

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On March 14, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - Excused
Representative Andrew Howell - Excused
Representative Tom Klein - Excused
Representative Rick Rehorn - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Sheila Walker, Director of Vehicles, Department of Revenue, Division of Vehicles
Todd Butler, President, Kansas Merchant Security Association
Elwaine Pomeroy, Kansas Collectors & Credit Attorneys Association
Francis Kastner, Kansas Food Dealers Association
Marlee Carpenter, Kansas Retail Council
Senator Karin Brownlee
James Freeman, Moor, Hennessy & Freeman, Attorneys at Law
Marvin Allen, Permanent Paving
Roy Worthington, Kansas Land & Title Association
Chuck Stones, Kansas Bankers Association
William Larson, General Counsel, Association of General Contractors of Kansas
Janet Stubbs, Kansas Building & Industry Association

Hearings on **SB 67 - driving under the influence, suspension of driving privileges**, were opened.

Sheila Walker, Director of Vehicles, Department of Revenue, Division of Vehicles, informed the committee that the proposed bill would remedy the conflict where the blood alcohol content of a driver under the age of 21 measures above .08, the license is suspended for a period of one year or the length of the diversion. Some courts are allowing a 30 day license suspension rather than one year. (Attachment 1)

Jim Hanni, American Automobile Association of Kansas, provided the committee with written testimony in support of the bill. (Attachment 2)

Hearings on **SB 67** were closed.

Hearings on **HB 2549 - worthless check; damages**, were opened.

Todd Butler, President, Kansas Merchant Security Association, appeared before the committee as a proponent of the bill. He explained that the proposed legislation would allow merchants the ability to send a notice of a worthless check by first class. This would be less expensive to the merchant. It would also allow merchants to set their return check service charge at \$30 and remove the posting requirement. Finally, it amends the definition of a worthless check to one that "is dishonored and not paid after presentment and demand" (Attachment 3)

Elwaine Pomeroy, Kansas Collectors & Credit Attorneys Association, informed the committee that in most legal instances notices are given by regular mail, therefore saving about \$4.75 per certified letter. (Attachment 4)

Francis Kastner, Kansas Food Dealers Association, appeared in support of the bill. She stated that customers who make honest mistakes are more likely to make good on the check immediately. It's those who want the goods and do not care about being honest that the bill addresses. (Attachment 5)

Marlee Carpenter, Kansas Retail Council, makes two significant changes that benefits businesses: allowing the demand to be sent by first class and the removal of the requirement that a retailer must place a sign informing of the amount of the service charge. ([Attachment 6](#))

Paul Davis, Kansas Bar Association, did not appear before the committee but requested his written testimony in support of the proposed legislation be included in the committee minutes. ([Attachment 7](#))

Hearings on **HB 2549** were closed.

Hearings on **SB 197 - extending filing time on certain mechanics liens**, were opened.

Senator Karin Brownlee thanked the Chairman for holding hearings on the bill. She explained that it would simply extend the time for filing mechanics' liens for contractors and subcontractors to 120 days for residential and 180 for property other than residential property.

James Freeman, Moor, Hennessy & Freeman, Attorneys at Law, informed the committee that the average costs of filing a mechanics lien is \$1,500 and that there was 660 filed in Johnson County last year. Extending the time in which a lien can be filed benefits all the parties involved by determining if there is a dispute or if payment is at issue and gives them an attempt to resolve it. ([Attachment 8](#))

Marvin Allen, Permanent Paving, stated that he has talked to many companies about extending the filing time on mechanics liens and they all support it. The number of liens that are filed are a tremendous costs to the state and county court systems. ([Attachment 9](#))

Written testimony from Commerce Bank & Western Retail Implement & Hardware Association stated their support of the bill and was distributed ([Attachments 10 & 11](#))

Roy Worthington, Kansas Land & Title Association, appeared in opposition to the bill. He commented that the only people that would benefit from the bill would be contractors. The current law is a balanced law that protects property owners and titles. ([Attachment 12](#))

Chuck Stones, Kansas Bankers Association, told the committee that they are concerned that by extending the time in which to file it would put the title in limbo and delay the closing on the loan. ([Attachment 13](#))

William Larson, General Counsel, Association of General Contractors of Kansas, would like to see the lien laws go unchanged. He doesn't see the need or reason to expand the rights. He believes that it would simply have the contractor paying at the end of 180 days instead of the 90 days. ([Attachment 14](#))

Janet Stubbs, Kansas Building & Industry Association, stated that they were concerned about extending the time to file liens on residential property, but have members that support and oppose extending the time on commercial property. ([Attachment 15](#))

Written testimony in opposition to the bill from Mid-America Lumbermens Association was distributed ([Attachment 16](#)).

Hearings on **SB 197** were closed.

Sheila J. Walker, Director
Division of Vehicles
915 SW Harrison St.
Topeka, KS 66626-0001



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Division of Vehicles

TESTIMONY

TO: House Judiciary Committee Chair Mike O'Neal
Members of the House Judiciary Committee

FROM: Sheila J. Walker, Director of Vehicles *Sheila J. Walker*

DATE: March 14, 2001

RE: Senate Bill 67

Chairman O'Neal and members of the House Judiciary Committee, my name is Sheila Walker, and I serve as Director of the Kansas Division of Motor Vehicles. Thank you for the opportunity to provide testimony today in support of Senate Bill 67.

The 1996 Kansas Legislature enacted zero tolerance, making it unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater. The law became effective in January 1997. The license sanction for a first occurrence was a 30-day suspension. On a second and subsequent occurrence, the license sanction was a 90-day suspension.

The 1999 Legislature made the license sanction even tougher for drivers under 21 whose blood alcohol content measures between .02 and .0799. Starting July 1, 1999, the license sanction for a first occurrence is a one-year suspension. On a second and subsequent occurrence, the license sanction is, again, one year. However, there's a discrepancy for drivers under 21 whose blood alcohol content is .08 or greater.

If the blood alcohol content of a driver under the age of 21 measures *above* .08, the license is suspended for one-year or the length of diversion. Some courts are allowing 30-day license suspensions, rather than a full year. The message this sends to teens is: **the more you drink, the less of a driver's license suspension you may serve.**

When the Division attempted to clean up this inequity a year ago, Chairman O'Neal was wisely quoted in the Topeka Capital-Journal as saying, "Obviously, we don't want our laws to be more lenient as the seriousness of the offense goes up."

March 14, 2001

We are once again trying to resolve this public safety concern this session. Our bill originally proposed a one-year license suspension for all drivers under the age of 21 whose blood alcohol content measures above .02.

The Senate Judiciary Committee amended the bill so drivers under 21 whose blood alcohol content measures above .08 face a one-year license suspension, and drivers under 21 whose blood alcohol content measures above .02 but under .08 face a 30-day license suspension, followed by a 330-day restriction. Driving privileges will be suspended for one year on a second or subsequent occurrence.

