

SB 1416

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THE STATE SENATE  
Thursday, February 19, 2004

Senate Bill No. 1416

As Amended

SENATE BILL NO. 1416 - By: HELTON of the Senate and McCARTER of the House.

[ liens - providing for notice - modifying rates - providing for fuel surcharge - codification - effective date ]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 91.1 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt by the Oklahoma Tax Commission of written notice from a wrecker operator who claims a wrecker operator's lien or judgment following the abandoned vehicle sale, pursuant to Section 91 of Title 42 of the Oklahoma Statutes, for recovery, towing, or storage of an abandoned vehicle or vessel, upon instructions from any law enforcement agency, the Tax Commission shall place the name of the registered owner of that vehicle or vessel on the list of those persons who may not be issued a license plate or decal for any motor vehicle, to be known as the stop tag issuance list. If the vehicle or vessel is owned jointly by more than one person, the name of each registered owner shall be placed on the list. The notice of wrecker operator's lien or judgment

1 shall be submitted on forms provided by the Tax Commission, which  
2 must include:

3 1. The name, address, and telephone number of the wrecker  
4 operator;

5 2. The name of the registered owner of the vehicle or vessel  
6 and the address to which the wrecker operator provided notice of the  
7 lien to the registered owner;

8 3. A general description of the vehicle or vessel, including  
9 its color, make, model, body style, and year;

10 4. The vehicle identification number (VIN); registration  
11 license plate number, state, and year; decal, state, and year;  
12 vessel registration number; hull identification number; or other  
13 identification number, as applicable;

14 5. The name of the person or the corresponding law enforcement  
15 agency that requested that the vehicle or vessel be recovered,  
16 towed, or stored; and

17 6. The amount of the wrecker operator's lien or judgment, not  
18 to exceed the amount allowed by subsection B of this section.

19 B. The amount of the wrecker operator's lien or judgment for  
20 which the Tax Commission will prevent issuance of a license plate or  
21 decal shall not exceed the amount of the charges for recovery,  
22 towing, and storage of the vehicle or vessel for ten (10) days.  
23 These charges may not exceed the maximum rates imposed by law. This

1 paragraph does not limit the amount of a wrecker operator's lien  
2 claimed or prevent a wrecker operator from seeking civil remedies  
3 for enforcement of the entire amount of the lien, but limits only  
4 that portion of the lien for which the Tax Commission will prevent  
5 issuance of a license plate or revalidation sticker.

6 C. 1. The registered owner of a vehicle or vessel may dispute  
7 a wrecker operator's lien or judgment, by notifying the Tax  
8 Commission of the dispute in writing on forms provided by the Tax  
9 Commission, if at least one of the following applies:

10 a. the registered owner presents a notarized statement  
11 that the vehicle or vessel was sold in a private or  
12 casual sale before the vehicle or vessel was  
13 recovered, towed, or stored, and

14 b. the registered owner presents proof that the vehicle  
15 or vessel was sold to a licensed dealer before the  
16 vehicle or vessel or was recovered, towed or stored.

17 2. a. If the registered owner's dispute of a wrecker  
18 operator's lien or judgment complies with one of the  
19 criteria set forth in paragraph 1 of this subsection,  
20 the Tax Commission shall immediately remove the  
21 registered owner's name from the stop tag issuance  
22 list. If a Transfer Record is on file for the vehicle  
23 at the Oklahoma Tax Commission Motor Vehicle Division,

1 the buyer's name will be placed on the stop tag  
2 issuance list. If the vehicle or vessel is owned  
3 jointly by more than one person, each registered owner  
4 must dispute the wrecker operator's lien or judgment  
5 in order to be removed from the list.

6 b. The Tax Commission shall deny any dispute and maintain  
7 the registered owner's name on the stop tag issuance  
8 list if the wrecker operator has provided the Tax  
9 Commission with a certified copy of the judgment of a  
10 court which orders the registered owner to pay the  
11 wrecker operator's lien or judgment claimed under this  
12 section. In that event, the amount of the wrecker  
13 operator's lien or judgment allowed by subsection B of  
14 this section may be increased to include no more than  
15 Five Hundred Dollars (\$500.00) of the reasonable costs  
16 and attorney's fees incurred in obtaining the  
17 judgment. The Tax Commission's action under this  
18 paragraph is ministerial in nature, shall not be  
19 considered final agency action, and is appealable only  
20 to the district court for the county in which the  
21 vehicle or vessel was ordered removed.

22 3. A person against whom a wrecker operator's lien or judgment  
23 has been imposed may alternatively obtain a discharge of the lien or

1 judgment by filing a petition, challenging the validity of the lien  
2 or judgment or the amount thereof, in the district court of the  
3 county in which the vehicle or vessel was ordered removed. Upon  
4 filing the petition, the person may have his or her name removed  
5 from the stop tag issuance list, upon posting with the court a cash  
6 or surety bond or other adequate security equal to the amount of the  
7 wrecker operator's lien or judgment to ensure the payment of such  
8 lien or judgment in the event he or she does not prevail. Upon the  
9 posting of the bond and the payment of the applicable fee, the clerk  
10 of the court shall issue a certificate notifying the Tax Commission  
11 of the posting of the bond and directing the Tax Commission to  
12 release the wrecker operator's lien or judgment. Upon entry of  
13 final judgment, the court may award damages and costs in favor of  
14 the prevailing party.

15 4. If a person against whom a wrecker operator's lien or  
16 judgment has been imposed does not object to the lien or judgment,  
17 but cannot discharge the lien or judgment by payment because the  
18 wrecker operator has moved or gone out of business, the person may  
19 have his or her name removed from the stop tag issuance list upon  
20 posting with the clerk of court in the county in which the vehicle  
21 or vessel was ordered removed, a cash or surety bond or other  
22 adequate security equal to the amount of the wrecker operator's lien  
23 or judgment. Upon the posting of the bond and the payment of the

1 application fee, the clerk of the court shall issue a certificate  
2 notifying the Tax Commission of the posting of the bond and  
3 directing the department to release the wrecker operator's lien or  
4 judgment. The Tax Commission shall mail to the wrecker operator, at  
5 the address on the lien form, notice that the wrecker operator must  
6 claim the security within sixty (60) days, or the security will be  
7 released back to the person who posted it. At the conclusion of the  
8 sixty (60) days, the Tax Commission shall direct the clerk as to  
9 which party is entitled to payment of the security, less applicable  
10 clerk's fees.

11 5. A wrecker operator's lien expires three (3) years after  
12 filing.

13 D. Upon discharge of the amount of the wrecker operator's lien  
14 or judgment, the wrecker operator must issue a certificate of  
15 discharged wrecker operator lien on forms provided by the Tax  
16 Commission to each registered owner of the vehicle or vessel  
17 attesting that the amount of the wrecker operator's lien or judgment  
18 has been discharged. Upon presentation of the certificate of  
19 discharge by the registered owner, the Tax Commission shall  
20 immediately remove the registered owner's name from the stop tag  
21 issuance list. Issuance of a certificate of discharged wrecker  
22 operator's lien or judgment does not discharge the entire amount of  
23 the wrecker operator's lien or judgment, but only certifies to the

1 Tax Commission that the amount of the wrecker operator's lien or  
2 judgment for which the stop tag issuance is allowed has been  
3 discharged.

4 E. When a wrecker operator files a notice of lien or judgment  
5 under this subsection, the Tax Commission shall charge the wrecker  
6 operator a fee of Two Dollars (\$2.00), which shall be deposited into  
7 the General Revenue Fund established. A service charge of Two  
8 Dollars and fifty-nine cents (\$2.59) shall be collected and retained  
9 by the Tax Commission.

10 F. This section applies only to the annual renewal of a motor  
11 vehicle registration and does not apply to the transfer of a  
12 registration of a motor vehicle sold by a motor vehicle dealer.

13 SECTION 2. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 91.2 of Title 42, unless there  
15 is created a duplication in numbering, reads as follows:

16 Any abandoned vehicle auction performed by a class AA wrecker  
17 shall be exempt from all prior years tag fees, title fees, stop flag  
18 fees, and any other wrecker fees imposed by the state from the prior  
19 ownership of the vehicle. The wrecker operator or buyer of the  
20 abandoned vehicle will be responsible only for fees incurred after  
21 the completion of the abandoned vehicle sale unless the buyer is the  
22 registered vehicle owner prior to the towing of the vehicle, in  
23 which case all fees will be due from the buyer.

