

1 **SENATE FLOOR VERSION**

2 February 28, 2011

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 530

By: Burrage and Shortey of the
Senate

6 and

7 Armes of the House

8
9
10 [agricultural liens - Livestock Owner's Lien Act of
11 2011 - lien procedures - codification - effective
12 date]

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

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

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

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

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

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

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

6 4. The time and place of sale; and

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

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

15 D. The notice shall be posted in three public places in the
16 county where the property is to be sold at least ten (10) days
17 before the time specified for such sale, and shall be mailed to the
18 owner and any other party who claims any interest in the domestic
19 animal, at the last-known post office address, by certified mail.
20 The mailing shall occur at least ten (10) days before the time
21 specified for the sale.

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

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

4 G. For purposes of this section:

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

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

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

15 a. all owners of the domestic animal,

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

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

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

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

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

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

10 K. Any person who is induced by means of a check or other form
11 of written order for immediate payment of money to deliver
12 possession of a domestic animal on which the person has a lien
13 created by subsection A of this section, which check or other
14 written order is dishonored or is not paid when presented, shall
15 have a lien for the amount thereof upon the personal property. The
16 person claiming such lien shall, within thirty (30) days from the
17 date of dishonor of the check or other written order for payment of
18 money, file an Effective Financing Statement pursuant to Sections 1-
19 9-320.1 through 1-9-320.7 of Title 12A of the Oklahoma Statutes or a
20 financing statement pursuant to Section 1-9-501 of Title 12A of the
21 Oklahoma Statutes, as applicable to the personal property, along
22 with a sworn statement that:

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

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

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

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

14 1. The person claiming such lien shall, within thirty (30) days
15 of such nonauthorized removal, file an Effective Financing Statement
16 pursuant to Sections 1-9-320.1 through 1-9-320.7 of Title 12A of the
17 Oklahoma Statutes or a financing statement pursuant to Section 1-9-
18 501 of Title 12A of the Oklahoma Statutes, as applicable to the
19 personal property, along with a sworn statement including:

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

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

- 1 c. an identifying description of the domestic animal on
2 or in relation to which the service was rendered, and
3 d. that the debt for the services rendered on or in
4 relation to the domestic animal was not paid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 a. a mortgage lien or security interest granted by a
8 first purchaser which secures payment under a written
9 instrument of indebtedness signed by the first
10 purchaser and accepted in writing by the payee thereof
11 prior to the effective date of this act with a
12 principal amount and a fixed maturity stated therein;
13 provided, however, a permitted lien does not include a
14 mortgage lien or security interest which:

- 15 (1) secures payment of any indebtedness incurred
16 after the effective date of this act,
- 17 (2) secures payment under a written instrument of
18 indebtedness not signed by a first purchaser and
19 accepted in writing by the payee thereof prior to
20 the effective date of this act,
- 21 (3) secures payment under a written instrument of
22 indebtedness modified, amended or restated from
23 or after the effective date of this act which
24 modification, amendment or restatement increases

1 the principal amount which was owing at the
2 effective date of this act,

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

9 (5) is not validly perfected with a first priority
10 against the claims of all persons under
11 applicable law other than persons holding a
12 statutory or regulatory lien as to which first
13 priority is granted by statute or regulation, or

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

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

1 11. "Proceeds" means:

- 2 a. any right or amount paid or to be paid in
3 consideration of, or as a consequence of, the sale of
4 livestock such as cash proceeds, accounts, chattel
5 paper, instruments, or payment intangibles, or
6 b. any by-products from the slaughter of livestock, or
7 any right or amount paid or to be paid in
8 consideration of, or as a consequence of, the sale of
9 such by-products;

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

13 13. "Sales agent" means any person who is authorized, including,
14 without limitation, a livestock auction, auctioneer, commission
15 company, or broker, to sell livestock on behalf of, or for the
16 benefit of, a livestock owner under an agreement to sell or to
17 receive on behalf of a livestock owner the consideration under an
18 agreement to sell; and

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

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 201.3 of Title 4, unless there
23 is created a duplication in numbering, reads as follows:
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1 A. To secure the obligations of a first purchaser to pay the
2 sales price, every livestock owner is granted a lien in all
3 livestock sold by such livestock owner, for any unpaid portion of
4 the sales price for such livestock. The lien granted by this act is
5 granted and shall exist as part of and incident to the ownership of
6 livestock.

7 B. An owner's lien:

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

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

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

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

23 D. The validity of an owner's lien shall not be dependent on
24 possession of the livestock by a livestock owner or sales agent. No

1 owner's lien shall become or be deemed to be void or expired by
2 reason of a change or transfer of the actual or constructive
3 possession of or title to the livestock from the livestock owner or
4 sales agent to a first purchaser or subsequent purchaser.

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

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

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

15 If livestock subject to an owner's lien are commingled with
16 other livestock in such a manner that the identity of the specific
17 livestock subject to the owner's lien cannot be determined by
18 reasonable means, then the owner's lien continues without
19 interruption into and attaches to such commingled livestock and is
20 perfected automatically as of the date of its original perfection
21 but only as to the percentage of the commingled livestock equal to
22 the number of livestock to which the owner's lien originally
23 attached. In such event, the owner's lien in the commingled
24 livestock has priority over any security interest or other lien that

1 is not an owner's lien or permitted lien, whether or not the
2 security interest or other lien has been properly perfected. If
3 more than one owner's lien attaches to the commingled livestock,
4 then the owner's liens rank equally in the proportion that the
5 respective sales prices secured by each owner's lien bears as a
6 percentage of the total of the sales prices secured by all owner's
7 liens applicable at the time the livestock were commingled.

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

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

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

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

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

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

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

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

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

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1 law of any state other than this state insofar as the same relates
2 to rights under this act provided the first purchaser either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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