

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 720

INTRODUCER: Senator Hutson

SUBJECT: Self-storage Facilities

DATE: February 1, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Maida</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Kraemer</u>	<u>Caldwell</u>	<u>RI</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1174 amends s. 83.806, F.S., relating to enforcement of liens on personal property in self-storage facilities and self-contained storage units. The bill allows for the advertisement of the sale or other disposition of personal property in a self-storage facility or self-contained storage unit to be posted on an online internet website accessible to the public. The bill deletes the requirement for physical posting in three conspicuous places in the neighborhood of the storage facility or unit, if there is no general circulation newspaper in the area of the storage facility or unit.

The bill provides that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property.

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill provides that the storage unit owner is not liable for the vehicle or any damages to it after the vehicle is removed from the unit by a wrecker, tow truck, or car carrier.

The bill provides for a July 1, 2016, effective date.

II. Present Situation:

Self-storage Facility Act

Sections 83.801 to 83.809, F.S., constitute the Self-storage Facility Act (act). Nothing in the act may be construed to impair or affect the rights of parties to create additional rights, duties, and

obligations in a rental agreement, and the provisions of the act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.¹

A self-service storage facility (storage facility) is any real property designed and used for renting or leasing individual storage space to tenants who have access to the space in order to store and remove personal property, but not to use it as a residence.² A storage facility is not a warehouse as used in ch. 677, F.S.,³ and if a storage facility owner issues any warehouse receipt, bill of lading, or other document of title for the stored personal property, the owner and the tenant are subject to the provisions of ch. 677, F.S., and not the provisions of the act.⁴

A self-contained storage unit (unit) is a unit (such as a trailer, box or other shipping container) at least 200 cubic feet in size, which is leased by a tenant primarily for use as storage space and is located at a facility owned or operated by the owner or at a location designated by the tenant.⁵ An owner is defined as an owner, operator, lessor, or sublessor of a storage facility or unit, or his agent or any other person authorized by the owner to manage the facility or to receive rent from a tenant pursuant to a rental agreement for a unit.⁶

Section 83.803(4), F. S., defines tenant as a person or his sublessee, successor, or assign entitled pursuant to a rental agreement to the exclusive use of storage space at a storage facility or in a unit, and s. 83.803(5), F.S., defines rental agreement as any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a storage facility or a unit.

The act addresses liens against the personal property located at a storage facility or in a unit.⁷ An owner of a storage facility or unit (and the owner's heirs, executors, administrators, successors, and assigns) has a lien upon all personal property at a storage facility or in a unit, even if that property is not owned by the tenant, for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to the act.

The lien attaches as of the date that the personal property is brought to the storage facility or the date the tenant takes possession of the unit, and the priority of this lien is the same as a landlord's lien pursuant to s. 83.08, F.S.⁸ In the event of default, the owner must give notice to persons who

¹ Section 83.809, F.S.

² Section 83.803(1), F.S. A history of public self-storage and the consumer protection provided by public notice is provided by the Public Notice Resource Center, *Public Notice in Self-Storage* (2014) (on file with the Committee on Regulated Industries).

³ Chapter 677, F.S., codifies article 7 of the Uniform Commercial Code and governs warehouse receipts, bills of lading, and other documents and procedures relating to goods, storage, and contracts to deliver them.

⁴ *Id.*

⁵ Section 83.803(2), F.S.

⁶ Section 83.803(3), F.S.

⁷ See s. 83.805, F.S.

⁸ The lien rights provided by s. 83.08(2), F.S., are in favor of owners to whom rent may be due, upon the property found upon or off the leased or rented premises, and are superior to any lien acquired subsequent to the bringing of the property onto the leased premises.

have properly documented security interests against the tenant (known as perfected interests against a debtor under the Uniform Commercial Code set forth in chs. 670 to 680, F.S.)⁹

When a tenant does not timely pay rent, the owner may deny access (without any notice) to the property located in the storage facility or unit, beginning five days after the due date.¹⁰ The owner may then pursue legal action, or may proceed without using the courts, if doing so will not create a breach of the peace.¹¹

Section 83.806, F.S., addresses satisfaction of an owner's lien against a tenant lien. A tenant is notified in writing either in person, by electronic mail, or by first-class mail with a certificate of mailing to the tenant's last known address¹² and a copy conspicuously posted at the storage facility or on the unit. If no response, return receipt or delivery confirmation is received from the same last known electronic address of the tenant, notice of the sale must be sent by the owner to the tenant by first-class mail with a certificate of mailing to the tenant's last known address, before proceeding with the sale.¹³

As required by s. 83.806(2), F.S., the notice of the sale shall include:

- An itemized statement of the claim indicating the due date and the amount due;
- The same description, or a reasonably similar description, of the personal property as stated in the rental agreement;
- A demand for payment within a specified time not less than 14 days after delivery of the notice (notice period);
- A conspicuous statement that, unless the claim is paid within the notice period, the personal property will be advertised for sale or other disposition (sale) and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

A notice of sale is presumed delivered when deposited with the United States Postal Service, properly addressed and with prepaid postage.¹⁴ After the expiration of the notice period, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the storage facility or unit is located. A single advertisement and a single sale may be used to dispose of property, even the property is owned by more than one person.¹⁵

Section 83.806(4), F.S., requires that the advertisement of the sale include:

⁹ See *supra* note 5 and s. 671.101, F.S.

¹⁰ Section 83.8055, F.S.

¹¹ *Id.* Section 877.03, F.S., states that a person who commits acts that corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not exceeding \$500.

¹² Section 83.803(6), F.S., provides that the last known address is the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail.

¹³ Section 83.806(1), F.S.

¹⁴ Section 83.806(3), F.S.

¹⁵ Section 83.806(4), F.S.

- A brief and general description of what is believed to constitute the personal property contained in the storage unit, pursuant to the rental agreement;
- The address of the storage facility or unit and the tenant's name; and
- The time, place, and manner of the sale, which may not be sooner than 15 days after the first publication.

If there is no newspaper of general circulation in the area where the facility or unit is located, the advertisement of the sale must be posted at least 10 days before the date of the sale, in at least three conspicuous places in the neighborhood where the facility or unit is located.¹⁶

Section 83.806(5), F.S., states that a sale must be properly noticed and advertised, and conducted in a commercially reasonable manner.¹⁷ Before any sale, the tenant may redeem the property by paying the amount due and the reasonable expenses incurred by the owner in complying with the enforcement procedures required by s. 83.806, F.S. (the compliance expenses).¹⁸ Upon receipt of payment, the owner must return the property to the tenant. If the tenant fails to redeem the property or satisfy the lien and the compliance expenses, the tenant is deemed to have unjustifiably abandoned the storage facility or storage unit, and the owner may resume possession of the premises.¹⁹

Section 83.806(7), F.S., provides that a good faith purchaser of property sold to satisfy a lien for amounts due for rental of a storage facility or unit and for compliance expenses, takes the property free of any claims, except those interests provided for in s. 83.808, F.S., despite any noncompliance by the owner with the enforcement procedures.²⁰

After a sale, if the owner's lien has priority over all other liens in the property, s. 83.806(8), F.S., states:

- The owner may satisfy the lien from the sale proceeds;
- The lien rights of secured lienholders are automatically transferred to the remaining sale proceeds of the sale;
- Any balance must be held by the owner for delivery to the tenant upon demand;
- A notice of any balance must be delivered by the owner to the tenant either in person or by first-class mail with a certificate of mailing to the tenant's last known address; and
- If the tenant does not claim the balance of the proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the balance.

However, if the owner's lien does not have priority over all other liens, s. 83.806(8), F.S., states:

- The sale proceeds must be held for the benefit of the holders of all superior liens;

¹⁶ *Id.*

¹⁷ Section 679.627(2), F.S., states that a disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner and at the current price in any recognized market at the time of disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property.

¹⁸ Section 83.806(6), F.S.

¹⁹ *Id.*

²⁰ Section 83.808, F.S., states that nothing in the act affects liens created by special contract or agreement, or any other lien arising at common law, in equity, or by any state statute or any other lien, other than the lien for charges established in s. 83.805, F.S.

- A notice of the amount of sale proceeds must be delivered by the owner to the tenant or to the secured lienholders either in person or by first-class mail with a certificate of mailing to their last known addresses; and
- If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the proceeds.

Legal and Official Advertisements in Newspapers and on Websites

The requirements for legal notices containing information of a public character or of interest or value to the residents or owners of property, or of interest or value to the general public, are provided in s. 50.011, F.S. When a legal advertisement in a newspaper is directed for any purpose, the intent and meaning of such legislation is that there be publication in a newspaper (qualified newspaper), which must be:

- Printed and published at least once a week, with at least 25 percent of its words in the English language;
- Entered as periodicals matter at a post office in the county where published;
- For sale to the public generally; and
- Available to the public generally.²¹

When any law directs advertisements to be made and there is no qualified newspaper published in the applicable county, the alternative method is posting three copies of the advertisement in three different places in the county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a qualified newspaper is published.²²

Section 50.0211(2), F.S., provides that effective July 1, 2013, each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper, at no additional charge. There must be a link to legal notices on the front page of that website for access to the legal notices without charge. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the website should optimize its online visibility in keeping with the print requirements. The web pages that contain legal notices shall present the legal notices as the dominant subject matter of those pages, and the website shall contain a search function to facilitate searching the legal notices.

