

Approved: 3-25-98
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 9, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Mayans (excused)
Representative Kirk (excused)
Representative Adkins (excused)
Representative Shultz (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: Randy Hearrell, Judicial Council
Phillip Mellor, Judicial Council Lien Law Subcommittee
Melissa Wangemann, office of the Secretary of State
Sara Ullmann, Registrar of Deeds Association
LewJene Schneider, Kansas Livestock Association
Trudy Aron, American Institute of Architects
Helen Stephens, Kansas Society of Land Surveyors
George Barbee, Kansas Consulting Engineers
Kathy Olsen, Kansas Bankers Association
Matthew Goddard, Vice President, Heartland Community Bankers Assoc.

Others attending: See attached list

The Chair called the meeting to order and opened the hearings on **HB 2606**.

HB 2606 **Enacting the Kansas statutory lien act**

Randy Hearrell, Judicial Council, introduced Phillip Mellor as a member of the Civil Code Committee. Mr. Hearrell referred to a list of members of the Civil Code Subcommittee Lien Law Study. (Attachment 1) Mr. Hearrell referred to an article, "*Kansas Artisan's & Mechanic's Liens: An Unnecessary Tangle*" by Judge John K. Pearson in the September 1994, The Kansas Bar Journal. (Attachment 2) The conferee referred to a legislative interim report. (Attachment 3) The conferee provided written testimony showing filing times under current law and under the provisions of **HB 2606**. (Attachment 4)

Phillip Mellor, Judicial Council Lien Law Subcommittee, testified in support of **HB 2606**. The conferee stated that the objective of the subcommittee was to satisfy some of the suggestions that Judge Pearson made in his article pointing out the proliferation of liens in Kansas. The conferee stated that there are several hundred different statutes referring to liens. The liens considered were those associated with improvement to, work on, or service to personal property. The conferee stated that this bill has nothing to do with liens on real estate, although it may have some effect on leases of real estate. The conferee described the types of liens affected by a change in filing times. This bill was written to provide a definite way of filing, a definite time to file and a consistent foreclosure procedure in Kansas. The conferee stated that to the extent it was practical to do so, provisions of the UCC were incorporated. The conferee stated that there is a big body of law in terms of the UCC. This bill provides for filing in register of deeds office in the county where the property is located things that are not very mobile; other things will be filed in the office of the Secretary of State. The provisions in this bill will save time and bring a state of stability. The conferee stated that the times for filing on the schedule would be 90 days for all liens on personal property. (Attachment 5)

During discussion with Committee members, the conferee stated that all the different Kansas statutes and laws concerning filing of such liens will be placed under one statute. The conferee stated that currently there are 25 different kinds of foreclosure procedures, but under the provisions of this bill there will just be one. The conferee stated that this bill does not create any new liens or remove any liens, it standardizes the filing time. The conferee discussed the liens that are exempted out of this bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 13, 1998.

The conferee related details of the filing process and stated that the liens will be filed with the register of deeds or the Secretary of State's office and they will be indexed.

In response to a Committee question, Mr. Mellor stated that the oil and gas industry asked to be left out of the bill. Conferee Mellor stated that this bill would clarify the Kansas lien law and make it uniform, but is not a part of a federal uniform measure.

Melissa Wangemann, Legal Counsel to the Secretary of State, commented on **HB 2606** as neither a proponent or opponent to the bill. The conferee referred to a comparison chart showing UCC filings and statutory lien filings contained in her testimony. The conferee offered information on how the bill will affect the office of the Secretary of State. The conferee stated that **HB 2606** will impose additional filing duties on the Secretary of State's office. The conferee stated that this bill will bring additional tasks to the Secretary of State's office and at the current time there is no way to determine the full impact. The conferee stated that the indexing and filing requirements of this bill are more extensive than those for security interests that are filed with the Secretary's office pursuant to the Uniform Commercial Code. The conferee stated that the current computer system does not have the capacity to record the necessary information. The conferee stated that this bill would increase the volume of filings the office receives. The conferee discussed provisions relating to statutory liens on consumer goods and suggested that the cap on consumer goods covered by **HB 2606** be raised to \$3,000 to make the statutory lien provision consistent with the Uniform Commercial Code provisions. (Attachment 6)

Sara Ullmann, Register of Deeds Association, testified noting inconsistencies in the bill. The conferee stated that the bill does not clearly define where dual filing is appropriate in the area of personal property liens. Language concerning the retention of the records does not include the electronic transfer and storage of information. The conferee addressed the area of fees, and stated that the bill would move away from uniformity of fees. Conferee Ullmann stated that the bill calls for additional accounting procedures, but does not compensate the performance of those duties. The conferee discussed technology issues that need to be addressed. The conferee stated that the intent of the bill to collectively address personal property liens is good, but her association believes that additional study is needed. (Attachment 7)

LewJene Schneider, Kansas Livestock Association, testified in opposition to **HB 2606**. The conferee asked that her Association be included in discussion of this bill to make sure that feed lots are covered, and to be advised about the filing requirements and filing fees. (Attachment 8)

The Chair closed the hearing on **HB 2606**.

HB 2228 **Allowing a design professional to have a lien on real property similar to contractor liens**

Trudy Aron, Executive Director, AIA Kansas, testified as a supporter of **HB 2228**. The conferee stated that current law allows persons furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, to place a lien upon that property for the labor, equipment, material or supplies furnished for which the owner has not paid. **HB 2228** expands the current law to allow design professional to have the same rights. The conferee stated that design services provided by the members of AIA takes place prior to construction. The conferee stated that the inclusion on lien rights for design professionals would, especially, benefit the small design firm. (Attachment 9)

The Committee members and conferee discussed the issue of "a warning statement" on page 3, line 7.

Helen Stephens testified on behalf of the Kansas Society of Land Surveyors and Geo Tech, Inc. supporting **HB 2228**. (Attachment 10)

Conferee Stephens stated that Mr. Brosemer, Geo Tech, would like to request an amendment on page one, line 16 and any other applicable cites that would include the words, "transfer or financing" so to clarify and prevent misinterpretation of the distinction between surveying for construction and surveying for financing or transfer. (Attachment 11)

The conferee responded to a question regarding a lien placed on property in the process of transaction, where the transaction is terminated as to the determination of who is responsible for that expense.

George Barbee, Executive Director, Kansas Consulting Engineers, testified in support of **HB 2228**. The conferee discussed situations where design engineers are not paid when a project is terminated before construction occurs. The conferee stated that the bill requires a contract before the provisions of this bill apply. (Attachment 12)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on March 13, 1998.

Kathy Olsen, Kansas Bankers Association, testified in opposition to **HB 2228**. The conferee stated that adding to the list of potential claimants begs the question of where to draw the line. Adding more groups to those who can file liens would make it more difficult for lenders to loan money. (Attachment 13)

Matthew Goddard, Heartland Community Bankers Association testified in opposition to **HB 2228**. The conferee stated that this bill would upset the funding process. (Attachment 14)

After brief committee discussion, the Chair closed the hearing on **HB 2228**.

The Chair stated that the hearing date for **HB 2522** has been changed to February 18, 1998.

Representative Mays requested a bill introduction. The Chair indicated that the committee was past the time in which to introduce bill.

The Chair adjourned the meeting at 4:50 p.m.

The next meeting is scheduled for February 16, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 2-9-98

NAME	REPRESENTING
Kathy Olsen	KS Bankers Assn
Pete Melrose	Judicial Council
J. Lynn M. Harwell	Judicial Council
Christy Moore	Judicial Council
Melissa Wangemann	Sec. of State
Helen Stephen	KSCS
Wendy D. Harms	KS Aggregate Producers Assn
Ken L. Henderson	Sec of State
Matthew Goddard	Heartland Community Bankers
Sara F. Ullmann	Reg of Deeds Assoc.
Mary S. Nichols	Reg. of Deeds, Shawnee Co.
Ann Dukes	BOB
Tom Whitaker	KS Motor Carriers Assn
Tame Ann Brown	KS Govt Consulting
Trudy ARON	Am Inst of Architects
Lew Jene Schneider	KS Livestock Assn

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(06/97)

House Judiciary
2-9-98
Attachment 1



#2

Kansas Artisan's & Mechanic's Liens: An Unnecessary Tangle

by Judge John K. Pearson

About the Author

JUDGE JOHN K. PEARSON was appointed U.S. Bankruptcy Judge for the District of Kansas on May 22, 1986. The author acknowledges the assistance of J. Scott Pohl, Esq. and Jeffery Dahlgren, Esq. in preparing this article.



Kansas, like most common law states, has a series of statutes designed to assure that an artisan, mechanic, or other person furnishing goods and services will be repaid. For the most part, the statutes permit the mechanic or artisan to enforce a lien against certain types of personal property¹ to collect the bill for goods or services furnished. Unfortunately, there is little consistency to the operation and enforcement of the statutes, and the statutes do not mesh with the provisions of the Uniform Commercial Code. It is time that the legislature considered a single, simple mechanic's and artisan's lien statute which would provide a single form for creation of a lien, a single place for filing the lien form, and mesh the provisions for filing and enforcement of the lien with those of the U.C.C. While there are numerous individual statutes involved, the various liens in Kansas fall into three broad categories: mechanic's and artisan's liens, warehouse liens, and miscellaneous liens relating to agriculture.²

House Judiciary
2-9-98
Attachment 2

In General: The U.C.C. does not apply to the creation or enforcement of a statutory lien on personal property or fixtures in favor of a mechanic, contractor, thresher, or agister. 9-104(c); see also 9-310. Kansas, like most states, has long recognized that a person performing repairs, supplying parts or materials, feeding or caring for livestock, or harvesting crops should have a lien on the subject of their effort to secure payment for the services or materials. Unfortunately, the legislation has been adopted piecemeal and with little regard for consistency, resulting in statutes that provide for a bewildering variety of mechanic's, artisan's, harvester's, thresher's, agricultural, veterinarian, and other liens with different procedures for creation, perfection, and enforcement. The interaction with the U.C.C. is also imperfect in that some of the liens take priority over competing security interests in the same collateral while others do not. Some require that the artisan or mechanic retain possession to enforce the lien. Others do not require possession, but require some sort of filing to preserve the lien. Most require prompt action to enforce the lien through sale or foreclosure, but apparently permit foreclosure without notice to those claiming competing liens.

There are other statutory lien statutes, such as those for hotel owners, K.S.A. 36-201, *et seq.*, adopted to deal with the peculiar problems of various industries. Some, such as those for hotel owners, recognize perfected liens. K.S.A. 36-202. Some give precedence to their lien, such as that for veterinary services. K.S.A. 47-836.

Lien vs. Security interest

What follows is an attempt to briefly outline the lien process for a variety of situations. At the outset, counsel should be aware of the distinction in terminology between *lien* and *security interest* recognized implicitly in the U.C.C. Specifically in the Bankruptcy Code: A lien is a charge against or interest in property to secure payment of a debt; a security interest is a lien created by agreement. Thus a lien can be imposed unilaterally by the mechanic or artisan upon the furnishing of services or

material at the request or with the consent of the owner of personal property. A security interest, however, must be specifically created by the owner of the property to repay a present or future debt. While the distinction may be minor in practice, the imposition of a lien involves different formalities and procedures than a security interest. The analysis will focus on: (1) types of liens; (2) work or materials which may result in a lien; (3) creation of the lien; (4) perfection of the lien; (5) enforcement of the lien; (6) priorities among competing liens and security interests; and (7) lapse of the lien.

For the sake of simplicity, the terms "artisan's or mechanic's liens" will be used to describe generic liens.

Mechanic's Liens

In General: The general personal property mechanic's lien is created by K.S.A. 58-201, *et seq.* It applies to work done on a broad range of personal property, including "any goods, personal property, chattels, horses, mules, wagons, buggies, automobiles, trucks, trailers, locomotives, railroad rolling stock, barges, aircraft, equipment of any kinds, including but not limited to construction equipment, vehicles of all kinds, and farm implements of whatsoever kind,..." K.S.A. 58-201. If properly created and perfected, it has priority over a preexisting U.C.C. security interest. 9-310; K.S.A. 58-201: *Hockaday Auto Supply Co. v. Huff*, 121 Kan. 113, 245 P. 1013 (1926); *but cf. National Supply Co. v. Case Oil & Gas, Inc.*, 13 Kan. App. 2d 430, 772 P.2d 1255 (1989). In a simpler world, the general statute would serve as a model for all mechanics and artisans liens.

Creation: The owner must consent to or request the work before a lien can attach. *Olson v. Orr*, 94 Kan. 38, 145 P. 900 (1915). Repairs done at a thief's request do not give rise to a lien. *United States Fidelity & Guaranty Co. v. Marshall*, 4 Kan. App. 2d 9, 601 P.2d 1169 (1980). Indeed, work done at a thief's request does not give rise to any claim. *In re Two (2) Bose Speakers*, 17 Kan. App. 2d 179, 835 P.2d 1385 (1992). Storage fees incurred when a police

FOOTNOTES:

1. For a discussion of the creation and enforcement of mechanic's liens for work or material performed or supplied on real estate, see Chapter 9, *Kansas Real Estate Practice & Procedure Handbook* (KBA 1990).

