

1 ENGROSSED SENATE
2 BILL NO. 566

By: Newhouse of the Senate

3 and

4 Banning of the House

5
6 An Act relating to liens for service on personal
7 property; amending 42 O.S. 2021, Section 91A, which
8 relates to procedures for lien on certain personal
9 property; increasing allowable fee for processing of
10 certain notice; clarifying date of applicability; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 42 O.S. 2021, Section 91A, is
14 amended to read as follows:

15 Section 91A. A. 1. a. This section applies to all types of
16 personal property other than:

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

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

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

- 1 (1) does not have a certificate of title,
- 2 (2) has a certificate of title but does not have an
- 3 active lien recorded on the certificate of title,
- 4 (3) has a certificate of title that is not issued by
- 5 the Oklahoma Tax Commission or by a federally
- 6 recognized Indian tribe in the State of Oklahoma,
- 7 or
- 8 (4) is otherwise excluded by subparagraph b of
- 9 paragraph 1 of subsection A of Section 91 of this
- 10 title or subsection D of Section 91 of this
- 11 title.

12 c. If personal property has a certificate of title, or
13 would be required to have a certificate of title under
14 Oklahoma law, and is apparently covered both by this
15 section and by Sections 191 through 200 of this title,
16 the procedures set out in this section shall apply
17 instead of Sections 191 through 200 of this title. If
18 personal property without a certificate of title and
19 not required to be titled under Oklahoma law is
20 covered both by this section and Sections 191 through
21 200 of this title, the procedures set out in Sections
22 191 through 200 of this title shall apply instead of
23 this section.

- 1 2. a. Any person who, while lawfully in possession of an
2 article of personal property to which this section
3 applies, renders any service to the owner thereof by
4 furnishing storage, rental space, material, labor or
5 skill for the protection, improvement, safekeeping,
6 towing, right to occupy space, storage or carriage
7 thereof, has a special lien thereon, dependent on
8 possession, for the compensation, if any, which is due
9 to such person from the owner for such service.
10 Charges owed under a contract primarily for the
11 purpose of storage or rental of space shall be accrued
12 only at the regular periodic rate for storage or
13 rental as provided in the contract, adjusted for
14 partial periods of storage or rental.
- 15 b. Except for Class AA licensed wrecker towing charges,
16 the special lien shall be subordinate to any perfected
17 security interest unless the claimant complies with
18 the requirements of this section. Failure to comply
19 with any requirements of this section shall result in
20 denial of any title application and cause the special
21 lien to be subordinate to any perfected lien. Upon
22 such denial, the applicant shall be entitled to one
23 resubmission of the title application within thirty
24 (30) business days of receipt of the denial, and

1 proceed to comply with the requirements of this
2 section. "Failure to comply" includes, but is not
3 limited to:

4 (1) failure to timely provide additional
5 documentation supporting or verifying any entry
6 on submitted forms as requested by the Tax
7 Commission,

8 (2) failure to provide the documentation supporting
9 lawful possession as outlined in paragraph 3 of
10 subsection H of this section,

11 (3) claimant being other than the individual who
12 provided the service giving rise to the special
13 lien, as in subparagraph a of this paragraph,

14 (4) claimant not being in possession of the vehicle,
15 or

16 (5) notification and proceedings not accomplished in
17 accordance with subparagraph c of this paragraph,
18 and paragraph 3 of this subsection.

19 c. Any person claiming a lien under this section shall
20 request, within five (5) business days of performing
21 any service or work on the property, the Tax
22 Commission or other appropriate license agency to
23 furnish the name and address of the current owner of
24 and any lienholder upon the property. The Motor

