

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 February 24, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)  
Representative Wagle (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: Jean Duncan, Kansas Real Estate Commission

Others attending: See attached list

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

**HB 2059:                    Kansas Digital Signature Act.**

The Chair distributed an amendment (balloon) to **HB 2059** that strips everything from the bill but the definition for digital signatures, and provides that digital signatures have the same force as any other form of signature. The Chair stated that the definition for digital signatures will provide legal recognition of digital signatures. (Attachment 1)

A motion was made by Representative Carmody to remove **HB 2059** from the table. The motion was seconded by Representative Presta. The motion carried.

The Committee members discussed the proposed amendment to **HB 2059**. The Chair stated that the purpose of the amendment was to delete reference to any regulatory agency, and to give legal protection for digital signatures as defined by the amendment.

A motion was made by Representative Carmody to amend **HB 2059** per balloon and called for the amended bill to be **Substitute HB 2059**. The motion was seconded by Representative Shriver. The motion carried.

A motion was made by Representative Carmody to recommend **Substitute HB 2059** favorably. The motion was seconded by Representative Presta. The motion carries.

**HB 2422:                    Transfer of real property on death of owner; relating to an heir who files a notification of interest in title.**

Representative Haley, sponsor of **HB 2422** related to the Committee members the need and purpose of this bill. The conferee stated that this bill would make it possible for an heir or other person showing an interest to obtain title to property provided the property has been maintained by the interested party for three years after notice of interest to the court and that the decedent has left property intestate. The property value must be \$15,000 or less. The conferee stated that this bill applies to Wyandotte County only and its purpose is to alleviate the problem of abandon houses following the owner's death when the estate does not go to probate. The conferee stated that he had discussed this proposal with the title companies. Their problems with this bill are not fully resolved. However, the problem will continue with or without the enactment of this bill. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 24, 1997.

**HB 2264: Brokerage relationships in real estate transactions act.**

Representative Mays presented an amendment (balloon) to **HB 2264**. Representative Mays stated that the proposed amendment will identify what a transaction broker may or may not do, and make some technical changes. (Attachment 3)

Jean Duncan, Kansas Real Estate Commission explained that the balloon, on page 3 of the bill, separates residential transactions from commercial transactions. The conferee stated that language at the bottom of page 3, was proposed by Marlin Penner. Ms Duncan explained the changes on page 31, strike "not" and insert "nor", and to add the word, "such" at the end of line 24 after the word "any". to relate better to subsection (b), to apply to real estate contracts where money is held by other than the real estate broker. The conferee stated that "rules and regulations" should be struck on line 28, page 31 and the word "statute" will replace them. The conferee stated on line 32, page 32 adds two year license fee. The conferee stated that on page 39 "transaction broker" is inserted. Ms Duncan stated that changes on page 51 will allow for the seller to instruct the broker in the agency agreement not to submit offers once one had been accepted, (as what is in current law). The conferee stated that the changes on page 56 are the same as those on page 51 except referring to a buyer's agent. Ms Duncan stated pertaining to the brochure given clients, on page 63 the word "lease" is struck. The conferee the change on page 64 is to correct a typing error.

A motion was made by Representative Mays and seconded by Representative Mayans to adopt the balloon. The motion carries.

A motion was made by Representative Carmody and Seconded by Representative Kirk to adopt the technical changes in the repealer sections as requested by the Revisor. The motion carries.

Representative Klein discussed with the Committee members the provisions in this bill that would override the courts/common law with the language on page 37, italicized lines 24-27. Representative Klein stated that those lines supersede common law, and there might be duties and responsibilities of the parties not covered by this bill.

Referring to pages 4, and 37 of the bill, the Committee members discussed release of fiduciary responsibility.

A motion was made by Representative Klein to amend conceptually by deleting italicized lines, 24-27 on page 37. The motion was seconded by Representative Pauls. The motion carries.

A motion was made to recommend **HB 2264** favorably by Representative Mays, and seconded by Representative Mayans. The motion carries with Representative Klein voting nay.

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

The Chair distributed his amendment. Representative Presta distributed his amendment.

Representative Presta stated that his amendment allows a ninety (90) day time period for contractors and subcontractors to file a lien from the time the work was performed, and requires pre-notification (intent to perform) to the owner. (Attachment 4)

Representative Carmody stated that his proposed amendment would allow for six months to file mechanics liens for commercial contractors and provide that within that period a 20 day notice be given before a lien can be filed. (Attachment 5)

A motion was made by Representative Presta to amend **HB 2041** per his balloon. The motion was seconded by Representative Powell. The motion carries.

A motion was made by Representative Presta and seconded by Representative Mayans to recommend **HB 2041** favorably as amended. The motion carries.

The Chair discussed future meeting agendas.

A motion was made by Representative Haley, seconded by Representative Garner to recommend **HB 2422** favorably for passage. The motion carries.

The Chair adjourned the meeting at 4:30 p.m.  
The next meeting is scheduled for March 5, 1997.

# HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-24-97

NAME	REPRESENTING
DAVE STRADER	KANSAS Dept of Revenue
E. R. "Woody" Moss	Ks. Ready Mix Concrete Assoc
JOE BROWN	mid-Am Farmers Assn
Heather Randall	Whitney, Newman, PA.
Matt Goddard	Heartland Community Bankers
Charlene Sater	KDHE
Patrick Hurley	KIC
Jerrold Neal	SOS
Paul Shelley	OIA
Ron Smith	Ks Bar Assoc
KEITH A. LANDIS	CHRISTIAN SENATE COMMITTEE ON PUBLICATION FOR KANSAS
Jim Clark	KCOAA
Karen F. Franco	Ks Assoc of R
Karen Gehle	" " IA
Dorrah Blam	Crosley, Inc. Realtors
Brian Dwyer	SRS
George Barber	Barber & Assoc's
Judy Wren	Amer Inst of Architects
JASON PITTSBERGER	BRAD SMOOT

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-24-97

NAME	REPRESENTING
<i>J. Chubb</i>	<i>SOS</i>
<i>Dash Rendar</i>	<i>Deqoba, Kansas</i>

# HOUSE BILL No. 2059

By Joint Committee on Computers and Telecommunications

1-22

9 AN ACT concerning digital signatures ~~[relating to the effect of digital~~  
10 signatures; providing for authentication and regulation of digital sig-  
11 natures and licensure of certain entities to perform authentication;  
12 amending K.S.A. 1996 Supp. 12-4516 and 21-4619 and repealing the  
13 ~~existing sections; also repealing K.S.A. 1996 Supp. 21-4619].~~

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 ~~[New]~~ Section 1. (a) This act may be cited as the Kansas digital sig-  
17 nature act.

