

Approved  
Date: February 15, 2001

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:38 a.m. on February 14, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Oleen (excused)

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Senator Barnett  
Tom Meyers, Vice Mayor, Emporia  
Sandy Barnett, Kansas Coalition Against Sex and Domestic Violence (KCSDV)  
Kyle Smith, KBI  
Kristin Hutchinson, City Prosecutor, City of Emporia  
Mark Burghart, Counsel, Western Retail Implement and Hardware Association  
Marvin Allen, Jr., Permanent Paving, Kansas City  
Ken Keller, Western Extralite Company  
James Freeman, Moore, Hennessy & Freeman  
Roy Worthington, Kansas Land Title Association  
Kathy Olsen, Kansas Banker's Association

Others attending: see attached list

Minutes of the February 8th meeting were approved on a motion by Senator Adkins and seconded by Senator Haley. Carried.

**SB 205—period of no contact with victim as condition of release**

Conferee Senator Barnett testified in support of **SB 205**, a bill which he stated will mandate a 72 hour no contact order for suspects in domestic violence cases. He explained how the bill extends protection to victims of domestic violence by covering the period when a judge may not be available, i.e., in the middle of the night or on weekends. (attachment 1)

Conferee Myers testified in support of **SB 205**. He summarized the need for the bill stating that it gives the victim time to "gather resources, support, possessions and courage." He stated that following the 72 hour period the victim can ask for a regular restraining order on the next available business day. He requested several language amendments to the bill. (attachment 2)

Conferee Barnett testified in support of **SB 205**. She referenced a brochure included with her testimony which describes KCSDV and lists the programs in Kansas. She stated that the bill requires a presumption, unless rebutted, that a 72 hour no-contact order is included as a condition of bond. She further stated that the bill should retain the right of local jurisdictions to set bond restrictions according to their community plan and that the no-contact order should be able to be rebutted in certain cases. (attachment 3)

Conferee Smith testified in support of **SB 205** reiterating much of the previous Conferees testimonies. He added that the bill's language also provides for exceptions in certain cases. (attachment 4)

Conferee Hutchison testified in support of **SB 205**. She stated the purpose of the bill, presented a typical scenario under current law and showed how this bill would address the problems created in the scenario. She added further information by pointing out that if the defendant disregards the "no contact" provision of their appearance bond, they may be immediately arrested again on an additional charge of violating the "no contact" order. The bill also provides that should the victim request the order be lifted they can petition the court to do so. (attachment 5)

SB 197-re: liens; filing time

Conferee Burghart testified in support of **SB 197**, a bill which would extend the time a contractor could file a mechanic's lien against a delinquent property owner. He stated the bill would reduce the number of liens filed thus reducing legal and administrative costs. (attachment 6)

Conferee Marvin Allen, Jr. testified in support of **SB 197**. He stated that the filing of liens is costly to business and the extra time allowed would reduce the number of unnecessary liens. (no attachment)

Conferee Keller testified in support of **SB 197**. He defined the term "mechanic's lien" and presented an overview of the lien filing process including issues which must be addressed prior to filing a lien. He further described how extending the time for filing a lien from the current three months to six months would benefit all parties involved in a construction job. He referenced written attachments to his testimony from various contractors. (attachment 7)

Conferee Freeman testified in support of **SB 197**. He presented an overview of his firm's experience handling construction contract matters, claims and government contract claims detailing the mechanic's lien process and problems encountered under current law. He discussed how this bill would benefit all parties involved in construction projects. (attachment 8)

Conferee Worthington testified in opposition to **SB 197**. He stated that the current law provides 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. He discussed several reasons why extending the time period for filing liens would be unfair to property owners: potential for faulty credit decisions by contractors; titles to real estate will remain uncertain to perspective buyers and mortgage lenders; title companies determination of risk will slow the process of mortgage lending; and there will be a requirement for more performance bonds to be filed. (attachment 9)

Conferee Olsen testified in opposition to **SB 197**. She expressed concern that extending the lien filing time would extend the time in which the title to the property would be clouded potentially delaying the closing of the transaction and causing a hardship for the property owner. (attachment 10)

The meeting adjourned at 10:30 a.m. The next meeting is February 15, 2001.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 14, 2001

NAME	REPRESENTING
R Thornburgh	KDOT
Doug Smith	Professional Services
Nancy Lindberg	As
KEVIN GRAHAM	A.G.
Marvin Allen JR.	S.R. 197
James Freeman	SB 197
Denny Burgess	NACM
Wren Kelle	NACM
Mike Burgess	NACM
Tom Burgess	NACM
Leslie Bailey	SB/97
Mark A. Burghart	Western Assn.
Carrie Kangas	Sen. Brownlee
Rebecca Tapido	Sen. Barnett
Janet Stubbbs	Ks Bldg Ind. Assn.
Jsg Harold	KSC
Paul Jones	KSC
Kyle Smith	KBI
Ami Hyten	OJA







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att 1

JAMES A. BARNETT  
SENATOR, 17TH DISTRICT  
HOME ADDRESS: 1400 LINCOLN  
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OFFICE: STATE CAPITOL BUILDING—136-N  
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785 296-7384  
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TOPEKA

SENATE CHAMBER

COUNTIES  
CHASE, COFFEY, GEARY,  
LYON, MARION, MORRIS,  
OSAGE AND WABAUNSEE

COMMITTEE ASSIGNMENTS

VICE CHAIR: PUBLIC HEALTH AND WELFARE  
MEMBER: FEDERAL AND STATE AFFAIRS  
FINANCIAL INSTITUTIONS AND  
INSURANCE

Thank you Mr. Chairman and members of the judiciary committee,

I am here in support of Senate Bill 205, which will mandate a 72 hour no contact order for suspects in domestic violence cases. I appreciate the help of all the people and agencies who have lent their advice, many who are here today.

Senate Bill 205 attempts to extend protection to victims of domestic violence who are unable to receive a restraining order because of the inaccessibility to a judge in the middle of the night or over the weekend. Victims are returning home to find an infuriated abuser who continues the violence in his rage over his arrest. The 72 hour no contact order as a condition of bond allows the victim sufficient time to receive a permanent restraining order regardless of the time or day. Finally, if a judge finds that this provision is unnecessary, he can remove the no contact order.

Some concerns have been raised that this bill does not go far enough, that the no contact order will not prevent a determined suspect from returning to the victim. What this law will do is guarantee victims legal recourse and give police immediate access to knowledge of a protective order. This bill has the strong constitutional foundations to stand up under the scrutiny of the court.

I have brought a number of conferees who are here to testify in support of Senate Bill 205 and I stand for questions.

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Re. Senate Bill No. 205

February 14, 2001

Domestic violence and its aftermath are, we all agree, a plague on our society. Impassioned debates rage as to its causes. Some accuse movies, others videos and music lyrics, still others drugs and alcohol, lax social discipline and loose standards of ethics and morals.

Whatever its complex causes, most agree that none is more powerful than the intra-generational witnessing of violence within the home. Breaking this cycle of violence is absolutely critical. As children see violence perpetrated on one parent by the other, they become much more likely to be an abuser or abused in their adult relationships.

Whatever we can do today to interrupt this cycle will reduce its occurrence in the next generation and the next, until perhaps the thought of domestic violence becomes as unthinkable as cannibalism or infanticide.

In recent years, we as a society have begun to recognize and address this plague. On the whole law enforcement and the courts have begun to address this critical issue with a seriousness undreamt of only two or three decades ago. I say "has begun" because we are nowhere near where we need to be on this issue.

Societal awareness is a lethargic creature, slow to become aware and frustratingly slow to act. We have begun, only begun, but our direction is positive. Our goal of eliminating domestic violence is, even if distant, at least becoming more defined, more understood, and closer to attainment.

There are a dozen things we could ask you to mandate by force of law this year that would be of tremendous help in this most worthy of crusades, but these things must be done step by step as our society becomes more informed, aware, and outraged.

Today we ask in Senate bill #205 for one small, but very important step. It mandates a presumption of no contact between accused and victim when an accused is released on bond for a domestic violence offence. That restraining order would be for a period of at least 72 hours. It would therefore give the victim a three day period to gather her (or his) resources, support, possessions and courage. They can then ask the court for a regular PFA (protection from abuse) restraining order on the courts next available business day.

So often these acts occur at night, on weekends, or holidays, when courts are not available to hear a PFA request. A presumptive, no contact condition would offer a small protection for at least a three day period. This is such a basic, simple

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and straight-forward proposal, one marvels that it hasn't been done years ago. Simply put, its plain, good common sense.

I would suggest only one slight, but important alteration. On line 19 of page 1, and line 7 of page 3, add "or designee" after "judge" on pg 1 and "magistrate" on page 3. This small addition will allow adjustments for unusual circumstances when, during after hours periods the decisions would be made by someone other than a judge or magistrate.

Respectfully,

*Tom Myers*

Tom Myers

Licensed Masters Level Psychologist  
Mental Health Center of East Central Kansas  
Vice-Mayor Ciy of Emporia





UNITED AGAINST VIOLENCE

## KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

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Hearing on Senate Bill 205  
Senate Judiciary Committee  
February 14, 2001

Dear Chairman Vratil and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence is an association representing victims of domestic and sexual violence and the 27 Kansas programs providing advocacy and other services to them. The attached brochure describes KCSDV and lists the programs in Kansas.

SB 205 is a step toward remedying the problem of perpetrators bonding from jail only to return home or otherwise harass the victim. There is no dispute that in some cases of domestic and sexual violence the perpetrator may return home quickly, sometimes less than an hour after the arrest. It is also true that in some cases perpetrators may be vengeful and dangerous, some even make open threats to "get even" if he goes to jail. SB 205 requires a presumption, unless rebutted, that a 72-hour no-contact order is included as a condition of bond.

SB 205 will not prevent perpetrators who are determined from returning home, but it will give law enforcement a tool to use, hopefully sufficient enough to make an immediate arrest.

Currently in Kansas a judge may enter no-contact or no-violent-contact orders as a condition of bond, but it is not done routinely except in jurisdictions where community response efforts have already addressed criminal justice issues. It is important that SB 205 retain the right of local jurisdictions to set bond restrictions according to their community plan that is part of a broader response. Please ensure that the presumption of the no-contact order can be rebutted in cases where it is necessary or where communities have established protocols.

