

Approved: 3/6/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on January 29, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Phill Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Representative Ballou
Elwaine Pomeroy, Kansas Credit Attorneys Association and
Kansas Collectors Association, Inc.
Thomas Moore, Attorney with Moore, Brower, Hennessey &
Freeman of Kansas City, Missouri
Dwane Russell, V.P. Boese Electric, Inc. Merriam, KS
Reiders Abel, Financial Manager, Graybar Electric, Kansas City,
Missouri
Ken Keller, Controller, Western EXTRALITE
Art Brown, Mid-America Lumbermens Association
Woody Moses, Kansas Ready-Mix and Kansas Aggregate
Association
Trudy Aron, American Institute of Architects
Bryon Smith, Attorney
George Barbee, Executive Director of the Kansas Consulting
Engineers
John Dozier, Kansas Land Title Association

Others attending: See attached list

The Chair called the meeting to order at 3:35 p.m.

Bill Introductions:

Representative Ballou requested the introduction of two bills. Representative Ballou's first request was for a bill concerning implied warranties of workmanlike construction for three years from the closing date of new construction.

Representative Ballou's second bill request proposes to clarify lien laws concerning subcontractors with intent to perform on residential property.

The Chair informed the Committee members that the Task Force on the Regulation of Residential Building Contractors generated both bills.

A motion was made by Representative Shriver and seconded by Representative Presta to introduce Representative Ballou's requests for a bill concerning implied warranties and a bill to clarify lien laws concerning subcontractors. The motion carries.

Elwaine Pomeroy appeared on behalf of the Kansas Credit Attorneys Association, and the Kansas Collectors Association, Inc and requested the introduction of two bills. The first would provide that when judgment is entered in an action brought under the code of civil procedure for limited actions, (Chapter 61 proceedings) the judgment debtor should submit to the Clerk of the District Court a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment--etc. The conferee stated that obtaining this information from the defendant in this manner would be more convenient for all parties, rather than requiring the defendant to appear in court to provide that information to the plaintiff. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on January 29, 1997.

Mr. Pomeroy's second request would permit the recovery of private process service expenses. The conferee requested an addition to current law that would include the "mileage and fees of a private process server....." (Attachment 2)

A motion was made by Representative Mays and seconded by Representative Kirk to introduce Mr. Pomeroy's two requests as Committee bills. The motion carries.

HB 2041: **A contractor/subcontractor has six months to file a lien against nonresidential property.**

The Chair opened the hearing on **HB 2041** and introduced Mr. Thomas Moore.

Mr. Moore, Attorney with Moore, Brower, Hennessy, & Freeman testified in support of **HB 2041**. Mr. Moore stated that he has practiced law for twenty-five years specializing in commercial building contracts. Mr. Moore stated that because of the payment cycles in commercial building, the present Kansas mechanic's lien law is too restrictive. Mr. Moore stated the normal reaction to the filing of a mechanic's lien is a polarization between the owner and the contractors. Mr. Moore encouraged the passage of this bill that would change the time limitation from three months to six months in filing a mechanic's lien. (Attachment 3)

The Committee members discussed with the conferee issues concerning the payment flow for commercial contractors and the number of nonresidential property liens. The conferee stated that Missouri nonresidential lien law allows six months to file. The conferee referred to a handout showing a comparison of time between the Missouri and Kansas law. (Attachment 4)

The Committee discussed with the conferee issues concerning contractual obligations and whether pre-notification of filing was required

Duane Russell, Vice President of Boese Electric, Inc of Merriam, Kansas testified in support of **HB 2041**. Mr. Russell stated that lien rights are very necessary and this bill gives more time to file which is important when dealing with nonresidential building contractors because there are many subcontractors involved in the process. The conferee stated that present Kansas law forces the issue, where if there was more time to file the differences between the parties might be worked out.

Reiders Abel, Financial Manager for Graybar Electric testified in support of **HB 2041**. Mr. Abel pointed out that the general contractor is the first to be paid and has the longest time to file a lien. The conferee discussed the time restraints on suppliers and subcontractors in further detail. The conferee discussed the importance of lien laws and the need to extend the time to file liens for nonresidential building contracts. (Attachment 5)

Ken Keller, Controller for Western EXTRALITE Company testified in support of **HB 2041**. Mr. Keller stated that his company is a Wholesale Electrical Distributor doing business in Kansas and Missouri. The conferee noted the difference in the mechanic's liens laws between the two states. Mr. Keller discussed the billing cycles used in the construction industry and referred to a chart showing examples of payment terms. The conferee concluded that due to the payment cycles in the nonresidential construction industry, a longer lien filing period for this type of industry would allow the parties time to work out discrepancies and reduce the number of liens filed. (Attachment 6)

Art Brown, Mid-America Lumbermens Association spoke in support of **HB 2041**. The conferee stated that the retail building material dealers he represents support this bill because would be compatible with Missouri lien law and provide additional time for closure of financial matters that exist between owners, contractors, sub-contractors and those supplying material and thus reduce the number of liens filed. (Attachment 7)

In response to Committee member's question concerning whether this bill provides for notification before the lien is filed, the conferee stated that this bill does not address notification. The conferee and Committee members discussed notification requirements for residential contracts. In response to a Committee member's question, as to whether his Association would support an intent to perform provision, Mr. Brown stated that he would have to refer to the Board of Directors.

Trudy Aron, Executive Director of AIA Kansas requested that the committee consider amending **HB 2041** to include preconstruction lien rights for design professionals. (Attachment 8)

Woody Moses representing the Kansas Aggregate Producer's Association and the Kansas Ready Mixed Concrete Association testified in support of **HB 2041**. The conferee stated that the concrete and aggregate materials are often the first delivered to a construction job; but under the practice of retainage, some of the last

CONTINUATION SHEET

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to be paid for. The conferee stated that this bill would allow greater flexibility to determine if there is a necessity to file a lien. (Attachment 9) (Attachment 10)

Bryan Smith stated that in his practice as an attorney, he files numerous liens each year throughout Kansas and Missouri. Mr. Smith stated that he supports **HB 2041**. The conferee requested that the Committee consider amending **HB 2041** to include some type of notice to the owner prior to filing of a lien. Mr. Smith referred to Florida's forty-five day notice and Missouri's ten day notice of intent provisions. The conferee stated that he favored the forty-five day notice provision. (Attachment 11)

The Committee members discussed with the conferee issues concerning notice to owner and contractors/suppliers. The conferee and Committee members discussed the creditor and supplier relationships.

George Barbee, Executive Director of the Kansas Consulting Engineers requested an amendment that would provide for design professionals to file a lien. The conferee stated that currently preconstruction design services providers cannot file a lien for their unpaid work because the work did not "finish labor, equipment, materials or supplies at the site of the property." The conferee requested an amendment to **HB 2041** to include design professional and requested that the Committee act favorably on the bill as amended. (Attachment 12)

John Dozier, Kansas Land Title Association testified in opposition to **HB 2041**. The conferee stated that the biggest danger for owners and lenders is subcontractor liens. The conferee stated that the longer a subcontractor has to perfect his lien of record, the more opportunity there is for the general contractor to receive more funds from the owner/lender without the owners knowledge that the general contractor is not paying his subcontractor. The conferee stated that this type of situation has caused foreclosure actions and financially broken owners. The conferee addressed the practice in Missouri of using commercial dispersing companies and the additional cost of using those services as a result of the six month lien law. (Attachment 13)

The conferee discussed the issue of non-site liens.

The Chair closed the hearing on **HB 2041**.

The Chair announced the agenda for the next meeting and adjourned the meeting at 5:25 p.m.

The next meeting is scheduled for January 30, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: Wednesday 1-29-97

NAME	REPRESENTING
Thomas M Moore, Atty	Western Extralite
Duane Russel	Boese Electric, Inc.
TRUDY ARON	Am Inst of Architects
Reiders Abel	Graybar Electric
Ken Keller	Western Extralite Co
Wanda Moss	KAPA-KANAKA
Best Brown	Mid Am Lumbermen Assn
Colleen Hill Denton	Kathy Peterson's Assoc.
Bob Vanaman	Tank farm on Resid. Building
Paul Shelby	OJA
Jeremy Clays	Rep. Paul's Office
KAREN FRANCE	Ks. Assoc. of Realtors
John De	Kansas Hand Tile Assn
Jorie Stramberg	CC Westwater
Cherlene A. Hymel	Kansas Credit Attorneys Assn Kansas Collectors Assn
Will Larson	Behr + Roberts
Tom Shattin	Associated General Contractors of Ks
Elaine Frisbie	Div of the Budget

#1

REQUEST FOR BILL INTRODUCTION

HOUSE JUDICIARY COMMITTEE

JANUARY 29, 1997

Thank you for giving me the opportunity to appear before your Committee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practices includes considerable collection work, and Kansas Collectors Association Inc., which is an association of collection agencies in Kansas.

These organizations would respectfully request your Committee to introduce a bill which would provide that when judgment is entered in an action brought under the code of civil procedure for limited actions, commonly referred to as Chapter 61 proceedings, that the judgment debtor should submit to the Clerk of the District Court a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment, account numbers and names of financial institutions holding assets of such person and a description of real property owned by such persons.

There is presently such a requirement in the statute relating to small claims actions.

We suggest that there be an additional subparagraph added to K.S.A. 61-1722 similar to subparagraph (b) of K.S.A. 61-2707.

