HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature

ENGROSSED SENATE
BILL NO. 530

By: Burrage, Shortey and Fields of the Senate

and

Armes of the House

An Act relating to agricultural liens; establishing procedures for foreclosure upon certain lien; specifying contents of certain notice; requiring posting of certain notice at specified locations; providing for mailing of certain notice; authorizing certain persons to purchase certain property; providing time restriction for certain proceedings; defining terms; construing provisions; prohibiting use of certain foreclosure method for certain purpose; granting lien rights to certain persons; establishing procedures for certain lien; providing time limitation for enforcement of certain lien; creating the Livestock Owner's Lien Act of 2011; providing short title; defining terms; creating certain lien right; providing requirements for continuity of certain lien; providing for automatic perfection of certain lien; establishing lien requirements for certain commingled property; providing for transfer of certain lien upon payment of certain consideration; establishing priority of certain lien; stating effect on certain title; prohibiting requirement of waiver of certain lien; providing exceptions; providing for expiration of certain lien; providing for enforcement of certain lien right; establishing requirements for commencement of certain proceedings; construing provisions; repealing 4 O.S. 2001, Section 194, which

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relates to enforcement of lien; providing for codification; and providing an 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 194.1 of Title 4, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

4. The time and place of sale; and

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

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

D. The 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 specified for such sale, and shall be mailed to the owner and any other party who claims any interest in the domestic animal, at the last-known post office address, by certified mail. The mailing shall occur at least ten (10) days before the time specified for the sale.

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

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

G. For purposes of this section:

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

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

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

a. all owners of the domestic animal,

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

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

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

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

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

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

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K. Any person who is induced by means of a check or other form of written order for immediate payment of money to deliver possession of a domestic animal on which the person has a 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. 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 an Effective Financing Statement pursuant to Sections 1-9-320.1 through 1-9-320.7 of Title 12A of the Oklahoma Statutes or a financing statement pursuant to Section 1-9-501 of Title 12A of the Oklahoma Statutes, as applicable to the personal property, along with a sworn statement that:

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

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 domestic animal, to deliver up the domestic animal.

L. Any person who renders service to the owner of a domestic animal by feeding, furnishing feed, or keeping a domestic animal shall have a lien on such domestic animal pursuant to this section

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if such property is removed from the person's possession, without such person's written consent or without payment for such service.

1. The person claiming such lien shall, within thirty (30) days of such nonauthorized removal, file an Effective Financing Statement pursuant to Sections 1-9-320.1 through 1-9-320.7 of Title 12A of the Oklahoma Statutes or a financing statement pursuant to Section 1-9-501 of Title 12A of the Oklahoma Statutes, as applicable to the personal property, along with a sworn statement including:

a. that services were rendered on or in relation to the domestic animal by the person claiming the lien,

b. that the domestic animal was in the possession of the person claiming the lien but the domestic animal was removed without the person's consent,

c. an identifying description of the domestic animal on or in relation to which the service was rendered, and

d. that the debt for the services rendered on or in relation to the domestic animal was not paid.

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

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2. The enforcement of the lien shall be within one hundred twenty (120) 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.

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

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

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

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

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

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

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

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

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

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

7. “Owner’s lender” means a person that has a valid mortgage lien or security interest in a livestock owner’s livestock at the time of delivery of such Livestock to the first purchaser;

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

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

a. a mortgage lien or security interest granted by a first purchaser which secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee thereof prior to the effective date of this act with a principal amount and a fixed maturity stated therein;

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provided, however, a permitted lien does not include a mortgage lien or security interest which:

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

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

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

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

(5) is not validly perfected with a first priority against the claims of all persons under applicable law other than persons holding a

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statutory or regulatory lien as to which first priority is granted by statute or regulation, or

b. a validly perfected and enforceable lien created by statute in relation to livestock purchased under an agreement to sell which secures payment of any indebtedness incurred by the first purchaser prior to the effective date of this act;

