

1 **WRONGFUL LIEN OFFENSES**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Beverly Ann Evans**

5

LONG TITLE

6 **General Description:**

7
8 This bill amends the Criminal Code and Title 38, Liens, to provide for filing civil
9 injunctions against wrongful liens made against a person's interest in real or personal
10 property. The bill establishes felony penalties for making a wrongful lien. The bill also
11 makes a felony offense of fraudulent handling of recordable writings.

12 **Highlighted Provisions:**

13 This bill:

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



- 28 ▶ provides for attorney fees in actions regarding the wrongful lien and injunction; and
- 29 ▶ makes cross reference changes in accordance with the provisions of this bill.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **38-9-2**, as last amended by Chapter 122, Laws of Utah 1999
- 37 **76-3-203.1**, as last amended by Chapter 209, Laws of Utah 2001
- 38 **76-6-504**, as enacted by Chapter 196, Laws of Utah 1973

39 ENACTS:

- 40 **38-9a-101**, Utah Code Annotated 1953
- 41 **38-9a-102**, Utah Code Annotated 1953
- 42 **38-9a-201**, Utah Code Annotated 1953
- 43 **38-9a-202**, Utah Code Annotated 1953
- 44 **38-9a-203**, Utah Code Annotated 1953
- 45 **38-9a-204**, Utah Code Annotated 1953
- 46 **38-9a-205**, Utah Code Annotated 1953
- 47 **76-6-503.5**, Utah Code Annotated 1953

48 REPEALS:

- 49 **38-9-5**, as enacted by Chapter 125, Laws of Utah 1997
- 50 **76-6-503**, as enacted by Chapter 196, Laws of Utah 1973



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

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

54 **38-9-2. Scope.**

55 (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, [~~38-9-5,~~] and 38-9-6 apply to
56 any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or
57 after May 5, 1997.

58 (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless

59 of the date the lien was recorded or filed.

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

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

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

65 **CHAPTER 9a. WRONGFUL LIEN INJUNCTIONS**

66 **Part 1. General Provisions**

67 **38-9a-101. Title.**

68 This chapter is known as "Wrongful Lien Injunctions."

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

70 **38-9a-102. Definitions.**

71 As used in this chapter, "wrongful lien" refers to a lien made in violation of Section
72 76-6-503.5.

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

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

75 **38-9a-201. Wrongful lien injunction -- Forms.**

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

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

82 (2) (a) The Administrative Office of the Courts shall develop and adopt forms for
83 petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service, and
84 any other necessary forms in accordance with the provisions of this chapter on or before May 2,
85 2005. The office shall provide the forms to the clerk of each district court.

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

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

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

91 **38-9a-202. Petition for wrongful lien injunction -- Ex parte injunction.**

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

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

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

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

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

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

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

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

109 (b) ordering that the lien be nullified; and

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

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

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

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

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

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

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

128 (4) The ex parte civil wrongful lien injunction shall be served on the respondent within
129 90 days after the date it is signed, and is effective upon service.

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

131 **38-9a-203. Hearing -- Court action.**

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

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

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

141 (3) (a) If the respondent requests a hearing subsequent to the ten-day period after
142 service, the court shall set a hearing within a reasonable time from the date requested.

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

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

146 **38-9a-204. Civil wrongful lien injunction -- Validity of injunctions -- Changes to**
147 **injunctions -- Dissolution of injunction.**

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

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

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

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

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

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

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

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

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

173 **38-9a-205. Remedies -- Actions arising from injunctions -- Attorney fees.**

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

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

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

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

180 **76-3-203.1. Offenses committed in concert with two or more persons -- Notice --**
181 **Enhanced penalties.**

182 (1) (a) A person who commits any offense listed in Subsection (4) is subject to an

183 enhanced penalty for the offense as provided in Subsection (3) if the trier of fact finds beyond a
184 reasonable doubt that the person acted in concert with two or more persons.

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

188 (i) was physically present; or

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

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

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

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

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

198 (3) The enhanced penalty for a:

199 (a) class B misdemeanor is a class A misdemeanor;

200 (b) class A misdemeanor is a third degree felony;

201 (c) third degree felony is a second degree felony;

202 (d) second degree felony is a first degree felony; and

203 (e) first degree felony is an indeterminate prison term of not less than nine years and
204 which may be for life.

205 (4) Offenses referred to in Subsection (1) are:

206 (a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding
207 drug-related offenses;

208 (b) assault and related offenses under Title 76, Chapter 5, Part 1;

209 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2;

210 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;

211 (e) any felony sexual offense under Title 76, Chapter 5, Part 4;

212 (f) sexual exploitation of a minor as defined in Section 76-5a-3;

213 (g) any property destruction offense under Title 76, Chapter 6, Part 1;

214 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;

215 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;

216 (j) theft and related offenses under Title 76, Chapter 6, Part 4;

217 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections [~~76-6-503~~];

218 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,

219 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

220 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,

221 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

222 (m) tampering with a witness or other violation of Section 76-8-508;

223 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

224 (o) any explosives offense under Title 76, Chapter 10, Part 3;

225 (p) any weapons offense under Title 76, Chapter 10, Part 5;

226 (q) pornographic and harmful materials and performances offenses under Title 76,

227 Chapter 10, Part 12;

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

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

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

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

232 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency

233 Transaction Reporting Act; and

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

235 (5) It is not a bar to imposing the enhanced penalties under this section that the persons

236 with whom the actor is alleged to have acted in concert are not identified, apprehended,

237 charged, or convicted, or that any of those persons are charged with or convicted of a different

238 or lesser offense.

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

240 **76-6-503.5. Wrongful liens and fraudulent handling of recordable writings --**

241 **Penalties.**

242 (1) "Lien" means:

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

244 (b) an instrument or document filed pursuant to or authorized by Title 38, Chapter 9,

245 Wrongful Liens and Wrongful Judgment Liens; and

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

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

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

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

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

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

261 (b) Fraudulent handling of recordable writings is a third degree felony unless the
262 person has been previously convicted of an offense under this section, in which case the
263 violation is a second degree felony.

264 (5) This section does not prohibit prosecution for any act in violation of Section
265 76-8-414 or for any offense greater than an offense under this section.

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

267 **76-6-504. Tampering with records -- Penalty.**

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

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

273 Section 12. **Repealer.**

274 This bill repeals:

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

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

Legislative Review Note
as of 1-12-05 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 SB0047

Wrongful Lien Offenses

25-Jan-05

6:04 PM

State Impact

Any fiscal impact can be handled within existing budgets.

Individual and Business Impact

Any fiscal impact is dependent on individual sentencing.

Office of the Legislative Fiscal Analyst