18 (b) As used in this act, "digital signature" means a computer-created  
19 electronic identifier that is: (1) Intended by the party using it to have the  
20 ~~[same]~~ force and effect ~~[as the use]~~ of a ~~[manual]~~ signature; (2) unique to the  
21 party using it; (3) capable of verification; (4) under the sole control of the  
22 party using it; ~~(5) linked to data in such a manner that it is invalidated if~~  
23 ~~the data are changed [and (6) in conformity with any applicable rules and~~  
24 ~~regulations adopted by the secretary of state under this act].~~

25 ~~[(c) The secretary of state shall adopt such rules and regulations as~~  
26 ~~the secretary of state determines necessary to provide for authentication~~  
27 ~~and reliability of digital signatures and to minimize incidence of forged~~  
28 ~~digital signatures and fraud in electronic commerce. Such rules and reg-~~  
29 ~~ulations shall include but not be limited to:~~

30 (1) Provisions for authentication of digital signatures by the secretary  
31 of state or entities licensed by the secretary of state, or both;

32 (2) procedures and standards for licensure and renewal of licensure  
33 of entities to authenticate digital signatures;

34 (3) fees for application for licensure and license renewal in an amount  
35 equal to the costs of processing the application, including costs of any  
36 background investigation required; and

37 (4) fees for licensure and license renewal in an amount equal to the  
38 costs of such licensure or license renewal.

39 If the rules and regulations adopted by the secretary of state provide  
40 for licensure of entities to authenticate digital signatures, such license  
41 may be suspended or revoked in accordance with the Kansas administra-  
42 tive procedure act for failure to maintain the required standards or pay  
43 ~~the required fees.]~~

Substitute

House Judiciary  
Attachment 1  
2/24/97

and

(c) A digital signature may be accepted as a substitute for, and, if accepted, shall have the same force and effect as any other form of signature.

Delete all in lines 25 through 43.

Delete all of pages 2 through 10.

On page 11, delete lines 1 through 4.

Re-number remaining Sec. 5 as Sec. 2.

# STATE OF KANSAS

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DISTRICT  
CIVIC CENTER STATION  
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THE CAPITOL

HOUSE OF  
REPRESENTATIVES

DAVID B. HALEY  
DISTRICT 34

## HB2422

### Greetings

#### Introduction to HB2422- *(Heir Notification/Interest/Title)*

- Legislative History (KS)

### The Bill

- What it says
- How it works
- Why it is needed

### Previous Objections

- Title insurers; overly optimistic attorneys
- Amendments

### Closing/Questions?

Notes: \*Any member may obtain the script of testimony upon request.

COMMITTEE ASSIGNMENTS  
GOVERNMENTAL ORGANIZATIONS & ELECTIONS  
HEALTH & HUMAN SERVICES  
JUDICIARY

House Judiciary  
Attachment 2  
2/24/97

#3

1 known by the transaction broker that were omitted from or contradict  
2 any information included in a written report described in subsection (c).

3 (e) If pursuant to subsection (b)(2)(B), the transaction broker advised  
4 the parties to obtain expert advice as to material matters about which the  
5 transaction broker knows but the specifics of which are beyond the ex-  
6 pertise of the transaction broker, no cause of action for any person shall  
7 arise against the transaction broker pertaining to such material matters.

8 (f) ~~The following information shall not be disclosed by a transaction~~  
9 broker without the consent of all parties:

10 (1) That a buyer or tenant is willing to pay more than the purchase  
11 price or lease rate offered for the property;

12 (2) that a seller or landlord is willing to accept less than the asking  
13 price or lease rate for the property;

14 (3) what the motivating factors are for any party buying, selling, or  
15 leasing the property;

16 (4) that a seller, buyer, landlord or tenant will agree to financing  
17 terms other than those offered; or

18 (5) any information or personal confidences about a party to the  
19 transaction which might place the other party at an advantage over the  
20 party unless the disclosure is required by law or failure to disclose such  
21 information would constitute fraudulent misrepresentation.

22 (g) ~~A transaction broker has no duty to conduct an independent in-~~  
23 ~~spection of the property for the benefit of any party to the transaction~~  
24 ~~and has no duty to independently verify the accuracy or completeness of~~  
25 ~~statements made by the seller, landlord, buyer, tenant or qualified third~~  
26 ~~party inspectors.~~

27 (h) A transaction broker has no duty to conduct an independent in-  
28 vestigation of the buyer's or tenant's financial condition or to verify the  
29 accuracy or completeness of any statement made by the buyer or tenant.

30 (i) A transaction broker may do the following without breaching any  
31 obligation or responsibility:

32 (1) Show alternative properties not owned by the seller or landlord  
33 to a prospective buyer or tenant;

34 (2) list competing properties for sale or lease;

35 (3) show properties in which the buyer or tenant is interested to other  
36 prospective buyers or tenants; and

37 (4) serve as a single agent or subagent for the same or for different  
38 parties in other real estate transactions.

39 (j) Information known to a transaction broker shall not be imputed  
40 to any party to the transaction or to any licensee within the brokerage  
41 firm engaged as a transaction broker.

