

SUBJECT: Enforcement of a self-service storage facility lien

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons
0 nays
2 absent — S. Miller, Workman

WITNESSES: For — Brian Cisarik; Silvia Pendleton (*Registered, but did not testify*: Emily Cates, Daily Commercial Record; Laura Matz, Texas Self Storage Association)

Against — None

BACKGROUND: Property Code, ch. 59 governs self-storage facility liens. A lessor has a lien on all property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant. A tenant may redeem property seized prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred.

A lessor may enforce a lien by seizing and selling the property if the seizure and sale are made under the terms of a contractual landlord's lien as in the written rental agreement. Otherwise, a lessor must have a court order to foreclose the lien and to sell the property.

To enforce a lien by seizing and selling or otherwise disposing of the property, the lessor must deliver written notice of the claim to the tenant to be delivered in person or by certified mail. The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other locations near the facility.

If the tenant fails to pay before the 15th day after the day that the notice is delivered, the lessor must publish or post notices advertising the sale. If notice is by publication, the lessor may not sell the property until the 15th day after the day that the first notice is published. If notice is by posting,

the lessor may sell the property after the 10th day after the day that the notices are posted.

If the proceeds of a sale are greater than the amount of the lien and the reasonable expenses of the sale, the lessor must notify the tenant who has two years to request the excess or the lessor owns the excess.

The Servicemembers Civil Relief Act. The Servicemembers Civil Relief Act defines a service member as a member of the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service. The Act, 50 U.S.C. sec. 537, does not permit a person holding a storage facility lien on the property or effects of a service member, during any period of military service of the service member and for 90 days thereafter, to foreclose or enforce a lien without a court order. A person who acts without a court order would be fined or imprisoned for not more than one year, or both.

DIGEST:

CSHB 1259 would make various changes to statutes governing self-storage facility liens.

It would include members of the Texas State Guard and the Texas National Guard in a definition of service members in Property Code, ch. 59, entitling them to the protections and rights for enforcement of storage liens of the federal Servicemembers Civil Relief Act.

The bill would require a notice of a claim to include a statement requesting a tenant in the military service to notify the lessor of the tenant's current military service status immediately. The lessor could require written proof of a tenant's military service.

The bill would permit notice of a claim to be delivered via e-mail if agreed upon in the rental agreement between the tenant and the lessor. The bill would require that a tenant satisfy a claim within 14 days, rather than 15 days, after being notified to avoid the sale of the property.

The bill would amend the timeframe for notification and action for the enforcement of a lien involving certain motor vehicles required to be titled, including those registered or titled outside this state. Within 30 days of the lessor taking possession of the property to enforce a lien, the lessor

would have to give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title.

The notice would include the amount of the charges secured by the lien, a request for payment, and a statement that if the charges were not paid in full before the 31st day after the date the notice was mailed or published, the property could be sold at public auction.

The notice required could be given in the print or electronic version of a newspaper in the county in which the vehicle or boat was stored if:

- the lessor submitted a written request by verified mail to the governmental entity with which the vehicle was registered or titled requesting information on the identity of the last known owner and any lienholder;
- the lessor was advised in writing that the entity was unwilling or unable to provide the information or the lessor did not receive a response;
- the identity of the last known owner could not be determined;
- the registration or title did not contain an address for the last known owner; and
- the lessor could not determine the identities and addresses of the lienholders of record.

The lessor would not be required to publish notice if notice were sent and returned as unclaimed or refused with a notation that the addressee was unknown or had moved without a valid forwarding address.

If a constitutional or statutory lien were foreclosed, the Texas Department of Transportation could issue a new certificate of title in the name of the purchaser at the foreclosure sale.

A person would commit a class C misdemeanor (maximum fine of \$500) if the person knowingly provided false or misleading information in a notice.

The bill would take effect January 1, 2012, and would apply only to self-service storage facility rental agreements entered into, extended, or renewed on or after that date.

NOTES: The companion bill, SB 690 by Carona, passed the Senate by 30-0 on March 24 and was reported favorably, as substituted, by the House Business and Industry Committee on April 13, making it eligible for consideration in lieu of HB 1259.