

CONSTRUCTION REGISTRY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts and amends provisions regarding the Construction Business Registry and the State Construction Registry.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ directs the Division of Occupational and Professional Licensing (division) to establish and maintain a database, the Construction Business Registry, of contact information for licensed contractors;
- ▶ establishes the parameters of the Construction Business Registry;
- ▶ renames the "State Construction Registry" the "Construction Project Registry";
- ▶ requires the division to make both the Construction Business Registry and the Construction Project Registry available through the Internet as part of the State Construction Registries;
- ▶ permits the division to establish a fee in relation to the Construction Business Registry;
- ▶ grants rulemaking authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **38-1a-102**, as last amended by Laws of Utah 2019, Chapter 250

33 **38-1a-103**, as renumbered and amended by Laws of Utah 2012, Chapter 278

34 **38-1a-201**, as last amended by Laws of Utah 2013, Chapter 278

35 ENACTS:

36 **13-61-101**, Utah Code Annotated 1953

37 **13-61-201**, Utah Code Annotated 1953

38 **13-61-301**, Utah Code Annotated 1953

39 **13-61-302**, Utah Code Annotated 1953

40 **13-61-303**, Utah Code Annotated 1953



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

43 Section 1. Section **13-61-101** is enacted to read:

44 **CHAPTER 61. STATE CONSTRUCTION REGISTRIES**

45 **Part 1. General Provisions**

46 **13-61-101. Definitions.**

47 As used in this chapter:

48 (1) "Division" means the Division of Occupational and Professional Licensing created
49 in Section [58-1-103](#).

50 (2) "Licensed contractor" means a person licensed under Title 58, Chapter 55, Utah
51 Construction Trades Licensing Act.

52 Section 2. Section **13-61-201** is enacted to read:

53 **Part 2. State Construction Registries**

54 **13-61-201. Making State Construction Registries accessible to public.**

55 (1) The division shall, by way of an Internet website, make accessible the State
56 Construction Registries.

57 (2) The State Construction Registries consist of:

58 (a) the Construction Business Registry under Part 3, Construction Business Registry;

59 and

60 (b) the Construction Project Registry under Title 38, Chapter 1a, Part 2, Construction
61 Project Registry.

62 (3) The division may make rules, in accordance with Title 63G, Chapter 3, Utah
63 Administrative Rulemaking Act, to establish and maintain the State Construction Registries in
64 accordance with this section.

65 Section 3. Section **13-61-301** is enacted to read:

66 **Part 3. Construction Business Registry**

67 **13-61-301. Construction Business Registry.**

68 (1) The division shall establish and maintain the Construction Business Registry as
69 described in this section.

70 (2) The Construction Business Registry shall consist of a database of contact
71 information for licensed contractors.

72 (3) Beginning January 1, 2023, the division shall ensure that the Construction Business
73 Registry:

74 (a) is accessible to the public through an Internet website as part of the State
75 Construction Registries described in Section [13-61-201](#); and

76 (b) is indexed by:

77 (i) the name of the licensed contractor;

78 (ii) the name of the licensed contractor's licensed business;

79 (iii) the classification of the licensed contractor, as described in Section [58-55-301](#); and

80 (iv) any other identifier that the division considers reasonably appropriate.

81 (4) (a) The division shall establish a process for a licensed contractor to:

82 (i) before entry into the Construction Business Registry, specify the licensed
83 contractor's contact information that the licensed contractor wants included in the Construction
84 Business Registry;

85 (ii) opt out of participation in the Construction Business Registry at any time; or

86 (iii) amend the licensed contractor's contact information in the Construction Business
87 Registry at any time.

88 (b) If a licensed contractor does not specify the licensed contractor's contact
89 information for the Construction Business Registry, the division shall include in the

90 Construction Business Registry only public contact information for the licensed contractor.

91 Section 4. Section **13-61-302** is enacted to read:

92 **13-61-302. Fees.**

93 The division may establish a fee for the entry of a licensed contractor's contact
94 information into the Construction Business Registry, in accordance with Section [63J-1-504](#), to
95 assist in offsetting the cost of creating, administering, and maintaining the Construction
96 Business Registry.

97 Section 5. Section **13-61-303** is enacted to read:

98 **13-61-303. Rulemaking.**

99 The division may make rules, in accordance with Title 63G, Chapter 3, Utah
100 Administrative Rulemaking Act, to establish and maintain the Construction Business Registry
101 in accordance with this part.

102 Section 6. Section **38-1a-102** is amended to read:

103 **38-1a-102. Definitions.**

104 As used in this chapter:

105 (1) "Alternate means" means a method of filing a legible and complete notice or other
106 document with the registry other than electronically, as established by the division by rule.

