

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 9

By: Burrage

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5  
6 AS INTRODUCED

7 An Act relating to possessory liens; amending 42  
8 O.S. 2001, Sections 91, as last amended by Section 1,  
Chapter 98, O.S.L. 2008 and 91A, as last amended by  
9 Section 2, Chapter 98, O.S.L. 2008 (42 O.S. Supp.  
2010, Sections 91 and 91A), which relate to  
10 possessory lien procedures; requiring notice of sale  
to be published in specified manner; modifying time  
11 period during which certain foreclosure proceedings  
may occur; and providing an effective date.

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13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 42 O.S. 2001, Section 91, as last  
16 amended by Section 1, Chapter 98, O.S.L. 2008 (42 O.S. Supp. 2010,  
17 Section 91), is amended to read as follows:

18 Section 91. A. 1. This section applies to every vehicle, all-  
19 terrain vehicle, utility vehicle, manufactured home, motorcycle,  
20 boat, outboard motor, or trailer that has a certificate of title  
21 issued by the Oklahoma Tax Commission or by a federally recognized  
22 Indian tribe in the State of Oklahoma, except as otherwise provided  
23 in subsection D of this section. This section does not apply to  
24 farm equipment as defined in Section 91.2 of this title. The items

1 of personal property to which this section applies are collectively  
2 referred to as "Section 91 Personal Property". If personal property  
3 is apparently covered both by this section and by Sections 191  
4 through 200 of this title, the procedures set out in this section  
5 shall apply instead of Sections 191 through 200.

6 2. Any person who, while lawfully in possession of an article  
7 of Section 91 Personal Property, renders any service to the owner  
8 thereof by furnishing storage, rental space, material, labor or  
9 skill for the protection, improvement, safekeeping, towing, right to  
10 occupy space, storage or carriage thereof, has a special lien  
11 thereon, dependent on possession, for the compensation, if any,  
12 which is due to such person from the owner for such service.

13 3. This special lien shall be subordinate to any perfected  
14 security interest unless the claimant complies with the requirements  
15 of this section.

16 4. Any person claiming the special lien provided in paragraph 2  
17 of this subsection shall mail a notice of such lien, no later than  
18 sixty (60) days after the first services are rendered, by regular,  
19 first class United States mail, and by certified mail, to all  
20 interested parties who reside at separate locations. (If services  
21 provided are pursuant to a contract primarily for the purpose of  
22 storage or rental of space, the beginning date of the sixty-day  
23 period provided in the previous sentence shall be the first day of  
24 the first period or partial period for which rental or storage

1 charges remain unpaid.) The notice shall be in writing and shall  
2 contain, but not be limited to, the following:

- 3 a. a statement that the notice is a notice of a  
4 possessory lien,
- 5 b. the complete legal name, physical and mailing address,  
6 and telephone number of the claimant,
- 7 c. the complete legal name, physical and mailing address  
8 of the person who requested that the claimant render  
9 service to the owner by furnishing material, labor or  
10 skill, storage, or rental space, or the date the  
11 property was abandoned if the claimant did not render  
12 any other service,
- 13 d. a description of the article of personal property and  
14 the complete physical and mailing address of the  
15 location of the article of personal property,
- 16 e. an itemized statement describing the date or dates the  
17 labor or services were performed and material  
18 furnished, and the amount of the compensation claimed,
- 19 f. a statement by the claimant that the materials, labor  
20 or skill furnished, or arrangement for storage or  
21 rental of space, was authorized by the owner of the  
22 personal property and was in fact provided or  
23 performed, or that the property was abandoned by the  
24 owner if the claimant did not render any other

1 service, and that storage or rental fees will accrue  
2 as allowed by law, and

3 g. the signature of the claimant which shall be notarized  
4 and, if applicable, the signature of the claimant's  
5 attorney. If the claimant is a business, then the  
6 name of the contact person must be shown. In place of  
7 an original signature and notary seal, a digital or  
8 electronic signature or seal shall be accepted.

