

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1694

By: Denney

AS INTRODUCED

An Act relating to liens; amending 42 O.S. 2011, Sections 91 and 91A, as amended by Sections 1 and 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2014, Sections 91 and 91A), which relate to liens on personal property; modifying applicability of section; altering definition; deleting return receipt requirement; clarifying notice of sale requirements; modifying definition; providing for adjustment of damages; excepting fees from subordinate claims; extending time period for application; increasing time for lien claimant; deleting return receipt requirement; providing time exception for mailing information; permitting additional fees in certain instance; modifying notice requirement; excepting notice if property is removed; modifying notice required to foreclose a lien through the sale of property; prescribing felony for lienholder or vehicle owner making false statement; modifying applicability once notice is mailed; permitting resubmission of forms if typographical or other error; authorizing disposal of property upon approval of corrected forms; providing for adjustment of damages; allowing tow ticket to be sufficient proof to title vehicle as recovered; requiring submission to Oklahoma Tax Commission; proscribing delay of notice or sale due to transfer record; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91, as
2 amended by Section 1, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2014,
3 Section 91), is amended to read as follows:

4 Section 91.

5 A. 1. a. This section applies to every vehicle, all-terrain
6 vehicle, utility vehicle, manufactured home,
7 motorcycle, boat, outboard motor, or trailer that has
8 a certificate of title issued by the Oklahoma Tax
9 Commission or by a federally recognized Indian tribe
10 in the State of Oklahoma, except as otherwise provided
11 in subsection D of this section. This section does
12 not apply to farm equipment as defined in Section 91.2
13 of this title. The items of personal property to
14 which this section applies are collectively referred
15 to as "Section 91 Personal Property". If personal
16 property is apparently covered both by this section
17 and by Sections 191 through 200 of this title, the
18 procedures set out in this section shall apply instead
19 of Sections 191 through 200.

20 b. Salvage pools as defined in Section 591.2 of Title 47
21 of the Oklahoma Statutes and class AA licensed wrecker
22 services taking possession of a vehicle pursuant to an
23 agreement with or at the direction of, or dispatched
24 by, a state or local law enforcement or government

1 agency, or pursuant to the abandoned vehicle renewal
2 provisions of Section 954A of Title 47 of the Oklahoma
3 Statutes, shall not be subject to the provisions of
4 this section, but shall be subject to the provisions
5 of Section 91A of this title. Unless otherwise
6 provided by this subparagraph, class AA licensed
7 wrecker services performing consensual tows on
8 personal property with an active lien that is less
9 than fifteen (15) years old and the property has an
10 Oklahoma title or federally recognized tribal title
11 shall be subject to the provisions of this section and
12 otherwise shall be subject to the procedures of
13 Section 91A of this title.

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

21 3. This special lien shall be subordinate to any perfected
22 security interest unless the claimant complies with the requirements
23 of this section. Failure to comply with any requirements of this
24 section shall result in denial of any title application and cause

1 the special lien to be subordinate to any perfected lien. Upon such
2 denial, the applicant shall be entitled to one resubmission of the
3 title application within fifteen (15) business days of receipt of
4 the denial, and proceed to comply with the requirements of this
5 section. "Failure to comply" includes, but is not limited to:

- 6 a. failure to timely provide additional documentation
7 supporting or verifying any entry on submitted forms as
8 requested by the Tax Commission, ~~including but not~~
9 ~~limited to, United States Postal Service proof of~~
10 ~~return receipt requested such as Form 3811 or United~~
11 ~~States Postal Service electronic equivalent,~~
- 12 b. failure to provide the documentation supporting lawful
13 possession as defined in paragraph 3 of subsection ~~F~~ H
14 of this section,
- 15 c. claimant or the agent being other than the individual
16 who provided the service giving rise to the special
17 lien, as in paragraph 2 of this subsection,
- 18 d. claimant not being in possession of the vehicle,
- 19 e. notice of lien not filed in accordance with paragraph 4
20 of this subsection, or
- 21 f. foreclosure notification and proceedings not
22 accomplished in accordance with paragraph 6 of this
23 section.

