

Senator Scott K. Jenkins proposes the following substitute bill:

1 **CONSTRUCTION TRADE RELATED**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Scott K. Jenkins**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to the construction trade and delays the effective
10 date of Chapter 250, Laws of Utah 2004.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ exempts from the preliminary notice requirement that is a prerequisite to filing a
14 mechanics' lien a person contracting directly with a payment bond principal;

15 ▶ ~~§→ [provides that there is no final completion of certain projects if work remains undone~~
16 ~~for which the owner holds payment to ensure completion of the work;~~

17 ~~→ exempts from the preliminary notice prerequisite to lien filing, and from other~~
18 ~~provisions, a person with privity of contract with the original contractor] exempts a person from the~~

18a ~~preliminary notice prerequisite to lien filing, and from other provisions, if the original~~

18b ~~contractor has actual notice that the person provided labor, service, equipment,~~

18c ~~or material~~ ←§ ;

19 ~~§→ [→ changes the amount of interest and attorney fees allowable under the Residence Lien~~

20 ~~Recovery Fund;]~~ ←§

21 ▶ eliminates the requirement under the Residence Lien Recovery Fund that a qualified
22 beneficiary file a notice of commencement of action;

23 ▶ provides that a qualified beneficiary under the Residence Lien Recovery Fund need
24 only verify a contractor's licensure annually; and

25 ▶ makes technical changes.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides an effective date.

30 This bill provides retrospective operation.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **13-8-4**, as enacted by Chapter 86, Laws of Utah 1997

34 **14-1-20 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of Utah
35 2004

36 **14-2-5 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of Utah
37 2004

38 ~~§→ [**38-1-7 (Superseded 05/01/05), as last amended by Chapter 85, Laws of Utah 2004**] ←§~~

39 **38-1-27 (Superseded 05/01/05)**, as last amended by Chapter 85, Laws of Utah 2004

40 **38-11-203**, as last amended by Chapter 42, Laws of Utah 2004

41 **38-11-204**, as last amended by Chapter 42, Laws of Utah 2004

42 **63-56-38.1 (Effective 05/01/05)**, as last amended by Chapters 30 and 250, Laws of
43 Utah 2004

44 REPEALS:

45 **38-1-38**, as enacted by Chapter 188, Laws of Utah 2004



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

48 Section 1. Section **13-8-4** is amended to read:

49 **13-8-4. Obligation to pay under construction contracts -- Rights of parties under**
50 **contingent payment provisions.**

51 (1) For purposes of this section:

52 (a) "Construction contract" means a contract or agreement to provide services, labor,
53 equipment, or materials for the design, construction, installation, or repair of an improvement
54 to real property located in Utah.

55 (b) "Contingent payment contract" means a construction contract between a contractor
56 and a subcontractor that makes a payment from the contractor to the subcontractor contingent

57 on the contractor receiving a corresponding payment from any other public or private party,
58 including a private owner.

59 (c) "Contractor" means a person who is or may be awarded a contract for the
60 construction, alteration, or repair of any building, structure, or improvement to real property.

61 (d) "Subcontractor" means any person engaged by a contractor to provide services,
62 labor, equipment, or materials for the design, construction, installation, or repair of an
63 improvement to real property and includes a trade contractor or specialty contractor.

64 (2) A party to a construction contract shall make all scheduled payments under the
65 terms of the construction contract.

66 (3) (a) The existence of a contingent payment contract is not a defense to a claim to
67 enforce a mechanics' lien filed under Title 38, Chapter 1, Mechanics' Liens.

68 (b) This Subsection (3) does not apply to [~~contracts~~] a contract for private construction
69 work for the building, improvement, repair, or remodeling of residential property consisting of
70 four units or less.

71 (4) If a construction contract is a contingent payment contract:

72 (a) the subcontractor may request from the contractor the financial information that the
73 contractor has received from the public or private party regarding:

74 (i) the project financing; and

75 (ii) the public or private party; and

76 (b) if information is requested by the subcontractor under Subsection (4)(a), the
77 contractor shall provide the information prior to the subcontractor signing the construction
78 contract between the contractor and the subcontractor.

79 (5) This section applies to a contract executed on or after May 5, 1997.