1 Vehicle Division of the Tax Commission or appropriate
2 license agency shall respond in person or by mail to
3 the lien claimant within ten (10) business days of the
4 receipt of the request for information. The Tax
5 Commission shall render assistance to ascertain
6 ownership, if needed. The lien claimant shall send,
7 within seven (7) business days of receipt of the
8 requested information from the Oklahoma Tax Commission
9 or other license agency, a notice of the location of
10 the property by certified mail with return receipt
11 requested, postage prepaid, to the owner and any
12 lienholder of the vehicle at the addresses furnished.
13 The lien claimant may charge ~~Twenty Dollars (\$20.00)~~
14 not more than Fifty Dollars (\$50.00) for processing
15 plus the cost of postage if the notice is timely sent
16 pursuant to the requirements of this subparagraph in
17 addition to fees regulated by the ~~Oklahoma~~ Corporation
18 Commission for licensed wreckers. If the lien
19 claimant is unable to meet the time requirements due
20 to a lack of or an altered vehicle identification
21 number on the property, the lien claimant shall
22 proceed diligently to obtain the proper vehicle
23 identification number and shall meet the time
24 requirements on the notice once the vehicle

1 identification number is known. If the lien claimant
2 is required to send additional notices because of
3 change of ownership or lienholder after it has timely
4 complied with the requirements of this subparagraph,
5 the lien claimant shall remain in compliance if such
6 additional notices are sent within the required time
7 periods from the date of discovery of the new owners
8 or lienholders. The notice shall be in writing and
9 shall contain, but not be limited to, the following:

- 10 (1) a statement that the notice is a Notice of
11 Possessory Lien,
- 12 (2) the complete legal name, physical and mailing
13 address, and telephone number of the claimant,
- 14 (3) the complete legal name, physical and mailing
15 address of the person who requested that the
16 claimant render service to the owner by
17 furnishing material, labor or skill, storage, or
18 rental space, or the date the property was
19 abandoned if the claimant did not render any
20 other service,
- 21 (4) a description of the article of personal
22 property, and the complete physical and mailing
23 address of the location of the article of
24 personal property,

1 (5) the nature of the work, labor or service
2 performed, material furnished, or the storage or
3 rental arrangement, and the date thereof, and
4 written proof of authority to perform the work,
5 labor or service provided that, in the case of a
6 law enforcement directed tow, the logbook entry
7 prescribed in OAC 595:25-5-5 or the tow ticket as
8 defined by the Corporation Commission shall serve
9 as written proof of authority,

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

18 (7) an itemized statement describing the date or
19 dates the labor or services were performed and
20 material furnished and the charges claimed for
21 each item, the totals of which shall equal the
22 total compensation claimed.

23 The lien claimant shall not be required to send the
24 notice required in this subparagraph if the property

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

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

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

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

22 b. a description of the property to be sold, including a
23 visual inspection or a photograph if the property is a
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1 motor vehicle, and the physical location of the
2 property,

3 c. the nature of the work, labor or service performed,
4 material furnished, or the storage or rental
5 arrangement, and the date thereof, and written proof
6 of authority to perform the work, labor or service
7 provided. In the case of a law enforcement directed
8 tow, the logbook entry prescribed in OAC 595:25-5-5 or
9 the tow ticket as defined by the Corporation
10 Commission, shall serve as written proof of authority,

11 d. the time and place of sale,

12 e. the name, telephone number, physical address and
13 mailing address of the claimant, and agent or
14 attorney, if any, foreclosing such lien. If the
15 claimant is a business, then the name of the contact
16 person representing the business must be shown. In
17 place of an original signature and notary seal, a
18 digital or electronic signature or seal shall be
19 accepted, and

20 f. itemized charges which shall equal the total
21 compensation claimed.

22 4. a. Such Notice of Sale shall be posted in two public
23 places in the county where the property is to be sold
24 at least ten (10) days before the time therein

1 specified for such sale, and a copy of the notice
2 shall be mailed to the owner and any other party
3 claiming any interest in the property, if known, at
4 their last-known post office address, by certified
5 mail, return receipt requested, at least ten (10) days
6 before the time therein specified for such sale. If
7 the item of personal property is a manufactured home,
8 notice shall also be sent by certified mail to the
9 county treasurer and to the county assessor of the
10 county where the manufactured home is located.

11 b. In the case of any item of personal property without a
12 certificate of title and not required to be titled
13 under Oklahoma law, a party who claims any interest in
14 the property shall include all owners of the property;
15 any secured party who has an active financing
16 statement on file with the county clerk of Oklahoma
17 County listing one or more owners of the property by
18 legal name as debtors and indicating a collateral
19 description that would include the property; and any
20 other person having any interest in the personal
21 property, of whom the claimant has actual notice.

