

ENROLLED HOUSE
BILL NO. 1580

By: Piatt and Lamons of the
House

and

Crutchfield of the Senate

An Act relating to liens; amending 42 O.S. 2001, Section 91, as last amended by Section 1, Chapter 477, O.S.L. 2005 and Section 2, Chapter 477, O.S.L. 2005 (42 O.S. Supp. 2005, Sections 91 and 91A), which relate to liens on personal property; clarifying scope of certain liens; modifying lien procedures; amending Section 1, Chapter 360, O.S.L. 2004 (42 O.S. Supp. 2005, Section 91.1), which relates to abandoned vehicle auctions; expanding exemption for payment of certain fees; amending 42 O.S. 2001, Section 180, as last amended by Section 3 of Enrolled House Bill No. 2361 of the 2nd Session of the 50th Oklahoma Legislature, which relates to liens on manufactured homes; modifying lien procedures; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 42 O.S. 2001, Section 91, as last amended by Section 1, Chapter 477, O.S.L. 2005 (42 O.S. Supp. 2005, Section 91), is amended to read as follows:

Section 91. A. 1. This section applies to every vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer that has a certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, except as otherwise provided in subsection D of this section. This section does not apply to farm equipment as defined in Section 91.2 of this title. The items of personal property to which this section applies are collectively referred to as "Section 91 Personal Property". If personal property is apparently covered both by this section and by Sections 191 through 200 of this title, the procedures set out in this section shall apply instead of Sections 191 through 200.

2. Any person who, while lawfully in possession of an article of personal property other than farm equipment as defined in Section 1 of Enrolled Senate Bill No. 419 of the 1st Session of the 50th Oklahoma Legislature Section 91 Personal Property, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service.

~~2.~~ 3. This special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section.

~~3.~~ 4. Any person claiming the special lien provided in paragraph ~~4~~ 2 of this subsection A of this section shall mail a notice of such lien, no later than ~~thirty (30)~~ sixty (60) days after the first services are rendered, by regular, first class United States mail, and by certified mail, to all interested parties who reside at separate locations. (If services provided are pursuant to a contract primarily for the purpose of storage or rental of space, the beginning date of the sixty-day period provided in the previous sentence shall be the first day of the first period or partial period for which rental or storage charges remain unpaid.) The notice shall be in writing and shall contain, but not be limited to, the following:

- a. a statement that the notice is a notice of a possessory lien,
- b. the complete legal name, physical and mailing address, and telephone number of the claimant,
- c. the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,
- d. a description of the article of personal property and the complete physical and mailing address of the location of the article of personal property,
- e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the amount of the compensation claimed,
- f. a statement by the claimant that the materials, labor or skill furnished ~~were~~, or arrangement for storage or rental of space, was authorized by the owner of the personal property and was in fact provided or performed, or that the property was abandoned by the owner if the claimant did not render any other service, and that storage or rental fees will accrue as allowed by law, and
- g. the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

~~4.~~ No storage charges may be assessed until notice is properly given ~~5.~~ For services rendered or vehicles abandoned on or after November 1, 2005, storage charges or charges for rental of space (unless agreed to by contract as part of an overall transaction or arrangement that was primarily for the purpose of storage of the Section 91 Personal Property or rental of space) may only be assessed beginning with the day that the Notice of Possessory Lien is mailed as evidenced by certified mail. Provided, however, in the case of contractual charges incurred for storage or rental of space

in an overall transaction primarily for the purpose of storage or rental, charges subject to the special lien may only be assessed beginning with a date not more than sixty (60) days prior to the day that the Notice of Possessory Lien is mailed, and shall accrue only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental. The maximum allowable compensation for storage shall not exceed the fees specified pursuant to Section 953.2 of Title 47 of the Oklahoma Statutes.

~~5.~~ 6. The lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice of sale shall contain:

- a. a statement that the notice is a Notice of Sale,
- b. the names ~~and addresses~~ of all interested parties known to the claimant,
- c. a description of the property to be sold,
- d. a notarized statement of the nature of the work, labor or service performed, material furnished, or storage or rental of space, and the date thereof, and the name of the person who authorized the work, labor or service performed, or the storage or rental arrangement, or that the property was abandoned if the claimant did not render any other service,
- e. the date, time and exact physical location of sale, and
- f. the name, complete physical address and telephone number of the party, ~~agent or attorney~~ foreclosing such lien. If the claimant is a business, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

~~6.~~ 7. Such notice of sale shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to all interested parties at their last-known post office address, by regular, first class United States mail and by certified mail on the day of posting. If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located.

