

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 21, 2011, in Room 346-S of the Capitol.

All members were present.

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

HB 2069 - Enacting the Kansas adverse medical outcome transparency act.

Jill Wolters provided the committee with an overview of the motions made to the bill, previously made by members of the committee, at the meeting on February 18, 2011.

Representative Patton made a substitute motion to amend Section (4) strike the words "to an action" and add a period. Representative Brookens seconded the motion. Representative Pauls recommended striking the word "between" and adding "among"; Chairman Kinzer suggested using "among the participants in the facilitated conference". This change was accepted with the approval of the first and the second. Motion carried.

Representative Patton made the substitute motion to use "all participants" instead of "all parties"; add that attorneys may attend the facilitated conference, and also add that the conference may not be electronically recorded. Representative Brookens seconded the motion. Motion carried.

Representative Patton made the motion to adopt **Substitute for HB 2069** favorably for passage as amended. Representative Rubin seconded the motion. Motion carried.

HB 2219 - Providing child support for an exceptional child through the school year the child turns 23 years of age.

Jill Wolters provided the committee with an overview of the bill.

Representative Colloton made the motion to report **HB 2219** favorably for passage. Representative Smith seconded the motion.

Representative Colloton made the substitute motion to amend with a balloon to recognize several changes from Representative Mah. (Attachment 1) Representative Osterman seconded the motion. Motion carried.

Representative Patton made the substitute motion to amend, page 2, Line 43, by adding the word "substantial" before disabilities and strike everything after age and lines 1, 2 and 3 on page 3, and the same on page 6, starting with line 38. Representative Holmes seconded the motion. Discussion followed. Motion failed.

After further discussion, Chairman Kinzer advised the committee he would strongly consider referring it to the Judicial Council for further study if the bill failed to pass or was tabled.

Representative Ward made the motion to table **HB 2219**. Representative Collins seconded the motion. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 21, 2011 in Room 346-S.

HB 2101 - Court of appeals judges appointed by the governor, confirmed by the Senate; eliminating the nominating commission for the court of appeals appointment.

Representative Holmes made the motion to report **HB 2101** favorably for passage. Representative Rubin seconded the motion.

Chairman Kinzer made the substitute motion to amend the bill to restore to the bill the existing system of retention election, consistent with current law. Representative Patton seconded the motion. Motion carried.

Representative Brookens made the motion to table **HB 2101**. Representative Keuthe seconded the motion. Motion failed.

Representative Keuthe made the substitute motion to amend by inserting the following language on page 2, Line 5, "*any person appointed shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the court of appeals will be the best qualified therefor.*" (Attachment 2) Representative Meiers seconded the motion. Motion carried.

Representative Keuthe made the substitute motion to insert the following language on page 1, Line 15, "*The governor shall select a person to be appointed and consented to the position on the court of appeals within 60 days from the date the governor was notified pursuant to subsection (b). If the governor fails to make the appointment within such time, the chief justice of the supreme court, with the consent of the senate, shall make the appointment.*" (Attachment 3) Representative Colloton seconded the motion. Motion failed.

Representative Brookens made the motion to table **HB 2101** to a date certain. Representative Colloton seconded the motion. Motion failed.

Representative Brookens made the substitute motion to amend the bill to change "*within 30 days to within 45 days*", on page 1, Lines 23, 25 and 29; and on page 2, line 3. Representative Ward seconded the motion. Representative Holmes suggested changing from "*45 days to 60 days*", with the approval of the first and the second. Motion carried.

Representative Ward made the substitute motion to amend the bill by changing from Senate confirmation to House confirmation. Seconded by Representative Pauls. Motion failed.

Representative Patton made the motion to report **HB 2101** favorably for passage as amended. Representative Rubin seconded the motion. Motion carried.

HB 2196 - Amending the rules of evidence regarding expert testimony in sexually violent predator commitment cases.

Jill Wolters, Senior Staff Revisor, provided the committee with an overview of the bill.

Representative Rubin made the motion to report **HB 2196** favorably for passage. Representative Suellentrop seconded the motion. Motion carried.

HB 2260 - Kansas preservation of religious freedom act.

Representative Patton made the motion to report **HB 2260** favorably for passage. Representative Pauls seconded the motion.

Representative Rubin made the motion to table **HB 2260**. Representative Colloton seconded the motion. Motion carried.

HB 2207 - Series limited liabilities companies.

Representative Bruchman made the motion to report **HB 2207** favorably for passage. Representative Osterman seconded the motion.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 21, 2011 in Room 346-S.

After discussion, Representative Kelly made the motion to table **HB 2207**. Representative Osterman seconded the motion. Motion carried.

HB 2072 - Civil procedure, commercial property liens; state construction registry, notice of commencement and notice of furnishings.

Representative Smith made the motion to report **HB 2072** favorably for passage. Representative Osterman seconded the motion.

Representative Brookens made the substitute motion to amend the bill with a balloon. (Attachment 4) Representative Kelly seconded the motion. With permission of the second, Representative Brookens asked to remove "comment (19) on the last page of his amendment. Motion fails.

Representative Colloton made a substitute motion to amend the bill by changing the notification of furnishing labor, materials, equipment and supplies from 21 days to 30 days, on page1, line 25; page 2, line 36; page 3, lines 2 and 8. Representative Smith seconded the motion. Motion carried.

Representative Patton made the motion to amend the bill to cover the changes requested by the Secretary of State. (Attachment 5) Representative Pauls seconded the motion. Motion carried.

