

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 796

6 By: Sykes of the Senate

7 and

8 Denney of the House

9
10 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 permitting same-day, separate mailing of notices if
16 denial; limiting storage charges from date of
17 resubmission; updating language; amending 42 O.S.
18 2011, Section 91A, as amended by Section 2, Chapter
19 405, O.S.L. 2014 (42 O.S. Supp. 2015, Section 91A),
20 which relates to liens on personal property; updating
21 reference; specifying fees are in addition to fees
22 regulated by the Oklahoma Corporation Commission;
23 updating language; and declaring an emergency.

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

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

28 Section 91.

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

16 b. Salvage pools as defined in Section 591.2 of Title 47
17 of the Oklahoma Statutes and class AA licensed wrecker
18 services taking possession of a vehicle pursuant to an
19 agreement with or at the direction of, or dispatched
20 by, a state or local law enforcement or government
21 agency, or pursuant to the abandoned vehicle renewal
22 provisions of Section 954A of Title 47 of the Oklahoma
23 Statutes, shall not be subject to the provisions of
24 this section, but shall be subject to the provisions

1 of Section 91A of this title. Unless otherwise
2 provided by this subparagraph, class AA licensed
3 wrecker services performing consensual tows shall be
4 subject to the provisions of this section.

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

12 3. This special lien shall be subordinate to any perfected
13 security interest unless the claimant complies with the requirements
14 of this section. Failure to comply with any requirements of this
15 section shall result in denial of any title application and cause
16 the special lien to be subordinate to any perfected lien. Upon such
17 denial, the applicant shall be entitled to one resubmission of the
18 title application within fifteen (15) business days of receipt of
19 the denial, and proceed to comply with the requirements of this
20 section. In the event of a denial, the Notice of Possessory Lien
21 and the Notice of Sale may be mailed on the same day in separate
22 envelopes and storage charges shall only be charged from the date of
23 resubmission. "Failure to comply" includes, but is not limited to:
24

- 1 a. failure to timely provide additional documentation
2 supporting or verifying any entry on submitted forms as
3 requested by the Tax Commission, including but not
4 limited to, ~~United States Postal Service~~ proof of
5 return receipt requested such as Form 3811 or United
6 States Postal Service electronic equivalent,
7 b. failure to provide the documentation supporting lawful
8 possession as defined in paragraph 3 of subsection ~~F~~ H
9 of this section,
10 c. claimant or the agent being other than the individual
11 who provided the service giving rise to the special
12 lien, as in paragraph 2 of this subsection,
13 d. claimant not being in possession of the vehicle,
14 e. notice of lien not filed in accordance with paragraph 4
15 of this subsection, or
16 f. foreclosure notification and proceedings not
17 accomplished in accordance with paragraph 6 of this
18 section.

19 4. Any person claiming the special lien provided in paragraph 2
20 of this subsection shall mail a notice of such lien, no later than
21 sixty (60) days after the first services are rendered, by regular,
22 first class United States mail, and by certified mail, return
23 receipt requested, to all interested parties who reside at separate
24 locations. ~~If services provided are pursuant to a contract~~

1 primarily for the purpose of storage or rental of space, the
2 beginning date of the sixty-day period provided in the previous
3 sentence shall be the first day of the first period or partial
4 period for which rental or storage charges remain unpaid.† The
5 notice shall be in writing and shall contain, but not be limited to,
6 the following:

- 7 a. a statement that the notice is a ~~notice~~ Notice of a
8 ~~possessory lien~~ Possessory Lien,
- 9 b. the complete legal name, physical and mailing address,
10 and telephone number of the claimant,
- 11 c. the complete legal name, physical and mailing address
12 of the person who requested that the claimant render
13 service to the owner by furnishing material, labor or
14 skill, storage, or rental space, or the date the
15 property was abandoned if the claimant did not render
16 any other service,
- 17 d. a description of the article of personal property,
18 including a photograph if the property is Section 91
19 Personal Property, and the complete physical and
20 mailing address of the location of the article of
21 personal property,
- 22 e. an itemized statement describing the date or dates the
23 labor or services were performed and material
24 furnished, and the charges claimed for each item, the

