

2016 Regular Session

SENATE BILL NO. 128

BY SENATOR MARTINY

COMMERCIAL REGULATIONS. Provides relative to self-service storage facilities. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 9:4757(5) and 4759(3), (4), (5), (8), (9), (10), and (11) and to
3 enact R.S. 9:4757(6), (7), and (8), and 4759(12), (13), and (14), relative to
4 self-service storage facilities; to provide for definitions; to provide for liens and
5 privileges; to provide for notices; to provide for advertisements; to provide relative
6 to late fees and reasonable charges; to provide for certain terms, conditions, and
7 procedures; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:4757(5) and 4759(3), (4), (5), (8), (9), (10), and (11) are hereby
10 amended and reenacted and R.S. 9:4757(6), (7), and (8) and 4759(12), (13), and (14) are
11 hereby enacted to read as follows:

12 §4757. Definitions

13 As used in this Part, unless the context clearly requires otherwise:

14 * * *

15 (5) "Last known address" means ~~that~~ **the mailing** address **or the electronic**
16 **mail address** provided by the lessee in the ~~most recent~~ **latest** rental agreement or the
17 **mailing** address **or the electronic mail address** provided by the lessee in a

1 subsequent written notice of a change of address.

2 (6) "Electronic mail" means an electronic message that is transmitted
3 between two or more telecommunications devices, computers, or electronic
4 devices capable of receiving electronic messages, whether or not the message is
5 converted to hard copy format after receipt or is viewed upon transmission or
6 stored for later retrieval. "Electronic mail" includes electronic messages that
7 are transmitted through a local, regional, or global computer network.

8 (7) "Electronic mail address" means a destination, commonly expressed
9 as a string of characters, to which electronic mail can be sent or delivered. An
10 "electronic mail address" may include a user name or mailbox and a reference
11 to an Internet domain.

12 (8) "Verified mail" means any method of mailing that is offered by the
13 United States Postal Service or a private delivery service that provides evidence
14 of mailing.

15 * * *

16 §4759. Options of owner upon lessee's default

17 In the event of default by the lessee, the owner of a self-service storage
18 facility has the option to enforce judicially all of his rights under the rental
19 agreement, including, if the agreement so provides, his right to accelerate all rentals
20 that will become due in the future for the full term of the lease or to cancel the lease
21 and enforce his privilege for the debt due him, as follows:

22 * * *

23 (3) The notice shall be delivered in person to the lessee or sent by ~~certified~~
24 ~~mail to the last known address of the lessee~~ verified mail to the last known address
25 of the lessee, and electronic mail if the email address is provided by the lessee
26 in the rental agreement.

27 (4) The notice shall include:

28 (a) ~~A copy of any written rental agreement between the owner and defaulting~~
29 ~~lessee, or, if the rental agreement is verbal, a summary of its terms and conditions.~~

1 ~~(b)~~ An itemized statement of the owner's claim, showing the sum due at the
2 time of the notice and the date when the sum became due.

3 ~~(c)~~ A brief and general description of the movable property upon which a
4 privilege is claimed. The description shall be reasonably adequate to permit the
5 person notified to identify it, except that any container, including, but not limited to,
6 a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which
7 deters immediate access to its contents may be described as such without describing
8 its contents.

9 ~~(d)~~(b) Notification that the lessee has been or shall be denied access to the
10 movable property, if such denial is permitted under the terms of the rental agreement,
11 with the name, street address, and telephone number of the owner or his designated
12 agent whom the lessee may contact to respond to the notice.

13 ~~(e)~~(c) A demand for payment within a specified time not less than ten days
14 after the date of mailing or delivery of the notice.

15 ~~(f)~~(d) A statement that the contents of the lessee's rented space are subject to
16 the owner's privilege and that, unless the claim is paid within the time stated in the
17 notice, the movable property is to be advertised for sale or other disposition and to
18 be sold or otherwise disposed of to satisfy the owner's privilege for rent due and
19 other charges at a specified time and place.

