

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: S2/26/97 S2/28/97 S3/5/97

## A Bill

HOUSE BILL 1362

5 By: Representative Maddox  
6

### For An Act To Be Entitled

8 "AN ACT TO PROVIDE THAT AN OPERATOR OF A MARINA FACILITY  
9 SHALL HAVE A LIEN ON ALL PROPERTY STORED WITHIN A LEASED  
10 SPACE FOR LEASE OR RENTAL CHARGES AND RELATED CHARGES; AND  
11 FOR OTHER PURPOSES."

### Subtitle

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13  
14 "TO ESTABLISH A MARINA FACILITY  
15 OPERATORS LIEN ON PROPERTY STORED IN  
16 LEASED SPACE FOR BOAT STALL RENTAL  
17 CHARGES AND RELATED CHARGES."  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

#### 21 SECTION 1. Definitions.

22 As used in this subchapter, unless the context otherwise requires:

23 (1) "Marina facility" means any property used for renting or leasing  
24 individual spaces in which the occupants themselves customarily store and  
25 remove their own boat or marina equipment on a self-service basis;

26 (2) 'Rental agreement' means any written agreement between a marina  
27 operator and an occupant that establishes or modifies the terms, conditions,  
28 or rules concerning the use and occupancy of a marina rental space;

29 (3) "Leased space" means the individual boat slip at the marina  
30 facility which is rented to an occupant pursuant to a rental agreement;

31 (4) 'Occupant' means a person or entity entitled to the use of a leased  
32 space at a marina facility under a rental agreement between the person and the  
33 marina operator.

34 (5) "Marina operator" means the owner, operator, lessor, or sublessor  
35 of a marina facility, and agent, or any other person authorized to manage the  
36 facility;

1           (6) (A) "Personal property" means movable property not affixed to the  
2 land;

3           (B) "Personal property" includes, but is not limited to  
4 watercraft, equipment, and goods;

5           (7) "Default" means the failure to perform on time any obligation or  
6 duty set forth in the rental agreement;

7           (8) "Last known address" means that address provided by the occupant in  
8 the rental agreement or the address provided by the occupant in a subsequent  
9 written notice of a change in address;

10           (9) "Net proceeds" as used in Section 6 means the proceeds from the  
11 sale authorized after deduction for expenses incurred by the marina operator  
12 to exercise its rights under this subchapter including, but not limited to  
13 attorneys fees, auctioneers fees, postage, and publication costs, together  
14 with the debt owed by the operator and charges directly related to preserving,  
15 assembling, advertising, and selling under this subchapter.

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17           SECTION 2. Marina operators lien on watercraft and stored property.

18           (a) The operator of a marina facility has a lien on all personal  
19 property stored within each leased space for rent, labor, or other charges and  
20 for expenses reasonably incurred in its sale, as provided in this subchapter.

21           (b) The lien provided for in this section attaches as of the date the  
22 lease or rental payment becomes delinquent and shall be superior to any other  
23 lien or security interest except the following:

24           (1) A lien which is perfected and recorded in Arkansas in the  
25 name of the occupant, either in the county of the occupants last known  
26 address or in the county where the marina facility is located, prior to the  
27 date the lease or rental payment becomes delinquent;

28           (2) Any tax lien; and

29           (3) Any lienholder with a perfected security interest in the  
30 property.

31           (c) Nothing in this subchapter shall be construed to prohibit the  
32 occupant, operator, lienholder, or any other person or entity claiming an  
33 interest in the property stored in the leased space from applying to a court  
34 of competent jurisdiction to determine the validity of the lien or its  
35 priority.

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1 SECTION 3. Notice of lien.

2 The rental agreement shall contain a statement, in bold type, advising  
3 the occupant:

4 (1) of the existence of the lien; and

5 (2) that property stored in the leased space may be sold to satisfy the  
6 lien if the occupant is in default.

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8 SECTION 4. Access to leased space - Care of property.

9 (a) If an occupant is in default, the marina operator may deny the  
10 occupant access to the leased space.

11 (b) (1) Unless the rental agreement specifically provides otherwise  
12 and until a lien sale under this subchapter, the property stored in the leased  
13 space remains vested in the occupant.

14 (2) Entry of the leased space by the marina operator for the  
15 purpose of complying with this subchapter shall not constitute conversion nor  
16 impose any responsibility for the care, custody, and control of any of the  
17 personal property stored.

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19 SECTION 5. Default - Right to sell property.

