

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2761

BY DELEGATE WESTFALL

[Originating in the Committee on the Judiciary,

February 4, 2019.]

1 A BILL 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) "Late fee" means a fee or charge assessed for a default;~~

5 ~~(3) "Leased space" means the individual storage space at the self-service facility which is
6 leased or rented to an occupant pursuant to a rental agreement;~~

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

9 ~~(5) "Owner" means the owner, operator, lessor or sublessor of a self-service storage
10 facility or the person's agent or any other person authorized to manage the facility or to receive
11 rent from any occupant under a rental agreement. The owner of a self-service storage facility is
12 not a warehouseman as defined in section one hundred two, article seven, chapter forty-six of
13 this code unless the owner issues a warehouse receipt, bill of lading or other document of title for
14 the personal property stored, in which event the owner and the occupant are subject to the
15 provisions of article seven, chapter forty-six of this code dealing with warehousemen;~~

16 ~~(6) "Personal property" means movable property not affixed to land and includes, but is
17 not limited to, goods, wares, merchandise, motor vehicles and household items and furnishings;~~

18 ~~(7) “Primary address” means that address provided by the occupant in the rental~~
19 ~~agreement or the address provided by the occupant in a subsequent notice of a change of~~
20 ~~address;~~

21 ~~(8) “Rental agreement” means any agreement or lease that establishes or modifies the~~
22 ~~terms, conditions or rules concerning the lawful and reasonable use and occupancy of a self-~~
23 ~~service storage facility;~~

24 ~~(9) “Secondary address” means any address provided on the rental agreement and is in~~
25 ~~addition to the primary address;~~

26 ~~(10) “Self-service storage facility” means any real property used for renting or leasing~~
27 ~~individual storage spaces, other than storage spaces which are leased or rented as an incident~~
28 ~~to the lease or rental of residential property or dwelling units, to which the occupants have access~~
29 ~~for storing or removing their personal property; and~~

30 ~~(11) “Self-service storage lien” means a lien imposed on the personal property of an~~
31 ~~occupant by the owner of a self-service storage facility~~

32 (2) “Last known address” means that address or electronic mail address provided by the
33 occupant in the rental agreement or the address or electronic mail address provided by the
34 occupant in a subsequent written notice of a change of address;

35 (3) “Leased space” means the individual storage space at the self-service storage facility
36 which is rented to an occupant pursuant to a rental agreement;

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

39 (5) “Online auction” means a public auction, as defined in §19-2C-1 of this code, that is
40 simulcast over the internet or other electronic means. This definition excludes sales of items via
41 fixed price or timed listings that allow bidding on an internet website.

42 (5) “Operator” means the owner, operator, lessor, or sublessor of a self-service storage
43 facility, an agent, or any other person authorized to manage the facility. The operator is not a

44 warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document
45 of title for the personal property stored;

46 (6) "Personal property" means movable property, not affixed to land. Personal property
47 includes goods, wares, merchandise, motor vehicles, trailer, watercraft, and household items and
48 furnishings;

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

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

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

§38-14-3. Self-service storage lien.

1 (a) The ~~owner~~ operator has a ~~self-service storage~~ lien on all personal property stored
2 within each leased space for agreed rent, labor, ~~or~~ late fees, and other charges and for expenses
3 reasonably incurred in its sale or ~~destruction~~ disposition pursuant to this article. The ~~self-service~~
4 ~~storage~~ lien attaches as of the date the personal property is stored within each leased space and
5 remains a lien until the occupant has satisfied the terms of 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 ~~owner~~ operator has a ~~self-service storage~~ lien on the vehicle
8 or watercraft so long as the motor vehicle or watercraft remains stored within the leased space.

9 (c) The rental agreement must contain:

10 (1) A statement in ~~bold type~~ advising the occupant of the existence of the ~~self-service~~
11 ~~storage~~ lien and that the personal property stored within the leased space may be sold to satisfy

12 ~~the self-service storage lien or destroyed if the value of the property would not reasonably~~
13 ~~discharge the costs of the sale and self-service storage lien if the occupant is in default;~~

14 ~~(2) A space for a secondary address immediately following the space provided for the~~
15 ~~primary address; and~~

16 ~~(3) A statement that the occupant may not store hazardous waste or contraband in the~~
17 ~~leased space.~~

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

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

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

25 (B) By electronic mail or text; or

26 (C) On an online website.

§38-14-4. Late fees.

1 The ~~owner~~ operator may charge a late fee not to exceed ~~\$10 or ten~~ \$20 or 20 percent of
2 the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of
3 ~~fifteen~~ five days or more.

§38-14-5. Enforcement of self-service storage lien.

