

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:30 a.m. on March 4, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Doug Taylor, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Others attending:

See attached list.

The Chairman opened the hearing on **SB 523 - Enacting the Kansas Racketeer Influenced and Corrupt Organization act (Kansas RICO act)**. Jason Thompson, staff revisor, provided a memorandum addressing questions raised by the Committee during the hearing. He also reviewed the bill and included explanations of two proposed balloon amendments. (Attachments 1, 2 & 3)

Senator Bruce moved, Senator Schodorf seconded, to amend SB 523 as proposed in the second balloon distributed labeled Attachment 2. Senator Vratil made a substitute motion to amend SB 523 as proposed in the second balloon distributed labeled Attachment 2 with the change on page 4, line 27, from 10 years to 5 years, Senator Kelly seconded. Motion carried.

Senator Schodorf moved, Senator Bruce seconded, to amend SB 523 by adopting the first balloon amendment labeled Attachment 1. Motion carried.

Senator Schmidt moved, Senator Vratil seconded, to provide the revisor latitude to make any necessary technical changes to SB 523 as amended. Motion carried.

Senator Schodorf moved, Senator Schmidt seconded, to recommend SB 523, as amended, favorably for passage. Motion carried.

Senator Vratil requested the Chairman to contact the Kansas Sentencing Commission for a comprehensive report on the bed impact statements on bills either passed or pending in the Committee.

The Chairman called for final action on **HB 2364 - Court procedure; time limitations for filing.**

Senator Schmidt moved, Senator Haley seconded, to recommend HB 2364 favorably for passage and place it on the consent calendar. Motion carried.

The Chairman called for final action on **HB 2418 - Carbon dioxide reduction act; limiting liability of the state of Kansas.** Jason Thompson, staff revisor, reviewed the bill and distributed a proposed balloon amendment based on a request by the Kansas Corporation Commission. (Attachment 4)

Senator Vratil moved, Senator Umbarger seconded, to adopt the proposed balloon amendment. Motion carried.

Senator Donovan moved, Senator Kelly seconded, to recommend HB 2418, as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2582 - Adding conspiracy and attempt to special sentencing requirement of presumptive.**

Senator Vratil moved, Senator Haley seconded, to amend HB 2582 by requiring anyone convicted under the provisions of this bill be incarcerated in the county jail.

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:30 a.m. on March 4, 2010, in Room 548-S of the Capitol.

Senator Bruce made a substitute motion to table **HB 2582**, Senator Umbarger seconded. Motion carried.

The Chairman called for final action on **SB 469 - Civil procedure, commercial property liens; state construction registry, notice of commencement and notice of furnishings.**

Senator Vratil distributed a balloon amendment and reviewed the changes it contained. (Attachment 5)

Senator Vratil moved, Senator Kelly seconded, to amend **SB 469** as reflected in the proposed balloon amendment. Senator Umbarger made a substitute motion to send **SB 469** to the Kansas Judicial Council for recodification of the State lien laws. Motion carried.

The next meeting is scheduled for March 5, 2010.

The meeting was adjourned at 10:33 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 4, 2010

NAME	REPRESENTING
Diane Milford	Sec. of State
Sheri Smiley	Sec. of State
SEAN MILLER	CAPITOL STRATEGIES
Levi Henry	Sandstone Group LLC
Arthur Beynants	KLED
Gail Bright	Office of the Kansas Securities Commissioner
Wendy Harris	KAPR
Woodsman	KRMCA
KEN DANIEL	TIBA
Lane Walsh	Judicial Branch
Richard Sammons	Kerney & Assoc
Jay Hall	KRBC
Leigh Keck	Hein law firm
Drew Morgan	KC/AGC

MEMORANDUM

To: Chairman Owens and Members of the Senate Judiciary Committee
From: Jason Thompson, Assistant Revisor (JT)
Date: March 4, 2010
Subject: Forfeiture under SB 523

Senator Donovan asked where the money goes in civil forfeiture cases during the hearing on Senate Bill 523, enacting the Kansas RICO act. K.S.A. 60-4117 governs disposition of forfeited property and the use of proceeds from sale of forfeited property. Subsection (a)(3) of K.S.A. 60-4117 provides that forfeited property may be sold and provides rules for the sales. Subsection (c) provides the priority order for distribution of proceeds from any sales.

For RICO act cases, the priority order for distribution would be: (1) Satisfaction of any court preserved security interest or lien; (2) payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs; (3) reasonable attorney fees; and (4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

The plaintiff's attorney in a RICO forfeiture will likely be a county or district attorney, an assistant, or another governmental agency's attorney. Thus, pursuant to subsection (c)(3)(A) of K.S.A. 60-4117, reasonable attorney fees will not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. The fees are deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in the fund are used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes.

Senate Judiciary

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Attachment 1

The 80% or 85% of the proceeds remaining after these distributions would be distributed to the law enforcement agency. If the law enforcement agency is a state agency, the proceeds are deposited in the state treasury and credited to such agency's state forfeiture fund. If the law enforcement agency is a city or county agency, the proceeds are deposited in such city or county treasury and credited to a special law enforcement trust fund. The moneys in such funds are required to be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate.

60-4117. Disposition of forfeited property; use of proceeds of sale. Except as provided in K.S.A. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

(4) salvage the property, subject to any lien preserved by the court.

(b) When firearms are forfeited under this act, the firearms in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another law enforcement agency for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) The proceeds of any sale shall be distributed in the following order of priority:

(1) For satisfaction of any court preserved security interest or lien, or in the case of a violation, as defined by subsection (h) of K.S.A. 60-4104, and amendments thereto, the proceeds shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount into the state treasury to the credit of the medicaid fraud reimbursement fund;

(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such

additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used in planning or adopting a county or district attorney's budget;

(B) if the plaintiff's attorney is the attorney general and the conduct and offense giving rise to forfeiture is pursuant to subsection (h) of K.S.A. 60-4104, and amendments thereto, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2) in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2) in a contested forfeiture. Such fees shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud prosecution revolving fund. Moneys paid into the medicaid fraud prosecution revolving fund pursuant to this subsection shall be appropriated to the attorney general for use by the attorney general in the investigation and prosecution of medicaid fraud and abuse; or

(C) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency;

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas attorney general's state medicaid fraud forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas attorney general's state medicaid fraud forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to

transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

(4) Moneys in the Kansas attorney general's medicaid fraud forfeiture fund shall defray costs of the attorney general in connection with the duties of investigating and prosecuting medicaid fraud and abuse.

History: L. 1994, ch. 339, § 17; L. 1999, ch. 170, § 22; L. 2000, ch. 68, § 1; L. 2005, ch. 141, § 3; L. 2006, ch. 183, § 10; July 1.

SENATE BILL No. 523

By Senators Petersen and Schodorf

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SB523-Balloon1.pdf
RS - JThompson - 02/23/10

Senate Judiciary
3-4-10
Attachment 2

9 AN ACT concerning crimes, punishment and criminal procedure; en-
10 acting the Kansas racketeer influenced and corrupt organization act;
11 amending K.S.A. 2009 Supp. 60-4104 and repealing the existing
12 section.

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

15 New Section 1. Sections 1 through 5, and amendments thereto, shall
16 be known and may be cited as the Kansas racketeer influenced and cor-
17 rupt organization act (Kansas RICO act).

