

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2761

BY DELEGATE WESTFALL

[Passed March 9, 2019; in effect July 1, 2019.]

FILED

2019 MAR 26 P 1:40

OFFICE WEST VIRGINIA
SECRETARY OF STATE

HB 2761

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1 AN ACT to amend and reenact §38-14-2, §38-14-3, §38-14-4, §38-14-5, §38-14-7, §38-14-8, and
2 §38-14-9 of the Code of West Virginia, 1931, as amended, all relating to modernizing the
3 self-service storage lien law; modifying late fees; re-defining certain terms; providing
4 modern methods of satisfying a self-service storage lien; and providing a new effective
5 date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-2. Definitions.

1 As used in this article, unless the context clearly requires otherwise:

2 (1) "Default" means the failure by the occupant to perform on time any obligation or duty
3 set forth in the rental agreement or this article;

4 (2) "Last known address" means that address or electronic mail address provided by the
5 occupant in the rental agreement or the address or electronic mail address provided by the
6 occupant in a subsequent written notice of a change of address;

7 (3) "Leased space" means the individual storage space at the self-service storage facility
8 which is rented to an occupant pursuant to a rental agreement;

9 (4) "Occupant" means a person, a sublessee, successor, or assign, entitled to the use of
10 a leased space at a self-service storage facility under a rental agreement;

11 (5) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage
12 facility, an agent, or any other person authorized to manage the facility. The operator is not a
13 warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document
14 of title for the personal property stored;

15 (6) "Personal property" means movable property, not affixed to land. Personal property
16 includes goods, wares, merchandise, motor vehicles, trailers, watercraft, and household items
17 and furnishings;

18 (7) "Rental agreement" means any written agreement that establishes or modifies the
19 terms, conditions, or rules concerning the use and occupancy of leased space at a self-service
20 storage facility;

21 (8) "Self-service storage facility" means any real property used for renting or leasing
22 individual storage spaces in which the occupants themselves customarily store and remove their
23 own personal property on a "self-service" basis; and

24 (9) "Verified mail" means any method of mailing that is offered by the United States Postal
25 Service or private delivery service that provides evidence of mailing.

§38-14-3. Self-service storage lien.

1 (a) The operator has a lien on all personal property stored within each leased space for
2 agreed rent, labor, late fees, and other charges and for expenses reasonably incurred in its sale
3 or disposition pursuant to this article. The lien attaches as of the date the personal property is
4 stored within each leased space and remains a lien until the occupant has satisfied the terms of
5 the rental agreement.

6 (b) In the case of any motor vehicle or watercraft which is subject to a lien previously
7 recorded on the certificate of title, the operator has a lien on the vehicle or watercraft as long as
8 the motor vehicle or watercraft remains stored within the leased space.

9 (c) The rental agreement shall contain:

10 (1) A statement advising the occupant of the existence of the lien and that the personal
11 property stored within the leased space may be sold to satisfy the lien if the occupant is in default;

12 (2) A statement advising the occupant that personal property stored in the leased space
13 may be towed or removed from the self-service storage facility if the personal property is a motor
14 vehicle, trailer, or watercraft and the occupant is in default for more than 60 days; and

15 (3) A statement advising the occupant that a sale of personal property stored in the leased
16 space to satisfy the lien if the occupant is in default may be advertised:

17 (A) In a newspaper of general circulation in the jurisdiction where the sale is to be held or
18 where the self-service storage facility is located;

19 (B) By electronic mail or text; or

20 (C) On an online website.

§38-14-4. Late fees.

1 The operator may charge a late fee not to exceed \$20 or 20 percent of the monthly rental
2 fee, whichever is greater, for each month the occupant defaults for a period of five days or more.

§38-14-5. Enforcement of lien.

1 (a)(1) If the occupant is in default for a period of more than 60 days, the operator may
2 enforce the lien by selling the personal property stored in the leased space at a public sale or
3 dispose of the personal property if the operator can demonstrate by photographs or other images
4 and affidavit of a knowledgeable and credible person that the personal property lacks a value
5 sufficient to cover the reasonable expense of a public auction plus the amount of the self-service
6 storage lien.

7 (2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be
8 disbursed as provided in subsection (e) of this section.

9 (b)(1) Before conducting a sale under subsection (a) of this section, the operator shall,
10 subject to subdivision (2) of this subsection, notify the occupant of the default by hand delivery,
11 verified mail, electronic mail, or text at the occupant's last known address.

12 (2)(A) The operator may not notify the occupant of the default by electronic mail unless:

13 (i) The rental agreement specifies, in bold type, that notice may be given by electronic mail
14 or text; and

15 (ii) The occupant provides the occupant's initials next to the statement in the rental
16 agreement specifying that notice of default may be given by electronic mail or text.

17 (B) If the operator notifies the occupant of the default by electronic mail or text at the
18 occupant's last known address and does not receive a response, return receipt, or a confirmation

19 of delivery, the operator shall send the notice of default to the occupant by hand delivery or by
20 verified mail to the occupant's last known postal address.

21 (C) Additional requirements for members of the military apply under the Soldiers and
22 Sailors Relief Act, 50 U.S.C. §§3901-4043.

