

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 459 Self-Service Storage Facilities

**SPONSOR(S):** Judiciary Committee; Civil Justice Subcommittee; Caldwell

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Billmeier	Bond
2) Judiciary Committee	17 Y, 0 N, As CS	Billmeier	Havlicak

### SUMMARY ANALYSIS

The Self-storage Facility Act allows an owner to sell personal property in a storage facility if the tenant fails to pay rent for the storage facility. The owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notices must be delivered to the tenant or mailed by certified mail. The bill removes the requirement to use certified mail and allows notices to be provided to the tenant by first-class mail with a certificate of mailing.

This bill also provides that parties to a self-service storage contract may limit remedies for violations of the Self-storage Facility Act and provides that such limitations must be prominently placed in the agreements.

This bill requires the rental agreements contain a provision disclosing whether the applicant is a member of the military.

This bill does not appear to have a fiscal impact on state or local governments. The bill appears to have private party fiscal effects.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background - Notice Requirements**

Sections 83.801- 83.809, F.S., are Florida's "Self-storage Facility Act" (the "Act"). The Act provides remedies for the owners of self-storage facilities<sup>1</sup> or self-contained storage units<sup>2</sup> in the event that tenants do not pay rent. The Act gives the owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.<sup>3</sup> The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.<sup>4</sup>

The owner's lien is enforced as follows:

- The tenant is notified by written notice<sup>5</sup> delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid;
- After the expiration of the time given in the notice, an advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.<sup>6</sup>

In the event of a sale, the owner may satisfy the lien from the proceeds of the sale. The balance, if any, is held by the owner for delivery on demand to the tenant. A notice of any balance must be delivered by the owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.<sup>7</sup>

Current law also requires the owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the owner's lien. The owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.

Current law requires that notices required by s. 83.806, F.S., be sent by certified mail. Certified mail is described by the U.S. Postal Service as follows:

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<sup>1</sup> "Self-service storage facility" is defined by s. 83.803(1), F.S.

<sup>2</sup> "Self-contained storage unit" is defined by s. 83.803(2), F.S.

<sup>3</sup> See s. 83.8055, F.S.

<sup>4</sup> See s. 83.805, F.S.

<sup>5</sup> The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

<sup>6</sup> See s. 83.806, F.S.

<sup>7</sup> See s. 83.806(8), F.S.

With Certified Mail you can be sure your article arrived at its destination with access to online delivery information. When you use Certified Mail, you receive a receipt stamped with the date of mailing. A unique article number allows you to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and a record is maintained by the Post Office.<sup>8</sup>

Currently, the USPS charges \$2.80 for certified mail service in addition to applicable postage for the piece.<sup>9</sup>

Current law requires tenants to provide notice of change of address by delivery or certified mail.

### **Effect of the Bill - Notice Requirements**

This bill provides that all notices required by s. 83.806, F.S., must either be delivered to the tenant or lienholder or mailed by first-class mail, rather than certified mail. A certificate of mailing must be included with the notification if notification is made by mail. A certificate of mailing is described by the United States Postal Service as follows:

A Certificate of Mailing is a receipt that provides evidence of the date that your mail was presented to the Postal Service™ for mailing. It can only be purchased at the time of mailing.<sup>10</sup>

A certificate of mailing costs \$1.15.<sup>11</sup>

This bill allows tenants to provide notice of change of address by first class mail or electronic mail. It removes the requirement that tenants mail notice by certified mail.

### **Background - Limitations on Liability**

In *Muns v. Shurgard Income Properties Fund 16-Ltd. Partnership*,<sup>12</sup> the court considered whether a contract limiting the liability for wrongful foreclosure on the contents of a storage unit was allowed under Florida law. In *Muns*, a tenant claimed to have placed at least \$50,000 worth of goods in a self-storage facility but signed a lease that contained an exculpatory provision limiting damages for wrongful foreclosure for nonpayment of rent to \$250.<sup>13</sup> When the rent became delinquent by \$16, the owner sold the property for a "pittance" but did not comply with the notice requirements of s. 83.806, F.S., so the tenant did not have notice of the sale.<sup>14</sup> The trial court dismissed *Muns*'s claims and the appellate court affirmed. The court did not address arguments that the exculpatory clause was unconscionable<sup>15</sup> and held, in a subsequent case, that a tenant has no private cause of action if an owner fails to comply with s. 83.806, F.S.<sup>16</sup>

### **Effect of the Bill - Limitations on Liability**

This bill provides that the parties to a self-storage lease may create limitations on liability by contract. This bill provides that the Act does not "impair or affect" the rights of parties to create limitations on the value of the property by contract. This bill requires that if a rental agreement contains a provision limiting the value of property stored in the lease space, the provision must be prominently placed in the rental agreement.

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<sup>8</sup> See <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm> (accessed March 10, 2011).

<sup>9</sup> See <http://www.usps.com/prices/extra-services-prices.htm> (accessed March 10, 2011).

<sup>10</sup> See <http://www.usps.com/send/waystosendmail/extraservices/certificateofmailingservice.htm> (accessed April 22, 2011).

<sup>11</sup> See <http://www.usps.com/prices/extra-services-prices.htm> (accessed April 22, 2011).

<sup>12</sup> 682 So.2d 166 (Fla. 4<sup>th</sup> DCA 1996)

<sup>13</sup> See *Muns*, 682 So.2d at 167.

<sup>14</sup> *Id.*

<sup>15</sup> (declining to address arguments that exculpatory clause was unconscionable because the issue was not properly before the court).

<sup>16</sup> See *Shurgard Income Properties Fund 16-Ltd Partnership v. Muns*, 761 So.2d 340 (Fla. 4th DCA 1999).

## **Background - Rental Agreements**

The Servicemembers Civil Relief Act (50 U.S.C. s. 501-596) requires a court order to enforce a lien in certain situations against members of the military. Owners are subject to federal criminal penalties for failing to comply with the Servicemembers Civil Relief Act. Current law does not contain a requirement that applicants for a self-storage lease disclose whether they are in the military. Under current law, the owner of a self-storage facility might not know a renter is in the military and could violate federal law by not obtaining a court order before conducting a sale of the property belonging to a member of the military.

## **Effect of the Bill - Additional Provisions in Rental Agreements**

This bill requires a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as defined in 10 U.S.C. s. 101(a)(5).<sup>17</sup> This provision will give the owner of the facility notice of a renter's military status. This bill does not change the requirements that owners comply with the Servicemembers Civil Relief Act.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 83.803, F.S., relating to the definition of "last known address."

Section 2 amends s. 83.806, F.S., relating to enforcement of liens.

Section 3 amends s. 83.808, F.S., relating to contracts.

Section 4 provides an effective date of July 1, 2011.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Owners of self-service storage facilities and self-contained storage units will save the cost of certified mail service related to notices required by s. 83.806, F.S.

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<sup>17</sup> 10 U.S.C. s. 101(a)(5) provides the definition of "uniformed services" for purposes of the Servicemembers Civil Relief Act. It defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

The Civil Justice Subcommittee considered the bill on April 13, 2011, and adopted an amendment. The amendment removed provisions of the bill relating to the publication of notices in newspapers and added provisions related to the Servicemembers Civil Relief Act. The bill, as amended, was reported favorably as a committee substitute.

The Judiciary Committee considered the bill on April 21, 2011, and adopted an amendment to provide that the parties may create limitations on the value of property stored by contract. The bill, as amended, was reported favorably as a committee substitute. This analysis reflects the Judiciary committee substitute.