

SHORT TITLE: Motor vehicles; providing procedure for release of liens and encumbrances not associated with vehicle financing upon certain sales; retention and return to Tax Commission of certain license plates. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1269

By: Herbert

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S.

1991, Sections 1110, as last amended by Section 1, Chapter 38, O.S.L. 1996 and 1113A (47 O.S. Supp. 1997, Section 1110), which relate to titles and registration of motor vehicles; providing procedure for release of certain liens and encumbrances; providing that certain amounts remain obligation of seller or transferor of motor vehicle; requiring Oklahoma Tax Commission to promulgate certain rules; requiring retention of certain license plates; requiring certain license plates to be returned to Tax Commission or motor license agent; providing procedures upon sale, transfer of ownership or repossession of vehicle; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 1110, as last amended by Section 1, Chapter 38, O.S.L. 1996 (47 O.S. Supp. 1997, Section 1110), is amended to read as follows:

Section 1110. A. 1. Except for a security interest in vehicles held by a dealer for sale or lease, as defined in Section 1-112 of this title and a vehicle being registered in this state which was previously registered in another state and which title

contains the name of a secured party on the face of the other state certificate or title, a security interest, as defined in Section 1-201 of Title 12A of the Oklahoma Statutes, in a vehicle as to which a certificate of title may be properly issued by the Oklahoma Tax Commission shall be perfected only when a lien entry form, and the existing certificate of title, if any, or application for a certificate of title and manufacturer's certificate of origin containing the name and address of the secured party and the date of the security agreement and the required fee are delivered to the Tax Commission or to a motor license agent. When a vehicle title is presented to a motor license agent for transferring or registering and the documents reflect a lien holder, the motor license agent shall perfect the lien pursuant to subsection G of Section 1105 of ~~Title 47 of the Oklahoma Statutes~~ this title. For the purposes of this section, the term "vehicle" shall not include special mobilized machinery, machinery used in highway construction or road material construction and rubber-tired road construction vehicles including rubber-tired cranes. The filing and duration of perfection of a security interest, pursuant to the provisions of Title 12A of the Oklahoma Statutes, including, but not limited to, Section 9-302 of Title 12A of the Oklahoma Statutes, shall not be applicable to perfection of security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission, except as to vehicles held by a dealer for sale or lease and except as provided in subsection D of this section. In all other respects Title 12A of the Oklahoma Statutes shall be applicable to such security interests in vehicles as to which a certificate of title may be properly issued by the Tax Commission.

2. Whenever a person creates a security interest in a vehicle, the person shall surrender to the secured party the certificate of title or the signed application for a new certificate of title, on the form prescribed by the Tax Commission, and the manufacturer's

certificate of origin. The secured party shall deliver the lien entry form and the required lien filing fee within twenty (20) days as provided hereafter with certificate of title or the application for certificate of title and the manufacturer's certificate of origin to the Tax Commission or to a motor license agent. If the lien entry form, the lien filing fee and the certificate of title or application for certificate of title and the manufacturer's certificate of origin are delivered to the Tax Commission or to a motor license agent within twenty (20) days after the date of the lien entry form, perfection of the security interest shall begin from the date of the execution of the lien entry form, but, otherwise, perfection of the security interest shall begin from the date of the delivery to the Tax Commission or to a motor license agent.

3. a. For each security interest recorded on a certificate of title, or manufacturer's certificate of origin, such person shall pay a fee of Ten Dollars (\$10.00), which shall be in addition to other fees provided for in the Oklahoma Vehicle License and Registration Act. Upon the receipt of the lien entry form and the required fees with either the certificate of title or an application for certificate of title and manufacturer's certificate of origin, a motor license agent shall, by placement of a clearly distinguishing mark, record the date and number shown in a conspicuous place, on each of these instruments. Of the ten-dollar fee, the motor license agent shall retain Two Dollars (\$2.00) for recording the security interest lien.

b. It shall be unlawful for any person to solicit, accept or receive any gratuity or compensation for acting as a messenger and for acting as the agent or

representative of another person in applying for the recording of a security interest or for the registration of a motor vehicle and obtaining the license plates or for the issuance of a certificate of title therefor unless the Tax Commission has appointed and approved the person to perform such acts; and before acting as a messenger, any such person shall furnish to the Tax Commission a surety bond in such amount as the Tax Commission shall determine appropriate.

4. The certificate of title or the application for certificate of title and manufacturer's certificate of origin with the record of the date of receipt clearly marked thereon shall be returned to the debtor together with a notice that the debtor is required to register and pay all additional fees and taxes due within thirty (30) days from the date of purchase of the vehicle.

