

Approved: 1/22/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice Chairperson Ed Pugh at 3:30 p.m. on January 16, 1997 in Room 313-S of the Capitol.

All members were present except: Rep. Carmody-excused
Rep. Howell-excused
Rep. Kline-excused
Rep. Mays-excused
Rep. Mayans-excused
Rep. Powell-excused
Rep. Swenson-excused

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Trudy Aron, American Institute of Architects
Linda DeCoursey, Kansas Insurance Department

Others attending: See attached list

Vice Chairman Representative Pugh called the meeting to order at 3:30.

Bill Introductions:

Trudy Aron, Executive Director, American Institute of Architects requested the introduction of a bill which would provide lien rights to design professionals licensed under the Board of Technical Professions. (Attachment 1)

A motion was made Representative Pauls, and second by Representative Ruff to introduce as a Committee bill. The motion carries.

Linda DeCoursey, Assistant Director of Government and Public Affairs, Kansas Insurance Department requested the introduction of a bill which would strengthen the powers of the Insurance Department in dealing with fraud. (Attachment 2)

A motion was made by Representative Haley, and second by Representative Pauls to introduce as a Committee bill. The motion carries.

Representative Garner requested the introduction of a bill that would prohibit underage drinking of alcoholic beverages on public property or at public events.

A motion was made by Representative Garner, second by Representative Pauls to introduce as a bill. The motion carries.

Representative Garner requested the introduction of a bill that would make displaying a suspended or revoked driver's license a misdemeanor instead of a level 9 felony.

A motion was made by Representative Garner, second by Representative Klein to introduce as a Committee bill. The motion carries.

Vice Chair Representative Pugh adjourned the meeting at 3:55 p.m.

The next meeting is scheduled for January 21, 1997.

AIA Kansas

A Chapter of The American Institute of Architects

January 16, 1997



TO: Tim Carmody, Chair, and Members of the House Judiciary Committee

FROM: Trudy Aron, Executive Director

RE: Request for a bill extending Lien Rights to Architects, Engineers, Landscape Architects and Land Surveyors

President

Vincent Mancini, AIA
Garden City

President Elect

Alan M. Stecklein, AIA
Hays

Secretary

Gregory E. Schwerdt, AIA
Topeka

Treasurer

David G. Emig, AIA
Emporia

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Neal J. Angrisano, AIA
Overland Park

Richard A. Bartholomew, AIA
Overland Park

Leslie L. Fedde, Associate AIA
Wichita

Robert D. Fincham, AIA
Topeka

Tod A. Ford, Associate AIA
Wichita

Sarah L. Garrett, AIA
Manhattan

John Gaunt, FAIA
Lawrence

Diana L. Hutchison, AIA
Topeka

Eugene Kremer, FAIA
Manhattan

Bruce E. McMillan, AIA
Manhattan

Wendy Ornelas, AIA
Manhattan

Charles R. Smith, AIA
Topeka

F. Lynn Walker, AIA
Wichita

John M. Wilkins, Jr., AIA
Lawrence

Executive Director

Trudy Aron, Hon. AIA, CAE

I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas.) I appreciate being allowed to appear before you today.

I am requesting introduction of a bill which would provide lien rights to design professionals licensed under the Board of Technical Professions (Chapter 74, K.S.A.) Design professionals include architects, engineers, landscape architects and land surveyors. Design professionals provide their services well before any construction. We believe they should have the same recourse as contractors to place liens on the owner's property for which their services were provided.

Attached are copies of the balloon showing our suggested changes. You will note that the main language is on the right side of page one - Section 60-1101a. All other changes add either the word "services" or "design professionals" to the existing statutes.

I appreciate your consideration of this matter and would be happy to answer any questions you have. Thank you.