20 (5)(a) Actual receipt of the notice made pursuant to this Section shall not be
21 required. ~~Within ten days after receipt of the notice, or within ten days after its~~
22 ~~mailing whichever is earlier~~ At least ten days after its mailing, or at least ten days
23 after the date by which payment is demanded, whichever is later, an
24 advertisement of the sale or other disposition of movable property subject to the
25 privilege shall be published on at least one occasion in a newspaper of general
26 circulation where the self-service storage facility is located and the owner of a
27 self-storage facility may publish an advertisement of the sale on a publicly
28 accessible website that conducts personal property auctions.

29 (b) The advertisement shall include:

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~~(a)~~**(i)** A brief and general description of the movable property reasonably adequate to permit its identification as ~~provided for in Paragraph (4)(c) of this Section~~ **by the lessee, except that any container, including but not limited to a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents, may be described as such without describing its contents.**

~~(b)~~**(ii)** The address of the self-service storage facility and the number, if any, of the space where the movable property is located and the name of the lessee.

~~(c)~~**(iii)** The time, place, and manner of the sale or other disposition.

* * *

(8) Any sale or other disposition of the movable property shall be held at the self-service storage facility, or at the nearest suitable place to where the movable property is held or store, as indicated in the notice required herein. The owner shall sell the movable property to the highest bidder, if any. If there are no bidders, the owner may purchase the movable property for a price at least sufficient to satisfy his claim for rent due and all other charges, or he may donate the movable property to charity. **For the purposes of this Paragraph, a "suitable place" shall include a publicly accessible website that conducts personal property auctions.**

(9) **If the property upon which the lien is claimed is a motor vehicle, watercraft, or trailer, and rent and other charges remain unpaid for sixty days, the owner may have the property towed in lieu of foreclosing on the lien. If a motor vehicle, watercraft, or trailer is towed pursuant to the provisions of this Paragraph, the owner shall not be liable for the motor vehicle, watercraft, or trailer or for any damages to the vehicle, watercraft, or trailer once the tower takes possession of the property. Any tower shall be licensed pursuant to the Louisiana Towing and Storage Act, R.S. 32:1711 et seq.**

(10) Prior to any sale or other disposition of movable property to enforce the privilege granted by this Section, the lessee may pay the amount necessary to satisfy the privilege, including all reasonable expenses incurred under this Section, and

1 thereby redeem the movable property. Upon receipt of such payment, the owner shall
2 have no liability to any person with respect to such movable property.

3 ~~(10)~~**(11)** A purchaser in good faith of movable property sold by an owner to
4 enforce the privilege granted herein takes the property free of any claims or rights
5 of persons against whom the privilege was valid, despite noncompliance by the
6 owner with the requirements of this Section.

7 ~~(11)~~**(12)** In the event of a sale held pursuant to this Section, the owner may
8 satisfy his privilege from the proceeds of the sale, but shall hold the balance, if any,
9 as a credit in the name of the lessee whose property was sold. The lessee may claim
10 the balance of the proceeds within two years of the date of sale, without any interest
11 thereon, and if unclaimed within the two year period, the credit shall become the
12 property of the owner, without further recourse by the lessee. If the sale or other
13 disposition of movable property made pursuant to this Part does not satisfy the
14 owner's claim for rent due and other charges, the owner may proceed by ordinary
15 proceedings to collect the balance owed.

16 **(13) A reasonable late fee may be imposed and collected by an owner for**
17 **each period that a lessee does not pay rent when due under the rental**
18 **agreement, provided the amount of the late fee and the conditions for imposing**
19 **such fee are stated in the rental agreement or in an addendum to that**
20 **agreement. For purposes of this Paragraph, a late fee of twenty dollars or**
21 **twenty percent of the monthly rent, whichever is greater, shall be deemed**
22 **reasonable and shall not constitute a penalty. Any reasonable expense incurred**
23 **as a result of rent collection or lien enforcement by an owner may be charged**
24 **to the lessee in addition to late fees.**

25 **(14) If the rental agreement contains a limit on the value of property**
26 **stored in the lessee's storage space, such limit shall be deemed to be the**
27 **maximum value of the property stored in that space and the lessor shall not be**
28 **liable for any claims in excess of any such stated value.**

29 Section 2. This Act shall become effective upon signature by the governor or, if not

1 signed by the governor, upon expiration of the time for bills to become law without signature
 2 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 3 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 4 effective on the day following such approval.

