

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2289

By: Wright

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5  
6 AS INTRODUCED

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

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

14 SECTION 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  
not apply to farm equipment as defined in Section 91.2

1 of this title. The items of personal property to  
2 which this section applies are collectively referred  
3 to as "Section 91 Personal Property". If personal  
4 property is apparently covered both by this section  
5 and by Sections 191 through 200 of this title, the  
6 procedures set out in this section shall apply instead  
7 of Sections 191 through 200 of this title.

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

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

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

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

- 16 a. failure to timely provide additional documentation  
17 supporting or verifying any entry on submitted forms as  
18 requested by the Tax Commission, including but not  
19 limited to United States Postal Service proof of return  
20 receipt requested such as Form 3811 or United States  
21 Postal Service electronic equivalent,
- 22 b. failure to provide the documentation supporting lawful  
23 possession as defined in paragraph 3 of subsection H of  
24 this section,

- c. claimant or the agent being other than the individual who provided the service giving rise to the special lien, as in paragraph 2 of this subsection,
- d. claimant not being in possession of the vehicle,
- e. notice of lien not filed in accordance with paragraph 4 of this subsection, or
- f. foreclosure notification and proceedings not accomplished in accordance with paragraph 6 of this subsection.

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

- a. a statement that the notice is a Notice of Possessory Lien,

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

1 abandoned by the owner if the claimant did not render  
2 any other service, and that storage or rental fees  
3 will accrue as allowed by law, and

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

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

1 The maximum allowable compensation for storage shall not exceed the  
2 fees established by the Corporation Commission for nonconsensual  
3 tows.

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

- 7 a. a statement that the notice is a Notice of Sale,
- 8 b. the names of all interested parties known to the  
9 claimant,
- 10 c. a description of the property to be sold, including a  
11 photograph if the property is Section 91 Personal  
12 Property and if the condition of such property has  
13 materially changed since the mailing of Notice of  
14 Possessory Lien required pursuant to paragraph 4 of  
15 this subsection,
- 16 d. a ~~notarized~~ statement of the nature of the work, labor  
17 or service performed, material furnished, or storage  
18 or rental of space, and the date thereof, and the name  
19 of the person who authorized the work, labor or  
20 service performed, or the storage or rental  
21 arrangement, and written proof of authority to perform  
22 the work, labor or service, or that the property was  
23 abandoned if the claimant did not render any other  
24 service,

- 1 e. the date, time, and exact physical location of sale,  
2 f. the name, complete physical address, mailing address,  
3 and telephone number of the party foreclosing such  
4 lien. If the claimant is a business, then the name of  
5 the contact person representing the business must be  
6 shown. In place of an original signature ~~and notary~~  
7 ~~seal~~, a digital or electronic signature ~~or seal~~ shall  
8 be accepted, and  
9 g. itemized charges which shall equal the total  
10 compensation claimed.

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

21 8. Interested parties shall include all owners of the article  
22 of personal property as indicated by the certificate of title issued  
23 by the Tax Commission or by a federally recognized Indian tribe in  
24 the State of Oklahoma; lien debtors, if any, other than the owners;



1 any lienholder whose lien is noted on the face of the certificate of  
2 title; and any other person having any interest in the article of  
3 personal property, of whom the claimant has actual notice.

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

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

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

24 B. 1.

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 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 a  
9 special lien on such property pursuant to this section  
10 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 or her written consent,  
23  
24

1 (3) an identifying description of the article of  
2 personal property on which the service was  
3 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 acknowledgement of receipt of a notice that  
8 the article may be subject to repossession. The notice and  
9 acknowledgement 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. If a vehicle, all-terrain vehicle, utility 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 the State of Oklahoma, but  
16 there is no active lien recorded on the certificate of title,  
17 Section 91A of this title will apply instead of this section.  
18 Likewise, if there is an active lien recorded on the certificate of  
19 title but the lien is over fifteen (15) years old and the property  
20 is not a manufactured home, Section 91A of this title will apply  
21 instead of this section.

22 2. If personal property that otherwise would be covered by this  
23 section has been registered by the Tax Commission or by a federally  
24 recognized Indian tribe in the State of Oklahoma, and there is a

1 lien of record but no certificate of title has been issued, Section  
2 91A of this title will apply instead of this section.

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

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

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

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

22 H. For purposes of this section:

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

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

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

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

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

22        J. If a person claiming a special lien pursuant to this section  
23 fails to comply with any of the requirements of this section, any  
24 interested party may proceed against the person claiming such lien



1 for all damages arising therefrom, including conversion, if the  
2 article of personal property has been sold. If the notice or  
3 notices required by this section shall be shown to be knowingly  
4 false or fraudulent, the interested party shall be entitled to  
5 treble damages. The prevailing party shall be entitled to all  
6 costs, including reasonable attorney fees.

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

9 SECTION 2. This act shall become effective November 1, 2019.

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