Representative Suellentrop made the motion to amend the bill to add "*in excess of \$10,000*" on Page 3, line 4; Page 5, Line 3; Page 6, Line 36 and Page 7, line 42. (Attachment 6) Representative Smith seconded the motion. Motion fails.

Representative Brookens made the motion to table **HB 2072**. Representative Bruchman seconded the motion. Motion carried.

The next meeting is scheduled for March 2, 2011.

The meeting was adjourned at 5:35 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 2-21-11

NAME	REPRESENTING
Joseph Mastrosimone	KHRC
Rich Fischer	KHRC
RON BROWN	FOP
Wendy Burns	KAAA
Wendy Burns	KRMCA
BEHIE CROSSLAND	CROSSLAND CONSTRUCTION
STEVE MOHAM	MOHAM CONSTRUCTION
MARK HUTTON	HUTTON CONSTRUCTION CORP.
Corey Peterson	AGC of KS
DEAN FERRELL	FERRELL CONSTRUCTION
THOMAS WETI	KCC
Megan Pinegar	AG
DEREK HEW	HEW LAW FIRM
Ken Seebor	K&F A
Cynthia Smith	SELHS
Kathy Olsen	KsBankers Assn.

HOUSE BILL No. 2219

By Committee on Judiciary

2-8

Representative Mah
Proposed amendment
February 16, 2011

House Judiciary
Date 2-21-11
Attachment # 1

1 AN ACT concerning child support; relating to exceptional children;
2 amending K.S.A. 2010 Supp. 38-1121 and 60-1610 and repealing the
3 existing sections.
4

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

6 Section 1. K.S.A. 2010 Supp. 38-1121 is hereby amended to read as
7 follows: 38-1121. (a) The judgment or order of the court determining the
8 existence or nonexistence of the parent and child relationship is
9 determinative for all purposes, but if any person necessary to determine
10 the existence of a father and child relationship for all purposes has not
11 been joined as a party, a determination of the paternity of the child shall
12 have only the force and effect of a finding of fact necessary to determine
13 a duty of support.

14 (b) If the judgment or order of the court is at variance with the
15 child's birth certificate, the court shall order that a new birth certificate be
16 issued, but only if any man named as the father on the birth certificate is a
17 party to the action.

18 (c) (1) Upon adjudging that a party is the parent of a minor child, the
19 court shall make provision for support and education of the child
20 including the necessary medical expenses incident to the birth of the
21 child. The court may order the support and education expenses to be paid
22 by either or both parents for the minor child.

23 (2) When the child reaches 18 years of age, the support shall
24 terminate unless: (1)

25 (A) The parent or parents agree, by written agreement approved by
26 the court, to pay support beyond that time; (2)

27 (B) the child reaches 18 years of age before completing the child's
28 high school education in which case the support shall not automatically
29 terminate, unless otherwise ordered by the court, until June 30 of the
30 school year during which the child became 18 years of age if the child is
31 still attending high school; ~~or (3)~~

32 (C) the child is still a bona fide high school student after June 30 of
33 the school year during which the child became 18 years of age, in which
34 case the court, on motion, may order support to continue through the
35 school year during which the child becomes 19 years of age so long as
36 the child is a bona fide high school student and the parents jointly

participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3)(2)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. ~~If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2).~~ If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3)(2)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3)(2)(C); or

(D) *the child is an exceptional child and still a bona fide high school student after June 30 of the school year during which the exceptional child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the exceptional child becomes 23 years of age so long as the exceptional child is a bona fide high school student. The court, in extending support pursuant to subsection (c)(2)(D), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of an exceptional child after reaching 18 years of age if still attending high school shall apply to any exceptional child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 2011. If an agreement approved by the court prior to July 1, 2011, provides for termination of support before the date provided by subsection (c)(2)(D), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2)(D).*

semester of the

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first take into account any support the child is receiving as a social security benefit prior to

(3) For purposes of this section:

(A) "Bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).

(B) "Exceptional child" means persons who are children with disabilities and are school age, to be determined in accordance with

1-3

(7) The financial resources and the earning ability of the child.

(8) The responsibility of the parents for the support of others.

(9) The value of services contributed by both parents.

(h) The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of support issued under this section.

(i) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-701, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.

Sec. 2. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* (A) The court shall make provisions for the support and education of the minor children. Subject to the provisions of K.S.A. 23-9,207, and amendments thereto, the court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

(B) Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless:

(A) (i) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age;

(B) (ii) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or

(C) (iii) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the

child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C)(B)(iii), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for ~~12-year~~ 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C)(B)(iii), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C)(B)(iii); or

(iv) the child is an exceptional child and still a bona fide high school student after June 30 of the school year during which the exceptional child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the exceptional child becomes 23 years of age so long as the exceptional child is a bona fide high school student. The court, in extending support pursuant to subsection (a)(1)(B)(iv), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of an exceptional child after reaching 18 years of age if still attending high school shall apply to any exceptional child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 2011. If an agreement approved by the court prior to July 1, 2011, provides for termination of support before the date provided by subsection (a)(1)(B)(iv), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B)(iv).

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first take into account any support the child is receiving as a social security benefit prior to

(C) For purposes of this section,:

(i) "Bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).

(ii) "Exceptional child" means persons who are children with disabilities and are school age, to be determined in accordance with rules and regulations adopted by the state board of education, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto.