700 SW Jackson, Suite 209
Topeka, Kansas 66603-3757
Telephone: 913-357-5308
800-444-9853
Facsimile: 913-357-6450

House Judiciary
Attachment 1
1/16/97

1 60-1101 Liens of contractors; priority. Any person furnishing labor, equipment, material, or supplies
2 used or consumed for the improvement of real property, under a contract with the owner or with the
3 trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment,
4 material or supplies furnished, and for the cost of transporting the same. The lien shall be preferred to
5 all other liens or encumbrances which are subsequent to the commencement of the furnishing of such
6 labor, equipment, material or supplies at the site of the property subject to the lien. When two or more
7 such contracts are entered into applicable to the same improvement, the liens of all claimants shall be
8 similarly preferred to the date of the earliest unsatisfied lien of any of them.

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40 60-1101 Liens of contractors; priority. Any person furnishing labor, equipment, material, or supplies
41 used or consumed for the improvement of real property, under a contract with the owner or with the
42 trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment,
43 material or supplies furnished, and for the cost of transporting the same. The lien shall be preferred to
44 all other liens or encumbrances which are subsequent to the commencement of the furnishing of such
45 labor, equipment, material or supplies at the site of the property subject to the lien. When two or more
46 such contracts are entered into applicable to the same improvement, the liens of all claimants shall be
47 similarly preferred to the date of the earliest unsatisfied lien of any of them.

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49 *60-1101a, Any person furnishing or performing architectural, professional engineering, land*
50 *surveying or landscape architectural services (hereafter called a design professional) for the*
51 *improvement of real property, under contract with the owner or with the trustee, agent or spouse of*
52 *the owner, shall have a lien upon the property for the services furnished or performed, so long as the*
53 *design professional was properly licensed under Chapter 74, K.S.A. at all such times. The lien shall*
54 *be preferred to all other liens or encumbrances which are subsequent to the commencement of the*
55 *furnishing or performing of such services relating to the property subject to the lien. When two or*
56 *more such contracts are entered into applicable to the same improvement, the lines of all claimants*
57 *shall be similarly preferred to the date of the earliest unsatisfied lien of any of them.*

59 60-1102. Filing and recording of lien statement. (a) Filing. Any person claiming a lien on real
60 property, under the provisions of K.S.A. 60-1101 or 60-1101a, and amendments thereto, shall file
61 with the clerk of the district court of the county in which property is located, within four months after
62 the date material, equipment or supplies, used or consumed was last furnished or last labor or
63 services performed under the contract a verified statement showing:

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

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

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73 60-1103. Liens of subcontractors; procedure, recording and notice, owner's liability. (a) Procedure.
74 Any supplier, subcontractor or other person furnishing labor, equipment, material or supplies, used or
75 consumed at the site of the property subject to the lien or services relating to such property, under an
76 agreement with the contractor, subcontractor, or owner contractor or design professional may obtain
77 a lien for the amount due in the same manner and to the same extent as the original contractor or
78 design professional except that:

1 (1) The lien statement must state the name of the contractor and be filed within three months
2 after the date supplies, material or equipment was last furnished or labor performed by the claimant;
3

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

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

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

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

11 (2) enters into contracts with more than one person, firm or corporation for labor, equipment,
12 material or supplies used or consumed for the improvement of such real property.

13 (c) Recording and notice. When a lien is filed pursuant to this section, the clerk of the district
14 court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien
15 statement to be served personally upon any one owner and any party obligated to pay the lien in the
16 manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the
17 state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of
18 the lien statement to any one owner of the property and to any party obligated to pay the same by
19 restricted mail or (3) if the address of any one owner or such party is unknown and cannot be
20 ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the
21 premises. The provisions of this subsection requiring that the claimant serve a copy of the lien
22 statement shall be deemed to have been complied with, if it is proven that the person to be served
23 actually received a copy of the lien statement.

