

MINUTES OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE.

The meeting was called to order by Chairperson Senator Ben Vidricksen at 9:10 a.m. on March 8, 2000 in Room 245-N of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Secretary

Conferees appearing before the committee: Tom Whitaker, Kansas Motor Carriers Assn.
Janet Stubbs, Ks Bldg. Industry Assn.
Roy Worthington, KS Land Title Assn.
Patrick Tolle, National Assn. Credit Management
Otto Buche, Stanion Wholesale Elec. Co.
Kenneth R. Keller, Western Extralite Co.

Others attending: See attached list

HB 2809: An Act concerning liens

Members were provided the following materials: Copy of letter from Bill Keller, Pres., Stanion Wholesale Electric Company (Attachment 1) in support of the changes to mechanics lien laws proposed in the House Amendment to this bill. Written testimony for this hearing from Thomas E. Slattery, Associated General contractors (Attachment 2); and from Chuck Stones, Kansas Bankers Association (Attachment 3); both in opposition to changes in the mechanics lien laws now in this bill.

Tom Whitaker, Kansas Motor Carriers Associations speaking on behalf of their Towing and Recovery Division members spoke in support of **HB 2809** as approved by the House Transportation Committee. The proposed changes are urgently needed by the Towing and Recovery Division. They have no position on the House Mechanics Liens amendment. Since the bill has been referred separately to this Committee and the Senate Judiciary Committee, he suggested that perhaps this committee could remove the House floor amendment and let the Senate Judiciary Committee handle the mechanics lien portion of this bill (Attachment 4).

Janet Stubbs, Executive Director Kansas Building Industry Association appeared in opposition to the House floor amendment. She reminded members the House amendment applies only to commercial buildings She urged removal of that amendment if the Committee supports provisions of the original bill (Attachment 5).

Representative Campbell provided members a proposed amendment. Karen France, Kansas Association of Realtors advised that she intended to address the mechanics lien portion of the bill, in support of this proposed amendment which contains clarifying language for the House floor amendment. This relates to "The Notice of Intent to Perform" (Attachment 6). Chairman Vidricksen advised no action would be taken on any portion of **HB 2809** in today's meeting. Committee will return to it next Tuesday.

Roy Worthington, Kansas Land Title Association spoke in opposition to extending the time period for filing mechanics liens (Attachment 7).

Patrick Tolle, National Association of Credit Management; Otto Buche, Stanion Wholesale Electric Company, and Kenneth R. Keller, Wester Extralite Company all testified in support of the House floor amendment portion of **HB 2809** (Attachment 8). They feel this will result in fewer liens being filed, not more because all parties involved will have more time to work out problems. Their testimony includes a partial list of organizations throughout the State of Kansas who support their stated position on this issue

Members questioned conferees and discussed the background of the bill.

CONTINUATION SHEET
MINUTES OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE
March 8, 2000

Approval of minutes

Senator Jordan moved to approve minutes of the March 7, 2000 meeting. Senator Salmans seconded the motion. Motion carried.

The Chair announced a Joint Senate and House Transportation Committee field trip to several construction sites in northeast Kansas, scheduled for March 13, 2000.

The meeting adjourned at 10:00 a.m.

The next meeting is scheduled for March 9, 2000

**SENATE TRANSPORTATION & TOURISM COMMITTEE
GUEST LIST**

DATE: MARCH 8, 2000

NAME	REPRESENTING
Denny Burgess	NACM
Patrick Colle	NACM
Kenneth R. Miller	Western Ethanol / NACM
Otto Bucher	STANION WHOLESALE ELEC. CO. INC.
Erik Sartorius	Johnson Co. Board of Realtors
Janet Stubbs	Ks Bldg. IND. ASSN
Martha Jean Smith	KMHA
BET BROWN	mid. America Unionsmen ASPN (M.A.A)
Chuck Stokes	KS Bankers Assoc
Scott Brunner	DOB
Roy WORTHINGTON	KS LAND TITLE ASSN
John Peterson	Ks Government Consulting
Lee WRIGHT	FARMERS INS.
Wendy Williams	KAPA
Sheila Walker	KDOR - DMV
Rick Scheibe	KDOR Vehicles
Roger Traudo	KGC
Tom Whitaker	Ks MOTOR CARRIERS ASSN
BUD BURKE	ISSUES MGMT. GROUP, INC
Daniel Hewes	KS Farm Bureau Capital Experience
Dick Bauman	KDOT
Tom Burgess	NACM

Pratt, Kansas
September 1, 1999

The Honorable Tim Emert
Chairman, Judiciary Committee
Kansas Statehouse
Topeka, Kansas 66612

RE: **Kansas Mechanic's Lien Laws**

Dear Senator Emert,

The Judiciary Committee will be conducting a hearing, on September 8, 1999, to consider a change in Kansas Mechanic's Lien laws to extend the time allowed for filing such liens on commercial property. Because I may not be able to attend that hearing, I wanted to write to you to give you my thoughts on this subject. Our company is a Kansas-owned business with branch locations in seventeen Kansas cities and three Missouri cities, and we are very interested in this issue.

