

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 ENGROSSED HOUSE
4 BILL NO. 1927

By: Sims of the House

and

Rogers of the Senate

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6
7
8 An Act relating to liens; amending 42 O.S. 2021,
9 Sections 91 and 91A, which relate to liens on
10 personal property; requiring property to be possessed
11 for a certain number of days before Notice of Sale
12 can be mailed; prohibiting additional fees for
13 resubmission of title application under certain
14 circumstances; providing that a Notice of Possessory
15 Lien and the Notice of Sale may be mailed on the date
16 of title application submission; requiring in the
17 event of title application resubmissions the storage
18 charges shall only be charged from the date of
19 resubmission; and providing an effective date.

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

21 SECTION 1. AMENDATORY 42 O.S. 2021, Section 91,

22 is amended to read as follows:

23 Section 91.

24 A. 1. a. This section applies to every vehicle, all-terrain
vehicle, utility vehicle, manufactured home,
motorcycle, boat, outboard motor, or trailer that has
a certificate of title issued by the Oklahoma Tax
Commission or by a federally recognized Indian tribe

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

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

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

8 3. This special lien shall be subordinate to any perfected
9 security interest unless the claimant complies with the requirements
10 of this section. Failure to comply with any requirements of this
11 section shall result in denial of any title application and cause
12 the special lien to be subordinate to any perfected lien. Upon such
13 denial, the applicant shall be entitled to one resubmission of the
14 title application within fifteen (15) business days of receipt of
15 the denial, and proceed to comply with the requirements of this
16 section. In the event of a denial, the Notice of Possessory Lien
17 and the Notice of Sale may be mailed on the same day in separate
18 envelopes and storage charges shall only be charged from the date of
19 resubmission; however, before a Notice of Sale is to be mailed, the
20 personal property must have been possessed by the possessory lien
21 claimant for at least twenty-one (21) days. Furthermore, if the
22 denial was due to error by the party submitting the title
23 application, then no additional fee for the resubmission shall be
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1 charged to the property owner. "Failure to comply" includes, but is
2 not limited to:

3 a. failure to timely provide additional documentation
4 supporting or verifying any entry on submitted forms
5 as requested by the Tax Commission, including but not
6 limited to United States Postal Service proof of
7 return receipt requested such as Form 3811 or United
8 States Postal Service electronic equivalent,

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

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

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

16 e. notice of lien not filed in accordance with paragraph
17 4 of this subsection, or

18 f. foreclosure notification and proceedings not
19 accomplished in accordance with paragraph 6 of this
20 section.

21 4. Any person claiming the special lien provided in paragraph 2
22 of this subsection shall mail a notice of such lien, no later than
23 sixty (60) days after the first services are rendered, by regular,
24 first-class United States mail, and by certified mail, return

1 receipt requested, to all interested parties who reside at separate
2 locations. If services provided are pursuant to a contract
3 primarily for the purpose of storage or rental of space, the
4 beginning date of the sixty-day period provided in the previous
5 sentence shall be the first day of the first period or partial
6 period for which rental or storage charges remain unpaid. The
7 notice shall be in writing and shall contain, but not be limited to,
8 the following:

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

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

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

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

22 5. For services rendered or vehicles abandoned on or after
23 November 1, 2005, storage charges or charges for rental of space,
24 unless agreed to by contract as part of an overall transaction or

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

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

- 18 a. a statement that the notice is a Notice of Sale,
- 19 b. the names of all interested parties known to the
20 claimant,
- 21 c. a description of the property to be sold, including a
22 photograph if the property is Section 91 Personal
23 Property and if the condition of such property has
24 materially changed since the mailing of Notice of

1 Possessory Lien required pursuant to paragraph 4 of
2 this subsection,

3 d. a notarized statement of the nature of the work, labor
4 or service performed, material furnished, or storage
5 or rental of space, and the date thereof, and the name
6 of the person who authorized the work, labor or
7 service performed, or the storage or rental
8 arrangement, and written proof of authority to perform
9 the work, labor or service, or that the property was
10 abandoned if the claimant did not render any other
11 service,

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

13 f. the name, complete physical address, mailing address,
14 and telephone number of the party foreclosing such
15 lien. If the claimant is a business, then the name of
16 the contact person representing the business must be
17 shown. In place of an original signature and notary
18 seal, a digital or electronic signature or seal shall
19 be accepted, and

20 g. itemized charges which shall equal the total
21 compensation claimed.