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

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

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

31 The owner may discharge any lien filed under this section which the contractor fails to discharge
32 and credit such payment against the amount due the contractor.
33

34 60-1103a. Subcontractors' liens; improvement of residential property. (a) As used in this section,
35 "improvement of residential property" means:

36 (1) Improvement of a preexisting structure in which the owner resides at the time the claimant
37 first furnishes labor, equipment, material or supplies and which is not used or intended for use as a
38 residence for more than two families or for commercial purposes or improvement or construction of

39 (1) The lien statement must state the name of the contractor *or design professional* and be filed
40 within three months after the date supplies, material, ~~or~~ equipment *or services* was last furnished or
41 labor performed by the claimant;

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

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

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

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

49 (2) enters into contracts with more than one person, firm or corporation for labor, equipment,
50 material or supplies used or consumed for the improvement of such real property.

51 (c) Recording and notice. When a lien is filed pursuant to this section, the clerk of the district
52 court shall enter the filing in the general index. The claimant shall (1) cause a copy of the lien
53 statement to be served personally upon any one owner and any party obligated to pay the lien in the
54 manner provided by K.S.A. 60-304, and amendments thereto, for the service of summons within the
55 state, or by K.S.A. 60-308, and amendments thereto, for service outside of the state, (2) mail a copy of
56 the lien statement to any one owner of the property and to any party obligated to pay the same by
57 restricted mail or (3) if the address of any one owner or such party is unknown and cannot be
58 ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the
59 premises. The provisions of this subsection requiring that the claimant serve a copy of the lien
60 statement shall be deemed to have been complied with, if it is proven that the person to be served
61 actually received a copy of the lien statement.

62 (d) Rights and liability of owner. The owner of the real property shall not become liable for a
63 greater amount than the owner has contracted to pay the original contractor *or design professional*,
64 except for any payments to the contractor *or design professional* made:

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

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

69 The owner may discharge any lien filed under this section which the contractor *or design*
70 *professional* fails to discharge and credit such payment against the amount due the contractor.
71

72 60-1103a. Subcontractors' liens; improvement of residential property. (a) As used in this section,
73 "improvement of residential property" means:

74 (1) Improvement of a preexisting structure in which the owner resides at the time the claimant
75 first furnishes labor, equipment, material, ~~or~~ supplies *or services* and which is not used or intended
76 for use as a residence for more than two families or for commercial purposes or improvement or
77 construction of

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1 any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a
2 structure; or

3 (2) any construction upon real property which is (A) owned or acquired by an individual at the
4 time the claimant first furnishes labor, equipment, material or supplies; (B) intended to become and
5 does become the principal personal residence of that individual upon completion; and (C) not used or
6 intended for use as a residence for more than two families or for commercial purposes.

7
8 (b) A lien for the furnishing of labor, equipment, materials or supplies for the improvement of
9 residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto only if the
10 claimant has:

11 (1) Mailed to any one of the owners of the property a warning statement conforming with this
12 section; or

13 (2) in the claimant's possession a copy of a statement signed and dated by any one owner of the
14 property stating that the general contractor or the claimant had given the warning statement
15 conforming with this section to one such owner of the property.

16 (c) The warning statement provided for by this section, to be effective, shall contain substantially
17 the following statement:

18 "Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing
19 materials or labor on Job No. _____ at (residence address) under an agreement with (name of
20 contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property
21 for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this
22 supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or
23 subcontractor, you may withhold from your contractor the amount claimed until the dispute is
24 settled."

25 (d) The warning statement provided for by this section shall not be required if the claimant's total
26 claim does not exceed \$250.

27
28 60-1103b. Subcontractors' liens; new residential property. (a) As used in this section, "new
29 residential property" means a new structure which is constructed for use as a residence and which is
30 not used or intended for use as a residence for more than two families or for commercial purposes.
31 "new residential property" does not include any improvement of a preexisting structure or
32 construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

33 (b) A lien for the furnishing of labor, equipment, materials or supplies for the construction of
34 new residential property may be claimed pursuant to K.S.A. 60-1103 and amendments thereto after
35 the passage of title to such new residential property to a good faith purchaser for value only if the
36 claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of
37 title to such new residential property. Such notice shall be filed in the office of the clerk of the
38 district court of the county where the property is located.