42 (k) A transaction broker may cooperate with other brokers or coop-  
erate and pay compensation to other brokers but shall not engage any

In any transaction regarding the sale or lease of real estate other than commercial property or residential property of more than four units, the

(1) Except as provided in subsection (g)(2), in any transaction regarding the sale or lease of commercial property or residential property of more than four units, the following information may be disclosed by a transaction broker unless prohibited by the parties:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) what the motivating factors are for any party buying, selling, or leasing the property; or

(D) that a seller, buyer, landlord, or tenant will agree to financing terms other than those offered.

(2) Any information or personal confidences about a party to the transaction which might place the other party at an advantage over the party shall not be disclosed unless the disclosure is required by law or failure to disclose such information would constitute fraudulent misrepresentation.

(renumber remaining subsections)

House Judiciary  
Attachment 3  
2/20/97

1 the custody of the broker whom the salesperson or associate broker rep-  
2 resents.

3 ~~(e)~~ (c) No broker shall:

4 (1) Pay a commission or compensation to any person for performing  
5 the services of an associate broker or salesperson unless such person is  
6 licensed under this act and employed by or associated with the broker,  
7 ~~except that nothing herein shall prohibit the payment of a referral fee to~~  
8 ~~a person who is properly licensed as a broker or salesperson in another~~  
9 ~~jurisdiction relating to a transaction regarding the sale or lease of com-~~  
10 ~~mercial or investment real estate property.~~

11 (2) Fail to deliver to the seller in every real estate transaction, at the  
12 time the transaction is closed, a complete, detailed closing statement  
13 showing all of the receipts and disbursements handled by the broker for  
14 the seller, or fail to deliver to the buyer a complete statement showing  
15 all money received in the transaction from such buyer and how and for  
16 what the same was disbursed, or fail to retain true copies of such state-  
17 ments in the broker's files, except that the furnishing of such statements  
18 to the seller and buyer by an escrow agent shall relieve the broker's re-  
19 sponsibility to the seller and the buyer.

20 (3) Fail to properly supervise the activities of an associated or em-  
21 ployed salesperson or associate broker.

22 (4) Lend the broker's license to a salesperson, or permit a salesperson  
23 to operate as a broker.

24 (5) Fail to provide to the principal a written report every 30 days,  
25 along with a final report, itemizing disbursements made by the broker  
26 from advance listing fees.

27 ~~(f)~~ (d) (1) If a purchase agreement provides that the earnest money  
28 be held by an escrow agent other than a real estate broker, ~~unless oth-~~  
29 ~~erwise specifically provided by written agreement of all parties to the~~  
30 ~~purchase agreement, no listing broker shall.~~

31 ~~(1)~~ (A) Fail to deliver the purchase agreement and earnest money  
32 deposit to the escrow agent named in the purchase agreement within five  
33 business days after the purchase agreement is signed by all parties *unless*  
34 *otherwise specifically provided by written agreement of all parties to the*  
35 *purchase agreement, in which case the broker shall deliver the purchase*  
36 *agreement and earnest money deposit to the escrow agent named in the*  
37 *purchase agreement on the date provided by such written agreement; or*  
38 ~~(2)~~ (B) fail to obtain and keep in the transaction file a receipt from  
39 the escrow agent showing date of delivery of the purchase agreement and  
40 earnest money deposit.

41 (2) *If a purchase agreement provides that the earnest money be held*  
42 *by an escrow agent other than a real estate broker and the property was*  
*not listed with a broker, no broker for the buyer shall.*



3-3

1 (A) Fail to deliver the purchase agreement and earnest money deposit  
 2 to the escrow agent named in the purchase agreement within five business  
 3 days after the purchase agreement is signed by all parties unless otherwise  
 4 specifically provided by written agreement of all parties to the purchase  
 5 agreement, in which case the broker shall deliver the purchase agreement  
 6 and earnest money deposit to the escrow agent named in the purchase  
 7 agreement on the date provided by such written agreement; or

8 (B) fail to obtain and keep in the transaction file a receipt from the  
 9 escrow agent showing date of delivery of the purchase agreement and  
 10 earnest money deposit.

11 (3) If a purchase agreement provides that the earnest money be held  
 12 by an escrow agent other than a real estate broker and neither the seller  
 13 ~~not~~ buyer is represented by a broker, no transaction broker shall:

strike nor

14 (A) Fail to deliver the purchase agreement and earnest money deposit  
 15 to the escrow agent named in the purchase agreement within five business  
 16 days after the purchase agreement is signed by all parties unless otherwise  
 17 specifically provided by written agreement of all parties to the purchase  
 18 agreement, in which case the broker shall deliver the purchase agreement  
 19 and earnest money deposit to the escrow agent named in the purchase  
 20 agreement on the date provided by such written agreement; or

21 (B) fail to obtain and keep in the transaction file a receipt from the  
 22 escrow agent showing date of delivery of the purchase agreement and  
 23 earnest money deposit.

24 The commission may adopt rules and regulations to require that any  
 25 purchase agreement which provides that the earnest money be held by  
 26 an escrow agent other than a real estate broker include: (1) notification  
 27 of whether or not the escrow agent named in the purchase agreement  
 28 maintains a surety bond, and (2) notification that ~~rules and regulations~~  
 29 governing the disbursement of earnest money held in trust accounts of  
 30 real estate brokers do not apply to earnest money deposited with the  
 31 escrow agent named in the purchase agreement.

such ?

strike statutes

32 ~~(g)~~ (e) Nothing in this section shall be construed to grant any person  
 33 a private right of action for damages or to eliminate any right of action  
 34 pursuant to other statutes or common law.

35 Sec. 15. On and after October 1, 1997, K.S.A. 58-3063 is hereby  
 36 amended to read as follows: 58-3063. (a) The commission shall adopt rules  
 37 and regulations fixing the amounts of the fees provided for by this act,  
 38 subject to the following:

39 (1) For any examination required for licensure, a fee in an amount  
 40 equal to the actual cost of the examination and the administration thereof.

