

HOUSE BILL No. 2072

By Committee on Judiciary

1-24

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

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. As used in sections 1 through 5, and amendments
8 thereto:

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

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

17 (c) “Commencement of physical construction” means the first
18 delivery to the project site of any equipment, materials or supplies to be
19 incorporated into the construction project or when ground is first broken
20 on the project site, whichever occurs first.

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

24 (e) “Notice of furnishing” means a notice from a subcontractor or
25 remote claimant that is filed within 21 days of the furnishing of labor,
26 materials, equipment or supplies pursuant to section 3, and amendments
27 thereto.

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

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

32 (h) “Remote claimant” means a subcontractor to a subcontractor,
33 also referred to as a sub-subcontractor, as well as persons who supply
34 materials to subcontractors. Remote claimants have no contract directly
35 with the original contractor.

36 (i) “Secretary” means the secretary of state.

1 (j) "State construction registry" means an electronic web-based
2 system created pursuant to section 4, and amendments thereto, for the
3 purposes of filing and maintaining notifications by original contractors,
4 subcontractors and remote claimants required pursuant to sections 2 and
5 3, and amendments thereto.

6 (k) "Subcontractor" means any person or supplier who has a contract
7 directly with an original contractor.

8 New Sec. 2. (a) Prior to commencement of physical construction at
9 the project site, any original contractor shall file a notice of
10 commencement with the state construction registry created pursuant to
11 section 4, and amendments thereto. The purpose of the notice of
12 commencement is to notify other persons who are working on the project,
13 including, but not limited to subcontractors or remote claimants that the
14 project has started and to give information concerning the name and
15 address of the owner, the original contractor, and the description of the
16 project.

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

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

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

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

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

26 (5) The date of the contract between an owner and an original
27 contractor for the construction or improvement.

28 (6) The name and address of the person preparing the notice of
29 commencement.

30 (7) This statement:

31 "To remote claimants and subcontractors: Take notice that labor or
32 work is about to begin on or equipment, materials or supplies are about to
33 be furnished for an improvement to the real property described in this
34 notice. Any subcontractor or remote claimant may preserve such
35 claimant's full lien rights by filing a notice of furnishing with the state
36 construction registry, within 21 days of furnishing labor, equipment,
37 materials or supplies to this project."

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

40 New Sec. 3. (a) If any original contractor has filed a notice of
41 commencement with the state construction registry pursuant to section 2,
42 and amendments thereto, concerning a project for which a subcontractor
43 or remote claimant has furnished labor, equipment, materials or supplies,

1 such subcontractor or remote claimant may file a notice of furnishing
2 with the state construction registry within 21 days of the date of
3 furnishing of labor, materials, equipment or supplies.

4 (b) In no event shall the aggregate amount of any liens filed by a
5 remote claimant exceed the net amount due by the original contractor to
6 the subcontractor to whom the remote claimant has supplied labor,
7 equipment, materials or supplies unless the remote claimant has filed a
8 notice of furnishing with the state construction registry within 21 days of
9 the date of furnishing of labor, materials, equipment or supplies.

10 (c) The notice of furnishing shall include the following:

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

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

16 (3) A brief description of the construction or improvement to be
17 performed, or equipment, materials or supplies being provided by the
18 subcontractor or remote claimant on the project.

19 (4) The unique project number assigned by the state construction
20 registry.

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

23 (e) One notice of furnishing is required for each project for each
24 subcontractor or remote claimant where such subcontractor or remote
25 claimant has furnished labor, equipment, materials or supplies.

26 (f) Nothing in this act shall expand or create any additional rights of
27 a person to claim a lien pursuant to K.S.A. 60-1103, and amendments
28 thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-
29 1110 or 60-1111, and amendments thereto.

30 (g) With the information included in the notice of furnishing, the
31 original contractor may take protective measures by either making direct
32 payments or payments by joint check to a remote claimant to ensure that
33 the remote claimant is paid.