Hopefully SB 205 will help to send a message to perpetrators of violent person crimes that the courts and community take seriously the safety of its citizens regardless of the relationship of the perpetrator to the victim.

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Member Programs Serve All 105 Counties in the State of Kansas

Signed  
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## Kansas Bureau of Investigation

Larry Welch  
*Director*

Carla J. Stovall  
*Attorney General*

TESTIMONY  
BEFORE THE SENATE JUDICIARY COMMITTEE  
KYLE G. SMITH, DIRECTOR OF PUBLIC & GOVERNMENTAL AFFAIRS  
KANSAS BUREAU OF INVESTIGATION  
IN SUPPORT OF SB 205  
FEBRUARY 14, 2001

Mr. Chairman and Members of the Committee:

I am pleased to appear in support of SB 205, which would resolve a difficulty in protecting victims of crimes.

This legislation was drafted to deal with the situation where a perpetrator of domestic violence or some other person offense is released on bond and immediately proceeds to confront the victim. The motive may be intimidation of a witness, revenge or just plain anger. Even if the police get there before a new crime occurs, their options in legally resolving the confrontation and restoring public peace are sometimes limited.

While K.S.A. 21-3843, violation of a protective order, allows police officers to arrest a person who violates a court order a condition of pretrial release, it is sometimes impossible for the officers to verify no contact with the victim was a condition of the bond. These incidents frequently happen late at night when the court is closed and the defendant may not feel like sharing a copy of his bond with the police.

SB 205 would require every bond for a person offense to have as a condition of release, a prohibition against contacting the victim for a period of at least 72 hours.

First, this would provide the officers probable cause. As every bond would have this condition of release, upon checking jail records to determine when a person was released, the officers would have probable cause to make arrests under K.S.A. 21-3843, assuming all facts were evident. This would allow officers to quickly resolve these situations and move on with the victim protected from someone who has demonstrated a disregard for court orders.

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Secondly, the 72 hours would allow victim to seek a protection from abuse order or obtain a copy of the conditions of bond from the court clerk's office, even if the originating incident occurred on a Friday night. This would allow victims to obtain additional protections and the proof thereof. Absent some proof of the conditions of bond, the officers are frequently left to only advising victims that they should contact their attorney to pursue a bond revocation when court reconvenes on Monday morning.

The proposed language also provides for an exception where a court makes a specific finding, modifying the presumption, so in a case where it would create an inappropriate hardship, the condition of release could be modified.

Thank you for your consideration. I would be happy to answer your questions.



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**SB 205  
FEBRUARY 14, 2001**

**TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE  
SENATOR JOHN VRATIL , CHAIR**

**BY**

**KRISTIN HUTCHISON  
CITY PROSECUTOR  
CITY OF EMPORIA, KANSAS**

**PROPOSED NO CONTACT AMENDMENT ON APPEARANCE BONDS FOR  
DEFENDANTS CHARGED WITH A PERSON OFFENSE**

I support the enactment of Senate Bill 205 which authorizes courts to impose a 72-hour “no contact” order with the victim as a condition of release on persons charged with a person offense under State law.

Here is a typical scenario under current law. A person is arrested on a Friday night for battery and taken into custody by the Emporia police. Once in custody, they would be transported to the Lyon County jail to be booked on the misdemeanor charge of battery. Under K.S.A. 12-4213, a person arrested on a city charge has a statutory right to post an appearance bond and be released. If they are able to post a cash or surety bond, the person cannot be held longer than **6 hours**. If the person is unable to post a cash or surety bond, they may not be held in custody longer than **18 hours**, at which time they are released on a personal recognizance bond. The next regular court day at which the person could be arraigned before a municipal court judge would not be until Tuesday, at the earliest. At the time of release on bond, the defendant is under no restraint and would be free to return to the scene of the battery or otherwise resume contact with the victim of the crime, possibly on the same night that it occurred. Once the defendant is arraigned, the municipal court judge can impose a “no contact” order, as well as any other conditions of release that are warranted by the facts of the case. The problem, however, is the time period after a defendant is released on bond by the jail but before the defendant appears in court for arraignment, a time period which can be as much as three days.

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Senate Bill 205 addresses the problem by amending K.S.A. 2000 Supp. 12-4301. The amendment authorizes every appearance bond issued to a person charged with a person offense to impose a condition of release **“prohibiting the person from having contact with the victim of such offense for a period of at least 72 hours.”** The amendment authorizes the judicial jurisdiction to incorporate the “no contact” provision in the standard appearance bond which does not now exist in the statutes governing pre-trial release. The amendment is narrowly tailored to cover only “person offenses” under state law. This would include assault, battery, criminal trespass, sex offenses and arson. The time period of 72 hours provides the victim legal protection during the gap period between the defendant’s release on bond and the first appearance in court. During the gap, the victim would have time to act. They might seek out community resources for victims of crime, or they might seek a protection for abuse order in district court. Under our Victim’s Rights Amendment to the State Constitution, a crime victim has the right to be present at the defendant’s first appearance to request an extension of the “no contact” order as a continuing condition of release.

If the defendant disregards the “no contact” provision of their appearance bond, they may be immediately re-arrested on the additional charge of violating the “no contact” order. Finally, in the event that the victim desires that the order be lifted, they have a right to petition the court to have the “no contact” order lifted.

