An Act

ENROLLED HOUSE
BILL NO. 1743

By: Johnson, Roan, Ritze and Nollan of the House

and

Sykes and Barrington of the Senate

An Act relating to motor vehicles; creating the Nonconsensual Towing Act of 2011; providing scope of act; empowering Corporation Commission to set and administer certain rates; specifying existing rates remain in effect until new rates are established; requiring reasonableness of rates; allowing penalties; directing cooperation; allowing cooperative agreements; allowing assessment of certain annual fee; providing for calculation of fee; providing penalty; directing Legislature to establish future budgetary limits; setting assessment limit for certain fiscal year; allowing appointment of certain unclassified employees; amending 47 O.S. 2001, Sections 951, as last amended by Section 25, Chapter 418, O.S.L. 2004, 952, as last amended by Section 1, Chapter 193, O.S.L. 2005, 953.1, as last amended by Section 2, Chapter 158, O.S.L. 2006, 953.2, as last amended by Section 3, Chapter 360, O.S.L. 2004, 954A, as amended by Section 1, Chapter 82, O.S.L. 2010, 956, as last amended by Section 1, Chapter 179, O.S.L. 2005 and 11-1110, as amended by Section 1, Chapter 133, O.S.L. 2002 (47 O.S. Supp. 2010, Sections 951, 952, 953.1, 953.2, 954A, 956 and 11-1110), which relate to wreckers; defining terms; transferring responsibility for regulation of wreckers to the Corporation Commission; amending 42 O.S. 2001, Section 91, as last amended by Section 1, Chapter 98, O.S.L. 2008 (42 O.S. Supp. 2010, Section 91), which relates to liens; updating reference; providing for codification; and providing an effective date.

SUBJECT: Nonconsensual Towing Act of 2011

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 966 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Nonconsensual Towing Act of 2011".

B. The provisions of this act shall apply to every wrecker operating within the State of Oklahoma removing and storing vehicles from Oklahoma roads and highways or private property as a result of a nonconsensual tow.

C. The Corporation Commission, by Commission order, shall have the power and authority necessary:

1. To establish wrecker rates for the transportation and storage of motor vehicles removed due to a nonconsensual tow from Oklahoma roads and highways or private property;

2. To supervise and enforce such rates; and

3. To mediate and adjudicate complaints that may arise from charges assessed as a result of such vehicle removal.

D. Rates as specified in Sections 953.1 and 953.2 of Title 47 of the Oklahoma Statutes shall remain in effect until rates are established by order of the Commission.

E. Rates established by the Commission shall be fair and reasonable.

F. The Commission may assess fines or other penalties to any wrecker or towing service for failure to comply with prescribed rates as established by the Commission, failure to pay a levied assessment or comply with any applicable order of the Commission. Repeat violations by a wrecker or towing service are cause for revocation of its license issued by the Department of Public Safety.

G. The Department shall cooperate with the Commission to implement this act and may enter into agreements to facilitate this act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 967 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Corporation Commission is hereby authorized to assess a fee upon each wrecker or towing service licensed by the Department of Public Safety and placed upon an official rotation log, as specified in Section 952 of Title 47 of the Oklahoma Statutes, to perform nonconsensual tows.

B. Each wrecker or towing service shall pay the assessment, levied pursuant to this section, on an annual basis.

C. The assessment shall be predicated upon the number of wrecker or towing vehicles utilized by the wrecker or towing service to conduct its Department-licensed operations.

D. Failure to pay the assessment in a timely manner shall result in revocation of the wrecker or towing license issued by the Department.

E. Beginning fiscal year 2013, the Legislature shall establish budgetary limits for the Commission to fulfill the duties of the Nonconsensual Towing Act of 2011. The total assessments levied pursuant to this section shall not exceed the amount of the budgetary limits and indirect costs for related support functions established by the Legislature for any fiscal year. For fiscal year 2012, the total assessments shall not exceed One Hundred Thousand Dollars ($100,000.00).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 968 of Title 47, unless there is created a duplication in numbering, reads as follows:

The Corporation Commission is authorized to appoint unclassified employees to perform the duties and responsibilities associated with the Nonconsensual Towing Act of 2011.

SECTION 4. AMENDATORY 47 O.S. 2001, Section 951, as last amended by Section 25, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2010, Section 951), is amended to read as follows:

Section 951. As used in Sections 951 through ~~964~~ 965 of this title and Sections 1 through 3 of this act:

1. "Wrecker or wrecker vehicle" means any motor vehicle that is equipped with any device designed to tow another vehicle or combination of vehicles. The use of the term "wrecker" or "wrecker vehicle" shall be construed to include a combination wrecker or combination wrecker vehicle, as defined in paragraph 2 of this ~~subsection~~ section, unless a specific differentiation is otherwise described;

