

**LIENS ON AIRCRAFT**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Thomas V. Hatch**

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**LONG TITLE**

**General Description:**

This bill modifies lien provisions to enact the Aircraft Lien Act.

**Highlighted Provisions:**

This bill:

- ▶ addresses notice of lien;
- ▶ defines terms;
- ▶ addresses relationship to other lien statutes;
- ▶ preserves the right to collect on a debt;
- ▶ authorizes a lien against an aircraft by a repairman;
- ▶ requires that the lien be filed with the Federal Aviation Administration;
- ▶ authorizes foreclosure on an aircraft;
- ▶ authorizes taking possession of an aircraft;
- ▶ authorizes selling an aircraft;
- ▶ establishes priority of lien;
- ▶ addresses release of lien by posting bond; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-12-102**, as last amended by Chapter 370, Laws of Utah 2001

ENACTS:

**38-13-101**, Utah Code Annotated 1953

**38-13-102**, Utah Code Annotated 1953

**38-13-103**, Utah Code Annotated 1953

**38-13-201**, Utah Code Annotated 1953

**38-13-202**, Utah Code Annotated 1953

**38-13-203**, Utah Code Annotated 1953

**38-13-204**, Utah Code Annotated 1953

**38-13-205**, Utah Code Annotated 1953

**38-13-206**, Utah Code Annotated 1953

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

Section 1. Section **38-12-102** is amended to read:

**38-12-102. Notice requirements for lien filings -- Exceptions.**

(1) [~~No later than 30 days after the day on which a lien claimant or the lien claimant's authorized agent files for recordation a notice of lien meeting the requirements of Subsection (2) with a county recorder, county clerk, or clerk of the court, a~~] A lien claimant or the lien claimant's agent shall send by certified mail a written copy of the notice of lien to the last-known address of the person against whom the notice of lien is filed[;] no later than 30 days after the day on which a lien claimant or the lien claimant's authorized agent files a notice of lien meeting the requirements of Subsection (2):

(a) for recordation with:

(i) a county recorder;

(ii) a county clerk; or

(iii) a clerk of the court; or

(b) in the case of a lien on an aircraft under Section 38-13-201, with the Federal Aviation Administration.

(2) The notice of lien described in Subsection (1) shall contain the following

information:

- (a) the name and address of the person against whom the lien is filed;
- (b) (i) a statement that certain property owned by the person against whom the lien is filed is subject to a lien;
  - (ii) the amount of the judgment, settlement, or compromise if the lien is based on a charge against or interest in a judgment, settlement, or compromise; or
  - (iii) the amount of state taxes owed;
- (c) the article number contained on the certified mail receipt;
- (d) the date the notice of lien was filed; and
- (e) the name and address of the lien claimant.
- (3) The notice requirements of Subsections (1) and (2) do not apply to:
  - (a) a mechanics' lien as provided in Title 38, Chapter 1, Mechanics' Liens;
  - (b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;
  - (c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;
  - (d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;
  - (e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;
  - (f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;
  - (g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;
  - (h) a trust deed;
  - (i) a mortgage;
  - (j) any interests subject to a security agreement as defined in Section 70A-9a-102;
  - (k) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2); or
  - (l) a court judgment or abstract of a court judgment presented for recording in the office of a county recorder.

Section 2. Section **38-13-101** is enacted to read:

**CHAPTER 13. AIRCRAFT LIEN ACT**

**Part 1. General Provisions**

**38-13-101. Title.**

This chapter is known as the "Aircraft Lien Act."

Section 3. Section **38-13-102** is enacted to read:

**38-13-102. Definitions.**

As used in this chapter:

(1) "Aircraft" is as defined in Section 72-10-102.

(2) "Repairman" means a person who makes, alters, repairs, or performs labor on an aircraft.

Section 4. Section **38-13-103** is enacted to read:

**38-13-103. Scope of chapter.**

(1) This chapter may not be interpreted to impair or affect the right of any person to whom a debt may be due for any work performed or materials furnished to maintain a personal action to recover the same.

(2) This chapter supersedes Sections 38-2-3 and 38-2-4 as it relates to a lien for a repairman making, altering, repairing, or performing labor on an aircraft.

Section 5. Section **38-13-201** is enacted to read:

**Part 2. Lien Provisions**

**38-13-201. Lien on aircraft -- Filing required -- Notice -- Release.**

(1) A repairman who makes, alters, repairs, or performs labor on an aircraft at the request of the owner or other person entitled to possession of the aircraft shall have a lien upon the aircraft for the reasonable value of the following furnished and used in making the aircraft or in altering or repairing the aircraft:

(a) the labor performed; and

(b) materials.

