~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 7, 2018

**H. 3970**

Introduced by Rep. Delleney

S. Printed 3/7/18--H.

Read the first time March 13, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3970) to amend Section 39‑20‑45, as amended, Code of Laws of South Carolina, 1976, relating to enforcement of self‑service storage facility liens, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 39‑20‑40 of the 1976 Code is amended to read:

“Section 39‑20‑40. If an owner complies with the requirements of this code section and Section 39‑20‑45, he may enforce the lien without judicial intervention. An owner shall obtain from the occupant a written rental agreement and a copy of the completed agreement shall be given to the occupant upon execution. The rental agreement must include the following language with bold type where indicated:

‘This agreement, made and entered into this \_\_\_ day of\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_\_\_\_\_\_, the owner and \_\_\_\_\_\_\_\_\_\_, the occupant, whose last known address is \_\_\_\_\_\_\_\_\_\_. YOU HAVE THE RIGHT TO CHOOSE ~~WHETHER YOU WANT~~ TO RECEIVE ~~ANY~~ NOTICE OF DEFAULT BY MAIL ~~OR~~ AND OPT OUT OF RECEIVING NOTICES OF DEFAULT VIA ELECTRONIC MAIL. WHEN CHOOSING ELECTRONIC MAIL, YOU WAIVE ANY RIGHT TO RECEIVE NOTICE OF DEFAULT PROCEEDINGS THROUGH PERSONAL SERVICE OR MAIL.

TO CHOOSE NOTICE BY MAIL TO THE ADDRESS WRITTEN ABOVE, SIGN HERE:

\_\_\_\_\_\_\_\_\_ (Occupant signs on this line to receive notice by mail.)

TO CHOOSE NOTICE BY ELECTRONIC MAIL, SIGN HERE AND PRINT YOUR ELECTRONIC MAIL ADDRESS:

\_\_\_\_\_\_\_\_(Occupant signs on this line to receive notice by electronic mail.)

\_\_\_\_\_\_\_\_ (If Occupant selects to receive notice by electronic mail, on this line Occupant must print the electronic mail address for Owner to use in sending notice.)

YOU HAVE THE RIGHT TO CHOOSE WHETHER YOU WANT TO DESIGNATE A NEXT OF KIN OR EMERGENCY CONTACT FOR PURPOSES OF RECEIVING ANY NOTICES OF DEFAULT. IF YOU WOULD LIKE TO PROVIDE THIS ADDITIONAL POINT OF CONTACT PLEASE LIST THE NAME OF THE INDIVIDUAL AS WELL AS THE EMAIL ADDRESS OR POSTAL MAILING ADDRESS WHERE THE NOTICE SHOULD BE SENT.

CHANGES TO YOUR PREFERRED METHOD OF RECEIVING NOTICE MUST BE SUBMITTED IN WRITING AND SENT BY FIRST CLASS MAIL OR HAND DELIVERED TO THE OWNER.

For the consideration provided for in this agreement, the owner agrees to let the occupant use and occupy a space in the self‑service storage facility, known as \_\_\_\_\_\_\_\_\_\_, located in the City of \_\_\_\_\_\_\_\_\_\_, State of South Carolina, and more particularly described as follows: Space #\_\_\_. The space is to be occupied and used for the purposes specified in this agreement and subject to the conditions set forth beginning on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and continuing month to month until terminated.

‘Space’, as used in this agreement, means that part of the self‑service storage facility as described above. The occupant agrees to pay the owner, as payment for the use of the space and improvements on the space, the monthly sum of $\_\_\_\_\_\_\_\_\_\_. Monthly installments are payable in advance on or before \_\_\_\_\_day of each month, in the amount of $\_\_\_\_\_\_\_\_\_\_, and a like amount of each month after that, until the termination of this agreement.

When rent is seven calendar days past due, or if any check given in payment is dishonored, occupant is considered to be in default and the owner may deny access to the personal property located in the self‑storage facility. THIS IS THE OCCUPANT’S NOTICE THAT OCCUPANT MAY BE DENIED ACCESS UPON DEFAULT.

The space named in this agreement is to be used by the occupant solely for the purpose of storing any personal property belonging to the occupant. The occupant agrees not to store any explosives or any highly inflammable goods or any other goods in the space which would cause danger to the space. The occupant agrees that the property will not be used for any unlawful purposes and the occupant agrees not to commit waste, nor alter, nor affix signs on the space, and will keep the space in good condition during the term of this agreement.