9 5. For services rendered or vehicles abandoned on or after  
10 November 1, 2005, storage charges or charges for rental of space  
11 (unless agreed to by contract as part of an overall transaction or  
12 arrangement that was primarily for the purpose of storage of the  
13 Section 91 Personal Property or rental of space) may only be  
14 assessed beginning with the day that the Notice of Possessory Lien  
15 is mailed as evidenced by certified mail. Provided, however, in the  
16 case of contractual charges incurred for storage or rental of space  
17 in an overall transaction primarily for the purpose of storage or  
18 rental, charges subject to the special lien may only be assessed  
19 beginning with a date not more than sixty (60) days prior to the day  
20 that the Notice of Possessory Lien is mailed, and shall accrue only  
21 at the regular periodic rate for storage or rental as provided in  
22 the contract, adjusted for partial periods of storage or rental.  
23 The maximum allowable compensation for storage shall not exceed the  
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1 fees specified pursuant to Section 953.2 of Title 47 of the Oklahoma  
2 Statutes.

3 6. The lien may be foreclosed by a sale of such personal  
4 property upon the notice and in the manner following: The notice of  
5 sale shall contain:

- 6 a. a statement that the notice is a Notice of Sale,
- 7 b. the names of all interested parties known to the  
8 claimant,
- 9 c. a description of the property to be sold,
- 10 d. a notarized statement of the nature of the work, labor  
11 or service performed, material furnished, or storage  
12 or rental of space, and the date thereof, and the name  
13 of the person who authorized the work, labor or  
14 service performed, or the storage or rental  
15 arrangement, or that the property was abandoned if the  
16 claimant did not render any other service,
- 17 e. the date, time and exact physical location of sale,  
18 and
- 19 f. the name, complete physical address and telephone  
20 number of the party foreclosing such lien. If the  
21 claimant is a business, then the name of the contact  
22 person must be shown. In place of an original  
23 signature and notary seal, a digital or electronic  
24 signature or seal shall be accepted.

1           7. Such notice of sale shall be posted in three public places  
2 in the county where the property is to be sold and published once in  
3 a newspaper of general circulation within such county at least ten  
4 (10) days before the time therein specified for such sale, and a  
5 copy of the notice shall be mailed to all interested parties at  
6 their last-known post office address, by regular, first class United  
7 States mail and by certified mail on the day of posting. If the  
8 item of personal property is a manufactured home, notice shall also  
9 be sent by certified mail to the county treasurer and to the county  
10 assessor of the county where the manufactured home is located.

11           8. Interested parties shall include all owners of the article  
12 of personal property as indicated by the certificate of title issued  
13 by the ~~Oklahoma~~ Tax Commission or by a federally recognized Indian  
14 tribe in the State of Oklahoma; lien debtors, if any, other than the  
15 owners; any lienholder whose lien is noted on the face of the  
16 certificate of title; and any other person having any interest in  
17 the article of personal property, of whom the claimant has actual  
18 notice.

19           9. Any interested party shall be permitted to inspect and  
20 verify the services rendered by the claimant prior to the sale of  
21 the article of personal property during normal business hours,  
22 unless the property was abandoned and the claimant did not render  
23 any other service.

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1 10. The claimant or any other person may in good faith become a  
2 purchaser of the property sold.

3 11. Proceedings for foreclosure under this act shall be  
4 commenced within thirty (30) days after the Notice of Possessory  
5 Lien has been mailed as evidenced by certified mail. The date  
6 actually sold shall be within sixty (60) days from the date of the  
7 Notice of Sale as evidenced by certified mail. In no event shall  
8 the Notice of Sale be mailed less than ten (10) days after the date  
9 of mailing the Notice of Possessory Lien.

10 B. 1. a. Any person who is induced by means of a check or other  
11 form of written order for immediate payment of money  
12 to deliver up possession of an article of personal  
13 property on which the person has a special lien  
14 created by subsection A of this section, which check  
15 or other written order is dishonored, or is not paid  
16 when presented, shall have a lien for the amount  
17 thereof upon the personal property.

18 b. The person claiming such lien shall, within thirty  
19 (30) days from the date of dishonor of the check or  
20 other written order for payment of money, file in the  
21 office of the county clerk of the county in which the  
22 property is situated a sworn statement that:

23 (1) the check or other written order for immediate  
24 payment of money, copy thereof being attached,

1 was received for labor, material or supplies for  
2 producing or repairing an article of personal  
3 property, or for other specific property-related  
4 services covered by this section,

5 (2) the check or other written order was not paid,  
6 and

7 (3) the uttering of the check or other written order  
8 constituted the means for inducing the person,  
9 one possessed of a special lien created by  
10 subsection A of this section upon the described  
11 article of personal property, to deliver up the  
12 ~~said~~ article of personal property.

