

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1273

By: Leewright

AS INTRODUCED

An Act relating to the Self-Service Storage Facility Lien Act; amending 42 O.S. 2011, Sections 192, 194, 196 and 197, which relate to definitions, duty of care, liens and enforcement; modifying definitions; establishing cap on owner liability under certain circumstances; authorizing late fee for delinquent rental payments; authorizing removal of certain property; prohibiting owner liability after removal of certain property; modifying notice requirements; modifying advertisement requirements; updating statutory language; updating statutory references; and providing an effective date.

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

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

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

1. "Default" means the failure to perform in a timely manner any obligation or duty set forth in ~~this act~~ the Self-Service Storage Facility Lien Act or the rental agreement;

2. "Electronic mail" means an electronic message or an executable program or computer file that contains an image of a

1 message that is transmitted between two or more computers or
2 electronic terminals and includes electronic messages that are
3 transmitted within or between computer networks;

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

8 ~~3.~~ 4. "Occupant" means a person, or his sublessee, successor,
9 or assign, entitled to the use of the storage space at a self-
10 service storage facility under a rental agreement, to the exclusion
11 of others;

12 ~~4.~~ 5. "Owner" means the owner, operator, lessor, or sublessor
13 of a self-service storage facility, his agent, or any other person
14 authorized by him to manage the facility or to receive rent from an
15 occupant under a rental agreement;

16 ~~5.~~ 6. "Personal property" means movable property not affixed to
17 land and includes, but is not limited to, goods, merchandise, and
18 household items;

19 7. "Public sale" means a sale made after public notice and
20 includes, but is not limited to, a sale at the self-service storage
21 facility or a sale conducted online at a publicly accessible
22 website;

23 ~~6.~~ 8. "Rental agreement" means any written agreement or lease
24 which establishes or modifies the terms, conditions, rules, or any

1 other provisions concerning the use and occupancy at a self-service
2 storage facility and which contains a notice stating that all
3 articles stored under the terms of such agreement will be sold or
4 otherwise disposed of if no payment has been received for a
5 continuous thirty-day period; ~~and~~

6 ~~7.~~ 9. "Self-service storage facility" means any real property
7 designed and used for the purpose of renting or leasing individual
8 storage space to occupants who are to have access to such facility
9 for the purpose of storing and removing personal property; and

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

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

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

18 B. Each owner of a self-service storage facility shall provide
19 a disclosure in the rental agreement, in conspicuous terms and in a
20 conspicuous manner, that the occupant has a duty to safeguard the
21 personal property located in a self-service storage facility from
22 losses and that the owner has no legal obligation to provide
23 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 that may be stored in the space rented by the occupant,
6 such limit shall be deemed to be the maximum value of the stored
7 property and shall be the maximum liability of the owner for any
8 claim for loss of or damage to the stored 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 of this act~~ 192 of this title, is entered into between the
13 owner and the occupant, the owner of a self-service storage facility
14 and his heirs, executors, administrators, successors, and assigns
15 have a lien upon all personal property located at the self-service
16 storage facility for rent, 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 an occupant a late fee,
4 not to exceed the greater of Twenty Dollars (\$20.00) or twenty
5 percent (20%) of unpaid rent, for each period that he or she does
6 not pay rent due under the rental agreement. The amount of the late
7 fee and the conditions for imposing such fee shall be stated in the
8 rental agreement or in an addendum to such agreement.

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

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

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

21 Section 197. A. An owner's lien as provided for a claim which
22 has become due may be satisfied as provided by this section. The
23 possessory lien authorized by this section shall be prior to any
24 previously perfected security interest in the personal property

1 pursuant to Section 1-9-333 of Title 12A of the Oklahoma Statutes.
2 This section shall not apply to any vehicle, watercraft or trailer
3 towed in compliance with subsection E of this section.

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 of this~~
8 ~~act~~ 195 of this 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~~ The notice shall
12 be delivered in person or sent by ~~certified~~ verified mail ~~return~~
13 ~~receipt requested~~ or electronic mail to the last-known address of
14 the occupant. Any lienholder with an interest in the property to be
15 sold or otherwise disposed of, of whom the owner has actual
16 knowledge, shall be included in the notice process as provided in
17 this section.

18 D. The notice shall include:

19 1. An itemized statement of the owner's claim showing the sum
20 due at the time of the notice and the date when the sum became due;

21 2. A brief and general description of the personal property
22 subject to the lien. The description shall be reasonably adequate
23 to permit the person notified to identify such property, except that
24 any container including, but not limited to, a trunk, valise, or box

1 that is locked, fastened, sealed, or tied in a manner which deters
2 immediate access to its contents may be described as such without
3 describing its contents;

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

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

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

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

21 F. After the expiration of the time given in the notice, an
22 advertisement of the sale or other disposition shall be published
23 once a week for two (2) consecutive weeks in a newspaper of general
24 circulation in the county where the self-service storage facility is

1 located. Alternatively, the owner may advertise the sale in any
2 commercially reasonable manner. The advertisement shall be deemed
3 commercially reasonable if at least three independent bidders attend
4 or register for the sale.

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

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

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

17 ~~3. If there is no newspaper of general circulation in the~~
18 ~~county where the self-service storage facility is located, the~~
19 ~~advertisement shall be posted at least ten (10) days before the date~~
20 ~~of the sale or other disposition in not less than six conspicuous~~
21 ~~places in the neighborhood where the self-service storage facility~~
22 ~~is located.~~

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1 H. Any sale or other disposition of the personal property shall
2 conform to the terms of the notification as provided for in this
3 section.

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

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

15 K. A purchaser in good faith of the personal property sold to
16 satisfy a lien as provided in ~~this act~~ the Self-Service Storage
17 Facility Lien Act takes the property free of any rights of persons
18 against whom the lien was valid and free of any rights of a secured
19 creditor, despite noncompliance by the owner with the requirements
20 of this section.

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

23 M. If the proceeds from sale of the property are less than the
24 amount required to pay the obligation secured by the lien, the owner

1 may pursue a deficiency against the tenant. If the proceeds from
2 sale of the property are more than the amount required to pay the
3 obligation secured by the owner's lien, the owner shall hold the
4 excess proceeds for a period of ninety (90) days from the date of
5 the sale. During this period, any persons, including the tenant,
6 claiming an interest in the excess proceeds from the sale of the
7 property shall present adequate proof of their claim to the owner.
8 After the expiration of the ninety-day period, the owner shall make
9 such distribution of the excess proceeds as is required based upon
10 the claims presented. If after making distribution of the proceeds
11 as prescribed by this subsection there are any remaining proceeds,
12 the proceeds shall become the property of the owner without further
13 recourse by the occupant, any lienholder or other person in
14 interest.

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

21 O. Any purchaser of personal property sold pursuant to this
22 section for which a certificate of title has been issued by the
23 Oklahoma Tax Commission shall obtain a certificate of title to be
24 issued in the purchaser's name in the same manner as provided by law

1 for the issuance of a certificate of title for property requiring a
2 certificate of title sold pursuant to the provisions of Sections 91
3 through 102 of ~~Title 42 of the Oklahoma Statutes~~ this title.

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

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