If the 72 hour time period elapses and the victim has not sought any extension of the “no contact” order through a protection from abuse order, or through a request made directly to the judge handling the case; then the “no contact” order would expire according to its own terms. If the police are called to a domestic violence scene and informed that one of the persons is under a “no contact” order, they have the means to determine when that person was previously arrested. Once they ascertain the time of the previous arrest, they would know if the person was under the 72 hour “no contact” provision. If so, they could re-arrest for violation of the order. If the suspect is beyond the 72 hour time period, they could investigate whether the victim had obtained any additional orders.

  
KRISTIN HUTCHISON

**DOMESTIC VIOLENCE BATTERY CHARGES FILED THROUGH EMPORIA  
MUNICIPAL COURT FOR 2000**

TOTAL CITATIONS FILED 164 (VIOLATIONS 168)

TOTALS BY SEX

MALE	126
FEMALE	38

TOTALS BY RACE

ASIAN	1
BLACK	32
HISPANIC	41
WHITE	90

TIME INCARCERATED FOR ARREST AT  
TIME OF VIOLATION (SAMPLE IS HALF  
OF TOTAL ARRESTS, EVERY OTHER  
ARREST IN CHRONOLOGICAL ORDER)

ARREST WARRANTS & OTHER*	18
LESS THAN 1 HOUR	13
1 TO 2 HOURS	5
2 TO 4 HOURS	4
4 TO 6 HOURS	10
6 TO 8 HOURS	15
8 TO 10 HOURS	3
10 TO 12 HOURS	1
12 TO 14 HOURS	1
14 TO 16 HOURS	0
16 TO 18 HOURS	3
18+ HOURS	9

\* Arrest warrants which account for the majority of this category are issued off of complaints made after the incident and are not usually served until well after the incident. This also includes persons arrested on other charges or warrants not related to the battery incident.



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

MEMORANDUM

TO: MEMBERS, SENATE JUDICIARY COMMITTEE

FROM: MARK A. BURGHART, LEGISLATIVE COUNSEL, WESTERN  
RETAIL IMPLEMENT AND HARDWARE ASSOCIATION

RE: SENATE BILL 197

DATE: FEBRUARY 14, 2001

Thank you for the opportunity to appear on behalf of the Western Retail Implement and Hardware Association, a six-state association of farm equipment dealers and hardware dealers, in 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 urge you to recommend Senate Bill 197 favorably for passage. Thank you.

*In Jud*  
2-14-01  
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# WESTERN EXTRALITE COMPANY

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

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www.westernextralite.com

January 16, 2001

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816-421-8404

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Maryland Heights, MO 63043  
314-432-4560

**Lee's Summit, MO**

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Lee's Summit, MO 64081  
816-246-8300

**N. Kansas City, MO**

1124 Howell Street  
N.K.C., MO 64116  
816-421-5888

**St. Joseph, MO**

1302 Frederick Ave.  
St. Joseph, MO 64501  
816-364-4500

**Sedalia, MO**

1501 Thompson Blvd.  
Sedalia, MO 65301  
660-827-3880

**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  
785-727-2941

**Manhattan, KS**

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

**Jlathe, KS**

708 E. 123rd Street  
Jlathe, KS 66061  
913-768-1777

**Topeka, KS**

4024 S. Topeka Blvd.  
Topeka, KS 66609  
785-266-3541

The Honorable John Vratil  
Chairman of the Senate Judiciary Committee  
Capitol Building, Room 128 South  
Topeka, KS 66612

Dear Senator Vratil:

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 10<sup>th</sup> prox. and is as follows:

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

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January 16, 2001

Page 2

The Honorable John Vratil

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 25<sup>th</sup> of the month is normally discountable on the following 10<sup>th</sup> and would be due without discount at the end of that month. However, invoices dated on the 26<sup>th</sup> are not due the following 10<sup>th</sup>, but the 10<sup>th</sup> 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 26<sup>th</sup> 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.

January 16, 2001

Page 3

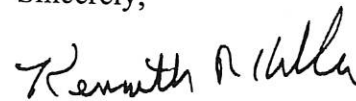
The Honorable John Vratil

We believe the Kansas law should be changed to allow a filing time of 6 months, which is currently being used, and works quite well, 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 3 months to 6 months 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 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 attention and cooperation.

