

HOUSE SUBSTITUTE TO SENATE BILL 61

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 4 of Title 10 of the Official Code of Georgia Annotated,
 2 relating to self-service storage facilities, so as to change the short title; to provide for
 3 definitions; to change the due date for monthly rental payments; to provide procedures for
 4 sending notice of default; to provide for publication of notice of public sale of property; to
 5 provide for limitations on an owner's liability; to provide for towing of motor vehicles,
 6 trailers, and watercraft; to exempt certain rental agreements; to provide for related matters;
 7 to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Article 5 of Chapter 4 of Title 10 of the Official Code of Georgia Annotated, relating to
 11 self-service storage facilities, is revised as follows:

12 "ARTICLE 5

13 10-4-210.

14 This article shall be known and may be cited as the 'Georgia Self-service Storage Facility
 15 Act of 2013.'

16 10-4-211.

17 For purposes of this article, the term:

18 (1) 'E-mail' means an electronic message or an executable program or computer file that
 19 contains an image of a message that is transmitted between two or more computers or
 20 electronic terminals. The term includes electronic messages that are transmitted within
 21 or between computer networks.

22 ~~(1)~~(2) 'Last known address' means that the street address, post office box address, or
 23 e-mail address provided by the occupant in the latest rental agreement or the address

24 provided by the occupant in a subsequent written notice of a change of address by hand
 25 delivery, verified mail, or e-mail.

26 ~~(2)~~(3) 'Occupant' means a person, his or her sublessee, successor, or assign entitled to the
 27 use of the storage space at a self-service storage facility under a rental agreement, to the
 28 exclusion of others.

29 ~~(3)~~(4) 'Owner' means the owner, operator, lessor, or sublessor of a self-service storage
 30 facility, his or her agent, or any other person authorized ~~by him~~ to manage the facility or
 31 to receive rent from an occupant under a rental agreement.

32 ~~(4)~~(5) 'Personal property' means movable property not affixed to land and includes, but
 33 is not limited to, goods, wares, merchandise, motor vehicles, trailers, watercraft, and
 34 household items and furnishings.

35 ~~(5)~~(6) 'Rental agreement' means any agreement or lease, written or oral, that establishes
 36 or modifies the terms, conditions, rules, or any other provisions concerning the use and
 37 occupancy of a self-service storage facility.

38 ~~(6)~~(7) 'Self-service storage facility' means any real property designed and used for the
 39 purpose of renting or leasing individual storage space to occupants who are to have
 40 access to such for the purpose of storing and removing personal property. No occupant
 41 shall use a self-service storage facility for residential purposes. A self-service storage
 42 facility is not a warehouse within the meaning of Article 1 of this chapter, known as the
 43 'Georgia State Warehouse Act,' and the provisions of law relative to bonded public
 44 warehousemen shall not apply to the owner of a self-service storage facility. A
 45 self-service storage facility is not a safe-deposit box or vault maintained by banks, trust
 46 companies, or other financial entities.

47 (8) 'Verified mail' means certified mail, registered mail, statutory overnight delivery, or
 48 other method of mailing or delivery in which the post office or delivery service furnishes
 49 proof that the parcel was sent.

50 10-4-212.

51 The owner of a self-service storage facility and his or her heirs, executors, administrators,
 52 successors, and assigns have a lien upon all personal property located at a self-service
 53 storage facility for rent, labor, or other charges, present or future, in relation to the personal
 54 property and for expenses necessary for its preservation or expenses reasonably incurred
 55 in its sale or other disposition pursuant to this article. The lien provided for in this Code
 56 section is superior to any other lien or security interest except those which are perfected
 57 and recorded prior to the date of the rental agreement in Georgia in the name of the
 58 occupant, either in the county of the occupant's last known address or in the county where
 59 the self-service storage facility is located, except any tax lien as otherwise provided by law

60 and except any lienholder with an interest in the property of whom the owner has
 61 knowledge either through the disclosure provision of the rental agreement or through other
 62 written notice. The lien attaches as of the date the personal property is brought to the
 63 self-service storage facility.

64 10-4-213.

