

Held in Room 526, at the Statehouse at 3:30 a. m./p. m., on January 23, 1979.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on January 24, 1979.These minutes of the meeting held on January 22, 1979 were considered, corrected and approved.JOSEPH J. HOAGLAND*Chairman*

The conferees appearing before the Committee were:

Rep. Ferguson, Sponsor of HB 2034
 Mr. Carey Brown, Administrative Officer for Kansas Bureau of Investigation
 Mr. Ken Gorman, Topeka Police Department
 Mr. Max Moses, Ks. County & District Attorneys Association
 Representative R. Mills, Co-Sponsor of HB 2105
 Tim Underwood, Director of Governmental Affairs, Kansas Association
 of Realtors
 Jerry Desch, Real Estate Broker, Topeka, Kansas and Legislative Chairman
 for the Kansas Association of Realtors
 Mike Muscheites, Managing Director of Mid-America Lumbermens Assn.
 Ralph Larson, Attorney for Kansas Sand and Concrete, Topeka, Ks.
 Oval West, Whelan Lumber Company, Topeka, Kansas
 Harold Michaelis, President Kansas Concrete Masonry Association,
 and Capitol Concrete.

Chairman Hoagland called the meeting to order at 3:30 p.m. The first order of business was to introduce Rep. Ferguson, sponsor of HB 2034. He briefly described his bill and indicated it was somewhat similar to HB2174 in 1978. (SEE ATTACHMENT # 1)

Mr. Carey Brown, Administrative Officer with Kansas Bureau of Investigation, was next introduced in opposition to the bill. He indicated he agreed in principle with the bill, but the bureau feels there are several large procedural problems with it. After completion of Mr. Brown's testimony, Rep. Ferguson questioned whether this bill would create any new problems. Mr. Brown indicated it would not.

Ken Gorman, Topeka Police Department, briefly stated his opposition to the bill.

Max Moses, Ks. County & District Attorneys Association, made a brief statement in favor of HB 2034. There were no further questions or statements, so Chairman Hoagland referred the bill to the Criminal Sub-Committee for further study and recommendation.

The Chairman then introduced Rep. Robert Miller, co-sponsor of HB 2105.. (SEE ATTACHED STATEMENT # 2). Rep. Miller then introduced Tim Underwood, Director of Governmental Affairs for the Kansas Association of Realtors, who indicated he represents over 8,000 realtors across the state and asked the committee to approve HB 2105. (SEE ATTACHMENT # 3). Rep. Miller then introduced Jerry Desch, Legislative Chairman of the Kansas Association of Realtors, and a real estate broker in Topeka, who made a brief statement in favor of the bill. Mr. Desch related a particular situation in which there were numerous problems with mechanic liens on a house sale for which he was the selling agent. Rep. Miller then indicated there were quite a few proponents of this bill that could not attend the hearing today because of weather conditions.

The Chairman then introduced Mike Muscheites, Managing Director of Mid-America Lumbermen's Association, who gave a brief statement in opposition to the bill. Mr. Muscheites introduced Ralph Larson, Attorney for Kansas Sand and Concrete in Topeka, who briefly stated his opposition to HB 2105. Oval West, Whelan's Lumber Company of Topeka, Kansas was next to testify his opposition to HB 2105. Harold Michaelis, President of the Kansas Concrete Massonry Association next stated his opposition to the bill. Mr. Muscheites closed his testimony be indicating he and his association would be glad to assist the committee in anyway they could to find a solution to this problem.

Following several questions by committee members, Chairman Hoagland referred HB 2105 to the Civil Sub-Committee for further study.

Chairman Hoagland then assigned HB 2117 and HB 2120 to the family sub-committee for review.

Meeting adjourned at 4:45 p.m.

PROPOSED COMMITTEE REPORT

MR. SPEAKER:

Your Committee on Judiciary

Recommends that House Bill No. 2034

"AN ACT relating to arrests for the violation of state laws, county resolutions and city ordinances; prohibiting the disclosure of certain arrests; and providing for the nondisclosure of certain arrests."

Be amended:

On page 1, in line 31, by deleting all following the the period and by deleting all of line 32.

