ENGROSSED SENATE
BILL NO. 835

By: Gumm of the Senate

and

Piatt of the House

[liens - personal property - priority - notice - inspection - foreclosure - remedies - effective date]

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

SECTION 1. 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, 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. This special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section;

3. Any person claiming the special lien provided in paragraph 1 of subsection A of this section shall mail a notice of such lien, no later than thirty (30) days after the first services are rendered, by regular, first class United States mail, and by certified mail, delivery restricted to the addressee, to all interested parties. The notice shall be in writing and shall contain, but not be limited to, the following:

a. a statement that the notice is a notice of a possessory lien,

b. the complete legal name, physical and mailing address, and telephone number of the claimant,

c. the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill,

d. a description of the article of personal property and the complete physical and mailing address of the location of the article of personal property,

e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the amount of the compensation claimed,

f. a statement by the claimant that the materials, labor or skill furnished were authorized by the owner of the personal property and was in fact provided or performed, and

g. the signature of the claimant which shall be verified and, if applicable, the signature of the claimant's attorney;

4. No storage charges may be assessed until ten (10) days after the notice is properly given. The maximum allowable compensation for storage shall not exceed Fifteen Dollars ($15.00) per day;

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

a. a statement that the notice is a Notice of Sale,

b. the names and addresses of ~~the owner and any other party or~~ all interested parties ~~who may claim any interest in the property~~,

~~b.~~

c. a description of the property to be sold,

~~c.~~

d. a verified statement of the nature of the work, labor or service performed, material furnished, and the date thereof, and the name of the person who authorized the work, labor or service performed,

~~d.~~

e. the date, time and ~~place~~ exact physical location of sale, and

~~e.~~

f. the name, complete physical address and telephone number of the party, agent or attorney foreclosing such lien;

~~3.~~ 6. Such notice of sale 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,~~ all interested parties at their last-known post office address, by ~~registered~~ regular, first class United States mail and by certified 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~~;

7. Interested parties shall include all owners of the article of personal property and any person who has a perfected security interest, lien, chattel mortgage, conditional sales contract or any interest in the article of personal property as shown by the records of the county clerk, by any title document, and of whom the claimant has actual notice;

8. Any interested party shall be permitted to inspect and verify the services rendered by the claimant prior to the sale of the article of personal property during normal business hours;

~~4.~~ 9. The ~~lienor~~ claimant or any other person may in good faith become a purchaser of the property sold;

~~5.~~ 10. Proceedings for foreclosure under this act shall ~~not~~ be commenced ~~until~~ within thirty (30) days after ~~said lien has accrued~~ the notice time has expired. The sale shall be completed within sixty (60) days from the date of the Notice of Sale; and

~~6.~~ 11. 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. <u>If a person claiming a special lien pursuant to this section fails to substantially comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be false or fraudulent, the interested party shall be entitled to treble damages. The prevailing party shall be entitled to all costs, including a reasonable attorney's fee.</u>

<u>5.</u> 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. This act shall become effective November 1, 2005.

Passed the Senate the 16th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives