

Senator Thomas V. Hatch 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:

- ▶ addresses preliminary notice requirements;
- ▶ addresses notice of claim requirements;
- ▶ 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 requirements for filing notices;
- ▶ requires the assignment to each construction project a unique project number which identifies each construction project;



- 26 ▶ provides requirements for the content of a notice of commencement;
- 27 ▶ provides penalties for failure to file notices in a timely manner;
- 28 ▶ provides penalties for abuse of the construction notice register;
- 29 ▶ provides that the state is not liable;
- 30 ▶ provides that construction notice does not impart notice for specified purposes;
- 31 ▶ addresses applicability of sections on the basis of when a construction project is
- 32 commenced;
- 33 ▶ requires a sunset review by July 1, 2008; and
- 34 ▶ makes technical changes.

35 Monies Appropriated in this Bill:

36 None

37 Other Special Clauses:

38 This bill provides a severability clause.

39 This bill provides an effective date.

40 This bill provides a coordination clause.

41 Utah Code Sections Affected:

42 AMENDS:

43 **14-1-20**, as enacted by Chapter 271, Laws of Utah 1989

44 **14-2-5**, as enacted by Chapter 271, Laws of Utah 1989

45 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999

46 **63-56-38.1**, as enacted by Chapter 271, Laws of Utah 1989

47 ENACTS:

48 **38-1-30**, Utah Code Annotated 1953

49 **38-1-31**, Utah Code Annotated 1953

50 **38-1-32**, Utah Code Annotated 1953

51 **38-1-33**, Utah Code Annotated 1953

52 **38-1-34**, Utah Code Annotated 1953

53 **38-1-35**, Utah Code Annotated 1953

54 **38-1-36**, Utah Code Annotated 1953

55 **38-1-37**, Utah Code Annotated 1953

56 **63-55-238**, Utah Code Annotated 1953

57 REPEALS AND REENACTS:

58 **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001

59

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

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

62 **14-1-20. Preliminary notice requirement.**

63 Except [~~persons who are in privity of contract with a payment bond principal or except~~]
 64 for persons performing labor for wages, any person furnishing labor, service, equipment, or
 65 material for which a payment bond claim may be made under this chapter shall provide
 66 preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by Section
 67 [~~38-1-27~~] 38-1-32. 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 2. Section **14-2-5** is amended to read:

71 **14-2-5. Preliminary notice requirement.**

72 Except [~~subcontractors who are in privity of contract with a payment bond principal or~~
 73 ~~except~~] for persons performing labor for wages, any person furnishing labor, service,
 74 equipment, or material for which a payment bond claim may be made under this chapter shall
 75 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
 76 Section [~~38-1-27~~] 38-1-32. Any person who fails to provide this preliminary notice may not
 77 make a payment bond claim under this chapter. The preliminary notice must be provided prior
 78 to commencement of any action on the payment bond.

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

80 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

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

87 (b) of final completion of an original contract not involving a residence as defined in

88 Section 38-11-102.

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

90 (a) the name of the reputed owner if known or, if not known, the name of the record
91 owner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 **38-1-27. Construction notice registry -- Form and contents of notice of**
121 **commencement, preliminary notice, and notice of completion.**

122 (1) As used in this section and Sections 38-1-30 through 38-1-37:

123 (a) "Database" means the Construction Notice Registry Database created in this
124 section.

125 (b) (i) "Designated agent" means the third party the Division of Occupational and
126 Professional Licensing contracts with to create and maintain the Construction Notice Registry
127 Database.

128 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
129 the state.

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

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

133 (2) Subject to receiving adequate funding through a legislative appropriation and
134 contracting with an approved third party vendor who meets the requirements of Sections
135 38-1-30 through 38-1-37, there is created the Construction Notice Registry Database Program
136 which shall:

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

139 (b) be overseen by the division with the assistance of the designated agent;

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

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

145 (e) accommodate electronic filing of such notices as well as provide for alternate filing
146 by U.S. mail, telefax, telephone, or any other alternate method as provided by rule made by the
147 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

148 (f) provide electronic notification for up to three e-mail addresses for each interested
149 person or company who requests notice from the construction notice registry as well as provide

150 alternate means of notification for those persons who make alternate filings, including U.S.
151 mail, telefax, or any other method as prescribed by rule made by the division in accordance
152 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

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

155 (3) Persons interested in a construction project may request notice of filings related to
156 the project. The database shall be indexed by owner name, original contractor name, project
157 name, project address, parcel number, project number, and any other identifier that the division
158 considers reasonably appropriate and established by rule, made in accordance with Title 63,
159 Chapter 46a, Utah Administrative Rulemaking Act.

