



- 28           ▶ provides that data submitted to the database by a governmental entity is classified
- 29 under Title 63, Chapter 2, Government Records Access and Management Act, by
- 30 the division;
- 31           ▶ clarifies the required content of a notice of commencement filed for a project where
- 32 no building permit is required;
- 33           ▶ provides that a person requesting a notice of filings for a project is responsible for
- 34 the accuracy of an e-mail address, mailing address, or the telefax number to which
- 35 notice is requested to be sent;
- 36           ▶ provides that a designated agent need only send the notice to the provided e-mail
- 37 address, mailing address, or telefax number, whether or not the notice is actually
- 38 received;
- 39           ▶ modifies the time within which a subcontractor or supplier must file a preliminary
- 40 notice;
- 41           ▶ clarifies that a preliminary notice filed for one construction project applies to all
- 42 labor, service, equipment, and material for that construction project;
- 43           ▶ provides that a qualified beneficiary may recover from the Residence Lien Recovery
- 44 Fund only if the qualified beneficiary files an action within 180 days after a notice
- 45 of claim is filed under Section 38-1-7; and
- 46           ▶ makes technical changes.

**47 Monies Appropriated in this Bill:**

48           None

**49 Other Special Clauses:**

50           This bill provides retrospective operation.

**51 Utah Code Sections Affected:**

52           AMENDS:

53           **38-1-27 (Effective 05/01/05)**, as repealed and reenacted by Chapter 250, Laws of Utah

54           2004

55           **38-1-30**, as enacted by Chapter 250, Laws of Utah 2004

56           **38-1-31 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004

57           **38-1-32 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004

58           **38-1-33 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004

59           **38-1-37 (Effective 05/01/05)**, as enacted by Chapter 250, Laws of Utah 2004  
 60           **38-11-204**, as last amended by Chapter 42, Laws of Utah 2004

61 

---

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

63           Section 1. Section **38-1-27 (Effective 05/01/05)** is amended to read:

64           **38-1-27 (Effective 05/01/05). State Construction Registry -- Form and contents of**  
 65 **notice of commencement, preliminary notice, and notice of completion.**

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

67           (a) "Alternate filing" means a filing made in a manner established by the division under  
 68 Subsection (2)(e) other than an electronic filing.

69           (b) "Cancel" means to indicate that a filing is no longer given effect.

70           (c) "Construction project," "project," or "improvement" means:

71           (i) a specific project or improvement for which one building permit is issued; or

72           (ii) if no building permit is required, the improvement or work required by a contract

73 between the owner and an original contractor under Section 38-1-2.

74           ~~[(a)]~~ (d) "Database" means the State Construction [Notice] Registry [Database] created  
 75 in this section.

76           ~~[(b)]~~ (e) (i) "Designated agent" means the third party the Division of Occupational and  
 77 Professional Licensing contracts with to create and maintain the State Construction [Notice]  
 78 Registry [Database].

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

81           ~~[(c)]~~ (f) "Division" means the Division of Occupational and Professional Licensing.

82           (g) "Interested person" means a person who may be affected by a construction project.

83           ~~[(d)]~~ (h) "Program" means the State Construction [Notice] Registry [Database]  
 84 Program created in this section.

85           (2) Subject to receiving adequate funding through a legislative appropriation and  
 86 contracting with an approved third party vendor who meets the requirements of Sections  
 87 38-1-30 through 38-1-37, there is created the State Construction [Notice] Registry [Database]  
 88 Program [which] that shall:

89           (a) (i) assist in protecting public health, safety, and welfare; and