1 totals of which shall equal the total compensation
2 claimed,

3 f. a statement by the claimant that the materials, labor
4 or skill furnished, or arrangement for storage or
5 rental of space, was authorized by the owner of the
6 personal property and was in fact provided or
7 performed, and written proof of authority to perform
8 the work, labor or service, or that the property was
9 abandoned by the owner if the claimant did not render
10 any other service, and that storage or rental fees
11 will accrue as allowed by law, and

12 g. the signature of the claimant which shall be notarized
13 and, if applicable, the signature of the claimant's
14 attorney. If the claimant is a business, then the
15 name of the contact person representing the business
16 must be shown. In place of an original signature and
17 notary seal, a digital or electronic signature or seal
18 shall be accepted.

19 5. For services rendered or vehicles abandoned on or after
20 November 1, 2005, storage charges or charges for rental of space ~~(,)~~
21 unless agreed to by contract as part of an overall transaction or
22 arrangement that was primarily for the purpose of storage of the
23 Section 91 Personal Property or rental of space ~~(,)~~, may only be
24 assessed beginning with the day that the Notice of Possessory Lien

1 is mailed as evidenced by certified mail. Provided, however, in the
2 case of contractual charges incurred for storage or rental of space
3 in an overall transaction primarily for the purpose of storage or
4 rental, charges subject to the special lien may only be assessed
5 beginning with a date not more than sixty (60) days prior to the day
6 that the Notice of Possessory Lien is mailed, and shall accrue only
7 at the regular periodic rate for storage or rental as provided in
8 the contract, adjusted for partial periods of storage or rental.
9 The maximum allowable compensation for storage shall not exceed the
10 fees established by the Corporation Commission for nonconsensual
11 tows.

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

- 16 a. a statement that the notice is a Notice of Sale,
- 17 b. the names of all interested parties known to the
18 claimant,
- 19 c. a description of the property to be sold, including a
20 photograph if the property is Section 91 Personal
21 Property and if the condition of such property has
22 materially changed since the mailing of Notice of
23 Possessory Lien required pursuant to paragraph 4 of
24 this subsection,

- 1 d. a notarized statement of the nature of the work, labor
2 or service performed, material furnished, or storage
3 or rental of space, and the date thereof, and the name
4 of the person who authorized the work, labor or
5 service performed, or the storage or rental
6 arrangement, and written proof of authority to perform
7 the work, labor or service, or that the property was
8 abandoned if the claimant did not render any other
9 service,
- 10 e. the date, time, and exact physical location of sale,
11 f. the name, complete physical address, mailing address,
12 and telephone number of the party foreclosing such
13 lien. If the claimant is a business, then the name of
14 the contact person representing the business must be
15 shown. In place of an original signature and notary
16 seal, a digital or electronic signature or seal shall
17 be accepted, and
- 18 g. itemized charges which shall equal the total
19 compensation claimed.

20 7. Such ~~notice~~ Notice of ~~sale~~ Sale shall be posted in two
21 public places in the county where the property is to be sold at
22 least ten (10) days before the time therein specified for such sale,
23 and a copy of the notice shall be mailed to all interested parties
24 at their last-known post office address by regular, first class

1 United States mail and by certified mail, return receipt requested,
2 at least ten (10) days before the date of the sale. If the item of
3 personal property is a manufactured home, notice shall also be sent
4 by certified mail to the county treasurer and to the county assessor
5 of the county where the manufactured home is located.

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

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

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 no sooner than ten (10) days and no later than thirty (30)
5 days after the Notice of Possessory Lien has been mailed as
6 evidenced by certified mail. The date actually sold shall be within
7 sixty (60) days from the date of the Notice of Sale as evidenced by
8 certified mail.