18 New Sec. 2. As used in the Kansas racketeer influenced and corrupt
19 organization act:

20 (a) "Racketeering activity" means to commit, attempt to commit, con-
21 spire to commit or to solicit, coerce or intimidate another person to
22 commit:

23 (1) Any violation of: K.S.A. 8-1568, and amendments thereto, fleeing
24 or attempting to elude a police officer; K.S.A. 9-508 et seq., and amend-
25 ments thereto, Kansas money transmitter act; article 12a of chapter 17 of
26 the Kansas Statutes Annotated, and amendments thereto, Kansas uniform
27 securities act; K.S.A. 21-3401, and amendments thereto, murder in the
28 first degree; K.S.A. 21-3402, and amendments thereto, murder in the
29 second degree; K.S.A. 21-3403, and amendments thereto, voluntary man-
30 slaughter; K.S.A. 21-3404, and amendments thereto, involuntary man-
31 slaughter; K.S.A. 21-3405, and amendments thereto, vehicular homicide;
32 K.S.A. 21-3406, and amendments thereto, assisting suicide; K.S.A. 21-
33 3408, and amendments thereto, assault; K.S.A. 21-3409, and amendments
34 thereto, assault of a law enforcement officer; K.S.A. 21-3410, and amend-
35 ments thereto, aggravated assault; K.S.A. 21-3411, and amendments
36 thereto, aggravated assault of a law enforcement officer; K.S.A. 21-3412,
37 and amendments thereto, battery; K.S.A. 21-3412a, and amendments
38 thereto, domestic battery; K.S.A. 21-3413, and amendments thereto, bat-
39 tery against a law enforcement officer; K.S.A. 21-3414, and amendments
40 thereto, aggravated battery; K.S.A. 21-3415, and amendments thereto,
41 aggravated battery against a law enforcement officer; K.S.A. 21-3419, and
42 amendments thereto, criminal threat; K.S.A. 21-3419a, and amendments
43 thereto, aggravated criminal threat; K.S.A. 21-3420, and amendments

1 thereto, kidnapping; K.S.A. 21-3421, and amendments thereto, aggra-
2 vated kidnapping; K.S.A. 21-3426, and amendments thereto, robbery;
3 K.S.A. 21-3427, and amendments thereto, aggravated robbery; K.S.A. 21-
4 3428, and amendments thereto, blackmail; K.S.A. 21-3437, and amend-
5 ments thereto, mistreatment of a dependent adult; K.S.A. 21-3439, and
6 amendments thereto, capital murder; K.S.A. 21-3442, and amendments
7 thereto, involuntary manslaughter while driving under the influence of
8 alcohol or drugs; K.S.A. 21-3443, and amendments thereto, battery
9 against a school employee; K.S.A. 21-3446, and amendments thereto, traf-
10 ficking; K.S.A. 21-3447, and amendments thereto, aggravated trafficking;
11 K.S.A. 21-3448, and amendments thereto, battery against a mental health
12 employee; K.S.A. 21-3449, and amendments thereto, terrorism; K.S.A.
13 21-3450, and amendments thereto, illegal use of weapons of mass de-
14 struction; K.S.A. 21-3451, and amendments thereto, furtherance of ter-
15 rorism or illegal use of weapons of mass destruction; K.S.A. 21-3512, and
16 amendments thereto, prostitution; K.S.A. 21-3513, and amendments
17 thereto, promoting prostitution; K.S.A. 21-3516, and amendments
18 thereto, sexual exploitation of a child; article 36a of chapter 21 of the
19 Kansas Statutes Annotated, and amendments thereto, crimes involving
20 controlled substances; article 37 of chapter 21 of the Kansas Statutes
21 Annotated, and amendments thereto, crimes against property; K.S.A. 21-
22 3805, and amendments thereto, perjury; K.S.A. 21-3807, and amend-
23 ments thereto, compounding a crime; K.S.A. 21-3808, and amendments
24 thereto, obstructing legal process or official duty; K.S.A. 21-3811, and
25 amendments thereto, aiding escape; K.S.A. 21-3812, and amendments
26 thereto, aiding a felon; K.S.A. 21-3815, and amendments thereto, at-
27 tempting to influence a judicial officer; K.S.A. 21-3816, and amendments
28 thereto, interference with the administration of justice; K.S.A. 21-3817,
29 and amendments thereto, corrupt conduct by a juror; K.S.A. 21-3830,
30 and amendments thereto, dealing in false identification documents;
31 K.S.A. 21-3831 through 21-3836, and amendments thereto, witness or
32 victim intimidation; K.S.A. 21-3844 et seq., and amendments thereto,
33 Kansas medicaid fraud control act; K.S.A. 21-3901, and amendments
34 thereto, bribery; K.S.A. 21-3902, and amendments thereto, official mis-
35 conduct; K.S.A. 21-3903, and amendments thereto, compensation for past
36 official acts; K.S.A. 21-3904, and amendments thereto, presenting a false
37 claim; K.S.A. 21-3905, and amendments thereto, permitting a false claim;
38 K.S.A. 21-3910, and amendments thereto, misuse of public funds; K.S.A.
39 21-4201, and amendments thereto, criminal use of weapons; K.S.A. 21-
40 4202, and amendments thereto, aggravated weapons violation; K.S.A. 21-
41 4203, and amendments thereto, criminal disposal of firearms; K.S.A. 21-
42 4204, and amendments thereto, criminal possession of a firearm; K.S.A.
43 21-4204a, and amendments thereto, criminal possession of a firearm by

1 a juvenile; K.S.A. 21-4205, and amendments thereto, defacing identifi-
2 cation marks of a firearm; K.S.A. 21-4209, and amendments thereto,
3 criminal disposal of explosives; K.S.A. 21-4209a, and amendments
4 thereto, criminal possession of explosives; K.S.A. 21-4210, and amend-
5 ments thereto, carrying concealed explosives; K.S.A. 21-4214, and amend-
6 ments thereto, obtaining a prescription-only drug by fraudulent means;
7 K.S.A. 21-4215, and amendments thereto, obtaining a prescription-only
8 drug by fraudulent means for resale; K.S.A. 21-4217, and amendments
9 thereto, criminal discharge of a firearm; K.S.A. 21-4219, and amendments
10 thereto, criminal discharge of a firearm at an unoccupied dwelling; K.S.A.
11 21-4220, and amendments thereto, unlawful endangerment; K.S.A. 21-
12 4225 through 21-4229, and amendments thereto, criminal street gang
13 prevention act; K.S.A. 21-4301, and amendments thereto, promoting ob-
14 scenity; K.S.A. 21-4301a, and amendments thereto, promoting obscenity
15 to minors; K.S.A. 21-4303, and amendments thereto, gambling; K.S.A.
16 21-4303a, and amendments thereto, illegal bingo operation; K.S.A. 21-
17 4304, and amendments thereto, commercial gambling; K.S.A. 21-4305,
18 and amendments thereto, permitting premises to be used for commercial
19 gambling; K.S.A. 21-4306, and amendments thereto, dealing in gambling
20 devices; K.S.A. 21-4307, and amendments thereto, possession of a gam-
21 bling device; K.S.A. 21-4308, and amendments thereto, installing com-
22 munication facilities for gamblers; K.S.A. 21-4401, and amendments
23 thereto, racketeering; K.S.A. 21-4402, and amendments thereto, debt ad-
24 justing; K.S.A. 21-4405, and amendments thereto, commercial bribery;
25 K.S.A. 21-4406, and amendments thereto, sports bribery; K.S.A. 21-4407,
26 and amendments thereto, receiving a sports bribe; K.S.A. 21-4408, and
27 amendments thereto, tampering with a sports contest; K.S.A. 21-4410,
28 and amendments thereto, equity skimming; K.S.A. 39-720, and amend-
29 ments thereto, social welfare service fraud; K.S.A. 40-2,118, and amend-
30 ments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and
31 amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and
32 amendments thereto, workers' compensation act; K.S.A. 44-719 et seq.,
33 and amendments thereto, employment security law; article 6 of chapter
34 50 of the Kansas Statutes Annotated, and amendments thereto, consumer
35 protection; K.S.A. 65-1657, and amendments thereto, nonresident phar-
36 macy registration; K.S.A. 65-3441, and amendments thereto, hazardous
37 waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit
38 drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and
39 amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321,
40 and amendments thereto, Kansas cigarette and tobacco products act.

41 (2) Any conduct defined as "racketeering activity" under 18 U.S.C.
42 1961(1).

43 (b) "Unlawful debt" means any money or other thing of value con-

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1 stituting principal or interest of a debt that is legally unenforceable in this
2 state in whole or in part because the debt was incurred or contracted:

3 (1) In violation of any of the following provisions of law: article 88 of
4 chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
5 Kansas parimutuel racing act; K.S.A. 21-4303, and amendments thereto,
6 gambling; K.S.A. 21-4303a, and amendments thereto, illegal bingo op-
7 eration; K.S.A. 21-4304, and amendments thereto, commercial gambling;
8 K.S.A. 21-4305, and amendments thereto, permitting premises to be used
9 for commercial gambling; K.S.A. 21-4306, and amendments thereto, deal-
10 ing in gambling devices; K.S.A. 21-4307, and amendments thereto, pos-
11 session of a gambling device; or K.S.A. 21-4308, and amendments thereto,
12 installing communication facilities for gamblers.

13 (2) In gambling activity in violation of federal law or in the business
14 of lending money at a rate usurious under state or federal law.

15 (c) "Enterprise" means any individual, sole proprietorship, partner-
16 ship, corporation, business trust, union chartered under the laws of this
17 state, or other legal entity, or any unchartered union, association, or group
18 of individuals associated in fact although not a legal entity; and it includes
19 illicit as well as licit enterprises and governmental, as well as other, en-
20 titities. A criminal street gang, as defined in K.S.A. 21-4226, and amend-
21 ments thereto, constitutes an enterprise.

22 (d) "Pattern of racketeering activity" means engaging in at least two
23 incidents of racketeering conduct that have the same or similar intents,
24 results, accomplices, victims, or methods of commission or that otherwise
25 are interrelated by distinguishing characteristics and are not isolated in-
26 cidents, provided at least one of such incidents occurred after the effec-
27 tive date of this act and that the last of such incidents occurred within 5
28 years after a prior incident of racketeering conduct.

, excluding any period
of imprisonment,

29 (e) "Documentary material" means any book, paper, document, writ-
30 ing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
31 computer printout, other data compilation from which information can
32 be obtained or from which information can be translated into usable form,
33 or other tangible item.

34 (f) "Beneficial interest" means:

35 (1) The interest of a person as a beneficiary under any trust arrange-
36 ment pursuant to which a trustee holds legal or record title to real prop-
37 erty for the benefit of such person; or

38 (2) the interest of a person under any other form of express fiduciary
39 arrangement pursuant to which any other person holds legal or record
40 title to real property for the benefit of such person.

41 The term "beneficial interest" does not include the interest of a stock-
42 holder in a corporation or the interest of a partner in either a general
43 partnership or a limited partnership. A beneficial interest shall be deemed

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1 to be located where the real property owned by the trustee is located.

2 (g) "Real property" means any real property or any interest in such
3 real property, including, but not limited to, any lease of or mortgage upon
4 such real property.

5 (h) "Trustee" means:

6 (1) Any person acting as trustee pursuant to a trust in which the
7 trustee holds legal or record title to real property;

8 (2) any person who holds legal or record title to real property in which
9 any other person has a beneficial interest; or

10 (3) any successor trustee or trustees to any or all of the foregoing
11 persons.

12 The term "trustee" does not include any person appointed or acting as
13 a personal representative as defined in K.S.A. 59-102, and amendments
14 thereto, or appointed or acting as a trustee of any testamentary trust or
15 as a trustee of any indenture of trust under which any bonds have been
16 or are to be issued.

17 New Sec. 3. (a) It is unlawful for any person:

18 (1) Who has with criminal intent received any proceeds derived, di-
19 rectly or indirectly, from a pattern of racketeering activity or through the
20 collection of an unlawful debt to use or invest, whether directly or indi-
21 rectly, any part of such proceeds, or the proceeds derived from the in-
22 vestment or use thereof, in the acquisition of any title to, or any right,
23 interest, or equity in, real property or in the establishment or operation
24 of any enterprise;

25 (2) through a pattern of racketeering activity or through the collection
26 of an unlawful debt, to acquire or maintain, directly or indirectly, any
27 interest in or control of any enterprise or real property; and

28 (3) employed by, or associated with, any enterprise to conduct or
29 participate, directly or indirectly, in such enterprise through a pattern of
30 racketeering activity or the collection of an unlawful debt.

31 (b) Violation of this section is a severity level 2, person felony.

32 (c) (1) Notwithstanding the provisions of K.S.A. 21-4503a, and
33 amendments thereto, any person convicted of engaging in conduct in
34 violation of this section, through which the person derived pecuniary
35 value, or by which the person caused personal injury or property damage
36 or other loss, may be sentenced to pay a fine that does not exceed three
37 times the gross value gained or three times the gross loss caused, which-
38 ever is the greater, plus court costs and the costs of investigation and
39 prosecution, reasonably incurred.

40 (2) The court shall hold a hearing to determine the amount of the
41 fine authorized by this subsection.

42 (3) For the purposes of this subsection, "pecuniary value" means:

43 (A) Anything of value in the form of money, a negotiable instrument,

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1 or a commercial interest or anything else the primary significance of
2 which is economic advantage; and

3 (B) any other property or service that has a value in excess of \$100.

4 New Sec. 4. (a) Any district court may, after making due provision
5 for the rights of innocent persons, enjoin violations of the provisions of
6 section 3, and amendments thereto, by issuing appropriate orders and
7 judgments, including, but not limited to:

8 (1) Ordering any defendant to divest such defendant of any interest
9 in any enterprise, including real property.

10 (2) Imposing reasonable restrictions upon the future activities or in-
11 vestments of any defendant, including, but not limited to, prohibiting any
12 defendant from engaging in the same type of endeavor as the enterprise
13 in which the defendant was engaged in violation of the provisions of sec-
14 tion 3, and amendments thereto.

15 (3) Ordering the dissolution or reorganization of any enterprise.

16 (4) Ordering the suspension or revocation of a license, permit, or
17 prior approval granted to any enterprise by any agency of the state.

18 (5) Ordering the forfeiture of the charter of a corporation organized
19 under the laws of the state, or the revocation of a certificate authorizing
20 a foreign corporation to conduct business within the state, upon finding
21 that the board of directors or a managerial agent acting on behalf of the
22 corporation, in conducting the affairs of the corporation, has authorized
23 or engaged in conduct in violation of section 3, and amendments thereto,
24 and that, for the prevention of future criminal activity, the public interest
25 requires the charter of the corporation forfeited and the corporation dis-
26 solved or the certificate revoked.

27 (b) All property, real or personal, including money, used in the course
28 of, intended for use in the course of, derived from, or realized through
29 conduct in violation of a provision of the Kansas racketeer influenced and
30 corrupt organization act is subject to civil forfeiture pursuant to the Kan-
31 sas standard asset seizure and forfeiture act, K.S.A. 60-4101 et seq., and
32 amendments thereto.

33 New Sec. 5. (a) For the purposes of this section, "attorney" means
34 the attorney general, assistant attorney general, county attorney or district
35 attorney, or in the absence of the county or district attorney a designated
36 assistant county or district attorney. If an assistant county or district at-
37 torney is designated by the county or district attorney for the purposes
38 of this section, such designation shall be filed with the chief judge of such
39 judicial district.

40 (b) If an attorney is informed or has knowledge that a person or other
41 enterprise has engaged in, or is engaging in, activity in violation of the
42 Kansas racketeer influenced and corrupt organization act, such attorney
43 shall be authorized to administer oaths or affirmations, subpoena wit-

(d) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, unless the court determines on the record that the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available and the defendant agrees to comply with the mandate of such pretrial supervision.