- 90           (ii) promote a fair working environment;
- 91           (b) be overseen by the division with the assistance of the designated agent;
- 92           (c) provide a central repository for notices of commencement, preliminary notices, and
- 93 notices of completion filed in connection with all privately owned construction projects as well
- 94 as all state and local government owned construction projects throughout Utah;
- 95           (d) be accessible for filing and review ~~[of]~~ by way of the program Internet website of:
- 96           (i) notices of commencement[;];
- 97           (ii) preliminary notices[;]; and
- 98           (iii) notices of completion ~~[via the program Internet website];~~
- 99           (e) accommodate;
- 100          (i) electronic filing of ~~[such notices as well as provide for]~~ the notices described in
- 101 Subsection (2)(d); and
- 102          (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,
- 103 ~~[telephone,]~~ or any other alternate method as provided by rule made by the division in
- 104 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
- 105          (f) (i) provide electronic notification for up to three e-mail addresses for each interested
- 106 person or company who requests notice from the construction notice registry ~~[as well as]; and~~
- 107          (ii) provide alternate means of notification for ~~[those persons]~~ a person who ~~[make]~~
- 108 makes an alternate ~~[filings]~~ filing, including U.S. mail, telefax, or any other method as
- 109 prescribed by rule made by the division in accordance with Title 63, Chapter 46a, Utah
- 110 Administrative Rulemaking Act; and
- 111          (g) provide hard-copy printing of electronic receipts for an individual ~~[filings]~~ filing
- 112 evidencing the date and time of the individual ~~[filings as well as]~~ filing and the content of the
- 113 individual ~~[filings]~~ filing.
- 114          (3) (a) ~~[Persons interested in a construction project]~~ An interested person may request
- 115 notice of filings related to ~~[the]~~ a project.
- 116          (b) The database shall be indexed by:
- 117               (i) owner name[;];
- 118               (ii) original contractor name[;];
- 119               (iii) subdivision, development, or other project name, if any;
- 120               (iv) project address[;];

- 121 (v) lot or parcel number[-];  
122 (vi) unique project number[-] assigned by the designated agent; and  
123 (vii) any other identifier that the division considers reasonably appropriate [and  
124 established by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative  
125 Rulemaking Act] in collaboration with the designated agent.
- 126 (4) (a) In accordance with [~~Title 63, Chapter 46a, Utah Administrative Rulemaking~~  
127 ~~Act,] the process required by Section 63-38-3.2, the division shall establish [~~by rule~~] the  
128 [~~filing~~] fees for [~~notices~~]:~~
- 129 (i) a notice of commencement[-];  
130 (ii) a preliminary [~~notices, notices~~] notice;  
131 (iii) a notice of completion[-, and requests];  
132 (iv) a request for notice[-, which fees may not exceed the amount reasonably necessary  
133 to create and maintain the database.];
- 134 (v) a duplicate receipt of a filing; and  
135 (vi) account setup for a person who wishes to be billed periodically for filings with the  
136 database.
- 137 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably  
138 necessary to create and maintain the database.
- 139 [~~(b)~~] (c) The fees established by the division may vary by method of filing if one form  
140 of filing is more costly than [~~other forms~~] another form of filing.
- 141 (d) Notwithstanding Subsection 63-38-3.2(2)(c), the division need not submit the fee  
142 schedule for fees allowed by this Subsection (4) to the Legislature until the 2006 General  
143 Session.
- 144 (e) The division may provide by contract that the designated agent may retain all fees  
145 collected by the designated agent except that the designated agent shall remit to the division the  
146 cost of the division's oversight under Subsection (2)(b).
- 147 (5) The following are not an adjudicative proceeding under Title 63, Chapter 46b,  
148 Administrative Procedures Act:
- 149 (a) the filing of a notice permitted by this chapter;  
150 (b) the rejection of a filing permitted by this chapter; or  
151 (c) other action by the designated agent in connection with a filing of any notice

152 permitted by this chapter.

153 (6) The division and the designated agent need not determine the timeliness of any  
154 notice before filing the notice in the database.

155 (7) (a) A person who is delinquent on the payment of a fee established under  
156 Subsection (4) may not file a notice with the database.

157 (b) A determination that a person is delinquent on the payment of a fee for filing  
158 established under Subsection (4) shall be made in accordance with Title 63, Chapter 46b,  
159 Administrative Procedures Act.

160 (c) Any order issued in a proceeding described in Subsection (7)(b) may prescribe the  
161 method of that person's payment of fees for filing notices with the database after issuance of the  
162 order.

