

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1218

By: Murphey

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5  
6 AS INTRODUCED

7 An Act relating to liens; amending 42 O.S. 2011,  
8 Sections 91 and 91A, as last amended by Sections 1  
9 and 2, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2016,  
10 Sections 91 and 91A), which relate to liens on  
11 personal property; extending time for title  
12 application resubmission; and providing an effective  
13 date.

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

15 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91, as last  
16 amended by Section 1, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2016,  
17 Section 91), is amended to read as follows:

18 Section 91.

19 A. 1. a. This section applies to every vehicle, all-terrain  
20 vehicle, utility vehicle, manufactured home,  
21 motorcycle, boat, outboard motor, or trailer that has  
22 a certificate of title issued by the Oklahoma Tax  
23 Commission or by a federally recognized Indian tribe  
24 in the State of Oklahoma, except as otherwise provided  
in subsection D of this section. This section does

1 not apply to farm equipment as defined in Section 91.2  
2 of this title. The items of personal property to  
3 which this section applies are collectively referred  
4 to as "Section 91 Personal Property". If personal  
5 property is apparently covered both by this section  
6 and by Sections 191 through 200 of this title, the  
7 procedures set out in this section shall apply instead  
8 of Sections 191 through 200 of this title.

9 b. Salvage pools as defined in Section 591.2 of Title 47  
10 of the Oklahoma Statutes and class AA licensed wrecker  
11 services taking possession of a vehicle pursuant to an  
12 agreement with or at the direction of, or dispatched  
13 by, a state or local law enforcement or government  
14 agency, or pursuant to the abandoned vehicle renewal  
15 provisions of Section 954A of Title 47 of the Oklahoma  
16 Statutes, shall not be subject to the provisions of  
17 this section, but shall be subject to the provisions  
18 of Section 91A of this title. Unless otherwise  
19 provided by this subparagraph, class AA licensed  
20 wrecker services performing consensual tows shall be  
21 subject to the provisions of this section.

22 2. Any person who, while lawfully in possession of an article  
23 of Section 91 Personal Property, renders any service to the owner  
24 thereof by furnishing storage, rental space, material, labor or

1 skill for the protection, improvement, safekeeping, towing, right to  
2 occupy space, storage or carriage thereof, has a special lien  
3 thereon, dependent on possession, for the compensation, if any,  
4 which is due to such person from the owner for such service.

5 3. This special lien shall be subordinate to any perfected  
6 security interest unless the claimant complies with the requirements  
7 of this section. Failure to comply with any requirements of this  
8 section shall result in denial of any title application and cause  
9 the special lien to be subordinate to any perfected lien. Upon such  
10 denial, the applicant shall be entitled to one resubmission of the  
11 title application within ~~fifteen (15)~~ thirty (30) business days of  
12 receipt of the denial, and proceed to comply with the requirements  
13 of this section. In the event of a denial, the Notice of Possessory  
14 Lien and the Notice of Sale may be mailed on the same day in  
15 separate envelopes and storage charges shall only be charged from  
16 the date of resubmission. "Failure to comply" includes, but is not  
17 limited to:

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

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

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

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

1 performed, and written proof of authority to perform  
2 the work, labor or service, or that the property was  
3 abandoned by the owner if the claimant did not render  
4 any other service, and that storage or rental fees  
5 will accrue as allowed by law, and

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

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

1 at the regular periodic rate for storage or rental as provided in  
2 the contract, adjusted for partial periods of storage or rental.  
3 The maximum allowable compensation for storage shall not exceed the  
4 fees established by the Corporation Commission for nonconsensual  
5 tows.

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

- 9 a. a statement that the notice is a Notice of Sale,
- 10 b. the names of all interested parties known to the  
11 claimant,
- 12 c. a description of the property to be sold, including a  
13 photograph if the property is Section 91 Personal  
14 Property and if the condition of such property has  
15 materially changed since the mailing of Notice of  
16 Possessory Lien required pursuant to paragraph 4 of  
17 this subsection,
- 18 d. a notarized statement of the nature of the work, labor  
19 or service performed, material furnished, or storage  
20 or rental of space, and the date thereof, and the name  
21 of the person who authorized the work, labor or  
22 service performed, or the storage or rental  
23 arrangement, and written proof of authority to perform  
24 the work, labor or service, or that the property was

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

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

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

5 and telephone number of the party foreclosing such

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

7 the contact person representing the business must be

8 shown. In place of an original signature and notary

9 seal, a digital or electronic signature or seal shall

10 be accepted, and

11 g. itemized charges which shall equal the total

12 compensation claimed.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 H. For purposes of this section:

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

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

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

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

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



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

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

12 SECTION 2. AMENDATORY 42 O.S. 2011, Section 91A, as last  
13 amended by Section 2, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2016,  
14 Section 91A), is amended to read as follows:

15 Section 91A.

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

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

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

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

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

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

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

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

- 3 2. a. Any person who, while lawfully in possession of an  
4 article of personal property to which this section  
5 applies, renders any service to the owner thereof by  
6 furnishing storage, rental space, material, labor or  
7 skill for the protection, improvement, safekeeping,  
8 towing, right to occupy space, storage or carriage  
9 thereof, has a special lien thereon, dependent on  
10 possession, for the compensation, if any, which is due  
11 to such person from the owner for such service.  
12 Charges owed under a contract primarily for the  
13 purpose of storage or rental of space shall be accrued  
14 only at the regular periodic rate for storage or  
15 rental as provided in the contract, adjusted for  
16 partial periods of storage or rental.
- 17 b. Except for Class AA licensed wrecker towing charges,  
18 the special lien shall be subordinate to any perfected  
19 security interest unless the claimant complies with  
20 the requirements of this section. Failure to comply  
21 with any requirements of this section shall result in  
22 denial of any title application and cause the special  
23 lien to be subordinate to any perfected lien. Upon  
24 such denial, the applicant shall be entitled to one

1 resubmission of the title application within ~~fifteen~~  
2 ~~(15)~~ thirty (30) business days of receipt of the  
3 denial, and proceed to comply with the requirements of  
4 this section. "Failure to comply" includes, but is  
5 not limited to:

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

21 c. Any person claiming a lien under this section shall  
22 request, within five (5) business days of performing  
23 any service or work on the property, the Tax  
24 Commission or other appropriate license agency to

1 furnish the name and address of the current owner of  
2 and any lienholder upon the property. The Motor  
3 Vehicle Division of the Tax Commission or appropriate  
4 license agency shall respond in person or by mail to  
5 the lien claimant within ten (10) business days of the  
6 receipt of the request for information. The Tax  
7 Commission shall render assistance to ascertain  
8 ownership, if needed. The lien claimant shall send,  
9 within seven (7) business days of receipt of the  
10 requested information from the Oklahoma Tax Commission  
11 or other license agency, a notice of the location of  
12 the property by certified mail with return receipt  
13 requested, postage prepaid, to the owner and any  
14 lienholder of the vehicle at the addresses furnished.  
15 The lien claimant may charge Twenty Dollars (\$20.00)  
16 for processing plus the cost of postage if the notice  
17 is timely sent pursuant to the requirements of this  
18 subparagraph in addition to fees regulated by the  
19 Oklahoma Corporation Commission for licensed wreckers.  
20 If the lien claimant is unable to meet the time  
21 requirements due to a lack of or an altered vehicle  
22 identification number on the property, the lien  
23 claimant shall proceed diligently to obtain the proper  
24 vehicle identification number and shall meet the time

1 requirements on the notice once the vehicle  
2 identification number is known. If the lien claimant  
3 is required to send additional notices because of  
4 change of ownership or lienholder after it has timely  
5 complied with the requirements of this subparagraph,  
6 the lien claimant shall remain in compliance if such  
7 additional notices are sent within the required time  
8 periods from the date of discovery of the new owners  
9 or lienholders. The notice shall be in writing and  
10 shall contain, but not be limited to, the following:

- 11 (1) a statement that the notice is a Notice of  
12 Possessory Lien,
- 13 (2) the complete legal name, physical and mailing  
14 address, and telephone number of the claimant,
- 15 (3) the complete legal name, physical and mailing  
16 address of the person who requested that the  
17 claimant render service to the owner by  
18 furnishing material, labor or skill, storage, or  
19 rental space, or the date the property was  
20 abandoned if the claimant did not render any  
21 other service,
- 22 (4) a description of the article of personal  
23 property, and the complete physical and mailing  
24

1 address of the location of the article of  
2 personal property,

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

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

20 (7) an itemized statement describing the date or  
21 dates the labor or services were performed and  
22 material furnished and the charges claimed for  
23 each item, the totals of which shall equal the  
24 total compensation claimed.

1 The lien claimant shall not be required to send the  
2 notice required in this subparagraph if the property  
3 is released to an interested party before the notice  
4 is mailed and no additional charges or fees continue  
5 to accrue. If a law enforcement agency has the  
6 property towed to a law enforcement facility, the  
7 person claiming a lien under this section shall not be  
8 required to send notice until the property is released  
9 by law enforcement to the claimant or the date which  
10 claimant starts charging storage, whichever is  
11 earlier. A lien claimant shall have an extension of  
12 ten (10) business days to send the notice required in  
13 this subparagraph if a state of emergency has been  
14 declared in the county in which the property is  
15 located.