~~7.~~ 8. Interested parties shall include all owners of the article of personal property as indicated by the certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person who has a perfected security interest, lien, chattel mortgage, conditional sales contract or having any interest in the article of personal property as shown by the records of the county clerk, by any title document, and of whom the claimant has actual notice.

~~8.~~ 9. Any interested party shall be permitted to inspect and verify the services rendered by the claimant prior to the sale of the article of personal property during normal business hours,

unless the property was abandoned and the claimant did not render any other service.

~~9.~~ 10. The claimant or any other person may in good faith become a purchaser of the property sold.

~~10.~~ 11. Proceedings for foreclosure under this act shall be commenced within thirty (30) days after the ~~notice of lien time has expired~~ Notice of Possessory Lien has been mailed as evidenced by certified mail. The ~~sale date actually sold~~ shall be ~~completed~~ within sixty (60) days from the date of the Notice of Sale as evidenced by certified mail.

~~11. Notwithstanding any other provision of law, proceedings for foreclosures for the storage of junk vehicles towed and stored pursuant to Section 955 of Title 47 of the Oklahoma Statutes by Class AA wreckers listed with the Motor Vehicle Division of the Department of Public Safety, may be commenced five (5) days after the lien has accrued. For purposes of this paragraph, "junk vehicles" means any vehicle that is more than ten (10) years old and has a value of less than Three Hundred Dollars (\$300.00) pursuant to the National Automobile Dealers Association Official Used Car Guide Company adjusting to the condition of the vehicle.~~

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

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

(1) the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, or for other specific property-related services covered by this section,

(2) the check or other written order was not paid, and

(3) the uttering of the check or other written order constituted the means for inducing the person, one possessed of a special lien created by subsection A of this section upon the described article of personal property, to deliver up the said article of personal property.

2. a. Any person who renders service to the owner of an article of personal property by furnishing storage, rental space, material, labor, or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage, or carriage ~~to such property thereof~~ shall have a special lien on such property pursuant to this section if such property is removed

from the person's possession, without such person's written consent or without payment for such service.

b. The person claiming such lien shall, within five (5) days of such nonauthorized removal, file in the office of the county clerk of the county in which the property is located, a sworn statement including:

- (1) that services were rendered on or in relation to the article of personal property by the person claiming such lien,
- (2) that the property was in the possession of the person claiming the lien but such property was removed without his written consent,
- (3) an identifying description of the article of personal property on which the service was rendered, and
- (4) that the debt for the services rendered on or in relation to the article of personal property was not paid. Provided, if the unpaid total amount of the debt for services rendered on or in relation to the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

3. The enforcement of the lien shall be within sixty (60) days after filing the lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice.

4. If a person claiming a special lien pursuant to this section fails to substantially comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be knowingly false or fraudulent, the interested party shall be entitled to treble damages. The prevailing party shall be entitled to all costs, including a reasonable attorney fee.

C. If the person who renders service to the owner of an article of personal property to which this section applies relinquishes or loses possession of the article due to circumstances described in subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of subsection B of this section, the person claiming the lien shall be entitled to possession of the article until the amount due is paid, unless the article is possessed by a person who became a bona fide purchaser. Entitlement to possession shall be in accordance with the following:

1. The claimant may take possession of an article pursuant to this subsection only if the person obligated under the contract for services has signed an acknowledgement of receipt of a notice that the article may be subject to repossession. The notice and acknowledgement pursuant to this subsection shall be:

- a. in writing and separate from the written contract for services, or
- b. printed on the written contract for services, credit agreement or other document which displays the notice in bold-faced, capitalized and underlined type, or is separated from surrounding written material so as to be conspicuous with a separate signature line;

2. The claimant may require the person obligated under the contract for services to pay the costs of repossession as a condition for reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article;

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

4. An article that is repossessed pursuant to this subsection shall be promptly delivered to the location where the services were performed. The article shall remain at the services location at all times until the article is lawfully returned to the record owner or a lienholder or is disposed of pursuant to this section.

D. 1. ~~This section applies only to vehicles required to be registered with~~ If a vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer has a certificate of title issued by the Oklahoma Tax Commission or ~~with~~ by a federally recognized Indian tribe in the State of Oklahoma, but there is no active lien recorded on the certificate of title, Section 91A of this title will apply instead of this section. Likewise, if there is an active lien recorded on the certificate of title but the lien is over fifteen (15) years old and the property is not a manufactured home, Section 91A will apply instead of this section.