39 any addition, garage, fence, swimming pool, outbuilding or other improvement appurtenant to such a
40 structure; or

41 (2) any construction upon *or design services for*, real property which is (A) owned or acquired by
42 an individual at the time the claimant first furnishes labor, equipment, material, ~~or~~ supplies *or*
43 *services*; (B) intended to become and does become the principal personal residence of that individual
44 upon completion; and (C) not used or intended for use as a residence for more than two families or for
45 commercial purposes.

46 (b) A lien for the furnishing of labor, equipment, materials, ~~or~~ supplies *or services* for the
47 improvement of residential property may be claimed pursuant to K.S.A. 60-1103 and amendments
48 thereto only if the claimant has:

49 (1) Mailed to any one of the owners of the property a warning statement conforming with this
50 section; or

51 (2) in the claimant's possession a copy of a statement signed and dated by any one owner of the
52 property stating that the general contractor, *the design professional* or the claimant had given the
53 warning statement conforming with this section to one such owner of the property.

54 (c) The warning statement provided for by this section, to be effective, shall contain substantially
55 the following statement:

56 "Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing
57 materials or labor on Job No. _____ at (residence address) under an agreement with (name of
58 contractor *or design professional*). Kansas law will allow this supplier or subcontractor to file a lien
59 against your property for materials, ~~or~~ labor *or services* not paid for by your contractor *or design*
60 *professional* unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a
61 notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your
62 contractor *or design professional, if applicable*, the amount claimed until the dispute is settled."

63 (d) The warning statement provided for by this section shall not be required if the claimant's total
64 claim does not exceed \$250.

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66 60-1103b. Subcontractors' liens; new residential property. (a) As used in this section, "new
67 residential property" means a new structure which is constructed for use as a residence and which is
68 not used or intended for use as a residence for more than two families or for commercial purposes.
69 "new residential property" does not include any improvement of a preexisting structure or
70 construction of any addition, garage or outbuilding appurtenant to a preexisting structure.

71 (b) A lien for the furnishing of labor, equipment, materials, ~~or~~ supplies *or services* for the
72 construction of new residential property may be claimed pursuant to K.S.A. 60-1103 and
73 amendments thereto after the passage of title to such new residential property to a good faith
74 purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of
75 the deed effecting passage of title to such new residential property. Such notice shall be filed in the
76 office of the clerk of the district court of the county where the property is located.

1 (c) The notice of intent to perform provided for in this section, to be effective, shall contain
2 substantially the following statement:

3 NOTICE OF INTENT TO PERFORM

4 "I _____ of
5 (name of supplier, subcontractor or contractor)

6 _____
7 (address of supplier, subcontractor or contractor)

8 do hereby give public notice that I am a supplier, subcontractor or contractor or other person
9 providing materials or labor on property owned by _____

10 (Name of property owner)

11 and having the legal description as follows:

12 _____
13 _____
14 _____."

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17 60-1104. Assignment. All claims for liens and rights of action to recover therefor under this act shall
18 be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses
19 thereto that might be made if such assignment had not been made. Where a statement has been filed
20 and recorded as herein provided, such assignment may be made by filing with the clerk of the court a
21 separate instrument in writing to be attached to the original lien.

22
23 60-1105. Limitations and amendment. (a) Limitations. An action to foreclose a lien under this
24 article shall be brought within one year from the time of filing the lien statement, but if a promissory
25 note has been attached to the lien statement in lieu of an itemized statement, the action shall be
26 commenced within one year from the maturity of said note.

27 (b) Amendment. Where action is brought to enforce a lien the lien statement may be amended by
28 leave of the judge in furtherance of justice, except to increase the amount claimed.