On page 1, in line 34, following "employment" by deleting the comma and inserting the following: "(except as a detective with a private detective agency, as defined by K.S.A. 75 - 7b01, as security personnel with a private patrol operator, as defined by K.S.A. 75 - 7b01, or with a criminal justice agency, as defined by K.S.A. 1978 Supp. 22-4701),"

And the bill be passed as amended.

Chairperson

Atch. 1

Statement from Robert H. Miller on HB2105

The time has come to re-evaluate the considerations that prompted legislatures beginning in 1791 to furnish materialmen and laborers a devastating weapon against homeowners who directly or indirectly receive the benefit of their services.

Since the mechanics lien is a process created by statutes, it is our duty to revise the antiquated law to prevent current abuses and to re-establish the balance which is currently weighted far too heavily in the materialman's favor.

The present Kansas mechanics lien law, Section 60-1101, et. seq. in its procedural ease and inevitable effects have proved a serious blow to defenseless consumers. Once the lien attaches, when work commences, all subsequent claims to the property are subordinate even before the claim is officially filed. In addition, the mechanics lien is not barred by the homestead exemption, a protection afforded to the homeowner against the threat of foreclosure by all other creditors.

With top priority, a material man or laborer may breeze through the simple process of filing (60-1103) and within a year institute relatively simple foreclosure proceedings forcing the sale of the home if he does not receive payment.

The seriousness of the impact of such a process on consumers is obvious. The worst and most widespread inequity is in the case of a defaulting or bankrupt contractor, when the owner is forced to pay twice the contract price to save his home. What consumer is going to refuse to pay when foreclosure threatens his home even if he has paid the contractor.

The present law provides no defense to such a threat and encourages lax business practices. Subcontractors find themselves in a no-risk-position, assured of payment, with no need to evaluate the job, the

Atch. 2

contracting employer, or many of the normal business considerations connected with a construction industry contract.

The time element requiring filing of a lien within three months after the work is completed creates a cloud on the title and a restraint on sale. Until filing, the lien is a "secret lien" and can be filed even after the property is conveyed though it may be in no way discoverable during the negotiation and sale process.

We feel that the need for such unqualified protection of subcontractors to the detriment of defenseless consumers is to extreme. The original purpose of mechanics lien legislation was to encourage construction during the early days of the country's development and to fill in a gap in the common law which failed to provide any right of action of the subcontractor against the owner because of a lack of a contract between them.

Although we agree that subcontractors today need some mode of redress in the event of non-payment, we recognize consumer protection as an imposing new interest which should balance and sometimes override the interests of the construction business.

HB2105 provides a defense to the consumer to better balance the competing interests involved. Under proposed Section 60-1106B, proof of payment is an absolute defense to a mechanics lien and renders it unenforceable. The right to raise a defense is cut off if the owner has not paid the contractor prior to filing of the lien. Therefore, the subcontractor is protected once he files against an owner who is delaying payment, but the owner is protected if before he is notified of the lien mistakenly pays the defaulting contractor in full.

Admittedly this introduces a risk into the subcontractor/contractor relationship not present under the existing law. The risk should encourage the subcontractors, who are in the business of construction

contracts, to utilize their expertise and evaluate the contractor, and their agreement before beginning performance. Financially shakey contractors should be scrutinized and rejected by subcontractors who under the present law have no reason to be more cautious in their business dealings.

In Section 2, a provision requires a hearing upon request of the owner within thirty days of the petition. An owner under existing law has the right to institute an action to adjudicate the lien question, but without a requirement of immediacy, the normal court delay renders the right ineffective in many cases, especially if the owner is in the process of selling the property. The accelerated hearing provisions plus the availability of a defense should encourage owners to make more frequent use of their right to bring the action. A speedy resolution of the claims benefits both sides and frees the title for sale.

Finally, new Sec. 3 has been added to mitigate the effect of the mechanics lien on the sale of property - an important public interest. Once the deed has been recorded a lien cannot be filed, and the title is clear. While protecting the purchaser, this also encourages subcontractors to file their lien claim in a timely fashion.

Today's weather has stopped what would have been a large gathering here today. However, I think we all know that there aren't many people in Kansas who don't personally know of someone who's been hit from their blind side and has had to pay twice.

Homeowners are in the worst position to judge the danger of doing business with a contractor, but this bill allows you to change that.

I urge your support of HB2105.

A Fairer Lien Law

In principle, laws that permit unpaid workmen or suppliers to file liens against property their services have benefitted make sense. There's no way labor can be repossessed the way an unpaid-for refrigerator can.