41 (2) For submission of an application for an original salesperson's li-  
 42 cense, an amount not exceeding \$25.

43 (3) for submission of an application for an original broker's license,

3-4

1 an amount not exceeding \$50.

2 (4) For an original salesperson's license, a *prorated* fee based on ~~an~~  
3 ~~annual~~ *a two-year* amount not exceeding ~~\$50~~ \$100.

4 (5) For an original broker's license, a *prorated* fee based on ~~an annual~~  
5 *a two-year* amount not exceeding ~~\$75~~ \$150.

6 (6) For renewal of a salesperson's license, a fee based on an annual — *strike*  
7 a two-year  
8 amount not exceeding ~~\$50~~ \$100.

9 (7) For renewal of a broker's license, a fee based on ~~an annual~~ *a two-*  
10 *year* amount not exceeding ~~\$75~~ \$150.

11 (8) For reinstatement of a license which has been deactivated or  
12 which has been canceled pursuant to subsection (d) of K.S.A. 58-3047  
13 and amendments thereto, or by reason of termination of a salesperson,  
14 an amount not exceeding \$15.

15 (9) For reinstatement of all licenses canceled pursuant to subsection  
16 (e) of K.S.A. 58-3047 and amendments thereto, an amount not exceeding  
17 \$7.50 for each license canceled.

18 (10) For issuance of a duplicate license, an amount not exceeding  
19 \$10.

20 (11) For certification of licensure to another jurisdiction, an amount  
21 not exceeding \$10.

22 (12) For approval of a course of instruction submitted by a course  
23 provider pursuant to K.S.A. 58-3046a and amendments thereto, an  
24 amount not exceeding \$75.

25 (13) For renewal of an approved course of instruction pursuant to  
26 K.S.A. 58-3046a and amendments thereto, an amount not exceeding \$15.

27 (14) For approval of a course of instruction submitted by any licensee  
28 for credit toward the 12 hours of additional instruction required by K.S.A.  
29 58-3046a and amendments thereto, an amount not less than \$10 nor more  
30 than \$20, as determined by the commission.

31 (15) *For a temporary salesperson's license, an amount not exceeding*  
32 *\$25.*

33 *(b) For each prorated fee, the commission shall establish a monthly*  
34 *amount, rounded off to the nearest dollar, and shall compute the fee from*  
35 *the last calendar day of the month in which the license is issued to the*  
36 *expiration date of the license.*

37 ~~(b)~~ *(c)* Subject to the limitations of this section, the commission shall  
38 fix the fees provided for by this section in the amounts necessary to ad-  
39 minister and enforce this act.

40 ~~(c)~~ *(d)* The fees provided for by this section shall be applicable re-  
41 gardless of the type of license.

42 Sec. 16. On and after July 1, 1997, K.S.A. 1996 Supp. 58-3064 is  
43 hereby revived to read as follows: 58-3064. Whenever any person has  
engaged in any act or practice that constitutes a violation of this act or

3-5

1 (m) "Landlord's agent" means a broker who has entered into an  
2 agency with a landlord. The term includes the broker's affiliated licensees.

3 (n) "Licensee" means any person licensed under the Kansas real es-  
4 tate brokers' and salespersons' license act as a broker or salesperson.

5 (o) "Seller's agent" means a broker who has an agency with a seller.  
6 The term includes the broker's affiliated licensees and subagents of the  
7 broker.

8 (p) "Statutory agent" means a broker who is a seller's agent, a buyer's  
9 agent, a landlord's agent, a tenant's agent or a disclosed dual agent in a  
10 real estate transaction.

11 (q) "Tenant's agent" means a broker who has an agency with a pro-  
12 spective tenant. The term includes the broker's affiliated licensees.

13 Sec. 25. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,102,  
14 as revived by section 24 of this act, is hereby amended to read as follows:  
15 58-30,102. As used in the brokerage relationships in real estate transac-  
16 tions act, unless the context otherwise requires:

17 (a) "Affiliated licensee" means any individual licensed as a salesper-  
18 son or broker under the Kansas real estate brokers' and salespersons'  
19 license act who is employed by a broker or affiliated with a broker as an  
20 independent contractor.

21 (b) "Agency" means every relationship in which a broker acts for or  
22 represents another, by the latter's express written authority, in a real es-  
23 tate transaction. "Agency" also means the relationship in which a broker,  
24 by verbal authorization pursuant to subsection (d)(2) of K.S.A. 1996 Supp.  
25 58-30,103, and amendments thereto, acts for or represents any agency of  
26 the federal government in the sale of property owned by the federal  
27 agency.

28 (c) "Agency agreement" means a written agreement setting forth the  
29 terms and conditions of the relationship between a broker and the brok-  
30 er's client.

31 (d) "Broker" means: (1) An individual who is licensed as a broker  
32 under the Kansas real estate brokers' and salespersons' license act and  
33 who has an agency with a seller, buyer, landlord or tenant; or (2) a cor-  
34 poration, partnership, association or limited liability company, of which  
35 the officers and members, or persons employed by or associated with the  
36 corporation, partnership, association or limited liability company, are li-  
37 censed pursuant to K.S.A. 58-3042 and amendments thereto and which  
38 has an agency with a seller, buyer, landlord or tenant. The term "broker"  
39 includes the broker's affiliated licensees except where the context would  
40 otherwise indicate. If an individual broker is indicated by the context, the  
41 term "broker" means the supervising broker as defined by K.S.A. 58-  
42 3035 and amendments thereto.

43 (e) "Brokerage firm" means the business entity of a broker, whether

or acts as a transaction broker;

or acts as a transaction broker.

3-6

1 shall not refuse permission to another licensee to show, or to present an  
2 offer to purchase, a listed property unless specifically instructed by the  
3 seller in writing. The broker shall provide a copy of the written instruc-  
4 tions to another licensee upon request.

