

1 **SENATE FLOOR VERSION**

2 February 22, 2017

3 **AS AMENDED**

4 SENATE BILL NO. 698

By: Sykes

5
6
7 **[service liens - titled personal property -**
8 **effective date]**
9

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

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

14 Section 91.

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

1 to as "Section 91 Personal Property". If personal
2 property is apparently covered both by this section
3 and by Sections 191 through 200 of this title, the
4 procedures set out in this section shall apply instead
5 of Sections 191 through 200 of this title.

6 b. Salvage pools as defined in Section 591.2 of Title 47
7 of the Oklahoma Statutes and class AA licensed wrecker
8 services taking possession of a vehicle pursuant to an
9 agreement with or at the direction of, or dispatched
10 by, a state or local law enforcement or government
11 agency, or pursuant to the abandoned vehicle renewal
12 provisions of Section 954A of Title 47 of the Oklahoma
13 Statutes, shall not be subject to the provisions of
14 this section, but shall be subject to the provisions
15 of Section 91A of this title. Unless otherwise
16 provided by this subparagraph, class AA licensed
17 wrecker services performing consensual tows on
18 personal property with an active lien less than
19 fifteen (15) years and the property is titled in this
20 state or a with a federally recognized tribe, shall be
21 subject to the provisions of this section; otherwise
22 Section 91A procedures will apply.

23 2. Any person who, while lawfully in possession of an article
24 of Section 91 Personal Property, renders any service to the owner

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

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

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

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

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

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

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

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

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

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

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

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

1 abandoned if the claimant did not render any other
2 service, in the case of an owner- or agent-directed
3 tow, the logbook entry prescribed in OAC 595:25-5-5 or
4 the tow ticket as defined by the Corporation
5 Commission or under an agreement, contract or policy
6 with a motor club or other insurance company road
7 hazard or towing policy shall serve as written proof
8 of authority to tow and store the vehicles,

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

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

11 and telephone number of the party foreclosing such

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

13 the contact person representing the business must be

14 shown. In place of an original signature and notary

15 seal, a digital or electronic signature or seal shall

16 be accepted, and

17 g. itemized charges which shall equal the total

18 compensation claimed.

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

1 before the date of the sale. If the item of personal property is a
2 manufactured home, notice shall also be sent by certified mail to
3 the county treasurer and to the county assessor of the county where
4 the manufactured home is located.

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

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

24

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

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

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

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

22 (1) the check or other written order for immediate
23 payment of money, copy thereof being attached,
24 was received for labor, material or supplies for

1 producing or repairing an article of personal
2 property, or for other specific property-related
3 services covered by this section,

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

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

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

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

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

21 3. The enforcement of the lien shall be within sixty (60) days
22 after filing the lien in the manner provided by law for enforcing
23 the lien of a security agreement and provided that the lien shall
24

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;

24

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, or in the case of an owner- or agent-
19 directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the
20 tow ticket as defined by the Corporation Commission or under an
21 agreement, contract or policy with a motor club or other insurance
22 company road, hazard or towing policy shall serve as written proof
23 of being lawfully in possession of the personal property. If the
24 person lacks such documentation, he or she shall not be lawfully in

1 possession of the Section 91 Personal Property and shall not be
2 entitled to a special lien as set forth in this section; and

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

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

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

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

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24

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

4 Section 91A.

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

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

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

11 b. This section applies to any vehicle, all-terrain
12 vehicle, utility vehicle, manufactured home,
13 motorcycle, boat, outboard motor, or trailer that is
14 excluded from coverage under subsection A of Section
15 91 of this title because the personal property:

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

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

20 (3) has a certificate of title that is not issued by
21 the Oklahoma Tax Commission or by a federally
22 recognized Indian tribe in the State of Oklahoma,
23 or
24

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

5 c. If personal property has a certificate of title, or
6 would be required to have a certificate of title under
7 Oklahoma law, and is apparently covered both by this
8 section and by Sections 191 through 200 of this title,
9 the procedures set out in this section shall apply
10 instead of Sections 191 through 200 of this title. If
11 personal property without a certificate of title and
12 not required to be titled under Oklahoma law is
13 covered both by this section and Sections 191 through
14 200 of this title, the procedures set out in Sections
15 191 through 200 of this title shall apply instead of
16 this section.

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

1 to such person from the owner for such service.
2 Charges owed under a contract primarily for the
3 purpose of storage or rental of space shall be accrued
4 only at the regular periodic rate for storage or
5 rental as provided in the contract, adjusted for
6 partial periods of storage or rental.

