

THE STATE SENATE  
Monday, April 10, 2006

ENGROSSED

House Bill No. 1580

As Amended

ENGROSSED HOUSE BILL NO. 1580 - By: PIATT of the House and  
CRUTCHFIELD of the Senate.

[ liens - amending 42 O.S., Sections 91, 91A and 91.1 -  
personal property - abandoned vehicle auctions - effective  
date ]

~~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. Any person who, while lawfully in  
possession of ~~an article of personal property~~ a vehicle described in  
paragraph 1 of subsection C of this section other than farm  
equipment as defined in Section ~~1 of Enrolled Senate Bill No. 419 of~~  
~~the 1st Session of the 50th Oklahoma Legislature~~ 91.2 of this title,  
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 such  
person from the owner for such service.

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

4           3. Any person claiming the special lien provided in paragraph 1  
5 of subsection A of this section shall mail a notice of such lien, no  
6 later than thirty (30) days after the first services are rendered,  
7 by regular, first class United States mail, and by certified mail,  
8 to all interested parties who reside at separate locations. The  
9 notice shall be in writing and shall contain, but not be limited to,  
10 the following:

- 11           a. a statement that the notice is a notice of a  
12                possessory lien,
- 13           b. the complete legal name, physical and mailing address,  
14                and telephone number of the claimant,
- 15           c. the complete legal name, physical and mailing address  
16                of the person who requested that the claimant render  
17                service to the owner by furnishing material, labor or  
18                skill, or the date the property was abandoned if the  
19                claimant did not render any other service,
- 20           d. a description of the article of personal property and  
21                the complete physical and mailing address of the  
22                location of the article of personal property,

- 1 e. an itemized statement describing the date or dates the  
2 labor or services were performed and material  
3 furnished, and the amount of the compensation claimed,  
4 f. a statement by the claimant that the materials, labor  
5 or skill furnished were authorized by the owner of the  
6 personal property and was in fact provided or  
7 performed, or that the property was abandoned by the  
8 owner if the claimant did not render any other  
9 service, and  
10 g. the signature of the claimant which shall be notarized  
11 and, if applicable, the signature of the claimant's  
12 attorney.

13 4. No storage charges may be assessed until notice is properly  
14 given. The maximum allowable compensation for storage shall not  
15 exceed the fees specified pursuant to Section 953.2 of Title 47 of  
16 the Oklahoma Statutes.

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

- 20 a. a statement that the notice is a Notice of Sale,  
21 b. the names and addresses of all interested parties  
22 known to the claimant,  
23 c. a description of the property to be sold,

- 1           d.    a notarized statement of the nature of the work, labor  
2                    or service performed, material furnished, and the date  
3                    thereof, and the name of the person who authorized the  
4                    work, labor or service performed, or that the property  
5                    was abandoned if the claimant did not render any other  
6                    service,
- 7            e.    the date, time and exact physical location of sale,  
8                    and
- 9            f.    the name, complete physical address and telephone  
10                   number of the party, agent or attorney foreclosing  
11                   such lien.

12           6.    Such notice of sale shall be posted in three public places  
13           in the county where the property is to be sold at least ten (10)  
14           days before the time therein specified for such sale, and a copy of  
15           the notice shall be mailed to all interested parties at their last-  
16           known post office address, by regular, first class United States  
17           mail and by certified mail on the day of posting.

18           7.    Interested parties shall include all owners of the article  
19           of personal property and any person who has a perfected security  
20           interest, lien, chattel mortgage, conditional sales contract or any  
21           interest in the article of personal property as shown by the records  
22           of the county clerk, by any title document, and of whom the claimant  
23           has actual notice.

1           8. Any interested party shall be permitted to inspect and  
2 verify the services rendered by the claimant prior to the sale of  
3 the article of personal property during normal business hours,  
4 unless the property was abandoned and the claimant did not render  
5 any other service.

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

8           10. Proceedings for foreclosure under this act shall be  
9 commenced within thirty (30) days after the notice of lien time has  
10 expired. The sale shall be completed within sixty (60) days from  
11 the date of the Notice of Sale.

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

22           B. 1. a. Any person who is induced by means of a check or other  
23 form of written order for immediate payment of money

1 to deliver up possession of an article of personal  
2 property on which the person has a special lien  
3 created by subsection A of this section, which check  
4 or other written order is dishonored, or is not paid  
5 when presented, shall have a lien for the amount  
6 thereof upon the personal property.

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

12 (1) the check or other written order for immediate  
13 payment of money, copy thereof being attached,  
14 was received for labor, material or supplies for  
15 producing or repairing an article of personal  
16 property,

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

19 (3) the uttering of the check or other written order  
20 constituted the means for inducing the person,  
21 one possessed of a special lien created by  
22 subsection A of this section upon the described

1 article of personal property, to deliver up the  
2 said article of personal property.

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

1           (4) that the debt for the services rendered on the  
2           article of personal property was not paid.  
3           Provided, if the unpaid total amount of the debt  
4           for services rendered on the article of personal  
5           property is unknown, an approximated amount of  
6           the debt due and owing shall be included in the  
7           sworn statement but such approximated debt may be  
8           amended within thirty (30) days of such filing to  
9           reflect the actual amount of the debt due and  
10          owing.

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

16          4. If a person claiming a special lien pursuant to this section  
17 fails to substantially comply with any of the requirements of this  
18 section, any interested party may proceed against the person  
19 claiming such lien for all damages arising therefrom, including  
20 conversion, if the article of personal property has been sold. If  
21 the notice or notices required by this section shall be shown to be  
22 knowingly false or fraudulent, the interested party shall be

1 entitled to treble damages. The prevailing party shall be entitled  
2 to all costs, including a reasonable attorney fee.

