

ENROLLED SENATE
BILL NO. 1686

By: Coates, Burrage and
Barrington of the Senate

and

Sullivan, Jones and
Harrison of the House

An Act relating to liens; amending 42 O.S. 2001, Section 142.6, which relates to pre-lien notice; modifying time period for filing of certain statement; specifying time period for pre-lien notice on certain property; modifying certain exception; increasing amount of certain exception; repealing 42 O.S. 2001, Sections 142.1, 142.3 and 142.5, which relate to materialmen liens; and providing an effective date.

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

SECTION 1. AMENDATORY 42 O.S. 2001, Section 142.6, is amended to read as follows:

Section 142.6 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~~ this title; 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~~ this title, but

no later than seventy-five (75) days after the last 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. Provided further, no lien affecting property presently occupied as a dwelling by an owner shall be valid unless the pre-lien notice provided in this section was sent within seventy-five (75) days of the last furnishing of materials, services, labor or equipment by the claimant.

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, except as otherwise provided in paragraph 1 of this subsection. 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)~~ Ten Thousand Dollars (\$10,000.00).

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)~~ Ten Thousand Dollars (\$10,000.00), 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. REPEALER 42 O.S. 2001, Sections 142.1, 142.3 and 142.5, are hereby repealed.

SECTION 3. This act shall become effective November 1, 2010.

Passed the Senate the 21st day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2010.

Presiding Officer of the House
of Representatives