For your information, I am attaching a copy of K.S.A. 61-1722 as it now reads, a copy of K.S.A. 61-2707, and a mockup of how K.S.A. 61-1722 would appear with our suggested amendment.

We believe that obtaining this information from the defendant in this manner would be more convenient for all parties, including the defendant, rather than requiring the defendant to appear in court to provide that information to the plaintiff.

Eleanor G. Embury
House Judiciary
Attachment 1
1/29/97

Research and Practice Aids:

Judgment \Leftarrow 92 et seq.
C.J.S. Judgments §§ 187, 218.

CASE ANNOTATIONS

1. Summary judgment for creditor affirmed. *Porter v. Stormont-Vail Hospital*, 228 K. 641, 643, 621 P.2d 411.

2. If defendant is personally served within state, trial court has no power to set aside default judgment on motion made more than 10 days after judgment is rendered. *Kubicki v. Wyandotte County Race Training Stables*, 11 K.A.2d 629, 630, 631, 731 P.2d 1288 (1987).

61-1722. Judgments. (a) Judgment shall be entered and be effective as provided in K.S.A. 60-258 and any amendments thereto.

(b) When more than one claim for relief is presented in an action, whether as a claim, counterclaim or cross-claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision shall be subject to revision at any time before the entry of judgment adjudicating all the claims.

(c) Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, regardless of whether the party has demanded such relief in such party's pleadings. Upon entry of such judgment for the plaintiff, plaintiff shall be deemed to have waived said plaintiff's right to recover any amount due in excess of such judgment. Entry of judgment for defendant on the defendant's cross-claim or counterclaim shall preclude the defendant from recovering in a subsequent suit any amount due said defendant in excess of such judgment.

(d) For the purposes of filing such judgment pursuant to K.S.A. 60-2418, and any amendments thereto, or K.S.A. 60-2202, and any amendments thereto, the transcript of the judgment rendered pursuant to this chapter shall be in the form prescribed in the appendix to this act.

(e) Whenever a party has commenced post-judgment proceedings for the enforcement of a judgment, and such judgment is subsequently set aside, reversed on appeal or otherwise nullified,

such party shall not be liable for damages as a result of such postjudgment proceedings, unless it can be proven that the judgment upon which said proceedings were based was fraudulently obtained.

History: L. 1969, ch. 290, § 61-1722; L. 1976, ch. 258, § 18; L. 1977, ch. 112, § 31; May 14.

Source or prior law:

61-901 to 61-904, 61-907.

Cross References to Related Sections:

What constitutes entry of judgment under code of civil procedure, see 60-258(b).

Judgment upon multiple claims under code of civil procedure, see 60-254(b).

Demand for judgment under code of civil procedure, see 60-254(c).

Claims exceeding the limit on actions, see 61-1720.

Research and Practice Aids:

Judgment \Leftarrow 191 et seq.
C.J.S. Judgments §§ 64, 100.

61-1723. Application of 16-205 to judgments on contracts. The provisions of K.S.A. 16-205 relating to judgments upon contracts providing for interest or finance charges, shall be applicable to judgments obtained pursuant to this chapter on such contracts.

History: L. 1969, ch. 290, § 61-1723; L. 1974, ch. 90, § 3; L. 1976, ch. 258, § 19; Jan. 10, 1977.

Cross References to Related Sections:

Interest on judgments, see 16-204.

Law Review and Bar Journal References:

"Summary Repossession, Replevin, and Foreclosure of Security Interests," Thomas V. Murray, 46 J.B.A.K. 93, 103 (1977).

61-1724. Actions concerning title to or interest in real estate; certification to district judge. In any action commenced pursuant to this chapter in which a district magistrate judge is presiding and in which it appears to the satisfaction of the judge that title to real estate is sought to be recovered or an equitable or legal interest in real estate is sought to be established, the action shall be stayed before such court. The judge shall notify the administrative judge of the district of the stay and, within 10 days after the action is stayed, shall transmit all papers and process in the action to the clerk of the district court of the county for assignment to a district judge.

The judge before whom the action is commenced shall require of the defendant setting up such question to file a bill of particulars setting

process to bring the demand for judgment within the scope of the court's small claims jurisdiction and thereby waive the right to recover any excess, assessing the costs accrued to the plaintiff; or (3) if the plaintiff's demand for judgment is within the scope of the court's general jurisdiction, allow the plaintiff to amend the plaintiff's pleadings and service of process so as to commence an action in such court in compliance with K.S.A. 61-1703 and amendments thereto, assessing the costs accrued to the plaintiff.

(b) Whenever a defendant asserts a claim beyond the scope of the court's small claims jurisdiction, but within the scope of the court's general jurisdiction, the court may determine the validity of defendant's entire claim. If the court refuses to determine the entirety of any such claim, the court must allow the defendant to: (1) Make no demand for judgment and reserve the right to pursue the defendant's entire claim in a court of competent jurisdiction; (2) make demand for judgment of that portion of the claim not exceeding \$1,800, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and reserve the right to bring an action in a court of competent jurisdiction for any amount in excess thereof; or (3) make demand for judgment of that portion of the claim not exceeding \$1,800, plus interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto, and waive the right to recover any excess.

History: L. 1973, ch. 239, § 6; L. 1979, ch. 187, § 2; L. 1986, ch. 223, § 3; L. 1986, ch. 222, § 3; L. 1986, ch. 224, § 2; L. 1994, ch. 273, § 20; July 1.

Law Review and Bar Journal References:

"The New Kansas Consumer Legislation," Barkley Clark, 42 J.B.A.K. 147, 148 (1973).

CASE ANNOTATIONS

1. District court hearing small claims appeal de novo cannot grant judgment beyond scope of small claims jurisdiction. *Armstrong v. Lowell H. Listrom & Co.*, 11 K.A.2d 448, 725 P.2d 540 (1986).

2. Counterclaimant may reserve right to bring action in district court for amount in excess of small claims jurisdiction. *Shollenberger v. Sease*, 18 K.A.2d 614, 615, 856 P.2d 951 (1993).

61-2707. Trial of action; exclusion of attorneys; enforcement of judgment; certain judgments null and void. (a) The trial of all actions shall be by the court, and no party in any such action shall be represented by an attorney

prior to judgment. Discovery methods or proceedings shall not be allowed nor shall the taking of depositions for any purpose be permitted. No order of attachment or garnishment shall be issued in any action commenced under this act prior to judgment in such action.

(b) When entering judgment in the action, the judge shall include as a part of the judgment form or order a requirement that, unless the judgment has been paid, the judgment debtor shall submit to the clerk of the district court, within 30 days after receipt of the form therefor, a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment, account numbers and names of financial institutions holding assets of such person and a description of real property owned by such person. The office of judicial administration shall develop the form to be used in submitting information to the clerk under this subsection. The court shall also include as a part of the judgment form or order a requirement that, within 15 days of the date judgment is entered, unless judgment has been paid, the judgment creditor shall mail a copy of the judgment form or order to the judgment debtor, together with the form for providing the information required to be submitted under this subsection, and that the judgment creditor shall file with the court proof of the mailing thereof. When the form containing the required information is submitted to the clerk as required by this subsection, the clerk shall note in the record of the proceeding that it was received and then shall mail the form to the judgment creditor. No copy of such form shall be retained in the court records nor shall it be made available to other persons. Upon motion of the judgment creditor, the court may punish for contempt any person failing to submit information as required by this subsection.

(c) Any judgment entered under this act on a claim which is not a small claim, as defined in K.S.A. 61-2703 and amendments thereto, or which has been filed with the court in contravention of the limitation prescribed by K.S.A. 61-2704 and amendments thereto on the number of claims which may be filed by any person, shall be void and unenforceable.

History: L. 1973, ch. 239, § 7; L. 1985, ch. 199, § 1; July 1.

Research and Practice Aids:Judgment \leftrightarrow 92 et seq.

C.J.S. Judgments §§ 187, 218.

CASE ANNOTATIONS

1. Summary judgment for creditor affirmed. *Porter v. Stormont-Vail Hospital*, 228 K. 641, 643, 621 P.2d 411.

2. If defendant is personally served within state, trial court has no power to set aside default judgment on motion made more than 10 days after judgment is rendered. *Kubick v. Wyandotte County Race Training Stables*, 11 K.A.2d 629, 630, 631, 731 P.2d 1288 (1987).

61-1722. Judgments. (a) Judgment shall be entered and be effective as provided in K.S.A. 60-258 and any amendments thereto.

(b) When more than one claim for relief is presented in an action, whether as a claim, counterclaim or cross-claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision shall be subject to revision at any time before the entry of judgment adjudicating all the claims.

(c) Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, regardless of whether the party has demanded such relief in such party's pleadings. Upon entry of such judgment for the plaintiff, plaintiff shall be deemed to have waived said plaintiff's right to recover any amount due in excess of such judgment. Entry of judgment for defendant on the defendant's cross-claim or counterclaim shall preclude the defendant from recovering in a subsequent suit any amount due said defendant in excess of such judgment.

(d) For the purposes of filing such judgment pursuant to K.S.A. 60-2418, and any amendments thereto, or K.S.A. 60-2202, and any amendments thereto, the transcript of the judgment rendered pursuant to this chapter shall be in the form prescribed in the appendix to this act.

