

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/2/23

A Bill

SENATE BILL 263

5 By: Senator Hester
6 By: Representative Underwood
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE PROCEDURE FOR
10 THE SALE OF PROPERTY POSSESSED BY CERTAIN
11 LIENHOLDERS; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE LAW CONCERNING THE PROCEDURE
16 FOR THE SALE OF PROPERTY POSSESSED BY
17 CERTAIN LIENHOLDERS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 18-45-101 is amended to read as follows:

23 18-45-101. Right of mechanics and artisans to sell personalty held for
24 debt.

25 (a) All mechanics and artisans who are in possession of articles of
26 personal property, and hold them by virtue of a lien thereon for labor and
27 material, shall have a right to sell them for the satisfaction of the debt
28 for which the personal property is held.

29 (b)(1) Lienholders shall:

30 (A) Determine the fair market value of the personal
31 property to be sold; and

32 (B) give File a bond with the circuit clerk in the sum
33 amount determined under subdivision (b)(1)(A) of this section to be fixed by
34 a circuit court with proper jurisdiction before they shall proceed to sell,
35 by proceeding in accordance with the requirements of this section.

36 (2) The bond shall be executed by one (1) or more sufficient



1 sureties of the lienholder so that if the circuit court finds that the
 2 lienholder wrongfully enforced the lien provided for by this subchapter, the
 3 surety shall pay to the debtor damages up to the amount of the bond.

4 (3) The lienholder shall be liable to the debtor for:

5 (A) Court costs; and

6 (B) Any sum of money adjudged as damages to the debtor
 7 which exceed the amount of the bond, not to exceed two (2) times the fair
 8 market value, as determined by a court of competent jurisdiction, of the
 9 personal property.

10 (4) The circuit court may in its discretion award the debtor
 11 attorneys fees.

12 (c)(1) The sale shall not take place until the expiration of thirty
 13 (30) days from the ~~time the work is completed~~ date the lienholder makes
 14 demand for the debt by certified letter addressed to the last known residence
 15 or post office address of the debtor as required by subsection (e) of this
 16 section.

17 (2)(A) If the debt is not paid at the end of that time, it shall
 18 be the duty of the lienholder, not less than ten (10) days before making the
 19 sale, to ~~post-up:~~

20 (i) Post a written notice of the proposed sale at or
 21 near the front door of his or her place of business, ~~or, in case he or she~~
 22 ~~has no place of business, at five (5) of the most public places in the~~
 23 ~~township; and~~

24 (ii) Notify the debtor of the proposed sale by
 25 certified letter addressed to the last known residence or post office address
 26 of the debtor.

27 (B) ~~This~~ The notice of the proposed sale under subdivision
 28 (c)(2)(A) of this section shall:

29 (i) specify Specify the personal property to be
 30 sold, the name of the owner or debtor, ~~and~~ the time and place of sale, the
 31 amount of the bond filed with the circuit clerk under § 18-45-205, and shall
 32 be signed by the lienholder; and

33 (ii) Be filed by the lienholder with the circuit
 34 clerk in the county in which the lienholder is situated.

35 ~~(C) The notice shall be signed by the lienholder.~~

36 (d) At the sale, which shall be at public auction for cash, the

1 lienholder shall have the right to bid not less than the amount of his or her
 2 debt. In case the personal property sells for more than the amount due, he or
 3 she shall pay over the surplus on demand to the person entitled thereto.

4 ~~(e) In case the place of residence or post office address of the~~
 5 ~~debtor is known to the lienholder, it~~ It shall be ~~his or her~~ the duty of the
 6 lienholder, besides giving the notice as required in ~~subsection~~ subdivision
 7 (c)(2) of this section, to make demand for the debt before making the sale,
 8 ~~either in person or by letter~~ by certified letter addressed to the last known
 9 residence or post office address of the debtor.

10 (f) In all the lienholder's dealings with the personal property held
 11 by him or her, the lienholder shall act in good faith with the debtor and
 12 shall be responsible for any abuse of the powers and authority vested in him
 13 or her by the provisions of this section.

