

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE  
5 FOR ENGROSSED  
6 SENATE BILL NO. 796

By: Sykes of the Senate

and

Denney of the House

8  
9  
10  
11                                   COMMITTEE SUBSTITUTE

12                   An Act relating to liens; amending 42 O.S. 2011,  
13                   Section 91, as amended by Section 1, Chapter 405,  
14                   O.S.L. 2014 (42 O.S. Supp. 2015, Section 91), which  
15                   relates to liens on titled personal property;  
16                   permitting same-day, separate mailing of notices if  
17                   denial; limiting storage charges from date of  
18                   resubmission; updating language; amending 42 O.S.  
19                   2011, Section 91A, as amended by Section 2, Chapter  
20                   405, O.S.L. 2014 (42 O.S. Supp. 2015, Section 91A),  
21                   which relates to liens on personal property; updating  
22                   reference; specifying fees are in addition to fees  
23                   regulated by the Oklahoma Corporation Commission;  
24                   updating language; and declaring an emergency.

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

SECTION 1.            AMENDATORY            42 O.S. 2011, Section 91, as  
amended by Section 1, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2015,  
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  
5 a certificate of title issued by the Oklahoma Tax  
6 Commission or by a federally recognized Indian tribe  
7 in the State of Oklahoma, except as otherwise provided  
8 in subsection D of this section. This section does  
9 not apply to farm equipment as defined in Section 91.2  
10 of this title. The items of personal property to  
11 which this section applies are collectively referred  
12 to as "Section 91 Personal Property". If personal  
13 property is apparently covered both by this section  
14 and by Sections 191 through 200 of this title, the  
15 procedures set out in this section shall apply instead  
16 of Sections 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 of the  
19 title application within fifteen (15) business days of receipt of  
20 the denial, and proceed to comply with the requirements of this  
21 section. In the event of a denial, the Notice of Possessory Lien  
22 and the Notice of Sale may be mailed on the same day in separate  
23 envelopes and storage charges shall only be charged from the date of  
24 resubmission. "Failure to comply" includes, but is not limited to:

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

19 4. Any person claiming the special lien provided in paragraph 2  
20 of this subsection shall mail a notice of such lien, no later than  
21 sixty (60) days after the first services are rendered, by regular,  
22 first class United States mail, and by certified mail, return  
23 receipt requested, to all interested parties who reside at separate  
24 locations. ~~If~~ services provided are pursuant to a contract

1 primarily for the purpose of storage or rental of space, the  
2 beginning date of the sixty-day period provided in the previous  
3 sentence shall be the first day of the first period or partial  
4 period for which rental or storage charges remain unpaid.† The  
5 notice shall be in writing and shall contain, but not be limited to,  
6 the following:

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

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

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

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

19 5. For services rendered or vehicles abandoned on or after  
20 November 1, 2005, storage charges or charges for rental of space ~~(,)~~  
21 unless agreed to by contract as part of an overall transaction or  
22 arrangement that was primarily for the purpose of storage of the  
23 Section 91 Personal Property or rental of space ~~(,)~~, may only be  
24 assessed beginning with the day that the Notice of Possessory Lien

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

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

- 16 a. a statement that the notice is a Notice of Sale,
- 17 b. the names of all interested parties known to the  
18 claimant,
- 19 c. a description of the property to be sold, including a  
20 photograph if the property is Section 91 Personal  
21 Property and if the condition of such property has  
22 materially changed since the mailing of Notice of  
23 Possessory Lien required pursuant to paragraph 4 of  
24 this subsection,

- 1 d. a notarized statement of the nature of the work, labor  
2 or service performed, material furnished, or storage  
3 or rental of space, and the date thereof, and the name  
4 of the person who authorized the work, labor or  
5 service performed, or the storage or rental  
6 arrangement, and written proof of authority to perform  
7 the work, labor or service, or that the property was  
8 abandoned if the claimant did not render any other  
9 service,
- 10 e. the date, time, and exact physical location of sale,  
11 f. the name, complete physical address, mailing address,  
12 and telephone number of the party foreclosing such  
13 lien. If the claimant is a business, then the name of  
14 the contact person representing the business must be  
15 shown. In place of an original signature and notary  
16 seal, a digital or electronic signature or seal shall  
17 be accepted, and
- 18 g. itemized charges which shall equal the total  
19 compensation claimed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 not affect the rights of innocent, intervening purchasers without  
2 notice.

