STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1694 By: Denney

AS INTRODUCED

An Act relating to liens; amending 42 O.S. 2011, Sections 91 and 91A, as amended by Sections 1 and 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2014, Sections 91 and 91A), which relate to liens on personal property; modifying applicability of section; altering definition; deleting return receipt requirement; clarifying notice of sale requirements; modifying definition; providing for adjustment of damages; excepting fees from subordinate claims; extending time period for application; increasing time for lien claimant; deleting return receipt requirement; providing time exception for mailing information; permitting additional fees in certain instance; modifying notice requirement; excepting notice if property is removed; modifying notice required to foreclose a lien through the sale of property; prescribing felony for lienholder or vehicle owner making false statement; modifying applicability once notice is mailed; permitting resubmission of forms if typographical or other error; authorizing disposal of property upon approval of corrected forms; providing for adjustment of damages; allowing tow ticket to be sufficient proof to title vehicle as recovered; requiring submission to Oklahoma Tax Commission; proscribing delay of notice or sale due to transfer record; and declaring an emergency.

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

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

Section 91.

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

b. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker services taking possession of a vehicle pursuant to an agreement with or at the direction of, or dispatched by, a state or local law enforcement or government

agency, or pursuant to the abandoned vehicle renewal provisions of Section 954A of Title 47 of the Oklahoma Statutes, shall not be subject to the provisions of this section, but shall be subject to the provisions of Section 91A of this title. Unless otherwise provided by this subparagraph, class AA licensed wrecker services performing consensual tows on personal property with an active lien that is less than fifteen (15) years old and the property has an Oklahoma title or federally recognized tribal title shall be subject to the provisions of this section and otherwise shall be subject to the procedures of Section 91A of this title.

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

3. This special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause

the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within fifteen (15) business days of receipt of the denial, and proceed to comply with the requirements of this section. "Failure to comply" includes, but is not limited to:

a. failure to timely provide additional documentation supporting or verifying any entry on submitted forms as requested by the Tax Commission~~, including but not limited to, United States Postal Service proof of return receipt requested such as Form 3811 or United States Postal Service electronic equivalent~~,

b. failure to provide the documentation supporting lawful possession as defined in paragraph 3 of subsection ~~I~~ H of this section,

c. claimant or the agent being other than the individual who provided the service giving rise to the special lien, as in paragraph 2 of this subsection,

d. claimant not being in possession of the vehicle,

e. notice of lien not filed in accordance with paragraph 4 of this subsection, or

f. foreclosure notification and proceedings not accomplished in accordance with paragraph 6 of this section.

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

a. a statement that the notice is a notice of a possessory lien,

b. the complete legal name, physical and mailing address, and telephone number of the claimant,

c. the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,

d. a description of the article of personal property, including a photograph if the property is Section 91

Personal Property, and the complete physical and mailing address of the location of the article of personal property,

e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the charges claimed for each item, the totals of which shall equal the total compensation claimed,

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

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

5. For services rendered or vehicles abandoned on or after November 1, 2005, storage charges or charges for rental of space (unless agreed to by contract as part of an overall transaction or arrangement that was primarily for the purpose of storage of the Section 91 Personal Property or rental of space) may only be assessed beginning with the day that the Notice of Possessory Lien is mailed as evidenced by certified mail. Provided, however, in the case of contractual charges incurred for storage or rental of space in an overall transaction primarily for the purpose of storage or rental, charges subject to the special lien may only be assessed beginning with a date not more than sixty (60) days prior to the day that the Notice of Possessory Lien is mailed, and shall accrue only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental. The maximum allowable compensation for storage shall not exceed the fees established by the Corporation Commission for nonconsensual tows.

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

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

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

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

d. a notarized statement of the nature of the work, labor or service performed, material furnished, or storage or rental of space, and the date thereof, and the name of the person who authorized the work, labor or service performed, or the storage or rental arrangement, and written proof of authority to perform the work, labor or service, or that the property was abandoned if the claimant did not render any other service. In the case of an owner- or agent-directed tow, the record entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Oklahoma Corporation Commission or under an agreement, contract or policy with a motor club or other insurance company road hazard or towing policy shall serve as written proof of authority to tow and store the vehicle,

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

f. the name, complete physical address, mailing address and telephone number of the party foreclosing such

lien. If the claimant is a business, then the name of the contact person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and

g. itemized charges which shall equal the total compensation claimed.

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

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

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

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

11. Proceedings for foreclosure under this act shall be commenced no sooner than ten (10) days and no later than thirty (30) days after the Notice of Possessory Lien has been mailed as evidenced by certified mail. The date actually sold shall be within sixty (60) days from the date of the Notice of Sale as evidenced by certified mail.

B. 1. a. Any person who is induced by means of a check or other form of written order for immediate payment of money to deliver up possession of an article of personal property on which the person has a special lien

created by subsection A of this section, which check or other written order is dishonored, or is not paid when presented, shall have a lien for the amount thereof upon the personal property.

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

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

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

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

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

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

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

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

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

(4) that the debt for the services rendered on or in relation to the article of personal property was

not paid. Provided, if the unpaid total amount of the debt for services rendered on or in relation to the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

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

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

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

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

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

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

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account

has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

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

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

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

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

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

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

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

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

H. For purposes of this section:

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

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

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

3. "Lawfully in possession" means a person has documentation from the owner or the owner's authorized agent, or an insurance company or its authorized agent, authorizing the furnishing of material, labor or storage, or that the property was authorized to be towed to a repair facility, or in the case of an owner- or agent-directed tow, the record entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Oklahoma Corporation Commission or under an agreement, contract or policy with a motor club or other insurance company road hazard or towing policy shall serve as written proof of being lawfully in possession of the personal property. If the person lacks such documentation, he or she shall not be lawfully in possession of the Section 91 Personal Property and shall not be entitled to a special lien as set forth in this section;

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

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

~~J.~~ If a person claiming a special lien pursuant to this section fails to comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be knowingly false or fraudulent, the interested party shall be entitled to treble damages, but adjusted for the condition and value of the personal property. The prevailing party shall be entitled to all costs, including reasonable attorney fees.

~~K.~~ J. This section shall apply to all actions or proceedings that commence on or after ~~the effective date of this act~~ November 1, 2014.

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

Section 91A.

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

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

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

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

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

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

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

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

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

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

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

b. Except for Class AA licensed wrecker towing charges <u>and fees regulated by the Oklahoma Corporation Commission excluding storage fees</u>, the special lien shall be subordinate to any perfected security interest unless the claimant complies with the

requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to ~~one resubmission~~ resubmissions of the title application within ~~fifteen (15)~~ thirty (30) business days of receipt of the denial unless a new record must be obtained from another state, in which case the resubmission shall be made within thirty (30) business days from the date that the record is obtained from the state of record, and proceed to comply with the requirements of this section. "Failure to comply" includes, but is not limited to:

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

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

(3) claimant being other than the individual who provided the service giving rise to the special

lien, as in subparagraph a of of this paragraph ~~2 of this subsection~~,

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

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

c. Any person claiming a lien under this section shall request, within ~~five (5)~~ seven (7) business days of performing any service or work on the property, the Tax Commission or other appropriate license agency to furnish the name and address of the current owner of and any lienholder upon the property. The Motor Vehicle Division of the Tax Commission or appropriate license agency shall respond in person or by mail to the lien claimant within ten (10) business days of the receipt of the request for information. The Tax Commission shall render assistance to ascertain ownership, if needed. The lien claimant shall send, within ~~seven (7)~~ ten (10) business days of receipt of the requested information from the Oklahoma Tax Commission or other license agency, a notice of the location of the property by certified mail ~~with return~~

~~receipt requested~~, postage prepaid to the registered owner, transferee, debtor and any lienholder of the vehicle at the addresses furnished. A Notice of Possessory Lien form sent to the owner or lienholder based on information acquired from other states or tribes shall not be required to be mailed until the information is physically received by the lien claimant either by mail or electronically. The lien claimant may charge Twenty Dollars ($20.00) for processing plus the cost of postage if the notice is timely sent pursuant to the requirements of this subparagraph. If the titling agency fees for obtaining this information are more than Five Dollars ($5.00), the lien claimant shall be allowed to add the additional costs to the Notice of Possessory Lien processing fees or be shown as a separate fee on the form. If the lien claimant is unable to meet the time requirements due to a lack of or an altered vehicle identification number on the property or other reason for not being able to identify the personal property owner or lienholder, the lien claimant shall proceed diligently to obtain the proper vehicle identification number and owner and any lienholder information and shall meet the time requirements on the notice once

the vehicle identification number or owner or lienholder information is known. If the lien claimant is required to send additional notices because of change of ownership or lienholder after it has timely complied with the requirements of this subparagraph, the lien claimant shall remain in compliance if such additional notices are sent within the required time periods from the date of discovery of the new registered owners or ~~lien holders~~ lienholders. The notice shall be in writing and shall contain, but not be limited to, the following:

