

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2752

By: Hall

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to liens; amending 42 O.S. 2011,
10 Sections 192, 194, 196 and 197, which relate to the
11 Self-Service Storage Facility Lien Act; modifying and
12 expanding definitions; limiting liability and value
13 of damaged property; allowing for reasonable late
14 fees; allowing for the towing of certain vehicles;
15 specifying proper channels to send notice; allowing
16 notice of sales to be published on website in certain
17 circumstances; allowing for online sales of certain
18 property subject to a lien; and providing an
19 effective date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 42 O.S. 2011, Section 192, is
22 amended to read as follows:

23 Section 192. As used in ~~this act~~ the Self-Service Storage
24 Facility Lien Act, unless the context otherwise requires:

1. "Default" means the failure by the occupant to perform in a
timely manner any obligation or duty set forth in this act or the
rental agreement;

1 2. "Last-known address" means that address or electronic mail
2 address provided by the occupant in the latest rental agreement or
3 the address or electronic mail address provided by the occupant in a
4 subsequent written notice of a change of address;

5 3. "Occupant" means a person, or his sublessee, successor, or
6 assign, entitled to the use of the storage space at a self-service
7 storage facility under a rental agreement, to the exclusion of
8 others;

9 4. "Owner" means the owner, operator, lessor, or sublessor of a
10 self-service storage facility, his agent, or any other person
11 authorized by him to manage the facility or to receive rent from an
12 occupant under a rental agreement;

13 5. "Personal property" means movable property not affixed to
14 land and includes, but is not limited to, goods, merchandise, and
15 household items;

16 6. "Rental agreement" means any written agreement or lease
17 which establishes or modifies the terms, conditions, rules, or any
18 other provisions concerning the use and occupancy at a self-service
19 storage facility and which contains a notice stating that all
20 articles stored under the terms of such agreement will be sold or
21 otherwise disposed of if no payment has been received for a
22 continuous thirty-day period; ~~and~~

23 7. "Self-service storage facility" means any real property
24 designed and used for the purpose of renting or leasing individual

1 storage space to occupants who are to have access to such facility
2 for the purpose of storing and removing personal property;

3 8. "Electronic mail" means an electronic message or an
4 executable program or computer file that contains an image of a
5 message that is transmitted between two or more computers or
6 electronic terminals and includes electronic messages that are
7 transmitted within or between computer networks;

8 9. "Sale" means a sale made after public notice and includes
9 but is not limited to a sale at the self-storage facility or a sale
10 conducted online at a publicly accessible website; and

11 10. "Verified mail" means any method of mailing that is offered
12 by the United States Postal Service or private delivery service that
13 provides evidence of mailing.

14 SECTION 2. AMENDATORY 42 O.S. 2011, Section 194, is
15 amended to read as follows:

16 Section 194. A. The duty of care an owner must exercise with
17 respect to personal property located in a self-service storage
18 facility is ordinary care only.

19 B. Each owner of a self-service storage facility shall provide
20 a disclosure in the rental agreement, in conspicuous terms and in a
21 conspicuous manner, that the occupant has a duty to safeguard the
22 personal property located in a self-service storage facility from
23 losses and that the owner has no legal obligation to provide
24 insurance to protect the personal property from loss.

1 C. No owner of a self-service storage facility shall be liable
2 for loss sustained by an occupant as a result of theft committed by
3 a third party provided that ordinary care was exercised.

4 D. If the rental agreement contains a limit on the value of
5 property stored in an occupant's space, such limit shall be deemed
6 to be the maximum value of the stored property and the maximum
7 liability of the owner for any claim for loss of or damage to stored
8 property.

9 SECTION 3. AMENDATORY 42 O.S. 2011, Section 196, is
10 amended to read as follows:

11 Section 196. A. Where a rental agreement, as defined in
12 Section ~~2~~ 192 of this ~~act~~ title, is entered into between the owner
13 and the occupant, the owner of a self-service storage facility and
14 his heirs, executors, administrators, successors, and assigns have a
15 lien upon all personal property located at the self-service storage
16 facility for rent, late fees, labor, or other charges, present or
17 future, in relation to the personal property and for expenses
18 necessary for its preservation or expenses reasonably incurred in
19 its sale or other disposition pursuant to ~~this act~~ the Self-Service
20 Storage Facility Lien Act.

