

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE BILL 702

By: Helton

AS INTRODUCED

An Act relating to liens; amending 42 O.S. 2001, Section 91, which relates to a lien on personal property for service; stating exception for foreclosure on certain vehicles stored by Class AA wreckers; defining term; amending 47 O.S. 2001, Section 962, which relates possessory liens; requiring owner or operators of certain vehicles to pay debt for certain services; providing penalty for non-payment of debt; authorizing the Department of Public Safety to suspend driving privileges of certain persons; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 42 O.S. 2001, Section 91, is amended to read as follows:

Section 91. 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~~ such person from the owner for such service;

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

- a. the names of the owner and any other party or parties who may claim any interest in ~~said~~ the property,
- b. a description of the property to be sold,
- c. the nature of the work, labor or service performed, material furnished, and the date thereof,

- d. the time and place of sale, and
- e. the name of the party, agent or attorney foreclosing such lien;

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~~ the notice shall be mailed to the owner and any other party claiming any interest in ~~said~~ the property if known, at their last-known post office address, by registered mail on the day of posting. Any party who claims any interest in ~~said~~ the 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;

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

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

6. Notwithstanding any other provision of law, proceedings for foreclosures for the storage of junk vehicles towed and stored pursuant to Section 955 of Title 47 of the Oklahoma Statutes by Class AA wreckers listed with the Motor Vehicle Division of the Department of Public Safety, shall not be commenced until five (5) days after the lien has accrued. For purposes of this paragraph, "junk vehicles" means any vehicle that is more than ten years old and has a value of less than of Three Hundred Dollars (\$300.00) pursuant to the National Automobile Dealers Association Official Used Car Guide Company.

- 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~~ the person has a special lien created by subsection 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~~ the personal property.

b. The person claiming such lien shall, within thirty (30) days from the date of dishonor of ~~said~~ the check or other written order for payment of money, 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,

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

(3) the uttering of the check or other written order constituted the means for inducing ~~him~~ the person, one possessed of a special lien created by subsection 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~~ the person's possession, without ~~his~~ such person's 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~~ the lien shall be within sixty (60) days after filing ~~said~~ the 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 47 O.S. 2001, Section 962, is amended to read as follows:

Section 962. A. Every person legally entitled to compensation for the removal or storage of any vehicle subject to registration, which vehicle's removal has been authorized by any public agency, has a lien on the vehicle, dependent on possession. The lien is deemed to arise on the date of possession of the vehicle. Any person perfecting a lien under this section shall foreclose this lien according to the provisions for sale under Sections 908 through 911 of Title 47 of the Oklahoma Statutes.

B. Every owner or operator of such vehicle towed or stored pursuant to Section 955 of this title shall be responsible for the total amount of the debt for services rendered. If such debt is not paid within seven (7) days after the owner receives notice of debt sent by certified mail, return receipt requested, by the wrecker, the wrecker may notify the Department of Public Safety of the unpaid debt and the Department shall suspend driver privileges until such debts are satisfied.

SECTION 3. This act shall become effective July 1, 2003.

SECTION 4. 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.