1 SECTION 3. AMENDATORY 47 O.S. 2001, Section 953.1, as  
2 amended by Section 3, Chapter 133, O.S.L. 2002 (47 O.S. Supp. 2003,  
3 Section 953.1), is amended to read as follows:

4 Section 953.1 A. The rates and provisions of this section  
5 shall apply only to determine the maximum fees and charges for  
6 wrecker or towing services performed in this state, including  
7 incorporated and unincorporated areas, by a wrecker or towing  
8 service licensed by the Department of Public Safety when that  
9 service appears on the rotation log of the Department or on the  
10 rotation log of any municipality, county or other political  
11 subdivision of this state, and the services performed are at the  
12 request or at the direction of any officer of the Department or of a  
13 municipality, county, or political subdivision. No wrecker or  
14 towing service in the performance of these services shall charge any  
15 fee which exceeds the maximum rates established in this section,  
16 adjusted as provided in subsection H of this section. Such rates  
17 shall be in addition to any other rates, fees or charges authorized  
18 or required by law. Any wrecker or towing service is authorized to  
19 collect from the owner, lienholder, agent or insurer accepting  
20 liability for paying the claim for a vehicle or purchasing the  
21 vehicle as a total loss vehicle from the registered owner of any  
22 towed or stored vehicle, the fee required by Section 904 of this  
23 title.

1           B. When wrecker or towing services are performed as provided in  
2 subsection A of this section:

3           1. Each performance of a wrecker or towing service shall be  
4 recorded by the operator on a bill or invoice as prescribed by rules  
5 of the Department;

6           2. Nothing herein shall limit the right of an operator who has  
7 provided or caused to be provided wrecker or towing services to  
8 require prepayment, in part or in full, or guarantee of payment of  
9 any charges incurred for providing such services;

10          3. This section shall not be construed to require an operator  
11 to charge a fee for the performance of any wrecker or towing  
12 services; and

13          4. The operator is authorized to collect all lawful fees from  
14 the owner, lienholder or agent or insurer accepting liability for  
15 paying the claim for a vehicle or purchasing the vehicle as a total  
16 loss vehicle from the registered owner of the towed vehicle for the  
17 performance of any and all such services. An operator shall release  
18 the vehicle from storage upon authorization from the owner, agent or  
19 lienholder of the vehicle or, in the case of a total loss, the  
20 insurer accepting liability for paying the claim for the vehicle or  
21 purchasing the vehicle where the vehicle is to be moved to an  
22 insurance pool yard for sale.

23          C. Distance rates.

1        1. Rates in this subsection shall apply to the distance the  
2 towed vehicle is transported and shall include services of the  
3 operator of the wrecker vehicle. Hourly rates, as provided in  
4 subsection D of this section, may be applied in lieu of distance  
5 rates. Hourly rates may be applied from the time the wrecker  
6 vehicle is assigned to the service call until the time it is  
7 released from service either upon return to the premises of the  
8 wrecker or towing service or upon being assigned to perform another  
9 wrecker or towing service, whichever occurs first. When the hourly  
10 rate is applied in lieu of distance towing rates, the operator may  
11 not apply the two-hour minimum prescribed in subsection D of this  
12 section nor may hookup or mileage charges, as prescribed in this  
13 section, be applied.

14        Such distance rates shall be computed via the shortest highway  
15 mileage as determined from the latest official Oklahoma Department  
16 of Transportation state highway map, except as follows:

- 17            a. for distances or portions of distances not  
18                    specifically provided for in the governing highway  
19                    map, the actual mileage via the shortest practical  
20                    route will apply,  
21            b. in computing distances, fractions of a mile will be  
22                    retained until the final and full mileage is

1                   determined, at which time any remaining fraction shall  
2                   be increased to the next whole mile,  
3           c.       when, due to circumstances beyond the control of the  
4                   wrecker or towing service, roadway conditions make it  
5                   impractical to travel via the shortest route, distance  
6                   rates shall be computed based on the shortest  
7                   practical route over which the wrecker vehicle and the  
8                   vehicle it is towing can be moved, which route shall  
9                   be noted on the bill or invoice, or  
10           d.       when the wrecker or towing service is performed upon  
11                   any turnpike or toll road, the turnpike or toll road  
12                   mileage shall be used to determine the distance rates  
13                   charged and the turnpike or toll road fees may be  
14                   added to the bill or invoice.

15           2.       Maximum distance rates shall be as follows:

16	Weight of Towed Vehicle	Distance	Rate
17	(In pounds, including	Towed	Per
18	equipment and lading)		Mile
19	Single vehicle: 8,000 or less	25 miles or less	\$2.89
20	Single vehicle: 8,000 or less	Over 25 miles	\$2.34
21	Single vehicle: 8,001 to 12,000	25 miles or less	\$3.28
22	Single vehicle: 8,001 to 12,000	Over 25 miles	\$2.89
23	Single vehicle: 12,001 to 40,000	Any	\$5.60

1	Single vehicle: 40,000 or over	Any	\$6.54
2	Combination of vehicles	Any	\$6.54

3 D. Hourly Rates.

4 1. Rates in this subsection shall apply for the use of a  
5 wrecker vehicle and shall include services of the operator of such  
6 wrecker, except as provided in paragraph 4 of this subsection.  
7 Rates shall apply for all wrecker or towing services performed that  
8 are not otherwise provided for in this section, including, but not  
9 limited to, waiting and standby time, but shall not include the  
10 first fifteen (15) minutes of service following the hookup of a  
11 vehicle when a hookup fee is assessed, as provided in subsection E  
12 of this section.

