

Approved April 1, 1986
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 ~~xxx~~ p.m. on March 19, 1986 in room 313-S of the Capitol.

All members were present except:

Representative Fuller was excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Tom Slattery, Associated General Contractors of Kansas
William A. Larson, Associated General Contractors of Kansas
Hon. Herbert Walton, Johnson County District Court
Jim Turner, Kansas League of Savings Institutions
David Moses, Sedgwick County District Attorney's Office
Pat Barnes, Kansas Motor Car Dealers Association

SB 413 - An act concerning subcontractors' liens.

Rep. Solbach moved to strike the amendments to SB 413 placed on it on the floor of the Senate. Seconded by Rep. O'Neal. Motion carried on a voice vote. Rep. Snowbarger said he does not feel the issue is that simple. He feels HB 2855 better addresses the problems involved in subcontractors' liens. SB 413 goes to the symptoms of the problem and not the root of the problem, i.e. general contractors who do not pay their subs. He said HB 2855 more directly answers the root problem. He then outlined all the provisions of HB 2855 and there was discussion by the committee in particular on the double damages provisions.

Tom Slattery of the Associated General Contractors stated that his organization opposes both bills and introduced their counsel, William A. Larson. Mr. Larson stated that the Associated General Contractors have a philosophical objection to 2855 in that their experience has been that problems arise most often when the contractor is insolvent. HB 2855 will not do any good if the general is insolvent. Nondischargability in bankruptcy does not make any difference if there isn't any money. He feels there is a better framework for protection in 413. They object to the double liability and penalties because it gives special treatment to this class of creditors. No other creditor is entitled to double damages. He also feels the double damages provision gives a good opportunity for collusion between less than honest subs and landowners.

Rep. Snowbarger moved to amend the provisions of HB 2855 into SB 413. Seconded by Rep. Vancrum. Rep. Solbach moved to table HB 2855. Seconded by Rep. Wagnon. Rep. Vancrum raised a point of order stating that HB 2855 was not the bill being discussed and could not be tabled. Rep. Solbach withdrew his substitute motion. Rep. Solbach moved to conceptually make the remedies in HB 2855 subject to nonpayment of a claim in addition to a violation of the provisions of Sec. 1 (a) (b) and (c) and also that it limit recovery of damages to an amount up to twice the amount of the claim plus costs. Seconded by Rep. Luzzati. Upon further discussion Rep. Solbach withdrew his motion.

Judge Herbert Walton, Administrative Judge of the Johnson County District Court appeared before the committee stating that this would more than double the filings and paperwork of the court's staff. He stated that this increase in workload will necessitate additional staff. He does not mind this paperwork being created but requests that additional staffing be authorized to handle it.

Jim Turner of the Kansas League of Savings Institutions stated that he has been involved in the interim studies and many hearings for a number of years which resulted in many compromises by all sides culminating in SB 413. He urged the committee members to give the provisions of SB 413 a year to operate and see

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary

room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 19, 1986.

how effective it is and at the end of a year if the progress toward addressing the problem is not sufficient, then consider legislation similar to 2855.

David Moses of the Sedgwick County District Attorney's Office, Consumer Division stated that he also felt SB 413 should be given a chance to work before starting over with another bill.

Representative Snowbarger withdrew his motion. Rep. Snowbarger moved to change the effective date of SB 413 from July 1, 1986 to January 1, 1987 because the July 1 date is in the middle of the heavy construction season and would create problems changing over to a new method in the middle of the season. Motion was seconded by Rep. Walker. Rep. Solbach made a substitute motion to report SB 413 as amended favorable for passage. Seconded by Rep. Shriver. The substitute motion passed on a voice vote.

SB 474 - An act concerning liens on personal property for materials and services; concerning the time limit for filing.

Pat Barnes of the Kansas Motor Car Dealers Association appeared before the committee in support of SB 474. He spoke of the problems involved with an automobile mechanic placing a lien upon a car which he has repaired. Many times when open accounts are carried the current 45 day limitation has passed before the mechanic is aware that the account is not going to be able to be collected. Further the mechanic prefers not to file a lien and appear not to be giving his customer a fair opportunity to pay. Rep. Waggon moved to report SB 474 favorable for passage. Seconded by Rep. Teagarden. Motion carried on a voice vote.

