

CS for SB 702

THE STATE SENATE  
Monday, February 24, 2003

Committee Substitute for  
Senate Bill No. 702

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 702 - By: HELTON of the Senate and MADDUX of the House.

[ liens - stating exception - requiring owner to pay debt - suspend driving privileges - all-terrain vehicles - municipal government - adopt certain ordinances - effective date - emergency ]

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

SECTION 1. AMENDATORY 42 O.S. 2001, Section 91, is amended to read as follows:

Section 91. A. 1. Any person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to ~~him~~ such person from the owner for such service;

2. ~~Said~~ The lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice shall contain:

- a. the names of the owner and any other party or parties who may claim any interest in ~~said~~ the property,

- 1           b.    a description of the property to be sold,  
2           c.    the nature of the work, labor or service performed,  
3                 material furnished, and the date thereof,  
4           d.    the time and place of sale, and  
5           e.    the name of the party, agent or attorney foreclosing  
6                 such lien;

7           3.    Such notice shall be posted in three (3) public places in  
8   the county where the property is to be sold at least ten (10) days  
9   before the time therein specified for such sale, and a copy of ~~said~~  
10 the notice shall be mailed to the owner and any other party claiming  
11 any interest in ~~said~~ the property if known, at their last-known post  
12 office address, by registered mail on the day of posting. Any party  
13 who claims any interest in ~~said~~ the property shall include owners of  
14 chattel mortgages and conditional sales contracts as shown by the  
15 records in the office of the county clerk in the county where the  
16 lien is foreclosed;

17           4.    The lienor or any other person may in good faith become a  
18 purchaser of the property sold; ~~and~~

19           5.    Proceedings for foreclosure under this act shall not be  
20 commenced until thirty (30) days after said lien has accrued; and

21           6.    Notwithstanding any other provision of law, proceedings for  
22 foreclosures for the storage of junk vehicles towed and stored  
23 pursuant to Section 955 of Title 47 of the Oklahoma Statutes by

1 Class AA wreckers listed with the Motor Vehicle Division of the  
2 Department of Public Safety, may be commenced five (5) days after  
3 the lien has accrued. For purposes of this paragraph, "junk  
4 vehicles" means any vehicle that is more than ten years old and has  
5 a value of less than of Three Hundred Dollars (\$300.00) pursuant to  
6 the National Automobile Dealers Association Official Used Car Guide  
7 Company adjusting to the condition of the vehicle.

8 B. 1. a. Any person who is induced by means of a check or other  
9 form of written order for immediate payment of money  
10 to deliver up possession of an article of personal  
11 property on which ~~he~~ the person has a special lien  
12 created by subsection A of this section, which check  
13 or other written order is dishonored, or is not paid  
14 when presented, shall have a lien for the amount  
15 thereof upon ~~said~~ the personal property.

16 b. The person claiming such lien shall, within thirty  
17 (30) days from the date of dishonor of ~~said~~ the check  
18 or other written order for payment of money, file in  
19 the office of the county clerk of the county in which  
20 the property is situated a sworn statement that:

21 (1) the check or other written order for immediate  
22 payment of money, copy thereof being attached,  
23 was received for labor, material or supplies for

1 producing or repairing an article of personal  
2 property,  
3 (2) the check or other written order was not paid,  
4 and  
5 (3) the uttering of the check or other written order  
6 constituted the means for inducing ~~him~~ the  
7 person, one possessed of a special lien created  
8 by subsection A of this section upon the  
9 described article of personal property, to  
10 deliver up the said article of personal property.

- 11 2. a. Any person who renders service to the owner of an  
12 article of personal property by furnishing material,  
13 labor, or skill for the protection, improvement,  
14 safekeeping, towing, storage, or carriage to such  
15 property shall have a special lien on such property  
16 pursuant to this section if such property is removed  
17 from ~~his~~ the person's possession, without ~~his~~ such  
18 person's written consent or without payment for such  
19 service.
- 20 b. The person claiming such lien shall, within five (5)  
21 days of such nonauthorized removal, file in the office  
22 of the county clerk of the county in which the  
23 property is located, a sworn statement including:

- 1 (1) that services were rendered on the article of  
2 personal property by the person claiming such  
3 lien,  
4 (2) that the property was in the possession of the  
5 person claiming the lien but such property was  
6 removed without his written consent,  
7 (3) an identifying description of the article of  
8 personal property on which the service was  
9 rendered, and  
10 (4) that the debt for the services rendered on the  
11 article of personal property was not paid.