(D) In determining the amount to be paid for child support, the court

HOUSE BILL No. 2101

By Representatives Kinzer, Collins, Gregory, Huebert, Kelley, Mast, Meigs,
O'Brien, O'Hara, Patton, Peck, Rhoades, Rubin, Ryckman, Siegfried, Suellentrop
and B. Wolf

1-26

1 AN ACT concerning the courts; relating to the court of appeals;
2 appointment of judges; amending K.S.A. 20-3006 and and K.S.A.
3 2010 Supp. 20-3002 and repealing the existing sections; also repealing
4 K.S.A. 20-3004, 20-3005, 20-3007, 20-3008, 20-3009 and 20-3010.
5

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

7 New Section 1. (a) On and after July 1, 2011, any vacancy
8 occurring in the office of any judge of the court of appeals and any
9 position to be open on the court of appeals as a result of enlargement of
10 such court pursuant to K.S.A. 20-3002, and amendments thereto, or the
11 retirement or failure of an incumbent to file such judge's declaration of
12 candidacy to be retained in office pursuant to K.S.A. 20-3006, and
13 amendments thereto, or failure of a judge to be elected to be retained in
14 office, shall be filled by appointment by the governor, with the consent of
15 the senate.

16 (b) Whenever a vacancy occurs, will occur or position opens on the
17 court of appeals, the clerk of the supreme court shall promptly give notice
18 to the governor.

19 (c) No person appointed pursuant to subsection (a) shall assume the
20 office of judge of the court of appeals until the senate, by an affirmative
21 vote of the majority of all members of the senate then elected or
22 appointed and qualified, consents to such appointment. The senate shall
23 vote to consent to any such appointment not later than 30 days after such
24 appointment is received by the senate. If the senate is not in session and
25 will not be in session within the 30-day time limitation, the president of
26 the senate shall convene the senate for the sole purpose of voting on such
27 appointment and no other action shall be in order during such session. In
28 the event a majority of the senate does not vote to consent to the
29 appointment, the governor, within 30 days after the senate vote on the
30 previous appointee, shall appoint another person possessing the
31 qualifications of office and such subsequent appointment shall be
32 considered by the senate in the same procedure as provided in this
33 section. The same appointment and consent procedure shall be followed
34 until a valid appointment has been made. No person who has been

previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the 30-day time limitation, the senate shall be deemed to have given consent to such appointment.

(d) Persons who are appointed as judges of the court of appeals pursuant to K.S.A. 20-3005, prior to its repeal, and section 1, and amendments thereto, shall commence the duties of office upon appointment and consent, and each judge shall have all the rights, privileges, powers and duties prescribed by law for the office of judge of the court of appeals.

Any person appointed shall be a person of recognized integrity, character, ability, experience and judicial temperament, to the end that persons serving as judges of the court of appeals will be the best qualified therefor.

(e)

(e) Judges of the court of appeals appointed and consented to on and after July 1, 2011:

(f)

(1) Shall hold their offices during good behavior;

(2) shall be subject to the discipline, suspension and removal for cause provisions of section 15 of article 3 of the constitution of the state of Kansas, and amendments thereto;

(3) shall be subject to the retirement provisions of K.S.A. 20-2608, and amendments thereto; and

(4) shall not be subject to a retention election.

Sec. 2. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as follows: 20-3002. (a) On and after January 1, 2008, through December 31, 2011, the court of appeals shall consist of 13 judges whose positions shall be numbered one to 13. On and after January 1, 2012, the court of appeals shall consist of 14 judges whose positions shall be numbered one to 14. Judges of the court of appeals shall possess the qualifications prescribed by law for justices of the supreme court.

(b) Judges of the court of appeals shall be ~~selected~~ *appointed* in the manner provided by ~~K.S.A. 20-3003 through 20-3010~~ *section 1*, and amendments thereto. Each judge of the court of appeals shall receive an annual salary in the amount prescribed by law. No judge of the court of appeals may receive additional compensation for official services performed by the judge. Each such judge shall be reimbursed for expenses incurred in the performance of such judge's official duties in the same manner and to the same extent justices of the supreme court are reimbursed for such expenses.

(c) The supreme court may assign a judge of the court of appeals to serve temporarily on the supreme court.

(d) Any additional court of appeals judge position created by this section shall be considered a position created by the supreme court and not a civil appointment to a state office pursuant to K.S.A. 46-234, and amendments thereto.

Sec. 3. K.S.A. 20-3006 is hereby amended to read as follows: 20-3006. (a) ~~Persons who are appointed as judges of the court of appeals~~

HOUSE BILL No. 2101

By Representatives Kinzer, Collins, Gregory, Huebert, Kelley, Mast, Meigs,
O'Brien, O'Hara, Patton, Peck, Rhoades, Rubin, Ryckman, Siegfried, Suellentrop
and B. Wolf

1-26

1 AN ACT concerning the courts; relating to the court of appeals;
2 appointment of judges; amending K.S.A. 20-3006 and and K.S.A.
3 2010 Supp. 20-3002 and repealing the existing sections; also repealing
4 K.S.A. 20-3004, 20-3005, 20-3007, 20-3008, 20-3009 and 20-3010.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) On and after July 1, 2011, any vacancy
8 occurring in the office of any judge of the court of appeals and any
9 position to be open on the court of appeals as a result of enlargement of
10 such court pursuant to K.S.A. 20-3002, and amendments thereto, or the
11 retirement or failure of an incumbent to file such judge's declaration of
12 candidacy to be retained in office pursuant to K.S.A. 20-3006, and
13 amendments thereto, or failure of a judge to be elected to be retained in
14 office, shall be filled by appointment by the governor, with the consent of
15 the senate. ←

16 (b) Whenever a vacancy occurs, will occur or position opens on the
17 court of appeals, the clerk of the supreme court shall promptly give notice
18 to the governor.