Stanion Wholesale Electric Company is a wholesale distributor of a wide variety of electrical products and services, covering all of Kansas and portions of Missouri, Oklahoma, Texas, Colorado, and Nebraska. Well over half of our sales are to contractors, involving products that are used in the construction, remodeling, and maintenance of facilities. The construction industry operates with various levels of contractors and suppliers providing products, services, and labor with corresponding contractual relationships. Most of this business is done on a credit basis, with contractors and their suppliers not receiving payment until work is properly completed. Proper and timely performance of services and payment for services is critical to the construction industry in general and to the profitability and success of contractors and suppliers.

There are a number of reasons why credit billing practices in the construction industry cause long delays in payment of invoices. Before a subcontractor can pay its supplier, it must approve the supplier invoice for payment. Before such approval can be given, the subcontractor must often obtain approval and payment from the general contractor. The general contractor may not be able to pay the subcontractor until the owner approves and pays for work of the general contractor. The normal procedures and common problems and delays of construction mean that subcontractors, whether as contractors or suppliers, often have not been paid when their ninety-day deadline for filing a mechanic's lien has passed.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-08-00
ATTACHMENT: 1

Colorado and Missouri allow a six month time period for the filing of mechanic's liens, while Nebraska allows four months. We urge the Kansas Legislature to modify Kansas law to allow six months for the filing of mechanic's liens. Many of the attorneys who work in construction law in the Kansas City area find that the short time frame in Kansas law requires them to file many more liens than they have to file in Missouri. This is an important point for consideration by those who believe that extending the time limit will result in more liens being filed.

An extension of the time limit would benefit all interested parties. Property owners would still have the same options to protect themselves against duplicate costs, with more time to clean up problems. Contractors and suppliers would have more time to clear up payment questions and disputes and face less pressure to quickly file liens. We should all welcome opportunities for concerned parties to resolve differences without having to formally involve legal processes.

We respectfully request that you act favorably on our request to change Kansas law by extending the time allowance for filing mechanics' liens. Thank you for your attention and consideration.

Sincerely,

Stanion Wholesale Electric Company, Inc.

Bill Keller
President

BK/cle

SUPPORTERS OF HOUSE BILL NUMBER 2809 AS AMENDED

BUSINESSES:

COMPANY NAME	LOCATION	NAME & TITLE
WESTERN EXTRALITE CO.	5 LOCATIONS IN KANSAS	THOMAS E. ISENBERG, PRESIDENT
KRIZ-DAVIS ELECTRIC	SALINA, KS	JOHN JACOBS, MANAGER
M & W ELECTRIC	SALINA, KS	MIKE WEAVER, OWNER
B & W ELECTRIC	SALINA, KS	BILL PRATT, OWNER
STAR ELECTRIC SUPPLY	WICHITA, KANSAS	BARRY MCEACHREN, PRESIDENT
STANION WHOLESALE ELECTRIC COMPANY, INC.	17 LOCATIONS IN KANSAS	BILL KELLER, PRESIDENT
COUNTERTOPS PLUS, INC.	WICHITA, KANSAS	THOMAS TRAYLER, OWNER
NAT'L ASSOC. OF CREDIT MANAGEMENT	KANSAS CITY DIV.	PATRICK TOLLE, PRESIDENT
GRAYBAR ELECTRIC CO., INC.	WICHITA & OLATHE	REIDERS ABEL DISTRICT FINANCE MANAGER
CONSOLIDATED ELECTRIC DIST., INC. RENSENHOUSE ELECTRIC SUPPLY, AMERICAN ELECTRIC COMPANY	10 LOCATIONS	RONALD SCHUMACHER DIVISION CREDIT MANAGER
CARGILL NORTH AMERICAN GRAIN	25 LOCATIONS	PAUL D. CALAHAN, SENIOR CREDIT ANALYST

ORGANIZATIONS:

- GREATER KANSAS CITY CHAMBER OF COMMERCE
- NATIONAL ELECTRICAL CONTRACTORS ASSOC. OF KANSAS
- INDEPENDENT ELECTRICAL CONTRACTORS
- GREATER KANSAS CITY CHAPTER AMERICAN SUBCONTRACTORS ASSOC.
- ELECTRIC LEAGUE OF MISSOURI & KANSAS



Associated General Contractors of Kansas, Inc.

P.O. Box 5253 • Topeka, Kansas 66605-0253 • 200 West 33rd • Topeka, Kansas 66611
Telephone 785-266-4015 • Fax 785-266-2561
Email: agcks@agcks.org • Webpage: www.agcks.org

March 6, 2000

Senator Ben Vidricksen, Chairman
Transportation and Tourism Committee
300 SW 10th Ave. Room 143 N
Topeka KS 66612 1504

Dear Chairman Vidricksen:

Due to a long standing commitment to be out of state I am unavailable to attend the March 8 meeting of the committee for hearings on HB 2809.