65 Provided that it complies with the requirements of this Code section, an owner may enforce
 66 the lien without judicial intervention. ~~The owner~~ Owner shall obtain from the occupant a
 67 written rental agreement which includes the following language:

68 This agreement, made and entered into this _____ day of _____, _____, by
 69 and between _____, hereinafter called Owner, and _____,
 70 hereinafter called Occupant, whose last known address is _____. For the
 71 consideration hereinafter stated, ~~the~~ Owner agrees to let ~~the~~ Occupant use and occupy a
 72 space in the self-service storage facility, known as _____, situated in
 73 the City of _____, County of _____, State of Georgia, and more particularly
 74 described as follows: Building #_____, Space #_____, Size _____. Said space is
 75 to be occupied and used for the purposes specified herein and subject to the conditions
 76 set forth for a period of _____, beginning on the _____ day of _____,
 77 _____, and continuing month to month until terminated.

78 'Space,' as used in this agreement, will be that part of the self-service storage facility as
 79 described above. ~~The~~ Occupant agrees to pay ~~the~~ Owner, as payment for the use of the
 80 space and improvements thereon, the monthly sum of \$_____. Monthly installments
 81 are payable in advance on or before the first of each month, in the amount of \$_____,
 82 and a like amount for each month thereafter, until the termination of this agreement.

83 If any monthly installment is not paid by the ~~tenth~~ seventh calendar day of the month due,
 84 or if any check given in payment is dishonored by the financial institution on which it is
 85 drawn, Occupant shall be deemed to be in default.

86 Occupant further agrees to pay the sum of one month's fees, which shall be used as a
 87 clean-up and maintenance fund, and is to be used, if required, for the repair of any
 88 damage done to the space and to clean up the space at the termination of the agreement.

89 In the event that the space is left in a good state of repair, and in a broom-swept
 90 condition, then this amount shall be refunded to ~~the~~ Occupant. However, it is agreed to
 91 between the parties that ~~the~~ Owner may set off any claims it may have against ~~the~~
 92 Occupant from this fund.

93 The space named herein is to be used by ~~the~~ Occupant solely for the purpose of storing
 94 any personal property belonging to ~~the~~ Occupant. ~~The~~ Occupant agrees not to store any
 95 explosives or any highly inflammable goods or any other goods in the space which would

96 cause danger to the space. ~~The~~ Occupant agrees that the property will not be used for any
 97 unlawful purposes and ~~the~~ Occupant agrees not to commit waste, nor alter, nor affix signs
 98 on the space, and to keep the space in good condition during the term of this agreement.
 99 OWNER HAS A LIEN ON ALL PERSONAL PROPERTY STORED IN OCCUPANT'S
 100 SPACE FOR RENT, LABOR, OR OTHER CHARGES, PRESENT OR FUTURE, IN
 101 RELATION TO THE PERSONAL PROPERTY, AND FOR ITS PRESERVATION OR
 102 EXPENSES REASONABLY INCURRED IN ITS SALE OR OTHER DISPOSITION
 103 PURSUANT TO THIS AGREEMENT. PERSONAL PROPERTY STORED IN
 104 OCCUPANT'S SPACE WILL BE SOLD OR OTHERWISE DISPOSED OF IF NO
 105 PAYMENT HAS BEEN RECEIVED FOR A CONTINUOUS THIRTY-DAY PERIOD
 106 AFTER DEFAULT. IN ADDITION, UPON OCCUPANT'S DEFAULT, OWNER MAY
 107 WITHOUT NOTICE DENY OCCUPANT ACCESS TO THE PERSONAL PROPERTY
 108 STORED IN OCCUPANT'S SPACE UNTIL SUCH TIME AS PAYMENT IS
 109 RECEIVED. IF ANY MONTHLY INSTALLMENT IS NOT MADE BY THE ~~TENTH~~
 110 SEVENTH CALENDAR DAY OF THE MONTH DUE, OR IF ANY CHECK GIVEN
 111 IN PAYMENT IS DISHONORED BY THE FINANCIAL INSTITUTION ON WHICH
 112 IT IS DRAWN, ~~THE~~ OCCUPANT IS IN DEFAULT FROM DATE PAYMENT WAS
 113 DUE.

114 I hereby agree that all notices other than bills and invoices shall be given by hand
 115 delivery, verified mail, or e-mail at the following addresses:

- 116 _____ (hand delivery)
- 117 _____ (verified mail)
- 118 _____ (e-mail).

119 and I further understand that I may designate to owner an agent to receive such notice by
 120 providing:

- 121 _____ (hand delivery)
- 122 _____ (verified mail)
- 123 _____ (e-mail).