80 Section 2. Section **14-1-20 (Effective 05/01/05)** is amended to read:

81 **14-1-20 (Effective 05/01/05). Preliminary notice requirement.**

82 (1) Any person furnishing labor, service, equipment, or material for which a payment
83 bond claim may be made under this chapter shall provide preliminary notice to the designated
84 agent ~~as~~ in the form prescribed by Section 38-1-32, except that this section does not apply:

85 (a) to a person performing labor for wages; [~~or~~]

86 (b) to a person who contracts directly with the payment bond principal; or

87 [~~(b)~~] (c) if a notice of commencement is not filed as prescribed in Section 38-1-31 for

88 the project or improvement for which labor, service, equipment, or material is furnished.

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

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

93 Section 3. Section 14-2-5 (Effective 05/01/05) is amended to read:

94 **14-2-5 (Effective 05/01/05). Preliminary notice requirement.**

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

98 (a) to a person performing labor for wages; [or]

99 (b) to a person who contracts directly with the payment bond principal; or

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

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

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

106 **§→ [Section 4. Section 38-1-7 (Superseded 05/01/05) is amended to read:**

107 ~~38-1-7 (Superseded 05/01/05). Notice of claim -- Contents -- Recording -- Service~~
 108 ~~on owner of property.~~

109 ~~(1) (a) A person claiming benefits under this chapter shall file for record with the~~
 110 ~~county recorder of the county in which the property, or some part of the property, is situated, a~~
 111 ~~written notice to hold and claim a lien within 90 days from the date of final completion of the~~
 112 ~~original contract under which the claimant claims a lien under this chapter.~~

113 ~~(b) For purposes of this Subsection (1) and except as provided in Subsection (1)(c),~~
 114 ~~final completion of the original contract means:~~

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

118 ~~(ii) if no certificate of occupancy is required by the local government entity having] ←§~~

119 ~~§→ [jurisdiction over the construction project, but as a result of the work performed under the~~
 120 ~~original contract an inspection is required for such work, the date of the final inspection for~~
 121 ~~such work by the local government entity having jurisdiction over the construction project; or~~
 122 ~~———(iii) if with regard to work performed under the original contract no certificate of~~
 123 ~~occupancy and no final inspection are required by the local government entity having~~
 124 ~~jurisdiction over the construction project, the date on which there remains no substantial work~~
 125 ~~to be completed to finish such work on the original contract.~~
 126 ~~———[(b)](c) Notwithstanding Section 38-1-2, where a subcontractor performs substantial~~
 127 ~~work after the applicable dates established by Subsections (1)[(a)](b)(i) and (ii), that~~
 128 ~~subcontractor's subcontract shall be considered an original contract for the sole purpose of~~
 129 ~~determining:~~
 130 ~~———(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien~~
 131 ~~under this Subsection (1); and~~
 132 ~~———(ii) the original contractor's time frame to file a notice of intent to hold and claim a lien~~
 133 ~~under this Subsection (1) for that subcontractor's work.~~
 134 ~~———[(c)](d) For purposes of this section, the term "substantial work" does not include:~~
 135 ~~———(i) repair work; or~~
 136 ~~———(ii) warranty work[; or];~~
 137 ~~———[(iii) work for which the project owner is not holding payment to ensure completion of~~
 138 ~~that work.]~~
 139 ~~———(e) Notwithstanding Subsection (1)(b)(iii), final completion of the original contract~~
 140 ~~does not occur if work remains to be completed for which the owner is holding payment to~~
 141 ~~ensure completion of that work.~~
 142 ~~———(2) (a) The notice required by Subsection (1) shall contain a statement setting forth:~~
 143 ~~———(i) the name of the reputed owner if known or, if not known, the name of the record~~
 144 ~~owner;~~
 145 ~~———(ii) the name of the person:~~
 146 ~~———(A) by whom the lien claimant was employed; or~~
 147 ~~———(B) to whom the lien claimant furnished the equipment or material;~~
 148 ~~———(iii) the time when:~~
 149 ~~———(A) the first and last labor or service was performed; or] ←§~~