22 c. In the case of personal property subject to this
23 section for which a certificate of title has been
24 issued by any jurisdiction, a party who claims any

1 interest in the property shall include all owners of
2 the article of personal property as indicated by the
3 certificate of title; lien debtors, if any, other than
4 the owners; any lienholder whose lien is noted on the
5 face of the certificate of title; and any other person
6 having any interest in the article of personal
7 property, of whom the claimant has actual notice.

8 d. When the jurisdiction of titling for a vehicle, all-
9 terrain vehicle, motorcycle, boat, outboard motor, or
10 trailer that is five (5) model years old or newer, or
11 a manufactured home that is fifteen (15) model years
12 old or newer, cannot be determined by ordinary means,
13 the claimant, the agent of the claimant, or the
14 attorney of the claimant, shall request, in writing,
15 that the Oklahoma Tax Commission Motor Vehicle
16 Division ascertain the jurisdiction where the vehicle
17 or manufactured home is titled. The Oklahoma Tax
18 Commission Motor Vehicle Division shall, within
19 fourteen (14) days from the date the request is
20 received, provide information as to the jurisdiction
21 where the personal property is titled. If the
22 Oklahoma Tax Commission Motor Vehicle Division is
23 unable to provide the information, it shall provide
24 notice that the record is not available.

1 e. When personal property is of a type that Oklahoma law
2 requires to be titled, the owner of record of that
3 property is unknown, and the jurisdiction of titling
4 and owner of record cannot be determined by ordinary
5 means and also, if applicable, cannot be determined in
6 accordance with the preceding subparagraph, then the
7 special lien may be foreclosed by publication of a
8 legal notice in a legal newspaper in the county where
9 the personal property is located, as defined in
10 Section 106 of Title 25 of the Oklahoma Statutes.
11 Such notice shall include the description of the
12 property by year, make, vehicle identification number
13 if available from the property, the name of the
14 individual who may be contacted for information, and
15 the telephone number of that person or the address
16 where the vehicle is located. The legal notice shall
17 be published once per week for three (3) consecutive
18 weeks. As soon as circumstances exist as described in
19 the first sentence of this subparagraph, the first
20 date of publication may occur even if the special lien
21 has not accrued for over thirty (30) days. The first
22 date available for public sale of the vehicle is the
23 day following publication of the final notice, but no
24 fewer than thirty (30) days after the lien has

1 accrued. When the owner of record is unknown, the
2 Notice of Sale nevertheless must be completed and
3 mailed to any known interested party by certified
4 mail. For purposes of this paragraph, interested
5 parties shall include all persons described in
6 subparagraph b or subparagraph c of this paragraph,
7 whichever is applicable, with the exception of any
8 owner who is unknown. Except in circumstances
9 described in paragraph 7 of this subsection that
10 provide for a shorter time period, the Notice of Sale
11 shall be posted in two public places in the county
12 where the property is to be sold at least ten (10)
13 days before the time therein specified for such sale,
14 and the Notice of Sale shall not be mailed until at
15 least thirty (30) days after the lien has accrued.

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

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

21 7. Notwithstanding any other provision of law, proceedings for
22 foreclosures for the storage of junk vehicles towed and stored
23 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by
24 Class AA wreckers listed with the Motor Vehicle Division of the

1 Department of Public Safety, may be commenced five (5) days after
2 the lien has accrued. For purposes of this paragraph, "junk
3 vehicles" means any vehicle that is more than ten (10) years old if
4 the cost of a comparable vehicle would be less than Three Hundred
5 Dollars (\$300.00) as quoted in the latest edition of the National
6 Automobile Dealers Association Official Used Car Guide or latest
7 monthly edition of any other nationally recognized published
8 guidebook, adjusting to the condition of the vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 3. This section applies if personal property to which Section
8 91 of this title otherwise would apply has been registered by the
9 Tax Commission or by a federally recognized Indian tribe in the
10 State of Oklahoma, and there is a lien of record but no certificate
11 of title has been issued.