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

- 13 a. a statement that the notice is a notice of a
14 possessory lien,
- 15 b. the complete legal name, physical and mailing address,
16 and telephone number of the claimant,
- 17 c. the complete legal name, physical and mailing address
18 of the person who requested that the claimant render
19 service to the owner by furnishing material, labor or
20 skill, storage, or rental space, or the date the
21 property was abandoned if the claimant did not render
22 any other service,
- 23 d. a description of the article of personal property,
24 including a photograph if the property is Section 91

1 Personal Property, and the complete physical and
2 mailing address of the location of the article of
3 personal property,

4 e. an itemized statement describing the date or dates the
5 labor or services were performed and material
6 furnished, and the charges claimed for each item, the
7 totals of which shall equal the total compensation
8 claimed,

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

18 g. the signature of the claimant which shall be notarized
19 and, if applicable, the signature of the claimant's
20 attorney. If the claimant is a business, then the
21 name of the contact person representing the business
22 must be shown. In place of an original signature and
23 notary seal, a digital or electronic signature or seal
24 shall be accepted.

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

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

- 21 a. a statement that the notice is a Notice of Sale,
- 22 b. the names of all interested parties known to the
- 23 claimant,

- 1 c. a description of the property to be sold, including a
2 photograph if the property is Section 91 Personal
3 Property and if the condition of such property has
4 materially changed since the mailing of Notice of
5 Possessory Lien required pursuant to paragraph 4 of
6 this subsection,
- 7 d. a notarized statement of the nature of the work, labor
8 or service performed, material furnished, or storage
9 or rental of space, and the date thereof, and the name
10 of the person who authorized the work, labor or
11 service performed, or the storage or rental
12 arrangement, and written proof of authority to perform
13 the work, labor or service, or that the property was
14 abandoned if the claimant did not render any other
15 service. In the case of an owner- or agent-directed
16 tow, the record entry prescribed in OAC 595:25-5-5 or
17 the tow ticket as defined by the Oklahoma Corporation
18 Commission or under an agreement, contract or policy
19 with a motor club or other insurance company road
20 hazard or towing policy shall serve as written proof
21 of authority to tow and store the vehicle,
- 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 said 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 will apply instead of this
17 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; and

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, or in the case of an owner- or agent-
8 directed tow, the record entry prescribed in OAC 595:25-5-5 or the
9 tow ticket as defined by the Oklahoma Corporation Commission or
10 under an agreement, contract or policy with a motor club or other
11 insurance company road hazard or towing policy shall serve as
12 written proof of being lawfully in possession of the personal
13 property. If the person lacks such documentation, he or she shall
14 not be lawfully in possession of the Section 91 Personal Property
15 and shall not be entitled to a special lien as set forth in this
16 section;

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

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

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

11 ~~K.~~ J. This section shall apply to all actions or proceedings
12 that commence on or after ~~the effective date of this act~~ November 1,
13 2014.

14 SECTION 2. AMENDATORY 42 O.S. 2011, Section 91A, as
15 amended by Section 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2014,
16 Section 91A), is amended to read as follows:

17 Section 91A.

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

- 20 (1) farm equipment as defined in Section 91.2 of this
21 title, and
22 (2) "Section 91 Personal Property" as defined in
23 Section 91 of this title.

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

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

7 (2) has a certificate of title but does not have an
8 active lien recorded on the certificate of title,
9 or

10 (3) has a certificate of title that is not issued by
11 the Oklahoma Tax Commission or by a federally
12 recognized Indian tribe in the State of Oklahoma,
13 or

14 (4) is otherwise excluded by subparagraph b of
15 paragraph 1 of subsection A of Section 91 of this
16 title or subsection D of Section 91 of this
17 title.

