

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 Committee on Regulated Industries

BILL: SB 1174

INTRODUCER: Senator Ring

SUBJECT: Liens on Personal Property

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/1 amendment
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

SB 1174 amends s. 83.806, F.S., relating to Liens on Personal Property in Self-Service Storage Facilities and Self-contained Storage Units. The bill allows for the advertisement of the sale or other disposition of personal property in a self-storage facility or self-contained storage unit to be posted on an Internet website accessible to the public. The bill deletes the requirement for physical posting in three conspicuous places in the neighborhood of the storage facility or unit, if there is no general circulation newspaper in the area of the storage facility or unit.

The bill provides that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property.

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill provides that the storage unit owner is not liable for the vehicle or any damages to it after the vehicle is removed from the unit by a wrecker, tow truck, or car carrier.

The bill provides a July 1, 2013 effective date.

This bill substantially amends section 83.806, Florida Statutes.

II. Present Situation:

Self-storage Facility Act

Sections 83.801 to 83.809, F.S., constitute the Self-storage Facility Act (act). Nothing in the act may be construed to impair or affect the rights of parties to create additional rights, duties, and obligations in a rental agreement, and the provisions of the act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.¹

A self-service storage facility (storage facility) is any real property designed and used for renting or leasing individual storage space to tenants who have access to the space in order to store and remove personal property, but not to use it as a residence.² A storage facility is not a warehouse as used in ch. 677, F.S.,³ and if a storage facility owner issues any warehouse receipt, bill of lading, or other document of title for the stored personal property, the owner and the tenant are subject to the provisions of ch. 677, F.S., and not the provisions of the act.⁴

A self-contained storage unit (unit) is a unit (such as a trailer, box or other shipping container) at least 200 cubic feet in size, which is leased by a tenant primarily for use as storage space and is located at a facility owned or operated by the owner or at a location designated by the tenant.⁵ An owner is defined as an owner, operator, lessor, or sublessor of a storage facility or unit, or his agent or any other person authorized by the owner to manage the facility or to receive rent from a tenant pursuant to a rental agreement for a unit.⁶

Section 83.803(4), F. S., defines tenant as a person or his sublessee, successor, or assign entitled pursuant to a rental agreement to the exclusive use agreement of storage space at a storage facility or in a unit, and s. 83.803(5), F.S., defines rental agreement as any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a storage facility or a unit.

The act addresses liens against the personal property located at a storage facility or in a unit.⁷ An owner of a storage facility or unit (and the owner's heirs, executors, administrators, successors, and assigns) has a lien upon all personal property at a storage facility or in a unit, even if that property is not owned by the tenant, for rent, labor charges, or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to the act.

The lien attaches as of the date that the personal property is brought to the storage facility or the date the tenant takes possession of the unit, and the priority of this lien is the same as a landlord's

¹ Section 83.809, F.S.

² Section 83.803(1), F.S.

³ Chapter 677, F.S., codifies article 7 of the Uniform Commercial Code and governs warehouse receipts, bills of lading, and other documents and procedures relating to goods, storage, and contracts to deliver them.

⁴ *Id.*

⁵ Section 83.803(2), F.S.

⁶ Section 83.803(3), F.S.

⁷ *See* s. 83.805, F.S.

lien pursuant to s. 83.08, F.S.⁸ In the event of default, the owner must give notice to persons who have properly documented security interests against the tenant (known as perfected interests against a debtor under the Uniform Commercial Code set forth in chs. 670 to 680, F.S.)⁹.

When a tenant does not timely pay rent, the owner may deny access (without any notice) to the property located in the storage facility or unit, beginning five days after the due date.¹⁰ The owner may then pursue legal action, or may proceed without using the courts, if doing so will not create a breach of the peace.¹¹

Section 83.806, F.S., addresses satisfaction of an owner's lien against a tenant lien. A tenant is notified in writing either in person, by electronic mail, or by first-class mail with a certificate of mailing to the tenant's last known address¹² and a copy conspicuously posted at the storage facility or on the unit. If no response, return receipt or delivery confirmation is received from the same last known electronic address of the tenant, notice of the sale must be sent by the owner to the tenant by first-class mail with a certificate of mailing to the tenant's last known address, before proceeding with the sale.¹³

As required by s. 83.806(2), F.S., the notice of the sale shall include:

- An itemized statement of the claim indicating the due date and the amount due;
- The same description, or a reasonably similar description, of the personal property as stated in the rental agreement;
- A demand for payment within a specified time not less than 14 days after delivery of the notice (notice period);
- A conspicuous statement that, unless the claim is paid within the notice period, the personal property will be advertised for sale or other disposition (sale) 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.

