

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2279

BY: LITTLEFIELD and VAUGHN
(George) of the HOUSE

and

STIPE of the SENATE

(LIENS - AMENDING 42 O.S. 1991, SECTIONS 91 AND
101 - POSSESSORY LIENS -

EFFECTIVE DATE)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

[LIENS - AMENDING 42 O.S., SECTIONS 91, 98 AND 101
- POSSESSORY LIENS -

EFFECTIVE DATE]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 42 O.S. 1991, Section 91, is
amended to read as follows:

Section 91. ~~(a) Every~~ A. 1. Any person who, while lawfully in
possession of an article of personal property, renders any service
to the owner thereof by furnishing material, labor or skill for the
protection, improvement, safekeeping, towing, storage or carriage

thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service;

~~(A)~~ 2. Said lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice shall contain:

~~(1)~~ The a. the names of the owner and any other party or parties who may claim any interest in said property;

~~(2)~~ A b. a description of the property to be sold;

~~(3)~~ The c. the nature of the work, labor or service performed, material furnished, and the date thereof;

~~(4)~~ The d. the time and place of sale, and

~~(5)~~ The e. the name of the party, agent or attorney foreclosing such lien;

~~(B)~~ 3. Such notice shall be posted in three (3) public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party ~~or parties~~ claiming any interest in said property if known, at their last-known post office address, by registered mail on the day of posting. ~~Party or parties~~ Any party who ~~claim~~ claims any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed;

~~(C)~~ 4. The lienor or any other person may in good faith become a purchaser of the property sold; and

~~(D)~~ 5. Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after said lien has accrued.

~~(b)~~ B. 1. a. Any person who is induced by means of a check or other form of written order for

immediate payment of money to deliver up possession of an article of personal property on which he has a special lien created by subsection ~~(a)~~ A of this section, which check or other written order is dishonored, or is not paid when presented, shall have a lien for the amount thereof upon said personal property ~~if~~.

b. The person claiming such lien shall, within thirty (30) days from the date of dishonor of said check or other written order for payment of money, ~~he files~~ file in the office of the county clerk of the county in which the property is situated a sworn statement that:

(1) the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, ~~that it~~

(2) the check or other written order was not paid, and ~~that~~

(3) the uttering ~~thereof~~ of the check or other written order constituted the means for inducing him, one possessed of a special lien created by subsection ~~(a)~~ A of this section upon the described article of personal property, to deliver up the said article of personal property.

2. a. Any person who renders service to the owner of an article of personal property by furnishing material, labor, or skill for the protection, improvement, safekeeping, towing, storage, or carriage to such property shall have a special lien on such property

pursuant to this section if such property is removed from his possession, without his written consent or without payment for such service.

b. The person claiming such lien shall, within five (5) days of such nonauthorized removal, file in the office of the county clerk of the county in which the property is located, a sworn statement including:

(1) that services were rendered on the article of personal property by the person claiming such lien,

(2) that the property was in the possession of the person claiming the lien but such property was removed without his written consent,

(3) an identifying description of the article of personal property on which the service was rendered, and

(4) that the debt for the services rendered on the article of personal property was not paid.

Provided, if the unpaid total amount of the debt for services rendered on the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

3. The enforcement of said lien shall be within sixty (60) days after filing said lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice.

4. For purposes of this subsection:

- a. "Possession" includes actual possession and constructive possession; and
- b. "Constructive possession" means possession by a person who, although not in actual possession, does not have an intention to abandon property, knowingly has both power and the intention at a given time to exercise dominion or control over the property, and who holds claim to such thing by virtue of some legal right.

SECTION 2. AMENDATORY 42 O.S. 1991, Section 98, is amended to read as follows:

Section 98. ~~Any~~ A. 1. Except as otherwise provided by this chapter, any person entitled to a lien under this act, pursuant to this chapter shall within sixty (60) days after last furnishing of labor, money, material or supplies for the production of, altering or repairing of said personal property, file in the office of the county clerk of the county in which the property is situated a statement in writing verified by oath, showing the amount of labor, money, material or supplies furnished for the producing of, altering or repairing of said personal property, the name of the person for, and by whom labor, money, material or supplies, was furnished, ~~unless.~~

2. If the person entitled to such lien shall does not file such statement within the time ~~aforsaid, he~~ required by this chapter, such person shall be deemed to have waived his rights thereto, ~~Provided, that the.~~

3. The lien provided for in this ~~act~~ chapter shall not attach to any personal property after it has been purchased by an innocent purchaser for value, and has passed into his possession unless the lien shall have been filed with the county clerk of the county before the property was purchased by such purchaser, or he shall have received written notice, from the party entitled to the lien, of his intention to file the same.

B. Immediately upon the receipt of such statement, the county clerk shall enter a record of the same in a book kept for that purpose, to be called the Personal Property Lien Journal, which shall be ruled off into separate columns, with headings as follows: "When filed", "Name of owner", "Name of claimant", "Amount claimed", and "Remarks", and the clerk shall make the proper entry in each column.

SECTION 3. AMENDATORY 42 O.S. 1991, Section 101, is amended to read as follows:

Section 101. Any person selling ~~or~~, disposing of or removing property covered by such lien, without the written consent of the owner of such lien, upon conviction thereof, shall be guilty of a misdemeanor and shall be punishable by imprisonment in the county jail for not more than six (6) months or by a fine of not less than One Hundred Dollars (\$100.00).

SECTION 4. This act shall become effective September 1, 1992."

Passed the Senate the 6th day of April, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives