

## SENATE BILL No. 469

By Committee on Ways and Means

1-27

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9 AN ACT concerning civil procedure; relating to remote claim liens on  
10 commercial property; establishing the state construction registry;  
11 amending K.S.A. 60-1103, 60-1110 and 60-1111 and repealing the ex-  
12 isting sections.

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

15 New Section 1. As used in sections 1, 2, 3 and 4, and amendments  
16 thereto:

17 (a) "Authorized person" means any individual authorized by an orig-  
18 inal contractor, subcontractor or remote claimant to act on their behalf.

19 (b) "Construction" means furnishing labor, equipment, material or  
20 supplies for the improvement of a new or pre-existing structure which is  
21 not constructed for use as a single-family residence or multi-family resi-  
22 dence of four units or less. "Construction" does not include highways,  
23 roads, bridges, dams or turnpikes.

24 (c) "Notice of commencement" means a notice filed by an original  
25 contractor with the state construction registry providing the information  
26 required to be given pursuant to section 2, and amendments thereto.

27 (d) "Notice of furnishing" means a notice from a subcontractor or  
28 remote claimant that is filed prior to the recording of a mechanic's lien  
29 and which is required to be filed pursuant to section 3, and amendments  
30 thereto.

31 (e) "Original contractor" means any contractor who has a contract  
32 directly with the owner. "Original contractor" may include more than one  
33 contractor and be referred to as a general contractor.

34 (f) "Owner" shall include the trustee, agent or spouse of the owner.

35 (g) "Remote claimant" means a subcontractor to a subcontractor, also  
36 referred to as a sub-subcontractor, as well as people who supply materials  
37 to subcontractors. Remote claimants have no contract directly with the  
38 original contractor.

39 (h) "Secretary" means the secretary of state.

40 (i) "State construction registry" means a system created pursuant to  
41 section 4, and amendments thereto, for the purposes of filing and main-  
42 taining notifications by original contractors, subcontractors and remote  
43 claimants required pursuant to sections 2 and 3, and amendments thereto.

- 1 (j) “Subcontractor” means any person who furnishes labor, equip-  
2 ment, materials or supplies pursuant to a contract directly with an original  
3 contractor.
- 4 New Sec. 2. (a) Prior to, but no later than 15 calendar days after  
5 commencement of physical construction work at the project site, any orig-  
6 inal contractor may file a notice of commencement with the state con-  
7 struction registry created pursuant to section 4, and amendments thereto.  
8 The purpose of the notice of commencement is to notify other persons  
9 who are working on the project, including, but not limited to, subcon-  
10 tractors or remote claimants that the project has started and to give in-  
11 formation as to the name and address of the owner, the original contrac-  
12 tor, and the description of the project.
- 13 (b) The notice of commencement shall include the following:
- 14 (1) The name and address of the owner of the project contracting for  
15 the construction or improvement.
- 16 (2) The name and address of any original contractor.
- 17 (3) The name, address and contact information of the owner.
- 18 (4) The legal description of the real property or the street address,  
19 city, state, county and zip code of the real property on which the con-  
20 struction or improvement is to be made.
- 21 (5) A brief description of the construction or improvement to be per-  
22 formed on the property.
- 23 (6) The date the owner first executed a contract with an original con-  
24 tractor for the construction or improvement.
- 25 (7) The name and address of the person preparing the notice of  
26 commencement.
- 27 (8) The following statement:  
28 “To remote claimants, subcontractors or suppliers: Take notice that  
29 labor or work is about to begin on or materials are about to be furnished  
30 for an improvement to the real property described in this notice. Any  
31 remote claimant or subcontractor may preserve such claimant’s lien rights  
32 by filing a notice of furnishing with the State Construction Registry, which  
33 serves as notice to the original contractor or contractors, within 21 days  
34 of furnishing labor, equipment, materials or supplies to this project.”
- 35 (c) The notice of commencement shall be deemed sufficient if filed  
36 in the form and manner prescribed by the secretary of state.
- 37 (d) The original contractor may take protective measures by either  
38 making direct payments or payments by joint check to remote claimants  
39 to ensure that the remote claimant is paid.
- 40 New Sec. 3. (a) If any original contractor has filed a notice of com-  
41 mencement with the state construction registry pursuant to section 2, and  
42 amendments thereto, concerning a project for which a subcontractor or  
43 remote claimant has furnished labor, equipment, materials or supplies,

1 such subcontractor or remote claimant shall file a notice of furnishing  
2 with the state construction registry created pursuant to section 4, and  
3 amendments thereto, in order to preserve their lien rights for construc-  
4 tion subject to this act.

