

HOUSE BILL No. 3001

By Committee on Federal and State Affairs

2-20

AN ACT concerning civil procedure; relating to certain liens; amending K.S.A. 60-1102 and K.S.A. 2001 Supp. 60-1103 and repealing the existing sections.

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

Section 1. K.S.A. 60-1102 is hereby amended to read as follows: 60-1102. (a) *Filing.* Any person claiming a lien on real property, under the provisions of K.S.A. 60-1101, and amendments thereto, shall file a *verified statement* with the clerk of the district court of the county in which property is located. *If the property is located in Reno county, such statement shall be filed* within four months after the date material, equipment or supplies, used or consumed ~~was were~~ last furnished or last labor performed under the contract ~~a verified statement showing~~. *If the property is located in any other county, such statement shall be filed within 120 days if such property is residential property, and within 180 days if such property is other than residential, after the date material, equipment or supplies used or consumed were furnished or last labor performed under the contract. The verified statement shall show:*

- (1) The name of the owner,
- (2) the name and address sufficient for service of process of the claimant,
- (3) a description of the real property,
- (4) a reasonably itemized statement and the amount of the claim, but if the amount of the claim is evidenced by a written instrument, or if a promissory note has been given for the same, a copy thereof may be attached to the claim in lieu of the itemized statement.

(b) *Recording.* Immediately upon the receipt of such statement the clerk of the court shall index the lien in the general index by party names and file number.

Sec. 2. K.S.A. 2001 Supp. 60-1103 is hereby amended to read as follows: 60-1103. (a) *Procedure.* Any supplier, subcontractor 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

1 contractor except that:

2 (1) The lien statement must state the name of the contractor and be
3 filed: (A) Within three months after the date supplies, material or equip-
4 ment was last furnished or labor performed by the claimant, *if the prop-
5 erty is located in Reno county; (B) within 90 days after the date supplies,
6 material or equipment was last furnished or labor performed by the claim-
7 ant, if the property is residential property and is located in any county
8 other than Reno; and (C) within 180 days after the date supplies, material
9 or equipment was last furnished or last performed by the claimant, if the
10 property is other than residential and is located in any county other than
11 Reno;*

12 (2) if a warning statement is required to be given pursuant to K.S.A.
13 60-1103a, and amendments thereto, there shall be attached to the lien
14 statement the affidavit of the supplier or subcontractor that such warning
15 statement was properly given; and

16 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
17 1103b, and amendments thereto, must have been filed as provided by
18 that section.

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

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

22 (2) enters into contracts with more than one person, firm or corpo-
23 ration for labor, equipment, material or supplies used or consumed for
24 the improvement of such real property.

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

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

5 (1) Prior to the expiration of the ~~three-month~~ *time* period for filing
6 lien claims *pursuant to subsection (a)(1)*, if no warning statement is re-
7 quired by K.S.A. 60-1103a, and amendments thereto; or

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

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

14 Sec. 3. K.S.A. 60-1102 and K.S.A. 2001 Supp. 60-1103 are hereby
15 repealed.

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

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