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1 nesses or material, and collect evidence relating to such activity.

2 (c) An attorney may apply *ex parte* to the district court of the district
3 in which a subpoenaed person or entity resides, is found or transacts
4 business, for an order directing that the subpoenaed person or entity not
5 disclose the existence of the subpoena to any other person or entity except
6 the subpoenaed person's attorney for a period of 90 days, which time may
7 be extended by the court for good cause shown by the attorney. The order
8 shall be served with the subpoena, and the subpoena shall include a ref-
9 erence to the order and a notice to the recipient of the subpoena that
10 disclosure of the existence of the subpoena to any other person or entity
11 in violation of the order may subject the subpoenaed person or entity to
12 punishment for contempt of court. Such an order may be granted by the
13 court only upon a showing:

14 (1) Of sufficient factual grounds to reasonably indicate a violation of
15 the Kansas racketeer influenced and corrupt organization act;

16 (2) that the documents or testimony sought appear reasonably cal-
17 culated to lead to the discovery of admissible evidence; and

18 (3) of facts which reasonably indicate that disclosure of the subpoena
19 would hamper or impede the investigation or would result in a flight from
20 prosecution.

21 (d) If information or evidence that the attorney seeks to obtain by
22 the subpoena is located outside the state, the person or enterprise sub-
23 poenaed may make such information or evidence available to the attorney
24 or such attorney's representative for examination at the place where such
25 information or evidence is located. The attorney may designate represen-
26 tatives, including officials of the jurisdiction in which the information or
27 evidence is located, to inspect the information or evidence on such at-
28 torney's behalf and may respond to similar requests from officials of other
29 jurisdictions.

30 (e) Upon failure of a person or enterprise, without lawful excuse, to
31 obey a subpoena issued under this section or a subpoena issued in the
32 course of a civil proceeding instituted pursuant to section 4, and amend-
33 ments thereto, and after reasonable notice to such person or enterprise,
34 the attorney may apply to the district court in which such civil proceeding
35 is pending or, if no civil proceeding is pending, to the district court of the
36 judicial district in which such person or enterprise resides, is found or
37 transacts business for an order compelling compliance. Except in a pros-
38 ecution for perjury, an individual who complies with a court order to
39 provide testimony or material after asserting a privilege against self-in-
40 crimination to which such individual is entitled by law shall not have the
41 testimony or material so provided, or evidence derived therefrom, re-
42 ceived against such individual in any criminal investigation or proceeding.

43 (f) A person who fails to obey a court order entered pursuant to this

1 section may be adjudged in contempt of court and punished by fine and
2 imprisonment.

3 Sec. 6. K.S.A. 2009 Supp. 60-4104 is hereby amended to read as
4 follows: 60-4104. Conduct and offenses giving rise to forfeiture under this
5 act, whether or not there is a prosecution or conviction related to the
6 offense, are:

7 (a) All offenses which statutorily and specifically authorize forfeiture;

8 (b) violations of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and
9 amendments thereto;

10 (c) theft which is classified as a felony violation pursuant to K.S.A.
11 21-3701, and amendments thereto, in which the property taken was
12 livestock;

13 (d) unlawful discharge of a firearm, K.S.A. 21-4219, and amendments
14 thereto;

15 (e) violations of K.S.A. 2009 Supp. 21-36a16, and amendments
16 thereto;

17 (f) gambling, K.S.A. 21-4303, and amendments thereto, and com-
18 mercial gambling, K.S.A. 21-4304, and amendments thereto;

19 (g) counterfeiting, K.S.A. 21-3763, and amendments thereto;

20 (h) violations of K.S.A. 21-4019, and amendments thereto;

21 (i) medicaid fraud, K.S.A. 21-3844 et seq., and amendments thereto;

22 (j) an act or omission occurring outside this state, which would be a
23 violation in the place of occurrence and would be described in this section
24 if the act occurred in this state, whether or not it is prosecuted in any
25 state;

26 (k) an act or omission committed in furtherance of any act or omission
27 described in this section including any inchoate or preparatory offense,
28 whether or not there is a prosecution or conviction related to the act or
29 omission;

30 (l) any solicitation or conspiracy to commit any act or omission de-
31 scribed in this section, whether or not there is a prosecution or conviction
32 related to the act or omission;

33 (m) furtherance of terrorism or illegal use of weapons of mass de-
34 struction, K.S.A. 21-3451, and amendments thereto;

35 (n) unlawful conduct of dog fighting and unlawful possession of dog
36 fighting paraphernalia, K.S.A. 21-4315, and amendments thereto;

37 (o) unlawful conduct of cockfighting and unlawful possession of cock-
38 fighting paraphernalia, K.S.A. 21-4319, and amendments thereto; ~~and~~

39 (p) prostitution, K.S.A. 21-3512, and amendments thereto, promot-
40 ing prostitution, K.S.A. 21-3513, and amendments thereto, and patron-
41 izing a prostitute, K.S.A. 21-3515, and amendments thereto; and

42 (q) racketeering, K.S.A. 21-4401, and amendments thereto; and

43 (r) violations of the Kansas racketeer influenced and corrupt organ-

- 1 *ization act, sections 1 through 5, and amendments thereto.*
- 2 Sec. 7. K.S.A. 2009 Supp. 60-4104 is hereby repealed.
- 3 Sec. 8. This act shall take effect and be in force from and after its
- 4 publication in the statute book.

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SENATE BILL No. 523

By Senators Petersen and Schodorf

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SB523-Balloon2.pdf
RS - JThompson - 03/04/10

Senate Judiciary
3-4-10
Attachment 3

9 AN ACT concerning crimes, punishment and criminal procedure; en-
10 acting the Kansas racketeer influenced and corrupt organization act;
11 amending K.S.A. 2009 Supp. 60-4104 and repealing the existing
12 section.
13

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

15 New Section 1. Sections 1 through 5, and amendments thereto, shall
16 be known and may be cited as the Kansas racketeer influenced and cor-
17 rupt organization act (Kansas RICO act).

18 New Sec. 2. As used in the Kansas racketeer influenced and corrupt
19 organization act:

20 (a) "Racketeering activity" means to commit, attempt to commit, con-
21 spire to commit or to solicit, coerce or intimidate another person to
22 commit:

23 (1) Any violation of: K.S.A. 8-1568, and amendments thereto, fleeing
24 or attempting to elude a police officer; K.S.A. 9-508 et seq., and amend-
25 ments thereto, Kansas money transmitter act; article 12a of chapter 17 of
26 the Kansas Statutes Annotated, and amendments thereto, Kansas uniform
27 securities act; K.S.A. 21-3401, and amendments thereto, murder in the
28 first degree; K.S.A. 21-3402, and amendments thereto, murder in the
29 second degree; K.S.A. 21-3403, and amendments thereto, voluntary man-
30 slaughter; K.S.A. 21-3404, and amendments thereto, involuntary man-
31 slaughter; K.S.A. 21-3405, and amendments thereto, vehicular homicide;
32 K.S.A. 21-3406, and amendments thereto, assisting suicide; K.S.A. 21-
33 3408, and amendments thereto, assault; K.S.A. 21-3409, and amendments
34 thereto, assault of a law enforcement officer; K.S.A. 21-3410, and amend-
35 ments thereto, aggravated assault; K.S.A. 21-3411, and amendments
36 thereto, aggravated assault of a law enforcement officer; K.S.A. 21-3412,
37 and amendments thereto, battery; K.S.A. 21-3412a, and amendments
38 thereto, domestic battery; K.S.A. 21-3413, and amendments thereto, bat-
39 tery against a law enforcement officer; K.S.A. 21-3414, and amendments
40 thereto, aggravated battery; K.S.A. 21-3415, and amendments thereto,
41 aggravated battery against a law enforcement officer; K.S.A. 21-3419, and
42 amendments thereto, criminal threat; K.S.A. 21-3419a, and amendments
43 thereto, aggravated criminal threat; K.S.A. 21-3420, and amendments

