

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on February 20, 2008, in Room 123-S of the Capitol.

All members were present.

## Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Karen Clowers, Committee Assistant

## Conferees appearing before the committee:

Will Larson, Legal Counsel, Associated General Contractors of Kansas  
Woody Moses, Kansas Aggregate Producers; Kansas Ready Mixed Concrete Association  
Bill Miller, American Sub-contractors Association  
Bob Totten, Public Affairs Director, Kansas Contractors Association  
Ken Keller, Western Extralite Company  
Ken Daniel, Midway Wholesale

## Others attending:

See attached list.

The Chairman distributed copies of a memo received from the Kansas Judicial Council concerning changes to the Uniform Trust Code (Attachment 1). At the request of Senator Vratil, the Judicial Council Probate Law Advisory Committee reviewed the changes proposed in **SB 478**. After a full review the Advisory Committee recommended that **SB 478** not be passed. Chairman Vratil stated that based on this report he will take no further action on **SB 478**.

The Chairman opened the hearing on **SB 603—Requirement of preliminary 20-day notice for supplier's lien.**

Will Larson testified in support, stating the goal of **SB 603** is to assure timely payment by subcontractors so liens against the general contractor are not filed (Attachment 2). Mr. Larson indicated there may be some confusion over the bill and wanted to clarify that only one notice is required and a provision was added to make it only applicable to goods and services over \$15,000. Mr. Larson also offered a balloon amendment to address public works bonds.

Woody Moses spoke in opposition, stating there is no need for this bill (Attachment 3). Kansas has good lien law structure and works as intended by spreading the risk in a balanced manner. Mr. Moses indicated enactment of this bill potentially increases construction costs, create unnecessary paperwork, and lacks a compelling reason for passage.

Bill Miller appeared in opposition, stating **SB 603** unfairly targets suppliers of goods and services to the construction industry (Attachment 4). Current law already requires notice within 90 days, and 150 days for lien filing and should be adequate. Mr. Millers suggested increasing the trust provision in the contract to solve the issue.

Bob Totten spoke in opposition, specifically noting K.S.A. 60-1111 prohibits filing a lien on public projects exceeding \$100,000 (Attachment 5). Mr. Totten also indicated it is impossible to provide the address or legal description on an highway project extending over several miles or sewer projects running several blocks. This bill will also remove the existing rights contractors now have on commercial property by severely reducing the time limit to 20 days for filing a lien protection notice.

Ken Keller spoke against the bill, stating the bill will create an administrative nightmare for suppliers (Attachment 6). Mr. Keller also voiced several of the concerns stated earlier. He feels the bill is unfair and unnecessary.

Ken Daniel appeared in opposition, stating this bill is unfair to suppliers and sub-sub contractors and the

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on February 20, 2008, in Room 123-S of the Capitol.

required paperwork will be impossible to administer (Attachment 7). Mr. Daniel estimated it will cost nearly \$1,000,000 to protect the lien right of the company. He feels the bill is ill conceived and urged that it not be passed.

Written testimony in opposition to **SB 603** was submitted by:  
Woody Moses, Kansas Cement Council (Attachment 8)

There being no further conferees, the hearing on **SB 603** was closed.

The hearing on **SB 551—Driving while suspended, term of imprisonment** was opened.

Senator Journey testified in support, indicating the bill will address an unintended consequence of legislation passed a couple of years ago regarding a third DUI offense (Attachment 9). Enactment of **SB 551** will reduce the mandatory minimum jail sentence from 90 days to 30 days but will not restrict or prohibit the judge from assessing a longer sentence.

There being no further conferees, the hearing on **SB 551** was closed.

The Chairman called for final action on **SB 414—Electors of county or counties may establish an office of the district attorney; salary based on felony caseload**. The Chairman reviewed the bill and distributed a balloon amendment (Attachment 10). Staff revisor Bruce Kinzie reviewed the changes in the balloon.

Senator Schmidt moved, Senator Goodwin seconded, to change the 3 year rolling average on felony caseloads to a 5 year rolling average felony caseload. Motion carried.

Senator Schmidt moved, Senator Journey seconded, to adopt the balloon amendment. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, to recommend **SB 414** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **SB 517—Department of corrections, work projects involving repair of real estate**. Senator Vratil reviewed the bill.

Senator Haley moved, Senator Donovan seconded, to recommend **SB 517** favorably for passage. Motion carried.

The Chairman called for final action on **SB 536—Prohibiting adoption and enforcing residency restrictions on registered offenders**. Senator Vratil reviewed the bill and a proposed amendment suggested by the Department of Corrections during testimony on February 14 (Attachment 11).

Senator Bruce moved, Senator Schmidt seconded, to amend **SB 536** as proposed by the Department of Corrections. Motion carried.