34 New Sec. 4. (a) On or before January 1, 2012, the secretary shall
35 implement and maintain the state construction registry. When any
36 provision of this act requires any notice to be filed with the state
37 construction registry, the notice shall be filed in the form and manner
38 prescribed by the secretary.

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

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

43 (d) Any notice filed with the state construction registry shall be

1 executed by an authorized person. The fact that a person's signature
2 appears on such notice shall be prima facie evidence that such person is
3 authorized to execute the notice on behalf of the original contractor,
4 subcontractor or remote claimant and that the notice is subscribed by the
5 person as true, under penalty of perjury.

6 (e) Upon receipt of any notice, and upon tender of the required fees,
7 the secretary shall certify that the notice has been filed in the office of
8 secretary of state by endorsing upon the notice the word "filed" and the
9 date and hour of its filing. This endorsement is the "filing date" of the
10 notice and is conclusive of the date and time of its filing in the absence of
11 actual fraud. The secretary shall thereupon record the endorsed notice in
12 the state construction registry and assign a unique project number.

13 (f) On or before January 1, 2012, the secretary shall adopt rules and
14 regulations prescribing the form and manner of filing any notice required
15 to be filed with the state construction registry and fixing the fees to be
16 charged and collected under this section.

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

23 New Sec. 5. The provisions of sections 1 through 4, and
24 amendments thereto, shall apply to projects that commence physical
25 construction work at the project site on or after July 1, 2012.

26 Sec. 6. K.S.A. 60-1103 is hereby amended to read as follows: 60-
27 1103. (a) *Procedure.* Any ~~supplier, remote claimant or~~ subcontractor as
28 *defined in section 1, and amendments thereto,* or other person furnishing
29 labor, equipment, material or supplies, used or consumed at the site of the
30 property subject to the lien, under an agreement with the contractor,
31 subcontractor or owner contractor may obtain a lien for the amount due in
32 the same manner and to the same extent as the original contractor except
33 that:

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

37 (2) if a warning statement is required to be given pursuant to K.S.A.
38 60-1103a, and amendments thereto, there shall be attached to the lien
39 statement the affidavit of the supplier or subcontractor that such warning
40 statement was properly given; ~~and~~

41 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
42 1103b, and amendments thereto, must have been filed as provided by that
43 section; *and*

1 (4) if a notice of furnishing has not been filed as provided for in
2 section 3, and amendments thereto, by a remote claimant as defined in
3 section 1, and amendments thereto, the aggregate amount of any liens
4 filed by a remote claimant shall not exceed the net amount due from the
5 original contractor under the terms of the subcontract with the
6 subcontractor to whom the remote claimant has supplied labor,
7 equipment, materials or supplies.

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

10 (1) Is the fee title owner of the real estate subject to the lien; and

11 (2) enters into contracts with more than one person, firm or
12 corporation for labor, equipment, material or supplies used or consumed
13 for the improvement of such real property.

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

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

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

41 (2) subsequent to the date the owner received the warning statement,
42 if a warning statement is required by K.S.A. 60-1103a, and amendments
43 thereto.

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

4 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of
5 labor, equipment, materials or supplies on property other than residential
6 property may be claimed pursuant to this section, and amendments
7 thereto, within five months only if the claimant has filed a notice of
8 extension within three months since last furnishing labor, equipment,
9 materials or supplies to the job site *or has filed a notice of furnishing in*
10 *accordance with section 3, and amendments thereto*. Such notice shall be
11 filed in the office of the clerk of the district court of the county where
12 such property is located and shall be mailed by certified and regular mail
13 to the general contractor or construction manager and a copy to the owner
14 by regular mail, if known. The notice of extension shall be deemed
15 sufficient if in substantial compliance with the form set forth by the
16 judicial council.

