

An Act

ENROLLED HOUSE
BILL NO. 2314

By: McCall of the House

and

Simpson of the Senate

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

SUBJECT: Liens

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

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

Section 91A.

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

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

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

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

- (1) does not have a certificate of title, ~~or~~
 - (2) has a certificate of title but does not have an active lien recorded on the certificate of title, ~~or~~
 - (3) has a certificate of title that is not issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, or
 - (4) is otherwise excluded by subparagraph b of paragraph 1 of subsection A of Section 91 of this title or subsection D of Section 91 of this title.
- c. If personal property has a certificate of title, or would be required to have a certificate of title under Oklahoma law, and is apparently covered both by this section and by Sections 191 through 200 of this title, the procedures set out in this section shall apply instead of Sections 191 through 200 of this title. If personal property without a certificate of title and not required to be titled under Oklahoma law is covered both by this section and Sections 191 through 200 of this title, the procedures set out in Sections 191 through 200 of this title shall apply instead of this section.
2. a. Any person who, while lawfully in possession of an article of personal property to which this section applies, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service. Charges owed under a contract primarily for the purpose of storage or rental of space shall be accrued only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental.

- b. Except for Class AA licensed wrecker towing charges, the special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within ~~fifteen~~ thirty (30) business days of receipt of the denial, and proceed to comply with the requirements of this section. "Failure to comply" includes, but is not limited to:
- (1) failure to timely provide additional documentation supporting or verifying any entry on submitted forms as requested by the Tax Commission,
 - (2) failure to provide the documentation supporting lawful possession as outlined in paragraph 3 of subsection H of this section,
 - (3) claimant being other than the individual who provided the service giving rise to the special lien, as in subparagraph a of this paragraph,
 - (4) claimant not being in possession of the vehicle, or
 - (5) notification and proceedings not accomplished in accordance with subparagraph c of this paragraph, and paragraph 3 of this subsection.
- c. Any person claiming a lien under this section shall request, within five (5) business days of performing any service or work on the property, the Tax Commission or other appropriate license agency to furnish the name and address of the current owner of and any lienholder upon the property. The Motor Vehicle Division of the Tax Commission or appropriate license agency shall respond in person or by mail to the lien claimant within ten (10) business days of the receipt of the request for information. The Tax Commission shall render assistance to ascertain

ownership, if needed. The lien claimant shall send, within seven (7) business days of receipt of the requested information from the Oklahoma Tax Commission or other license agency, a notice of the location of the property by certified mail with return receipt requested, postage prepaid, to the owner and any lienholder of the vehicle at the addresses furnished. The lien claimant may charge Twenty Dollars (\$20.00) for processing plus the cost of postage if the notice is timely sent pursuant to the requirements of this subparagraph in addition to fees regulated by the Oklahoma Corporation Commission for licensed wreckers. If the lien claimant is unable to meet the time requirements due to a lack of or an altered vehicle identification number on the property, the lien claimant shall proceed diligently to obtain the proper vehicle identification number and shall meet the time requirements on the notice once the vehicle identification number is known. If the lien claimant is required to send additional notices because of change of ownership or lienholder after it has timely complied with the requirements of this subparagraph, the lien claimant shall remain in compliance if such additional notices are sent within the required time periods from the date of discovery of the new owners or lienholders. The notice shall be in writing and shall contain, but not be limited to, the following:

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

address of the location of the article of personal property,

- (5) the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided that, in the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission shall serve as written proof of authority,
- (6) the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, the name of the contact person representing the business shall be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
- (7) an itemized statement describing the date or dates the labor or services were performed and material furnished and the charges claimed for each item, the totals of which shall equal the total compensation claimed.

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

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

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

- a. the names of the owner and any other known party or parties who may claim any interest in the property,
 - b. a description of the property to be sold, including a visual inspection or a photograph if the property is a motor vehicle, and the physical location of the property,
 - c. the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided. In the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission, shall serve as written proof of authority,
 - d. the time and place of sale,
 - e. the name, telephone number, physical address and mailing address of the claimant, and agent or attorney, if any, foreclosing such lien. If the claimant is a business, then the name of the contact person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
 - f. itemized charges which shall equal the total compensation claimed.
4. a. Such Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to the owner and any other party claiming any interest in the property, if known, at

their last-known post office address, by certified mail, return receipt requested, at least ten (10) days before the time therein specified for such sale. If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located.

- b. In the case of any item of personal property without a certificate of title and not required to be titled under Oklahoma law, a party who claims any interest in the property shall include all owners of the property; any secured party who has an active financing statement on file with the county clerk of Oklahoma County listing one or more owners of the property by legal name as debtors and indicating a collateral description that would include the property; and any other person having any interest in the personal property, of whom the claimant has actual notice.
- c. In the case of personal property subject to this section for which a certificate of title has been issued by any jurisdiction, a party who claims any interest in the property shall include all owners of the article of personal property as indicated by the certificate of title; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person having any interest in the article of personal property, of whom the claimant has actual notice.
- d. When the jurisdiction of titling for a vehicle, all-terrain vehicle, motorcycle, boat, outboard motor, or trailer that is five (5) model years old or newer, or a manufactured home that is fifteen (15) model years old or newer, cannot be determined by ordinary means, the claimant, the agent of the claimant, or the attorney of the claimant, shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction where the vehicle or manufactured home is titled. The Oklahoma Tax Commission Motor Vehicle Division shall, within fourteen (14) days from the date the request is received, provide information as to the jurisdiction where the personal property is titled. If the

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

- e. When personal property is of a type that Oklahoma law requires to be titled, the owner of record of that property is unknown, and the jurisdiction of titling and owner of record cannot be determined by ordinary means and also, if applicable, cannot be determined in accordance with the preceding subparagraph, then the special lien may be foreclosed by publication of a legal notice in a legal newspaper in the county where the personal property is located, as defined in Section 106 of Title 25 of the Oklahoma Statutes. Such notice shall include the description of the property by year, make, vehicle identification number if available from the property, the name of the individual who may be contacted for information, and the telephone number of that person or the address where the vehicle is located. The legal notice shall be published once per week for three (3) consecutive weeks. As soon as circumstances exist as described in the first sentence of this subparagraph, the first date of publication may occur even if the special lien has not accrued for over thirty (30) days. The first date available for public sale of the vehicle is the day following publication of the final notice, but no fewer than thirty (30) days after the lien has accrued. When the owner of record is unknown, the Notice of Sale nevertheless must be completed and mailed to any known interested party by certified mail. For purposes of this paragraph, interested parties shall include all persons described in subparagraph b or subparagraph c of this paragraph, whichever is applicable, with the exception of any owner who is unknown. Except in circumstances described in paragraph 7 of this subsection that provide for a shorter time period, the Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and the Notice of Sale shall not be mailed until at least thirty (30) days after the lien has accrued.

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

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

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

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

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

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

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