13 2. a. Any person who renders service to the owner of an  
14 article of personal property by furnishing storage,  
15 rental space, material, labor, or skill for the  
16 protection, improvement, safekeeping, towing, right to  
17 occupy space, storage, or carriage thereof shall have  
18 a special lien on such property pursuant to this  
19 section if such property is removed from the person's  
20 possession, without such person's written consent or  
21 without payment for such service.

22 b. The person claiming such lien shall, within five (5)  
23 days of such nonauthorized removal, file in the office  
24

1 of the county clerk of the county in which the  
2 property is located, a sworn statement including:

3 (1) that services were rendered on or in relation to  
4 the article of personal property by the person  
5 claiming such lien,

6 (2) that the property was in the possession of the  
7 person claiming the lien but such property was  
8 removed without his or her written consent,

9 (3) an identifying description of the article of  
10 personal property on which the service was  
11 rendered, and

12 (4) that the debt for the services rendered on or in  
13 relation to the article of personal property was  
14 not paid. Provided, if the unpaid total amount  
15 of the debt for services rendered on or in  
16 relation to the article of personal property is  
17 unknown, an approximated amount of the debt due  
18 and owing shall be included in the sworn  
19 statement but such approximated debt may be  
20 amended within thirty (30) days of such filing to  
21 reflect the actual amount of the debt due and  
22 owing.

23 3. The enforcement of the lien shall be within sixty (60) days  
24 after filing the lien in the manner provided by law for enforcing

1 the lien of a security agreement and provided that the lien shall  
2 not affect the rights of innocent, intervening purchasers without  
3 notice.

4 4. If a person claiming a special lien pursuant to this section  
5 fails to substantially comply with any of the requirements of this  
6 section, any interested party may proceed against the person  
7 claiming such lien for all damages arising therefrom, including  
8 conversion, if the article of personal property has been sold. If  
9 the notice or notices required by this section shall be shown to be  
10 knowingly false or fraudulent, the interested party shall be  
11 entitled to treble damages. The prevailing party shall be entitled  
12 to all costs, including a reasonable attorney fee.

13 C. If the person who renders service to the owner of an article  
14 of personal property to which this section applies relinquishes or  
15 loses possession of the article due to circumstances described in  
16 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of  
17 subsection B of this section, the person claiming the lien shall be  
18 entitled to possession of the article until the amount due is paid,  
19 unless the article is possessed by a person who became a bona fide  
20 purchaser. Entitlement to possession shall be in accordance with  
21 the following:

22 1. The claimant may take possession of an article pursuant to  
23 this subsection only if the person obligated under the contract for  
24 services has signed an acknowledgement of receipt of a notice that

1 the article may be subject to repossession. The notice and  
2 acknowledgement pursuant to this subsection shall be:

- 3 a. in writing and separate from the written contract for  
4 services, or
- 5 b. printed on the written contract for services, credit  
6 agreement or other document which displays the notice  
7 in bold-faced, capitalized and underlined type, or is  
8 separated from surrounding written material so as to  
9 be conspicuous with a separate signature line;

10 2. The claimant may require the person obligated under the  
11 contract for services to pay the costs of repossession as a  
12 condition for reclaiming the article only to the extent of the  
13 reasonable fair market value of the services required to take  
14 possession of the article;

15 3. The claimant shall not transfer to a third party or to a  
16 person who performs repossession services, a check, money order, or  
17 credit card transaction that is received as payment for services  
18 with respect to an article and that is returned to the claimant  
19 because of insufficient funds or no funds, because the person  
20 writing the check, issuing the money order, or credit cardholder has  
21 no account or because the check, money order, or credit card account  
22 has been closed. A person violating this paragraph shall be guilty  
23 of a misdemeanor; and

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1       4. An article that is repossessed pursuant to this subsection  
2 shall be promptly delivered to the location where the services were  
3 performed. The article shall remain at the services location at all  
4 times until the article is lawfully returned to the record owner or  
5 a lienholder or is disposed of pursuant to this section.