17 Sec. 7. K.S.A. 60-1110 is hereby amended to read as follows: 60-
18 1110. (a) The contractor or owner may execute a bond to the state of
19 Kansas for the use of all persons in whose favor liens might accrue by
20 virtue of this act, conditioned for the payment of all claims which might
21 be the basis of liens in a sum not less than the contract price, or to any
22 person claiming a lien which is disputed by the owner or contractor,
23 conditioned for the payment of such claim in the amount thereof. Any
24 such bond shall have good and sufficient sureties, be approved by a judge
25 of the district court and filed with the clerk of the district court. When
26 bond is approved and filed, no lien for the labor, equipment, material or
27 supplies under contract, or claim described or referred to in the bond shall
28 attach under this act, and if when such bond is filed liens have already
29 been filed, such liens are discharged. Suit may be brought on such bond
30 by any person interested but no such suit shall name as defendant any
31 person who is neither a principal or surety on such bond, nor
32 contractually liable for the payment of the claim.

33 (b) *If a notice of furnishing has not been filed as provided for in*
34 *section 3, and amendments thereto, by a remote claimant as defined in*
35 *section 1, and amendments thereto, making a claim under the bond, the*
36 *aggregate amount of the bond claims made by the remote claimant shall*
37 *not exceed the net amount due by the original contractor under the terms*
38 *of the subcontract with the subcontractor to whom the remote claimant*
39 *has supplied labor, equipment, materials or supplies.*

40 Sec. 8. K.S.A. 60-1111 is hereby amended to read as follows: 60-
41 1111. (a) *Bond by contractor*. Except as provided in this section,
42 whenever any public official, under the laws of the state, enters into
43 contract in any sum exceeding \$100,000 with any person or persons for

1 the purpose of making any public improvements, or constructing any
2 public building or making repairs on the same, such officer shall take,
3 from the party contracted with, a bond to the state of Kansas with good
4 and sufficient sureties in a sum not less than the sum total in the contract,
5 conditioned that such contractor or the subcontractor of such contractor
6 shall pay all indebtedness incurred for labor furnished, materials,
7 equipment or supplies, used or consumed in connection with or in or
8 about the construction of such public building or in making such public
9 improvements.

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

17 (b) *Filing and limitations.* The bond required under subsection (a)
18 shall be filed with the clerk of the district court of the county in which
19 such public improvement is to be made. When such bond is filed, no lien
20 shall attach under this article. Any liens which have been filed prior to the
21 filing of such bond shall be discharged. Any person to whom there is due
22 any sum for labor or material furnished, as stated in subsection (a), or
23 such person's assigns, may bring an action on such bond for the recovery
24 of such indebtedness but no action shall be brought on such bond after six
25 months from the completion of such public improvements or public
26 buildings.

27 (c) In any case of a contract for construction, repairs or
28 improvements for the state or a state agency under K.S.A. 75-3739 or 75-
29 3741, and amendments thereto, a certificate of deposit payable to the state
30 may be accepted in accordance with and subject to K.S.A. 60-1112, and
31 amendments thereto. When such certificate of deposit is so accepted, no
32 lien shall attach under this article. Any liens which have been filed prior
33 to the acceptance of such certificate of deposit shall be discharged. Any
34 person to whom there is due any sum for labor furnished, materials,
35 equipment or supplies used or consumed in connection with or for such
36 contract for construction, repairs or improvements shall make a claim
37 therefor with the director of purchases under K.S.A. 60-1112, and
38 amendments thereto.

39 (d) *If a notice of furnishing has not been filed as provided for in*
40 *section 3, and amendments thereto, by a remote claimant as defined in*
41 *section 1, and amendments thereto, making a claim under the bond, the*
42 *aggregate amount of the bond claims made by the remote claimant shall*
43 *not exceed the net amount due by the original contractor under the terms*

1 *of the subcontract with the subcontractor to whom the remote claimant*
2 *has supplied labor, equipment, materials or supplies.*

3 Sec. 9. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.

4 Sec. 10. This act shall take effect and be in force from and after its
5 publication in the statute book.