150 ~~§→ [(B) the first and last equipment or material was furnished;~~
 151 ~~—— (iv) a description of the property, sufficient for identification;~~
 152 ~~—— (v) the name, current address, and current phone number of the lien claimant;~~
 153 ~~—— (vi) the amount of the lien claim;~~
 154 ~~—— (vii) the signature of the lien claimant or the lien claimant's authorized agent;~~
 155 ~~—— (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,~~
 156 ~~Recording of Documents; and~~
 157 ~~—— (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a~~
 158 ~~statement describing what steps an owner, as defined in Section 38-11-102, may take to require~~
 159 ~~a lien claimant to remove the lien in accordance with Section 38-11-107.~~
 160 ~~—— (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to~~
 161 ~~hold and claim a lien.~~
 162 ~~—— (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or~~
 163 ~~mail by certified mail a copy of the notice of lien to:~~
 164 ~~—— (i) the reputed owner of the real property; or~~
 165 ~~—— (ii) the record owner of the real property.~~
 166 ~~—— (b) If the record owner's current address is not readily available to the lien claimant, the~~
 167 ~~copy of the claim may be mailed to the last-known address of the record owner, using the~~
 168 ~~names and addresses appearing on the last completed real property assessment rolls of the~~
 169 ~~county where the affected property is located.~~
 170 ~~—— (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner~~
 171 ~~precludes the lien claimant from an award of costs and attorneys' fees against the reputed~~
 172 ~~owner or record owner in an action to enforce the lien.~~
 173 ~~—— (4) The Division of Occupational and Professional Licensing shall make rules~~
 174 ~~governing the form of the statement required under Subsection (2)(a)(ix).] ←§~~

175 Section ~~§→~~ [5] ~~4~~ ←§ . Section 38-1-27 (Superseded 05/01/05) is amended to read:
 176 **38-1-27 (Superseded 05/01/05). Preliminary notice to original contractor -- Form**
 177 **and contents -- Service -- Notice of commencement of project or improvement.**

178 (1) (a) This section relating to preliminary notices does not apply to residential
 179 construction or to work performed in the development of subdivisions whose end use is for
 180 residential construction.

181 (b) (i) For the purposes of this section, residential construction means:

182 (A) single family detached housing; and

183 (B) multifamily attached housing up to and including fourplexes.

184 (ii) Residential construction includes rental housing.

185 (2) (a) Any person claiming, reserving the right to claim, or intending to claim a

186 mechanic's lien under this chapter for labor, service, equipment, or material shall provide

187 preliminary notice to the original contractor as prescribed by this section except this Subsection

188 (2) does not apply to:

189 (i) a person who is in privity of contract with an original contractor; or

190 (ii) a person performing labor for wages.

191 (b) ~~[Any]~~ Except as provided in Subsection (2)(c), a person who fails to provide the

192 preliminary notice required by this Subsection (2) has no right to claim a mechanic's lien under

193 this chapter.

194 (c) If ~~§~~ ~~[a person has privity of contract with the]~~ ~~an~~ ~~§~~ original contractor ~~§~~ ~~has~~
 194a actual notice of a person's provision of labor, service, equipment, or material on a construction
 194b project ~~§~~, the failure of that

195 person to send a preliminary notice does not ~~§~~ ~~[effect]~~ ~~affect~~ ~~§~~ that person's right to:

196 (i) claim a mechanic's lien under this chapter; or

197 (ii) make a claim under:

198 (A) Title 14, Chapter 1, Public Contracts;

199 (B) Title 14, Chapter 2, Private Contracts; or

200 (C) Section 63-56-38.1.

201 (3) The preliminary notice required by this section:

202 (a) shall be in writing; and

203 (b) may be given at any time during the course of the project or improvement.

204 (4) A person required by this section to give preliminary notice is only required to give
 205 one notice for each project or improvement, which may include an entire structure or a scheme
 206 of improvements.

207 (5) If the labor, service, equipment, or material is furnished pursuant to contracts with
 208 more than one subcontractor or with more than one original contractor, the notice requirements
 209 must be met with respect to the labor, service, equipment, or materials furnished to each such
 210 subcontractor or original contractor.

211 (6) (a) The person required by this section to give preliminary notice is precluded from

212 making a claim for any labor, service, equipment, or material [~~which~~ that was provided more
213 than 45 days prior to the date the preliminary notice is given.

214 (b) The preliminary notice must be given before a notice of lien is filed with the county
215 recorder pursuant to Section 38-1-7.

