

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: CS/SB 264

INTRODUCER: Judiciary Committee and Senator Artiles

SUBJECT: Self-storage

DATE: February 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 264 revises the methods available to owners of a self-service storage facility or self-contained storage unit (storage facility owner) for the sale of stored property when a tenant is delinquent in the payment of rent and other expenses (delinquent tenant).

Current law permits a storage facility owner to sell the stored property of a delinquent tenant in order to recover unpaid rent and other expenses (storage expenses). In addition to the sale of a delinquent tenant's stored property at a physical sale as permitted under current law, the bill authorizes the sale of such property to be conducted on a public website that customarily handles personal property auctions.

Current law specifies the notice and advertising requirements that a storage facility owner must meet before selling a delinquent tenant's stored property. The bill provides that, 60 days after the date that a tenant is obligated to pay rent and other charges for the storage of a motor vehicle or watercraft, a storage facility owner may either sell the motor vehicle or watercraft, or have it towed.

The storage facility owner is not liable for the motor vehicle or watercraft or for any damage to the property once the operator of a wrecker (a vehicle equipped with a winch or similar equipment which is used to tow or transport motor vehicles or vessels on Florida highways) takes possession of the stored property. The wrecker operator must comply with the notification

and sale requirements in current law in order to claim a lien for its towing or storage services or to proceed with a sale of the property.

The bill provides that, if a 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. This may limit liability of a storage facility owner for damages to or losses of stored property.

As permitted by the bill, if a rental agreement includes a late fee provision, a late fee of the greater of \$20 or 20 percent of the monthly rent amount may be imposed on a delinquent tenant.

The bill has no fiscal impact to state government.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Sections 83.801-83.809, F.S., constitute the Self-storage Facility Act (act) governing self-storage facilities in this state. The act may not be construed to impair or affect the rights of a storage facility owner and a tenant to create additional rights, duties, and obligations in a rental agreement, and the provisions of the act supplement all other rights in a creditor-debtor or landlord-tenant relationship pursuant to Florida law.¹

A self-service storage facility (storage facility) is real property designed and used for renting or leasing an individual storage space to a tenant who accesses the space to store and remove personal property, but not to use the space 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 a warehouse receipt, bill of lading, or other document of title for the stored personal property, the transaction is subject to ch. 677, F.S., dealing with documents of title under the Uniform Commercial Code, and not the act.⁴

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

The term “tenant” is defined as a person or his sublessee, successor, or assign entitled pursuant to a rental agreement to the exclusive use of storage space at a storage facility or in a unit.⁷ The term “rental agreement” includes any agreement or lease which establishes or modifies terms,

¹ See s. 83.809, F.S.

² See s. 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 the storage and transport of goods.

⁴ See s. 83.809(1), F.S.

⁵ See s. 83.803(2), F.S.

⁶ See s. 83.803(3), F.S.

⁷ See s. 83.803(4), F.S.

conditions, rules, or any other provisions concerning the use and occupancy of a storage facility or a unit.⁸

Lien Rights

The act addresses liens against the personal property at a storage facility or in a unit.⁹ A storage facility owner (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. The lien secures rent, labor charges, or other charges, present or future, related to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition as permitted by 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 unit¹⁰ In the event of default, the storage facility owner must give notice to persons who have properly documented security interests against the tenant (i.e., "perfected interests" against a debtor under the Uniform Commercial Code,¹¹ pursuant to chs. 670 - 680, F.S.)¹²

Actions After Failure by Tenant to Timely Pay Rent

When a tenant does not timely pay rent, the storage facility owner may deny access, without notice, to the stored property, beginning five days after the due date.¹³ The storage facility owner may then pursue legal action, or may proceed without using the courts, if doing so will not create a breach of the peace.¹⁴

Requirements for Notice of Sale of Stored Property

Section 83.806, F.S., addresses satisfaction of a storage facility owner's lien against stored property. A tenant must be notified in writing of a pending sale of the tenant's stored property, delivered in person, by electronic mail, or by first-class mail with a certificate of mailing to the tenant's last known address,¹⁵ and a copy of the notice must be conspicuously posted at the storage facility or on the unit. If the storage facility owner does not receive 1) a response to the notice, 2) a return receipt, or 3) a delivery confirmation from the same electronic address of the

⁸ See s. 83.803(5), F.S.

⁹ See s. 83.805, F.S.

¹⁰ The lien rights described in s. 83.08(2), F.S., are in favor of owners to whom rent may be due, upon the property found upon or usually kept at the leased premises, and are superior to any lien acquired after the property is brought onto the leased premises.

¹¹ See s. 671.101, F.S.

¹² See *supra* note 3.

¹³ See s. 83.8055, F.S.

¹⁴ *Id.* Section 877.03, F.S., relating to breach of the peace and disorderly conduct, provides that a 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, is guilty of a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not exceeding \$500.

¹⁵ See s. 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.

tenant, the storage facility owner must send the notice by first-class mail with a certificate of mailing to the tenant's last known address, before the storage facility owner may proceed with a sale of the stored property.¹⁶

The notice of the sale must include:¹⁷

- 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 and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the storage facility 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.¹⁸

Advertisement of the Sale of Stored Property

After the expiration of the notice period, an advertisement of the sale or other disposition shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area where the storage facility or unit is located. A single advertisement and a single sale may be used to dispose of property, even if the property is owned by more than one person.¹⁹

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 no newspaper of general circulation in the area exists 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.²⁰

A sale must be properly noticed and advertised, and conducted in a commercially reasonable manner.²¹ The tenant may redeem the property before a sale by paying both the amount required to satisfy the lien and the reasonable expenses incurred by the storage facility owner in

¹⁶ See s. 83.806(1), F.S.

