

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 3359

By: Echols

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6 AS INTRODUCED

7 An Act relating to liens; creating the Oklahoma
8 Construction Registry Act; defining terms; directing
9 administrator employ personnel, procure supplies and
10 promulgate rules; providing for liens on property;
11 stating preference of liens; specifying lien attaches
12 to property; providing for constructive notice of
13 liens; describing perfection process for lien;
14 requiring posting to registry; directing
15 administrator send notice of lien to property owner;
16 limiting lien applicability; setting timing for
17 posting; requiring general contractor provide
18 property owner with certain notice; restricting
19 applicability; requiring property owner post notice
20 of commencement of work; setting time frame for
21 posting; describing contents of notice; prohibiting
22 applicability of act if owner fails to post notice;
23 specifying timing of posting notices; directing
24 administrator assign registry number and send notice;
providing for posting of preliminary notice by
subcontractor; describing contents of notice;
directing administrator send notice to owner;
describing enforceability of lien; providing burden
of proof process for certain notices; stating
presumption; specifying payment does not relieve
certain liability; permitting discharge of lien upon
submission of a bond; construing provision; stating
priority of liens; directing administrator to post
and index every lien claim; listing information to be
gathered; establishing jurisdiction to enforce or
dispute liens; limiting time for claims to be filed;
authorizing court to award reasonable attorney fees
and actual damages; providing penalty for bad faith
claims; prescribing fees; directing deposit of fees;
describing how funds should be expended; creating
revolving fund; specifying type of fund; directing

1 budgeting and spending of funds by administrator;
2 limiting fund; providing for codification; and
3 providing an effective date.
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5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 160.1 of Title 42, unless there
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as the "Oklahoma
10 Construction Registry Act".

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 160.2 of Title 42, unless there
13 is created a duplication in numbering, reads as follows:

14 As used in the Oklahoma Construction Registry Act:

- 15 1. "Administrator" means the Secretary of State or designee;
- 16 2. "Construction registry" means a centralized computer
17 database maintained on the Internet by the administrator that
18 provides a central repository for the submission and management of
19 preliminary lien notices, notices of commencement of work on a
20 construction project, and mechanic's liens on properties;
- 21 3. "Construction registry number" means the number assigned by
22 the administrator for all construction project properties and posted
23 on the construction registry;

1 4. "General contractor" means every person who does work or
2 furnishes materials for a construction project, express or implied;

3 5. "Material" includes but is not limited to machinery, tools,
4 fixtures, wiring, concrete, gravel, stone, rock, trees, evergreens,
5 vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil,
6 dirt, mulch, peat, fertilizer, fence wire, fence material, fence
7 posts, tile and the use of forms, accessories and equipment; and

8 6. "Subcontractor" means every person furnishing material or
9 performing labor upon any building, erection or other improvement,
10 except those having contracts directly with a property owner.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 160.3 of Title 42, unless there
13 is created a duplication in numbering, reads as follows:

14 The administrator of the Oklahoma construction registry shall:

15 1. Employ personnel and procure supplies and equipment as may
16 be necessary to carry out and implement the requirements of the
17 Oklahoma Construction Registry Act;

18 2. Promulgate rules and prescribe forms to implement the
19 provisions of the Oklahoma Construction Registry Act; and

20 3. Administer any provision of the Oklahoma Construction
21 Registry Act through the use of the Internet or other technology as
22 deemed necessary or appropriate.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 160.4 of Title 42, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any person who shall, under oral or written contract with a
5 property owner, perform labor, furnish material or lease or rent
6 equipment used on the land for the erection, alteration or repair of
7 any building, improvement or structure thereon or perform labor to
8 any building, structure or improvements; or who shall plant any
9 material in or upon the land; or who shall build, alter, repair or
10 furnish labor, material or lease or rent equipment used on the land
11 for building, altering or repairing any fence or footwalk in or upon
12 the land, or any sidewalk in any street abutting the land, shall
13 have a lien upon the whole of the tract or piece of land, the
14 buildings and appurtenances in an amount inclusive of all sums owed
15 to the person at the time of the lien filing, including, without
16 limitation, applicable profit and overhead costs.