107 (2) "Anticipated improvement" means the improvement:

108 (a) for which preconstruction service is performed; and

109 (b) that is anticipated to follow the performing of preconstruction service.

110 (3) "Applicable county recorder" means the office of the recorder of each county in
111 which any part of the property on which a claimant claims or intends to claim a preconstruction
112 or construction lien is located.

113 (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
114 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
115 shares or other ownership interest.

116 (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

117 (6) "Compensation" means the payment of money for a service rendered or an expense
118 incurred, whether based on:

119 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
120 percentage fee, or commission; or

- 121 (b) a combination of the bases listed in Subsection (6)(a).
- 122 (7) "Construction lender" means a person who makes a construction loan.
- 123 (8) "Construction lien" means a lien under this chapter for construction work.
- 124 (9) "Construction loan" does not include a consumer loan secured by the equity in the
125 consumer's home.
- 126 (10) "Construction project" means an improvement that is constructed pursuant to an
127 original contract.
- 128 (11) "Construction work":
 - 129 (a) means labor, service, material, or equipment provided for the purpose and during
130 the process of constructing, altering, or repairing an improvement; and
 - 131 (b) includes scheduling, estimating, staking, supervising, managing, materials testing,
132 inspection, observation, and quality control or assurance involved in constructing, altering, or
133 repairing an improvement.
- 134 (12) "Contestable notice" means a notice of preconstruction service under Section
135 [38-1a-401](#), a preliminary notice under Section [38-1a-501](#), or a notice of completion under
136 Section [38-1a-506](#).
- 137 (13) "Contesting person" means an owner, original contractor, subcontractor, or other
138 interested person.
- 139 (14) "Designated agent" means the third party the division contracts with as provided
140 in Section [38-1a-202](#) to create and maintain the registry.
- 141 (15) "Division" means the Division of Occupational and Professional Licensing created
142 in Section [58-1-103](#).
- 143 (16) "Entry number" means the reference number that:
 - 144 (a) the designated agent assigns to each notice or other document filed with the
145 registry; and
 - 146 (b) is unique for each notice or other document.
- 147 (17) "Final completion" means:
 - 148 (a) the date of issuance of a permanent certificate of occupancy by the local
149 government entity having jurisdiction over the construction project, if a permanent certificate
150 of occupancy is required;
 - 151 (b) the date of the final inspection of the construction work by the local government

152 entity having jurisdiction over the construction project, if an inspection is required under a
153 state-adopted building code applicable to the construction work, but no certificate of occupancy
154 is required;

155 (c) unless the owner is holding payment to ensure completion of construction work, the
156 date on which there remains no substantial work to be completed to finish the construction
157 work under the original contract, if a certificate of occupancy is not required and a final
158 inspection is not required under an applicable state-adopted building code; or

159 (d) the last date on which substantial work was performed under the original contract,
160 if, because the original contract is terminated before completion of the construction work
161 defined by the original contract, the local government entity having jurisdiction over the
162 construction project does not issue a certificate of occupancy or perform a final inspection.

163 (18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

164 (19) "First preliminary notice filing" means a preliminary notice that:

165 (a) is the earliest preliminary notice filed on the construction project for which the
166 preliminary notice is filed;

167 (b) is filed on a construction project that, at the time the preliminary notice is filed, has
168 not reached final completion; and

169 (c) is not cancelled under Section 38-1a-307.

170 (20) "Government project-identifying information" has the same meaning as defined in
171 Section 38-1b-102.

172 (21) "Improvement" means:

173 (a) a building, infrastructure, utility, or other human-made structure or object
174 constructed on or for and affixed to real property; or

175 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
176 referred to in Subsection (21)(a).

177 (22) "Interested person" means a person that may be affected by a construction project.

178 (23) "Notice of commencement" means a notice required under Section 38-1b-201 for
179 a government project, as defined in Section 38-1b-102.