(e) Whenever a party has commenced post-judgment proceedings for the enforcement of a judgment, and such judgment is subsequently set aside, reversed on appeal or otherwise nullified,

such party shall not be liable for damages as a result of such postjudgment proceedings, unless it can be proven that the judgment upon which said proceedings were based was fraudulently obtained.

(f) ^{Any} When entering judgment in ~~the~~ ^{any} action, the judge shall include as a part of the judgment form or order a requirement that, unless the judgment has been paid, the judgment debtor shall submit to the clerk of the district court, within 30 days after receipt of the form therefor, a verified statement describing the location and nature of property and assets which the person owns, including the person's place of employment, account numbers and names of financial institutions holding assets of such person and a description of real property owned by such person. The office of judicial administration shall develop the form to be used in submitting information to the clerk under this subsection. The court shall also include as a part of the judgment form or order a requirement that, within 15 days of the date judgment is entered, unless judgment has been paid, the judgment creditor shall mail a copy of the judgment form or order to the judgment debtor, together with the form for providing the information required to be submitted under this subsection, and that the judgment creditor shall file with the court proof of the mailing thereof. When the form containing the required information is submitted to the clerk as required by this subsection, the clerk shall note in the record of the proceeding that it was received and then shall mail the form to the judgment creditor. No copy of such form shall be retained in the court records nor shall it be made available to other persons. Upon motion of the judgment creditor, the court may punish for contempt any person failing to submit information as required by this subsection.

#2

REQUEST FOR BILL INTRODUCTION

HOUSE JUDICIARY COMMITTEE

JANUARY 29, 1997

Thank you for giving me the opportunity to appear before your Committee on behalf of Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work and Kansas Collectors Association Inc. which is an association of collection agencies in Kansas.

The organizations I represent respectfully request your Committee to introduce a bill that would permit the recovery of private process service expense.

K.S.A. 60-2003 is the statute which enumerates items that are allowable as costs when judgment is rendered. For your convenience, I am attaching a copy of the present statute.

Our organizations would request that a new subsection be added which would read as follows:

"The mileage and fees of a private process server incurred in the service of process or in effecting any of the provisional remedies authorized by this chapter."

You will note that this language is patterned after the language in subsection (2). We would leave it to the good judgment of the bill drafters as to just where this additional subsection would be added; we would think that perhaps it could be added as the new subsection (7), with the remaining subsections being re-numbered.

In Sedgwick County, where there is extensive use of private process servers, the expenses of the private process server are allowed as an item of costs by District Court rule. We feel that the authorization to tax the expenses of private process server as costs should be available throughout the state, by amending the statute.

Clarence J. Pomeroy

House Judiciary
Attachment 2
1/29/97

CASE ANNOTATIONS

Prior law cases, see G.S. 1949, 60-2936, 60-2941, 60-3704, 60-3705, 60-3708 and the 1961 Supp. thereto.

1. Costs assessed against plaintiff where trial court directed verdict for plaintiff on issue of liability but jury found no injury sustained. *Schroeder v. Richardson*, 196 K. 363, 371, 411 P.2d 670.

2. Taxing of costs in equitable action reviewable only for abuse of judge's discretion. *Commercial Asphalt, Inc. v. Smith*, 200 K. 362, 368, 436 P.2d 849.

3. Subsection (a) discussed; charges for discovery depositions not used as evidence held not ordinarily taxable as costs. *Wood v. Gautier*, 201 K. 74, 78, 439 P.2d 73.

4. No abuse of discretion in assessing costs in action foreclosing lien for labor and material. *Stewart v. Cunningham*, 219 K. 374, 381, 548 P.2d 740.

5. Docket fee may be taxed against any one or more litigants even if poverty affidavit filed. *Davis v. Davis*, 5 K.A.2d 712, 713, 623 P.2d 1369.

6. Assessment of costs in the trial court is discretionary with that court. *Negley v. Massey Ferguson*, 229 K. 465, 472, 625 P.2d 472.

7. "Costs" do not include paralegal time, attorney fees, deposition expense, phone calls, expert witness fees, etc. *Divine v. Groshong*, 235 K. 127, 141, 679 P.2d 700 (1984).

8. Where action not frivolous and substantial claims asserted, trial court correct in refusing defendant allowances for other than statutory costs. *Betts v. General Motors Corp.*, 236 K. 108, 117, 689 P.2d 795 (1984).

9. Denial of motion to assess costs proper where unreasonable, oppressive conduct or frivolity and bad faith absent. *City of Shawnee v. Webb*, 236 K. 504, 512, 694 P.2d 896 (1985).

10. Cited; trial court did not abuse discretion in granting costs in action to collect overtime pay under 44-1201 et seq. *Dollison v. Osborne County*, 241 K. 374, 386, 737 P.2d 43 (1987).

11. Cited; denial of taxing deposition costs on plaintiff to avoid "chilling effect" on bona fide constitutional claims examined. *R. B. Enterprises, Inc. v. State*, 242 K. 241, 250, 747 P.2d 152 (1987).

12. Absent extraordinary circumstances, charges for discovery depositions not admitted into evidence cannot be assessed as costs. *Bridges v. Bentley*, 244 K. 434, 445, 446, 769 P.2d 635 (1989).

13. Assessing filing fee cost permitted after adverse determination in 60-1507 motion filed under poverty affidavit. *Fought v. State*, 14 K.A.2d 17, 19, 781 P.2d 742 (1989).

14. Ruling on allowance for attorney fees as unnecessary before filing timely notice of appeal determined. *Snodgrass v. State Farm Mut. Auto. Ins. Co.*, 246 K. 371, 377, 789 P.2d 211 (1990).

15. Insurance policy provision reducing underinsured motorist coverage (40-284) by amount paid by party potentially liable examined. *Allied Mut. Ins. Co. v. Gordon*, 248 K. 715, 719, 811 P.2d 1112 (1991).

16. Under facts stated, court abused its discretion in denying plaintiff's request for costs in action alleging fraud. *Grove v. Orkin Exterminating Co.*, 18 K.A.2d 369, 376, 855 P.2d 958 (1993).

60-2003. Items allowable as costs. Items which may be included in the taxation of costs are:

(1) The docket fee as provided for by K.S.A. 60-2001, and amendments thereto.

(2) The mileage, fees, and other allowable expenses of the sheriff or other officer incurred in the service of process outside of this state or in effecting any of the provisional remedies authorized by this chapter.

(3) Publisher's charges in effecting any publication of notices authorized by law.

(4) Statutory fees and mileage of witnesses attending court or the taking of depositions used as evidence.

(5) Reporter's or stenographic charges for the taking of depositions used as evidence.

(6) The postage fees incurred pursuant to K.S.A. 60-303 or subsection (e) of K.S.A. 60-308, and amendments thereto.

(7) Alternative dispute resolution fees shall include fees, expenses and other costs arising from mediation, conciliation, arbitration, settlement conferences or other alternative dispute resolution means, whether or not such means were successful in resolving the matter or matters in dispute, which the court shall have ordered or to which the parties have agreed.

(8) Such other charges as are by statute authorized to be taxed as costs.

History: L. 1963, ch. 303, 60-2003; L. 1974, ch. 168, § 5; L. 1990, ch. 202, § 13; L. 1991, ch. 173, § 3; July 1.

Source or prior law:

G.S. 1868, ch. 80, § 344; L. 1909, ch. 182, § 350; R.S. 1923, 60-2835.

Research and Practice Aids:

Costs = 146 et seq.
Hatcher's Digest, Costs & Fees §§ 25 to 27.
C.J.S. Costs § 184.
Card's Kansas C.C.P. 60-2003.
Vernon's Kansas C.C.P.—Fowks, Harvey & Thomas, 60-2003.

Law Review and Bar Journal References:

"Some Comments on the New Code of Civil Procedure," Emmet A. Blaes, 12 K.L.R. 75, 79 (1963).
Case note on witness fees under federal rules of civil procedure, James L. Crabtree, 13 K.L.R. 304, 306 (1964).
"Kansas Court Costs: The Quality of Mercy Is Strained," Richard F. Hayse, 9 W.L.J. 87, 94 (1969).
"Carnishment in Kansas: A Procedural Paradox," Leon B. Graves, 49 J.B.A.K. 129, 131 (1980).
"Service of Process by Certified Mail," Robert C. Casad, 59 J.K.B.A. No. 10, 25, 27 (1990).

Attorney General's Opinions:

Procedure after arrest; diversion; imposition of diversion costs. 84-15.
Sheriff's authority to charge additional fees for in-state service of process. 86-63.

Service of p...
age fees. 91-1...
Service of p...
Transfer of p...
court; court ex...

Prior law cas...
thereto.

1. Objection...
raised for the...
K. 273, 277, 3...

2. Attorney...
prior law (G.S...
bleton, 196 K...

3. Charges f...
held not ordina...
74, 78, 79, 439...

4. Attorney f...
where action to...
nik v. McKee.

5. Subsection...
able under 40-2...
Frickey v. Equi...
702.

6. Docket fe...
ignants even if p...
712, 713, 623 P...

7. "Costs" d...
deposition exp...
vine v. Groshon...

8. Where act...
serted, trial cour...
statutory costs.

117, 689 P.2d 7...
9. Costs of f...
Court Rule 142...

v. Frazier, 11 K...
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MOORE BROWER HENNESSY & FREEMAN, P.C.