Senator Goodwin moved, Senator Umbarger seconded, to recommend **SB 536** as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 21, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-20-08

NAME	REPRESENTING
Tom Burgess	ASA
Bill Miller	ASA - MIDWEST COUNCIL
Ken Keller	ASA - Western Extralite
Eric Stafford	AGC of KS
Will Larson	AGC of KS
Corey Peterson	AGC of KS
Roger Werheltz	KDOC
Tim Madden	KDOC
Jammy Dickson	Coffeyville Chamber



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February 19, 2008

Sen. John Vratil  
Statehouse, Rm 281 E  
Topeka, KS 66612

Re: 2008 Senate Bill 478

Dear Chairman Vratil,

Your letter of February 6, 2008, requested that the Judicial Council review 2008 Senate Bill 478 concerning changes to the Uniform Trust Code. You specifically asked the Council to review the proposed language which would allow the trustee of an irrevocable trust to distribute income or principal of a trust early to a potential remainder beneficiary under certain conditions.

The timing of your request was good because the Judicial Council Probate Law Advisory Committee, which handles such matters for the Judicial Council and studied and recommended the Kansas Uniform Trust Code, met Friday, February 15, 2008. As I told you when we spoke, the Judicial Council itself does not meet for a few months and the following report of the Probate Law Advisory Committee has not been considered by the Council.

The Probate Law Advisory Committee met February 15, 2008. The following Committee members were present:

Gerald L. Goodell, Chair,  
Cheryl C. Boushka,  
Hon. Sam K. Bruner,  
James L. Bush,  
Tim Carmody,  
Prof. Martin B. Dickinson, Jr.,  
Mark Knackendoffel,  
Justice Edward Larson,  
Phillip D. Ridenour, and  
Willard B. Thompson.

Senate Judiciary

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Attachment 1

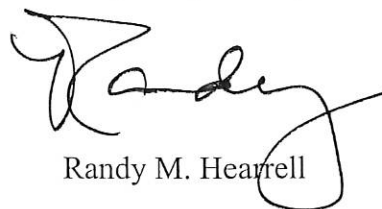
A week prior to the meeting I mailed the following materials to the Committee:

- February 6, 2008 letter from Senate Judiciary Chair John Vratil requesting review of SB 478 by the Judicial Council.
- A copy of 2008 Senate Bill 478 relating to the Uniform Trust Code.
- February 5, 2008 testimony of Scott Martinson in support of SB 478.
- February 5, 2008 testimony of Daryl V. Craft opposing passage of SB 478.
- February 5, 2008 testimony of Whitney B. Damron opposing passage of SB 478.
- Comments of the President of the Executive Committee of the Kansas Bar Association's Real Property, Probate and Trust Section opposing passage of SB 478.
- An e-mail from Michelle W. Clayton of the Uniform Law Commission opposing passage of SB 478.

At the meeting the Committee reviewed the materials and discussed whether there is a need for a bill that provides for discretionary acceleration of remainder interests. The Committee again discussed In re Estate of Somers (the case had been an item on the Committee's agenda and had previously been reviewed) and the issues raised in the testimony of the proponent and opponents.

After further discussion, it was moved by Justice Larson and seconded by Professor Dickinson that Mr. Hearrell be directed to report to Chairman Vratil that the Judicial Council Probate Law Advisory Committee has reviewed 2008 SB 478, considered the issues raised in the testimony on the bill, finds that the analysis of SB 478 by the Kansas Bar Association's Real Property Probate and Trust Section is sound and recommends SB 478 not be passed. The motion passed unanimously.

Very Truly Yours,



Randy M. Hearrell



*Building a Better Kansas Since 1934*  
200 SW 33<sup>rd</sup> St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE SENATE COMMITTEE ON JUDICIARY  
SB 603**

February 20, 2008

By Will Larson, on behalf of the Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Will Larson with Larson & Blumreich, Chartered. I serve as legal counsel for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

**AGC of Kansas supports Senate Bill 603 and respectfully asks that you report it favorably for passage.**

The purpose of SB 603 is to provide a means to insure general contractors are notified as to the companies providing goods and services to a construction site in order to make sure these subcontractors and suppliers are being paid. The goal is to insure parties are paid so liens will not need to be filed. SB 603 will create this ability through the filing of a preliminary 20-day lien protection notice to the general contractor.

Prompt payment was a major issue for the construction industry over the past several years. AGC worked closely with other industry groups to form a compromise to pass sound and effective legislation for both the private and public sectors in the form of the "Fairness in Construction Acts." This legislation was an accomplishment for the industry. The American Subcontractors Association of America was quoted in an article as saying the legislation was some of the "most extensive legislation passed in the country."

