

**WRONGFUL LIENS AND WRONGFUL**

**JUDGEMENT LIENS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James R. Gowans**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill addresses the filing of, and an action against, a wrongful lien.

**Highlighted Provisions:**

This bill:

- ▶ includes a notice of interest and other encumbrances within the definition of "wrongful lien";
- ▶ addresses the impact of various wrongful lien provisions on a notice of interest and other encumbrance;
- ▶ increases the statutory amount that may be recovered by a person against whom a wrongful lien is recorded; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-9-1**, as repealed and reenacted by Laws of Utah 1997, Chapter 125

**38-9-2**, as last amended by Laws of Utah 2005, Chapter 93



28           **38-9-4**, as last amended by Laws of Utah 2006, Chapter 297

29           **38-9a-201**, as enacted by Laws of Utah 2005, Chapter 93



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

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

33           **38-9-1. Definitions.**

34           As used in this chapter:

35           (1) "Interest holder" means a person who holds or possesses a present, lawful property  
36 interest in certain real property, including an owner, title holder, mortgagee, trustee, or  
37 beneficial owner.

38           (2) "Lien claimant" means a person claiming an interest in real property who offers a  
39 document for recording or filing with any county recorder in the state asserting a lien, or notice  
40 of interest, or other claim of interest in certain real property.

41           (3) "Owner" means a person who has a vested ownership interest in certain real  
42 property.

43           (4) "Record interest holder" means a person who holds or possesses a present, lawful  
44 property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or  
45 beneficial owner, and whose name and interest in that real property appears in the county  
46 recorder's records for the county in which the property is located.

47           (5) "Record owner" means an owner whose name and ownership interest in certain real  
48 property is recorded or filed in the county recorder's records for the county in which the  
49 property is located.

50           (6) "Wrongful lien" means any document that purports to create a lien, notice of  
51 interest, or encumbrance on an owner's interest in certain real property and at the time it is  
52 recorded or filed is not:

53           (a) expressly authorized by this chapter or another state or federal statute;

54           (b) authorized by or contained in an order or judgment of a court of competent  
55 jurisdiction in the state; or

56           (c) signed by or authorized pursuant to a document signed by the owner of the real  
57 property.

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

59           **38-9-2. Scope.**

60           (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any  
61 recording or filing or any rejected recording or filing of a lien or notice of interest pursuant to  
62 this chapter on or after May 5, 1997.

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

65           (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in  
66 accordance with Section [~~78-40-2~~] 78B-6-1303 or seeking any other relief permitted by law.

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

69           Section 3. Section **38-9-4** is amended to read:

70           **38-9-4. Civil liability for filing wrongful lien -- Damages.**

71           (1) A lien claimant who records or files or causes a wrongful lien as defined in Section  
72 38-9-1 to be recorded or filed in the office of the county recorder against real property is liable  
73 to a record interest holder for any actual damages proximately caused by the wrongful lien.

74           (2) If the person in violation of [~~this~~] Subsection (1) refuses to release or correct the  
75 wrongful lien within ten days from the date of written request from a record interest holder of  
76 the real property delivered personally or mailed to the last-known address of the lien claimant,  
77 the person is liable to that record interest holder for [~~\$1,000~~] \$3,000 or for treble actual  
78 damages, whichever is greater, and for reasonable attorney fees and costs.

79           (3) A person is liable to the record owner of real property for [~~\$3,000~~] \$10,000 or for  
80 treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who  
81 records or files or causes to be recorded or filed a wrongful lien as defined in Section 38-9-1 in  
82 the office of the county recorder against the real property, knowing or having reason to know  
83 that the document:

- 84           (a) is a wrongful lien;  
85           (b) is groundless; or  
86           (c) contains a material misstatement or false claim.

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

88           **38-9a-201. Wrongful lien injunction -- Forms.**

89           (1) (a) Any person who believes that he or she is the victim of a wrongful lien may file

90 a verified written petition for a civil wrongful lien injunction against the person filing, making,  
91 or uttering the lien, notice of interest, or other encumbrance in the district court in the district in  
92 which the petitioner or respondent resides or in which any of the events occurred.

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

95 (2) (a) (i) The Administrative Office of the Courts shall develop and adopt forms for  
96 petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service, and  
97 any other necessary forms in accordance with the provisions of this chapter on or before May 2,  
98 2005.

99 (ii) The office shall provide the forms adopted under Subsection (2)(a)(i) to the clerk of  
100 each district court.

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

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

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**Legislative Review Note**  
as of 2-15-08 10:17 AM

**Office of Legislative Research and General Counsel**

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**H.B. 486 - Wrongful Liens and Wrongful Judgement Liens**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Individuals may be entitled to additional damages.

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