29
30 60-1106. Parties. In such actions all persons whose liens are filed as herein provided, and other
31 encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other
32 cases. Where such an action is brought by a subcontractor, or person other than the original
33 contractor, such original contractor shall be made a party defendant, and shall at his or her own
34 expense defend against the claim of every subcontractor, or other person claiming a lien under this
35 article, and if he or she fails to make such defense the owner may make the same at the expense of
36 such contractor; and until all such claims, costs and expenses are finally adjudicated, and defeated or
37 satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs
38

39 (c) The notice of intent to perform provided for in this section, to be effective, shall contain
40 substantially the following statement:

41 NOTICE OF INTENT TO PERFORM

42 "I _____ of
43 (name of supplier, subcontractor or contractor)

44 _____
45 (address of supplier, subcontractor or contractor)

46 do hereby give public notice that I am a supplier, subcontractor or contractor or other person
47 providing materials, ~~or~~ labor *or services* on property owned by _____

48 (Name of property owner)

49 and having the legal description as follows:

50 _____
51 _____
52 _____."

53
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55 60-1104. Assignment. All claims for liens and rights of action to recover therefor under this act shall
56 be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses
57 thereto that might be made if such assignment had not been made. Where a statement has been filed
58 and recorded as herein provided, such assignment may be made by filing with the clerk of the court a
59 separate instrument in writing to be attached to the original lien.

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61 60-1105. Limitations and amendment. (a) Limitations. An action to foreclose a lien under this
62 article shall be brought within one year from the time of filing the lien statement, but if a promissory
63 note has been attached to the lien statement in lieu of an itemized statement, the action shall be
64 commenced within one year from the maturity of said note.

65 (b) Amendment. Where action is brought to enforce a lien the lien statement may be amended by
66 leave of the judge in furtherance of justice, except to increase the amount claimed.

67
68 60-1106. Parties. In such actions all persons whose liens are filed as herein provided, and other
69 encumbrancers of record, shall be made parties, and issues shall be made and trials had as in other
70 cases. Where such an action is brought by a subcontractor, or person other than the original
71 contractor *or design professional*, such original contractor *or design professional* shall be made a
72 party defendant, and shall at his or her own expense defend against the claim of every subcontractor,
73 or other person claiming a lien under this article, and if he or she fails to make such defense the
74 owner may make the same at the expense of such contractor *or design professional*; and until all such
75 claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be
76 entitled to retain from the contractor *or design professional* the amount thereof, and such costs

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1 and expenses as he or she may be required to pay. If the sheriff of the county in which such action is
2 pending shall make return that he or she is unable to find such original contractor, the court may
3 proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs.
4

6 60-1107. Stay of proceedings. In any action to foreclose a lien under this article if the building or
7 other improvement is still in course of construction, the judge on application of any party engaged in
8 furnishing labor or materials for such building or improvement, may stay the trial thereof for a
9 reasonable time to permit the filing of a lien statement by such party under the provisions of this act.

11 60-1108. Action by landowner for adjudication, cancellation. If any lien or liens are filed under the
12 provisions of this article and no action to foreclose any of such liens is commenced, the owner of the
13 land may file such owner's petition in the district court of the county in which such land is situated,
14 making such lien claimants defendants therein, and praying for an adjudication of such lien or liens
15 so claimed. If any such lien claimant shall fail to establish such claimant's lien, the court may tax
16 against such claimant the whole or such portion of the costs of such action as may be just. If no
17 action to foreclose or adjudicate any lien filed under the provisions of this article shall be instituted
18 within the time provided in subsection

19 (a) of K.S.A. 60-1105, and amendments thereto, the lien shall be considered canceled by
20 limitation of law.

22 60-1109. Pro rata distribution. If the proceeds of the sale be insufficient to pay all the claimants,
23 then the court shall order them to be paid in proportion to the amount due each.

25 60-1110. Bond to secure payment of claims. The contractor or owner may execute a bond to the state
26 of Kansas for the use of all persons in whose favor liens might accrue by virtue of this act,
27 conditioned for the payment of all claims which might be the basis of liens in a sum not less than the
28 contract price, with good and sufficient sureties, to be approved by a judge of the district court and
29 filed with the clerk of the district court. When bond is approved and filed, no lien shall attach under
30 this act, and if when such bond is filed liens have already been filed, such liens are discharged. Suit
31 may be brought on such bond by any person interested.

