

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 530

6 By: Burrage

7 COMMITTEE SUBSTITUTE

8 An Act relating to agricultural liens; establishing
9 procedures for foreclosure upon certain lien;
10 specifying contents of certain notice; requiring
11 posting of certain notice at specified locations;
12 providing for mailing of certain notice; authorizing
13 certain persons to purchase certain property;
14 providing time restriction for certain proceedings;
15 defining terms; construing provisions; prohibiting
16 use of certain foreclosure method for certain
17 purpose; granting lien rights to certain persons;
18 establishing procedures for certain lien; providing
19 time limitation for enforcement of certain lien;
20 creating the Livestock Owner's Lien Act of 2011;
21 providing short title; defining terms; establishing
22 requirements for certain lien right; stating duration
23 of certain lien; providing for perfection of certain
24 lien; stating result of commingling livestock on
certain lien; establishing rights of certain
purchasers; establishing priority of certain lien;
stating effect of lien on certain title; providing
for waiver of certain lien right; establishing time
period for expiration of certain lien; providing for
enforcement of certain lien right; authorizing award
of certain fees and costs; construing provisions;
repealing 4 O.S. 2001, Section 194, which relates to
enforcement of lien; providing for codification; and
providing an effective date.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 194.1 of Title 4, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A person who has a lien upon a domestic animal pursuant to
5 Title 4 of the Oklahoma Statutes may foreclose upon the lien while
6 lawfully in possession of the animal.

7 B. The lien may be foreclosed by a sale of the domestic animal
8 upon notice which shall include:

9 1. The names of the owner and any other known party or parties
10 who claim any interest in the domestic animal;

11 2. A description of the domestic animal to be sold;

12 3. The nature of the work, labor or service performed, or the
13 materials or feed provided, any of which resulted in the creation of
14 the lien, and the value of the work, labor, services, materials or
15 feed;

16 4. The time and place of sale; and

17 5. The name of the party, agent or attorney foreclosing the
18 lien. If the claimant is a business, the name of the contact person
19 shall be shown. In place of an original signature and notary seal,
20 a digital or electronic signature or seal shall be accepted.

21 C. The notice may relate to and contain information for more
22 than one domestic animal or lien, provided that the information
23 required pursuant to subsection B of this section is provided for
24 each domestic animal or lien.

1 D. The notice shall be posted in three public places in the
2 county where the property is to be sold at least ten (10) days
3 before the time specified for such sale, and shall be mailed to the
4 owner and any other party who claims any interest in the domestic
5 animal, at the last-known post office address, by certified mail.
6 The mailing shall occur at least ten (10) days before the time
7 specified for the sale.

8 E. The lienor or any other person may in good faith become a
9 purchaser of the property sold.

10 F. Proceedings for foreclosure under this section shall not be
11 commenced until thirty (30) days after the lien has accrued, except
12 as otherwise provided in the laws of this state.

13 G. For purposes of this section:

14 1. "Constructive possession" means possession by a person who,
15 although not in actual possession, does not have an intention to
16 abandon property, who knowingly has both the power and the intent at
17 a given time to exercise dominion or control over the property, and
18 who holds claim to the property pursuant to a legal right;

19 2. "Commercially reasonable sale" shall include, but not be
20 limited to, any auction which members of the public may attend and
21 bid;

22 3. A "party who claims any interest in the domestic animal"
23 shall include:

24 a. all owners of the domestic animal,

1 b. any secured party who has a properly perfected lien in
2 accordance with the laws of this state, and

3 c. any other person having any interest in the domestic
4 animal, of whom the claimant has actual notice; and

5 4. "Possession" shall include actual possession and
6 constructive possession.

7 H. The method described in this section for foreclosing upon a
8 lien is in addition to, and not exclusive of, any other method under
9 the laws of this state by which the lien may be properly foreclosed.

10 I. Nothing in this section shall be construed to create any new
11 lien rights or limit any existing lien rights provided under the
12 laws of this state; provided, however, this act shall not apply to
13 liens created pursuant to Section 156 of Title 4 of the Oklahoma
14 Statutes.

15 J. Notwithstanding the provisions of this section, the method
16 of foreclosing upon a lien set forth in this section shall not be
17 used for any lien created pursuant to Section 156 of Title 4 of the
18 Oklahoma Statutes.