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

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

22 a. the names of the owner and any other known party or  
23 parties who may claim any interest in the property,  
24



- 1           b. a description of the property to be sold, including a  
2           visual inspection or a photograph if the property is a  
3           motor vehicle, and the physical location of the  
4           property,
- 5           c. the nature of the work, labor or service performed,  
6           material furnished, or the storage or rental  
7           arrangement, and the date thereof, and written proof  
8           of authority to perform the work, labor or service  
9           provided. In the case of a law enforcement directed  
10          tow, the logbook entry prescribed in OAC 595:25-5-5 or  
11          the tow ticket as defined by the Corporation  
12          Commission, shall serve as written proof of authority,
- 13          d. the time and place of sale,
- 14          e. the name, telephone number, physical address and  
15          mailing address of the claimant, and agent or  
16          attorney, if any, foreclosing such lien. If the  
17          claimant is a business, then the name of the contact  
18          person representing the business must be shown. In  
19          place of an original signature and notary seal, a  
20          digital or electronic signature or seal shall be  
21          accepted, and
- 22          f. itemized charges which shall equal the total  
23          compensation claimed.
- 24

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

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

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

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

1 Oklahoma Tax Commission Motor Vehicle Division is  
2 unable to provide the information, it shall provide  
3 notice that the record is not available.

4 e. When personal property is of a type that Oklahoma law  
5 requires to be titled, the owner of record of that  
6 property is unknown, and the jurisdiction of titling  
7 and owner of record cannot be determined by ordinary  
8 means and also, if applicable, cannot be determined in  
9 accordance with the preceding subparagraph, then the  
10 special lien may be foreclosed by publication of a  
11 legal notice in a legal newspaper in the county where  
12 the personal property is located, as defined in  
13 Section 106 of Title 25 of the Oklahoma Statutes.  
14 Such notice shall include the description of the  
15 property by year, make, vehicle identification number  
16 if available from the property, the name of the  
17 individual who may be contacted for information, and  
18 the telephone number of that person or the address  
19 where the vehicle is located. The legal notice shall  
20 be published once per week for three (3) consecutive  
21 weeks. As soon as circumstances exist as described in  
22 the first sentence of this subparagraph, the first  
23 date of publication may occur even if the special lien  
24 has not accrued for over thirty (30) days. The first

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

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

21 6. Proceedings for foreclosure under this act shall not be  
22 commenced until thirty (30) days after the lien has accrued, except  
23 as provided elsewhere in Oklahoma law.  
24

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

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

21           b. The person claiming such lien shall, within thirty  
22 (30) days from the date of dishonor of the check or  
23 other written order for payment of money, file in the  
24

1 office of the county clerk of the county in which the  
2 property is situated a sworn statement that:

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

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

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

17 2. a. Any person who renders service to the owner of an  
18 article of personal property by furnishing storage,  
19 rental space, material, labor, or skill for the  
20 protection, improvement, safekeeping, towing, right to  
21 occupy space, storage, or carriage thereof shall have  
22 a special lien on such property pursuant to this  
23 section if such property is removed from the person's  
24

1 possession, without such person's written consent or  
2 without payment for such service.

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

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

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

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

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



1 reflect the actual amount of the debt due and  
2 owing.

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

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

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

22 a. in writing and separate from the written contract for  
23 services, or  
24

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

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

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

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

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

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

12 3. This section applies if personal property to which Section  
13 91 of this title otherwise would apply has been registered by the  
14 Tax Commission or by a federally recognized Indian tribe in the  
15 State of Oklahoma, and there is a lien of record but no certificate  
16 of title has been issued.

17 4. This section applies if personal property to which Section  
18 91 of this title otherwise would apply has not been registered by  
19 either the Tax Commission or a federally recognized Indian tribe in  
20 the State of Oklahoma, and no certificate of title has been issued,  
21 but there is a lien of record.

22 5. This section applies to personal property that otherwise  
23 would be covered by Section 91 of this title, except that the  
24

1 services were rendered or the property was abandoned prior to  
2 November 1, 2005.

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

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

12 8. This section applies to salvage pools as defined in Section  
13 591.2 of Title 47 of the Oklahoma Statutes.

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

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

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

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

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

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

18 H. For purposes of this section:

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

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

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

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

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

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

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

24

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

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

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

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

10 SECTION 3. This act shall become effective November 1, 2017.

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