2. "Combination wrecker" or "combination wrecker vehicle" means any wrecker vehicle which is designed and equipped with two separate and distinct devices to tow simultaneously two or more other vehicles or combinations of vehicles, whether or not both devices are in use simultaneously. One of the devices shall allow another vehicle to be loaded onto and transported upon the wrecker vehicle, and one of the devices shall allow another vehicle to be attached to and pulled by the wrecker vehicle;

3. "Tow" or "towing" means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of:

a. attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or

b. loading the vehicle onto and transporting the vehicle upon the wrecker vehicle;

4. "Rollback equipment" means a towing device or equipment upon which the towed vehicle is loaded and transported, removing the towed vehicle completely from the surface of the roadway. The term "rollback equipment" shall include car haulers;

5. "Dolly" means a towing device or equipment which lifts and suspends one axle of the towed vehicle above the surface of the roadway;

6. "Wrecker or towing service" means engaging in the business of or performing the act of towing or offering to tow any vehicle, except:

a. where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE",

b. where the service is performed by a transporter as defined in Section 1-181 of this title,

c. where service is performed in conjunction with the transportation of household goods and property,

d. where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or

e. where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, the vehicle is not involved in a collision, and is being towed:

(1) in either direction across the border between Oklahoma and a neighboring state, or

(2) through Oklahoma in transit to another state;

provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law;

7. "Commissioner" means the Commissioner of Public Safety;

8. "Commission" means the Corporation Commission;

9. "Department" means the Department of Public Safety;

~~9.~~ 10. "Nonconsensual tow" means the transportation of a vehicle without the consent or knowledge of the vehicle's owner, possessor, agent, insurer, lienholder, or any other person in possession of or in charge of any vehicle and includes the transportation or towing of the vehicle under lawful circumstances or necessity for the public interest including removing from the roadway for public safety or public convenience, or accidents, by any law enforcement officer or property agent or removal from public or private property as a result of abandonment or unauthorized parking by the property owner, agent, possessor, or other legal entity for the property owner;

11. "Operator" means any person owning or operating a wrecker vehicle or wrecker or towing service;

~~10.~~ 12. "Officer" means any duly authorized law enforcement officer;

~~11.~~ 13. "Roadway" means any public street, road, highway or turnpike or the median, easement or shoulder of a roadway;

~~12.~~ 14. "Service call" means the act of responding to a request for service with a wrecker vehicle in which a service is performed; and

~~13.~~ 15. "Vehicle" shall:

a. have the same meaning as defined in Section 1-186 of this title, and

b. for the purposes of this chapter when referring to a vehicle or combination of vehicles being towed or stored, include a vessel. The term "vessel" shall have the same meaning as defined in Section 4002 of Title 63 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 47 O.S. 2001, Section 952, as last amended by Section 1, Chapter 193, O.S.L. 2005 (47 O.S. Supp. 2010, Section 952), is amended to read as follows:

Section 952. A. ~~The~~ Except for the rates established by the Corporation Commission and other provisions as provided for by law, the Department of Public Safety shall have the power and authority necessary to license, supervise, govern and control wrecker vehicles and wrecker or towing services.

B. The Department of Public Safety shall adopt and prescribe such rules as are necessary to carry out the intent of Section 951 et seq. of this title.

The rules shall state the requirements for facilities, for storage of vehicles, necessary towing equipment, the records to be kept by operators, liability insurance and insurance covering the vehicle and its contents while in storage in such sum and with such provisions as the Department deems necessary to adequately protect the interests of the public, and such other matters as the Department may prescribe for the protection of the public.

C. Unless otherwise regulated by the governing body of the political subdivision, the wrecker vehicle used to perform wrecker or towing services requested by a political subdivision of this state for removal of a vehicle from public property for reasons listed in Section 955 of this title shall be from the licensed wrecker or towing service whose location is nearest to the vehicle to be towed. Requests for service may be alternated or rotated among all such licensed wrecker or towing services which are located within a reasonable radius of each other. In cities of less than fifty thousand (50,000) population, all such licensed wrecker or towing services located near or in the city limits of such cities shall be considered as being equal distance and shall be called on an equal basis as nearly as possible. The police chief of any municipality and the county sheriff of each county shall keep rotation logs on all requested tows, except where there are insufficient licensed wrecker or towing services available to rotate such services or services are contracted after a competitive bid process. Rotation logs shall be made available for public inspection upon request. Any calls made from cell phones or two-way radios by any law enforcement officer or employee of any municipality or county to any wrecker service shall be listed on the rotation or call logs and made available for public inspection. A wrecker service shall not be removed from rotation without notification to the wrecker operator stating the reason for removal from the rotation log. All notification for removal from a rotation log shall be mailed to the wrecker service owner at least ten (10) days before removal from the rotation log and shall state the procedure and requirements for reinstatement.

