

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB796
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Lee Denney

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 PROPOSED
4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 796

By: Sykes of the Senate

and

Denney of the House

7
8
9
10 PROPOSED COMMITTEE SUBSTITUTE

11 An Act relating to liens; amending 42 O.S. 2011,
12 Section 91, as amended by Section 1, Chapter 405,
13 O.S.L. 2014 (42 O.S. Supp. 2015, Section 91), which
14 relates to liens on titled personal property;
15 exempting consensual tows of vehicles without
16 recorded liens by licensed wrecker services;
17 permitting same-day, separate mailing of notices if
18 denial; limiting storage charges from date of
19 resubmission; allowing United States Postal Service
20 website tracking for proof of certified mailing;
21 updating language; amending 42 O.S. 2011, Section
22 91A, as amended by Section 2, Chapter 405, O.S.L.
23 2014 (42 O.S. Supp. 2015, Section 91A), which relates
24 to liens on personal property; updating reference;
exempting submission of proof of mailing unless there
is a claim by the owner or lienholder; allowing USPS
website tracking for proof of certified mailing;
specifying fees are in addition to fees regulated by
the Oklahoma Corporation Commission; clarifying when
photograph of property is not required; excluding
copy of tow ticket in Notice of Sale; requiring a
copy of authorization from salvage pools upon
request; excepting submission of proof of mailing for
licensed wrecker services and salvage pools unless
there is a claim by the owner or lienholder;
permitting USPS website tracking for proof of

1 certified mailing; updating language; and declaring
2 an emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91, as
6 amended by Section 1, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2015,
7 Section 91), is amended to read as follows:

8 Section 91.

9 A. 1. a. This section applies to every vehicle, all-terrain
10 vehicle, utility vehicle, manufactured home,
11 motorcycle, boat, outboard motor, or trailer that has
12 a certificate of title issued by the Oklahoma Tax
13 Commission or by a federally recognized Indian tribe
14 in the State of Oklahoma, except as otherwise provided
15 in subsection D of this section. This section does
16 not apply to farm equipment as defined in Section 91.2
17 of this title. The items of personal property to
18 which this section applies are collectively referred
19 to as "Section 91 Personal Property". If personal
20 property is apparently covered both by this section
21 and by Sections 191 through 200 of this title, the
22 procedures set out in this section shall apply instead
23 of Sections 191 through 200 of this title.

1 b. Salvage pools as defined in Section 591.2 of Title 47
2 of the Oklahoma Statutes and class AA licensed wrecker
3 services taking possession of a vehicle pursuant to an
4 agreement with or at the direction of, or dispatched
5 by, a state or local law enforcement or government
6 agency, or pursuant to the abandoned vehicle renewal
7 provisions of Section 954A of Title 47 of the Oklahoma
8 Statutes, shall not be subject to the provisions of
9 this section, but shall be subject to the provisions
10 of Section 91A of this title. Unless otherwise
11 provided by this subparagraph, class AA licensed
12 wrecker services performing consensual tows shall be
13 subject to the provisions of this section. Licensed
14 wrecker services performing consensual tows on
15 vehicles without recorded liens shall be subject to
16 the provisions of Section 91A of this title.

17 2. Any person who, while lawfully in possession of an article
18 of Section 91 Personal Property, renders any service to the owner
19 thereof by furnishing storage, rental space, material, labor or
20 skill for the protection, improvement, safekeeping, towing, right to
21 occupy space, storage or carriage thereof, has a special lien
22 thereon, dependent on possession, for the compensation, if any,
23 which is due to such person from the owner for such service.

1 3. This special lien shall be subordinate to any perfected
2 security interest unless the claimant complies with the requirements
3 of this section. Failure to comply with any requirements of this
4 section shall result in denial of any title application and cause
5 the special lien to be subordinate to any perfected lien. Upon such
6 denial, the applicant shall be entitled to one resubmission of the
7 title application within fifteen (15) business days of receipt of
8 the denial, and proceed to comply with the requirements of this
9 section. In the event of a denial, the Notice of Possessory Lien
10 and the Notice of Sale may be mailed on the same day in separate
11 envelopes and storage charges shall only be charged from the date of
12 resubmission. "Failure to comply" includes, but is not limited to:

13 a. failure to timely provide additional documentation
14 supporting or verifying any entry on submitted forms as
15 requested by the Tax Commission, including but not
16 limited to, ~~7~~ United States Postal Service proof of
17 return receipt requested such as Form 3811 or United
18 States Postal Service electronic equivalent. The
19 United States Postal Service website tracking may be
20 used as proof of certified mailing,

21 b. failure to provide the documentation supporting lawful
22 possession as defined in paragraph 3 of subsection ~~F~~ H
23 of this section,
24

- 1 c. claimant or the agent being other than the individual
2 who provided the service giving rise to the special
3 lien, as in paragraph 2 of this subsection,
4 d. claimant not being in possession of the vehicle,
5 e. notice of lien not filed in accordance with paragraph 4
6 of this subsection, or
7 f. foreclosure notification and proceedings not
8 accomplished in accordance with paragraph 6 of this
9 section.

10 4. Any person claiming the special lien provided in paragraph 2
11 of this subsection shall mail a notice of such lien, no later than
12 sixty (60) days after the first services are rendered, by regular,
13 first class United States mail, and by certified mail, return
14 receipt requested, to all interested parties who reside at separate
15 locations. ~~(If services provided are pursuant to a contract~~
16 ~~primarily for the purpose of storage or rental of space, the~~
17 ~~beginning date of the sixty-day period provided in the previous~~
18 ~~sentence shall be the first day of the first period or partial~~
19 ~~period for which rental or storage charges remain unpaid.)~~ The
20 notice shall be in writing and shall contain, but not be limited to,
21 the following:

- 22 a. a statement that the notice is a ~~notice~~ Notice of a
23 ~~possessory lien~~ Possessory Lien,

- 1 b. the complete legal name, physical and mailing address,
2 and telephone number of the claimant,
- 3 c. the complete legal name, physical and mailing address
4 of the person who requested that the claimant render
5 service to the owner by furnishing material, labor or
6 skill, storage, or rental space, or the date the
7 property was abandoned if the claimant did not render
8 any other service,
- 9 d. a description of the article of personal property,
10 including a photograph if the property is Section 91
11 Personal Property, and the complete physical and
12 mailing address of the location of the article of
13 personal property,
- 14 e. an itemized statement describing the date or dates the
15 labor or services were performed and material
16 furnished, and the charges claimed for each item, the
17 totals of which shall equal the total compensation
18 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, and written proof of authority to perform
24 the work, labor or service, or that the property was

1 abandoned by the owner if the claimant did not render
2 any other service, and that storage or rental fees
3 will accrue as allowed by law, and

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

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

1 The maximum allowable compensation for storage shall not exceed the
2 fees established by the Corporation Commission for nonconsensual
3 tows.

4 6. The lien may be foreclosed by a sale of such personal
5 property upon the notice and in the manner following: The ~~notice~~
6 Notice of sale Sale shall be in writing and shall contain, but not
7 be limited to:

8 a. a statement that the notice is a Notice of Sale,

9 b. the names of all interested parties known to the
10 claimant,

11 c. a description of the property to be sold, including a
12 photograph if the property is Section 91 Personal
13 Property and if the condition of such property has
14 materially changed since the mailing of Notice of
15 Possessory Lien required pursuant to paragraph 4 of
16 this subsection,

17 d. a notarized statement of the nature of the work, labor
18 or service performed, material furnished, or storage
19 or rental of space, and the date thereof, and the name
20 of the person who authorized the work, labor or
21 service performed, or the storage or rental
22 arrangement, and written proof of authority to perform
23 the work, labor or service, or that the property was
24

1 abandoned if the claimant did not render any other
2 service,

3 e. the date, time, and exact physical location of sale,

4 f. the name, complete physical address, mailing address,

5 and telephone number of the party foreclosing such

6 lien. If the claimant is a business, then the name of

7 the contact person representing the business must be

8 shown. In place of an original signature and notary

9 seal, a digital or electronic signature or seal shall

10 be accepted, and

11 g. itemized charges which shall equal the total

12 compensation claimed.

13 7. Such ~~notice~~ Notice of ~~sale~~ Sale shall be posted in two
14 public places in the county where the property is to be sold at
15 least ten (10) days before the time therein specified for such sale,
16 and a copy of the notice shall be mailed to all interested parties
17 at their last-known post office address by regular, first class
18 United States mail and by certified mail, return receipt requested,
19 at least ten (10) days before the date of the sale. If the item of
20 personal property is a manufactured home, notice shall also be sent
21 by certified mail to the county treasurer and to the county assessor
22 of the county where the manufactured home is located.

