

**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 Rules

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BILL: CS/CS/SB 264

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Artiles

SUBJECT: Self-storage

DATE: March 31, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<b>Favorable</b>
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 264 revises the options that an owner of a self-storage facility has for recourse against 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, though they may still be conducted in-person, at the storage facility.

Current law specifies the notice and advertising that a storage facility must undertake before it may sell a delinquent tenant's general property. However, the bill imposes an additional requirement when the property is a motor vehicle or a watercraft, namely, a 60-day delay between the date a tenant becomes delinquent and the sale of the watercraft or motor vehicle stored by the tenant. In addition to selling a motor vehicle or watercraft, the bill expressly permits the storage facility to have it towed after the same 60-day delay. Moreover, the storage facility is not liable for the motor vehicle or watercraft after it is towed or for any damage that the item incurs after being towed. The wrecker operator that tows the item may sell it, and the storage facility might satisfy its lien from the sale.

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 tenant<sup>1</sup> contracting with an owner<sup>2</sup> of a facility to store the tenant's personal property.<sup>3</sup> 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 by granting the storage facility a lien on all stored property of a tenant<sup>4</sup> and by authorizing the storage facility to sell the property of a delinquent tenant.<sup>5</sup>

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

The lien that a storage facility has on its tenants' stored property 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.<sup>6</sup>

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.<sup>7</sup> When this breach of contract occurs, the storage facility may enforce the lien in two ways. First, the storage facility may deny access to the tenant's property until the tenant pays what is due.<sup>8</sup> Also, the storage facility may take the first steps toward selling the tenant's property. And the storage facility may later sell the property if the tenant does not pay the amount due before the lien sale occurs.<sup>9</sup>

### ***Selling a Delinquent Tenant's Property to Enforce a Lien***

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.<sup>10</sup>

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<sup>1</sup> Section 83.803(4), F.S.

<sup>2</sup> See s. 83.803(3), F.S., for the broad legal definition of this term.

<sup>3</sup> Section 83.803(1), F.S.

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

<sup>5</sup> See s. 83.806, F.S.

<sup>6</sup> *Id.* It is unclear if it is the sooner of these two occurrences that triggers the attachment of the lien.

<sup>7</sup> Note that taking action to enforce the lien is not the only recourse provided in the Act for a 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.

<sup>8</sup> Section 83.8055, F.S.

<sup>9</sup> Section 83.806, F.S.

<sup>10</sup> 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.

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.”<sup>11</sup> But the tenant may redeem the property before the sale by paying the amount of rent due and the reasonable expenses incurred by the storage facility in advertising and arranging the sale.<sup>12</sup>

### **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.<sup>13</sup> 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**

The bill revises the options that an owner of a self-storage facility has for recourse against 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 these 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 a motor vehicle or watercraft stored by a delinquent tenant. One option is to have the item towed, and the other option is to sell the item at auction. However, before selling the item or having it towed, the storage facility must let 60 days pass from the date the tenant became delinquent.

#### ***Towing the Motor Vehicle or Watercraft***

If a storage facility chooses to have the motor vehicle or watercraft of a delinquent tenant towed, the storage facility has no liability for the item after it is towed or for any damage that occurs to the item after it is towed.

The wrecker operator who tows the motor vehicle or watercraft acquires a lien on the item.<sup>14</sup> And after the wrecker operator attempts to give notice to the vehicle owner, insurer, and lienholders, the wrecker operator may sell the vehicle or watercraft.<sup>15</sup> The proceeds of the sale

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<sup>11</sup> Section 83.806(5), F.S.

<sup>12</sup> *See*, s. 83.806(6), F.S.

<sup>13</sup> *See*, ss. 83.808(1) and 83.809(1), F.S.

<sup>14</sup> Section 713.78(2), F.S.

<sup>15</sup> Section 713.78(6), F.S.

must then be used to satisfy lienholders after the payment of towing, storage charges, and the costs of the sale.<sup>16</sup>

### ***Selling the Motor Vehicle or Watercraft***

A storage facility's other option for disposing of a delinquent tenant's motor vehicle or watercraft is to sell it as it would any other item stored by a delinquent tenant.<sup>17</sup>

### **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 having to engage in costly disputes about the value of stored property if the property is lost, stolen, or wrongfully sold in a lien sale.<sup>18</sup>

### **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.<sup>19</sup> 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:**

None.

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

None.

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<sup>16</sup> *Id.*

<sup>17</sup> Recall, however, that a motor vehicle or watercraft may not be sold until 60 days from the date on which a tenant becomes delinquent, though this 60-day delay is not required before selling other property of a delinquent tenant.

<sup>18</sup> 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.

<sup>19</sup> New s. 83.808(3), F.S. The bill also provides that the late fee is not a penalty.

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 websites that would host these 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 funds for the tenant.

The bill authorizes storage facilities to have a delinquent tenant's motor vehicle or watercraft towed. If the wrecker operator later sells the item, the costs of towing and selling the item are recoverable from the proceeds. Therefore, the bill could impact a delinquent tenant whose motor vehicle or watercraft is disposed of in this manner.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

Current law provides that an advertisement for the sale of a delinquent tenant's stored property must include the "*place . . . of the sale or other disposition.*"<sup>20</sup> (Emphasis added.) The bill does not specify whether the advertisement must include the physical address of the self-service storage facility or the self-contained storage unit, the address of the public website that customarily conducts personal property auctions, or both addresses. 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.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 83.806 and 83.808 of the Florida Statutes.

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<sup>20</sup> See s. 83.806(4)(a)3., F.S.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on March 29, 2017:**

The committee substitute clarifies that a wrecker operator who tows a motor vehicle or watercraft of a delinquent tenant has a lien on the item.

**CS by Judiciary on February 7, 2017:**

The bill specified the way in which a storage facility must attempt to identify any lienholder or owner of a motor vehicle or watercraft stored by a delinquent tenant prior to selling the item. The bill also specified the way in which the storage facility must give notice of the potential sale to any identified lienholder or owner of these items. In contrast, the committee substitute does not specify the way in which storage facilities must perform these tasks.

- B. **Amendments:**

None.