

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 Judiciary

BILL: SB 264

INTRODUCER: Senator Artiles

SUBJECT: Self-storage

DATE: February 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.			RI	
3.			RC	

I. Summary:

SB 264 revises the options available to an owner of a self-storage facility for dealing with a tenant who is delinquent on rent or other expenses.

Current law permits the storage facility to sell the stored property of a delinquent tenant to recover unpaid rent and other expenses. Under the bill, these sales are expressly permitted to occur online

Also, the bill creates a process that a storage facility may use to sell or dispose of a motor vehicle or watercraft of a delinquent tenant once the tenant is 60 days delinquent on rent or other charges. Within this process, one option is to have the item towed. Afterwards, the wrecker operator may sell the item. The other option is to sell the motor vehicle or watercraft at a public auction after the storage facility attempts to provide notice to the vehicle owner or any lienholder of the sale.

However, another process is set forth in the bill for selling or otherwise disposing of a delinquent tenant's property generally. This provision does not expressly state that it pertains to motor vehicles or watercraft, and it does not require a 60-day delay.

Additionally, the bill deems a rental agreement's limit on the value of property stored in a unit to be the maximum value of the property actually stored in the unit. This provision may limit the liability of a storage facility, and avoid a dispute as to the value of the stored items, if the property is wrongfully sold.

Lastly, the bill permits a storage facility to assess a reasonable late fee for the nonpayment of rent. A reasonable late fee, as described in the bill, is \$20 or 20 percent of the monthly rent, whichever is greater. However, the late fee is permitted only if it is set forth in the rental agreement.

II. Present Situation:

The Self-storage Facility Act, codified as ss. 83.801-83.809, F.S., governs self-storage facilities in this state. The basic arrangement contemplated in the Act is a tenant¹ contracting with an owner² of a facility to store the tenant's personal property.³ In this arrangement, the storage facility faces the risk that a tenant will fail to pay rent or other expenses. However, the Act provides the facility with a degree of protection from this risk.

Self-Storage Liens

One component of this protection is a lien held by the storage facility on all tenant property placed in the facility.⁴ The lien attaches as of the date that the property is brought to the facility or as of the date the tenant takes possession of a self-contained unit.⁵

Self-Storage Facility's Recourse as to a Delinquent Tenant

While the statute does not state it expressly, the statute infers that the storage facility may take no action on the lien until the tenant breaches the rental agreement by nonpayment.⁶ When a breach of contract occurs, the storage facility may enforce the lien in two ways. First, the storage may deny access to the tenant's property until the tenant pays what is due.⁷ Also, the storage facility may take the first steps toward selling the tenant's property.⁸

Selling a Delinquent Tenant's Property to Enforce a Lien

Nonetheless, if the storage facility decides to pursue the sale of the tenant's property to enforce the lien, the storage facility must proceed as follows. First, the storage facility must notify the tenant that the lien must be satisfied within 14 days or the storage facility will advertise the property for sale.

After 14 days, the storage facility may advertise the sale of the property. Among other requirements, the statutes require the sale to be advertised at least once a week for two consecutive weeks in a newspaper in general circulation in the facility's area.⁹

As for the sale itself, it may not take place until 15 days after the first advertisement, and must occur in a commercially reasonable manner.¹⁰ But the tenant may redeem the property before the sale by paying the amount due and the reasonable expenses incurred by the storage facility in advertising and arranging the sale.¹¹

¹ Section 83.803(4), F.S.

² See section 83.803(3), F.S., for the broad legal definition of this term.

³ Section 83.803(1), F.S.

⁴ Section 83.805, F.S.

⁵ *Id.* It is unclear if it is the sooner of these two occurrences that triggers the attachment of the lien.

⁶ Note that taking action to enforce the lien is not the only recourse provided in the Act for storage facility faced with a nonpaying tenant. The storage facility may also withhold the tenant's access to the property. See, s. 803.8055, F.S.

⁷ Section 83.8055, F.S.

⁸ Section 83.806, F.S.

⁹ See, s. 83.806(4)(b), F.S., regarding how sales must be advertised if there is no newspaper in the area of the storage facility.

¹⁰ Section 83.806(5), F.S.

¹¹ See, s. 83.806(6), F.S.

Additional Contractual Terms Permitted

The terms of the business relationship between a storage facility and a tenant discussed thus far are set forth in statute. However, the Act permits tenants and storage facilities to enter into contracts containing additional terms.¹² As such, the Act provides a baseline or default set of rights and obligations to govern the storage facility-tenant relationship.

III. Effect of Proposed Changes:

Self-Storage Facility Online Lien Sale

SB 264 revises the options available to a self-storage facility for dealing with a tenant who is delinquent on rent or other expenses.

Current law permits the storage facility to sell the stored property of a delinquent tenant to recover unpaid rent and other expenses. Under the bill, the storage facility is expressly allowed to conduct the sale online. The current statutes do not address whether the sales may occur online.

