

1 STATE OF OKLAHOMA

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

3 SENATE BILL 289

By: Newberry

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5
6 AS INTRODUCED

7 An Act relating to service liens; amending 42 O.S.
8 2011, Sections 91 and 91A, as last amended by
9 Sections 1 and 2, Chapter 316, O.S.L. 2016 (42 O.S.
10 Supp. 2016, Sections 91 and 91A), which relate to
11 liens on personal property; establishing requirements
12 for certain sale; adding grounds for failure of
13 certain compliance; establishing procedures for
14 release of certain impounded vehicles; authorizing
15 hold on vehicles under certain circumstances;
16 establishing procedures for certain holds; providing
17 for liability for certain storage charges;
18 establishing precedence of certain court order;
19 establishing requirements for certain release;
20 defining term; and providing an effective date.

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

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

Section 91.

25 A. 1. a. This section applies to every vehicle, all-terrain
26 vehicle, utility vehicle, manufactured home,
27 motorcycle, boat, outboard motor, or trailer that has
28 a certificate of title issued by the Oklahoma Tax

1 Commission or by a federally recognized Indian tribe
2 in the State of Oklahoma, except as otherwise provided
3 in subsection D of this section. This section does
4 not apply to farm equipment as defined in Section 91.2
5 of this title. The items of personal property to
6 which this section applies are collectively referred
7 to as "Section 91 Personal Property". If personal
8 property is apparently covered both by this section
9 and by Sections 191 through 200 of this title, the
10 procedures set out in this section shall apply instead
11 of Sections 191 through 200 of this title.

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

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

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

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

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1 receipt requested such as Form 3811 or United States
2 Postal Service electronic equivalent,

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

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

9 d. claimant not being in possession of the vehicle,

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

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

15 4. Any person claiming the special lien provided in paragraph 2
16 of this subsection shall mail a notice of such lien, no later than
17 sixty (60) days after the first services are rendered, by regular,
18 first-class United States mail, and by certified mail, return
19 receipt requested, to all interested parties who reside at separate
20 locations. If services provided are pursuant to a contract
21 primarily for the purpose of storage or rental of space, the
22 beginning date of the sixty-day period provided in the previous
23 sentence shall be the first day of the first period or partial
24 period for which rental or storage charges remain unpaid. The

1 notice shall be in writing and shall contain, but not be limited to,
2 the following:

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

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

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

15 5. For services rendered or vehicles abandoned on or after
16 November 1, 2005, storage charges or charges for rental of space ,
17 unless agreed to by contract as part of an overall transaction or
18 arrangement that was primarily for the purpose of storage of the
19 Section 91 Personal Property or rental of space, may only be
20 assessed beginning with the day that the Notice of Possessory Lien
21 is mailed as evidenced by certified mail. Provided, however, in the
22 case of contractual charges incurred for storage or rental of space
23 in an overall transaction primarily for the purpose of storage or
24 rental, charges subject to the special lien may only be assessed

1 beginning with a date not more than sixty (60) days prior to the day
2 that the Notice of Possessory Lien is mailed, and shall accrue only
3 at the regular periodic rate for storage or rental as provided in
4 the contract, adjusted for partial periods of storage or rental.
5 The maximum allowable compensation for storage shall not exceed the
6 fees established by the Corporation Commission for nonconsensual
7 tows.

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

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

1 arrangement, and written proof of authority to perform
2 the work, labor or service, or that the property was
3 abandoned if the claimant did not render any other
4 service,

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

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

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

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

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

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

20 10. The claimant or any other person may in good faith become a
21 purchaser of the property sold. The sale shall be held in a
22 commercially-reasonable manner. If the property is a motor vehicle,
23 it shall be sold for no less than sixty-five percent (65%) of the
24 average trade-in value on the date of sale according to the National

1 Automobile Dealers Association Official Used Car Guide or latest
2 monthly edition of any other nationally-recognized published
3 guidebook, adjusting to the condition of the vehicle.

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

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

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

23 (1) the check or other written order for immediate
24 payment of money, copy thereof being attached,

1 was received for labor, material or supplies for
2 producing or repairing an article of personal
3 property, or for other specific property-related
4 services covered by this section,

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

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

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

22 b. The person claiming such lien shall, within five (5)
23 days of such nonauthorized removal, file in the office
24

1 of the county clerk of the county in which the
2 property is located, a sworn statement including:

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

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

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

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

23 3. The enforcement of the lien shall be within sixty (60) days
24 after filing the lien in the manner provided by law for enforcing

1 the lien of a security agreement and provided that the lien shall
2 not affect the rights of innocent, intervening purchasers without
3 notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 H. For purposes of this section:

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

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

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

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

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

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

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

16 K. This section shall apply to all actions or proceedings that
17 commence on or after ~~the effective date of this act~~ November 1,
18 2014.