AGC of Kansas does oppose the floor amendment that was added to the bill. If the amendment were removed, we would have no concern about the bill.

Enclosed is written testimony of our position which I will make available to the committee members. Thank you for your consideration.

Sincerely,

Thomas E. Slattery

cc: Committee Members

———— OFFICERS ————

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President

Darwin McClung
Vice President

Steve Mohan
Treasurer

Corey Peterson
Executive Vice President

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 2

———— DIRECTORS ————

Nick Dondlinger
Dan Foltz
Mark Hutton
Tim Nightingale
Beverly Sauerwein

Wayne Sloan
Dennis Smith
Bob Wertenberger
Marty Kennedy, Subcontractor
Doug Kirkland, Subcontractor
Craig Stromgren, Associate

NATIONAL DIRECTORS
James R. Grier, III
Richard M. Kerschen



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TESTIMONY OF AGC OF KANSAS BEFORE
SENATE TRANSPORTATION & TOURISM COMMITTEE
IN OPPOSITION TO HB 2809

March 8, 2000

by Thomas E. Slattery

The Associated General Contractors of Kansas oppose House Bill 2809 insofar as the Bill amends K.S.A. 60-1102 and K.S.A. 60-1103. These are the statutes which provide for contractor's mechanic's liens and subcontractor's mechanic's liens respectively. The Bill would amend K.S.A. 60-1102 with respect to commercial construction to allow a contractor one hundred eighty (180) days after finishing its work on a project to file a mechanic's lien as opposed to the four (4) months which is currently allowed. The Bill would also amend K.S.A. 1103 to allow a subcontractor or material supplier on a commercial construction project one hundred eighty (180) days to file a mechanic's lien rather than the three (3) months which is currently allowed.

The Associated General Contractors of Kansas (AGC) has consistently opposed changes to the mechanic's lien laws that affect commercial construction. The commercial construction industry involves complex relationships between owners, contractors, subcontractors and suppliers. In order to successfully complete almost any significant construction project, these entities must work together and understand their rights and responsibilities towards one another. The lien laws are important not only as a means of collecting debts but also as a means of applying leverage between the parties to adjust disputes that may arise. The AGC feels that the players in the

building construction industry understand the lien laws and have learned to use them effectively in regulating the industry.

The AGC feels that to change the lien laws, particularly by increasing the time limits allowable for filing a mechanic's lien would disrupt the construction industry.

For example, one of the consequences of increasing the time limits for filing mechanic's lien would be to extend the time for ensuring that a project has been finally completed. It is to the benefit of all parties involved in a construction project to complete the project with certainty in a timely manner. By extending the time for filing both contractors and subcontractors or material supplier's mechanic's liens, the time to ensure that all facets of a commercial construction project is effectively extended by three (3) months. We believe this would be disruptive to the industry.

For these reasons, the Associated General Contractors of Kansas opposes House Bill 2809.

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 kbacs@ink.org

March 8, 2000

TO: House Transportation Committee

FROM: Chuck Stones, Kansas Bankers Association

RE: HB 2809: Materialman's Lien Amendment

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you regarding HB 2809. My testimony today is concerned only with the amendment added to the bill on the floor of the House.

The amendment was to K.S.A. 60-1102 and K.S.A.60-1103, and would effectively extend the period of time, from 3 months to 6 months, that a contractor or subcontractor would have for filing a materialman's lien on property other than residential property.

Our concern is that by extending the time in which a lien could be filed, the legislature would also be extending the time in which the title to that property would be clouded, which may end up delaying the closing of the transaction. This has the potential of creating a hardship on the property owner who is trying to finalize the transaction.

We understand that some contractors may feel that 90 days is not enough time to evaluate whether they need to file a lien on the property, however, there are many other businesses that are also suppliers of material or labor of another sort that do not even have the privilege of having a statutory lien granted to them.

In a world where competition demands that we process other business transactions even faster, we question the need to slow down the process for non-residential construction transactions.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 3

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KANSAS MOTOR CARRIERS ASSOCIATION

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LEGISLATIVE TESTIMONY

Presented by the

KANSAS MOTOR CARRIERS ASSOCIATION

**Appearing before the Senate Transportation & Tourism Committee
Senator Ben Vidricksen, Chairman
Wednesday, March 8, 2000
State Capitol, Topeka, Kansas**

SUPPORTING HOUSE BILL NO. 2809

As approved by the House Transportation Committee

MR. CHAIRMAN AND MEMBERS OF THE SENATE TRANSPORTATION & TOURISM COMMITTEE:

My name is Tom Whitaker, director of governmental relations and membership services for the Kansas Motor Carriers Association. I appear here this afternoon on behalf of our 1,475 member firms and specifically our Towing and Recovery Division members.