During testimony on the prompt pay bills, construction payment laws in Arizona were repeatedly given as an example of how successful prompt pay laws can be. SB 603 was also modeled after Arizona law, which has been in place since the 1970's. This law was introduced by construction suppliers in attempt to insure they get paid and therefore do not need to file a lien. While amendments were made during negotiations between AGC general contractors, subcontractors and suppliers to restrict the law to fewer companies, the intent of the Arizona law remains.

The assurance of timely payment has magnified a problem that has already existed on construction projects. This creates the problem of how to deal with a subcontractor who has been paid by the general contractor, but then fails to pay its subcontractors or material suppliers. Should this occur, second tier subs and suppliers on commercial projects have up to 5 months to file a lien on the owner's property. Should this happen, it is likely the original subcontractor has been fully paid and the general contractor will be looked to, to remedy the lien, therefore paying for the same goods and services twice. If this scenario plays out, the subcontractor is most likely out of business and there is no other remedy.

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Attachment 2

SB 603 would require those second-tier subcontractors and suppliers to submit a 20-day preliminary notice to the general contractor informing the general that they will be providing goods or services. This allows the general contractor to know who is on the project and to insure they are being paid.

A provision was added to make this apply to only goods and services that exceed \$15,000 on a particular project. For those companies providing less than this threshold, the lien law remains unchanged and they will have full rights regardless of filing the notice. Also, each company must submit only one notice per project.

As with the "Fairness in Construction Acts" that recently passed the legislature, SB 603 deals with a fairness issue. It would take positive steps in protecting general contractor and second-tier subcontractors and suppliers from subcontractors that fail to pay.

The AGC of Kansas **respectfully requests that you recommend SB 603 for passage.** Thank you for your consideration.



Session of 2008  
SENATE BILL No. 603  
By Committee on Commerce

AN ACT concerning liens; relating to supplier's liens; amending K.S.A. 60-1111 and repealing the existing section.

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

New Section 1. (a) As used in this section:

- (1) "Commercial property" means a new structure or pre-existing structure which is not constructed for use or used as a single or double family residence.
- (2) "Original contractor" means any contractor who has a direct contractual relationship with the owner.
- (3) "Subcontractor" means any person who furnishes labor, equipment, materials or supplies pursuant to a contract directly with an original contractor.
- (4) "Supplier" means any person who furnishes labor, equipment, materials or supplies pursuant to a contract directly with a subcontractor.

For the purposes of this section anyone who has a contract with a subcontractor is considered a supplier.

- (5) "Preliminary 20-day notice" means one or more written notices from a claimant that are given prior to the recording of a mechanic's lien and which are required to be given pursuant to this section.

(b) A lien for the furnishing of labor, equipment, materials or supplies in an amount in excess of \$15,000 by a supplier for the construction of or improvement to commercial property pursuant to K.S.A. 60-1103, and amendments thereto, may only be claimed if the supplier has, no more than 20 days after furnishing such labor, equipment, materials or supplies, served on the original contractor and the subcontractor with whom the supplier has contracted for the furnishing of labor, equipment, materials or supplies, a preliminary 20-day notice providing the information required by subsection (c). The preliminary 20-day notice shall be served by sending the notice or a copy of the notice by certified mail.

(c) The preliminary 20-day notice shall be in substantially the following form:



KANSAS LIEN PROTECTION NOTICE

**This is not a lien and is not a reflection on the integrity of any contractor or subcontractor**

The name and address of the original contractor are:

The name and address of the subcontractor with whom the supplier has contracted are:

This preliminary lien notice has been completed by: (name of subcontractor)

Date:

By:

Address:

Telephone number:

You are hereby notified that the claimant has furnished or will furnish labor, equipment, materials, or supplies of the following general description:

In the construction, alteration or repair of the building, structure or improvement located at: (Insert the address, legal description or other description sufficient to identify the property)

And situated in County, Kansas.

(d) If a supplier who is required to give a preliminary 20-day notice does not do so within 20 days of first furnishing labor, equipment, materials or supplies for a project, such supplier may still give the notice later, but will retain the right to claim a lien in excess of \$15,000 only for that portion of the labor, equipment, materials or supplies furnished within the 20 days prior to the notice being served and at any time there- after.

(e) A supplier required to give a preliminary 20-day notice in order to claim a lien pursuant to K.S.A. 60-1103, and amendments thereto, need only give notice once.

(f) Nothing in this section shall expand or create any additional rights of a person to claim a lien pursuant to K.S.A. 60-1101 or 60-1103, and amendments thereto, or to file a claim under a bond furnished pursuant to K.S.A. 60-1111, and amendments thereto.