SB 533 - An act concerning actions for divorce, annulment or separate maintenance; relating to custody of minor children.

Rep. Solbach moved to report SB 533 favorable for passage. Seconded by Rep. Vancrum. Motion carried 11 votes to 7.

SB 534 - An act concerning child support; relating to determination of the amount thereof.

Rep. Shriver moved to strike everything but New Sec. 1 and the repealer on SB 534. Seconded by Rep.

Rep. Solbach made a substitute motion to report SB 534 favorable for passage. The motion failed on a voice vote. Rep. Shriver made a substitute motion to reconsider the committee's action on SB 533. Seconded by Rep. Duncan. Motion carried on a voice vote. Rep. Shriver made a substitute motion to incorporate New Sec. 1 of SB 534 into SB 533 and change the title appropriately. Motion carried on a voice vote. Rep. Wunsch moved to report SB 533 as amended favorable for passage. Seconded by Rep. Shriver. Motion carried on a voice vote.

SB 535 - An act concerning child visitation orders; relating to the enforcement thereof.

Rep. Shriver moved to table SB 535 and recommend it for interim study. Seconded by Rep. Solbach. Motion carried on a voice vote.

The Chairman said that HB 2580 had been or would shortly be rereferred to the committee. It realtes to the publication and distribution of publications of the Judicial Council. He asked the committee to listen to statements of Randy Harrell of the Judicial Council regarding the problems resulting in the introduction of HB 2580. Mr. Harrell stated that currently the Judicial Council distributes copies of its publications to all licensed attorneys in Kansas. It has been suggested that this procedure be changed to require attorneys to request copies of the publications in an attempt to reduce costs. Various methods of distribution were discussed. Mr. Harrell stated that the Judicial Council can see the benefits of both sides of this question and will abide by whatever decision is made.

The Chairman adjourned the meeting at 5:15 P.M.

BEFORE THE HOUSE COMMITTEE
ON JUDICIARY REGARDING SB 474

Mr. Chairman, Members of the Committee, I am Pat Barnes, Legislative Counsel for the Kansas Motor Car Dealers Association. Today I appear before you to express KMCD's support for SB 474. This bill extends the time in which a person may file a personal property lien for materials and services rendered to improve that property from 45 days to 90 days.

Traditionally, Kansas has had a "mechanics' lien" statute which, among other things, allows an automobile mechanic to place a lien upon a person's car for work done to the car. Under the present law, this lien is only valid while the car (or other property) is in the possession of the person claiming the lien or if the lien claimant files a lien statement with the Register of Deeds within 45 days after giving up possession of the car (or other property).

SB 474 would extend the time for filing a lien statement from 45 days to 90 days. This change is needed for a number of reasons.

First, automobile dealers, both large and small, carry open-end accounts. That is, a person may bring a vehicle in for repair and pick it up when the job is completed without paying for the repairs. Several repairs may be carried on the same

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account. The person is then billed for the work on a monthly basis. In some cases the time allowed for filing a mechanics' lien can elapse before it becomes known that the customer will not pay for the work. The dealer then has no security for the debt and this can mean he will not be paid, even though he can seek enforcement of the obligation against the debtor personally.

Similarly, a second justification for this extension is customer relations. Many businessmen do not like to assume a customer will not pay a bill and file a lien simply because the debt is 45 days old. Many accounts are this old when they are paid. We think a reasonable payment period on a repair bill can be at least 45 days and so the requested change in SB 474 conforms this law to this fact.

Third, many billing cycles may be set up in such a manner that by the time a bill for a repair is sent out and a reasonable period of time has elapsed for its payment, the present 45-day period allowed for filing the lien may have expired. This type of situation arises where work is performed on a car at the beginning of a month, statements are sent at the end of the month and payment is due 15 days after the receipt of the statement.

Overall, we believe extending the deadline for filing a mechanics' lien to 90 days after parting with possession of the property will have several positive effects. First, it should improve customer relations. Second, it will give greater security not just to automobile dealers, but to all covered repairman who perform valuable work and services for individuals and businesses.

We urge adoption of this legislation. By adopting this legislation, Kansas automobile dealers, as well as others, will be allowed greater flexibility in handling accounts incurred for the repair or improvement of vehicles.