

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 2289

 By: Wright

7 AS INTRODUCED

8 An Act relating to liens; amending 42 O.S. 2011,
9 Section 91, as last amended by Section 1, Chapter
10 316, O.S.L. 2016 (42 O.S. Supp. 2018, Section 91),
11 which relates to liens on personal property;
12 terminating requirements for notarization of certain
13 documents; 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 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,
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- 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 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:

- 1 a. a statement that the notice is a Notice of Possessory
2 Lien,
- 3 b. the complete legal name, physical and mailing address,
4 and telephone number of the claimant,
- 5 c. the complete legal name, physical and mailing address
6 of the person who requested that the claimant render
7 service to the owner by furnishing material, labor or
8 skill, storage, or rental space, or the date the
9 property was abandoned if the claimant did not render
10 any other service,
- 11 d. a description of the article of personal property,
12 including a photograph if the property is Section 91
13 Personal Property, and the complete physical and
14 mailing address of the location of the article of
15 personal property,
- 16 e. an itemized statement describing the date or dates the
17 labor or services were performed and material
18 furnished, and the charges claimed for each item, the
19 totals of which shall equal the total compensation
20 claimed,
- 21 f. a statement by the claimant that the materials, labor
22 or skill furnished, or arrangement for storage or
23 rental of space, was authorized by the owner of the
24 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
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1 sixty (60) days from the date of the Notice of Sale as evidenced by
2 certified mail.

3 B. 1.

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

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

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

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

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 a
12 special lien on such property pursuant to this section
13 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,
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- 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 2. This act shall become effective November 1, 2019.

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14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/13/2019 - DO
15 PASS.

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