

## SB0219S01 compared with SB0219

~~{deleted text}~~ shows text that was in SB0219 but was deleted in SB0219S01.

inserted text shows text that was not in SB0219 but was inserted into SB0219S01.

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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: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill enacts provisions relating to a lien for ~~{disaster recovery}~~mitigation services.

##### Highlighted Provisions:

This bill:

- ▶ gives a person that provides certain ~~{disaster recovery}~~mitigation services to an owner of damaged property a lien on the proceeds of the insurance policy that covers the ~~{disaster recovery}~~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

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### 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

**38-14-104**, Utah Code Annotated 1953

**38-14-105**, Utah Code Annotated 1953

**38-14-106**, Utah Code Annotated 1953

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

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

#### **CHAPTER 14. ~~{DISASTER RECOVERY}~~MITIGATION SERVICE LIEN ACT**

##### **Part 1. General Provisions**

#### **38-14-101. Title.**

(1) This chapter is known as the "~~{Disaster Recovery}~~Mitigation Service Lien Act."

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

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

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

As used in this chapter:

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

(~~{1}~~2) "Claims office" means an insurer's office that adjusts an owner's claim for damaged property.

(~~{2}~~3) "Damaged property" means real property that is damaged by a disaster.

(~~{3}~~4) "Disaster" means a situation causing, or threatening to cause, widespread damage, social disruption, or injury or loss of life or property resulting from attack, internal disturbance, natural phenomena, or technological hazard.

(~~{4}~~5) "{Disaster recovery service}" means labor or material provided to perform a

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~~mitigation or emergency service to remedy damaged property.~~

~~—— (5) "Disaster recovery service lien" means a lien on insurance; Insurer" means an insurance company that provides insurance coverage for damage to real property caused by a disaster.~~

~~(6) "Insurance proceeds" for the unpaid balance owing to a provider under a service agreement.~~

~~—— (6) "Mitigation or emergency" means money payable by an insurer under an insurance policy for a mitigation service.~~

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

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

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

~~(~~7~~8) "~~Insurance~~ Mitigation service lien" means a lien on insurance proceeds;" means money payable by an insurer under an insurance policy for a disaster recovery service.~~

~~—— (8) "Insurer" means an insurance company that provides insurance coverage for damage to real property caused by a disaster; for the unpaid balance owing to a provider under a service agreement.~~

~~(9) "Provider" means a person ~~who~~ that provides a ~~disaster recovery~~ mitigation service under a service agreement.~~

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

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

### **38-14-103. ~~Disaster recovery~~ Mitigation service lien -- Requirements.**

A provider that performs a ~~disaster recovery~~ mitigation service under a service agreement has a ~~disaster recovery~~ mitigation service lien on the insurance proceeds related to the ~~disaster recovery~~ mitigation service if:

~~(1) the service agreement under which the provider performs the disaster recovery service requires the owner of the damaged property to pay at least \$5,000 for the provider's disaster recovery service;~~

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~~(2)~~ the owner of the damaged property has not paid the provider the amount owed under the service contract for the ~~{disaster recovery}~~mitigation service; and

~~(3)~~2 the provider gives notice to the insurer under Section 38-14-104.

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

**38-14-104. Notice of a ~~{disaster recovery}~~mitigation service lien.**

(1) Within ~~{three}~~10 business days after the day on which a provider completes a ~~{disaster recovery}~~mitigation service governed by a service agreement, the provider shall send to the insurer of the damaged property:

(a) the written notice ~~{, as}~~ described in Subsection (2) ~~{, to the claims office}~~; and

(b) a copy of the ~~{insurer by certified mail, postage prepaid}~~certificate of satisfactory completion.

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

(a) notify the insurer that the provider claims a ~~{disaster recovery}~~mitigation service lien;

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

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

(d) state the amount ~~{that the owner of the damaged property is required}~~owed to ~~{pay}~~the provider for the mitigation service provided under the service agreement ~~{,~~

~~(e) describe the disaster recovery service that the provider performed;~~

~~(f) state the date on which the provider completed the disaster recovery service; and~~

~~(g) state the unpaid balance owing to the provider under the service agreement as of the date on which the notice is sent}.~~

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

**38-14-105. ~~{Insurer liable under lien -- Enforcement}~~ Payment by insurer -- Proceeds payable to provider.**

If a provider satisfies the requirements described in Section 38-14-104 and has not received the full amount due for the mitigation service, as described in the provider's notice and certificate of satisfactory completion, the insurer shall include the provider as an additional payee on each check issued to the insured that is:

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

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

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

### 38-14-106. Enforcement of lien.

~~{ (1) An insurer that pays insurance proceeds to an owner of damaged property after notice to the insurer is provided under Section 38-14-104 is liable to the provider for the amount owing to the provider under the disaster recovery service lien, not to exceed the amount of insurance proceeds the insurer pays to the owner after the insurer is provided notice.~~

{ ~~(2)~~1) A provider may enforce a ~~{disaster recovery}~~ mitigation service lien by an action filed in a court of competent jurisdiction.

~~{3}~~2) A provider that prevails in an action described in Subsection (2) is entitled to an award of costs and reasonable attorney fees.

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### **Legislative Review Note**

~~as of 2-19-13 4:44 PM~~

~~Office of Legislative Research and General Counsel}~~