180 (24) "Original contract":

181 (a) means a contract between an owner and an original contractor for preconstruction
182 service or construction work; and

- 183 (b) does not include a contract between an owner-builder and another person.
- 184 (25) "Original contractor" means a person, including an owner-builder, that contracts
185 with an owner to provide preconstruction service or construction work.
- 186 (26) "Owner" means the person that owns the project property.
- 187 (27) "Owner-builder" means an owner, including an owner who is also an original
188 contractor, who:
- 189 (a) contracts with one or more other persons for preconstruction service or construction
190 work for an improvement on the owner's real property; and
- 191 (b) obtains a building permit for the improvement.
- 192 (28) "Preconstruction lien" means a lien under this chapter for a preconstruction
193 service.
- 194 (29) "Preconstruction service":
- 195 (a) means to plan or design, or to assist in the planning or design of, an improvement or
196 a proposed improvement:
- 197 (i) before construction of the improvement commences; and
- 198 (ii) for compensation separate from any compensation paid or to be paid for
199 construction work for the improvement; and
- 200 (b) includes consulting, conducting a site investigation or assessment, programming,
201 preconstruction cost or quantity estimating, preconstruction scheduling, performing a
202 preconstruction construction feasibility review, procuring construction services, and preparing
203 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,
204 drawing, specification, or contract document.
- 205 (30) "Private project" means a construction project that is not a government project.
- 206 (31) "Project property" means the real property on or for which preconstruction service
207 or construction work is or will be provided.
- 208 (32) "Registry" means the [State] Construction Project Registry under [~~Part 2, State~~
209 ~~Construction Registry~~] Part 2, Construction Project Registry.
- 210 (33) "Required notice" means:
- 211 (a) a notice of preconstruction service under Section 38-1a-401;
- 212 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;
- 213 (c) a notice of commencement;

- 214 (d) a notice of construction loan under Section 38-1a-601;
- 215 (e) a notice under Section 38-1a-602 concerning a construction loan default;
- 216 (f) a notice of intent to obtain final completion under Section 38-1a-506; or
- 217 (g) a notice of completion under Section 38-1a-507.

218 (34) "Subcontractor" means a person that contracts to provide preconstruction service
 219 or construction work to:

- 220 (a) a person other than the owner; or
- 221 (b) the owner, if the owner is an owner-builder.

222 (35) "Substantial work" does not include repair work or warranty work.

223 (36) "Supervisory subcontractor" means a person that:

- 224 (a) is a subcontractor under contract to provide preconstruction service or construction
 225 work; and
- 226 (b) contracts with one or more other subcontractors for the other subcontractor or
 227 subcontractors to provide preconstruction service or construction work that the person is under
 228 contract to provide.

229 Section 7. Section 38-1a-103 is amended to read:

230 **38-1a-103. Government projects not subject to chapter -- Exception.**

231 Except as provided in Section 38-1a-102, [~~Part 2, State Construction Registry~~] Part 2,
 232 Construction Project Registry, and Chapter 1b, Government Construction Projects, this chapter
 233 does not apply to a government project, as defined in Section 38-1b-102.

234 Section 8. Section 38-1a-201 is amended to read:

235 **38-1a-201. Establishment of Construction Project Registry -- Filing index.**

236 (1) Subject to receiving adequate funding through a legislative appropriation and
 237 contracting with an approved third party vendor as provided in Section 38-1a-202, the division
 238 shall establish and maintain the [State] Construction Project Registry to:

- 239 (a) (i) assist in protecting public health, safety, and welfare; and
- 240 (ii) promote a fair working environment;
- 241 (b) be overseen by the division with the assistance of the designated agent;
- 242 (c) provide a central repository for all required notices;
- 243 (d) make accessible, by way of an Internet website as part of the State Construction

244 Registries described in Section 13-61-201:

- 245 (i) the filing and review of required notices; and
246 (ii) the transmitting of building permit information under Subsection 38-1a-205(1) and
247 the reviewing of that information;
- 248 (e) accommodate:
- 249 (i) electronic filing of required notices and electronic transmitting of building permit
250 information described in Subsection (1)(d)(ii); and
251 (ii) the filing of required notices by alternate means, including United States mail,
252 telefax, or any other method as the division provides by rule;
- 253 (f) (i) provide electronic notification for up to three email addresses for each interested
254 person who requests to receive notification under Section 38-1a-204 from the designated agent;
255 and
256 (ii) provide alternate means of providing notification to a person who makes a filing by
257 alternate means, including United States mail, telefax, or any other method as the division
258 prescribes by rule; and
259 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
260 the date and time of the individual filing and the content of the individual filing.
- 261 (2) The designated agent shall index filings in the registry by:
- 262 (a) the name of the owner;
263 (b) the name of the original contractor;
264 (c) subdivision, development, or other project name, if any;
265 (d) lot or parcel number;
266 (e) the address of the project property;
267 (f) entry number;
268 (g) the name of the county in which the project property is located;
269 (h) for private projects:
270 (i) the tax parcel identification number of each parcel included in the project property;
271 and
272 (ii) the building permit number;
273 (i) for government projects, the government project-identifying information; and
274 (j) any other identifier that the division considers reasonably appropriate in
275 collaboration with the designated agent.