5 (b) The notice of furnishing shall include the following:

6 (1) The name and address of the original contractor.

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

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

12 (4) The legal description or address, city, state, county and zip code  
13 of the real property on which the construction or improvement is to be  
14 made.

15 (5) A brief description of the construction or improvement to be per-  
16 formed on the project.

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

19 (d) If a notice of commencement has not been filed with the state  
20 construction registry, a subcontractor or remote claimant may not file a  
21 notice of furnishing with the state construction registry.

22 (e) Nothing in this act shall expand or create any additional rights of  
23 a person to claim a lien pursuant to K.S.A. 60-1103, and amendments  
24 thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-  
25 1110 or K.S.A. 60-1111, and amendments thereto.

26 (f) If any original contractor has filed a notice of commencement with  
27 the state construction registry pursuant to section 2, and amendments  
28 thereto, concerning a project for which a subcontractor or remote claim-  
29 ant has furnished labor, equipment, materials or supplies, a lien for the  
30 furnishing of labor, equipment, materials or supplies by such subcontrac-  
31 tor or remote claimant pursuant to K.S.A. 60-1103, and amendments  
32 thereto, for construction subject to this act, may be claimed only if the  
33 subcontractor or remote claimant filed a notice of furnishing with the  
34 state construction registry within 21 calendar days of the date of furnish-  
35 ing any such labor, equipment, materials or supplies. If the subcontractor  
36 or remote claimant does not file within such time period, the subcon-  
37 tractor or remote claimant may file at a later date. In such event, the  
38 subcontractor or remote claimant's lien rights will only be effective from  
39 the date of the filing of the notice of furnishing.

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

- 1 (b) A notice of commencement shall contain the information pre-  
2 scribed in section 2, and amendments thereto.
- 3 (c) A notice of furnishing shall contain the information prescribed in  
4 section 3, and amendments thereto.
- 5 (d) Any notice filed with the state construction registry shall be signed  
6 by an authorized person. The fact that a person's signature appears on  
7 such notice shall be prima facie evidence that such person is authorized  
8 to sign the notice on behalf of the original contractor, subcontractor or  
9 remote claimant and that the notice is subscribed by the person as true,  
10 under penalty of perjury.
- 11 (e) Upon receipt of any notice, and upon tender of the required fees,  
12 the secretary shall certify that the notice has been filed in the office of  
13 secretary of state by endorsing upon the notice the word "filed" and the  
14 date and hour of its filing. This endorsement is the "filing date" of the  
15 notice and is conclusive of the date and time of its filing in the absence  
16 of actual fraud. The secretary shall thereupon record the endorsed notice  
17 in the state construction registry.
- 18 (f) The secretary shall adopt rules and regulations prescribing the  
19 form and manner of filing any notice required to be filed with the state  
20 construction registry and fixing the fees to be charged and collected under  
21 this section.
- 22 (g) The secretary of state shall remit all moneys received from fees  
23 and charges under this section, and amendments thereto, to the state  
24 treasurer in accordance with the provisions of K.S.A. 75-4215, and  
25 amendments thereto. Upon receipt of each such remittance, the state  
26 treasurer shall deposit the entire amount in the state treasury to the credit  
27 of the information and services fee fund of the secretary of state.
- 28 Sec. 5. K.S.A. 60-1103 is hereby amended to read as follows: 60-  
29 1103. (a) *Procedure.* Any ~~supplier, remote claimant or~~ subcontractor, as  
30 *defined in section 1, and amendments thereto,* or other person furnishing  
31 labor, equipment, material or supplies, used or consumed at the site of  
32 the property subject to the lien, under an agreement with the contractor,  
33 subcontractor or owner contractor may obtain a lien for the amount due  
34 in the same manner and to the same extent as the original contractor  
35 except that:
- 36 (1) The lien statement must state the name of the contractor and be  
37 filed within three months after the date supplies, material or equipment  
38 was last furnished or labor performed by the claimant;
- 39 (2) if a warning statement is required to be given pursuant to K.S.A.  
40 60-1103a, and amendments thereto, there shall be attached to the lien  
41 statement the affidavit of the supplier or subcontractor that such warning  
42 statement was properly given; ~~and~~
- 43 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-

1 1103b, and amendments thereto, must have been filed as provided by  
2 that section; *and*

3 (4) *a notice of furnishings, if required pursuant to section 3, and*  
4 *amendments thereto, must have been filed as provided by that section.*

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

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

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

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

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

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

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

40 The owner may discharge any lien filed under this section which the  
41 contractor fails to discharge and credit such payment against the amount  
42 due the contractor.