Sincerely,



Kenneth R. Keller  
Controller

/bb

## LIEN LAWS – KANSAS AND MISSOURI

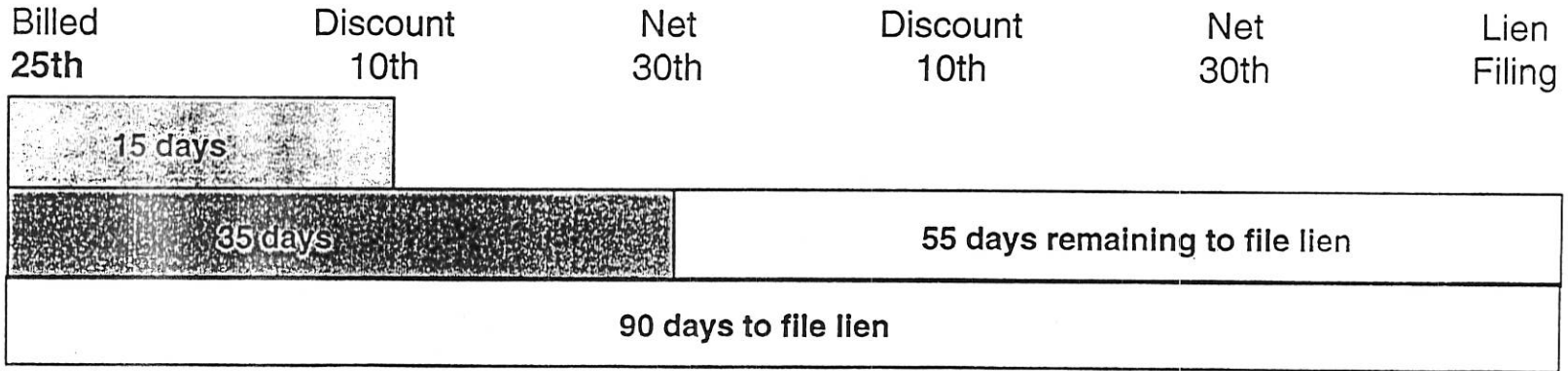
<u>Nonresidential Property</u>	<u>Time for Filing Lien *</u>	
	KS	MO
Tier I General Contractor	4 months	6 months
Tier II Subcontractor or supplier to general contractor	3 months	6 months – Must give 10 days notice before filing lien
Tier III Subcontractor to a subcontractor or a supplier to a subcontractor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

\* From date of last material delivered or labor performed.

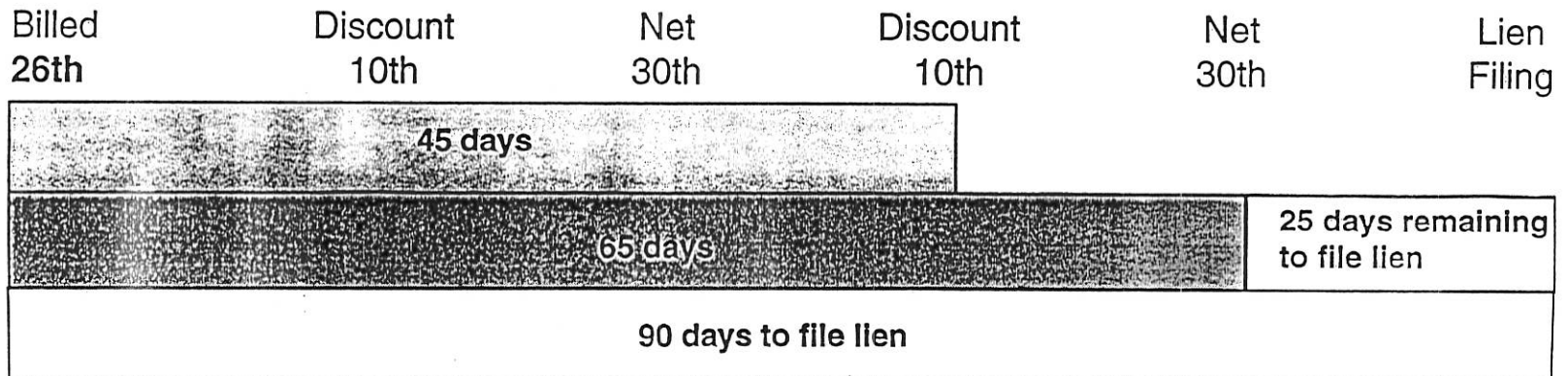


# Time Line — 10th Prox. Payment Term

Example 1:



Example 2:



**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**

# MHF

## MOORE HENNESSY & FREEMAN, P.C.

ATTORNEYS AT LAW

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January 25, 2001

The Honorable John Vratil  
Chairman Senate Judiciary Committee  
1285 Capital Building  
Topeka, Kansas 66612

*Re: Mechanic's Lien Law Revisions*

Dear Chairman Vratil:

I have been practicing law in the Kansas City Metropolitan Area for 29 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 and in many various jurisdictions. One of the primary remedies utilized for our clients, especially subcontractors and suppliers, for collection of contract sums due is through various mechanic's lien laws. These 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 period of time, in our opinion, is much too short and 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 contractor 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 has, based upon our experience, allowed the owner and the contractors to resolve their differences without the real estate and improvements being encumbered. This longer period of time, in our opinion, results in proportionately a higher percentage of liens being filed in Kansas than in Missouri and much more rapid voluntary resolutions of disputes between the owner and contractors in Missouri than in Kansas. Voluntary resolution is obviously is the most preferential manner, from our point of view,

to remedy disputes.

Based upon our experience, the most prevalent reaction to the filing of a mechanic's lien is a polarization between the owner and contractors or between the subcontractors (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 as well as among the contractors and suppliers running down the line of subcontracts and purchase orders. For that reason alone, we view a mechanic's lien as a remedy of last resort; certainly not one of first resort which, because of the very short Kansas lien law time frames (3 months and 4 months) has become necessary. The six (6) month period for filing a lien certainly allows a much greater opportunity for voluntary resolution of disputes. At the present time, we represent suppliers who supplied materials on three projects owned by the same entity, one (1) in Kansas and two (2) in Missouri. We have already been compelled to file liens against the project in Kansas rather than lose our lien rights. The mere filing of the liens, in our opinion, is creating much hardship and many more difficulties in reaching a voluntary resolution of all issues. On the Missouri projects, on the other hand, no liens have yet been filed and will not have to be filed for another 2 to 3 months because of the longer lien time.