13 Hourly rates shall apply from the time the vehicle or labor is  
14 assigned to the service call until the time it is released from  
15 service either upon return to the premises of the wrecker or towing  
16 service or upon being assigned to perform another wrecker or towing  
17 service, whichever occurs first. Whenever a wrecker vehicle is used  
18 to tow a vehicle subject to distance rates, as provided in  
19 subsection C of this section, hourly rates shall apply only for the  
20 time such wrecker is used in the performance of services other than  
21 transportation, except when such hourly rates are used in lieu of  
22 such distance rates.

1 As used in this subsection, rates stated per hour apply for  
 2 whole hours and, for fractions of an hour, rates stated per fifteen  
 3 (15) minutes apply for each fifteen (15) minutes or fraction thereof  
 4 over seven and one-half (7 1/2) minutes. However, if the service  
 5 subject to an hourly rate is performed in less than two (2) hours,  
 6 the charge applicable for two (2) hours may be assessed, except as  
 7 provided for in subsection C of this section.

8 2. Maximum hourly rates for wrecker or towing services  
 9 performed for passenger vehicles, when rates for such services are  
 10 not otherwise provided for by law, shall be as follows:

11 Weight of Towed Passenger Vehicle	Rate Per	Rate Per
12 (In pounds)	Hour	15 Minutes
13 Single vehicle: 8,000 or less	<del>\$46.73</del>	<del>\$11.69</del>
	<u>\$60.00</u>	<u>\$15.00</u>
15 Single vehicle: 8,001 to 24,000	<del>\$65.42</del>	<del>\$16.36</del>
	<u>\$80.00</u>	<u>\$20.00</u>
17 Single vehicle: 24,001 to 44,000	<del>\$93.46</del>	<del>\$23.36</del>
	<u>\$120.00</u>	<u>\$30.00</u>
19 Single vehicle: 44,001 or over	<del>\$140.18</del>	<del>\$35.05</del>
	<u>\$180.00</u>	<u>\$45.00</u>
21 Combination of vehicles	<del>\$140.18</del>	<del>\$35.05</del>
	<u>\$180.00</u>	<u>\$45.00</u>

1           3. Maximum hourly rates for all other wrecker or towing  
 2 services, when rates for such other services are not otherwise  
 3 provided for by law, shall be determined based upon the gross  
 4 vehicle weight rating of each wrecker vehicle used as follows:

5 GVWR of Wrecker Vehicle	Rate Per	Rate Per
6 (In pounds)	Hour	15 Minutes
7 8,000 or less	<del>\$46.73</del>	<del>\$11.69</del>
	<u>\$60.00</u>	<u>\$15.00</u>
9 8,001 to 24,000	<del>\$65.42</del>	<del>\$16.36</del>
	<u>\$80.00</u>	<u>\$20.00</u>
11 24,001 to 44,000	<del>\$93.46</del>	<del>\$23.36</del>
	<u>\$120.00</u>	<u>\$30.00</u>
13 44,001 or over	<del>\$140.18</del>	<del>\$35.05</del>
	<u>\$180.00</u>	<u>\$45.00</u>
15 Combination wrecker vehicle		
16 with GVWR of 24,000 or over	<del>\$140.18</del>	<del>\$35.05</del>
	<u>\$180.00</u>	<u>\$45.00</u>

18           4. a. Maximum hourly rates for extra labor shall be ~~Fourteen~~  
 19 ~~Dollars and twenty eight cents (\$14.28)~~ Thirty Dollars  
 20 (\$30.00) per person per hour.

21           b. Maximum hourly rates for skilled or specialized labor  
 22 and/or equipment shall be the actual customary and  
 23 ordinary rates charged for such labor and/or

1 equipment. An industry standard markup is allowed on  
2 fees paid out by wrecker operators to perform tasks  
3 needed for cleanup, movement, and safekeeping and  
4 storage of vehicles towed.