1 thereto, kidnapping; K.S.A. 21-3421, and amendments thereto, aggra-
2 vated kidnapping; K.S.A. 21-3426, and amendments thereto, robbery;
3 K.S.A. 21-3427, and amendments thereto, aggravated robbery; K.S.A. 21-
4 3428, and amendments thereto, blackmail; K.S.A. 21-3437, and amend-
5 ments thereto, mistreatment of a dependent adult; K.S.A. 21-3439, and
6 amendments thereto, capital murder; K.S.A. 21-3442, and amendments
7 thereto, involuntary manslaughter while driving under the influence of
8 alcohol or drugs; K.S.A. 21-3443, and amendments thereto, battery
9 against a school employee; K.S.A. 21-3446, and amendments thereto, traf-
10 ficking; K.S.A. 21-3447, and amendments thereto, aggravated trafficking;
11 K.S.A. 21-3448, and amendments thereto, battery against a mental health
12 employee; K.S.A. 21-3449, and amendments thereto, terrorism; K.S.A.
13 21-3450, and amendments thereto, illegal use of weapons of mass de-
14 struction; K.S.A. 21-3451, and amendments thereto, furtherance of ter-
15 rorism or illegal use of weapons of mass destruction; K.S.A. 21-3512, and
16 amendments thereto, prostitution; K.S.A. 21-3513, and amendments
17 thereto, promoting prostitution; K.S.A. 21-3516, and amendments
18 thereto, sexual exploitation of a child; article 36a of chapter 21 of the
19 Kansas Statutes Annotated, and amendments thereto, crimes involving
20 controlled substances; article 37 of chapter 21 of the Kansas Statutes
21 Annotated, and amendments thereto, crimes against property; K.S.A. 21-
22 3805, and amendments thereto, perjury; K.S.A. 21-3807, and amend-
23 ments thereto, compounding a crime; K.S.A. 21-3808, and amendments
24 thereto, obstructing legal process or official duty; K.S.A. 21-3811, and
25 amendments thereto, aiding escape; K.S.A. 21-3812, and amendments
26 thereto, aiding a felon; K.S.A. 21-3815, and amendments thereto, at-
27 tempting to influence a judicial officer; K.S.A. 21-3816, and amendments
28 thereto, interference with the administration of justice; K.S.A. 21-3817,
29 and amendments thereto, corrupt conduct by a juror; K.S.A. 21-3830,
30 and amendments thereto, dealing in false identification documents;
31 K.S.A. 21-3831 through 21-3836, and amendments thereto, witness or
32 victim intimidation; K.S.A. 21-3844 et seq., and amendments thereto,
33 Kansas medicaid fraud control act; K.S.A. 21-3901, and amendments
34 thereto, bribery; K.S.A. 21-3902, and amendments thereto, official mis-
35 conduct; K.S.A. 21-3903, and amendments thereto, compensation for past
36 official acts; K.S.A. 21-3904, and amendments thereto, presenting a false
37 claim; K.S.A. 21-3905, and amendments thereto, permitting a false claim;
38 K.S.A. 21-3910, and amendments thereto, misuse of public funds; K.S.A.
39 21-4201, and amendments thereto, criminal use of weapons; K.S.A. 21-
40 4202, and amendments thereto, aggravated weapons violation; K.S.A. 21-
41 4203, and amendments thereto, criminal disposal of firearms; K.S.A. 21-
42 4204, and amendments thereto, criminal possession of a firearm; K.S.A.
43 21-4204a, and amendments thereto, criminal possession of a firearm by

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1 a juvenile; K.S.A. 21-4205, and amendments thereto, defacing identifi-
2 cation marks of a firearm; K.S.A. 21-4209, and amendments thereto,
3 criminal disposal of explosives; K.S.A. 21-4209a, and amendments
4 thereto, criminal possession of explosives; K.S.A. 21-4210, and amend-
5 ments thereto, carrying concealed explosives; K.S.A. 21-4214, and amend-
6 ments thereto, obtaining a prescription-only drug by fraudulent means;
7 K.S.A. 21-4215, and amendments thereto, obtaining a prescription-only
8 drug by fraudulent means for resale; K.S.A. 21-4217, and amendments
9 thereto, criminal discharge of a firearm; K.S.A. 21-4219, and amendments
10 thereto, criminal discharge of a firearm at an unoccupied dwelling; K.S.A.
11 21-4220, and amendments thereto, unlawful endangerment; K.S.A. 21-
12 4225 through 21-4229, and amendments thereto, criminal street gang
13 prevention act; K.S.A. 21-4301, and amendments thereto, promoting ob-
14 scenity; K.S.A. 21-4301a, and amendments thereto, promoting obscenity
15 to minors; K.S.A. 21-4303, and amendments thereto, gambling; K.S.A.
16 21-4303a, and amendments thereto, illegal bingo operation; K.S.A. 21-
17 4304, and amendments thereto, commercial gambling; K.S.A. 21-4305,
18 and amendments thereto, permitting premises to be used for commercial
19 gambling; K.S.A. 21-4306, and amendments thereto, dealing in gambling
20 devices; K.S.A. 21-4307, and amendments thereto, possession of a gam-
21 bling device; K.S.A. 21-4308, and amendments thereto, installing com-
22 munication facilities for gamblers; K.S.A. 21-4401, and amendments
23 thereto, racketeering; K.S.A. 21-4402, and amendments thereto, debt ad-
24 justing; K.S.A. 21-4405, and amendments thereto, commercial bribery;
25 K.S.A. 21-4406, and amendments thereto, sports bribery; K.S.A. 21-4407,
26 and amendments thereto, receiving a sports bribe; K.S.A. 21-4408, and
27 amendments thereto, tampering with a sports contest; K.S.A. 21-4410,
28 and amendments thereto, equity skimming; K.S.A. 39-720, and amend-
29 ments thereto, social welfare service fraud; K.S.A. 40-2,118, and amend-
30 ments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and
31 amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and
32 amendments thereto, workers' compensation act; K.S.A. 44-719 et seq.,
33 and amendments thereto, employment security law; article 6 of chapter
34 50 of the Kansas Statutes Annotated, and amendments thereto, consumer
35 protection; K.S.A. 65-1657, and amendments thereto, nonresident phar-
36 macy registration; K.S.A. 65-3441, and amendments thereto, hazardous
37 waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit
38 drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and
39 amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321,
40 and amendments thereto, Kansas cigarette and tobacco products act.

41 (2) Any conduct defined as "racketeering activity" under 18 U.S.C.
42 1961(1).

43 (b) "Unlawful debt" means any money or other thing of value con-

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1 stituting principal or interest of a debt that is legally unenforceable in this
2 state in whole or in part because the debt was incurred or contracted:

3 (1) In violation of any of the following provisions of law: article 88 of
4 chapter 74 of the Kansas Statutes Annotated, and amendments thereto,
5 Kansas parimutuel racing act; K.S.A. 21-4303, and amendments thereto,
6 gambling; K.S.A. 21-4303a, and amendments thereto, illegal bingo op-
7 eration; K.S.A. 21-4304, and amendments thereto, commercial gambling;
8 K.S.A. 21-4305, and amendments thereto, permitting premises to be used
9 for commercial gambling; K.S.A. 21-4306, and amendments thereto, deal-
10 ing in gambling devices; K.S.A. 21-4307, and amendments thereto, pos-
11 session of a gambling device; or K.S.A. 21-4308, and amendments thereto,
12 installing communication facilities for gamblers.