¹⁷ See s. 83.806(2), F.S.

¹⁸ See s. 83.806(3), F.S.

¹⁹ See s. 83.806(4), F.S.

²⁰ *Id.*

²¹ Section 83.806(5), F.S. 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.

complying with the enforcement procedures required by law (the compliance expenses).²² Upon receipt of payment, the storage facility 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 storage facility owner may resume possession of the premises.²³ A good faith purchaser of property sold to satisfy a lien and the compliance expenses of a storage facility owner takes the property free of most claims,²⁴ even if a storage facility owner fails to comply with the procedures required by the act.²⁵

Satisfaction of Liens in Favor of Storage Facilities Owners

After a sale, if the storage facility owner's lien has priority over all other liens in the property:²⁶

- The storage facility owner may satisfy the lien from the sale proceeds;
- The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale;
- Any balance must be held by the storage facility owner for delivery to the tenant upon demand;
- A notice of any balance must be delivered by the storage facility 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
- 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 storage facility owner has no further obligation for payment of the balance.

However, if the storage facility owner's lien does not have priority over all other liens:²⁷

- 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 storage facility 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 storage facility owner has no further obligation for payment of the proceeds.

III. Effect of Proposed Changes:

Section 1 of the bill authorizes the use of a public website to sell a delinquent tenant's stored property by a self-service storage facility or a self-contained storage unit (storage facility owner), in order to satisfy a lien in favor of the storage facility owner. A storage facility owner need not be licensed to post property for sale on a public website. Current law provides that the sale of stored property for which a tenant is delinquent in paying rent payments may be sold at a specified time and place.

²² See s. 83.806(6), F.S.

²³ *Id.*

²⁴ Section 83.808(1), F.S., provides that the act does not affect 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 not provided for in s. 83.805, F.S. (liens for charges in favor of a storage facility owner).

²⁵ See s. 83.806(7), F.S.

²⁶ See s. 83.806(8), F.S.

²⁷ *Id.*

If the rental agreement (or an addendum) includes a limit on the value of property that may be stored, as authorized by the bill, the financial liability of a storage facility owner for loss or damage to stored property may be similarly limited.

The bill provides that a storage facility owner may either sell a motor vehicle or watercraft or have the property towed by a wrecker operator. Once a wrecker operator takes possession of the property, the storage facility owner is not liable for the item or any damage to it. The wrecker operator is required to comply with notification and sale requirements provided in s. 713.78, F.S., dealing with liens for recovering, towing, or storing vehicles and vessels.

Section 2 of the bill permits the imposition of a late fee upon a delinquent tenant under the conditions specified in s. 83.808(3), F.S., created in the bill. A storage facility may charge a reasonable late fee for each rental period that a tenant does not pay rent. However, this fee may be imposed and collected only if its amount is set forth in the contract with the tenant, and the fee may not exceed the greater of \$20 or 20 percent of the monthly rent. The act does not address the imposition of a late fee against a delinquent tenant or provide a limitation on the amount of a late fee.

The bill provides an effective date of July 1, 2017.

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:

CS/SB 264 authorizes the use of a public website to sell a delinquent tenant's stored property by an owner of a self-service storage facility or a self-contained storage unit (storage facility owner), in order to satisfy a lien to recover unpaid rent and other expenses. The use of a public website rather than a sale of stored property at a specified time and place may impact storage facility owners, tenants, and prospective purchasers

who are familiar with the current method authorized in current law for the sale of stored property of a delinquent tenant.

If the rental agreement (or an addendum) includes a limit on the value of property that may be stored as authorized by the bill, the financial liability of a storage facility owner for loss or damage to stored property may be similarly limited.

The ability of a storage facility owner to either sell a motor vehicle or watercraft or have the item towed by a wrecker operator may impact storage facility owners, tenants, and prospective purchasers familiar with the current method of sale authorized for the sale of motor vehicles and watercraft. The financial liability of a storage facility owner for loss or damage to stored property may be reduced due to the transfer of such liability from the storage facility owner to the wrecker operator who takes possession of the property. Delinquent tenants storing motor vehicles or watercraft may be impacted by costs associated with the towing of such stored property, if a storage facility owner uses that method to dispose of a delinquent tenant's property, rather than the method of sale that is authorized under current law for all stored property.

Tenants who do not timely pay rent for the storage of their property may be impacted by the late fee authorized by the bill, if their rental agreements comply with all requirements for the imposition of a late fee set forth in the bill.

C. Government Sector Impact:

CS/SB 264 has no fiscal impact to state government.

VI. Technical Deficiencies:

Current law provides that an advertisement for the sale of a delinquent tenant's stored property must include the "*place . . . of the sale or other disposition.*"²⁸ (Emphasis added.) The bill does not specify whether the advertisement must include the physical address of the self-service storage facility or the self-contained storage unit, the address of the public website that customarily conducts personal property auctions, or both addresses.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

²⁸ See s. 83.806(4)(a)3., F.S.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 7, 2017:

The bill specified the way in which a storage facility must attempt to identify any lienholder or owner of a motor vehicle or watercraft stored by a delinquent tenant prior to selling the item. The bill also specified the way in which the storage facility must give notice of the potential sale to any identified lienholder or owner of these items. In contrast, the committee substitute does not specify the way in which storage facilities must perform these tasks.

- B. **Amendments:**

None.