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

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

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

24

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

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

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

20           D. 1. If a vehicle, all-terrain vehicle, utility vehicle,  
21 manufactured home, motorcycle, boat, outboard motor, or trailer has  
22 a certificate of title issued by the Tax Commission or by a  
23 federally recognized Indian tribe in the State of Oklahoma, but  
24 there is no active lien recorded on the certificate of title,

1 Section 91A of this title will apply instead of this section.

2 Likewise, if there is an active lien recorded on the certificate of  
3 title but the lien is over fifteen (15) years old and the property  
4 is not a manufactured home, Section 91A of this title will apply  
5 instead of this section.

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

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

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

23 F. Upon receipt of notice of legal proceedings, the Tax  
24 Commission shall cause the sale process to be put on hold until

1 notice of resolution of court proceedings is received from the  
2 court. If such notice of commencement of court proceedings is not  
3 filed with the Tax Commission, the possessory lien sale process may  
4 continue.

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

6 H. For purposes of this section:

7 1. "Possession" includes actual possession and constructive  
8 possession;

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

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

22 4. "Itemized charges" means total parts, total labor, total  
23 towing fees, total storage fees, total processing fees and totals of  
24

1 any other fee groups, the sum total of which shall equal the  
2 compensation claimed.

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

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

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

18 SECTION 2. AMENDATORY 42 O.S. 2011, Section 91A, as  
19 amended by Section 2, Chapter 405, O.S.L. 2014 (42 O.S. Supp. 2015,  
20 Section 91A), is amended to read as follows:

21 Section 91A.

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

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

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

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

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

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

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

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

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

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

10 2. a. Any person who, while lawfully in possession of an  
11 article of personal property to which this section  
12 applies, renders any service to the owner thereof by  
13 furnishing storage, rental space, material, labor or  
14 skill for the protection, improvement, safekeeping,  
15 towing, right to occupy space, storage or carriage  
16 thereof, has a special lien thereon, dependent on  
17 possession, for the compensation, if any, which is due  
18 to such person from the owner for such service.  
19 Charges owed under a contract primarily for the  
20 purpose of storage or rental of space shall be accrued  
21 only at the regular periodic rate for storage or  
22 rental as provided in the contract, adjusted for  
23 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 of the title application within fifteen  
10          (15) business days of receipt of the denial, and  
11          proceed to comply with the requirements of this  
12          section. "Failure to comply" includes, but is not  
13          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 ~~F~~ 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 2 ~~of~~  
24           ~~this subsection,~~

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 ~~2 of this subsection~~, and paragraph 3 of this  
6 subsection.

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

1 The lien claimant may charge Twenty Dollars (\$20.00)  
2 for processing plus the cost of postage if the notice  
3 is timely sent pursuant to the requirements of this  
4 subparagraph in addition to fees regulated by the  
5 Oklahoma Corporation Commission for licensed wreckers.

6 If the lien claimant is unable to meet the time  
7 requirements due to a lack of or an altered vehicle  
8 identification number on the property, the lien  
9 claimant shall proceed diligently to obtain the proper  
10 vehicle identification number and shall meet the time  
11 requirements on the notice once the vehicle  
12 identification number is known. If the lien claimant  
13 is required to send additional notices because of  
14 change of ownership or lienholder after it has timely  
15 complied with the requirements of this subparagraph,  
16 the lien claimant shall remain in compliance if such  
17 additional notices are sent within the required time  
18 periods from the date of discovery of the new owners  
19 or ~~lien holders~~ lienholders. The notice shall be in  
20 writing and shall contain, but not be limited to, the  
21 following:

- 22 (1) a statement that the notice is a ~~notice~~ Notice of  
23 ~~a possessory lien~~ Possessory Lien,

24

- 1 (2) the complete legal name, physical and mailing  
2 address, and telephone number of the claimant,  
3 (3) the complete legal name, physical and mailing  
4 address of the person who requested that the  
5 claimant render service to the owner by  
6 furnishing material, labor or skill, storage, or  
7 rental space, or the date the property was  
8 abandoned if the claimant did not render any  
9 other service,  
10 (4) a description of the article of personal  
11 property, and the complete physical and mailing  
12 address of the location of the article of  
13 personal property,  
14 (5) the nature of the work, labor or service  
15 performed, material furnished, or the storage or  
16 rental arrangement, and the date thereof, and  
17 written proof of authority to perform the work,  
18 labor or service provided that, in the case of a  
19 law enforcement directed tow, the logbook entry  
20 prescribed in OAC 595:25-5-5 or the tow ticket as  
21 defined by the Corporation Commission shall serve  
22 as written proof of authority,  
23 (6) the signature of the claimant which shall be  
24 notarized and, if applicable, the signature of

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

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

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

1 declared in the county in which the property is  
2 located.