Section 50.0211(3), F.S., requires placement of published legal notices by the qualified newspaper on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at www.floridapublicnotices.com. Upon request and without charge, newspapers that publish legal notices shall provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.²³ An error in the notice placed on the

²¹ Section 50.011, F.S.

²² Section 50.021, F.S.

²³ Section 50.0211(4), F.S.

newspaper or statewide website shall be considered a harmless error, and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.²⁴

III. Effect of Proposed Changes:

SB 720 substantially revises the requirements for advertisement and sale of personal property of delinquent tenants by owners of a self-storage facility (owners). Owners may advertise sales in a local newspaper, or may advertise sales in any commercially reasonable manner.²⁵ The advertisement is deemed commercially reasonable if at least three bidders unrelated to the owner and who have no common financial interest with the owner or any other bidder, attend the sale in person or register to bid at an online sale.²⁶

Sales may also be conducted on a public website that regularly conducts personal property auctions, and licensure is not required to post property for sale online. The bill eliminates the requirement that owners post notices in three conspicuous places in the neighborhood of the self-storage facility when there is no newspaper of general circulation published in the area.

The bill provides that when the rental agreement with a tenant limits the value of the property that may be stored in the rented storage space, the stated limit is considered to be the maximum value of the stored property. This provision has the effect of limiting liability of owners for damages to stored property.²⁷ Should a court in Florida interpret a rental agreement as one of adhesion,²⁸ the result may be unfavorable for owners.²⁹

The bill creates two methods for owners to remove vehicles and watercraft when rent and other charges are past due for 60 days. If a vehicle or watercraft is towed away, the self-storage facility or owner no longer has liability for it or for damages to it. Alternatively, if a sale of the vehicle or watercraft is desired to recover unpaid rent, the vehicle or watercraft may be sold under certain conditions, including research with the Florida Department of Highway Safety and Motor Vehicles (department) to identify any lienholders, and written notices by “verified mail”³⁰ to lienholders and the owners of the property that the property may be sold in any commercially reasonable manner, including public auction.

²⁴ Section 50.0211(5), F.S.

²⁵ Section 671.101, F.S., provides that chs. 670-680, F.S., may be cited as Florida’s “Uniform Commercial Code.”

²⁶ The Uniform Commercial Code requires a secured creditor to dispose of a debtor’s property in a commercially reasonable manner. However, the term “commercially reasonable” is not defined in the code. See ss. 679.607-679.615, F.S.; see also Gary D. Spivey, *Uniform Commercial Code: Burden of Proof as to Commercially Reasonable Disposition of Collateral*, 59 A.L.R.3d 369, at s. 2[a] (1974).

²⁷ See *Allied Van Lines, Inc., v. Bratton*, 351 So. 2d 344 (Fla. 1977) (a contract that limited the carrier’s liability to the shipper to \$1.25 per pound was valid).

²⁸ Adhesion contracts are standardized contract forms offered to consumers of goods and services on a “take it or leave it” basis with no realistic opportunity for the consumer to bargain. See, e.g., *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999).

²⁹ *Id.* Whether a contract is one of adhesion is a factor examined by courts in determining a contract’s unconscionability. If a contract is unconscionable, it is unenforceable. See also *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278 (Fla. 1st DCA 2003).

³⁰ The term “verified” mail is used in the bill on line 86. It appears that this is a reference to verification of an electronic mail address, as a substitute for United States Postal Service mail, such as “certified mail, return receipt requested.”

The bill provides a July 1, 2016, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The creation of other methods for self-storage facilities and owners to pursue the sale of personal property, in addition to advertisements in newspapers of general circulation, may impact the revenues of newspapers and improve revenues of those who operate online sales or personal property auctions. If advertising costs for the sale of property are reduced, or proceeds from the sale of property are increased, both self-storage facilities and the affected tenant may benefit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term “tower” is used in the bill on line 77. An amendment should be considered to reference “wrecker,” which is a defined term under s. 320.01(39), F.S.³¹

³¹ Chapter 320, F.S., addresses motor vehicle licenses; s. 320.01(39), F.S., provides that “wrecker” means “any motor vehicle that is used to tow, carry, or otherwise transport motor vehicles and that is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.”

The term “verified” mail is used in the bill on line 86. It appears that this is a reference to verification of an electronic mail address, as a substitute for United States Postal Service mail, such as “certified mail, return receipt requested.”

VIII. Statutes Affected:

This bill substantially amends section 83.806 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