20 If the occupant is in default for a period of more than forty-five (45)  
21 days, the marina operator may enforce the lien by selling the property stored  
22 in the leased space at a public sale for cash.

23

24 SECTION 6. Sale procedure.

25 (a) Before conducting a sale under Section 5, the marina operator  
26 shall:

27 (1) Notify the occupant in writing of the default. The notice  
28 shall be sent by certified mail, return receipt requested, to the occupant at  
29 the occupant's last known address, and shall include:

30 (A) A statement that the contents of the occupant's leased  
31 space are subject to the marina operator's lien;

32 (B) A statement that the marina operator's claim,  
33 indicating the charges due on the date of the notice, the amount of any  
34 additional charges which shall become due before the date of sale, and the  
35 date those additional charges shall become due;

36 (C) A demand for payment of the charges due within a

1 specified time, not less than fourteen (14) days after the date that the  
2 notice was mailed;

3 (D) A statement that unless that claim is paid within the  
4 time stated, the contents of the occupant's space will be sold at a specified  
5 time and place;

6 (E) The name, street address, and telephone number of the  
7 marina operator or his designated agent, whom the occupant may contact to  
8 respond to the notice; and

9 (F) Designation of the date, time, and place where the  
10 contents will be sold unless the default is remedied prior to sale;

11 (2) Publish one (1) advertisement in a newspaper of general  
12 circulation in the county in which the marina facility is located at least  
13 seven (7) days prior to sale;

14 (3) Contact the circuit clerk in the county where the personal  
15 property is stored to determine the name and address of any holder of liens or  
16 security interests in the personal property being sold. The owner shall  
17 notify by certified mail, return receipt requested, each holder of a lien or  
18 security interest of the time and place of the proposed sale at least ten (10)  
19 days prior to conducting the sale. The owner shall be required to notify the  
20 holder of a lien or security interest only if the lien or security interest is  
21 filed under the name of the occupant.

22 (b) At any time before a sale under this section, the occupant may pay  
23 the amount necessary to satisfy the marina operator's lien and redeem the  
24 occupant's personal property.

25 (c) The sale under this subchapter shall be held at the marina facility  
26 where the personal property is stored.

27 (d) A purchaser in good faith of any personal property sold under this  
28 subchapter takes the property free and clear of any rights of:

29 (1) Persons against whom the lien was valid; and

30 (2) Other lienholders.

31 (e) If the marina operator complies with the provisions of this  
32 subchapter, the marina operator's liability:

33 (1) To the occupant shall be limited to the net proceeds received  
34 from the sale of the personal property; and

35 (2) To other lienholders shall be limited to the net proceeds  
36 received from the sale of any personal property covered by the other liens or

1 the amount owed to such lienholders, whichever is less.

2 (f) The marina operator shall retain a copy of all notices and return  
3 receipts required by subsection (a) of this section for six (6) months  
4 following the date of the lien sale.

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6 SECTION 7. Disposition of sale proceeds.

7 (a) Proceeds from the sale shall be applied to satisfy the lien, and  
8 any surplus shall be disbursed as provided in subsection (b) of this section.

9 (b) If a sale is held under this subchapter, the marina operator shall:

10 (1) Satisfy the lien from the proceeds of the sale;

11 (2) Hold the balance, if any, for delivery on demand to the  
12 occupant or any other recorded lienholders. If demand is not made within two  
13 (2) years after the date of the sale, the surplus shall escheat to the county.

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15 SECTION 8. Notices - Method of delivery.

16 (a) Unless otherwise specifically provided, all notices required by  
17 this subchapter shall be sent by certified mail, return receipt requested.

18 (b) (1) Notices sent to the operator shall be sent to the marina  
19 facility where the occupant's property is stored.

20 (2) Notices to the occupant shall be sent to the occupant at the  
21 occupant's last known address.

22 (3) Notices shall be deemed delivered when deposited with the  
23 United States Postal Service, properly addressed as provided in Section 6(a)  
24 with postage prepaid.

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26 SECTION 9. The provisions of this act shall be applicable only in those  
27 situations in which the rental agreement is between a marina operator and the  
28 occupant.

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30 SECTION 10. All provisions of this act of a general and permanent  
31 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
32 Code Revision Commission shall incorporate the same in the Code.

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34 SECTION 11. If any provision of this act or the application thereof to  
35 any person or circumstance is held invalid, such invalidity shall not affect  
36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this  
2 act are declared to be severable.

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4 SECTION 12. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

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/s/Maddox

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