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

SB 128 Engrossed

2016 Regular Session

Martiny

Present law provides relative to lease agreements for self-storage facilities.

Present law defines the terms "self-service storage facility", "owner", "lessee", "rental agreement", and "last known address".

Proposed law retains present law definitions, includes in the definition of "last known address" the lessee's electronic mail address, and defines the following new terms:

- (1) "Electronic mail" means an electronic message that is transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt or is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.
- (2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An "electronic mail address" may include a user name or mailbox and a reference to an internet domain.
- (3) "Verified mail" means any method of mailing that is offered by the United States Postal Service or a private delivery service that provides evidence of mailing.

Present law provides for the option of a self-service storage facility owner to judicially enforce all of his right under the rental agreement provided certain conditions are met.

Present law requires that notice be sent by certified mail to the lessee of the owner's right to enforce his privilege and requires that the notice contain certain information, including but not limited to a copy of the rental agreement and a description of the property.

Proposed law removes from present law the following requirements:

- (1) That the owner send notice by certified mail to the lessee. Proposed law allows the owner to send the notice to the last known address of the lessee by verified mail, and electronic mail if the email address is provided by the lessee in the rental agreement.
- (2) That a copy of the rental agreement and a description of the movable property be included in the notice.

Present law provides that the owner must advertise the sale or other disposition of the movable property on at least one occasion in a newspaper of general circulation where the self-service storage facility is located.

Proposed law retains present law and adds that the owner of a self-storage facility may publish an advertisement of the sale on a publicly accessible website that conducts personal property auctions.

Present law requires that the sale or other disposition of the movable property be held at the self-storage facility, or at the nearest suitable place to where the movable property is held or stored, as indicated in the notice.

Proposed law defines "suitable place" to include a publicly accessible website that conducts personal property auctions.

Proposed law provides that if the property upon which the lien is claimed is a motor vehicle, watercraft, or trailer, and rent and other charges remain unpaid for 60 days, the owner may have the property towed in lieu of foreclosing on the lien. Proposed law provides that the owner shall not be liable for the motor vehicle, watercraft, or trailer or for any damages to the motor vehicle, watercraft, or trailer once the tower takes possession of the property. Further provides that a tower must be licensed pursuant to the Louisiana Towing and Storage Act.

Proposed law authorizes a reasonable late fee to be collected by an owner for each period that a lessee does not pay rent when due under the rental agreement, provided the amount of the late fee and the conditions for imposing such fee are stated in the rental agreement or in an addendum to that agreement.

Proposed law defines "reasonable late fee" as a fee of \$20 or 20% of the monthly rent, whichever is greater.

Proposed law provides that in addition to late fees, any reasonable expense incurred as a result of rent collection or lien enforcement by an owner may be charged to the lessee.

Proposed law provides that if the rental agreement contains a limit on the value of property stored in the lessee's storage space, such limit shall be deemed to be the maximum value of the property stored in that space and the lessor shall not be liable for any claims in excess of any such stated value.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 9:4757(5) and 4759(3), (4), (5), (8), (9), (10), and (11); adds R.S. 9:4757(6), (7), and (8) and 4759(12), (13), and (14))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Deleted language providing that owner could publish in any commercially reasonable manner rather than by newspaper of general circulation where the self-storage facility is located, and authorized additional notice by advertisement of the sale on a publicly accessible website that conducts personal property auctions.
2. Required that if property is towed, then tower must be licensed.
3. Provided that lessor shall not be liable for any claims in excess of any such stated value if the rental agreement contains a limit on value of the property stored in the lessee's storage space.