

HOUSE BILL No. 2173

By Committee on Commerce, Labor and Economic Development

1-30

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 4, 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 behalf.

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

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

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

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

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

30 (g) "Owner" shall include the trustee, agent or spouse of the owner.

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

35 (i) "Secretary" means the secretary of state.

36 (j) "State construction registry" means an electronic web-based

1 system or equivalent system prescribed by the secretary created pursuant
2 to section 4, and amendments thereto, for the purpose of filing and
3 maintaining notifications by original contractors, subcontractors and
4 remote claimants required pursuant to sections 2 and 3, and amendments
5 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 provide 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, address, fax number and e-mail address of any original
21 contractor.

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

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

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

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

31 (7) The following statement:

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

39 (c) (1) Any correction to a notice of commencement shall be made in
40 the manner and form prescribed by the secretary.

41 (2) Any original contractor filing a notice of commencement shall file
42 a notice of completion upon completion of the project. Such notice of
43 completion shall be made in the manner and form prescribed by the

1 secretary.

2 (3) A notice of commencement shall be accompanied by a filing fee
3 in an amount fixed by rules and regulations of the secretary. Such filing
4 fee shall be paid by the original contractor.

5 New Sec. 3. (a) If any original contractor has filed a notice of
6 commencement with the state construction registry pursuant to section 2,
7 and amendments thereto, concerning a project for which a subcontractor or
8 remote claimant has furnished labor, equipment, materials or supplies,
9 such subcontractor or remote claimant may file a notice of furnishing with
10 the state construction registry when such furnishing exceeds a total of
11 \$5,000, within 21 days of the date of furnishing of labor, materials,
12 equipment or supplies. A notice of furnishing need not be filed with the
13 secretary if the total of such furnishing is less than \$5,000.

14 (b) In no event shall the aggregate amount of any liens filed by a
15 remote claimant exceed the net amount due by the original contractor to
16 the subcontractor to whom the remote claimant has supplied labor,
17 equipment, materials or supplies unless the remote claimant has filed a
18 notice of furnishing with the state construction registry within 21 days of
19 the date of furnishing of labor, materials, equipment or supplies.

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

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

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

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

28 (4) The unique project number assigned by the state construction
29 registry.

30 (d) One notice of furnishing is required for each project for each
31 subcontractor or remote claimant where such subcontractor or remote
32 claimant has furnished labor, equipment, materials or supplies.

33 (e) A notice of furnishing shall be accompanied by a filing fee in an
34 amount fixed by rules and regulations of the secretary. Such filing fee shall
35 be paid by the original contractor.

36 (f) Nothing in this act shall expand or create any additional rights of a
37 person to claim a lien pursuant to K.S.A. 60-1103, and amendments
38 thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-
39 1110 or 60-1111, and amendments thereto.

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

1 (g) Any correction to a notice of furnishing shall be made in the
2 manner and form prescribed by the secretary.

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

7 (b) A notice of commencement shall contain the information
8 prescribed in section 2, and amendments thereto. A notice of furnishing
9 shall contain the information prescribed in section 3, and amendments
10 thereto.

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

17 (d) Upon receipt of any notice, and upon tender of any required fees,
18 the secretary shall certify that the notice has been filed in the office of
19 secretary of state by endorsing upon the notice the word "filed" and the
20 date and hour of its filing. This endorsement is the "filing date" of the
21 notice and is conclusive of the date and time of its filing in the absence of
22 actual fraud. The secretary shall thereupon record the endorsed notice in
23 the state construction registry and assign a unique project number.

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

30 New Sec. 5. (a) Except with respect to willful misconduct, the
31 secretary and secretary's employees are immune from liability for damages
32 resulting from errors or omissions due to any:

33 (1) Filing information supplied pursuant to the provisions of sections
34 2 through 4, and amendments thereto;

35 (2) failure by any person to accurately file information or
36 documentation pursuant to the provisions of sections 2 through 4, and
37 amendments thereto; or

38 (3) technical error or malfunction of the system created pursuant to
39 section 4, and amendments thereto.