13 (2) In gambling activity in violation of federal law or in the business
14 of lending money at a rate usurious under state or federal law.

15 (c) "Enterprise" means any individual, sole proprietorship, partner-
16 ship, corporation, business trust, union chartered under the laws of this
17 state, or other legal entity, or any unchartered union, association, or group
18 of individuals associated in fact although not a legal entity; and it includes
19 illicit as well as licit enterprises and governmental, as well as other, en-
20 tities. A criminal street gang, as defined in K.S.A. 21-4226, and amend-
21 ments thereto, constitutes an enterprise.

22 (d) "Pattern of racketeering activity" means engaging in at least two
23 incidents of racketeering ~~conduct~~ that have the same or similar intents,
24 results, accomplices, victims, or methods of commission or that otherwise
25 are interrelated by distinguishing characteristics and are not isolated in-
26 cidents, provided at least one of such incidents occurred after the effec-
27 tive date of this act and that the last of such incidents occurred within 5
28 years after a prior incident of racketeering ~~conduct~~.

activity

10 years, excluding any
period of imprisonment,

activity

29 (e) "Documentary material" means any book, paper, document, writ-
30 ing, drawing, graph, chart, photograph, phonorecord, magnetic tape,
31 computer printout, other data compilation from which information can
32 be obtained or from which information can be translated into usable form,
33 or other tangible item.

34 (f) "Beneficial interest" means:

35 (1) The interest of a person as a beneficiary under any trust arrange-
36 ment pursuant to which a trustee holds legal or record title to real prop-
37 erty for the benefit of such person; or

38 (2) the interest of a person under any other form of express fiduciary
39 arrangement pursuant to which any other person holds legal or record
40 title to real property for the benefit of such person.

41 The term "beneficial interest" does not include the interest of a stock-
42 holder in a corporation or the interest of a partner in either a general
43 partnership or a limited partnership. A beneficial interest shall be deemed

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1 to be located where the real property owned by the trustee is located.
2 (g) "Real property" means any real property or any interest in such
3 real property, including, but not limited to, any lease of or mortgage upon
4 such real property.

5 (h) "Trustee" means:
6 (1) Any person acting as trustee pursuant to a trust in which the
7 trustee holds legal or record title to real property;
8 (2) any person who holds legal or record title to real property in which
9 any other person has a beneficial interest; or
10 (3) any successor trustee or trustees to any or all of the foregoing
11 persons.

12 The term "trustee" does not include any person appointed or acting as
13 a personal representative as defined in K.S.A. 59-102, and amendments
14 thereto, or appointed or acting as a trustee of any testamentary trust or
15 as a trustee of any indenture of trust under which any bonds have been
16 or are to be issued.

17 New Sec. 3. (a) It is unlawful for any person:

18 (1) Who has with criminal intent received any proceeds derived, di-
19 rectly or indirectly, from a pattern of racketeering activity or through the
20 collection of an unlawful debt to use or invest, whether directly or indi-
21 rectly, any part of such proceeds, or the proceeds derived from the in-
22 vestment or use thereof, in the acquisition of any title to, or any right,
23 interest, or equity in, real property or in the establishment or operation
24 of any enterprise;

25 (2) through a pattern of racketeering activity or through the collection
26 of an unlawful debt, to acquire or maintain, directly or indirectly, any
27 interest in or control of any enterprise or real property; and

28 (3) employed by, or associated with, any enterprise to conduct or
29 participate, directly or indirectly, in such enterprise through a pattern of
30 racketeering activity or the collection of an unlawful debt.

31 (b) Violation of this section is a severity level 2, person felony.

32 (c) (1) Notwithstanding the provisions of K.S.A. 21-4503a, and
33 amendments thereto, any person convicted of engaging in conduct in
34 violation of this section, through which the person derived pecuniary
35 value, or by which the person caused personal injury or property damage
36 or other loss, may be sentenced to pay a fine that does not exceed three
37 times the gross value gained or three times the gross loss caused, which-
38 ever is the greater, plus court costs and the costs of investigation and
39 prosecution, reasonably incurred.

40 (2) The court shall hold a hearing to determine the amount of the
41 fine authorized by this subsection.

42 (3) For the purposes of this subsection, "pecuniary value" means:

43 (A) Anything of value in the form of money, a negotiable instrument,

or conspiracy to commit
a violation of this section

(c) The provisions of subsection (c) of
K.S.A. 21-3302, and amendments
thereto, shall not apply to conspiracy
to commit a violation of this section.

Add corresponding amendment to
K.S.A. 21-3302(c).

2-2

K.S.A. 21-3302

(a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

(b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) terrorism ~~pursuant to~~ as defined in K.S.A. 21-3449, and amendments thereto, ~~or of;~~

(B) illegal use of weapons of mass destruction ~~pursuant to~~ as defined in K.S.A. 21-3450, and amendments thereto;

(C) violation of section 3, and amendments thereto.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

HOUSE BILL No. 2418

By Joint Committee on Administrative Rules and Regulations

1-11

HB2418-Balloon1.pdf
RS - JThompson - 03/04/10

Senate Judiciary
3-4-10
Attachment 4

10 AN ACT concerning the carbon dioxide reduction act; pertaining to lia-
11 bility of the state of Kansas; pertaining to rules and regulations; amend-
12 ing K.S.A. 2009 Supp. 55-1636 and 55-1637 and repealing the existing
13 sections.

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

16 New Section 1. (a) Except as permitted by the Kansas tort claims
17 act, no provision of this act shall establish or create or impose upon the
18 commission, any agent or employee thereof, or the state of Kansas any
19 liability or responsibility to pay any damages resulting from the leak or
20 discharge of carbon dioxide from any carbon dioxide injection well or the
21 underground storage of carbon dioxide.

22 (b) This section shall be supplemental to and a part of the carbon
23 dioxide reduction act.

24 Sec. 2. K.S.A. 2009 Supp. 55-1636 is hereby amended to read as
25 follows: 55-1636. K.S.A. 2009 Supp. 55-1636 through 55-1640, *section 1*,
26 79-233 and 79-32,256, and amendments thereto, may be cited as the
27 carbon dioxide reduction act.

28 Sec. 3. K.S.A. 2009 Supp. 55-1637 is hereby amended to read as
29 follows: 55-1637. (a) As used in K.S.A. 2009 Supp. 55-1637 through 55-
30 1640, and amendments thereto:

31 (1) "Carbon dioxide injection well" means any hole or penetration of
32 the surface of the earth used to inject carbon dioxide for underground
33 storage or for enhanced recovery of hydrocarbons and any associated
34 machinery and equipment used for such injection of carbon dioxide. "Car-
35 bon dioxide injection well" does not include underground storage.

36 (2) "Commission" means the state corporation commission.

37 (3) "Underground storage" means any underground formation where
38 carbon dioxide is injected for sequestration.

39 (b) *Except as provided in subsection (h)*, for the purposes of protect-
40 ing the health, safety and property of the people of the state, and pre-
41 venting escape of carbon dioxide into the atmosphere and pollution of
42 soil and surface and subsurface water detrimental to public health or to
43 plant, animal and aquatic life, the commission, on or before July 1, 2008,

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1 shall adopt separate and specific rules and regulations establishing
 2 requirements, procedures and standards for the safe and secure injection
 3 of carbon dioxide and maintenance of underground storage of carbon
 4 dioxide. Such rules and regulations shall include, but not be limited to:
 5 (1) Site selection criteria; (2) design and development criteria; (3) oper-
 6 ation criteria; (4) casing requirements; (5) monitoring and measurement
 7 requirements; (6) safety requirements, including public notification; (7)
 8 closure and abandonment requirements, including the financial require-
 9 ments of subsection (e); and (8) long-term monitoring.