7 b. Except for Class AA licensed wrecker towing charges
8 and fees regulated by the Oklahoma Corporation
9 Commission, excluding storage fees, the special lien
10 shall be subordinate to any perfected security
11 interest unless the claimant complies with the
12 requirements of this section. Failure to comply with
13 any requirements of this section shall result in
14 denial of any title application and cause the special
15 lien to be subordinate to any perfected lien. Upon
16 such denial, the applicant shall be entitled to ~~one~~
17 ~~resubmission of~~ resubmit the title application within
18 ~~fifteen (15)~~ thirty (30) business days of receipt of
19 the denial, unless a new record must be obtained from
20 a state other than Oklahoma, in which case the
21 resubmission must be made within thirty (30) days from
22 the date that such record is obtained from the state
23 of record, and proceed to comply with the requirements
24

1 of this section. "Failure to comply" includes, but is
2 not limited to:

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

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

10 (3) claimant being other than the individual who
11 provided the service giving rise to the special
12 lien, as in subparagraph a of this paragraph ,

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

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

18 c. Any person claiming a lien under this section shall
19 request, within ~~five (5)~~ seven (7) business days of
20 performing any service or work on the property, the
21 Tax Commission or other appropriate license agency to
22 furnish the name and address of the current owner of
23 and any lienholder upon the property. The Motor
24 Vehicle Division of the Tax Commission or appropriate

1 license agency shall respond in person or by mail to
2 the lien claimant within ten (10) business days of the
3 receipt of the request for information. The Tax
4 Commission shall render assistance to ascertain
5 ownership, if needed. The lien claimant shall send,
6 within ~~seven (7)~~ ten (10) business days of receipt of
7 the requested information from the Oklahoma Tax
8 Commission or other license agency, a notice of the
9 location of the property by certified mail ~~with return~~
10 ~~receipt requested~~, postage prepaid, to the registered
11 owner, transferee, debtor and any lienholder of the
12 vehicle at the addresses furnished. Notice of
13 Possessory Lien form sent to the owner or lienholder
14 based on information acquired from other states or
15 tribes will not be required to be mailed until the
16 information is physically received by the lien
17 claimant either by mail or electronically. The lien
18 claimant may charge Twenty Dollars (\$20.00) for
19 processing plus the cost of postage if the notice is
20 timely sent pursuant to the requirements of this
21 subparagraph in addition to fees regulated by the
22 Oklahoma Corporation Commission for licensed wreckers.
23 If the titling agency fees for obtaining this
24 information is greater than Five Dollars (\$5.00), the

1 lien claimant will be allowed to add the additional
2 cost over Five Dollars (\$5.00) to the Notice of
3 Possessory Lien processing fees or may be shown as a
4 separate fee on the form. If the lien claimant is
5 unable to meet the time requirements due to a lack of
6 or an altered vehicle identification number on the
7 property or for another reason is unable to identify
8 the owner or lienholder of the personal property, the
9 lien claimant shall proceed diligently to obtain the
10 proper vehicle identification number and owner and any
11 lienholder information and shall meet the time
12 requirements on the notice once the vehicle
13 identification number is known. If the lien claimant
14 is required to send additional notices because of
15 change of ownership or lienholder after it has timely
16 complied with the requirements of this subparagraph,
17 the lien claimant shall remain in compliance if such
18 additional notices are sent within the required time
19 periods from the date of discovery of the new
20 registered owners or lienholders. The notice shall be
21 in writing and shall contain, but not be limited to,
22 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, except for tows performed
7 under Section 954A of Title 47 of the Oklahoma
8 Statutes, labor or skill, storage, or rental
9 space, or the date the property was abandoned if
10 the claimant did not render any other service,
11 (4) a description of the article of personal
12 property, and the complete physical and mailing
13 address of the location of the article of
14 personal property,
15 (5) the nature of the work, labor or service
16 performed, material furnished, or the storage or
17 rental arrangement, and the date thereof, and
18 written proof of authority to perform the work,
19 labor or service provided that, in the case of a
20 law enforcement directed tow, the logbook entry
21 prescribed in OAC 595:25-5-5 or the tow ticket as
22 defined by the Corporation Commission shall serve
23 as written proof of authority,
24

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

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

14 The lien claimant shall not be required to send the
15 notice required in this subparagraph if the property
16 is released to an interested party before the notice
17 is mailed and no additional charges or fees continue
18 to accrue. The lien claimant shall not be required to
19 send the notice required in this subparagraph to the
20 vehicle owner if the vehicle owner or owner's agent
21 removes property from a vehicle in storage by a Class
22 AA wrecker. If a law enforcement agency has the
23 property towed to a law enforcement facility, the
24 person claiming a lien under this section shall not be

1 required to send notice until the property is released
2 by law enforcement to the claimant or the date which
3 claimant starts charging storage, whichever is
4 earlier. A lien claimant shall have an extension of
5 ten (10) business days to send the notice required in
6 this subparagraph if a state of emergency has been
7 declared in the county in which the property is
8 located.