ATTORNEYS AT LAW

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P. O. BOX 33027
KANSAS CITY, MISSOURI 64114-0027

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KANSAS OFFICE:

11020 KING STREET, SUITE 100
OVERLAND PARK, KANSAS 66210

*ADMITTED IN MISSOURI AND KANSAS

**ADMITTED IN KANSAS ONLY

January 29, 1997

The Honorable Timothy Carmody
Chairman Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: *Mechanic's Lien Law*

Dear Chairman Carmody:

I have been practicing law in the Kansas City Metropolitan Area for 26 years with my primary field of expertise in construction contract matters, construction claims and government contract claims. My firm and I have represented general contractors, subcontractors and material suppliers, as well as owners and surety companies. Our representation, while focused primarily in Missouri and Kansas, has extended nationally in resolving disputes through many available remedies. One of the primary remedies utilized for our clients, especially subcontractors and suppliers, for collection of sums due is through various mechanic's lien laws. The laws vary from state to state with respect to notices, time for filing liens and the availability of the remedy for use by various sub-tiers of contractors and suppliers on and to a construction project. We have filed liens in a number of different jurisdictions to accomplish payment to our clients.

Specifically, the present Kansas mechanic's lien law, in our opinion, is much too restrictive time-wise to allow the construction industry to function in what has become a generally accepted manner. A subcontractor or a supplier is required to file a mechanic's lien against the real estate and the improvements thereon within three (3) months of the last day worked on or the last material delivered to the Project to be able to avail itself of the mechanic's lien remedy. The three (3) month time period is much too short and, in our opinion, has resulted in many more liens being filed than should be necessary. In contrast, the Missouri mechanic's lien law allows a lien to be filed by a subcontractor or a supplier (as well as an original contractor) within six (6) months of the last day worked on or the last materials

House Judiciary
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1/29/97

The Honorable Timothy Carmody

January 29, 1997

Page 2

delivered to, the Project. This longer period of time to file a lien allows the owner and the contractors to resolve their differences without the real estate and improvements being encumbered which, based upon our experience, occurs in a proportionately higher percentage of the situations in Missouri than in Kansas. In our opinion, voluntary resolution of disputes between the owner and contractors is obviously the most preferential manner to remedy disputes.

Based upon our experience, the most prevalent reaction to the filing of a mechanic's lien is a polarization between the owner and the contractors or between the contractors (suppliers). This is obviously to be expected because a mechanic's lien does, in fact, constitute an encumbrance on the real estate. Relationships between the owner and its lender can become immediately strained which results in even more strained relationships among the owner and its general contractor and among the contractors and suppliers running down the line of contracts and purchase orders. For that reason alone, we view a mechanic's lien as a remedy of last resort; certainly not one of first resort which, because of the very short Kansas lien law time frames (3 months and 4 months) has become necessary. When the lien is filed, there seems to be, in the vast majority of incidents, an immediate polarization of the parties which leads to a stifling of the pursuance of voluntary dispute resolution which certainly ought to be preferential to all parties involved and is much more economic than the ensuing litigation and attorney intervention. The six (6) month time period for filing a lien certainly allows a much greater opportunity for voluntary resolution of disputes.

In the representation of subcontractors and material suppliers, it is clear that on many construction projects, our clients do not even become aware of any payment problem until seventy-five (75) days or so have run from the last day worked on, or the last day materials were delivered to the Project. Under those circumstances, it is necessary immediately to commence preparation and filing of a mechanic's lien. Equally common and certainly now generally accepted in construction is the fact that retainage due at the end of a Project may not even become due until three (3) months or so after a subcontractor has worked on a Project. In such instances, a subcontractor has no option other than to file a mechanic's lien or lose a very valuable remedy which may later develop to be the only manner in which the monies due are able to be collected. In circumstances where sums are not contractually due before it becomes necessary to file a mechanic's lien, business relationships among all parties are adversely affected and collection of sums due then becomes more protracted and much more expensive.

Extending the time in which any contractor or supplier may file a lien, in our opinion, benefits all parties involved in the construction project - owners, banks, contractors, subcontractors and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than as a first resort. The six (6)

The Honorable Timothy Carmody
January 29, 1997
Page 3

month time limitation, based upon our experience, has certainly resulted in fewer liens being filed in slow payment situations than the Kansas three (3) month time limitation for subcontractors or suppliers and the four (4) month time limitation for general contractors. Again, that result, in our opinion, is beneficial for all parties to the construction project including lenders and owners. It also acknowledges what have become presently accepted construction payment cycles.

Given the benefits which flow overall to all of the parties, the six (6) month time limitation, in our opinion, ought to be enacted to replace the present four (4) month and three (3) month Kansas mechanic's lien law time limitations.

Yours very truly,

MOORE BROWER HENNESSY
& FREEMAN, P.C.

By: Thomas M. Moore
Thomas M. Moore

TMM:laf

#4

LIEN LAWS KANSAS AND MISSOURI

<u>Nonresidential Property</u>	<u>Time for Filing Lien</u> *	
	KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months - must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor	3 months	6 months - must give 10 days notice before filing lien

* From date of last material delivered or labor performed.

House Judiciary
Attachment 4
1/29/97

#5
LOAN
BRANCH MANAGER

TAMMY M. LYNCH
MANAGER OF CUSTOMER SERVICE

R.L. ABEL
BRANCH FINANCIAL MANAGER

GraybaR

1221 EAST 13TH STREET
MAILING ADDRESS, P. O. BOX 411644
KANSAS CITY, MISSOURI 64141

TELEPHONE (AREA CODE 816) 221-1644

**The Honorable Timothy Carmody
Chairman Judiciary Committee
State Capitol Building
Topeka, Ks.**

Jan. 29, 1997

Subject: Proposed changes to mechanics lien law
for commercial property

Dear Chairman Carmody

The proposed changes would be of benefit to all construction companies and suppliers conducting business in the state of Kansas. We have found it necessary to file a lien to protect our rights as a distributor although our contractor has not had time to be paid by the general contractor.

- 1) General business practices in the industry dictate that invoices dated after the 25th of the month be considered the following months billing.
- 2) This means that a contractor could have as many as 65 from our invoice date to pay and still be considered paying within terms.
- 3) We would be required to file a lien before the invoice becomes 30 days past due.
- 4) Delay of job due to weather conditions after shipment of last material.

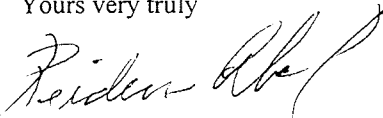
For the purpose of calculating the time to file a lien, we use the date of shipment (from either the factory or our warehouse) to the job as the date to start counting days. The factory ships the material, (bills us within a day or two usually) and we receive our invoice in a week to 10 days later. Although we bill promptly, if there is a question about the price billed us or any discrepancy it may take us a few days longer to bill our customer. These days must be taken into consideration when determining time available to file our lien. After our customer is billed, it takes a few days for them to get their invoice billed to the general contractor. Once the general contractor gets our customers invoice which includes our billing for material, there are necessary approvals before they are passed along to the owner.

Other factors to be considered by suppliers are:

- 1) The general contractor is the first to be paid and has the longest time to file a lien.
- 2) The supplier to subcontractors is the last to be paid, has the shortest time to file a lien and is the first to complete their portion of the job.
- 3) The expense of filing liens and releasing liens reduce the profitability of the job.
- 4) It is difficult to explain to a customer, general contractor and owner that you are filing a lien because your time is running out when they still have time. Obviously, this this does nothing to enhance business relationships.

These are the basic reasons a longer time to file a lien should be reviewed. Your consideration in supporting a six month time frame in which to file a lien would be appreciated.

Yours very truly



Reiders Abel
Financial Manager

House Judiciary
Attachment 5
1/29/97

116

Western EXTRALITE Company

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

1470 Liberty Street • Kansas City, Missouri 64102-1018 • (816) 421-8404 • Fax (816) 421-6211

January 29, 1997

The Honorable Timothy Carmody
Chairman Judiciary Committee
State Capitol Building
Topeka, KS 66612

Dear Representative Carmody:

Western Extralite Company is a Wholesale Electrical Distributor doing business in Kansas and Missouri. A large portion of our sales is to electrical contractors working in the construction industry. Most of our sales to our customers are sold on credit.

Mechanic's liens are one of the primary remedies available to suppliers of the construction industry to collect payment on unpaid sales. Because we do business in both Kansas and Missouri, we note a difference in the mechanic's liens laws between the two states. Attached you will find a comparison in the time for filing liens between Missouri and Kansas as it affects the general contractor, subcontractor, and the supplier to both the general contractor and subcontractor.

Suppliers to subcontractors in Kansas (which would include wholesalers selling to plumbers, electricians, etc.) have 3-months time to file a mechanic's lien, while those same suppliers in Missouri have a 6-months filing period. Billing terms in our industry are typically as follows:

1. The billing cycle runs from the 26th of one month to the 25th of the following month.
2. Payment is due if no cash discount is offered or taken 30 days after the close of the billing cycle. This in reality can be 35 days, which would advance that to the last day of the month. This means that any sale made on the 26th of January would not be due for payment until March 31. Thus, an invoice dated on January 26th could be 65 days old and still be paid within the billing terms. That invoice would be considered only 25 days past due, but will be 90 days old on April 25th, the date on which it has reached the mechanic's lien filing deadline.