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

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

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

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

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

23 d. the time and place of sale,  
24

1 e. the name, telephone number, physical address and  
2 mailing address of the claimant, and agent or  
3 attorney, if any, foreclosing such lien. If the  
4 claimant is a business, then the name of the contact  
5 person representing the business must be shown. In  
6 place of an original signature and notary seal, a  
7 digital or electronic signature or seal shall be  
8 accepted, and

9 f. itemized charges which shall equal the total  
10 compensation claimed.

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

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

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

22           d.    When the jurisdiction of titling for a vehicle, all-  
23                terrain vehicle, motorcycle, boat, outboard motor, or  
24                trailer that is five (5) model years old or newer, or

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

15 e. When personal property is of a type that Oklahoma law  
16 requires to be titled, the owner of record of that  
17 property is unknown, and the jurisdiction of titling  
18 and owner of record cannot be determined by ordinary  
19 means ~~and also, if applicable, cannot be determined~~  
20 ~~in accordance with the preceding subparagraph~~, then  
21 the special lien may be foreclosed by publication of a  
22 legal notice in a legal newspaper in the county where  
23 the personal property is located, as defined in  
24 Section 106 of Title 25 of the Oklahoma Statutes.

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

1 shall be posted in two public places in the county  
2 where the property is to be sold at least ten (10)  
3 days before the time therein specified for such sale,  
4 and the Notice of Sale shall not be mailed until at  
5 least thirty (30) days after ~~said~~ the lien has  
6 accrued.

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

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

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

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

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

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

20 (2) the check or other written order was not paid,  
21 and

22 (3) the uttering of the check or other written order  
23 constituted the means for inducing the person,  
24 one possessed of a special lien created by

1 subsection A of this section upon the described  
2 article of personal property, to deliver up the  
3 ~~said~~ article of personal property.

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

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

17 (1) that services were rendered on or in relation to  
18 the article of personal property by the person  
19 claiming such lien,

20 (2) that the property was in the possession of the  
21 person claiming the lien but such property was  
22 removed without his written consent,  
23  
24

- 1 (3) an identifying description of the article of  
2 personal property on or in relation to which the  
3 service was rendered, and  
4 (4) that the debt for the services rendered on or in  
5 relation to the article of personal property was  
6 not paid. Provided, if the unpaid total amount  
7 of the debt for services rendered on or in  
8 relation to the article of personal property is  
9 unknown, an approximated amount of the debt due  
10 and owing shall be included in the sworn  
11 statement but such approximated debt may be  
12 amended within thirty (30) days of such filing to  
13 reflect the actual amount of the debt due and  
14 owing.

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

20 C. If the person who renders service to the owner of an article  
21 of personal property to which this section applies relinquishes or  
22 loses possession of the article due to circumstances described in  
23 subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of  
24 subsection B of this section, the person claiming the lien shall be

1 entitled to possession of the article until the amount due is paid,  
2 unless the article is possessed by a person who became a bona fide  
3 purchaser. Entitlement to possession shall be in accordance with  
4 the following:

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

10 a. in writing and separate from the written contract for  
11 services, or

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

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

22 3. The claimant shall not transfer to a third party or to a  
23 person who performs repossession services, a check, money order, or  
24 credit card transaction that is received as payment for services

1 with respect to an article and that is returned to the claimant  
2 because of insufficient funds or no funds, because the person  
3 writing the check, issuing the money order, or credit cardholder has  
4 no account or because the check, money order, or credit card account  
5 has been closed. A person violating this paragraph shall be guilty  
6 of a misdemeanor; and

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

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

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

23 3. This section applies if personal property to which Section  
24 91 of this title otherwise would apply has been registered by the

1 Tax Commission or by a federally recognized Indian tribe in the  
2 State of Oklahoma, and there is a lien of record but no certificate  
3 of title has been issued.

4 4. This section applies if personal property to which Section  
5 91 of this title otherwise would apply has not been registered by  
6 either the Tax Commission or a federally recognized Indian tribe in  
7 the State of Oklahoma, and no certificate of title has been issued,  
8 but there is a lien of record.

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

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

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

22 8. This section applies to salvage pools as defined in Section  
23 591.2 of Title 47 of the Oklahoma Statutes.

24

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

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

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

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

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

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

4 H. For purposes of this section:

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

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

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

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

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

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

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

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

22  
23 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,  
24 dated 04/07/2016 - DO PASS, As Amended.