3 C. 1. This section applies only to vehicles required to be  
4 registered with the Oklahoma Tax Commission or with a federally  
5 recognized Indian tribe.

6 2. Salvage pools as defined in Section 591.2 of Title 47 of the  
7 Oklahoma Statutes and class AA licensed wrecker operators in their  
8 capacity as wrecker operators shall be exempt from the provisions of  
9 this section.

10 D. For purposes of this section:

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

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

18 SECTION 2. AMENDATORY Section 2, Chapter 477, O.S.L.  
19 2005 (42 O.S. Supp. 2005, Section 91A), is amended to read as  
20 follows:

21 Section 91A. A. 1. Any person who, while lawfully in  
22 possession of an article of personal property other than farm  
23 equipment as defined in Section ~~1 of Enrolled Senate Bill No. 419 of~~

1 ~~the 1st Session of the 50th Oklahoma Legislature~~ 91.2 of this title  
2 or a vehicle described in paragraph 1 of subsection C of Section 91  
3 of this title, renders any service to the owner thereof by  
4 furnishing material, labor or skill for the protection, improvement,  
5 safekeeping, towing, storage or carriage thereof, has a special lien  
6 thereon, dependent on possession, for the compensation, if any,  
7 which is due to such person from the owner for such service.

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

- 11           a. the names of the owner and any other party or parties  
12                who may claim any interest in the property,  
13           b. a description of the property to be sold,  
14           c. the nature of the work, labor or service performed,  
15                material furnished, and the date thereof,  
16           d. the time and place of sale, and  
17           e. the name of the party, agent or attorney foreclosing  
18                such lien.

19       3. Such notice shall be posted in three public places in the  
20 county where the property is to be sold at least ten (10) days  
21 before the time therein specified for such sale, and a copy of the  
22 notice shall be mailed to the owner and any other party claiming any  
23 interest in the property if known, at their last-known post office

1 address, by registered mail on the day of posting. Any party who  
2 claims any interest in the property shall include owners of chattel  
3 mortgages and conditional sales contracts as shown by the records in  
4 the office of the county clerk in the county where the lien is  
5 foreclosed.

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

8 5. Proceedings for foreclosure under this act shall not be  
9 commenced until thirty (30) days after said lien has accrued.

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

20 B. 1. a. Any person who is induced by means of a check or other  
21 form of written order for immediate payment of money  
22 to deliver up possession of an article of personal  
23 property on which the person has a special lien

1           created by subsection A of this section, which check  
2           or other written order is dishonored, or is not paid  
3           when presented, shall have a lien for the amount  
4           thereof upon the personal property.

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

10           (1) the check or other written order for immediate  
11           payment of money, copy thereof being attached,  
12           was received for labor, material or supplies for  
13           producing or repairing an article of personal  
14           property,

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

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

1           2.    a.    Any person who renders service to the owner of an  
2                    article of personal property by furnishing material,  
3                    labor, or skill for the protection, improvement,  
4                    safekeeping, towing, storage, or carriage to such  
5                    property shall have a special lien on such property  
6                    pursuant to this section if such property is removed  
7                    from the person's possession, without such person's  
8                    written consent or without payment for such service.

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

13                    (1)   that services were rendered on the article of  
14                    personal property by the person claiming such  
15                    lien,

16                    (2)   that the property was in the possession of the  
17                    person claiming the lien but such property was  
18                    removed without his written consent,

19                    (3)   an identifying description of the article of  
20                    personal property on which the service was  
21                    rendered, and

22                    (4)   that the debt for the services rendered on the  
23                    article of personal property was not paid.

1            Provided, if the unpaid total amount of the debt  
2            for services rendered on the article of personal  
3            property is unknown, an approximated amount of  
4            the debt due and owing shall be included in the  
5            sworn statement but such approximated debt may be  
6            amended within thirty (30) days of such filing to  
7            reflect the actual amount of the debt due and  
8            owing.

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

14          C. 1. This section applies to vehicles not required to be  
15          registered with the Oklahoma Tax Commission or with a federally  
16          recognized Indian tribe.

17          2. This section applies to salvage pools as defined in Section  
18          591.2 of Title 47 of the Oklahoma Statutes and class AA licensed  
19          wrecker operators in their capacity as wrecker operators with  
20          respect to all vehicles, regardless of whether the vehicle is  
21          required to be registered with the Oklahoma Tax Commission or with a  
22          federally recognized Indian tribe.

1       3. This section applies to all articles of personal property,  
2 excluding farm equipment as defined in Section 91.2 of this title  
3 and vehicles described in paragraph 1 of subsection C of Section 91  
4 of this title.

5       D. For purposes of this section:

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

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

13       SECTION 3.       AMENDATORY       Section 1, Chapter 360, O.S.L.  
14 2004 (42 O.S. Supp. 2005, Section 91.1), is amended to read as  
15 follows:

16       Section 91.1 Any abandoned vehicle auction performed by a class  
17 AA wrecker or lien claimant shall be exempt from all prior years'  
18 tag fees, title fees, stop flag fees, and any other fees imposed by  
19 the state from the prior ownership of the vehicle. The wrecker  
20 operator, lien claimant, or buyer of the abandoned vehicle will be  
21 responsible only for fees incurred after the completion of the  
22 abandoned vehicle sale unless the buyer is the registered vehicle

1 owner prior to the towing or abandonment of the vehicle, in which  
2 case all fees will be due from the buyer.

3 SECTION 4. This act shall become effective November 1, 2006.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-4-06 - DO PASS,  
5 As Amended.