We are here today in support of House Bill No. 2809 as approved by the House Transportation Committee, which updates the Towing and Recovery Lien Law, that was approved by the Legislature in 1987. An amendment was added to the bill during debate on the House floor concerning mechanics liens. Subsequently, the bill was referred separately to this Committee and the Senate Judiciary Committee. We have no position on the amendment and feel that this Committee should remove the House floor amendment from House Bill No. 2809 and let the Senate Judiciary Committee handle the mechanics lien portion of the bill.

The towing and recovery lien law only applies when a towing company is properly registered with the Kansas Corporation Commission and the owner of the motor vehicle or law enforcement orders the towing service.

Current law requires towing companies to comply with the following procedure to satisfy a lien on a motor vehicle:

- If the name of the owner of the vehicle is known, notice must be given within 15 days that the vehicle is being held subject to satisfaction of the lien.
- If the vehicle has a value of less than \$500.00, within 60 days of taking possession of the vehicle, the towing company must request verification of the last registered owner and any lienholders from the Kansas Department of Revenue Division of Vehicles.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-08-00
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Pro-Truck PAC Chairman

MARVIN ROBERTSON
J.M.J. Projects, Inc.
Public Relations Chairman

MIKE KELLEY
Executive Director

House Bill No. 2809 – Page 2

- If the vehicle has a value of \$500.00 or more, the towing company must request the verification of ownership between the 45th and 60th day of possession of such vehicle. This provision was requested by the insurance industry to ascertain that if the vehicle were reported stolen, the insurance company would be the owner of record and notified of the vehicle's location.
- Notice of sale shall be provided by certified mail to the owner and any lienholders within 10 days after receipt of the verification from the Division of Vehicles that the vehicle will be sold if no response is received within 15 days.
- Notice of sale must be published in the newspaper once a week for three consecutive weeks.
- All sales are at public auction.
- All proceeds, in excess of the value of the lien, are to be deposited with the county treasurer and subject to the order of the person legally entitled thereto.
- All notices and publications of satisfaction of the lien must be filed with the county clerk's office.
- Failure to give any notices required by lien law invalidates the lien held by the towing company.

House Bill No. 2809 proposes to streamline current law to reduce the paperwork burden placed on towing companies to dispose of abandoned vehicles. The towing industry has become the litter control officers for our streets and highways. Everyday, people abandon their vehicles along the roadside when such vehicle has outlived its usefulness. Tow companies are called by law enforcement to pick up these vehicles, store them and then proceed with the Towing and Recovery Lien Law to recover whatever compensation for their service they can.

KMCA has proposed the following changes to the Towing and Recovery Lien Law:

- Increase the \$500.00 threshold to \$1,000.00 to reflect inflation since 1987.
- Reduce the number of times notice must be published in the newspaper from three times to once.
- Eliminate the requirement that any excess proceeds be deposited with the county treasurer. In most instances, the tower loses money on the disposal of abandoned vehicles. The ability to keep any excess would offset the losses.
- Eliminate of invalidation of the lien if a notice is missed and provide that the storage charge shall stop until such time that all notice requirements are complied with.

House Bill No. 2809 – Page 3

We believe that the changes found in House Bill No. 2809 will ease the burden on the towing industry and at the same time protect the vehicle owner and lienholder. We ask for your favorable consideration of House Bill No.2809 as approved by the House Transportation Committee.

We thank you for the opportunity to appear before you today, and would be pleased to answer any questions you may have.

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LEGISLATIVE



TESTIMONY



2300 SW 29th St., Topeka, KS 66611 ♦ 785-266-4540 Fax: 785-266-7953 ♦ Email: janetstubbs@compuserve.com

TO: SENATE TRANSPORTATION & TOURISM
FROM: KANSAS BUILDING INDUSTRY ASSOCIATION
RE: HB 2809

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Kansas Building Industry Association, appearing in opposition to HB 2809 as amended by the House Committee of the Whole.

As a member of the group which met and worked out a compromise on the filing of mechanics liens on real property, we oppose any amendments to the mechanics lien laws.

We believe that suppliers and subcontractors have been operating since 1987 and 1992 amendments without complaints except in the metropolitan Kansas City area. We continue to believe that suppliers should be responsible for checking the credit of the businesses ordering the material or the general contractor with which a subcontractor has the contractual agreement to do the agreed upon work. We think the safeguards contained in current law protect the consumer if handled in accordance with the statute.

We do not feel that revisions in the law for commercial construction will make operation of business in the metropolitan area any less confusing because of the Missouri law. The next request will be that the law be amended for filing of liens on residential property so the businesses won't have to know whether the material is going to a commercial or residential jobsite.

We urge you to remove the House floor amendment on HB 2809 if you support the provisions of the bill in its original form.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 5



Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
TELEPHONE 785/267-3610 • 1-800-366-0069
FAX 785/267-1867



TO: THE SENATE TRANSPORTATION COMMITTEE
FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: MARCH 9, 2000
SUBJECT: HB 2809, Sub-contractor Liens

Thank you for the opportunity to testify. The Kansas Association of REALTORS® supports the amendment offered to you by Representative Campbell. The subcontractor's lien law is the only place where a third party, someone who was not a party to a contract, can be forced to pay the damages when one of the parties breaches the contract. The potential for problems is particularly high in the new home construction arena.

