

First Extraordinary Session, 2005

HOUSE BILL NO. 88

BY REPRESENTATIVES GALLOT AND ANSARDI AND SENATOR LENTINI

LEASES: Provides for removal and preservation of property by lessor during certain periods

1 AN ACT

2 To enact R.S. 9:2554, relative to the removal and preservation of property by the lessor in
3 certain emergency periods; to provide for the right of the lessor to enter leased
4 property to make necessary repairs; to provide for the removal and disposal of
5 property; to provide for the duty of the lessor to preserve unsalvageable property; to
6 provide for the payment of storage costs and the lessor's privilege; to provide for the
7 taking of an inventory of the property; to provide for a presumption of intent to
8 abandon the leased premises; to provide for notice to the lessee; to provide for
9 definitions; to provide for applicability; to provide for retroactive effect; to provide
10 for termination of provisions; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 9:2554 is hereby enacted to read as follows:

13 §2554. Leased premises; obligations regarding property; presumption of intent to
14 abandon; applicability to certain emergencies and disasters

15 A. The legislature finds that Hurricanes Katrina and Rita created a statewide
16 emergency disrupting and forcing the closure of certain courts and public offices,
17 and further resulting in the displacement of courts, offices, clients, and counsel. This
18 Section is enacted for the benefit and protection of the state as a whole and its
19 citizens, and to prevent injustice, inequity, and undue hardship to persons who were
20 prevented by these hurricanes from timely access to courts and offices in the exercise

1 of their legal rights, including the filing of documents and pleadings as authorized
2 or required by law. This Section is intended to provide additional remedies relative
3 to the removal and preservation of a lessee's property not otherwise provided by law.

4 B. This Section applies to leased premises in the areas directly affected by
5 Hurricanes Katrina and Rita during the period of August 26, 2005, until June 30,
6 2006.

7 C.(1) The lessor of an immovable may enter the leased premises without the
8 permission of the lessee to inspect the premises and to make necessary repairs. The
9 lessor may remove the lessee's property from the premises to make necessary repairs.
10 The lessor shall preserve the salvageable property and may dispose of any property
11 that is unsalvageable.

12 (2) The lessor shall make a reasonable effort to notify the lessee at least ten
13 days before preserving or disposing of the lessee's property. The notice shall include
14 information that the lessee's unsalvageable property will be discarded, and if
15 salvageable property is to be preserved, a statement to that effect, including
16 information as to the location where the property will be stored.

17 (3) The cost of removing all of the property from the premises and
18 preserving the salvageable property shall be at the lessee's expense, unless otherwise
19 covered by the lessor's insurance; however, the cost of moving and preserving the
20 property while necessary repairs are being made shall be deducted from the rent.
21 The lessor shall have a privilege over the preserved property for any such costs paid
22 by the lessor. The lessor shall store the property at any available storage site closest
23 in proximity to the leased premises. If the lessor is entitled to be paid under an
24 insurance policy or has received or is entitled to receive funds from FEMA or other
25 source for loss of rental income attributable to the leased premises, the lessee shall
26 be given credit for the amounts paid to the lessor.

27 D. The lessor may take photographs or videotape the property, or may cause
28 an inventory of the property being disposed of and the property being preserved.
29 The failure of the lessor to take photographs or videotape the property shall not in

1 any manner shift the burden to the lessor to prove the condition of or any other fact
2 related to the property. If the lessor causes an inventory to be made of the property,
3 the inventory shall be made in the presence of a notary and two competent witnesses
4 and the notary shall prepare a proces verbal in the manner provided by Code of Civil
5 Procedure Article 3133. The proces verbal shall be admissible in any relevant court
6 proceeding between the lessor and lessee as prima facie evidence of all matter shown
7 therein. The photographs and videotapes may be admissible as provided in the Code
8 of Evidence.

9 E.(1) If the lessor has provided the lessee with emergency contact
10 information, the intent of a lessee to abandon the leased premises is presumed if the
11 lessee has failed to remain current on his rent and has failed to inform the lessor of
12 his intention to remain in the leased premises within thirty days from the date that
13 the affected area has been declared available for inspection by the local governing
14 authority pursuant to the provisions of the Louisiana Homeland Security and
15 Emergency Assistance and Disaster Act, R.S. 29:721 et seq. In order to invoke the
16 presumption of abandonment, the lessor shall make a reasonable effort to contact the
17 lessee.

18 (2) The lessee may rebut the presumption by showing any of the following:

19 (a) That the lessor failed to provide any contact information.

20 (b) That the lessee contacted the lessor and informed him of his intention to
21 return to the premises.

22 (c) That he is current on his rent.

