

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/SB 1772

INTRODUCER: Commerce and Tourism Committee and Senator Hays

SUBJECT: Self-service storage facilities

DATE: April 12, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | McCarthy | Cooper | CM | Fav/CS |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 1772 (the bill) changes the notice requirements related to enforcing an owner's lien against goods stored in a self-service storage facility. Specifically, it allows for postal notice by first-class mail, along with a certificate of mailing, rather than certified mail; allows electronic mail notice.

In addition, it expands the provision relating to the right to create contractual liens or limitations on liability.

This bill substantially amends the following sections of the Florida Statutes: 83.803, 83.806, and 83.808.

II. Present Situation:

The Florida Self-storage Facility Act (act) controls the relationship between the owner of a self storage facility and a tenant who has entered into an agreement with him. This act controls the

enforcement of an owners lien, including the notice requirements for the advertisement of sale of the personal property of the tenant who is in default.¹

Currently the last known address is defined in s. 83.803, F.S., as the address provided by the tenant in the latest rental agreement or the address provided by the tenant by hand delivery, or certified mail in a subsequent written notice of a change of address.²

With respect to the enforcement of lien, the tenant must be notified by written notice delivered in person or by certified mail to the tenant's last known address, and conspicuously posted at the self-service storage facility or on the self-contained storage unit.³ The notice must include:

- An itemized statement of the owner's claim;
- A description of the personal property;
- A demand for payment within a specified time, not less than 14 days after delivery of the notice;
- A conspicuous statement that unless the claim is paid within the time stated in the notice the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.

Any notice given in the enforcement action is presumed delivered when it is deposited with the United States Postal Service, registered, and properly addressed with postage prepaid.⁴

After the expiration of the time given in the notice, an advertisement of the sale or other disposition must be published once a week for 2-consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one sale.⁵

In the event of a sale, the owner must provide a notice of any balance remaining to the tenant either in person or by certified mail. The owner must also provide a notice of the amount of the sale proceeds to the tenant or secured lienholders in person or by certified mail.⁶

If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.⁷

¹ Part III of ch. 83, F.S.

² Section 83.303(6), F.S.

³ See U.S. Postal Service <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm> (last visited April 8, 2011).

⁴ See U.S. Postal Service <http://www.usps.com/send/waystosendmail/extraservices/registeredmailservice.htm> (last visited April 8, 2011).

⁵ Section 83.806(4), F.S.

⁶ Section 83.806(8), F.S.

⁷ Section 83.806(4)(b), F.S.

Section 83.808, F.S., specifically provides that nothing in the Self-storage Facility Act should be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, or in any manner impair or affect any other lien arising at common law, in equity, or by any statute of this state, or any other lien not provided for with respect to the owner's lien.

III. Effect of Proposed Changes:

Section 1 amends s. 83.803, F.S., to expand the definition of last known address to include the street address, post office box, or electronic mail address provided by the tenant or in a subsequent written change of address notice provided by first-class mail, or electronic mail. The bill removes the provision for notice of change of address being provided by the tenant by certified mail.

Section 2 amends s. 83.806, F.S., to remove the requirement that a tenant be notified by certified mail of the owners claim. The bill also alters the criteria for the creation of the presumption that the notice required by the statute was delivered to the tenant by removing the requirement that the notice be sent by registered mail.

The bill allows notice be given by first class mail rather than certified mail with respect to the notice of the amount of the sale proceeds or any balance remaining after the sale.

Section 3 amends s. 83.808, F.S., by clarifying that this statute does not impair or affect the right of parties to create liens or *limitations on liability* by special contract or agreement.

Section 4 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will lower the costs for owners of self storage facilities with respect to providing the required notice to tenants and secured lienholders under the self storage facility act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on April 12, 2011

The CS differs from the bill as filed in that it restores the newspaper notice provisions in current law that were deleted by the bill.

B. Amendments:

None.