

## SENATE BILL No. 292

By Committee on Ways and Means

2-26

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9 AN ACT concerning civil procedure; relating to remote claim liens on  
10 commercial property; amending K.S.A. 60-1103, 60-1110 and 60-1111  
11 and repealing the existing sections.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. As used in sections 1 and 2, and amendments  
15 thereto:

16 (a) “Commercial property” means a new or pre-existing structure  
17 which is not constructed for use or used as a single or two family  
18 residence.

19 (b) “Original contractor” means any contractor who has a contract  
20 directly with the owner. “Original contractor” may include more than one  
21 contractor and be referred to as a general contractor.

22 (c) “Subcontractor” means any person who furnishes labor, equip-  
23 ment, materials or supplies pursuant to a contract directly with an original  
24 contractor.

25 (d) “Supplier” means any person who furnishes equipment, materials  
26 or supplies pursuant to a contract directly with an original contractor.

27 (e) “Remote claimant” means a subcontractor to a subcontractor, also  
28 referred to as a sub-subcontractor, as well as suppliers to subcontractors.  
29 Remote claimants have no contact directly with the original contractor.

30 (f) “Notice of furnishing” means a written notice from a remote  
31 claimant that is given prior to the recording of a mechanic’s lien and which  
32 is required to be given pursuant to the provisions of section 2, and amend-  
33 ments thereto.

34 (g) “Notice of commencement” means a written notice, in the form  
35 of an affidavit, from the original contractor providing the information  
36 required to be given pursuant to the provisions of section 2, and amend-  
37 ments thereto.

38 New Sec. 2. (a) The original contractor shall record in the office of  
39 the register of deeds in each county in which the original contractor enters  
40 into a contract for the construction or improvement of commercial prop-  
41 erty a notice of commencement.

42 (b) The purpose of the notice of commencement is to notify other  
43 persons, including, but not limited to, remote claimants, who are working

- 1 on the project, that the project has started and to give information as to  
2 the name and address of the owner, original contractor and the descrip-  
3 tion of the project.
- 4 (c) The notice of commencement shall be recorded before com-  
5 mencing work on the construction or improvement of the commercial  
6 property. The original contractor shall post the notice of commencement  
7 at the job site.
- 8 (d) The notice of commencement required under this section shall  
9 contain the following information:
- 10 (1) The legal description of the real property on which the construc-  
11 tion or improvement is to be made.
- 12 (2) A brief description of the construction or improvement to be per-  
13 formed on the property.
- 14 (3) The name, address of the owner, part owner, or lessee of the real  
15 property contracting for the construction or improvement.
- 16 (4) The name and address of the owner's, part owner's, or lessee's  
17 designee, if any.
- 18 (5) The name and address of all original contractors.
- 19 (6) The date the owner, part owner, or lessee first executed a contract  
20 with an original contractor for the construction or improvement.
- 21 (7) The name and address of the person preparing the notice of  
22 commencement.
- 23 (8) The following statement:
- 24 To remote claimants: Take notice that labor or work is about to begin  
25 on or materials are about to be furnished for an improvement to the real  
26 property described in this notice. Any remote claimant may preserve such  
27 claimant's lien rights by providing a notice of furnishings to the original  
28 contractor or contractors and owner within 21 days of furnishing labor,  
29 equipment, materials or supplies to this project.
- 30 (e) Within ten business days of the date a remote claimant serves a  
31 written request for a copy of the notice of commencement on the original  
32 contractor or contractors, the original contractor shall provide a copy of  
33 the notice of commencement to the requesting remote claimant.
- 34 (f) If a notice of commencement is not recorded with the register of  
35 deeds in the county where the construction or improvement is to be  
36 performed, a remote claimant is not required to file a notice of furnishing.
- 37 (g) A lien for the furnishing of labor, equipment, materials or supplies  
38 by a remote claimant for the construction of or improvement to com-  
39 mercial property pursuant to K.S.A. 60-1103, and amendments thereto,  
40 may be claimed only if the remote claimant has filed a notice of furnishing  
41 within 21 days of the date of furnishing any such labor, equipment, ma-  
42 terials or supplies to the project. If the remote claimant does not file  
43 within such time period, the remote claimant may file at a later date. In

