

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 2ND CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 1165

6 By: Phillips of the House

7 and

8 Dunlap of the Senate

9
10 2ND CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to landlord and tenant; amending 41
12 O.S. 1991, Sections 51 and 130, as amended by Section
13 5, Chapter 149, O.S.L. 1995 (41 O.S. Supp. 1998,
14 Section 130), which relate to leases of certain
15 property; modifying definitions; providing for
16 inapplicability of certain provisions to persons
17 defined pursuant to the Self-Service Storage Facility
18 Lien Act; modifying procedures for disposition of
19 certain personal property; modifying notice
20 requirements; amending Section 7, Chapter 306, O.S.L.
21 1998 (42 O.S. Supp. 1998, Section 197), which relates
22 to the Self-Service Storage Facility Lien Act;
23 modifying required contents for certain notice and
24 advertisement; prescribing procedures for dispositon
25 of personal property remaining in certain storage
26 units; amending 42 O.S. 1991, Section 153, as amended
27 by Section 460, Chapter 133, O.S.L. 1997 (42 O.S.
28 Supp. 1998, Section 153), which relates to lienable
29 claims; modifying provisions related to responsible
30 parties for certain entities; imposing maximum
31 charges for certain resale of water or sewage
32 services; requiring disclosure; prescribing criminal
penalty; authorizing powers for investigation and
prosecution; providing for codification; and
providing an effective date.

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

34 SECTION 1. AMENDATORY 41 O.S. 1991, Section 51, is
35 amended to read as follows:

36 Section 51. As used in this act:

37 1. "Landlord" means the owner, lessor or sublessor of a
38 nonresidential rental property, but does not mean an "owner" as
39 defined by Section 192 of Title 42 of the Oklahoma Statutes;

1 2. "Nonresidential rental property" means any land or building
2 which is rented or leased to a tenant for other than residential
3 purposes and the rental agreement of which is not regulated under
4 the provisions of the Oklahoma Residential Landlord and Tenant Act,
5 Section 101 et seq. of Title 41 of the Oklahoma Statutes or the
6 Self-Service Storage Facility Lien Act, Section 191 et seq. of Title
7 42 of the Oklahoma Statutes; and

8 3. "Tenant" means any person entitled under a rental agreement
9 to occupy the nonresidential rental property.

10 SECTION 2. AMENDATORY 41 O.S. 1991, Section 130, as
11 amended by Section 5, Chapter 149, O.S.L. 1995 (41 O.S. Supp. 1998,
12 Section 130), is amended to read as follows:

13 Section 130. A. If the tenant abandons or surrenders
14 possession of the dwelling unit or has been lawfully removed from
15 the premises through eviction proceedings and leaves household
16 goods, furnishings, fixtures, or any other personal property in the
17 dwelling unit, the landlord may take possession of the property, and
18 if, in the judgment of the landlord, the property has no
19 ascertainable or apparent value, the landlord may dispose of the
20 property without any duty of accounting or any liability to any
21 party. ~~Any property~~ The landlord may dispose of perishable property
22 in any manner the landlord considers fit.

23 B. If the tenant abandons or surrenders possession of the
24 dwelling unit or has been lawfully removed from the premises through
25 eviction proceedings and leaves household goods, furnishings,
26 fixtures, or any other personal property in the dwelling unit, the
27 landlord may take possession of the property, and if, in the
28 judgment of the landlord the property has an ascertainable or
29 apparent value, the landlord shall provide written notice to the
30 tenant by certified mail to the last known address that if the
31 property is not removed within the time specified in the notice, the
32 property will be deemed abandoned. Any property left with the

1 landlord for a period of thirty (30) days or longer shall be
2 conclusively determined to be abandoned and as such the landlord may
3 dispose of said property in any manner which he deems reasonable and
4 proper without liability to the tenant or any other interested
5 party. ~~In any such case, the landlord has the option of complying~~
6 ~~with the provisions of subsection B of this section.~~

7 ~~B. If the tenant abandons or surrenders possession of the~~
8 ~~dwelling unit or has been lawfully removed from the premises through~~
9 ~~eviction proceedings and leaves household goods, furnishings,~~
10 ~~fixtures, or any other personal property of an ascertainable or~~
11 ~~apparent value in the dwelling unit including property classified as~~
12 ~~exempt from a landlord's lien pursuant to Section 133 of this title,~~
13 ~~the landlord may take possession of the property and give notice to~~
14 ~~the tenant, demanding that the property be removed within the dates~~
15 ~~set out in the notice but not less than fifteen (15) days after~~
16 ~~delivery or mailing of such notice, and that if the property is not~~
17 ~~removed within the time specified in the notice, the landlord may~~
18 ~~sell the property at a public sale. The landlord may dispose of~~
19 ~~perishable commodities in any manner the landlord considers fit.~~
20 ~~Payment by the tenant of all outstanding rent, damages, storage~~
21 ~~fees, court costs and attorneys' fees shall be a prerequisite to the~~
22 ~~return of the personal property. For purposes of this section,~~
23 ~~notice sent by certified mail to the tenant's last-known address~~
24 ~~with forwarding requested shall be deemed sufficient notice.~~