14
 15 SECTION 2. Arkansas Code § 18-45-204 is amended to read as follows:

16 18-45-204. Procedure for sale of property possessed by lienholder.

17 (a)(1) The sale shall not take place until the expiration of thirty
 18 (30) days from the date the lienholder makes demand for the debt by certified
 19 letter addressed to the last known residence or post office address of the
 20 debtor as required by subsection (c) of this section ~~time the work is~~
 21 ~~completed.~~

22 (2)(A) If the debt is not paid at the end of that time, it shall
 23 be the duty of the lienholder, not less than ten (10) days before making the
 24 sale, to ~~post:~~

25 (i) Post up written notice of the proposed sale
 26 under subdivision (a)(2)(A) of this section at or near the front door of his
 27 or her place of business ~~and at least five (5) other of the most public~~
 28 ~~places in the township; and~~

29 (ii) Notify the debtor of the proposed sale by
 30 certified letter addressed to the last known residence or post office address
 31 of the debtor.

32 (B) ~~This~~ The written notice of the proposed sale under
 33 subdivision (a)(2)(A) of this section shall:

34 (i) specify Specify the property to be sold, the
 35 name of the owner or debtor, the time and place of sale, the amount of the
 36 bond filed with the circuit clerk under § 18-45-205, and shall be signed by

1 the lienholder; and

2 (ii) Be filed by the lienholder with the circuit
3 clerk in the county in which the lienholder is situated.

4 (b)(1) At the sale, which shall be at public auction for cash to the
5 highest and best bidder, the lienholder shall have the right to bid not less
6 than the amount of his or her debt.

7 (2) In case the property sells for more than the amount of the
8 debt, the lienholder shall pay over the surplus on demand to the person
9 entitled thereto after deducting the amount of his or her debt and the actual
10 cost of the sale.

11 (c) It shall be the duty of the lienholder, besides giving notice as
12 required in subsection (a) of this section, to make demand for the debt
13 before making the sale by ~~registered~~ certified letter addressed to the last
14 known residence or post office address of the debtor.

15 (d) In the lienholder's dealings with the property held by him or her,
16 the lienholder shall act in good faith with the debtor and shall be
17 responsible for any abuse of the power and authority vested in him or her by
18 the provisions of this subchapter.

19 (e) The provisions of § 27-50-1101 shall govern sales of vehicles
20 subject to the registration laws of this state.

21
22 SECTION 3. Arkansas Code § 18-45-205 is amended to read as follows:

23 18-45-205. Filing of notice and bond required.

24 (a)~~(1)~~ The lienholder shall file with a the circuit court having
25 jurisdiction clerk in the county in which the lienholder is situated a notice
26 under § 18-45-204 to be posted.

27 ~~(2) The circuit court shall note in the notice the amount of a~~
28 ~~bond, for the protection of the debtor or property owner, if the lienholder~~
29 ~~is not entitled to the lien and for the payment of damages if the sale is~~
30 ~~wrongfully made.~~

31 (b)(1) The lienholder shall:

32 (A) Determine the fair market value of the property to be
33 sold; and

34 (B) file File a bond with the circuit clerk so conditioned
35 and in such sum in the amount determined under subdivision (b)(1)(A) of this
36 section with the circuit court, and the surety thereon shall be approved by

1 ~~the circuit court before making the sale under this subchapter.~~

2 (2) The bond shall be executed by one (1) or more sufficient
3 sureties of the lienholder so that if the circuit court finds that the
4 lienholder wrongfully enforced the lien provided by this subchapter, the
5 surety shall pay to the debtor:

6 (A) Damages of up to the amount of the bond;

7 (B) Court costs; and

8 (C) Any sums of money adjudged against the lienholder in
9 an amount that does not exceed two (2) times the value of the property.

10
11 */s/Hester*

12
13
14 **APPROVED: 3/30/23**