D. Except as otherwise provided in this subsection, the Department and any municipality, county or other political subdivision of this state shall not place any wrecker or towing service upon an official rotation log for the performance of services carried out pursuant to the request of or at the direction of any officer of the Department or municipality, county or political subdivision unless the service meets the following requirements:

1. Principal business facilities are located within Oklahoma;

2. Tow trucks are registered and licensed in Oklahoma; and

3. Owner is a resident of the State of Oklahoma or the service is an Oklahoma corporation.

In the event a licensed wrecker or towing service is not located within a county, a wrecker or towing service that is located outside of the county or this state and does not meet the above qualifications may be placed on the rotation log for the county or any municipality or political subdivision located within the county.

When performing services at the request of any officer, no operator or wrecker or towing service upon the rotation logs shall charge fees in excess of the maximum rates for services performed within this state, including incorporated and unincorporated areas, as ~~prescribed in Section 953.1 of this title~~ established by the Commission.

E. The Department ~~of Public Safety~~ shall place a licensed Class AA wrecker service on the Highway Patrol Rotation Log in a highway patrol troop district in which the place of business and the primary storage facility of the wrecker service are located upon written request filed by the wrecker service with the Department. Upon further request of the wrecker service, the Commissioner of Public Safety or the Department ~~of Public Safety~~ employee with statewide responsibility for administration of wrecker services may place a wrecker service on the Highway Patrol Rotation Log in a district adjacent to the district in which the place of business and the primary storage facility of the wrecker service are located if the wrecker service is in proximity to and within a reasonable radius of the boundary of the district. When a wrecker service is placed on the rotation log in a district, the Department shall notify the wrecker service and the troop commander of the district.

F. The Commissioner of Public Safety or the Department ~~of Public Safety~~ employee with statewide responsibility for administration of wrecker services shall be responsible for establishing geographical areas of rotation within the troop districts and for notifying each wrecker service of the geographical areas of rotation to which the service is assigned.

G. The Department ~~of Public Safety~~ shall make all rotation logs available for public inspection at the state office and shall make rotation logs for a highway patrol troop district available for public inspection at the district office.

SECTION 6. AMENDATORY 47 O.S. 2001, Section 953.1, as last amended by Section 2, Chapter 158, O.S.L. 2006 (47 O.S. Supp. 2010, Section 953.1), is amended to read as follows:

Section 953.1 A. The rates ~~and provisions of this section shall apply only to~~ established by the Corporation Commission shall determine the nonconsensual tow maximum fees and charges for wrecker or towing services performed in this state, including incorporated and unincorporated areas, by a wrecker or towing service licensed by the Department of Public Safety when that service appears on the rotation log of the Department or on the rotation log of any municipality, county or other political subdivision of this state, and the services performed are at the request or at the direction of any officer of the Department or of a municipality, county, or political subdivision. No wrecker or towing service in the performance of ~~these services~~ transporting or storing vehicles or other property towed as a result of a nonconsensual tow shall charge any fee which exceeds the maximum rates established ~~in this section, adjusted as provided in subsection H of this section~~ by the Commission. Such rates shall be in addition to any other rates, fees or charges authorized, allowed or required by law and costs to collect such fees. Any wrecker or towing service is authorized to collect from the owner, lienholder, agent or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the registered owner of any towed or stored vehicle, the fee required by Section 904 of this title including environmental remediation fees and services.

B. When wrecker or towing services are performed as provided in subsection A of this section:

1. Each performance of a wrecker or towing service shall be recorded by the operator on a bill or invoice as prescribed by rules of the Department and by order of the Commission;

2. Nothing herein shall limit the right of an operator who has provided or caused to be provided wrecker or towing services to require prepayment, in part or in full, or guarantee of payment of any charges incurred for providing such services;

3. This section shall not be construed to require an operator to charge a fee for the performance of any wrecker or towing services; and

4. The operator is authorized to collect all lawful fees from the owner, lienholder or agent or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the registered owner of the towed vehicle for the performance of any and all such services and costs to collect such

fees. An operator shall release the vehicle from storage upon authorization from the owner, agent or lienholder of the vehicle or, in the case of a total loss, the insurer accepting liability for paying the claim for the vehicle or purchasing the vehicle where the vehicle is to be moved to an insurance pool yard for sale.

C. The rates in subsections D through G of this section shall be applicable until superseded by rates established by the Commission.

D. Distance rates.

1. Rates in this subsection shall apply to the distance the towed vehicle is transported and shall include services of the operator of the wrecker vehicle. Hourly rates, as provided in subsection ~~D~~ E of this section, may be applied in lieu of distance rates. Hourly rates may be applied from the time the wrecker vehicle is assigned to the service call until the time it is released from service either upon return to the premises of the wrecker or towing service or upon being assigned to perform another wrecker or towing service, whichever occurs first. When the hourly rate is applied in lieu of distance towing rates, the operator may not apply the two-hour minimum prescribed in subsection ~~D~~ E of this section nor may hookup or mileage charges, as prescribed in this section, be applied.