1 ~~(a) (1) If an occupant is in default under a rental agreement and the owner wishes to~~
2 ~~enforce the lien, the owner shall notify the occupant of the default in a form as prescribed by~~
3 ~~subsection (c) of this section. If the default is not cured within sixty days after the service of the~~
4 ~~notice, the owner may:~~

5 ~~(A) Proceed to enforce the self-service storage lien by selling the contents of the~~
6 ~~occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the self-~~
7 ~~service storage lien, with the surplus, if any, to be disbursed as provided in this article; or~~

8 ~~(B) Destroy the personal property if he or she can demonstrate by photographs or other~~
9 ~~images and affidavit of a knowledgeable and credible person that the personal property lacks a~~
10 ~~value sufficient to cover the reasonable expense of a public auction plus the amount of the self-~~
11 ~~service storage lien;~~

12 ~~(2) In the case of personal property having a fair market value in excess of \$1,000 and~~
13 ~~against which a secured party has filed a financing statement in the name of the occupant with~~
14 ~~the Secretary of State or in the office of the clerk of the county commission in the county where~~
15 ~~the self-service storage facility is located or in the county in West Virginia shown as the last known~~
16 ~~address of the occupant or if the personal property is a motor vehicle or watercraft required by~~
17 ~~the laws of this state to be registered and the Division of Motor Vehicles shows a lien on the~~
18 ~~certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address~~
19 ~~on the financing statement or certificate of title, of the time and place of the proposed public~~
20 ~~auction, at least thirty days prior to the auction. At any time prior to the public sale or destruction,~~
21 ~~a secured party may pay the reasonable fees and costs due to the person possessing the self-~~
22 ~~service storage lien and take possession of the personal property which is subject to the lien;~~

23 ~~(3) If a lienholder of record of the personal property cannot be ascertained, the name of~~
24 ~~"Jane Doe" shall be substituted in the proceedings brought under this article and no written notice~~
25 ~~is required except as prescribed by subsection (c) of this section. Whenever a motor vehicle or~~
26 ~~watercraft is sold under the provisions of this article, the Division of Motor Vehicles shall issue a~~
27 ~~certificate of title and registration to the purchaser upon the purchaser's application containing the~~
28 ~~serial or motor number of the vehicle or watercraft purchased, together with an affidavit by the~~
29 ~~person conducting the public auction, evidencing compliance with the provisions of this article.~~

30 ~~(b) The owner may, without judicial process, deny the occupant access to the personal~~
31 ~~property stored at the self-service storage facility if the occupant has been in default for fifteen~~
32 ~~days: *Provided*, That the owner clearly states in the rental agreement that he or she may deny~~
33 ~~the occupant access to the personal property stored in the rental space after a default lasting~~
34 ~~fifteen or more days and the owner maintains a conspicuous sign on the premises of the self-~~
35 ~~service storage facility stating the name, street address and telephone number of the owner or~~
36 ~~the owner's designated agent who the occupant may contact to redeem his or her personal~~
37 ~~property and upon redemption, the occupant or lienholder be permitted access to his or her~~
38 ~~personal property at a time not later than the close of business on the next following business~~
39 ~~day.~~

40 ~~(c) Anytime after the occupant has been in default and before the owner can sell or destroy~~
41 ~~the occupant's personal property in accordance with the terms of this article, the owner shall send~~
42 ~~a notice of default, by regular mail, and registered or certified mail, postage prepaid, to the~~
43 ~~occupant at the occupant's last-known primary address and secondary address, if any. The notice~~
44 ~~of default shall include:~~

45 ~~(1) An itemized statement of the owner's claim, indicating the charges due on the date of~~
46 ~~the notice, the date when the charges became due and those charges that will accrue through~~
47 ~~the date of sale or destruction of the occupant's personal property;~~

48 ~~(2) A demand for payment of the charges due to the owner with an address where payment~~
49 ~~can be made;~~

50 ~~(3) A statement that the contents of the occupant's leased space are subject to the owner's~~
51 ~~self-service storage lien;~~

52 ~~(4) A conspicuous statement that unless the claim is paid prior to the enforcement of the~~
53 ~~self-storage lien:~~

54 ~~(A) The personal property contained in the occupant's space will be sold at public auction~~
55 ~~at a specified time and place which may not be less than sixty days from the date of the service;~~
56 ~~or~~

57 ~~(B) The personal property contained in the occupant's space will be disposed of at a~~
58 ~~commercially reasonable cost to the occupant at a specified time and place which may not be~~
59 ~~less than sixty days from the date of the service; and~~

60 ~~(d) At any time prior to the public auction or destruction of the personal property pursuant~~
61 ~~to this section the occupant may pay the full amount necessary to satisfy the self-service storage~~
62 ~~lien. A lienholder of record may pay an amount not to exceed \$175 for incurred rental fees, late~~
63 ~~fees and safekeeping of the property in addition to an amount not to exceed \$75 for notice and~~
64 ~~redeem only the personal property subject to the lien.~~

65 ~~(e)(1) Any owner who conducts a public auction pursuant to this section may satisfy the~~
66 ~~self-service storage lien from the proceeds of the public auction and hold the balance, if any, for~~
67 ~~delivery on demand to the occupant. If an owner complies with the provisions of this article, his~~
68 ~~or her liability to the occupant is limited to the net proceeds less the amount of the self-service~~
69 ~~storage lien and costs received at the public auction;~~