160 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
161 the division shall establish by rule the filing fees for notices of commencement, preliminary
162 notices, notices of completion, and requests for notice, which fees may not exceed the amount
163 reasonably necessary to create and maintain the database.

164 (b) The fees established by the division may vary by method of filing if one form of
165 filing is more costly than other forms of filing.

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

167 **38-1-30. Third party contract -- Designated agent.**

168 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah
169 Procurement Code, with a third party to establish and maintain the database for the purposes
170 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-37.

171 (2) (a) The third party under contract under this section is the division's designated
172 agent, and shall develop and maintain a database from the information provided by:

173 (i) local government entities issuing building permits;

174 (ii) original contractors;

175 (iii) subcontractors; and

176 (iv) other interested persons.

177 (b) The division and the designated agent shall design, develop, and test the database
178 for full implementation on May 1, 2005.

179 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
180 division shall make rules and develop procedures for:

181 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
182 38-1-31 through 38-1-37; and

183 (b) the designated agent to administer this section, Section 38-1-27, and Sections
184 38-1-31 through 38-1-37.

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

187 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
188 division shall make rules to allow the designated agent, unless requested otherwise by an
189 interested party for a particular project, to periodically archive and purge completed or inactive
190 projects from the database:

191 (i) no earlier than one year after the day on which a notice of commencement is filed
192 for a particular project; or

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

195 (c) The division may audit the designated agent's administration of the database as
196 often as the division considers necessary.

197 (5) The designated agent shall carry errors and omissions insurance in the amounts
198 established by rule made by the division in accordance with Title 63, Chapter 46a, Utah
199 Administrative Rulemaking Act.

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

201 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
202 **commencement of work.**

203 (1) (a) For a construction project where a building permit is issued, within 15 days after
204 the issuance of the building permit, the local government entity issuing that building permit
205 shall input the data and transmit the building permit information to the database electronically
206 via the Internet or computer modem or by any other means and such information shall form the
207 basis of a notice of commencement.

208 (b) For a construction project where a building permit is not issued, within 15 days
209 after commencement of physical construction work at the project site, the original contractor
210 shall file a notice of commencement with the database.

211 (c) An owner of construction, a lender, surety, or other interested party may file a

212 notice of commencement with the designated agent within the prescribed time set forth in
213 Subsection (1)(a).

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

218 (e) A notice of commencement is effective as to all work, materials, and equipment
219 furnished to the construction project after the filing of the notice of commencement. A notice
220 of commencement is effective only as to the work, materials, or equipment furnished to the
221 construction project that is provided subsequent to the filing of the notice of commencement.

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

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

225 (b) the name and address of the:

226 (i) original contractor; and

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

229 (c) (i) the project address if the project can be reasonably identified by an address; or

230 (ii) the name and general description of the location of the project if the project cannot
231 be reasonably identified by an address;

232 (d) a general description of the project;

233 (e) the parcel number of the real property upon which the project is to be constructed if
234 the project is subject to mechanics' liens; and

235 (f) a legal description of the property on which the project is located if the project is
236 subject to mechanics' liens.

237 (3) Failure to file any notice of commencement for a construction project suspends the
238 operation of:

239 (a) the preliminary notice provisions of Section 38-1-32; and

240 (b) the notice of completion provisions of Section 38-1-33.

241 (4) Electronic notice of the filing of a notice of commencement or alternate notice as
242 prescribed in Subsection (1), shall be provided to:

- 243 (a) all persons who have filed notices of commencement for the project; and
244 (b) all interested parties who have requested such notice for the project.
245 (5) The burden is upon any person seeking to enforce the notice of commencement to
246 prove that the notice of commencement is filed timely and meets all of the requirements in this
247 section.
248 (6) At the time a building permit is obtained, each original contractor shall
249 conspicuously post at the project site a copy of each building permit obtained for the project
250 improvement.

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

252 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

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

258 (b) If a subcontractor or supplier files a preliminary notice after the 20-day period
259 prescribed by Subsection (1)(a), the preliminary notice becomes effective as of the day on
260 which the preliminary notice is filed.