2. Because of the uncertain nature of oil and gas interests, the creation and perfection of both security interests and statutory liens present significant problems. In some instances an oil and gas interest may constitute real property, in other instances it may constitute personal property. See *Pierce, Kansas Oil and Gas Handbook*, Vol. II, p. 19-3 (1989). The difficulties become acute when dealing with statutory liens which may attach to an interest in a lease, to the equipment on the lease, and to the severed oil and gas produced on a lease. The following is a discussion of the statutory liens affecting interests in oil and gas leaseholds and related equipment and production. Kansas law provides a mechanic's lien for certain parties providing services or materials to the oil and gas lease. K.S.A. 55-207. K.S.A. 55-208 provides the mechanic's lien as to subcontractors and materialmen as well. Oil and gas mechanics liens are left for future discussion.

To complicate matters, Kansas has followed Texas and Oklahoma in attempting to create a variety of "security interests" in favor of the owner of a mineral interest securing the obligation of the purchaser of oil or gas produced on a lease. K.S.A. 84-9-319. Although the interest purports to

be a security interest, it is in fact a type of lien and has no business being in the U.C.C. The interest so created requires no documentation beyond a division order or other writing signed by the purchaser acknowledging, directly or indirectly, that the owner has an interest in the leasehold production. It requires no filing to perfect the security interest so created.

The security interest attaches to the oil or gas produced and certain proceeds of the production owned by, received by, or due to the purchaser which secures the purchaser's obligation to the owner for royalties under the lease and all taxes due under the lease. It does not, however, follow the petroleum products forever. It is cut off by the purchase of the products by a buyer from the first purchaser in the ordinary course of the first purchaser's business. The security interest or lien so created has priority over any other lien or security interest. While the statute attempts to create a purchase money security interest in oil or gas sold, the interest so created is really a statutory lien imposed without compliance with the U.C.C. The lien is a type of secret lien which may interfere with the carefully ordered system of security interests under the U.C.C. The probable losers in a priority fight will be attaching creditors and any lender financing an oil and gas purchaser or operator who fails to pay royalty owners.

3. All references to the U.C.C. refer to the Kansas version as contained in K.S.A. chapter 84. For the sake of brevity, the author has omitted the "K.S.A. 84-" from the citations to article 9 of the Kansas U.C.C.

icer impounds a vehicle do not give rise to a mechanic's lien because they were not incurred with the owner's consent. *Hartford Ins. Co. v. Overland Body Tow, Inc.*, 11 Kan. App. 2d 373, 724 P.2d 687 (1986).

Filing a lien statement: The verified lien statement must set forth the following: (1) the name of the owner; (2) a description of the property on which the lien is claimed; (3) a statement of the items of the account; (4) the date the work was last performed or material last provided; and (5) the county of residence of the owner, if known. K.S.A. 58-201.

A lien statement must be filed with the register of deeds (1) in the county where the work was performed; and (2) in the county of the residence of the owner of the property, *if known*. K.S.A. 58-201. To simplify the process, the statute should be amended to provide for the filing of the lien statement with the secretary of state rather than the register of deeds.

Assignment and Amendment: Mechanic's liens are assignable. *National Bond & Investment v. Midwest Finance Co.*, 156 Kan 532, 134 P.2d 639 (1943). Generally, however, amendment of lien statements is not allowed unless the amendment is minor and not adverse to any other person. *Butel Motors, Inc. v. Warsop*, 176 Kan 491, 271 P.2d 237 (1954).

Perfection: Where the lien claimant has possession of the property, nothing further is necessary to perfect the

Possession is so essential...that if the owner...takes the property... without permission, that taking may be theft.

lien. *Overland Co. v. Evans*, 104 Kan. 632, 180 P. 235 (1919). If the lien claimant does not have possession, it must file to perfect the lien within ninety days after the work was done on the property. K.S.A. 58-201. Possession is so essential to the lien that if the owner of the property takes the property from the claimant without permission, that taking may be theft. *State v. Etape*, 237 Kan 380,

699 P.2d 532 (1985). A release of possession to the debtor will defeat the lien unless a lien statement is filed with the register of deeds within ninety days of the release of possession. In *Weatherhead v. Boettcher*, 3 Kan. App. 2d 261, 594 P.2d 257 (1979), the claimant released the property after filing suit for replevin, but without filing a lien statement. The court ruled that this constituted a waiver of the lien. A lien claimant cannot be sued for conversion of property delivered to it for repair. *Farrell v. GMAC*, 249 Kan. 231, 815 P.2d 538, 16 U.C.C. Rep.Serv.2d 96 (1991).

Enforcement: A mechanic's lien is foreclosed in the same manner as a security interest under the U.C.C. See K.S.A. 58-202. However, any mechanic's lien foreclosure must be commenced within one year after filing with the register of deeds. *Id.* There is no time limit for foreclosure of a lien if perfected by possession. *Id.*

Priorities: A properly perfected mechanic's lien has priority over an existing security interest in the same property. 9-310; K.S.A. 58-201; *Hockaday Auto Supply Co. v. Huff*, 121 Kan. 113, 245 P. 1013 (1926).

Lapse: Unless the lien creditor has possession, an action to enforce the mechanic's lien must be commenced within one year of filing the lien statement. K.S.A. 58-202.

Agricultural Liens

In general: As might be expected in a state as dependent on agriculture as Kansas, the legislature has created a number of special liens which relate to farming, farm products, and farm machinery. Liens on farm equipment for repairs, replacement of parts, or other services and on farm products such as crops or livestock are very similar to mechanic's liens on vehicles. There are unfortunate differences, however, which should be eliminated. The following discussion will focus on special liens on farm products, including but not limited to crops and livestock. The legislature has also created the "Agricultural Input Lien," which is more akin to a limited purchase money security interest (PMSI) than a "mechanic's lien," and should be considered as such.

The Agricultural Input Lien: K.S.A. 58-241 *et seq.*

In general: A farmer with financial problems may find it impossible to obtain financing unless a supplier will provide the seed, fuel, and chemicals necessary to produce the crop. Accordingly, the legislature adopted the provisions of the Agricultural Input Lien statute at K.S.A. 58-241 *et seq.* The statute allows a supplier to obtain a type of purchase money security interest in a new crop or other farm products planted or raised with its seed, fuel, chemicals, or supplies.

Unfortunately, the statute may create more problems than it solves. The debtor farmer must sign the initial agreement for the purchase of the input chemicals, etc., as well as the lien-notification statement. The lender with the existing security interest must either agree to finance the inputs or reject the proposal. Thus the existing lender can defeat the proposed lien simply by rejecting it. An agricultural input supplier is not in the same position as a mechanic performing work on the farmer's tractor or a custom cutter who cuts the farmer's wheat. *Cf.* K.S.A. 58-201, 58-203.

The agricultural PMSI distinguished: The U.C.C. permits a creditor who provides financing for the purpose of planting a crop or acquiring livestock to acquire a purchase money security interest in the new crop or live-

stock. However, it places severe restrictions on the new crop financing and makes it difficult to create a security interest which will prime or take priority over existing security interests with after-acquired property or dragnet clauses. 9-312. To obtain priority over prior perfected security interests, a new lender or supplier of inputs must: (1) give new value in the form of a new loan or a credit sale of seed, livestock, fuel, or chemicals; (2) give new value to enable the farmer to produce the crops or other farm products during the current production season; (3) give new value not more than three months before any crop financed became a growing crop; and (4) in addition, the obligation owing to the earlier perfected secured party must be overdue more than six months before the crops were planted. *Id.*; *In re Cress*, 89 B.R. 163, 6 U.C.C. Rep. Serv. 2d 969 (Bankr. D. Kan. 1988). Whether the lender or supplier of the new input credit knows of the prior security interest is irrelevant.

The new creditor faces the potential difficulty of the debtor's existing debt being less than six months past due when it is necessary to get the new crop planted. *See, e.g., In re Cress, supra.*

Inputs covered: The lien afforded the supplier is very broad and covers virtually any type of goods or services used in the production of farm products. The initial definition of "agricultural production input" is all encompassing and includes two other defined terms, "crop production inputs" and "livestock production inputs." K.S.A. 58-241(b). The definitions of crop and livestock production inputs include labor, chemicals, seeds, petroleum products, and just about anything else that a farmer might use in planting, raising, harvesting, and storing crops or livestock. K.S.A. 58-241(c) & (h).

Collateral: A properly perfected input lien attaches to virtually any farm product produced directly or indirectly with the inputs. K.S.A. 58-243(a). *See Garst Seed Co. v. Wilson*, 17 Kan. App. 2d 130, 833 P.2d 130, 18 U.C.C. Rep. Serv. 2d 943 (1992) for a discussion of proceeds. It also continues in crop products and proceeds, except when the collateral is sold in a "cash sale." *Id.*

Creation of lien

Summary: The statute requires that the supplier provide to the existing secured creditor(s) a notice of the inputs and file the notice "with the appropriate filing office under K.S.A. 84-9-401 [the secretary of state] within twenty days after the last date that inputs were furnished." K.S.A. 58-244(a).

Timing: The procedure provided by the statute apparently contemplates creation of a lien either before the inputs are supplied or after they have been supplied. The statute provides that the lien statement (discussed below) may state "the date or anticipate date or dates of furnishing agricultural production input . . ." K.S.A. 58-242(b)(3). The lien, however, does not attach to the new crop until the inputs are actually provided. The supplier

faces the difficulty that unless the lien notice is given in advance or accepted by the existing secured creditor, the lien is subordinate to the existing security interest. Giving the lien notice after the inputs have been supplied gives the supplier no assurance of being paid. Only by giving the notice before providing the inputs, and then refusing to provide them if the lender rejects the notice, does the supplier protect itself.

Procedure: K.S.A. 58-242 sets out the procedure for the creation of an agricultural input lien.

Who is protected: A "supplier," defined as a person who furnishes agricultural production inputs, can obtain a type of purchase money security interest by compliance with the statute if the existing secured creditor consents or fails to reject. K.S.A. 58-241(m).

The lien notice: The statute mandates that the supplier deliver notice to existing lenders holding security interests in farm products which may be subject to the proposed input lien. The statute specifically refers to "lenders," defined as a person in the business of lending money. K.S.A. 58-241(e). It apparently makes no provision for other statutory liens which may have attached to the farm products in issue and does not attempt to regulate the priorities among suppliers furnishing inputs to the same farmer. A supplier runs the risk that an

A supplier runs the risk that an attaching creditor may have a lien on the farm products senior to any input lien created...

attaching creditor may have a lien on the farm products senior to any input lien created under the statute. The notice must be in a form approved by the secretary of state and contain: (a) the name and business address of the lender; (b) the name and address of the supplier claiming the lien; (c) the date or anticipated date or dates of furnishing the inputs; (d) a description of the inputs; (e) the retail cost of the inputs; (f) the name and residential address of the person to whom the inputs are to be or were supplied (i.e., the debtor) (Note: unlike the U.C.C., which requires only a mailing address, a notice under the input lien statute must list the debtor's residential address. *Compare* 9-402(1) *with* K.S.A. 58-242(b). In those isolated cases where the debtor's mailing and residence addresses are different, the difference will only cause confusion.); (g) a statement that products and proceeds of the farm products are covered; and (h) the signature of the purchaser. K.S.A. 58-242(a) & (b); *see* U.C.C. Form 4. A creditor should probably add the debtor's

security or federal employer identification number although the statute does not require it. Cf. 9-402.

Service of the lien-notification statement: The supplier must serve the lien-notification statement to the lender in an envelope marked "IMPORTANT-LEGAL NOTICE" by certified mail or another method evidencing date or receipt. K.S.A. 58-242(a).

Perfection of the lien: The supplier must perfect any lien created under the statute by filing a copy of the notice with the secretary of state within twenty days after the last date on which inputs were furnished. K.S.A. 58-244. The filed copy must also include the date on which the notice was mailed to the lender and a statement signed by the supplier indicating that the lender did not respond to the notice. *Caveat:* the statute does not require that the notice filed with the secretary of state contain the debtor's original signature as does the general practice for financing statements filed under the U.C.C.

...the statute does not require that the notice filed with the secretary of state contain the debtor's original signature...

9-401. The U.C.C. Form 4 approved by the secretary of state requires that the purchaser/debtor sign the original statement and serve a copy from the tear-apart form on the lender. The original is thus available for filing with the secretary of state. Note that the U.C.C. Form 4 as approved does not contain a blank for the debtor/purchaser's social security (SSN) or Federal Employer Identification Number (FEIN) as is required for all financing statements filed after July 1, 1993. The supplier should add the purchaser's SSN or FEIN in the signature blank provided. Separate U.C.C. 4 statements should be filed for each individual debtor and for each corporate or partnership debtor who may claim an interest in the farm products to be produced. Note that the U.C.C. 4 statement provides for a description of the real estate where crops are to be grown and the name and owner of the "crop" if different from the purchaser. These blanks should be used to identify the owner of record and describe the real estate on which the crop is growing or to be grown. See 9-402. The real estate description need not be a legal description.

