

3 Senate Bill No. 835
4 As Amended

5 SENATE BILL NO. 835 - By: GUMM of the Senate and PIATT of the House.

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

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

9 SECTION 1. AMENDATORY 42 O.S. 2001, Section 91, as
10 amended by Section 1, Chapter 214, O.S.L. 2003 (42 O.S. Supp. 2004,
11 Section 91), is amended to read as follows:

12 Section 91. A. 1. Any person who, while lawfully in
13 possession of an article of personal property, renders any service
14 to the owner thereof by furnishing material, labor or skill for the
15 protection, improvement, safekeeping, towing, storage or carriage
16 thereof, has a special lien thereon, dependent on possession, for
17 the compensation, if any, which is due to such person from the owner
18 for such service;

19 2. This special lien shall be subordinate to any perfected
20 security interest unless the claimant complies with the requirements
21 of this section;

22 3. Any person claiming the special lien provided in paragraph 1
23 of subsection A of this section shall mail a notice of such lien, no
24 later than thirty (30) days after the first services are rendered,

1 by regular, first class United States mail, and by certified mail,
2 delivery restricted to the addressee, to all interested parties.
3 The notice shall be in writing and shall contain, but not be limited
4 to, the following:

- 5 a. a statement that the notice is a notice of a
6 possessory lien,
- 7 b. the complete legal name, physical and mailing address,
8 and telephone number of the claimant,
- 9 c. the complete legal name, physical and mailing address
10 of the person who requested that the claimant render
11 service to the owner by furnishing material, labor or
12 skill,
- 13 d. a description of the article of personal property and
14 the complete physical and mailing address of the
15 location of the article of personal property,
- 16 e. an itemized statement describing the date or dates the
17 labor or services were performed and material
18 furnished, and the amount of the compensation claimed,
- 19 f. a statement by the claimant that the materials, labor
20 or skill furnished were authorized by the owner of the
21 personal property and was in fact provided or
22 performed, and

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

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

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

- 11 a. a statement that the notice is a Notice of Sale,
- 12 b. the names and addresses of ~~the owner and any other~~
13 ~~party or~~ all interested parties ~~who may claim any~~
14 ~~interest in the property,~~
- 15 ~~b.~~
- 16 c. a description of the property to be sold,
- 17 ~~e.~~
- 18 d. a verified statement of the nature of the work, labor
19 or service performed, material furnished, and the date
20 thereof, and the name of the person who authorized the
21 work, labor or service performed,
- 22 ~~d.~~

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

3 ~~e.~~

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

7 ~~3.~~ 6. Such notice of sale shall be posted in three public
8 places in the county where the property is to be sold at least ten
9 (10) days before the time therein specified for such sale, and a
10 copy of the notice shall be mailed to ~~the owner and any other party~~
11 ~~claiming any interest in the property if known,~~ all interested
12 parties at their last-known post office address, by ~~registered~~
13 regular, first class United States mail and by certified mail on the
14 day of posting. ~~Any party who claims any interest in the property~~
15 ~~shall include owners of chattel mortgages and conditional sales~~
16 ~~contracts as shown by the records in the office of the county clerk~~
17 ~~in the county where the lien is foreclosed;~~

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

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

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

6 ~~5.~~ 10. Proceedings for foreclosure under this act shall ~~not~~ be
7 commenced ~~until~~ within thirty (30) days after ~~said lien has accrued~~
8 the notice time has expired. The sale shall be completed within
9 sixty (60) days from the date of the Notice of Sale; and

10 ~~6.~~ 11. Notwithstanding any other provision of law, proceedings
11 for foreclosures for the storage of junk vehicles towed and stored
12 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by
13 Class AA wreckers listed with the Motor Vehicle Division of the
14 Department of Public Safety, may be commenced five (5) days after
15 the lien has accrued. For purposes of this paragraph, "junk
16 vehicles" means any vehicle that is more than ten (10) years old and
17 has a value of less than Three Hundred Dollars (\$300.00) pursuant to
18 the National Automobile Dealers Association Official Used Car Guide
19 Company adjusting to the condition of the vehicle.

20 B. 1. a. Any person who is induced by means of a check or other
21 form of written order for immediate payment of money
22 to deliver up possession of an article of personal
23 property on which the person has a special lien

1 created by subsection A of this section, which check
2 or other written order is dishonored, or is not paid
3 when presented, shall have a lien for the amount
4 thereof upon the personal property.

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

10 (1) the check or other written order for immediate
11 payment of money, copy thereof being attached,
12 was received for labor, material or supplies for
13 producing or repairing an article of personal
14 property,

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

17 (3) the uttering of the check or other written order
18 constituted the means for inducing the person,
19 one possessed of a special lien created by
20 subsection A of this section upon the described
21 article of personal property, to deliver up the
22 said article of personal property.

1 2. a. Any person who renders service to the owner of an
2 article of personal property by furnishing material,
3 labor, or skill for the protection, improvement,
4 safekeeping, towing, storage, or carriage to such
5 property shall have a special lien on such property
6 pursuant to this section if such property is removed
7 from the person's possession, without such person's
8 written consent or without payment for such service.

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

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

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

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

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

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

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

14 4. If a person claiming a special lien pursuant to this section
15 fails to substantially comply with any of the requirements of this
16 section, any interested party may proceed against the person
17 claiming such lien for all damages arising therefrom, including
18 conversion, if the article of personal property has been sold. If
19 the notice or notices required by this section shall be shown to be
20 false or fraudulent, the interested party shall be entitled to
21 treble damages. The prevailing party shall be entitled to all
22 costs, including a reasonable attorney's fee.

23 5. For purposes of this subsection:

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

9 SECTION 2. This act shall become effective November 1, 2005.

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
11 PASS, As Amended and Coauthored.