5. Any person creating a security interest in a vehicle that has been previously registered in the debtor's name and on which all taxes due the state have been paid shall surrender the certificate of ownership to the secured party. The secured party shall have the duty to record the security interest as provided in this section and shall, at the same time, obtain a new certificate of title which shall show the secured interest on the face of the certificate of title.

6. The lien entry form with the date and assigned number thereof clearly marked thereon shall be returned to the secured party. If the lien entry form is received and authenticated, as herein provided, by a motor license agent, the agent shall make a report thereof to the Tax Commission upon the forms and in the manner as may be prescribed by the Tax Commission.

7. The Tax Commission shall have the duty to record the lien upon the face of the certificate of title issued at the time of registering and paying all fees and taxes due on the vehicle.

B. 1. A secured party shall, within seven (7) business days after the satisfaction of the security interest, furnish directly or by mail a release of a security interest to the Tax Commission and mail a copy thereof to the last-known address of the debtor. If the security interest has been satisfied by payment from a licensed used motor vehicle dealer to whom the motor vehicle has been transferred, the secured party shall also, within seven (7) business days after such satisfaction, mail an additional copy of the release to the dealer. If the secured party fails to furnish the release as required, the secured party shall be liable to the debtor for a penalty of One Hundred Dollars (\$100.00) and, in addition, any loss caused to the debtor by such failure.

2. Upon release of a security interest the owner may obtain a new certificate of title omitting reference to the security interest, by submitting to the Tax Commission or to a motor license agent:

- a. a release signed by the secured party, an application for new certificate of title and the proper fees, or
- b. by submitting to the Tax Commission or the motor license agent an affidavit, supported by such documentation as the Tax Commission may require, by the owner on a form prescribed by the Tax Commission stating that the security interest has been satisfied and stating the reasons why a release cannot be obtained, an application for a new certificate of title and the proper fees.

Upon receiving such affidavit that the security interest has been satisfied, the Tax Commission shall issue a new certificate of title

eliminating the satisfied security interest and the name and address of the secured parties who have been paid and satisfied.

The words "security interest" when used in ~~this act~~ the Oklahoma Vehicle License and Registration Act do not include liens dependent upon possession.

3. In the event of the sale or transfer of the ownership of a vehicle at a salvage pool, salvage disposal sale, or at an auction, or sale or transfer of ownership to a dealer or a licensed automotive dismantler and parts recycler, the purchaser may make application to the Tax Commission or a motor license agent for the release of any security interest resulting from liens or encumbrances for fees or taxes or for any reason other than in connection with purchase or financing of the vehicle by the seller or transferor thereof. If such application is approved, the Tax Commission shall issue a new certificate of title eliminating such security interest. Any amounts still owed by the seller or transferor shall remain the obligation of the seller or transferor and the Tax Commission is hereby authorized to take such actions as authorized by law for the collection of such amounts. The Tax Commission shall promulgate rules to implement the provisions of this paragraph.

C. The Tax Commission shall file and index certificates of title so that at all times it will be possible to trace a certificate of title to the vehicle designated therein, identify the lien entry form, and the names and addresses of secured parties, or their assignees, so that all or any part of such information may be made readily available to those who make legitimate inquiry of the Tax Commission as to the existence or nonexistence of security interest in the vehicle.

D. Any security interest in a vehicle properly perfected prior to July 1, 1979, may be continued as to its effectiveness or duration as provided by subsection (3) of Section 9-401 and

subsection (3) of Section 9-403 of Title 12A of the Oklahoma Statutes, or may be terminated, assigned or released as provided by Sections 9-404, 9-405 and 9-406 of Title 12A of the Oklahoma Statutes, as fully as if this section had not been enacted, or, at the option of the secured party, may also be perfected under this section, and, if so perfected, the time of perfection under this section shall be the date the security interest was originally perfected under the prior law. Upon request of the secured party, the debtor or any other holder of the certificate of title shall surrender the certificate of title to the secured party and shall do such other acts as may be required to perfect the security interest under this section.