Duty of lender receiving lien-notification statement: Upon receipt of a lien notification statement from an input supplier, the lender must within five (5) business days either furnish a letter of commitment to advance part or all of the retail costs stated in the lien-notification state-

ment or a written letter of commitment to furnish the letter of commitment. K.S.A. 58-242(c). A letter of commitment is a binding, irrevocable, and unconditional agreement by the lender to honor drafts or other demands for payment upon the supplier for inputs delivered. The statute requires the lender to agree to honor drafts on the *supplier*, not the purchaser. Presumably the legislature meant the purchaser because drafts are normally drawn on a buyer of goods and paid or dishonored by the buyer's bank. The letter of commitment may also condition payment upon presentment of an invoice or other evidence of delivery signed by the purchaser. The statute does not suggest how an individual evidences delivery of labor performed, although labor is a type of agricultural input, nor does it address how the supplier might evidence delivery of other services such as custom farming or crop dusting. It appears that the purchaser could defeat the lien simply by refusing to sign an invoice evidencing delivery, and the lender would have no duty under the letter of commitment to honor a draft drawn on the purchaser. The statute does not address how the supplier proceeds where the lender agrees to advance only part of the cost of the inputs described in the statement.

Enforcement: Any lien created under the statute is enforced and foreclosed in any manner provided in 9-501 *et seq.* or by an action in the district court for the county in which the crops or livestock are located. See Chapter 8, *Kansas Personal Property Secured Transactions Handbook* (KBA 1994), on default and foreclosure.

Priorities: A properly perfected input lien has priority over any existing lien in favor of the lender to whom notice was given. K.S.A. 58-242, -243. Although the statute provides for the priority of a properly perfected lien over any preexisting security interest in favor of the lender on whom notice is served (and who fails to reject), it does not address the priorities among competing input suppliers and attaching creditors. The input lien is specifically subordinate to agister's and thresher's liens created under K.S.A. 58-207 and 58-220. See K.S.A. 58-242. Because the input lien is a type of purchase money security interest, priorities will presumably be determined in accordance with the rules set out in the U.C.C. relating to the time of attachment or perfection. See K.S.A. 84-9-301. The lien attaches when the supplier actually furnishes the inputs to the purchaser. K.S.A. 58-243(c).

Other Agricultural Liens

Kansas provides for a number of liens for livery keepers, threshers, veterinarians, and agisters who care for animals and harvest crops. While they seem foreign to the urban lawyer, they are vitally important to the suppliers protected. Generally, a lien perfected under the various provisions of K.S.A. 58-201 to 227 permits a supplier of feed, labor, medicine, or pasture, and a harvester of crops to unilaterally impose a lien on farm products to secure payment for the services or feed provided. Moreover,

most liens take priority over even previously perfected security interests under the U.C.C. See 9-310, -312.

Thresher's lien

In general: Not surprisingly, Kansas grants a lien to any person operating a threshing machine, or engaged in the business of threshing and harvesting grain or grain crops, shucking, husking, or gathering of corn, either by hand or by machinery, for the owners of the crop by contract or with a secured creditor with a security interest in the crop from the date of harvest for the cost of the harvest. K.S.A. 58-203. As with any statutory lien, strict compliance with the provisions of the statute is required. *Owen v. Treadwell*, 11 Kan. App.2d 127, 715 P.2d 1040, 1 U.C.C. Rep. Serv.2d 198 (1986). The work must have been performed *under contract with* the owner(s) or secured creditor having an interest in the crop. *Cf. Hartford Insurance Company v. Overland Body Tow, Inc.*, 11 Kan. App. 2d 373, 724 P.2d 687 (1986) (lien did not attach where police officer arranged for towing of vehicle, not owner).

Broomcorn and hay lien: For some reason, the legislature has created a special type of thresher's lien for the seeding and harvesting of broomcorn and for baling hay. K.S.A. 58-218. Any person operating a broomcorn seeder and baler or hay baler under contract with the owner of broomcorn or hay, or under contract with a creditor with a security interest therein, is entitled to a lien on the broomcorn or hay to pay the costs of seeding or baling. *Id.* The lien is entitled to priority over conflicting security interests in the broomcorn or hay. The lien is perfected and enforced in the same manner as a thresher's lien. K.S.A. 58-219; *cf.* K.S.A. 58-203. While the following discussion refers specifically to thresher's liens, it is also directly applicable to broomcorn and hay liens.

Creation: While the lien is created by the statute, the thresher must evidence the lien by filing with the register of deeds in the county in which the crop was harvested a verified written statement setting out: the name of the owner(s) of the crops; the kind of grain; the number of bushels threshed or acres harvested; the description of the land upon which the crops were grown; either the contract price of the harvest or the price or value of the wages; the date of the harvest; the amount due; and the name of the claimant. K.S.A. 58-204.

The register of deeds is required to index the lien statement as a U.C.C. financing statement. *Id.* The filing fee is the same as that charged for the filing and indexing of a financing statement. *Id.*

A lien evidenced by a filed statement may be assigned. K.S.A. 58-205. The statute provides no special requirements for an assignment of a thresher's lien, but an assignment to be filed should contain the name and address of the assignor, the name and address of the assignee, the file number and date of filing of the original lien statement, a description of the crops covered, and the name and mailing address of the debtor/owner of the crop and the assignor's signature. *Cf.* 9-405.

Perfection: The thresher must file within fifteen days of completing the harvest unless work is halted for more than five days, in which case the filing may be filed within fifteen days after the beginning of the interruption. K.S.A. 58-204. Better practice would be to serve notice on the owner(s), any secured creditor, and any other party claiming an interest in the crop in addition to filing the lien statement. *Cf. Utility Trailers of Wichita, Inc. v. Citizens National Bank & Trust Company*, 11 Kan. App. 2d 421, 726 P.2d 282, 2 U.C.C. Rep. Serv. 2d 38 (1986); 9-504(3).

Enforcement: Any action to foreclose the lien must be brought within ninety days after the filing of the lien statement. K.S.A. 58-205. The provisions of that statute suggest that something other than foreclosure may constitute "action" to enforce the lien. In *Hermes v. Stackley*, 10 Kan. 2d 342, 699 P.2d 560 (1985), the court, in construing K.S.A. 58-220, held that the "foreclosure proceedings" referred to in the statute contemplated more than just court action. It suggested that notice of sale of the collateral under the agister's lien could constitute the necessary "action" to meet the limitation in that statute. Arguably, if the harvester/thresher is still in possession of the crop, it might enforce its lien simply by giving notice of intended sale to the owner, any secured creditor, and any other party with an interest in the crop. However, the wording of K.S.A. 58-205 ("Any lien...may be enforced...by *action brought against the owner...*") (emphasis added), suggests that a judicial foreclosure action is contemplated.

Lapse: Any thresher's lien lapses and becomes void unless an action to enforce it is brought within ninety days of the filing of the lien statement. *Id.*

Comments: This statute needs to be amended to require the filing of the lien statement with the secretary of state rather than the register of deeds. Filing a lien statement with the register of deeds, even if indexed with the U.C.C. financing statements, will no longer give notice to creditors. See 9-401. Where the statute provides for a legal description of the land on which the crop was grown, better practice dictates that the legal description be provided. Better practice also suggests that a copy of the file stamped lien statement be served on the owner(s) of the crop, anyone claiming a security interest in the crop, the record owner of the land, the elevator where the crop is stored, and any one else who may claim some interest in the crop.

Livery lien

In general: K.S.A. 58-207 provides that the keepers of livery stables and all others engaged in feeding livestock have a lien upon the livestock for the feed and care provided. The livery stable may sell the livestock if the bill is not paid within sixty days after it comes due.

Creation: The lien is possessory only and there is no

provision for filing a lien statement. Cf. K.S.A. 47-836; *Northeast Kansas P.C.A. v. Ferbrache*, 236 Kan. 491, 693 P.2d. 1152 (1985) (veterinary lien); *First National Bank of Amarillo v. Southwest Livestock, Inc.*, 616 F. Supp. 1515 (D. Kan. 1985) (agister's lien).

Perfection: Possession of the livestock is the only method of perfecting the lien.

Enforcement: Although not specifically provided, the livery keeper may either sell the property after notice to the owner and apply the proceeds to the livery bill or commence an action in district court to enforce the lien. Livestock may be sold thirty days after the bill becomes due and the expenses of the sale process may also be deducted from the sale proceeds. K.S.A. 58-209, -210. The lien holder must give at

least 20-days notice of the proposed public sale. The notice must be in writing and must be served on the owner, if known, by mail or in person at the owner's residence or place of business. If the owner is not known or the owner's place of residence or business is not known, notice may be given by publication. The publication must run at least three successive weeks in the newspaper in the county where the property is located. K.S.A. 58-211.

The sale must be a public auction sale for cash. K.S.A. 58-212. Upon conclusion of the sale, the proceeds are first applied to the costs of sale, including the publication of any notices, and then to the costs incurred for the care and feeding of the livestock. Any surplus must be deposited with county treasurer in the county where the sale takes place. K.S.A. 58-213. Copies of the notice of sale, proof of publication, or service of the notice, and the affidavit of the lien holder setting forth the costs of sale and notice and the claim for services shall be filed with the clerk of the county where the sale took place. K.S.A. 58-214. Certified copies of the notice and affidavit are admissible as evidence of the matters therein contained. *Id.*

Priorities: A livery keeper's lien is apparently preferred to all other interests in the same livestock.

Lapse: A livery keeper's lien lapses upon surrender of the livestock. K.S.A. 58-215.

Agister's lien

Creation: K.S.A. 58-220 creates a special agister's lien to secure the payment of rent for the owner of pasture lands (or the owner's agents) who lease or rent pasture exclusively for pasture purposes. The lien is entitled to first priority over all other liens and security interests.

K.S.A. 58-220. While the lien may be perfected by the owner taking possession of the pastured livestock, it may also be perfected by the filing of a verified lien statement with the register of deeds in the county where the pasture is located within fifteen days after the livestock is removed from the pasture. (The statute may also be susceptible to a construction that the lien must be recorded in the county where the livestock are pastured within fifteen days after they are removed from the lessor's pasture. Under this construction, what happens if the animals are sold for slaughter rather than relocated?) Note that the lease of the land must be exclusively for pasture. The Kansas Court of Appeals has held that in a lease of both pasture and crop land, the lease may be apportioned. *Hermes v. Back*, 10 Kan. App. 2d 342, 699 P.2d (1985).

Perfection: An agister's lien may be perfected by possession or by filing a lien statement. The lien statement must be verified, but no specific form or contents are required by statute. By analogy to other lien statements, an agister's lien statement should set out: (1) the name of the owner(s) of the livestock; (2) a description of and the number of the livestock; (3) a description of the location of the leased pasture; (4) the unpaid rent amount provided in the lease; (5) the date(s) of the lease; and (6) the name of the claimant. Cf. K.S.A. 58-219; 58-204.

Enforcement: The statute provides for a specific non-judicial sale procedure and also permits the commencement of judicial foreclosure procedures.

Non-judicial sale: An agister in possession of livestock may give ten days written notice to the owner(s) of the livestock by registered mail at the owner's present or last known address and publishing notice of the sale once in a general circulation newspaper in the county where the livestock are located. The sale must be a public sale. There is no provision for accounting for the surplus or the payment of other claimants. *Note:* Sale proceedings must be commenced by giving written notice of the intended sale not later than December 31 following the season for which the rent is owing. The notice should contain a date, time, and location for the sale. *Hermes v. Back, supra.*

Judicial foreclosure: An agister not in possession may commence a judicial foreclosure proceeding provided that the action is commenced prior to December 31 following the season for which the rent is owing. *Hermes v. Back, supra.*

Lapse: An agister's lien lapses unless an action is commenced or a sale noticed not later than the December 31 following the season for which the pasture is rented. *Hermes v. Back, supra.*

Comments: Cf. Veterinarian's lien under K.S.A. 47-836 which also provides for the filing of a lien statement. Cf. *Northeast Kansas P.C.A. v. Ferbrache*, 236 Kan. 491, 693

P.2d. (1985) (decided under a previous version of the statute).

Veterinarian's lien

In general: K.S.A. 47-836 grants to a veterinarian, veterinary partnership, or veterinary corporation a first and prior lien on any animal treated at the request of the owner or anyone in lawful possession to secure payment of the reasonable cost of the treatment, medicines, and food furnished. The veterinarian may retain the animal until the charge is paid or may file a verified lien statement.

Perfection: As originally enacted, a veterinarian's lien under K.S.A. 47-836 was strictly possessory and there was no provision for the filing of a lien statement. *Northeast Kansas P.C.A. v. Ferbrache*, 236 Kan. 491, 693 P.2d. 1152 (1985). In 1991, the legislature enacted a provision allowing a veterinarian evidence the lien by filing a *verified* written statement with the register of deeds in the county where the veterinary services were rendered. The statute does not provide the form of the lien statement. By analogy to other lien statutes, the lien statement should at least set out: (1) the name of the owner(s) of the livestock; (2) a description of and the number of the livestock; (3) a description of the location of the livestock; (4) the retail cost of the services, medication or feed provided; (5) the date(s) the services or medications were provided; (6) the amount due; (7) the name of the claimant; and (8) the debtor's social security or federal employer identification number. *Cf.* K.S.A. 58-219; K.S.A. 58-204. The lien statement must be filed with the register of deeds prior to the expiration of sixty days after the services or medications were provided. Although the statute does not provide for service of the lien statement, better practice dictates that the lien statement be served on any person claiming a security interest in the livestock, anyone in possession of the livestock (other than an agent of the veterinarian), and the owner(s) by some means evidencing receipt.

While K.S.A. 47-836 does not specifically so provide, register of deeds will presumably index the lien statement as a U.C.C. financing statement and collect the fee charged for the filing and indexing of a financing statement. *Cf.* K.S.A. 58-204.