5 (i) A seller's or landlord's agent shall not be liable for punitive or  
6 exemplary damages for the licensee's failure to perform any of the duties  
7 set forth in this section, unless such failure is shown by clear and con-  
8 vincing evidence that the licensee acted toward the plaintiff with willful  
9 conduct, wanton conduct, fraud or malice.

10 Sec. 33. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,106,  
11 as revived by section 32 of this act, is hereby amended to read as follows:  
12 58-30,106. (a) A seller's agent or a landlord's agent shall be a statutory  
13 agent with the duty and obligation to:

- 14 (1) Perform the terms of the written agreement made with the client;
- 15 (2) ~~exercise reasonable skill and care for the client;~~
- 16 ~~(3)~~ promote the interests of the client with the utmost good faith,  
17 loyalty and fidelity, including:

18 (A) ~~Seeking a price and terms which are acceptable to the client,~~  
19 ~~except that an agency agreement with a seller may provide that the broker~~  
20 ~~shall not be obligated to continue to market the property after an offer~~  
21 ~~has been accepted by the seller;~~

22 ~~(B)~~ presenting, in a timely manner, all ~~written offers, counteroffers~~  
23 ~~and back-up offers to and from the client when such offer is received~~  
24 ~~prior to the closing of the sale unless the seller instructs the broker in the~~  
25 ~~agency agreement not to submit offers after an offer has been accepted~~  
26 ~~by the seller, even when the property is subject to a contract sale;~~

when such offer is received prior to the closing of the sale unless  
the seller instructs the broker in the agency agreement not to  
submit offers after an offer has been accepted by the seller;

strike

27 ~~(C)~~ (B) disclosing to the client all adverse material facts actually  
28 known by the licensee about the buyer or tenant; and

29 ~~(D)~~ (C) advising the client to obtain expert advice as to material mat-  
30 ters about which the licensee knows but the specifics of which are beyond  
31 the expertise of the licensee;

32 ~~(4)~~ (3) account in a timely manner for all money and property re-  
33 ceived;

34 ~~(5)~~ (4) comply with all requirements of this act and rules and regu-  
35 lations adopted hereunder; and

36 ~~(6)~~ (5) comply with any applicable federal, state and local laws, rules  
37 and regulations and ordinances, including fair housing and civil rights  
38 statutes and rules and regulations.

39 (b) If pursuant to subsection ~~(a)(3)(D)~~ (a)(2)(C), the licensee advised  
40 the client to obtain expert advice as to material matters about which the  
41 licensee knows but the specifics of which are beyond the expertise of the  
42 licensee, no cause of action for any person shall arise against the licensee  
43 pertaining to such material matters.

3-7

1 be obligated to seek other properties after the client enters into a purchase contract;

2  
3 ~~(B)~~ Presenting, in a timely manner, all written offers, counteroffers  
4 and back-up offers to and from the client ~~when such offer is received~~  
5 ~~prior to the closing of the sale unless the buyer instructs the broker in~~  
6 ~~the agency agreement not to submit offers after the client enters into a~~  
7 ~~purchase contract;~~

when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;

8 ~~(C)~~ (B) disclosing to the client all adverse material facts actually  
9 known by the licensee; and

10 ~~(D)~~ (C) advising the client to obtain expert advice as to material mat-  
11 ters about which the licensee knows but the specifics of which are beyond  
12 the expertise of the licensee;

13 ~~(4)~~ (3) account in a timely manner for all money and property re-  
14 ceived;

15 ~~(5)~~ (4) comply with all requirements of this act and rules and regu-  
16 lations adopted hereunder; and

17 ~~(6)~~ (5) comply with any applicable federal, state and local laws, rules  
18 and regulations and ordinances, including fair housing and civil rights  
19 statutes or rules and regulations.

20 (b) If pursuant to subsection ~~(a)(3)(D)~~ (a)(2)(C), the licensee advised  
21 the client to obtain expert advice as to material matters about which the  
22 licensee knows but the specifics of which are beyond the expertise of the  
23 licensee, no cause of action for any person shall arise against the licensee  
24 pertaining to such material matters.

25 (c) A buyer's or tenant's agent shall not disclose any confidential in-  
26 formation about the client unless disclosure is required by statute or rule  
27 and regulation or failure to disclose the information would constitute  
28 fraudulent misrepresentation. No cause of action for any person shall arise  
29 against a licensee acting as a buyer's or tenant's agent for making any  
30 required or permitted disclosure.

31 (d) (1) A buyer's or tenant's agent owes no duty or obligation to a  
32 customer, except that the licensee shall disclose to any customer all ad-  
33 verse material facts actually known by the licensee, including but not  
34 limited to material facts concerning the client's financial ability to perform  
35 the terms of the transaction.

36 (2) A buyer's or tenant's agent owes no duty to conduct an inde-  
37 pendent investigation of the client's financial condition for the benefit of  
38 the customer and owes no duty to independently verify the accuracy or  
39 completeness of statements made by the client or any qualified third  
40 party.

41 (3) Except as provided in subsection (d)(4), a buyer's or tenant's agent  
is not required to disclose to a client or customer information relating to  
the physical condition of the property if a written report regarding the

1 (B) the ~~written~~ communication from the licensee is a solicitation of  
2 business;

3 (C) the ~~face-to-face meeting occurs at an open house and there is no~~  
4 ~~substantive discussion regarding a transaction, or transaction is regarding~~  
5 ~~the sale or lease of commercial property or the sale of residential property~~  
6 ~~of more than four units;~~ — strike

7 (D) the ~~face-to-face meeting is a mere solicitation of business and~~  
8 ~~there is no substantive discussion regarding a transaction, transaction is~~  
9 ~~regarding the sale of property by public auction;~~

10 (E) the licensee is only performing ministerial acts; or

11 (F) the customer or client has already received the brochure from the  
12 licensee's brokerage firm.