House Judiciary
Attachment 6
1/29/97

SERVICE CENTERS

in Missouri				in Kansas				
N. Kansas City 1124 Howell N. Kansas City, MO 64116-4113	Lee's Summit 1020 S.E. Hamblen Road Lee's Summit, MO 64081-2936	St. Joseph 1302 Frederick Avenue St. Joseph, MO 64501-2006	Sedalia 1501 Thompson Boulevard Sedalia, MO 65301-2246	Warrensburg 608 N. Ridgeway Drive Warrensburg, MO 64093-9337	Lawrence 1811 West 31st Street Lawrence, KS 66046-4339	Olathe 1706 E. 123rd Street Olathe, KS 66061-5882	Manhattan 221 Colorado Street Manhattan, KS 66502-6298	Topeka 4024 S Topeka Boulevard Topeka, KS 66609-1296

January 29, 1997

Page 2

The Honorable Timothy Carmody

Our customers often pay our invoices from payments they receive for the job in question, and there are many reasons why they may wait 60 to 90 days before they get paid. Payment from owners and general contractors are made throughout the course of a construction period and delays frequently occur. The supplier, on the other hand, has to file their liens within 90 days to avoid losing their lien rights. There are many issues to consider before filing a lien:

1. It is expensive to file liens and to release them when payment is received a little late.
2. The profit margins in our industry are very close and do not provide for the cost of filing and monitoring liens.
3. The administrative costs of handling liens is extremely time-consuming as well as expensive.
4. Most importantly, we spend a lot of time developing relationships with our customers. Nothing can destroy that quicker than to file a lien on one of their jobs.

We believe that the Kansas legislature should consider mechanic's lien filing of 6-months, which is currently being used in Missouri. A longer filing period would mean fewer liens would have to be filed because many billing and payment issues would be resolved before the filing deadline. In visiting with our attorney, he tells me that they file three times the liens in the State of Kansas than they do in the State of Missouri due to the difference in time requirements for filing. A change to a 6-months filing period would benefit the owner, the general contractor, the subcontractor, and the supplier.

January 29, 1997

Page 2

The Honorable Timothy Carmody

We urge the Judiciary Committee to draft a law to lengthen the mechanic's lien filing period as outlined above. The construction industry is critical to the well-being of our economy and help should be provided to those who help finance the construction activity. All parties would benefit from this suggested improvement.

Thank you for your attention and cooperation.

Sincerely,



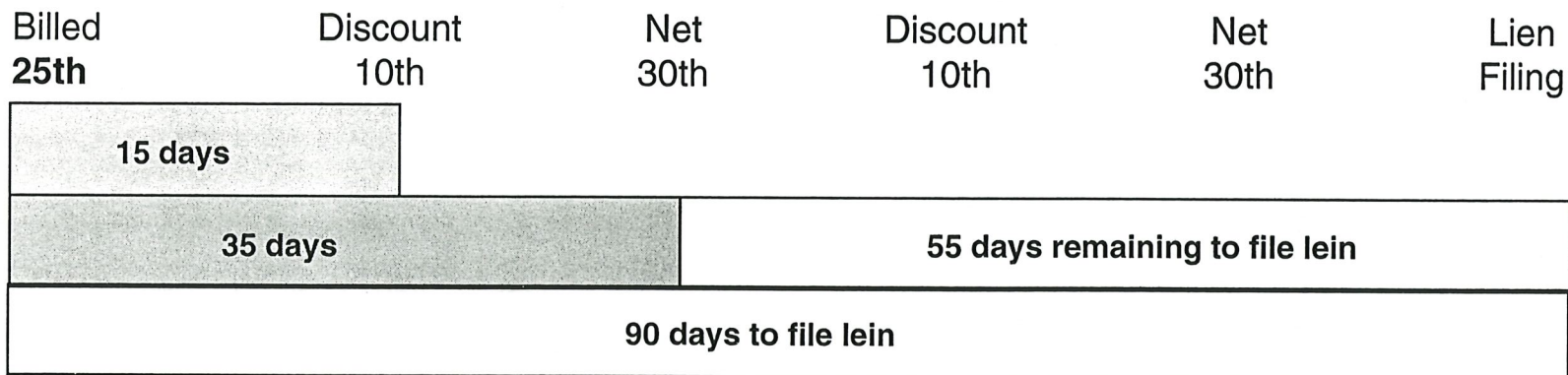
Kenneth R. Keller
Controller

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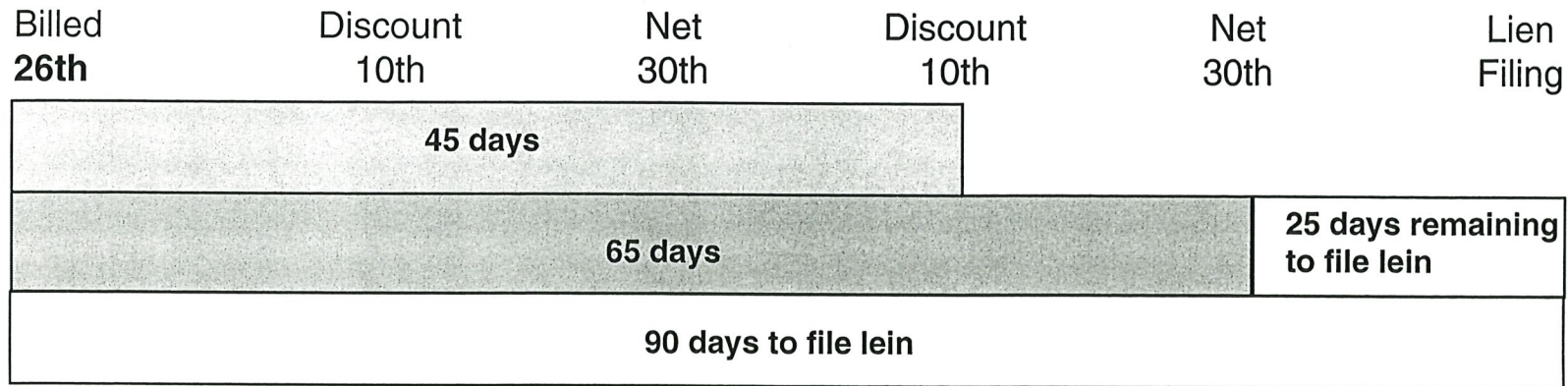
Time Line — 10th Prox. Payment Term

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Example 1:



Example 2:



h-9

#67

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-3190
816/931-2102 FAX 816/931-4617



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY TO THE HOUSE JUDICIARY COMMITTEE

House Bill # 2041

January 29, 1997

Mister Chairman, members of House Judiciary Committee. My name is Art Brown, representing the retail building material dealers in the State of Kansas through the Mid-America Lumbermens Association. I appear before you today as a supporter of House Bill No. 2041.

This bill as we understand it, would increase the filing time for liens from the current 4 months for a primary property owner and 3 months for a contractor/owner to 6 months on all non-residential property. Due to the fact Missouri has such a time frame within the context of their lien law, we heartily support this change in order to obtain compatibility with their law.

We have members who own operations in both Johnson County, Kansas, as well as Jackson County, Missouri. Speaking just for the material supply side of the building construction component, we feel this would certainly help our Kansas dealers by eliminating the confusion and disharmony caused by the split filing times between the two States.

We strongly feel that by allowing this additional time frame to bring to closure the financial matters that exist between owners, contractors, sub-contractors and those supplying material that it will be shown there will be a DECREASE in the number of liens filed by taking this action to extend the filing time from 3 or 4 months to 6 months as proposed in this bill.



*House Judiciary
Attachment 7*

1/29/97

pg 2- testimony before the House Judiciary Committee on HB 2041 January 29, 1997

We say this, because many times we are forced to file a lien to protect our lien rights simply because of the current 4 month provision to property owners under K.S.A. 60-1102 , and the 3 month provision of K.S.A. 60-1103, the Contractor/Owner. In many cases, that simply is not enough time in the overall building construction cycle to bring to closure all of the complexities in the financial arrangements these projects present. We are not in the lien filing business. Filing liens is expensive and puts us in a position of adversity with the people who are our customers. We feel this is an excellent step towards taking some the adversity that develops in such situations off of the table and provides a more workable time frame to resolve the financial issues surrounding these business transactions.

I thank the Committee for allowing us this time to express our position on this bill and ask that HB 2041 be passed out of this Committee favorably.

I am not an attorney, but I would certainly be glad to address any comments you may have on my testimony ; or to the best of my ability answer any of your questions.

Again, I thank you for this opportunity to appear before you.

AIA Kansas

A Chapter of The American Institute of Architects

January 29, 1997



TO: Tim Carmody, Chair, and Members of the House Judiciary Committee

FROM: Trudy Aron, Executive Director

RE: Request to amend HB 2041 to extend Lien Rights to Architects, Engineers, Landscape Architects and Land Surveyors

President

Vincent Mancini, AIA
Garden City

President Elect

Alan M. Stecklein, AIA
Hays

Secretary

Gregory E. Schwerdt, AIA
Topeka

Treasurer

David G. Emig, AIA
Emporia

Directors

Neal J. Angrisano, AIA
Overland Park

Richard A. Bartholomew, AIA
Overland Park

Leslie L. Fedde, Associate AIA
Wichita

Robert D. Fincham, AIA
Topeka

Tod A. Ford, Associate AIA
Wichita

Sarah L. Garrett, AIA
Manhattan

John Gaunt, FAIA
Lawrence

Diana L. Hutchison, AIA
Topeka

Eugene Kremer, FAIA
Manhattan

Bruce E. McMillan, AIA
Manhattan

Wendy Ornelas, AIA
Manhattan

Charles R. Smith, AIA
Topeka

F. Lynn Walker, AIA
Wichita

John M. Wilkins, Jr., AIA
Lawrence

I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas.) Thank you for allowing me to appear before you today.