In practice, lien laws have become a headache to homeowners who do pay their bills, but have had the bad judgment to deal with contractors who don't.

Under present law, if a contractor declares bankruptcy, skips town or for some other reason fails to pay subcontractors or suppliers, a homeowner who already has paid the general contractor for the job may find himself showered with duns. The plumber, the electrician, the painting contractor, the lumber dealer and anyone else the contractor should have paid, but hadn't, want their money.

Reps. Neal Whittaker of Wichita, Robert Miller of Wellington and Vic Elliott of Anthony, all Republicans, have filed in the Kansas House of Representatives a bill that would free property owners from further obligation if they can prove the work already has been paid for.

After all, a contractor who agrees to carry out all details of a construction job for a certain price has the obligation to do just that. If a builder makes arrangements with subcontractors to perform certain phases of the work for him, and agrees to pay for materials out of his earnings, he should be held to those responsibilities.

If the Whittaker-Miller-Elliott bill passes, property owners still, of course, will have to make sure they know what a contractor has accepted the obligation to furnish.

But a homeowner shouldn't have the responsibility for paying the bills of a deadbeat, and shouldn't be required to pay for the same services twice.

The problem the bill seeks to correct is indeed a grave one. Richard Schodorf, who

heads the consumer fraud division of the Sedgwick County District Attorney's office estimates that during one recent two-year period, 449 homeowners were the victims in lien actions totaling \$1,448,000.

The division now advises homeowners having construction work done to ask contractors to sign affidavits affirming that they have paid their bills. The district attorney's office since has successfully prosecuted a total of 48 counts against three contractors who falsely signed such affidavits.

This kind of legal recourse can't help everybody, obviously. But legislative reform can.

KANSAS ASSOCIATION OF REALTORS[®]

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Hearing for the House Judiciary Committee concerning House Bill 2105
 January 23, 1979

Mr. Chairman, Ladies and Gentlemen of the Committee,

My name is Tim Underwood. I am the Director of Governmental Affairs for the Kansas Association of REALTORS[®]. The Kansas Association of REALTORS[®] represents almost 8,000 REALTORS[®] across the State of Kansas. I appear before you today to testify for the passage of House Bill 2105.

The members of my Association think the problem that 2105 addresses is a very serious one. Because of our involvement and knowledge of real estate transactions, our members see the effects of this problem. The lien problem affects everyone from the elderly who sometimes end up paying twice for the shingles which go on their new roof, to the young couple who buy their first home only to see it turn into a nightmare of additional payments on items they thought they had paid for.

I would like to point out two items to the members of the committee. First of all, we are talking about residential housing only. We are talking of those people who are probably not aware of the implications of the present lien law. Secondly, we are talking about people who are not deadbeats, who do not pay their bills in full. We are talking about the owners of residential housing who pay a contractor in full for the total amount of work involved in either building a new home or remodeling or repairing an existing one. They then have the problem of a lien being filed by a sub-contractor or supplier which the contractor didn't pay.

I tried to think of a parallel to this particular problem and would suggest the following example: A supplier of T.V. picture tubes sells these tubes to Jones T.V. & Repair Shop on credit terms. I don't think this would be too unusual a situation. I take my T.V. set into Jones T.V. & Repair to have the picture tube replaced. I pay Jones T.V. & Repair the full amount for the work and the picture tube which was replaced in my set. Jones T.V. & Repair meanwhile does not pay, because of several reasons, the supplier of the picture tube for the tubes they bought on credit. To follow along with our present lien law, if it was extended to this particular situation, then the supplier of picture tubes could file a lien on my T.V. set and foreclose on it if the lien was not satisfied. Obviously this doesn't happen. What would really happen is that the supplier of the picture tube would try to recover the money from Jones T.V. & Repair, which they should because Jones was the purchaser of the materials.

Ladies and Gentlemen of the committee, I don't think what this bill is

(over)

asking for is too unreasonable. Rather, what we are asking for in this particular piece of legislation is fairness to the consumer who pays in full according to the agreement of the contract with the contractor and expects to be protected because they have fulfilled their requirements of the contract. We believe that the consumer should be protected. We, therefore, respectfully ask that this committee pass out favorably House Bill 2105.

Thank you.