13 (4) Acknowledgment of receipt of the brochure by the seller and buyer  
14 shall be included in any contract for sale.

15 (b) (1) Except for instances when a licensee is providing information  
16 through an advertisement or other form of public notice of the licensee's  
17 representation of a client, a licensee representing a client in a proposed  
18 real estate transaction shall disclose the representation at the time of  
19 ~~every~~ the initial contact with another licensee representing the other  
20 party. The disclosure may be made orally or in writing.

21 (2) Each time a licensee is contacted by another licensee who re-  
22 quests permission to show property to a prospective buyer, the licensee  
23 shall inquire whether or not the licensee represents the buyer.

24 (c) The disclosure of the ~~agency~~ brokerage relationship between all  
25 licensees involved and the seller and buyer shall be included in any con-  
26 tract for sale and in any lot reservation agreement.

27 Sec. 41. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,111 is  
28 hereby revived to read as follows: 58-30,111. (a) A client shall not be  
29 liable for a misrepresentation of the client's statutory agent arising out of  
30 the agency agreement unless the client knew of the misrepresentation.

31 (b) A statutory agent shall not be liable for a misrepresentation of the  
32 agent's client arising out of the agency agreement unless the licensee  
33 knew of the misrepresentation.

34 (c) A statutory agent shall not be liable for an innocent misrepresen-  
35 tation in information provided to the seller or landlord or to the buyer or  
36 tenant if the licensee does not have personal knowledge of the error,  
37 inaccuracy or omission that is the basis for the misrepresentation.

38 Sec. 42. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,111,  
39 as revived by section 41 of this act, is hereby amended to read as follows:  
40 58-30,111. (a) A client or customer shall not be liable for a misrepresen-  
41 tation ~~of or omission by~~ the client's statutory agent or the transaction  
42 broker arising out of the agency or transaction broker agreement unless  
43 the client or customer knew of the misrepresentation or omission.

3-8

strike transaction

3-9

1 (b) A statutory agent or ~~transmission~~ broker shall not be liable for a  
2 misrepresentation ~~of or omission by~~ the agent's client or the transaction  
3 broker's customer arising out of the agency or transaction broker agree-  
4 ment unless the licensee knew of the misrepresentation or omission.

5 (c) A statutory agent or transaction broker shall not be liable for an  
6 innocent or negligent misrepresentation in information provided to the  
7 seller or landlord or to the buyer or tenant if the licensee does not have  
8 personal knowledge of the error, inaccuracy or omission that is the basis  
9 for the claim of misrepresentation.

10 Sec. 43. On and after July 1, 1997, K.S.A. 1996 Supp. 58-30,112 is  
11 hereby revived to read as follows: 58-30,112. The commission shall pro-  
12 vide suggested forms of agency agreements and, by rules and regulations,  
13 provide such other prohibitions, limitations and conditions relating  
14 thereto as the commission may prescribe.

15 Sec. 44. On and after October 1, 1997, K.S.A. 1996 Supp. 58-30,112,  
16 as revived by section 43 of this act, is hereby amended to read as follows:  
17 58-30,112. The commission shall provide suggested sample forms of  
18 agency agreements and, by rules and regulations, provide such other pro-  
19 hibitions, limitations and conditions relating thereto as the commission  
20 may prescribe.

21 Sec. 45. On and after July 1, 1997, K.S.A. 1996 Supp. 74-4202 is  
22 hereby revived to read as follows: 74-4202. (a) Within 30 days after the  
23 appointment of the members to be regularly appointed within any year,  
24 the commission shall meet in the city of Topeka for the purpose of or-  
25 ganizing by selecting from its membership a chairperson and such other  
26 officers as the commission may deem necessary and appropriate. A ma-  
27 jority of the members of the commission shall constitute a quorum for  
28 the exercise of the powers or authority conferred upon it.

29 (b) The commission shall receive applications for, and issue licenses  
30 to, brokers and salespersons, as provided in this act and shall administer  
31 the provisions of this act and the brokerage relationships in real estate  
32 transactions act, as such act governs the sale or lease of real estate that is  
33 one to four residential units. The commission may do all things necessary  
34 and convenient for carrying into effect the provisions of the acts and may  
35 adopt rules and regulations not inconsistent with the acts. For the purpose  
36 of the acts, the commission shall make all necessary investigations, and  
37 every licensee shall furnish to the commission such evidence as the li-  
38 censee may have as to any violation the acts or any rules and regulations  
39 adopted under the acts. The commission may enforce any order by an  
40 action in the district court of the county where the alleged violator resides  
41 or where the violation allegedly occurred.

42 (c) Each member of the commission shall be paid compensation, sub-  
43 sistence allowances, mileage and other expenses as provided in K.S.A. 75-

HOUSE BILL No. 2041

Rep. Presta  
2-17-97

By Committee on Judiciary

1-21

9 AN ACT concerning civil procedure; relating to liens for material and  
10 labor; amending K.S.A. ~~60-1102 and 60-1103~~ and repealing the existing  
11 sections.  
12

60-1103a and K.S.A. 1996 Supp. 60-1103b

House Judiciary  
Attachment 4  
2/20/97

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

14 ~~[Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-~~  
15 ~~1102. (a) Filing. Any person claiming a lien on real property, under the~~  
16 ~~provisions of K.S.A. 60-1101, and amendments thereto, shall file a verified~~  
17 ~~statement with the clerk of the district court of the county in which prop-~~  
18 ~~erty is located;:~~

Delete all in lines 14 through 43.  
Delete all of page 2.

19 (1) Within four months after the date material, equipment or sup-  
20 plies, used or consumed was last furnished or last labor performed under  
21 the contract a verified statement showing for residential property; or

22 (2) within six months after the date material, equipment or supplies,  
23 used or consumed was last furnished or last labor performed under the  
24 contract for nonresidential property.