Two weeks ago, I requested introduction of a bill which would provide preconstruction lien rights to design professionals licensed under the Board of Technical Professions (Chapter 74, K.S.A.) Design professionals include architects, engineers, landscape architects and land surveyors. This committee agreed to our request but that bill has yet to be printed and introduced.

My request today is that the committee consider amending HB 2041 to include preconstruction lien rights for design professionals. The design services provided by architects, engineers, landscape architects and land surveyors are completed well before construction. We believe design professionals should be able to file a lien on the clients' property after they perform their services just like contractors, subcontractors, and material suppliers can do after they provide their materials, equipment and labor used or consumed for the improvement of real property.

To the best of my knowledge, 36 other states, including Missouri, allow architects and other design professionals to file preconstruction liens.

Attached are copies of the balloon showing our amendment to the original statute; not the changes in HB 2041.

I appreciate your consideration of this matter and would be happy to answer any questions you have. Thank you.

Executive Director

Trudy Aron, Hon. AIA, CAE

700 SW Jackson, Suite 209
Topeka, Kansas 66603-3757
Telephone: 913-357-5308
800-444-9853
Facsimile: 913-357-6450

House Judiciary
Attachment 8
1/29/97

1 CURRENT STATUTE

2
3 60-1101 Liens of contractors; priority. Any person furnishing labor, equipment, material, or supplies
4 used or consumed for the improvement of real property, under a contract with the owner or with the
5 trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment,
6 material or supplies furnished, and for the cost of transporting the same. The lien shall be preferred to
7 all other liens or encumbrances which are subsequent to the commencement of the furnishing of such
8 labor, equipment, material or supplies at the site of the property subject to the lien. When two or more
9 such contracts are entered into applicable to the same improvement, the liens of all claimants shall be
10 similarly preferred to the date of the earliest unsatisfied lien of any of them.

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22 60-1102. Filing and recording of lien statement. (a) Filing. Any person claiming a lien on real
23 property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file with the clerk of
24 the district court of the county in which property is located, within four months after the date
25 material, equipment or supplies, used or consumed was last furnished or last labor performed under
26 the contract a verified statement showing:

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

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

35
36 60-1103. Liens of subcontractors; procedure, recording and notice, owner's liability. (a) Procedure.
37 Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or
38 consumed at the site of the property subject to the lien, under an agreement with the contractor,
39 subcontractor or owner contractor may obtain a lien for the amount due in the same manner and to
40 the same extent as the original contractor except that:

41 PROPOSED AMENDMENT TO CURRENT STATUTES - NOT MERGED WITH HB2041

42
43 60-1101 Liens of contractors; priority. Any person furnishing labor, equipment, material, or supplies
44 used or consumed for the improvement of real property, under a contract with the owner or with the
45 trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment,
46 material or supplies furnished, and for the cost of transporting the same. The lien shall be preferred to
47 all other liens or encumbrances which are subsequent to the commencement of the furnishing of such
48 labor, equipment, material or supplies at the site of the property subject to the lien. When two or more
49 such contracts are entered into applicable to the same improvement, the liens of all claimants shall be
50 similarly preferred to the date of the earliest unsatisfied lien of any of them.

51
52 *60-1101a. Any person furnishing or performing architectural, professional engineering, land*
53 *surveying or landscape architectural services (hereafter called a design professional) for the*
54 *improvement of real property, under contract with the owner or with the trustee, agent or spouse of*
55 *the owner, shall have a lien upon the property for the services furnished or performed, so long as the*
56 *design professional was properly licensed under Chapter 74, K.S.A. at all such times. The lien shall*
57 *be preferred to all other liens or encumbrances which are subsequent to the commencement of the*
58 *furnishing or performing of such services relating to the property subject to the lien. When two or*
59 *more such contracts are entered into applicable to the same improvement, the liens of all claimants*
60 *shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.*

61
62 60-1102. Filing and recording of lien statement. (a) Filing. Any person claiming a lien on real
63 property, under the provisions of K.S.A. 60-1101 *or 60-1101a*, and amendments thereto, shall file
64 with the clerk of the district court of the county in which property is located, within four months after
65 the date material, equipment or supplies, used or consumed was last furnished or last labor *or*
66 *services* performed under the contract a verified statement showing:

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

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

75
76 60-1103. Liens of subcontractors; procedure, recording and notice, owner's liability. (a) Procedure.
77 Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or
78 consumed at the site of the property subject to the lien *or services relating to such property*, under an
79 agreement with the contractor, subcontractor, ~~or~~ owner contractor *or design professional* may obtain
80 a lien for the amount due in the same manner and to the same extent as the original contractor *or*
81 *design professional* except that:

8-2

1 (1) The lien statement must state the name of the contractor and be filed within three months
2 after the date supplies, material or equipment was last furnished or labor performed by the claimant;

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

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

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

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

11 (2) enters into contracts with more than one person, firm or corporation for labor, equipment,
12 material or supplies used or consumed for the improvement of such real property.

13 (c) Recording and notice. When a lien is filed pursuant to this section, the clerk of the district
14 court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien
15 statement to be served personally upon any one owner and any party obligated to pay the lien in the
16 manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the
17 state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of
18 the lien statement to any one owner of the property and to any party obligated to pay the same by
19 restricted mail or (3) if the address of any one owner or such party is unknown and cannot be
20 ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the
21 premises. The provisions of this subsection requiring that the claimant serve a copy of the lien
22 statement shall be deemed to have been complied with, if it is proven that the person to be served
23 actually received a copy of the lien statement.

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

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

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

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

34 60-1103a. Subcontractors' liens; improvement of residential property. (a) As used in this section,
35 "improvement of residential property" means:

36 (1) Improvement of a preexisting structure in which the owner resides at the time the claimant
37 first furnishes labor, equipment, material or supplies and which is not used or intended for use as a
38 residence for more than two families or for commercial purposes or improvement or construction of

39 (1) The lien statement must state the name of the contractor *or design professional* and be filed
40 within three months after the date supplies, material, ~~or~~ equipment *or services* was last furnished or
41 labor performed by the claimant;

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

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

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

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

49 (2) enters into contracts with more than one person, firm or corporation for labor, equipment,
50 material or supplies used or consumed for the improvement of such real property.

51 (c) Recording and notice. When a lien is filed pursuant to this section, the clerk of the district
52 court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien
53 statement to be served personally upon any one owner and any party obligated to pay the lien in the
54 manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the
55 state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of
56 the lien statement to any one owner of the property and to any party obligated to pay the same by
57 restricted mail or (3) if the address of any one owner or such party is unknown and cannot be
58 ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the
59 premises. The provisions of this subsection requiring that the claimant serve a copy of the lien
60 statement shall be deemed to have been complied with, if it is proven that the person to be served
61 actually received a copy of the lien statement.

62 (d) Rights and liability of owner. The owner of the real property shall not become liable for a
63 greater amount than the owner has contracted to pay the original contractor *or design professional*,
64 except for any payments to the contractor *or design professional* made:

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

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

69 The owner may discharge any lien filed under this section which the contractor *or design*
70 *professional* fails to discharge and credit such payment against the amount due the contractor.

72 60-1103a. Subcontractors' liens; improvement of residential property. (a) As used in this section,
73 "improvement of residential property" means:

74 (1) Improvement of a preexisting structure in which the owner resides at the time the claimant
75 first furnishes labor, equipment, material, ~~or~~ supplies *or services* and which is not used or intended
76 for use as a residence for more than two families or for commercial purposes or improvement or
77 construction of

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1 any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a
 2 structure; or
 3 (2) any construction upon real property which is (A) owned or acquired by an individual at the
 4 time the claimant first furnishes labor, equipment, material or supplies; (B) intended to become and
 5 does become the principal personal residence of that individual upon completion; and (C) not used or
 6 intended for use as a residence for more than two families or for commercial purposes.
 7
 8 (b) A lien for the furnishing of labor, equipment, materials or supplies for the improvement of
 9 residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the
 10 claimant has:
 11 (1) Mailed to any one of the owners of the property a warning statement conforming with this
 12 section; or
 13 (2) in the claimant's possession a copy of a statement signed and dated by any one owner of the
 14 property stating that the general contractor or the claimant had given the warning statement
 15 conforming with this section to one such owner of the property.
 16 (c) The warning statement provided for by this section, to be effective, shall contain substantially
 17 the following statement:
 18 "Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing
 19 materials or labor on Job No. _____ at (residence address) under an agreement with (name of
 20 contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property
 21 for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this
 22 supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or
 23 subcontractor, you may withhold from your contractor the amount claimed until the dispute is
 24 settled."
 25 (d) The warning statement provided for by this section shall not be required if the claimant's total
 26 claim does not exceed \$250.
 27
 28 60-1103b. Subcontractors' liens; new residential property. (a) As used in this section, "new
 29 residential property" means a new structure which is constructed for use as a residence and which is
 30 not used or intended for use as a residence for more than two families or for commercial purposes.
 31 "new residential property" does not include any improvement of a preexisting structure or
 32 construction of any addition, garage or outbuilding appurtenant to a preexisting structure.
 33 (b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of
 34 new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after
 35 the passage of title to such new residential property to a good faith purchaser for value only if the
 36 claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of
 37 title to such new residential property. Such notice shall be filed in the office of the clerk of the
 38 district court of the county where the property is located.