163 Section 2. Section **38-1-30** is amended to read:

164 **38-1-30. Third party contract -- Designated agent.**

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

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

170 (i) local government entities issuing building permits;

171 (ii) original contractors;

172 (iii) subcontractors; and

173 (iv) other interested persons.

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

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

178 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections  
179 38-1-31 through 38-1-37; ~~and~~

180 (b) the designated agent to administer this section, Section 38-1-27, and Sections  
181 38-1-31 through 38-1-37[-]; and

182 (c) the form of submission of an alternate filing.

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

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

189 (c) A project shall be archived no earlier than:

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

192 (ii) if no notice of ~~[commencement]~~ completion is filed, ~~[no earlier than]~~ two years  
193 after the last filing activity for a ~~[particular]~~ project~~[:]~~; or

194 (iii) one year after the day on which a filing is cancelled under Subsection  
195 38-1-32(3)(c) or 38-1-33(2)(c).

196 ~~[(c)]~~ (d) The division may audit the designated agent's administration of the database as  
197 often as the division considers necessary.

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

201 Section 3. Section **38-1-31 (Effective 05/01/05)** is amended to read:

202 **38-1-31 (Effective 05/01/05). Building permit -- Construction -- Notice registry --**  
203 **Notice of commencement of work.**

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

209 (ii) For the purposes of classifying a record under Title 63, Chapter 2, Government  
210 Records Access and Management Act, building permit information transmitted from a local  
211 governmental entity to the database shall be classified in the database by the division  
212 notwithstanding the local governmental entity's classification of the building permit  
213 information.

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

217 (c) An owner of construction, a lender, surety, or other interested ~~[party]~~ person may  
218 file a notice of commencement with the designated agent within the ~~[prescribed]~~ time ~~[set forth~~  
219 ~~in Subsection]~~ prescribed by Subsections (1)(a) and (b).

220 (d) If duplicate notices of commencement are filed, they shall be combined into one  
221 notice for each project. The designated agent shall assign each construction project a unique  
222 project number ~~[which]~~ that:

223 (i) identifies each construction project; and

224 (ii) can be associated with all notices of commencement, preliminary notices, and  
225 notices of completion.

226 (e) (i) A notice of commencement is effective as to all ~~[work, materials, and~~  
227 ~~equipment]~~ labor, service, equipment, and material furnished to the construction project after  
228 the filing of the notice of commencement.

229 (ii) A notice of commencement is effective only as to the ~~[work, materials, or~~  
230 ~~equipment]~~ labor, service, equipment, and material furnished to the construction project that is  
231 provided subsequent to the filing of the notice of commencement.

232 (2) (a) The content of a notice of commencement shall include the following ~~[if~~  
233 ~~available on a building permit]:~~

234 ~~[(a)]~~ (i) the name and address of the owner of the project ~~[or improvement];~~

235 ~~[(b)]~~ (ii) the name and address of the:

236 ~~[(i)]~~ (A) original contractor; and

237 ~~[(ii)]~~ (B) surety providing any payment bond for the project ~~[or improvement], or if~~  
238 none exists, a statement that a payment bond was not required for the work being performed;

239 ~~[(c)-(i)]~~ (iii) (A) the project address if the project can be reasonably identified by an  
240 address; or

241 ~~[(ii)]~~ (B) the name and general description of the location of the project if the project  
242 cannot be reasonably identified by an address;

243 ~~[(d)]~~ (iv) a general description of the project; and

244 ~~[(e)]~~ (v) the lot or parcel number, and any subdivision, development, or other project

245 name, of the real property upon which the project is to be constructed if the project is subject to  
246 mechanics' liens~~[-and]~~.

247 ~~[(f) a legal description of the property on which the project is located if the project is~~  
248 ~~subject to mechanics' liens.]~~

249 (b) The content of a notice of commencement need not include all of the items listed in  
250 Subsection (2)(a) if:

251 (i) a building permit is issued for the project; and

252 (ii) all items listed in Subsection (2)(a) that are available on the building permit are  
253 included in the notice of commencement.

