

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1426

By: Pugh

6 AS INTRODUCED

7 An Act relating to liens; amending 42 O.S. 2011,
8 Section 91, as last amended by Section 1, Chapter
316, O.S.L. 2016 (42 O.S. Supp. 2016, Section 91),
9 which relates to service liens; modifying certain
mailing requirements; and providing an effective
10 date.

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

16 Section 91. A. 1. a. This section applies to every vehicle,
17 all-terrain vehicle, utility vehicle, manufactured home, motorcycle,
18 boat, outboard motor, or trailer that has a certificate of title
19 issued by the Oklahoma Tax Commission or by a federally recognized
20 Indian tribe in the State of Oklahoma, except as otherwise provided
21 in subsection D of this section. This section does not apply to
22 farm equipment as defined in Section 91.2 of this title. The items
23 of personal property to which this section applies are collectively
24 referred to as "Section 91 Personal Property". If personal property

1 is apparently covered both by this section and by Sections 191
2 through 200 of this title, the procedures set out in this section
3 shall apply instead of Sections 191 through 200 of this title.

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

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

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

- 13 a. failure to timely provide additional documentation
14 supporting or verifying any entry on submitted forms as
15 requested by the Tax Commission, including but not
16 limited to United States Postal Service proof of return
17 receipt requested such as Form 3811 or United States
18 Postal Service electronic equivalent,
- 19 b. failure to provide the documentation supporting lawful
20 possession as defined in paragraph 3 of subsection H of
21 this section,
- 22 c. claimant or the agent being other than the individual
23 who provided the service giving rise to the special
24 lien, as in paragraph 2 of this subsection,

- d. claimant not being in possession of the vehicle,
- e. notice of lien not filed in accordance with paragraph 4 of this subsection, or
- f. foreclosure notification and proceedings not accomplished in accordance with paragraph 6 of this section.

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

- a. a statement that the notice is a Notice of Possessory Lien,
- b. the complete legal name, physical and mailing address, and telephone number of the claimant,
- c. the complete legal name, physical and mailing address of the person who requested that the claimant render

1 service to the owner by furnishing material, labor or
2 skill, storage, or rental space, or the date the
3 property was abandoned if the claimant did not render
4 any other service,

5 d. a description of the article of personal property,
6 including a photograph if the property is Section 91
7 Personal Property, and the complete physical and
8 mailing address of the location of the article of
9 personal property,

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

15 f. a statement by the claimant that the materials, labor
16 or skill furnished, or arrangement for storage or
17 rental of space, was authorized by the owner of the
18 personal property and was in fact provided or
19 performed, and written proof of authority to perform
20 the work, labor or service, or that the property was
21 abandoned by the owner if the claimant did not render
22 any other service, and that storage or rental fees
23 will accrue as allowed by law, and
24

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

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

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

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

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

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

13 d. a notarized statement of the nature of the work, labor
14 or service performed, material furnished, or storage
15 or rental of space, and the date thereof, and the name
16 of the person who authorized the work, labor or
17 service performed, or the storage or rental
18 arrangement, and written proof of authority to perform
19 the work, labor or service, or that the property was
20 abandoned if the claimant did not render any other
21 service,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 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 which the service was
22 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 acknowledgement of receipt of a notice that
4 the article may be subject to repossession. The notice and
5 acknowledgement 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. If a vehicle, all-terrain vehicle, utility 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 the State of Oklahoma, but
12 there is no active lien recorded on the certificate of title,
13 Section 91A of this title will apply instead of this section.
14 Likewise, if there is an active lien recorded on the certificate of
15 title but the lien is over fifteen (15) years old and the property
16 is not a manufactured home, Section 91A of this title will apply
17 instead of this section.

18 2. If personal property that otherwise would be covered by this
19 section has been registered by the Tax Commission or by a federally
20 recognized Indian tribe in the State of Oklahoma, and there is a
21 lien of record but no certificate of title has been issued, Section
22 91A of this title will apply instead of this section.

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

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

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. If the person lacks such
8 documentation, he or she shall not be lawfully in possession of the
9 Section 91 Personal Property and shall not be entitled to a special
10 lien as set forth in this section; and

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

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

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

1 false or fraudulent, the interested party shall be entitled to
2 treble damages. The prevailing party shall be entitled to all
3 costs, including reasonable attorney fees.

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

6 SECTION 2. This act shall become effective November 1, 2018.

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