17 B. These liens shall be preferred to all other liens or
18 encumbrances which may attach to or upon the land, buildings or
19 improvements or either of them subsequent to the commencement of the
20 building, the furnishing or putting up of fixtures or machinery, the
21 planting of materials, the building of fence, footwalk or sidewalks,
22 or the making of any repairs or improvements; and the lien shall
23 follow the property and each and every part thereof, and be
24 enforceable against the property wherever the same may be found, and

1 compliance with the provisions of the Oklahoma Construction Registry
2 Act shall constitute constructive notice of the lien to all
3 purchasers and encumbrancers of the property or any part thereof,
4 subsequent to the date of the furnishing of the first item of
5 material or the date of the performance of the first labor or the
6 first use of the rental equipment on the land.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 160.5 of Title 42, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A person shall perfect a lien described in Section 4 of this
11 act by posting to the construction registry website a verified
12 statement of account of the demand due to the person after allowing
13 all credits, setting forth:

14 1. The date when the material was first furnished or labor
15 first performed, and the date on which the last of the material was
16 furnished or the last of the labor was performed;

17 2. The legal description of the property to be charged with the
18 lien;

19 3. The name and last-known mailing address of the owner of the
20 property;

21 4. The address of the property or a description of the location
22 of the property if the property cannot be reasonably identified by
23 an address;

24 5. The parcel identification number; and

1 6. The construction registry number.

2 B. Upon posting of the lien, the administrator shall mail a
3 copy of the lien to the property owner. If the statement of the
4 lien consists of more than one page, the administrator may omit any
5 pages consisting solely of an accounting of the material furnished
6 or labor performed. In this case, the administrator shall attach a
7 notification that pages of accounting were omitted and may be
8 inspected on the construction registry.

9 C. A lien perfected under this section shall be limited to the
10 county in which the building, land or improvement to be charged with
11 the lien is situated. The county identified on the construction
12 registry at the time of posting the required notices pursuant to
13 Sections 7 and 8 of this act shall be the only county in which the
14 building, land or improvement may be charged with a mechanic's lien.

15 D. The statement of account described in subsection A of this
16 section shall be posted by a general contractor, subcontractor or
17 any other person who provides labor or furnishes materials no later
18 than fifteen (15) calendar days after providing the labor or
19 furnishing the materials.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 160.6 of Title 42, unless there
22 is created a duplication in numbering, reads as follows:

23 A. A general contractor who has contracted or will contract
24 with a subcontractor to provide labor or furnish material for the

1 property shall provide the property owner with the following notice
2 in writing in boldface type of a minimum size of ten points:

3 "Persons or companies furnishing labor or materials for the
4 improvement of real property may enforce a lien upon the improved
5 property if they are not paid for their contributions, even if the
6 parties have no direct contractual relationship with the owner. The
7 construction registry provides a listing of all persons or companies
8 furnishing labor or materials who have posted a lien or who may post
9 a lien upon the improved property."

10 B. The notice described in subsection A of this section shall
11 also contain the Internet website address and toll-free telephone
12 number of the construction registry.

13 C. A general contractor who fails to provide notice pursuant to
14 this section shall not be entitled to a lien and remedy provided by
15 the Oklahoma Construction Registry Act.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 160.7 of Title 42, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A property owner who has contracted or will contract with a
20 general contractor or subcontractor to provide labor or furnish
21 material for the property shall post a notice of commencement of
22 work to the construction registry not later than one (1) day prior
23 to commencement of work on the property. A notice of commencement
24 of work is effective only as to any labor, service, equipment or

1 material furnished to the property subsequent to the posting of the
2 notice of commencement of work. A notice of commencement of work
3 shall include all of the following information:

4 1. The name and address of the property owner;

5 2. The name, address and telephone number of the general
6 contractor or subcontractors;

7 3. The address of the property or a description of the location
8 of the property if the property cannot be reasonably identified by
9 an address;

10 4. The legal description of the property;

11 5. The date work commenced;

12 6. The parcel identification number; and

13 7. Any other information prescribed by the administrator
14 pursuant to rule.

15 B. If a property owner fails to post the required notice of
16 commencement of work to the construction registry pursuant to
17 subsection A of this section, the Oklahoma Construction Registry Act
18 shall not apply and the lien process set forth in Sections 141
19 through 143.1 of Title 42 of the Oklahoma Statutes shall apply. A
20 notice of commencement of work shall be posted to the construction
21 registry before preliminary notices pursuant to Section 8 of this
22 act may be posted.