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

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

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

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

260 ~~[(a)]~~ (i) all persons who have filed notices of commencement for the project; and

261 ~~[(b)]~~ (ii) all interested ~~[parties]~~ persons who have requested such notice for the project.

262 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

263 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
264 required by Subsection (4)(a) is to be sent; and

265 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
266 notice is to be sent.

267 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it  
268 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
269 designated agent whether or not the notice is actually received.

270 (5) The burden is upon any person seeking to enforce the notice of commencement to  
271 prove that the notice of commencement is filed timely and meets all of the requirements in this  
272 section.

273 (6) At the time a building permit is obtained, each original contractor shall  
274 conspicuously post at the project site a copy of ~~[each]~~ the building permit obtained for the  
275 project ~~[improvement]~~.

276 Section 4. Section **38-1-32 (Effective 05/01/05)** is amended to read:

277 **38-1-32 (Effective 05/01/05). Preliminary notice -- Subcontractor or supplier.**

278 (1) (a) (i) A subcontractor or supplier shall file a preliminary notice with the database  
279 within the later of:

280 (A) [Within] 20 days after commencement of its own work or the commencement of  
281 furnishing [materials or equipment] labor, service, equipment, and material to a construction  
282 project[~~, a subcontractor or supplier shall file a preliminary notice with the construction notice~~  
283 registry.]; or

284 (B) 20 days after the filing of a notice of commencement.

285 (ii) A preliminary notice filed within the [20-day] period described in Subsection  
286 (1)(a)(i) is effective as to all [work, materials, and equipment] labor, service, equipment, and  
287 material furnished to the construction project, including labor, service, equipment, and material  
288 provided to more than one contractor or subcontractor.

289 (b) If a subcontractor or supplier files a preliminary notice after the [20-day] period  
290 prescribed by Subsection (1)(a), the preliminary notice becomes effective [as of] five days after  
291 the [filing of the] day on which the preliminary notice is filed.

292 (c) Failure to file a preliminary notice within the [20-day] period required by  
293 Subsection (1)(a) precludes a subcontractor or supplier from filing any claim for compensation  
294 earned for performance of [work] labor or service or supply of materials or equipment  
295 furnished to the construction project before the expiration of five days after the late filing of a  
296 preliminary notice, except as against the person with whom the subcontractor or supplier  
297 contracted.

298 (d) (i) The preliminary notice must be filed before a notice of lien may be filed with the  
299 county recorder pursuant to Section 38-1-7.

300 (ii) The content of a preliminary notice shall include the following:

301 [(i)] (A) the name, address, and telephone number of the person furnishing the labor,  
302 service, equipment, or material;

303 [(ii)] (B) the name and address of the person who contracted with the claimant for the  
304 furnishing of the labor, service, equipment, or material;

305 [(iii)] (C) the name of the record or reputed owner of the project [or improvement];

306 [(iv)] (D) the name of the original contractor under which the claimant is performing or

307 will perform its work; and

308       ~~[(v)]~~ (E) the address of the project ~~[or improvement]~~ or a description of the location of  
309 the project ~~[or improvement]~~.

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

312       ~~[(i)]~~ (A) the person filing the preliminary notice;

313       ~~[(ii)]~~ (B) each person that filed a notice of commencement for the project; and

314       ~~[(iii)]~~ (C) all interested ~~[parties]~~ persons who have requested such notice for the  
315 project.

316       (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

317       (A) providing an e-mail address, mailing address, or telefax number to which a notice  
318 required by Subsection (2)(a) is to be sent; and

319       (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
320 notice is to be sent.

321       (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it  
322 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
323 designated agent whether or not the notice is actually received.

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

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

329       (d) If the labor, service, equipment, or material is furnished pursuant to contracts under  
330 more than one original contract, the notice requirements must be met with respect to the labor,  
331 service, equipment, or ~~[materials]~~ material furnished under each original contract.

332       (3) (a) If a construction project owner, original contractor, subcontractor, or other  
333 interested person believes that a preliminary notice has been filed erroneously, that owner,  
334 original contractor, subcontractor, or other interested person can request from the person who  
335 filed the preliminary notice evidence establishing the validity of the preliminary notice.