10 (c) *Except as provided in subsection (h), the commission may adopt*
 11 *rules and regulations establishing fees for permitting, monitoring and in-*
 12 *pecting operators of carbon dioxide injection wells and underground*
 13 *storage. Fees collected by the commission under this subsection shall be*
 14 *remitted by the commission to the state treasurer in accordance with the*
 15 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*
 16 *each such remittance, the state treasurer shall deposit the entire amount*
 17 *in the state treasury and credit it to the carbon dioxide injection well and*
 18 *underground storage fund.*

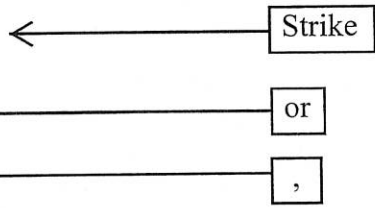
19 (d) The commission or the commission's duly authorized represen-
 20 tative may impose on any holder of a permit issued pursuant to this sec-
 21 tion such requirements relating to inspecting, monitoring, investigating,
 22 recording and reporting as the commission or representative deems nec-
 23 essary to administer the provisions of this section and rules and regula-
 24 tions adopted hereunder.

25 (e) Any company or operator receiving a permit under the provisions
 26 of this act shall demonstrate annually to the commission evidence, satis-
 27 factory to the commission, that the permit holder has financial ability to
 28 cover the cost of closure of the permitted facility as required by the
 29 commission.

30 (f) The commission may enter into contracts for services from con-
 31 sultants and other experts for the purposes of assisting in the drafting of
 32 rules and regulations pursuant to this section.

33 (g) Rules and regulations adopted under this act shall apply to any
 34 carbon dioxide injection well or underground storage, whether in exist-
 35 tence on the effective date of this act or thereafter. ~~No rule and regu-~~
 36 ~~lation adopted pursuant to subsection (h) shall be construed to~~
 37 ~~prohibit the commission from the plugging, replugging, repairing~~
 38 ~~or remediation of any carbon dioxide injection well or under-~~
 39 ~~ground storage in an emergency situation.~~

40 (h) *No rule and regulation adopted under the provisions of this sec-*
 41 *tion shall create or impose upon the commission, any agent or employee*
 42 *thereof or the state of Kansas any liability for the underground storage of*
 43 *carbon dioxide or the maintenance of any carbon dioxide injection well*



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1 *or underground storage of carbon dioxide except as permitted by the*
2 *Kansas tort claims act. From and after July 1, 2010, any requirement in*
3 *any rule and regulation adopted by the commission which conflicts with*
4 *the prohibition prescribed in this section shall be null and void.*

5 Sec. 4. K.S.A. 2009 Supp. 55-1636 and 55-1637 are hereby repealed.

6 Sec. 5. This act shall take effect and be in force from and after its
7 publication in the statute book.

(i) No rule or regulation adopted under the provisions of this section shall be construed to prohibit the commission from the plugging, replugging, repairing or remediation of any carbon dioxide injection well or underground storage in an emergency situation.



Session of 2010
SENATE BILL No. 469
By Committee on Ways and Means
1-27

AN ACT concerning civil procedure; relating to remote claim liens on commercial property; establishing the state construction registry; amending K.S.A. 60-1103, 60-1110 and 60-1111 and repealing the existing sections.

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

New Section 1. As used in sections 1, 2, 3, 4 and 5, and amendments thereto:

(a) “Authorized person” means any individual authorized by an original contractor, subcontractor or remote claimant to act on their behalf.

(b) “Construction” means furnishing labor, equipment, material or supplies for the improvement of a new or pre-existing structure which is not constructed for use as a single-family residence or multi-family residence of four units or less. “Construction” does not include highways, roads, bridges, dams or turnpikes.

(c) “Notice of commencement” means a notice filed by an original contractor with the state construction registry providing the information required to be given pursuant to section 2, and amendments thereto.

(d) “Notice of furnishing” means a notice from a subcontractor or remote claimant that is filed prior to the recording of a mechanic’s lien and which is required to be filed pursuant to section 3, and amendments thereto.

(e) “Original contractor” means any contractor who has a contract directly with the owner. “Original contractor” may include more than one contractor and be referred to as a general contractor.

(f) “Owner” shall include the trustee, agent or spouse of the owner.

(g) “Remote claimant” means a subcontractor to a subcontractor, also referred to as a sub-subcontractor, as well as people who supply materials to subcontractors. Remote claimants have no contract directly with the original contractor.

(h) “Secretary” means the secretary of state.

(i) “State construction registry” means a system created pursuant to

Insert: “an electronic web-based”

section 4, and amendments thereto, for the purposes of filing and maintaining notifications by original contractors, subcontractors and remote claimants required pursuant to sections 2 and 3, and amendments thereto.

(j) “Subcontractor” means any person who furnishes labor, equipment, materials or supplies pursuant to a contract directly with an original contractor.

Insert: “7”

New Sec. 2. (a) Prior to, but no later than ~~15~~ calendar days after commencement of physical construction work at the project site, any original contractor may file a notice of commencement with the state construction registry created pursuant to section 4, and amendments thereto. The purpose of the notice of commencement is to notify other persons who are working on the project, including, but not limited to, subcontractors or remote claimants that the project has started and to give information as to the name and address of the owner, the original contractor, and the description of the project.

(b) The notice of commencement shall include the following:

(1) The name and address of the owner of the project contracting for the construction or improvement.

(2) The name and address of any original contractor.

~~(3) The name, address and contact information of the owner.~~

~~(4)~~(3) The legal description of the real property or the street address, city, state, county and zip code of the real property on which the construction or improvement is to be made.

~~(5)~~(4) A brief description of the construction or improvement to be performed on the property.

~~(6)~~(5) The date the owner first executed a contract with an original contractor for the construction or improvement.

~~(7)~~(6) The name and address of the person preparing the notice of commencement.

~~(8)~~(7) The following statement:

“To remote claimants, subcontractors or suppliers: Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this notice. Any remote claimant or subcontractor may preserve such claimant’s lien rights

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by filing a notice of furnishing with the State Construction Registry, which serves as notice to the original contractor or contractors, within 21 days of furnishing labor, equipment, materials or supplies to this project.”

(c) The notice of commencement shall be deemed sufficient if filed in the form and manner prescribed by the secretary of state.

(d) The original contractor may take protective measures by either making direct payments or payments by joint check to remote claimants to ensure that the remote claimant is paid.

New Sec. 3. (a) If any original contractor has filed a notice of commencement with the state construction registry pursuant to section 2, and amendments thereto, concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies, such subcontractor or remote claimant shall file a notice of furnishing with the state construction registry created pursuant to section 4, and amendments thereto, in order to preserve their lien rights for construction subject to this act.

(b) The notice of furnishing shall include the following:

~~(1) The name and address of the original contractor.~~

~~(2)(1) The name and address of persons with whom the remote claimant or subcontractor has contracted concerning the project at the time of filing.~~

~~(3)(2) The name, address, telephone number, fax number and e-mail address of the subcontractor or remote claimant.~~

~~(4) The legal description or address, city, state, county and zip code of the real property on which the construction or improvement is to be made.~~

~~(5)(3) A brief description of the construction or improvement to be performed on the project.~~

(c) The notice of furnishing shall be deemed sufficient if filed in the form and manner prescribed by the secretary of state.

~~(d) If a notice of commencement has not been filed with the state construction registry, a subcontractor or remote claimant may not file a notice of furnishing with the state construction registry.~~

(e) Nothing in this act shall expand or create any additional rights of

Insert: “(4) The unique project number assigned by the state construction registry.”

Insert: “A notice of furnishing shall not be filed with the state construction registry if an original contractor has not filed a notice of commencement with the state construction registry at the time of furnishing labor, equipment, materials or supplies.”

