ENROLLED HOUSE
BILL NO. 1165

By: Phillips of the House

and

Dunlap of the Senate

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

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

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

Section 51. As used in this act:

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

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

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

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

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

B. If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord the property has an ascertainable or apparent value, the landlord shall provide written notice to the tenant by certified mail to the last-known address that if the property is not removed within the time specified in the notice, the property will be deemed abandoned. Any property left with the landlord for a period of thirty (30) days or longer shall be conclusively determined to be abandoned and as such the landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the tenant or any other interested party. ~~In any such case, the landlord has the option of complying with the provisions of subsection B of this section.~~

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

C. ~~After notice is given as provided in subsection B of this section, the~~ The landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the property. The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the property in the

dwelling unit that was abandoned or surrendered by the tenant, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

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

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

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

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

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

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

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

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

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

~~4. The balance, if any, shall be paid into court within thirty (30) days of the sale and held for six (6) months and, if not~~

~~claimed by the owner of the property within that period, shall escheat to the county.~~

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

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

B. No enforcement action shall be taken by the owner until the occupant has been in default continuously for a period of thirty (30) days. As used in this subsection, "enforcement action" shall not include actions of the owner taken pursuant to Section ~~5~~ 195 of this ~~act~~ title.

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

D. The notice shall include:

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

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

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

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

5. A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

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

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

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

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

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

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

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

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

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

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

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

M. If the proceeds from sale of the property are less than the amount required to pay the obligation secured by the lien, the owner may pursue a deficiency against the tenant. If the proceeds from sale of the property are more than the amount required to pay the

obligation secured by the owner's lien, the owner shall hold the excess proceeds for a period of ninety (90) days from the date of the sale. During this period, any persons, including the tenant, claiming an interest in the excess proceeds from the sale of the property shall present adequate proof of their claim to the owner. After the expiration of the ninety-day period, the owner shall make such distribution of the excess proceeds as is required based upon the claims presented. If after making distribution of the proceeds as prescribed by this subsection there are any remaining proceeds, the proceeds shall become the property of the owner without further recourse by the occupant, any lienholder or other person in interest.

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

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

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

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

B. If the occupant abandons or surrenders possession of the self-service storage facility and leaves household goods, furnishings, fixtures, or any other personal property in the self-service storage facility, the owner may take possession of the property, and if, in the judgment of the owner the property has an ascertainable or apparent value, such property left with the owner for a period of thirty (30) days or longer shall be conclusively determined to be abandoned and as such the owner may dispose of said property in any manner which he deems reasonable and proper without liability to the occupant or any other interested party; however, before the property is disposed of, the owner shall provide written notice to the occupant, by certified mail with return receipt requested, and the owner may dispose of the property fifteen (15) days after the owner receives the return receipt document or fifteen (15) days after the owner receives a communication from the United States Post Office that the written notice was not claimed by the addressee, whichever period occurs first.

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

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

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

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

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

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

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

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

C. Any person who willfully violates the provisions of this section, upon conviction thereof by a district court, shall be guilty of a misdemeanor. In addition to the punishment prescribed by this subsection, the reseller is liable in treble damages to the lessee injured, said damages to be recovered in a civil action by

the consumer so injured. Treble damages shall be based on the total amount to be paid to the reseller by the lessee for each bill which exceeds the authorized percentage pursuant to this section.

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

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

Passed the House of Representatives the 19th day of May, 1999.

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Speaker of the House of Representatives

Passed the Senate the 19th day of May, 1999.

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President of the Senate