

**WRONGFUL LIEN OFFENSES**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Beverly Ann Evans**

House Sponsor: John G. Mathis

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**LONG TITLE**

**General Description:**

This bill amends the Criminal Code and Title 38, Liens, to provide for filing civil injunctions against wrongful liens made against a person's interest in real or personal property. The bill establishes felony penalties for making a wrongful lien. The bill also makes a felony offense of fraudulent handling of recordable writings.

**Highlighted Provisions:**

This bill:

- ▶ defines civil wrongful lien;
- ▶ establishes felony penalties for making a wrongful lien and increased penalties for subsequent violations;
- ▶ establishes felony penalties for the fraudulent handling of recordable writings, which includes falsifying or destroying a will, deed, lien, or other similar writing;
- ▶ allows an individual to petition for an ex parte injunction against the person making the wrongful lien, which prohibits the maker of the lien from making further liens against the petitioner without specific permission of the court;
- ▶ provides that the ex parte injunction nullifies the wrongful lien and gives the person making the wrongful lien the right to a hearing regarding the nullification;
- ▶ provides that if the maker of the lien does not respond, or if there is a hearing and the court determines that the lien is wrongful, the lien is nullified and the lien injunction stays in effect for three years unless the petitioner requests that the injunction be dissolved earlier;
- ▶ provides for attorney fees in actions regarding the wrongful lien and injunction; and

- ▶ makes cross reference changes in accordance with the provisions of this bill.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-9-2**, as last amended by Chapter 122, Laws of Utah 1999

**76-3-203.1**, as last amended by Chapter 209, Laws of Utah 2001

**76-6-504**, as enacted by Chapter 196, Laws of Utah 1973

ENACTS:

**38-9a-101**, Utah Code Annotated 1953

**38-9a-102**, Utah Code Annotated 1953

**38-9a-201**, Utah Code Annotated 1953

**38-9a-202**, Utah Code Annotated 1953

**38-9a-203**, Utah Code Annotated 1953

**38-9a-204**, Utah Code Annotated 1953

**38-9a-205**, Utah Code Annotated 1953

**76-6-503.5**, Utah Code Annotated 1953

REPEALS:

**38-9-5**, as enacted by Chapter 125, Laws of Utah 1997

**76-6-503**, as enacted by Chapter 196, Laws of Utah 1973

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

Section 1. Section **38-9-2** is amended to read:

**38-9-2. Scope.**

(1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, [~~38-9-5;~~] and 38-9-6 apply to any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or

after May 5, 1997.

(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless of the date the lien was recorded or filed.

(2) The provisions of this chapter shall not prevent a person from filing a lis pendens in accordance with Section 78-40-2 or seeking any other relief permitted by law.

(3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

Section 2. Section **38-9a-101** is enacted to read:

**CHAPTER 9a. WRONGFUL LIEN INJUNCTIONS**

**Part 1. General Provisions**

**38-9a-101. Title.**

This chapter is known as "Wrongful Lien Injunctions."

Section 3. Section **38-9a-102** is enacted to read:

**38-9a-102. Definitions.**

As used in this chapter, "wrongful lien" refers to a lien made in violation of Section 76-6-503.5, and includes an instrument or document as defined in Section 38-9-1.

Section 4. Section **38-9a-201** is enacted to read:

**Part 2. Petition, Notice, Injunction, Hearings**

**38-9a-201. Wrongful lien injunction -- Forms.**

(1) (a) Any person who believes that he or she is the victim of a wrongful lien may file a verified written petition for a civil wrongful lien injunction against the person filing, making, or uttering the lien in the district court in the district in which the petitioner or respondent resides or in which any of the events occurred.

(b) A minor accompanied by his or her parent or guardian may file a petition on his or her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

(2) (a) The Administrative Office of the Courts shall develop and adopt forms for petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service, and any other necessary forms in accordance with the provisions of this chapter on or before May 2,

2005. The office shall provide the forms to the clerk of each district court.

(b) The court clerks shall provide the forms to persons seeking to proceed under this chapter.

(c) The district courts shall issue all petitions, injunctions, ex parte injunctions, and any other necessary forms in the form prescribed by the Administrative Office of the Courts.