39 any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a
 40 structure; or
 41 (2) any construction upon *or design services for*, real property which is (A) owned or acquired by
 42 an individual at the time the claimant first furnishes labor, equipment, material, ~~or~~ supplies *or*
 43 *services*; (B) intended to become and does become the principal personal residence of that individual
 44 upon completion; and (C) not used or intended for use as a residence for more than two families or for
 45 commercial purposes.
 46 (b) A lien for the furnishing of labor, equipment, materials, ~~or~~ supplies *or services* for the
 47 improvement of residential property may be claimed pursuant to K.S.A. 60-1103 and amendments
 48 thereto only if the claimant has:
 49 (1) Mailed to any one of the owners of the property a warning statement conforming with this
 50 section; or
 51 (2) in the claimant's possession a copy of a statement signed and dated by any one owner of the
 52 property stating that the general contractor, *the design professional* or the claimant had given the
 53 warning statement conforming with this section to one such owner of the property.
 54 (c) The warning statement provided for by this section, to be effective, shall contain substantially
 55 the following statement:
 56 "Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing
 57 materials or labor on Job No. _____ at (residence address) under an agreement with (name of
 58 contractor *or design professional*). Kansas law will allow this supplier or subcontractor to file a lien
 59 against your property for materials, ~~or~~ labor *or services* not paid for by your contractor *or design*
 60 *professional* unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a
 61 notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your
 62 contractor *or design professional, if applicable*, the amount claimed until the dispute is settled."
 63 (d) The warning statement provided for by this section shall not be required if the claimant's total
 64 claim does not exceed \$250.
 65
 66 60-1103b. Subcontractors' liens; new residential property. (a) As used in this section, "new
 67 residential property" means a new structure which is constructed for use as a residence and which is
 68 not used or intended for use as a residence for more than two families or for commercial purposes.
 69 "new residential property" does not include any improvement of a preexisting structure or
 70 construction of any addition, garage or outbuilding appurtenant to a preexisting structure.
 71 (b) A lien for the furnishing of labor, equipment, materials, ~~or~~ supplies *or services* for the
 72 construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and
 73 amendments thereto after the passage of title to such new residential property to a good faith
 74 purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of
 75 the deed effecting passage of title to such new residential property. Such notice shall be filed in the
 76 office of the clerk of the district court of the county where the property is located.

1 (c) The notice of intent to perform provided for in this section, to be effective, shall contain
2 substantially the following statement:

3 NOTICE OF INTENT TO PERFORM

4 "I _____ of

5 (name of supplier, subcontractor or contractor)

6 _____
7 (address of supplier, subcontractor or contractor)

8 do hereby give public notice that I am a supplier, subcontractor or contractor or other person

9 providing materials or labor on property owned by _____

10 (Name of property owner)

11 and having the legal description as follows:

12 _____
13 _____
14 _____,"

15 _____
16 _____

17 60-1104. Assignment. All claims for liens and rights of action to recover therefor under this act shall
18 be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses
19 thereto that might be made if such assignment had not been made. Where a statement has been filed
20 and recorded as herein provided, such assignment may be made by filing with the clerk of the court a
21 separate instrument in writing to be attached to the original lien.

22
23 60-1105. Limitations and amendment. (a) Limitations. An action to foreclose a lien under this
24 article shall be brought within one year from the time of filing the lien statement, but if a promissory
25 note has been attached to the lien statement in lieu of an itemized statement, the action shall be
26 commenced within one year from the maturity of said note.

27 (b) Amendment. Where action is brought to enforce a lien the lien statement may be amended by
28 leave of the judge in furtherance of justice, except to increase the amount claimed.
29

30 60-1106. Parties. In such actions all persons whose liens are filed as herein provided, and other
31 encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other
32 cases. Where such an action is brought by a subcontractor, or person other than the original
33 contractor, such original contractor shall be made a party defendant, and shall at his or her own
34 expense defend against the claim of every subcontractor, or other person claiming a lien under this
35 article, and if he or she fails to make such defense the owner may make the same at the expense of
36 such contractor; and until all such claims, costs and expenses are finally adjudicated, and defeated or
37 satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs
38

39 (c) The notice of intent to perform provided for in this section, to be effective, shall contain
40 substantially the following statement:

41 NOTICE OF INTENT TO PERFORM

42 "I _____ of

43 (name of supplier, subcontractor or contractor)

44 _____
45 (address of supplier, subcontractor or contractor)

46 do hereby give public notice that I am a supplier, subcontractor or contractor or other person

47 providing materials, ~~or~~ labor *or services* on property owned by _____

48 (Name of property owner)

49 and having the legal description as follows:

50 _____
51 _____
52 _____,"

53 _____
54 _____

55 60-1104. Assignment. All claims for liens and rights of action to recover therefor under this act shall
56 be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses
57 thereto that might be made if such assignment had not been made. Where a statement has been filed
58 and recorded as herein provided, such assignment may be made by filing with the clerk of the court a
59 separate instrument in writing to be attached to the original lien.

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62 article shall be brought within one year from the time of filing the lien statement, but if a promissory
63 note has been attached to the lien statement in lieu of an itemized statement, the action shall be
64 commenced within one year from the maturity of said note.

65 (b) Amendment. Where action is brought to enforce a lien the lien statement may be amended by
66 leave of the judge in furtherance of justice, except to increase the amount claimed.
67

68 60-1106. Parties. In such actions all persons whose liens are filed as herein provided, and other
69 encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other
70 cases. Where such an action is brought by a subcontractor, or person other than the original
71 contractor *or design professional*, such original contractor *or design professional* shall be made a
72 party defendant, and shall at his or her own expense defend against the claim of every subcontractor,
73 or other person claiming a lien under this article, and if he or she fails to make such defense the
74 owner may make the same at the expense of such contractor *or design professional*; and until all such
75 claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be
76 entitled to retain from the contractor *or design professional* the amount thereof, and such costs

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1 and expenses as he or she may be required to pay. If the sheriff of the county in which such action is
2 pending shall make return that he or she is uable to find such original contractor, the court may
3 proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs.
4
5

6 60-1107. Stay of proceedings. In any action to foreclose a lien under this article if the building or
7 other improvement is still in course of construction, the judge on application of any party engaged in
8 furnishing labor or materials for such building or improvement, may stay the trial thereof for a
9 reasonable time to permit the filing of a lien statement by such party under the provisions of this act.
10

11 60-1108. Action by landowner for adjudication, cancellation. If any lien or liens are filed under the
12 provisions of this article and no action to foreclose any of such liens is commenced, the owner of the
13 land may file such owner's petition in the district court of the county in which such land is situated,
14 making such lien claimants defendants therein, and praying for an adjudication of such lien or liens
15 so claimed. If any such lien claimant shall fail to establish such claimant's lien, the court may tax
16 against such claimant the whole or such portion of the costs of such action as may be just. If no
17 action to foreclose or adjudicate any lien filed under the provisions of this article shall be instituted
18 within the time provided in subsection

19 (a) of K.S.A. 60-1105, and amendments thereto, the lien shall be considered canceled by
20 limitation of law.
21

22 60-1109. Pro rata distribution. If the proceeds of the sale be insufficient to pay all the claimants,
23 then the court shall order them to be paid in proportion to the amount due each.
24

25 60-1110. Bond to secure payment of claims. The contractor or owner may execute a bond to the state
26 of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act,
27 conditioned for the payment of all claims which might be the basis of liens in a sum not less than the
28 contract price, with good and sufficient sureties, to be approved by a judge of the district court and
29 filed with the clerk of the district court. When bond is approved and filed, no lien shall attach under
30 this act, and if when such bond is filed liens have already been filed, such liens are discharged. Suit
31 may be brought on such bond by any person interested.

32 and expenses as he or she may be required to pay. If the sheriff of the county in which such action is
33 pending shall make return that he or she is uable to find such original contractor *or design*
34 *professional*, the court may proceed to adjudicate the liens upon the land and render judgment to
35 enforce the same with costs.
36

37 60-1107. Stay of proceedings. In any action to foreclose a lien under this article if the building or
38 other improvement is still in course of construction, the judge on application of any party engaged in
39 furnishing labor or materials for such building or improvement, may stay the trial thereof for a
40 reasonable time to permit the filing of a lien statement by such party under the provisions of this act.
41

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43 provisions of this article and no action to foreclose any of such liens is commenced, the owner of the
44 land may file such owner's petition in the district court of the county in which such land is situated,
45 making such lien claimants defendants therein, and praying for an adjudication of such lien or liens
46 so claimed. If any such lien claimant shall fail to establish such claimant's lien, the court may tax
47 against such claimant the whole or such portion of the costs of such action as may be just. If no
48 action to foreclose or adjudicate any lien filed under the provisions of this article shall be instituted
49 within the time provided in subsection

50 (a) of K.S.A. 60-1105, and amendments thereto, the lien shall be considered canceled by
51 limitation of law.
52

53 60-1109. Pro rata distribution. If the proceeds of the sale be insufficient to pay all the claimants,
54 then the court shall order them to be paid in proportion to the amount due each.
55

56 60-1110. Bond to secure payment of claims. The contractor, *design professional* or owner may
57 execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by
58 virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum
59 not less than the contract price, with good and sufficient sureties, to be approved by a judge of the
60 district court and filed with the clerk of the district court. When bond is approved and filed, no lien
61 shall attach under this act, and if when such bond is filed liens have already been filed, such liens are
62 discharged. Suit may be brought on such bond by any person interested.
63
64

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

By

The Kansas Aggregate Producer's Association

Before the

HOUSE JUDICIARY COMMITTEE

Regarding HB #2041 - Lien Law Extension

January 29, 1997

Good afternoon Mr. Chairman and members of the committee. Thank you for the opportunity to come before you today with our comments in support of HB #2041 concerning lien laws.