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

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

- 15 a. the names of the owner and any other known party or
16 parties who may claim any interest in the property,
17 b. a description of the property to be sold, including if
18 a visual inspection is allowed or a photograph ~~if~~ of
19 the property ~~is a motor vehicle~~ and if visual
20 inspections are not allowed by the lien claimant, and
21 the physical location of the property,
22 c. the nature of the work, labor or service performed,
23 material furnished, or the storage or rental
24 arrangement, and the date thereof, and written proof

1 of authority to perform the work, labor or service
2 provided. In the case of a law enforcement directed
3 tow, the logbook entry prescribed in OAC 595:25-5-5 or
4 the tow ticket as defined by the Corporation
5 Commission, shall serve as written proof of authority
6 and shall be made available upon request,

7 d. the time and place of sale,

8 e. the name, telephone number, physical address and
9 mailing address of the claimant, and agent or
10 attorney, if any, foreclosing such lien. If the
11 claimant is a business, then the name of the contact
12 person representing the business must be shown. In
13 place of an original signature and notary seal, a
14 digital or electronic signature or seal shall be
15 accepted, and

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

18 4. a. Such Notice of Sale shall be posted in two public
19 places in the county where the property is to be sold
20 at least ten (10) days before the time therein
21 specified for such sale, and a copy of the notice
22 shall be mailed to the owner and any other party
23 claiming any interest in the property, if known, at
24 their last-known post office address, by certified

1 mail, ~~return receipt requested~~, at least ten (10) days
2 before the time therein specified for such sale. If
3 the item of personal property is a manufactured home,
4 notice shall also be sent by certified mail to the
5 county treasurer and to the county assessor of the
6 county where the manufactured home is located.

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

18 c. In the case of personal property subject to this
19 section for which a certificate of title has been
20 issued by any jurisdiction, a party who claims any
21 interest in the property shall include all owners of
22 the article of personal property as indicated by the
23 certificate of title; lien debtors, if any, other than
24 the owners; any lienholder whose lien is noted on the

1 face of the certificate of title; and any other person
2 having any interest in the article of personal
3 property, of whom the claimant has actual notice.

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

21 e. When personal property is of a type that Oklahoma law
22 requires to be titled, the owner of record of that
23 property is unknown, and the jurisdiction of titling
24 and owner of record cannot be determined by ordinary

1 means and also, if applicable, cannot be determined in
2 accordance with the preceding subparagraph, then the
3 special lien may be foreclosed by publication of a
4 legal notice in a legal newspaper in the county where
5 the personal property is located, as defined in
6 Section 106 of Title 25 of the Oklahoma Statutes.
7 Such notice shall include the description of the
8 property by year, make, vehicle identification number
9 if available from the property, the name of the
10 individual who may be contacted for information, and
11 the telephone number of that person or the address
12 where the vehicle is located. The legal notice shall
13 be published once per week for three (3) consecutive
14 weeks. As soon as circumstances exist as described in
15 the first sentence of this subparagraph, the first
16 date of publication may occur even if the special lien
17 has not accrued for over thirty (30) days. The first
18 date available for public sale of the vehicle is the
19 day following publication of the final notice, but no
20 fewer than thirty (30) days after the lien has
21 accrued. When the owner of record is unknown, the
22 Notice of Sale nevertheless must be completed and
23 mailed to any known interested party by certified
24 mail. For purposes of this paragraph, interested

1 parties shall include all persons described in
2 subparagraph b or subparagraph c of this paragraph,
3 whichever is applicable, with the exception of any
4 owner who is unknown. Except in circumstances
5 described in paragraph 7 of this subsection that
6 provide for a shorter time period, the Notice of Sale
7 shall be posted in two public places in the county
8 where the property is to be sold at least ten (10)
9 days before the time therein specified for such sale,
10 and the Notice of Sale shall not be mailed until at
11 least thirty (30) days after the lien has accrued.