12 Provided, if the unpaid total amount of the debt  
13 for services rendered on the article of personal  
14 property is unknown, an approximated amount of  
15 the debt due and owing shall be included in the  
16 sworn statement but such approximated debt may be  
17 amended within thirty (30) days of such filing to  
18 reflect the actual amount of the debt due and  
19 owing.

20 3. The enforcement of ~~said~~ the lien shall be within sixty (60)  
21 days after filing ~~said~~ the lien in the manner provided by law for  
22 enforcing the lien of a security agreement and provided that the

1 lien shall not affect the rights of innocent, intervening purchasers  
2 without notice.

3 4. For purposes of this subsection:

4 a. "Possession" includes actual possession and  
5 constructive possession; and

6 b. "Constructive possession" means possession by a person  
7 who, although not in actual possession, does not have  
8 an intention to abandon property, knowingly has both  
9 power and the intention at a given time to exercise  
10 dominion or control over the property, and who holds  
11 claim to such thing by virtue of some legal right.

12 SECTION 2. AMENDATORY 47 O.S. 2001, Section 962, is  
13 amended to read as follows:

14 Section 962. A. Every person legally entitled to compensation  
15 for the removal or storage of any vehicle subject to registration,  
16 which vehicle's removal has been authorized by any public agency,  
17 has a lien on the vehicle, dependent on possession. The lien is  
18 deemed to arise on the date of possession of the vehicle. Any  
19 person perfecting a lien under this section shall foreclose this  
20 lien according to the provisions for sale under Sections 908 through  
21 911 of Title 47 of the Oklahoma Statutes.

22 B. Every owner of such vehicle towed or stored pursuant to  
23 Section 955 of this title shall be responsible for the total amount

1 of the debt for services rendered. If such debt is not paid within  
2 seven (7) days after the owner is sent notice of debt by certified  
3 mail, return receipt requested, by the wrecker, the wrecker may  
4 notify the Department of Public Safety of the unpaid debt. Upon  
5 notification, the Department may suspend driver privileges until  
6 such debt is satisfied.

7 SECTION 3. AMENDATORY 47 O.S. 2001, Section 1151.1, as  
8 amended by Section 2, Chapter 444, O.S.L. 2002 (47 O.S. Supp. 2002,  
9 Section 1151.1), is amended to read as follows:

10 Section 1151.1 A. Notwithstanding any other provision of law,  
11 golf carts or all-terrain vehicles shall not be registered pursuant  
12 to the provisions of the Oklahoma Vehicle License and Registration  
13 Act.

14 B. Except as otherwise provided in this section and pursuant to  
15 the exception provided in subsection E of Section 1151 of this  
16 title, golf carts or all-terrain vehicles shall not be operated on  
17 the highways or turnpikes of the state.

18 C. All-terrain vehicles owned by a city or golf carts may be  
19 operated on city streets if:

20 1. The municipal governing body has adopted an ordinance  
21 governing the operation of golf carts or all-terrain vehicles on  
22 city streets; and

23 2. Operation occurs during daylight hours only.

1 D. Golf carts may be operated on roadways under the following  
2 conditions:

3 1. The board of county commissioners of a county has approved  
4 the location of golf cart traffic on roadways within the county;

5 2. The roadway has a posted speed limit of twenty-five (25)  
6 miles per hour or less;

7 3. The roadway is located in an unincorporated area; and

8 4. Appropriate signage, cautioning motorists of the possibility  
9 of golf cart traffic, is erected by the board of county  
10 commissioners.

11 E. All terrain vehicles, owned by an individual, may be  
12 operated on roadways, including state highways, if the roadway is  
13 within municipal limits and the municipal government has adopted an  
14 ordinance authorizing and governing the operation of all-terrain  
15 vehicles on such roadways.

16 SECTION 4. REPEALER 47 O.S. 2001, Section 1151.1, as  
17 amended by Section 2, Chapter 59, O.S.L. 2002 (47 O.S. Supp. 2002,  
18 Section 1151.1), is hereby repealed.

19 SECTION 5. This act shall become effective July 1, 2003.

20 SECTION 6. It being immediately necessary for the preservation  
21 of the public peace, health and safety, an emergency is hereby  
22 declared to exist, by reason whereof this act shall take effect and  
23 be in full force from and after its passage and approval.

1 COMMITTEE REPORT BY: COMMITTEE ON VETERANS, MILITARY AFFAIRS &  
2 PUBLIC SAFETY, dated 2-17-03 - DO PASS, As Amended and Coauthored.