124 For purposes of Owner's lien: 'personal property' means movable property, not affixed
 125 to land, and includes, but is not limited to, goods, wares, merchandise, motor vehicles,
 126 trailers, watercraft, household items, and furnishings; 'last known address' means ~~that the~~
 127 street address or post office box address provided by ~~the occupant~~ Occupant in the latest
 128 rental agreement or the address provided by ~~the occupant~~ Occupant in a subsequent
 129 written notice of a change of address by hand delivery, verified mail, or e-mail.

130 ~~The~~ Owner's lien is superior to any other lien or security interest, except those which are
 131 evidenced by a certificate of title or perfected and recorded prior to the date of this rental
 132 agreement in Georgia, in the name of ~~the~~ Occupant, either in the county of ~~the~~ Occupant's

133 'last known address' or in the county where the self-service storage facility is located,
 134 except any tax lien as provided by law and except those liens or security interests of
 135 whom ~~the~~ Owner has knowledge through ~~the~~ Occupant's disclosure in this rental
 136 agreement or through other written notice. Occupant attests that the personal property
 137 in ~~his~~ Occupant's space(s) is free and clear of all liens and secured interests except for
 138 _____. ~~The~~ Owner's lien attaches as of the date the personal property is brought
 139 to the self-service storage facility.

140 Except as otherwise specifically provided in this rental agreement, the exclusive care,
 141 custody, and control of any and all personal property stored in the leased space shall
 142 remain vested in ~~the~~ Occupant. ~~The~~ Owner does not become a bailee of ~~the~~ Occupant's
 143 personal property by the enforcement of ~~the~~ Owner's lien.

144 If Occupant has been in default continuously for thirty (30) days, Owner may enforce its
 145 lien, provided Owner shall comply with the following procedure:

146 ~~The~~ Occupant shall be notified ~~in writing by delivery in person or by certified mail or~~
 147 ~~statutory overnight delivery to the last known address of Occupant~~ of Owner's intent
 148 to enforce Owner's lien by written notice delivered in person, by verified mail, or by
 149 e-mail. ~~The~~ Owner also shall notify other parties with superior liens or security
 150 interests as defined in this rental agreement. ~~A Such~~ notice given pursuant to this rental
 151 agreement shall be presumed ~~delivered as of the date indicated on the proof of delivery~~
 152 ~~or, if there is no proof of delivery, on the fourteenth day after sending as shown by~~ sent
 153 when it is deposited with the United States Postal Service or the statutory overnight
 154 delivery service properly addressed with postage or delivery fees prepaid or sent by
 155 e-mail. If Owner sends notice of a pending sale of property to Occupant's last known
 156 e-mail address and does not receive a nonautomated response or a receipt of delivery
 157 to the e-mail address, Owner shall send notice of the sale to Occupant by verified mail
 158 to Occupant's last known address or to the last known address of the designated agent
 159 of the Occupant before proceeding with the sale.

160 Owner's notice to Occupant shall include an itemized statement of ~~the~~ Owner's claim
 161 showing the sum due; at the time of the notice; and the date when the sum became due.
 162 ~~It shall briefly and generally describe the personal property subject to the lien. The~~
 163 ~~description shall be reasonably adequate to permit the person(s) notified to identify it,~~
 164 ~~except that any container included, but not limited to, a trunk, valise, or box that is~~
 165 ~~locked, fastened, sealed, or tied in a manner which deters immediate access to its~~
 166 ~~contents may be described as such without describing its contents.~~ Owner's notice shall
 167 notify Occupant of denial of access to the personal property and provide the name,
 168 street address, e-mail address, and telephone number of ~~the~~ Owner or its designated
 169 agent, whom ~~the~~ Occupant may contact to respond to this notice. Owner's notice shall

170 demand payment within a specified time, not less than fourteen (14) days after delivery
171 of the notice. It shall state that, unless the claim is paid, within the time stated in the
172 notice, the personal property will be advertised for public sale to the highest bidder, and
173 will be sold at a public sale to the highest bidder, at a specified time and place.