(2) A repairman may retain possession of the aircraft until the amount due under

Subsection (1) is paid, subject to the rights and interests of any secured party in the aircraft that has priority in accordance with Section 38-13-205 over the lien imposed under this chapter unless the secured party requested that the repairman make, alter, repair, or perform labor on the aircraft.

(3) (a) For a lien to be valid, a repairman shall file the lien with the Federal Aviation Administration within 90 days of the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft.

(b) In addition to any requirements of 14 C.F.R. Part 49, Recording of Aircraft Titles and Security Documents, the lien filing required by Subsection (3)(a) shall:

(i) comply with Subsection 38-12-102(2); and

(ii) include:

(A) the United States Registration Number, make, model, and serial number of the aircraft subject to the lien;

(B) the name of the manufacturer, the model, and the serial number of any engine, propeller, or appliance subject to the lien, to the extent that it is not otherwise identifiable by reference to the United States Registration Number;

(C) the amount of the lien; and

(D) a narrative statement describing the nature of the labor performed.

(c) Notwithstanding the day on which the repairman files a lien with the Federal Aviation Administration, a lien filed with the Federal Aviation Administration is effective beginning the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft.

(4) A repairman shall send a notice of lien to the person against whom the notice of lien is filed in accordance with Section 38-12-102.

(5) If the repairman is paid amounts owed under this section, the repairman shall file a release of lien with the Federal Aviation Administration.

Section 6. Section **38-13-202** is enacted to read:

**38-13-202. Foreclosure on a lien.**

(1) A repairman shall file a foreclosure action in a court of competent jurisdiction to

enforce the lien filed under this chapter within 180 days from the day on which the repairman sends notice of the lien in accordance with Section 38-12-102.

(2) In a foreclosure action filed under this section, the repairman or the repairman's attorney shall show by complaint to the court:

(a) that the repairman made, altered, repaired, or performed labor on the aircraft that entitles the repairman to a lien under this chapter;

(b) that the owner or other person entitled to possession of the aircraft requested that the repairman make, alter, repair, or perform labor described in Subsection (2)(a);

(c) that the repairman sent notice of the lien in accordance with Sections 38-12-102 and 38-13-201;

(d) that the person against whom the lien is filed failed to pay the amount owed within 30 days of the day on which the repairman sent the notice of lien described in Subsection (2)(c); and

(e) an itemized description of the amounts owed.

(3) In a foreclosure action, the amount claimed by the repairman may include:

(a) work performed;

(b) materials;

(c) interest;

(d) storage fees charged; and

(e) any costs incurred by the repairman for using enforcement procedures under this chapter, including attorneys' fees.

Section 7. Section **38-13-203** is enacted to read:

**38-13-203. Repossession of aircraft.**

(1) If a repairman is not in possession of the aircraft under Section 38-13-201, a repairman may take possession of an aircraft to recover the amounts owed under a lien imposed by this chapter if:

(a) the repairman obtains a foreclosure judgment under Section 38-13-202;

(b) the repairman provides written notice of the intent to take possession of the aircraft:

(i) to:

(A) the owner of the aircraft; and

(B) any person described in Subsection 38-13-204(1)(b); and

(ii) at least 15 days before the day on which the repairman takes possession of the aircraft;

(c) the aircraft is in the possession of one of the following if that person requested that the repairman make, alter, repair, or perform labor on the aircraft:

(i) the owner of the aircraft; or

(ii) other person entitled to possession of the aircraft; and

(d) the person described in Subsection (1)(c) has not paid the amount owed under this chapter before the day on which the repairman takes possession of the aircraft.

(2) Subject to the other requirements of this section, a repairman may take possession of an aircraft under this section:

(a) pursuant to judicial process; or

(b) without judicial process, if the transfer of possession of the aircraft proceeds without breach of the peace.