216 (7) The preliminary notice under this section shall include:

217 (a) the name, address, and telephone number of the person furnishing the labor,
218 service, equipment, or material;

219 (b) the name and address of the person who contracted for the furnishing of the labor,
220 service, equipment, or material; and

221 (c) the address of the project or improvement or a drawing sufficient to describe the
222 location of the project or improvement.

223 (8) (a) Service of a preliminary notice is sufficient if the notice is deposited in the
224 United States mail, certified or registered, return receipt requested, postage prepaid. Service of
225 the preliminary notice by mail is complete upon deposit of the certified or registered mail.

226 (b) A preliminary notice served by mail may be addressed to:

227 (i) the original contractor at the original contractor's place of business[-]; or

228 (ii) the original contractor's address as shown on the notice of commencement on
229 record with the county recorder as required by Subsection (9).

230 (9) (a) Any right to assert a defense of failure to comply with the preliminary notice
231 requirements of this section is void unless the original contractor records a notice of
232 commencement of the project or improvement with the county recorder for the county or
233 counties where the project is located within 30 days after commencement of the project.

234 (b) The notice of commencement described in Subsection (9)(a) shall include the
235 following:

236 (i) the name and address of the owner of the project or improvement;

237 (ii) the name and address of the original contractor;

238 (iii) (A) the name and address of the surety providing any payment bond for the project
239 or improvement; or

240 (B) if a surety does not exist, a statement that a payment bond was not required for the
241 work being performed;

242 (iv) the name and address of the project; and

243 (v) a legal description of the property on which the project is located.

244 ~~§~~ → [Section ~~§~~ → [6] ~~5~~ ← ~~§~~ . Section 38-11-203 is amended to read:

245 ~~38-11-203. Disbursements from the fund -- Limitations:~~

246 ~~(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only~~

247 ~~upon an order issued by the director finding that:~~

248 ~~(a) the claimant was a qualified beneficiary during the construction on a residence;~~

249 ~~(b) the claimant complied with the requirements of Section 38-11-204; and~~

250 ~~(c) there is adequate money in the fund to pay the amount ordered.~~

251 ~~(2) A payment of a claim upon the fund by a laborer shall be made only upon an order~~

252 ~~issued by the director finding that:~~

253 ~~(a) the laborer complied with the requirements of Subsection 38-11-204(7); and~~

254 ~~(b) there is adequate money in the fund to pay the amount ordered.~~

255 ~~(3) (a) An order under this section may be issued only after the division has complied~~

256 ~~with the procedures established by rule under Section 38-11-105.~~

257 ~~(b) The director shall order payment of the qualified services as established by~~

258 ~~evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified~~

259 ~~services in the judgment to the extent the qualified services are attributable to the~~

260 ~~owner-occupied residence at issue in the claim.~~

261 ~~(c) The director shall order payment of interest on amounts claimed for qualified~~

262 ~~services [based on the current prime interest rate at the time payment was due to the date the~~

263 ~~claim is approved for payment except for delays attributable to the claimant but not more than~~

264 ~~10% per annum].~~

265 ~~(d) The rate shall be the sum of the Prime Lending Rate as published in the Wall Street~~

266 ~~Journal on the first business day of each calendar year adjusted annually and 2% per annum.~~

267 ~~[(e) The]~~

268 ~~(e) (i) Subject to the other provisions of this Subsection (3)(d), the director shall order~~

269 ~~payment of costs in the amount stated in the judgment.~~

270 ~~(ii) If the judgment does not state a sum certain for costs, or if no judgment has been~~

271 ~~obtained, the director shall order payment of reasonable costs as supported by evidence.~~

272 ~~(iii) The claim application fee as established by the division pursuant to Subsection~~

273 ~~38-11-204(1)(b) is not a reimbursable cost.] ← ~~§~~~~

274 ~~§→ [(f) (i) If a judgment has been obtained with attorneys' fees, notwithstanding the amount~~
 275 ~~stated in a judgment, or if no judgment has been obtained but the contract provides for~~
 276 ~~attorneys' fees, the director shall order payment of attorneys' fees [not to exceed 15% of~~
 277 ~~qualified services.] equal to the lesser of:~~

278 ~~—— (A) the amount of attorneys' fees actually incurred; or~~

279 ~~—— (B) the sum of:~~

280 ~~—— (I) 33% of the first \$5,000 of qualified services; and~~

281 ~~—— (H) 15% of the amount of qualified services in excess of \$5,000.~~

282 ~~—— (ii) If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be~~
 283 ~~paid by the director.~~

