

By: Miller of Erath

H.B. No. 1259

Substitute the following for H.B. No. 1259:

By: Quintanilla

C.S.H.B. No. 1259

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the enforcement of a self-service storage facility  
3 lien; providing a penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 59.001, Property Code, is amended by  
6 adding Subdivisions (1-a) and (5) to read as follows:

7 (1-a) "Military service" means:

8 (A) military service as defined by Section 101,  
9 Servicemembers Civil Relief Act (50 U.S.C. App. Section 511); and

10 (B) active duty service for a period of more than  
11 30 consecutive days as a member of the Texas State Guard or Texas  
12 National Guard under the call of the governor.

13 (5) "Verified mail" means any method of mailing that  
14 provides evidence of mailing.

15 SECTION 2. Section 59.003(a), Property Code, is amended to  
16 read as follows:

17 (a) Subchapter B, Chapter 54, and Chapter 70 do ~~does~~ not  
18 apply to a self-service storage facility.

19 SECTION 3. Subchapter A, Chapter 59, Property Code, is  
20 amended by adding Section 59.010 to read as follows:

21 Sec. 59.010. RIGHTS OF CERTAIN MILITARY MEMBERS. (a) In  
22 this section, "servicemember" has the meaning assigned by Section  
23 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511).

24 (b) A member of the Texas State Guard or Texas National

1 Guard who is in military service is entitled to the same protections  
2 and rights relating to the enforcement of storage liens under the  
3 Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et  
4 seq.) to which a servicemember is entitled.

5 SECTION 4. Sections 59.042(b) and (c), Property Code, are  
6 amended to read as follows:

7 (b) If the tenant fails to satisfy the claim on or before the  
8 14th [~~15th~~] day after the date [~~day that~~] the notice is delivered,  
9 the lessor must publish or post notices advertising the sale as  
10 provided by this subchapter.

11 (c) If notice is by publication, the lessor may not sell the  
12 property until the 15th day after the date [~~day that~~] the notice is  
13 first [~~notice is~~] published. If notice is by posting, the lessor  
14 may sell the property after the 10th day after the date [~~day that~~]  
15 the notices are posted.

16 SECTION 5. Section 59.043, Property Code, is amended to  
17 read as follows:

18 Sec. 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM;  
19 INFORMATION REGARDING TENANT'S MILITARY SERVICE. (a) The lessor's  
20 notice to the tenant of the claim must contain:

21 (1) an itemized account of the claim;  
22 (2) the name, address, and telephone number of the  
23 lessor or the lessor's agent;

24 (3) a statement that the contents of the self-service  
25 storage facility have been seized under the contractual landlord's  
26 lien; [~~and~~]

27 (4) a statement that if the tenant fails to satisfy the

1 claim on or [~~is not satisfied~~] before the 14th [~~15th~~] day after the  
2 date [~~day that~~] the notice is delivered, the property may be sold at  
3 public auction; and

4 (5) a statement underlined or printed in conspicuous  
5 bold print requesting a tenant who is in military service to notify  
6 the lessor of the status of the tenant's current military service  
7 immediately.

8 (b) A lessor may require written proof of a tenant's  
9 military service in the form of documentation from the United  
10 States Department of Defense or other documentation reasonably  
11 acceptable to the lessor.

12 (c) Subject to Subsection (d), the [~~The~~] lessor must deliver  
13 the notice in person or by e-mail or verified [~~by certified~~] mail to  
14 the tenant's last known e-mail or postal address as stated in the  
15 rental agreement or in a written notice from the tenant to the  
16 lessor furnished after the execution of the rental agreement.  
17 Notice by verified mail is considered delivered when the notice,  
18 properly addressed with postage prepaid, is deposited with the  
19 United States Postal Service or a common carrier. Notice by e-mail  
20 is considered delivered when sent to the last known e-mail address  
21 of the tenant.

22 (d) The notice may not be sent by e-mail unless a written  
23 rental agreement between the lessor and the tenant contains  
24 language underlined or in conspicuous bold print that notice may be  
25 given by e-mail if the tenant elects to provide an e-mail address.

26 SECTION 6. Subchapter C, Chapter 59, Property Code, is  
27 amended by adding Section 59.0445 to read as follows:

1       Sec. 59.0445. NOTICE TO OWNER AND LIENHOLDERS. (a) This  
2 section applies to the enforcement of a lien under this chapter on:

3           (1) a motor vehicle subject to Chapter 501,  
4 Transportation Code;

5           (2) a motorboat, vessel, or outboard motor for which a  
6 certificate of title is required under Subchapter B, Chapter 31,  
7 Parks and Wildlife Code; or

8           (3) a motor vehicle, motorboat, vessel, or outboard  
9 motor registered or titled outside this state.

10       (b) In addition to the notices required by Sections 59.042  
11 and 59.044, not later than the 30th day after the date the lessor  
12 takes possession of the motor vehicle, motorboat, vessel, or  
13 outboard motor to enforce a lien under this chapter, the lessor  
14 shall give written notice of sale to the last known owner and each  
15 holder of a lien recorded on the registration or certificate of  
16 title of the motor vehicle, motorboat, vessel, or outboard motor  
17 or, if the registration or title is outside this state, the owner  
18 and each lienholder of record in the location in which the motor  
19 vehicle, motorboat, vessel, or outboard motor is registered or  
20 titled.