22 7. Such Notice of Sale shall be posted in two public places in
23 the county where the property is to be sold at least ten (10) days
24 before the time therein specified for such sale, and a copy of the

1 notice shall be mailed to all interested parties at their last-known
2 post office address by regular, first-class United States mail and
3 by certified mail, return receipt requested, at least ten (10) days
4 before the date of the sale. If the item of personal property is a
5 manufactured home, notice shall also be sent by certified mail to
6 the county treasurer and to the county assessor of the county where
7 the manufactured home is located.

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

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

1 from all liability and shall be held harmless for any losses or
2 claims of loss.

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

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

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

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

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

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

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

15 2. a. Any person who renders service to the owner of an
16 article of personal property by furnishing storage,
17 rental space, material, labor, or skill for the
18 protection, improvement, safekeeping, towing, right to
19 occupy space, storage, or carriage thereof shall have
20 a special lien on such property pursuant to this
21 section if such property is removed from the person's
22 possession, without such person's written consent or
23 without payment for such service.
24

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

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

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

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

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

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

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

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

20 a. in writing and separate from the written contract for
21 services, or

22 b. printed on the written contract for services, credit
23 agreement or other document which displays the notice
24 in bold-faced, capitalized and underlined type, or is

1 separated from surrounding written material so as to
2 be conspicuous with a separate signature line;

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

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

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

22 D. 1. If a vehicle, all-terrain vehicle, utility vehicle,
23 manufactured home, motorcycle, boat, outboard motor, or trailer has
24 a certificate of title issued by the Tax Commission or by a

1 federally recognized Indian tribe in the State of Oklahoma, but
2 there is no active lien recorded on the certificate of title,
3 Section 91A of this title will apply instead of this section.
4 Likewise, if there is an active lien recorded on the certificate of
5 title but the lien is over fifteen (15) years old and the property
6 is not a manufactured home, Section 91A of this title will apply
7 instead of this section.

8 2. If personal property that otherwise would be covered by this
9 section has been registered by the Tax Commission or by a federally
10 recognized Indian tribe in the State of Oklahoma, and there is a
11 lien of record but no certificate of title has been issued, Section
12 91A of this title will apply instead of this section.

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

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

1 F. Upon receipt of notice of legal proceedings, the Tax
2 Commission shall cause the sale process to be put on hold until
3 notice of resolution of court proceedings is received from the
4 court. If such notice of commencement of court proceedings is not
5 filed with the Tax Commission, the possessory lien sale process may
6 continue.

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

8 H. For purposes of this section:

9 1. "Possession" includes actual possession and constructive
10 possession;

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

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

24

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

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

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

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

20 SECTION 2. AMENDATORY 42 O.S. 2021, Section 91a, is
21 amended to read as follows:

22 Section 91a. A. 1. a. This section applies to all types of
23 personal property other than:
24

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

3 (2) "Section 91 Personal Property" as defined in
4 Section 91 of this title.

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

10 (1) does not have a certificate of title,

11 (2) has a certificate of title but does not have an
12 active lien recorded on the certificate of title,

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

17 (4) is otherwise excluded by subparagraph b of
18 paragraph 1 of subsection A of Section 91 of this
19 title or subsection D of Section 91 of this
20 title.

21 c. If personal property has a certificate of title, or
22 would be required to have a certificate of title under
23 Oklahoma law, and is apparently covered both by this
24 section and by Sections 191 through 200 of this title,

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

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

1 security interest unless the claimant complies with
2 the requirements of this section. Failure to comply
3 with any requirements of this section shall result in
4 denial of any title application and cause the special
5 lien to be subordinate to any perfected lien. Upon
6 such denial, the applicant shall be entitled to one
7 resubmission of the title application within thirty
8 (30) business days of receipt of the denial, and
9 proceed to comply with the requirements of this
10 section. In the event of a denial, the Notice of
11 Possessory Lien and the Notice of Sale may be mailed
12 on the same day in separate envelopes and storage
13 charges shall only be charged from the date of
14 resubmission; however, before a Notice of Sale is to
15 be mailed, the personal property must have been
16 possessed by the possessory lien claimant for at least
17 twenty-one (21) days. Furthermore, if the denial was
18 due to error by the party submitting the title
19 application, then no additional fee for the
20 resubmission shall be charged to the property owner.
21 "Failure to comply" includes, but is not limited to:
22 (1) failure to timely provide additional
23 documentation supporting or verifying any entry
24

1 on submitted forms as requested by the Tax
2 Commission,

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

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

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

11 (5) notification and proceedings not accomplished in
12 accordance with subparagraph c of this paragraph,
13 and paragraph 3 of this subsection.