23 (3) The notice shall include:

24 (A) A statement that the contents of the occupant's leased space are subject to the
25 operator's lien;

26 (B) A statement of the operator's claim, indicating the charges due on the date of the
27 notice, the amount of any additional charges which will become due before the date of sale, and
28 the date those additional charges will become due;

29 (C) A demand for payment of the charges due within a specified time, not less than 14
30 days after the date that the notice was mailed;

31 (D) A statement that unless the claim is paid within the time stated, the contents of the
32 occupant's space will be sold at a specified time and place; and

33 (E) The name, street address, and telephone number of the operator, or his or her
34 designated agent, whom the occupant may contact to respond to the notice.

35 (4) (A) Subject to paragraph (B) of this subdivision, at least three days before conducting
36 a sale under this section, the operator shall advertise the time, place, and terms of the sale:

37 (i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

38 (ii) By electronic mail; or

39 (iii) On an online website.

40 (B) The operator may not advertise the sale in the manner provided under subparagraph
41 (ii) or (iii) of this paragraph unless the occupant provides the occupant's initials next to the
42 statement in the rental agreement required under this article.

43 (c) The operator may dispose of the personal property if the operator has complied with
44 subsection (b) of this section and the property has not been purchased.

45 (d) At any time before a sale under this section, the occupant may pay the amount
46 necessary to satisfy the lien and redeem the occupant's personal property.

47 (e) A sale under this section shall be held at the self-service storage facility where the
48 personal property is stored, on an online auction website, or at any other location reasonably
49 determined by the operator.

50 (f)(1) If a sale is held under this section, the operator shall:

51 (A) Satisfy the lien from the proceeds of the sale; and

52 (B) Mail the balance, if any, by certified mail to the occupant at the occupant's last known
53 address of the occupant.

54 (2) (A) If the balance is returned to the operator after the operator mailed the balance in
55 the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall
56 hold the balance for one year after the date of sale for delivery on demand to the operator.

57 (B) After expiration of the one-year period, the balance is presumed abandoned.

58 (g) A purchaser in good faith of any personal property sold under this article takes the
59 property free and clear of any rights of persons against whom the lien was valid.

60 (h) If the operator complies with the provisions of this article, the operator's liability to the
61 occupant is limited to the net proceeds received from the sale of the personal property less the
62 amount of the operator's lien.

63 (i) If an occupant is in default, the operator may deny the occupant access to the leased
64 space.

65 (j)(1)(A) Notices sent to the operator shall be sent to the self-service storage facility where
66 the occupant's personal property is stored by hand delivery or verified mail.

67 (B) Notices to the occupant shall be sent to the occupant at the occupant's last known
68 address.

69 (2) Notices shall be considered delivered when:

70 (A) Deposited with the United States Postal Service or a private delivery service, properly
71 addressed as provided in subsection (b) of this section, with postage prepaid; or

72 (B) Sent by electronic mail to the occupant's last known address.

73 (k)(1) If the occupant is in default for more than 60 days and the personal property stored
74 in the leased space is a motor vehicle, trailer, or watercraft, the operator may have the personal
75 property towed or removed from the self-service storage facility in lieu of a sale authorized under
76 subsection (a) of this section.

77 (2) The operator is immune from civil liability for any damage to the personal property
78 towed or removed from the self-service storage facility under subdivision (1) of this subsection
79 that occurs after the person that undertakes the towing or removal of the personal property takes
80 possession of the personal property.

81 (l) If a rental agreement specifies a limit on the value of personal property that may be
82 stored in the occupant's leased space, the limit is the maximum value of the stored personal
83 property.

84 (m) Nothing in this article impairs or affects the rights of the parties to create additional
85 rights, duties, and obligations in and by virtue of the rental agreement.

§38-14-7. Duties; care, custody, and control of property.

1 (a) The operator shall use reasonable care in maintaining the self-service storage facility
2 for the purposes of storage of personal property.

3 (b) Unless the rental agreement specifically provides otherwise, the exclusive care,
4 custody, and control of all personal property stored in the leased space remains vested in the
5 occupant.

6 (c) An occupant may not use a self-service storage facility for residential purposes.

7 (d) An occupant may not store hazardous waste or contraband in the leased space.

§38-14-8. Savings clause.

1 All rental agreements entered into prior to July 1, 2019, which have not been extended or
2 renewed after that date remain valid and may be enforced or terminated in accordance with their
3 terms or as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

1 The provisions of this article apply to all rental agreements entered into or extended or
2 renewed after July 1, 2019.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Steve Capito
.....
Chairman, House Committee

OSZ
.....
~~Member~~ Chairman, Senate Committee

Originating in the House.

In effect July 1, 2019.

Steve Hovio
.....
Clerk of the House of Delegates

De Brin
.....
Clerk of the Senate

Lee Haskaw
.....
Speaker of the House of Delegates

Mark B. Canfield
.....
President of the Senate

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2019 MAR 26 P 1:40

FILED

The within *is approved* this the *26th*
March
day of 2019.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 25 2019

Time 2:40 pm