Sec. 2. K.S.A. 60-1111 is hereby amended to read as follows: 60-

1111. (a) Bond by contractor. Except as provided in this section, whenever any public official, under the laws of the state, enters into contract in any sum exceeding \$100,000 with any person or persons for the purpose of making any public improvements, or constructing any public building or making repairs on the same, such officer shall take, from the party contracted with, a bond to the state of Kansas with good and sufficient sureties in a sum not less than the sum total in the contract, conditioned that such contractor or the subcontractor of such contractor shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies, used or consumed in connection with or in or about the construction of such public building or in making such public improvements.

A contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer. A public official entering into a contract which requires a contractor or subcontractor to obtain a payment bond or any other bond shall not require that such bond be obtained from a specific surety, agent, broker or producer.

(b) Filing and limitations. The bond required under subsection (a) shall be filed with the clerk of the district court of the county in which such public improvement is to be made.

When such bond is filed, no lien shall attach under this article. Any liens which have been filed prior to the filing of such bond shall be discharged. Any person to whom there is due any sum for labor or material furnished, as stated in subsection (a), or such person's assigns, may bring an action on such bond for the recovery of such indebtedness but no action shall be brought on such bond after six months from the completion of such public improvements or public buildings.

(c) In any case of a contract for construction, repairs or improvements for the state or a state agency under K.S.A. 75-3739 or 75-3741, and amendments thereto, a certificate of deposit payable to the state may be accepted in accordance with and subject to K.S.A. 60-1112, and amendments thereto. When such certificate of deposit is so accepted, no lien shall attach under this article. Any liens which have been filed prior to the acceptance of such certificate of deposit shall be discharged. Any person to whom there is due any sum for labor furnished, materials, equipment or supplies used or consumed in connection with or for such contract for construction, repairs or improvements shall make a claim therefor with the director of purchases under K.S.A. 60-1112, and amendments thereto.

(d) ~~No supplier may file a claim in excess of \$15,000 under a public works bond provided pursuant to this section, unless such supplier has served a preliminary 20-day notice pursuant to section 1, and amendments thereto, on the original contractor required to obtain the bond under this section. Service of the preliminary 20-day notice shall be made by certified mail.~~

**Inserted:** With respect to the construction of any public building or repairs on the same, no

Sec. 3. K.S.A. 60-1111 is hereby repealed.

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

# KRMCA

Kansas Ready Mixed  
Concrete Association

# KAPA

Kansas Aggregate  
Producers' Association

## TESTIMONY

Date: February 20, 2008

By: Woody Moses, Managing Director  
Kansas Aggregate Producers' Association  
Kansas Ready Mixed Concrete Association

Regarding: Senate Bill 603, An act concerning liens; relating to supplier's liens

Before: The Senate Committee on Judiciary

Good morning Mr. Chairman and Members of the Committee:

My name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association and the Kansas Ready Mixed Concrete Association. The Kansas Aggregate Producer's Association (KAPA) and the Kansas Ready Mixed Concrete Association (KRMCA) is a state wide trade association comprised of over 170 members located or conducting operations in all 165 legislative districts in this state, providing basic building materials to all Kansans. I appreciate the opportunity to appear before you today to express our opposition regarding SB 603.

While we have considered why this bill is deemed necessary and has been introduced, our thoughts go to the old saying, "If it is not broke, do not fix it". Over the course of many years we, as a state, have crafted a good lien law structure and it seems as though it works just as it was intended by spreading risk in a balanced manner. Now, SB 603 seeks to upset the carefully crafted balance by shifting the risk from one group (general contractors) to another (subcontractors and suppliers). Ironic, as general contractors profess to make a living out of accepting risk, which justifies their existence. It is even more ironic, as the contractor already enjoys automatic lien protection, pursuant to K.S.A. 60-1101. Yet they seek to limit those of others.

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Attachment 3

Lien laws exist in all 50 states for a good reason, by fairly assigning the risks and providing a means whereby the fruits of one's labor may be recovered. SB 603 unfairly tips the scale against suppliers and subcontractors, as it essentially changes the time to file a lien from 90 days to 20 days (page 2, line 20).

In short, we urge this committee to reject SB 603 as its passage would:

- Drive construction costs higher as suppliers are forced to add more dollars to their estimates to cover the increased risk.
- Creates unnecessary paperwork.
- Creates even more uncertainty in an already uncertain marketplace, and
- Lacks a compelling reason for passage.

Thank you for your time and attention, I would be happy to respond to any questions at the appropriate time.