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

1 ownership, if needed. The lien claimant shall send,
2 within seven (7) business days of receipt of the
3 requested information from the Oklahoma Tax Commission
4 or other license agency, a notice of the location of
5 the property by certified mail with return receipt
6 requested, postage prepaid, to the owner and any
7 lienholder of the vehicle at the addresses furnished.
8 The lien claimant may charge Twenty Dollars (\$20.00)
9 for processing plus the cost of postage if the notice
10 is timely sent pursuant to the requirements of this
11 subparagraph in addition to fees regulated by the
12 Oklahoma Corporation Commission for licensed wreckers.
13 If the lien claimant is unable to meet the time
14 requirements due to a lack of or an altered vehicle
15 identification number on the property, the lien
16 claimant shall proceed diligently to obtain the proper
17 vehicle identification number and shall meet the time
18 requirements on the notice once the vehicle
19 identification number is known. If the lien claimant
20 is required to send additional notices because of
21 change of ownership or lienholder after it has timely
22 complied with the requirements of this subparagraph,
23 the lien claimant shall remain in compliance if such
24 additional notices are sent within the required time

1 periods from the date of discovery of the new owners
2 or lienholders. The notice shall be in writing and
3 shall contain, but not be limited to, the following:

- 4 (1) a statement that the notice is a Notice of
5 Possessory Lien,
- 6 (2) the complete legal name, physical and mailing
7 address, and telephone number of the claimant,
- 8 (3) the complete legal name, physical and mailing
9 address of the person who requested that the
10 claimant render service to the owner by
11 furnishing material, labor or skill, storage, or
12 rental space, or the date the property was
13 abandoned if the claimant did not render any
14 other service,
- 15 (4) a description of the article of personal
16 property, and the complete physical and mailing
17 address of the location of the article of
18 personal property,
- 19 (5) the nature of the work, labor or service
20 performed, material furnished, or the storage or
21 rental arrangement, and the date thereof, and
22 written proof of authority to perform the work,
23 labor or service provided that, in the case of a
24 law enforcement directed tow, the logbook entry

1 prescribed in OAC 595:25-5-5 or the tow ticket as
2 defined by the Corporation Commission shall serve
3 as written proof of authority,

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

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

17 The lien claimant shall not be required to send the
18 notice required in this subparagraph if the property
19 is released to an interested party before the notice
20 is mailed and no additional charges or fees continue
21 to accrue. If a law enforcement agency has the
22 property towed to a law enforcement facility, the
23 person claiming a lien under this section shall not be
24 required to send notice until the property is released

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

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

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

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

16 b. a description of the property to be sold, including a
17 visual inspection or a photograph if the property is a
18 motor vehicle, and the physical location of the
19 property,

20 c. the nature of the work, labor or service performed,
21 material furnished, or the storage or rental
22 arrangement, and the date thereof, and written proof
23 of authority to perform the work, labor or service
24 provided. In the case of a law enforcement directed

1 tow, the logbook entry prescribed in OAC 595:25-5-5 or
2 the tow ticket as defined by the Corporation

3 Commission, shall serve as written proof of authority,

4 d. the time and place of sale,

5 e. the name, telephone number, physical address and

6 mailing address of the claimant, and agent or

7 attorney, if any, foreclosing such lien. If the

8 claimant is a business, then the name of the contact

9 person representing the business must be shown. In

10 place of an original signature and notary seal, a

11 digital or electronic signature or seal shall be

12 accepted, and

13 f. itemized charges which shall equal the total

14 compensation claimed.