Enforcement: K.S.A. 47-836 does not provide a specific procedure for enforcement of a veterinary lien. Again by analogy, a veterinarian in possession of an animal may give notice of the sale thereof, sell the animal at auction, and apply the proceeds to the lien and costs of sale. *Cf.* K.S.A. 58-209. A lien perfected by filing a lien statement must be judicially foreclosed.

Lapse: The veterinarian's lien statute does not provide for a lapse of the lien.

Priorities: A veterinarian's lien perfected by possession

has priority over all other liens and security interests. K.S.A. 47-836. A non-possessory lien perfected by filing is preferred to all but possessory liens under K.S.A. 58-207 and 58-220. K.S.A. 47-836. A non-possessory lien cannot be enforced against a subsequent purchaser of the livestock unless the purchaser has received actual prior notice of the lien.

A veterinarian's lien under K.S.A. 47-836 is strictly possessory and there is no provision for the filing of a lien statement. *Northeast Kansas P.C.A. v. Ferbrache*, 236 Kan. 491, 693 P.2d. 1152 (1985).

Warehouse Liens

In general: At least three separate statutes provide for warehouse liens. K.S.A. 34-266, K.S.A. 58-208, and K.S.A. 84-7-206. In addition, there are special provisions for residential landlords and self-storage units which are akin to warehouse liens. K.S.A. 58-2540 (Kansas Residential Landlord and Tenant Act); K.S.A. 58-817 (self-storage units). Care should be taken in examining these statutes for inconsistencies before exercising any warehouse lien. Courts construe these liens very strictly.

Self-service storage units: Self-service storage units are becoming more prevalent.⁴ K.S.A. 58-813, *et seq.* is the Self-Service Storage Act. The Act allows a lien for the landlord in items stored in the self-storage units. K.S.A. 58-816. The Act provides specific arrangements for enforcing the lien. K.S.A. 58-817. The lien enforcement statute, K.S.A. 58-817, seems to grant the landlord a lien that is superior to U.C.C. lien claimants. As with the U.C.C., there is no requirement that the landlord enforcing the lien do any search for other

liens. In fact, after liquidation of the property the landlord is directed to hold on to the proceeds after application to the storage lien for a year and then disburse the funds to the State of Kansas, presumably under escheat law. K.S.A. 58-817. If pursued as enacted, these statutes extinguish the lien of a perfected secured creditor without the creditor's knowledge.

Creation: The lien is created through K.S.A. 58-816. The lien procedure is unusual in that it requires the rental agreement to contain written notice of the lien. K.S.A. 58-816. This notice must include a statement that sets forth:

4. An argument can be made that unless regulated, the self storage facilities will soon outnumber cemeteries and used car lots.

**...K.S.A. 58-817,
seems to grant
the landlord a
lien that is
superior to
U.C.C. lien
claimants.**

the existence of the lien; (2) that the property stored could be sold to satisfy the lien; and (3) that proceeds of the sale of the property after satisfaction of the lien will be paid to the state treasurer if unclaimed by the debtor within one year after the sale of the property.

Perfection and Enforcement: Perfection is by possession and by virtue of having given the statutory notices. It is primed by the debtor being in default on the rent. When the debtor is in default the operator may refuse entrance to the storage unit. If the debtor is more than forty-five days delinquent on the rent, the operator of the storage units may follow a series of steps set forth in K.S.A. 58-817 to enforce the lien. The purchaser of property from the operator is purportedly protected from the claims of the third parties including competing lienholders to the property. K.S.A. 58-817(e). The numerous steps necessary to create and enforce the

In residential leases a landlord may not recover and sell tenant's property except in abandonment situations.

lien make it likely that an operator will make a mistake in one or more of the steps. The Act has a savings clause to attempt to limit the operator's liability. That savings clause, however, limits the operator's liability only if the operator has complied with the statute. If the operator has complied with the statute, why does the operator need a limit on liability?

The Kansas Residential Landlord and Tenant Act

Kansas Residential Landlord and Tenant Act, K.S.A. 58-2540, *et seq.*, provides for a limited landlord's lien on the tenant's personal property. K.S.A. 58-2567, 58-2565. The remedy of distraint for rent, at least on residential personal property no longer exists in residential situations. In residential leases a landlord may not recover and sell tenant's property except in abandonment situations. K.S.A. 58-2565. It is not clear whether commercial leases may claim this remedy. Farm landlords indeed have a statutory lien under K.S.A. 58-2524 against crops for the rent.

Residential landlords are clearly prohibited from taking a lien or security interest in the tenant's property. K.S.A. 58-2567. If the tenant has been absent without notice for thirty days and is more than ten days in default for non-payment of rent, the landlord may take possession of the tenant's household goods, furnishings, fixtures, or any other personal property in the premises and store them.

K.S.A. 58-2565. After taking possession the landlord must apparently keep the personal property, unless the statutory procedure is followed to sell it. The landlord may publish a notice warning of the sale in a newspaper of general circulation more than fifteen days prior to any sale. Seven days after publication, a copy of the published notice must be mailed to the tenant's last known address. K.S.A. 58-2565(d). Finally, thirty days after taking possession the landlord may sell or dispose of the property. *Id.* During this thirty days the tenant may redeem the property by paying the costs incurred in taking, holding, and preparing the property for sale *and* any amounts due for rent *or otherwise*. *Id.* After the sale the proceeds are applied to the costs of the sale, then to unpaid rent, and then held for the tenant.

The statute raises some interesting questions. What if the landlord does not want to bear the expense of publishing notice and doing a sale? What is the tenant's last known address — the address from which the personal property was taken? Mailing notice to the address that was abandoned seems ludicrous. What then is the tenant's last known address?

What is clear is that a secured creditor loses its rights in the property under this statute unless the secured creditor gives the landlord notice of the lien "if the landlord has no knowledge or notice that any person, other than the tenant, has or claims to have an interest in said property." K.S.A. 58-2565(d). Either this means that some notice other than a financing statement filed with the register of deeds is needed to protect against a landlord, or it means that notice to the public, by filing a financing statement, protects the secured creditor. If this means that a financing statement protects the secured creditor, then why have this provision at all?

Conclusion

Kansas has a bewildering variety of mechanic's and artisan's liens with inconsistent creation, perfection, priority, and enforcement provisions. The legislature should consider adopting a single form of statutory mechanics lien covering all repairs, replacements, improvements, harvesting, storage, or feeding of personal property. While the priority question is a political one for the legislature to address, the priorities should be clearly set out and meshed with the provisions of the U.C.C. to avoid confusion. There should be a single clear lien statement which should be filed with the register of deeds in the case of consumer goods, the register of deeds and the secretary of state in case of farm products, and the secretary of state in all other cases. Enforcement should be tied to article 9 of the U.C.C., which permits both non-judicial and judicial enforcement and sale of collateral. Finally, there should be a uniform lapse provision for all types of mechanic's liens. ■

35

Uniform Statutory Lien Act*

SUMMARY: Topic No. 4 called for the Special Committee on Judiciary to review the need for the enactment of the Kansas Statutory Lien Act (S.B. 384). The Committee concludes that a uniform statutory lien act that covers various kinds of personal property liens only should be enacted by the 1998 Legislature. The recommended legislation does not cover liens dealing with real property, e.g., mechanic's liens against real estate, or with liens dealing with oil and gas.

BACKGROUND

Kansas personal property statutory liens was the subject of a law review article written by federal Bankruptcy Judge John K. Pearson entitled "Kansas Artisan's & Mechanic's Liens: An Unnecessary Tangle" which appeared in the September 1994 *Kansas Bar Association Journal*. The article describes a variety of personal property liens including personal property mechanics liens, agricultural liens, thresher's liens, livery liens, agister's liens, veterinarian's liens, warehouse liens, and liens created under the Kansas Residential Landlord Tenant Act. The article came to the attention of the Kansas Judicial Council's Civil Code Advisory Committee and a subcommittee was formed to study the subject. The subcommittee drafted S.B. 384 which was introduced into the 1997 Legislature and an interim study of the topic was requested.

S.B. 384 would establish a uniform procedure for the establishment and enforcement of liens against both real and personal property for anyone furnishing labor, including farming and harvesting, accessions, material, equipment, parts, supplies, feed, including pasturage, seed, veterinary services, transportation, bailment, warehousing, or storage or for repairs or improvements to real or personal property. Section 3 of the bills excludes 18 specific types of statutory liens from the scope of the bill. The time frame for filing liens is set in Section 11, i.e., within 90 days for most liens and 30 days for liens dealing with vehicles. The place for filing the various kinds of liens is set in Section 10.

* H.B. 2606 accompanies this report.

COMMITTEE ACTIVITIES

Conferees included several representatives of the Kansas Judicial Council including the federal bankruptcy judge, the Associated General Contractors of Kansas, the MidAmerica Lumbermen's Association, the Kansas Ready Mix Concrete Association, the Kansas Land Title Association, the American Institute of Architects of Kansas, the Kansas Consulting Engineers, and a private citizen.

The representatives of the Kansas Judicial Council explained the rationale for the recodification of statutory lien laws contained in S.B. 384. It was noted that the subcommittee of the Civil Code Advisory Committee of the Council was still in the process of refining its recommendations to the Legislature. During the course of the hearings, the Advisory Committee recommended that the proposed legislation be limited to liens involving personal property.

Representatives of the building trades all opposed any changes in the current law dealing with mechanic's liens against real estate. The representative of the Land Title Association said the dual filing requirement for mechanic's liens against real estate in both the county and the Secretary of State's Office was unworkable.

The representatives of the architects and engineers groups requested that the mechanic's lien laws affecting real estate be expanded to allow those persons performing professional services which impact real estate to be allowed to file mechanic's liens against the real property.

CONCLUSIONS AND RECOMMENDATIONS

The Committee endorses the idea of a uniform procedure for the establishment of liens against personal property. The Committee recommends the introduction of legislation which creates a uniform procedure for the establishment and enforcement of the following liens against personal property. The Committee does not recommend any changes be made to the law dealing with imposition of liens against real property or with liens dealing with oil and gas. Specifically, the Committee does not believe that any changes regarding the establishment or enforcement of mechanic's liens against real estate should be made to the law at this time.

House Judiciary
2-9-98
Attachment 3

4

STATUTE

TIMES FOR FILING:

UNDER CURRENT LAW

UNDER HB 2606

47-836	veterinary services	60 days	90 days
58-201	mechanic's lien on personal property (including consumer goods and vehicles)	90 days	90 days
58-204	threshing and husking	15 days	90 days
58-219	broomcorn and hay	15 days	90 days
58-220	agister's lien	15 days	90 days

House Judiciary
2-9-98
Attachment 4

4
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HOUSE BILL No. 2606

By Special Committee on Judiciary

12-17

9 AN ACT enacting the Kansas statutory lien act; repealing K.S.A. 42-119,
 10 47-836, 58-201, 58-202, 58-203, 58-204, 58-205, 58-206, 58-207, 58-
 11 208, 58-209, 58-210, 58-211, 58-212, 58-213, 58-214, 58-215, 58-218,
 12 58-219, 58-220, 58-221, 58-222, 58-223, 58-224, 58-225, 58-226, 84-
 13 7-209, 84-7-210, 84-7-307 and 84-7-308.
 14

Judicial Council comments to 1998 House Bill 2606 Kansas Statutory Lien Act

General comment: Like most states, Kansas has a bewildering variety of statutory provisions governing the creation, perfection and enforcement of what have become known as "mechanic's liens" on personal property. For ease of reference, the term mechanic's lien will be used throughout these comments although, in fact, the liens created involve a number of potential claimants including liverymen, bailees, agistors, veterinarians and others.

In general, the various liens created by the legislature grant to a person furnishing parts or accessory equipment or providing care or labor a lien on the personal property. That lien may be foreclosed in the state courts to pay for the parts, equipment or labor. Currently, the lien provisions are scattered throughout the Kansas Statutes. The lien provisions provide a variety of deadlines, filing locations for perfection, and generally make no provision for specific enforcement procedures. In many cases, the lien may conflict with an existing security interest in the property.

Recently, Kansas has moved to computerize many of its court, UCC and other records and offer direct access to those records to interested parties. Proposed amendments to the official text of the Uniform Commercial Code will attempt to reconcile conflicts between mechanic's lien claimants and secured creditors in the same personal property.

The purpose of the Kansas statutory lien act is to, without changing present Kansas law on liens in any material way, establish uniform means of creating, perfecting and enforcing mechanic's liens. One of the problems facing the drafters is that the term "lien" has been applied to many transactions creating an interest in personal or real property. Not all of the interests so created actually involve the furnishing of repairs or labor. Although lawyers and nonlawyers alike refer to almost any interest in property belonging to another as a "lien," in many cases, the terminology is a misnomer. For example, an agricultural input lien under K.S.A. 58-241 is more akin to a security interest than a lien.

In effect, in all but the most trivial cases, a mechanic's lien will be perfected by a single lien statement form filed with the register of deeds and/or the secretary of state where the lien statement will be indexed and available for inspection. The act will also establish uniform time deadlines for filing and commencement of an action to enforce the lien. While that effort necessarily involves changes in filing procedure and deadlines, for the most part, the act is not intended to change Kansas lien law.

It should be noted that the act does not affect existing lien law relating to real property.

House Judiciary
 2-9-98
 Attachment 5

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

16 Section 1. Sections 1 through 18 and amendments thereto, shall be
17 known and may be cited as the Kansas statutory lien act.