32 and expenses as he or she may be required to pay. If the sheriff of the county in which such action is
33 pending shall make return that he or she is unable to find such original contractor *or design*
34 *professional*, the court may proceed to adjudicate the liens upon the land and render judgment to
35 enforce the same with costs.
36

37 60-1107. Stay of proceedings. In any action to foreclose a lien under this article if the building or
38 other improvement is still in course of construction, the judge on application of any party engaged in
39 furnishing labor or materials for such building or improvement, may stay the trial thereof for a
40 reasonable time to permit the filing of a lien statement by such party under the provisions of this act.

42 60-1108. Action by landowner for adjudication, cancellation. If any lien or liens are filed under the
43 provisions of this article and no action to foreclose any of such liens is commenced, the owner of the
44 land may file such owner's petition in the district court of the county in which such land is situated,
45 making such lien claimants defendants therein, and praying for an adjudication of such lien or liens
46 so claimed. If any such lien claimant shall fail to establish such claimant's lien, the court may tax
47 against such claimant the whole or such portion of the costs of such action as may be just. If no
48 action to foreclose or adjudicate any lien filed under the provisions of this article shall be instituted
49 within the time provided in subsection

50 (a) of K.S.A. 60-1105, and amendments thereto, the lien shall be considered canceled by
51 limitation of law.

53 60-1109. Pro rata distribution. If the proceeds of the sale be insufficient to pay all the claimants,
54 then the court shall order them to be paid in proportion to the amount due each.

56 60-1110. Bond to secure payment of claims. The contractor, *design professional* or owner may
57 execute a bond to the state of Kansas for the use of all persons in whose favor liens might accrue by
58 virtue of this act, conditioned for the payment of all claims which might be the basis of liens in a sum
59 not less than the contract price, with good and sufficient sureties, to be approved by a judge of the
60 district court and filed with the clerk of the district court. When bond is approved and filed, no lien
61 shall attach under this act, and if when such bond is filed liens have already been filed, such liens are
62 discharged. Suit may be brought on such bond by any person interested.
63
64



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Judiciary

FROM: Linda J. De Coursey *LJD*
Assistant Director, Government & Public Affairs Division

RE: Introduction of Bill

DATE: January 16, 1997

The Commissioner of Insurance is requesting the House Committee on Judiciary introduce legislation which will strengthen the ability of the Insurance Department to combat insurance fraud. This bill proposal was drafted with input from the insurance industry and law enforcement agencies.

*House Judiciary
Attachment 2
1/16/97*

Insurance Fraud Prevention

_____ Bill No. _____

AN ACT concerning insurance; relating to insurance fraud; prohibiting certain acts and prescribing penalties therefor; repealing K.S.A. 40-254 and 40-417 and K.S.A. 1995 Supp. 40-2,118.

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

Section 1. As used in sections 1 through 5:

(a) "Action" shall include nonaction or failure to take action.

(b) "Authorized agencies" mean"

- (1) The office of the commissioner of insurance;
- (2) the office of the attorney general;
- (3) the office of state fire marshal;
- (4) the office of a district or county attorney;
- (5) all law enforcement agencies; and
- (6) all official firefighting agencies;

and solely for the purposes of subsection (a) of section 3, "authorized agencies" also mean:

- (7) the federal bureau of investigation or any other federal agency; and
- (8) the United States attorney's office

(c) "Fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurance company, purported insurance company, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any material fact thereto; or conceals for the purpose of misleading, information concerning any material fact thereto.

(d) "Insurance company" means all corporations, companies, associations, societies, persons or partnerships writing contracts of insurance, indemnity or suretyship in the state of Kansas upon any type of risk or loss, including the Kansas fair access to insurance requirements (FAIR) plan.

