

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2289

By: Wright of the House

and

Howard of the Senate

7 An Act relating to liens; amending 42 O.S. 2011,
8 Section 91, as last amended by Section 1, Chapter
316, O.S.L. 2016 (42 O.S. Supp. 2018, Section 91),
9 which relates to liens on personal property;
10 terminating requirements for notarization of certain
documents; and providing an effective date.

11
12 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

13
14 "An Act relating to liens; amending 42 O.S. 2011,
Sections 91, as last amended by Section 1, Chapter
15 316, O.S.L. 2016, and 91A, as last amended by Section
1, Chapter 183, O.S.L. 2017 (42 O.S. Supp. 2018,
16 Sections 91 and 91A), which relate to liens on
personal property; modifying requirements for
17 resubmission of certain title applications for
perfection of certain special lien; terminating
18 requirements for notarization of certain documents;
and providing an effective date.

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

22 SECTION 1. AMENDATORY 42 O.S. 2011, Section 91, as last
23 amended by Section 1, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2018,
24 Section 91), is amended to read as follows:

1 Section 91.

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

17 b. Salvage pools as defined in Section 591.2 of Title 47
18 of the Oklahoma Statutes and class AA licensed wrecker
19 services taking possession of a vehicle pursuant to an
20 agreement with or at the direction of, or dispatched
21 by, a state or local law enforcement or government
22 agency, or pursuant to the abandoned vehicle renewal
23 provisions of Section 954A of Title 47 of the Oklahoma
24 Statutes, shall not be subject to the provisions of

1 this section, but shall be subject to the provisions
2 of Section 91A of this title. Unless otherwise
3 provided by this subparagraph, class AA licensed
4 wrecker services performing consensual tows shall be
5 subject to the provisions of this section.

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

13 3. This special lien shall be subordinate to any perfected
14 security interest unless the claimant complies with the requirements
15 of this section. Failure to comply with any requirements of this
16 section shall result in denial of any title application and cause
17 the special lien to be subordinate to any perfected lien. Upon such
18 denial, the applicant shall be entitled to ~~one resubmission~~ no more
19 than two resubmissions of the title application within ~~fifteen (15)~~
20 thirty (30) business days of receipt of the denial, and proceed to
21 comply with the requirements of this section. In the event of a
22 denial, the Notice of Possessory Lien and the Notice of Sale may be
23 mailed on the same day in separate envelopes and storage charges
24

1 shall only be charged from the date of resubmission. "Failure to
2 comply" includes, but is not limited to:

- 3 a. failure to timely provide additional documentation
4 supporting or verifying any entry on submitted forms as
5 requested by the Tax Commission, including but not
6 limited to United States Postal Service proof of return
7 receipt requested such as Form 3811 or United States
8 Postal Service electronic equivalent,
- 9 b. failure to provide the documentation supporting lawful
10 possession as defined in paragraph 3 of subsection H of
11 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 4
17 of this subsection, or
- 18 f. foreclosure notification and proceedings not
19 accomplished in accordance with paragraph 6 of this
20 ~~section~~ subsection.

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:

24

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. 2011, Section 91A, as last
21 amended by Section 1, Chapter 183, O.S.L. 2017 (42 O.S. Supp. 2018,
22 Section 91A), is amended to read as follows:

23 Section 91A.
24

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

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

5 (2) "Section 91 Personal Property" as defined in
6 Section 91 of this title.

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

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

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

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

18 or

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

23 c. If personal property has a certificate of title, or
24 would be required to have a certificate of title under

1 Oklahoma law, and is apparently covered both by this
2 section and by Sections 191 through 200 of this title,
3 the procedures set out in this section shall apply
4 instead of Sections 191 through 200 of this title. If
5 personal property without a certificate of title and
6 not required to be titled under Oklahoma law is
7 covered both by this section and Sections 191 through
8 200 of this title, the procedures set out in Sections
9 191 through 200 of this title shall apply instead of
10 this section.

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

1 b. Except for Class AA licensed wrecker towing charges,
2 the special lien shall be subordinate to any perfected
3 security interest unless the claimant complies with
4 the requirements of this section. Failure to comply
5 with any requirements of this section shall result in
6 denial of any title application and cause the special
7 lien to be subordinate to any perfected lien. Upon
8 such denial, the applicant shall be entitled to ~~one~~
9 ~~resubmission~~ no more than two resubmissions of the
10 title application within thirty (30) business days of
11 receipt of the denial, and proceed to comply with the
12 requirements of this section. "Failure to comply"
13 includes, but is not limited to:

14 (1) failure to timely provide additional
15 documentation supporting or verifying any entry
16 on submitted forms as requested by the Tax
17 Commission,

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

21 (3) claimant being other than the individual who
22 provided the service giving rise to the special
23 lien, as in subparagraph a of this paragraph,
24