18 Sec. 2. (a) Except as otherwise provided in section 3 and amend-
19 ments thereto on excluded transactions, this act provides the sole means
20 for creating, perfecting and enforcing statutory liens arising under section
21 5 and amendments thereto on personal property, including leasehold in-
22 terests. This act applies to any transaction, regardless of its form, which
23 gives rise to a lien under section 5 and amendments thereto.

24 (b) This act is intended to replace all types of statutory liens referred
25 to in K.S.A. 84-9-310 and amendments thereto.

26 Sec. 3. (a) This act shall not apply to creation, perfection or en-
27 forcement of the following types of liens: (1) Any liens created by federal
28 statute;

29 (2) any lien created by state statute or attachment for the enforce-
30 ment of taxes owed by one or more owners of real or personal property
31 or special assessments for fees levied or charged by any governmental
32 entity or officer thereof which becomes liens or are collected as taxes;

33 (3) any lien under K.S.A. 7-108 and amendments thereto;

34 (4) any agricultural input liens created under K.S.A. 58-241 *et seq.*
35 and amendments thereto;

36 (5) any liens created by judicial attachment, levy or garnishment or
37 any judgment liens;

38 (6) any security interest arising under article 9 of the uniform com-
39 mercial code, K.S.A. 84-9-101, *et seq.* and amendments thereto;

40 (7) any liens created and perfected under laws of another state on
41 property moved into the state of Kansas after the lien is perfected;

42 (8) any possessory lien of salvage vehicle dealer created under K.S.A.
43 8-1,136 and amendments thereto;

Section 2 is modeled on K.S.A. 84-9-102 which provides for creation of security interests in personal property.

Section 3 is modeled on K.S.A. 84-9-104 which excludes certain transactions from the UCC. It specifically excludes from the provisions of the act a number of specific transactions which might otherwise be construed to create a lien on personal property.

- 1 (9) any possessory lien for removal of abandoned vehicles created
- 2 under K.S.A. 8-1102 and amendments thereto;
- 3 (10) any lien for wrecker or towing service created under K.S.A. 8-
- 4 1103 and amendments thereto;
- 5 (11) any lien of lessor of safe deposit box created under K.S.A. 9-
- 6 1506 and amendments thereto;
- 7 (12) any grain storage lien related to grain storage created under
- 8 chapter 34 of the Kansas Statutes Annotated; or
- 9 (13) any lien of self-service storage operator created under K.S.A. 58-
- 10 816 *et seq.* and amendments thereto.

11 (b) Nothing in this act shall be construed to limit a court of this state's
 12 inherent power to impose as a remedy an equitable mortgage or construc-
 13 tive or resulting trust on property subject to its jurisdiction after due
 14 process. The provisions of this act shall not apply to creation, attachment,
 15 priority or enforcement of such remedies.

16 Sec. 4. (a) The following definitions found in the uniform com-
 17 mercial code shall apply to this act and the sections in which they appear,
 18 including any amendments thereto are:

- 19 (1) "Agreement." K.S.A. 84-1-201.
- 20 (2) "Buyer in ordinary course of business." K.S.A. 84-1-201.
- 21 (3) "Creditor." K.S.A. 84-1-201.
- 22 (4) "Good faith." K.S.A. 84-1-201.
- 23 (5) "Notice." K.S.A. 84-1-201.
- 24 (6) "Party." K.S.A. 84-1-201.
- 25 (7) "Person." K.S.A. 84-1-201.
- 26 (8) "Purchase." K.S.A. 84-1-201.
- 27 (9) "Purchaser." K.S.A. 84-1-201.
- 28 (10) "Remedy." K.S.A. 84-1-201.
- 29 (11) "Rights." K.S.A. 84-1-201.
- 30 (12) "Security interest." K.S.A. 84-1-201.
- 31 (13) "Signed." K.S.A. 84-1-201.
- 32 (14) "Value." K.S.A. 84-1-201.
- 33 (15) "Warehouse receipt." K.S.A. 84-1-201.
- 34 (16) "Written." K.S.A. 84-1-201.
- 35 (17) "Certificate of deposit." K.S.A. 84-3-104.
- 36 (18) "Accounts." K.S.A. 84-9-106.
- 37 (19) "Attaches." K.S.A. 84-9-203.
- 38 (20) "Collateral." K.S.A. 84-9-105.
- 39 (21) "Consumer goods, except that consumer
- 40 goods shall not include any vehicle or motor
- 41 home or manufactured home." K.S.A. 84-9-109.
- 42 (22) "Debtor." K.S.A. 84-9-105.
- 43 (23) "Document." K.S.A. 84-9-105.

Section 4 contains the definitions to be used in the act. For the most part, they either incorporate by reference provisions of the Kansas UCC or were created to specify the types of transactions covered by the act.

1	(24) "Encumbrance."	K.S.A. 84-9-105.
2	(25) "Equipment."	K.S.A. 84-9-109.
3	(26) "Fixture."	K.S.A. 84-9-313.
4	(27) "Fixture filing."	K.S.A. 84-9-313.
5	(28) "Farm products."	K.S.A. 84-9-109.
6	(29) "Goods."	K.S.A. 84-9-105.
7	(30) "Instrument."	K.S.A. 84-9-109.
8	(31) "Inventory."	K.S.A. 84-9-109.
9	(32) "Mortgage."	K.S.A. 84-9-105.
10	(33) "Purchase money security interest."	K.S.A. 84-9-107.
11	(34) "Secured party."	K.S.A. 84-9-105.

12 (b) As used in this act, unless the context otherwise requires:

13 (1) "Custom farming" means any services or labor contracted for by the
 14 owner or lessee of real estate or the agent of the owner or lessee, incident
 15 to production of crops, including planting, harvesting or hauling of farm
 16 products of all kinds on that real estate. Custom farming shall not include
 17 the furnishing of agricultural inputs of any kind, including, but not limited
 18 to, fuel, fertilizer, chemicals and medicines, seed or other supplies used
 19 in the planting or production of crops or farm products. Custom farming
 20 shall not include labor, services or materials provided or performed in
 21 terracing, fencing, constructing buildings, storage facilities, fixtures or
 22 other improvements, or any other work done to repair or improve the
 23 real estate itself.

24 (2) "Harvesting" means all services, labor and materials furnished in
 25 connection with the cutting, picking or gathering and transportation of
 26 crops severed from the real estate on which they were grown. It does not
 27 include any work or materials provided in connection with breeding, feed-
 28 ing, finishing or transporting livestock.

29 (3) "Leasehold" does not include any oil and gas or other mineral or
 30 mining leasehold.

31 (4) "Lien" means a charge on property created under this act to se-
 32 cure payment of a debt or performance of an obligation.

33 (5) "Lien holder" means a person claiming a lien on personal prop-
 34 erty under the provisions of this act. The assignee of a statutory lien is
 35 also a lien holder.

36 (6) "Lien statement" means the written document necessary to per-
 37 fect a nonpossessory statutory lien. Lien statement means the original
 38 lien statement and any amendments thereto.

39 (7) "Possession" means physical control of personal property, other
 40 than a leasehold interest. Where personal property is covered by a non-
 41 negotiable instrument, the lien holder is deemed to have perfected its
 lien by possession as of the time the lien holder serves written notice of
 the claimed lien together with any required lien statement on the bailee.

Where a third party, other than the owner/debtor or the lien holder is in possession of personal property, other than a leasehold, the lien holder may agree with the third party in writing that the third party has possession of the property subject to the lien as bailee for the lien holder.

(8) "Proceeds" means whatever is received upon the sale, exchange, collection or other disposition of property subject to a statutory lien. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the transaction giving rise to the statutory lien. Money, checks, deposit accounts and the like are cash proceeds. All other proceeds are noncash proceeds.

(9) "Statutory lien" means a lien created by this act.

(10) "Vehicle" means any means of transportation of goods or persons as defined under K.S.A. 8-126 and amendments thereto, and any vehicles which move on stationary rails or tracks in interstate commerce.

(11) "Work" means any of the acts giving rise to a lien under section 5 and amendments thereto.

Sec. 5. (a) Any person who, at the request of, or with the consent of the owner of personal property or the agent of the owner of such property, shall perform labor, including custom farming and harvesting; furnish accessions, material, equipment, parts, supplies, feed, including pasturage, seed or veterinary services; or provide transportation, bailment, warehousing or storage for or make improvements or repairs to personal property shall:

(1) In the case of a leasehold, have a lien on the whole of such leasehold to secure the payment of the charges for such labor, equipment, parts, supplies, feed, seed, services, transportation, bailment, warehousing or storage; and

(2) in the case of all other personal property, have a lien on that property to secure the payment of the charges for such labor, equipment, parts, supplies, feed, seed, services, transportation, bailment, warehousing or storage.

(b) Except as this act otherwise provides, a statutory lien continues in property subject to the lien notwithstanding sale, exchange or other disposition of such property unless the disposition was authorized by the holder of the lien in writing, and also continues in an identifiable proceeds including collections received by the debtor. The statutory lien in proceeds terminates 10 days after receipt of the proceeds by the debtor unless the proceeds are identifiable cash proceeds.

Sec. 6. (a) The statutory lien created by this act shall attach to the property on which the lien holder performed work or provided goods or services at the time the work, goods or services are first performed or provided. The lien for custom harvesting, farming, repairs to fixtures,

Section 5 contains the language creating the statutory lien. It creates a single statutory lien on all types of personal property to provide for payment of the charges incurred in performing labor, furnishing material, or repairing the property subject to the lien. In general, the lien attaches to the personal property itself, or to a leasehold (but not the underlying real estate subject to the lease), and continues in proceeds if the property has been sold before foreclosure or other enforcement of the lien is completed. The section is modeled on the provisions of existing law and the UCC.

Section 6 provides for the attachment of the lien to the personal property or its proceeds.

equipment and accessions located on real property where the debtor is a lessee shall not attach to the real property but only to the debtor's interest in the leasehold or the farm products produced on the leasehold.

(b) A statutory lien continues in identifiable proceeds of the property subject to the lien as provided in subsection (b) of section 5 and amendments thereto.

Sec. 7. (a) (1) Except as otherwise provided, any statutory lien created under this act may be perfected by possession of personal property or the filing of a lien statement, as provided in this section and section 8 and amendments thereto, in a form approved by the secretary of state.

(2) A person holding a statutory lien on personal property may perfect the lien by retaining possession thereof. A statutory lien on consumer goods having a fair market value of \$1,000 or less at the time of the attachment of the lien may only be perfected by possession.

(3) A person holding a statutory lien on personal property, other than an interest in a leasehold or consumer goods having a fair market value of \$1,000 or less at the time of the attachment of the lien may continue perfection of that lien by filing a lien statement, within the time prescribed by section 8 and amendments thereto, as follows:

(A) If the personal property is a titled motor vehicle, a lien statement shall be filed with the secretary of state in a form prescribed by the secretary of state.

(B) If the personal property is consumer goods having a fair market value of greater than \$1,000 as of the date the lien attaches, the lien statement shall be filed with the register of deeds in the county of the owner's residence if the debtor is a Kansas resident or in the county where the property is located if the debtor is not a resident of Kansas. If the lien holder is unable to determine where the owner is resident, the lien statement shall be filed in the county where the property is located when the lien attaches.

(C) If the personal property is farm products, other than growing or harvested crops, the lien statement shall be filed with the register of deeds in the county where the debtor is resident as of the date of attachment and with the secretary of state. If the debtor is not a resident of Kansas, the lien statement shall be filed with the register of deeds in the county where the farm products are located as of the date of attachment of the lien and with the secretary of state. If the lien holder is unable to determine where the owner is resident, the lien statement shall be filed with the register of deeds in the county where the property is located when the lien attaches and with the secretary of state.

(D) If the personal property is growing or harvested crops the lien statement shall be filed with the register of deeds in the county where the crops are located as of the date of attachment and with the secretary

Section 7 provides for perfection of the statutory lien. Perfection is accomplished by possession of the subject property or by the filing of a lien statement in a form approved by the secretary of state. Some existing lien provisions provide for perfection by possession. The lien statement form approved by the secretary of state is new but is intended to provide a uniform means of giving notice of the existence of the lien if the personal property is not in the lien holder's possession. Section 7 is very generally modeled after the UCC provisions on financing statements. K.S.A. 84-9-204. The various filing requirements are intended to facilitate creation of a state wide data base on statutory liens.

1 of state.

2 (E) If the property is an interest in a leasehold, the lien statement
3 shall be filed with the register of deeds in the county where the real estate
4 subject to the lease is located and with the secretary of state.

5 (F) In all other cases, the lien statement shall be filed with the sec-
6 retary of state.

7 (4) Perfection of a statutory lien in personal property by possession
8 continues in the property upon the filing of the lien statement.

9 (b) A person holding a statutory lien on fixtures shall file the lien
10 statement required by this act with the secretary of state and the register
11 of deeds in the county where the real property is located.

12 Sec. 8. (a) A lien holder claiming a lien on personal property shall
13 file a lien statement as provided in this act not later than 90 days after
14 the later of: (1) Delivery of possession of the property subject to the lien
15 to the debtor or some other person entitled to possession; or (2) the date
16 material, equipment or supplies were last furnished or work was last per-
17 formed.

