

MEMORANDUM

TO: Judicial Council
FROM: Christy Molzen
DATE: December 6, 2013
RE: Lien Law Advisory Committee – Proposed Legislation

The Lien Law Advisory Committee is recommending the attached proposed legislation regarding vehicle liens. The proposed amendments would require mechanics' liens on titled vehicles to be centrally filed with the Division of Vehicles of the Department of Revenue and noted on electronic certificates of title. Liens on other kinds of vehicle and equipment would be centrally filed with the Secretary of State's office. In both instances, centralized filing would benefit buyers who could search for liens on a single online database rather than multiple county Register of Deeds offices. As to liens on titled vehicles filed with the Division of Vehicles, buyers could search for liens by vehicle identification number (VIN). The proposed amendments would not change the law as to possessory mechanics' liens.

Committee members participating in this project represented a wide range of interests. Those Committee members were:

Joe Jeter, Chair, Hays; practicing attorney and member of the Judicial Council

Pat Barnes, Topeka; attorney with Scott, Quinlan, Willard, Barnes and Keeshan, LLC; representing the Kansas Automobile Dealers Association

Hon. Charles Droege, Olathe; District Court Judge in the 10th Judicial District

Rep. John C. Grange, El Dorado; former State Representative from the 75th District, and owner of Carlisle Heating and Air Conditioning

Kathy Sachs, Topeka; Deputy Assistant Secretary of State

Hon. John K. Pearson, Lawrence; practicing attorney, Adjunct Professor at the University of Kansas School of Law, and Retired U.S. Bankruptcy Judge

Aaron Popelka, Topeka; Vice President of Legal and Governmental Affairs for the Kansas Livestock Association

Ted Smith, Topeka; Attorney for the Kansas Department of Revenue

Randy Stookey, Topeka; Vice President and General Counsel of the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association

Kathy Taylor, Topeka; Senior Vice President and General Counsel of the Kansas Bankers Association

New Section 1.

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2 (a) Whenever any person, at or with the owner's request or consent performs work, makes
3 repairs or improvements or replaces, adds or installs equipment on any vehicle for
4 which a certificate of title has been issued pursuant to K.S.A. 8-135 or K.S.A. 8-198,
5 and amendments thereto, a first and prior lien on the vehicle is hereby created in favor
6 of the person performing the work, making the repairs or improvements or replacing,
7 adding or installing the equipment. The lien shall amount to the full amount and
8 reasonable value of the services performed and shall include the reasonable value of
9 all material used in the performance of such services and the reasonable value of all
10 equipment replaced, added or installed.
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12 (b) If such vehicle comes into the lien claimant's possession for the purpose of having
13 work, repairs or improvements made or equipment replaced, added or installed
14 thereon, such lien shall be valid as long as the lien claimant retains possession of the
15 vehicle. The lien claimant may retain the lien after parting with the possession of the
16 vehicle by filing within 90 days in the division of vehicles of the department of
17 revenue a notice of mechanic's lien.
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19 (c) If the lien claimant was never in possession of the vehicle, the lien claimant may retain
20 the lien by filing, within 90 days after the date upon which work was last performed,
21 material was last furnished in performing such work or making such repairs or
22 improvements or equipment was last replaced, added or installed in the division of
23 vehicles of the department of revenue a notice of mechanic's lien.
24
25 (d) A notice of mechanic's lien shall be on a form prescribed by the division and shall
26 include the following information: (1) a statement of the items of the account; (2) the
27 vehicle's year, make and identification number; (3) the name of the vehicle's owner;
28 (4) the county where the work was performed; (5) the date upon which work was last
29 performed, material was last furnished in performing such work or making such
30 repairs or improvements or equipment was last replaced, added or installed; and (6)
31 and any other information required by the division. If the lien claimant has
32 documentary evidence of the owner's request or consent authorizing the performance
33 of services on the vehicle, that evidence should be attached to the notice of mechanic's
34 lien.
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36 (e) Upon the filing of a notice of mechanic's lien under this section and payment to the
37 division of a fee not to exceed \$10, the division shall create a new electronic title
38 reflecting the lien and shall cancel any existing title number. The division shall be
39 authorized to demand in writing the surrender and return of the cancelled physical
40 certificate of title, if one exists, from the owner of the vehicle within 15 days. The

1 division may call to its aid any state highway patrol or peace officer to secure the
2 surrender and return of a canceled physical certificate of title within such officer's
3 jurisdiction, and it shall be the duty of such officer to comply. Once the lien is
4 properly recorded and perfected by noting it on the electronic certificate of title, a
5 transfer of title is not valid unless the lien has been released in the manner provided by
6 the applicable provisions of K.S.A. 58-202, and amendments thereto. The division
7 shall remit all fees received by the division under this subsection to the state treasurer
8 in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and
9 such fees shall be considered certificate of title fees. Upon receipt of each such
10 remittance, the state treasurer shall deposit the entire amount in the state treasury and
11 credit such fees in accordance with K.S.A. 8-145, and amendments thereto.
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13 (f) If the division does not have a current title record on the vehicle that matches the
14 owner or vehicle identification number listed on the notice of mechanic's lien, the
15 division may refuse to allow the lien claimant to file the notice of mechanic's lien to
16 record and perfect its lien. The duties and responsibilities of the division with respect
17 to the filing of notice of mechanic's liens shall be ministerial.
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19 (g) As used in this section, the following terms have the following meanings:

20 (1) "Division" means the division of vehicles of the department of revenue, acting
21 directly or through its duly authorized officers and agents. When acting on behalf of
22 the department of revenue under this act, a county treasurer shall be deemed to be an
23 agent of the state of Kansas.

