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H.B. 172
133rd General Assembly

Bill Analysis

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Version: As Reported by House Civil Justice

Primary Sponsor: Rep. Hillyer

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SUMMARY

- Allows the sale of personal property in a self-storage facility for the satisfaction of amounts due the facility owner to take place on the Internet.
- Allows notices required to be sent before the sale of personal property kept in self-service storage facilities to be delivered by email or private delivery service.
- Expands the class of persons who may enforce liens under the Self-Service Storage Facility Law by expanding the definition of “owner” of a self-service storage facility to include the sublessor of an entire self-service storage facility as well as agents of facility owners, lessors, and sublessors.
- Expands the costs to which proceeds from the sale of personal property held in a self-service storage facility may be applied to include late fees and expenses incurred to enforce a lien.
- Requires that the same notice that is given to persons with liens on motor vehicles and watercraft in self-service storage facilities also be given to persons with liens on trailers prior to a sale.
- Grants self-service storage facility owners discretion in deciding whether and when to have motor vehicles, trailers, and watercraft removed from self-service storage spaces in which other personal property will be sold to collect amounts due.
- Grants self-service storage facility owners discretion as to whether to rent previously delinquent self-service storage facility space or allow removal of the personal property following payment by a person other than the occupant.

DETAILED ANALYSIS

Continuing law defines a “**self-service storage facility**,” as real property that is designed and used only to rent individual storage space to occupants whose access is limited to storing

or removing personal property. While the definition includes other conditions and exclusions, their explanation is not necessary to an understanding of the bill.¹

The bill modifies the procedures self-service storage facility owners may use, primarily through liens the Self-Service Storage Facility Law places on personal property stored at a facility, when occupants default on their obligations.

Self-service storage facility liens

Continuing law grants self-service storage facility owners liens on personal property kept in the facilities pursuant to rental agreements. The bill adds late fees and expenses incurred in the enforcement of the lien to the list of expenses that the liens secure. Under continuing law, the liens secure expenses for rent, labor, or other charges specified in the rental agreement that have become due, and for expenses necessary for the preservation of the property or reasonably incurred in the disposition of the property.²

Lien enforcement

A self-service storage facility owner who wishes to enforce a lien on personal property kept in the facility has to follow certain procedures established by law. The requirements are mandatory and exclusive, as continuing law states that an owner's lien can only be enforced pursuant to the Self-Service Storage Facility Law.

The bill modifies those procedures by changing requirements for the sale itself, changing the definition of "owner" (and thus who may enforce the lien), and several aspects of the law's notice and advertising requirements.

Sale requirements

Self-service storage facility liens are enforced through the sale of personal property held in the facilities. Before a sale may take place, notice and advertising procedures must be followed, but those procedures are affected by the bill's changes to the law. Specifically, existing law requires the sale of personal property to be held at the self-service storage facility or at the nearest suitable place to the facility, so long as the address of that place is included on the required notice.

The bill adds the Internet to the allowable sale locations and also makes the listed sale locations permissive rather than exclusive.³

"Owner" – who may enforce the lien

Existing law defines "owner," with respect to a self-service storage facility, as a person who receives rent from occupants pursuant to rental agreements in the person's capacity as

¹ R.C. 5322.01(A).

² R.C. 5322.02(A).

³ R.C. 5322.03(F).

the owner of the facility or the lessor of the entire facility. The bill expands the definition by adding operators and sublessors of an entire facility, as well as the agents of an owner, operator, lessor, or sublessor who are authorized to manage a facility or receive rent from occupants pursuant to rental agreements.⁴

Required notice and advertisement

An owner seeking to enforce a lien through the sale of personal property must provide notice to the following persons under existing law:

- All persons who claim an interest in the personal property and who the owner has actual knowledge of;
- All persons who hold liens on motor vehicles or watercraft amongst the property;
- All persons who have filed security agreements, with relevant officials, in the name of the occupant showing a security interest in the property.

The bill adds persons holding liens on trailers amongst the personal property to the list of persons who must be served notice.⁵ It also modifies the contents of the notice and expands the manner in which notice may be delivered.

Under existing law, the notice must include, among other things unaffected by the bill:

- A demand for payment within a specified time, not less than ten days after delivery of the notice;
- A conspicuous statement that unless the claim is paid, the personal property will be advertised for sale and sold by auction at a specified time and place;
- The address of the place where the sale will take place if it will be held at a location other than the self-service storage facility.

The bill removes the requirement that a specified time and place be listed in every notice, and clarifies that if the sale is to be held at a place other than the self-service storage facility, the street or Internet address be provided, rather than simply an address.⁶

With respect to delivery methods, existing law requires the notice to be delivered in person, sent by certified mail, or sent by first-class mail with a certificate of mailing to the last known address of each person who must be given notice. The bill adds email and private delivery service to the list of permissible delivery methods, and makes related modifications to the circumstances under which notice will be presumed to be delivered.

⁴ R.C. 5322.01(B).

⁵ R.C. 5322.03(A).

⁶ R.C. 5322.03(C)(6) and (7).