21 B. The lien attaches as of the date the personal property is
22 brought to the self-service storage facility and continues so long
23 as the owner retains possession and until the default is corrected,
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1 or a sale is conducted, or the property is otherwise disposed of to
2 satisfy the lien.

3 C. A facility or unit owner may charge a tenant a reasonable
4 late fee for each period that the tenant does not pay rent due under
5 the rental agreement. The amount of the late fee and the conditions
6 for imposing such a fee shall be stated in the rental agreement or
7 in an addendum to the agreement. For purposes of this subsection, a
8 late fee not to exceed the greater of Twenty Dollars (\$20.00) or
9 twenty percent (20%) of unpaid rent is considered reasonable.

10 D. The rental agreement shall contain a provision directing the
11 occupant to disclose any lienholders with an interest in property
12 that is or will be stored in a self-service storage facility.

13 E. If the personal property is a vehicle, watercraft or trailer
14 and rent and other charges remain unpaid for sixty (60) days, the
15 self-storage owner may have the vehicle, watercraft or trailer towed
16 from the facility. If the vehicle, watercraft or trailer is towed
17 from the self-storage facility, the facility owner shall not be
18 liable for the vehicle, watercraft or trailer or for any damages to
19 the vehicle, watercraft or trailer once the towing company takes
20 possession of the property.

21 SECTION 4. AMENDATORY 42 O.S. 2011, Section 197, is
22 amended to read as follows:

23 Section 197. A. An owner's lien as provided for a claim which
24 has become due may be satisfied as provided by this section. The

1 possessory lien authorized by this section shall be prior to any
2 previously perfected security interest in the personal property
3 pursuant to Section 1-9-333 of Title 12A of the Oklahoma Statutes.

4 B. No enforcement action shall be taken by the owner until the
5 occupant has been in default continuously for a period of thirty
6 (30) days. As used in this subsection, "enforcement action" shall
7 not include actions of the owner taken pursuant to Section ~~5~~ 195 of
8 this ~~act~~ title.

9 C. After the occupant has been in default continuously for a
10 period of thirty (30) days, the owner may begin enforcement action
11 if the occupant has been notified in writing. Said notice shall be
12 delivered in person or sent by ~~certified~~ verified mail ~~return~~
13 ~~receipt requested~~ to the last-known address of the occupant or, if
14 mutually agreed between the owner and occupant in the rental
15 agreement or in an addendum to the rental agreement, by electronic
16 mail. Any lienholder with an interest in the property to be sold or
17 otherwise disposed of, of whom the owner has actual knowledge, shall
18 be included in the notice process ~~as provided in this section~~ via
19 verified mail.

20 D. The notice shall include:

- 21 1. An itemized statement of the owner's claim showing the sum
22 due at the time of the notice and the date when the sum became due;
- 23 2. A brief and general description of the personal property
24 subject to the lien. The description shall be reasonably adequate

1 to permit the person notified to identify such property, except that
2 any container including, but not limited to, a trunk, valise, or box
3 that is locked, fastened, sealed, or tied in a manner which deters
4 immediate access to its contents may be described as such without
5 describing its contents;

6 3. A notification of denial of access to the personal property,
7 if such denial is permitted under the terms of the rental agreement,
8 which notification shall provide the name, street address, and
9 telephone number of the owner or his designated agent whom the
10 occupant may contact to respond to such notification;

11 4. A demand for payment within a specified time not less than
12 fifteen (15) days after delivery of the notice; and

13 5. A conspicuous statement that, unless the claim is paid
14 within the time stated in the notice, the personal property will be
15 advertised for sale or other disposition and will be sold or
16 otherwise disposed of at a specified time and place.

17 E. Any notice made pursuant to this section by verified mail
18 shall be presumed delivered when it is deposited with the United
19 States Postal Service or a private delivery service and properly
20 addressed with postage prepaid. Any notice made pursuant to this
21 section and delivered via electronic mail shall be presumed
22 delivered when it is sent and properly addressed.