25 ~~C. After notice is given as provided in subsection B of this~~
26 ~~section, the The landlord shall store all personal property of the~~
27 ~~tenant in a place of safekeeping and shall exercise reasonable care~~
28 ~~of the property. The landlord shall not be responsible to the~~
29 ~~tenant for any loss not caused by the landlord's deliberate or~~
30 ~~negligent act. The landlord may elect to store the property in the~~
31 ~~dwelling unit that was abandoned or surrendered by the tenant, in~~
32 ~~which event the storage cost may not exceed the fair rental value of~~

1 the premises. If the tenant's property is removed to a commercial
2 storage company, the storage cost shall include the actual charge
3 for the storage and removal from the premises to the place of
4 storage.

5 ~~D. If the tenant makes timely response in writing of an~~
6 ~~intention to remove the personal property from the premises and does~~
7 ~~not do so within the later of the time specified in the notice~~
8 ~~provided for in subsection B of this section or within fifteen (15)~~
9 ~~days of the delivery or mailing of the tenant's written response, it~~
10 ~~shall be conclusively presumed that the tenant abandoned the~~
11 ~~property.~~ If the tenant removes the personal property within the
12 time limitations provided in this ~~subsection~~ section, the landlord
13 is entitled to the cost of storage for the period during which the
14 property remained in the landlord's safekeeping plus all other costs
15 that accrued under the rental agreement.

16 ~~E. If the tenant fails to take possession of the personal~~
17 ~~property as prescribed in subsection D of this section and make~~
18 ~~payment of all amounts due and owing, the property shall be deemed~~
19 ~~abandoned and the landlord may thereupon sell the property in any~~
20 ~~reasonable manner without liability to the tenant.~~

21 ~~F. Notice of sale shall be mailed to the owner and any other~~
22 ~~party claiming any interest in said property, if known, at their~~
23 ~~last-known post office address, by certified mail at least ten (10)~~
24 ~~days before the time specified therein for such sale. For purposes~~
25 ~~of this section, parties who claim an interest in the property~~
26 ~~include holders of security interests or other liens or encumbrances~~
27 ~~as shown by the records in the office of the county clerk of the~~
28 ~~county where the lien would be foreclosed.~~

29 ~~G. The landlord or any other person may in good faith become a~~
30 ~~purchaser of the property sold. The landlord may dispose of any~~
31 ~~property upon which no bid is made at the public sale.~~

1 ~~H.~~ The landlord may not be held to respond in damages in an
2 action by a tenant claiming loss by reason of the landlord's
3 election to destroy, sell or otherwise dispose of the property in
4 compliance with the provisions of this section. If, however, the
5 landlord deliberately or negligently violated the provisions of this
6 section, the landlord shall be liable for actual damages.

7 ~~I. Any proceeds from the sale or other disposition of the
8 property, as provided in subsection B of this section, shall be
9 applied by the landlord in the following order:~~

10 ~~1. To the reasonable expenses of taking, holding, preparing for
11 sale or disposition, giving notice and selling or disposing thereof;~~

12 ~~2. To the satisfaction of any properly recorded security
13 interest;~~

14 ~~3. To the satisfaction of any amount due from the tenant to the
15 landlord for rent or otherwise; and~~

16 ~~4. The balance, if any, shall be paid into court within thirty
17 (30) days of the sale and held for six (6) months and, if not
18 claimed by the owner of the property within that period, shall
19 escheat to the county.~~

20 SECTION 3. AMENDATORY Section 7, Chapter 306, O.S.L.
21 1998 (42 O.S. Supp. 1998, Section 197), is amended to read as
22 follows:

23 Section 197. A. An owner's lien as provided for a claim which
24 has become due may be satisfied as provided by this section. With
25 respect to any lien on personal property sold in satisfaction of
26 obligations secured by the lien authorized by this section, the
27 provisions of Section 9-310 of Title 12A of the Oklahoma Statutes
28 shall be applicable and the possessory lien as authorized by this
29 section shall be prior to any previously perfected security interest
30 in the personal property.

31 B. No enforcement action shall be taken by the owner until the
32 occupant has been in default continuously for a period of thirty

1 (30) days. As used in this subsection, "enforcement action" shall
2 not include actions of the owner taken pursuant to Section § 195 of
3 this ~~act~~ title.