19 (c) No person appointed pursuant to subsection (a) shall assume the
20 office of judge of the court of appeals until the senate, by an affirmative
21 vote of the majority of all members of the senate then elected or
22 appointed and qualified, consents to such appointment. The senate shall
23 vote to consent to any such appointment not later than 30 days after such
24 appointment is received by the senate. If the senate is not in session and
25 will not be in session within the 30-day time limitation, the president of
26 the senate shall convene the senate for the sole purpose of voting on such
27 appointment and no other action shall be in order during such session. In
28 the event a majority of the senate does not vote to consent to the
29 appointment, the governor, within 30 days after the senate vote on the
30 previous appointee, shall appoint another person possessing the
31 qualifications of office and such subsequent appointment shall be
32 considered by the senate in the same procedure as provided in this
33 section. The same appointment and consent procedure shall be followed
34 until a valid appointment has been made. No person who has been

The governor shall select a person to be appointed and consented to the position on the court of appeals within 60 days from the date the governor was notified pursuant to subsection (b). If the governor fails to make the appointment within such time, the chief justice of the supreme court, with the consent of the senate, shall make such appointment.

Session of 2011

HOUSE BILL No. 2072

By Committee on Judiciary

1-24

1 AN ACT concerning civil procedure; relating to remote claim liens on
2 commercial property; establishing the state construction registry;
3 amending K.S.A. 60-1103, 60-1110 and 60-1111 and repealing the
4 existing sections.

Comment [1]: and K.S.A. 2010 Supp. 16-1904.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. AS used in sections 1 through 5, and amendments
8 thereto:

9 (a) "Authorized person" means any individual authorized by an
10 original contractor, subcontractor or remote claimant to act on their
11 behalf.

12 (b) "Construction" means furnishing labor, equipment, materials or
13 supplies for the improvement of a new or pre-existing structure which is
14 not constructed for use as a single-family residence or multi-family
15 residence of four units or less. "Construction" does not include
16 highways, roads, bridges, dams or dikes.

17 (c) "Commencement of physical construction" means the first
18 delivery to the project site of any equipment, materials or supplies to be
19 incorporated into the construction project or when ground is first broken
20 on the project site, whichever occurs first.

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

24 (e) "Notice of furnishing" means a notice from a subcontractor or
25 remote claimant that is filed within 21 days of the furnishing of labor,
26 materials, equipment or supplies pursuant to section 3, and amendments
27 thereto.

28 (f) "Original contractor" means any contractor who has a contract
29 directly with the owner. "Original contractor" may include more than
30 one contractor and be referred to as a general contractor.

31 (g) "Owner" shall include the trustee, agent or spouse of the owner.

32 (h) "Remote claimant" means a subcontractor to a subcontractor.

1 also referred to as a sub-subcontractor, as well as persons who supply
2 materials to subcontractors. Remote claimants have no contract directly
3 with the original contractor.

4 (f) "Secretary" means the secretary of state.

5 (g) "State construction registry" means an electronic web-based
6 system created pursuant to section 4 and amendments thereto for the
7 purposes of filing and maintaining notifications by original contractors,
8 subcontractors and remote claimants required pursuant to sections 2 and
9 3 and amendments thereto.

10 (k) "Subcontractor" means any person or supplier who has a contract
11 directly with an original contractor.

12 New Sec. 2. (a) Prior to commencement of physical construction at
13 the project site, any original contractor shall file a notice of
14 commencement with the state construction registry created pursuant to
15 section 4 and amendments thereto. The purpose of the notice of
16 commencement is to notify other persons who are working on the project,
17 including, but not limited to, subcontractors or remote claimants that the
18 project has started and to give information concerning the name and
19 address of the owner, the original contractor and the description of the
20 project.

21 (b) The notice of commencement shall include the following:

22 (1) The name and address of the owner of the project contracting for
23 the construction or improvement.

24 (2) The name and address of any original contractor.

25 (3) The legal description of the real property or the street address,
26 city, state, county and zip code of the real property on which the
27 construction or improvements to be made.

28 (4) A brief description of the construction or improvement to be
29 performed on the property.

30 (5) The date of the contract between an owner and an original
31 contractor for the construction or improvement.

32 (6) The name and address of the person preparing the notice of
33 commencement.

34 (7) This statement:

35 To remote claimants and subcontractors: Take notice that labor or
36 work is about to begin on or equipment, materials or supplies are about to
37 be furnished for an improvement to the real property described in this
38 notice. Any subcontractor or remote claimant may preserve such
39 claimant's full lien rights by filing a notice of furnishing with the state
40 construction registry, within 21 days of furnishing labor, equipment,
41 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

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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 finishing 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 words "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. 75-1215, 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.

Comment [2]: See-6:
New Sec. 1.

K.S.A. 2010 Supp. 16-1904 is hereby amended to read as follows: 16-1904.

(a) Retainage shall not exceed 5% of the value of the contract or subcontract unless the owner or contractor determines that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed 10% of the value of the contract or subcontract.

Comment [3]: (b) If the contractor or subcontractor has failed to meet the terms of the contract, is not performing according to schedule, shows poor workmanship, has a record of slow payment of suppliers, or other issues, the owner may increase retainage up to 10%.

Comment [4]: (c) An owner may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.

Comment [5]: (d) A contractor may withhold not more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of

Comment [6]: a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle.

Comment [7]: (e) A subcontractor may withhold not more than 150% of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as a part of the regular payment cycle.

Comment [8]: (f) Prior to commencement of work, a contractor or subcontractor may request an alternate security in lieu of retainage.