The *Owen Lumber Company vs. Chartrand* decision puts the innocent purchaser in jeopardy of being forced to pay for the contractor who doesn't pay their bills. The "Notice of Intent to Perform" statute K.S.A. 60-1103(b) was created in 1986 in order to prevent a new homebuyer from being hit with a subcontractor lien after they had completed the purchase of their new home. In order to file a subcontractor lien on a new residential property after the purchaser closes on the property, the subcontractor must have filed a "Notice of Intent to Perform" at the courthouse.

In this case it appears that, because the lien was filed before title transferred to the purchaser, the Court of Appeals ruled that a Notice of Intent to Perform was not required in order for the lumber company to file their lien.

Additionally, the decision held that the language in K.S.A. 60-1103(c) stating that the notice of the lien must be given "...to any party obligated to pay the lien" refers to the contractor, not the homebuyer. This is a problem because, if the subcontractor files the lien prior to closing, the homebuyer inherits the debts when they close on the property. They actually do become "obligated to pay the lien", because in order to remove the lien from their property, they must pay off the debt.

The proposed amendment clarifies that "any party obligated to pay the lien" includes any purchaser who has a sales contract pending, as well as any party who has filed a notice of equitable interest. This would prevent the scenario that led to the *Owens* case by requiring a subcontractor to put everyone on notice as to the existence of the lien. We believe this language represents the underlying intent of the law, which is to give full notice to as many affected parties as possible.

We ask for your favorable consideration of this amendment. Thank you for the opportunity to testify.

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 6

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1 sumed for the improvement of such real property.

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

, including any equitable owner of record or any contract holder for purchase,

, including any equitable owner of record or any contract holder for purchase,

18 [(d) *Rights and liability of owner.* The owner of the real property
19 shall not become liable for a greater amount than the owner has
20 contracted to pay the original contractor, except for any payments
21 to the contractor made:

No action to foreclose any lien may proceed or be entered against residential real property in this state unless a judicial determination is first made that the contract holder for purchase of such residential real property and any equitable owner of record were actually and personally served with notice in accordance with the provisions of this subsection.

22 [(1) Prior to the expiration of the ~~three-month~~ *time* period for
23 filing lien claims as provided in subsection (a)(1), if no warning state-
24 ment is required by K.S.A. 60-1103a, and amendments thereto; or

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

28 [The owner may discharge any lien filed under this section which
29 the contractor fails to discharge and credit such payment against
30 the amount due the contractor.]

31 Sec. ~~4~~ [6.] K.S.A. 8-1103, 8-1104, 8-1106 and ~~8-1108~~, 8-1108, 60-
32 1102 and 60-1103] are hereby repealed.

33 Sec. ~~5~~ [7.] This act shall take effect and be in force from and after
34 its publication in the statute book.

KANSAS LAND TITLE ASSOCIATION
434 N. MAIN
WICHITA, KS 67202

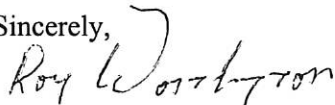
TO: Senate Committee on Transportation

RE: House Bill 2809

1. Kansas Land Title Association is opposed to extending the time period for filing mechanic's liens;
2. The current law is a fair balance between the rights of property owners to protect their title to real estate and the rights of contractors and subcontractors to file liens if their bills for material and/or labor are unpaid (i.e. currently 4 months for contractors and 3 months for subcontractors). It would be unfair to property owners to extend the time period for filing liens to 180 days after work is completed;
3. Under the current law, contractors and subcontractors are already "privileged" and have the "extraordinary right" to file liens after the date supplies, material, equipment or labor are last furnished to the job, and gaining a lien priority which dates back to the commencement of the furnishing of such labor, equipment, material or supplies to the job site. No other business enjoys such a privilege to assist in obtaining payment for material/labor/services rendered;
4. Extending the time period for filing liens encourages contractors and subcontractors to make faulty credit decisions. It is not the function of the legislature to assist businesses in receiving payment for services;
5. The existing law has been in effect for decades; recent changes to the law have been to reduce the harshness of the law to consumers. Extending the time for filing liens will increase the sometimes harsh effect of the law.
6. Extending the time period will also make titles to real estate that much more uncertain to the prospective buyers and mortgage lenders;
7. Most mortgage lenders in Kansas require title insurance with mechanic's lien coverage when making a mortgage on commercial real estate; extending the time period for filing mechanic's liens will only slow the process of mortgage lending while title insurance companies determine the risk of providing such coverage and in many cases prevent title insurance companies from providing mechanic's lien coverage.

The Kansas Land Title Association requests that the committee delete the mechanic's lien provision from the bill.