18 (b) A lien holder claiming a lien on an interest in fixtures or a lease-
19 hold shall file a lien statement as provided in this act not later than 90
20 days after material was last furnished or labor last performed by the lien
21 claimant.

22 Sec. 9. (a) A lien statement shall conform substantially to a form pre-
23 scribed by the secretary of state and shall contain: (1) The names of the
24 debtor and the lien holder; (2) an address of the lien holder from which
25 information concerning the lien may be obtained; (3) a mailing address
26 of the debtor; (4) the debtor's social security number (SSN) or federal
27 employer identification number (FEIN); (5) a statement of the date the
28 lien attached; (6) a statement describing the property subject to the lien;
29 (7) a reasonably itemized statement of the amount of the lien and the
30 work, storage and materials for which the lien is claimed; but if the
31 amount of the claim is evidenced by a written instrument, a copy thereof
32 may be attached to the claim in lieu of the itemized statement; (8) a legal
33 description of the real estate when the lien statement covers an interest
34 in a leasehold or fixtures; (9) the name of the record owner of the real
35 estate where the debtor is a lessee of the real estate; (10) a serial or vehicle
36 identification number for the vehicle subject to the lien when the lien
37 statement covers a titled vehicle, mobile or manufactured home, and shall
38 be signed by the lien holder under penalty of perjury pursuant to K.S.A.
39 53-601 and amendments thereto.

40 (b) For the purposes of this section: (1) A description of the location
41 of the property subject to the lien is not necessary except where a de-
42 scription of location is specifically required by this act.

43 (2) When the lien statement covers growing crops, the statement shall

Section 8 provides that lien statements must be filed within 90 days after delivery of the personal property to the debtor or the date when materials, equipment or supplies were last furnished or work last performed. This is a change in the law. Current mechanic's lien laws provide for several deadlines ranging from 15 days to 90 days after work is performed or material furnished.

Section 9 sets out the information which must be included in a lien statement for filing. It is generally modeled after the financing statement requirements of K.S.A. 84-9-402. In some cases, the information required is more detailed than present law.

contain a description of the real estate concerned. When the lien statement covers a leasehold interest or fixtures, as defined in K.S.A. 84-9-313 and amendments thereto, the statement shall contain a legal description of the real property concerned.

(c) The secretary of state shall prescribe a form substantially as follows to comply with subsections (a) and (b) of this section:

Name or debtor (or assignor)

Address _____

Social security number (SSN) _____; or

Federal employer identification number (FEIN) _____

Name of lien holder (or assignee)

Address _____

1. This lien statement covers the following property:

(Describe)

_____ [VIN _____]

2. (If collateral is growing crops, describe real estate) _____

3. This lien statement covers fixtures, or a leasehold interest located on: (Legal description of real estate)

4. (Name(s) of record owner(s))

5. Date of attachment of lien: _____

6. Amount of lien claimed: \$ _____ (Attached is a statement of the service, repair, labor, storage or material charges)

Pursuant to K.S.A. 53-601 and amendments thereto, I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct and reflects work performed, storage provided or material furnished and that the lien holder identified above is entitled to a lien on the property described.

Signature of lien holder (or assignor) _____

Date _____

(d) A lien statement may be amended by filing a writing signed by the lien holder or the lien holder's assignee. An amendment does not extend the period of effectiveness of a lien statement and does not relate back to the date of the original lien statement. If any amendment adds property subject to the lien, it is effective as to the added property only from the filing date of the amendment.

(e) A lien statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor as of

1 the date of attachment, whether or not it adds other trade names or the
 2 names of all partners. A filing listing only the trade names of the debtor
 3 is insufficient as against third parties.

4 (f) A filed lien statement remains effective with respect to property
 5 transferred by the debtor unless the lien holder consents to the transfer
 6 in writing.

7 (g) A description of property subject to the lien is adequate if it rea-
 8 sonably identifies the personal property subject to the lien. A legal de-
 9 scription of real property is sufficient if it identifies the property or affords
 10 the means of identification within the instrument itself or by specific
 11 reference to other instruments recorded in the office of the register of
 12 deeds where the lien statement is filed.

13 (h) A lien statement substantially complying with the requirements
 14 of this section is effective even though it contains minor errors which are
 15 not seriously misleading.

16 Sec. 10. (a) Presentation for filing of a lien statement and tender of
 17 the filing fee to the filing officer constitutes filing under this act.

18 (b) Except as provided in subsection (d), a filed lien statement cov-
 19 ering an interest in a leasehold or fixtures is effective for a period of one
 20 year from the date of filing. If a promissory note has been attached to
 21 the lien statement in lieu of an itemized statement, the lien statement
 22 shall be effective for a period of one year from the maturity of the note.

23 (c) Except as provided in subsection (d), a filed lien statement cov-
 24 ering an interest in personal property is effective for a period of 90 days
 25 from the date of filing.

26 (d) The effectiveness of a filed lien statement lapses on the expiration
 27 of the period specified in subsection (b) or (c) unless the lien holder has
 28 commenced an action to foreclose the lien prior to the lapse. If a statutory
 29 lien perfected by filing exists at the time insolvency proceedings are com-
 30 menced by or against the debtor, the lien remains perfected until ter-
 31 mination of the insolvency proceedings and thereafter for a period of 60
 32 days. Upon lapse the lien becomes unperfected, unless it is perfected
 33 without filing. If the lien becomes unperfected upon lapse, it is deemed
 34 to have been unperfected as against a person who became a purchaser
 35 or lien creditor before lapse.

36 (e) Where a lien statement must be filed with both a register of deeds
 37 and the secretary of state to perfect a lien under this act, if the filing with
 38 the second office is accomplished within 20 days of the filing with the
 39 first office to receive the lien statement, perfection relates back to the
 40 date the first lien statement was received for filing. In all other cases,
 41 perfection is effective from the date the lien statement is received by the
 42 second office.

43 (f) The fee for filing and indexing and for stamping a copy furnished

Section 10 specifies the method of filing and the period of effectiveness for a filed statement. The effective periods are changes from present law: a personal property lien is effective only for 90 days from filing where present law allows the lien to be enforced in some cases for up to a year. A lien on a leasehold interest is effective for one year from filing, or for one year from the maturity of any attached promissory note. The section is generally modeled after the provisions of the UCC for filing and enforcing financing statements.

Section 10 also copies the UCC provisions which require the filing and indexing of the lien statements by the registers of deeds and the secretary of state and set the fees to be charged. For the most part, existing lien laws do not specify the indexing requirements.

by the lien holder to show the date and place of filing for an original lien statement, or for any amendments thereto shall be \$6, plus \$1 for each additional page, or an amount fixed by rules and regulations adopted by the secretary of state on or after the effective date of this act of not to exceed \$10, plus \$1 for each additional page.

(g)(1) A filing officer shall mark each lien statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection.

(2) In addition the filing officer shall index all statements according to the names of the debtors but shall not index the names of corporate officers or signatures of the debtors, shall note in the index the file number, the address of the debtor given in the statement, the date of filing and general description of the collateral and shall cause the index to be accessible to the public.

(3) In addition the filing officer shall index all statements by legal description where the lien statement contains a legal description and shall note in the index the file number, the address of the debtor given in the statement, the date of filing and the legal description of the collateral and shall cause the index to be accessible to the public.

(4) When a lien statement covers goods which are or are to become fixtures and contains the information required by K.S.A. 84-9-402 and amendments thereto, the filing officer shall also index the statement according to the name of the record owner of the real estate and shall cause the index to be accessible to the public.

Sec. 11. (a) The holder of a statutory lien on personal property perfected by the filing of a lien statement shall serve a file stamped copy of the lien statement on the debtor by first class mail, postage prepaid, by mailing the file stamped copy to the individual debtor's dwelling, residence or place where the debtor conducts a business or profession, or if the debtor is an entity, to either the place where the debtor conducts its business or profession or the debtor's registered agent.

(b) The holder of a statutory lien on fixtures or a leasehold perfected by filing a lien statement shall: (1) Cause a file stamped copy of the lien statement to be served upon any one owner and any party obligated to pay the lien by any of the methods provided by K.S.A. 60-303 and amendments thereto, for the service of process within the state, or by K.S.A. 60-308 and amendments thereto, for service outside of the state; or (2) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises.

(c) The provisions of this section requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, notwithstanding some irregularity or omission, if it is proven that the

Section 11 provides for the service of a file stamped copy of the lien statement on the debtor.

1 person to be served actually received a copy of the lien statement.

2 Sec. 12. (a) Within one month, or within 10 days following written
3 demand by the debtor, after satisfaction of the debt, the lien holder must
4 file with each filing officer with whom the lien statement was filed, a
5 termination statement identified by file number thereof to the effect that
6 the lien holder no longer claims a lien under the statement. A termination
7 statement signed by a person other than the lien holder of record must
8 be accompanied by a separate written statement of assignment signed by
9 the lien holder of record. If the lien holder fails to file such a termination
10 statement as required by this subsection within 10 days after proper de-
11 mand therefore the lien holder shall be liable to the debtor for \$500, and
12 in addition for any loss caused to the debtor by such failure.

13 (b) On presentation of such a termination statement, the filing officer
14 must note it in the index. If the filing officer has received the termination
15 statement in duplicate, the filing officer shall return one copy of the ter-
16 mination statement to the lien holder stamped to show the time of receipt
17 thereof. If the filing officer has a microfilm or other photographic record
18 of the lien statement, and of any related amendment, statement of as-
19 signment and statement of release, the filing officer may remove the
20 originals from the files at any time after receipt of the termination state-
21 ment, or if the filing officer has no such record, the filing officer may
22 remove them from the files at any time after one year after receipt of the
23 termination statement.

24 (c) Termination statements may be destroyed after such statements
25 have been on file for five years.

26 Sec. 13. (a) An assignment of a statutory lien shall contain the name
27 and address of the assignee, shall identify the file or other number of the
28 lien statement and shall contain the signature of the assignor. The assign-
29 ment shall be filed in all locations where the original lien statement was
30 filed. On presentation to the filing officer of an assignment, the filing
31 officer shall mark the same as provided in this act. The fee for filing,
32 indexing and furnishing filing data for a lien statement so indicating an
33 assignment shall be the amount fixed for filing original lien statements.

34 (b) After the filing of an assignment under this section, the assignee
35 is the lien holder of record.

36 Sec. 14. (a) If the person filing any lien statement, termination state-
37 ment, statement of assignment or statement of release furnishes the filing
38 officer a copy thereof, the filing officer shall upon request note upon the
39 copy the file number and date and hour of the filing of the original and
40 deliver or send the copy to such person.

41 (b) Upon written or electronic request of any person and tender of
42 the proper fee, the filing officer shall inform the person, in writing or
43 electronically, of whether there is on file on the date and hour stated, any

Section 12 requires the lien holder to release any filed lien upon satisfaction of the debt which the lien secures. There is no similar provision in many of the current lien statutes. The provision includes substantial penalties for failure to release the lien.

Section 13 regulates any assignment of a statutory lien. Current law does not contain similar provisions. The provision is modeled after the UCC provisions.

Sections 14, 15 and 16 regulate the filing officer's treatment of certain requests for information including computer access. There are no similar provisions in current law. One of the major purposes of adopting a statutory lien act is to facilitate remote access to public records.

2 presently effective lien statement naming a particular debtor and any
3 related statement and, if there is, the date and hour of filing of each such
4 statement and the names and addresses of each lien holder therein. The
5 fee for providing the information shall be \$8 or an amount, not to exceed
6 \$10, fixed by rules and regulations adopted by the secretary of state. Upon
7 request, the filing officer shall furnish a copy of any filed lien statement
8 or related statement after payment of a fee of \$1 per page except that, if
9 the filing officer is the secretary of state, the fee shall be in an amount
10 fixed by the secretary of state and approved by the director of accounts
and reports under K.S.A. 45-219 and amendments thereto.

11 (c) Except with respect to willful misconduct, the state, counties and
12 filing officers, and their employees and agents, are immune from liability
13 for damages resulting from errors or omissions in information supplied
14 pursuant to this section.

15 Sec. 15. (a) The secretary of state shall provide information concern-
16 ing filings under the Kansas statutory lien act to persons with an interest
17 in the information that is related exclusively to the purposes of that act.

18 (b) The secretary of state or a register of deeds may adopt one or
19 more of the following methods of providing information concerning fil-
20 ings under the Kansas statutory lien act to persons with an interest in the
21 information that is related exclusively to the purposes of that act: (1)
22 Telecopier access by interested parties and offices of registers of deeds
23 to filings in the office of the secretary of state; (2) subscription periodic
24 written summaries; (3) copies of microfilm; (4) data storage material; (5)
25 access to data processing functions; or (6) any other appropriate method
26 of disseminating the information.

27 (c) The secretary of state or a register of deeds may charge a reason-
28 able fee for the information on file in that office provided pursuant to
29 this section. In establishing the fees, the secretary of state or register of
30 deeds may take into account the costs incurred in establishing and main-
31 taining the information system as well as other costs.

32 (d) If information regarding filings in the office of the secretary of
33 state is provided by a register of deeds pursuant to this section, the fee
34 to be collected from the customer shall be an amount fixed by rules and
35 regulations adopted by the secretary of state. The rules and regulations
36 adopted by the secretary of state shall specify the amount the register of
37 deeds shall remit to the county treasurer for deposit into the county gen-
38 eral fund. The register of deeds shall remit at least monthly the remainder
39 of all such fees collected to the state treasurer. The state treasurer shall
40 deposit the entire amount in the state treasury and shall credit 20% of
41 the amount to the state general fund and the remainder to the uniform
commercial code fee fund.