23 8. Interested parties shall include all owners of the article
24 of personal property as indicated by the certificate of title issued

1 by the Tax Commission or by a federally recognized Indian tribe in
2 the State of Oklahoma; lien debtors, if any, other than the owners;
3 any lienholder whose lien is noted on the face of the certificate of
4 title; and any other person having any interest in the article of
5 personal property, of whom the claimant has actual notice.

6 9. Any interested party shall be permitted to inspect and
7 verify the services rendered by the claimant prior to the sale of
8 the article of personal property during normal business hours. The
9 lienholder shall be allowed to retrieve the Section 91 Personal
10 Property without being required to bring the title into the
11 lienholder's name, if the lienholder provides proof it is a
12 lienholder and any payment due the claimant for lawful charges where
13 the claimant has complied with the requirements of this section.
14 Upon the release of personal property to an insurer or
15 representative of the insurer, wrecker operators shall be exempt
16 from all liability and shall be held harmless for any losses or
17 claims of loss.

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

20 11. Proceedings for foreclosure under this act shall be
21 commenced no sooner than ten (10) days and no later than thirty (30)
22 days after the Notice of Possessory Lien has been mailed as
23 evidenced by certified mail. The date actually sold shall be within
24

1 sixty (60) days from the date of the Notice of Sale as evidenced by
2 certified mail.

3 B. 1. a. Any person who is induced by means of a check or other
4 form of written order for immediate payment of money
5 to deliver up possession of an article of personal
6 property on which the person has a special lien
7 created by subsection A of this section, which check
8 or other written order is dishonored, or is not paid
9 when presented, shall have a lien for the amount
10 thereof upon the personal property.

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

16 (1) the check or other written order for immediate
17 payment of money, copy thereof being attached,
18 was received for labor, material or supplies for
19 producing or repairing an article of personal
20 property, or for other specific property-related
21 services covered by this section,

22 (2) the check or other written order was not paid,
23 and
24

1 (3) the uttering of the check or other written order
2 constituted the means for inducing the person,
3 one possessed of a special lien created by
4 subsection A of this section upon the described
5 article of personal property, to deliver up the
6 ~~said~~ article of personal property.

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

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

20 (1) that services were rendered on or in relation to
21 the article of personal property by the person
22 claiming such lien,
23
24

- 1 (2) that the property was in the possession of the
2 person claiming the lien but such property was
3 removed without his or her written consent,
4 (3) an identifying description of the article of
5 personal property on which the service was
6 rendered, and
7 (4) that the debt for the services rendered on or in
8 relation to the article of personal property was
9 not paid. Provided, if the unpaid total amount
10 of the debt for services rendered on or in
11 relation to the article of personal property is
12 unknown, an approximated amount of the debt due
13 and owing shall be included in the sworn
14 statement but such approximated debt may be
15 amended within thirty (30) days of such filing to
16 reflect the actual amount of the debt due and
17 owing.

18 3. The enforcement of the lien shall be within sixty (60) days
19 after filing the lien in the manner provided by law for enforcing
20 the lien of a security agreement and provided that the lien shall
21 not affect the rights of innocent, intervening purchasers without
22 notice.

23 C. If the person who renders service to the owner of an article
24 of personal property to which this section applies relinquishes or

1 loses possession of the article due to circumstances described in
2 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of
3 subsection B of this section, the person claiming the lien shall be
4 entitled to possession of the article until the amount due is paid,
5 unless the article is possessed by a person who became a bona fide
6 purchaser. Entitlement to possession shall be in accordance with
7 the following:

8 1. The claimant may take possession of an article pursuant to
9 this subsection only if the person obligated under the contract for
10 services has signed an acknowledgement of receipt of a notice that
11 the article may be subject to repossession. The notice and
12 acknowledgement pursuant to this subsection shall be:

- 13 a. in writing and separate from the written contract for
14 services, or
15 b. printed on the written contract for services, credit
16 agreement or other document which displays the notice
17 in bold-faced, capitalized, and underlined type, or is
18 separated from surrounding written material so as to
19 be conspicuous with a separate signature line;

20 2. The claimant may require the person obligated under the
21 contract for services to pay the costs of repossession as a
22 condition for reclaiming the article only to the extent of the
23 reasonable fair market value of the services required to take
24 possession of the article;

1 3. The claimant shall not transfer to a third party or to a
2 person who performs repossession services, a check, money order, or
3 credit card transaction that is received as payment for services
4 with respect to an article and that is returned to the claimant
5 because of insufficient funds or no funds, because the person
6 writing the check, issuing the money order, or credit cardholder has
7 no account or because the check, money order, or credit card account
8 has been closed. A person violating this paragraph shall be guilty
9 of a misdemeanor; and

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

15 D. 1. If a vehicle, all-terrain vehicle, utility vehicle,
16 manufactured home, motorcycle, boat, outboard motor, or trailer has
17 a certificate of title issued by the Tax Commission or by a
18 federally recognized Indian tribe in the State of Oklahoma, but
19 there is no active lien recorded on the certificate of title,
20 Section 91A of this title will apply instead of this section.
21 Likewise, if there is an active lien recorded on the certificate of
22 title but the lien is over fifteen (15) years old and the property
23 is not a manufactured home, Section 91A of this title will apply
24 instead of this section.

1 2. If personal property that otherwise would be covered by this
2 section has been registered by the Tax Commission or by a federally
3 recognized Indian tribe in the State of Oklahoma, and there is a
4 lien of record but no certificate of title has been issued, Section
5 91A of this title will apply instead of this section.

6 3. If personal property otherwise would be covered by this
7 section, but the services were rendered or the property was
8 abandoned prior to November 1, 2005, Section 91A of this title will
9 apply instead of this section.

10 E. A person who knowingly makes a false statement of a material
11 fact regarding the furnishing of storage, rental space, material,
12 labor or skill for the protection, improvement, safekeeping, towing,
13 right to occupy space, storage or carriage thereof in a proceeding
14 under this section, or attempts to use or uses the provisions of
15 this section to foreclose an owner or lienholder's interest in a
16 vehicle knowing that any of the statements made in the proceeding
17 are false, upon conviction, shall be guilty of a felony.

18 F. Upon receipt of notice of legal proceedings, the Tax
19 Commission shall cause the sale process to be put on hold until
20 notice of resolution of court proceedings is received from the
21 court. If such notice of commencement of court proceedings is not
22 filed with the Tax Commission, the possessory lien sale process may
23 continue.

24 G. No possessory lien sale shall be held on a Sunday.

1 H. For purposes of this section:

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

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; ~~and~~

9 3. "Lawfully in possession" means a person has documentation
10 from the owner or the owner's authorized agent, or an insurance
11 company or its authorized agent, authorizing the furnishing of
12 material, labor or storage, or that the property was authorized to
13 be towed to a repair facility. If the person lacks such
14 documentation, he or she shall not be lawfully in possession of the
15 Section 91 Personal Property and shall not be entitled to a special
16 lien as set forth in this section; and

17 4. "Itemized charges" means total parts, total labor, total
18 towing fees, total storage fees, total processing fees and totals of
19 any other fee groups, the sum total of which shall equal the
20 compensation claimed.

21 I. For purposes of this section, the United States Postal
22 Service approved electronic equivalent of proof of return receipt
23 requested Form 3811 shall satisfy return receipt requested
24 documentation requirements.

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

10 K. This section shall apply to all actions or proceedings that
11 commence on or after the effective date of this act.

12 SECTION 2. AMENDATORY 42 O.S. 2011, Section 91A, as
13 amended by Section 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2015,
14 Section 91A), is 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 subparagraph b of
12 paragraph 1 of subsection A of Section 91 of this
13 title or subsection D of Section 91 of this
14 title.

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

1 191 through 200 of this title shall apply instead of
2 this section.

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

17 b. Except for Class AA licensed wrecker towing charges,
18 the special lien shall be subordinate to any perfected
19 security interest unless the claimant complies with
20 the requirements of this section. Failure to comply
21 with any requirements of this section shall result in
22 denial of any title application and cause the special
23 lien to be subordinate to any perfected lien. Upon
24 such denial, the applicant shall be entitled to one

1 resubmission of the title application within fifteen
2 (15) business days of receipt of the denial, and
3 proceed to comply with the requirements of this
4 section. "Failure to comply" includes, but is not
5 limited to:

- 6 (1) failure to timely provide additional
7 documentation supporting or verifying any entry
8 on submitted forms as requested by the Tax
9 Commission,
- 10 (2) failure to provide the documentation supporting
11 lawful possession as outlined in paragraph 3 of
12 subsection ~~F~~ H of this section,
- 13 (3) claimant being other than the individual who
14 provided the service giving rise to the special
15 lien, as in subparagraph a of this paragraph ~~2 of~~
16 ~~this subsection,~~
- 17 (4) claimant not being in possession of the vehicle,
18 or
- 19 (5) notification and proceedings not accomplished in
20 accordance with subparagraph c of this paragraph
21 ~~2 of this subsection,~~ and paragraph 3 of this
22 subsection.

23 c. Any person claiming a lien under this section shall
24 request, within five (5) business days of performing

1 any service or work on the property, the Tax
2 Commission or other appropriate license agency to
3 furnish the name and address of the current owner of
4 and any lienholder upon the property. The Motor
5 Vehicle Division of the Tax Commission or appropriate
6 license agency shall respond in person or by mail to
7 the lien claimant within ten (10) business days of the
8 receipt of the request for information. The Tax
9 Commission shall render assistance to ascertain
10 ownership, if needed. The lien claimant shall send,
11 within seven (7) business days of receipt of the
12 requested information from the Oklahoma Tax Commission
13 or other license agency, a notice of the location of
14 the property by certified mail with return receipt
15 requested, postage prepaid, to the owner and any
16 lienholder of the vehicle at the addresses furnished.
17 Class AA licensed wrecker services shall not be
18 required to submit copies of United States Postal
19 Service Form 3811 or returned certified letters and
20 envelopes with completed paperwork to the Oklahoma Tax
21 Commission unless copies are needed for proof after a
22 claim stating the notices were not mailed by the
23 registered owner or lienholder. The United States
24 Postal Service website tracking may be used as proof

1 of certified mailing. The lien claimant may charge
2 Twenty Dollars (\$20.00) for processing plus the cost
3 of postage if the notice is timely sent pursuant to
4 the requirements of this subparagraph in addition to
5 fees regulated by the Oklahoma Corporation Commission
6 for licensed wreckers. If the lien claimant is unable
7 to meet the time requirements due to a lack of or an
8 altered vehicle identification number on the property,
9 the lien claimant shall proceed diligently to obtain
10 the proper vehicle identification number and shall
11 meet the time requirements on the notice once the
12 vehicle identification number is known. If the lien
13 claimant is required to send additional notices
14 because of change of ownership or lienholder after it
15 has timely complied with the requirements of this
16 subparagraph, the lien claimant shall remain in
17 compliance if such additional notices are sent within
18 the required time periods from the date of discovery
19 of the new owners or ~~lien holders~~ lienholders. The
20 notice shall be in writing and shall contain, but not
21 be limited to, the following:

- 22 (1) a statement that the notice is a notice of a
23 possessory lien,
24

- 1 (2) the complete legal name, physical and mailing
2 address, and telephone number of the claimant,
3 (3) the complete legal name, physical and mailing
4 address of the person who requested that the
5 claimant render service to the owner by
6 furnishing material, labor or skill, storage, or
7 rental space, or the date the property was
8 abandoned if the claimant did not render any
9 other service,
10 (4) a description of the article of personal
11 property, and the complete physical and mailing
12 address of the location of the article of
13 personal property,
14 (5) the nature of the work, labor or service
15 performed, material furnished, or the storage or
16 rental arrangement, and the date thereof, and
17 written proof of authority to perform the work,
18 labor or service provided that, in the case of a
19 law enforcement directed tow, the logbook entry
20 prescribed in OAC 595:25-5-5 or the tow ticket as
21 defined by the Corporation Commission shall serve
22 as written proof of authority,
23 (6) the signature of the claimant which shall be
24 notarized and, if applicable, the signature of

1 the claimant's attorney. If the claimant is a
2 business, the name of the contact person
3 representing the business shall be shown. In
4 place of an original signature and notary seal, a
5 digital or electronic signature or seal shall be
6 accepted, and

7 (7) an itemized statement describing the date or
8 dates the labor or services were performed and
9 material furnished and the charges claimed for
10 each item, the totals of which shall equal the
11 total compensation claimed.

12 The lien claimant shall not be required to send the
13 notice required in this subparagraph if the property
14 is released to an interested party before the notice
15 is mailed and no additional charges or fees continue
16 to accrue. If a law enforcement agency has the
17 property towed to a law enforcement facility, the
18 person claiming a lien under this section shall not be
19 required to send notice until the property is released
20 by law enforcement to the claimant or the date which
21 claimant starts charging storage, whichever is
22 earlier. A lien claimant shall have an extension of
23 ten (10) business days to request the registration
24 from the titling agency and send the notice required

1 in this subparagraph if a state of emergency has been
2 declared in the county in which the property is
3 located.

4 d. Subparagraphs b and c of this paragraph shall not
5 apply to salvage pools as defined in Section 591.2 of
6 Title 47 of the Oklahoma Statutes.

7 3. The lien may be foreclosed by a sale of such personal
8 property upon the notice and in the manner following: The notice
9 shall be in writing and shall contain, but not be limited to:

10 a. the names of the owner and any other known party or
11 parties who may claim any interest in the property,

12 b. a description of the property to be sold, including a
13 visual inspection or a photograph if the property is a
14 motor vehicle, and the physical location of the
15 property. If an inspection is allowed, a photograph
16 shall not be required to be mailed with the Notice of
17 Sale. A copy of the tow ticket shall not be required
18 with the Notice of Sale. Salvage pools shall not be
19 required to include a copy of the authorization, but a
20 copy of the authorization shall be provided upon
21 request,

22 c. the nature of the work, labor or service performed,
23 material furnished, or the storage or rental
24 arrangement, and the date thereof, and written proof

1 of authority to perform the work, labor or service
2 provided. In the case of a law enforcement directed
3 tow, the logbook entry prescribed in OAC 595:25-5-5 or
4 the tow ticket as defined by the Corporation
5 Commission, shall serve as written proof of authority,

6 d. the time and place of sale,

7 e. the name, telephone number, physical address and
8 mailing address of the claimant, and agent or
9 attorney, if any, foreclosing such lien. If the
10 claimant is a business, then the name of the contact
11 person representing the business must be shown. In
12 place of an original signature and notary seal, a
13 digital or electronic signature or seal shall be
14 accepted, and

15 f. itemized charges which shall equal the total
16 compensation claimed.

17 4. a. Such ~~notice~~ Notice of ~~sale~~ Sale shall be posted in two
18 public places in the county where the property is to
19 be sold at least ten (10) days before the time therein
20 specified for such sale, and a copy of the notice
21 shall be mailed to the owner and any other party
22 claiming any interest in the property, if known, at
23 their last-known post office address, by certified
24 mail, return receipt requested, at least ten (10) days

1 before the time therein specified for such sale.
2 Class AA licensed wrecker services and salvage pools
3 shall not be required to submit copies of United
4 States Postal Service Form 3811 or returned certified
5 letters and envelopes with completed paperwork to the
6 Oklahoma Tax Commission unless copies are needed for
7 proof after a claim stating the notices were not
8 mailed by the registered owner or lienholder. The
9 United States Postal Service website tracking may be
10 used as proof of certified mailing. If the item of
11 personal property is a manufactured home, notice shall
12 also be sent by certified mail to the county treasurer
13 and to the county assessor of the county where the
14 manufactured home is located.

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

1 other person having any interest in the personal
2 property, of whom the claimant has actual notice.

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

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

1 received, provide information as to the jurisdiction
2 where the personal property is titled. If the
3 Oklahoma Tax Commission Motor Vehicle Division is
4 unable to provide the information, it shall provide
5 notice that the record is not available.

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

1 date of publication may occur even if the special lien
2 has not accrued for over thirty (30) days. The first
3 date available for public sale of the vehicle is the
4 day following publication of the final notice, but no
5 fewer than thirty (30) days after the lien has
6 accrued. When the owner of record is unknown, the
7 Notice of Sale nevertheless must be completed and
8 mailed to any known interested party by certified
9 mail. For purposes of this paragraph, interested
10 parties shall include all persons described in
11 subparagraph b or subparagraph c of this paragraph,
12 whichever is applicable, with the exception of any
13 owner who is unknown. Except in circumstances
14 described in paragraph 7 of this subsection that
15 provide for a shorter time period, the Notice of Sale
16 shall be posted in two public places in the county
17 where the property is to be sold at least ten (10)
18 days before the time therein specified for such sale,
19 and the Notice of Sale shall not be mailed until at
20 least thirty (30) days after ~~said~~ the lien has
21 accrued.