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

Extending the time in which any contractor or supplier may file a lien, in our opinion, benefits all parties involved in the construction project - owners, banks, contractors, subcontractors and suppliers. It also allows an attorney for an aggrieved contractor or supplier to utilize the mechanic's lien remedy as a last resort rather than as a first resort. The six (6) month time limitation, based upon our experience, gives an attorney an opportunity to write a demand letter or for the attorney's client to notify everyone involved that money is still due and owing to it. The longer time limitation for the filing of a lien, based upon our experience, has certainly resulted in fewer liens being filed in slow payment situations in Missouri than in Kansas which has the very short three (3) month and four (4) month time limitations. Again, that result, in our opinion, is beneficial for all parties to the construction project including lenders and owners. It also merely acknowledges what have become

presently accepted construction payment cycles.

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

Yours very truly,

MOORE HENNESSY & FREEMAN, P.C.

By:   
Thomas M. Moore

TMM:smb



*See att # 8  
2-14-01  
SNJnd*

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**



**H.Patrick Tolle, President**  
10670 Barkley P.O. Box 12370  
Overland Park, KS 66212  
(913) 383-9300 (800) 525-7228 FAX (913) 381-0109  
[www.nacmkc.org](http://www.nacmkc.org) [ptolle@nacmkc.org](mailto:ptolle@nacmkc.org)

January 30, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
Room 128 State Capitol Building  
300 SW 10<sup>th</sup>  
Topeka, Ks 66612

Dear Senator Vratil,

The National Association of Credit Management, founded in 1896 is committed to enhancing, promoting and protecting the many interest 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 in the States of Kansas and Missouri, ensuring that sound credit management practices are recognized.

As Chairman of the Kansas Senate 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. Our Board of directors along with hundreds of our members support and welcome this change to the Kansas lien laws. It is our belief that such a change, as evidenced in the state of Missouri will be most beneficial to commercial credit grantors helping them to keep the cost of doing business down and improving customer relationships.

Thank you for your attention to this most important matter.

H. Patrick Tolle  
President  
HPT/dr

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

**Robert E. Doran III, President  
Capital Electric  
Leavenworth, KS**

**February 2001**

# CAPITAL ELECTRIC

Line Builders, Inc.

---

1320 Ottawa St.  
P.O. Box 148  
Leavenworth, KS 66048  
Phone: (913) 682-2034  
K.C. Phone: (816) 472-9500  
Fax: (913) 362-2304  
www.capitalelectric.com

January 18, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
Room 128 – State Capital Building  
300 SW 10<sup>th</sup>  
Topeka, KS 66612

RE: Change of Kansas Mechanics Lien Law

Dear Mr. Vratil:

I am writing this letter soliciting your support as chairman of the Kansas Senate Judiciary Committee to initiate changes in the mechanics lien law for non-residential property liens. The present law allows subcontractors only a three-month window from the last day of work on a jobsite to file a lien. In today's business environment this simply is not enough time to execute a lien. It also creates additional problems between owners and contractors having to file in such a short period of time. In many cases, it creates tension and an unfavorable working relationship between owners and contractors.

If the lien laws for filing mechanics liens were extended to six months, in many cases the issues of dispute could be worked out and would eliminate or certainly reduce the need to file a mechanics lien in the first place. This consideration would also cut contractor's costs and for that matter, owner's cost for the elimination or certainly the reduction of legal fees and other expenses to help us preserve the owner/contractor relationship. This is a good time for this issue to be resolved by increasing the mechanics lien laws from three months to six months so both business and construction can improve and grow in the economy.

I respectfully request your support in addressing adjustments to the mechanics lien law in the State of Kansas. Thank you for taking time to read this letter and your efforts.

Respectfully,



Robert E. Doran III  
President

REDIII\er

cc: Ken Keller, Western Extralite Co. ✓  
Don Dawson, NECA



**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**

RECEIVED JAN 17 2001

Kansas City Chapter  
National Electrical Contractors Association

# NECA

Joplin • Kansas City  
St. Joseph • Springfield

4016 Washington  
Kansas City, MO 64111

P.O. Box 32255  
Kansas City, MO 64171

January 16, 2001

**The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
Room 128 – State Capitol Building  
300 SW 10<sup>th</sup>  
Topeka, KS 66612**

**RE: Kansas Mechanics Lien Law – Support to Change Filing Time Period**

Dear Mr. Vratil:

This letter is written urging your support, as Chairman of the Kansas Senate Judiciary Committee, for changing the Mechanics Lien Law in the State of Kansas for non-residential property liens.