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

22 Section 91A.

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

- 1 (1) farm equipment as defined in Section 91.2 of this
2 title, and
3 (2) "Section 91 Personal Property" as defined in
4 Section 91 of this title.

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

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

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

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

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

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

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

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

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

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

2 ~~or~~

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

6 (6) failure to release a vehicle under the procedures
7 provided in subparagraph e of paragraph 2 of this
8 subsection.

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

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

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

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

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

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

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

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

6 e.

7 (1) at all times, the Class AA wrecker operator shall
8 have a capable person available to release an
9 impounded or stored vehicle within thirty (30)
10 minutes. As required by Section 955 of Title 47
11 of the Oklahoma Statutes, any vehicle impounded
12 by law enforcement shall not be released to the
13 owner until that owner provides proof of valid
14 insurance or an affidavit of nonuse on the
15 roadway. In the event a lienholder, an insurer
16 or a representative of the insurer who has
17 accepted liability for the vehicle requests the
18 release, no proof of valid insurance or affidavit
19 of nonuse on the roadway or any further
20 documentation shall be required in accordance
21 with subsection K of this section.

22 (2) in the event an officer determines a need exists
23 to preserve the secured status of an impounded or
24 stored vehicle, the officer may direct the

1 operator to place a hold on the vehicle for the
2 following reasons:

3 (a) failure to pay taxes due to the state,

4 (b) forfeiture proceedings under the Controlled
5 Dangerous Substances Act, Section 2-506 of
6 Title 63 of the Oklahoma Statutes,

7 (c) evidentiary proceedings,

8 (d) failure to provide proof of insurance, or

9 (e) the vehicle has been used in the commission
10 of a felony offense.

11 (3) the operator shall honor the hold, subject to the
12 following procedures:

13 (a) if the hold is because taxes due to the
14 state have not been paid, the operator shall
15 not release the vehicle until the owner has
16 furnished proof from the Oklahoma Tax
17 Commission or a motor license agent to the
18 operator that the vehicle has been duly
19 registered and the license fee has been
20 paid. This provision shall not apply to
21 lienholders, insurers or other parties
22 exempt from registration requirements.

23 (b) if the hold is due to a forfeiture
24 proceeding under the Uniform Controlled

1 Dangerous Substance Act, the operator shall
2 not release the vehicle unless authorization
3 is received either from the District
4 Attorney's Office of the county from which
5 the vehicle was impounded or from the
6 impounding officer. Except:

7 (i) if, after the expiration of seventy-two
8 (72) hours from the time of impoundment
9 excluding Saturday, Sunday and legal
10 holidays, the operator has not received
11 either the case number under which a
12 forfeiture proceeding has been accepted
13 and filed or a release of the hold from
14 the impounding officer, the operator
15 shall contact the law enforcement
16 agency storing the vehicle, between
17 7:00 a.m. and 12:00 noon following such
18 seventy-two (72) hour period, advising
19 the ranking supervisor on duty or
20 dispatcher of the following information:

21 (A) that the vehicle is being held for
22 the filing of forfeiture
23 proceedings,
24

1 (B) that no case number of forfeiture
2 proceedings has been received;

3 (C) Description of the vehicle,
4 including tag and vehicle
5 identification number,

6 (D) Vehicle owner, if known,

7 (E) County from which the vehicle was
8 impounded,

9 (F) Name of impounding officer, and

10 (G) Name and telephone number of
11 operator submitting such
12 information,

13 (ii) the supervisor may direct the
14 impounding officer to verify the
15 decision of the district attorney
16 and to notify the operator:

17 (A) of the style and case number of
18 the forfeiture proceedings, or

19 (B) that the hold is cancelled because
20 the district attorney has declined
21 forfeiture proceedings, so the
22 vehicle may be released,

23 (iii) pursuant to subsection K of Section 2-
24 506 of Title 63 of the Oklahoma

1 Statutes, any vehicle seized or stored
2 for forfeiture proceedings under the
3 Uniform Controlled Dangerous Substance
4 Act is considered to be in the custody
5 of the district attorney of the county
6 where the property was seized and
7 therefore the operator may contact that
8 office regarding any matter relating to
9 such vehicle.

10 (4) if the hold is for evidentiary proceedings, for
11 any reason other than taxes or forfeiture, or if
12 the officer fails to state a reason, then the
13 hold shall expire forty-eight (48) hours from the
14 time of impoundment, if not released earlier by
15 the officer, and the operator shall not honor the
16 hold beyond the forty-eight (48) hour period
17 without express direction of the law enforcement
18 agency storing the vehicle. The vehicle may then
19 be released in accordance with the provisions of
20 this section.