# MIDWEST CRANE AND RIGGING, INC.

15585 S. KEELER • P.O. BOX 970 • OLATHE, KANSAS 66051-0970  
(913) 747-5100 • FAX (913) 764-0102

Feb.20, 2008

TO: The Senate Judiciary Committee  
RE: SB 603

Chairman Vratil , Vice Chairman Bruce and Committee Members

My name is William R. Miller. I represent The American Subcontractors Association and Midwest Crane & Rigging Co. Inc. ASA represents subcontractors and suppliers in Kansas and Western Missouri. Midwest Crane is headquartered in Olathe with locations in Topeka and St. Joseph, Mo.

I am here to testify in opposition to SB 603. This proposed bill unfairly targets suppliers of goods and services to the construction industry. These suppliers, who in good faith provide materials and services, should not be put at risk for payment.

The current lien law that was passed in 2003 already requires that notice be given to the General Contractor, before 90 days have passed, to extend the time for lien filing to 150 days. This should be adequate time for notice to be given. Suppliers typically do not wait 90 days before making it known that they have not been paid.

Most standard construction contracts include a form that lists all of the suppliers that each subcontractor is purchasing from. Each monthly pay application must include a lien release from the listed suppliers for the previous month's payment. Final payment is conditioned upon furnishing lien releases from those suppliers showing that they have been paid in full. There should be few if any problems if this procedure is followed.

My suggestion to help solve the problem, if in fact a problem exists, is to strengthen the trust provision in the contract to make it a felony for failure to pay those that were owed money that was included in the payment. It would be a strong incentive for those to whom money was entrusted, to pay those that were due the money if mandatory incarceration would result from failure to pay.

I ask that you oppose this bill that unfairly targets construction material suppliers.

Bill Miller  
  
President

Midwest Crane & Rigging

Topeka Branch  
711 1/2 24 Hwy  
785-233-0400



St. Joseph Branch  
1804 S. 8  
816-279-

Senate Judiciary

2-20-08  
Attachment 4

# THE KANSAS CONTRACTORS ASSOCIATION, INC.



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TROY SPORER  
Oakley, Kansas

MARY SULLIVAN  
Kansas City, Kansas

## Testimony

By the Kansas Contractors Association

before the Senate Judiciary committee regarding SB 603

February 20, 2008

Mr. Chairman and members of the Senate Judiciary Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization **represents over 350 companies** who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Although this measure affects very few of our members, the ones that are affected are very vocal about the concerns raised in this bill. Therefore we are in opposition to the measure.

Specifically in Section 2 of the bill, it amends KSA 60-1111 by adding paragraph (d). It appears this applies to any public project exceeding \$100,000 which would include buildings, highways, streets and sewers. We believe the existing statute (60-111) prohibits filing a lien on such projects if a bond has been filed for the project. Given that position it appears to us the requirements of new paragraph (d) would require a supplier

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Attachment 5



to file a preliminary 20-day notice on such bonded projects which would include a bonded highway, street, or sewer project. We were led to believe this measure would only apply to buildings but we think this requirement would now apply to highway work.

The ability to complete the proposed notice where the address or legal description of the project must be provided is potentially much more difficult on a highway project extending over many miles or a sewer project running across multiple lots. When constructing a building, you normally are only worried about a specific address...with a highway project, the scope of the project encompasses a larger area. Because of this concern and the way it is worded, we are opposed to the measure.

In addition, we find we are in opposition because some of our members will be forced to give up their rights. Essentially, what this bill does is require some contractors to give up their existing rights on commercial property which now provides three months or more to file a lien and instead accept the 20-day requirement for filing a Lien Protection Notice. While we understand the problems that the general contractors have with liens being filed by suppliers or second-tier subs after they have paid a first-tier sub, I am not sure that transferring the risk to the second-tier subs and suppliers is fair.

As a result, we oppose SB 603.



Feb 20, 2008

To: The Senate Judiciary Committee  
RE: SB 603

Mr. Chairman

Thank you for allowing me to address you and your committee this morning in opposition to SB 603. I'm Ken Keller retired controller of Western Extralite Company. Western Extralite Company is a supplier of electrical supplies to the construction industry. We have multiple locations, with six locations in Kansas and would definitely be effected by this proposed legislation. I also represent the American Subcontractors Association, National Association of Credit Managers, and other interested parties.

I have many questions as it relates to this bill:

1 In 2003, Substitute for HB 2064 extending the time for filing a mechanics lien took effect. It provides a notice provision asked for and received by the general contractors as part of a compromise to give them notice of the intent to file a lien. This notice, properly executed, extended the filing time for a mechanics lien an additional 60 days. That notice is all that should be necessary. Why do the suppliers need to be burdened with this additional time consuming and expensive administrative burden?

2 The wrong person is being penalized. The supplier has not been paid and is entitled to his money. The culprit is the subcontractor. Don't punish the supplier by reducing his lien rights.