284 ~~—— (4) (a) Payments made from the fund may not exceed \$75,000 per construction project~~
 285 ~~to qualified beneficiaries and laborers who have claim against the fund for that construction~~
 286 ~~project.~~

287 ~~—— (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000~~
 288 ~~shall be awarded proportionately so that each qualified beneficiary and laborer awarded~~
 289 ~~compensation from the fund for qualified services shall receive an identical percentage of the~~
 290 ~~qualified beneficiary's or laborer's award.~~

291 ~~—— (5) Subject to the limitations of Subsection (4), if on the day the order is issued there~~
 292 ~~are inadequate funds to pay the entire claim and the director determines that the claimant has~~
 293 ~~otherwise met the requirements of Subsection (1) or (2), the director shall order additional~~
 294 ~~payments once the fund meets the balance limitations of Section 38-11-206.] ←§~~

295 Section ~~§→~~ [7] ~~5 ←§~~ . Section 38-11-204 is amended to read:

296 **38-11-204. Claims against the fund -- Requirement to make a claim --**

297 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
 298 **compliance.**

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

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

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

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

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

305 (ii) that the person was a qualified beneficiary or laborer during the construction on the
306 owner-occupied residence; and

307 (iii) the basis for the claim.

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

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

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

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

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

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

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

324 (A) for the performance of qualified services;

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

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

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

330 or

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

334 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
335 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

336 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
337 contract in accordance with the written contract and any amendments to the contract;

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

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

348 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
349 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
350 supplier;

351 (d) (i) the qualified beneficiary filed~~[-(A)]~~ an action against the nonpaying party to
352 recover monies owed to the qualified beneficiary within 180 days from the date the qualified
353 beneficiary last provided qualified services, unless precluded from doing so by the nonpaying
354 party's bankruptcy filing within the 180 days after completion of services; ~~[and]~~

355 ~~[(B) a notice of commencement of action with the division within 30 days from the~~
356 ~~date the qualified beneficiary filed the civil action if a civil action was filed as required by~~
357 ~~Subsection (4)(d)(i)(A);]~~

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

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

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

365 (II) received return of service of the order from a person qualified to serve documents
366 under the Utah Rules of Civil Procedure, Rule 4(b); and

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

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

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

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

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

378 (ii) A qualified beneficiary complies with Subsection (4)(f)(i) if it verifies a
379 contractor's licensure annually.

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

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

386 [~~(a) if otherwise qualified under this chapter;~~]

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

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

392 [~~(7)~~] (6) To recover from the fund a laborer shall:

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

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

396 [~~(8)~~] (7) A fee determined by the division under Section 63-38-3.2 shall be deducted
397 from any recovery from the fund received by a laborer.

398 ~~[(9)]~~ (8) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner
399 or agent of the owner establishes to the satisfaction of the director that the owner of the
400 owner-occupied residence or the owner's agent entered into a written contract with an original
401 contractor who:

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

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

409 ~~[(10)]~~ (9) The director shall have equitable power to determine if the requirements of
410 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under Title 38,
411 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, shall not alter or have
412 any effect on any other decision by the division under Title 58, Occupations and Professions.

413 Section ~~§~~ → [8] 7 ← ~~§~~ . Section **63-56-38.1 (Effective 05/01/05)** is amended to read:
414 **63-56-38.1 (Effective 05/01/05). Preliminary notice requirement.**

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

418 (a) to a person performing labor for wages; ~~[or]~~

419 (b) to a person who contracts directly with the payment bond principal; or

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

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

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

426 Section ~~§~~ → [9] 8 ← ~~§~~ . **Repealer.**

427 This bill repeals:

428 Section **38-1-38, Lien notification.**

429 Section ~~§~~ → [10] 9 ← ~~§~~ . **Effective date.**

430 This bill takes effect on May 2, 2005, except that the amendments to Section 58-55-501
431 (Effective 07/01/05) in this bill take effect on July 1, 2005.

432 Section ~~§~~ → [11] 10 ← ~~§~~ . **Retrospective operation.**

433 The amendments to Sections 38-1-7 (Superseded 05/01/05) and 38-1-27 (Superseded
434 05/01/05) have retrospective operation to May 1, 2005.