261 (c) Failure to file a preliminary notice within the 20-day period required by Subsection
262 (1)(c) precludes a subcontractor or supplier from filing any claim for compensation earned for
263 performance of work or supply of materials or equipment furnished to the construction project
264 before the expiration of five days after the filing of a preliminary notice, except as against the
265 person with whom the subcontractor or supplier contracted.

266 (d) The preliminary notice must be filed before a notice of lien may be filed with the
267 county recorder pursuant to Section 38-1-7. The content of a preliminary notice shall include
268 the following:

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

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

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

274 (iv) the address of the project or improvement or a description of the location of the
275 project or improvement.

276 (2) (a) Electronic notification of the filing of a preliminary notice or alternate notice as
277 prescribed in Subsection (1), shall be provided to:

278 (i) the person filing the preliminary notice;

279 (ii) each person that filed a notice of commencement for the project; and

280 (iii) all interested parties who have requested such notice for the project.

281 (b) The burden is upon the person filing the preliminary notice to prove that the
282 preliminary notice is filed timely and substantially meets all of the requirements of this section.

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

286 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under
287 more than one original contract, the notice requirements must be met with respect to the labor,
288 service, equipment, or materials furnished under each original contract. If the labor, service,
289 equipment, or material is furnished pursuant to more than one subcontract under one original
290 contract, the subcontractor or supplier shall identify all persons to whom the labor, service,
291 equipment, or material is furnished who are known at the time the preliminary notice is filed.

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

296 (b) Within ten days after the request described in Subsection (3)(a), the person that
297 filed the preliminary notice shall provide the requesting person proof that the preliminary
298 notice is valid.

299 (c) If the person that filed the preliminary notice cannot provide proof of the validity of
300 the preliminary notice, that person shall immediately remove the preliminary notice from the
301 database.

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

303 **38-1-33. Notice of completion.**

304 (1) (a) Upon final completion of a construction project, an owner of a construction

305 project, an original contractor, a lender that has provided financing for the construction project,
306 or surety that has provided bonding for the construction project, may file a notice of completion
307 with the database. Final completion, for purposes of this Subsection (1), shall mean:

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

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

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

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

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

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

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

327 (i) repair work;

328 (ii) warranty work; or

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

331 (d) (i) Electronic notification of the filing of a notice of completion or alternate notice
332 as prescribed in Subsection (1)(a), shall be provided to:

333 (A) each person that filed a notice of commencement for the project;

334 (B) each person that filed preliminary notice for the project; and

335 (C) all interested parties who have requested notice for the project.

336 (ii) Upon the filing of a notice of completion, the time periods for filing preliminary
337 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed
338 subsequent to the notice of completion and shall be filed within ten days from the day on which
339 the notice of completion is filed.

340 (e) A subcontract that is considered an original contract for purposes of this section
341 shall not create a requirement for an additional preliminary notice if a preliminary notice has
342 already been given for materials and labor furnished to the subcontractor who performs
343 substantial work.

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

348 (b) Within ten days after the request described in Subsection (2)(a), the person that
349 filed the notice of completion shall provide the requesting person proof that the notice of
350 completion is valid.

351 (c) If the person that filed the notice of completion cannot provide proof of the validity
352 of the notice of completion, that person shall immediately remove the notice of completion
353 from the database.

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

355 **38-1-34. Abuse of database -- Penalty.**

356 (1) A person abuses the database if that person records a notice in the database:

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

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

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

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

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

366 **38-1-35. State not liable.**

367 (1) The state and the state's agencies, instrumentalities, and political subdivisions are
368 not liable for any errors in receiving, recording, maintaining, and reporting any notices or
369 information in the database.

370 (2) The designated agent shall:

371 (a) not be entitled to the liability limitations provided by this section; and

372 (b) maintain a liability insurance policy in an amount set by rule.

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

374 **38-1-36. Construction notice does not impart notice.**

375 The filing of a document in the database is not intended to give notice to all persons of
376 the content of the document within the meaning of Section 57-3-102 and does not constitute
377 constructive notice of matters relating to real property to purchasers for value and without
378 knowledge.

379 Section 12. Section **38-1-37** is enacted to read:

380 **38-1-37. Application of Section 38-1-27 and Sections 38-1-30 through 38-1-36.**

381 (1) For purposes of this section "commenced" means commencement of physical
382 construction work at the project site.

383 (2) (a) Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1,
384 2005 shall apply to construction projects commenced on or after May 1, 2005.