3 The proposed legislation would create an administrative nightmare for the suppliers. They would have to file a 20-day notice on virtually every job. They don't know when a \$13,000 job, with change orders and miscellaneous add-ons will exceed \$15,000. We are adding a huge responsibility to the supplier.

4 Currently the supplier doesn't know who the general contractor is on all he supplies. Often times the sub will come in and buy material without explaining its destination.

5 When is notice required on a direct ship job with a long lead time? I assume when the material is shipped from the factory and delivered to the job site.

6 Is this a real problem that requires legislation? How often does the problem arise? Are we going to require a lot of needless and expensive administrative effort for a problem that doesn't happen that often and could be prevented if the general contractors would do their due diligence when hiring the subcontractor.

7 In the interest of fairness, should this legislation pass, then it should require the general contractor to provide all information necessary for filing a lien in return for the information they request. This would include the name and address of the owner, the legal description of the property where the project is located and all bonding information necessary to file a bond claim on public or bonded job.

SB603 raises many questions, increases the administrative work of the suppliers and provides little positive in return. I urge you to vote against SB603.

Ken Keller

Controller, Retired  
Western Extralite Company

Senate Judiciary  
2-20-08  
Attachment 6



Midway Sales & Distributing, Inc. d/b/a

# MIDWAY WHOLESALE

Topeka • Salina • Lawrence • Manhattan • Elwood • Kansas City • Wichita

## TESTIMONY ON SENATE BILL 603 SENATE JUDICIARY COMMITTEE

By **Kenneth Daniel**  
February 20, 2007

*Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is publisher of KsSmallBiz.com, a small business e-newsletter and website. He is C.E.O. of Midway Wholesale, a business he founded in 1970. Midway has eight locations and 115 employees.*

Mr.Chairman and Members of the Committee:

I speak in strong opposition of Senate Bill 603 in its entirety. This bill guts the Kansas lien laws.

Midway Wholesale is a construction materials supplier. About half of the costs of commercial building construction are materials costs. We extend credit to contractors, and become the de facto financiers of most construction projects. One of our only protections is that we often know where the materials were used and can protect ourselves through liens.

Last year Midway filed five liens on \$52 million of sales. We issued about 75,000 invoices. We estimate that this ill-conceived bill will require us to spend more than \$1 million to attempt to protect our lien rights, with great risks of failing to do so.

Last year, in spite of the lien laws, we “contributed” nearly \$500,000 to construction projects. We did not choose the owners, general contractors, and subcontractors for those projects. We were not party to the construction contracts on these projects – in fact, we rarely saw them. We merely furnished the materials at the low profit margin of our industry.

This bill abuses suppliers and sub-sub contractors. It requires no responsibility for the owners, general contractors, and subcontractors who get to choose who does the work and enjoy the luxury of being party to the written contracts.

This bill will enable dishonest, incompetent, or careless building owners, developers, contractors, and subcontractors to avoid paying for materials, leaving companies like mine to suffer the losses.

Owners, developers, general contractors, and subcontractors control the money. They are the parties to the contracts. It should not be our job to be the policemen for the industry when we have few rights to begin with.

This bill will strip us of even this marginal protection. This is a very ugly proposal. I strongly urge you to reject Senate Bill 603.

# KANSAS CEMENT COUNCIL

800 SW Jackson St., Ste. 1408

Topeka, KS 66612

(785) 235-1188

## TESTIMONY

Date: February 20, 2008

By: Woody Moses, Managing Director  
Kansas Cement Council

Regarding: Senate Bill 603, An act concerning liens; relating to supplier's liens

Before: The Senate Committee on Judiciary

Good morning Mr. Chairman and Members of the Committee:

My name is Woody Moses, representing the Kansas Cement Council. The Kansas Cement Council is composed of the four cement mills operating in Southeast Kansas. I appreciate the opportunity to appear before you today to express our opposition regarding SB 603.

While we have considered why this bill is deemed necessary and has been introduced, our thoughts go to the old saying, "If it is not broke, do not fix it". Over the course of many years we, as a state, have crafted a good lien law structure and it seems as though it works just as it was intended by spreading risk in a balanced manner. Now, SB 603 seeks to upset the carefully crafted balance by shifting the risk from one group (general contractors) to another (subcontractors and suppliers). Ironic, as general contractors profess to make a living out of accepting risk, which justifies their existence. It is even more ironic, as the contractor already enjoys automatic lien protection, pursuant to K.S.A. 60-1101. Yet they seek to limit those of others.

Lien laws exist in all 50 states for a good reason, by fairly assigning the risks and providing a means whereby the fruits of one's labor may be recovered. SB 603 unfairly tips the scale against suppliers and subcontractors, as it essentially changes the time to file a lien from 90 days to 20 days (page 2, line 20).