19 K. Any person who is induced by means of a check or other form
20 of written order for immediate payment of money to deliver
21 possession of a domestic animal on which the person has a lien
22 created by subsection A of this section, which check or other
23 written order is dishonored or is not paid when presented, shall
24 have a lien for the amount thereof upon the personal property. The

1 person claiming such lien shall, within thirty (30) days from the
2 date of dishonor of the check or other written order for payment of
3 money, file an Effective Financing Statement pursuant to Sections 1-
4 9-320.1 through 1-9-320.7 of Title 12A of the Oklahoma Statutes or a
5 financing statement pursuant to Section 1-9-501 of Title 12A of the
6 Oklahoma Statutes, as applicable to the personal property, along
7 with a sworn statement that:

8 1. The check or other written order for immediate payment of
9 money, copy thereof being attached, was received for feeding,
10 furnishing feed, or keeping a domestic animal;

11 2. The check or other written order was not paid; and

12 3. The uttering of the check or other written order constituted
13 the means for inducing the person, one possessed of a special lien
14 created by subsection A of this section upon the described domestic
15 animal, to deliver up the domestic animal.

16 L. Any person who renders service to the owner of a domestic
17 animal by feeding, furnishing feed, or keeping a domestic animal
18 shall have a lien on such domestic animal pursuant to this section
19 if such property is removed from the person's possession, without
20 such person's written consent or without payment for such service.

21 1. The person claiming such lien shall, within thirty (30) days
22 of such nonauthorized removal, file an Effective Financing Statement
23 pursuant to Sections 1-9-320.1 through 1-9-320.7 of Title 12A of the
24 Oklahoma Statutes or a financing statement pursuant to Section 1-9-

1 501 of Title 12A of the Oklahoma Statutes, as applicable to the
2 personal property, along with a sworn statement including:

- 3 a. that services were rendered on or in relation to the
4 domestic animal by the person claiming the lien,
- 5 b. that the domestic animal was in the possession of the
6 person claiming the lien but the domestic animal was
7 removed without the person's consent,
- 8 c. an identifying description of the domestic animal on
9 or in relation to which the service was rendered, and
- 10 d. that the debt for the services rendered on or in
11 relation to the domestic animal was not paid.

12 Provided, if the unpaid total amount of the debt for
13 services rendered on or in relation to the domestic
14 animal is unknown, an approximated amount of the debt
15 shall be included in the sworn statement. The
16 approximated debt may be amended within thirty (30)
17 days of filing to reflect the actual amount of the
18 debt.

19 2. The enforcement of the lien shall be within one hundred
20 twenty (120) days after filing the lien in the manner provided by
21 law for enforcing the lien of a security agreement and provided that
22 the lien shall not affect the rights of innocent, intervening
23 purchasers without notice.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 201.1 of Title 4, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 2 through 12 of this act shall be known and may be
5 cited as the "Livestock Owner's Lien Act of 2011".

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 201.2 of Title 4, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Livestock Owner's Lien Act of 2011:

10 1. "Affiliate" means any person who is controlled, directly or
11 indirectly, by a first purchaser, or who controls, directly or
12 indirectly, a first purchaser. "Control" or "controlled by" means
13 the possession, directly or indirectly, of the power to direct or
14 cause the direction of the management and policies of a person,
15 whether through ownership, by contract, or otherwise;

16 2. "Agreement to sell" means any enforceable agreement, whether
17 oral or written, by which a livestock owner, either directly or
18 through a sales agent, agrees to sell livestock to a first
19 purchaser;

20 3. "Article 9" means Article 9 of the Oklahoma Uniform
21 Commercial Code in effect as of the relevant date or a comparable
22 article under the uniform commercial code of another state to the
23 extent applicable;

24

1 4. "First purchaser" means the first person that purchases
2 livestock, either directly or through a sales agent, under an
3 agreement to sell;

4 5. "Livestock" means cattle, bison, horses, sheep, goats,
5 asses, mules, swine, domesticated rabbits, chickens, turkeys, or any
6 domesticated animal raised primarily for human food consumption;

7 6. "Livestock owner" means a person owning an interest in
8 Livestock before the acquisition thereof by a first purchaser;

9 7. "Owner's lender" means a person that has a valid mortgage
10 lien or security interest in a livestock owner's livestock at the
11 time of delivery of such Livestock to the first purchaser;

12 8. "Owner's lien" means the lien granted by this act;

13 9. "Permitted lien" means any of the following liens or
14 security interests:

15 a. a mortgage lien or security interest granted by a
16 first purchaser which secures payment under a written
17 instrument of indebtedness signed by the first
18 purchaser and accepted in writing by the payee thereof
19 prior to the effective date of this act with a
20 principal amount and a fixed maturity stated therein;
21 provided, however, a permitted lien does not include a
22 mortgage lien or security interest which:

23 (1) secures payment of any indebtedness incurred
24 after the effective date of this act,

1 (2) secures payment under a written instrument of
2 indebtedness not signed by a first purchaser and
3 accepted in writing by the payee thereof prior to
4 the effective date of this act,

5 (3) secures payment under a written instrument of
6 indebtedness modified, amended or restated from
7 or after the effective date of this act which
8 modification, amendment or restatement increases
9 the principal amount which was owing at the
10 effective date of this act,