4 C. After the occupant has been in default continuously for a
5 period of thirty (30) days, the owner may begin enforcement action
6 if the occupant has been notified in writing. Said notice shall be
7 delivered in person or sent by certified mail return receipt
8 requested to the last-known address of the occupant. Any lienholder
9 with an interest in the property to be sold or otherwise disposed
10 of, of whom the owner has actual knowledge, shall be included in the
11 notice process as provided in this section.

12 D. The notice shall include:

13 1. An itemized statement of the owner's claim showing the sum
14 due at the time of the notice and the date when the sum became due;

15 2. ~~A brief and general description~~ The address of the self-
16 service storage facility and the number, if any, of the space where
17 the personal property subject to the lien. Such description shall
18 be reasonably adequate to permit the person notified to identify
19 such property, except that any container including, but not limited
20 to, a trunk, valise, or box that is locked, fastened, sealed, or
21 tied in a manner which deters immediate access to its contents may
22 be described as such without describing its contents is located, and
23 the name of the occupant and his last-known address;

24 3. A notification of denial of access to the personal property,
25 if such denial is permitted under the terms of the rental agreement,
26 which notification shall provide the name, street address, and
27 telephone number of the owner or his designated agent whom the
28 occupant may contact to respond to such notification;

29 4. A demand for payment within a specified time not less than
30 fifteen (15) days after delivery of the notice; and

31 5. A conspicuous statement that, unless the claim is paid
32 within the time stated in the notice, the personal property will be

1 advertised for sale or other disposition and will be sold or
2 otherwise disposed of at a specified time and place.

3 E. Any notice made pursuant to this section shall be presumed
4 delivered when it is deposited with the United States Postal Service
5 and properly addressed with postage prepaid.

6 F. After the expiration of the time given in the notice, an
7 advertisement of the sale or other disposition shall be published
8 once a week for two (2) consecutive weeks in a newspaper of general
9 circulation in the county where the self-service storage facility is
10 located.

11 G. The advertisement prescribed by subsection F of this section
12 shall include:

13 1. ~~A brief and general description of the personal property~~
14 ~~reasonably adequate to permit its identification as provided in~~
15 ~~paragraph 2 of subsection D of this section, the~~ The address of the
16 self-service storage facility and the number, if any, of the space
17 where the personal property is located, and the name of the occupant
18 and his last-known address;

19 2. The time, place, and manner of the sale or other
20 disposition. The sale or other disposition shall take place not
21 sooner than fifteen (15) days after the first publication; or

22 3. If there is no newspaper of general circulation in the
23 county where the self-service storage facility is located, the
24 advertisement shall be posted at least ten (10) days before the date
25 of the sale or other disposition in not less than six conspicuous
26 places in the neighborhood where the self-service storage facility
27 is located.

28 H. Any sale or other disposition of the personal property shall
29 conform to the terms of the notification as provided for in this
30 section.

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1 I. Any sale or other disposition of the personal property shall
2 be held at the self-service storage facility or at the nearest
3 suitable place to where the personal property is held or stored.

4 J. Before any sale or other disposition of personal property
5 pursuant to this section, the occupant may pay the amount necessary
6 to satisfy the lien and the reasonable expenses incurred under this
7 section and thereby redeem the personal property. Upon receipt of
8 such payment, the owner shall return the personal property, and
9 thereafter the owner shall have no liability to any person with
10 respect to such personal property.

11 K. A purchaser in good faith of the personal property sold to
12 satisfy a lien as provided in this act takes the property free of
13 any rights of persons against whom the lien was valid and free of
14 any rights of a secured creditor, despite noncompliance by the owner
15 with the requirements of this section.

16 L. In the event of a sale under this section, the owner may
17 satisfy his lien from the proceeds of the sale.

18 M. If the proceeds from sale of the property are less than the
19 amount required to pay the obligation secured by the lien, the owner
20 may pursue a deficiency against the tenant. If the proceeds from
21 sale of the property are more than the amount required to pay the
22 obligation secured by the owner's lien, the owner shall hold the
23 excess proceeds for a period of ninety (90) days from the date of
24 the sale. During this period, any persons, including the tenant,
25 claiming an interest in the excess proceeds from the sale of the
26 property shall present adequate proof of their claim to the owner.
27 After the expiration of the ninety-day period, the owner shall make
28 such distribution of the excess proceeds as is required based upon
29 the claims presented. If after making distribution of the proceeds
30 as prescribed by this subsection there are any remaining proceeds,
31 the proceeds shall become the property of the owner without further
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1 recourse by the occupant, any lienholder or other person in
2 interest.

3 N. If the requirements of this act are not satisfied, if the
4 sale of the personal property is not in conformity with the notice
5 of sale, or if there is a willful violation of this act, nothing in
6 this section affects the rights and liabilities of the owner, the
7 occupant, or any other person.

