

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 2314

By: McCall

4
5
6 AS INTRODUCED

7 An Act relating to liens; amending 42 O.S. 2011,
8 Section 91A, as last amended by Section 2, Chapter
9 316, O.S.L. 2016 (42 O.S. Supp. 2016, Section 91A),
10 which relates to liens for service on personal
11 property; modifying time allowed for resubmission of
12 title application; and providing an effective date.

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

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

17 Section 91A.

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

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

22 (2) "Section 91 Personal Property" as defined in
23 Section 91 of this title.

24 b. This section applies to any vehicle, all-terrain
vehicle, utility vehicle, manufactured home,

1 motorcycle, boat, outboard motor, or trailer that is
2 excluded from coverage under subsection A of Section
3 91 of this title because the personal property:

- 4 (1) does not have a certificate of title, or
- 5 (2) has a certificate of title but does not have an
6 active lien recorded on the certificate of title,
7 or
- 8 (3) has a certificate of title that is not issued by
9 the Oklahoma Tax Commission or by a federally
10 recognized Indian tribe in the State of Oklahoma,
11 or
- 12 (4) is otherwise excluded by subparagraph b of
13 paragraph 1 of subsection A of Section 91 of this
14 title or subsection D of Section 91 of this
15 title.

16 c. If personal property has a certificate of title, or
17 would be required to have a certificate of title under
18 Oklahoma law, and is apparently covered both by this
19 section and by Sections 191 through 200 of this title,
20 the procedures set out in this section shall apply
21 instead of Sections 191 through 200 of this title. If
22 personal property without a certificate of title and
23 not required to be titled under Oklahoma law is
24 covered both by this section and Sections 191 through

1 200 of this title, the procedures set out in Sections
2 191 through 200 of this title shall apply instead of
3 this section.

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

18 b. Except for Class AA licensed wrecker towing charges,
19 the special lien shall be subordinate to any perfected
20 security interest unless the claimant complies with
21 the requirements of this section. Failure to comply
22 with any requirements of this section shall result in
23 denial of any title application and cause the special
24 lien to be subordinate to any perfected lien. Upon

1 such denial, the applicant shall be entitled to one
2 resubmission of the title application within ~~fifteen~~
3 ~~(15)~~ thirty (30) business days of receipt of the
4 denial, and proceed to comply with the requirements of
5 this section. "Failure to comply" includes, but is
6 not limited to:

- 7 (1) failure to timely provide additional
8 documentation supporting or verifying any entry
9 on submitted forms as requested by the Tax
10 Commission,
- 11 (2) failure to provide the documentation supporting
12 lawful possession as outlined in paragraph 3 of
13 subsection H of this section,
- 14 (3) claimant being other than the individual who
15 provided the service giving rise to the special
16 lien, as in subparagraph a of this paragraph,
- 17 (4) claimant not being in possession of the vehicle,
18 or
- 19 (5) notification and proceedings not accomplished in
20 accordance with subparagraph c of this paragraph,
21 and paragraph 3 of this subsection.

22 c. Any person claiming a lien under this section shall
23 request, within five (5) business days of performing
24 any service or work on the property, the Tax

1 Commission or other appropriate license agency to
2 furnish the name and address of the current owner of
3 and any lienholder upon the property. The Motor
4 Vehicle Division of the Tax Commission or appropriate
5 license agency shall respond in person or by mail to
6 the lien claimant within ten (10) business days of the
7 receipt of the request for information. The Tax
8 Commission shall render assistance to ascertain
9 ownership, if needed. The lien claimant shall send,
10 within seven (7) business days of receipt of the
11 requested information from the Oklahoma Tax Commission
12 or other license agency, a notice of the location of
13 the property by certified mail with return receipt
14 requested, postage prepaid, to the owner and any
15 lienholder of the vehicle at the addresses furnished.
16 The lien claimant may charge Twenty Dollars (\$20.00)
17 for processing plus the cost of postage if the notice
18 is timely sent pursuant to the requirements of this
19 subparagraph in addition to fees regulated by the
20 Oklahoma Corporation Commission for licensed wreckers.
21 If the lien claimant is unable to meet the time
22 requirements due to a lack of or an altered vehicle
23 identification number on the property, the lien
24 claimant shall proceed diligently to obtain the proper