40 (b) The secretary may promulgate rules and regulations to implement
41 the provisions of sections 1 through 4, and amendments thereto.

42 Sec. 6. K.S.A. 60-1103 is hereby amended to read as follows: 60-
43 1103. (a) *Procedure*. Any supplier, *remote claimant*, subcontractor or other

1 person furnishing labor, equipment, material or supplies, used or
2 consumed at the site of the property subject to the lien, under an agreement
3 with the contractor, subcontractor or owner contractor may obtain a lien
4 for the amount due in the same manner and to the same extent as the
5 original contractor except that:

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

9 (2) if a warning statement is required to be given pursuant to K.S.A.
10 60-1103a, and amendments thereto, there shall be attached to the lien
11 statement the affidavit of the supplier or subcontractor that such warning
12 statement was properly given; ~~and~~

13 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
14 1103b, and amendments thereto, must have been filed as provided by that
15 section; *and*

16 (4) *if a notice of furnishing has not been filed by a remote claimant*
17 *pursuant to section 3, and amendments thereto, the aggregate amount of*
18 *any lien filed by such remote claimant shall not exceed the net amount due*
19 *from the original contractor under the terms of the subcontract with the*
20 *subcontractor to whom such remote claimant has furnished labor,*
21 *materials, equipment or supplies.*

22 (b) *As used in this section:*

23 (1) "Owner contractor" ~~is defined as~~ *means* any person, firm or
24 corporation who:

25 ~~(1) (A)~~ *Is the fee title owner of the real estate subject to the lien; and*

26 ~~(2) (B)~~ *enters into contracts with more than one person, firm or*
27 *corporation for labor, equipment, material or supplies used or consumed*
28 *for the improvement of such real property.*

29 (2) *"Remote claimant" means the same as in section 1, and*
30 *amendments thereto.*

31 (c) *Recording and notice.* When a lien is filed pursuant to this section,
32 the clerk of the district court shall enter the filing in the general index. The
33 claimant shall: (1) Cause a copy of the lien statement to be served
34 personally upon any one owner, any holder of a recorded equitable interest
35 and any party obligated to pay the lien in the manner provided by K.S.A.
36 60-304, and amendments thereto, for the service of summons within the
37 state, or by K.S.A. 60-308, and amendments thereto, for service outside of
38 the state; (2) mail a copy of the lien statement to any one owner of the
39 property, any holder of a recorded equitable interest and to any party
40 obligated to pay the same by restricted mail; or (3) if the address of any
41 one owner or such party is unknown and cannot be ascertained with
42 reasonable diligence, post a copy of the lien statement in a conspicuous
43 place on the premises. The provisions of this subsection requiring that the

1 claimant serve a copy of the lien statement shall be deemed to have been
2 complied with, if it is proven that the person to be served actually received
3 a copy of the lien statement. No action to foreclose any lien may proceed
4 or be entered against residential real property in this state unless the holder
5 of a recorded equitable interest was served with notice in accordance with
6 the provisions of this subsection.

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

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

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

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

20 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of
21 labor, equipment, materials or supplies on property other than residential
22 property may be claimed pursuant to this section, and amendments thereto,
23 within five months only if the claimant has filed *a notice of furnishing*
24 *pursuant to section 3, and amendments thereto, or* a notice of extension
25 within three months since last furnishing labor, equipment, materials or
26 supplies to the job site. ~~Such~~ *A notice of extension* shall be filed in the
27 office of the clerk of the district court of the county where such property is
28 located and shall be mailed by certified and regular mail to the general
29 contractor or construction manager and a copy to the owner by regular
30 mail, if known. ~~The~~ *Such* notice of extension shall be deemed sufficient if
31 in substantial compliance with the form set forth by the judicial council.