18 c. If personal property has a certificate of title, or
19 would be required to have a certificate of title under
20 Oklahoma law, and is apparently covered both by this
21 section and by Sections 191 through 200 of this title,
22 the procedures set out in this section shall apply
23 instead of Sections 191 through 200 of this title. If
24 personal property without a certificate of title and

1 not required to be titled under Oklahoma law is
2 covered both by this section and Sections 191 through
3 200 of this title, the procedures set out in Sections
4 191 through 200 of this title shall apply instead of
5 this section.

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

20 b. Except for Class AA licensed wrecker towing charges
21 and fees regulated by the Oklahoma Corporation
22 Commission excluding storage fees, the special lien
23 shall be subordinate to any perfected security
24 interest unless the claimant complies with the

1 requirements of this section. Failure to comply with
2 any requirements of this section shall result in
3 denial of any title application and cause the special
4 lien to be subordinate to any perfected lien. Upon
5 such denial, the applicant shall be entitled to ~~one~~
6 ~~resubmission~~ resubmissions of the title application
7 within ~~fifteen (15)~~ thirty (30) business days of
8 receipt of the denial unless a new record must be
9 obtained from another state, in which case the
10 resubmission shall be made within thirty (30) business
11 days from the date that the record is obtained from
12 the state of record, and proceed to comply with the
13 requirements of this section. "Failure to comply"
14 includes, but is not limited to:

- 15 (1) failure to timely provide additional
16 documentation supporting or verifying any entry
17 on submitted forms as requested by the Tax
18 Commission,
- 19 (2) failure to provide the documentation supporting
20 lawful possession as outlined in paragraph 3 of
21 subsection ~~F~~ H of this section,
- 22 (3) claimant being other than the individual who
23 provided the service giving rise to the special
24

1 lien, as in subparagraph a of of this paragraph ~~2~~
2 ~~of this subsection,~~

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

5 (5) notification and proceedings not accomplished in
6 accordance with subparagraph c of this paragraph
7 ~~2 of this subsection,~~ and paragraph 3 of this
8 subsection.

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

1 ~~receipt requested~~, postage prepaid to the registered
2 owner, transferee, debtor and any lienholder of the
3 vehicle at the addresses furnished. A Notice of
4 Possessory Lien form sent to the owner or lienholder
5 based on information acquired from other states or
6 tribes shall not be required to be mailed until the
7 information is physically received by the lien
8 claimant either by mail or electronically. The lien
9 claimant may charge Twenty Dollars (\$20.00) for
10 processing plus the cost of postage if the notice is
11 timely sent pursuant to the requirements of this
12 subparagraph. If the titling agency fees for
13 obtaining this information are more than Five Dollars
14 (\$5.00), the lien claimant shall be allowed to add the
15 additional costs to the Notice of Possessory Lien
16 processing fees or be shown as a separate fee on the
17 form. If the lien claimant is unable to meet the time
18 requirements due to a lack of or an altered vehicle
19 identification number on the property or other reason
20 for not being able to identify the personal property
21 owner or lienholder, the lien claimant shall proceed
22 diligently to obtain the proper vehicle identification
23 number and owner and any lienholder information and
24 shall meet the time requirements on the notice once

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

- 12 (1) a statement that the notice is a notice of a
13 possessory lien,
- 14 (2) the complete legal name, physical and mailing
15 address, and telephone number of the claimant,
- 16 (3) the complete legal name, physical and mailing
17 address of the person who requested that the
18 claimant render service to the owner by
19 furnishing material except for tows performed
20 under Section 954A of Title 47 of the Oklahoma
21 Statutes, labor or skill, storage, or rental
22 space, or the date the property was abandoned if
23 the claimant did not render any other service,
24

- 1 (4) a description of the article of personal
2 property, and the complete physical and mailing
3 address of the location of the article of
4 personal property,
- 5 (5) the nature of the work, labor or service
6 performed, material furnished, or the storage or
7 rental arrangement, and the date thereof, and
8 written proof of authority to perform the work,
9 labor or service provided that, in the case of a
10 law enforcement directed tow, the ~~logbook~~ record
11 entry prescribed in OAC 595:25-5-5 or the tow
12 ticket as defined by the Corporation Commission
13 shall serve as written proof of authority,
- 14 (6) the signature of the claimant which shall be
15 notarized and, if applicable, the signature of
16 the claimant's attorney. If the claimant is a
17 business, the name of the contact person
18 representing the business shall be shown. In
19 place of an original signature and notary seal, a
20 digital or electronic signature or seal shall be
21 accepted, and
- 22 (7) an itemized statement describing the date or
23 dates the labor or services were performed and
24 material furnished and the charges claimed for

1 each item, the totals of which shall equal the
2 total compensation claimed.

