

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2752

By: Hall

AS INTRODUCED

An Act relating to liens; amending 42 O.S. 2011, Sections 192, 194, 196 and 197, which relate to the Self-Service Storage Facility Lien Act; modifying and expanding definitions; limiting liability and value of damaged property; allowing for reasonable late fees; allowing for the towing of certain vehicles; specifying proper channels to send notice; allowing alternate means of advertising sales; allowing notice of sales to be published on website in certain circumstances; 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 or the rental agreement;

2. "Last-known address" means that address or electronic mail address provided by the occupant in the latest rental agreement or

1 the address or electronic mail address provided by the occupant in a
2 subsequent written notice of a change of address;

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

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

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

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

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

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

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

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

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

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

17 B. Each owner of a self-service storage facility shall provide
18 a disclosure in the rental agreement, in conspicuous terms and in a
19 conspicuous manner, that the occupant has a duty to safeguard the
20 personal property located in a self-service storage facility from
21 losses and that the owner has no legal obligation to provide
22 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, labor, or other charges, present or future, in
17 relation to the personal property and for expenses necessary for its
18 preservation or expenses reasonably incurred in its sale or other
19 disposition pursuant to ~~this act~~ the Self-Service Storage Facility
20 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 Twenty Dollars (\$20.00) or twenty percent
9 (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 property is a vehicle, watercraft or trailer and rent
14 and other charges remain unpaid for sixty (60) days, the owner may
15 have the vehicle, watercraft or trailer towed from the self-storage
16 facility. If the vehicle, watercraft or trailer is towed from the
17 self-storage facility, the owner shall not be liable for the
18 vehicle, watercraft or trailer or for any damages to the vehicle,
19 watercraft or trailer once the tower takes possession of the
20 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~~ 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 and properly addressed with postage prepaid.

18 F. After the expiration of the time given in the notice, an
19 advertisement of the sale or other disposition shall be published
20 once a week for two (2) consecutive weeks in a newspaper of general
21 circulation in the county where the self-service storage facility is
22 located. Alternatively, the owner may advertise the sale in a
23 commercially reasonable manner. The advertisement shall be deemed
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1 commercially reasonable if at least three independent bidders attend
2 or register for the sale.

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

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

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

14 3. If there is no newspaper of general circulation in the
15 county where the self-service storage facility is located, the
16 advertisement shall be posted ~~at least ten (10) days before the date~~
17 ~~of the sale or other disposition in not less than six conspicuous~~
18 ~~places in the neighborhood where the self-service storage facility~~
19 ~~is located~~ once per week for two (2) consecutive weeks on a publicly
20 available website identified in the rental agreement.

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

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

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

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

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

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

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

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

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

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

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