Section 5. Section **38-9a-202** is enacted to read:

**38-9a-202. Petition for wrongful lien injunction -- Ex parte injunction.**

(1) The petition for a civil wrongful lien injunction shall include:

(a) the name of the petitioner, except that at the petitioner's request his or her address shall be disclosed to the court for purposes of service, but may not be listed on the petition, and shall be maintained in a separate document or automated database, not subject to release, disclosure, or any form of public access except as ordered by the court for good cause shown;

(b) the name and address, if known, of the respondent;

(c) specific actions and dates of the actions constituting the alleged wrongful lien;

(d) if there is a prior court order concerning the same conduct, the name of the court in which the order was rendered; and

(e) corroborating evidence of a wrongful lien, which may be in the form of a police report, affidavit, record, statement, item, letter, copy of the lien, or any other evidence which tends to prove the allegation of wrongful lien.

(2) If the court determines there is reason to believe that a wrongful lien has been made, uttered, recorded, or filed, the court may issue an ex parte civil wrongful lien injunction that includes any of the following:

(a) enjoining the respondent from making, uttering, recording, or filing any further liens without specific permission of the court;

(b) ordering that the lien be nullified; and

(c) any other relief necessary or convenient for the protection of the petitioner and other specifically designated persons under the circumstances.

(3) An ex parte civil wrongful lien injunction issued under this section shall state on its

face:

(a) that the respondent is entitled to a hearing, upon written request filed with the court within ten days of the service of the injunction;

(b) the name and address of the district court where the request may be filed;

(c) that if the respondent fails to request a hearing within ten days of service, the ex parte civil wrongful lien injunction is automatically modified to a civil wrongful lien injunction without further notice to the respondent and that the civil wrongful lien injunction expires three years after service on the respondent;

(d) the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of making a wrongful lien and any other crime you may have committed in disobeying this order."; and

(e) that if the respondent requests, in writing, a hearing after the ten-day period specified in Subsection (3)(a) the court shall set a hearing within a reasonable time from the date the hearing is requested.

(4) The ex parte civil wrongful lien injunction shall be served on the respondent within 90 days after the date it is signed, and is effective upon service.

Section 6. Section **38-9a-203** is enacted to read:

**38-9a-203. Hearing -- Court action.**

(1) (a) A hearing requested by the respondent as allowed under Section 38-9a-202 shall be held within ten days from the date the request is filed with the court, except as provided under Subsection (3).

(b) If the court finds compelling reasons to continue the hearing date, the hearing shall then be held at the earliest possible time.

(2) At the hearing the court may modify, revoke, or continue the injunction. The burden is on the petitioner to show by a preponderance of the evidence that the respondent has made, uttered, recorded, or filed a wrongful lien against the petitioner or the petitioner's property.

(3) (a) If the respondent requests a hearing subsequent to the ten-day period after service,

the court shall set a hearing within a reasonable time from the date requested.

(b) At the hearing, the burden is on the respondent to show good cause why the civil wrongful lien injunction should be nullified.

Section 7. Section **38-9a-204** is enacted to read:

**38-9a-204. Civil wrongful lien injunction -- Validity of injunctions -- Changes to injunctions -- Dissolution of injunction.**

(1) If the respondent does not request a hearing in writing within ten days of service of the ex parte civil wrongful lien injunction under Section 38-9a-203, the injunction automatically becomes a civil wrongful lien injunction without further notice to the respondent and expires three years from the date of service.

(2) The civil wrongful lien injunction issued by the court shall include the following statement: "Attention. This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of making a wrongful lien and any other crime you may have committed in disobeying this order."

(3) A certified copy of an ex parte civil wrongful lien injunction or civil wrongful lien injunction is presumed to be a valid existing order of the court for a period of three years from the date of service of the ex parte civil wrongful lien injunction on the respondent.

(4) (a) Any changes or modifications of the ex parte civil wrongful lien injunction are effective upon service on the respondent. The original ex parte civil wrongful lien injunction continues in effect until service of the changed or modified civil wrongful lien injunction on the respondent.

(b) The validity of the injunction under this Subsection (4) is determined in the same manner as prescribed in Subsection (3).

(5) The ex parte civil wrongful lien injunction or civil wrongful lien injunction may be dissolved at any time upon written application by the petitioner to the issuing court.

(6) (a) The court clerk shall provide, without charge, to the petitioner one certified copy of the injunction issued by the court and one certified copy of the proof of service of the injunction on the respondent.

(b) Charges may be imposed by the clerk's office for any additional copies, whether or not certified, under the Utah Code of Judicial Administration, Rule 4-202.08.

