

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 Judiciary

BILL: SB 456

INTRODUCER: Senator Harrell

SUBJECT: Self-service Storage Facility Liens

DATE: January 26, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			RI	
3.			RC	

I. Summary:

SB 456 amends provisions in the Self-storage Facility Act. The Act controls the relationship and contracts between tenants and owners of self-storage facilities and self-contained storage units.

The bill requires rental agreements to contain a provision that authorizes a tenant to name an optional alternate contact person who must be notified when a facility owner sends notice that he or she is about to sell the tenant’s personal property because of nonpayment of rent. If an alternate contact is named, he or she does not receive an interest in the tenant’s stored property.

The bill also provides an alternative for facility owners to advertise a sale of a tenant’s property. Currently, the advertisement must be placed in a local newspaper once a week for 2 consecutive weeks. The bill allows an alternative publication on a public website that customarily conducts or advertises personal property auctions.

The bill takes effect July 1, 2024.

II. Present Situation:

The Self-storage Facility Act

The Self-storage Facility Act, which is contained in ss. 83.801 – 83.809, F.S., governs self-storage facilities and self-contained storage units in the state. The basic arrangement contemplated in the Act is that of a tenant¹ who contracts with a facility owner to store the tenant’s personal property. Under this arrangement, the storage facility owner faces the risk that a tenant will fail to pay rent or other expenses. However, the Act provides the storage facility

¹ A “tenant” is the person entitled to use the storage space at a self-service storage facility or in a self-contained unit under a rental agreement, to the exclusion of others. The term is defined in s. 83.803(6), F.S.

owner with a degree of protection from this risk by granting the owner a lien² on all stored personal property of a tenant and by authorizing the storage facility owner to sell the property of a delinquent tenant.

Self-storage Facility's Recourse against a Delinquent Tenant

The lien that a storage facility has on a tenant's stored property attaches as of the date that the personal property, whether the property belongs to the tenant or not, is brought to the self-service storage facility or as of the date that the tenant takes possession of the self-contained storage unit.³

Once the tenant breaches the rental agreement by failing to pay the rent when it is due, the owner may enforce the lien in two ways. First, the owner may, without notice, after 5 days from the date the rent is due, deny the tenant access to the personal property located in the unit.⁴ Second, the storage facility may take the first steps toward selling the tenant's property. The storage facility may later sell the property if the tenant does not pay the amount due before the lien sale occurs.⁵

Selling a Delinquent Tenant's Property to Enforce a Lien

If the owner of the self-service storage facility or self-contained storage unit chooses to sell the tenant's property to enforce the lien, the owner must proceed as follows. First, the owner must notify the tenant in writing that the lien must be satisfied within 14 days after delivery of the notice.

The Notice to the Tenant

The written notice may be delivered in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address. The notice must also be conspicuously posted at the storage facility or unit. If the owner sends the notice of a pending sale to the tenant's last known e-mail address, but does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send the notice of the sale to the tenant by first-class mail with a certificate of mailing to the tenant's last known address before the owner may proceed with the sale.⁶

The notice must contain an itemized statement showing:

- The amount due;
- When the amount became due;
- A description of the personal property;
- A demand for payment with a specified time that is not less than 14 days after the notice is delivered;

² A lien is "a legal right or interest that a creditor has in another's property." The lien generally lasts until the debt that it has secured is satisfied. BLACK'S LAW DICTIONARY (11th ed. 2019).

³ Section 83.805, F.S.

⁴ Section 83.8055, F.S. This "unit" may be a self-service storage facility or self-contained storage unit.

⁵ Section 83.806, F.S.

⁶ Section 83.806(1), F.S.

- A statement that, unless the claim is paid by the time stated in the notice, the personal property will be advertised for sale and will be sold or otherwise disposed of at a certain time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact in order to respond to the notice.⁷

Advertisement of the Notice of Sale

When the time given in the notice has expired, the owner must place an advertisement of the sale or other disposition of the property in a newspaper of general circulation once a week for 2 consecutive weeks in the area where the facility or unit is located.

The Lien Sale on a Public Website

A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility owner is not required to have a license to post property for an online sale. The advertisement for the online sale must include:

- A brief description of what is believed to be the personal property in the storage unit.
- The address of the storage facility or unit and the name of the tenant.
- The time, place, and manner of the sale or other disposition of the property.

The sale or other disposition of the property may take place at least 15 days after the first publication.

If there is no newspaper of general circulation in the area where the storage facility or unit is located, the advertisement 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.

Contracts

The “contracts” provision⁸ states that nothing in the Act may be construed as impairing or affecting the right of the tenant and owner to create liens by special contract or agreement or impair any other lien arising at common law, in equity, or by statute, or any other lien not provided for in the Act. Stated more generally, the Act permits tenants and owners to agree to contracts that contain additional terms.

Each rental agreement or application for a rental agreement must disclose whether the applicant is a member of the uniformed services⁹ as defined in 10 U.S.C. 101(a)(5).

A facility owner may charge a tenant a reasonable late fee for each period that the tenant does not pay the rent that is due. The amount of the late fee must be stated in the rental agreement. A late fee of \$20 or 20 percent of the monthly rent, whichever is greater, is considered reasonable.

⁷ Section 83.806(2), F.S.

⁸ Section 83.808, F.S.

⁹ If a tenant is an active duty service member or a member of the National Guard and reserve, the Servicemembers Civil Relief Act gives them certain financial and legal protections in business dealings, including rental agreements.

An owner may also charge a reasonable fee for any expenses that are incurred as a result of rent collection or lien enforcement.¹⁰

III. Effect of Proposed Changes:

Designation of an Alternate Contact Person

The bill amends s. 83.808, F.S., to require that a rental agreement contain a provision authorizing a tenant to designate an optional alternate contact person. The alternate contact may be contacted only for the purpose of providing notice of a pending sale of the tenant's property or as otherwise provided in the rental agreement. Designating an alternate contact does not give that person an interest in the contents that are stored in the self-service storage facility or in the self-contained storage unit.

Enforcement of a Lien

Section 83.806(1), F.S., which addresses the enforcement of a lien, is amended to require that written notice be sent to the last known address of the alternate contact person if one is designated by the tenant. If the facility owner sends notice of a pending sale to the alternate contact person's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the e-mail address, the owner must send notice of the sale to the alternate contact person by first-class mail with a certificate of mailing to his or her last known address before proceeding with the sale.

Publication on a Public Website

Additionally, the bill is amended to permit an advertisement for the sale of a tenant's property to be published on a public website that customarily conducts or advertises personal property auctions, in lieu of publishing the advertisement in a newspaper.

If there is no newspaper of general circulation in the area where the storage facility or storage unit is located and the facility owner does not publish the advertisement on a public website that customarily conducts or advertises personal property auctions, the advertisement must be posted at least 10 days before the date of the sale or disposition in at least three conspicuous places in the neighborhood where the facility or unit is located.

The act takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁰ Section 83.808(3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The storage facility owners will likely save money by providing the notice of sale on a more affordable public website rather than paying the advertising fee to a local newspaper. In contrast, the newspapers will likely experience a loss in revenue due to lost sales from the facility owners.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 83.806(4), F.S., is amended to permit placing the advertisement of the sale of personal property on a public website. As the bill is currently worded the phrase “for a full day” is inserted in the language addressing newspaper publications. This phrase would be better understood if it modified publication on the public website and not the newspaper. Additionally, the bill does not clearly state how long advertisements must appear on a website in advance of the sale of the tenant’s property. The intent, however, may be that advertisements must appear continuously for 2 weeks.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