The Division supports the changes approved by the full Senate. We appreciate your consideration as well.

**Testimony in support of SB 67
House Judiciary Committee
March 14, 2001**

My name is Jim Hanni and I am the President and CEO for the American Automobile Association of Kansas. AAA Kansas is a membership organization representing over 135,000 motorists in our state.

On behalf of AAA Kansas and its members, I am here to urge your support of SB 67 regarding drivers license suspension.

According to the National Highway Traffic Safety Association, during a typical weekend, an average of one teenager dies every hour in a car crash. Almost 50 percent of those crashes involve alcohol. Alcohol-related highway crashes are the leading cause of death for adolescents and young adults in the U.S. Lesser penalties propagate the idea that drinking and driving is not a serious offense. By imposing stricter penalties, the message is sent to young drivers that drinking and driving is serious business.

In a public affairs survey conducted last October by AAA Kansas, 82 percent of our members said that their top safety concern as motorists was drunk drivers. This is no surprise considering that about 2 in every 5 Kansans will be involved in an alcohol-related crash sometime in their life. (KDOT) Seventy-two percent of the driving age public agrees that the penalties for drinking and driving should be more severe. (NHTSA)

With the severity of consequences from drinking and driving, coupled with the public support for stricter penalties, AAA Kansas urges your support of SB 67. Thank you.

TODD B. BUTLER

BUTLER & ASSOCIATES, P.A.
ATTORNEYS
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*GARY L. FANNING, JR.
*ADMITTED IN KANSAS AND MISSOURI

March 13, 2001

HOUSE JUDICIARY COMMITTEE

Re: House Bill 2549

Members of the committee:

My name is Todd Butler and I am a Lawyer. First, let me thank you for the opportunity to speak to you today on HB ~~2549~~. For 15 years I have practiced law. For most of that time, collections have been the mainstay of my practice. Collecting worthless checks is a significant part of my practice.

In every instance I am aware of, notice of the returned check is sent to the check writer by his or her bank, and two to three notices via mail or phone call are attempted by the check recovery company or merchant, before the check is ever sent to an attorney. After a check is received by an attorney he or she must send a 30 day demand for payment to comply with federal law, the Fair Debt Collection Practices Act and a 14 day demand for payment to comply with this Act, K.S.A. 60-2610. Nothing in this bill will alter the number of notices sent to the check writer.

It is only after the expiration of the 14 day demand that suit can be filed, if you want to take advantage of the attorney fees and damages provision allowed by this Act.

In my contractual relationship with merchants across Kansas I receive all of the attorney fees awarded by the court pursuant to K.S.A. 60-2610. I do not share in the return check service charge, and the check amount is returned in whole to the Merchant. The Merchant is responsible for all court costs and certified mail expense and recovers these amounts only if a recovery is made.

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Attachment 3

RESTRICTED MAIL

The current law requires that a demand for payment be sent to the debtor via registered mail advising him or her of the impending lawsuit and the addition of attorney fees and damages, if the check, service charge and registered mail charge is not paid within 14 days. This bill proposes that the demand be sent via first class mail.

For the month of January, I have kept track of the results of the registered mail returns in my office. The results are as follows:

- 46% of the registered letters were received by the check writer or someone at the home of the check writer,
- 38% of the registered letters were returned unclaimed, and
- 16% of the registered letters were returned for other reasons.

A large percentage of our registered mail is returned unclaimed. That means that the postal carrier believes that the individual receives mail at the address and at least two notices have been left by the postal carrier, notifying the individual that a registered letter needs to be picked up. There is no explanation as to why the mail is unclaimed other than that to a person in financial trouble no good news comes in certified mail.

If the purpose of the demand for payment is to put the check writer on notice, I can assure you that more individuals will receive the demand if it is sent by first class mail. In Shawnee County, the court has been sending hearing notices to criminal defendants using first class mail instead of certified mail for over one year. We know from the experience of the Shawnee County District Court that more criminal defendants are appearing in court.

In addition, the cost for restricted mail is now \$6.94 a letter. With the thousands of worthless checks being written, this puts a heavy financial burden on the Merchant.

POSTING OF THE RETURN CHECK CHARGES

Current law allows a \$10 return check service charge unless another amount, not to exceed \$30, is conspicuously posted. It is my belief that approximately 98% of all merchants charge \$30 for a return check service charge. This bill proposes to set the return check service charge at \$30 and remove the posting requirement.

In 1993 I was co-counsel in a class action lawsuit filed in Douglas County. One of the claims made was that the Merchant failed to conspicuously post a notice of the \$30 return check charge. Through my experience in that lawsuit I have learned that maintaining a notice of the return check charge is a monumental task for the Merchant. These stickers get picked on and removed by customers and their children, they are covered by displays placed by vendors, and they are covered by individuals putting up signs for community events and looking for lost dogs. Regardless of the difficulty, current law makes it the responsibility of the Merchant to post the notice and therein lays the liability.

In addition, it is impossible for the Merchant who makes home deliveries to maintain the sticker. Therefore, unless this Merchant can separate the check given at the store from the check taken on delivery all return checks must be charged at \$10.

INTEREST APPLIED

Pursuant to K.S.A. 16-204 interest accrues on all past due (liquidated) amounts at 10%, unless there is an agreement which specifies otherwise, except bad checks. Current law does not allow the collection of interest until after Judgment. This Bill would allow the addition of interest on worthless checks from the beginning. While this would only amount to pennies for the typical bad check claim, it would amount to significant dollars to Merchants who have large losses in worthless checks.

DEFINITION OF A WORTHLESS CHECK

Under current law, if an individual testifies that he or she thought they had sufficient funds in the account to cover the check the court would have to make a finding of intent to commit fraud, contrary to their testimony, in order to find that the check was by definition a worthless check. This Bill cleans up the statutory definition of giving a worthless check. When a check is dishonored and not paid after presentment and demand, by definition it is a worthless check.

REPEAL OF K.S.A. 60-2611

This bill proposes to repeal K.S.A. 60-2611. In the past I have as an alternative asked for attorney fees pursuant to K.S.A. 60-2611, should the court find that the check was not given with the intent to commit fraud. With the change of the definition of a worthless check, in under to this bill, this act is no longer needed.

I thank you for your time.

Respectfully,



Todd B. Butler

REMARKS CONCERNING HOUSE BILL 2549

HOUSE JUDICIARY COMMITTEE

MARCH 14, 2001

Thank you for giving me the opportunity to express support of House Bill 2549 on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

One of the changes that the bill makes is that the written demand for the payment of a check would be given by first class mail. There have been many studies which show very vividly that first class mail is much more likely to reach the intended recipient than is restricted mail. The change to first-class mail will result in more of the written demands actually reaching the persons who wrote the checks.

