

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 720

INTRODUCER: Senator Hutson

SUBJECT: Self-storage Facilities

DATE: November 30, 2015      REVISED: 12/02/15

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	<b>Favorable</b>
2.			RI	
3.			FP	

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**I. Summary:**

SB 720 substantially revises the process that the owner of a self-storage facility may advertise and sell the personal property of a delinquent tenant. Under the bill, owners are no longer required to advertise a property sale via a local newspaper; such advertisements may now be posted in any “commercially reasonable manner.” Rather than rely on the courts to determine precisely what “commercially reasonable” means, the bill defines the term itself. If at least three bidders—all of whom are unrelated to the seller—attend the sale or register to bid online at the sale, the advertisement is commercially reasonable. Further, the sale itself may be conducted online.

Beyond altering the advertisement provisions of s. 83.806, F.S., the bill creates additional protections for storage facility owners. Primarily, it provides additional means for storage owners to remove vehicles and watercraft from their property and remain safe from liability. The decision to tow a vehicle or watercraft would create additional space for the owner to rent to other tenants; it may also, however, preclude the sale of that vehicle or watercraft to recover unpaid rent. Thus, as an alternative to towing, a storage facility owner may opt to contact the Florida Department of Highway Safety and Motor Vehicles (“Department”). After contacting the Department to determine the existence of any lienholders of the motor vehicle or watercraft, the owner may, after a written notice and 30 days’ warning, sell the property.

Lastly, the bill provides for a statutorily-defined contract provision interpretation. Any agreed-limit on the value of property storable in the tenant’s storage space is flexible; the limit is, at all times, the maximum value of the property stored in that storage space.

## II. Present Situation:

Self-storage space is governed by the Self-storage Facility Act,<sup>1</sup> contained within Florida's Landlord and Tenant statutory scheme.<sup>2</sup> Under the Act, a tenant<sup>3</sup> leases space from an owner under a rental agreement in order to store personal property.<sup>4</sup> The personal property is subject to a lien—the right to possess property unless or until a debt is paid—held by the owner of the storage facility.<sup>5</sup> This lien attaches to the tenant's property as of the date that the personal property is brought to the facility or, alternatively, as of the date the tenant takes possession of an owner's storage unit.<sup>6</sup>

Should a tenant breach the lease, typically by failing to pay rent, the lien on the tenant's property is activated. Upon the tenant's failure to pay rent, an owner could, for example, deny the tenant's access to his or her property located in the owner's facility.<sup>7</sup> Alternatively, the owner may initiate a sale of the tenant's property to recover amounts owed.<sup>8</sup> The statute imposes a number of requirements on owners during this process, including a mandatory sale advertisement in a newspaper of general circulation in the area where the owner's facility or unit is located.<sup>9</sup> The costs to advertise may vary by newspaper.<sup>10</sup> Nevertheless, a tenant may still redeem his or her property by paying the amount necessary to satisfy the lien.<sup>11</sup>

Notably, these statutory processes are merely additions to, and not the exclusive remedies of, any other contract entered into between a tenant and an owner.<sup>12</sup> In other words, the tenant and owner are free to contract to create additional obligations and duties; the Act simply provides additional remedies, and creates no private cause of action for tenants.<sup>13</sup>

## III. Effect of Proposed Changes

This bill expands the avenues through which the owner of a self-storage facility can advertise and conduct the sale of a delinquent tenant's property.

Under the bill, the owner may advertise the sale of a tenant's property in a "commercially reasonable manner," and the owner is no longer required to advertise in a newspaper. An

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<sup>1</sup> See Part III of chapter 83, F.S.

<sup>2</sup> See generally chapter 83, F.S.

<sup>3</sup> Although the Self-storage Facility Act uses the term "tenant" and is codified in chapter 83, F.S., which governs several types of landlord-tenant relationships, the relationship the Act governs is not that of a typical landlord and tenant relationship. In the context of storage facilities and storage units, there is no real property in the possession of a tenant.

<sup>4</sup> Section 83.803, F.S.

<sup>5</sup> Section 83.805, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 83.8055, F.S.

<sup>8</sup> Section 83.806, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 50.061(3), F.S. Where an established "minimum commercial rate" for a given newspaper exceeds the rates provided by statute, that "minimum" rate may be charged instead. There is no statutory, regulatory, or judicial guidance on what constitutes a fair or legal minimum rate.

<sup>11</sup> *Id.*

<sup>12</sup> Sections 83.808 and 809, F.S.

<sup>13</sup> *Shurgard Income Properties Fund 16—Ltd. Partnership v. Muns*, 761 So. 2d 340 (Fla. 4th DCA 1999).

advertisement is commercially reasonable if it results in at least three independent bidders at a sale.<sup>14</sup> Additionally, lien sales may be conducted on a public website.

With respect to motor vehicles and watercraft, the bill authorizes the owner of a self-storage facility to tow or remove a delinquent tenant's motor vehicle or watercraft and sell the vehicle or watercraft in a commercially reasonable manner after notice to the tenant and other lienholders.

Finally, the bill provides that "[i]f the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space." Although the bill does not explain the purpose of the new provision, this provision may serve to limit the liability of the owner of the self-storage facility for damages to a tenant's property.<sup>15</sup> Since these rental agreement offers are likely those of adhesion,<sup>16</sup> Florida courts may look at them more unfavorably.<sup>17</sup>

The bill takes effect on July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

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<sup>14</sup> The Uniform Commercial Code requires a secured creditor to dispose of a debtor's property in a commercially reasonable manner. However, what is commercially reasonable is not expressly 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.

<sup>15</sup> See *Allied Van Lines, Inc., v. Bratton*, 351 So. 2d 344 (1977) (finding that a contract which limited the carrier's liability to the shipper to \$1.25 per pound was valid).

<sup>16</sup> Adhesion contracts are standardized contract forms offered to consumers of goods and services on a "take it or leave it" basis without affording the consumer a realistic opportunity to bargain. See, e.g., *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999).

<sup>17</sup> *Id.* Whether a contract is one of "adhesion" is a factor courts examine 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).

**B. Private Sector Impact:**

By allowing self-storage facilities to advertise in a “commercially reasonable manner” instead of mandating the use of newspapers to advertise the sale of property, advertising revenues may be shifted from newspapers to other entities. If the bill reduces the costs of advertising the sale of property or increases the revenues from the sale of property, the bill may increase the potential for self-storage facilities to be made whole or result in additional surplus funds to be paid to a tenant.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.