11 (4) secures payment under a written instrument of
12 indebtedness modified, amended or restated from
13 or after the effective date of this act which
14 modification, amendment or restatement extends
15 the stated maturity thereof which was in effect
16 at the effective date of this act, or

17 (5) is not validly perfected with a first priority
18 against the claims of all persons under
19 applicable law other than persons holding a
20 statutory or regulatory lien as to which first
21 priority is granted by statute or regulation, or

22 b. a validly perfected and enforceable lien created by
23 statute in relation to livestock purchased under an
24 agreement to sell which secures payment of any

1 indebtedness incurred by the first purchaser prior to
2 the effective date of this act;

3 10. "Person" means any individual, executor, administrator,
4 estate, agent, trust, trustee, institution, receiver, business
5 trust, firm, business entity, corporation, partnership, limited
6 liability company, cooperative, joint venture, governmental entity
7 or agency, association or any other group or combination acting as a
8 unit;

9 11. "Proceeds" means:

- 10 a. any right or amount paid or to be paid in
11 consideration of, or as a consequence of, the sale of
12 livestock such as cash proceeds, accounts, chattel
13 paper, instruments, or payment intangibles, or
14 b. any by-products from the slaughter of livestock, or
15 any right or amount paid or to be paid in
16 consideration of, or as a consequence of, the sale of
17 such by-products;

18 12. "Purchaser" means a person who is not an affiliate of a
19 first purchaser and who takes, receives or purchases livestock from
20 a first purchaser;

21 13. "Sales agent" means any person who is authorized, including,
22 without limitation, a livestock auction, auctioneer, commission
23 company, or broker, to sell livestock on behalf of, or for the
24 benefit of, a livestock owner under an agreement to sell or to

1 receive on behalf of a livestock owner the consideration under an
2 agreement to sell; and

3 14. "Sales price" means the amount a first purchaser agrees to
4 pay a livestock owner or sales agent under an agreement to sell.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 201.3 of Title 4, unless there
7 is created a duplication in numbering, reads as follows:

8 A. To secure the obligations of a first purchaser to pay the
9 sales price, every livestock owner is granted a lien in all
10 livestock sold by such livestock owner, for any unpaid portion of
11 the sales price for such livestock. The lien granted by this act is
12 granted and shall exist as part of and incident to the ownership of
13 livestock.

14 B. An owner's lien:

15 1. Exists in and attaches immediately to all livestock on the
16 effective date of this act;

17 2. Continues uninterrupted and without lapse in all livestock
18 upon and after sale of any livestock; and

19 3. Continues uninterrupted and without lapse in and to all
20 proceeds.

21 C. An owner's lien exists until the livestock owner or sales
22 agent entitled to receive the sales price has received the full
23 amount of the sales price. Any security interest or mortgage lien
24 of an owner's lender shall attach to the livestock owner's right to

1 an owner's lien in livestock or proceeds from the sale of the
2 livestock. An owner's lender shall not be considered to have waived
3 its security interest or mortgage lien or right in an owner's lien
4 by approving or authorizing the livestock owner to sell the
5 livestock pursuant to the sales agreement.

6 D. The validity of an owner's lien shall not be dependent on
7 possession of the livestock by a livestock owner or sales agent. No
8 owner's lien shall become or be deemed to be void or expired by
9 reason of a change or transfer of the actual or constructive
10 possession of or title to the livestock from the livestock owner or
11 sales agent to a first purchaser or subsequent purchaser.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 201.4 of Title 4, unless there
14 is created a duplication in numbering, reads as follows:

15 An owner's lien is granted and exists as part of and incident to
16 the ownership of livestock and is perfected automatically from the
17 effective date of this act without the need to file a financing
18 statement or any other type of documentation.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 201.5 of Title 4, unless there
21 is created a duplication in numbering, reads as follows:

22 If livestock subject to an owner's lien are commingled with
23 other livestock in such a manner that the identity of the specific
24 livestock subject to the owner's lien cannot be determined by

1 reasonable means, then the owner's lien continues without
2 interruption into and attaches to such commingled livestock and is
3 perfected automatically as of the date of its original perfection
4 but only as to the percentage of the commingled livestock equal to
5 the number of livestock to which the owner's lien originally
6 attached. In such event, the owner's lien in the commingled
7 livestock has priority over any security interest or other lien that
8 is not an owner's lien or permitted lien, whether or not the
9 security interest or other lien has been properly perfected. If
10 more than one owner's lien attaches to the commingled livestock,
11 then the owner's liens rank equally in the proportion that the
12 respective sales prices secured by each owner's lien bears as a
13 percentage of the total of the sales prices secured by all owner's
14 liens applicable at the time the livestock were commingled.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 201.6 of Title 4, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A purchaser takes free of any owner's lien otherwise
19 applicable to the livestock so purchased, and shall be relieved of
20 any obligations created by subsection A of Section 11 of this act,
21 if the purchaser has paid the full amount of consideration required
22 to be paid by such purchaser for the livestock pursuant to a good
23 faith, noncollusive agreement to purchase the livestock.