336       (b) Within ten days after the request described in Subsection (3)(a), the person or entity  
337 that filed the preliminary notice shall provide the requesting person or entity proof that the

338 preliminary notice is valid.

339 (c) If the person or entity that filed the preliminary notice [~~cannot~~] does not provide  
340 proof of the validity of the preliminary notice, that person or entity shall immediately [~~remove~~]  
341 cancel the preliminary notice from the database in any manner prescribed by the division  
342 pursuant to rule.

343 Section 5. Section **38-1-33 (Effective 05/01/05)** is amended to read:

344 **38-1-33 (Effective 05/01/05). Notice of completion.**

345 (1) (a) (i) Upon final completion of a construction project, an owner of a construction  
346 project, an original contractor, a lender that has provided financing for the construction project,  
347 or surety that has provided bonding for the construction project, may file a notice of completion  
348 with the database.

349 (ii) Final completion, for purposes of this Subsection (1), shall mean:

350 [(i)] (A) if as a result of work performed under the original contract a permanent  
351 certificate of occupancy is required for such work, the date of issuance of a permanent  
352 certificate of occupancy by the local government entity having jurisdiction over the  
353 construction project;

354 [(ii)] (B) if no certificate of occupancy is required by the local government entity  
355 having jurisdiction over the construction project, but as a result of the work performed under  
356 the original contract an inspection is required for such work, the date of the final inspection for  
357 such work by the local government entity having jurisdiction over the construction project; or

358 [(iii)] (C) if with regard to the work performed under the original contract no certificate  
359 of occupancy and no final inspection are required by the local government entity having  
360 jurisdiction over the construction project, the date on which there remains no substantial work  
361 to be completed to finish such work on the original contract.

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

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

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

- 369 (c) For purposes of this section, the term "substantial work" does not include:
- 370 (i) repair work;
- 371 (ii) warranty work; or
- 372 (iii) work for which the project owner is not holding payment to ensure completion of
- 373 that work.
- 374 (d) (i) Electronic notification of the filing of a notice of completion or alternate notice
- 375 as prescribed in Subsection (1)(a), shall be provided to:
- 376 (A) each person that filed a notice of commencement for the project;
- 377 (B) each person that filed preliminary notice for the project; and
- 378 (C) all interested [~~parties~~] persons who have requested notice for the project.
- 379 (ii) A person to whom notice is required under Subsection (1)(d) is responsible for:
- 380 (A) providing an e-mail address, mailing address, or telefax number to which a notice
- 381 required by Subsection (4)(a) is to be sent; and
- 382 (B) the accuracy of any e-mail address, mailing address, or telefax number to which
- 383 notice is to be sent.
- 384 (iii) The designated agent fulfills the notice requirement of Subsection (1)(d)(ii) when
- 385 it sends the notice to the e-mail address, mailing address, or telefax number provided to the
- 386 designated agent, whether or not the notice is actually received.
- 387 [~~(ii)~~] (iv) Upon the filing of a notice of completion, the time periods for filing
- 388 preliminary notices stated in Section 38-1-27 are modified such that all preliminary notices
- 389 shall be filed subsequent to the notice of completion and [~~shall be filed~~] within ten days from
- 390 the day on which the notice of completion is filed.
- 391 (e) A subcontract that is considered an original contract for purposes of this section
- 392 shall not create a requirement for an additional preliminary notice if a preliminary notice has
- 393 already been given for [~~materials and~~] the labor, service, equipment, and material furnished to
- 394 the subcontractor who performs substantial work.
- 395 (2) (a) If a construction project owner, original contractor, subcontractor, or other
- 396 interested person believes that a notice of completion has been filed erroneously, that owner,
- 397 original contractor, subcontractor, or other interested person can request from the person who
- 398 filed the preliminary notice evidence establishing the validity of the notice of completion.
- 399 (b) Within ten days after the request described in Subsection (2)(a), the person that

400 filed the notice of completion shall provide the requesting person proof that the notice of  
401 completion is valid.