(e) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

Sec. 2 (a) There is created within the Department of Insurance a Fraud Unit. It shall be the duty of this unit, subject to the approval of the Commissioner, to:

(1) make investigations within or outside the state of Kansas when the fraud unit has reason to believe that any person has violated or is about to violate any provision of the Kansas insurance fraud act, or any rule or order thereunder

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, of all the facts and circumstances concerning the matter to be investigated; and

(3) publish information concerning any violation of the Kansas insurance fraud act, or any rule or order thereunder.

(b) The commissioner may appoint special investigators to aid in investigations conducted pursuant to the Kansas insurance fraud act. Such special investigators shall have authority to serve subpoenas and all other process. To encourage uniform interpretation and administration of this act and effective insurance regulation and enforcement, these special investigators may request cooperation with any federal, state or municipal agency including law enforcement entities.

The cooperation authorized by this section includes but is not limited to, the following:

(1) sharing and exchanging information and documents subject to the restrictions of the Kansas open records act; and federal and state laws regarding the protection of trade secrets;

(2) sharing and exchanging information, including criminal background history, with law enforcement officers as defined by K.S.A. 74-5602;

(3) assisting officials of investigative or law enforcement agencies or other authorized agencies who are investigating insurance fraud and who request assistance from the commissioner;

(4) assisting law enforcement officials in conducting searches and seizures.

(c) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence,

memoranda, agreements or other documents or records which the commissioner deems relevant or material to such investigation. *Provided however*, no person complying with subsection (c) shall be prosecuted or subjected to any penalty or forfeiture for providing evidence in the manner described in K.S.A. 40-2413.

(d) In case of the failure or refusal of any person to comply with any subpoena, interrogatory or request for production of documents issued hereunder, or to testify to any matter regarding which such person may be lawfully questioned, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(e) The commissioner may issue, and apply to enforce, subpoenas in this state at the request of an insurance commissioner or insurance administrator of another state if the activities constituting an alleged violation for which the information sought would be a violation of the Kansas insurance fraud act, if such activities had occurred in this state.

(f) The commissioner may refer such evidence as may be available concerning violations of the Kansas insurance fraud act, hereunder to the U. S. Attorney, Attorney General, or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the U.S. Attorney, Attorney General or the proper county attorney or district attorney may request that a duly employed attorney of the commissioner prosecute or assist in the prosecution of such violations or violations on behalf of the state or federal government. Upon approval of the commissioner, such employee shall be appointed a special prosecutor for the U.S. Attorney, Attorney General, the proper county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law of assistant U.S. Attorney's, assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the U.S. Attorney, Attorney General, county attorney, or district attorney.

(g) The commissioner or their authorized agent, may notify the appropriate professional licensing board or disciplinary body of evidence of insurance fraud involving professionals

(h) The commissioner or their authorized agent, may notify the appropriate professional licensing board of evidence of gross overutilization of health care services.

Sec 3 (a) Any authorized agency, in writing, may require an insurance company to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession, relating to any suspected violations of the Kansas insurance fraud act. Materials shall be deemed important if it is within the sole discretion of the authorized agency to request such material. Relevant information may include, but not be limited to:

(1) Pertinent insurance policy information relevant to a loss or claim under investigation and any application for such policy;

(2) premium payment records;

(3) history of previous claims made by the insured; and

(4) information relating to the investigation of an application, a loss or claim, including statements of any person, proof of loss and any other evidence relevant to the investigation; and

(5) information relating to any financial gain by the agent or broker relating to a policy or claim.

(b)(1) For the purpose of notification and investigation, an insurance company, its employees, or agents, who in good faith believe that insurance fraud, has been or is being committed, shall report the suspected insurance fraud to any authorized agency. This notice shall be in writing and contain all relevant materials.

(2) When an insurance company provides any one of the authorized agencies with notice of suspected fraudulent acts, it shall be sufficient notice for the purpose of this act.