6       D. 1. If a vehicle, all-terrain vehicle, utility vehicle,  
7 manufactured home, motorcycle, boat, outboard motor, or trailer has  
8 a certificate of title issued by the ~~Oklahoma~~ Tax Commission or by a  
9 federally recognized Indian tribe in the State of Oklahoma, but  
10 there is no active lien recorded on the certificate of title,  
11 Section 91A of this title will apply instead of this section.  
12 Likewise, if there is an active lien recorded on the certificate of  
13 title but the lien is over fifteen (15) years old and the property  
14 is not a manufactured home, Section 91A will apply instead of this  
15 section.

16       2. If personal property that otherwise would be covered by this  
17 section has been registered by the ~~Oklahoma~~ Tax Commission or by a  
18 federally recognized Indian tribe in the State of Oklahoma, and  
19 there is a lien of record but no certificate of title has been  
20 issued, Section 91A of this title will apply instead of this  
21 section.

22       3. If personal property otherwise would be covered by this  
23 section, but the services were rendered or the property was  
24

1 abandoned prior to November 1, 2005, Section 91A of this title will  
2 apply instead of this section.

3 4. Salvage pools as defined in Section 591.2 of Title 47 of the  
4 Oklahoma Statutes and class AA licensed wrecker operators in their  
5 capacity as wrecker operators shall not be subject to the provisions  
6 of this section. Salvage pools as defined in Section 591.2 of Title  
7 47 of the Oklahoma Statutes and class AA licensed wrecker operators  
8 shall be subject to Section 91A of this title.

9 E. For purposes of this section:

10 1. "Possession" includes actual possession and constructive  
11 possession; and

12 2. "Constructive possession" means possession by a person who,  
13 although not in actual possession, does not have an intention to  
14 abandon property, knowingly has both power and the intention at a  
15 given time to exercise dominion or control over the property, and  
16 who holds claim to such thing by virtue of some legal right.

17 SECTION 2. AMENDATORY 42 O.S. 2001, Section 91A, as last  
18 amended by Section 2, Chapter 98, O.S.L. 2008 (42 O.S. Supp. 2010,  
19 Section 91A), is amended to read as follows:

20 Section 91A. A. 1. a. This section applies to all types of  
21 personal property other than:

22 (1) farm equipment as defined in Section 91.2 of this  
23 title, and  
24

1 (2) "Section 91 Personal Property" as defined in  
2 Section 91 of this title.

3 b. This section applies to any vehicle, all-terrain  
4 vehicle, utility vehicle, manufactured home,  
5 motorcycle, boat, outboard motor, or trailer that is  
6 excluded from coverage under subsection A of Section  
7 91 of this title because the personal property:

8 (1) does not have a certificate of title, or

9 (2) has a certificate of title but does not have an  
10 active lien recorded on the certificate of title,  
11 or

12 (3) has a certificate of title that is not issued by  
13 the Oklahoma Tax Commission or by a federally  
14 recognized Indian tribe in the State of Oklahoma,  
15 or

16 (4) is otherwise excluded by subsection D of Section  
17 91 of this title.

18 c. If personal property has a certificate of title, or  
19 would be required to have a certificate of title under  
20 Oklahoma law, and is apparently covered both by this  
21 section and by Sections 191 through 200 of this title,  
22 the procedures set out in this section shall apply  
23 instead of Sections 191 through 200 of this title. If  
24 personal property without a certificate of title and

1 not required to be titled under Oklahoma law is  
2 covered both by this section and Sections 191 through  
3 200 of this title, the procedures set out in Sections  
4 191 through 200 of this title shall apply instead of  
5 this section.

6 2. Any person who, while lawfully in possession of an article  
7 of personal property to which this section applies, renders any  
8 service to the owner thereof by furnishing storage, rental space,  
9 material, labor or skill for the protection, improvement,  
10 safekeeping, towing, right to occupy space, storage or carriage  
11 thereof, has a special lien thereon, dependent on possession, for  
12 the compensation, if any, which is due to such person from the owner  
13 for such service. Charges owed under a contract primarily for the  
14 purpose of storage or rental of space shall be accrued only at the  
15 regular periodic rate for storage or rental as provided in the  
16 contract, adjusted for partial periods of storage or rental.