The establishment in the statute of a service charge of no more than \$30.00 without the necessity of posting a notice recognizes the reality that often worthless checks are given to a delivery person, such as a delivery person for pizza, where the person receiving the pizza would not have occasion to see a notice posted at the place of the pizza maker.

Our groups support the changes to the statute made in this bill.

Elwaine F. Pomeroy
For Kansas Credit Attorneys Association
And Kansas Collectors Association, Inc.

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3-14-01
Attachment 4



EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

OFFICERS

PRESIDENT
ARNIE GRAHAM
Emporia

HOUSE JUDICIARY COMM.

March 14, 2001

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

SUPPORTING HB 2549

BOARD OF DIRECTORS

CHAIRMAN
DUANE CROSIER
Seneca

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our members include retailers, distributors and manufacturers of food products throughout the State.

MIKE BRAXMEYER
Atwood

Grocers have always tried to give their customers the most value for the dollars spent in their stores. However, there are some people who intentionally write worthless checks, thereby causing the honest consumer, like you and me, to pay more for their groceries.

CARY BINNEY
Ulysses

If our customers write a bad check inadvertently, they still cause a lot of time and expense to the grocer for collecting on that check. We don't believe this bill targets the person who makes an error in the calculation of the balance in their check book.

MIKE FLOERSCH
Clay Center

DOUGLAS GARRETT
Sabatha

BRIAN GIESY
Osage City

The customer who makes an honest mistake is very likely to respond to the grocer's telephone call and pays the amount of the bad check. In most instances, the grocer is happy to get the money for the purchases and forgives the \$30 fee which he could collect.

SKIP KLEIER
Carbondale

GEORGANNA McCRRARY
Russell

JIM McGUFFEY
Cheney

When that is not the case, and the writer of a bad check ignores the written demand letter and further action is required, HB 2549 will help reduce the total amount of profit lost from uncollected bad checks.

JOHN McKEEVER
Louisburg

LEONARD McKINZIE
Overland Park

The bottom line in any business is that ALL the operating expenses incurred have to be paid before the business can continue to operate. We see no reason for the honest consumer having to bear the burden of paying for those who deliberately try to escape a debt.

CLIFF O'BRYHIM
Overbrook

J. R. WAYMIRE
Leavenworth

Thank you for allowing me to present our views and we urge you to recommend HB 2549 favorably.

BILL WEST
Abilene

Frances Kastner

Frances Kastner, Director
Governmental Affairs, KFPA

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

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3-14-01
Attachment 5

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2549

March 14, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Judiciary Committee
by

Marlee Carpenter
Executive Director, Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Marlee Carpenter and I am the Executive Director of the Kansas Retail Council, an affiliate of the Kansas Chamber of Commerce and Industry. I am here today in support of HB 2549, which makes several changes to Kansas' worthless check statute.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Worthless checks are a large problem for many retailers. In 1999, U.S. consumers wrote 68 billion checks of which 612 million personal checks bounced. These worthless checks totaled \$19.9 billion. A Nilson Report states that U.S. consumers write more than 1.2 million bad checks daily.

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The number of checks written each year is increasing, as is the number of checks that bounce. Retailers lose millions of dollars each year processing and prosecuting bad check claims. Retailers do not recover their costs in many cases, which increases the cost of doing business. Retailers have no choice but to pass the costs of worthless checks to the consumers by increasing prices or decreasing services.

HB 2549 makes several significant changes to the worthless check statute. There are two changes that I would like to emphasize. The first change would allow a demand to be sent by first class mail instead of certified mail. Retailers have found that many people do not sign for certified mail and do not receive their notice. This is an expensive and frustrating process for the retailer.

Second is the removal of the requirement that a retailer conspicuously place a sign informing patrons the amount of the service charge. Kansas is in a minority of states that require the posting of a sign to invoke a higher service charge. Those who collect checks at the point of delivery receive a \$10 service charge on returned checks while those who collect checks at a store, where a sign can be conspicuously displayed, receive a \$30 service charge. This unfairly discriminates against businesses that delivers or does service work. HB 2549 would remedy this inequity.

Thank you for your time today and we urge you to support HB 2549. I will be happy to answer any questions.



**KANSAS BAR
ASSOCIATION**

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**WRITTEN LEGISLATIVE TESTIMONY
HOUSE BILL 2549**

MARCH 14, 2001

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE
HOUSE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

Mr. Chairman and Members of the Committee:

As you are aware, House Bill 2549 grew out of House Bill 2150, which was heard by the House Business, Commerce and Labor Committee on February 7th and 8th. The KBA stated several concerns it had with House Bill 2150 to the House Business, Commerce and Labor Committee at the hearings. Most specifically, the KBA objected to a provision that would take away a judge's discretion in awarding attorney fees in worthless check cases.

The proponents of House Bill 2549 have drafted the bill to try to address the concerns that the KBA and several other parties expressed about House Bill 2150. We have carefully reviewed House Bill 2549 and are very comfortable in supporting it. We agree with the change from restricted mail to first class mail because it will result in a much higher rate of penetration to debtors. This will only result in more worthless check disputes being resolved prior to the commencement of litigation. We appreciate the House Judiciary Committee's consideration of the bill. Thank you for allowing me to present this written testimony.

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**James F. Freeman III, Attorney
Moore, Hennessy & Freeman, P.C.
Kansas City, MO**

March 2001

MHF

MOORE HENNESSY & FREEMAN, P.C.

ATTORNEYS AT LAW

FROM THE DESK OF:
JAMES F. FREEMAN III

Admitted in Kansas and Missouri
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March 5, 2001

The Honorable Mike O'Neal, Chairperson
Kansas House Judiciary Committee
Room 170-W
300 SW 10th
Topeka, Kansas 66612

Re: Senate Bill 197 - Revisions to K.S.A. ¶60-1101, et seq., - Mechanic's Lien Law

Dear Representative O'Neal:

Our firm's primary practice area is in the primary field of construction contract matters, construction claims and government contract claims. MHF has years of experience and expertise representing general contractors, subcontractors, material suppliers, owners and surety companies. Our representation, while focused in Kansas and Missouri, extends nationally and internationally in advising construction related clients and resolving disputes through many available remedies and in many jurisdictions. MHF advises construction related clients throughout the nation and files many liens in a number of jurisdictions throughout the nation. A primary remedy utilized on behalf of MHF's clients is use of the various mechanic's lien laws. These laws vary from state to state with respect to notices, time limitations and the availability of the remedy for use by various sub-tiers of contractors, sub-contractors and suppliers on and to construction projects.

Based upon experience, it is my opinion that the present Kansas mechanic's lien law's filing time limitations are much too restrictive, disallow the construction industry from functioning in generally accepted construction industry standards, artificially restrict commerce in the construction trades, restrict competition in the industry, unduly restrict credit extension by trade creditors, result in increased construction costs and needlessly increase the number of mechanic's liens filed in Kansas. Kansas requires subcontractors and suppliers to file mechanic's liens against real estate and the improvements within three (3) months of the last day worked or the last material delivered to the project. The three month time limitation is much too short and results in many more liens being filed than practicality otherwise would dictate. In contrast, many other jurisdictions (including Missouri) allow mechanic's liens to be filed within six (6) months of the last day worked or materials supplied. These jurisdictions result in many fewer mechanic's liens being filed in that the longer time frame more truly reflect generally accepted construction industry credit and payment practices.