15 4. a. Such Notice of Sale shall be posted in two public

16 places in the county where the property is to be sold

17 at least ten (10) days before the time therein

18 specified for such sale, and a copy of the notice

19 shall be mailed to the owner and any other party

20 claiming any interest in the property, if known, at

21 their last-known post office address, by certified

22 mail, return receipt requested, at least ten (10) days

23 before the time therein specified for such sale. If

24 the item of personal property is a manufactured home,

1 notice shall also be sent by certified mail to the
2 county treasurer and to the county assessor of the
3 county where the manufactured home is located.

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

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

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

18 e. When personal property is of a type that Oklahoma law
19 requires to be titled, the owner of record of that
20 property is unknown, and the jurisdiction of titling
21 and owner of record cannot be determined by ordinary
22 means and also, if applicable, cannot be determined in
23 accordance with the preceding subparagraph, then the
24 special lien may be foreclosed by publication of a

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

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

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

11 6. Proceedings for foreclosure under this act shall ~~not be~~
12 ~~commenced until thirty (30) days~~ commence in twenty (20) days after
13 the lien has accrued, except as provided elsewhere in Oklahoma law.

14 7. Notwithstanding any other provision of law, proceedings for
15 foreclosures for the storage of junk vehicles towed and stored
16 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by
17 Class AA wreckers listed with the Motor Vehicle Division of the
18 Department of Public Safety, may be commenced five (5) days after
19 the lien has accrued. For purposes of this paragraph, "junk
20 vehicles" means any vehicle that is more than ten (10) years old if
21 the cost of a comparable vehicle would be less than Three Hundred
22 Dollars (\$300.00) as quoted in the latest edition of the National
23 Automobile Dealers Association Official Used Car Guide or latest
24

1 monthly edition of any other nationally recognized published
2 guidebook, adjusting to the condition of the vehicle.

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

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

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

22 (2) the check or other written order was not paid,
23 and
24

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

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

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

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

- 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
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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.

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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
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1 vehicle knowing that any of the statements made in the proceeding
2 are false, upon conviction, shall be guilty of a felony.

3 F. Upon receipt of notice of legal proceedings, the Tax
4 Commission shall cause the sale process to be put on hold until
5 notice of resolution of court proceedings is received from the
6 court. If such notice of commencement of court proceedings is not
7 filed with the Tax Commission, the possessory lien sale process may
8 continue.

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

10 H. For purposes of this section:

11 1. "Possession" includes actual possession and constructive
12 possession;

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

18 3. "Lawfully in possession" means a person has documentation
19 from the owner or the owner's authorized agent, or an insurance
20 company or its authorized agent, authorizing the furnishing of
21 material, labor or storage, or that the property was authorized to
22 be towed to a repair facility.

23 Class AA wrecker services taking possession of a vehicle
24 pursuant to an agreement with, or at the direction of, or dispatched

1 by, a state or local law enforcement or government agency, or
2 pursuant to the abandoned vehicle removal provisions of Section 954A
3 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
4 in possession of the vehicle. If the person lacks such
5 documentation, the procedures established by this section shall not
6 apply; and

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

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

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

24

1 K. Any interested party shall be permitted to visually inspect
2 and verify the services rendered by the claimant prior to the sale
3 of the article of property during normal business hours. If the
4 claimant fails to allow any interested party to inspect the
5 property, the interested party shall mail a request for inspection
6 by certified mail, return receipt requested, to the claimant.
7 Within three (3) business days of receipt of the request for
8 inspection, the claimant shall mail a photograph of the property, by
9 certified mail, return receipt requested, and a date of inspection
10 within five (5) business days from the date of the notice to
11 inspect. The lienholder shall be allowed to retrieve the property
12 without being required to bring the title into the lienholder's
13 name, if the lienholder provides proof it is a lienholder and any
14 payment due the claimant for lawful charges where the claimant has
15 complied with this section. Upon the release of personal property
16 to an insurer or representative of the insurer, wrecker operators
17 shall be exempt from all liability and shall be held harmless for
18 any losses or claims of loss. In the event any law enforcement
19 agency places a hold on the property, the party wanting to inspect
20 or photograph the property shall obtain permission from the law
21 enforcement agency that placed the hold on the property before
22 inspecting or photographing.

23 L. This section shall apply to all actions or proceedings that
24 commence on or after the effective date of this act.

1 SECTION 3. This act shall become effective November 1, 2023.

2 COMMITTEE REPORT BY: COMMITTEE ON FINANCE

3 April 10, 2023 - DO PASS

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