32 Sec. 7. K.S.A. 60-1110 is hereby amended to read as follows: 60-
33 1110. (a) The contractor or owner may execute a bond to the state of
34 Kansas for the use of all persons in whose favor liens might accrue by
35 virtue of this act, conditioned for the payment of all claims which might be
36 the basis of liens in a sum not less than the contract price, or to any person
37 claiming a lien which is disputed by the owner or contractor, conditioned
38 for the payment of such claim in the amount thereof. Any such bond shall
39 have good and sufficient sureties, be approved by a judge of the district
40 court and filed with the clerk of the district court. When bond is approved
41 and filed, no lien for the labor, equipment, material or supplies under
42 contract, or claim described or referred to in the bond shall attach under
43 this act, and if when such bond is filed liens have already been filed, such

1 liens are discharged. Suit may be brought on such bond by any person
2 interested but no such suit shall name as defendant any person who is
3 neither a principal or surety on such bond, nor contractually liable for the
4 payment of the claim.

5 (b) *If a notice of furnishing has not been filed pursuant to section 3,*
6 *and amendments thereto, by a remote claimant making a claim under a*
7 *bond, the aggregate amount of any bond claims made by such remote*
8 *claimant shall not exceed the net amount due from the original contractor*
9 *under the terms of the subcontract with the subcontractor to whom such*
10 *remote claimant has furnished labor, materials, equipment or supplies.*

11 (c) *As used in this section, "remote claimant" means the same as in*
12 *section 1, and amendments thereto.*

13 Sec. 8. K.S.A. 60-1111 is hereby amended to read as follows: 60-
14 1111. (a) *Bond by contractor.* Except as provided in this section, whenever
15 any public official, under the laws of the state, enters into contract in any
16 sum exceeding \$100,000 with any person or persons for the purpose of
17 making any public improvements, or constructing any public building or
18 making repairs on the same, such officer shall take, from the party
19 contracted with, a bond to the state of Kansas with good and sufficient
20 sureties in a sum not less than the sum total in the contract, conditioned
21 that such contractor or the subcontractor of such contractor shall pay all
22 indebtedness incurred for labor furnished, materials, equipment or
23 supplies, used or consumed in connection with or in or about the
24 construction of such public building or in making such public
25 improvements.

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

32 (b) *Filing and limitations.* The bond required under subsection (a)
33 shall be filed with the clerk of the district court of the county in which
34 such public improvement is to be made. When such bond is filed, no lien
35 shall attach under this article. Any liens which have been filed prior to the
36 filing of such bond shall be discharged. Any person to whom there is due
37 any sum for labor or material furnished, as stated in subsection (a), or such
38 person's assigns, may bring an action on such bond for the recovery of
39 such indebtedness but no action shall be brought on such bond after six
40 months from the completion of such public improvements or public
41 buildings.

42 (c) In any case of a contract for construction, repairs or improvements
43 for the state or a state agency under K.S.A. 75-3739 or 75-3741, and

1 amendments thereto, a certificate of deposit payable to the state may be
2 accepted in accordance with and subject to K.S.A. 60-1112, and
3 amendments thereto. When such certificate of deposit is so accepted, no
4 lien shall attach under this article. Any liens which have been filed prior to
5 the acceptance of such certificate of deposit shall be discharged. Any
6 person to whom there is due any sum for labor furnished, materials,
7 equipment or supplies used or consumed in connection with or for such
8 contract for construction, repairs or improvements shall make a claim
9 therefor with the director of purchases under K.S.A. 60-1112, and
10 amendments thereto.

11 *(d) If a notice of furnishing has not been filed pursuant to section 3,*
12 *and amendments thereto, by a remote claimant making a claim under a*
13 *bond, the aggregate amount of any bond claim made by such remote*
14 *claimant shall not exceed the net amount due from the original contractor*
15 *under the terms of the subcontract with the subcontractor to whom such*
16 *remote claimant has furnished labor, materials, equipment or supplies.*

17 *(e) As used in this section, "remote claimant" means the same as in*
18 *section 1, and amendments thereto.*

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

20 Sec. 10. This act shall take effect and be in force from and after July
21 1, 2015, and its publication in the statute book.