Representative O'Neal

Re: Senate Bill 197

March 5, 2001

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In MHF's experience the six month time limitations allows the owners, general contractors, sub-contractors and suppliers to resolve their differences without the real estate being unduly encumbered or affected and without artificially forcing construction parties into legal action. Kansas' shortened three month time limitation results in a proportionately higher percentage of liens being filed in Kansas than in jurisdictions with six month time limitations and artificially forces construction parties into legal action. In Kansas parties are forced to proactively file mechanic's liens for protection, instead of filing liens as a last resort remedy (which MHF believes should be the true purpose of mechanic's liens). The requirement to artificially file mechanic's liens unfortunately limits voluntary resolution of payment issues between owners, general contractors, subcontractors and suppliers. Based upon MHF's experience, the most prevalent reaction to the filing of a mechanic's lien is a polarization and hardening of positions between construction parties. Relationships between owners and lenders are needlessly strained because of the protective filing of mechanic's liens. This serves only to escalate disputes between parties. Voluntary resolution without the needless expenditure of legal expenses and without resort to and use of limited District Court resources is the most preferential method to remedy disputes.

The general construction industry practice is that subcontractors and suppliers are not even entitled to payment until the 75th day or later after a payment application is submitted on a project. The payment application itself is commonly submitted 10-15 days after the date the work or materials are last supplied. Following normal, accepted construction industry trade practices payment is not even due on a construction project until the 90th day after the work or materials are provided. Thus, under Kansas law a prudent subcontractor or supplier is required to file a mechanic's lien alleging non-payment to protect itself when, in fact, payment may not even be due or may only be late by a day or two. Failure of the subcontractor or supplier to file its mechanic's lien would recklessly expose the claimant from losing a valuable remedy, and which may later develop to be the only viable manner in which monies due are to be collected. This problem is compounded by the common industry practice of contract balance retainage, which is often 10% of the contract balance and often is contractually payable until three (3) or more months after the project is substantially complete and may actually be many more months after the subcontractor or supplier actually worked or supplied on the project. In circumstances where the monies are not even due but protective liens are filed the business relationships among the parties are much more adversarial, protracted and expenses and needlessly add to the District Court's dockets and case load.

MHF has many clients performing substantial construction work in both Kansas and Missouri. It is not uncommon for these clients to regularly file 50-100 mechanic's liens a year in Kansas, while filing less than a dozen liens a year in Missouri. These clients are performing the same work for the same type of customers in both states. The only material difference is Kansas' three month filing limitation and Missouri's six month filing limitation. In fact, MHF has several clients with two standard operating procedures, the Kansas procedure which is to begin lien filing action if not paid in full on day 75 and the Missouri procedure which is to begin lien filing action if not paid in full on day 125.

Representative O'Neal

Re: Senate Bill 197

March 5, 2001

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Extending the time in which any contractor or supplier may file a lien benefits all parties involved in the construction project - bankers, owners, general contractors, subcontractors and suppliers. It allows the parties the opportunity to first determine if there actually is a dispute or payment issue and attempt to resolve it. It then allows additional time to perfect the lien rights as a remedy of last resort, not of first resort. The six month time limitation gives an opportunity for a demand letter to be written and place all parties on notice that unless resolution is had the drastic remedy of filing of a mechanic's lien will occur. The longer six month time limit in other jurisdictions most certainly results in fewer liens being filed in slow payment situations, which may be caused by nothing other than the time constraints imposed to submit and obtain draws on a construction loan with a prudent lender. It is beneficial for all parties to a construction project, including lenders and owner, to extend the lien filing limitations to more closely reflect the presently accepted construction payment cycles.

While the proposed modifications will benefit others associated with construction, *e.g.* title companies, lenders, owners, *etc.*, the proposed modifications to the law will not adversely affect them. Based upon our firm's extensive practice in the mechanic's lien law area in both Kansas and Missouri over the last 30 years, our firm recalls only four (4) instances when a title company acting as an insurer (as opposed to simple closing agent) actually paid any claim on mechanic's lien coverage. Two (2) of the instances were on the Missouri side and two (2) were on the Kansas side. In three of the instances the title insurer actually had held reserves from the loan closing with which to cover the exposure. The fourth instance (which occurred in Kansas) involved an individual who clearly intentionally acted to defraud not only his trade creditors, but also his lenders and customers. I would assume the individual was able to carry out the fraud in Kansas because the title insurer had not conducted a basic credit check or investigation of the individual against whom it was insuring.

Given the benefits which flow to all parties to the construction project and the natural time limitations of the construction industry, the proposed extension of time limitations to six months for all mechanic's liens would vastly improve the construction industry in that it would allow the industry to function in the current generally accepted construction industry standards, it would not artificially restrict commerce in the construction trades, it would encourage competition in the industry and would greatly decrease the number of mechanic's liens filed in Kansas

Sincerely,

MOORE HENNESSY & FREEMAN, P.C.

By


James F. Freeman III

JFF3/ltc

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

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

March 2001

WESTERN EXTRALITE COMPANY

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March 1, 2001

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Warrensburg, MO

608 N. Ridgeview Drive
Warrensburg, MO 64093
660-429-6900

Lawrence, KS

1811 West 31st Street
Lawrence, KS 66046
785-843-4174

Leavenworth, KS

4601 Brewer Place
Leavenworth, KS 66048
913-727-2941

Manhattan, KS

221 Colorado Street
Manhattan, KS 66502
785-539-5665

Olathe, KS

1708 E. 123rd Street
Olathe, KS 66061
913-768-1777

Topeka, KS

4024 S. Topeka Blvd.
Topeka, KS 66609
95-266-3541

The Honorable Mike O'Neal
Chairman of the House Judiciary Committee
Kansas State Capitol Building
Room 170 West
Topeka, KS 66612

Dear Representative O'Neal:

RE: EXTENSION OF TIME FOR FILING MECHANIC'S LIENS – NON-RESIDENTIAL PROPERTIES

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

The issue we are discussing is the extension of time for filing mechanic's liens in the State of Kansas. First we need to identify what are mechanic's liens. They are encumbrances that attach to real property, and the improvements thereon, and remain until satisfied. Mechanic's liens are one of the primary remedies available to those in the construction industry to collect payments on unpaid sales. This should, however, be used only as a last resort, for reasons I will outline later in this letter.

The mechanic's lien itself is similar in Missouri and Kansas. However, the time for filing a lien is quite different. Attached you will find a comparison of the time for filing liens between Missouri and Kansas and its affect on the general contractor, subcontractor, and the supplier.