8 O. Any purchaser of personal property for which a certificate
9 of title has been issued by the Oklahoma Tax Commission shall obtain
10 a certificate of title to be issued in the purchaser's name in the
11 same manner as provided by law for the issuance of a certificate of
12 title for a motor vehicle sold pursuant to the provisions of
13 Sections 91 through 102 of ~~Title 42 of the Oklahoma Statutes~~ this
14 title if the personal property is sold as authorized by this
15 section.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 197.1 of Title 42, unless there
18 is created a duplication in numbering, reads as follows:

19 A. If the occupant abandons or surrenders possession of the
20 self-service storage facility and leaves household goods,
21 furnishings, fixtures, or any other personal property in the self-
22 service storage facility, the owner may take possession of the
23 property, and if, in the judgment of the owner, the property has no
24 ascertainable or apparent value, the owner may dispose of the
25 property without any duty of accounting or any liability to any
26 party.

27 B. If the occupant abandons or surrenders possession of the
28 self-service storage facility and leaves household goods,
29 furnishings, fixtures, or any other personal property in the self-
30 service storage facility, the owner may take possession of the
31 property, and if, in the judgment of the owner the property has an
32 ascertainable or apparent value, such property left with the owner

1 for a period of thirty (30) days or longer shall be conclusively
2 determined to be abandoned and as such the owner may dispose of said
3 property in any manner which he deems reasonable and proper without
4 liability to the occupant or any other interested party; however,
5 before the property is disposed of, the owner shall provide written
6 notice to the occupant, by certified mail with return receipt
7 requested, and the owner may dispose of the property fifteen (15)
8 days after the owner receives the return receipt document or fifteen
9 (15) days after the owner receives a communication from the United
10 States Post Office that the written notice was not claimed by the
11 addressee, whichever period occurs first.

12 SECTION 5. AMENDATORY 42 O.S. 1991, Section 153, as
13 amended by Section 460, Chapter 133, O.S.L. 1997 (42 O.S. Supp.
14 1998, Section 153), is amended to read as follows:

15 Section 153. (1) The trust funds created under Section 152 of
16 this title shall be applied to the payment of said valid lienable
17 claims and no portion thereof shall be used for any other purpose
18 until all lienable claims due and owing or to become due and owing
19 shall have been paid.

20 (2) Any person willfully and knowingly appropriating such trust
21 funds to a use not permitted by subsection (1) of this section, upon
22 conviction, shall be guilty of the felony of embezzlement. The fine
23 for a violation of this subsection shall not exceed Ten Thousand
24 Dollars (\$10,000.00).

25 (3) If the party receiving any money under Section 152 of this
26 title ~~shall be a corporation~~ is an entity having the characteristics
27 of limited liability pursuant to law, such corporation entity and
28 its managing officers the natural persons having the legally
29 enforceable duty for the management of the entity shall be liable
30 for the proper application of such trust funds and subject to
31 punishment under subsection (2) of this section. For purposes of
32 this section, the natural persons subject to punishment shall be the

1 managing officers of a corporation and the managers of a limited
2 liability company.

3 (4) The existence of such trust funds shall not prohibit the
4 filing or enforcement of a labor, mechanic or materialmen's lien
5 against the affected real property by any lien claimant, nor shall
6 the filing of such a lien release the holder of such funds from the
7 obligations created under this section or Section 152 of this title.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 151.1 of Title 17, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Except for any person, public utility, or public service
12 corporation subject to the jurisdiction of the Corporation
13 Commission, or a municipal utility, or a public trust which has as
14 its beneficiary the municipality, no owner of any interest in real
15 property in this state who purchases water or sewage services from a
16 municipality and who resells such water or sewage services to any
17 residential lessee of any interest in such real property for the
18 purpose of providing water or sewage services shall charge such
19 lessee any amount in excess of ten percent (10%) of the cost to such
20 reseller for each billing cycle of the water or sewage services
21 purchased by the reseller from the supplier.

22 B. The reseller shall separately disclose in its water or
23 sewage services bills to the lessee the per unit cost of its
24 purchased water or sewage services and the actual amount of each fee
25 or charge in dollars and cents to be paid by the lessee to the
26 reseller.

27 C. Any person who willfully violates the provisions of this
28 section, upon conviction thereof by a district court, shall be
29 guilty of a misdemeanor. In addition to the punishment prescribed
30 by this subsection, the reseller is liable in treble damages to the
31 lessee injured, said damages to be recovered in a civil action by
32 the consumer so injured. Treble damages shall be based on the total

1 amount to be paid to the reseller by the lessee for each bill which
2 exceeds the authorized percentage pursuant to this section.

3 D. The Office of the Attorney General of this state shall have
4 the power and duty to investigate and prosecute any violations of
5 the provisions of this section.

6 SECTION 7. This act shall become effective November 1, 1999.

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