21 (5) if a police hold remains after the expiration of
22 seventy-two (72) hours, lienholders, insurers and
23 other parties other than the registered owner
24 shall not be liable for any storage charges

1 during the pendency of the police hold. Upon
2 expiration or release of the police hold, in
3 order to collect storage charges that accrue
4 after the release of the police hold, the
5 operator shall commence foreclosure proceedings
6 within five (5) days of the release of the hold.

7 (6) if any provision of this subparagraph conflicts
8 with a court order served upon the operator
9 relating to impoundments, release, storage or
10 other matter relating to the wrecker service, the
11 court order shall take precedence.

12 (7) when a wrecker service is to obtain a vehicle
13 from another wrecker service which originally
14 towed the vehicle, the original wrecker service
15 shall:

16 (a) allow the other wrecker service to enter its
17 premises and remove the vehicle, or

18 (b) if the original wrecker service does not
19 allow the other licensed wrecker services or
20 registered owner or agent on its premises to
21 make the tow, the original wrecker service
22 shall properly tow the vehicle to a mutually
23 agreeable site in order to transfer the
24 vehicle to the requesting wrecker service.

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

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

6 b. a description of the property to be sold, including a
7 visual inspection or a photograph if the property is a
8 motor vehicle, and the physical location of the
9 property,

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

18 d. the time and place of sale,

19 e. the name, telephone number, physical address and
20 mailing address of the claimant, and agent or
21 attorney, if any, foreclosing such lien. If the
22 claimant is a business, then the name of the contact
23 person representing the business must be shown. In
24 place of an original signature and notary seal, a

1 digital or electronic signature or seal shall be
2 accepted, and

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

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

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

1 legal name as debtors and indicating a collateral
2 description that would include the property; and any
3 other person having any interest in the personal
4 property, of whom the claimant has actual notice.

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

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

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

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

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

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

1 commercially reasonable manner. If the property is a motor vehicle,
2 it shall be sold for no less than sixty-five percent (65%) of the
3 average trade-in value on the date of sale according to the National
4 Automobile Dealers Association Official Used Car Guide or latest
5 monthly edition of any other nationally recognized published
6 guidebook, adjusting to the condition of the vehicle.

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

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

22 B. 1. a. Any person who is induced by means of a check or other
23 form of written order for immediate payment of money
24 to deliver up possession of an article of personal

1 property on which the person has a special lien
2 created by subsection A of this section, which check
3 or other written order is dishonored, or is not paid
4 when presented, shall have a lien for the amount
5 thereof upon the personal property.

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

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

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

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

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

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

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

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

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

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

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

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

15 C. If the person who renders service to the owner of an article
16 of personal property to which this section applies relinquishes or
17 loses possession of the article due to circumstances described in
18 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of
19 subsection B of this section, the person claiming the lien shall be
20 entitled to possession of the article until the amount due is paid,
21 unless the article is possessed by a person who became a bona fide
22 purchaser. Entitlement to possession shall be in accordance with
23 the following:
24

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

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

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

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

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

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

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

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

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

19 3. This section applies if personal property to which Section
20 91 of this title otherwise would apply has been registered by the
21 Tax Commission or by a federally recognized Indian tribe in the
22 State of Oklahoma, and there is a lien of record but no certificate
23 of title has been issued.

24

1 4. This section applies if personal property to which Section
2 91 of this title otherwise would apply has not been registered by
3 either the Tax Commission or a federally recognized Indian tribe in
4 the State of Oklahoma, and no certificate of title has been issued,
5 but there is a lien of record.

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

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

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

19 8. This section applies to salvage pools as defined in Section
20 591.2 of Title 47 of the Oklahoma Statutes.

21 9. This section applies to class AA licensed wrecker services
22 taking possession of a vehicle pursuant to an agreement with, or at
23 the direction of, or dispatched by a state or local law enforcement
24 or government agency, or pursuant to the abandoned vehicle removal

1 provisions of Section 954A of Title 47 of the Oklahoma Statutes with
2 respect to all types of personal property, regardless of whether
3 that personal property has a certificate of title.

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

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

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

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

24 H. For purposes of this section:

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

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

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

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

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

1 5. "Operator" means a Class AA wrecker operator acting in its
2 capacity as a Class AA wrecker operator performing duties requested
3 by an officer or law enforcement agency.

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

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

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

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

15 L. This section shall apply to all actions or proceedings that
16 commence on or after ~~the effective date of this act~~ November 1,
17 2014.

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

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20 56-1-207 TEK 1/18/2017 3:02:50 PM
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