

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 281

By: Silk

AS INTRODUCED

An Act relating to service liens; amending 42 O.S. 2011, Section 91, as last amended by Section 1, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2016, Section 91), which relates to lien on certain personal property for service thereon; requiring payment for service before repossession under certain circumstances; and providing an effective date.

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

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

Section 91.

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

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. In the
5 event the owner of the article of Section 91 Personal Property fails
6 to pay for services rendered and abandons the property, the
7 institution that holds a perfected security interest shall pay for
8 such services to the special lien holder before repossession of the
9 property.

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

- 22 a. failure to timely provide additional documentation
23 supporting or verifying any entry on submitted forms as
24 requested by the Tax Commission, including but not

1 limited to United States Postal Service proof of return
2 receipt requested such as Form 3811 or United States
3 Postal Service electronic equivalent,

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

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

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

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

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

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

1 period for which rental or storage charges remain unpaid. The
2 notice shall be in writing and shall contain, but not be limited to,
3 the following:

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

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

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

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

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

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

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

1 of the person who authorized the work, labor or
2 service performed, or the storage or rental
3 arrangement, and written proof of authority to perform
4 the work, labor or service, or that the property was
5 abandoned if the claimant did not render any other
6 service,

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

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

9 and telephone number of the party foreclosing such

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

11 the contact person representing the business must be

12 shown. In place of an original signature and notary

13 seal, a digital or electronic signature or seal shall

14 be accepted, and

15 g. itemized charges which shall equal the total

16 compensation claimed.

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

1 the county treasurer and to the county assessor of the county where
2 the manufactured home is located.

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

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

22 10. The claimant or any other person may in good faith become a
23 purchaser of the property sold.
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1 11. Proceedings for foreclosure under this act shall be
2 commenced no sooner than ten (10) days and no later than thirty (30)
3 days after the Notice of Possessory Lien has been mailed as
4 evidenced by certified mail. The date actually sold shall be within
5 sixty (60) days from the date of the Notice of Sale as evidenced by
6 certified mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

18 SECTION 2. This act shall become effective November 1, 2017.

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