(1) a statement that the notice is a notice of a possessory lien,

(2) the complete legal name, physical and mailing address, and telephone number of the claimant,

(3) the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material except for tows performed under Section 954A of Title 47 of the Oklahoma Statutes, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,

(4) a description of the article of personal property, and the complete physical and mailing address of the location of the article of personal property,

(5) the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided that, in the case of a law enforcement directed tow, the ~~logbook~~ record entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission shall serve as written proof of authority,

(6) the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, the name of the contact person representing the business shall be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and

(7) an itemized statement describing the date or dates the labor or services were performed and material furnished and the charges claimed for

each item, the totals of which shall equal the total compensation claimed.

The lien claimant shall not be required to send the notice required in this subparagraph if the property is released to an interested party before the notice is mailed and no additional charges or fees continue to accrue. The lien claimant shall not be required to send the notice required in this subparagraph to the vehicle owner if the vehicle owner or their agent removes property from a vehicle in storage by a Class AA wrecker. If a law enforcement agency has the property towed to a law enforcement facility, the person claiming a lien under this section shall not be required to send notice until the property is released by law enforcement to the claimant or the date which claimant starts charging storage, whichever is earlier. A lien claimant shall have an extension of ten (10) business days to send the notice required in this subparagraph if a state of emergency has been declared in the county in which the property is located.

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

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

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

b. a description of the property to be sold, including a visual inspection, if allowed or a photograph ~~if~~ of the property ~~is a motor vehicle~~ if a visual inspection is not allowed by a lien claimant, and the physical location of the property,

c. the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided. In the case of a law enforcement directed tow, the ~~logbook~~ record entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission, shall serve as written proof of authority and made available upon request,

d. the time and place of sale,

e. the name, telephone number, physical address and mailing address of the claimant, and agent or attorney, if any, foreclosing such lien. If the claimant is a business, then the name of the contact

person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and

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

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

b. In the case of any item of personal property without a certificate of title and not required to be titled under Oklahoma law, a party who claims any interest in the property shall include all owners of the property; any secured party who has an active financing

statement on file with the county clerk of Oklahoma County listing one or more owners of the property by legal name as debtors and indicating a collateral description that would include the property; and any other person having any interest in the personal property, of whom the claimant has actual notice.

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

d. When the jurisdiction of titling for a vehicle, all-terrain vehicle, motorcycle, boat, outboard motor, or trailer that is five (5) model years old or newer, or a manufactured home that is fifteen (15) model years old or newer, cannot be determined by ordinary means, the claimant, the agent of the claimant, or the attorney of the claimant, shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle

Division ascertain the jurisdiction where the vehicle or manufactured home is titled. The Oklahoma Tax Commission Motor Vehicle Division shall, within fourteen (14) days from the date the request is received, provide information as to the jurisdiction where the personal property is titled. If the Oklahoma Tax Commission Motor Vehicle Division is unable to provide the information, it shall provide notice that the record is not available.

e. When personal property is of a type that Oklahoma law requires to be titled, the owner of record of that property is unknown, and the jurisdiction of titling and owner of record cannot be determined by ordinary means (and also, if applicable, cannot be determined in accordance with the preceding subparagraph), then the special lien may be foreclosed by publication of a legal notice in a legal newspaper in the county where the personal property is located, as defined in Section 106 of Title 25 of the Oklahoma Statutes. Such notice shall include the description of the property by year, make, vehicle identification number (if available from the property), the name of the individual who may be contacted for information, and the telephone number of that person or the address

where the vehicle is located. The legal notice shall be published once per week for three (3) consecutive weeks. As soon as circumstances exist as described in the first sentence of this subparagraph, the first date of publication may occur even if the special lien has not accrued for over thirty (30) days. The first date available for public sale of the vehicle is the day following publication of the final notice, but no fewer than thirty (30) days after the lien has accrued. When the owner of record is unknown, the Notice of Sale nevertheless must be completed and mailed to any known interested party by certified mail. For purposes of this paragraph, interested parties shall include all persons described in subparagraph b or subparagraph c of this paragraph, whichever is applicable, with the exception of any owner who is unknown. Except in circumstances described in paragraph 7 of this subsection that provide for a shorter time period, the Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and the Notice of Sale shall not be mailed until at least thirty (30) days after said lien has accrued.