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

- 12 (1) a statement that the notice is a Notice of
13 Possessory Lien,
- 14 (2) the complete legal name, physical and mailing
15 address, and telephone number of the claimant,
- 16 (3) the complete legal name, physical and mailing
17 address of the person who requested that the
18 claimant render service to the owner by
19 furnishing material, labor or skill, storage, or
20 rental space, or the date the property was
21 abandoned if the claimant did not render any
22 other service,
- 23 (4) a description of the article of personal
24 property, and the complete physical and mailing

1 address of the location of the article of
2 personal property,

3 (5) the nature of the work, labor or service
4 performed, material furnished, or the storage or
5 rental arrangement, and the date thereof, and
6 written proof of authority to perform the work,
7 labor or service provided that, in the case of a
8 law enforcement directed tow, the logbook entry
9 prescribed in OAC 595:25-5-5 or the tow ticket as
10 defined by the Corporation Commission shall serve
11 as written proof of authority,

12 (6) the signature of the claimant which shall be
13 notarized and, if applicable, the signature of
14 the claimant's attorney. If the claimant is a
15 business, the name of the contact person
16 representing the business shall be shown. In
17 place of an original signature and notary seal, a
18 digital or electronic signature or seal shall be
19 accepted, and

20 (7) an itemized statement describing the date or
21 dates the labor or services were performed and
22 material furnished and the charges claimed for
23 each item, the totals of which shall equal the
24 total compensation claimed.

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

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

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

22 a. the names of the owner and any other known party or
23 parties who may claim any interest in the property,
24

- 1 b. a description of the property to be sold, including a
2 visual inspection or a photograph if the property is a
3 motor vehicle, and the physical location of the
4 property,
- 5 c. the nature of the work, labor or service performed,
6 material furnished, or the storage or rental
7 arrangement, and the date thereof, and written proof
8 of authority to perform the work, labor or service
9 provided. In the case of a law enforcement directed
10 tow, the logbook entry prescribed in OAC 595:25-5-5 or
11 the tow ticket as defined by the Corporation
12 Commission, shall serve as written proof of authority,
- 13 d. the time and place of sale,
- 14 e. the name, telephone number, physical address and
15 mailing address of the claimant, and agent or
16 attorney, if any, foreclosing such lien. If the
17 claimant is a business, then the name of the contact
18 person representing the business must be shown. In
19 place of an original signature and notary seal, a
20 digital or electronic signature or seal shall be
21 accepted, and
- 22 f. itemized charges which shall equal the total
23 compensation claimed.
- 24

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

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

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

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

1 Oklahoma Tax Commission Motor Vehicle Division is
2 unable to provide the information, it shall provide
3 notice that the record is not available.

4 e. When personal property is of a type that Oklahoma law
5 requires to be titled, the owner of record of that
6 property is unknown, and the jurisdiction of titling
7 and owner of record cannot be determined by ordinary
8 means and also, if applicable, cannot be determined in
9 accordance with the preceding subparagraph, then the
10 special lien may be foreclosed by publication of a
11 legal notice in a legal newspaper in the county where
12 the personal property is located, as defined in
13 Section 106 of Title 25 of the Oklahoma Statutes.
14 Such notice shall include the description of the
15 property by year, make, vehicle identification number
16 if available from the property, the name of the
17 individual who may be contacted for information, and
18 the telephone number of that person or the address
19 where the vehicle is located. The legal notice shall
20 be published once per week for three (3) consecutive
21 weeks. As soon as circumstances exist as described in
22 the first sentence of this subparagraph, the first
23 date of publication may occur even if the special lien
24 has not accrued for over thirty (30) days. The first