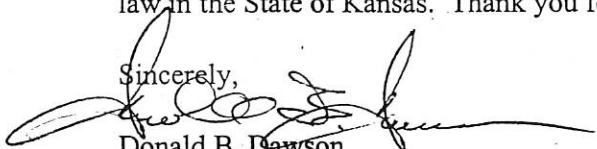
The current law in Kansas permits a construction contractor to file a mechanics lien on real property or improvements to real property within three (3) months of the last day worked or the last day material is delivered. This is simply not enough time in today's business climate. This unusually short 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 were 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 support changing the current law from three months to six months for non-residential property liens. This is a very important issue to all of our members who work throughout the entire State of Kansas.

We respectfully request your support in making the necessary adjustments to the mechanics lien law in the State of Kansas. Thank you for your consideration.

Sincerely,



Donald B. Dawson  
Chapter Manager

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Telephone: (816) 753-7444 • Fax: (816) 931-2314 • E-Mail: kcneca@unicom.net

7-16

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

**Jamiel Yameen, President  
Electrical Contractors, Inc.  
Raytown, MO**

**February 2001**

Power up with

**Electrical  
Contractors, Inc**

18 January 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
Room 128 – State Capital Building  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

Re: Kansas Mechanics Lien Law – Support to Change Filing Time Period

Dear Mr. Vratil:

This letter is written to you to urge support for changing the Mechanics Lien Law in the State of Kansas for non-residential property liens. I am writing you recognizing your important position as Chairman of the Kansas Senate Judiciary Committee.

Although our office is in Missouri a good portion of our annual work is in the State of Kansas as the state line is only ten miles from our front door.

Kansas law currently allows a contractor to file a mechanics lien on real property or improvements to real property with three (3) months of the last day worked or the last day material is delivered. This is not enough time to determine whether a payment issue exists considering today's business climate where many customers regularly pay their bills in forty-five (45) and sixty (60) days.

If the allowable time period for filing mechanics liens were extended to six (6) months, we would be able to work out issues and answer questions of our customers. Under the current conditions, we begin contemplating our lien rights at 45 to 60 days to assure a proper filing within 90 days. I personally believe that if we had the added 3 months to negotiate with owners we could alleviate the need to file liens.

Additionally, as a contractor I could reduce legal expenses and overhead costs because I would not need to call in the attorney as soon and the customer would not be as inclined to see his or her name in the newspaper related to a mechanic's lien.

This all being said, please note this letter in favor of changing the current law from three (3) months to six (6) months for non-residential property liens. This is an important issue and we respectfully request your support in making the necessary changes.

Thank you for your consideration,

Electrical Contractors, Inc.

Jamiel Yameen  
President

**COPY**

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**



January 19, 2001

COPY

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
Room 128-State Capitol Building  
300 SW 10<sup>th</sup>  
Topeka, KS 66212

Subject: Kansas Mechanics Lien Law-Supporting Change in Filing Time Period

Dear Mr. Vratil,

As the owner of an electrical contracting firm, I am writing to you requesting your support of repeal of the current Mechanics Lien Law in the State of Kansas for non-residential property liens. With the current laws requiring liens filed within three months from the last day worked on a project, this has created lost opportunities and friction between parties for our company.

Often times we do not know the true intent of payment from the customer until the 90 days have elapsed. It is easier to be led down the path of deception with the promises of payment with this "short" window of opportunity for filing liens. We have also found that when we have exercised our lien rights, it has created animosities between parties once legal avenues have been pursued. We have a present situation where the customer is having financial difficulties and is requesting installment payments over a six-month period.

If we had six months for securing our lien rights we feel this would be a more appropriate time frame to secure our interests. We would greatly appreciate your consideration in adjusting the mechanics lien law in the State of Kansas. Thank you for your consideration.

Sincerely,



Robert B. Fisher  
President, Heartland Electric Corporation

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

**D. L. Smith, President  
D. L. Smith Electrical Construction, Inc.  
Topeka, KS**

**February 2001**

January 26, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
128-S State Capitol Building  
300 S.W. 10<sup>th</sup>  
Topeka, Ks. 66612

RE: Mechanics Lien Law

Dear Senator Vratil:

I am an electrical contractor located in Topeka, Kansas and have been in business since 1972. Since that time I have watched as lien laws have developed in this State. In my opinion the current Kansas mechanics lien law is too limited in the time required to file a lien. I feel that a time limit of six months, like the Missouri law, is a much more flexible law that allows time for dispute resolution, if any is needed, without developing an adversarial relationship because of the need to file a mechanic's lien within the existing statute of limitation of three months.

I would ask that the Kansas Legislature amend the present Kansas lien law as it related to non-residential construction in order to provide a more favorable atmosphere in which to provide construction services in the State of Kansas. This is a much needed revision for our industry. Thanking you in advance for your positive consideration of this request, I am,

Respectfully,



D. L. Smith  
President  
D. L. Smith Electrical Construction, Inc.

cc: Mr. Ken Keller, Western Extralite Company  
Mr. Don Dawson, Kansas City Chapter, NECA

File:Vratil

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

**Scott L. Bond, Project Manager  
Bond Electric, Inc.  
Lawrence, KS**

**February 2001**

**Bond Electric, Inc.**

*Electrical Contractor*

P.O. 3774

Lawrence, KS 66046

785-843-0722

February 1, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
128-S State Capitol Building  
300 SW 10<sup>th</sup>  
Topeka, KS 66612

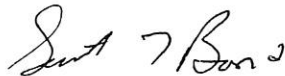
**Re: Mechanics Lien Law**

Dear Sir:

The reason for this letter is to ask that the Kansas Legislature amend the Kansas Lien Law for **non-residential construction**. As a small electrical contractor I feel that 3 months is not a sufficient amount of time to resolve problems and receive payment from owners. Many of our clients remain on our accounts payable list for over 90 days. At that time it is already too late to file a lien. Six months would allow more time to resolve issues and would relieve pressure on contractors to file. This will save the owners embarrassment and reduce legal fees for the owners and contractors.