Such distance rates shall be computed via the shortest highway mileage as determined from the latest official Oklahoma Department of Transportation state highway map, except as follows:

a. for distances or portions of distances not specifically provided for in the governing highway map, the actual mileage via the shortest practical route will apply,

b. in computing distances, fractions of a mile will be retained until the final and full mileage is determined, at which time any remaining fraction shall be increased to the next whole mile,

c. when, due to circumstances beyond the control of the wrecker or towing service, roadway conditions make it impractical to travel via the shortest route, distance rates shall be computed based on the shortest practical route over which the wrecker vehicle and the

vehicle it is towing can be moved, which route shall be noted on the bill or invoice, or

d. when the wrecker or towing service is performed upon any turnpike or toll road, the turnpike or toll road mileage shall be used to determine the distance rates charged and the turnpike or toll road fees may be added to the bill or invoice.

2. Maximum distance rates shall be as follows:

Weight of Towed Vehicle (In pounds, including equipment and lading)		Distance Towed	Rate Per Mile
Single vehicle:	8,000 or less	25 miles or less	$3.00
Single vehicle:	8,000 or less	Over 25 miles	$2.50
Single vehicle:	8,001 to 12,000	25 miles or less	$3.40
Single vehicle:	8,001 to 12,000	Over 25 miles	$3.00
Single vehicle:	12,001 to 40,000	Any	$5.75
Single vehicle:	40,000 or over	Any	$6.75
Combination of vehicles		Any	$6.75

~~D.~~ E. Hourly Rates.

1. Rates in this subsection shall apply for the use of a wrecker vehicle and shall include services of the operator of such wrecker, except as provided in paragraph 4 of this subsection. Rates shall apply for all wrecker or towing services performed that are not otherwise provided for in this section, including, but not limited to, waiting and standby time, but shall not include the first fifteen (15) minutes of service following the hookup of a vehicle when a hookup fee is assessed, as provided in subsection ~~E~~ F of this section.

Hourly rates shall apply from the time the vehicle or labor is assigned to the service call until the time it is released from service either upon return to the premises of the wrecker or towing service or upon being assigned to perform another wrecker or towing

service, whichever occurs first. Whenever a wrecker vehicle is used to tow a vehicle subject to distance rates, as provided in subsection ∈ D of this section, hourly rates shall apply only for the time such wrecker is used in the performance of services other than transportation, except when such hourly rates are used in lieu of such distance rates.

As used in this subsection, rates stated per hour apply for whole hours and, for fractions of an hour, rates stated per fifteen (15) minutes apply for each fifteen (15) minutes or fraction thereof over seven and one-half (7 1/2) minutes. However, if the service subject to an hourly rate is performed in less than two (2) hours, the charge applicable for two (2) hours may be assessed, except as provided for in subsection ∈ D of this section.

2. Maximum hourly rates for wrecker or towing services performed for passenger vehicles, when rates for such services are not otherwise provided for by law, shall be as follows:

Weight of Towed Passenger Vehicle (In pounds)	Rate Per Hour	Rate Per 15 Minutes
Single vehicle: 8,000 or less	$60.00	$15.00
Single vehicle: 8,001 to 24,000	$80.00	$20.00
Single vehicle: 24,001 to 44,000	$120.00	$30.00
Single vehicle: 44,001 or over	$180.00	$45.00
Combination of vehicles	$180.00	$45.00

3. Maximum hourly rates for all other wrecker or towing services, when rates for such other services are not otherwise provided for by law, shall be determined based upon the gross vehicle weight rating of each wrecker vehicle used as follows:

GVWR of Wrecker Vehicle (In pounds)	Rate Per Hour	Rate Per 15 Minutes
8,000 or less	$60.00	$15.00
8,001 to 24,000	$80.00	$20.00
24,001 to 44,000	$120.00	$30.00

44,001 or over	$180.00	$45.00
Combination wrecker vehicle with GVWR of 24,000 or over	$180.00	$45.00

4. a. Maximum hourly rates for extra labor shall be Thirty Dollars ($30.00) per person per hour.

b. Maximum hourly rates for skilled or specialized labor and/or equipment shall be the actual customary and ordinary rates charged for such labor and/or equipment. When skilled or specialized labor or equipment is required, the wrecker operator's cost for such skilled or specialized labor or equipment plus a twenty-five percent (25%) gross profit markup to cover overhead costs for such labor will be added to the invoice or freight bill to be collected in addition to all other applicable charges.

~~E.~~ F. Hookup Rates.

1. Rates in this subsection shall apply to the hookup of a vehicle to a wrecker vehicle when such hookup is performed in connection with a wrecker or towing service described in this section. Such hookup rate shall include the first fifteen (15) minutes of such service, for which there shall be no additional fee charged, but shall not include the use of a dolly or rollback equipment or a combination wrecker vehicle to accomplish such hookup, for which an additional fee may be charged as provided in subsection ~~F~~ G of this section. Hookup shall include, but not be limited to, the attachment of a vehicle to or the loading of a vehicle onto a wrecker vehicle.