43 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of la-

1 bor, equipment, materials or supplies on property other than residential  
2 property may be claimed pursuant to this section, and amendments  
3 thereto, within five months only if the claimant has filed a notice of ex-  
4 tension within three months since last furnishing labor, equipment, ma-  
5 terials or supplies to the job site. Such notice shall be filed in the office  
6 of the clerk of the district court of the county where such property is  
7 located and shall be mailed by certified and regular mail to the general  
8 contractor or construction manager and a copy to the owner by regular  
9 mail, if known. The notice of extension shall be deemed sufficient if in  
10 substantial compliance with the form set forth by the judicial council.

11 Sec. 6. K.S.A. 60-1110 is hereby amended to read as follows: 60-  
12 1110. (a) The contractor or owner may execute a bond to the state of  
13 Kansas for the use of all persons in whose favor liens might accrue by  
14 virtue of this act, conditioned for the payment of all claims which might  
15 be the basis of liens in a sum not less than the contract price, or to any  
16 person claiming a lien which is disputed by the owner or contractor,  
17 conditioned for the payment of such claim in the amount thereof. Any  
18 such bond shall have good and sufficient sureties, be approved by a judge  
19 of the district court and filed with the clerk of the district court. When  
20 bond is approved and filed, no lien for the labor, equipment, material or  
21 supplies under contract, or claim described or referred to in the bond  
22 shall attach under this act, and if when such bond is filed liens have  
23 already been filed, such liens are discharged. Suit may be brought on  
24 such bond by any person interested but no such suit shall name as de-  
25 fendant any person who is neither a principal or surety on such bond, nor  
26 contractually liable for the payment of the claim.

27 (b) *If any original contractor has filed a notice of commencement*  
28 *concerning a project for which a subcontractor or remote claimant has*  
29 *furnished labor, equipment, materials or supplies, no subcontractor or*  
30 *remote claimant may file a claim under a payment bond obtained and*  
31 *executed pursuant to this section, unless such subcontractor or remote*  
32 *claimant has filed a notice of furnishing required pursuant to section 3,*  
33 *and amendments thereto. As used in this subsection, terms have the mean-*  
34 *ings provided by section 1, and amendments thereto.*

35 Sec. 7. K.S.A. 60-1111 is hereby amended to read as follows: 60-  
36 1111. (a) *Bond by contractor.* Except as provided in this section, when-  
37 ever any public official, under the laws of the state, enters into contract  
38 in any sum exceeding \$100,000 with any person or persons for the pur-  
39 pose of making any public improvements, or constructing any public  
40 building or making repairs on the same, such officer shall take, from the  
41 party contracted with, a bond to the state of Kansas with good and suf-  
42 ficient sureties in a sum not less than the sum total in the contract, con-  
43 ditioned that such contractor or the subcontractor of such contractor shall

1 pay all indebtedness incurred for labor furnished, materials, equipment  
2 or supplies, used or consumed in connection with or in or about the  
3 construction of such public building or in making such public  
4 improvements.

5 A contract which requires a contractor or subcontractor to obtain a  
6 payment bond or any other bond shall not require that such bond be  
7 obtained from a specific surety, agent, broker or producer. A public of-  
8 ficial entering into a contract which requires a contractor or subcontractor  
9 to obtain a payment bond or any other bond shall not require that such  
10 bond be obtained from a specific surety, agent, broker or producer.

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

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

33 (d) *If any original contractor has filed a notice of commencement*  
34 *concerning a project for which a subcontractor or remote claimant has*  
35 *furnished labor, equipment, materials or supplies, no subcontractor or*  
36 *remote claimant may file a claim under a public works bond obtained and*  
37 *executed pursuant to this section, unless such subcontractor or remote*  
38 *claimant has filed a notice of furnishing required pursuant to section 3,*  
39 *and amendments thereto. As used in this subsection, terms have the mean-*  
40 *ings provided by section 1, and amendments thereto.*

41 Sec. 8. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.

42 Sec. 9. This act shall take effect and be in force from and after July  
43 1, 2011, and its publication in the statute book.