Sincerely,



Roy Worthington
Chairman, Legislative Committee

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 7

**PRESENTED TO SENATE TRANSPORTATION
& TOURISM COMMITTEE
MARCH 8, 2000**

Kenneth R. Keller, Controller
Western Extralite Company
1470 Liberty
Kansas City, MO 64102-1018
Telephone (816) 421-8404

Patrick Tolle, President
National Association of Credit Management, Kansas City Div. Inc.
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Otto Buche, Vice President
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2958 Fourwheel Drive
Lawrence, KS 66047
Telephone (785) 841-8420

SENATE TRANSPORTATION & TOURISM
COMMITTEE -DATE: 3-8-00
ATTACHMENT: 8

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**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**Thomas M. Moore, Attorney at Law
Moore, Hennessy & Freeman, P.C.
Kansas City, MO**

February 2000

MHF

MOORE HENNESSY & FREEMAN, P.C.

ATTORNEYS AT LAW

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KANSAS OFFICE:

11020 KING STREET, SUITE 100
OVERLAND PARK, KANSAS 66210

May 18, 1999

The Honorable Richard Bond
State Capitol Building
Topeka, Kansas 66612

Re: Mechanic's Lien Law

Dear Senator Bond:

I have been practicing law in the Kansas City Metropolitan Area for 28 years with my primary field of expertise in construction contract matters, construction claims and government contract claims. My firm and I have represented general contractors, subcontractors and material suppliers, as well as owners and surety companies. Our representation, while focused primarily in Missouri and Kansas, has extended nationally in resolving disputes through many available remedies. One of the primary remedies utilized for our clients, especially subcontractors and suppliers, for collection of sums due is through various mechanic's lien laws. The laws vary from state to state with respect to notices, time for filing liens and the availability of the remedy for use by various sub-tiers of contractors and suppliers on and to a construction project. We have filed liens in a number of different jurisdictions to accomplish payment to our clients.

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

without the real estate and improvements being encumbered. Based upon our experience, negotiation occurs in a proportionately higher percentage of the situations without liens being filed in Missouri than in Kansas. In our opinion, voluntary resolution of disputes between the owner and contractors is obviously the most preferential manner to remedy disputes. It is not unusual for negotiation towards final payment at the end of a project which causes the flow down payments to subcontractors and suppliers to be slower and, in many situations, longer than 90 days. In Kansas, this results in mechanic's liens which can then polarize the parties resulting in protracted and expensive litigation.

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

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

Extending the time in which any contractor or supplier may file a lien, in our opinion benefits all parties involved in the construction project- owners, banks, contractors, subcontractors

and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than a first resort. The six (6) month time limitation, based upon our experience, has certainly resulted in fewer liens being filed in slow payment situations than the Kansas three (3) month time limitation for subcontractors or suppliers and the four (4) month time limitation for general contractors. Again, that result, in our opinion, is beneficial for all parties to the construction project including lenders and owners. It also acknowledges what have been presently accepted construction payment cycles.


Given the benefits which flow overall to all of the parties, the six (6) month time limitation, in our opinion, ought to be enacted to replace the present four (4) and three (3) month Kansas mechanic's lien law time limitations. We are enclosing the revisions we propose to the present Kansas mechanic's lien law to increase the time in which contractors or suppliers may file a lien to six (6) months rather than the present four (4) months for an original contractor and three (3) months for a subcontractor or supplier.

Note that we have restricted the increased filing time to non-residential projects, Payment cycles and generally accepted procedures, based upon our experience, differ greatly between commercial and residential projects and we believe warrant different filing times. The Legislature, through notice provisions, has treated commercial and residential projects differently in the past and we believe the two disciplines, in these circumstances, also warrant the differing limitations.

We would be happy to meet with you or any of your associates to further discuss these matters and to respond to any inquiries if you believe that would be beneficial.

Yours very truly,

MOORE, HENNESSY
& FREEMAN, P.C.

By: 
Thomas M. Moore

TMM:aem

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**Kenneth Keller, Controller
Western Extralite Co.
Kansas City, MO**

February 2000

Western EXTRALITE Company

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

1470 Liberty Street • Kansas City, Missouri 64102-1018 • (816) 421-8404 • Fax (816) 421-6211
e-mail www.westernextralite.com

ISO 9002



Certificate Number
FS 35294

July 27, 1999

The Honorable Tim Emert
Chairman of the Interim Judiciary Committee
Capitol Building/Room 356-E
Topeka, KS 66612

Dear Senator Emert:

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

Mechanic's liens are one of the primary remedies available to suppliers of the construction industry to collect payment on unpaid sales. Mechanic's Lien Laws in Kansas and Missouri are different. Attached you will find a comparison in the time for filing liens between Missouri and Kansas as it affects the general contractor, subcontractor, and the supplier to both.