Comment [9]: (g) If a contractor or subcontractor requests the use of an alternate security, as defined in subsection (a) of K.S.A. 16-1902, and amendments thereto, in lieu of retainage, the owner or contractor who would otherwise withhold the retainage shall have the right to determine which type of alternate security, as defined in subsection (a) of K.S.A. 16-1902, and amendments thereto, shall be accepted.

Comment [10]: (h) An owner, contractor or subcontractor must release all remaining retainage on any undisputed payment due on a construction project within

30

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days

after substantial completion of the project as part of the regular payment cycle of the last day when the contractor or subcontractor may file a lien on such project less 115% of the lien claims that have been filed.

; however, if any contractor or subcontractor is still performing work on the project, an owner may withhold that portion of the retainage attributable to such work until

30

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days after such work is completed.

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

Comment [11]: (i) If an owner, contractor or subcontractor fails to pay retainage, if any, pursuant to the terms of a contract for public construction or as required by this act, the owner, contractor or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at a rate of 18% per annum.

Comment [12]: (j) Nothing in this section shall prevent early release of retainage if it is determined by the owner, the contractor and the project architect or engineer, that a subcontractor has completed performance satisfactorily and that the subcontractor can be released prior to substantial completion of the entire project without risk or additional cost to the owner or contractor. Once so determined, the contractor shall request such adjustment in retainage, if any, from the owner as necessary to enable the contractor to pay the subcontractor in full, and the owner shall, as part of the next contractual payment cycle, release the subcontractor

s retainage to the contractor, who shall, as part of the next contractual payment cycle, release such retainage as is due to the subcontractor.

Comment [13]: Sec. 2.

Comment [14]: supplier.

Comment [15]: 74 days

Comment [16]: and

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1 one owner of the property, any holder of a recorded equitable interest and
2 to any party obligated to pay the same by restricted mail or (3) if the
3 address of any one owner or such party is unknown and cannot be
4 ascertained with reasonable diligence, post a copy of the lien statement in
5 a conspicuous place on the premises. The provisions of this subsection
6 requiring that the claimant serve a copy of the lien statement shall be
7 deemed to have been complied with, if it is proven that the person to be
8 served actually received a copy of the lien statement. No action to
9 foreclose any lien may proceed or be entered against residential real
10 property in this state unless the holder of a recorded equitable interest was
11 served with notice in accordance with the provisions of this subsection.

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

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

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

22 The owner may discharge any lien filed under this section which the
23 contractor fails to discharge and credit such payment against the amount
24 due the contractor.

25 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of
26 labor, equipment, materials or supplies on property other than residential
27 property may be claimed pursuant to this section, and amendments
28 thereto, within five months only if the claimant has filed a notice of
29 extension within three months since last furnishing labor, equipment,
30 materials or supplies to the job site ~~or has filed a notice of furnishing in~~
31 ~~accordance with section 3, and amendments thereto.~~ Such notice shall be
32 filed in the office of the clerk of the district court of the county where
33 such property is located and shall be mailed by certified and regular mail
34 to the general contractor or construction manager and a copy to the owner
35 by regular mail, if known. The notice of extension shall be deemed
36 sufficient if in substantial compliance with the form set forth by the
37 judicial council.

38 Sec. 7 K.S.A. 60-1110 is hereby amended to read as follows: 60-
39 1110. (a) The contractor or owner may execute a bond to the state of
40 Kansas for the use of all persons in whose favor liens might accrue by
41 virtue of this act, conditioned for the payment of all claims which might

Comment [17]: 3.

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1 be the basis of liens in a sum not less than the contract price, or to any
2 person claiming a lien which is disputed by the owner or contractor,
3 conditioned for the payment of such claim in the amount thereof. Any
4 such bond shall have good and sufficient sureties, be approved by a judge
5 of the district court and filed with the clerk of the district court. When
6 bond is approved and filed, no lien for the labor, equipment, material or
7 supplies under contract, or claim described or referred to in the bond shall
8 attach under this act, and if when such bond is filed liens have already
9 been filed, such liens are discharged. Suit may be brought on such bond
10 by any person interested but no such suit shall name as defendant any
11 person who is neither a principal or surety on such bond, nor
12 contractually liable for the payment of the claim.

13 ~~(b) If a notice of forwarding has not been filed as provided for in~~
14 ~~section 3, and amendments hereto, by a remote claimant as defined in~~
15 ~~section 4, and amendments thereto, making a claim under the bond, the~~
16 ~~aggregate amount of the bond claims made by the remote claimant shall~~
17 ~~not exceed the net amount due by the original contractor under the terms~~
18 ~~of the subcontract with the subcontractor to whom the remote claimant~~
19 ~~has supplied labor, equipment, material or supplies.~~

20 Sec. 8 K.S.A. 60-1111 is hereby amended to read as follows: 60-
21 1111. (a) *Bond by contractor.* Except as provided in this section,
22 whenever any public official, under the laws of the state, enters into
23 contract in any sum exceeding \$100,000 with any person or persons for
24 the purpose of making any public improvements, or constructing any
25 public building or making repairs on the same, such officer shall take,
26 from the party contracted with, a bond to the state of Kansas with good
27 and sufficient sureties in a sum not less than the sum total in the contract,
28 conditioned that such contractor or the subcontractor of such contractor
29 shall pay all indebtedness incurred for labor furnished, materials,
30 equipment or supplies, used or consumed in connection with or in or
31 about the construction of such public building or in making such public
32 improvements.

