

First Extraordinary Session, 2005

HOUSE BILL NO. 88

BY REPRESENTATIVES GALLOT, ANSARDI, AND THOMPSON AND SENATOR LENTINI

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 relative to the protection, preservation, and storage of property;
6 to provide for the payment of storage costs and the lessor's privilege; to provide for
7 the 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 termination of provisions; to
10 provide for redesignation of provisions by the Louisiana State Law Institute; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

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

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

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

1 or required by law. This Section is intended to provide additional remedies relative
 2 to the removal and preservation of a lessee's property not otherwise provided by law.

3 B. This Section applies to leased premises in the areas directly affected by
 4 Hurricanes Katrina and Rita.

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

10 (2) The lessor shall keep written records of contacts with insurance agents
 11 and other investigators and of decisions on retrieval, preservation, and removal of
 12 movable property.

13 (3) The landlord shall salvage water-damaged books, heirlooms,
 14 photographs, and documents.

15 (4) The lessor may take the following into consideration in prioritizing the
 16 salvageability of the other movable property:

17 (a) Immediate susceptibility to damage.

18 (b) Rarity.

19 (c) Monetary value.

20 (d) Whether the property is on loan.

21 (e) Ability to move the object particularly without introducing the risk of
 22 additional damage.

23 (g) Degree of apparent damage.

24 (h) Degree of susceptibility over the time period of the salvage operation.

25 (5) If undamaged movable property is in an unstable environment or area
 26 that is not secure, the lessor shall move the undamaged movable property to any
 27 available storage site closest in proximity to the leased premises.

28 (6) The lessor shall make a reasonable effort to notify the lessee at least ten
 29 days before preserving or disposing of the lessee's property. The notice shall include
 30 information that the lessee's unalvageable property will be discarded, and if

1 salvageable property is to be preserved, a statement to that effect, including
2 information as to the location where the property will be stored.

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

13 (8) The provisions of this Subsection are not applicable to any lessee who
14 continues to occupy the premises or who has attempted to regain occupancy or
15 remove his property within thirty days from the date that the affected area has been
16 declared available for inspection by the local governing authority pursuant to the
17 provisions of the Louisiana Homeland Security and Emergency Assistance and
18 Disaster Act, R.S. 29:721 et seq.

19 D.(1) The lessor shall not move the movable property without documenting
20 its condition. In order to document the condition of the movable property, the lessor
21 may do either of the following:

22 (a) Use a camera or video camera to record conditions of the movable and
23 immovable property and may make notes and voice recordings to accompany
24 photographs or video.

25 (b) Cause an inventory to be made of the property.

26 (2) The failure of the lessor to take photographs or videotape the property
27 shall not in any manner shift the burden to the lessor to prove the condition of or any
28 other fact related to the property. If the lessor causes an inventory to be made of the
29 property, the inventory shall be made in the presence of a notary and two competent
30 witnesses and the notary shall prepare a proces verbal in the manner provided by

1 Code of Civil Procedure Article 3133. The proces verbal shall be admissible in any
2 relevant court proceeding between the lessor and lessee as prima facie evidence of
3 all matter shown therein. The photographs and videotapes may be admissible as
4 provided in the Code of Evidence.

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

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

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

16 (b) That the lessee contacted the lessor and informed him of his intention to
17 return to the premises, provided that the lessor has been available for contact by the
18 lessee or present at the leased premises.

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

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

22 F. Unless otherwise agreed by the parties, in the event of the total destruction
23 of the immovable property, the lease is terminated, and the lessor is bound to
24 reimburse the rent paid by the lessee since the time of the total destruction of the
25 property, except that the lessor may deduct the amounts expended for the removal
26 and preservation of the lessee's property on the leased premises, unless otherwise
27 covered by insurance.

28 G. The lessor shall not be liable to the lessee for any damage or loss for
29 removing property of the lessee that has been abandoned by the lessee or for
30 disposing of the lessee's unsalvageable property provided that the lessor has made

1 a reasonable effort to notify the lessee, has been available for contact by the lessee,
 2 and has complied with the provisions of this Section. The lessor shall not be liable
 3 to the lessee for any damage or loss for removing the property in order to make
 4 necessary repairs to the leased premises, unless the damage or loss is caused by the
 5 fault of the lessor.

6 H. As used in this Section:

7 (1) "Reasonable effort" includes but is not limited to notifying the lessee by
 8 telephone or other electronic communications devices, transmission of information
 9 or communication by the use of the Internet, a computer, a facsimile machine, a
 10 pager, a cellular telephone, or other electronic means, or publishing the notice in the
 11 official journal of the parish or municipality where the premises are located or notice
 12 by certified mail if the lessee's address is ascertainable through disaster services'
 13 websites, such as those maintained by the American Red Cross or FEMA, or posting
 14 a notice on the door of the lease premises if the lessee has not provided emergency
 15 contact information or cannot be reached through any other reasonable methods
 16 including those included in this Paragraph.

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

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

23 J. The provisions of this Section shall terminate on June 30, 2006.

24 K. The provisions of this Section shall not apply to the lease or furnishing
 25 of sleeping rooms, cottages, or cabins by hotels or motels.

26 Section 2. The Louisiana State Law Institute shall redesignate the provisions of this
 27 Act as R.S. 9:3391 of Chapter 5 of Code Title IX of Code Book III of the Louisiana Revised
 28 Statutes of 1950.

29 Section 3. This Act shall become effective upon signature by the governor or, if not
 30 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____