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

11. "Proceeds" means:

a. any right or amount paid or to be paid in consideration of, or as a consequence of, the sale of livestock such as cash proceeds, accounts, chattel paper, instruments, or payment intangibles, or

b. any by-products from the slaughter of livestock, or any right or amount paid or to be paid in consideration of, or as a consequence of, the sale of such by-products;

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

13. "Sales agent" means any person who is authorized, including, without limitation, a livestock auction, auctioneer, commission company, or broker, to sell livestock on behalf of, or for the benefit of, another person; and

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

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

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

B. An owner's lien:

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

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

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

C. An owner's lien exists until the livestock owner or sales agent entitled to receive the sales price has received the full amount of the sales price. Any security interest or mortgage lien of an owner's lender shall attach to the livestock owner's right to an owner's lien in livestock or proceeds from the sale of the livestock. An owner's lender shall not be considered to have waived its security interest or mortgage lien or right in an owner's lien by approving or authorizing the livestock owner to sell the livestock pursuant to the sales agreement.

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

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

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

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

If livestock subject to an owner's lien are commingled with other livestock in such a manner that the identity of the specific livestock subject to the owner's lien cannot be determined by reasonable means, then the owner's lien continues without interruption into and attaches to such commingled livestock and is perfected automatically as of the date of its original perfection but only as to the percentage of the commingled livestock equal to the number of livestock to which the owner's lien originally attached. In such event, the owner's lien in the commingled livestock has priority over any security interest or other lien that is not an owner's lien or permitted lien, whether or not the security interest or other lien has been properly perfected. If more than one owner's lien attaches to the commingled livestock, then the owner's liens rank equally in the proportion that the respective sales prices secured by each owner's lien bears as a percentage of the total of the sales prices secured by all owner's liens applicable at the time the livestock were commingled.

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

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A. A purchaser or sales agent takes free of any owner's lien otherwise applicable to the livestock so purchased and shall be relieved of any obligations created by subsection A of Section 4 of this act if the purchaser or sales agent has paid the full amount of required consideration for the livestock pursuant to a good faith, noncollusive agreement to purchase such livestock. If a purchaser or sales agent has paid the full amount of consideration as set forth in this section, the owner's lien shall transfer to the proceeds paid by the purchaser or sales agent. Except as specifically provided by this section, an owner's lien has priority over the rights of any purchaser or sales agent.

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

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

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

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

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

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

No livestock owner shall be required, as a condition or term of an agreement to sell or otherwise, to waive, relinquish or release any owner's lien or any rights under this act other than upon payment in full of the sales price or agree to any provision that would apply the law of any state other than this state insofar as the same relates to rights under this act, and any such purported waiver, relinquishment, release, or provision shall be void as a matter of the public policy of this state. Provided, however, any livestock owner or sales agent acting on behalf of a livestock owner, may waive, relinquish or release any owner's lien or any rights under this act or agree to a provision that would apply the law of any state other than this state insofar as the same relates to rights under this act provided the first purchaser either:

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

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

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

A. An owner's lien shall expire one (1) year after the last day of the month following the date the sales price from the sale of livestock subject to such lien are required by law or contract to be paid to such livestock owner but only as to the particular livestock sold during such month, unless an action to enforce the owner's lien is commenced within such time in a court of competent jurisdiction.

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

C. In addition to any other court of competent jurisdiction, an action to enforce the owner's lien may be commenced in the district court of the county where the agreement to sell was entered, where the sales price was to be paid, where the unpaid for livestock are located, or wherever the proceeds may be found. Provided, however,

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the commencement of any proceeding by or against any person claiming an interest in any property subject to the owner's lien seeking to adjudicate such person as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such person or such person's debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for such person or for any substantial part of such person's property shall toll the foregoing one (1) year period in which to commence an action to enforce the owner's lien for an additional period of ninety (90) days from the earlier of:

1. The final conclusion or dismissal of such proceedings; or

2. The date final relief is obtained from the applicable tribunal authorizing the commencement of such action.

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04-04-2011 - DO PASS.

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