2. Maximum hookup rates shall be as follows:

Weight of Vehicle Being Hooked Up (In pounds, including equipment and lading)	Rate
Single vehicle: 8,000 or less	$65.00
Single vehicle: 8,001 to 12,000	$75.00
Single vehicle: 12,001 to 24,000	$85.00

Single vehicle: 24,001 or over	$95.00
Combination of vehicles	$95.00

~~F.~~ G. Additional Service Rates.

1. Rates in this subsection shall apply to the performance of the following services:

a. the disconnection and reconnection of a towed vehicle's drive line when necessary to prevent mechanical damage to such vehicle,

b. the removal and replacement of a towed vehicle's axle when necessary to prevent mechanical damage to such vehicle, or

c. the use of a dolly or rollback equipment when essential to prevent mechanical damage to a towed vehicle or when neither end of such vehicle is capable of being towed safely while in contact with the roadway.

2. Maximum additional service rates shall be as follows:

Weight of Towed Vehicle (In pounds, including equipment and lading)	Service Performed: Disconnect Drive Line; Remove Axle	Reconnect Drive Line; Replace Axle	Use of Dolly or Rollback Equipment
	Rate Per Service Performed		
8,000 or less	$10.00	$15.00	$25.00
8,001 to 12,000	$15.00	$20.00	$30.00
	Rate Per 15 Minutes of Service Performed		
12,001 or over	$20.00	$20.00	Not applicable

~~G.~~ H. An operator shall be required to provide reasonable documentation to substantiate all lawful fees charged the owner, lienholder, agent or insurer paying the claim for the towed vehicle. Fees for which the operator is being reimbursed or having paid to a

third party, shall include copies of the invoice or other appropriate documents to substantiate such payment to said third party.

~~H.~~ I. Wrecker fees, including maximum distance, hourly, and hookup rates shall be adjusted weekly ~~by the Department of Public Safety~~ by adding a fuel surcharge as provided in this section. The ~~Department shall base the~~ fuel surcharge shall be based on the Department of Energy "weekly retail on-highway diesel prices" for the "Midwest region" using ~~One Dollar and ninety cents ($1.90)~~ Two Dollars ($2.00) per gallon as the base price with no fees added. The wrecker fees shall be adjusted to allow a one-percent increase in fees for every ten-cent increase in fuel cost starting at ~~Two Dollars ($2.00)~~ Two Dollars and ten cents ($2.10) per gallon.

~~I.~~ J. When skilled or specialized labor or equipment is required, the cost incurred by the wrecker operator for such skilled or specialized labor or equipment plus an additional twenty-five percent (25%) gross profit markup or gross profit margin shall be allowed to cover overhead costs for such labor and will be added to the invoice or freight bill to be collected in addition to all other applicable charges. This applies to labor and equipment not regulated by the Commission.

K. Wrecker operators shall be allowed to obtain ownership and insurer information, including accident reports and other public records, from the Oklahoma Tax Commission or other ~~state's~~ states' motor vehicle agencies or from law enforcement agencies for the purpose of determining ownership and responsibility for wrecker fees. In the event a state of origin is not known, the Department of Public Safety and the Oklahoma Tax Commission shall assist in providing such information. The wrecker operator is authorized to collect lawful fees for such costs and services from the owner, lienholder that seeks possession of a vehicle under a security interest, agent, or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the owner of any towed or stored vehicle.

SECTION 7. AMENDATORY 47 O.S. 2001, Section 953.2, as last amended by Section 3, Chapter 360, O.S.L. 2004 (47 O.S. Supp. 2010, Section 953.2), is amended to read as follows:

Section 953.2 A. The rates ~~and provisions of this section shall apply only to~~ established by order of the Corporation Commission shall determine the maximum fees and charges for the

storage and after-hours release of nonconsensual towed vehicles, including incorporated and unincorporated areas, by a wrecker or towing service licensed by the Department of Public Safety. No wrecker or towing service shall charge any fee for nonconsensual towed vehicles and storage which exceeds the maximum rates established ~~in this section~~ by the Commission. Such rates shall be in addition to any other rates, fees or charges authorized, allowed or required by law, including environmental remediation fees and services.

B. 1. Storage or after-hours release of a towed vehicle, or both, provided by a wrecker or towing service shall be recorded by the operator on a bill or invoice as prescribed by rules of the Department.

2. Nothing herein shall limit the right of an operator who has provided or caused to be provided storage or after-hours release of a towed vehicle, or both, to require prepayment, in part or in full, or guarantee of payment of any charges incurred for providing such services.

3. This section shall not be construed to require an operator to charge a fee for the storage or after-hours release, or both, of any towed vehicle.

4. The operator is authorized to collect all lawful fees from the owner, lienholder or agent of the towed vehicle or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the registered owner for the performance of any and all such services. An operator shall release the vehicle from storage upon authorization from the owner, agent or lienholder of the vehicle or in the case of a total loss, the insurer accepting liability for paying the claim for the vehicle or purchasing the vehicle where the vehicle is to be moved to an insurance pool yard for sale.