Section 8. Section **38-9a-205** is enacted to read:

**38-9a-205. Remedies -- Actions arising from injunctions -- Attorney fees.**

(1) The remedies provided in this chapter for enforcement of the orders of the court are in addition to any other civil and criminal remedies available.

(2) The district court shall hear and decide all matters arising pursuant to this chapter.

(3) After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney's fees.

Section 9. Section **76-3-203.1** is amended to read:

**76-3-203.1. Offenses committed in concert with two or more persons -- Notice -- Enhanced penalties.**

(1) (a) A person who commits any offense listed in Subsection (4) is subject to an enhanced penalty for the offense as provided in Subsection (3) if the trier of fact finds beyond a reasonable doubt that the person acted in concert with two or more persons.

(b) "In concert with two or more persons" as used in this section means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:

(i) was physically present; or

(ii) participated as a party to any offense listed in Subsection (4).

(c) For purposes of Subsection (1)(b)(ii):

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

- (3) The enhanced penalty for a:
- (a) class B misdemeanor is a class A misdemeanor;
  - (b) class A misdemeanor is a third degree felony;
  - (c) third degree felony is a second degree felony;
  - (d) second degree felony is a first degree felony; and
  - (e) first degree felony is an indeterminate prison term of not less than nine years and which may be for life.
- (4) Offenses referred to in Subsection (1) are:
- (a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related offenses;
  - (b) assault and related offenses under Title 76, Chapter 5, Part 1;
  - (c) any criminal homicide offense under Title 76, Chapter 5, Part 2;
  - (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;
  - (e) any felony sexual offense under Title 76, Chapter 5, Part 4;
  - (f) sexual exploitation of a minor as defined in Section 76-5a-3;
  - (g) any property destruction offense under Title 76, Chapter 6, Part 1;
  - (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;
  - (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;
  - (j) theft and related offenses under Title 76, Chapter 6, Part 4;
  - (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections [~~76-6-503;~~ 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;
  - (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
  - (m) tampering with a witness or other violation of Section 76-8-508;
  - (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
  - (o) any explosives offense under Title 76, Chapter 10, Part 3;
  - (p) any weapons offense under Title 76, Chapter 10, Part 5;



(q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;

(r) prostitution and related offenses under Title 76, Chapter 10, Part 13;

(s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(u) communications fraud as defined in Section 76-10-1801;

(v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and

(w) burglary of a research facility as defined in Section 76-10-2002.

(5) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Section 10. Section **76-6-503.5** is enacted to read:

**76-6-503.5. Wrongful liens and fraudulent handling of recordable writings --**

**Penalties.**

(1) "Lien" means:

(a) an instrument or document filed pursuant to Section 70A-9a-516;

(b) an instrument or document described in Subsection 38-9-1(6); and

(c) any instrument or document that creates or purports to create a lien or encumbrance on an owner's interest in real or personal property or a claim on another's assets.

(2) A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien:

(a) having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets; or

(b) if the person files the lien in violation of a civil wrongful lien injunction pursuant to Title 38, Chapter 9a, Wrongful Lien Injunctions.

(3) A violation of this section is a third degree felony unless the person has been

previously convicted of an offense under this section, in which case the violation is a second degree felony.

(4) (a) Any person who with intent to deceive or injure anyone falsifies, destroys, removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other writing for which the law provides public recording is guilty of fraudulent handling of recordable writings.

(b) A violation of Subsection (4)(a) is a third degree felony unless the person has been previously convicted of an offense under this section, in which case the violation is a second degree felony.

(5) This section does not prohibit prosecution for any act in violation of Section 76-8-414 or for any offense greater than an offense under this section.

Section 11. Section **76-6-504** is amended to read:

**76-6-504. Tampering with records -- Penalty.**

(1) Any person who, having no privilege to do so, knowingly falsifies, destroys, removes, or conceals any writing, other than the writings enumerated in Section [~~76-6-503, or~~] 76-6-503.5 for which the law provides public recording or any record, public or private, with intent to deceive or injure any person or to conceal any wrongdoing is guilty of tampering with records.

(2) Tampering with records is a class B misdemeanor.

Section 12. **Repealer.**

This bill repeals:

Section **38-9-5, Criminal liability for filing a wrongful lien -- Penalties.**

Section **76-6-503, Fraudulent handling of recordable writings.**