Section 8. Section **38-13-204** is enacted to read:

**38-13-204. Selling the aircraft.**

(1) A repairman may sell an aircraft subject to a lien under this chapter if:

(a) the repairman receives a judgment in the foreclosure action filed under Section 38-13-202;

(b) the repairman gives notice to:

(i) the owner of the aircraft;

(ii) the customer as indicated on the work order for the making, altering, repairing, or performing of labor; and

(iii) all other persons claiming an interest in or lien on the aircraft:

(A) as disclosed by the records of the Federal Aviation Administration or of corresponding agencies of any state in which the aircraft appears registered; and

(B) that is known by the repairman;

(c) the notice required by Subsection (1)(b) is sent by certified mail at least 30 days before the proposed or scheduled date of any sale; and

(d) the notice required by Subsection (1)(b) contains:

(i) a description of the aircraft and its location;

(ii) the name and address of each person described in Subsection (1)(b);

(iii) the name, address, and telephone number of the repairman;

(iv) notice:

(A) that the repairman has a foreclosure judgment against the aircraft for the amount stated in the judgment;

(B) of the cash sum which, if paid to the repairman would be sufficient to redeem the aircraft from the lien claimed by the repairman;

(C) that the lien claimed by the repairman is subject to enforcement under this chapter;  
and

(D) that the aircraft may be sold to satisfy the lien;

(v) the date, time, and location of any proposed or scheduled sale of the aircraft;

(vi) notice as to whether the sale is private or public; and

(vii) notice that the owner of the aircraft or other person entitled to possession of the aircraft has a right to recover possession of the aircraft without instituting judicial proceedings by posting a bond in accordance with Section 38-13-206.

(2) The repairman shall at least 20 days before the proposed or scheduled date of sale of the aircraft publish the notice required by this section once in a newspaper circulated in the county where the aircraft is held if:

(a) the owner of the aircraft is unknown;

(b) the whereabouts of the owner of the aircraft cannot be determined; or

(c) the owner of the aircraft or any person notified under Subsection (1)(b) fails to acknowledge receipt of the notice.

(3) (a) An aircraft subject to lien enforcement under this chapter may be sold by the repairman at public or private sale.

(b) Notwithstanding Subsection (3)(a), in the case of a private sale, every aspect of the sale, including the method, manner, time, place, and terms shall be commercially reasonable.

(4) This section may not be construed to affect an owner's right to redeem the owner's aircraft from the lien at any time prior to sale by paying the amount claimed by the repairman for:

(a) work performed;

(b) materials;

(c) interest;

(d) storage fees charged; and

(e) any costs incurred by the repairman for using enforcement procedures under this chapter, including attorneys' fees.

(5) The proceeds of a sale under this section shall be distributed as follows:

(a) amounts owed persons having a security interest or lien on the aircraft shall be paid in the order that they have priority in accordance with Section 38-13-205; and

(b) the amount remaining after the amount described in Subsection (5)(a) is paid shall be paid to the owner of the aircraft before the sale of the aircraft under this section.

(6) An aircraft against which a lien is filed may not be sold earlier than the later of:

(a) 45 days after the last day on which the repairman makes, alters, repairs, or performs labor on the aircraft; or

(b) 30 days from the date on which the repairman sends notice of the lien in accordance with Section 38-12-102.

Section 9. Section **38-13-205** is enacted to read:

**38-13-205. Priority of liens.**

(1) Except as provided in Subsection (2), a lien imposed under this chapter has priority over any lien, mortgage, security interest, or other encumbrance arising after the day on which the lien is effective in accordance with Section 38-13-201.

(2) The lien imposed under this chapter does not have priority over a lien imposed pursuant to Title 59, Chapter 2, Property Tax Act.

Section 10. Section **38-13-206** is enacted to read:

**38-13-206. Release of aircraft by posting a bond.**

(1) The owner or other person entitled to possession of the aircraft may have the aircraft released from any lien claimed on it under this chapter by filing with the clerk of a court of competent jurisdiction a cash or surety bond, payable to the person claiming the lien, and conditioned for the payment of any judgment that may be recovered on the lien, with costs, interest, and storage fees.

(2) (a) The repairman has 60 days after the day on which the repairman receives notice that the owner or other person entitled to possession of the aircraft has filed the bond provided in Subsection (1) to file suit to foreclose the repairman's lien.

(b) If the repairman fails to timely file an action, the clerk of the court shall release the bond.

(3) (a) If an owner or other person entitled to possession of the aircraft files a bond as provided in Subsection (1), the clerk of the court shall provide that person with evidence that the bond has been filed.

(b) The owner or other person entitled to possession of the aircraft shall file the evidence of a bond provided under Subsection (3)(a) with the Federal Aviation Administration.

(c) Filing the evidence provided in Subsection (3)(a) with the Federal Aviation Administration releases the lien on the aircraft if the repairman fails to foreclose on the lien within 60 days of the day on which the repairman receives notice that the owner or other person entitled to possession of the aircraft filed the bond.