ENROLLED SENATE
BILL NO. 512

By: Smith of the Senate

and

Hastings of the House

An Act relating to liens; amending 42 O.S. 2001, Sections 98 and 180, which relate to lien against manufactured home for storage; modifying certain time periods; modifying effective date of certain notice; providing an effective date.

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

SECTION 1. AMENDATORY 42 O.S. 2001, Section 98, is amended to read as follows:

Section 98. A. 1. Except as otherwise provided by this chapter, any person entitled to a lien pursuant to this chapter shall within ~~sixty (60) days~~ one hundred twenty (120) days after last furnishing of labor, money, material or supplies for the production of, altering or repairing of said personal property, file in the office of the county clerk of the county in which the property is situated a statement in writing verified by oath, showing the amount of labor, money, material or supplies furnished for the producing of, altering or repairing of said personal property, the name of the person for, and by whom labor, money, material or supplies, was furnished.

2. If the person entitled to such lien does not file such statement within the time required by this chapter, such person shall be deemed to have waived his rights thereto.

3. The lien provided for in this chapter shall not attach to any personal property after it has been purchased by an innocent purchaser for value, and has passed into his possession unless the lien shall have been filed with the county clerk of the county before the property was purchased by such purchaser, or he shall have received written notice, from the party entitled to the lien, of his intention to file the same.

B. Immediately upon the receipt of such statement, the county clerk shall enter a record of the same in a book kept for that purpose, to be called the Personal Property Lien Journal, which shall be ruled off into separate columns, with headings as follows: "When filed", "Name of owner", "Name of claimant", "Amount claimed", and "Remarks", and the clerk shall make the proper entry in each column.

SECTION 2. AMENDATORY 42 O.S. 2001, Section 180, is amended to read as follows:

Section 180. A. The owner of real property upon which a manufactured home is located shall have a possessory lien to secure accrued storage or rental charges pursuant to a contract with the owner of the real property and the consumer.

B. Except as provided in this section, any lien or charge against a manufactured home for accrued storage or rental charges on the manufactured home upon the real property on which the manufactured home is or has been located is subordinate to the rights of a creditor with a perfected security interest or lien which is recorded on the document of title issued on the manufactured home.

C. The maximum storage charge which is not subordinated, and which is secured by the possessory lien, is a daily rate equal to one-thirtieth (1/30) of the amount of the monthly payment last paid by the consumer, or if no payment has been made, the payment required pursuant to contract between the owner of the real property and the consumer, beginning on the date determined by this subsection, not to exceed thirty (30) days.

D. That portion of the possessory lien of the owner of the real property occurring after notice under this section shall have priority over a creditor with a perfected security interest ~~ten (10)~~ fifteen (15) days from and after the date the owner of the real property or his agent shall have given the secured creditor notice that the manufactured home is abandoned or voluntarily surrendered by the consumer.

E. For the purposes of this section, a consumer abandons or voluntarily surrenders a manufactured home by:

1. The owner of the real property discovering or being notified of the intention to abandon or surrender; or

2. Failure to pay storage or rental charges when due.

F. Notice required by this section shall be mailed by certified mail, return receipt requested to the secured creditor of record on the document of title and to the mailing address listed therein. Notice by mail shall be effective on the date mailed.

G. Unless the owner of the real property has a possessory lien which has priority pursuant to this section, it shall be unlawful for the owner of the real property to refuse to allow the creditor to repossess and move the manufactured home. In the event that the owner of the real property refuses to allow the creditor to repossess and move the home, then the owner of the real property shall be liable to the creditor for each day that the owner of the real property unlawfully maintains possession of the home, at a daily rate equal to one-thirtieth (1/30) of the monthly payment last paid by the consumer, or if no payment has been made, the payment required pursuant to the contract between the secured creditor and

the consumer. The prevailing party shall be entitled to reasonable attorneys fees and costs.

H. The owner of the real property, pursuant to a possessory lien which has priority pursuant to this section, is entitled to recover the storage charges as set forth in this section. If the owner of the real property is required to retain legal counsel to recover the amounts subject to the possessory lien, such owner is entitled to recover reasonable attorneys fees and court costs incurred.

I. Upon receipt of notice of bankruptcy, the secured creditor shall, within five (5) days after receipt thereof, notify the owner of the real estate by certified mail, return receipt requested, of said bankruptcy. Failure of the secured creditor to notify said owner of the real estate will cause said creditor to be held liable for any storage charges not paid by the trustee in bankruptcy.

SECTION 3. This act shall become effective November 1, 2003.

Passed the Senate the 19th day of May, 2003.

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Presiding Officer of the Senate

Passed the House of Representatives the 29th day of May, 2003.

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Presiding Officer of the House
of Representatives