25 (b) Statement. Such verified statement shall show:

26 (1) The name of the owner;:  
27 (2) the name and address sufficient for service of process of the claim-  
28 ant;:

29 (3) a description of the real property; and

30 (4) a reasonably itemized statement and the amount of the claim, but  
31 if the amount of the claim is evidenced by a written instrument, or if a  
32 promissory note has been given for the same, a copy thereof may be  
33 attached to the claim in lieu of the itemized statement.

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

37 Sec. 2. K.S.A. 60-1103 is hereby amended to read as follows: 60-

38 1103. (a) Procedure. Any supplier, subcontractor or other person furnish-  
39 ing labor, equipment, material or supplies, used or consumed at the site  
40 of the property subject to the lien, under an agreement with the con-  
41 tractor, subcontractor or owner contractor may obtain a lien for the  
42 amount due in the same manner and to the same extent as the original  
43 contractor except that.



1 ~~thereto.~~  
 2 The owner may discharge any lien filed under this section which the  
 3 contractor fails to discharge and credit such payment against the amount  
 4 ~~due the contractor.~~  
 5 Sec. 3. K.S.A. ~~60-1102 and 60-1103~~ are hereby repealed.  
 6 Sec. 4. This act shall take effect and be in force from and after its  
 7 publication in the statute book.

Delete all in lines 1 through 4 and insert  
 the attached sections, as amended.

60-1103a and K.S.A. 1996 Supp. 60-1103b

4-2

Section 1. KSA 60-1103a is hereby amended to read as follows:

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

(1) Improvement of a preexisting structure in which the owner resides at the time the claimant first furnishes labor, equipment, material or supplies and which is not used or intended for use as a residence for more than two families or for commercial purposes or improvement or construction of any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a structure; or

(2) any construction upon real property which is (A) owned or acquired by an individual at the time the claimant first furnishes labor, equipment, material or supplies; (B) intended to become and does become the principal personal residence of that individual upon completion; and (C) not used or intended for use as a residence for more than two families or for commercial purposes.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the improvement of residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only ~~if the claimant has:~~ or nonresidential

(1) Mailed to any one of the owners of the property a warning statement conforming with this section; or

(2) in the claimant's possession a copy of a statement signed and dated by any one owner of the property stating that the general contractor or the claimant had given the warning statement conforming with this section to one such owner of the property.

(c) The warning statement provided for by this section, to be effective, shall contain substantially the following statement:

"Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing materials or labor on Job No. \_\_\_\_\_ at (residence address) under an agreement with (name of contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your contractor the amount claimed until the dispute is settled."

(d) The warning statement provided for by this section shall not be required if the claimant's total claim does not exceed \$250.

Sec. 2. KSA 1996 Supp. 60-1103b is hereby amended to read as follows:

**60-1103b. Subcontractors' liens; new residential property.** (a) As used in this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located. or nonresidential

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM

"I \_\_\_\_\_ of  
(name of supplier, subcontractor or contractor)  
\_\_\_\_\_  
(address of supplier, subcontractor or contractor)

do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by \_\_\_\_\_

(name of property owner)

and having the legal description as follows:  
\_\_\_\_\_  
\_\_\_\_\_

RELEASE OF NOTICE OF INTENT TO PERFORM  
NO. \_\_\_\_\_ AND WAIVER OF LIEN

"I \_\_\_\_\_ of  
(name of supplier, subcontractor or contractor)  
\_\_\_\_\_  
(address of supplier, subcontractor or contractor)

do hereby acknowledge that I filed notice of intent to perform no. \_\_\_\_\_ covering property owned by \_\_\_\_\_

(name of property owner)

and having the legal description as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In consideration of the sum of \$ \_\_\_\_\_, the receipt of which is hereby acknowledged, I hereby direct the clerk of the district court of \_\_\_\_\_, Kansas to release the subject notice of intent to perform and do hereby waive and relinquish any statutory right to a lien for the furnishing of labor, equipment, materials or supplies to the above-described real estate under the statutes of the state of Kansas."

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

**HOUSE BILL No. 2041**

By Committee on Judiciary

1-21

9 AN ACT concerning civil procedure; relating to liens for material and  
10 labor; amending K.S.A. 60-1102 ~~and 60-1103~~ and repealing the existing  
11 sections. and 60-1103a and K.S.A. 1996 Supp. 60-1103b

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-  
15 1102. (a) *Filing.* Any person claiming a lien on real property, under the  
16 provisions of K.S.A. 60-1101, and amendments thereto, shall file a *verified*  
17 *statement* with the clerk of the district court of the county in which prop-  
18 erty is located;:

19 (1) Within four months after the date material, equipment or sup-  
20 plies, used or consumed was last furnished or last labor performed under  
21 the contract a *verified statement showing for residential property; or*

22 (2) *within six months after the date material, equipment or supplies,*  
23 *used or consumed was last furnished or last labor performed under the*  
24 *contract for nonresidential property.*

25 (b) *Statement.* Such *verified statement shall show:*

26 (1) The name of the owner;:  
27 (2) the name and address sufficient for service of process of the claim-  
28 ant;:

29 (3) a description of the real property;: *and*

30 (4) a reasonably itemized statement and the amount of the claim, but  
31 if the amount of the claim is evidenced by a written instrument, or if a  
32 promissory note has been given for the same, a copy thereof may be  
33 attached to the claim in lieu of the itemized statement.

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

37 Sec. 2. K.S.A. 60-1103 is hereby amended to read as follows: 60-  
38 1103. (a) *Procedure.* Any supplier, subcontractor or other person furnish-  
39 ing labor, equipment, material or supplies, used or consumed at the site  
40 of the property subject to the lien, under an agreement with the con-  
41 tractor, subcontractor or owner contractor may obtain a lien for the  
42 amount due in the same manner and to the same extent as the original  
43 contractor except that:

House Judiciary  
Attachment 5  
2/24/97

1 (1) The lien statement must state the name of the contractor and be  
2 filed within: (A) three months after the date supplies, material or equip-  
3 ment was last furnished or labor performed by the claimant *if such prop-*  
4 *erty is residential property; or (B) six months after the date supplies,*  
5 *material or equipment was last furnished or labor performed by the claim-*  
6 *ant if such property is nonresidential property;*

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

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

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

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

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

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

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

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

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

1 thereto.

