

HOUSE BILL NO. 402

INTRODUCED BY J. ESSMANN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE SELF-STORAGE FACILITIES ACT; PROHIBITING RESIDENTIAL USE OF A SELF-STORAGE FACILITY; ALLOWING OPERATOR INSPECTIONS; PROVIDING FOR AN OPERATOR'S LIEN; PROVIDING FOR DEFAULT BY A RENTER AND SALE BY AN OPERATOR; PROVIDING FOR RENTER'S RIGHTS; AND PROVIDING DEFINITIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] shall be cited as the "Self-Storage Facilities Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "CERTIFIED MAIL" MEANS:

(A) A METHOD OF MAILING THAT IS OFFERED BY THE UNITED STATES POSTAL SERVICE AND PROVIDES EVIDENCE OF MAILING; OR

(B) A METHOD OF MAILING THAT IS ACCOMPANIED BY A CERTIFICATE OF MAILING EXECUTED BY THE INDIVIDUAL WHO CAUSED THE NOTICE TO BE MAILED.

~~(1)~~(2) "Commercially reasonable sale" means a sale that:

(a) is conducted at the self-storage facility, offsite at another location, or on a publicly accessible website that conducts lien sales; and

(b) is attended by at least three persons who appear personally or online, by telephone, or by any other method.

~~(2)~~(3) "Default" means the failure to timely perform an obligation or duty set forth in a rental agreement.

~~(3)~~(4) "Electronic mail" means an electronic message or an executable program or computer file that contains an image that is transmitted between two or more computers or electronic terminals. The term includes an electronic message that is transmitted within or between computer networks.

~~(4)~~(5) "Emergency" means a sudden, unexpected occurrence or circumstance at or near a self-storage

1 facility that requires immediate action to avoid injury to persons or property at or near the self-storage facility. The
2 term includes but is not limited to flood; OR fire, ~~or another event requiring timely action.~~

3 ~~(5)(6)~~ "Last-known address" means the postal address or electronic mail address provided in a rental
4 agreement, or the postal address or electronic mail address provided by the renter through subsequent written
5 notice of a change of address.

6 ~~(6)(7)~~ "Leased space" means the individual storage space at a self-storage facility that is rented to a
7 renter pursuant to a rental agreement.

8 ~~(7)(8)~~ "Operator" means the owner, operator, lessor, or sublessor of a self-storage facility or an agent
9 or another person authorized to manage the facility or to receive rent from a renter under a rental agreement. The
10 term does not include a warehouse operator if the warehouse operator issues a warehouse receipt, bill of lading,
11 or other document of title for the personal property stored.

12 ~~(8)(9)~~ "Personal property" means movable property not affixed to land. Personal property includes but
13 is not limited to goods, wares, merchandise, motor vehicles, and other titled or otherwise registered vehicles or
14 property.

15 ~~(9)(10)~~ "Property that has no commercial value" means property offered for sale in a commercially
16 reasonable sale that receives no bid or offer.

17 ~~(10)(11)~~ "Rental agreement" means a written agreement or lease that establishes or modifies the terms,
18 conditions, or rules concerning the use and occupancy of a self-storage facility.

19 ~~(11)(12)~~ "Renter" means a person entitled to the use of a leased space at a self-storage facility under a
20 rental agreement or the person's successors or assigns.

21 ~~(12)(13)~~ "Self-storage facility" means a rented or leased real property consisting of individual storage
22 spaces in which a renter customarily stores and removes personal property on a self-service basis.

23
24 NEW SECTION. **Section 3. Self-storage use -- residential prohibition.** (1) An operator may not
25 knowingly permit a leased space at a self-storage facility to be used for residential purposes.

26 (2) A renter may not use a leased space for residential purposes.
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28 NEW SECTION. **Section 4. Operator inspection -- repair -- emergency.** (1) ~~A renter, upon reasonable~~
29 ~~request from an operator, must allow the operator to enter~~ AN OPERATOR MUST CONTACT THE RENTER BY TELEPHONE
30 OR ELECTRONIC MAIL 3 DAYS BEFORE ENTERING a leased space for the purpose of inspection or repair.

(2) If an emergency occurs, an operator may enter a leased space for inspection or repair without notice to or consent from the renter.

NEW SECTION. Section 5. Renter's personal property -- operator's lien -- rental agreement -- value of contents. (1) The operator of a self-storage facility ~~and the operator's heirs, executors, administrators, successors, and assigns~~ shall have a lien on all of a renter's personal property located at the self-storage facility for rent, late fees, legal fees, labor, or other charges incurred pursuant to a rental agreement and for expenses incurred for preservation, sale, or disposition of the personal property. The lien established by this subsection has priority over all other liens except for liens that have been perfected and recorded on such personal property and tax liens.

(2) The lien in subsection (1) attaches on the date that the personal property is placed in a leased space.

(3) The rental agreement must contain a statement advising the renter:

(a) of the existence of the lien; and

(b) that personal property stored in the leased space may be sold to satisfy the lien if the renter is in default.

(4) If the rental agreement specifies a limit on the value of personal property that the renter may store in the leased space, the limit must be deemed to be the maximum value of the personal property in the renter's leased space.

NEW SECTION. Section 6. Renter default -- access restriction. (1) ~~If any part of the rent or other~~ charges due from the renter are delinquent and unpaid, the operator has the right to deny the renter access to the leased space at the self-storage facility.