24

1 B. Notwithstanding subsection A of this section, the owner's
2 lien shall continue uninterrupted in the proceeds paid to or
3 otherwise due the first purchaser. Except as specifically set forth
4 in this section, an owner's lien has priority over the rights of any
5 purchaser.

6 SECTION 8. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 201.7 of Title 4, unless there
8 is created a duplication in numbering, reads as follows:

9 Except for a permitted lien, an owner's lien takes priority over
10 any other lien, whether arising by contract, law, equity or
11 otherwise.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 201.8 of Title 4, unless there
14 is created a duplication in numbering, reads as follows:

15 The provisions of this act shall not affect the time at which
16 legal title to livestock may pass by agreement or operation of law
17 subject to an owner's lien.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 201.9 of Title 4, unless there
20 is created a duplication in numbering, reads as follows:

21 No livestock owner shall be required, as a condition or term of
22 an agreement to sell or otherwise, to waive, relinquish or release
23 any owner's lien or any rights under this act other than upon
24 payment in full of the sales price or agree to any provision that

1 would apply the law of any state other than this state insofar as
2 the same relates to rights under this act, and any such purported
3 waiver, relinquishment, release, or provision shall be void as a
4 matter of the public policy of this state. Provided, however, any
5 livestock owner or sales agent acting on behalf of a livestock
6 owner, may waive, relinquish or release any owner's lien or any
7 rights under this act or agree to a provision that would apply the
8 law of any state other than this state insofar as the same relates
9 to rights under this act provided the first purchaser either:

10 1. Posts a letter of credit in form and amount satisfactory to
11 the livestock owner or sales agent; or

12 2. Agrees to a binding contractual arrangement satisfactory in
13 form and substance to the livestock owner or sales agent to prepay
14 or escrow the sales price under an agreement to sell in form and
15 substance satisfactory to the livestock owner and performs all of
16 the first purchaser's obligations thereunder.

17 SECTION 11. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 201.10 of Title 4, unless there
19 is created a duplication in numbering, reads as follows:

20 A. An owner's lien shall expire one (1) year after the last day
21 of the month following the date the sales price from the sale of
22 livestock subject to such lien are required by law or contract to be
23 paid to such livestock owner but only as to the particular livestock
24

1 sold during such month, unless an action to enforce the owner's lien
2 is commenced within such time in a court of competent jurisdiction.

3 B. If a sales agent advances the sales price for livestock to
4 the livestock owner before the first purchaser pays the sales prices
5 to the livestock owner or sales agent, the sales agent shall assume
6 and be entitled to enforce all rights of the livestock owner under
7 this act as to such livestock or proceeds thereof.

8 C. In addition to any other court of competent jurisdiction, an
9 action to enforce the owner's lien may be commenced in the district
10 court of the county where the agreement to sell was entered, where
11 the sales price was to be paid, where the unpaid for livestock are
12 located, or wherever the proceeds may be found. Provided, however,
13 the commencement of any proceeding by or against any person claiming
14 an interest in any property subject to the owner's lien seeking to
15 adjudicate such person as bankrupt or insolvent, or seeking
16 liquidation, winding up, reorganization, arrangement, adjustment,
17 protection, relief, or composition of such person or such person's
18 debts under any law relating to bankruptcy, insolvency or
19 reorganization or relief of debtors, or seeking the entry of an
20 order for relief or the appointment of a receiver, trustee or other
21 similar official for such person or for any substantial part of such
22 person's property shall toll the foregoing one (1) year period in
23 which to commence an action to enforce the owner's lien for an
24 additional period of ninety (90) days from the earlier of:

- 1 1. The final conclusion or dismissal of such proceedings; or
2 2. The date final relief is obtained from the applicable
3 tribunal authorizing the commencement of such action.

4 D. The prevailing party in any action to enforce the provisions
5 of this act shall be entitled to recover reasonable attorney fees
6 and costs in any legal proceeding.

7 E. Nothing in this act shall be construed to impair or affect
8 the right of any livestock owner or sales agent to maintain a
9 personal action to recover the debt against any person liable for
10 payment of the sales price or to exercise any other rights and
11 remedies available at law or in equity.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 201.11 of Title 4, unless there
14 is created a duplication in numbering, reads as follows:

15 The provisions of this act shall not be construed to impair any
16 other rights a livestock owner otherwise may have at law or in
17 equity. In the event a conflict arises between this act and any
18 other rights a livestock owner may have, the livestock owner's right
19 to receive the sales price shall be given preference.

20 SECTION 13. REPEALER 4 O.S. 2001, Section 194, is hereby
21 repealed.

22 SECTION 14. This act shall become effective November 1, 2011.

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