(e) Except with respect to willful misconduct, the state, counties and

See comment to Section 14.

1 filing officers, and their employees and agents, are immune from liability
2 for damages resulting from errors or omissions in information supplied
3 pursuant to this section.

4 (f) Any fees in effect on the day preceding the effective date of this
5 act shall continue in effect until the secretary of state or the register of
6 deeds establishes different fees, as the case may be.

7 Sec. 16. (a) The secretary of state shall provide information con-
8 cerning filings under the Kansas statutory lien act upon request by tele-
9 phone to persons who have received prior approval of the secretary of
10 state.

See comment to Section 14.

11 (b) Information provided under this section shall not include the text
12 descriptive of the collateral.

13 (c) The secretary of state may charge a reasonable fee in addition to
14 the fee specified in section 14 and amendments thereto to the requesting
15 party for information provided pursuant to this section.

16 (d) Except with respect to willful misconduct, the state and its em-
17 ployees and agents are immune from liability for damages resulting from
18 errors or omissions in information supplied pursuant to this section.

19 Sec. 17. (a) A perfected statutory lien in personal property with a fair
20 market value of \$1,000 or less has priority over a person who has or takes
21 a security interest in the property.

Section 17 sets out the priorities among competing statutory liens and security interests. The provisions are not intended to change current law which generally provides that a mechanic's lien has priority over a perfected security interest in the same collateral.

22 (b) (1) A perfected statutory lien in a leasehold interest is subordi-
23 nate to any assignment of the leasehold interest and any interest created
24 in a mortgage or deed of trust duly filed of record in the appropriate
25 county prior to attachment of the statutory lien.

26 (2) A perfected statutory lien in a leasehold interest, has priority over:
27 (A) Any interest created through attachment by judicial process after the
28 statutory lien attaches; and (B) any interest created by an assignment,
29 mortgage or deed of trust unrecorded as of the time of attachment of the
30 statutory lien.

31 (3) Conflicting perfected statutory liens in a leasehold interest have
32 equal priority.

33 (c) (1) A perfected statutory lien in other personal property has pri-
34 ority over: (A) Any perfected or unperfected security interest in the prop-
35 erty even where the lien holder had actual or constructive notice of the
36 security interest; and (B) any interest created through attachment by ju-
37 dicial process after the statutory lien attaches.

38 (2) Conflicting perfected statutory liens in other personal property
39 have equal priority.

40 (d) (1) A perfected statutory lien in fixtures is subordinate to any
41 assignment of the leasehold interest and any interest created in a mort-
42 gage or deed of trust duly filed of record in the appropriate county at the
43 time of the attachment of the statutory lien.

(2) A perfected statutory lien in fixtures, has priority over: (A) Any interest created through attachment by judicial process after the statutory lien attaches; and (B) any interest created by a mortgage or deed of trust unrecorded as of the time of the attachment of the statutory lien.

(3) Conflicting perfected statutory liens in fixtures have equal priority.

Sec. 18. Statutory liens shall be enforced as follows:

(a) (1) A perfected statutory lien in personal property with a fair market value of \$1,000 or less may be enforced by the lien holder in any manner specified in K.S.A. 84-9-504 and amendments thereto and proceeds of any sale shall be applied first to satisfaction of the sale expenses and thereafter to the statutory lien. Any surplus shall be applied to junior liens and security interests in the order they are perfected.

(2) Goods which are subject to rapid deterioration may be sold without advance notice to the owner if sold in a recognized public market for goods of that type and proceeds of any sale shall be applied first to satisfaction of the sale expenses and thereafter to the statutory lien. Any surplus shall be applied to junior liens and security interests in the order they are perfected.

(3) In all other instances, statutory liens in personal property shall be foreclosed in the manner prescribed for judicial foreclosure under K.S.A. 60-1006 *et seq.* and amendments thereto.

(b) (1) In actions to foreclose statutory liens on leasehold interests and fixtures, all persons whose liens are filed as provided in this act, and other encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other cases. Where such an action is brought by a subcontractor, or person other than the original contractor, such original contractor shall be made a party defendant, and shall at the contractor's own expense defend against the claim of every subcontractor, or other person claiming a lien under this act, and if the contractor fails to make such defense the owner may make the same at the expense of such contractor. Until all such claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs and expenses as the owner may be required to pay. If the sheriff of the county in which such action is pending shall make return that the sheriff is unable to find such original contractor, the court may proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs.

(2) In any action to foreclose a lien under this subsection if the building or other improvement is still in course of construction, the judge on application of any party engaged in furnishing labor or materials for such building or improvement, may stay the trial thereof for a reasonable time to permit the filing of a lien statement by such party under the provisions

Section 18 provides for the enforcement of statutory liens. In general, liens on personal property must be enforced in accordance with the provisions of the UCC and an accounting made to the debtor and junior lien holders.

1 of this act.

2 (3) The lien statement may be amended by leave of the judge in
3 furtherance of justice, except to increase the amount claimed.

4 (4) If the proceeds of the sale be insufficient to pay all the claimants,
5 then the court shall order them to be paid in proportion to the amount
6 due each.

7 (5) After sale of property pursuant to foreclosure of a statutory lien
8 on a leasehold interest, there shall be no redemption and the sheriff shall
9 make a formal conveyance of all the property so sold to the purchaser, in
10 one leasehold assignment.

11 (6) If any lien or liens are filed under the provisions of this act and
12 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
14 which such land is situated, making such lien claimants defendants
15 therein, and praying for an adjudication of such lien or liens so claimed.
16 If any such lien claimant shall fail to establish such claimant's lien, the
17 court may tax against such claimant the whole or such portion of the costs
18 of such action as may be just. If no action to foreclose or adjudicate any
19 lien filed under the provisions of this act shall be instituted within the
20 time provided in section 10 and amendments thereto, the lien shall be
21 considered canceled by limitation of law.

22 Sec. 19. K.S.A. 42-119, 47-836, 58-201, 58-202, 58-203, 58-204, 58-
23 205, 58-206, 58-207, 58-208, 58-209, 58-210, 58-211, 58-212, 58-213, 58-
24 214, 58-215, 58-218, 58-219, 58-220, 58-221, 58-222, 58-223, 58-224, 58-
25 225, 58-226, 84-7-209, 84-7-210, 84-7-307 and 84-7-308 are hereby
26 repealed.

27 Sec. 20. This act shall take effect and be in force from and after its
28 publication in the statute book.

Section 19 repeals the current statutory provisions for a variety of
liens.

#6
Ron Thornburgh
Secretary of State



2nd Floor, State Capitol
300 S.W. 10th Ave.
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

TESTIMONY ON HB 2606
TO HOUSE JUDICIARY COMMITTEE
FEBRUARY 9, 1998

Mr. Chairman and Members of the Judiciary Committee:

I appreciate the opportunity to comment on HB 2606, the Kansas Statutory Lien Act. I do not appear as a proponent or opponent to the bill, but only to offer information on how the bill will affect the Office of the Secretary of State.

HB 2606 will impose new and additional tasks on the Secretary of State. Under current law, most statutory liens are filed at the local level, either with the Register of Deeds or the County Clerk's office. The Kansas Statutory Lien Act adds the Secretary of State as a filing office for most of the statutory liens covered in HB 2606 resulting in filings that have never before been filed with our office. Liens on motor vehicles, which are perfected by notation on the vehicle's certificate of title under current law, would also be filed with the Secretary of State. With regard to statutory liens on farm products, growing or harvested crops, leaseholds, and fixtures, the liens would be filed with both the Register of Deeds and the Secretary of State, which seems duplicative. In contrast, security interests filed pursuant to the Uniform Commercial Code are filed in one location, either centrally with the Secretary of State or locally with the Register of Deeds, but not with both.

HB 2606 outlines the indexing and filing requirements for the filing officers accepting lien filings. The filing and indexing requirements are much more extensive than those for security interests that are filed with our office pursuant to the Uniform Commercial Code. Our present computer program and filing system cannot accommodate these additional filings and their indexing requirements. For example, Section 10 of the bill

House Judiciary
2-9-98
Attachment 6

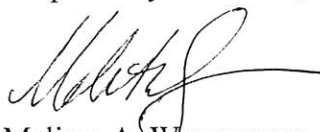
would require our filing clerks to index lien statements by legal description and the record owner of real estate in certain instances. Our computer program does not have the space or the capability to record this information. It appears that these indexing and filing requirements are modeled on the procedures and duties of local filing officers, whose filing duties are very different from our office's filing duties. Our office would be required to buy a computer program or software comparable to those used by the Register of Deeds. Therefore, considerable time and money would be needed to upgrade and modify our computer system in order to process such filings.

Furthermore, the bill would increase the volume of filings our office receives. The duties of filing and indexing the liens and additional data input required by this bill would create additional work for our filing clerks. Our current staff is already pressed to capacity with the current volume of filings; therefore additional filings requiring extensive indexing would be an incredible burden.

Aside from the bill's impact on our office, I would also like to point out an observation about the bill, relating to statutory liens on consumer goods. Under HB 2606, perfection of consumer goods valued at less than \$1,000 is achieved by possession. Any consumer goods valued above \$1,000 must be perfected by filing a statutory lien. This provision is similar to K.S.A. 84-9-304 of the Uniform Commercial Code, which--until recently--required the filing of a financial statement on consumer goods with a purchase price over \$1,000. K.S.A. 84-9-304 was amended last year and the cap was raised to \$3,000. The committee may wish to raise the cap on consumer goods covered by HB 2606 to \$3,000 to make the statutory lien provisions consistent with the Uniform Commercial Code provisions.

I appreciate the opportunity to raise these issues with the committee.

Respectfully submitted,



Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State

**COMPARISON CHART
UCC FILINGS AND STATUTORY LIEN FILINGS**

	<u>UCC Security Interests</u>	<u>Statutory Liens (HB 2606)</u>
Consumer Goods	Register of Deeds	Register of Deeds
Crops	Secretary of State	Secretary of State/Register of Deeds
Farm Products	Secretary of State	Secretary of State/Register of Deeds
Fixtures	Register of Deeds	Secretary of State/Register of Deeds
Inventory and Equipment	Secretary of State	Secretary of State
Leaseholds	(excluded from Article 9)	Secretary of State/Register of Deeds
Motor Vehicles	interest noted on title	Secretary of State
Timber, Oil/Gas, Minerals	Register of Deeds	Secretary of State

REGISTER OF DEEDS

KANSAS

PRESIDENT Linda Fincham
VICE-PRESIDENT Linda Massey

ASSOCIATION

Sally Acres SECRETARY
Marcia Johnson TREASURER

H.B. 2606

My name is Sara Ullmann. I am here representing the Kansas Register of Deeds Association. We appreciate the opportunity to provide input concerning this bill. It is my understanding that this bill's purpose is to consolidate the statutes concerning liens against personal property. Because of the length of the bill and the multiple statutes involved we have not had the opportunity to give every aspect of the bill full consideration. It is our belief that this bill requires more study.

I would like to state a few of the inconsistencies we noticed. In the area of personal property, there has been and continues to be dialogue around the appropriate place for filing. This bill does not clearly define where dual (state and local) filing is appropriate and where single (state or local) filing in terms of the intent of the lien. The bill is inconsistent in the length of time the lien is effective and the process for removing a lien from the record. Language concerning the retention of the records does not include the electronic transfer and storage of information.

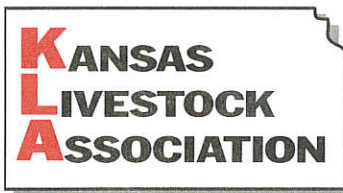
In the area of fees, the bill provides that fees can be determined by the Secretary of State and each register of deeds depending on the analysis of costs in each individual entity. This would move away from the current thinking of uniformity of fees. The bill requires the register of deeds office to collect revenue for the state, adding a whole new set of accounting procedures. It does not address the issue of compensation concerning the performance of those duties.

The retention of the records does not adequately address the use of today's technology. The technology issue needs to address the retention, the retrieval and the recording of liens. It should provide a firm foundation for the new technology that will be available and at the same time bridge the gap between the old and the new technology.

As I stated earlier, it is our belief that the intent to collectively address personal property liens is good. But, we also believe that this bill needs additional study. We would be happy to provide our assistance in providing a more consistent bill, if the committee so wishes.

Thank you again for the opportunity to be here. I am happy to stand for any questions.

House Judiciary
2-9-98
Attachment 7



Since 1894

Testimony

presented by

LewJene Schneider,
Director of Research and Legal Affairs

regarding

House Bill 2606

before the

House Judiciary Committee

February 9, 1998

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,300 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry, including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1996 cash receipts from agriculture products totaled over \$7.5 billion, with sixty percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing ninety percent of the livestock and poultry marketings.

*House Judiciary
2-9-98
Attachment 8*

Chairperson Carmody and members of the House Judiciary Committee, thank you for the opportunity to testify today. My name is LewJene Schneider. I am the Director of Research and Legal Affairs for the Kansas Livestock Association.

KLA urges you vote against House Bill 2606. We are not convinced anything is broken, so why fix it? Additionally, as an attorney I know the challenge in educating attorneys regarding changes in the law. I believe educating the general public, who has been using and relying on statutory liens for years, would be difficult at best. My concern is for those who are unaware of the law's change and are left with no remedy.

I might also share with the Committee that I know of no agricultural or livestock groups who were asked to participate or work with the Kansas Judicial Council's Civil Code Advisory Committee proposing the legislation. I would ask they allow KLA to be part of any additional meetings and recommendations.

The proposed legislation would change the filing of statutory or common-law liens that attach to goods for services and materials provided by a person in the ordinary course of her business that have priority over competing security interest (even prior perfected ones), K.S.A. 84-9-310. This exception is justified because the lienholder's services add to or maintain the collateral's value. A common example of such a statutory lien is the mechanic's lien that arises when a person repairs or improves equipment, vehicles, or other personal property.

Most of these liens take priority over even previously perfected security interests under the U.C.C. Even though the priority would not change, I am concerned KLA members could lose their priority due to the change in the law and filing procedure. It also appears to be additionally burdensome and more costly. It is not clear where the lien will be filed. Currently, many of our members file their own liens, without the assistance of legal counsel.

Many state legislatures created statutory liens to give special protection to individuals and economic groups involved in the production or financing of agriculture products. Statutory liens are not consensual and do not depend upon judicial action by the creditor. A lien can be imposed unilaterally by the mechanic or artisan upon the furnishing of services or material at the request or with the consent of the owner of the personal property. A security interest, on the other hand, must be specifically created by the owner of the property to repay a present or future debt.

While the distinction may seem minor, the imposition of a lien involves different formalities and procedures than a security interest. The interaction with the U.C.C. is such that some of the statutory liens take priority over a competing security interest in the same collateral while others do not.

Kansas provides for a number of liens for agriculture--livery keepers, threshers, veterinarians, and agisters who care for animals and harvest crops. Generally a lien perfected under the various provisions of K.S.A. 58-201, et seq., permits a supplier of feed, labor, medicine or pasture and a harvester of crops to unilaterally impose a lien on farm products to secure payment for the services or feed provided.

K.S.A. 58-207 provides that those engaged in the feeding of livestock have a lien upon the livestock for the feed and care provided. The lien is possessory only and there is no provision for filing a lien statement. Perfection is possession. This bill would require filing of a form at either the office of the register of deeds or secretary of state--or worse yet, both.

An agister's lien is perfected by possession or by filing a lien statement. The lien statement must be verified, but no specific form or contents are required by statute. By analogy to other lien statements, an agister's lien statement should set out: name of the owner of livestock; a description of and the number of the livestock; a description of the location of the leased pasture; the unpaid rent amount provided in the lease; the date(s) of the lease; and the name of the claimant.

Credit plays a large role in agricultural operations. Credit is essential to America's business world and very important in agricultural operations, even non-real estate farm debt. If a debtor fails to pay for goods purchased on credit, the unsecured creditor must file a lawsuit against the debtor, obtain a civil judgment and collect the judgment by seizing and selling non-exempt property. This is a slow, expensive, and inefficient process. The secured creditor, however, contracts for an interest in specific property of the debtor and can often obtain the collateral without the expense of a lawsuit.

An interesting recent case, not from Kansas, involved a claim of a security interest in embryos that were arguably subject to a prior security interest claimed by a bank. The court granted the entity in possession of the embryos a common-law artisan's lien that was superior to the bank's lien, even though it had earlier ruled that the bank had superior priority in order to allow the farmer to get operational financing during the bankruptcy. The court's rationale was that to hold otherwise would be "fundamentally unfair." *Matter of Stookey Holsteins Inc.*, 112 Bankr. 942 (Bankr. N.D. Ind. 1990)

I understand the intent of the Council was to establish a uniform means of creating all liens, but to whose advantage--urban attorneys? It also allows up to 90 days for filing. Time does not appear to have been a problem, unless the cattle are in the meat by then.

I am concerned time will be a problem when a pen of cattle are sold out of a feed yard Friday afternoon about 4:30 p.m., and must be delivered to the packing plant by Monday morning at 7 a.m. Pursuant to Federal Law, the packing plant must have payment to the customer by the close of Tuesday, which is interpreted to mean 5 p.m. Just when will there be time to file the correct form at the correct place, yet to be determined, to perfect the statutory lien? Furthermore, if the customer receives the check by 5 p.m. on Tuesday, he could be on his way to the Bahamas while the feed yard has a feed bill for many thousands of dollars and has 90 days to file.

KLA does not believe this legislation is in the best interest of its members. It appears cumbersome and burdensome. Again, KLA would urge you to vote against House Bill 2606. I will be happy to answer questions. Thank you for your time and consideration.

AIA Kansas

A Chapter of The American Institute of Architects

February 9, 1998



TO: Members of the House Judiciary Committee
FROM: Trudy Aron, Executive Director
RE: Support for HB 2228

Good afternoon Mr. Chairman and members of the Committee. I am Trudy Aron, executive director, of the American Institute of Architects in Kansas (AIA Kansas.) Thank you for the opportunity to address your committee regarding our support for lien rights for architects, engineers, landscape architects and land surveyors.

AIA Kansas is a state-wide association of architects and intern architects. The majority of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice, health, and recreational facilities, schools, industrial buildings, offices, housing, and much more. The remainder of our members work in industry, government and education where many manage the facilities of their employers.

Current law allows persons furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, to place a lien upon that property for the labor, equipment, material or supplies furnished for which the owner has not paid. HB 2228 expands the current law to allow design professionals to have the same rights.

The services provided by design professionals take place prior to construction. In fact, their services provide the plans and specifications from which contractors build a project and from which equipment, material and supplies are purchased. HB 2228 would allow design professionals to file a lien on the property in the event they are not compensated for the design work. The inclusion on lien rights for design professionals would, especially, benefit the small design firm. Sixty per cent of all architectural firms have fewer than five employees and thirty percent have only one architect.

We believe that Kansas should join the list of 36 other states, including all contiguous states, that allow architects, engineers, and other design professionals to file preconstruction liens. We appreciate your time and thank you for allowing us the opportunity to discuss our support of lien rights for design professionals. I'd be happy to answer any questions the committee may have.

President
Alan M. Stecklein, AIA
Hays
President Elect
Gregory E. Schwerdt, AIA
Topeka
Secretary
Neal J. Angrisano, AIA
Overland Park
Treasurer
Wendy Ornelas, AIA
Manhattan

Directors
Richard A. Bartholomew, AIA
Overland Park
Kelly Broce, AIA
Wichita
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Topeka
John C. Gaunt, FAIA
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Georgla Gavito, Associate AIA
Wichita
Eugene Kremer, FAIA
Manhattan
David H. Livingood, AIA
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Vincent Mancini, AIA
Garden City
Steven R. Roark, AIA
Westwood
Nancy L. Steele, AIA
Wichita
Andrew D. Steffes, AIA
McPherson
Richard K. Tilghman, AIA
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John M. Wilkins, Jr., AIA
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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
2-9-98
Attachment 9

10



Griffiths & Associates, Inc.

Land Surveyors

438 N. Ohio
Wichita, KS 67214
(316) 267-2900
Fax: (316) 262-0080

February 9, 1998

To: Members of the House Judiciary Committee

From: Arthur G. Griffiths, L.S.

Re: Support for HB 2228

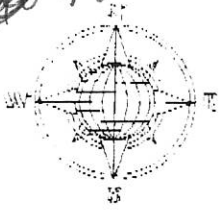
Mr. Chairman and members of the Committee, I am Arthur G. Griffiths a registered Land Surveyor in Kansas and former president of the Kansas Society of Land Surveyors.

HB 2228 would give the same licn rights to professionals (architects, engineers, land surveyors and landscape architects) that are now limited to persons furnishing labor, equipment, material or supplies used or consumed for the improvement of real property.

The land surveyor's services are normally the first services required in any land development project. Preliminary surveys for architectural or engineering designs, boundary surveys of the project site, whether performed for another design professional or owner. The services of a surveyor are many times used as the final determination, on a project, as to the compliance with architectural or engineering design specifications. Once the surveying services have been rendered, the original purpose has been fulfilled and cannot be recaptured. The performance of professional services on all projects related to real property are a benefit and improvement to that property. Therefore, I strongly urge you to support the passage of HB 2228 and bring Kansas in line with all of our neighboring states.

House Judiciary
2-9-98
Attachment 10

11 # 900 910



FAX:

GeoTech, Inc.
1512 W. 6th Avenue
Emporia, KS 66801
Voice: 316-342-7491
Fax: 316-342-6722
geotech@cadvantage.com



From: Steven S. Brosemer
Date: February 9, 1998
Pages: 1

To: Helen Stephens
Of: KSLS Legislative Liaison
FAX: 785-354-8758

RE: HB 2228

Message:

Dear Ms. Stephens,

A professional lien law would help protect private surveying firms in instances where development or a land transaction fails to finalize or "close."

In most cases, the Site Survey is the first action physically taken prior to the development of a tract of land. Land Surveyors need a convenient way to protect ourselves. House Bill 2228 would do that.

However, most fee collection problems for Land Surveyors arise out of the American Land Title Association Surveys used by most lenders and title companies for commercial financing. I am asking that the bill be amended to read as follows:

- 15 lces, hereafter called a design professional, for the improvement, *transfer or financing* of real
- 16 property, under contract

The inclusion of "transfer or financing" phrase would clarify and prevent misinterpretation of the distinction between surveying for construction and surveying for financing or transfer.

Sincerely,

Steven S. Brosemer, RLS

House Judiciary
2-9-98
Attachment 11



Affiliated with:

American Consulting Engineers Council
Kansas Society of Professional Engineers
National Society of Professional Engineers
Professional Engineers in Private Practice

Statement to
House Judiciary Committee
on House Bill-2228
Monday, February 9, 1998

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 developer 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 2228 to include design professionals and act favorably on the bill as amended.

George Barbee, Executive Director

700 SW Jackson, Suite 702 • Topeka, KS 66603-3758 • 785/357-1824 • Fax 785/357-6629 • www.kce.org • gbarbee@kce.org

House Judiciary
2-9-98
Attachment 12



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 9, 1998

To: House Committee on Judiciary

From: Kathy Taylor Olsen, Kansas Bankers Association

Re: **HB 2228**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today before the committee to discuss the provisions of **HB 2228**, which would create a new, non-possessory statutory lien for architectural, professional engineering, land surveying and landscape architectural services.

In reviewing the bill, as lenders to many property owners, the initial concern was to see that it did not create a super-priority lien status for these new potential lien holders. It apparently does not as it states such liens will only have priority over subsequently established liens or encumbrances. It has always been our position that subsequent liens should not dilute the interest of the party who takes the very first lien.

As the law stands now with regard to other non-possessory statutory liens such as materialman's liens, before a banker decides whether to make a loan on a piece of property, that banker must check the records to see what other liens or encumbrances already exist. The banker then has a choice of whether or not to extend credit on that piece of land.

However, the existence of yet another non-possessory statutory lien begs the question, "Where do we draw the line?" How many more potential claims granted by state law will the banker have to search for? With so many potential claims out there, will buyers of property and lenders alike become disinterested in land transactions?

This appears to be the policy question that must be addressed by the Legislature, i.e., whether the lien rights extended to a certain group of professionals can have an adverse impact on the buyer(borrower)/lender relationship. **HB 2228** raises this question.

Again, thank you for the opportunity to express our view of this important legislative matter.

House Judiciary
2-9-98
Attachment 13



Matthew S. Goddard, Vice President

700 S. Kansas Ave., Suite 512
Topeka, Kansas 66603
(913) 232-8215

To: House Committee on Judiciary

From: Matthew Goddard
Heartland Community Bankers Association

Date: February 9, 1998

Re: House Bill 2228

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Judiciary to express our opposition to **House Bill 2228**.

HCBA represents 18 Kansas-based savings institutions. Through the first three quarters of 1997, our members made over 11,000 residential mortgage loans in an amount in excess of \$1 billion. Those numbers would drop if HB 2228 were enacted. The group most impacted by the bill, however, would be home buyers, not financial institutions.

Financial institutions take liens very seriously. An institution is not about to loan someone \$90,000 unless they have significant guarantees that the loan will be paid back. It is for this reason that a lender insists on the priority lien for a real estate mortgage. To ensure its lien will be preferred, for example, a thrift will send an employee to take a photograph of a lot before construction begins. This is to provide evidence that no work that could result in a lien has been performed prior to filing the mortgage lien. It is not uncommon for a mortgage application to be denied because work has already been done that would deny the lender the priority lien.

House Bill 2228 would give design professionals, as defined in the bill, the ability to file liens that have priority over all other liens which are subsequent to their work on the property. The result is that if a consumer goes to an architect about building a home and then goes to a lender, with passage of HB 2228, the lender is much more likely to deny the loan than under current law.

Another complication arising from HB 2228 is diminished business in the secondary market. Many residential real estate mortgages are currently sold by mortgage lenders to the secondary market. This generates funds which are utilized for additional mortgage lending. The secondary market requires that the loans it buys are first lien, priority mortgages. Without priority liens, business between Kansas lenders and the secondary market could see a significant decline.

While other states allow design professionals to file liens, we are unaware of any that allow them priority liens over the mortgage lender. Kansas should not become the first.

We respectfully request that the House Committee on Judiciary recommend HB 2228 unfavorable for passage.

Thank you.