17 3. The lien may be foreclosed by a sale of such personal  
18 property upon the notice and in the manner following: The notice  
19 shall contain:

- 20 a. the names of the owner and any other known party or
  - 21 parties who may claim any interest in the property,
  - 22 b. a description of the property to be sold,
- 23  
24

- 1 c. the nature of the work, labor or service performed,  
2 material furnished, or the storage or rental  
3 arrangement, and the date thereof,  
4 d. the time and place of sale, and  
5 e. the name of the party, agent or attorney foreclosing  
6 such lien. If the claimant is a business, then the  
7 name of the contact person must be shown. In place of  
8 an original signature and notary seal, a digital or  
9 electronic signature or seal shall be accepted.

- 10 4. a. Such notice shall be posted in three public places in  
11 the county where the property is to be sold and  
12 published once in a newspaper of general circulation  
13 within such county at least ten (10) days before the  
14 time therein specified for such sale, and a copy of  
15 the notice shall be mailed to the owner and any other  
16 party claiming any interest in the property if known,  
17 at their last-known post office address, by certified  
18 mail on the day of posting. If the item of personal  
19 property is a manufactured home, notice shall also be  
20 sent by certified mail to the county treasurer and to  
21 the county assessor of the county where the  
22 manufactured home is located.  
23 b. In the case of any item of personal property without a  
24 certificate of title and not required to be titled

1 under Oklahoma law, a party who claims any interest in  
2 the property shall include all owners of the property;  
3 any secured party who has an active financing  
4 statement on file with the county clerk of Oklahoma  
5 County listing one or more owners of the property by  
6 legal name as debtors and indicating a collateral  
7 description that would include the property; and any  
8 other person having any interest in the personal  
9 property, of whom the claimant has actual notice.

10 c. In the case of personal property subject to this  
11 section for which a certificate of title has been  
12 issued by any jurisdiction, a party who claims any  
13 interest in the property shall include all owners of  
14 the article of personal property as indicated by the  
15 certificate of title; lien debtors, if any, other than  
16 the owners; any lienholder whose lien is noted on the  
17 face of the certificate of title; and any other person  
18 having any interest in the article of personal  
19 property, of whom the claimant has actual notice.

20 d. When the jurisdiction of titling for a vehicle, all-  
21 terrain vehicle, motorcycle, boat, outboard motor, or  
22 trailer that is five (5) model years old or newer, or  
23 a manufactured home that is fifteen (15) model years  
24 old or newer, cannot be determined by ordinary means,

1 the claimant, the agent of the claimant, or the  
2 attorney of the claimant, shall request, in writing,  
3 that the Oklahoma Tax Commission Motor Vehicle  
4 Division ascertain the jurisdiction where the vehicle  
5 or manufactured home is titled. The Oklahoma Tax  
6 Commission Motor Vehicle Division shall, within  
7 fourteen (14) days from the date the request is  
8 received, provide information as to the jurisdiction  
9 where the personal property is titled. If the  
10 Oklahoma Tax Commission Motor Vehicle Division is  
11 unable to provide the information, it shall provide  
12 notice that the record is not available.

13 e. When personal property is of a type that Oklahoma law  
14 requires to be titled, the owner of record of that  
15 property is unknown, and the jurisdiction of titling  
16 and owner of record cannot be determined by ordinary  
17 means (and also, if applicable, cannot be determined  
18 in accordance with the preceding subparagraph), then  
19 the special lien may be foreclosed by publication of a  
20 legal notice in a legal newspaper in the county where  
21 the personal property is located, as defined in  
22 Section 106 of Title 25 of the Oklahoma Statutes.  
23 Such notice shall include the description of the  
24 property by year, make, vehicle identification number

(if available from the property), the name of the individual who may be contacted for information, and the telephone number of that person or the address where the vehicle is located. The legal notice shall be published once per week for three (3) consecutive weeks. As soon as circumstances exist as described in the first sentence of this subparagraph, the first date of publication may occur. The first date available for public sale of the vehicle is the day following publication of the final notice. When the owner of record is unknown, the Notice of Sale nevertheless must be completed and mailed to any known interested party by certified mail. For purposes of this paragraph, interested parties shall include all persons described in subparagraph b or subparagraph c of this paragraph, whichever is applicable, with the exception of any owner who is unknown. Except in circumstances described in paragraph 7 of this subsection that provide for a shorter time period, the Notice of Sale 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 therein specified for such sale, and the Notice of Sale shall not be

1           mailed until at least thirty (30) days after said lien  
2           has accrued.