33 A contract which requires a contractor or subcontractor to obtain a
34 payment bond or any other bond shall not require that such bond be
35 obtained from a specific surety, agent, broker or producer. A public
36 official entering into a contract which requires a contractor or
37 subcontractor to obtain a payment bond or any other bond shall not
38 require that such bond be obtained from a specific surety, agent, broker or
39 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

Comment [18]: 4

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1 such public improvement is to be made. When such bond is filed, no lien
2 shall attach under this article. Any liens which have been filed prior to the
3 filing of such bond shall be discharged. Any person to whom there is due
4 any sum for labor or material furnished, as stated in subsection (a), or
5 such person's assigns, may bring an action on such bond for the recovery
6 of such indebtedness but no action shall be brought on such bond after six
7 months from the completion of such public improvements or public
8 buildings.

Comment [19]: and four days

9 (c) In any case of a contract for construction, repairs or
10 improvements for the state or a state agency under K.S.A. 75-3739 or 75-
11 3741, and amendments thereto, a certificate of deposit payable to the state
12 may be accepted in accordance with and subject to K.S.A. 60-1112, and
13 amendments thereto. When such certificate of deposit is so accepted, no
14 lien shall attach under this article. Any liens which have been filed prior
15 to the acceptance of such certificate of deposit shall be discharged. Any
16 person to whom there is due any sum for labor furnished, materials,
17 equipment or supplies used or consumed in connection with or for such
18 contract for construction, repairs or improvements shall make a claim
19 therefor with the director of purchases under K.S.A. 60-1112, and
20 amendments thereto.

21 ~~(d) If a notice of furnishing has not been filed as provided for in~~
22 ~~section 3, and amendments thereto, by a remote claimant as required in~~
23 ~~section 4, and amendments thereto, no lien or claim under this bond shall~~
24 ~~exist. Amounts of the bond claims made by the remote claimant shall~~
25 ~~not exceed the net amount due to the original contractor and in the form~~
26 ~~of the subcontract with the subcontractor to whom the remote claimant~~
27 ~~has supplied labor, equipment, materials or supplies.~~

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

Comment [20]: 5.

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

Comment [21]: and K.S.A. 2010 Supp. 16-1904

Comment [22]: 6.

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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."

Comment [1]: or equivalent system prescribed by secretary

Comment [2]: Upon filing the notice of commencement

the original contractor shall post the project number assigned by the registry at the job site

Comment [3]: .

Comment [4]: . fax number and e-mail address

Comment [5]: and

Comment [6]: if available.

1 (c) The notice of commencement shall be deemed sufficient if filed
2 in the form and manner prescribed by the secretary of state.

Comment [7]: Corrections

Comment [8]: to a notice of commencement shall be made in the form and manner prescribed by the secretary.

Comment [9]: (d) A notice of completion, in the form and manner prescribed by the secretary, shall be filed at the time the project is completed by any original contractor filing a notice of commencement.

3
4 New Sec. 3. (a) If any original contractor has filed a notice of
5 commencement with the state construction registry pursuant to section 2,
6 and amendments thereto, concerning a project for which a subcontractor
7 or remote claimant has furnished labor, equipment, materials or supplies,
8 such subcontractor or remote claimant may file a notice of furnishing
9 with the state construction registry within 21 days of the date of
10 furnishing of labor, materials, equipment or supplies.

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

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

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

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

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

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

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

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

33 (f) Nothing in this act shall expand or create any additional rights of
34 a person to claim a lien pursuant to K.S.A. 60-1103, and amendments
35 thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-
36 1110 or 60-1111, and amendments thereto.

Comment [10]: (e)

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

Comment [11]: (f)

Comment [12]: (g) Corrections to a notice of furnishing shall be made in the form

Comment [13]: and manner prescribed by the secretary.

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1 New Sec. 4. (a) **On or before January 1, 2012.** The secretary shall
2 implement and maintain the state construction registry. When any
3 provision of this act requires any notice to be filed with the state
4 construction registry, the notice shall be filed in the form and manner
5 prescribed by the secretary.

6 (b) A notice of commencement shall contain the information
7 prescribed in section 2, and amendments thereto.

8 (c) A notice of furnishing shall contain the information prescribed in
9 section 3, and amendments thereto.

10 (d) Any notice filed with the state construction registry shall be
11 executed by an authorized person. The fact that a person's signature
12 appears on such notice shall be prima facie evidence that such person is
13 authorized to execute the notice on behalf of the original contractor,
14 subcontractor or remote claimant and that the notice is subscribed by the
15 person as true, under penalty of perjury.

16 (e) Upon receipt of any notice, and upon tender of the required fees,
17 the secretary shall certify that the notice has been filed in the office of
18 secretary of state by endorsing upon the notice the word "filed" and the
19 date and hour of its filing. This endorsement is the "filing date" of the
20 notice and is conclusive of the date and time of its filing in the absence of
21 actual fraud. The secretary shall thereupon record the endorsed notice in
22 the state construction registry and assign a unique project number.

23 (f) **On or before January 1, 2012, the secretary shall adopt rules and**
24 **regulations prescribing the form and manner of filing any notice required**
25 **to be filed with the state construction registry and fixing the fees to be**
26 **charged and collected under this section.**

27 (g) The secretary of state shall remit all moneys received from fees
28 and charges under this section, and amendments thereto, to the state
29 treasurer in accordance with the provisions of K.S.A. 75-4215, and
30 amendments thereto. Upon receipt of each such remittance, the state
31 treasurer shall deposit the entire amount in the state treasury to the credit
32 of the information and services fee fund of the secretary of state.