Senate Judiciary

2-20-08  
Attachment 8

In short, we urge this committee to reject SB 603 as its passage would:

- Drive construction costs higher as suppliers are forced to add more dollars to their estimates to cover the increased risk.
- Creates unnecessary paperwork.
- Creates even more uncertainty in an already uncertain marketplace, and
- Lacks a compelling reason for passage.

Thank you for your time and attention, I would be happy to respond to any questions at the appropriate time.



## SENATOR PHILLIP B. JOURNEY

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TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

VICECHAIR: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT), VICECHAIR  
MEMBER: HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

**Testimony in Support of Senate Bill 551  
Before the Kansas State Senate Judiciary Committee  
The Honorable John Vratil, Chairman  
Wednesday, February 20<sup>th</sup>, 2008**

Mr. Chairman, members of the Committee, thank you for the opportunity to address you regarding Senate Bill 551, which moderates the minimum term of incarceration for a third offense in driving while suspended or revoked from the mandatory current period of 90 days to a minimum period of 30 days. This does not restrict or prohibit the judge from assessing a longer sentence, but sets the floor for the minimum.

Current Kansas statutes parallel DUI in some respects with the second offense being a mandatory five days in jail, that is unchanged by Senate Bill 551 and then establishes a third offense for 90 days for minimum mandatory sentence under current law. At the request of courts, sheriffs, and even prosecutors, Senate Bill 551 reduces that minimum sentence on the third offense to 30 days in custody. I do this not because I want to help people drive illegally in this State, but because the proportionality of the original statute is less than appropriate for the severity of the charge. A 90-day term of incarceration, house arrest, or work release can have varying effects upon the functionality of an individual and/or their family. For someone that has never been in custody before, 30 days is a sufficient penalty to do what I euphemistically call the "lets make a believer out of them school of jurisprudence." The longer sentence is more punitive than corrective in nature. Should a fourth or subsequent offence occur, the courts always have the option of increasing the penalty up to a year in custody. I believe the essential analysis for the Committee is, is 30 days long enough in custody on work release or house arrest to get the message across to the person that they should not drive a motor vehicle until they are properly licensed and insured. I believe so.

I want to thank the Committee again for the opportunity to address the Committee.

Respectfully submitted,

Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District

**SENATE BILL No. 414**

By Special Committee on Judiciary

1-10

Proposed Amendment  
February 5, 2008

Senate Judiciary  
2-20-08  
Attachment 10

9 AN ACT concerning district attorneys; relating to the creation of the  
10 office of district attorney in certain counties; expenses of office;  
11 amending K.S.A. 22a-102, 22a-103, 22a-105, 22a-106, 22a-107 and 25-  
12 617 and K.S.A. 2007 Supp. 25-213, 25-611, 75-3718 and 75-3721 and  
13 repealing the existing sections.

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

16 New Section 1. (a) If any county or two or more contiguous counties  
17 have a three-year average fiscal year felony caseload filing in such county  
18 or counties of at least 150 felony filings, an office of district attorney may  
19 be established in such county or two or more contiguous counties in the  
20 following manner.

21 (b) (1) If the felony caseload filing requirement established in sub-  
22 section (a) is met, each county commission may pass a resolution sub-  
23 mitting to the qualified electors in each county the proposition of creating  
24 the office of district attorney in such county or two or more contiguous  
25 counties. If all county commissions in each of the contiguous counties  
26 pass such a resolution, the secretary of state shall place on the ballot at  
27 the next election in which all of the qualified electors of the county or  
28 counties are entitled to vote the proposition stated in paragraph (3).

29 (2) The secretary of state shall place on the ballot at the next election  
30 in which all of the qualified electors of the county or contiguous counties  
31 are entitled to vote the proposition stated in paragraph (3), if the secretary  
32 of state receives a petition requesting an election on the proposition,  
33 signed by not less than 5% of the qualified electors in each of the counties.  
34 The following shall appear on the petition:

35 "We request an election to determine whether the present method of selecting the county  
36 attorney(s) in (county or counties) shall be discontinued and replaced in this county  
37 (these counties) with the office of district attorney, which shall be elected by the voters of  
38 the county (these counties)."

39 (3) The proposition on the ballot at an election held pursuant to this  
40 subsection for the adoption of the office of district attorney shall be as  
41 follows:

42 "The present method of selecting county attorneys in this county (these counties) shall  
43 be discontinued and there is hereby adopted in this county (these counties) the office of

10-3

1 Monday in January next following the election. Upon such date, the of-  
2 fices of county attorney in such counties which voted by the majority for  
3 the office of the district attorney shall be and is hereby abolished.

4 (c) Upon the establishment of the office of district attorney pursuant  
5 to section 1, and amendments thereto, the title and style of office shall  
6 be district attorney of (county or counties).

7 (d) The district attorney authorized by this section is hereby declared  
8 to be an executive officer of the county or contiguous counties in which  
9 such attorney is elected, with the office constituting a separate entity  
10 within the county or contiguous counties for administrative purposes. In  
11 no event shall the district attorney be deemed an officer of any county.

12 (e) Before entering upon the duties of the office, the district attorney  
13 shall take the oath of office required by law for public officers and shall  
14 execute a good and sufficient surety bond in the manner prescribed by  
15 K.S.A. 75-4101 et seq., and amendments thereto.

16 (f) If the office of district attorney is established pursuant to this sec-  
17 tion, the duration of the office of the district attorney shall be perpetual.

18 (g) The provisions of article 1 of chapter 22a of the Kansas Statutes  
19 Annotated, and amendments thereto, shall be applicable to the office of  
20 district attorney established pursuant to sections 1 and 2, and amend-  
21 ments thereto.

22 New Sec. 3. The attorney general shall coordinate, determine and  
23 submit the budget estimates for the salary of the district attorney of each  
24 office of the district attorney, as established in K.S.A. 22a-105, and  
25 amendments thereto, to the legislature. Each such budget estimate shall  
26 be prepared and submitted by the attorney general in the manner pro-  
27 vided by K.S.A. 75-3716 and 75-3717, and amendments thereto. Subject  
28 to appropriations, the attorney general shall allocate and disburse to the  
29 county or counties, pursuant to an interlocal agreement, the amount of  
30 money constituting the district attorney's salary as established in K.S.A.  
31 22a-105, and amendments thereto.

~~32 New Sec. 4. For the tax year following the year in which the qualified  
33 voters elected a district attorney in a newly established office of the dis-  
34 trict attorney pursuant to sections 1 and 2, and amendments thereto, the  
35 tax statement required pursuant to K.S.A. 79-2001, and amendments  
36 thereto, shall contain a notification of the decrease in the mill levy spe-  
37 cifically attributable to the establishment of such office. Upon approval  
38 of the board of county commissioners, the county treasurer of the county  
39 or counties shall place such notification with the tax statement specifically  
40 stating the mill levy decrease.~~

41 Sec. 5. K.S.A. 22a-102 is hereby amended to read as follows: 22a-  
42 102. (a) No person shall be eligible for nomination to the office of district  
43 attorney unless such person shall have been regularly admitted to practice

Renumbering sections accordingly



SENATE BILL No. 536

By Committee on Judiciary

2-4

9 AN ACT concerning the Kansas offender registration act; prohibition  
10 from adopting and enforcing residency restrictions; amending K.S.A.  
11 22-4913 and repealing the existing section.

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

14 Section 1. K.S.A. 22-4913 is hereby amended to read as follows: 22-  
15 4913. (a) *Except as provided in subsection (b), on and after the effective*  
16 *date of this act, cities and counties shall be prohibited from adopting or*  
17 *enforcing any ordinance, resolution or regulation establishing residential*  
18 *restrictions for offenders as defined by K.S.A. 22-4902, and amendments*  
19 *thereto. The provisions of this section shall expire on June 30, 2008.*

20 (b) *The prohibition in subsection (a), shall not apply to any city or*  
21 *county residential licensing or zoning program for correctional placement*  
22 *residences that includes regulations for the housing of such offenders.*

23 (c) *As used in this section, "correctional placement residence" means*  
24 *a facility that provides residential services for individuals or offenders*  
25 *who reside or have been placed in such facility due to any one of the*  
26 *following situations:*

- 27 (1) *Prior to, or instead of, being sentenced to prison;*
- 28 (2) *received a conditional release prior to a hearing;*
- 29 (3) *as a part of a sentence of confinement of not more than one year;*
- 30 (4) *a privately operated facility housing parolees;*
- 31 (5) *received a deferred sentence and placed in a facility operated by*

32 *community corrections; ~~or~~*  
33 *(6) ~~required court-ordered treatment services for alcohol or drug~~*

34 *abuse. ✓*  
35 *Correctional placement residence shall not include a single or multi-*  
36 *family dwelling or commercial residential building that provides a resi-*  
37 *dence to staff and persons other than those described in paragraphs (1)*  
38 *through (6).*

39 Sec. 2. ~~K.S.A. 22-4913 is hereby repealed.~~

40 Sec. 3. This act shall take effect and be in force from and after its  
41 publication in the statute book.

; or

(7) voluntary treatment services for alcohol or drug abuse.

(7)