385 (b) A construction project commenced before May 1, 2005 is subject to the provisions
386 of this chapter in effect prior to May 1, 2005.

387 Section 13. Section **63-55-238** is enacted to read:

388 **63-55-238. Repeal dates, Title 38.**

389 Section 38-1-27 and Sections 38-1-30 through 38-1-37 are repealed July 1, 2008.

390 Section 14. Section **63-56-38.1** is amended to read:

391 **63-56-38.1. Preliminary notice requirement.**

392 Except [~~subcontractors who are in privity of contract with a payment bond principal or~~
393 ~~except~~] for persons performing labor for wages, any person furnishing labor, service,
394 equipment, or material for which a payment bond claim may be made under this chapter shall
395 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
396 Section [~~38-1-27~~] 38-1-32. Any person who fails to provide this preliminary notice may not
397 make a payment bond claim under this chapter. The preliminary notice must be provided prior

398 to commencement of any action on the payment bond.

399 Section 15. **Severability clause.**

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

403 Section 16. **Effective date.**

404 (1) Except for Section 38-1-30, this bill takes effect on May 1, 2005.

405 (2) If approved by two-thirds of all the members elected to each house, Section 38-1-30
406 takes effect upon approval by the governor, or the day following the constitutional time limit of
407 Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a
408 veto, the date of veto override.

409 Section 17. **Coordinating H.B. 136 with H.B. 20.**

410 It is the intent of the Legislature that if this H.B. 136 and H.B. 20, Construction
411 Bonding Statutes, both pass that the Office of Legislative Research and General Counsel in
412 preparing the Utah Code database for publication merge the amendments of these bills as
413 follows:

414 (1) Section 14-1-20, effective May 1, 2005, shall read:

415 **"14-1-20. Preliminary notice requirement.**

416 [~~Except persons who are in privity of contract with a payment bond principal or except~~
417 ~~for persons performing labor for wages, any]~~

418 (1) Any person furnishing labor, service, equipment, or material for which a payment
419 bond claim may be made under this chapter shall provide preliminary notice to the [payment
420 bond principal] designated agent as prescribed by Section [38-1-27:] 38-1-32, except that this
421 section does not apply:

422 (a) to a person performing labor for wages; or

423 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
424 project or improvement for which labor, service, equipment, or material is furnished.

425 (2) Any person who fails to provide [this] the preliminary notice required by
426 Subsection (1) may not make a payment bond claim under this chapter.

427 (3) The preliminary notice required by Subsection (1) must be provided prior to
428 commencement of any action on the payment bond."

429 (2) Section 14-2-5, effective May 1, 2005, shall read:

430 **"14-2-5. Preliminary notice requirement.**

431 [~~Except subcontractors who are in privity of contract with a payment bond principal or~~
432 ~~except for persons performing labor for wages, any]~~

433 (1) Any person furnishing labor, service, equipment, or material for which a payment
434 bond claim may be made under this chapter shall provide preliminary notice to the [payment
435 bond principal] designated agent as prescribed by Section [38-1-27:] 38-1-32, except that this
436 section does not apply:

437 (a) to a person performing labor for wages; or

438 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
439 project or improvement for which labor, service, equipment, or material is furnished.

440 (2) Any person who fails to provide [this] the preliminary notice required by
441 Subsection (1) may not make a payment bond claim under this chapter.

442 (3) The preliminary notice required by Subsection (1) must be provided prior to
443 commencement of any action on the payment bond."

444 (3) Section 63-56-38.1, effective May 1, 2005, shall read:

445 **"63-56-38.1. Preliminary notice requirement.**

446 [~~Except subcontractors who are in privity of contract with a payment bond principal or~~
447 ~~except for persons performing labor for wages, any]~~

448 (1) Any person furnishing labor, service, equipment, or material for which a payment
449 bond claim may be made under this chapter shall provide preliminary notice to the [payment
450 bond principal] designated agent as prescribed by Section [38-1-27:] 38-1-32, except that this
451 section does not apply:

452 (a) to a person performing labor for wages; or

453 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
454 project or improvement for which labor, service, equipment, or material is furnished.

455 (2) Any person who fails to provide [this] the preliminary notice required by
456 Subsection (1) may not make a payment bond claim under this chapter.

457 (3) The preliminary notice required by Subsection (1) must be provided prior to
458 commencement of any action on the payment bond."

459