33 New Sec. 5. The provisions of sections 1 through 4, and
34 amendments thereto, shall apply to projects that commence physical
35 construction work at the project site on or after July 1, **2012.**

36 Sec. 6. K.S.A. 60-1103 is hereby amended to read as follows: 60-
37 1103. (a) *Procedure.* Any ~~supplier~~, *remote claimant or subcontractor as*
38 *defined in section 1, and amendments thereto,* or other person furnishing
39 labor, equipment, material or supplies, used or consumed at the site of the
40 property subject to the lien, under an agreement with the contractor,
41 subcontractor or owner contractor may obtain a lien for the amount due in

Comment [14]: 2013

(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.

Comment [15]: New Sec. 9. Except with respect to willful misconduct, the Kansas secretary of state and any employee of the Kansas secretary of state acting within the scope of the employee's employment are immune from liability for damages resulting from errors or omissions in information supplied pursuant to this act, any failure by any party to correctly file any document pursuant to this act, and any technical errors or malfunctions related to the system created pursuant to this act.

Comment [16]: New Sec. 10. The secretary of state shall make such additional rules and regulations as needed in order to implement the provisions of this act.

Comment [17]: 11.

Comment [18]: 12.

Comment [19]: On and after July 1, 2013.

HOUSE BILL No. 2072

By Committee on Judiciary

1-24

BALLOON

2/21/11

Adds minimum threshold

1 AN ACT concerning civil procedure; relating to remote claim liens on
2 commercial property; establishing the state construction registry;
3 amending K.S.A. 60-1103, 60-1110 and 60-1111 and repealing the
4 existing sections.
5

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

7 New Section 1. As used in sections 1 through 5, and amendments
8 thereto:

9 (a) "Authorized person" means any individual authorized by an
10 original contractor, subcontractor or remote claimant to act on their
11 behalf.

12 (b) "Construction" means furnishing labor, equipment, materials or
13 supplies for the improvement of a new or pre-existing structure which is
14 not constructed for use as a single-family residence or multi-family
15 residence of four units or less. "Construction" does not include
16 highways, roads, bridges, dams or turnpikes.

17 (c) "Commencement of physical construction" means the first
18 delivery to the project site of any equipment, materials or supplies to be
19 incorporated into the construction project or when ground is first broken
20 on the project site, whichever occurs first.

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

24 (e) "Notice of furnishing" means a notice from a subcontractor or
25 remote claimant that is filed within 21 days of the furnishing of labor,
26 materials, equipment or supplies pursuant to section 3, and amendments
27 thereto.

28 (f) "Original contractor" means any contractor who has a contract
29 directly with the owner. "Original contractor" may include more than
30 one contractor and be referred to as a general contractor.

31 (g) "Owner" shall include the trustee, agent or spouse of the owner.

32 (h) "Remote claimant" means a subcontractor to a subcontractor,
33 also referred to as a sub-subcontractor, as well as persons who supply
34 materials to subcontractors. Remote claimants have no contract directly
35 with the original contractor.

36 (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 construction registry pursuant to section 2, and amendments thereto concerning project for which a subcontractor or remote claimant has furnished labor, equipment, materials or supplies,

1 such remote claimant may file a notice of furnishing
2 with the state construction registry within 21 days of the date of
3 furnishing of labor, materials, equipment or supplies.

4 (b) In no event shall the aggregate amount of any liens *in excess of \$10,000*
5 filed by a remote claimant exceed the net amount due by the original
6 contractor to the subcontractor to whom the remote claimant has supplied labor,
7 equipment, materials or supplies unless the remote claimant has filed a
8 notice of furnishing with the state construction registry within 21 days of
9 the date of furnishing of labor, materials, equipment or supplies.

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

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

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

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

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

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

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

26 (f) Nothing in this act shall expand or create any additional rights of
27 a person to claim a lien pursuant to K.S.A. 60-1103, and amendments
28 thereto, or to file a claim under a bond furnished pursuant to K.S.A 60-
29 1110 or 60-1111, and amendments thereto.

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

34 New Sec. 4. (a) On or before January 1, 2012, the secretary shall
35 implement and maintain the state construction registry. When any
36 provision of this act requires any notice to be filed with the state
37 construction registry, the notice shall be filed in the form and manner
38 prescribed by the secretary.

39 (b) A notice of commencement shall contain the information
40 prescribed in section 2, and amendments thereto.

41 (c) A notice of furnishing shall contain the information prescribed in
42 section 3, and amendments thereto.

43 (d) Any notice filed with the state construction registry shall be

Add: ...any liens "*in excess of \$10,000*" filed by a...

1 Executed by an authorized person. The fact that a person's signature
2 appears on such notice shall be prima facie evidence that such person is
3 authorized to execute the notice on behalf of the original contractor,
4 subcontractor or remote claimant and that the notice is subscribed by the
5 person as true, under penalty of perjury.

6 (e) Upon receipt of any notice, and upon tender of the required fees,
7 the secretary shall certify that the notice has been filed in the office of
8 secretary of state by endorsing upon the notice the word "filed" and the
9 date and hour of its filing. This endorsement is the "filing date" of the
10 notice and is conclusive of the date and time of its filing in the absence of
11 actual fraud. The secretary shall thereupon record the endorsed notice in
12 the state construction registry and assign a unique project number.

13 (f) On or before January 1, 2012, the secretary shall adopt rules and
14 regulations prescribing the form and manner of filing any notice required
15 to be filed with the state construction registry and fixing the fees to be
16 charged and collected under this section.

17 (g) The secretary of state shall remit all moneys received from fees
18 and charges under this section, and amendments thereto, to the state
19 treasurer in accordance with the provisions of K.S.A. 75-4215, and
20 amendments thereto. Upon receipt of each such remittance, the state
21 treasurer shall deposit the entire amount in the state treasury to the credit
22 of the information and services fee fund of the secretary of state.