2. If personal property that otherwise would be covered by this section has been registered by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, and there is a lien of record but no certificate of title has been issued, Section 91A of this title will apply instead of this section.

3. If personal property otherwise would be covered by this section, but the services were rendered or the property was abandoned prior to November 1, 2005, Section 91A of this title will apply instead of this section.

4. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker operators in their capacity as wrecker operators shall ~~not be exempt from~~ subject to the provisions of this section. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker operators shall be subject to Section 91A of this title.

~~D.~~ E. For purposes of this section:

1. "Possession" includes actual possession and constructive possession; and

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

SECTION 2. AMENDATORY Section 2, Chapter 477, O.S.L. 2005 (42 O.S. Supp. 2005, Section 91A), is amended to read as follows:

Section 91A.

A. 1. a. This section applies to all types of personal property other than:

(1) farm equipment as defined in Section 91.2 of this title, and

(2) "Section 91 Personal Property" as defined in Section 91 of this title.

b. This section applies to any vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer that is excluded from coverage under subsection A of Section 91 of this title because the personal property:

(1) does not have a certificate of title, or

(2) has a certificate of title but does not have an active lien recorded on the certificate of title, or

(3) has a certificate of title that is not issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, or

(4) is otherwise excluded by subsection D of Section 91 of this title.

c. If personal property has a certificate of title, or would be required to have a certificate of title under Oklahoma law, and is apparently covered both by this section and by Sections 191 through 200 of this title, the procedures set out in this section shall apply instead of Sections 191 through 200 of this title. If personal property without a certificate of title and not required to be titled under Oklahoma law is covered both by this section and Sections 191 through 200 of this title, the procedures set out in Sections 191 through 200 of this title shall apply instead of this section.

2. Any person who, while lawfully in possession of an article of personal property ~~other than farm equipment as defined in Section 1 of Enrolled Senate Bill No. 419 of the 1st Session of the 50th Oklahoma Legislature~~ to which this section applies, renders any

service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service. Charges owed under a contract primarily for the purpose of storage or rental of space shall be accrued only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental.

2. ~~3.~~ 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 known party or parties who may claim any interest in the property,
- b. a description of the property to be sold,
- c. the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof,
- d. the time and place of sale, and
- e. the name of the party, agent or attorney foreclosing such lien. If the claimant is a business, then the name of the contact person must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

~~3.~~ 4. a. Such notice shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to the owner and any other party claiming any interest in the property if known, at their last-known post office address, by ~~registered~~ certified mail on the day of posting. If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located. Any

b. In the case of any item of personal property without a certificate of title and not required to be titled under Oklahoma law, a party who claims any interest in the property shall include all owners of the property; any secured party who has an active financing statement on file with the county clerk of Oklahoma County listing one or more owners of the property by legal name as debtors and indicating a collateral description that would include the property; and any other person having any interest in the personal property, of whom the claimant has actual notice.

c. In the case of personal property subject to this section for which a certificate of title has been issued by any jurisdiction, a party who claims any interest in the property shall include all owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed the article

of personal property as indicated by the certificate of title; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person having any interest in the article of personal property, of whom the claimant has actual notice.

- d. When the jurisdiction of titling for a vehicle, all-terrain vehicle, motorcycle, boat, outboard motor, or trailer that is five (5) model years old or newer, or a manufactured home that is fifteen (15) model years old or newer, cannot be determined by ordinary means, the claimant, the agent of the claimant, or the attorney of the claimant, shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction where the vehicle or manufactured home is titled. The Oklahoma Tax Commission Motor Vehicle Division shall, within fourteen (14) days from the date the request is received, provide information as to the jurisdiction where the personal property is titled. If the Oklahoma Tax Commission Motor Vehicle Division is unable to provide the information, it shall provide notice that the record is not available.
- e. When personal property is of a type that Oklahoma law requires to be titled, the owner of record of that property is unknown, and the jurisdiction of titling and owner of record cannot be determined by ordinary means (and also, if applicable, cannot be determined in accordance with the preceding subparagraph), then the special lien may be foreclosed by publication of a legal notice in a legal newspaper in the county where the personal property is located, as defined in Section 106 of Title 25 of the Oklahoma Statutes. Such notice shall include the description of the property by year, make, vehicle identification number (if available from the property), the name of the individual who may be contacted for information, and the telephone number of that person or the address where the vehicle is located. The legal notice shall be published once per week for three (3) consecutive weeks. As soon as circumstances exist as described in the first sentence of this subparagraph, the first date of publication may occur. The first date available for public sale of the vehicle is the day following publication of the final notice. When the owner of record is unknown, the Notice of Sale nevertheless must be completed and mailed to any known interested party by certified mail. For purposes of this paragraph, interested parties shall include all persons described in subparagraph b or subparagraph c of this paragraph, whichever is applicable, with the exception of any owner who is unknown. Except in circumstances described in paragraph 7 of this subsection that provide for a shorter time period, the Notice of Sale shall be posted in three public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and the Notice of Sale shall not be mailed until at least thirty (30) days after said lien has accrued.