- 1 such event, the remote claimant's lien rights will only be effective from  
2 the date of the filing of the notice of furnishings.
- 3 (h) The notice of furnishings shall be served on the original contractor  
4 and owner by certified mail, return receipt requested.
- 5 (i) The notice of furnishings required under this section shall contain  
6 the following information:
- 7 (1) The name and address of the original contractor.
- 8 (2) The name and address of all subcontractors with whom the re-  
9 mote claimant has contracted.
- 10 (3) The name, address, telephone number, fax number and e-mail  
11 address of the remote claimant.
- 12 (4) The approximate value of material, labor, equipment or supplies  
13 on the project.
- 14 (5) The legal description of the real property on which the construc-  
15 tion or improvement is to be made.
- 16 (j) Nothing in this act shall expand or create any additional rights of  
17 a person to claim a lien pursuant to K.S.A. 60-1103 or K.S.A. 60-1110,  
18 and amendments thereto, or to file a claim under a bond furnished pur-  
19 suant to K.S.A. 60-1111, and amendments thereto.
- 20 (k) The notice of commencement and notice of furnishings shall be  
21 deemed sufficient if in substantial compliance with the forms set forth by  
22 the judicial council.
- 23 Sec. 3. K.S.A. 60-1103 is hereby amended to read as follows: 60-  
24 1103. (a) *Procedure*. Any supplier, subcontractor or other person furnish-  
25 ing labor, equipment, material or supplies, used or consumed at the site  
26 of the property subject to the lien, under an agreement with the con-  
27 tractor, subcontractor or owner contractor may obtain a lien for the  
28 amount due in the same manner and to the same extent as the original  
29 contractor except that:
- 30 (1) The lien statement must state the name of the contractor and be  
31 filed within three months after the date supplies, material or equipment  
32 was last furnished or labor performed by the claimant;
- 33 (2) if a warning statement is required to be given pursuant to K.S.A.  
34 60-1103a, and amendments thereto, there shall be attached to the lien  
35 statement the affidavit of the supplier or subcontractor that such warning  
36 statement was properly given; ~~and~~
- 37 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-  
38 1103b, and amendments thereto, must have been filed as provided by  
39 that section; *and*
- 40 (4) *a notice of furnishings, if required pursuant to section 2, and*  
41 *amendments thereto, must have been filed as provided by that section.*
- 42 (b) Owner contractor is defined as any person, firm or corporation  
43 who:

1 (1) Is the fee title owner of the real estate subject to the lien; and  
2 (2) enters into contracts with more than one person, firm or corpo-  
3 ration for labor, equipment, material or supplies used or consumed for  
4 the improvement of such real property.

5 (c) *Recording and notice.* When a lien is filed pursuant to this section,  
6 the clerk of the district court shall enter the filing in the general index.  
7 The claimant shall (1) cause a copy of the lien statement to be served  
8 personally upon any one owner, any holder of a recorded equitable in-  
9 terest and any party obligated to pay the lien in the manner provided by  
10 K.S.A. 60-304, and amendments thereto, for the service of summons  
11 within the state, or by K.S.A. 60-308, and amendments thereto, for service  
12 outside of the state, (2) mail a copy of the lien statement to any one owner  
13 of the property, any holder of a recorded equitable interest and to any  
14 party obligated to pay the same by restricted mail or (3) if the address of  
15 any one owner or such party is unknown and cannot be ascertained with  
16 reasonable diligence, post a copy of the lien statement in a conspicuous  
17 place on the premises. The provisions of this subsection requiring that  
18 the claimant serve a copy of the lien statement shall be deemed to have  
19 been complied with, if it is proven that the person to be served actually  
20 received a copy of the lien statement. No action to foreclose any lien may  
21 proceed or be entered against residential real property in this state unless  
22 the holder of a recorded equitable interest was served with notice in  
23 accordance with the provisions of this subsection.

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

28 (1) Prior to the expiration of the three-month period for filing lien  
29 claims, if no warning statement is required by K.S.A. 60-1103a, and  
30 amendments thereto; or

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

34 The owner may discharge any lien filed under this section which the  
35 contractor fails to discharge and credit such payment against the amount  
36 due the contractor.

37 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of la-  
38 bor, equipment, materials or supplies on property other than residential  
39 property may be claimed pursuant to this section, and amendments  
40 thereto, within five months only if the claimant has filed a notice of ex-  
41 tension within three months since last furnishing labor, equipment, ma-  
42 terials or supplies to the job site. Such notice shall be filed in the office  
43 of the clerk of the district court of the county where such property is

1 located and shall be mailed by certified and regular mail to the general  
2 contractor or construction manager and a copy to the owner by regular  
3 mail, if known. The notice of extension shall be deemed sufficient if in  
4 substantial compliance with the form set forth by the judicial council.