A notice of sale is presumed delivered when deposited with the United States Postal Service, properly addressed and with prepaid postage.¹⁴ After the expiration of the notice period, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the storage facility or unit is

⁸ The lien rights provided by s. 83.08(2), F.S., are in favor of owners to whom rent may be due, upon the property found upon or off the leased or rented premises, and are superior to any lien acquired subsequent to the bringing of the property onto the leased premises.

⁹ See *supra* note 5 and s. 671.101, F.S.

¹⁰ Section 83.8055, F.S.

¹¹ *Id.* Section 877.03, F.S., states that person who commits acts that corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not exceeding \$500.

¹² Section 83.803(6), F.S., provides that the last known address is the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail.

¹³ Section 83.806(1), F.S.

¹⁴ Section 83.806(3), F.S.

located. A single advertisement and a single sale may be used to dispose of property, even the property is owned by more than one person.¹⁵

Section 83.806(4), F.S., requires that the advertisement of the sale include:

- A brief and general description of what is believed to constitute the personal property contained in the storage unit, pursuant to the rental agreement;
- The address of the storage facility or unit and the tenant's name; and
- The time, place, and manner of the sale, which may not be sooner than 15 days after the first publication.

If there is no newspaper of general circulation in the area where the facility or unit is located, the advertisement of the sale must be posted at least 10 days before the date of the sale, in at least three conspicuous places in the neighborhood where the facility or unit is located.¹⁶

Section 83.806(5), F.S., states that a sale must be properly noticed and advertised, and conducted in a commercially reasonable manner.¹⁷ Before any sale, the tenant may redeem the property by paying the amount due and the reasonable expenses incurred by the owner in complying with the enforcement procedures required by s. 83.806, F.S. (the compliance expenses).¹⁸ Upon receipt of payment, the owner must return the property to the tenant. If the tenant fails to redeem the property or satisfy the lien and the compliance expenses, the tenant is deemed to have unjustifiably abandoned the storage facility or storage unit, and the owner may resume possession of the premises.¹⁹

Section 83.806(7), F.S., provides that a good faith purchaser of property sold to satisfy a lien for amounts due for rental of a storage facility or unit and for compliance expenses, takes the property free of any claims, except those interests provided for in s. 83.808, F.S., despite any noncompliance by the owner with the enforcement procedures.²⁰

After a sale, if the owner's lien has priority over all other liens in the property, s. 83.806(8), F.S., states:

- The owner may satisfy the lien from the sale proceeds;
- The lien rights of secured lienholders are automatically transferred to the remaining sale proceeds of the sale;
- Any balance must be held by the owner for delivery to the tenant upon demand;
- A notice of any balance must be delivered by the owner to the tenant either in person or by first-class mail with a certificate of mailing to the tenant's last known address; and

¹⁵ Section 83.806(4), F.S.

¹⁶ *Id.*

¹⁷ Section 679.627(2), F.S., states that a disposition of collateral is made in a commercially reasonable manner if the disposition is made in the usual manner and at the current price in any recognized market at the time of disposition, or otherwise in conformity with reasonable commercial practices among dealers in the type of property.

¹⁸ Section 83.806(6), F.S.

¹⁹ *Id.*

²⁰ Section 83.808, F.S., states that nothing in the act affects liens created by special contract or agreement, or any other lien arising at common law, in equity, or by any state statute or any other lien, other than the lien for charges established in s. 83.805, F.S.

- If the tenant does not claim the balance of the proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the balance.

However, if the owner's lien does not have priority over all other liens, s. 83.806(8), F.S., states:

- The sale proceeds must be held for the benefit of the holders of all superior liens;
- A notice of the amount of sale proceeds must be delivered by the owner to the tenant or to the secured lienholders either in person or by first-class mail with a certificate of mailing to their last known addresses; and
- If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation for payment of the proceeds.

Legal and Official Advertisements in Newspapers and on Websites

The requirements for legal notices containing information of a public character or of interest or value to the residents or owners of property, or of interest or value to the general public, are provided in s. 50.011, F.S. When a legal advertisement in a newspaper is directed for any purpose, the intent and meaning of such legislation is that there be publication in a newspaper (qualified newspaper), which must be:

- printed and published at least once a week, with at least 25 percent of its words in the English language;
- entered as periodicals matter at a post office in the county where published;
- for sale to the public generally; and
- available to the public generally.²¹

When any law directs advertisements to be made and there is no qualified newspaper published in the applicable county, the alternative method is posting three copies of the advertisement in three different places in the county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a qualified newspaper is published.²²

Section 50.0211(2), F.S., provides that effective July 1, 2013, each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper, at no additional charge. There must be a link to legal notices on the front page of that website for access to the legal notices without charge. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the website should optimize its online visibility in keeping with the print requirements. The web pages that contain legal notices shall present the legal notices as the dominant subject matter of those pages, and the website shall contain a search function to facilitate searching the legal notices.