23 F. After the expiration of the time given in the notice, an
24 advertisement of the sale or other disposition shall be published

1 once ~~a week for two (2) consecutive weeks~~ in the print or electronic
2 version of a newspaper of general circulation in the county where
3 the self-service storage facility is located.

4 G. The advertisement prescribed by subsection F of this section
5 shall include:

6 1. A brief and general description of the personal property
7 reasonably adequate to permit its identification as provided in
8 paragraph 2 of subsection D of this section, the address of the
9 self-service storage facility and the number, if any, of the space
10 where the personal property is located, and the name of the occupant
11 and his last-known address; or

12 2. The time, place, and manner of the sale or other
13 disposition. The sale or other disposition shall take place not
14 sooner than fifteen (15) days after the ~~first~~ publication; ~~or~~

15 ~~3.—If~~ if there is no newspaper of general circulation in the
16 county where the self-service storage facility is located, the
17 advertisement shall be posted at least ten (10) days before the date
18 of the sale or other disposition in not less than six conspicuous
19 places in the neighborhood where the self-service storage facility
20 is located or on a publicly accessible website that regularly
21 conducts online auctions of personal property.

22 H. Any sale or other disposition of the personal property shall
23 conform to the terms of the notification as provided for in this
24 section.

1 I. Any sale or other disposition of the personal property shall
2 be held online, at the self-service storage facility or at the
3 nearest suitable place to where the personal property is held or
4 stored.

5 J. Before any sale or other disposition of personal property
6 pursuant to this section, the occupant may pay the amount necessary
7 to satisfy the lien and the reasonable expenses incurred under this
8 section and thereby redeem the personal property. Upon receipt of
9 such payment, the owner shall return the personal property, and
10 thereafter the owner shall have no liability to any person with
11 respect to such personal property.

12 K. A purchaser in good faith of the personal property sold to
13 satisfy a lien as provided in this act takes the property free of
14 any rights of persons against whom the lien was valid and free of
15 any rights of a secured creditor, despite noncompliance by the owner
16 with the requirements of this section.

17 L. In the event of a sale under this section, the owner may
18 satisfy his lien from the proceeds of the sale.

19 M. If the proceeds from sale of the property are less than the
20 amount required to pay the obligation secured by the lien, the owner
21 may pursue a deficiency against the tenant. If the proceeds from
22 sale of the property are more than the amount required to pay the
23 obligation secured by the owner's lien, the owner shall hold the
24 excess proceeds for a period of ninety (90) days from the date of

1 the sale. During this period, any persons, including the tenant,
2 claiming an interest in the excess proceeds from the sale of the
3 property shall present adequate proof of their claim to the owner.
4 After the expiration of the ninety-day period, the owner shall make
5 such distribution of the excess proceeds as is required based upon
6 the claims presented. If after making distribution of the proceeds
7 as prescribed by this subsection there are any remaining proceeds,
8 the proceeds shall become the property of the owner without further
9 recourse by the occupant, any lienholder or other person in
10 interest.

11 N. If the requirements of ~~this act~~ the Self-Service Storage
12 Facility Lien Act are not satisfied, if the sale of the personal
13 property is not in conformity with the notice of sale, or if there
14 is a willful violation of this act, nothing in this section affects
15 the rights and liabilities of the owner, the occupant, or any other
16 person.

17 O. Any purchaser of personal property sold pursuant to this
18 section for which a certificate of title has been issued by the
19 Oklahoma Tax Commission shall obtain a certificate of title to be
20 issued in the purchaser's name in the same manner as provided by law
21 for the issuance of a certificate of title for property requiring a
22 certificate of title sold pursuant to the provisions of Sections 91
23 through 102 of ~~Title 42 of the Oklahoma Statutes~~ this title.

SECTION 5. This act shall become effective November 1, 2018.

COMMITTEE REPORT BY: COMMITTEE ON BANKING AND BUSINESS, dated
02/28/2018 - DO PASS, As Amended.