

State of Arkansas

76th General Assembly

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SENATE BILL 36

By: Senator Brandon As engrossed 3-25-87

As engrossed 2-4-87

"AN ACT TO PROVIDE FOR REGULATING THE USE OF LEASED SPACE AT A SELF-SERVICE STORAGE FACILITY; TO PROVIDE FOR AN OPERATOR'S LIEN ON THE PROPERTY STORED IN THE STORAGE FACILITY AND A SALE OF THE ATTACHED PROPERTY IN THE EVENT OF A DEFAULT BY THE OCCUPANT; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. (A) In this Act the following words have the meanings indicated.

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

(C) "Rental Agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

(D) "Leased Space" means the individual storage space at the self-service facility which is rented to an occupant pursuant to a rental agreement.

(E) "Occupant" means a person or entity entitled to the use of a leased space at a self-service storage facility under a rental agreement.

(F) (1) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility.

(2) "Operator" does not mean a warehousemen, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

(G) (1) "Personal Property" means movable property, not affixed to

the land.

(2) "Personal Property" includes, but is not limited to, goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings.

(H) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement.

(I) "Last Known Address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(J) "Net proceeds" as used in Section 4(G) means the proceeds from the sale authorized after deduction for expenses incurred by the operator to exercise its rights hereunder, including, but not limited to, attorneys fees, auctioneers fees, postage, publication costs, together with the debt owed by operator and charges directly related to preserving, assembling, advertising and selling hereunder.

SECTION 2. (A) An operator may not knowingly permit a leased space at a self-service storage facility to be used for residential purposes.

(B) An occupant may not use a leased space for residential purposes.

SECTION 3. (A) The operator of a self-service storage facility has a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale, as provided in this Act. The lien provided for in this section attaches as of the date the personal property is brought to the self-service storage facility and shall be superior to any other lien or security interest except the following:

(1) a lien which is perfected and recorded in Arkansas in the name of the occupant, either in the county of the occupant's "last known address" or in the county where the self-service storage facility is located prior to the date of the rental agreement,

(2) any tax lien, and

(3) any lienholder with a perfected security interest in the property.

(B) The rental agreement shall contain a statement, in bold type, advising the occupant:

- (1) of the existence of the lien; and
- (2) that property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

SECTION 4. (A) (1) If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce the lien by selling the property stored in the leased space at a public sale, for cash.

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

(B) Before conducting a sale under Subsection (A), the operator shall:

(1) Notify the occupant in writing of the default which notice shall be sent by certified mail, return receipt requested, to the occupant at the occupant's last known address, which notice shall include:

- (i) a statement that the contents of the occupant'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, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;
- (iii) a demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date that the notice was mailed;
- (iv) a statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and
- (v) the name, street address, and telephone number of the operator, or his designated agent, whom the occupant may contact to respond to the notice; and
- (vi) designation of the date, time and place where the contents will be sold unless the default be remedied prior to sale.

(2) Publish one advertisement in a newspaper of general circulation in the county in which the storage facility is located at least seven (7) days prior to sale.

(3) Contact the Circuit Clerk in the county where the personal property is stored to determine the name and address of any holder of liens or

security interests in the personal property being sold. The owner shall notify by certified mail return receipt requested each such holder of a lien or security interest of the time and place of the proposed sale at least ten (10) days prior to conducting such sale. The owner shall be required to notify the holder of a lien or security interest only if the lien or security interest is filed under the name of the occupant.

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

(D) The sale under this section shall be held at the self-service storage facility where the personal property is stored.

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

- (1) satisfy the lien from the proceeds of the sale;
- (2) hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholders. If demand is not made within two (2) years after the date of the sale, the surplus shall escheat to the county.

(F) A purchaser in good faith of any personal property sold under this Act takes the property free and clear of any rights of:

- (1) persons against whom the lien was valid; and
- (2) other lienholders.

(G) If the operator complies with the provisions of this Act, the operator's liability;

(1) to the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) to other lienholder(s) shall be limited to the net proceeds received from the sale of any personal property covered by the other lien(s) or the amount owed to such lienholder(s), whichever is less.

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

(I) (1) Unless otherwise specifically provided, all notices required by this Act shall be sent by certified mail, return receipt requested.

(2) (i) notices sent to the operator shall be sent to the self-service storage facility where the occupant's property is stored.

(ii) notices to the occupant shall be sent to the occupant at the occupant's last known address.

(3) Notices shall be deemed delivered when deposited with the

United States postal service, properly addressed as provided in Subsection (B), with postage prepaid.

(J) The operator shall retain a copy of all notices and return receipts required by Subsection (B) of this section for six (6) months following the date of the lien sale.

SECTION 5. (A) Unless the rental agreement specifically provides otherwise and until a lien sale under this Act, the exclusive care, custody, and control of all personal property stored in the leased self-service storage space remains vested in the occupant.

(B) Entry of the leased space by landlord for the purpose of complying with this Act shall not constitute conversion nor impose any responsibility for the care, custody, and control of any of the personal property stored.

SECTION 6. All rental agreements, entered into before the effective date of this Act, which have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

SECTION 7. Nothing herein shall be construed to prohibit the occupant, operator, lienholder or any other person or entity claiming an interest in the property stored in the leased space from applying to a court of competent jurisdiction to determine the validity of the lien or its priority.

SECTION 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not effect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application, and to this end all the provisions of this Act are declared to be severable.

/s/ Brandon