Section 50.0211(3), F.S., requires placement of published legal notices by the qualified newspaper on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at www.floridapublicnotices.com. Upon

²¹ Section 50.011, F.S.

²² Section 50.021, F.S.

request and without charge, newspapers that publish legal notices shall provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.²³ An error in the notice placed on the newspaper or statewide website shall be considered a harmless error, and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.²⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 83.806, F.S., concerning the enforcement and satisfaction of liens held by an owner of a storage unit. The bill allows for the advertisement of the sale or other disposition of personal property (notice of sale) in a self-storage facility or self-contained storage unit (storage unit) to be posted on an Internet website accessible to the public. The bill deletes the requirement for physical posting of a notice of sale in three conspicuous places in the neighborhood of the storage unit, when there is no general circulation newspaper in the area of the storage unit. Owners of storage units in areas without a general circulation newspaper will be required to post a notice of sale on an Internet website accessible to the public.

The bill amends s. 83.806, F.S., to provide that if the rental agreement for a storage unit states a limit on the value of the property to be stored, that limit is deemed to be the maximum value of the stored property. Section 83.808, F.S., also addresses contracts, and contains a requirement that there must be a provision disclosing whether the applicant is a member of the uniformed services as defined in federal law.²⁵

The bill allows for the owners of a storage unit to have a vehicle towed from the storage unit, when the vehicle's title is deemed to have no prior lienholder. The bill does not describe the process to be followed to deem that a title has no prior lienholder. Vehicle Information checks may be conducted using title or vehicle identification numbers through an Internet inquiry²⁶ or by completion of a records request to the Division of Motorist Services at the Department of Highway Safety and Motor Vehicles.²⁷

The bill provides that the owner of a storage unit is not liable for the vehicle or any damages to it after the vehicle is removed from the storage unit by a wrecker,²⁸ tow truck, or car carrier. The provisions of s. 713.78 (2), F.S., address liens for services rendered by those persons regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier (wrecker). A wrecker has a lien for towing and storage charges for the recovery, removal, or storage of a vehicle, conditioned upon instructions from:

²³ Section 50.0211(4), F.S.

²⁴ Section 50.0211(5), F.S.

²⁵ 10 U.S.C. s. 101(a)(5) defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

²⁶ Florida Highway Safety and Motor Vehicles, *Motor Vehicle Check*, <https://services.flhsmv.gov/MVCheckWeb/> (last visited Mar. 29, 2013).

²⁷ Florida Highway Safety and Motor Vehicles, *Forms*, <http://www.flhsmv.gov/dmv/forms/BTR/85054.pdf> (last visited Mar. 29, 2013).

²⁸ Section 713.78(c), F.S., defines wrecker as any truck or other vehicle used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

- The owner of the vehicle;
- The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with certain notice and other requirements in s. 715.07, F.S.,²⁹ or
- Any law enforcement agency.

Compliance with the notice provisions in s. 715.97, F.S., may be required for the towing of a vehicle from a storage facility or unit.

Section 2 of the bill provides a July 1, 2013 effective date.

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 reduction in publication of notices of sales may impact some newspapers of general circulation. The amount payable to a tenant after a sale may be increased by the difference in the cost associated with posting the notice of sale on an Internet website in lieu of publication of the notice in a newspaper.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²⁹ Section 715.07, F.S., provides procedures for towing or removal of vehicles on private property.

VII. Related Issues:

The bill does not make exception for compliance with the requirements of ch. 50, F.S., regarding publication of legal notices, which may result in conflicting statutory language. The bill does not identify the websites on which legal notices may be placed.

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

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

None.

B. Amendments:**Barcode 417994 by the Regulated Industries Committee on April 9, 2013:**

The amendment deletes the posting of the notice of sale or other disposition of personal property (notice of sale) in a self-storage facility or self-contained storage unit (storage unit) on an Internet website accessible to the public. The requirement of current law regarding physical posting of a notice of sale in three conspicuous places in the neighborhood of the storage unit, when there is no general circulation newspaper in the area of the storage unit is retained. (WITH TITLE AMENDMENT)