

Senator Stephen H. Urquhart proposes the following substitute bill:

DISASTER RECOVERY LIENS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill enacts provisions relating to a lien for mitigation services.

Highlighted Provisions:

This bill:

- ▶ gives a person that provides certain mitigation services to an owner of damaged property a lien on the proceeds of the insurance policy that covers the mitigation service for the balance owed to the provider under the governing service agreement;
- ▶ establishes prerequisites to a provider obtaining a lien described in this bill; and
- ▶ provides for enforcement of a lien described in this bill.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

38-14-101, Utah Code Annotated 1953

38-14-102, Utah Code Annotated 1953

38-14-103, Utah Code Annotated 1953



- 26 **38-14-104**, Utah Code Annotated 1953
- 27 **38-14-105**, Utah Code Annotated 1953
- 28 **38-14-106**, Utah Code Annotated 1953

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

31 Section 1. Section **38-14-101** is enacted to read:

32 **CHAPTER 14. MITIGATION SERVICE LIEN ACT**

33 **Part 1. General Provisions**

34 **38-14-101. Title.**

35 (1) This chapter is known as the "Mitigation Service Lien Act."

36 (2) This part is known as "General Provisions."

37 Section 2. Section **38-14-102** is enacted to read:

38 **38-14-102. Definitions.**

39 As used in this chapter:

40 (1) "Certificate of satisfactory completion" means a document signed by a named
41 insured in which the named insured certifies that the provider satisfactorily completed the
42 mitigation service provided under the service agreement.

43 (2) "Claims office" means an insurer's office that adjusts an owner's claim for damaged
44 property.

45 (3) "Damaged property" means real property that is damaged by a disaster.

46 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
47 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
48 natural phenomena, or technological hazard.

49 (5) "Insurer" means an insurance company that provides insurance coverage for
50 damage to real property caused by a disaster.

51 (6) "Insurance proceeds" means money payable by an insurer under an insurance policy
52 for a mitigation service.

53 (7) "Mitigation service" means labor, equipment, or material provided on damaged
54 property for the purpose of performing:

55 (a) urgent repairs necessary to prevent further damage; or

56 (b) services or repairs to mitigate the damage caused by a disaster, including cleanup.

57 (8) "Mitigation service lien" means a lien on insurance proceeds for the unpaid balance
58 owing to a provider under a service agreement.

59 (9) "Provider" means a person that provides a mitigation service under a service
60 agreement.

61 (10) "Service agreement" means a written agreement between an owner of property
62 damaged by a disaster and a provider, under which the provider agrees to perform a mitigation
63 service for the owner's damaged property.

64 Section 3. Section **38-14-103** is enacted to read:

65 **38-14-103. Mitigation service lien -- Requirements.**

66 A provider that performs a mitigation service under a service agreement has a
67 mitigation service lien on the insurance proceeds related to the mitigation service if:

68 (1) the owner of the damaged property has not paid the provider the amount owed
69 under the service contract for the mitigation service; and

70 (2) the provider gives notice to the insurer under Section 38-14-104.

71 Section 4. Section **38-14-104** is enacted to read:

72 **38-14-104. Notice of a mitigation service lien.**

73 (1) Within 10 business days after the day on which a provider completes a mitigation
74 service governed by a service agreement, the provider shall send to the insurer of the damaged
75 property:

76 (a) the written notice described in Subsection (2); and

77 (b) a copy of the certificate of satisfactory completion.

78 (2) A notice described in Subsection (1) shall:

79 (a) notify the insurer that the provider claims a mitigation service lien;

80 (b) state the name, address, and telephone number of the owner of the damaged

81 property;

82 (c) state the date of the service agreement; and

83 (d) state the amount owed to the provider for the mitigation service provided under the
84 service agreement.

85 Section 5. Section **38-14-105** is enacted to read:

86 **38-14-105. Payment by insurer -- Proceeds payable to provider.**

87 If a provider satisfies the requirements described in Section 38-14-104 and has not

88 received the full amount due for the mitigation service, as described in the provider's notice and
89 certificate of satisfactory completion, the insurer shall include the provider as an additional
90 payee on each check issued to the insured that is:

91 (1) for \$2,500 or more; and

92 (2) intended to pay for the mitigation service described in the provider's notice and
93 certificate of satisfactory completion.

94 Section 6. Section **38-14-106** is enacted to read:

95 **38-14-106. Enforcement of lien.**

96 (1) A provider may enforce a mitigation service lien by an action filed in a court of
97 competent jurisdiction.

98 (2) A provider that prevails in an action described in Subsection (2) is entitled to an
99 award of costs and reasonable attorney fees.