

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 634
Finance

(Senator Peters, *et al.*)

Commercial Law - Self-Service Storage Facilities

This bill authorizes, if an occupant is in default for more than 60 days, an operator of a self-service storage facility to tow or remove the occupant's motor vehicle or watercraft in lieu of a sale to enforce a lien. The bill requires an operator to include a statement, in bold type, of this authorization in the rental agreement for the leased space. The operator is immune from civil liability for any damage to a motor vehicle or watercraft that occurs after the person that undertakes the towing or removal takes possession of the personal property. The bill authorizes the operator to charge a reasonable late fee for each month the occupant does not pay rent when due. The bill also alters specified notice, disclosure, and recordkeeping requirements.

The bill applies prospectively and may not be applied or interpreted to affect any rental agreement or contract executed or renewed before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations or finances.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill amends the means of delivery by which an operator must notify the occupant of a more than 60-day default before a sale of property held in the leased

space. The operator must notify the occupant of the default by hand delivery or “verified mail,” as defined by the bill. The operator may also send notice through electronic mail if the rental agreement, or a written change to the rental agreement, specifies that notice may be given by electronic mail. Notice is deemed delivered if it is deposited with the U.S. Postal Service or private delivery service and property addressed or sent to the occupant’s last known electronic mail address. The bill repeals the requirement that the operator must send a second notice of default to the occupant and keep a copy of that notice for six months from the date of the lien sale.

The bill amends the requirement that the operator must advertise the time, place, and terms of the lien sale in a newspaper of general circulation in the jurisdiction where the lien sale is to be held by authorizing the operator to advertise in any other commercially reasonable manner. A manner of advertisement is commercially reasonable if at least three “independent bidders,” as defined by the bill, attend the lien sale. The bill also authorizes the operator to hold the lien sale on an online auction website.

If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant’s leased space, the limit is deemed to be the maximum value of the stored personal property.

The operator may charge a late fee of \$20 a month or 20% of the monthly rent for the leased space whichever is greater. If the operator charges a fee, the rental agreement must include the amount of the fee and the timing for charging the fee. A fee may be charged in addition to any other remedy provided by law or contract.

Current Law: The Maryland Self-Service Storage Act was adopted in 1983 and applies to all rental agreements entered into or renewed after July 1, 1983.

The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its late sale. If the lien is in default for more than 60 days, the operator may enforce the lien by selling the property stored in the leased space at a public sale and using the sale’s proceeds to satisfy the lien. The rental agreement must contain a statement, in bold type, advising the occupant of the existence of the lien and the possibility that any property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

Before conducting a lien sale, the operator must notify the occupant of the default by regular mail at the occupant’s last known address and send a second notice of default by certified mail, return receipt requested, to the same address which includes (1) a statement that the contents of the occupant’s leased space are subject to the operator’s lien; (2) a statement of the operator’s claim, indicating the charges due on the date of the notice, the amount of any additional charges to become due before the date of the lien

sale, and the date those additional charges become due; (3) a demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed; (4) a statement that, unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and (5) the contact information of the operator or his or her designated agent. The operator must retain a copy of the second notice of default and the return receipt for six months after the date of the sale. A notice is deemed delivered when deposited with the U.S. Postal Service and properly addressed with postage prepaid.

The operator must also, at least three days before the sale, advertise the time, place, and terms of the sale in a newspaper generally circulated in the jurisdiction where the lien sale is to be held (*i.e.*, the location of the facility).

At any time prior to the lien sale, an occupant may redeem the property by paying the amount necessary to satisfy the lien. If the operator does sell the property at a lien sale, the operator must use the funds to satisfy the lien and hold any balance, if any, for delivery on demand to the occupant or any other recorded lien holders. A lawfully conducted lien sale limits the operator's liability of the operator to the net proceeds received from the sale and of other lien holders to the net proceeds received from the lien sale of any personal property covered by that lien. A good faith purchaser of any property sold takes the property free and clear of any rights of persons against whom the lien was valid and other lien holders.

If an occupant is in default, the operator may deny the occupant access to the leased space. Additionally, unless the rental agreement states otherwise and until a lien sale, the exclusive care, custody, and control of all personal property stored in the leased self-service storage space remains vested in the occupant.

Background: According to the Self Storage Association, there are approximately 53,940 self-service storage facilities in the United States and 543 in Maryland; 22,000 of the nation's facilities are owned by operators of just one facility.

Small Business Effect: The bill has a meaningful impact on self-service storage facilities, some of which are small businesses. An operator's revenue will increase due to the ability to charge a reasonable late fee for each month a payment is not made. Additionally, by granting an operator authorization to hold a lien sale online, the operator may be able to reach a larger audience and more easily satisfy the lien amount.

Perhaps most important, the bill grants an operator the ability to establish the maximum value of stored property in a leased space. In the event of any loss of or damage to an occupant's property, the operator's liability may be limited to that amount.

Additional Information

Prior Introductions: None.

Cross File: HB 1127 (Delegate Jameson, *et al.*) - Economic Matters.

Information Source(s): State Department of Assessments and Taxation, State Board of Contract Appeals, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Self Storage Association, Department of Legislative Services

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