ENROLLED HOUSE
BILL NO. 2375

By: Roan of the House

and

Crutchfield of the Senate

An Act relating to vessels; amending 47 O.S. 2001, Section 951, which relates to wreckers and towing services; adding definition of vehicle; amending 63 O.S. 2001, Sections 4201 and 4217, which relate to the Oklahoma Boating Safety Regulation Act; adding and deleting definitions; authorizing officer of any law enforcement agency to deem a vessel abandoned; requiring notification of removal of vessels; establishing time periods for certain notices; establishing hearing process for abandoned vessels; authorizing owner or insurer to regain possession of abandoned vessel under certain circumstances; establishing special liens for possession of abandoned property; establishing notice contents; stating how proceeds from sale shall be distributed; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 951, is amended to read as follows:

Section 951. As used in ~~Section~~ Sections 951 ~~et seq.~~ through 964 of this title:

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, 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, or

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;

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

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

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

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

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

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

13. "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 2. AMENDATORY 63 O.S. 2001, Section 4201, is amended to read as follows:

Section 4201. In addition to the terms defined by the Oklahoma Vessel and Motor Registration Act, ~~Section 4002 et seq. of this title,~~ for the purposes of the Oklahoma Boating Safety Regulation Act~~, Section 4201 et seq. of this title~~:

1. ~~"Anchorage area" means a place specifically indicated by the authority in charge of a body of water for anchoring or mooring a vessel;~~

~~2.~~ "Buoy" means an anchored marker for marking a position on the water, or a hazard, shoal or mooring, or any other prohibitive activity area;

~~3.~~ 2. "Capacity plate" means a sign posted in view of the operator's station on a vessel which designates the maximum weight capacity and horsepower restrictions of a vessel for safe operation;

~~4. "Class A vessel" means a vessel which is less than sixteen (16) feet in length;~~

~~5. "Class 1 vessel" means a vessel which is sixteen (16) feet or longer and less than twenty-six (26) feet in length;~~

~~6. "Class 2 vessel" means a vessel which is twenty-six (26) feet or longer and less than forty (40) feet in length;~~

~~7. "Class 3 vessel" means a vessel which is forty (40) feet or longer in length;~~

~~8.~~ 3. "Diver's flag" means a red flag not less than twenty (20) inches by twenty-four (24) inches with a four-inch white stripe running from one upper corner to a diagonal lower corner, and such flag is used to indicate a submerged diver;

~~9.~~ 4. "Emergency vessel" means any law enforcement vessel which is legally authorized to operate in the emergency mode;

~~10.~~ 5. "Law enforcement vessel" means any vessel legally authorized to operate under the color of law;

~~11.~~ 6. "Lienholder" means a person holding a security interest in a vessel, as shown on the vessel title;

7. "Manipulate" means to guide, steer or otherwise control;

~~12.~~ 8. "Marine sewage" means any substance, treated or untreated, that contains any of the waste products of humans or animals or foodstuffs;

~~13.~~ 9. "Marine toilet" means any latrine, head, lavatory or toilet intended to receive marine sewage and which is located on or in any vessel;

~~14.~~ 10. "Operator" means the person who operates, has actual physical control, or has charge of the navigation or use of a vessel;

~~15.~~ 11. "Parasail" means any device which, when airborne, is used or capable of being used for lifting or suspending a person who is being or will be towed by a vessel;

~~16.~~ 12. "Personal flotation device" means only a United States Coast Guard approved flotation device;

~~17.~~ 13. "Personal watercraft" means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, or a vessel which is similar in appearance and operation to a personal watercraft but which is powered by an outboard or propeller driven motor, or a vessel less than sixteen (16) feet in length which travels across the water above or on a cushion of air provided by engines, propellers or other means of propulsion;

~~18. "Reportable boating accident" means an accident, collision or other casualty involving a vessel which results in loss of life, injury sufficient to require first aid or medical attention or actual physical damage to property in excess of Five Hundred Dollars ($500.00);~~

~~19.~~ 14. "Sanctioned event" means any organized event on the waters of this state, including but not limited to regattas, motorboat or other boat races, marine parades, tournaments and exhibitions, which is approved and permitted by an authorizing agency;

~~20.~~ 15. "Under way" means the movement of a vessel whether by mechanical or nonmechanical means which is other than incidental to the force of wind, waves or current; and

~~21.~~ 16. "Wake" means the track of waves left by a vessel or other object moving through the water, and such waves are greater than the natural waves in the immediate area of the vessel, or are cresting and showing white water, or may cause injury or damage to any person or property.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 4217, is amended to read as follows:

Section 4217. A. It shall be unlawful to abandon a vessel on the waters of this state or other public property. Any officer of the Department of Public Safety or any other law enforcement agency shall deem a vessel abandoned and shall have authority to remove or direct the removal of a vessel when found upon any portion of the waters of this state or other public property, if, after a period of forty-eight (48) hours, there is no evidence of an apparent owner who intends to remove the vessel. Any law enforcement officer prior to removing such vessel shall attempt to notify the owner of such

vessel if the vessel has an identification number registered in this state or if the name and address of the owner is attached to such vessel.

B. If such officer has reasonable cause to believe a vessel has been abandoned in a location which would be hazardous to the free flow of traffic or would be highly susceptible to damage from vandalism or other harm, he shall have authority to remove or direct the removal of the vessel immediately. At the time of ordering the removal of an abandoned vessel, the authorizing officer shall also determine the sale value of the vessel and certify that amount on the removal order.

C. Any officer of the Department of Public Safety is hereby authorized to cause to be removed any vessel found upon the waters of this state or any other public property when:

1. Report has been made that such vessel has been stolen or taken without the consent of its owner;

2. The officer has reason to believe the vessel has been abandoned as defined in this section;

3. The person operating or in control of such vessel is arrested for an alleged offense for which the officer is required by law to take the person arrested or summoned before a proper magistrate without unnecessary delay;

4. At the scene of an accident, when the owner or operator is not in a position to take charge of his vessel and direct or request proper removal; or

5. When a vessel and/or motor registration is thirty (30) days past the date of expiration.

Such officer may ensure the safe removal of said vessel by use of a trailer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4217.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any officer who has removed or directed the removal of any vessel, or an authorized person in the employing agency of the officer, shall within seventy-two (72) hours of the removal notify the Department of Public Safety of the removal. The notice of removal shall contain the name and address of the owner, if known, the make, model, vessel identification number, registration number, date stored, place stored and the estimated value. Upon receipt of such notice of removal, the Department of Public Safety shall promptly request the Oklahoma Tax Commission or other appropriate registering jurisdiction to furnish the name and address of the owner of and any lienholder on the vessel and must within five (5) days from receipt of the requested information send a notice to the owner and any lienholder by regular mail, postage prepaid, at the addresses furnished by the Tax Commission or registering jurisdiction, of the location of the vessel. This section shall not be construed to create any civil liability upon the state, any agency of the state or employee thereof for failure to provide notice to the owner or lienholder.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4217.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. After the removal or storage of any abandoned or wrecked vessel at the request of a public agency, the registered or legal owner of the vessel, or their agent, may contest the validity of the removal or storage, by filing a written request for a hearing with the public agency. The written request may be filed before or after the vessel is retrieved from the storage operator. The public agency shall not be required to conduct a hearing if the request is received more than ten (10) days following actual or constructive notice to the owner or driver of the vessel that the vessel has been so removed or stored. A hearing shall be scheduled within seventy-two (72) hours of the request, excluding weekends and holidays. The public agency may authorize its own officer or employee to conduct the hearing, so long as the hearing officer is not the same person who directed the removal or storage of the vessel. The public agency may, with the consent of the person requesting the hearing, schedule the hearing by telephone and conduct the hearing on the merits by telephone conference call.

The hearing officer shall apply the law to the evidence and make a determination whether the vessel removal and storage was justified. If deemed unjustified, the public agency shall bear the cost of hookup and tow mileage, and the operator shall waive all storage costs in such cases as a condition of eligibility to respond to a service call request from a public agency. The vessel owner or agent shall not be charged any type of fee or costs relating to impoundment or storage in such case. If the tow and storage is deemed justified, the owner or agent shall bear the cost of reasonable tow and storage.

B. Failure of either the registered or legal owner, or their agent, to timely request or to timely appear for a scheduled hearing shall satisfy the hearing requirement of this section.

C. The hearing conducted by the public agency pursuant to this section shall not be governed by the Administrative Procedures Act. The owner of a stored vessel may, either in lieu of such hearing or after such hearing, file a petition in the district court of the county wherein the vessel is stored. The district court is vested with original jurisdiction to conduct a de novo hearing and determine the validity of removal and storage.

D. The provisions of this section shall not apply to the removal of vessels pursuant to Section 954A of Title 47 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4217.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

The owner of a vessel or lienholder of the vessel abandoned in violation of Section 4217 of Title 63 of the Oklahoma Statutes, or the owner of any vessel or lienholder of the vessel or insurer of a vessel when the insurer has purchased the vessel as a total loss vessel from the registered owner which shall have been lawfully removed from any waters of this state or other public property may

regain possession of the vessel in accordance with rules of the Department of Public Safety upon payment of the reasonable cost of removal and storage of the vessel. The cost of removal and storage shall be paid to the wrecker or towing service. An operator shall release the vessel from storage upon authorization from the owner, agent or lienholder of the vessel or, in the case of a total loss, the insurer of the vessel where the vessel is to be moved to an insurance pool yard for sale.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4217.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Every person lawfully in possession of an abandoned vessel shall have a special lien thereon for the compensation due from the owner of such abandoned vessel for all expenses incurred.

B. The lien may be foreclosed by a sale of such abandoned vessel upon giving notice and in the following manner. The notice shall contain:

1. The name of the party bringing action and the name of the owner or any person claiming any interest therein;

2. A full description of the vessel, giving all available information as to the make, year, serial number, registration decal number with year and the state from which the registration was issued;

3. A full statement of all the facts;

4. The amount of the claim, giving a full description of the work, labor, storage or any other costs involved; and

5. The date, time and place of the sale.

The notice shall be posted in three public places in the county in which the vessel is to be sold at least ten (10) days before the time specified therein for such sale, and a copy of said notice shall be mailed to the owner and any other person claiming any interest in the abandoned motor vehicle, at their last-known mailing address, by registered mail on the same date of posting said notice.

C. Proceedings for such sale under this section shall not be commenced until ten (10) days after the lien has accrued.

D. A return of such sale shall be made at the time of sale and proof of posting and mailing of the notice of sale of abandoned vessel.

E. The proceeds from the sale of an abandoned vessel made pursuant to subsection B of this section shall be applied in the following order:

1. To the reasonable cost incurred in the sale of the abandoned vessel;

2. To the satisfaction of the special lien provided for in subsection A of this section;

3. To the satisfaction of any indebtedness secured by a subordinate security interest or lien in the vessel; and

4. To the owner if the owner is known, and if the owner or the address of the owner is not known, to the Oklahoma Tax Commission to be remitted to the State Treasurer and deposited in the General Revenue Fund.

SECTION 8. This act shall become effective July 1, 2002.

Passed the House of Representatives the 26th day of February, 2002.

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Presiding Officer of the House of Representatives

Passed the Senate the 9th day of April, 2002.

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Presiding Officer of the Senate