~~(2) An operator may impose late fees of \$20 or 20% of the monthly rent, whichever is greater, to a renter in default.~~

(2) A REASONABLE LATE FEE MAY BE IMPOSED AND COLLECTED BY AN OPERATOR FOR EACH PERIOD THAT A RENTER DOES NOT PAY RENT WHEN DUE UNDER THE RENTAL AGREEMENT, IF THE AMOUNT OF THE LATE FEE AND THE CONDITIONS FOR IMPOSING THE FEE ARE STATED IN THE RENTAL AGREEMENT OR IN AN ADDENDUM TO THAT AGREEMENT. A LATE FEE OF \$20 OR 20% OF THE MONTHLY RENT, WHICHEVER IS GREATER, IS A REASONABLE FEE AND MAY NOT BE CONSIDERED A PENALTY. ANY REASONABLE EXPENSE INCURRED AS A RESULT OF RENT COLLECTION OR LIEN ENFORCEMENT BY AN OPERATOR MAY BE CHARGED TO THE RENTER IN ADDITION TO LATE FEES.

(3) A renter who purposely or knowingly accesses a leased space after having been in default of the rental agreement and denied access under [section 7] and subsection (1) of this section may be prosecuted under Title 45, chapter 6.

NEW SECTION. Section 7. Renter default -- personal property sale. (1) If a renter is in default for a period of more than ~~45~~ 60 days, the operator may enforce the lien provided in [section 5] by selling the renter's stored personal property AT A COMMERCIALLY REASONABLE SALE. ~~Sale of the renter's personal property may be by public or private proceedings.~~ Personal property may be sold:

(a) as a unit or in parcels; OR

(b) by way of one or more contracts;

~~—— (c) at any time or place; and~~

~~—— (d) on any terms as long as the sale is a commercially reasonable sale.~~

(2) The operator may otherwise dispose of property that has no commercial value.

~~(2)~~(3) Before conducting a sale under this section, the operator shall:

(a) at least 30 days before the sale, send notice of default to the renter. The notice of default must include:

(i) a statement that the contents of the renter's leased space are subject to the operator's lien;

(ii) a statement of the operator's claim, indicating the charges due on the date of the notice and that additional charges shall continue to accrue and become due;

(iii) a demand for payment of the charges due and a deadline for payment;

(iv) a statement that unless the claim is paid before the deadline, the contents of the renter's leased space will be sold or otherwise disposed of after a specified time; and

(v) the name, street address, and telephone number of the operator or a designated agent that the renter may contact to respond to the notice.

(b) at least 7 days before the sale, advertise the time, place, and terms of the sale ~~in a commercially reasonable manner~~ IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY WHERE THE SALE IS TO BE HELD.

ALTERNATIVELY, THE OPERATOR MAY ADVERTISE THE SALE IN ANY OTHER COMMERCIALY REASONABLE MANNER. THE MANNER OF ADVERTISEMENT IS COMMERCIALY REASONABLE IF THE SALE IS ATTENDED BY AT LEAST THREE PERSONS WHO APPEAR PERSONALLY OR ONLINE, BY TELEPHONE, OR BY ANY OTHER METHOD AT THE TIME AND PLACE ADVERTISED.

~~(3) The operator may buy the renter's personal property at a public sale held pursuant to this section.~~

(4) If the personal property subject to the operator's lien is titled, registered, or owned by public record and if charges and rent remain unpaid for ~~45~~ 60 days, the operator may have the personal property removed from the self-storage facility by ~~an outside party~~ A PROFESSIONAL TRANSFER OR TOW TRUCK COMPANY, including but not limited to motor vehicles, watercraft, aircraft, and trailers. The operator is not liable for any damage to personal property under this subsection after the ~~outside party~~ PROFESSIONAL TRANSFER OR TOW TRUCK COMPANY takes possession of the property.

(5) At any time before a sale is held under this section or before a vehicle, watercraft, aircraft, or trailer is removed under this section, the renter may pay the amount necessary to satisfy the lien and access the renter's personal property.

(6) If a sale is held under this section, the operator shall:

(a) satisfy the lien with the proceeds of the sale; and

(b) hold the balance of the proceeds, if any, for delivery on demand to the renter or any other recorded lienholders for a period of 1 year after the date of the sale. The operator is not liable to any party for excess proceeds paid to the renter. After the 1-year period, any remaining proceeds are considered abandoned property and must be reported and paid to the department of revenue in accordance with the Uniform Unclaimed Property Act in Title 70, chapter 9, part 8.

(7) A purchaser in good faith of any personal property sold pursuant to this section to satisfy the lien granted in [section 5] takes the property free and clear of any rights of persons against whom the lien was valid.

(8) Notices to the renter under subsection ~~(2)~~ (3) must be sent to the renter's last-known address by United States CERTIFIED mail or by electronic mail. ~~Notices sent by United States mail are considered delivered when postmarked by the United States postal service, properly addressed with postage prepaid.~~ Notices sent by electronic mail are considered delivered on the date the electronic message is sent to the last-known address provided by the renter.

(9) If the operator complies with the requirements of this section, the operator's liability:

(a) to the renter shall be limited to the net proceeds received from the sale of the renter's personal property until the proceeds escheat to the state according to subsection (6)(b); and

(b) to other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by the other lienholder's lien property until the proceeds escheat to the state according to subsection (6)(b).

NEW SECTION. **Section 8. Renter's rights.** Unless the rental agreement specifically provides otherwise and until a lien sale under [section 7], the exclusive care, custody, and control of all personal property stored in a leased space remains vested in the renter.

NEW SECTION. **Section 9. Rights of parties -- rental agreements.** [Sections 1 through 8] do not impair the power of the parties to a rental agreement to create rights, duties, or obligations that do not arise from [sections 1 through 8]. The rights provided to an operator by [sections 1 through 8] are in addition to all other rights provided by law to a creditor against a debtor.

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 1 through 9].

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