70 ~~(2) If an owner conducts a public auction pursuant to this section, the owner's liability to a~~
71 ~~lienholder is limited to the proceeds received at the public auction, less the amount of the self-~~
72 ~~service storage lien and costs. If an owner complies with the provisions of this article, the owner~~
73 ~~is not liable to a lienholder who fails to claim an interest in the net proceeds within thirty days after~~
74 ~~the public auction.~~

75 ~~(f) Any public auction of the personal property shall be held at the self-service storage~~
76 ~~facility or at the nearest suitable place to where the personal property is held or stored. An~~
77 ~~advertisement shall be published in a newspaper of general circulation in the county or~~
78 ~~municipality in which the public auction is to be held not less than twenty days prior to the public~~
79 ~~auction. The advertisement must state the:~~

80 ~~(1) Fact that it is a public auction;~~

81 ~~(2) Date, time and location of the public auction;~~

82 ~~(3) Date, time and location which the property may be inspected; and~~

83 ~~(4) Form of payment acceptable.~~

84 ~~(g) A purchaser in good faith of any personal property sold or otherwise disposed of~~
85 ~~pursuant to this article takes the property free and clear of any rights of persons against whom~~
86 ~~the lien was valid.~~

87 ~~(h) Any notice made pursuant to this section is presumed delivered when it is deposited~~
88 ~~with the United States postal service and properly addressed with postage prepaid.~~

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

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

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

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

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

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

105 (B) If the operator notifies the occupant of the default by electronic mail or text at the
106 occupant's last known address and does not receive a response, return receipt, or a confirmation
107 of delivery, the operator shall send the notice of default to the occupant by hand delivery or by
108 verified mail to the occupant's last known postal address.

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

111 (3) The notice shall include:

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

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

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

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

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

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

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

126 (ii) By electronic mail; or

127 (iii) On an online website.

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

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

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

135 (e) A sale under this section shall be held at the self-service storage facility where the
136 personal property is stored, on an online auction, via fixed price or timed listings that allow bidding
137 on an internet website, or at any other location reasonably determined by the operator.

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

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

140 (B) Mail the balance, if any, by certified mail to the occupant or any other recorded
141 lienholder at the last known address of the occupant or lienholder.

142 (2) (A) If the balance is returned to the operator after the operator mailed the balance in
143 the manner required under paragraph (B), subdivision (1) of this subsection, the operator shall
144 hold the balance for one year after the date of sale for delivery on demand to the occupant or any
145 other recorded lienholder.

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

147 (g) A purchaser in good faith of any personal property sold under this article takes the
148 property free and clear of any rights of:

149 (1) Persons against whom the lien was valid; and

150 (2) Other lienholders.

151 (h) If the operator complies with the provisions of this article, the operator's liability:

152 (1) To the occupant is limited to the net proceeds received from the sale of the personal
153 property less the amount of the operator's lien; and

154 (2) To other lienholders is limited to the net proceeds received from the sale of any
155 personal property covered by that other lien less the amount of the operator's lien.

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

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

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

162 (2) Notices shall be deemed delivered when:

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

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

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

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

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

177 (m) Nothing in this article impairs or affects the rights of the parties to create additional
178 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 ~~owner~~ operator shall use reasonable care in maintaining the self-service storage
2 facility for the purposes of storage of personal property. ~~and may not offer to sell insurance to the~~
3 ~~occupant to cover the owner's risk or lack of care~~

4 ~~(b) Prior to the sale or destruction of personal property pursuant to this section, the owner~~
5 ~~shall prepare a detailed inventory of all personal property to be sold or destroyed and shall~~
6 ~~maintain the inventory listing for a period of two years from the date of the sale or destruction of~~
7 ~~the property. The occupant shall have access to the inventory listing for the period during which~~
8 ~~it is maintained by the owner~~

9 ~~(e)~~ (b) Unless the rental agreement specifically provides otherwise, the exclusive care,
10 custody and control of all personal property stored in the leased space remains vested in the
11 occupant.

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

13 ~~(e)~~ (d) An occupant may not store hazardous waste or contraband in the leased space.
14 ~~An owner who discovers hazardous waste or contraband in a leased space shall promptly notify~~
15 ~~the appropriate law enforcement agency and is authorized to deliver the hazardous waste or~~
16 ~~contraband to the appropriate law enforcement agency~~

§38-14-8. Savings clause.

1 All rental agreements entered into prior to July 1, ~~2004~~ 2019, which have not been
2 extended or renewed after that date remain valid and may be enforced or terminated in
3 accordance with their 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, ~~2004~~ 2019.

NOTE: The purpose of this bill is to modernize the self-service storage lien law in West Virginia, re-define certain terms, and to provide an effective date for all rental agreements entered into or extended or renewed after July 1, 2019.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.