Disposing of a Delinquent Tenant's Motor Vehicle or Watercraft

New s. 83.806(10), F.S., sets forth two options for disposing of motor vehicles and watercraft belonging to a delinquent tenant.

Towing the Motor Vehicle or Watercraft

One of the storage facility's first options is to have the motor vehicle or watercraft towed. If the storage facility exercises this option, it is not liable for the motor vehicle or watercraft or any damages to them.

Under the statute governing liens by wrecker operators, a wrecker operator, after attempting notice to the vehicle owner, insurer, and lienholders, may sell the vehicle or watercraft.¹³ The proceeds of the sale must then be used to satisfy lienholders after the payment of towing, storage charges, and the costs of the sale.¹⁴ As a result, it appears that a storage facility that disposes of a vehicle by having it towed might recover its lien from the proceeds of the wrecker operator's sale.

Selling the Motor Vehicle or Watercraft

The storage facility's other option for disposing of a delinquent tenant's motor vehicle or watercraft is to sell it. The process for doing so is different from the process for selling all other property.

First, the storage facility must check the Department of Highway Safety and Motor Vehicles' database in an attempt to determine the existence and identity of the owner of the vehicle and other lienholders. If the vehicle is not titled in Florida, the storage facility must pursue to the

¹² See, ss. 83.808(1) and 83.809(1), F.S.

¹³ Section 713.78(6), F.S.

¹⁴ *Id.*

same information from the National Motor Vehicle Information System or a similar database. Once the owner and any lienholders are identified, the storage facility must notify them that, among other things, they have 30 days to satisfy the lien and take possession of the motor vehicle or watercraft. The notice must also state that if the vehicle owner or lienholder does not pay within 30 days, the storage facility may sell the motor vehicle or watercraft.¹⁵

By setting out specific procedures for selling motor vehicles and watercraft, the bill implies that the storage facility is prohibited from disposing of those items in the same way it disposes of other items of delinquent tenant's personal property.¹⁶

Self-Storage Facility Liability Limitation

The bill appears to limit a storage facility's liability for stored property that is lost, stolen, or wrongfully sold. This limitation is set forth in new s. 83.806(9), F.S., which states:

If a 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.

This provision might also mitigate the risk of costly disputes about the value of stored property if property is lost, stolen, or wrongfully sold in a lien sale.¹⁷

Late Fees for Nonpayment of Rent

The bill also permits a storage facility to charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant. Also, the fee may not exceed the greater of \$20 or 20 percent of the monthly rent.¹⁸ Current law does not expressly permit or prohibit a late fee, nor does it limit the amount of the fee.

The bill takes effect July 1, 2017.

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.

¹⁵ New s. 83.806(10), F.S.

¹⁶ *See, Bush v. Holmes*, 919 So. 2d 392, 407 (Fla. 2006) (explaining the principle of construction, "'expressio unius est exclusio alterius,' or 'the expression of one thing implies the exclusion of another.'").

¹⁷ A somewhat similar provision, contained not in statute but in a rental agreement, was upheld in *Muns v. Shugard Income Props. Fund 16 – Ltd. Pshp*, 682 So.2d 166 (Fla. 4th DCA 1996). The provision at issue in that case expressly limited liability to \$250 in the event of a wrongful foreclosure on the tenant's stored property.

¹⁸ New section 83.808(3), F.S. The bill also provides that the late fee is not a penalty.

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 bill expressly states that lien sales by a self-storage facility may be conducted on the Internet. This could increase the use of Internet-based sales by storage facilities, and these sales would likely benefit the website hosting the sales. Additionally, the use of Internet-based sales may increase the number of bidders on items from a delinquent tenant's storage unit and result in higher prices for items sold. As a result, there may be additional funds to pay the storage facility's lien and additional surplus fund for the tenant.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill permits a storage facility to hold a lien sale online. This option, when read together with the rest of s. 83.806(4), F.S., may cause confusion. Current law states that the required advertisement for a lien sale must include the "*place . . . of the sale or other disposition.*"¹⁹ (Emphasis added). The Legislature may wish to amend the bill to clarify whether the advertisement must include the physical address of the facility and unit, the website address, or both.

The bill and its interaction with existing law might be read to describe two different time periods that must expire before a storage facility conducts a lien sale of a delinquent tenant's motor vehicle or watercraft. The procedure set forth in new s. 83.806(10)(b), F.S., prohibits a storage facility from beginning the process of selling a motor vehicle or watercraft until the tenant is 60 days delinquent on rent or other charges. In contrast, existing s. 83.806(4), F.S., which permits lien sales of apparently any item of a delinquent tenant's property, would allow sales to occur within 6 weeks after a delinquency. To prevent confusion, the Legislature may wish to amend the bill to make clear whether the storage facility must wait 60 days before proceeding toward selling a delinquent tenant's motor vehicle or watercraft.

¹⁹ Section 83.806(4)(a)3., F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 83.806 and 83.808 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.
