

By: Miller of Erath

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" has the meaning assigned by
8 Section 101, Servicemembers Civil Relief Act (50 U.S.C. App.
9 Section 511).

10 (5) "Verified mail" means any method of mailing that
11 provides evidence of mailing.

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

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

16 SECTION 3. Sections 59.042(b) and (c), Property Code, are
17 amended to read as follows:

18 (b) If the tenant fails to satisfy the claim on or before the
19 14th ~~15th~~ day after the date ~~day that~~ the notice is delivered,
20 the lessor must publish or post notices advertising the sale as
21 provided by this subchapter.

22 (c) If notice is by publication, the lessor may not sell the
23 property until the 15th day after the date ~~day that~~ the notice is
24 first ~~notice is~~ published. If notice is by posting, the lessor

1 may sell the property after the 10th day after the day that the
2 notices are posted.

3 SECTION 4. Section 59.043, Property Code, is amended to
4 read as follows:

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

8 (1) an itemized account of the claim;

9 (2) the name, address, and telephone number of the
10 lessor or the lessor's agent;

11 (3) a statement that the contents of the self-service
12 storage facility have been seized under the contractual landlord's
13 lien; ~~and~~

14 (4) a statement that if the tenant fails to satisfy the
15 claim ~~[is not satisfied]~~ on or before the 14th ~~[15th]~~ day after the
16 date ~~[day that]~~ the notice is delivered, the property may be sold at
17 public auction; and

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

22 (b) A lessor may require written proof of a tenant's
23 military service in the form of documentation from the United
24 States Department of Defense or other documentation reasonably
25 acceptable to the lessor.

26 (c) The lessor must deliver the notice in person or by
27 electronic mail or verified ~~[by certified]~~ mail to the tenant's

1 last known electronic mail or postal address as stated in the rental
2 agreement or in a written notice from the tenant to the lessor
3 furnished after the execution of the rental agreement. Notice by
4 verified mail is considered delivered when the notice, properly
5 addressed with postage prepaid, is deposited with the United States
6 Postal Service or a common carrier. Notice by electronic mail is
7 considered delivered when transmitted to the last known electronic
8 mail address of the tenant.

9 SECTION 5. Section 59.044(b), Property Code, is amended to
10 read as follows:

11 (b) The lessor must publish the notice:

12 (1) at least once in each of two consecutive weeks in
13 the print or electronic version of a newspaper of general
14 circulation in the county in which the self-service storage
15 facility is located. If there is not a newspaper of general
16 circulation in the county, the lessor may instead post a copy of the
17 notice at the self-service storage facility and at least five other
18 conspicuous locations near the facility; or

19 (2) for at least 10 consecutive days on an Internet
20 website accessible at no cost to the general public.

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

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

25 (1) a motor vehicle subject to Chapter 501,
26 Transportation Code;

27 (2) a motorboat, vessel, or outboard motor for which a

1 certificate of title is required under Subchapter B, Chapter 31,
2 Parks and Wildlife Code; or

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

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

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

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

22 (2) a request for payment; and

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

27 (d) The notice required by this section may be given by

1 publishing the notice once in a print or electronic version of a
2 newspaper of general circulation in the county in which the motor
3 vehicle, motorboat, vessel, or outboard motor is stored if:

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

9 (2) the lessor:

10 (A) is advised in writing by the governmental
11 entity with which the motor vehicle, motorboat, vessel, or outboard
12 motor is registered or titled that the entity is unwilling or unable
13 to provide information on the last known owner of record or any
14 lienholder of record; or

15 (B) does not receive a response from the
16 governmental entity with which the motor vehicle, motorboat,
17 vessel, or outboard motor is registered or titled on or before the
18 21st day after the date the lessor submits the request;

19 (3) the identity of the last known owner of record
20 cannot be determined;

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

23 (5) the lessor cannot determine the identities and
24 addresses of the lienholders of record.

25 (e) The lessor is not required to publish notice under
26 Subsection (d) if a correctly addressed notice is sent with
27 sufficient postage in accordance with Subsections (b) and (c) and

1 is returned as unclaimed or refused or with a notation that the
2 addressee is unknown or has moved without leaving a forwarding
3 address or the forwarding order has expired.

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

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

14 (h) A person commits an offense if the person knowingly
15 provides false or misleading information in a notice required by
16 this section. An offense under this subsection is a Class B
17 misdemeanor.

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

20 (a) A holder of a lien under this subchapter [~~or Chapter 59~~]
21 on a motor vehicle subject to Chapter 501, Transportation Code, or
22 on a motorboat, vessel, or outboard motor for which a certificate of
23 title is required under Subchapter B, Chapter 31, Parks and
24 Wildlife Code, as amended, who retains possession of the motor
25 vehicle, motorboat, vessel, or outboard motor shall, not later than
26 the 30th day after the date on which the charges accrue, give
27 written notice to the owner and each holder of a lien recorded on

1 the certificate of title. A holder of a possessory lien on a motor
2 vehicle under Section 70.001, other than a person licensed as a
3 franchised dealer under Chapter 2301, Occupations Code, shall file
4 a copy of the notice and all information required by this section
5 with the county tax assessor-collector's office in the county in
6 which the repairs were made with an administrative fee of \$25
7 payable to the county tax assessor-collector. If the motor
8 vehicle, motorboat, vessel, or outboard motor is registered outside
9 this state, the holder of a lien under this subchapter who retains
10 possession during that period shall give notice to the last known
11 registered owner and each lienholder of record.

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

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

21 (c) If a constitutional or statutory lien is foreclosed, the
22 department may issue a new certificate of title in the name of the
23 purchaser at the foreclosure sale on receiving:

24 (1) the affidavit of the lienholder of the fact of the
25 creation of the lien and of the divestiture of title according to
26 law; and

27 (2) proof of notice as required by Sections 70.004 and

1 70.006, Property Code, or by Section 59.0445, Property Code.

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

3 SECTION 10. The changes in law made by this Act to Chapter
4 59, Property Code, apply only to a self-service storage facility
5 rental agreement entered into, extended, or renewed on or after the
6 effective date of this Act. A self-service storage facility rental
7 agreement entered into, extended, or renewed before the effective
8 date of this Act is governed by the law in effect immediately before
9 the effective date of this Act, and the former law is continued in
10 effect for that purpose.

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