

## **BILL ANALYSIS**

C.S.H.B. 1259  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, self-service storage facilities hold a lien, similar to a lien in a landlord-tenant relationship, against the contents of the rented unit to secure payment of the rent. However, statutory provisions governing self-service storage liens are outdated. Among other current issues, the law does not allow an operator or consumer to take advantage of modern notice methods. C.S.H.B. 1259 seeks to address those issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1259 amends the Property Code to specify that the period for a tenant of a self-service storage facility to satisfy a claim for the payment of charges due and unpaid by the tenant before the lessor publishes or posts notice of a sale to enforce a lien and then sells the property is on or before the 14th day after the date notice of the claim is delivered by the lessor to the tenant, rather than before the 15th day after the day the notice is delivered.

C.S.H.B. 1259 requires the lessor's notice to the tenant of the claim to include, among other provisions, a statement underlined or printed in conspicuous bold print requesting a tenant who is in military service to notify the lessor immediately of the status of the tenant's current military service and authorizes the lessor to require written proof of a tenant's military service in the form of documentation from the United States Department of Defense or other documentation reasonably acceptable to the lessor. The bill provides for the delivery of the notice by e-mail or verified mail to the tenant's last known e-mail address as an alternative means of delivery and removes a provision requiring the lessor to deliver notice by certified mail. The bill establishes that notice by e-mail is considered delivered when transmitted to the last known e-mail address of the tenant. The bill prohibits the notice from being sent by e-mail unless a written rental agreement between the lessor and the tenant contains language underlined or in conspicuous bold print that notice may be given by e-mail if the tenant elects to provide an e-mail address. The bill provides for delivery by verified mail, rather than by certified mail, to the tenant's last known postal address and includes the notice's deposit with a common carrier, as an alternative to the United States Postal Service, for purposes of considering the notice delivered.

C.S.H.B. 1259 requires a lessor, not later than the 30th day after the date the lessor takes possession of a motor vehicle for which a certificate of title is required, or of a motorboat, vessel, or outboard motor for which a certificate of title is required or that is registered or titled out of state, for purposes of enforcing a self-service storage facility lien, to give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title or, if the registration or title is outside this state, the owner and each lienholder of record in the location in which the vehicle, motorboat, vessel, or outboard motor is registered or titled. The bill requires the notice to be sent by verified mail and establishes that such notice by verified

mail is considered mailed when the notice, properly addressed with the postage prepaid, is deposited with the United States Postal Service or a common carrier. The bill requires the notice to include the amount of charges secured by the lien, a request for payment, and a statement that if the charges are not paid in full before the 31st day after the date the notice is mailed or published, as applicable, the property may be sold at public auction. The bill authorizes such notice to be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored, under the following conditions: the lessor submits a written request by verified mail to the governmental entity with which the vehicle, motorboat, vessel, or outboard motor is registered or titled requesting information relating to the identity of the last known owner of record and any lienholder of record; the lessor either is advised in writing by the applicable governmental entity that the entity is unwilling or unable to provide information on the last known owner of record or any lienholder of record or does not receive a response from the governmental entity on or before the 21st day after the date the lessor submits the request; the identity of the last known owner of record cannot be determined; the registration or title does not contain an address for the last known owner of record; and the lessor cannot determine the identities and addresses of the lienholders of record.

C.S.H.B. 1259 establishes that the lessor is not required to publish such notice if a correctly addressed notice is sent with sufficient postage and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address or the forwarding order has expired. The bill authorizes the owner or lienholder, after notice is given to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, to take possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the lessor before the 31st day after the date the notice is mailed or published. The bill authorizes the lessor to sell the vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges if the charges are not paid before the 31st day after the date the notice is mailed or published, as applicable. The bill creates a Class B misdemeanor offense for a person who knowingly provides false or misleading information in a notice required by the bill's provisions.

C.S.H.B. 1259 exempts a self-service storage facility from statutory provisions governing miscellaneous liens.

C.S.H.B. 1259 entitles a member of the Texas State Guard or Texas National Guard who is in military service to the same protections and rights relating to the enforcement of storage liens under the federal Servicemembers Civil Relief Act to which a servicemember is entitled.

C.S.H.B. 1259 makes conforming and nonsubstantive changes.

C.S.H.B. 1259 defines "military service" and "verified mail" and provides for the meaning of "servicemember" by reference to the federal Servicemembers Civil Relief Act.

C.S.H.B. 1259 amends the Transportation Code in a provision relating to foreclosure of a constitutional or statutory lien on a motor vehicle to make a conforming change.

C.S.H.B. 1259 repeals Section 59.047, Property Code, relating to additional procedures for the sale of a motor vehicle, motorboat, vessel, or outboard motor to enforce a lien on such property.

#### **EFFECTIVE DATE**

January 1, 2012.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1259 differs from the original in the definition of "military service" by including active

duty service for a period of more than 30 consecutive days as a member of the Texas State Guard or Texas National Guard under the call of the governor, in addition to military service as defined by reference to the applicable definition in the federal Servicemembers Civil Relief Act, whereas the original defines the term only by reference to that act. The substitute contains provisions not included in the original providing for the meaning of "servicemember" by reference to the federal Servicemembers Civil Relief Act and entitling a member of the Texas State Guard or Texas National Guard who is in military service to the same protections and rights relating to the enforcement of storage liens under that act to which a servicemember is entitled.

C.S.H.B. 1259 contains a provision not included in the original prohibiting the notice of claim for the payment of charges due and unpaid by the tenant of a self-service storage facility from being sent by e-mail unless a written rental agreement between the lessor and the tenant contains language underlined or in conspicuous bold print that notice may be given by e-mail if the tenant elects to provide an e-mail address.

C.S.H.B. 1259 omits a provision included in the original relating to the frequency for the publication of a notice advertising the sale at a public auction of property in a self-service storage facility to which a lien is attached and providing for publication of such notice in the print or electronic version of a newspaper or on an Internet website accessible at no cost to the general public.

C.S.H.B. 1259 differs from the original by making provisions relating to the notice to the owner and lienholders of a sale by the lessor to enforce a self-service storage facility lien applicable to a motor vehicle, motorboat, vessel, or outboard motor registered or titled out of Texas, whereas, the original limits the application of such provisions to motor vehicle, motorboat, vessel, or outboard motor registered out of Texas.

C.S.H.B. 1259 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.