402 (c) If the person that filed the notice of completion [~~cannot~~] does not provide proof of  
403 the validity of the notice of completion, that person shall immediately [~~remove~~] cancel the  
404 notice of completion from the database in any manner prescribed by the division pursuant to  
405 rule.

406 Section 6. Section **38-1-37 (Effective 05/01/05)** is amended to read:

407 **38-1-37 (Effective 05/01/05). Application of Section 38-1-27 and Sections 38-1-30**  
408 **through 38-1-36.**

409 (1) Except as provided in Subsection (3), Section 38-1-27 and Sections 38-1-30  
410 through 38-1-36 in effect as of May 1, 2005 shall apply to construction projects [~~commenced~~]  
411 for which a notice of commencement is filed on or after May 1, 2005.

412 (2) A construction project [~~commenced~~] for which a notice of commencement is filed  
413 before May 1, 2005 is subject to the provisions of this chapter in effect prior to May 1, 2005.

414 (3) (a) Section 38-1-27 and Sections 38-1-30 through 38-1-36 in effect as of May 1,  
415 2005, shall apply to a construction project for which a notice of commencement is filed on or  
416 after October 1, 2005 involving a residence, as defined in Subsection 38-11-102(22).

417 (b) For a construction project for which a notice of commencement is filed before  
418 October 1, 2005 involving a residence, as defined in Subsection 38-11-102(22), the law in  
419 effect on April 30, 2005 shall govern.

420 Section 7. Section **38-11-204** is amended to read:

421 **38-11-204. Claims against the fund -- Requirement to make a claim --**

422 **Qualifications to receive compensation -- Qualifications to receive a certificate of**  
423 **compliance.**

424 (1) To claim recovery from the fund a person shall:

425 (a) meet the requirements of either Subsection (4) or (7);

426 (b) pay an application fee determined by the division under Section 63-38-3.2; and

427 (c) file with the division a completed application on a form provided by the division  
428 accompanied by supporting documents establishing:

429 (i) that the person meets the requirements of either Subsection (4) or (7);

430 (ii) that the person was a qualified beneficiary or laborer during the construction on the

431 owner-occupied residence; and

432 (iii) the basis for the claim.

433 (2) To recover from the fund, the application required by Subsection (1) shall be filed  
434 no later than one year:

435 (a) from the date the judgment required by Subsection (4)(d) is entered;

436 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded  
437 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the  
438 nonpaying party filed bankruptcy within one year after the entry of judgment; or

439 (c) from the date the laborer, trying to recover from the fund, completed the laborer's  
440 qualified services.

441 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish  
442 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

443 (4) To recover from the fund, regardless of whether the residence is occupied by the  
444 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified  
445 beneficiary shall establish that:

446 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a  
447 written contract with an original contractor licensed or exempt from licensure under Title 58,  
448 Chapter 55, Utah Construction Trades Licensing Act:

449 (A) for the performance of qualified services;

450 (B) to obtain the performance of qualified services by others; or

451 (C) for the supervision of the performance by others of qualified services in  
452 construction on that residence;

453 (ii) the owner of the owner-occupied residence or the owner's agent entered into a  
454 written contract with a real estate developer for the purchase of an owner-occupied residence;  
455 or

456 (iii) the owner of the owner-occupied residence or the owner's agent entered into a  
457 written contract with a factory built housing retailer for the purchase of an owner-occupied  
458 residence;

459 (b) the owner has paid in full the original contractor, licensed or exempt from licensure  
460 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or  
461 factory built housing retailer under Subsection (4)(a) with whom the owner has a written

462 contract in accordance with the written contract and any amendments to the contract;

463 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,  
464 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory  
465 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to  
466 payment under an agreement with that original contractor or real estate developer licensed or  
467 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for  
468 services performed or materials supplied by the qualified beneficiary;

469 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from  
470 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate  
471 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is  
472 entitled to payment under an agreement with that subcontractor or supplier; or

473 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a  
474 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or  
475 supplier;