5 Sec. 4. K.S.A. 60-1110 is hereby amended to read as follows: 60-  
6 1110. The contractor or owner may execute a bond to the state of Kansas  
7 for the use of all persons in whose favor liens might accrue by virtue of  
8 this act, conditioned for the payment of all claims which might be the  
9 basis of liens in a sum not less than the contract price, or to any person  
10 claiming a lien which is disputed by the owner or contractor, conditioned  
11 for the payment of such claim in the amount thereof. Any such bond shall  
12 have good and sufficient sureties, be approved by a judge of the district  
13 court and filed with the clerk of the district court. When bond is approved  
14 and filed, no lien for the labor, equipment, material or supplies under  
15 contract, or claim described or referred to in the bond shall attach under  
16 this act, and if when such bond is filed liens have already been filed, such  
17 liens are discharged. Suit may be brought on such bond by any person  
18 interested but no such suit shall name as defendant any person who is  
19 neither a principal or surety on such bond, nor contractually liable for  
20 the payment of the claim. *No remote claimant may file a claim under a*  
21 *payment bond obtained and executed pursuant to this section, unless such*  
22 *remote claimant has served a notice of furnishing as required in section*  
23 *1, and amendments thereto, on the original contractor and owner.*

24 Sec. 5. K.S.A. 60-1111 is hereby amended to read as follows: 60-  
25 1111. (a) *Bond by contractor.* Except as provided in this section, when-  
26 ever any public official, under the laws of the state, enters into contract  
27 in any sum exceeding \$100,000 with any person or persons for the pur-  
28 pose of making any public improvements, or constructing any public  
29 building or making repairs on the same, such officer shall take, from the  
30 party contracted with, a bond to the state of Kansas with good and suf-  
31 ficient sureties in a sum not less than the sum total in the contract, con-  
32 ditioned that such contractor or the subcontractor of such contractor shall  
33 pay all indebtedness incurred for labor furnished, materials, equipment  
34 or supplies, used or consumed in connection with or in or about the  
35 construction of such public building or in making such public  
36 improvements.

37 A contract which requires a contractor or subcontractor to obtain a  
38 payment bond or any other bond shall not require that such bond be  
39 obtained from a specific surety, agent, broker or producer. A public of-  
40 ficial entering into a contract which requires a contractor or subcontractor  
41 to obtain a payment bond or any other bond shall not require that such  
42 bond be obtained from a specific surety, agent, broker or producer.

43 (b) *Filing and limitations.* The bond required under subsection (a)

1 shall be filed with the clerk of the district court of the county in which  
2 such public improvement is to be made. When such bond is filed, no lien  
3 shall attach under this article. Any liens which have been filed prior to  
4 the filing of such bond shall be discharged. Any person to whom there is  
5 due any sum for labor or material furnished, as stated in subsection (a),  
6 or such person's assigns, may bring an action on such bond for the re-  
7 covery of such indebtedness but no action shall be brought on such bond  
8 after six months from the completion of such public improvements or  
9 public buildings.

10 (c) In any case of a contract for construction, repairs or improvements  
11 for the state or a state agency under K.S.A. 75-3739 or 75-3741, and  
12 amendments thereto, a certificate of deposit payable to the state may be  
13 accepted in accordance with and subject to K.S.A. 60-1112, and amend-  
14 ments thereto. When such certificate of deposit is so accepted, no lien  
15 shall attach under this article. Any liens which have been filed prior to  
16 the acceptance of such certificate of deposit shall be discharged. Any  
17 person to whom there is due any sum for labor furnished, materials,  
18 equipment or supplies used or consumed in connection with or for such  
19 contract for construction, repairs or improvements shall make a claim  
20 therefor with the director of purchases under K.S.A. 60-1112, and amend-  
21 ments thereto.

22 (d) *No remote claimant may file a claim under a public works bond*  
23 *obtained and executed pursuant to this section, unless such remote claim-*  
24 *ant has served a notice of furnishing as required in section 1, and amend-*  
25 *ments thereto, on the original contractor and owner required to obtain a*  
26 *bond pursuant to this section.*

27 Sec. 6. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.

28 Sec. 7. This act shall take effect and be in force from and after its  
29 publication in the statute book.