The Kansas Aggregate Producers' Association is composed of over 75 members engaged in businesses in every House and Senate district in Kansas. They routinely deliver materials to job sites at the very beginning of a project. The four (4) month limitation to file has created problems in the past with many members of our association, the extension from four (4) to six (6) months for a filing of lien on commercial property is strongly supported.

The aggregate producers industry is particularly supportive of this measure as it is our materials are among the first delivered to a construction job; but under the practice of retainage, some of the last to be paid for. Under current law, many producers have experienced problems with filing a lien against projects. Many times we are unable to determine at the beginning of a project if payment will be made promptly or at all. As commercial jobs are not bonded and contractor licensing is not uniform, this would afford additional protection to both the owners and suppliers of commercial projects. The extension prepared in the bill would allow greater flexibility to determine if there is a necessity to file a lien. As it is in the interest of all Kansans (owners and suppliers) to benefit from clear and concise lien laws, we would further propose this committee consider amending HB 2041 to include a six (6) month filing period for residential construction.

We urge your favorable consideration of this bill. I will be happy to respond to any questions.

House Judiciary
Attachment 9
1/29/97

KRMCA

Kansas Ready Mixed
Concrete Association

Edward R. Moses
Managing Director

TESTIMONY

By

The Kansas Ready Mixed Concrete Association

Before the

HOUSE JUDICIARY COMMITTEE

Regarding HB #2041 - Lien Law Extension

January 29, 1997

Good afternoon Mr. Chairman and members of the committee. Thank you for the opportunity to come before you today with our comments in support of HB #2041 concerning lien laws.

The Kansas Ready Mixed Concrete Association is composed of over 75 members engaged in businesses in every House and Senate district in Kansas. They routinely deliver concrete to job sites at the very beginning of a project. The four (4) month limitation to file has created problems in the past with many members of our association, the extension from four (4) to six (6) months for a filing of lien on commercial property is strongly supported.

The ready mixed concrete industry is particularly supportive of this measure as it is our materials are among the first delivered to a construction job; but under the practice of retainage, some of the last to be paid for. Under current law, many producers have experienced problems with filing a lien against projects. Many times we are unable to determine at the beginning of a project if payment will be made promptly or at all. As commercial jobs are not bonded and contractor licensing is not uniform, this would afford additional protection to both the owners and suppliers of commercial projects. The extension prepared in the bill would allow greater flexibility to determine if there is a necessity to file a lien. As it is in the interest of all Kansans (owners and suppliers) to benefit from clear and concise lien laws, we would further propose this committee consider amending HB 2041 to include a six (6) month filing period for residential construction.

We urge your favorable consideration of this bill. I will be happy to respond to any questions.

House Judiciary
Attachment 10
1/29/97

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January 30, 1997

Representative Tim Carmody
Chairperson, House Judiciary Committee
House of Representatives
State House
Topeka, KS 66612

RE: House Bill 2041
Testimony before Committee

Dear Chairman Carmody and Members of the Committee:

My name is Bryan Smith and I am an attorney in private practice in Topeka, Kansas. I file numerous liens each year throughout Kansas and Missouri. I support House Bill 2041, which extends the time for the filing of commercial mechanic's liens to six months from the date material, equipment, or supplies were used or consumed or last furnished or labor was last performed on a project. This change will lessen the number of liens filed on construction projects because it will allow the owner, contractor, and subcontractor more time to work out any disputes as to work performed and payment for the same.

I would request that the Committee consider amending this bill to include some type of notice to the owner prior to filing of a lien. I have found in my practice that such notice, more often than not, will result in the dispute being resolved prior to the filing of a lien. In order to file a lien in Missouri, the subcontractor must provide the land owner notice of his/her intent to file a lien against the property at least ten days prior to the filing of the lien. In Florida, a subcontractor or materialman must provide notice to the owner and contractor within 40 days after the first work on the project or supply of materials to the project, that they are working on the project. This allows the property owner to question the contractor before making payment as to whether all parties have been paid and to specifically request a lien release or letter showing payment from the parties whom the property owner has received notice. Under both the Missouri and Florida provisions, the subcontractor or supplier cannot avail himself or herself of the lien laws without

House Judiciary
Attachment 11
1/29/97

Representative Carmody

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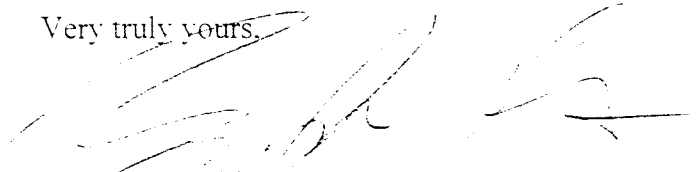
January 30, 1997

RE: House Bill 2041

meeting the statutory notice requirement. I believe that the inclusion of a similar provision in the Kansas lien law would further facilitate the resolution of disputes regarding payment on construction projects, which, in turn, would lead to a reduction in the number of liens filed.

I would like to thank the Committee for allowing me to speak regarding this issue.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bryan W. Smith", written over a horizontal line.

Bryan W. Smith

FISHER, CAVANAUGH & SMITH, P.A.

BWS:cr

#12



Statement to
House Judiciary Committee
on House Bill-2041
Wednesday, January 29, 1997

Mr. Chairman and members of the Committee. The Kansas Consulting Engineers is an organization whose membership is comprised of design firms in Kansas and metropolitan Kansas City. They offer engineering design for projects such as roads, bridges, water works, sewage systems, buildings, etc. to public and private sector clients.

Engineers also perform preconstruction design services such as the design of roads, access entries, storm sewers, plat preparation, zoning information, and utilities location in addition to the design of the structural, electrical, and mechanical components of building design to prepare a site for future improvement. Before the landowner can obtain project and/or construction financing, it is necessary that the engineering work be performed. Too often the project is abandoned because of problems with financing or the project is determined to be economically unfeasible. In these cases, engineers and design professionals may find that repeated efforts to be paid by the landholder for services rendered are unsuccessful.

To the surprise of design professionals, a lien can not be perfected for their unpaid work because the work did not "furnish labor, equipment, materials or supplies at the site of the property." The amendments suggested by AIA Kansas would extend the same rights to the design professional as now enjoyed by contractors and subcontractors.

This amendment would add Kansas to a growing list of states, including Missouri, that already have the right for design professionals to file a lien.

On behalf of the members of the Kansas Consulting Engineers, you are urged to amend House Bill 2041 to include design professionals and act favorably on the bill as amended.

House Judiciary
Attachment 12
1/29/97

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1-29-97



KANSAS LAND TITLE ASSOCIATION

Charles Stewart
President
P.O. Box 287
Oakley, KS 67748

Bill Regier
Vice President
P.O. Box 346
Newton, KS 67114

John M. Bell
Secretary-Treasurer
434 N. Main
Wichita, KS 67202



TO: HOUSE COMMITTEE ON JUDICIARY
RE: TESTIMONY ON HOUSE BILL NO. 2041
FROM: KANSAS LAND TITLE ASSOCIATION

The Kansas Land Title Association is opposed to any extension of time for the filing of mechanics' liens.

The right to file mechanics' liens is already an extraordinary right that is not available to other businesses, and the law in its present form creates a great amount of uncertainty for both purchasers and lenders regarding the marketability of titles to real estate.

The Kansas Land Title Association believes that the existing law provides more than adequate protection for contractors and subcontractors furnishing materials and labor to real estate.

Any further extension of time in which contractors and subcontractors have to file mechanics' liens will only lead to greater uncertainty in the marketability of titles to real estate and greater uncertainty in the insurability of titles for both purchasers and lenders.

We, in the title industry, find that the biggest danger for owners and lenders is subcontractor liens. The more time that elapses from the completion date of a subcontractor's portion of the project before that subcontractor has to perfect his lien of record, allows the general contractor the opportunity to receive more funds from the owner/lender without the owners knowledge that the general contractor is not paying his subcontractor.

Many times lenders rely on a search of the county records by title companies to ascertain if any liens have been filed before advancing additional funds on a construction loan. An extension of time for filing of liens defeats the safety this practice provides.

Early warning is the key to preventing economic loss to owners or lenders and to the community. The extraordinary amount of time provided for in House Bill No. 2014 makes it much more difficult for owners and lenders to determine the existence of unpaid subcontractors who have performed labor or furnished materials and have not been paid for such services.

The Kansas Land Title Association would request that you vote against House Bill No. 2041.

Respectfully submitted,

Kansas Land Title Association

House Judiciary
Attachment 13
1/29/97