476 (d) (i) the qualified beneficiary filed:

477 (A) an action against the nonpaying party to recover monies owed to the qualified  
478 beneficiary within 180 days from the date the qualified beneficiary [~~last provided qualified~~  
479 ~~services~~] filed a notice of claim under Section 38-1-7, unless precluded from doing so by the  
480 nonpaying party's bankruptcy filing within the 180 days [~~after completion of services~~] from the  
481 date the qualified beneficiary filed the notice of claim; and

482 (B) a notice of commencement of action with the division within 30 days from the date  
483 the qualified beneficiary filed the civil action if a civil action was filed as required by  
484 Subsection (4)(d)(i)(A);

485 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who  
486 failed to pay the qualified beneficiary under an agreement to provide qualified services for  
487 construction of that owner-occupied residence;

488 (iii) (A) the qualified beneficiary has:

489 (I) obtained from a court of competent jurisdiction the issuance of an order requiring  
490 the judgment debtor, or if a corporation any officer of the corporation, to appear before the  
491 court at a specified time and place to answer concerning the debtor's or corporation's property;

492 (II) received return of service of the order from a person qualified to serve documents

493 under the Utah Rules of Civil Procedure, Rule 4(b); and

494 (III) made reasonable efforts to obtain asset information from the supplemental  
495 proceedings; and

496 (B) if assets subject to execution are discovered as a result of the order required under  
497 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution  
498 from a court of competent jurisdiction; or

499 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the  
500 bankruptcy action, if the nonpaying party has filed bankruptcy;

501 (e) the qualified beneficiary is not entitled to reimbursement from any other person;  
502 and

503 (f) the qualified beneficiary provided qualified services to a contractor, licensed or  
504 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

505 (5) The requirements of Subsections (4)(d)(i), (ii), and (iii) need not be met if the  
506 qualified beneficiary has been precluded from obtaining a judgment against the nonpaying  
507 party or from satisfying the requirements of Subsections (4)(d)(i), (ii), and (iii) because the  
508 nonpaying party filed bankruptcy.

509 (6) If a qualified beneficiary fails to file the notice with the division required under  
510 Subsection (4)(d)(i)(B), the claim of the qualified beneficiary shall be paid:

511 (a) if otherwise qualified under this chapter;

512 (b) to the extent that the limit of Subsection 38-11-203(4)(a) has not been reached by  
513 payments from the fund to qualified beneficiaries who have complied with the notice  
514 requirements of Subsection (4)(d)(i)(B); and

515 (c) in the order that the claims are filed by persons who fail to comply with Subsection  
516 (4)(d)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a).

517 (7) To recover from the fund a laborer shall:

518 (a) establish that the laborer has not been paid wages due for the work performed at the  
519 site of a construction on an owner-occupied residence; and

520 (b) provide any supporting documents or information required by rule by the division.

521 (8) A fee determined by the division under Section 63-38-3.2 shall be deducted from  
522 any recovery from the fund received by a laborer.

523 (9) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or

524 agent of the owner establishes to the satisfaction of the director that the owner of the  
525 owner-occupied residence or the owner's agent entered into a written contract with an original  
526 contractor who:

527 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah  
528 Construction Trades Licensing Act, but was solely or partly owned by an individual who was  
529 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

530 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah  
531 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a  
532 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades  
533 Licensing Act.

534 (10) The director shall have equitable power to determine if the requirements of  
535 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under [~~Title 38,~~  
536 ~~Chapter 11,~~] this chapter shall not alter or have any effect on any other decision by the division  
537 under Title 58, Occupations and Professions.

538 Section 8. **Retrospective operation.**

539 The amendments to Section 38-1-37 (Effective 05/01/05) have retrospective operation  
540 to May 1, 2005.

---

---

**Legislative Review Note**  
**as of 1-28-05 1:49 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

---

---

**Fiscal Note**  
**Bill Number HB0105**

**Construction Filing Amendments**

*02-Feb-05*

*5:04 PM*

---

---

**State Impact**

No fiscal impact.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**