

Substitute for HOUSE BILL No. 2064

AN ACT concerning civil procedure; relating to filing time; amending K.S.A. 60-1102 and K.S.A. 2002 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 with the clerk of the district court of the county in which property is located, within four months after the date material, equipment or supplies, used or consumed was last furnished or last labor performed under the contract a verified statement showing:

- (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.

(c) *Notwithstanding subsection (a), a lien for the furnishing of labor, equipment, materials or supplies on property other than residential property may be claimed pursuant to this section within five months only if the claimant has filed a notice of extension within four months since last furnishing labor, equipment, materials or supplies to the job site. Such notice shall be filed in the office of the district court of the county where such property is located and shall be mailed by certified and regular mail to the owner. The notice of extension shall contain substantially the following statement:*

Notice of Extension to File Contractor Lien

Name of Contractor

Address of Contractor

Telephone Number of Contractor

Name and/or Number of Job

Address of Job Site

Filing of such notice extends the time for filing a lien to five months for the above contractor providing materials or labor on property owned by:

(d) *As used in this section and K.S.A. 60-1103, and amendments thereto, "residential property" means a structure which is constructed for use as a residence and which is not used or intended for use as a residence for more than two families.*

Sec. 2. K.S.A. 2002 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 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.

(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 contain substantially the following statement:*

Notice of Extension to File Lien

Name of Subcontractor or Supplier

Address of Subcontractor or Supplier

Telephone Number of Subcontractor or Supplier

Name and/or Number of Job

Address of Job Site

Filing of such notice extends the time for filing a lien to five months for the above subcontractor, supplier, or other person providing materials and labor on property owned by:

Owner's Name (if known)

Owner's Address (if known)

Sec. 3. K.S.A. 60-1102 and K.S.A. 2002 Supp. 60-1103 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.