C. The rates in subsections D through F of this section shall be applicable until superseded by rates established by the Commission.

D. Outdoor Storage Rates.

1. Rates in this subsection shall apply to the outdoor storage of a towed vehicle. Rates may be applied from the time the towed vehicle is brought onto the outdoor storage facility premises.

Rates shall apply to each calendar day of outdoor storage; provided, the maximum twenty-four-hour fee, as provided for in this section, may be charged for any towed vehicle which is stored for a portion of a twenty-four-hour period.

2. Maximum outdoor storage rates shall be as follows:

Type of Towed Vehicle	Rate per Each 24-hour Period or Portion Thereof
Single vehicle: motorcycle, automobile, or light truck up to 20 feet in length	$15.00
Single vehicle or combination of vehicles over 20 feet in length but less than 30 feet in length	$20.00
Single vehicle or combination of vehicles over 30 feet in length and up to 8 feet in width	$25.00
Single vehicle or combination of vehicles over 30 feet in length and over 8 feet in width	$35.00

~~D.~~ E. Indoor Storage Rates:

1. Rates in this subsection shall apply to the indoor storage of a towed vehicle. Rates may be applied from the time the towed vehicle is brought into the indoor storage facility premises. Rates shall apply to each calendar day of indoor storage; provided, the maximum twenty-four-hour fee, as provided for in this section, may be charged for any towed vehicle which is stored for a portion of a twenty-four-hour period.

2. Maximum indoor storage rates shall be as follows:

Type of Towed Vehicle	Rate per Each 24-hour Period or Portion Thereof
Single vehicle: motorcycle, automobile, or light truck up to 20 feet in length	$25.00

Single vehicle or combination of vehicles over 20 feet in length but less than 30 feet in length	$30.00
Single vehicle or combination of vehicles over 30 feet in length and up to 8 feet in width	$35.00
Single vehicle or combination of vehicles over 30 feet in length and over 8 feet in width	$45.00

3. For purposes of this subsection, "indoor storage" means the vehicle is kept in an enclosed facility.

~~E.~~ F. After-Hours Release Rate.

1. The rate in this subsection shall apply to the release of a towed vehicle to the owner, lienholder, or agent when such release occurs at a time other than normal business hours.

2. As used in this subsection:

a. "after-hours release rate" shall mean the rate charged for the release of a towed vehicle between the hours of midnight and 8:00 a.m., or between the hours of 4:00 p.m. and midnight Monday through Friday, or any time on Saturday, Sunday or a national holiday, and

b. "national holiday" shall mean New Year's Day, Martin Luther King Day, George Washington's Birthday, on the third Monday in February, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day, and shall further include the Friday before such national holiday which falls on a Saturday and the Monday following such national holiday which falls on a Sunday.

3. The maximum after-hours release rate shall be Fifteen Dollars ($15.00) per quarter hour for the release of any single vehicle or combination of vehicles.

~~F.~~ G. An operator shall be required to provide reasonable documentation to substantiate all lawful fees charged the owner, lienholder, agent or insurer accepting liability for paying the

claim for the towed vehicle or purchasing the towed vehicle. Fees for which the operator is being reimbursed, or having paid to a third party, shall include copies of the invoice or other appropriate documents to substantiate the payment to the third party. ~~When skilled or specialized labor or equipment is required, the wrecker operator's cost for such skilled or specialized labor or equipment plus a twenty-five percent (25%) gross profit markup to cover overhead costs for such labor will be added to the invoice or freight bill to be collected in addition to all other applicable charges.~~

SECTION 8. AMENDATORY 47 O.S. 2001, Section 954A, as amended by Section 1, Chapter 82, O.S.L. 2010 (47 O.S. Supp. 2010, Section 954A), is amended to read as follows:

Section 954A. A. In addition to any procedure provided by local ordinance, whenever the owner or legal possessor of real property or an authorized agent has reasonable cause to believe that a vehicle has been abandoned thereon, said vehicle having been on said property for a minimum of forty-eight (48) hours, or whenever a vehicle is left upon said real property without express or implied permission, such vehicle may be removed as provided in this section.

B. 1. The owner, legal possessor or authorized agent may request any licensed wrecker or towing service within the county wherein the real property is located to remove the abandoned vehicle from the premises by signing a Tow Request and Authorization Form prescribed by the Department of Public Safety and furnished to licensed wrecker operators as hereinafter provided.

2. If the owner, legal possessor or authorized agent of the property owner is unable to obtain the services of a licensed wrecker or towing service to remove the abandoned vehicle in a reasonable amount of time, the owner, legal possessor or authorized agent may contact and request that a licensed wrecker or towing service from an adjacent county perform the service. A notation shall be made on the Tow Request and Authorization Form that a licensed wrecker or towing service in the county in which the real property is located was contacted but the licensed wrecker or towing service was not able to perform the removal in a reasonable amount of time.