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

5 Sec. 3. K.S.A. 60-1102 and 60-1103 are hereby repealed.

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

Insert the attached sections, as amended.  
Renumber remaining sections accordingly.

and 60-1103a and K.S.A. 1996 Supp. 60-1103b

5-3

Sec. 3. K.S.A. 60-1103a is hereby amended to read as follows:

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

(1) Improvement of a preexisting structure in which the owner resides at the time the claimant first furnishes labor, equipment, material or supplies and which is not used or intended for use as a residence for more than two families or for commercial purposes or improvement or construction of any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a structure; or

(2) any construction upon real property which is (A) owned or acquired by an individual at the time the claimant first furnishes labor, equipment, material or supplies; (B) intended to become and does become the principal personal residence of that individual upon completion; and (C) not used or intended for use as a residence for more than two families or for commercial purposes.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the improvement of residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the claimant has:

(1) Mailed to any one of the owners of the property a warning statement conforming with this section; or

(2) in the claimant's possession a copy of a statement signed and dated by any one owner of the property stating that the general contractor or the claimant had given the warning statement conforming with this section to one such owner of the property.

(c) The warning statement provided for by this section, to be effective, shall contain substantially the following statement:

"Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing materials or labor on Job No. \_\_\_\_\_ at (residence address) under an agreement with (name of contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your contractor the amount claimed until the dispute is settled."

(d) The warning statement provided for by this section shall not be required if the claimant's total claim does not exceed \$250.

(e) A lien for the furnishing of labor, equipment, materials or supplies for the improvement of nonresidential property may be claimed pursuant to K.S.A. 60-1103, and amendments thereto, only if the claimant has notified, by certified mail, return receipt requested, any one of the owners of the property within 20 days of filing the lien, of the intent to file such lien. Nothing in this subsection shall extend the six month time period established in K.S.A. 60-1103, and amendments thereto.



Sec. 4. K.S.A. 1996 Supp. 60-1103b  
is hereby amended to read as follows:

**60-1103b. Subcontractors' liens; new residential property.** (a) As used in this section, "new residential property" means a new structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families or for commercial purposes. "New residential property" does not include any improvement of a preexisting structure or construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

(b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the clerk of the district court of the county where the property is located.

(c) The notice of intent to perform and release thereof provided for in this section, to be effective, shall contain substantially the following statement, whichever is applicable:

NOTICE OF INTENT TO PERFORM  
"I \_\_\_\_\_ of  
(name of supplier, subcontractor or contractor)  
\_\_\_\_\_  
(address of supplier, subcontractor or contractor)  
do hereby give public notice that I am a supplier, subcontractor  
or contractor or other person providing materials or labor on  
property owned by \_\_\_\_\_  
(name of property owner)  
and having the legal description as follows:  
\_\_\_\_\_  
\_\_\_\_\_."

RELEASE OF NOTICE OF INTENT TO PERFORM  
NO. \_\_\_\_\_ AND WAIVER OF LIEN  
"I \_\_\_\_\_ of  
(name of supplier, subcontractor or contractor)  
\_\_\_\_\_  
(address of supplier, subcontractor or contractor)  
do hereby acknowledge that I filed notice of intent to perform  
no. \_\_\_\_\_ covering property owned by \_\_\_\_\_  
(name of property owner)  
and having the legal description as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_."

In consideration of the sum of \$ \_\_\_\_\_, the receipt of  
which is hereby acknowledged, I hereby direct the clerk of the  
district court of \_\_\_\_\_, Kansas to release the sub-  
ject notice of intent to perform and do hereby waive and re-  
linquish any statutory right to a lien for the furnishing of labor,  
equipment, materials or supplies to the above-described real  
estate under the statutes of the state of Kansas."

K.S.A. 1996 Supp. 60-1103b (continued)

(d) When any claimant who has filed a notice of intent to perform has been paid in full, such claimant shall be required to file in the office in which the notice of intent to perform was filed, and to pay any requisite filing fee, a release of such notice and waiver of lien which shall be executed by the claimant, shall identify the property as set forth in the notice of intent to perform, and state that it is the intention of the claimant to waive or relinquish any statutory right to a lien for the furnishing of labor or material to the property. Upon such filing, the notice of intent to perform previously filed by such claimant shall be of no further force or effect, and such claimant's right to a lien under K.S.A. 60-1101 and 60-1103, and amendments thereto, shall be extinguished.

(e) Any owner of the real estate upon which a notice of intent to perform has been filed, or any owner's heirs or assigns, or anyone acting for such owner, heirs or assigns, and after payment in full to the claimant, may make demand upon the claimant filing the notice of intent to perform, for the filing of a release of the notice and waiver of lien as provided for in subsection (d), unless the same has expired by virtue of the provisions set forth in subsection (f).

(f) Notwithstanding the requirements of subsections (d) and (e), a notice of intent to perform shall be of no further force or effect after the expiration of 18 months from the date of filing the same, unless within such time the claimant has filed a lien pursuant to K.S.A. 60-1101 and 60-1103, and amendments thereto.

<sup>A</sup> (g) A lien for the furnishing of labor, equipment, materials or supplies for the construction of nonresidential property may be claimed pursuant to K.S.A. 60-1103, and amendments thereto, after the passage of title to such new nonresidential property to a good faith purchaser for value, only if the claimant has notified, by certified mail, return receipt requested, any one of the owners of the property within 20 days of filing the lien, of the intent to file such lien. Nothing in this subsection shall extend the six month time period established in K.S.A. 60-1103, and amendments thereto.