14. **Effective date.**

355 This bill takes effect on May 1, 2005.