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

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

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

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

6 b. a description of the property to be sold, including a
7 visual inspection, if allowed or a photograph ~~if~~ of
8 the property ~~is a motor vehicle~~ if a visual inspection
9 is not allowed by a lien claimant, and the physical
10 location of the property,

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

20 d. the time and place of sale,

21 e. the name, telephone number, physical address and
22 mailing address of the claimant, and agent or
23 attorney, if any, foreclosing such lien. If the
24 claimant is a business, then the name of the contact

1 person representing the business must be shown. In
2 place of an original signature and notary seal, a
3 digital or electronic signature or seal shall be
4 accepted, and

5 f. itemized charges which shall equal the total
6 compensation claimed.

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

20 b. In the case of any item of personal property without a
21 certificate of title and not required to be titled
22 under Oklahoma law, a party who claims any interest in
23 the property shall include all owners of the property;
24 any secured party who has an active financing

1 statement on file with the county clerk of Oklahoma
2 County listing one or more owners of the property by
3 legal name as debtors and indicating a collateral
4 description that would include the property; and any
5 other person having any interest in the personal
6 property, of whom the claimant has actual notice.

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

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

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

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

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

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

3 6. Proceedings for foreclosure under this act shall not be
4 commenced until thirty (30) days after said lien has accrued, except
5 as provided elsewhere in Oklahoma law.

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

18 B. 1. a. Any person who is induced by means of a check or other
19 form of written order for immediate payment of money
20 to deliver up possession of an article of personal
21 property on which the person has a special lien
22 created by subsection A of this section, which check
23 or other written order is dishonored, or is not paid
24

1 when presented, shall have a lien for the amount
2 thereof upon the personal property.

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

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

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

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

22 2. a. Any person who renders service to the owner of an
23 article of personal property by furnishing storage,
24 rental space, material, labor, or skill for the

1 protection, improvement, safekeeping, towing, right to
2 occupy space, storage, or carriage thereof shall have
3 a special lien on such property pursuant to this
4 section if such property is removed from the person's
5 possession, without such person's written consent or
6 without payment for such service.

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

11 (1) that services were rendered on or in relation to
12 the article of personal property by the person
13 claiming such lien,

14 (2) that the property was in the possession of the
15 person claiming the lien but such property was
16 removed without his written consent,

17 (3) an identifying description of the article of
18 personal property on or in relation to which the
19 service was rendered, and

20 (4) that the debt for the services rendered on or in
21 relation to the article of personal property was
22 not paid. Provided, if the unpaid total amount
23 of the debt for services rendered on or in
24 relation to the article of personal property is

1 unknown, an approximated amount of the debt due
2 and owing shall be included in the sworn
3 statement but such approximated debt may be
4 amended within thirty (30) days of such filing to
5 reflect the actual amount of the debt due and
6 owing.

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

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

21 1. The claimant may take possession of an article pursuant to
22 this subsection only if the person obligated under the contract for
23 services has signed an acknowledgment of receipt of a notice that
24

1 the article may be subject to repossession. The notice and
2 acknowledgment pursuant to this subsection shall be:

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

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

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

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

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

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

17 3. This section applies if personal property to which Section
18 91 of this title otherwise would apply has been registered by the
19 Tax Commission or by a federally recognized Indian tribe in the
20 State of Oklahoma, and there is a lien of record but no certificate
21 of title has been issued.

22 4. This section applies if personal property to which Section
23 91 of this title otherwise would apply has not been registered by
24 either the Tax Commission or a federally recognized Indian tribe in

1 the State of Oklahoma, and no certificate of title has been issued,
2 but there is a lien of record.