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

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

6 c. Any person claiming a lien under this section shall
7 request, within five (5) business days of performing
8 any service or work on the property, the Tax
9 Commission or other appropriate license agency to
10 furnish the name and address of the current owner of
11 and any lienholder upon the property. The Motor
12 Vehicle Division of the Tax Commission or appropriate
13 license agency shall respond in person or by mail to
14 the lien claimant within ten (10) business days of the
15 receipt of the request for information. The Tax
16 Commission shall render assistance to ascertain
17 ownership, if needed. The lien claimant shall send,
18 within seven (7) business days of receipt of the
19 requested information from the Oklahoma Tax Commission
20 or other license agency, a notice of the location of
21 the property by certified mail with return receipt
22 requested, postage prepaid, to the owner and any
23 lienholder of the vehicle at the addresses furnished.
24 The lien claimant may charge Twenty Dollars (\$20.00)

1 for processing plus the cost of postage if the notice
2 is timely sent pursuant to the requirements of this
3 subparagraph in addition to fees regulated by the
4 Oklahoma Corporation Commission for licensed wreckers.
5 If the lien claimant is unable to meet the time
6 requirements due to a lack of or an altered vehicle
7 identification number on the property, the lien
8 claimant shall proceed diligently to obtain the proper
9 vehicle identification number and shall meet the time
10 requirements on the notice once the vehicle
11 identification number is known. If the lien claimant
12 is required to send additional notices because of
13 change of ownership or lienholder after it has timely
14 complied with the requirements of this subparagraph,
15 the lien claimant shall remain in compliance if such
16 additional notices are sent within the required time
17 periods from the date of discovery of the new owners
18 or lienholders. The notice shall be in writing and
19 shall contain, but not be limited to, the following:
20 (1) a statement that the notice is a Notice of
21 Possessory Lien,
22 (2) the complete legal name, physical and mailing
23 address, and telephone number of the claimant,
24

1 (3) the complete legal name, physical and mailing
2 address of the person who requested that the
3 claimant render service to the owner by
4 furnishing material, labor or skill, storage, or
5 rental space, or the date the property was
6 abandoned if the claimant did not render any
7 other service,

8 (4) a description of the article of personal
9 property, and the complete physical and mailing
10 address of the location of the article of
11 personal property,

12 (5) the nature of the work, labor or service
13 performed, material furnished, or the storage or
14 rental arrangement, and the date thereof, and
15 written proof of authority to perform the work,
16 labor or service provided that, in the case of a
17 law enforcement directed tow, the logbook entry
18 prescribed in OAC 595:25-5-5 or the tow ticket as
19 defined by the Corporation Commission shall serve
20 as written proof of authority,

21 (6) the signature of the claimant which shall be
22 notarized and, if applicable, the signature of
23 the claimant's attorney. If the claimant is a
24 business, the name of the contact person

1 representing the business shall 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 (7) an itemized statement describing the date or
6 dates the labor or services were performed and
7 material furnished and the charges claimed for
8 each item, the totals of which shall equal the
9 total compensation claimed.

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

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

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

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

9 b. a description of the property to be sold, including a
10 visual inspection or a photograph if the property is a
11 motor vehicle, and the physical location of the
12 property,

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

21 d. the time and place of sale,

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

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

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

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

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

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

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

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

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

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

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

1 and the Notice of Sale shall not be mailed until at
2 least thirty (30) days after the lien has accrued.

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

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

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

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

1 or other written order is dishonored, or is not paid
2 when presented, shall have a lien for the amount
3 thereof upon the personal property.

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

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

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

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

23 2. a. Any person who renders service to the owner of an
24 article of personal property by furnishing storage,

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

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

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

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

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

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

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

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

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

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

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.

14 F. Upon receipt of notice of legal proceedings, the Tax
15 Commission shall cause the sale process to be put on hold until
16 notice of resolution of court proceedings is received from the
17 court. If such notice of commencement of court proceedings is not
18 filed with the Tax Commission, the possessory lien sale process may
19 continue.

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

21 H. For purposes of this section:

22 1. "Possession" includes actual possession and constructive
23 possession;
24

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

6 3. "Lawfully in possession" means a person has documentation
7 from the owner or the owner's authorized agent, or an insurance
8 company or its authorized agent, authorizing the furnishing of
9 material, labor or storage, or that the property was authorized to
10 be towed to a repair facility.

11 Class AA wrecker services taking possession of a vehicle
12 pursuant to an agreement with, or at the direction of, or dispatched
13 by, a state or local law enforcement or government agency, or
14 pursuant to the abandoned vehicle removal provisions of Section 954A
15 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
16 in possession of the vehicle. If the person lacks such
17 documentation, the procedures established by this section shall not
18 apply; and

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

23 I. For purposes of this section, the United States Postal
24 Service approved electronic equivalent of proof of return receipt

1 requested Form 3811 shall satisfy return receipt requested
2 documentation requirements.