23 C. 1. At the time a notice of commencement of work is posted
24 on the construction registry, the administrator shall assign a

1 construction registry number and send a copy of the notice of
2 commencement of work to the general contractor and any
3 subcontractor; and

4 2. The notice of commencement of work shall contain the
5 following language:

6 "You may be entitled to lien on the property if you are not paid
7 for your contributions, even if you have no direct contractual
8 relationship with the property owner. The construction registry
9 provides a listing of all persons or companies furnishing labor or
10 materials who have posted a lien or who may post a lien upon the
11 improved property. The information in the construction registry is
12 posted on the Internet website of the construction registry."

13 Other relevant information may be included with the notice of
14 commencement of work as prescribed by the administrator pursuant to
15 rule.

16 SECTION 8. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 160.8 of Title 42, unless there
18 is created a duplication in numbering, reads as follows:

19 A. A subcontractor shall post a preliminary notice to the
20 construction registry website. A preliminary notice posted before
21 the balance due is paid to the general contractor or the property
22 owner is effective as to all labor, service, equipment and materials
23 furnished to the property by the subcontractor. The preliminary
24 notice shall contain all of the following information:

- 1 1. The name of the property owner;
- 2 2. The construction registry number;
- 3 3. The name, address and telephone number of the subcontractor
- 4 furnishing the labor, service, equipment or material;
- 5 4. The name and address of the person who contracted with the
- 6 claimant for the furnishing of the labor, service, equipment or
- 7 material;
- 8 5. The name of the general contractor under which the claimant
- 9 is performing or will perform the work;
- 10 6. The address of the property or a description of the location
- 11 of the property if the property cannot be reasonably identified by
- 12 an address;
- 13 7. The legal description of the property;
- 14 8. The date the material or materials were first furnished or
- 15 the labor was first performed;
- 16 9. The parcel identification number; and
- 17 10. Any other information required by the administrator
- 18 pursuant to rule.

19 B. At the time a preliminary notice is posted to the
20 construction registry, the administrator shall send notification to
21 the property owner, including the property owner notice described in
22 subsection A of Section 6 of this act, and shall docket the mailing
23 of the notice on the construction registry as prescribed by the
24 administrator pursuant to rule. Upon request, the administrator

1 shall provide an affidavit of mailing at no cost for the notice
2 required under this section.

3 C. A lien perfected under the Oklahoma Construction Registry
4 Act is enforceable only to the extent of the balance due the general
5 contractor or the owner at the time of the posting of the
6 preliminary notice specified in subsection A of this section, and
7 also is enforceable only to the extent of the balance due the
8 general contractor at the time the owner actually receives the
9 notice provided pursuant to subsection B or subparagraph b of
10 paragraph 1 of subsection D of this section.

11 D. In any action to enforce a lien perfected under the Oklahoma
12 Construction Registry Act against the property owner, the
13 subcontractor bears the burden to prove by a preponderance of the
14 evidence that the property owner received notice pursuant to
15 subsection B of this section.

16 1. A subcontractor may satisfy the burden of proof by providing
17 separate notice to a property owner by including but not limited to
18 any of the following means:

- 19 a. by certified mail with return receipt,
- 20 b. by personal service in the manner original notices are
21 required to be served, or
- 22 c. by actual notice with a signed receipt from the
23 property owner acknowledging notice.

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1 2. If the subcontractor provides an affidavit of mailing, the
2 presumption is that the property owner received the notice on the
3 fourth day of business for the post office after the notice was sent
4 and the burden of proof shifts from the subcontractor to the
5 property owner to refute the presumption.

6 E. A subcontractor who fails to post a preliminary notice
7 pursuant to this section shall not be entitled to a lien and remedy
8 provided under the Oklahoma Construction Registry Act.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 160.9 of Title 42, unless there
11 is created a duplication in numbering, reads as follows:

12 Except as provided in Section 8 of this act, payment to the
13 general contractor or property owner of any part or all of the
14 contract price of the building or improvement within ninety (90)
15 days after the date on which the last of the materials was furnished
16 or the last of the labor was performed by a subcontractor does not
17 relieve the property owner from liability to the subcontractor for
18 the full value of any material furnished or labor performed upon the
19 building, land or improvement if the subcontractor posts a lien
20 within fifteen (15) days after the date on which the last of the
21 materials was furnished or the last of the labor was performed.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 160.10 of Title 42, unless there
24 is created a duplication in numbering, reads as follows:

1 A lien may be discharged at any time by submitting a bond to the
2 administrator in twice the amount of the sum for which the claim for
3 the lien is filed, with surety or sureties, to be approved by the
4 administrator, conditioned for the payment of any sum for which the
5 claimant may obtain judgment upon the claim.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 160.11 of Title 42, unless there
8 is created a duplication in numbering, reads as follows:

9 Nothing in the Oklahoma Construction Registry Act shall be
10 construed to require the property owner to pay a greater amount or
11 at an earlier date than is provided in the property owner's contract
12 with the general contractor, unless the property owner pays a part
13 or all of the contract price to the general contractor after the
14 property owner receives notice pursuant to subsection B or
15 subparagraph b of paragraph 1 of subsection D of Section 8 of this
16 act.

17 SECTION 12. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 160.12 of Title 42, unless there
19 is created a duplication in numbering, reads as follows:

20 Liens posted pursuant to the Oklahoma Construction Registry Act
21 shall have priority over each other in the order of the posting of
22 the statements of accounts as provided in Section 5 of this act.

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1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 160.13 of Title 42, unless there
3 is created a duplication in numbering, reads as follows:

4 The administrator shall endorse upon every claim for a lien
5 posted to the construction registry the date and hour of posting.
6 Each claim shall be properly indexed and shall contain the following
7 items:

- 8 1. The name of the person who posted the lien;
- 9 2. The date and hour of posting;
- 10 3. The amount of the lien;
- 11 4. The name of the person against whom the lien is posted;
- 12 5. The legal description of the property to be charged;
- 13 6. The parcel identification number of the property to be
14 charged; and
- 15 7. The address of the property or a description of the location
16 of the property if the property cannot be reasonably identified by
17 an address.

18 SECTION 14. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 160.14 of Title 42, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Any action to enforce a lien provided for in the Oklahoma
22 Construction Registry Act or resolve a lien dispute as a result of
23 the act shall be filed in the district court of the county where the
24 property that is subject to the lien is located.

1 B. Any action to enforce a lien subject to this act shall be
2 brought within two (2) years from the date on which the last of the
3 material was furnished or the last of the labor was performed.

4 C. In a court action to enforce or challenge a lien, if the
5 person challenging the lien prevails, the court may award reasonable
6 attorney fees and actual damages. If the court determines that the
7 lien was posted in bad faith or the supporting affidavit was
8 materially false, the court shall award the owner reasonable
9 attorney fees plus an amount not less than Five Hundred Dollars
10 (\$500.00) or the amount of the lien, whichever is less.

11 SECTION 15. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 160.15 of Title 42, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Any person who perfects a lien pursuant to Section 5 of the
15 Oklahoma Construction Registry Act shall pay to the administrator a
16 fee of Five Dollars (\$5.00) for each statement of account posted to
17 the construction registry.

18 B. A property owner who posts a notice of commencement of work
19 pursuant to Section 7 of the Oklahoma Construction Registry Act
20 shall pay to the administrator a fee of Five Dollars (\$5.00).

21 C. All monies collected by the administrator for posting liens,
22 notices and other administrative fees shall be deposited by the
23 administrator and credited to the Oklahoma Construction Registry
24 Revolving Fund and such funds shall be used by the administrator to

1 implement and administer the provisions of the Oklahoma
2 Construction Registry Act.

3 SECTION 16. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 160.16 of Title 42, unless there
5 is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the administrator to be designated the "Oklahoma Construction
8 Registry Revolving Fund". The fund shall be a continuing fund, not
9 subject to fiscal year limitations, and shall consist of fees for
10 posting liens and notices, administrative fees and any other monies
11 collected pursuant to the Oklahoma Construction Registry Act. All
12 monies accruing to the credit of the fund are hereby appropriated
13 and may be budgeted and expended by the administrator for
14 implementation and administration of the Oklahoma Construction
15 Registry Act. Expenditures from the fund shall be made upon
16 warrants issued by the State Treasurer against claims filed as
17 prescribed by law with the Director of the Office of Management and
18 Enterprise Services for approval and payment. This fund shall be
19 subject to and comply with the provisions of Section 211 of Title 62
20 of the Oklahoma Statutes.

21 SECTION 17. This act shall become effective November 1, 2014.

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