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

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

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

B. 1. a. Any person who is induced by means of a check or other form of written order for immediate payment of money to deliver up possession of an article of personal property on which the person has a special lien created by subsection A of this section, which check or other written order is dishonored, or is not paid

when presented, shall have a lien for the amount thereof upon the personal property.

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

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

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

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

2. a. Any person who renders service to the owner of an article of personal property by furnishing storage, rental space, material, labor, or skill for the

protection, improvement, safekeeping, towing, right to occupy space, storage, or carriage thereof shall have a special lien on such property pursuant to this section if such property is removed from the person's possession, without such person's written consent or without payment for such service.

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

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

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

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

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

unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

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

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

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

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

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

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

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

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

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

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

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

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

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

the State of Oklahoma, and no certificate of title has been issued, but there is a lien of record.

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

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

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

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

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

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

E. A person who knowingly makes a false statement of a material fact regarding the furnishing of storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof in a proceeding under this section, or attempts to use or uses the provisions of this section to foreclose an owner or lienholder's interest in a vehicle knowing that any of the statements made in the proceeding are false, upon conviction, shall be guilty of a felony. A lienholder or vehicle owner who knowingly makes a false statement of a material fact to obtain the release of personal property from a lien claimant or attempts to use or uses the provisions of this section to invalidate the lienholder's interest in personal property knowing that any of the statements made in the proceeding are false, upon conviction, shall be guilty of a felony.

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

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

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

H. For purposes of this section:

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

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

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

Class AA wrecker services taking possession of a vehicle pursuant to an agreement with, or at the direction of, or dispatched by, a state or local law enforcement or government agency, or pursuant to the abandoned vehicle removal provisions of Section 954A of Title 47 of the Oklahoma Statutes, shall be considered lawfully in possession of the vehicle. If the person lacks such documentation, the procedures established by this section shall not apply <u>until the Notice of Possessory Lien form is mailed to the registered owner and</u>

lienholder, if any. In the case of missing or incomplete documentation or typographical errors, storage fees shall not continue to accrue until the notice is mailed. A lien claimant making an error or typographical error in paperwork shall be allowed to resubmit all required documents and allowed to make an adjustment in storage fees to the owner or lienholder wanting to retrieve the property being stored to adjust for any errors. The lien claimant shall be allowed to dispose of the abandoned property upon approval of the corrected forms;

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

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

J. If a person claiming a special lien pursuant to this section fails to comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be knowingly false or fraudulent, the interested party shall be entitled to

treble damages, but adjusted for the condition and value of the personal property. The prevailing party shall be entitled to all costs, including reasonable attorney fees.

K. Any interested party shall be permitted to visually inspect and verify the services rendered by the claimant prior to the sale of the article of property during normal business hours. If the claimant fails to allow any interested party to inspect the property, the interested party shall mail a request for inspection by certified mail, return receipt requested, to the claimant. Within three (3) business days of receipt of the request for inspection, the claimant shall mail a photograph of the property, by certified mail, return receipt requested, and a date of inspection within five (5) business days from the date of the notice to inspect. The lienholder shall be allowed to retrieve the property without being required to bring the title into the lienholder's name, if the lienholder provides proof it is a lienholder and any payment due the claimant for lawful charges where the claimant has complied with this section. Upon the release of personal property to ~~an insurer~~ a lienholder or representative of the ~~insurer~~ lienholder, wrecker operators shall be exempt from all liability and shall be held harmless for any losses or claims of loss. In the event any law enforcement agency places a hold on the property, the party wanting to inspect or photograph the property shall obtain

permission from the law enforcement agency that placed the hold on the property before inspecting or photographing.

L. If a vehicle is titled as an unrecovered theft title and law enforcement directs the towing by a Class AA Wrecker, a copy of the tow ticket shall be sufficient proof for the title to be branded as recovered and an estimate of repair costs to determine if the title should be branded as salvage, junk or nonbranded title shall be included with the forms presented to the Oklahoma Tax Commission to obtain an Oklahoma title.

M. If an owner of the vehicle performs a transfer record to a Class AA licensed wrecker service after the tow or storage date, the transfer record shall not hinder or delay the Notice of Sale or the sale of the abandoned vehicle. The Class AA licensed wrecker shall not be denied the ability to perform the process in this section to dispose of an abandoned vehicle as described in this section or Section 91 of this title.

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

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

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