(3) Any person that has a good faith belief that an act of insurance fraud will be, is being, or has been committed may furnish and disclose any information in its possession concerning such act to any authorized agency, insurance company, its employees or agents or the National Insurance Crime Bureau for the purpose of detecting, prosecuting or preventing insurance fraud.

(4) An insurance company, its employees, or agents are immune from civil action, civil penalty, or damages when in good faith that insurance company, its employees, or agents cooperates with, furnishes evidence, provides or receives information regarding suspected insurance fraud.

(5) No person shall be subject to civil liability for any cause of action by virtue of reporting suspected insurance fraud if:

i) the report was made to any authorized agency; insurance company, its employees or agents, or the National Insurance Crime Bureau and,

ii) the person reporting the suspected insurance fraud acted in good faith when making the report.

(6) No person employed by or authorized by an insurance company whose activities includes the investigation of or reporting of suspected insurance fraud who furnishes, discloses or requests information regarding an act of suspected insurance fraud to persons employed by other insurance companies acting in the same capacity shall be subject to civil liability for libel, slander or any other cause of action arising from the furnishing, disclosing or requesting of such information if such person acts in good faith.

(7) Nothing contained in this subsection shall abrogate or impair the rights or powers created under subsection (a) of Section 2.

(8) Notwithstanding any other provision in this section, a person, insurance company, its employees, or agents, are not immune from civil action, civil penalty or damages under this section if that person, insurance company, its employees or agents, commits the fraudulent insurance act that is the subject of the information.

(c) Any authorized agency provided with information concerning any acts of insurance fraud, or pursuant to K.S.A. 40-2,119 and amendments thereto, may release or provide such information to any other authorized agencies.

(d) Any insurance company providing information to the Insurance Department shall have the right to request relevant information relating to such loss, claim or application for insurance from the Insurance Department

(e) If an insurance company has a good faith belief that an insurance fraud has been committed in connection with an insurance claim, and has properly notified the fraud unit of its suspicions, such notification shall toll any applicable time period in any unfair claims practices statute or related regulation or any action on the claim against the insurance company, until thirty days after determination by

the fraud unit of the insurance department and notice to the insurance company that the fraud unit will not recommend action on the claim.

Sec. 4 (a) Except as otherwise provided in subsection (c) or (d) of Section 3, any authorized agency or insurance company described in Section 1 or Section 3 which receives any information furnished pursuant to this act, shall hold the information in confidence until such time as its release may be required pursuant to a criminal, civil or administrative proceeding.

(b) Any authorized agency or its personnel, may be required to testify in any litigation in which the insurance company at interest is named as a party.

Sec. 5 (a) Except as otherwise specifically provided in K.S.A. 21-3718 and 44-5,125 and amendments thereto, a fraudulent insurance act is a severity level 6 nonperson felony, if the amount involved is \$25,000 or more; a severity level 7, nonperson felony, if the amount is at least \$5,000 but less than \$25,000; a severity level 8, nonperson felony, if the amount is at least \$1000 but less than \$5,000; a severity level 9, nonperson felony, if the amount is at least \$500 but less than \$1000; and a class C non person misdemeanor, if the amount is less than \$500.

(b) In addition to any other penalty, a person who violates the provisions of this act shall be ordered to make restitution to the insurer or any other person or entity for any financial loss sustained as a result of such violation. Except as provided in K.S.A. 40-418 and K.S.A. 40-2205, an insurance company shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.

(c) No prosecution for any crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. A prosecution shall be deemed to have been commenced if the warrant so issued is executed without unreasonable delay.

(d) It is unlawful and a violation of this act to fail to release information or evidence pursuant to subsection (a) of section 3 or to fail to give notice and to provide material developed from an inquiry into a loss or claim as provided in subsection (b) of section 3. Any such violation is a class C nonperson misdemeanor.

(e) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

Sec 6. K.S.A. 40-254 and 40-417 and K.S.A. 1995 Supp. 40-2,118 are hereby repealed.

Sec. 7 this act shall take effect and be in force from and after its publication in the statute book.