

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 **verified** mail **or electronic mail** to the last known address of the lessee.

25 (4) The notice shall include:

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

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

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

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

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

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

18 **(5)(a)** Actual receipt of the notice made pursuant to this Section shall not be
19 required. ~~Within~~ **At least** ten days after receipt of the notice, or ~~within~~ **at least** ten
20 days after its mailing, whichever is earlier, an advertisement of the sale or other
21 disposition of movable property subject to the privilege shall be published on at least
22 one occasion in a newspaper of general circulation where the self-service storage
23 facility is located **or published in any other commercially reasonable manner.**
24 **For the purposes of this Paragraph, an advertisement shall be deemed**
25 **"commercially reasonable" if at least three independent bidders attend the sale.**
26 **For the purposes of this Paragraph, an "independent bidder" shall not be**
27 **related to the owner or to any other bidder.**

28 **(b)** The advertisement shall include:

29 ~~(a)~~**(i)** A brief and general description of the movable property reasonably

1 adequate to permit its identification as ~~provided for in Paragraph (4)(c) of this~~
2 Section by the lessee, except that any container, including but not limited to a
3 trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which
4 deters immediate access to its contents, may be described as such without
5 describing its contents.

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

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

9 * * *

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

18 (9) If the property upon which the lien is claimed is a motor vehicle,
19 watercraft, or trailer, and rent and other charges remain unpaid for sixty days,
20 the owner may have the property towed in lieu of foreclosing on the lien. If a
21 motor vehicle, watercraft, or trailer is towed pursuant to the provisions of this
22 Paragraph, the owner shall not be liable for the motor vehicle, watercraft, or
23 trailer or for any damages to the vehicle, watercraft, or trailer once the tower
24 takes possession of the property.

25 (10) Prior to any sale or other disposition of movable property to enforce the
26 privilege granted by this Section, the lessee may pay the amount necessary to satisfy
27 the privilege, including all reasonable expenses incurred under this Section, and
28 thereby redeem the movable property. Upon receipt of such payment, the owner shall
29 have no liability to any person with respect to such movable property.

1 ~~(10)~~(11) A purchaser in good faith of movable property sold by an owner to
2 enforce the privilege granted herein takes the property free of any claims or rights
3 of persons against whom the privilege was valid, despite noncompliance by the
4 owner with the requirements of this Section.

5 ~~(11)~~(12) In the event of a sale held pursuant to this Section, the owner may
6 satisfy his privilege from the proceeds of the sale, but shall hold the balance, if any,
7 as a credit in the name of the lessee whose property was sold. The lessee may claim
8 the balance of the proceeds within two years of the date of sale, without any interest
9 thereon, and if unclaimed within the two year period, the credit shall become the
10 property of the owner, without further recourse by the lessee. If the sale or other
11 disposition of movable property made pursuant to this Part does not satisfy the
12 owner's claim for rent due and other charges, the owner may proceed by ordinary
13 proceedings to collect the balance owed.

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

23 (14) If the rental agreement contains a limit on the value of property
24 stored in the lessee's storage space, such limit shall be deemed to be the
25 maximum value of the property stored in that space and the lessee may not
26 assert that the property has a greater value.

27 Section 2. This Act shall become effective upon signature by the governor or, if not
28 signed by the governor, upon expiration of the time for bills to become law without signature
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ridge.

DIGEST

SB 128 Original

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 lessee by verified mail or by electronic mail to the lessee's last known address.
- (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 allows the owner to publish the advertisement in the newspaper or in any other commercially reasonable manner. An advertisement is deemed to be "commercially reasonable" if at least three independent bidders attend the sale provided the bidders are unrelated to the owner and each other.

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.

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 lessee may not assert that the property has a greater 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))