~~4.~~ 5. The lienor or any other person may in good faith become a purchaser of the property sold.

~~5.~~ 6. Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after said lien has accrued, except as provided elsewhere in Oklahoma law.

~~6.~~ 7. Notwithstanding any other provision of law, proceedings for foreclosures for the storage of junk vehicles towed and stored pursuant to Section 955 of Title 47 of the Oklahoma Statutes by Class AA wreckers listed with the Motor Vehicle Division of the Department of Public Safety, may be commenced five (5) days after the lien has accrued. For purposes of this paragraph, "junk vehicles" means any vehicle that is more than ten (10) years old ~~and has a value of~~ if the cost of a comparable vehicle would be less than Three Hundred Dollars (\$300.00) pursuant to as quoted in the latest edition of the National Automobile Dealers Association Official Used Car Guide Company or latest monthly edition of any other nationally recognized published guidebook, adjusting to the condition of the vehicle.

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

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

(1) the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, or for other specific property-related services covered by this section,

(2) the check or other written order was not paid, and

(3) the uttering of the check or other written order constituted the means for inducing the person, one possessed of a special lien created by subsection A of this section upon the described article of personal property, to deliver up the said article of personal property.

2. a. Any person who renders service to the owner of an article of personal property by furnishing storage, rental space, material, labor, or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage, or carriage ~~to such property thereof~~ shall have a special lien on such property pursuant to this section if such property is removed from the person's possession, without such person's written consent or without payment for such service.

b. The person claiming such lien shall, within five (5) days of such nonauthorized removal, file in the office of the county clerk of the county in which the property is located, a sworn statement including:

- (1) that services were rendered on or in relation to the article of personal property by the person claiming such lien,
- (2) that the property was in the possession of the person claiming the lien but such property was removed without his written consent,
- (3) an identifying description of the article of personal property on or in relation to which the service was rendered, and
- (4) that the debt for the services rendered on or in relation to the article of personal property was not paid. Provided, if the unpaid total amount of the debt for services rendered on or in relation to the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

3. The enforcement of the lien shall be within sixty (60) days after filing the lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice.

C. If the person who renders service to the owner of an article of personal property to which this section applies relinquishes or loses possession of the article due to circumstances described in subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of subsection B of this section, the person claiming the lien shall be entitled to possession of the article until the amount due is paid, unless the article is possessed by a person who became a bona fide purchaser. Entitlement to possession shall be in accordance with the following:

1. The claimant may take possession of an article pursuant to this subsection only if the person obligated under the contract for services has signed an acknowledgment of receipt of a notice that the article may be subject to repossession. The notice and acknowledgment pursuant to this subsection shall be:

- a. in writing and separate from the written contract for services, or
- b. printed on the written contract for services, credit agreement or other document which displays the notice in bold-faced, capitalized and underlined type, or is separated from surrounding written material so as to be conspicuous with a separate signature line;

2. The claimant may require the person obligated under the contract for services to pay the costs of repossession as a condition for reclaiming the article only to the extent of the

reasonable fair market value of the services required to take possession of the article;

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

4. An article that is repossessed pursuant to this subsection shall be promptly delivered to the location where the services were performed. The article shall remain at the services location at all times until the article is lawfully returned to the record owner or a lienholder or is disposed of pursuant to this section.

D. 1. This section applies ~~to vehicles not required to be registered with~~ if a vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer has a certificate of title issued by the Oklahoma Tax Commission or ~~with~~ by a federally recognized Indian tribe in Oklahoma, but there is no active lien recorded on the certificate of title.

