HOUSE BILL No. 2072

By Committee on Judiciary

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 through 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, materials 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) “Commencement of physical construction” means the first delivery to the project site of any equipment, materials or supplies to be incorporated into the construction project or when ground is first broken on the project site, whichever occurs first.
   (d) “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.
   (e) “Notice of furnishing” means a notice from a subcontractor or remote claimant that is filed within 21 days of the furnishing of labor, materials, equipment or supplies pursuant to section 3, and amendments thereto.
   (f) “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.
   (g) “Owner” shall include the trustee, agent or spouse of the owner.
   (h) “Remote claimant” means a subcontractor to a subcontractor, also referred to as a sub-subcontractor, as well as persons who supply materials to subcontractors. Remote claimants have no contract directly with the original contractor.
   (i) “Secretary” means the secretary of state.
(j) “State construction registry” means an electronic web-based system created pursuant to 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.

(k) “Subcontractor” means any person or supplier who has a contract directly with an original contractor.

New Sec. 2. (a) Prior to commencement of physical construction at the project site, any original contractor shall 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 concerning 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 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.
(4) A brief description of the construction or improvement to be performed on the property.
(5) The date of the contract between an owner and an original contractor for the construction or improvement.
(6) The name and address of the person preparing the notice of commencement.
(7) This statement:

“To remote claimants and subcontractors: Take notice that labor or work is about to begin on or equipment, materials or supplies are about to be furnished for an improvement to the real property described in this notice. Any subcontractor or remote claimant may preserve such claimant’s full lien rights by filing a notice of furnishing with the state construction registry, 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.

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 may file a notice of furnishing
with the state construction registry within 21 days of the date of
furnishing of labor, materials, equipment or supplies.

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

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

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

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

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

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

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

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

(f) Nothing in this act shall expand or create any additional rights of
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 60-1111, and amendments thereto.

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

New Sec. 4. (a) On or before January 1, 2012, 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.

(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
executed 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 execute 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.

(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 and assign a unique project number.

(f) On or before January 1, 2012, 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.

(g) 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.

New 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, 2012.

Sec. 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:

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

(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 or has filed a notice of furnishing in accordance with section 3, and amendments thereto. 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. 7. 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 a notice of furnishing has not been filed as provided for in section 3, and amendments thereto, by a remote claimant as defined in section 1, and amendments thereto, making a claim under the bond, the aggregate amount of the bond claims made by the remote claimant shall not exceed the net amount due by the original contractor under the terms of the subcontract with the subcontractor to whom the remote claimant has supplied labor, equipment, materials or supplies.

Sec. 8. 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 a notice of furnishing has not been filed as provided for in
section 3, and amendments thereto, by a remote claimant as defined in
section 1, and amendments thereto, making a claim under the bond, the
aggregate amount of the bond claims made by the remote claimant shall
not exceed the net amount due by the original contractor under the terms
of the subcontract with the subcontractor to whom the remote claimant has supplied labor, equipment, materials or supplies.

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

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