Suppliers to subcontractors in Kansas, whether they are plumbers, electricians, etc., have three months to file a mechanic's lien. Those same suppliers in Missouri have a 6-month filing period. The most common used billing term in our industry is as follows:

1. The billing cycle runs from the 26th of one month to the 25th of the following month.
2. Payment is due, if no cash discount is offered, 30 days after the close of the billing cycle. In reality, this is 35 days, which runs it through the end of the month. Merchandise invoiced through the 25th of the month is normally discountable on the following 10th and would be due at the end of the following month. However, invoices dated the 26th are not due the following 10th, but the 10th of the next month, and are still considered paid within billing terms. Thus, an invoice dated on January 26th could be 65 days old and still paid within terms. Therefore, an invoice that is only 25 days past due is at the current deadline for filing mechanics liens in Kansas.

Our customers often pay our invoices from payments they receive from the general contractor. There are a variety of reasons why they may wait 60 to 90 days before they get paid. Payments are made on construction contracts monthly and delays frequently occur. The supplier, on the other hand, has to file their liens within 90 days to avoid losing their lien rights. There are many issues to consider before filing a lien:

1. The expense of filing and then releasing liens when payment is received a little late.

SERVICE CENTERS

in Missouri

Lee's Summit
1020 S.E. Hamblen Road
Lee's Summit, MO 64081-2936

N. Kansas City
1124 Howell
N. Kansas City, MO 64116-4113

St. Joseph
1302 Frederick Avenue
St. Joseph, MO 64501-2006

Sedalia
1501 Thompson Boulevard
Sedalia, MO 65301-2246

Warrensburg
608 N. Ridgeview Drive
Warrensburg, MO 64093-9337

Lawrence
1811 West 31st Street
Lawrence, KS 66046-4339

Leavenworth
4601 Brewer Place
Leavenworth, KS 66048-50680

in Kansas

Manhattan
221 Colorado Street
Manhattan, KS 66502-6298

Olathe
1708 E. 123rd Street
Olathe, KS 66061-5882

Topeka
4024 S. Topeka Boulevard
Topeka, KS 66609-1296

8-7

July 27, 1999

Page 2

The Honorable Tim Emert

2. The profit margins in our industry are very close and do not provide for these additional costs.
3. The administrative costs for monitoring and handling liens is extremely time-consuming and expensive.
4. Most importantly, we spend considerable time developing relationships with our customers. These relationships are destroyed when a lien is filed.

We believe the Kansas law should be changed to a filing time of 6-months, which is currently being used in both Missouri and Colorado. This would result in fewer liens being filed and a greater time period to resolve issues. Our attorney tells us that they file three times the liens in Kansas than they do in Missouri. This is a result of the time differential for filing. The change to a 6-month billing period would benefit the owner, the general contractor, the subcontractor, and the supplier.

We urge the Interim Judiciary Committee to recommend the adoption of a law to lengthen the Mechanic's Lien filing period to 6-months as outlined above. The construction industry is critical to the well-being of our economy and everything possible should be done to help those who finance the construction activity. All parties would benefit from this suggested improvement.

Thank you for your attention and cooperation.

Sincerely,



Kenneth R. Keller
Controller

/bb
Enclosures

LIEN LAWS – KANSAS AND MISSOURI

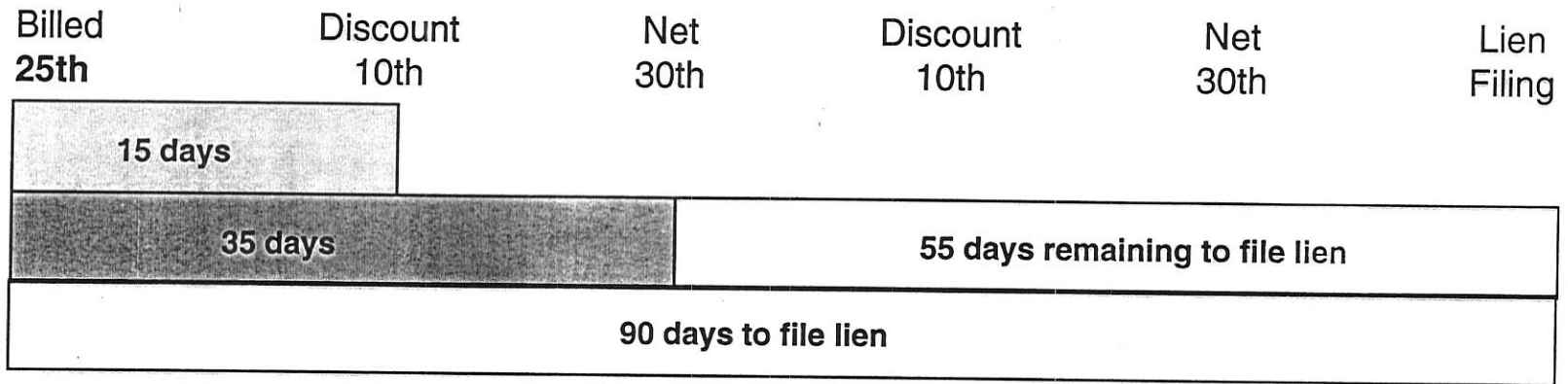
<u>Nonresidential Property</u>	<u>Time for Filing Lien *</u>	
	KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months – Must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor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

* From date of last material delivered or labor performed.