Please consider making this change for the **State of Kansas**.

Thank you .



Scott L. Bond  
Project Manager

cc: ~~Mr.~~ Ken Keller, Western Extralite Company  
Mr. Don Dawson, Kansas City Chapter, NECA

**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

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

**February 2001**



# Shelley Electric, Inc.

328 Graham  
Emporia, KS 66801  
Telephone (316) 342-6611  
Fax: (316) 342-6213

February 1, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
128-S State Capitol Building  
300 S.W. 10<sup>th</sup>  
Topeka, KS 66612

RE: Mechanics Lien Law

Dear Senator Vratil:

I am an electrical contractor located in Emporia, Kansas. For many years I have watched as lien laws have developed in this State. In my opinion the current Kansas mechanics lien law is too limited in the time required to file a lien. I feel that a time limit of six months, like the Missouri law, is a much more flexible law that allows time for dispute resolution, if any is needed, without developing an adversarial relationship because of the need to file a mechanic's lien within the existing statute of limitation of three months.

I would ask that the Kansas Legislature amend the present Kansas lien law as it related to non-residential construction in order to provide a more favorable atmosphere in which to provide construction services in the State of Kansas. This is a much-needed revision for our industry. I thank you in advance for your positive consideration of this request.

Sincerely,

James A. Fowler  
Shelley Electric, Inc.  
Branch Manager

c.c. Mr. Cal Nicodemus, Wichita Chapter, NECA  
Mr. Ken Keller, Western Extralite Company  
Mr. Don Dawson, Kansas City Chapter, NECA



**PROPOSED CHANGE  
IN THE  
MECHANIC LIEN LAW**

**Tom Coble, Estimator  
Shelley Electric, Inc.  
Emporia, KS**

**February 2001**



# Shelley Electric, Inc.

328 Graham  
Emporia, KS 66801  
Telephone (316) 342-6611  
Fax: (316) 342-6213

February 1, 2001

The Honorable John Vratil, Chairman  
Kansas Senate Judiciary Committee  
128-S State Capitol Building  
300 S.W. 10<sup>th</sup>  
Topeka, KS 66612

RE: Mechanics Lien Law

Dear Senator Vratil:

I am an electrical contractor located in Emporia, Kansas. For many years I have watched as lien laws have developed in this State. In my opinion the current Kansas mechanics lien law is too limited in the time required to file a lien. I feel that a time limit of six months, like the Missouri law, is a much more flexible law that allows time for dispute resolution, if any is needed, without developing an adversarial relationship because of the need to file a mechanic's lien within the existing statute of limitation of three months.

I would ask that the Kansas Legislature amend the present Kansas lien law as it related to non-residential construction in order to provide a more favorable atmosphere in which to provide construction services in the State of Kansas. This is a much-needed revision for our industry. I thank you in advance for your positive consideration of this request.

Sincerely,

Tom Coble  
Shelley Electric, Inc.  
Estimator

c.c. Mr. Cal Nicodemus, Wichita Chapter, NECA  
Mr. Ken Keller, Western Extralite Company  
Mr. Don Dawson, Kansas City Chapter, NECA

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. 16<sup>th</sup> 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. 39<sup>th</sup>, 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. 96<sup>th</sup> Terrace, Lenexa, KS 66215

Builders Association, 632 W. 39<sup>th</sup> 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

FROM THE DESK OF:  
JAMES F. FREEMAN III

Admitted in Kansas and Missouri  
e-mail: jffreeman@MHFpc.com

February 12, 2001

The Honorable Senator Edward Pugh, Vice-Chairperson  
Kansas Senate Judiciary Committee  
Room 120-S  
300 SW 10<sup>th</sup>  
Topeka, Kansas 66612

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

Dear Senator Adkins:

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.

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In Jud  
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**Senator Umbarger**  
**Re: Senate Bill 197**  
**February 12, 2001**  
**Page 2**

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 75<sup>th</sup> 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 90<sup>th</sup> 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

**Senator Umbarger**  
**Re: Senate Bill 197**  
**February 12, 2001**  
**Page 3**

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.

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 mor closely reflect the presently accepted construction payment cycles.

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

53  
2-14  
att9

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

TO: Senate Judiciary Committee

RE: Senate Bill 197

1. Kansas Land Title Association is opposed to extending the time period for filing mechanics' liens;
2. 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;
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 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.
8. 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:
  - a. mortgage lender files construction mortgage prior to start of work to gain priority over liens;

Sen. Jud  
2-14-01  
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- 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.

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



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

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February 14, 2001

TO: Senate Committee on Judiciary

FROM: Kathleen Taylor Olsen, Kansas Bankers Association

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.

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