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

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

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

16 8. This section applies to salvage pools as defined in Section
17 591.2 of Title 47 of the Oklahoma Statutes.

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

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

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

20 F. Upon receipt of notice of legal proceedings, the Tax
21 Commission shall cause the sale process to be put on hold until
22 notice of resolution of court proceedings is received from the
23 court. If such notice of commencement of court proceedings is not
24

1 filed with the Tax Commission, the possessory lien sale process may
2 continue.

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

4 H. For purposes of this section:

5 1. "Possession" includes actual possession and constructive
6 possession;

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

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

17 Class AA wrecker services taking possession of a vehicle pursuant to
18 an agreement with, or at the direction of, or dispatched by, a state
19 or local law enforcement or government agency, or pursuant to the
20 abandoned vehicle removal provisions of Section 954A of Title 47 of
21 the Oklahoma Statutes, shall be considered lawfully in possession of
22 the vehicle. If the person lacks such documentation, the procedures
23 established by this section shall not apply until the Notice of
24 Possessory Lien form is mailed to the registered owner and

lienholder, if any. In the case of missing or incomplete documentation or typographical errors, storage fees shall not continue to accrue until the notice is mailed. A lien claimant making an error or typographical error in paperwork shall be allowed to resubmit all required documents and allowed to make an adjustment in storage fees to the owner or lienholder wanting to retrieve the property being stored to adjust for any errors. The lien claimant shall be allowed to dispose of the abandoned property upon approval of the corrected forms;

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

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

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

1 treble damages, but adjusted for the condition and value of the
2 personal property. The prevailing party shall be entitled to all
3 costs, including reasonable attorney fees.

4 K. Any interested party shall be permitted to visually inspect
5 and verify the services rendered by the claimant prior to the sale
6 of the article of property during normal business hours. If the
7 claimant fails to allow any interested party to inspect the
8 property, the interested party shall mail a request for inspection
9 by certified mail, return receipt requested, to the claimant.

10 Within three (3) business days of receipt of the request for
11 inspection, the claimant shall mail a photograph of the property, by
12 certified mail, return receipt requested, and a date of inspection
13 within five (5) business days from the date of the notice to
14 inspect. The lienholder shall be allowed to retrieve the property
15 without being required to bring the title into the lienholder's
16 name, if the lienholder provides proof it is a lienholder and any
17 payment due the claimant for lawful charges where the claimant has
18 complied with this section. Upon the release of personal property
19 to ~~an insurer~~ a lienholder or representative of the ~~insurer~~
20 lienholder, wrecker operators shall be exempt from all liability and
21 shall be held harmless for any losses or claims of loss. In the
22 event any law enforcement agency places a hold on the property, the
23 party wanting to inspect or photograph the property shall obtain
24

1 permission from the law enforcement agency that placed the hold on
2 the property before inspecting or photographing.

3 L. If a vehicle is titled as an unrecovered theft title and law
4 enforcement directs the towing by a Class AA Wrecker, a copy of the
5 tow ticket shall be sufficient proof for the title to be branded as
6 recovered and an estimate of repair costs to determine if the title
7 should be branded as salvage, junk or nonbranded title shall be
8 included with the forms presented to the Oklahoma Tax Commission to
9 obtain an Oklahoma title.

10 M. If an owner of the vehicle performs a transfer record to a
11 Class AA licensed wrecker service after the tow or storage date, the
12 transfer record shall not hinder or delay the Notice of Sale or the
13 sale of the abandoned vehicle. The Class AA licensed wrecker shall
14 not be denied the ability to perform the process in this section to
15 dispose of an abandoned vehicle as described in this section or
16 Section 91 of this title.

17 N. This section shall apply to all actions or proceedings that
18 commence on or after the effective date of this act.

19 SECTION 3. It being immediately necessary for the preservation
20 of the public peace, health and safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.
23

24 55-1-5622

EK

01/18/15