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

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

17 7. Notwithstanding any other provision of law, proceedings for
18 foreclosures for the storage of junk vehicles towed and stored
19 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by
20 Class AA wreckers listed with the Motor Vehicle Division of the
21 Department of Public Safety, may be commenced five (5) days after
22 the lien has accrued. For purposes of this paragraph, "junk
23 vehicles" means any vehicle that is more than ten (10) years old if
24 the cost of a comparable vehicle would be less than Three Hundred

1 Dollars (\$300.00) as quoted in the latest edition of the National
2 Automobile Dealers Association Official Used Car Guide or latest
3 monthly edition of any other nationally recognized published
4 guidebook, adjusting to the condition of the vehicle.

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

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

18 (1) the check or other written order for immediate
19 payment of money, copy thereof being attached,
20 was received for labor, material or supplies for
21 producing or repairing an article of personal
22 property, or for other specific property-related
23 services covered by this section,
24

1 (2) the check or other written order was not paid,
2 and
3 (3) the uttering of the check or other written order
4 constituted the means for inducing the person,
5 one possessed of a special lien created by
6 subsection A of this section upon the described
7 article of personal property, to deliver up the
8 article of personal property.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 2. This section applies if a vehicle, all-terrain vehicle,
21 utility vehicle, motorcycle, boat, outboard motor or trailer has a
22 certificate of title issued by the Tax Commission or by a federally
23 recognized Indian tribe in Oklahoma, and there is an active lien
24

1 recorded on the certificate of title, but the lien is over fifteen
2 (15) years old.

3 3. This section applies if personal property to which Section
4 91 of this title otherwise would apply has been registered by the
5 Tax Commission or by a federally recognized Indian tribe in the
6 State of Oklahoma, and there is a lien of record but no certificate
7 of title has been issued.

8 4. This section applies if personal property to which Section
9 91 of this title otherwise would apply has not been registered by
10 either the Tax Commission or a federally recognized Indian tribe in
11 the State of Oklahoma, and no certificate of title has been issued,
12 but there is a lien of record.

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

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

23

24

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

4 8. This section applies to salvage pools as defined in Section
5 591.2 of Title 47 of the Oklahoma Statutes.

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

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

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

1 are false, upon conviction, shall be guilty of a felony. A
2 lienholder or vehicle owner making a false statement of material
3 fact to obtain the release of personal property from a lien claimant
4 or who attempts to use or uses the provisions of this section to
5 invalidate the lien claimant's interest in personal property knowing
6 that any of the statements made in the proceeding are false, upon
7 conviction, shall be guilty of a felony.

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

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

15 H. For purposes of this section:

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

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

23 3. "Lawfully in possession" means a person has documentation
24 from the owner or the owner's authorized agent, or an insurance

1 company or its authorized agent, authorizing the furnishing of
2 material, labor or storage, or that the property was authorized to
3 be towed to a repair facility.

4 Class AA wrecker services taking possession of a vehicle
5 pursuant to an agreement with, or at the direction of, or dispatched
6 by, a state or local law enforcement or government agency, or
7 pursuant to the abandoned vehicle removal provisions of Section 954A
8 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
9 in possession of the vehicle. If the person lacks such
10 documentation, the procedures established by this section shall not
11 apply until the Notice of Possessory Lien form is mailed to the
12 registered owner and lienholder, if any. Storage fees shall not
13 continue to accrue until such notice is mailed in the case of
14 missing or incomplete documentation or typographical errors. A lien
15 claimant making an error or typographical error in paperwork will be
16 allowed to resubmit all required documents and allowed to make an
17 adjustment in storage fees owed by the owner or lienholder wanting
18 to retrieve the property being stored to adjust for any errors. The
19 lien claimant will be allowed to dispose of the abandoned property
20 upon approval of the corrected forms; 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.

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

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

15 K. Any interested party shall be permitted to visually inspect
16 and verify the services rendered by the claimant prior to the sale
17 of the article of property during normal business hours. If the
18 claimant fails to allow any interested party to inspect the
19 property, the interested party shall mail a request for inspection
20 by certified mail, return receipt requested, to the claimant.
21 Within three (3) business days of receipt of the request for
22 inspection, the claimant shall mail a photograph of the property, by
23 certified mail, return receipt requested, and a date of inspection
24 within five (5) business days from the date of the notice to

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

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

20 M. If an owner of the vehicle issues a transfer record to a
21 Class AA licensed wrecker service after the tow or storage date, the
22 transfer record shall not hinder or delay the Notice of Sale or the
23 sale of the abandoned vehicle. The Class AA licensed wrecker will
24 not be denied the ability to perform the process in this section to

1 dispose of an abandoned vehicle as described in this section or
2 Section 91 of this title.

3 N. This section shall apply to all actions or proceedings that
4 commence on or after ~~the effective date of this act~~ November 1,
5 2014.

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

7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
8 February 22, 2017 - DO PASS AS AMENDED
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