

HOUSE BILL NO. 402

INTRODUCED BY J. ESSMANN

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

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

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

13
14 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 9], the following definitions
15 apply:

16 (1) "CERTIFIED MAIL" MEANS:
17 (A) A METHOD OF MAILING THAT IS OFFERED BY THE UNITED STATES POSTAL SERVICE AND PROVIDES EVIDENCE
18 OF MAILING; OR

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

21 ~~(1)~~(2) "Commercially reasonable sale" means a sale that:
22 (a) is conducted at the self-storage facility, offsite at another location, or on a publicly accessible website
23 that conducts lien sales; and

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

26 ~~(2)~~(3) "Default" means the failure to timely perform an obligation or duty set forth in a rental agreement.

27 ~~(3)~~(4) "Electronic mail" means an electronic message or an executable program or computer file that
28 contains an image that is transmitted between two or more computers or electronic terminals. The term includes
29 an electronic message that is transmitted within or between computer networks.

30 ~~(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.

27
 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.

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

3
4 **NEW SECTION. Section 5. Renter's personal property -- operator's lien -- rental agreement --**
5 **value of contents.** (1) The operator of a self-storage facility ~~and the operator's heirs, executors, administrators,~~
6 ~~successors, and assigns~~ shall have a lien on all of a renter's personal property located at the self-storage facility
7 for rent, late fees, legal fees, labor, or other charges incurred pursuant to a rental agreement and for expenses
8 incurred for preservation, sale, or disposition of the personal property. The lien established by this subsection has
9 priority over all other liens except for liens that have been perfected and recorded on such personal property and
10 tax liens.

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

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

13 (a) of the existence of the lien; and

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

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

19
20 **NEW SECTION. Section 6. Renter default -- access restriction.** (1) ~~If any part of the rent or other~~
21 ~~charges due from the renter are delinquent and unpaid, the operator has the right to deny the renter access to~~
22 ~~the leased space at the self-storage facility.~~

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

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

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

4
 5 **NEW SECTION. Section 7. Renter default -- personal property sale.** (1) If a renter is in default for
 6 a period of more than ~~45~~ 60 days, the operator may enforce the lien provided in [section 5] by selling the renter's
 7 stored personal property AT A COMMERCIALY REASONABLE SALE. ~~Sale of the renter's personal property may be by~~
 8 ~~public or private proceedings.~~ Personal property may be sold:

9 (a) as a unit or in parcels; OR

10 (b) by way of one or more contracts;

11 ~~—— (c) at any time or place; and~~

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

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

14 ~~(2)~~(3) Before conducting a sale under this section, the operator shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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