174 After the expiration of the time given in Owner's notice, Owner shall publish an
175 advertisement of the public sale to the highest bidder, once a week, for two consecutive
176 weeks, ~~in a newspaper of general circulation where the self-service storage facility is~~
177 ~~located~~ the legal organ for the county where the self-service storage facility is located.
178 The sale shall be deemed commercially reasonable if at least three (3) independent
179 bidders attend the sale at the time and place advertised. 'Independent bidder' means a
180 bidder who is not related to and who has no controlling interest in, or common pecuniary
181 interest with, Owner or any other bidder. The advertisement shall include: a brief and
182 general description of the personal property, reasonably adequate to permit its
183 identification; the address of the self-service storage facility, and the number, if any, of
184 the space where the personal property is located, and the name of ~~the~~ Occupant; and the
185 time, place, and manner of the public sale. The public sale to the highest bidder shall take
186 place not sooner than fifteen (15) days after the first publication. ~~If there is no newspaper~~
187 ~~of general circulation where the self-service storage facility is located, the advertisement~~
188 ~~shall be posted at least ten (10) days before the date of the public sale and in not less than~~
189 ~~six (6) conspicuous places in the neighborhood where the self-service storage facility is~~
190 ~~located.~~ Regardless of whether a sale involves the property of more than one Occupant,
191 a single advertisement may be used to advertise the disposal of property at the sale. A
192 public sale includes offering the property on a publicly accessible website that regularly
193 conducts online auctions of personal property. Such sale shall be considered incidental
194 to the self-storage business and no license shall be required.

195 If no one purchases the property at the public sale and if ~~the~~ Owner has complied with
196 the foregoing procedures, ~~the~~ Owner may otherwise dispose of the property and shall
197 notify ~~the~~ Occupant of the action taken. Any sale or disposition of the personal property
198 shall be held at the self-service storage facility or at the nearest suitable place to where
199 the personal property is held or stored.

200 Before any sale or other disposition of personal property pursuant to this agreement, ~~the~~
201 Occupant may pay the amount necessary to satisfy the lien and the reasonable expenses
202 incurred and thereby redeem the personal property and thereafter ~~the~~ Owner shall have
203 no liability to any person with respect to such personal property.

204 A Purchaser in good faith of the personal property sold to satisfy Owner's lien takes the
205 property free of any rights of persons against whom the lien was valid, despite
206 noncompliance by ~~the~~ Owner with the requirements of this agreement.

207 In the event of a sale, ~~the~~ Owner may satisfy his or her lien from the proceeds of the sale.
 208 ~~The~~ Owner shall hold the balance of the proceeds, if any, for ~~the~~ Occupant or any notified
 209 secured interest holder. If not claimed within two years of the date of sale, the balance
 210 of the proceeds shall be disposed of in accordance with Article 5 of Chapter 12 of Title
 211 44, the 'Disposition of Unclaimed Property Act.' In no event shall ~~the~~ Owner's liability
 212 exceed the proceeds of the sale.

213 If the rental agreement contains a limit on the value of property stored in Occupant's
 214 storage space, the limit shall be deemed to be the maximum value of the property stored
 215 in that space.

216 If the property upon which the lien is claimed is a motor vehicle, trailer, or watercraft and
 217 rent and other charges related to the property remain unpaid or unsatisfied for 60 days
 218 following the maturity of the obligation to pay rent, Owner may have the property towed
 219 in lieu of foreclosing on the lien. If a motor vehicle, trailer, or watercraft is towed as
 220 authorized in this section, Owner shall not be liable for the motor vehicle, trailer, or
 221 watercraft or any damages to the motor vehicle, trailer, or watercraft once the tower takes
 222 possession of the property.

223 10-4-214.

224 If the rental agreement is with a service member, the owner shall comply with all terms of
 225 the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et seq. Nothing in this article shall
 226 be construed as in any manner impairing or affecting the right of the parties to create
 227 additional rights, duties, and obligations in and by virtue of the rental agreement. The
 228 rights provided by this article shall be in addition to all other rights allowed by law to a
 229 creditor against his or her debtor.

230 10-4-215.

231 All rental agreements entered into before July 1, ~~1982~~ 2013, and not extended or renewed
 232 after that date; and the rights and duties and interests flowing from them shall remain valid
 233 and may be enforced or terminated in accordance with their terms or as permitted by any
 234 other statute or law of this state."

235 **SECTION 2.**

236 This Act shall become effective on July 1, 2013.

237 **SECTION 3.**

238 All laws and parts of laws in conflict with this Act are repealed.