23 New Sec. 5. The provisions of sections 1 through 4, and
24 amendments thereto, shall apply to projects that commence physical
25 construction work at the project site on or after July 1, 2012.

26 Sec. 6. K.S.A. 60-1103 is hereby amended to read as follows: 60-
27 1103. (a) *Procedure*. Any supplier, *remote claimant* or subcontractor as
28 *defined in section 1, and amendments thereto*, or other person furnishing
29 labor, equipment, material or supplies, used or consumed at the site of the
30 property subject to the lien, under an agreement with the contractor,
31 subcontractor or owner contractor may obtain a lien for the amount due in
32 the same manner and to the same extent as the original contractor except
33 that:

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

37 (2) if a warning statement is required to be given pursuant to K.S.A.
38 60-1103a, and amendments thereto, there shall be attached to the lien
39 statement the affidavit of the supplier or subcontractor that such warning
40 statement was properly given; and

41 (3) a notice of intent to perform, if required pursuant to K.S.A. 60-
42 1103b, and amendments thereto, must have been filed as provided by that
43 section; *and*

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

8 (b) Owner contractor is defined as any person, firm or corporation
9 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
12 corporation for labor, equipment, material or supplies used or consumed
13 for the improvement of such real property.

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

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

38 (1) Prior to the expiration of the three-month period for filing lien
39 claims, if no warning statement is required by K.S.A. 60-1103a, and
40 amendments thereto; or
41 (2) subsequent to the date the owner received the warning statement,
42 if a warning statement is required by K.S.A. 60-1103a, and amendments
43 thereto.

Add: ...any liens "*in
excess of \$10,000*" filed
by a...

1 The owner may discharge any lien filed under this section which the
2 contractor fails to discharge and credit such payment against the amount
3 due the contractor.

4 (e) Notwithstanding subsection (a)(1), a lien for the furnishing of
5 labor, equipment, materials or supplies on property other than residential
6 property may be claimed pursuant to this section, and amendments
7 thereto, within five months only if the claimant has filed a notice of
8 extension within three months since last furnishing labor, equipment,
9 materials or supplies to the job site *or has filed a notice of furnishing in*
10 *accordance with section 3, and amendments thereto*. Such notice shall be
11 filed in the office of the clerk of the district court of the county where
12 such property is located and shall be mailed by certified and regular mail
13 to the general contractor or construction manager and a copy to the owner
14 by regular mail, if known. The notice of extension shall be deemed
15 sufficient if in substantial compliance with the form set forth by the
16 judicial council.

17 Sec. 7. K.S.A. 60-1110 is hereby amended to read as follows: 60-
18 1110. (a) The contractor or owner may execute a bond to the state of
19 Kansas for the use of all persons in whose favor liens might accrue by
20 virtue of this act, conditioned for the payment of all claims which might
21 be the basis of liens in a sum not less than the contract price, or to any
22 person claiming a lien which is disputed by the owner or contractor,
23 conditioned for the payment of such claim in the amount thereof. Any
24 such bond shall have good and sufficient sureties, be approved by a judge
25 of the district court and filed with the clerk of the district court. When
26 bond is approved and filed, no lien for the labor, equipment, material or
27 supplies under contract, or claim described or referred to in the bond shall
28 attach under this act, and if when such bond is filed liens have already
29 been filed, such liens are discharged. Suit may be brought on such bond
30 by any person interested but no such suit shall name as defendant any
31 person who is neither a principal or surety on such bond, nor
32 contractually liable for the payment of the claim.

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

40 Sec. 8. K.S.A. 60-1111 is hereby amended to read as follows: 60-
41 1111. (a) *Bond by contractor*. Except as provided in this section,
42 whenever any public official, under the laws of the state, enters into
43 contract in any sum exceeding \$100,000 with any person or persons for

Add: ...bond claims "*in excess of \$10,000*" made by the remote...

1 the purpose of making any public improvements, or constructing any
2 public building or making repairs on the same, such officer shall take,
3 from the party contracted with, a bond to the state of Kansas with good
4 and sufficient sureties in a sum not less than the sum total in the contract,
5 conditioned that such contractor or the subcontractor of such contractor
6 shall pay all indebtedness incurred for labor furnished, materials,
7 equipment or supplies, used or consumed in connection with or in or
8 about the construction of such public building or in making such public
9 improvements.

10 A contract which requires a contractor or subcontractor to obtain a
11 payment bond or any other bond shall not require that such bond be
12 obtained from a specific surety, agent, broker or producer. A public
13 official entering into a contract which requires a contractor or
14 subcontractor to obtain a payment bond or any other bond shall not
15 require that such bond be obtained from a specific surety, agent, broker or
16 producer.

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

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

39 (d) *If a notice of furnishing has not been filed as provided for in*
40 *section 3, and amendments thereto, by a remote claimant as defined in*
41 *section 1, and amendments thereto, making a claim under the bond, the*
42 *aggregate amount of the bond claims* ▼ *in excess of \$10,000 made by the remote claimant shall*
43 *not exceed the net amount due by the original contractor under the terms*

Add: ...bond claims "*in
excess of \$10,000*" made
by the remote...

1 *of the subcontract with the subcontractor to whom the remote claimant*
2 *has supplied labor, equipment, materials or supplies.*
3 Sec. 9. K.S.A. 60-1103, 60-1110 and 60-1111 are hereby repealed.
4 Sec. 10. This act shall take effect and be in force from and after its
5 publication in the statute book.