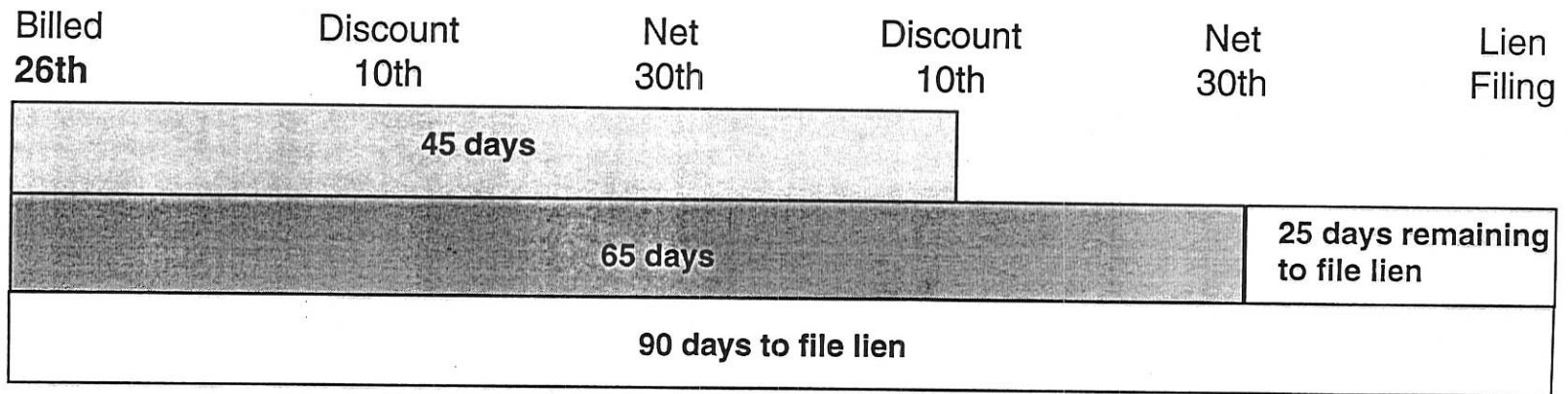
Time Line — 10th Prox. Payment Term

8-10

Example 1:



Example 2:



**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**H. Patrick Tolle, President
NACM - Kansas City Division, Inc.
National Association Of Credit Management**

February 2000



NATIONAL ASSOCIATION OF CREDIT MANAGEMENT

10670 BARKLEY
P.O. BOX 12370
OVERLAND PARK, KS 66212

KANSAS CITY DIVISION, INC.
GENERAL OFFICE 913-383-9300

July 21, 1999

The Honorable Tim Emert
Capitol Building/Room 356-E
Topeka, Ks 66612

Dear Senator Emert:

The National Association of Credit Management, founded in 1896 is committed to enhancing, promoting and protecting the many interests of credit management. The Association represents business credit grantors in many types of industries, including manufacturing, wholesaling, service industries and financial institutions. Currently the NACM Kansas City Division represents over 1000 such members.

Part of the mission of NACM is to promote good laws for sound credit. Our Government Affairs Committee is more important than ever today. NACM continually makes members' views known to representatives in Washington and at the state levels, ensuring that sound credit management practices are recognized.

As chairman of the Interim Judiciary Committee, we are asking that you support the proposed change in the Kansas Lien Laws, extending the time for filing of a mechanics lien from the present 90 day period to 180 days. The Association has adopted that position presented by Thomas Moore in his letter to Senator Bond of May 18, 1999 (Attached).

On behalf of NACM - Kansas City Division, Inc., its board of directors and members - Thank you.

Very truly,

H. Patrick Tolle, President
NACM - Kansas City Division, Inc.

HPT:dr

cc: Ken Keller, Government Affairs Chairman

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**Paul D. Calahan, CCE
Senior Credit Analyst
Cargill North American Grain**

February 2000

Accordingly, we are asking the Kansas Legislature to give serious consideration to increasing the time allowed to file Mechanic's Liens to 6 months. This would allow:

- A. Contractors/sub contractors to satisfactorily conclude their business.
- B. Allow a window for contractors, sub contractors, and suppliers to resolve conflicts which might arise.
- C. It leaves the ultimate customer out of the process until it becomes absolutely necessary that a mechanic's lien be filed.

Again, we're not advocating changing any of the remedies that suppliers need to have, but what we are asking is that we allow sufficient time for the "normal course of business" to occur before provisions of the Mechanic's Lien Law are implemented.

Your kind consideration of this issue with your colleagues would be greatly appreciated.

Sincerely,



Paul D. Calahan, CCE
Senior Credit Analyst