

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 419

By: Gumm and Coates of the
Senate

and

Armes of the House

COMMITTEE SUBSTITUTE

[liens - modifying procedures - sale, disposal or
removal of property - codification -
effective date]

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 91.2 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. Any person who, at or with the owner's request or consent, performs work, or makes repairs or improvements on any farm equipment has a first and prior lien, subject to the restrictions set forth in subsections B and C of this section, on such equipment for the total value of the services performed, including the reasonable value of all material used in the performance of such services and the reasonable value of all equipment replaced, added or installed.

B. If the lien claimant is in possession of the farm equipment for the purpose of having the work, repairs or improvements made, or the equipment replaced, added or installed thereon, the lien shall be first and prior and valid as long as the lien claimant retains possession of the equipment. The lien claimant shall retain the lien after releasing the equipment by filing within ninety (90) days

thereafter a statement, under oath, of the items of the account, a description of the equipment on which the lien is claimed and the legal name of the owner of the equipment, with the county clerk in the county in this state where the owner resides, or if the owner does not reside in this state, then with the county clerk in the county where the equipment is located. Provided, once the lien claimant has released possession of the equipment, the lien established by this section shall be subordinate to any prior lien or security interest of record.

C. If the lien claimant was never in possession of the farm equipment, the lien claimant shall retain the lien by filing with the county clerk in the county where the owner resides, or if the owner does not reside in this state, then with the county clerk in the county where the equipment is located, within ninety (90) days after the date work was last performed, material was last furnished in performing such work or making such repairs or improvements, equipment was last replaced, added or installed or the farm equipment was last towed or stored, a statement, under oath, of the items of the account, a description of the equipment on which the lien is claimed, the legal name of the owner of the equipment and the date upon which work was last performed, material was last furnished in performing such work or making such repairs or improvements, equipment was last replaced, added or installed, or the equipment was last towed or stored. Provided, if the lien claimant was never in possession of the equipment, the lien established by this section shall be subordinate to any prior lien or security interest.

D. For purposes of this section, "farm equipment" means equipment, as defined in paragraph (33) of subsection (a) of Section 1-9-102 of Title 12A of the Oklahoma Statutes, that is primarily used in connection with a farming operation, as defined in paragraph

(35) of subsection (a) of Section 1-9-102 of Title 12A of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 42, unless there is created a duplication in numbering, reads as follows:

A lien granted under Section 1 of this act with respect to farm equipment may be enforced and foreclosed in the same manner as security agreements pursuant to the Uniform Commercial Code. Any legal action taken by or on behalf of a lien claimant to enforce or foreclose any such lien filed in the office of the county clerk shall be commenced within one (1) year of the date the lien was filed or the lien shall be void. For purposes of this section, publication or delivery of a notice of sale under the Uniform Commercial Code shall constitute the commencement of legal action to enforce or foreclose a lien granted under Section 1 of this act. Reasonable attorney fees and legal expenses incurred by the lien claimant to claim, enforce and foreclose the lien granted under Section 1 of this act shall be included in the amount secured by such lien. After five (5) years from the date the lien was filed, the county clerk of the county where the lien is filed shall remove the lien from the records.

SECTION 3. AMENDATORY 42 O.S. 2001, Section 101, is amended to read as follows:

Section 101. Any person convicted of selling, disposing of or removing property covered by ~~such a lien,~~ not subordinate to that person's interest, arising under Sections 91 through 102 of this title or Section 1 or 2 of this act without either obtaining the written consent of the owner of such the lien, upon conviction thereof, or making provision adequate to satisfy the lien, 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. AMENDATORY 42 O.S. 2001, Section 91, as amended by Section 1, Chapter 214, O.S.L. 2003 (42 O.S. Supp. 2004, 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 other than farm equipment, as defined in Section 1 of this act, 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 such person from the owner for such service~~+~~.

2. 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 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 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 the notice shall be mailed to the owner and any other party claiming any interest in 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 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~~+~~.

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, may be commenced five (5) days after the lien has accrued. For purposes of this paragraph, "junk vehicles" means any vehicle that is more than ten (10) years old and has a value of less than Three Hundred Dollars (\$300.00) pursuant to the National Automobile Dealers Association Official Used Car Guide Company adjusting to the condition of the vehicle.

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 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 the personal property.

b. The person claiming such lien shall, within thirty (30) days from the date of dishonor of 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 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 the person's possession, without 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 the lien shall be within sixty (60) days after filing 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~~r~~, 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 5. This act shall become effective November 1, 2005.

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