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a person to claim a lien pursuant to K.S.A. 60-1103, and amendments thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-1110 or K.S.A. 60-1111, and amendments thereto.

(f) If any original contractor has filed a notice of commencement with the state construction registry pursuant to section 2, and amendments thereto, concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies, a lien for the furnishing of labor, equipment, materials or supplies by such subcontractor or remote claimant pursuant to K.S.A. 60-1103, and amendments thereto, for construction subject to this act, may be claimed only if the subcontractor or remote claimant filed a notice of furnishing with the state construction registry within 21 calendar days of the date of furnishing any such labor, equipment, materials or supplies. If the subcontractor or remote claimant does not file within such time period, the subcontractor or remote claimant may file at a later date. **In such event, the subcontractor or remote claimant's lien rights will only be effective from the date of the filing of the notice of furnishing.**

Insert: "In such event, the subcontractor or remote claimant's lien rights will only be effective for labor, equipment, materials or supplies furnished on or after the date of the filing of the notice of furnishing."

New Sec. 4. (a) The secretary shall implement and maintain the state construction registry. When any provision of this act requires any notice to be filed with the state construction registry, the notice shall be filed in the form and manner prescribed by the secretary.

*Insert: "(g) If materials are delivered prior to the filing of a notice of commencement, the remote claimant or subcontractor shall not file a notice of furnishing. However, if that supplier delivers materials to the same project after the filing of a notice of commencement, then a notice of furnishing shall be filed."

"(h) If a subcontractor or remote claimant has furnished labor, equipment, materials or supplies and is required to file a notice of furnishing pursuant to section 3, only one notice of furnishing is required per project."*

(b) A notice of commencement shall contain the information prescribed in section 2, and amendments thereto.

(c) A notice of furnishing shall contain the information prescribed in section 3, and amendments thereto.

(d) Any notice filed with the state construction registry shall be signed by an authorized person. The fact that a person's signature appears on such notice shall be prima facie evidence that such person is authorized to sign the notice on behalf of the original contractor, subcontractor or remote claimant and that the notice is subscribed by the person as true, under penalty of perjury.

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(e) Upon receipt of any notice, and upon tender of the required fees, the secretary shall certify that the notice has been filed in the office of secretary of state by endorsing upon the notice the word "filed" and the date and hour of its filing. This endorsement is the "filing date" of the notice and is conclusive of the date and time of its filing in the absence of actual fraud. The secretary shall thereupon record the endorsed notice in the state construction registry;

Insert: "and assign a unique project number."

(f)(g) The secretary shall adopt rules and regulations prescribing the form and manner of filing any notice required to be filed with the state construction registry and fixing the fees to be charged and collected under this section.

Insert: "(f) Whenever any notice of commencement or notice of furnishing to be filed with the secretary of state under any provision of this act has been so filed and is inaccurate in any respect or was defectively or erroneously executed, such notice of commencement or notice of furnishing may be corrected by filing with the secretary of state a notice of correction of such notice of commencement or notice of furnishing. The notice of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the notice of commencement or notice of furnishing in corrected form and shall be executed and filed as required for a notice of commencement or notice of furnishing. The notice of correction shall be effective as of the date the original notice of commencement or notice of furnishing was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the notice of correction shall be effective from the filing date."

(g)(h) The secretary of state shall remit all moneys received from fees and charges under this section, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the information and services fee fund of the secretary of state.

Sec. 5 6. K.S.A. 60-1103 is hereby amended to read as follows: 60-1103. (a) Procedure. Any ~~supplier~~, remote claimant or subcontractor, as defined in section 1, and amendments thereto, or other person furnishing labor, equipment, material or supplies, used or consumed at the site of the property subject to the lien, under an agreement with the contractor, subcontractor or owner contractor may obtain a lien for the amount due in the same manner and to the same extent as the original contractor except that:

Insert: "Sec. 5. The provisions of sections 1 through 4, and amendments thereto, shall apply to projects that commence physical construction work at the project site on or after July 1, 2011. The provisions of sections 1 through 4, and amendments thereto, shall not apply to projects that commence physical construction work at the project site prior to July 1, 2011."

(1) The lien statement must state the name of the contractor and be filed within three months after the date supplies, material or equipment was last furnished or labor performed by the claimant;

(2) if a warning statement is required to be given pursuant to K.S.A. 60-1103a, and amendments thereto, there shall be attached to the lien statement the affidavit of the supplier or subcontractor that such warning statement was properly given; and

(3) a notice of intent to perform, if required pursuant to K.S.A. 60-1103b, and amendments thereto, must have been filed as provided by that section; and

(4) a notice of furnishings, if required pursuant to section 3, and amendments thereto, must have been filed as provided by that section.

(b) Owner contractor is defined as any person, firm or corporation who:

- (1) Is the fee title owner of the real estate subject to the lien; and
- (2) enters into contracts with more than one person, firm or corporation for labor, equipment, material or supplies used or consumed for the improvement of such real property.

(c) *Recording and notice.* When a lien is filed pursuant to this section, the clerk of the district court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien statement to be served personally upon any one owner, any holder of a recorded equitable interest and any party obligated to pay the lien in the manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of the lien statement to any one owner of the property, any holder of a recorded equitable interest and to any party obligated to pay the same by restricted mail or (3) if the address of any one owner or such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. The provisions of this subsection requiring that the claimant serve a copy of the lien statement shall be deemed to have been complied with, if it is proven that the person to be served actually received a copy of the lien statement. No action to foreclose any lien may proceed or be entered against residential real property in this state unless the holder of a recorded equitable interest was served with notice in accordance with the provisions of this subsection.

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

- (1) Prior to the expiration of the three-month period for filing lien claims, if no warning statement is required by K.S.A. 60-1103a, and amendments thereto; or
- (2) subsequent to the date the owner received the warning statement,

if a warning statement is required by K.S.A. 60-1103a, and amendments thereto.

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

(e) Notwithstanding subsection (a)(1), a lien for the furnishing of labor, equipment, materials or supplies on property other than residential property may be claimed pursuant to this section, and amendments thereto, within five months only if the claimant has filed a notice of extension within three months since last furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the clerk of the district court of the county where such property is located and shall be mailed by certified and regular mail to the general contractor or construction manager and a copy to the owner by regular mail, if known. The notice of extension shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

Sec. 67. K.S.A. 60-1110 is hereby amended to read as follows: 60-1110. (a) The contractor or owner may execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum not less than the contract price, or to any person claiming a lien which is disputed by the owner or contractor, conditioned for the payment of such claim in the amount thereof. Any such bond shall have good and sufficient sureties, be approved by a judge of the district court and filed with the clerk of the district court. When bond is approved and filed, no lien for the labor, equipment, material or supplies under contract, or claim described or referred to in the bond shall attach under this act, and if when such bond is filed liens have already been filed, such liens are discharged. Suit may be brought on such bond by any person interested but no such suit shall name as defendant any person who is neither a principal or surety on such bond, nor

contractually liable for the payment of the claim.

(b) If any original contractor has filed a notice of commencement concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies, no subcontractor or remote claimant may file a claim under a payment bond obtained and executed pursuant to this section, unless such subcontractor or remote claimant has filed a notice of furnishing required pursuant to section 3, and amendments thereto. As used in this subsection, terms have the meanings provided by section 1, and amendments thereto.

Sec. 78. 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) If any original contractor has filed a notice of commencement concerning a project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies, no subcontractor or remote claimant may file a claim under a public works bond obtained and executed pursuant to this section, unless such subcontractor or remote claimant has filed a notice of furnishing required pursuant to section 3, and amendments thereto. As used in this subsection, terms have the meanings provided by section 1, and amendments thereto.

Sec. 89. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.

Sec. 910. This act shall take effect and be in force from and after July 1, 2011, and its publication in the statute book.