E. The priority of a valid security interest in a manufactured home, including without limitation a mobile home or sectional home, perfected pursuant to this section, shall not be affected by reason of the manufactured home becoming a fixture or otherwise being permanently attached to real property after the date of perfection of the security interest. A security interest in a manufactured home perfected pursuant to this section shall have priority over a conflicting interest of a mortgagee or other lien encumbrancer, or the owner of the real property upon which the manufactured home became affixed or otherwise permanently attached. The holder of the security interest in the manufactured home, upon default, may remove the manufactured home from such real property. The holder of the security interest in the manufactured home shall reimburse the owner of the real property who is not the debtor and who has not otherwise agreed to access the real property for the cost of repair of any physical injury to the real property, but shall not be liable for any diminution in value to the real property caused by the removal of the manufactured home, trespass, or any other damages caused by the removal. The debtor shall notify the holder of the security interest in the manufactured home of the street address, if any, and

the legal description of the real property upon which the manufactured home is affixed or otherwise permanently attached and shall sign such other documents, including any appropriate mortgage, as may reasonably be requested by the holder of such security interest.

F. In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 1113A, is amended to read as follows:

Section 1113A. A. As used in this section:

1. "First vehicle" means the vehicle from which a license plate is removed and transferred to a second vehicle;
2. "Second vehicle" means the vehicle to which a license plate is transferred after removal from a first vehicle; and
3. "Vehicle" means a passenger vehicle and does not include farm or commercial vehicles.

B. A person may retain the license plate of any vehicle registered to such person for purposes of transferring such license plate to a second vehicle registered to such person. The license plate removed from the first vehicle may be transferred to a new or used second vehicle. Upon any sale or transfer of the ownership of a vehicle, the seller or transferor shall retain the license plate, which may be transferred to a second vehicle registered to such person. Upon any repossession of a vehicle, the reposessor thereof shall return the license plate to the Tax Commission or a motor license agent pursuant to the provisions of paragraph 3 of this subsection. The procedure for transfer shall be as follows:

1. If the license plate removed from the first vehicle is transferred to a new motor vehicle registered to the seller or transferor thereof, the owner shall obtain a replacement license plate for the first vehicle from the Oklahoma Tax Commission or one of its motor license agents upon payment of the fee required for a replacement plate and an additional Ten Dollars (\$10.00). The replacement plate shall bear an expiration date that corresponds to the expiration date on the license plate removed from the first vehicle. The replacement plate shall be affixed to the first vehicle immediately upon removal of the existing license plate. The license plate removed from the first vehicle shall be affixed to the second vehicle upon payment by the owner of all applicable registration and license fees. Transfer of a license plate to a new motor vehicle as authorized by this paragraph shall not relieve the owner of payment for registration or license fees applicable to such new motor vehicle as required by this title.

2. If the license plate removed from the first vehicle is transferred to a second vehicle already displaying a license plate, the owner shall obtain the replacement license plate required by paragraph 1 of this subsection. The replacement plate shall be affixed to the first vehicle and shall bear the expiration date of the license plate removed from the first vehicle. The license plate from the second vehicle shall be removed and returned to the Tax Commission or one of its motor license agents. The license plate removed from the first vehicle shall then be affixed to the second vehicle. The removed plate from the first vehicle shall bear an expiration date identical to the plate removed from the second vehicle.

3. If the license plate removed from a vehicle sold, the ownership of which is transferred or repossessed is not transferred to a second vehicle registered to the seller or transferor thereof, the seller or transferor or reposessor shall return the license

plate to the Tax Commission or one of its motor license agents and shall be required to pay a transfer fee of One Dollar (\$1.00).

C. 1. Upon any sale or transfer of ownership of a vehicle to a dealer, no license plate shall be required except as provided in Section 1128 of this title.

2. Upon any repossession of a vehicle, a license plate shall not be required until such time as title to the vehicle is transferred to a person, other than a dealer or a licensed automotive dismantler and parts recycler, who purchases the vehicle from the person who repossessed the vehicle.

3. Upon any sale or transfer of ownership to a person other than a dealer of a vehicle for which a replacement license plate is not obtained pursuant to the provisions of paragraph 1 or 2 of subsection B of this section, the purchaser shall register the vehicle with the Tax Commission or a motor license agent prior to operation of the vehicle on the roads and highways of this state.
The ~~Oklahoma~~ Tax Commission shall be authorized to promulgate ~~such rules or regulations~~ as may be required to implement the license plate transfers authorized by this section.

D. In the event a person fails to obtain a replacement license plate as provided for in this section within the time prescribed for the registration of the new or used second vehicle, a penalty of twenty-five cents (\$0.25) per day shall be assessed from the day following the period prescribed for registration to the date of acquisition of the replacement license plate, such penalty to accrue for no more than thirty (30) days, at the end of which time the penalty shall be twice the registration cost of such vehicle.

SECTION 3. This act shall become effective November 1, 1998.