C. A licensed wrecker or towing service removing an abandoned vehicle pursuant to this section shall be subject to the maximum

rates ~~authorized~~ established by ~~Section 953.1 of this title~~ the Corporation Commission.

D. The Department shall design and promulgate a suitable Tow Request and Authorization Form to be completed in quadruplicate, containing space for the following information:

1. A description of the vehicle, including the type of vehicle, year of manufacture, name of the manufacturer, vehicle color or colors, identification number and license tag number;

2. The name, address and business telephone number of the wrecker or towing service;

3. The name, address, telephone number and driver license number or state-issued identification card number of the real property owner, legal possessor or authorized agent;

4. Inventory of personal property within the vehicle to be towed;

5. Time and date the form is completed; and

6. Signatures of the driver of the wrecker vehicle and of the owner, legal possessor or authorized agent of the real property.

The Department or the Commission may require additional information on the Tow Request and Authorization Form. The driver license number or state-issued identification card number of the real property owner, legal possessor or authorized agent shall not be disclosed by the Department or the Commission to any entity inquiring about services performed without a court order or without written consent from the property owner, legal possessor or authorized agent.

E. The real property owner, legal possessor or authorized agent and the wrecker vehicle driver shall jointly, and each in the presence of the other, inventory personal property found within or upon the vehicle and each shall accordingly sign a statement on the form reflecting this requirement has been fulfilled. In the event an inventory cannot be completed, the reasons therefor shall be clearly stated on the form.

F. A copy of the completed Tow Request and Authorization Form shall be retained by the signatories and the wrecker or towing

service shall maintain the wrecker vehicle driver's copy for not less than one (1) year, or longer if required by the Department or the Commission. The wrecker or towing service shall forthwith send the completed original Tow Request and Authorization Form to the Department and the remaining copy of the completed form to the local police department of the municipality in which the real property is located, or the sheriff's office of the county from which the vehicle was towed, if the real property is located outside of an incorporated municipality. A facsimile copy of the Tow Request and Authorization Form shall be considered the original form if a printed or digital confirmation of the facsimile transmission is available.

G. Within three (3) business days of the time indicated on the form, the wrecker or towing service shall request the Oklahoma Tax Commission or other appropriate motor license agent to furnish the name and address of the current owner of and any lienholder upon the vehicle. The Tax Commission or appropriate motor license agent shall respond in person or by certified mail to the wrecker or towing service within five (5) business days from the receipt of the request for information. The Department and the Oklahoma Tax Commission shall render assistance to ascertain ownership, if needed. The wrecker or towing service shall, within seven (7) days from receipt of the requested information from the Oklahoma Tax Commission or other motor license agent, send a notice of the location of the vehicle by certified mail, postage prepaid, at the addresses furnished, to the owner and any lienholder of the vehicle. The owner or lienholder may regain possession of the vehicle in accordance with rules of the Department upon payment of the wrecker or towing services, costs of certified mailing and the reasonable cost of towing and storage of the vehicle. If the wrecker or towing service has not complied with the notification procedures required by this subsection, the owner or lienholder shall not be required to pay for storage of the vehicle.

H. No wrecker or towing service or operator of a wrecker or towing service shall tow or cause to be towed a vehicle pursuant to this section until the form furnished by the Department has been appropriately completed by the parties as required by rules of the Department.

SECTION 9. AMENDATORY 47 O.S. 2001, Section 956, as last amended by Section 1, Chapter 179, O.S.L. 2005 (47 O.S. Supp. 2010, Section 956), is amended to read as follows:

Section 956. A. No operator, employee, or contractor of a wrecker or towing service or of a person or business that derives any business or income from a wrecker or towing service shall offer, and no officer or employee of the Corporation Commission, Department of Public Safety or any political subdivision of the state shall accept, directly or indirectly, any compensation, gift, loan, favor or service given for the purpose of influencing the officer or employee in the discharge of official duties of the person.

B. Except as provided in subsection C of this section, no officer of the Commission, Department ~~of Public Safety~~ or any law enforcement officer of any political subdivision of the state shall have any interest, financial or otherwise, in a wrecker or towing service, or with a person or in a business that derives business or income from a wrecker or towing service, nor shall a wrecker or towing service or a person or business that derives any business or income from a wrecker or towing service employ such officer.

C. An officer of the Commission, Department ~~of Public Safety~~ or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service when the sole purpose and only business of the wrecker or towing service is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record.

SECTION 10. AMENDATORY 47 O.S. 2001, Section 11-1110, as amended by Section 1, Chapter 133, O.S.L. 2002 (47 O.S. Supp. 2010, Section 11-1110), is amended to read as follows:

Section 11-1110. A. No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substances likely to injure any person, animal or vehicle upon such highway.

B. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

C. Any person removing a wrecked or damaged vehicle from a highway, highway right-of-way or any other location as the result of an accident shall remove any glass or other injurious substance dropped upon the highway or highway right-of-way or other location from such vehicle. The owner or insurer of the owner of the vehicle if the owner's insurance policy provides coverage for such expense,

shall be responsible for the cost of removal of the vehicle and the glass or other injurious substance and any vehicle storage fees ~~pursuant to Section 953.1 of this title~~. The cost of the removal of the vehicle and any storage fees shall be the same as established by the Corporation Commission for nonconsensual tows.

D. No person shall throw any substance at a standing vehicle or any occupant thereof, nor shall any person throw any substance at a person on or adjacent to a highway.

SECTION 11. AMENDATORY 42 O.S. 2001, Section 91, as last amended by Section 1, Chapter 98, O.S.L. 2008 (42 O.S. Supp. 2010, Section 91), is amended to read as follows:

Section 91. A. 1. This section applies to every vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer that has a certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, except as otherwise provided in subsection D of this section. This section does not apply to farm equipment as defined in Section 91.2 of this title. The items of personal property to which this section applies are collectively referred to as "Section 91 Personal Property". If personal property 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.

2. Any person who, while lawfully in possession of an article of Section 91 Personal Property, 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.

3. This special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section.

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, 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 a possessory lien,

b. the complete legal name, physical and mailing address, and telephone number of the claimant,

c. 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,

d. a description of the article of personal property and the complete physical and mailing address of the location of the article of personal property,

e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the amount of the compensation claimed,

f. a statement by the claimant that the materials, labor or skill furnished, or arrangement for storage or rental of space, was authorized by the owner of the personal property and was in fact provided or performed, or that the property was abandoned by the owner if the claimant did not render any other service, and that storage or rental fees will accrue as allowed by law, and

g. 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, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

5. For services rendered or vehicles abandoned on or after November 1, 2005, storage charges or charges for rental of space

(unless agreed to by contract as part of an overall transaction or arrangement that was primarily for the purpose of storage of the Section 91 Personal Property or rental of space) may only be assessed beginning with the day that the Notice of Possessory Lien is mailed as evidenced by certified mail. Provided, however, in the case of contractual charges incurred for storage or rental of space in an overall transaction primarily for the purpose of storage or rental, charges subject to the special lien may only be assessed beginning with a date not more than sixty (60) days prior to the day that the Notice of Possessory Lien is mailed, and shall accrue only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental. The maximum allowable compensation for storage shall not exceed the fees ~~specified pursuant to Section 953.2 of Title 47 of the Oklahoma Statutes~~ established by the Corporation Commission for nonconsensual tows.

6. The lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice of sale shall contain:

a. a statement that the notice is a Notice of Sale,

b. the names of all interested parties known to the claimant,

c. a description of the property to be sold,

d. a notarized statement of the nature of the work, labor or service performed, material furnished, or storage or rental of space, and the date thereof, and the name of the person who authorized the work, labor or service performed, or the storage or rental arrangement, or that the property was abandoned if the claimant did not render any other service,

e. the date, time and exact physical location of sale, and

f. the name, complete physical address and telephone number of the party foreclosing such lien. If the claimant is a business, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

7. Such notice of sale shall be posted in three 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 all interested parties at their last-known post office address, by regular, first class United States mail and by certified mail on the day of posting. 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.

8. Interested parties shall include all owners of the article of personal property as indicated by the certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma; 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.

9. Any interested party shall be permitted to inspect and verify the services rendered by the claimant prior to the sale of the article of personal property during normal business hours, unless the property was abandoned and the claimant did not render any other service.

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

11. Proceedings for foreclosure under this act shall be commenced within thirty (30) days after the Notice of Possessory Lien has been mailed as evidenced by certified mail. The date actually sold shall be within sixty (60) days from the date of the Notice of Sale as evidenced by certified mail.

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

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

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

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

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

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

(3) an identifying description of the article of personal property on which the service was rendered, and

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

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

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

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

1. The claimant may take possession of an article pursuant to this subsection only if the person obligated under the contract for

services has signed an acknowledgement of receipt of a notice that the article may be subject to repossession. The notice and acknowledgement pursuant to this subsection shall be:

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

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

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

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

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

D. 1. If a vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer has a certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, but there is no active lien recorded on the certificate of title, Section 91A of this title will apply instead of this section. Likewise, if there is an active lien recorded on the certificate of title but the lien is over fifteen (15) years old and the property is not a manufactured home, Section 91A will apply instead of this section.

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

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

4. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker operators in their capacity as wrecker operators shall not be subject to the provisions of this section. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker operators shall be subject to Section 91A of this title.

E. For purposes of this section:

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

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

SECTION 12. This act shall become effective November 1, 2011.

Passed the House of Representatives the 18th day of May, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 19th day of May, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 20th day of May, 20 11, at 6:33 o'clock PM.

By: Jessica R. Rogers

Approved by the Governor of the State of Oklahoma the 26th day of May, 20 11, at 11:01 o'clock AM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 26th day of May, 20 11, at 6:01 o'clock P. M.

By: Michelle R Day