21       (c) Except as provided by Subsection (d), the notice  
22 required by this section must be sent by verified mail. Notice by  
23 verified mail is considered mailed when the notice, properly  
24 addressed with postage prepaid, is deposited with the United States  
25 Postal Service or a common carrier. The notice must include:

26           (1) the amount of the charges secured by the lien;

27           (2) a request for payment; and

1           (3) a statement that if the charges are not paid in  
2 full before the 31st day after the date the notice is mailed or  
3 published, as applicable, the property may be sold at public  
4 auction.

5           (d) The notice required by this section may be given by  
6 publishing the notice once in a print or electronic version of a  
7 newspaper of general circulation in the county in which the motor  
8 vehicle, motorboat, vessel, or outboard motor is stored if:

9           (1) the lessor submits a written request by verified  
10 mail to the governmental entity with which the motor vehicle,  
11 motorboat, vessel, or outboard motor is registered or titled  
12 requesting information relating to the identity of the last known  
13 owner of record and any lienholder of record;

14           (2) the lessor:

15           (A) is advised in writing by the governmental  
16 entity with which the motor vehicle, motorboat, vessel, or outboard  
17 motor is registered or titled that the entity is unwilling or unable  
18 to provide information on the last known owner of record or any  
19 lienholder of record; or

20           (B) does not receive a response from the  
21 governmental entity with which the motor vehicle, motorboat,  
22 vessel, or outboard motor is registered or titled on or before the  
23 21st day after the date the lessor submits the request;

24           (3) the identity of the last known owner of record  
25 cannot be determined;

26           (4) the registration or title does not contain an  
27 address for the last known owner of record; and

1           (5) the lessor cannot determine the identities and  
2 addresses of the lienholders of record.

3           (e) The lessor is not required to publish notice under  
4 Subsection (d) if a correctly addressed notice is sent with  
5 sufficient postage in accordance with Subsections (b) and (c) and  
6 is returned as unclaimed or refused or with a notation that the  
7 addressee is unknown or has moved without leaving a forwarding  
8 address or the forwarding order has expired.

9           (f) After notice is given under this section to the owner of  
10 or the holder of a lien on the motor vehicle, motorboat, vessel, or  
11 outboard motor, the owner or lienholder may take possession of the  
12 motor vehicle, motorboat, vessel, or outboard motor by paying all  
13 charges due to the lessor before the 31st day after the date the  
14 notice is mailed or published as provided by this section.

15           (g) If the charges are not paid before the 31st day after the  
16 date the notice is mailed or published, as applicable, the lessor  
17 may sell the motor vehicle, motorboat, vessel, or outboard motor at  
18 a public sale and apply the proceeds to the charges.

19           (h) A person commits an offense if the person knowingly  
20 provides false or misleading information in a notice required by  
21 this section. An offense under this subsection is a Class B  
22 misdemeanor.

23           SECTION 7. Sections 70.006(a) and (e), Property Code, are  
24 amended to read as follows:

25           (a) A holder of a lien under this subchapter [~~or Chapter 59~~]  
26 on a motor vehicle subject to Chapter 501, Transportation Code, or  
27 on a motorboat, vessel, or outboard motor for which a certificate of

1 title is required under Subchapter B, Chapter 31, Parks and  
2 Wildlife Code, as amended, who retains possession of the motor  
3 vehicle, motorboat, vessel, or outboard motor shall, not later than  
4 the 30th day after the date on which the charges accrue, give  
5 written notice to the owner and each holder of a lien recorded on  
6 the certificate of title. A holder of a possessory lien on a motor  
7 vehicle under Section 70.001, other than a person licensed as a  
8 franchised dealer under Chapter 2301, Occupations Code, shall file  
9 a copy of the notice and all information required by this section  
10 with the county tax assessor-collector's office in the county in  
11 which the repairs were made with an administrative fee of \$25  
12 payable to the county tax assessor-collector. If the motor  
13 vehicle, motorboat, vessel, or outboard motor is registered outside  
14 this state, the holder of a lien under this subchapter who retains  
15 possession during that period shall give notice to the last known  
16 registered owner and each lienholder of record.

17 (e) After notice is given under this section to the owner of  
18 or the holder of a lien on the motor vehicle, motorboat, vessel, or  
19 outboard motor, the owner or holder of the lien may obtain  
20 possession of the motor vehicle, motorboat, vessel, or outboard  
21 motor by paying all charges due to the holder of a lien under this  
22 subchapter [~~and Chapter 59~~] before the 31st day after the date the  
23 notice is mailed or published as provided by this section.

24 SECTION 8. Section 501.074(c), Transportation Code, is  
25 amended to read as follows:

26 (c) If a constitutional or statutory lien is foreclosed, the  
27 department may issue a new certificate of title in the name of the

1 purchaser at the foreclosure sale on receiving:

2 (1) the affidavit of the lienholder of the fact of the  
3 creation of the lien and of the divestiture of title according to  
4 law; and

5 (2) proof of notice as required by Sections 70.004 and  
6 70.006, Property Code, or by Section 59.0445, Property Code.

7 SECTION 9. Section 59.047, Property Code, is repealed.

8 SECTION 10. The changes in law made by this Act to Chapter  
9 59, Property Code, apply only to a self-service storage facility  
10 rental agreement entered into, extended, or renewed on or after the  
11 effective date of this Act. A self-service storage facility rental  
12 agreement entered into, extended, or renewed before the effective  
13 date of this Act is governed by the law in effect immediately before  
14 the effective date of this Act, and the former law is continued in  
15 effect for that purpose.

16 SECTION 11. This Act takes effect January 1, 2012.