22 5. The lienor or any other person may in good faith become a
23 purchaser of the property sold.
24

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

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

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

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 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 Tax Commission or by a federally
11 recognized Indian tribe in Oklahoma, and there is an active lien
12 recorded on the certificate of title, but the lien is over fifteen
13 (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 Tax Commission or by a federally recognized Indian tribe in the
17 State of Oklahoma, and there is a lien of record but no certificate
18 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 Tax Commission or a federally recognized Indian tribe in
22 the State of Oklahoma, and no certificate of title has been issued,
23 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 services
17 taking possession of a vehicle pursuant to an agreement with, or at
18 the direction of, or dispatched by a state or local law enforcement
19 or government agency, or pursuant to the abandoned vehicle removal
20 provisions of Section 954A of Title 47 of the Oklahoma Statutes with
21 respect to all types of personal property, regardless of whether
22 that personal property has a certificate of title.

23 10. For a vehicle abandoned at a salvage pool, if the cost of
24 repairing the vehicle for safe operation on the highway does not

1 exceed sixty percent (60%) of the fair market value of the vehicle
2 as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a
3 salvage title shall not be required.

4 E. A person who knowingly makes a false statement of a material
5 fact regarding the furnishing of storage, rental space, material,
6 labor or skill for the protection, improvement, safekeeping, towing,
7 right to occupy space, storage or carriage thereof in a proceeding
8 under this section, or attempts to use or uses the provisions of
9 this section to foreclose an owner or lienholder's interest in a
10 vehicle knowing that any of the statements made in the proceeding
11 are false, upon conviction, shall be guilty of a felony.

12 F. Upon receipt of notice of legal proceedings, the Tax
13 Commission shall cause the sale process to be put on hold until
14 notice of resolution of court proceedings is received from the
15 court. If such notice of commencement of court proceedings is not
16 filed with the Tax Commission, the possessory lien sale process may
17 continue.

18 G. No possessory lien sale shall be held on a Sunday.

19 H. For purposes of this section:

20 1. "Possession" includes actual possession and constructive
21 possession;

22 2. "Constructive possession" means possession by a person who,
23 although not in actual possession, does not have an intention to
24 abandon property, knowingly has both power and the intention at a

1 given time to exercise dominion or control over the property, and
2 who holds claim to such thing by virtue of some legal right;

3 3. "Lawfully in possession" means a person has documentation
4 from the owner or the owner's authorized agent, or an insurance
5 company or its authorized agent, authorizing the furnishing of
6 material, labor or storage, or that the property was authorized to
7 be towed to a repair facility.

8 Class AA wrecker services taking possession of a vehicle
9 pursuant to an agreement with, or at the direction of, or dispatched
10 by, a state or local law enforcement or government agency, or
11 pursuant to the abandoned vehicle removal provisions of Section 954A
12 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
13 in possession of the vehicle. If the person lacks such
14 documentation, the procedures established by this section shall not
15 apply; and

16 4. "Itemized charges" means total parts, total labor, total
17 towing fees, total storage fees, total processing fees and totals of
18 any other fee groups, the sum total of which shall equal the
19 compensation claimed.

20 I. For purposes of this section, the United States Postal
21 Service approved electronic equivalent of proof of return receipt
22 requested Form 3811 shall satisfy return receipt requested
23 documentation requirements.

24

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

10 K. Any interested party shall be permitted to visually inspect
11 and verify the services rendered by the claimant prior to the sale
12 of the article of property during normal business hours. If the
13 claimant fails to allow any interested party to inspect the
14 property, the interested party shall mail a request for inspection
15 by certified mail, return receipt requested, to the claimant.
16 Within three (3) business days of receipt of the request for
17 inspection, the claimant shall mail a photograph of the property, by
18 certified mail, return receipt requested, and a date of inspection
19 within five (5) business days from the date of the notice to
20 inspect. The lienholder shall be allowed to retrieve the property
21 without being required to bring the title into the lienholder's
22 name, if the lienholder provides proof it is a lienholder and any
23 payment due the claimant for lawful charges where the claimant has
24 complied with this section. Upon the release of personal property

1 to an insurer or representative of the insurer, wrecker operators
2 shall be exempt from all liability and shall be held harmless for
3 any losses or claims of loss. In the event any law enforcement
4 agency places a hold on the property, the party wanting to inspect
5 or photograph the property shall obtain permission from the law
6 enforcement agency that placed the hold on the property before
7 inspecting or photographing.

8 L. This section shall apply to all actions or proceedings that
9 commence on or after the effective date of this act.

10 SECTION 3. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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