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

12 K. Any interested party shall be permitted to visually inspect
13 and verify the services rendered by the claimant prior to the sale
14 of the article of property during normal business hours. If the
15 claimant fails to allow any interested party to inspect the
16 property, the interested party shall mail a request for inspection
17 by certified mail, return receipt requested, to the claimant.
18 Within three (3) business days of receipt of the request for
19 inspection, the claimant shall mail a photograph of the property, by
20 certified mail, return receipt requested, and a date of inspection
21 within five (5) business days from the date of the notice to
22 inspect. The lienholder shall be allowed to retrieve the property
23 without being required to bring the title into the lienholder's
24 name, if the lienholder provides proof it is a lienholder and any

1 payment due the claimant for lawful charges where the claimant has
2 complied with this section. Upon the release of personal property
3 to an insurer or representative of the insurer, wrecker operators
4 shall be exempt from all liability and shall be held harmless for
5 any losses or claims of loss. In the event any law enforcement
6 agency places a hold on the property, the party wanting to inspect
7 or photograph the property shall obtain permission from the law
8 enforcement agency that placed the hold on the property before
9 inspecting or photographing.

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

12 SECTION 3. This act shall become effective November 1, 2019."

13

14 Passed the Senate the 23rd day of April, 2019.

15

16

Presiding Officer of the Senate

17

18 Passed the House of Representatives the ____ day of _____,
19 2019.

20

21

Presiding Officer of the House
of Representatives

22

23

24

1 ENGROSSED HOUSE
2 BILL NO. 2289

By: Wright of the House

and

Howard of the Senate

3
4
5
6
7 An Act relating to liens; amending 42 O.S. 2011,
8 Section 91, as last amended by Section 1, Chapter
9 316, O.S.L. 2016 (42 O.S. Supp. 2018, Section 91),
10 which relates to liens on personal property;
11 terminating requirements for notarization of certain
12 documents; and providing an effective date.

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

14 SECTION 4. AMENDATORY 42 O.S. 2011, Section 91, as last
15 amended by Section 1, Chapter 316, O.S.L. 2016 (42 O.S. Supp. 2018,
16 Section 91), is amended to read as follows:

17 Section 91. A. 1.

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

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

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

22 2. Any person who, while lawfully in possession of an article
23 of Section 91 Personal Property, renders any service to the owner
24 thereof by furnishing storage, rental space, material, labor or

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

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

17 a. failure to timely provide additional documentation
18 supporting or verifying any entry on submitted forms as
19 requested by the Tax Commission, including but not
20 limited to United States Postal Service proof of return
21 receipt requested such as Form 3811 or United States
22 Postal Service electronic equivalent,
23
24

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

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

- a. a statement that the notice is a Notice of Possessory Lien,
- b. the complete legal name, physical and mailing address, and telephone number of the claimant,
- c. the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,
- d. a description of the article of personal property, including a photograph if the property is Section 91 Personal Property, and the complete physical and mailing address of the location of the article of personal property,
- e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the charges claimed for each item, the totals of which shall equal the total compensation claimed,
- f. a statement by the claimant that the materials, labor or skill furnished, or arrangement for storage or rental of space, was authorized by the owner of the personal property and was in fact provided or

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

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

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

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

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

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

1 abandoned if the claimant did not render any other
2 service,

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

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

5 and telephone number of the party foreclosing such

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

7 the contact person representing the business must be

8 shown. In place of an original signature ~~and notary~~

9 ~~seal~~, a digital or electronic signature ~~or seal~~ shall

10 be accepted, and

11 g. itemized charges which shall equal the total

12 compensation claimed.

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

23 8. Interested parties shall include all owners of the article
24 of personal property as indicated by the certificate of title issued

1 by the Tax Commission or by a federally recognized Indian tribe in
2 the State of Oklahoma; lien debtors, if any, other than the owners;
3 any lienholder whose lien is noted on the face of the certificate of
4 title; and any other person having any interest in the article of
5 personal property, of whom the claimant has actual notice.

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

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

20 11. Proceedings for foreclosure under this act shall be
21 commenced no sooner than ten (10) days and no later than thirty (30)
22 days after the Notice of Possessory Lien has been mailed as
23 evidenced by certified mail. The date actually sold shall be within
24

1 sixty (60) days from the date of the Notice of Sale as evidenced by
2 certified mail.

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

1 2. If personal property that otherwise would be covered by this
2 section has been registered by the Tax Commission or by a federally
3 recognized Indian tribe in the State of Oklahoma, and there is a
4 lien of record but no certificate of title has been issued, Section
5 91A of this title will apply instead of this section.

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

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

18 F. Upon receipt of notice of legal proceedings, the Tax
19 Commission shall cause the sale process to be put on hold until
20 notice of resolution of court proceedings is received from the
21 court. If such notice of commencement of court proceedings is not
22 filed with the Tax Commission, the possessory lien sale process may
23 continue.

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

1 H. For purposes of this section:

2 1. "Possession" includes actual possession and constructive
3 possession;

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

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

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 J. 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. The prevailing party shall be entitled to all
9 costs, including reasonable attorney fees.

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

12 SECTION 5. This act shall become effective November 1, 2019.

13 Passed the House of Representatives the 21st day of February,
14 2019.

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Presiding Officer of the House
of Representatives

Passed the Senate the ___ day of _____, 2019.

Presiding Officer of the Senate