12 4. This section applies if personal property to which Section
13 91 of this title otherwise would apply has not been registered by
14 either the Tax Commission or a federally recognized Indian tribe in
15 the State of Oklahoma, and no certificate of title has been issued,
16 but there is a lien of record.

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

21 6. This section applies to a vehicle, all-terrain vehicle,
22 utility vehicle, manufactured home, motorcycle, boat, outboard
23 motor, or trailer for which ownership cannot be determined by
24 ordinary means or by the Oklahoma Tax Commission Motor Vehicle

1 Division, as provided in subparagraphs d and e of paragraph 4 of
2 subsection A of this section, as applicable.

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

6 8. This section applies to salvage pools as defined in Section
7 591.2 of Title 47 of the Oklahoma Statutes.

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

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

20 E. A person who knowingly makes a false statement of a material
21 fact regarding the furnishing of storage, rental space, material,
22 labor or skill for the protection, improvement, safekeeping, towing,
23 right to occupy space, storage or carriage thereof in a proceeding
24 under this section, or attempts to use or uses the provisions of

1 this section to foreclose an owner or lienholder's interest in a
2 vehicle knowing that any of the statements made in the proceeding
3 are false, upon conviction, shall be guilty of a felony.

4 F. Upon receipt of notice of legal proceedings, the Tax
5 Commission shall cause the sale process to be put on hold until
6 notice of resolution of court proceedings is received from the
7 court. If such notice of commencement of court proceedings is not
8 filed with the Tax Commission, the possessory lien sale process may
9 continue.

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

11 H. For purposes of this section:

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

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

19 3. "Lawfully in possession" means a person has documentation
20 from the owner or the owner's authorized agent, or an insurance
21 company or its authorized agent, authorizing the furnishing of
22 material, labor or storage, or that the property was authorized to
23 be towed to a repair facility.

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1 Class AA wrecker services taking possession of a vehicle
2 pursuant to an agreement with, or at the direction of, or dispatched
3 by, a state or local law enforcement or government agency, or
4 pursuant to the abandoned vehicle removal provisions of Section 954A
5 of Title 47 of the Oklahoma Statutes, shall be considered lawfully
6 in possession of the vehicle. If the person lacks such
7 documentation, the procedures established by this section shall not
8 apply; and

9 4. "Itemized charges" means total parts, total labor, total
10 towing fees, total storage fees, total processing fees and totals of
11 any other fee groups, the sum total of which shall equal the
12 compensation claimed.

13 I. For purposes of this section, the United States Postal
14 Service approved electronic equivalent of proof of return receipt
15 requested Form 3811 shall satisfy return receipt requested
16 documentation requirements.

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

3 K. Any interested party shall be permitted to visually inspect
4 and verify the services rendered by the claimant prior to the sale
5 of the article of property during normal business hours. If the
6 claimant fails to allow any interested party to inspect the
7 property, the interested party shall mail a request for inspection
8 by certified mail, return receipt requested, to the claimant.
9 Within three (3) business days of receipt of the request for
10 inspection, the claimant shall mail a photograph of the property, by
11 certified mail, return receipt requested, and a date of inspection
12 within five (5) business days from the date of the notice to
13 inspect. The lienholder shall be allowed to retrieve the property
14 without being required to bring the title into the lienholder's
15 name, if the lienholder provides proof it is a lienholder and any
16 payment due the claimant for lawful charges where the claimant has
17 complied with this section. Upon the release of personal property
18 to an insurer or representative of the insurer, wrecker operators
19 shall be exempt from all liability and shall be held harmless for
20 any losses or claims of loss. In the event any law enforcement
21 agency places a hold on the property, the party wanting to inspect
22 or photograph the property shall obtain permission from the law
23 enforcement agency that placed the hold on the property before
24 inspecting or photographing.

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L. This section shall apply to all actions or proceedings that commence on or after ~~the effective date of this act~~ August 22, 2014.

SECTION 2. This act shall become effective November 1, 2023.

Passed the Senate the 14th day of February, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2023.

Presiding Officer of the House
of Representatives