24 (1) "Equipment" includes tires and other standard equipment on vehicles.

25 (2) "Owner" has the meaning ascribed to it in subsection (n) of K.S.A. 8-126, and
26 amendments thereto.

27 (3) "Vehicle" has the meaning ascribed to it in subsection (a) of K.S.A. 8-126, and
28 amendments thereto.
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1 **58-201. Liens for materials and services; filing statements with register of deeds**
2 **secretary of state, contents.**
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4 (a) Whenever any person, at or with the owner's request or consent shall perform work, make
5 repairs or improvements or replace, add or install equipment on any goods, personal property,
6 chattels, horses, mules, wagons, buggies, ~~automobiles, trucks, trailers, locomotives, railroad~~
7 ~~rolling stock, barges, aircraft, equipment of all kinds, including but not limited to construction~~
8 ~~equipment, trailers and vehicles of all kinds which are not subject to the provisions of Section~~
9 ~~1, and farm implements of whatsoever kind, a first and prior lien on such personal property is~~
10 hereby created in favor of such person performing such work, making such repairs or
11 improvements or replacing, adding or installing such equipment and such lien shall amount to
12 the full amount and reasonable value of the services performed and shall include the
13 reasonable value of all material used in the performance of such services and the reasonable
14 value of all equipment replaced, added or installed.
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16 (b) If such property shall come into the lien claimant's possession for the purpose of having
17 the work, repairs or improvements made or the equipment replaced, added or installed
18 thereon, such lien shall be valid as long as the lien claimant retains possession of the property,
19 and the claimant of the lien may retain the same after parting with the possession of the
20 property by filing within 90 days in the office of the ~~register of deeds, under oath, a statement~~
21 ~~of the items of the account and a description of the property on which the lien is claimed, with~~
22 ~~the name of the owner thereof, in the county where the work was performed and in the county~~
23 ~~of the residence of the owner, if such is known to the claimant. secretary of state, on a form~~
24 prescribed by the secretary of state, a description of the property upon which the lien is
25 claimed, the name of the lien claimant, the name of the debtor under the lien, and the date
26 upon which work was last performed, material was last furnished in performing such work or
27 making such repairs or improvements, or equipment was last replaced, added or installed.
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30 (c) If the lien claimant was never in possession of the property, the lien claimant may retain
31 the lien by filing, within 90 days after the date upon which work was last performed, material
32 was last furnished in performing such work or making such repairs or improvements or
33 equipment was last replaced, added or installed in the office of the ~~register of deeds, under~~
34 ~~oath, a statement of the items of the account and a description of the property on which the~~
35 ~~lien is claimed, with the name of the owner thereof and the date upon which work was last~~
36 ~~performed, material was last furnished in performing such work or making such repairs or~~
37 ~~improvements or equipment was last replaced, added or installed, in the county where the~~
38 ~~work was performed and in the county of the residence of the owner, if such is known to the~~
39 ~~claimant. secretary of state, on a form prescribed by the secretary of state, a description of the~~
40 property upon which the lien is claimed, the name of the lien claimant, the name of the debtor
41 under the lien, and the date upon which work was last performed, material was last furnished
42 in performing such work or making such repairs or improvements, or equipment was last
43 replaced, added or installed.
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45 (d) The secretary of state shall file and index the notice of lien in accordance with the

1 requirements of this section on a filing system to be prescribed by the secretary of state. The
2 duties and responsibility of the secretary with respect to such filing and indexing shall be
3 ministerial.
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5 (e) Upon the filing of a notice of lien under this section and payment of a fee not to exceed
6 \$20, the secretary shall remit all fees received by the secretary under this section to the state
7 treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire
8 amount in the state treasury and credit such fees to the credit of the information and services
9 fee fund.
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11 (f) As used in this section, "equipment" includes tires and other standard equipment on
12 vehicles.
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1 **58-202. Same; enforcement and foreclosure; time restrictions; destruction of records.**

2 ~~Such~~ Any lien created under Section 1 or K.S.A. 58-201, and amendments thereto may be
3 enforced and foreclosed as security agreements are enforced under the provisions of the
4 uniform commercial code. Any legal action necessary to enforce or foreclose upon any such
5 lien ~~filed in the office of the register of deeds~~ shall be brought within one year of the date such
6 lien was filed, and unless such action is brought within such time, such lien shall be deemed
7 to have been abandoned and shall be thereafter void. After ~~five~~ two years from the date such
8 lien has been filed, the ~~register of deeds of the county~~ office where the lien is filed may
9 remove the lien from the records and destroy the records. Upon satisfaction of any lien
10 created under K.S.A. 58-201 and amendments thereto, the lien claimant shall, within 10 days,
11 file a release of the lien with the secretary of state. Upon satisfaction of any lien created
12 under Section 1, the lien claimant shall, within 10 days, file a release of the lien with the
13 division of motor vehicles of the department of revenue in compliance with K.S.A. 8-1,157
14 and amendments thereto.

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