1 date available for public sale of the vehicle is the
2 day following publication of the final notice, but no
3 fewer than thirty (30) days after the lien has
4 accrued. When the owner of record is unknown, the
5 Notice of Sale nevertheless must be completed and
6 mailed to any known interested party by certified
7 mail. For purposes of this paragraph, interested
8 parties shall include all persons described in
9 subparagraph b or subparagraph c of this paragraph,
10 whichever is applicable, with the exception of any
11 owner who is unknown. Except in circumstances
12 described in paragraph 7 of this subsection that
13 provide for a shorter time period, the Notice of Sale
14 shall be posted in two public places in the county
15 where the property is to be sold at least ten (10)
16 days before the time therein specified for such sale,
17 and the Notice of Sale shall not be mailed until at
18 least thirty (30) days after the lien has accrued.

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

21 6. Proceedings for foreclosure under this act shall not be
22 commenced until thirty (30) days after the lien has accrued, except
23 as provided elsewhere in Oklahoma law.
24

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

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

21 b. The person claiming such lien shall, within thirty
22 (30) days from the date of dishonor of the check or
23 other written order for payment of money, file in the
24

1 office of the county clerk of the county in which the
2 property is situated a sworn statement that:

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

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

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

17 2. a. Any person who renders service to the owner of an
18 article of personal property by furnishing storage,
19 rental space, material, labor, or skill for the
20 protection, improvement, safekeeping, towing, right to
21 occupy space, storage, or carriage thereof shall have
22 a special lien on such property pursuant to this
23 section if such property is removed from the person's
24

1 possession, without such person's written consent or
2 without payment for such service.

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

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

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

13 (3) an identifying description of the article of
14 personal property on or in relation to which the
15 service was rendered, and

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

1 reflect the actual amount of the debt due and
2 owing.

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

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

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

22 a. in writing and separate from the written contract for
23 services, or
24

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

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

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

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

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

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

12 3. This section applies if personal property to which Section
13 91 of this title otherwise would apply has been registered by the
14 Tax Commission or by a federally recognized Indian tribe in the
15 State of Oklahoma, and there is a lien of record but no certificate
16 of title has been issued.

17 4. This section applies if personal property to which Section
18 91 of this title otherwise would apply has not been registered by
19 either the Tax Commission or a federally recognized Indian tribe in
20 the State of Oklahoma, and no certificate of title has been issued,
21 but there is a lien of record.

22 5. This section applies to personal property that otherwise
23 would be covered by Section 91 of this title, except that the
24

1 services were rendered or the property was abandoned prior to
2 November 1, 2005.

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

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

12 8. This section applies to salvage pools as defined in Section
13 591.2 of Title 47 of the Oklahoma Statutes.

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

21 10. For a vehicle abandoned at a salvage pool, if the cost of
22 repairing the vehicle for safe operation on the highway does not
23 exceed sixty percent (60%) of the fair market value of the vehicle
24

1 as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a
2 salvage title shall not be required.

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

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

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

18 H. For purposes of this section:

19 1. "Possession" includes actual possession and constructive
20 possession;

21 2. "Constructive possession" means possession by a person who,
22 although not in actual possession, does not have an intention to
23 abandon property, knowingly has both power and the intention at a
24

1 given time to exercise dominion or control over the property, and
2 who holds claim to such thing by virtue of some legal right;

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

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

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

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

24

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

1 to an insurer or representative of the insurer, wrecker operators
2 shall be exempt from all liability and shall be held harmless for
3 any losses or claims of loss. In the event any law enforcement
4 agency places a hold on the property, the party wanting to inspect
5 or photograph the property shall obtain permission from the law
6 enforcement agency that placed the hold on the property before
7 inspecting or photographing.

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

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

11

12 56-1-5753 SD 01/16/17

13

14

15

16

17

18

19

20

21

22

23

24