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. A commonly used billing term in our industry is payment due 10th prox. and is as follows:

1. The billing cycle runs from the 26th of one month to the 25th of the following month. See the time line enclosed.

March 1, 2001

Page 2

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 through the end of the month. Merchandise invoices dated through the 25th of the month is normally discountable on the following 10th and would be due without discount at the end of that month. However, invoices dated on the 26th are not due the following 10th, but the 10th of the next month, and would still be subject to cash discount.
3. These are due net of discount by the end of that month and are still considered paid within billing terms. Thus, an invoice dated on January 26th could be 65 days old and still be paid within terms. This leaves only 25 days for the issuer of the invoice to determine there is a problem and prepare for and file mechanic's liens in Kansas. This time frame is entirely too short.

Our customers often pay 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 from the date material was last delivered to avoid losing their lien rights. There are many issues to consider before filing a lien:

1. It is expensive to file and then release liens when payments are received a little late.
2. The profit margins in our industries are very close and do not provide for these additional costs.
3. The administrative costs for monitoring and handling liens are extremely time-consuming and expensive.
4. Most importantly, we spend considerable time, effort, and money developing relationships with our customers. These relationships are destroyed when a lien is filed.

March 1, 2001

Page 3

We believe the Kansas law should be changed to allow a filing time of 180 days, which is similar to 6 months currently being used successfully in Missouri. This would result in fewer liens being filed and a greater time period to resolve issues, thereby, preserving the business relationships referred to above. Our attorney tells us they file three times more liens in Kansas than they do in Missouri. This is a result in the time differential for filing. Our proposed change in the filing time from 90 days to 180 days would benefit the owner, the general contractors, the subcontractor, and the supplier, and would lighten the backlog of lawsuits in our judicial system. The fiscal note is zero regarding our proposed change.

We urge the Senate Judiciary Committee to recommend the adoption of the law to extend the mechanic's lien filing period to 180 days 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 attention and cooperation.

Sincerely,



Kenneth R. Keller
Controller

/bb

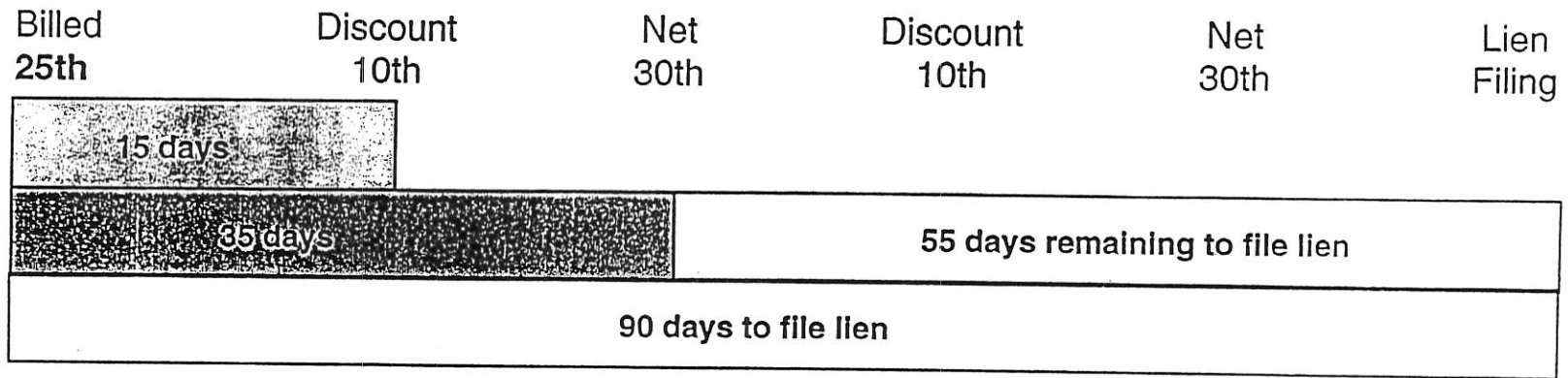
LIEN LAWS – KANSAS AND MISSOURI

<u>Nonresidential Property</u>	<u>Time for Filing Lien *</u>	
	KS	MO
Tier I General Contractor	120 days	6 months
Tier II Subcontractor or supplier to general contractor	90 days	6 months – Must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor	90 days	6 months – Must give 10 days notice before filing lien

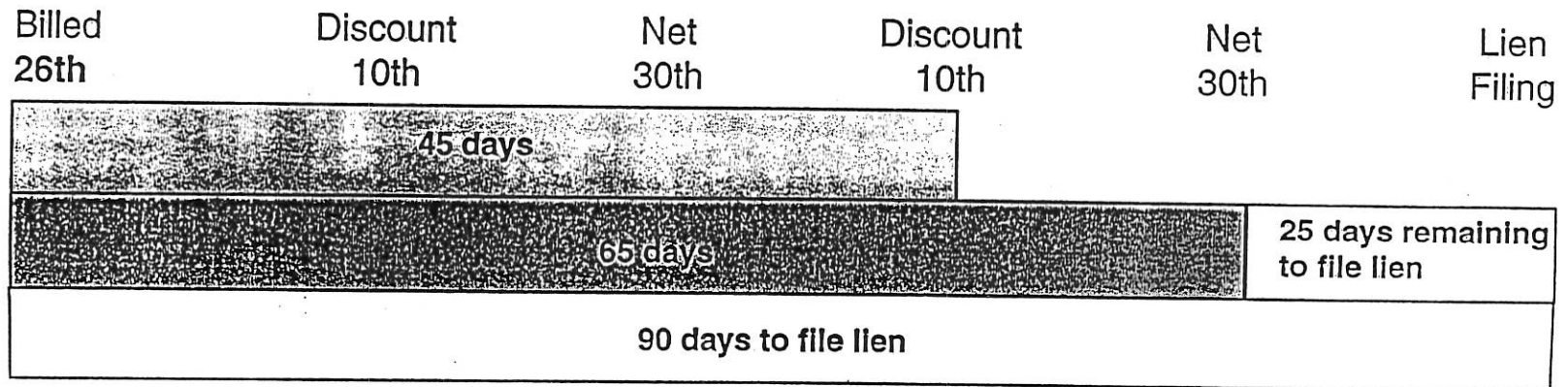
* From date of last material delivered or labor performed.

