

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 1084

By: Johnson (Rob)

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5
6 AS INTRODUCED

7 An Act relating to foreclosure proceedings; amending
8 42 O.S. 2011, Section 91A, which relates to lien on
9 personal property for service; modifying time period
for certain notice and proceedings; and providing an
effective date.

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

13 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91A, is
14 amended to read as follows:

15 Section 91A.

16 A. 1. a. This section applies to all types of personal property
17 other than:

18 (1) farm equipment as defined in Section 91.2 of this
19 title, and

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

22 b. This section applies to any vehicle, all-terrain
23 vehicle, utility vehicle, manufactured home,
24 motorcycle, boat, outboard motor, or trailer that is

1 excluded from coverage under subsection A of Section
2 91 of this title because the personal property:

- 3 (1) does not have a certificate of title, or
4 (2) has a certificate of title but does not have an
5 active lien recorded on the certificate of title,
6 or
7 (3) has a certificate of title that is not issued by
8 the Oklahoma Tax Commission or by a federally
9 recognized Indian tribe in the State of Oklahoma,
10 or
11 (4) is otherwise excluded by subsection D of Section
12 91 of this title.

13 c. If personal property has a certificate of title, or
14 would be required to have a certificate of title under
15 Oklahoma law, and is apparently covered both by this
16 section and by ~~Sections 191 through 200 of this title~~
17 the Self-Service Storage Facility Lien Act, the
18 procedures set out in this section shall apply instead
19 of ~~Sections 191 through 200 of this title~~ the Self-
20 Service Storage Facility Lien Act. If personal
21 property without a certificate of title and not
22 required to be titled under Oklahoma law is covered
23 both by this section and ~~Sections 191 through 200 of~~
24 ~~this title~~ the Self-Service Storage Facility Lien Act,

1 the procedures set out in ~~Sections 191 through 200 of~~
2 ~~this title~~ the Self-Service Storage Facility Lien Act
3 shall apply instead of this section.

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

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

- 18 a. the names of the owner and any other known party or
19 parties who may claim any interest in the property,
- 20 b. a description of the property to be sold,
- 21 c. the nature of the work, labor or service performed,
22 material furnished, or the storage or rental
23 arrangement, and the date thereof,
- 24 d. the time and place of sale, and

1 e. the name of the party, agent or attorney foreclosing
2 such lien. If the claimant is a business, then the
3 name of the contact person must be shown. In place of
4 an original signature and notary seal, a digital or
5 electronic signature or seal shall be accepted.

6 4. a. Such notice shall be posted in three public places in
7 the county where the property is to be sold at least
8 ten (10) days before the time therein specified for
9 such sale, and a copy of the notice shall be mailed to
10 the owner and any other party claiming any interest in
11 the property if known, at their last-known post office
12 address, by certified mail on the day of posting. If
13 the item of personal property is a manufactured home,
14 notice shall also be sent by certified mail to the
15 county treasurer and to the county assessor of the
16 county where the manufactured home is located.

17 b. In the case of any item of personal property without a
18 certificate of title and not required to be titled
19 under Oklahoma law, a party who claims any interest in
20 the property shall include all owners of the property;
21 any secured party who has an active financing
22 statement on file with the county clerk of Oklahoma
23 County listing one or more owners of the property by
24 legal name as debtors and indicating a collateral

1 description that would include the property; and any
2 other person having any interest in the personal
3 property, of whom the claimant has actual notice.

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

14 d. When the jurisdiction of titling for a vehicle, all-
15 terrain vehicle, motorcycle, boat, outboard motor, or
16 trailer that is five (5) model years old or newer, or
17 a manufactured home that is fifteen (15) model years
18 old or newer, cannot be determined by ordinary means,
19 the claimant, the agent of the claimant, or the
20 attorney of the claimant, shall request, in writing,
21 that the Oklahoma Tax Commission Motor Vehicle
22 Division ascertain the jurisdiction where the vehicle
23 or manufactured home is titled. The Oklahoma Tax
24 Commission Motor Vehicle Division shall, within

1 fourteen (14) days from the date the request is
2 received, provide information as to the jurisdiction
3 where the personal property is titled. If the
4 Oklahoma Tax Commission Motor Vehicle Division is
5 unable to provide the information, it shall provide
6 notice that the record is not available.