Under existing law, notice will be presumed delivered if sent by first-class mail with a certificate of mailing when it is deposited with the U.S. Postal Service and properly addressed with proper prepaid postage. The bill adds a presumption of delivery to notices sent by private delivery service or email so long as certain conditions are met. For private delivery service, the notice will be presumed delivered when deposited with the service so long as it is sent with a verification of mailing, properly addressed, and the postage is prepaid. For email, the notice will be presumed delivered when it is properly addressed and sent.⁷

After the expiration of the time given in the notice, continuing law requires the owner to advertise the sale, and include all of the following in the advertisements:

- A general description of the personal property;
- The name and last known address of the occupant;
- The self-service storage facility's address; and
- The time, place, and manner of the sale.

The bill specifies that it is the self-service storage facility's street address, rather than an unspecified type of address, that must be included in the advertisement alongside the time, place, and manner of the sale. (See **COMMENT.**)

Existing law states that an advertisement will be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised. The bill maintains the three independent bidders requirement, but allows their registration for, viewing of, or attendance at the sale to demonstrate commercial reasonableness.⁸

Removal of vehicles

Under existing law, when the property upon which the self-service storage facility owner's lien attaches is a motor vehicle or watercraft, the owner must have the vehicle or watercraft removed if any of the following circumstances apply:

- The required notice was sent to all persons holding a lien on the motor vehicle or watercraft and 30 days have elapsed without a response from any of those persons;
- Rent and other charges remain unpaid for 60 days and no lien holders have been identified;
- The owner is planning to hold an auction of the personal property that was stored in the storage unit with the motor vehicle or watercraft.

In the third case, the motor vehicle or watercraft must be removed prior to the sale. The bill makes several changes to these requirements.

⁷ R.C. 5322.03(B) to (D), with conforming change in R.C. 5322.01(G).

⁸ R.C. 5322.03(G).

First, the provisions are made to apply to trailers, in addition to motor vehicles and watercraft. Second, when the listed circumstances are present, the bill makes the motor vehicle's, trailer's, or watercraft's removal optional, to be executed at the owner's sole discretion. Third, in cases where notice was sent to persons holding a lien on the vehicle, trailer, or watercraft, the removal may occur 30 days after the notice is sent, whether or not a response is received. Finally, removal in the event of a sale may occur before or after the sale, and reference to a sale at auction is modified to refer to any sale, which results in consistency with provisions in continuing law that allow for private sales or other disposition of property if property does not sell at auction.⁹

Payment by others

Continuing law allows any person who has a legal interest or a security interest in, or who holds a lien against, personal property other than a motor vehicle or watercraft, to pay the self-service storage facility owner's lien and reasonable expenses and remove the personal property from the facility. Existing law also states that, upon receipt of payment from a person other than the occupant, the owner must either allow the personal property to be removed or enter into a new rental agreement for the storage of the personal property. The bill modifies this provision to state that the owner may, at his or her sole discretion, allow the person to enter into a new rental agreement or permit the person to remove the personal property from the self-service storage facility.¹⁰ (See **COMMENT.**)

After property is removed

After all personal property is removed from a self-service storage facility pursuant to the Self-Service Storage Facility Law (e.g., through sale at auction or removal by another person with an interest in the property), provision is made for the vacated space. Under existing law, any person can enter into a rental agreement for the storage for personal property with the owner, and the owner has no obligation to the prior occupant of the space in the self-service storage facility. Existing law also states that, before entering into a new rental agreement, the facility owner must have any motor vehicle or watercraft towed from the storage space.

The bill revises these provisions to state that the owner may enter into a rental agreement with a new occupant, rather than that any person may enter into a rental agreement with the owner. It also eliminates the requirement that the owner first have any motor vehicle or watercraft towed from the storage space, though that requirement may have been redundant as the law only made provision for new rental agreements once all personal property was removed.¹¹

⁹ R.C. 5322.03(K) and (P).

¹⁰ R.C. 5322.03(H)(2) and (3).

¹¹ R.C. 5322.03(H)(2).

Delivery of excess funds

Continuing law requires self-service storage facility owners to deliver the balance of any funds obtained from the sale of personal property under a lien to the occupant whose property was sold. Existing law states that the balance is to be sent by certified mail to the occupant's last known address. The bill clarifies that the balance is to be sent to the occupant's last known mailing address, and also allows it to be sent by first class mail or private delivery service with a certificate or verification of mailing.¹²

COMMENT

Continuing law requires the advertisement for a sale of personal property kept in a self-service storage facility to include the time, place, and manner of the sale. The bill allows such sales to be conducted on the Internet, but does not specify whether the advertisement is to state the place of sale in that instance as the Internet, or at a specific address on the Internet.

Existing law's requirement that the self-service storage facility owner either enter into a new rental agreement or permit personal property to be removed upon payment from a person with an interest in or lien against the personal property, other than the occupant, ensures that the person making payment will be permitted to remove the property or store it under an agreement with the owner. The bill's modification to make the new agreement or removal of property permissive, under the owner's discretion, could result in an owner accepting payment but refusing to enter into a new rental agreement or allow removal of the property. The owner would likely be subject to civil and criminal liability under other provisions of law for such conduct, but it would not be prohibited under the Self-Service Storage Facility Law.

HISTORY

| Action | Date |
|----------------------------|----------|
| Introduced | 03-27-19 |
| Reported, H. Civil Justice | 05-15-19 |

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¹² R.C. 5322.03(L).