Time Line — 10th Prox. Payment Term

Example 1:



Example 2:



Mechanic Lien Summary for the Year 2000

State	County	Population	Liens filed	Liens/1000	Cost of Filing @1,500
Kansas	Sedgwick	451,684	746	1.651597	1,119,000
	Johnson	440,198	660	1.499325	990,000
	Shawnee	170,773	218	1.276548	327,000
	Reno	63,702	78	1.224451	117,000
	Total	<u>1,126,357</u>	<u>1,702</u>	<u>1.511066</u>	<u>2,553,000</u>
Using Missouri rate Kansas adjusted Estimated savings					<u>27.02 %</u> <u>689,913</u> <u>1,863,087</u>
Missouri	St. Louis	996,181	332	0.333273	498,000
	St Charles	280,448	123	0.438584	184,500
	Jackson	Not available			
	Green	227,002	159	0.700434	238,500
	Total	<u>1,503,631</u> *	<u>614</u>	<u>0.408345</u>	<u>921,000</u>
Missouri as a % of Kansas				27.02 %	

* Excludes Jackson County Figures not available

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**Donald B. Dawson
NECA-Kansas City Chapter Manager
Kansas City, MO**

March 2001



Joplin • Kansas City
St. Joseph • Springfield

4016 Washington
Kansas City, MO 64111

P.O. Box 32255
Kansas City, MO 64171

March 6, 2001

The Honorable Mike O'Neal
Kansas House Judiciary Committee
Room 170-W – State Capitol Building
300 SW 10th
Topeka, KS 66612

RE: Support for Senate Bill 197 - Kansas Mechanics Lien Law – Filing Time Period

Dear Representative O'Neal:

This letter is written urging your support for Senate Bill 197, which is currently before the Kansas House Judiciary Committee. This bill will change the filing time period in the Mechanics Lien Law in the State of Kansas for non-residential property liens.

The current law in Kansas permits a construction contractor to file a mechanics lien on real property or improvements to real property within three (3) months of the last day worked or the last day material is delivered. This is simply not enough time in today's business climate. This unusually short time period creates an environment in which more mechanics liens are filed than is really necessary, and creates more tension between owners and contractors that is simply unnecessary, and introduces more legal involvement than is really required.

If the time period to file a mechanics lien was extended to six (6) months, owners and contractors would be able to work out many of the issues, thus reducing the need to file mechanics liens in the first place. Additional benefits of extending the time period to file mechanics liens would be reduced legal expenses for all concerned, the owners would not have to be burdened with issues involving their reputation when a lien is filed, and the owner/contractor relationship would be preserved by being able to amicably resolve issues prior to the filing of a lien.

Accordingly, we respectfully request your support for Senate Bill 197. This is a very important issue to all of our members who work throughout the entire State of Kansas.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald B. Dawson", is written over a horizontal line. Below the signature, the name "Donald B. Dawson" and the title "Chapter Manager" are printed in a standard font.

Donald B. Dawson
Chapter Manager

**PROPOSED CHANGE
IN THE
MECHANIC LIEN LAW**

**Dan Morgan, Director of Governmental Affairs
The Builders' Association
Kansas City, MO**

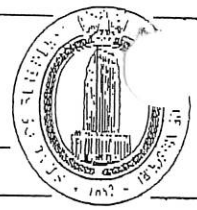
March 2001

THE BUILDERS' ASSOCIATION

SERVING MISSOURI AND KANSAS

James L. Hurton, Jr., President

Administrative Offices at 632 West 39th Street • Kansas City, Missouri 64111 • (816) 531-4741



March 12, 2001

The Honorable Mike O'Neal
Room 170-W, State Capitol Building
300 SW 10th Avenue
Topeka, KS 66612

Dear Representative O'Neal :

On behalf of nearly 450 general contractor, subcontractor and supplier members of the Builders' Association who are engaged in commercial and industrial building construction and who are domiciled in or perform work in Kansas, I urge your support of Senate Bill 197. If adopted, this proposal would extend the time for filing mechanics' liens on non-residential projects in Kansas and result in significantly fewer lien filings in the state.

Senate Bill 179 would extend the lien-filing period for subcontractors and suppliers performing work on or supplying materials to non-residential property from the current three months to 180 days and would extend the filing period for general contractors performing work on such property from the current four months to 180 days. The Builders' Association supports an extension of the filing period in Kansas as a way to reduce the number of mechanics' lien filings in the state. Kansas' relatively short lien filing periods often encourage lien filings, unnecessarily cloud title to property and cause strained relationships between owners and the contracting community.

Thank you for your thoughtful consideration of our position on this important issue. Please feel free to contact me for additional information.

Sincerely,

THE BUILDERS' ASSOCIATION

Dan Morgan
Director of Governmental Affairs

OFFICERS AND DIRECTORS: Phillip Moore, Chairman of the Board • Bill Fagan, Vice Chairman of the Board
Gus Meyer, Assistant Chairman of the Board • Leon Keller, Assistant Chairman of the Board • Donald R. Pearce, Assistant
Chairman of the Board • Morris I. Dock, Immediate Past Chairman of the Board • James O. Delaney • Jeffrey M. Dimon
Gregory A. Dunn • Michael J. Hayes • Todd Kane • Rory O'Connor • Mark Teahan • Thomas F. Whittaker • Richard A. Zahner

SUPPORTERS OF THE EXTENSION OF TIME
TO FILE MECHANIC'S LIEN

Western Extralite Company, 1470 Liberty Street, Kansas City, MO 64102-1018
Mid-America Lumbermen's Assn., P O Box 419264, Kansas City, MO 64141
Carter-Waters Corporation, P O Box 412676, Kansas City, MO 64141
Shaw Electric Supply, 1066 E. 16th Street, Kansas City, MO 64108
Golden Star, Inc., P O Box 12539, North Kansas City, MO 64116
Associated River Terminal, P O Box 148, Marceilles, IL 61341
Harcros Chemicals, Inc., 5200 Speaker Road, Kansas City, KS 66106
Kansas City Electrical Supply, 10900 Mid America Ave., Lenexa, KS 66219
Heating & Cooling Distr., 4303 Merriam Dr., Overland Park, KS 66203
Alber Electric Company, 8601 Prospect, Kansas City, MO 64132
Electric League of Missouri & Kansas, 638 W. 39th, Kansas City, MO 64111
IBEW & NECA Labor Management Corporation Trust
NECA Kansas City Chapter, P O Box 32255, Kansas City, MO 64171
SMACNA Kansas City Chapter, 777 Admiral Blvd., Kansas City, MO 64106
Missouri Valley Electric, P O Box 419640, Kansas City, MO 64141
Interstate Flooring, L.L.C./DBA Case Supply, 507 N Montgall, Kansas City, MO 64120
Teague Electric Construction, 14535 W. 96th Terrace, Lenexa, KS 66215
Builders Association, 632 W. 39th Street, Kansas City, MO 64111
First National Bank of Olathe, 444 E. Santa Fe, Olathe, KS 66061
Stanion Wholesale Electric, P O Drawer P, Pratt, Kansas 67124
Mechanical Contractors Association, 9229 Ward Parkway, Suite 270, K.C., MO 64114

ADDITIONAL SUPPORTERS

Thomas M. Moore & James F. Freeman III – Partners in the law firm of Moore, Hennessy & Freeman PC, Kansas City, MO