2. This section applies if a vehicle, all-terrain vehicle, motorcycle, boat, outboard motor or trailer has a certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in Oklahoma, and there is an active lien recorded on the certificate of title, but the lien is over fifteen (15) years old.

3. This section applies if personal property to which Section 91 of this title otherwise would apply has been registered by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, and there is a lien of record but no certificate of title has been issued.

4. This section applies if personal property to which Section 91 of this title otherwise would apply has not been registered by either the Oklahoma Tax Commission or a federally recognized Indian tribe in the State of Oklahoma, and no certificate of title has been issued, but there is a lien of record.

5. This section applies to personal property that otherwise would be covered by Section 91 of this title, except that the services were rendered or the property was abandoned prior to November 1, 2005.

6. This section applies to a vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer for which ownership cannot be determined by ordinary means or by the Oklahoma Tax Commission Motor Vehicle Division, as provided in subparagraphs d and e of paragraph 4 of subsection A of this section, as applicable.

7. This section applies to items of personal property that are not required by Oklahoma law to be titled, and that do not have a certificate of title.

8. This section applies to salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes ~~and~~.

9. This section applies to class AA licensed wrecker operators in their capacity as wrecker operators with respect to all vehicles types of personal property, regardless of whether the vehicle is required to be registered with the Oklahoma Tax Commission or with a federally recognized Indian tribe that personal property has a certificate of title.

10. For a vehicle abandoned at a salvage pool, if the cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a salvage title shall not be required.

~~D.~~ E. For purposes of this section:

1. "Possession" includes actual possession and constructive possession; and

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

SECTION 3. AMENDATORY Section 1, Chapter 360, O.S.L. 2004 (42 O.S. Supp. 2005, Section 91.1), is amended to read as follows:

Section 91.1 Any abandoned vehicle auction performed by a class AA wrecker or lien claimant shall be exempt from all prior years' tag fees, title fees, stop flag fees, and any other fees imposed by the state from the prior ownership of the vehicle. The wrecker operator, lien claimant, or buyer of the abandoned vehicle will be responsible only for fees incurred after the completion of the abandoned vehicle sale unless the buyer is the registered vehicle owner prior to the towing or abandonment of the vehicle, in which case all fees will be due from the buyer. Vehicles purchased from a class AA wrecker at an abandoned vehicle auction on which a junk title will be issued, shall be exempt from motor vehicle excise tax.

SECTION 4. AMENDATORY 42 O.S. 2001, Section 180, as last amended by Section 3 of Enrolled House Bill No. 2361 of the 2nd Session of the 50th Oklahoma Legislature, 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 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. Additionally, notice shall also be mailed to the county treasurer and county assessor of the county where the manufactured home is located.~~

~~G. Unless the owner of the real property on which a manufactured home is located has a possessory lien which has with priority pursuant to this section over a creditor having a perfected security interest or a lien recorded on the document of title issued on the manufactured home, it shall be unlawful for the owner of the real property to refuse to allow the secured creditor to repossess and move the manufactured home. ~~In the event that~~ If the owner of the real property refuses to on which a manufactured home is located has a possessory lien pursuant to Section 91 or Section 91A of this title, and a creditor with a perfected security interest in that manufactured home pays to the owner of real property that portion of the possessory lien having priority over the creditor, the owner of the real property must allow the creditor to repossess and move the manufactured home, then. If the owner of the real property refuses to allow the creditor to repossess and move the manufactured home as required by this subsection, that owner of real property shall be liable to the creditor for each day that the owner of the real property unlawfully maintains possession of the manufactured home, at a daily rate equal to one-thirtieth (1/30) of the monthly rental or storage payment last paid by the consumer to the owner of the real property, 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. B. Upon receipt of notice of the bankruptcy of a consumer owning a manufactured home located on real property owned by another person and subject to rental or storage charges, the secured~~

creditor shall, within five (5) days after receipt thereof, ~~notify~~
~~of notice of the bankruptcy, give notice to the owner of the real~~
~~estate by certified mail, return receipt requested, of said~~
~~bankruptcy if the location of the manufactured home is known.~~
~~Failure of~~ If the secured creditor to notify said ~~fails to give~~
~~required notice to the~~ owner of the real estate ~~will cause said,~~ the
creditor ~~to~~ will be ~~held~~ liable for any post-bankruptcy-filing
storage or rental charges not paid by the trustee in bankruptcy.

SECTION 5. This act shall become effective July 1, 2006.

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

Passed the House of Representatives the 18th day of May, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2006.

Presiding Officer of the Senate