

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1165

By: Phillips

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7 COMMITTEE SUBSTITUTE

8 An Act relating to landlord and tenant; amending 41  
9 O.S. 1991, Sections 51 and 130, as amended by Section  
10 5, Chapter 149, O.S.L. 1995 (41 O.S. Supp. 1998,  
11 Section 130), which relate to leases of certain  
12 property; modifying definitions; providing for  
13 inapplicability of certain provisions to persons  
14 defined pursuant to the Self-Service Storage Facility  
15 Lien Act; modifying procedures for disposition of  
16 certain personal property; amending Section 7,  
17 Chapter 306, O.S.L. 1998 (42 O.S. Supp. 1998, Section  
18 197), which relates to the Self-Service Storage  
19 Facility Lien Act; modifying required contents for  
20 certain notice and advertisement; and providing an  
21 effective date.

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

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

25 Section 51. As used in this act:

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

29 2. "Nonresidential rental property" means any land or building  
30 which is rented or leased to a tenant for other than residential  
31 purposes and the rental agreement of which is not regulated under  
32 the provisions of the Oklahoma Residential Landlord and Tenant Act,  
33 Section 101 et seq. of Title 41 of the Oklahoma Statutes or the  
34 Self-Service Storage Facility Lien Act, Section 191 et seq. of Title  
35 42 of the Oklahoma Statutes; and

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

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

4 Section 130. A. If the tenant abandons or surrenders  
5 possession of the dwelling unit or has been lawfully removed from  
6 the premises through eviction proceedings and leaves household  
7 goods, furnishings, fixtures, or any other personal property in the  
8 dwelling unit, the landlord may take possession of the property, and  
9 if, in the judgment of the landlord, the property has no  
10 ascertainable or apparent value, the landlord may dispose of the  
11 property without any duty of accounting or any liability to any  
12 party. ~~Any property~~

13 B. If the tenant abandons or surrenders possession of the  
14 dwelling unit or has been lawfully removed from the premises through  
15 eviction proceedings and leaves household goods, furnishings,  
16 fixtures, or any other personal property in the dwelling unit, the  
17 landlord may take possession of the property, and if, in the  
18 judgment of the landlord the property has an ascertainable or  
19 apparent value, such property left with the landlord for a period of  
20 thirty (30) days or longer shall be conclusively determined to be  
21 abandoned and as such the landlord may dispose of said property in  
22 any manner which he deems reasonable and proper without liability to  
23 the tenant or any other interested party. ~~In any such case, the~~  
24 ~~landlord has the option of complying with the provisions of~~  
25 ~~subsection B of this section.~~

26 ~~B. If the tenant abandons or surrenders possession of the~~  
27 ~~dwelling unit or has been lawfully removed from the premises through~~  
28 ~~eviction proceedings and leaves household goods, furnishings,~~  
29 ~~fixtures, or any other personal property of an ascertainable or~~  
30 ~~apparent value in the dwelling unit including property classified as~~  
31 ~~exempt from a landlord's lien pursuant to Section 133 of this title,~~  
32 ~~the landlord may take possession of the property and give notice to~~

1 ~~the tenant, demanding that the property be removed within the dates~~  
2 ~~set out in the notice but not less than fifteen (15) days after~~  
3 ~~delivery or mailing of such notice, and that if the property is not~~  
4 ~~removed within the time specified in the notice, the landlord may~~  
5 ~~sell the property at a public sale. The landlord may dispose of~~  
6 ~~perishable commodities in any manner the landlord considers fit.~~  
7 ~~Payment by the tenant of all outstanding rent, damages, storage~~  
8 ~~fees, court costs and attorneys' fees shall be a prerequisite to the~~  
9 ~~return of the personal property. For purposes of this section,~~  
10 ~~notice sent by certified mail to the tenant's last-known address~~  
11 ~~with forwarding requested shall be deemed sufficient notice.~~

12 C. ~~After notice is given as provided in subsection B of this~~  
13 ~~section, the~~ The landlord shall store all personal property of the  
14 tenant in a place of safekeeping and shall exercise reasonable care  
15 of the property. The landlord shall not be responsible to the  
16 tenant for any loss not caused by the landlord's deliberate or  
17 negligent act. The landlord may elect to store the property in the  
18 dwelling unit that was abandoned or surrendered by the tenant, in  
19 which event the storage cost may not exceed the fair rental value of  
20 the premises. If the tenant's property is removed to a commercial  
21 storage company, the storage cost shall include the actual charge  
22 for the storage and removal from the premises to the place of  
23 storage.

24 D. ~~If the tenant makes timely response in writing of an~~  
25 ~~intention to remove the personal property from the premises and does~~  
26 ~~not do so within the later of the time specified in the notice~~  
27 ~~provided for in subsection B of this section or within fifteen (15)~~  
28 ~~days of the delivery or mailing of the tenant's written response, it~~  
29 ~~shall be conclusively presumed that the tenant abandoned the~~  
30 ~~property.~~ If the tenant removes the personal property within the  
31 time limitations provided in this ~~subsection~~ section, the landlord  
32 is entitled to the cost of storage for the period during which the

1 property remained in the landlord's safekeeping plus all other costs  
2 that accrued under the rental agreement.

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

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

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

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

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

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

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

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

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

7       SECTION 3.       AMENDATORY       Section 7, Chapter 306, O.S.L.  
8 1998 (42 O.S. Supp. 1998, Section 197), is amended to read as  
9 follows:

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

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

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

31       D. The notice shall include:  
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1 1. An itemized statement of the owner's claim showing the sum  
2 due at the time of the notice and the date when the sum became due;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 M. If the proceeds from sale of the property are less than the  
6 amount required to pay the obligation secured by the lien, the owner  
7 may pursue a deficiency against the tenant. If the proceeds from  
8 sale of the property are more than the amount required to pay the  
9 obligation secured by the owner's lien, the owner shall hold the  
10 excess proceeds for a period of ninety (90) days from the date of  
11 the sale. During this period, any persons, including the tenant,  
12 claiming an interest in the excess proceeds from the sale of the  
13 property shall present adequate proof of their claim to the owner.  
14 After the expiration of the ninety-day period, the owner shall make  
15 such distribution of the excess proceeds as is required based upon  
16 the claims presented. If after making distribution of the proceeds  
17 as prescribed by this subsection there are any remaining proceeds,  
18 the proceeds shall become the property of the owner without further  
19 recourse by the occupant, any lienholder or other person in  
20 interest.

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

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

3 SECTION 4. This act shall become effective November 1, 1999.

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