

SENATE BILL No. 197

By Senators Brownlee, Adkins, Allen, Barnett, Brungardt, Clark, Corbin, Emler, Gilstrap, Haley, Harrington, Jackson, Jordan, Lyon, O'Connor, Oleen, Praeger, Pugh, Schodorf, Steineger, Taddiken, Tyson, Umbarger, Vratil and Wagle

2-1

AN ACT concerning civil procedure; relating to liens; filing time; amending K.S.A. 60-1102 and 60-1103, as amended by section 7 of chapter 175 of the 2000 Session Laws of Kansas, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-1102. (a) *Filing.* Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file with the clerk of the district court of the county in which property is located, within ~~four months~~ *120 days when such property is residential property, and within 180 days when such property is other than residential property,* after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing:

- (1) The name of the owner,
- (2) the name and address sufficient for service of process of the claimant,
- (3) a description of the real property,
- (4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) *Recording.* Immediately upon the receipt of such statement the clerk of the court shall index the lien in the general index by party names and file number.

Sec. 2. K.S.A. 60-1103, as amended by section 7 of chapter 175 of the 2000 Session Laws of Kansas, is hereby amended to read as follows: 60-1103. (a) *Procedure.* Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or consumed at the site of the property subject to the lien, under an agreement with the contractor, subcontractor or owner contractor may obtain a lien for the

1 amount due in the same manner and to the same extent as the original
2 contractor except that:

3 (1) The lien statement must state the name of the contractor and be
4 filed within ~~three months~~ *90 days when such property is residential prop-*
5 *erty, and within 180 days when such property is other than residential*
6 *property*, after the date supplies, material or equipment was last furnished
7 or labor performed by the claimant;

8 (2) if a warning statement is required to be given pursuant to K.S.A.
9 60-1103a, and amendments thereto, there shall be attached to the lien
10 statement the affidavit of the supplier or subcontractor that such warning
11 statement was properly given; and

12 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
13 1103b, and amendments thereto, must have been filed as provided by
14 that section.

15 (b) Owner contractor is defined as any person, firm or corporation
16 who:

17 (1) Is the fee title owner of the real estate subject to the lien; and

18 (2) enters into contracts with more than one person, firm or corpo-
19 ration for labor, equipment, material or supplies used or consumed for
20 the improvement of such real property.

21 (c) *Recording and notice.* When a lien is filed pursuant to this section,
22 the clerk of the district court shall enter the filing in the general index.
23 The claimant shall (1) cause a copy of the lien statement to be served
24 personally upon any one owner, any holder of a recorded equitable inter-
25 est and any party obligated to pay the lien in the manner provided by
26 K.S.A. 60-304, and amendments thereto, for the service of summons
27 within the state, or by K.S.A. 60-308, and amendments thereto, for service
28 outside of the state, (2) mail a copy of the lien statement to any one owner
29 of the property, any holder of a recorded equitable interest and to any
30 party obligated to pay the same by restricted mail or (3) if the address of
31 any one owner or such party is unknown and cannot be ascertained with
32 reasonable diligence, post a copy of the lien statement in a conspicuous
33 place on the premises. The provisions of this subsection requiring that
34 the claimant serve a copy of the lien statement shall be deemed to have
35 been complied with, if it is proven that the person to be served actually
36 received a copy of the lien statement. No action to foreclose any lien may
37 proceed or be entered against residential real property in this state unless
38 the holder of a recorded equitable interest was served with notice in
39 accordance with the provisions of this subsection.

40 (d) *Rights and liability of owner.* The owner of the real property shall
41 not become liable for a greater amount than the owner has contracted to
42 pay the original contractor, except for any payments to the contractor
43 made:

1 (1) Prior to the expiration of the ~~three-month~~ *time* period for filing
2 lien claims *as provided in subsection (a)(1)*, if no warning statement is
3 required by K.S.A. 60-1103a, and amendments thereto; or

4 (2) subsequent to the date the owner received the warning statement,
5 if a warning statement is required by K.S.A. 60-1103a, and amendments
6 thereto.

7 The owner may discharge any lien filed under this section which the
8 contractor fails to discharge and credit such payment against the amount
9 due the contractor.

10 Sec. 3. K.S.A. 60-1102 and 60-1103, as amended by section 7 of
11 chapter 175 of the 2000 Session Laws of Kansas, are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43