Robert E. Doran III – President of Capital Electric Construction Company, Leavenworth, KS

D.L. Smith – President of D.L. Smith Electrical Construction, Inc., Topeka, KS

H. Patrick Tolle – President of National Association of Credit Management, Kansas City Division, Overland Park, KS

Donald B. Dawson – Chapter Manager of the Kansas City Chapter of the National Electrical Contractors Association

Fire Sprinklers Association – Kansas City, MO

Kansas City Insulation Contractors – Kansas City, MO

The Sheet Metal & Air Conditioning Contractors, National Association of Kansas City

Bernie Electrical Wholesale Company – Kansas City, KS

Broken Arrow Electric Supply – Broken Arrow, OK

C E D, Inc. – Mission, KS

Electrical Materials Company – Kansas City, MO

Glasco Electric Company – Tulsa, OK

Graybar Electric Company, Inc., Kansas City, MO

Marvin Allen – Vice President & Chief Estimator for Permanent Paving, a Division of Ash Grove Cement, Overland Park, KS

Jim Lacy – President of Electrical Corporation of America, Raytown, MO

Jerry Root – President of Broadway Electric Construction Company, Kansas City, KS

Bill Miller – Owner of Building Erection Services, Olathe, KS

Dan Haake – Owner of Haake Foundations, Raytown, MO

Bill Penny – Penny’s Concrete, Inc. Shawnee Mission, KS

Jamile Yameen - President of Electrical Contractors, Inc. Raytown, MO

Robert B. Fisher, President of Heartland Electric Corporation, Belton, MO

Scott L. Bond - Project Manager of Bond Electric, Inc., Lawrence, KS

James A. Fowler – Branch Manager of Shelley Electric, Inc, Emporia, KS

Tom Coble – Estimator of Shelley electric, Inc., Emporia, KS



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(913) 451-7834 • (913) 451-0996 FAX • (816) 898-9600 MOBILE

MARVIN ALLEN, JR.
VICE-PRESIDENT

March 14, 2001

Kansas House Judiciary Committee
Kansas State Capitol Building
300 SW 10th Avenue
Topeka, KS 66612

Dear Honorable Members of House Judiciary Committee:

RE: SENATE BILL 197 EXTENSION OF TIME FOR FILING MECHANIC'S LIEN'S –
NON RESIDENTIAL PROPERTIES

My name is Marvin Allen, Jr., Vice President of Permanent Paving, Inc., a Division of Ash Grove Cement Company. My job takes me all over the State of Kansas, and for the past 18 years I have worked as a consultant on numerous projects for contractors and owners in Kansas and Missouri where the lien law was an issue. As I testified at the Senate Judiciary Hearing, I have talked to literally hundreds of business people interested in seeing Senate Bill 197 put into law. The businesses are located all over the State of Kansas: Wichita, Hutchinson, Manhattan, Topeka, Ottawa, Lawrence, Leavenworth, and Johnson County. Attached are letters from several banks referencing their support for Senate Bill 197.

In my opinion, the Missouri 180 day Lien Law works in everyone's best interest. Besides the obvious, which is the additional time for working out differences, it would allow us to sustain business relationships that are lost when liens have to be filed. The additional 90 days would allow us to work out our differences and problems in a normal business fashion, which unfortunately has to be overlooked to meet the current 90 days requirement.

I would like to approach this a little differently and point out a recent conversation I had with an attorney in Kansas City. He informed me that his firm files at least three times the liens in Kansas than it does in Missouri strictly because of the time differential. Handling these additional claims is extremely costly to the state and county to which they are filed. In addition, these claims, along with other items requiring litigation, have over-loaded and over-whelmed our court system. Imagine the relief to the state, county, and our court system if two-thirds of the cases involving filing of liens now being filed never got on the books. That is the kind of relief we would see if Senate Bill 197 were passed. The enormous cost to the state and counties, and the over-burdening on our court system, filing claims is extremely expensive for the individual business owner. In order to file a claim, normally an attorney is involved and suit must be filed as mentioned above. In addition, the owner has the burden of copying records, getting proofs of delivery, etc., to substantiate his case. Filing liens is extremely costly to the business community.

Lastly, as mentioned above, my work takes me throughout the State of Kansas. This is an important issue to all in the construction industry. There may be some that say, "This is only a Johnson County issue"; however, let me guarantee that filing liens and maintaining business relationships is something that is important and utilized by all throughout the State of Kansas. I ask for your support in seeing that Senate Bill 197 be approved by the House of Representatives. A heartfelt thank you to this committee for their support and for taking the time to consider Senate Bill 197.

Respectively,

Marvin Allen, Jr.

Marvin Allen, Jr.

MA:sah

House Judiciary
3-14-01
Attachment 9



Commerce Bank

1000 Walnut
Post Office Box 419248
Kansas City, Missouri 64141-6248
(816) 234-2201

EDWARD J. REARDON, II
Vice Chairman

March 12, 2001

The Honorable Michael R. O'Neal
Chairman, Kansas House Judiciary Committee
Kansas State Capitol Building
Room 170-W
300 SW 10th
Topeka, KS 66612

SENT VIA FEDERAL EXPRESS

Dear Representative O'Neal:

RE: REQUEST YOUR SUPPORT OF SENATE BILL 197

As a lending institution, we request your support to extend the Kansas Lien Law filing time to 180 days from its present 90 days for subcontractor and suppliers and 120 days for general contractors. (The filing extension, as passed by the Senate S.B.197, applies only to non-residential construction.) The 180-day filing period is being very successfully used in Missouri, resulting in:

- Significantly fewer lien filings
- Lower administrative and legal costs
- Sustained relationships

The extended lien filing time will provide these benefits:

- It will allow adequate time for **all** contractors and suppliers to resolve differences amicably and, thus retain important business relationships.
- It will avoid expensive legal and administrative costs as well as court actions.
- It leaves the owner and lender out of the process until it becomes absolutely necessary that a mechanic's lien be filed.

Bottom Line: All parties in the chain of construction, the owner, the lender, the contractors, and material suppliers will benefit, thus making Kansas a better place in which to do business.

For all of the above, we again request your cooperation to have this change become law.

Sincerely,

Edward J. Reardon, II
Vice Chairman

hlm

House Judiciary
3-14-01
Attachment 10

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
DEBORAH FRYE STERN

(785)232-0753
FACSIMILE: (785)232-1866
WEB SITE: www.aldersonlaw.com

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON
JOHN E. JANDERA (RETIRED)

LL.M., TAXATION
LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

MEMORANDUM

TO: MEMBERS, HOUSE JUDICIARY COMMITTEE

FROM: ALAN F. ALDERSON, LEGISLATIVE COUNSEL, WESTERN
RETAIL IMPLEMENT AND HARDWARE ASSOCIATION

RE: SENATE BILL 197

DATE: MARCH 14, 2001

On behalf of the Western Retail Implement and Hardware Association, a six-state association of farm equipment dealers and hardware dealers, I am urging your support of Senate Bill 197.