5 E. Hookup Rates.

6 1. Rates in this subsection shall apply to the hookup of a  
7 vehicle to a wrecker vehicle when such hookup is performed in  
8 connection with a wrecker or towing service described in this  
9 section. Such hookup rate shall include the first fifteen (15)  
10 minutes of such service, for which there shall be no additional fee  
11 charged, but shall not include the use of a dolly or rollback  
12 equipment or a combination wrecker vehicle to accomplish such  
13 hookup, for which an additional fee may be charged as provided in  
14 subsection F of this section. Hookup shall include, but not be  
15 limited to, the attachment of a vehicle to or the loading of a  
16 vehicle onto a wrecker vehicle.

17 2. As used in this subsection:

18 a. "day rate" shall mean the rate charged for a hookup  
19 performed by an operator between the hours of 8:00  
20 a.m. to 4:00 p.m., Monday through Friday, but shall  
21 not include any national holiday,

22 b. "night rate" shall mean the rate charged for a hookup  
23 performed by an operator between the hours of 4:00

1 p.m. to 8:00 a.m. of the following day, Monday through  
2 Friday, or any time on Saturday, Sunday or a national  
3 holiday, and

4 c. "national holiday" shall mean New Year's Day, Martin  
5 Luther King Day, George Washington's Birthday, on the  
6 third Monday in February, Memorial Day, Independence  
7 Day, Labor Day, Veterans Day, Thanksgiving Day and  
8 Christmas Day, and shall further include the Friday  
9 before such national holiday which falls on a Saturday  
10 and the Monday following such national holiday which  
11 falls on a Sunday.

12 3. Maximum hookup rates shall be as follows:

13 Weight of Vehicle Being Hooked Up	Day	Night
14 (In pounds, including equipment	Rate	Rate
15 and lading)		
16 Single vehicle: 8,000 or less	\$40.00	\$50.00
17 Single vehicle: 8,001 to 12,000	\$48.00	\$60.00
18 Single vehicle: 12,001 to 24,000	\$60.00	\$70.00
19 Single vehicle: 24,001 or over	\$70.00	\$80.00
20 Combination of vehicles	\$70.00	\$80.00

21 F. Additional Service Rates.

22 1. Rates in this subsection shall apply to the performance of  
23 the following services:

- 1           a.    the disconnection and reconnection of a towed  
2                    vehicle's drive line when necessary to prevent  
3                    mechanical damage to such vehicle,  
4           b.    the removal and replacement of a towed vehicle's axle  
5                    when necessary to prevent mechanical damage to such  
6                    vehicle, or  
7           c.    the use of a dolly or rollback equipment when  
8                    essential to prevent mechanical damage to a towed  
9                    vehicle or when neither end of such vehicle is capable  
10                  of being towed safely while in contact with the  
11                  roadway.

12           2.    Maximum additional service rates shall be as follows:

Weight of Towed	Service Performed		
Vehicle (In pounds, including equipment and lading)	Disconnect Drive Line; Remove Axle	Reconnect Drive Line; Replace Axle	Use of Dolly or Rollback Equipment
	Rate Per Service Performed		
8,000 or less	\$6.88	\$8.25	\$20.90
8,001 to 12,000	\$11.00	\$14.30	\$23.90
	Rate Per 15 Minutes of Service Performed		
12,001 or over	<del>\$13.75</del>	<del>\$13.75</del>	Not applicable
	<u>\$20.00</u>	<u>\$20.00</u>	

1 G. An operator shall be required to provide reasonable  
2 documentation to substantiate all lawful fees charged the owner,  
3 lienholder, agent or insurer paying the claim for the towed vehicle.  
4 Fees for which the operator is being reimbursed or having paid to a  
5 third party, shall include copies of the invoice or other  
6 appropriate documents to substantiate such payment to ~~said~~ such  
7 third party.

8 H. Wrecker fees, including maximum distance, hourly, hookup,  
9 and additional service rates, shall be adjusted weekly by the  
10 Department of Public Safety by adding a fuel surcharge as provided  
11 in this section. The Department shall base the surcharge on the  
12 Department of Energy "weekly retail on-highway diesel prices" for  
13 the "midwest region" using One Dollar (\$1.00) per gallon as the base  
14 price with no fees added. The wrecker fees shall be adjusted to  
15 allow a one-percent increase in fees for every ten-cent increase in  
16 fuel cost.

17 SECTION 4. This act shall become effective November 1, 2004.

18 COMMITTEE REPORT BY: COMMITTEE ON VETERANS, MILITARY AFFAIRS &  
19 PUBLIC SAFETY, dated 2-16-04 - DO PASS, As Amended and Coauthored.