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

5           6. Proceedings for foreclosure under this act shall not be  
6 commenced until thirty (30) days after said lien has accrued, except  
7 as provided elsewhere in Oklahoma law.

8           7. Notwithstanding any other provision of law, proceedings for  
9 foreclosures for the storage of junk vehicles towed and stored  
10 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by  
11 Class AA wreckers listed with the Motor Vehicle Division of the  
12 Department of Public Safety, may be commenced five (5) days after  
13 the lien has accrued. For purposes of this paragraph, "junk  
14 vehicles" means any vehicle that is more than ten (10) years old if  
15 the cost of a comparable vehicle would be less than Three Hundred  
16 Dollars (\$300.00) as quoted in the latest edition of the National  
17 Automobile Dealers Association Official Used Car Guide or latest  
18 monthly edition of any other nationally recognized published  
19 guidebook, adjusting to the condition of the vehicle.

20           B. 1. a. Any person who is induced by means of a check or other  
21 form of written order for immediate payment of money  
22 to deliver up possession of an article of personal  
23 property on which the person has a special lien  
24 created by subsection A of this section, which check

1 or other written order is dishonored, or is not paid  
2 when presented, shall have a lien for the amount  
3 thereof upon the personal property.

4 b. The person claiming such lien shall, within thirty  
5 (30) days from the date of dishonor of the check or  
6 other written order for payment of money, file in the  
7 office of the county clerk of the county in which the  
8 property is situated a sworn statement that:

9 (1) the check or other written order for immediate  
10 payment of money, copy thereof being attached,  
11 was received for labor, material or supplies for  
12 producing or repairing an article of personal  
13 property, or for other specific property-related  
14 services covered by this section,

15 (2) the check or other written order was not paid,  
16 and

17 (3) the uttering of the check or other written order  
18 constituted the means for inducing the person,  
19 one possessed of a special lien created by  
20 subsection A of this section upon the described  
21 article of personal property, to deliver up the  
22 said article of personal property.

23 2. a. Any person who renders service to the owner of an  
24 article of personal property by furnishing storage,

1 rental space, material, labor, or skill for the  
2 protection, improvement, safekeeping, towing, right to  
3 occupy space, storage, or carriage thereof shall have  
4 a special lien on such property pursuant to this  
5 section if such property is removed from the person's  
6 possession, without such person's written consent or  
7 without payment for such service.

8 b. The person claiming such lien shall, within five (5)  
9 days of such nonauthorized removal, file in the office  
10 of the county clerk of the county in which the  
11 property is located, a sworn statement including:

12 (1) that services were rendered on or in relation to  
13 the article of personal property by the person  
14 claiming such lien,

15 (2) that the property was in the possession of the  
16 person claiming the lien but such property was  
17 removed without his written consent,

18 (3) an identifying description of the article of  
19 personal property on or in relation to which the  
20 service was rendered, and

21 (4) that the debt for the services rendered on or in  
22 relation to the article of personal property was  
23 not paid. Provided, if the unpaid total amount  
24 of the debt for services rendered on or in

1 relation to the article of personal property is  
2 unknown, an approximated amount of the debt due  
3 and owing shall be included in the sworn  
4 statement but such approximated debt may be  
5 amended within thirty (30) days of such filing to  
6 reflect the actual amount of the debt due and  
7 owing.

8 3. The enforcement of the lien shall be within sixty (60) days  
9 after filing the lien in the manner provided by law for enforcing  
10 the lien of a security agreement and provided that the lien shall  
11 not affect the rights of innocent, intervening purchasers without  
12 notice.

13 C. If the person who renders service to the owner of an article  
14 of personal property to which this section applies relinquishes or  
15 loses possession of the article due to circumstances described in  
16 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of  
17 subsection B of this section, the person claiming the lien shall be  
18 entitled to possession of the article until the amount due is paid,  
19 unless the article is possessed by a person who became a bona fide  
20 purchaser. Entitlement to possession shall be in accordance with  
21 the following:

22 1. The claimant may take possession of an article pursuant to  
23 this subsection only if the person obligated under the contract for  
24 services has signed an acknowledgment of receipt of a notice that

1 the article may be subject to repossession. The notice and  
2 acknowledgment pursuant to this subsection shall be:

