

ENROLLED SENATE
BILL NO. 112

By: Hobson of the Senate

and

Hefner of the House

An Act relating to liens; defining terms; requiring certain notice; construing act; excluding certain claims from notice requirements; providing for contents of notice; providing for notice; requiring original contractor to provide certain information and stating consequences; stating satisfaction of notice; requiring filing of certain affidavit; stating certain consequences; amending 42 O.S. 1991, Section 143.1, as amended by Section 23, Chapter 363, O.S.L. 2000 (42 O.S. Supp. 2000, Section 143.1), which relates to filing of lien statement; clarifying language; making language gender neutral; deleting certain notice requirements and consequences; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.6 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section:

1. "Claimant" means a person, other than an original contractor, that is entitled or may be entitled to a lien pursuant to Section 141 of Title 42 of the Oklahoma Statutes; and

2. "Person" means any individual, corporation, partnership, unincorporated association, or other entity.

B. 1. Prior to the filing of a lien statement pursuant to Section 143.1 of Title 42 of the Oklahoma Statutes, but no later than seventy-five (75) days after the date of supply of material, services, labor, or equipment in which the claimant is entitled or may be entitled to lien rights, the claimant shall send to the last-known address of the original contractor and owner of the property a pre-lien notice pursuant to the provisions of this section.

2. The provisions of this section shall not be construed to require:

- a. a pre-lien notice with respect to any retainage held by agreement between an owner, contractor, or subcontractor, or
- b. more than one pre-lien notice during the course of a construction project in which material, services, labor, or equipment is furnished.

A pre-lien notice sent in compliance with this section for the supply of material, services, labor, or equipment that entitles or may entitle a claimant to lien rights shall protect the claimant's lien rights for any subsequent supply of material, services, labor, or equipment furnished during the course of a construction project.

3. The pre-lien notice requirements shall not apply to a claimant:

- a. whose claim relates to the supply of material, services, labor, or equipment furnished in connection with a residential project. For the purposes of this subparagraph, the term "residential" shall mean a single family or multifamily project of four or fewer dwelling units, or
- b. whose aggregate claim is less than Two Thousand Five Hundred Dollars (\$2,500.00).

4. The pre-lien notice shall be in writing and shall contain, but not be limited to, the following:

- a. a statement that the notice is a pre-lien notice,
- b. the complete name, address, and telephone number of the claimant, or the claimant's representative,
- c. the date of supply of material, services, labor, or equipment,
- d. a description of the material, services, labor, or equipment,
- e. the name and last-known address of the person who requested that the claimant provide the material, services, labor, or equipment,
- f. the address, legal description, or location of the property to which the material, services, labor, or equipment has been supplied,
- g. a statement that the dollar amount of the material, services, labor, or equipment furnished or to be furnished exceeds Two Thousand Five Hundred Dollars (\$2,500.00), and
- h. the signature of the claimant, or the claimant's representative.

5. A rebuttable presumption of compliance with paragraph 1 of this subsection shall be created if the pre-lien notice is sent as follows:

- a. hand delivery supported by a delivery confirmation receipt,
- b. automated transaction pursuant to Section 15-115 of Title 12A of the Oklahoma Statutes, or
- c. certified mail, return receipt requested. Notice by certified mail, return receipt requested, shall be effective on the date mailed.

6. The claimant may request in writing, the request to be sent in the manner as provided in paragraph 5 of this subsection, that the original contractor provide to the claimant the name and last-known address of the owner of the property. Failure of the original contractor to provide the claimant with the information requested within five (5) days from the date of receipt of the request shall render the pre-lien notice requirement to the owner of the property unenforceable.

C. At the time of the filing of the lien statement, the claimant shall furnish to the county clerk a notarized affidavit verifying compliance with the pre-lien notice requirements of this section. Any claimant who falsifies the affidavit shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

D. Failure of the claimant to comply with the pre-lien notice requirements of this section shall render that portion of the lien claim for which no notice was sent invalid and unenforceable.

SECTION 2. AMENDATORY 42 O.S. 1991, Section 143.1, as amended by Section 23, Chapter 363, O.S.L. 2000 (42 O.S. Supp. 2000, Section 143.1), is amended to read as follows:

Section 143.1 A. ~~1.~~ Within one (1) business day after the date of the filing of the lien statement provided for in Sections 142 and 143 of this title, a notice of ~~such~~ the lien shall be mailed by certified mail, return receipt requested, to the owner of the property on which the lien attaches. The claimant shall furnish to the county clerk the last-known mailing address of the person or persons against whom the claim is made and the owner of the property. The notice shall be mailed by the county clerk. The fee for preparing and mailing the notice of mechanics' and materialmen's lien and costs for each additional page or exhibit shall be as provided for in Section 32 of Title 28 of the Oklahoma Statutes and shall be paid by the person filing ~~such~~ the lien. ~~Said~~ The fee shall be deposited into the County Clerk's Lien Fee Account, created pursuant to the provisions of Section 265 of Title 19 of the Oklahoma Statutes.

~~2.~~ B. The notice shall contain the date of filing; the name and address of the following: The person claiming the lien; the person against whom the claim is made and the owner of the property; a legal description of the property; and the amount claimed. Provided that, if with due diligence the person against whom the claim is made or the owner of the property cannot be found, the claimant after filing an affidavit setting forth such facts may, within sixty (60) days of the filing of the lien statement, serve a copy of ~~such~~ the notice upon the occupant of the property or the occupant of the improvements, as the case may be, in a like manner as is provided for service upon the owner thereof, or, if the same be unoccupied, ~~he~~ the claimant may post ~~such~~ a copy in a conspicuous place upon the property or any improvements thereon.

~~B. 1. A lien claimant who is owed payment by the original contractor must send written notice of the unpaid amount to the owner of the property and the original contractor not later than the tenth day of the third month following each month in which the unpaid labor, materials, or equipment was furnished.~~

~~2. A lien claimant who is owed payment by a subcontractor must send written notice of the unpaid amount to the owner and the original contractor not later than the tenth day of the second month following each month in which the unpaid labor, materials, or equipment was furnished.~~

~~3. Failure of the lien claimant to send written notice pursuant to this subsection shall render that portion of the lien claim for which no notice was sent invalid and unenforceable.~~

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 12th day of March, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 28th day of March, 2001.

Presiding Officer of the House
of Representatives