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

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

22 (1) the check or other written order for immediate
23 payment of money, copy thereof being attached,
24 was received for labor, material or supplies for

1 producing or repairing an article of personal
2 property, or for other specific property-related
3 services covered by this section,

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

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

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

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

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

21 3. The enforcement of the lien shall be within sixty (60) days
22 after filing the lien in the manner provided by law for enforcing
23 the lien of a security agreement and provided that the lien shall
24

1 not affect the rights of innocent, intervening purchasers without
2 notice.

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

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

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

24

1 2. The claimant may require the person obligated under the
2 contract for services to pay the costs of repossession as a
3 condition for reclaiming the article only to the extent of the
4 reasonable fair market value of the services required to take
5 possession of the article;

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

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

20 D. 1. If a vehicle, all-terrain vehicle, utility vehicle,
21 manufactured home, motorcycle, boat, outboard motor, or trailer has
22 a certificate of title issued by the Tax Commission or by a
23 federally recognized Indian tribe in the State of Oklahoma, but
24 there is no active lien recorded on the certificate of title,

1 Section 91A of this title will apply instead of this section.

2 Likewise, if there is an active lien recorded on the certificate of
3 title but the lien is over fifteen (15) years old and the property
4 is not a manufactured home, Section 91A of this title will apply
5 instead of this section.

6 2. If personal property that otherwise would be covered by this
7 section has been registered by the Tax Commission or by a federally
8 recognized Indian tribe in the State of Oklahoma, and there is a
9 lien of record but no certificate of title has been issued, Section
10 91A of this title will apply instead of this section.

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

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

23 F. Upon receipt of notice of legal proceedings, the Tax
24 Commission shall cause the sale process to be put on hold until

1 notice of resolution of court proceedings is received from the
2 court. If such notice of commencement of court proceedings is not
3 filed with the Tax Commission, the possessory lien sale process may
4 continue.

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

6 H. For purposes of this section:

7 1. "Possession" includes actual possession and constructive
8 possession;

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

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

22 4. "Itemized charges" means total parts, total labor, total
23 towing fees, total storage fees, total processing fees and totals of
24

1 any other fee groups, the sum total of which shall equal the
2 compensation claimed.

3 I. For purposes of this section, the United States Postal
4 Service approved electronic equivalent of proof of return receipt
5 requested Form 3811 shall satisfy return receipt requested
6 documentation requirements.

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

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

18 SECTION 2. AMENDATORY 42 O.S. 2011, Section 91A, as
19 amended by Section 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2015,
20 Section 91A), is amended to read as follows:

21 Section 91A.

22 A. 1. a. This section applies to all types of personal property
23 other than:
24

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

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

5 b. This section applies to any vehicle, all-terrain
6 vehicle, utility vehicle, manufactured home,
7 motorcycle, boat, outboard motor, or trailer that is
8 excluded from coverage under subsection A of Section
9 91 of this title because the personal property:

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

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

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

18 (4) is otherwise excluded by subparagraph b of
19 paragraph 1 of subsection A of Section 91 of this
20 title or subsection D of Section 91 of this
21 title.

22 c. If personal property has a certificate of title, or
23 would be required to have a certificate of title under
24 Oklahoma law, and is apparently covered both by this

1 section and by Sections 191 through 200 of this title,
2 the procedures set out in this section shall apply
3 instead of Sections 191 through 200 of this title. If
4 personal property without a certificate of title and
5 not required to be titled under Oklahoma law is
6 covered both by this section and Sections 191 through
7 200 of this title, the procedures set out in Sections
8 191 through 200 of this title shall apply instead of
9 this section.