Our Association believes this modification to our state's mechanic's lien laws would work to the benefit of not only those dealers who supply materials, but the contractors who can forego the filing of liens because the dealers have more time to determine whether an account has become questionable.

We believe the bill would actually reduce the number of liens filed as well as reduce both legal and administrative costs.

On behalf of the hardware members of Western Retail Implement and Hardware Association, we ask you to recommend Senate Bill 197 favorably for passage. Thank you.

KANSAS LAND TITLE ASSOCIATION
8621 E. 21ST NORTH
SUITE 150
WICHITA, KS 67206

Date: March 14, 2001

TO: House Judiciary Committee

RE: Senate Bill 197

The Kansas Land Title Association is opposed to extending the time period for filing mechanics' liens on property for the following reasons:

1. The current law is a fair balance between the rights of property owners to protect their titles 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;
2. 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;
3. 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;
4. 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.
5. Extending the time period will also make titles to real estate that much more uncertain to the prospective buyers and mortgage lenders. The buyer of a newly constructed commercial property will be exposed twice as long to mechanics' liens;
6. Most mortgage lenders in Kansas require title insurance with mechanics' lien coverage when making a mortgage on commercial real estate; extending the time period for filing mechanics' 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 mechanics' lien coverage.
7. Extending the time period for filing liens will require more performance bonds to be filed and extend the time period for obtaining end loan financing. A typical sequence of events in commercial lending is as follows:

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Attachment 12

- a. mortgage lender files construction mortgage prior to start of work to gain priority over liens;
- b. job completed and occupancy permit issued;
- c. title insurance underwriter will require 3 months (time for filing of subcontractor liens) to run from issuance of occupancy permit prior to agreeing to insure new end loan mortgage with mechanic's lien coverage.

Extending the time period for filing subcontractor liens to 180 days could double the time period before end loan financing is obtained. Agreeing to insure a mortgage that has not gained priority over mechanic's liens is a credit decision on the part of the title insurance underwriter and not a function of title insurance.

The Kansas Land Title Association requests that the committee oppose this bill.

Sincerely,

Roy Worthington
Chairman, Legislative Committee

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

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

3-14-01

TO: House Committee on Judiciary

FROM: Chuck Stones, Senior Vice President

RE: SB 197: Materialman's Lien

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you regarding **SB 197**. This bill would effectively extend the period of time 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 transaction.

**TESTIMONY OF AGC OF KANSAS BEFORE THE
HOUSE JUDICIARY COMMITTEE
IN OPPOSITION TO SB 197**

March 14, 2001

By William A. Larson, AGC of Kansas General Counsel

The Associated General Contractors of Kansas opposes Senate Bill 197 insofar as the Bill amends K.S.A. 60-1102 and K.S.A. 60-1103. These are the statutes, which provide for contractor 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 a construction project, these entities must work together and understand their rights and responsibilities towards one another. Lien laws are important not only as a means of collecting debts but also as a means of applying leverage between parties to adjust disputes that may arise. The AGC feels that the building construction industry understands the lien laws and has learned to use them effectively in regulating the industry.

A realistic scenario that may occur with this change is as follows. A general contractor pays a subcontractor for work completed, unaware that the subcontractor has not paid a supplier for materials. The supplier then files a lien. The owner, wanting the lien dissolved, advises the general contractor that he will not release the retention, thus putting pressure on the general contractor to resolve the matter of payment. The general contractor may, or may not, be able to work out payment by the subcontractor to the supplier. The general contractor, then runs the risk of paying for the materials twice, once to the subcontractor and then again directly to the supplier.

Another consequence of increasing the time limits for filing mechanic's lien would be the extension of time for ensuring that a project has been completed. It is to the benefit of all parties involved in a construction project to complete the project in a timely manner. By extending the time for filing liens, the time to ensure that all facets of a commercial construction project is completed 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 Senate Bill 197.

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3-14-01
Attachment 14

LEGISLATIVE



TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611 ♦ 785-267-2936 Fax 785-267-2959 ♦ E-mail: janetstubbs@worldnet.att.net

HOUSE JUDICIARY COMMITTEE

March 14, 2001
SB 197

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, appearing today on behalf of the Kansas Building Industry Association's approximately 1700 members. These members are comprised of residential and light commercial contractors, developers, subcontractors and other industry related type businesses.

Historically, the Kansas Building Industry Association has had a firm policy statement in opposition to extending the filing time on mechanic liens out of concern as to the ramifications the board of directors believe it would have on owners of the residential property. After the amendments which were made to K.S.A. 60-1103 which provide for notice provisions, we believe the law has been providing the property owner with as much protection as can be expected. KBIA strongly opposes an amendment to extend the time constraints provided for residential property.

In the area of commercial property, there are mixed opinions. KBIA did not provide me with a separate policy for residential and commercial. However, I did call some larger contractors who are active in the Association and was told that it can sometimes be a problem but they believed extending it to 6 months would be too much.

Therefore, I would suggest that if the Committee believes it is necessary to amend this statute for commercial construction, we believe consideration should be given to a minimal extension of time. Again, I want to reiterate that we firmly oppose any amendment to the law as it relates to residential construction.

Thank you for the opportunity to appear.



MID-AMERICA LUMBERMENS ASSOCIATION

WRITTEN TESTIMONY

HOUSE JUDICIARY COMMITTEE

March 14, 2001

Senate Bill No. 197

Mister Chairman: Members of the House Judiciary Committee. The following is a prepared statement reflecting our position on Senate Bill 197, which allows an extension on commercial liens filed in the State of Kansas.

My name is Art Brown, and I am the Kansas Regional Manager for the Mid-America Lumbermens Association. I bring 13 years of institutional knowledge regarding our memberships State Committee meetings and Board meetings that have occurred during my tenure with the Association.

At no occasion during the above mentioned time of service I have been with this Association has the issue of an extended period of time for lien filing regarding commercial transactions ever been discussed by any governing State body or the Board of Directors of the Mid-America Lumbermens Association.

Given that no statement from our Board or State Committee has ever been provided, we as a membership take no position of support or denial regarding SB 197 in its current

638 West 39th Street • P. O. Box 419264 • Kansas City, Missouri 64141-6264
800-747-6529; 816-561-5323 • Fax: 816-561-1991 • E-Mail: mail@TheMLA.com

A PROUD MEMBER OF THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS

House Judiciary
3-14-01
Attachment 16

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form. We have no concerns as to the outcome of this issue and would adhere to the wisdom of the body as to whether enactment of such a provision is indeed good public policy. If the Committee so wishes, I can produce minutes from our State Committee business meetings that go back to 1989 to support my statements.

It was thought that due to the fact we as an industry utilize the lien process, we should make a position statement regarding this bill.

Having presented same, we wish the Committee well in its deliberations regarding SB 197.

Thank you.