23 (3) This presumption of abandonment shall also apply to movable property
24 located on the leased premises from August 26, 2005, until June 30, 2006.

25 F. Unless otherwise agreed by the parties, in the event of the total destruction
26 of the immovable property, the lease is terminated, and the lessor is bound to
27 reimburse the rent paid by the lessee since the time of the total destruction of the
28 property, except that the lessor may deduct the amounts expended for the removal

1 and preservation of the lessee's property on the leased premises, unless otherwise
2 covered by insurance.

3 G. The lessor shall not be liable to the lessee for any damage or loss for
4 removing property of the lessee that has been abandoned by the lessee or for
5 disposing of the lessee's unsalvageable property provided that the lessor has made
6 a reasonable effort to notify the lessee. The lessor shall not be liable to the lessee for
7 any damage or loss for removing the property in order to make necessary repairs to
8 the leased premises, unless the damage or loss is caused by the fault of the lessor.

9 H. As used in this Section:

10 (1) "Reasonable effort" includes but is not limited to posting a notice on the
11 door of the leased premises, notifying the lessee by telephone or other electronic
12 communications devices, transmission of information or communication by the use
13 of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, or
14 other electronic means, or publishing the notice in the official journal of the parish
15 or municipality where the premises are located.

16 (2) "Unsalvageable property" means property that has been damaged as a
17 result of Hurricane Katrina or Rita, or both, and can no longer be used for its
18 intended purpose, or if the cost of cleaning, repairing, or preserving the property is
19 greater than its fair market value.

20 I. The provisions of this Section shall not affect the laws governing eviction
21 proceedings.

22 J. The provisions of this Section shall have retroactive application to August
23 26, 2005.

24 K. The provisions of this Section shall terminate on June 30, 2006.

25 Section 2. This Act shall become effective upon signature by the governor or, if not
26 signed by the governor, upon expiration of the time for bills to become law without signature
27 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
28 vetoed by the governor and subsequently approved by the legislature, this Act shall become
29 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Gallot

HB No. 88

Abstract: Provides for the removal and preservation of a lessee's property by the lessor during the period of 8/26/05 until 6/30/06.

Present law provides that a lessor has the right to enter leased premises to make necessary repairs.

Proposed law (R.S. 9:2554(C)) does not change present law but specifies the lessor's right to inspect the premises during the period of 8/26/05 until 6/30/06.

Present law provides for the duty of the lessor to preserve the lessee's property when the lessor is making necessary repairs.

Proposed law does not change present law.

Present law provides the lessor may remove the lessee's property when the lessee has abandoned the premises.

Proposed law does not change present law.

Present law does not provide for the lessor's right to dispose of unsalvageable property.

Proposed law (R.S. 9:2554(C)(2)) changes present law and allows the lessor to discard unsalvageable property and requires the lessor to make every reasonable effort to notify the lessee before discarding the nonsalvageable property.

Present law provides for a lessor's privilege to secure the payment of rent and other obligations.

Proposed law extends the lessor's privilege to cover the costs of removing and preserving the lessee's property.

Proposed law (R.S. 9:2554(C)(3)) provides for payment of costs of removal of the lessee's property.

Proposed law (R.S. 9:2554(D)) provides a procedure for taking evidence of the lessee's property when it is being removed.

Present law provides that whether the lessee abandoned the leased premises depends on the intent of the lessee.

Proposed law (R.S. 9:2554(E)(1)) provides for presumption of the lessee's intent to abandon the leased premises.

Proposed law (R.S. 9:2554(E)(2)) provides that the lessee may rebut the presumption of abandonment by a showing of certain information.

Proposed law (R.S. 9:2554(F)) provides that unless otherwise agreed by the parties, in the event of the total destruction of the immovable property, the lease is terminated, and the lessor is bound to reimburse the rent paid by the lessee since the time of the total destruction

of the property, except that the lessor may deduct the amounts expended for the removal and preservation of the property on the leased premises, unless otherwise covered by insurance.

Proposed law (R.S. 9:2554(G)) provides that the lessor shall not be liable to the lessee for any damage or loss for removing property of the lessee that has been abandoned or if the lessor disposes of the lessee's unsalvageable property provided that the lessor has made every reasonable effort to notify the lessee. Provides that the lessor shall not be liable to the lessee for any damage or loss if the property is removed to make necessary repairs to the leased premises, unless the damage or loss is caused by the fault of the lessor.

Proposed law defines "reasonable effort" and "unsalvageable property".

Proposed law applies retroactively to August 26, 2005, and also provides that proposed law shall not affect the law governing eviction proceedings.

Proposed law terminates on June 30, 2006.

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

(Adds R.S. 9:2554)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Provides that proposed law shall not affect the laws governing eviction proceedings.