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

1 b. Except for Class AA licensed wrecker towing charges,
2 the special lien shall be subordinate to any perfected
3 security interest unless the claimant complies with
4 the requirements of this section. Failure to comply
5 with any requirements of this section shall result in
6 denial of any title application and cause the special
7 lien to be subordinate to any perfected lien. Upon
8 such denial, the applicant shall be entitled to one
9 resubmission of the title application within fifteen
10 (15) business days of receipt of the denial, and
11 proceed to comply with the requirements of this
12 section. "Failure to comply" includes, but is not
13 limited to:

14 (1) failure to timely provide additional
15 documentation supporting or verifying any entry
16 on submitted forms as requested by the Tax
17 Commission,

18 (2) failure to provide the documentation supporting
19 lawful possession as outlined in paragraph 3 of
20 subsection ~~F~~ H of this section,

21 (3) claimant being other than the individual who
22 provided the service giving rise to the special
23 lien, as in subparagraph a of this paragraph ~~2~~
24 ~~this subsection,~~

1 (4) claimant not being in possession of the vehicle,
2 or

3 (5) notification and proceedings not accomplished in
4 accordance with subparagraph c of this paragraph
5 ~~2 of this subsection~~, and paragraph 3 of this
6 subsection.

7 c. Any person claiming a lien under this section shall
8 request, within five (5) business days of performing
9 any service or work on the property, the Tax
10 Commission or other appropriate license agency to
11 furnish the name and address of the current owner of
12 and any lienholder upon the property. The Motor
13 Vehicle Division of the Tax Commission or appropriate
14 license agency shall respond in person or by mail to
15 the lien claimant within ten (10) business days of the
16 receipt of the request for information. The Tax
17 Commission shall render assistance to ascertain
18 ownership, if needed. The lien claimant shall send,
19 within seven (7) business days of receipt of the
20 requested information from the Oklahoma Tax Commission
21 or other license agency, a notice of the location of
22 the property by certified mail with return receipt
23 requested, postage prepaid, to the owner and any
24 lienholder of the vehicle at the addresses furnished.

1 The lien claimant may charge Twenty Dollars (\$20.00)
2 for processing plus the cost of postage if the notice
3 is timely sent pursuant to the requirements of this
4 subparagraph in addition to fees regulated by the
5 Oklahoma Corporation Commission for licensed wreckers.

6 If the lien claimant is unable to meet the time
7 requirements due to a lack of or an altered vehicle
8 identification number on the property, the lien
9 claimant shall proceed diligently to obtain the proper
10 vehicle identification number and shall meet the time
11 requirements on the notice once the vehicle
12 identification number is known. If the lien claimant
13 is required to send additional notices because of
14 change of ownership or lienholder after it has timely
15 complied with the requirements of this subparagraph,
16 the lien claimant shall remain in compliance if such
17 additional notices are sent within the required time
18 periods from the date of discovery of the new owners
19 or ~~lien holders~~ lienholders. The notice shall be in
20 writing and shall contain, but not be limited to, the
21 following:

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

- 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 send the notice required in
24 this subparagraph if a state of emergency has been

1 declared in the county in which the property is
2 located.

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

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

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

11 b. a description of the property to be sold, including a
12 visual inspection or a photograph if the property is a
13 motor vehicle, and the physical location of the
14 property,

15 c. the nature of the work, labor or service performed,
16 material furnished, or the storage or rental
17 arrangement, and the date thereof, and written proof
18 of authority to perform the work, labor or service
19 provided. In the case of a law enforcement directed
20 tow, the logbook entry prescribed in OAC 595:25-5-5 or
21 the tow ticket as defined by the Corporation
22 Commission, shall serve as written proof of authority,

23 d. the time and place of sale,
24

1 e. the name, telephone number, physical address and
2 mailing address of the claimant, and agent or
3 attorney, if any, foreclosing such lien. If the
4 claimant is a business, then the name of the contact
5 person representing the business must be shown. In
6 place of an original signature and notary seal, a
7 digital or electronic signature or seal shall be
8 accepted, and

9 f. itemized charges which shall equal the total
10 compensation claimed.

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

1 b. In the case of any item of personal property without a
2 certificate of title and not required to be titled
3 under Oklahoma law, a party who claims any interest in
4 the property shall include all owners of the property;
5 any secured party who has an active financing
6 statement on file with the county clerk of Oklahoma
7 County listing one or more owners of the property by
8 legal name as debtors and indicating a collateral
9 description that would include the property; and any
10 other person having any interest in the personal
11 property, of whom the claimant has actual notice.

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

22 d. When the jurisdiction of titling for a vehicle, all-
23 terrain vehicle, motorcycle, boat, outboard motor, or
24 trailer that is five (5) model years old or newer, or

1 a manufactured home that is fifteen (15) model years
2 old or newer, cannot be determined by ordinary means,
3 the claimant, the agent of the claimant, or the
4 attorney of the claimant, shall request, in writing,
5 that the Oklahoma Tax Commission Motor Vehicle
6 Division ascertain the jurisdiction where the vehicle
7 or manufactured home is titled. The Oklahoma Tax
8 Commission Motor Vehicle Division shall, within
9 fourteen (14) days from the date the request is
10 received, provide information as to the jurisdiction
11 where the personal property is titled. If the
12 Oklahoma Tax Commission Motor Vehicle Division is
13 unable to provide the information, it shall provide
14 notice that the record is not available.

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

1 Such notice shall include the description of the
2 property by year, make, vehicle identification number
3 ~~(if available from the property)~~, the name of the
4 individual who may be contacted for information, and
5 the telephone number of that person or the address
6 where the vehicle is located. The legal notice shall
7 be published once per week for three (3) consecutive
8 weeks. As soon as circumstances exist as described in
9 the first sentence of this subparagraph, the first
10 date of publication may occur even if the special lien
11 has not accrued for over thirty (30) days. The first
12 date available for public sale of the vehicle is the
13 day following publication of the final notice, but no
14 fewer than thirty (30) days after the lien has
15 accrued. When the owner of record is unknown, the
16 Notice of Sale nevertheless must be completed and
17 mailed to any known interested party by certified
18 mail. For purposes of this paragraph, interested
19 parties shall include all persons described in
20 subparagraph b or subparagraph c of this paragraph,
21 whichever is applicable, with the exception of any
22 owner who is unknown. Except in circumstances
23 described in paragraph 7 of this subsection that
24 provide for a shorter time period, the Notice of Sale

1 shall be posted in two public places in the county
2 where the property is to be sold at least ten (10)
3 days before the time therein specified for such sale,
4 and the Notice of Sale shall not be mailed until at
5 least thirty (30) days after ~~said~~ the lien has
6 accrued.

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

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

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

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

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

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

20 (2) the check or other written order was not paid,
21 and

22 (3) the uttering of the check or other written order
23 constituted the means for inducing the person,
24 one possessed of a special lien created by

1 subsection A of this section upon the described
2 article of personal property, to deliver up the
3 ~~said~~ article of personal property.

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

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

17 (1) that services were rendered on or in relation to
18 the article of personal property by the person
19 claiming such lien,

20 (2) that the property was in the possession of the
21 person claiming the lien but such property was
22 removed without his written consent,
23
24

- 1 (3) an identifying description of the article of
2 personal property on or in relation to which the
3 service was rendered, and
4 (4) that the debt for the services rendered on or in
5 relation to the article of personal property was
6 not paid. Provided, if the unpaid total amount
7 of the debt for services rendered on or in
8 relation to the article of personal property is
9 unknown, an approximated amount of the debt due
10 and owing shall be included in the sworn
11 statement but such approximated debt may be
12 amended within thirty (30) days of such filing to
13 reflect the actual amount of the debt due and
14 owing.

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

20 C. If the person who renders service to the owner of an article
21 of personal property to which this section applies relinquishes or
22 loses possession of the article due to circumstances described in
23 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of
24 subsection B of this section, the person claiming the lien shall be

1 entitled to possession of the article until the amount due is paid,
2 unless the article is possessed by a person who became a bona fide
3 purchaser. Entitlement to possession shall be in accordance with
4 the following:

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

10 a. in writing and separate from the written contract for
11 services, or

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

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

22 3. The claimant shall not transfer to a third party or to a
23 person who performs repossession services, a check, money order, or
24 credit card transaction that is received as payment for services

1 with respect to an article and that is returned to the claimant
2 because of insufficient funds or no funds, because the person
3 writing the check, issuing the money order, or credit cardholder has
4 no account or because the check, money order, or credit card account
5 has been closed. A person violating this paragraph shall be guilty
6 of a misdemeanor; and

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

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

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

23 3. This section applies if personal property to which Section
24 91 of this title otherwise would apply has been registered by the

1 Tax Commission or by a federally recognized Indian tribe in the
2 State of Oklahoma, and there is a lien of record but no certificate
3 of title has been issued.

4 4. This section applies if personal property to which Section
5 91 of this title otherwise would apply has not been registered by
6 either the Tax Commission or a federally recognized Indian tribe in
7 the State of Oklahoma, and no certificate of title has been issued,
8 but there is a lien of record.

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

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

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

22 8. This section applies to salvage pools as defined in Section
23 591.2 of Title 47 of the Oklahoma Statutes.

24

1 9. This section applies to class AA licensed wrecker services
2 taking possession of a vehicle pursuant to an agreement with, or at
3 the direction of, or dispatched by a state or local law enforcement
4 or government agency, or pursuant to the abandoned vehicle removal
5 provisions of Section 954A of Title 47 of the Oklahoma Statutes with
6 respect to all types of personal property, regardless of whether
7 that personal property has a certificate of title.

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

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

21 F. Upon receipt of notice of legal proceedings, the Tax
22 Commission shall cause the sale process to be put on hold until
23 notice of resolution of court proceedings is received from the
24 court. If such notice of commencement of court proceedings is not

1 filed with the Tax Commission, the possessory lien sale process may
2 continue.

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

4 H. For purposes of this section:

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

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

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

17 Class AA wrecker services taking possession of a vehicle
18 pursuant to an agreement with, or at the direction of, or dispatched
19 by, a state or local law enforcement or government agency, or
20 pursuant to the abandoned vehicle removal provisions of Section 954A
21 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
22 in possession of the vehicle. If the person lacks such
23 documentation, the procedures established by this section shall not
24 apply; and

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

5 I. For purposes of this section, the United States Postal
6 Service approved electronic equivalent of proof of return receipt
7 requested Form 3811 shall satisfy return receipt requested
8 documentation requirements.

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

18 K. Any interested party shall be permitted to visually inspect
19 and verify the services rendered by the claimant prior to the sale
20 of the article of property during normal business hours. If the
21 claimant fails to allow any interested party to inspect the
22 property, the interested party shall mail a request for inspection
23 by certified mail, return receipt requested, to the claimant.
24 Within three (3) business days of receipt of the request for

1 inspection, the claimant shall mail a photograph of the property, by
2 certified mail, return receipt requested, and a date of inspection
3 within five (5) business days from the date of the notice to
4 inspect. The lienholder shall be allowed to retrieve the property
5 without being required to bring the title into the lienholder's
6 name, if the lienholder provides proof it is a lienholder and any
7 payment due the claimant for lawful charges where the claimant has
8 complied with this section. Upon the release of personal property
9 to an insurer or representative of the insurer, wrecker operators
10 shall be exempt from all liability and shall be held harmless for
11 any losses or claims of loss. In the event any law enforcement
12 agency places a hold on the property, the party wanting to inspect
13 or photograph the property shall obtain permission from the law
14 enforcement agency that placed the hold on the property before
15 inspecting or photographing.

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

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

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