- 3 a. in writing and separate from the written contract for  
4 services, or
- 5 b. printed on the written contract for services, credit  
6 agreement or other document which displays the notice  
7 in bold-faced, capitalized and underlined type, or is  
8 separated from surrounding written material so as to  
9 be conspicuous with a separate signature line;

10 2. The claimant may require the person obligated under the  
11 contract for services to pay the costs of repossession as a  
12 condition for reclaiming the article only to the extent of the  
13 reasonable fair market value of the services required to take  
14 possession of the article;

15 3. The claimant shall not transfer to a third party or to a  
16 person who performs repossession services, a check, money order, or  
17 credit card transaction that is received as payment for services  
18 with respect to an article and that is returned to the claimant  
19 because of insufficient funds or no funds, because the person  
20 writing the check, issuing the money order, or credit cardholder has  
21 no account or because the check, money order, or credit card account  
22 has been closed. A person violating this paragraph shall be guilty  
23 of a misdemeanor; and

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1 4. An article that is repossessed pursuant to this subsection  
2 shall be promptly delivered to the location where the services were  
3 performed. The article shall remain at the services location at all  
4 times until the article is lawfully returned to the record owner or  
5 a lienholder or is disposed of pursuant to this section.

6 D. 1. This section applies if a vehicle, all-terrain vehicle,  
7 manufactured home, motorcycle, boat, outboard motor, or trailer has  
8 a certificate of title issued by the ~~Oklahoma~~ Tax Commission or by a  
9 federally recognized Indian tribe in Oklahoma, but there is no  
10 active lien recorded on the certificate of title.

11 2. This section applies if a vehicle, all-terrain vehicle,  
12 utility vehicle, motorcycle, boat, outboard motor or trailer has a  
13 certificate of title issued by the ~~Oklahoma~~ Tax Commission or by a  
14 federally recognized Indian tribe in Oklahoma, and there is an  
15 active lien recorded on the certificate of title, but the lien is  
16 over fifteen (15) years old.

17 3. This section applies if personal property to which Section  
18 91 of this title otherwise would apply has been registered by the  
19 ~~Oklahoma~~ Tax Commission or by a federally recognized Indian tribe in  
20 the State of Oklahoma, and there is a lien of record but no  
21 certificate of title has been issued.

22 4. This section applies if personal property to which Section  
23 91 of this title otherwise would apply has not been registered by  
24 either the ~~Oklahoma~~ Tax Commission or a federally recognized Indian

1 | tribe in the State of Oklahoma, and no certificate of title has been  
2 | issued, but there is a lien of record.

3 |       5. This section applies to personal property that otherwise  
4 | would be covered by Section 91 of this title, except that the  
5 | services were rendered or the property was abandoned prior to  
6 | November 1, 2005.

7 |       6. This section applies to a vehicle, all-terrain vehicle,  
8 | utility vehicle, manufactured home, motorcycle, boat, outboard  
9 | motor, or trailer for which ownership cannot be determined by  
10 | ordinary means or by the ~~Oklahoma~~ Tax Commission Motor Vehicle  
11 | Division, as provided in subparagraphs d and e of paragraph 4 of  
12 | subsection A of this section, as applicable.

13 |       7. This section applies to items of personal property that are  
14 | not required by Oklahoma law to be titled, and that do not have a  
15 | certificate of title.

16 |       8. This section applies to salvage pools as defined in Section  
17 | 591.2 of Title 47 of the Oklahoma Statutes.

18 |       9. This section applies to class AA licensed wrecker operators  
19 | in their capacity as wrecker operators with respect to all types of  
20 | personal property, regardless of whether that personal property has  
21 | a certificate of title.

22 |       10. For a vehicle abandoned at a salvage pool, if the cost of  
23 | repairing the vehicle for safe operation on the highway does not  
24 | exceed sixty percent (60%) of the fair market value of the vehicle

1 as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a  
2 salvage title shall not be required.

3 E. For purposes of this section:

4 1. "Possession" includes actual possession and constructive  
5 possession; and

6 2. "Constructive possession" means possession by a person who,  
7 although not in actual possession, does not have an intention to  
8 abandon property, knowingly has both power and the intention at a  
9 given time to exercise dominion or control over the property, and  
10 who holds claim to such thing by virtue of some legal right.

11 SECTION 3. This act shall become effective November 1, 2011.

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