7 e. When personal property is of a type that Oklahoma law
8 requires to be titled, the owner of record of that
9 property is unknown, and the jurisdiction of titling
10 and owner of record cannot be determined by ordinary
11 means (and also, if applicable, cannot be determined
12 in accordance with the preceding subparagraph), then
13 the special lien may be foreclosed by publication of a
14 legal notice in a legal newspaper in the county where
15 the personal property is located, as defined in
16 Section 106 of Title 25 of the Oklahoma Statutes.
17 Such notice shall include the description of the
18 property by year, make, vehicle identification number
19 (if available from the property), the name of the
20 individual who may be contacted for information, and
21 the telephone number of that person or the address
22 where the vehicle is located. The legal notice shall
23 be published once per week for three (3) consecutive
24 weeks. As soon as circumstances exist as described in

1 the first sentence of this subparagraph, the first
2 date of publication may occur. The first date
3 available for public sale of the vehicle is the day
4 following publication of the final notice. When the
5 owner of record is unknown, the Notice of Sale
6 nevertheless must be completed and mailed to any known
7 interested party by certified mail. For purposes of
8 this paragraph, interested parties shall include all
9 persons described in subparagraph b or subparagraph c
10 of this paragraph, whichever is applicable, with the
11 exception of any owner who is unknown. Except in
12 circumstances described in paragraph 7 of this
13 subsection that provide for a shorter time period, the
14 Notice of Sale shall be posted in three public places
15 in the county where the property is to be sold at
16 least ten (10) days before the time therein specified
17 for such sale, and the Notice of Sale shall not be
18 mailed until at least ~~thirty (30)~~ fifteen (15) days
19 after ~~said~~ the lien has accrued.

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

22 6. Proceedings for foreclosure under this act shall not be
23 commenced until ~~thirty (30)~~ fifteen (15) days after ~~said~~ the lien
24 has accrued and shall be commenced no later than thirty-five (35)

1 days after the lien accrued, except as provided elsewhere in
2 Oklahoma law. In the event the foreclosure is not commenced within
3 thirty-five (35) days after the lien has accrued, all charges by the
4 lienor shall be subordinate to any perfected security interest.

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

17 B. 1. a. Any person who is induced by means of a check or other
18 form of written order for immediate payment of money
19 to deliver up possession of an article of personal
20 property on which the person has a special lien
21 created by subsection A of this section, which check
22 or other written order is dishonored, or is not paid
23 when presented, shall have a lien for the amount
24 thereof upon the personal property.

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

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

12 (2) the check or other written order was not paid,
13 and

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

20 2. a. Any person who renders service to the owner of an
21 article of personal property by furnishing storage,
22 rental space, material, labor, or skill for the
23 protection, improvement, safekeeping, towing, right to
24 occupy space, storage, or carriage thereof shall have

1 a special lien on such property pursuant to this
2 section if such property is removed from the person's
3 possession, without such person's written consent or
4 without payment for such service.

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

9 (1) that services were rendered on or in relation to
10 the article of personal property by the person
11 claiming such lien,

12 (2) that the property was in the possession of the
13 person claiming the lien but such property was
14 removed without his written consent,

15 (3) an identifying description of the article of
16 personal property on or in relation to which the
17 service was rendered, and

18 (4) that the debt for the services rendered on or in
19 relation to the article of personal property was
20 not paid. Provided, if the unpaid total amount
21 of the debt for services rendered on or in
22 relation to the article of personal property is
23 unknown, an approximated amount of the debt due
24 and owing shall be included in the sworn

1 statement but such approximated debt may be
2 amended within thirty (30) days of such filing to
3 reflect the actual amount of the debt due and
4 owing.

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

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

19 1. The claimant may take possession of an article pursuant to
20 this subsection only if the person obligated under the contract for
21 services has signed an acknowledgment of receipt of a notice that
22 the article may be subject to repossession. The notice and
23 acknowledgment pursuant to this subsection shall be:
24

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

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

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

22 4. An article that is repossessed pursuant to this subsection
23 shall be promptly delivered to the location where the services were
24 performed. The article shall remain at the services location at all

1 times until the article is lawfully returned to the record owner or
2 a lienholder or is disposed of pursuant to this section.

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

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

14 3. This section applies if personal property to which Section
15 91 of this title otherwise would apply has been registered by the
16 Oklahoma Tax Commission or by a federally recognized Indian tribe in
17 the State of Oklahoma, and there is a lien of record but no
18 certificate of title has been issued.

19 4. This section applies if personal property to which Section
20 91 of this title otherwise would apply has not been registered by
21 either the Oklahoma Tax Commission or a federally recognized Indian
22 tribe in the State of Oklahoma, and no certificate of title has been
23 issued, but there is a lien of record.

24

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

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

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

14 8. This section applies to salvage pools as defined in Section
15 591.2 of Title 47 of the Oklahoma Statutes.

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

20 10. For a vehicle abandoned at a salvage pool, if the cost of
21 repairing the vehicle for safe operation on the highway does not
22 exceed sixty percent (60%) of the fair market value of the vehicle
23 as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a
24 salvage title shall not be required.

1 E. For purposes of this section:

2 1. "Possession" includes actual possession and constructive
3 possession; and

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

9 SECTION 2. This act shall become effective November 1, 2013.

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