UPON DEFAULT BY THE OCCUPANT THE OWNER HAS A LIEN ON ALL PERSONAL PROPERTY STORED IN OCCUPANT’S SPACE FOR RENT IN RELATION TO THE PERSONAL PROPERTY, AND FOR ITS PRESERVATION OR EXPENSES REASONABLY INCURRED IN ITS SALE OR OTHER DISPOSITION PURSUANT TO THIS AGREEMENT. PERSONAL PROPERTY STORED IN OCCUPANT’S SPACE WILL BE SOLD OR OTHERWISE DISPOSED OF IF NO PAYMENT HAS BEEN RECEIVED FOR A CONTINUOUS FIFTY‑DAY PERIOD AFTER DEFAULT. IF ANY RENT IS SEVEN CALENDAR DAYS PAST DUE, OR IF ANY CHECK GIVEN IN PAYMENT IS DISHONORED, THE OCCUPANT IS IN DEFAULT FROM DATE PAYMENT WAS DUE.

IN THE EVENT OF YOUR DEFAULT, THE OWNER OF THE FACILITY IS REQUIRED TO PUBLISH AN ADVERTISEMENT OF THE PUBLIC SALE IN ORDER TO ATTRACT THE HIGHEST BIDDER. YOU HAVE THE RIGHT TO PREVENT THIS ADVERTISEMENT FROM INCLUDING YOUR NAME AS THE DEFAULTING PARTY.

\_\_\_\_\_\_\_\_\_ (Occupant signs on this line to request that advertisement not include their name.)

For purposes of owner’s lien: ‘personal property’ means movable property, not affixed to land and includes, but is not limited to, goods, merchandise, and household items; ‘last known address’ means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address; and ‘rent’ means any fees that were agreed to by parties in the latest rental agreement and includes, but is not limited to, fees for past due rent. The owner’s lien attaches as of the date the occupant is considered in default.

OWNER DOES NOT PROVIDE ANY TYPE OF INSURANCE WHICH WOULD PROTECT THE OCCUPANT’S PERSONAL PROPERTY FROM LOSS BY FIRE, THEFT, OR ANY OTHER TYPE CASUALTY LOSS. IT IS THE OCCUPANT’S RESPONSIBILITY TO PROVIDE SUCH INSURANCE.’”

SECTION 2. Section 39‑20‑45 of the 1976 Code is amended to read:

“Section 39‑20‑45. (A) If the occupant has been in default continuously for fifty days, owner may enforce its lien, provided owner shall comply with, during the fifty‑day default period, the following procedure.

(B) When rent is fourteen or more days past due the occupant must be notified by written notice delivered to the occupant’s last known address (1) in person, (2) by personal delivery service as provided by court rule, (3) by first‑class mail with a certificate of mailing, (4) by certified mail, or (5) by electronic mail.

(C) Owner’s notice to occupant shall include:

(1) a brief and general description of what is believed to constitute the personal property contained in the storage unit;

(2) a statement of the owner’s claim, showing the sum due at the time of the notice and the date the sum became due;

(3) a demand for payment within a specified time not less than fourteen days after delivery of notice;

(4) a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or disposed of as provided by law and will be sold or otherwise disposed of after a specified date;

(5) a conspicuous statement that partial payment of the owner’s claim does not stop or delay the owner’s right to proceed with the sale or disposition of the property; and

(6) a conspicuous statement notifying the occupant of denial of access to the personal property and provide the name, street address, and telephone number of the owner or its designated agent, whom the occupant may contact to respond to this notice.

(D) Any notice given pursuant to this section is presumed delivered when it is (1) properly addressed to the last known address, and (2) either deposited with the United States Postal Service with postage prepaid for first class mail with a certificate of mailing or certified mail or sent by electronic mail from which a confirmation of receipt is received.

(E) After the expiration of the fifty‑day default period, the owner shall publish an advertisement of the public sale to the highest bidder once a week for two consecutive weeks in a newspaper of general circulation where the self‑service storage facility is located or in any other commercially reasonable manner resulting in a commercially reasonable sale. For purposes of this chapter, ‘commercially reasonable sale’ includes, but is not limited to, the offering of property to an audience of bidders through an online, publicly accessible auction website. An advertisement is considered to be made in a commercially reasonable manner if at least three independent bidders attend the sale at the time and place as advertised. In the event that the public sale is held through a publicly available Internet website, the attendance of three independent bidders shall be evidenced by at least three independent potential bidders visiting or viewing the publicly accessible URL or website address during the advertised timeframe of the sale.

(F) The advertisement shall include:

(1) a brief and general description of what is believed to constitute the personal property, contained in the storage unit;

(2) the address of the self‑storage facility or the address where the self‑contained storage unit is located and the name of the occupant; ~~and~~

(3) the time, place, and manner of the public sale or other disposition. In the event that a public sale is planned to be held through a publicly available Internet website, the advertisement must include the URL/website address, which must constitute the ‘place’ for purposes of fulfilling this requirement; and

(4) the advertisement shall include only the name of the occupant if the rental agreement indicates that the occupant did not wish to exercise their right to prevent the inclusion of their name.

(G) If the owner determines that the property in the storage space has a sale value of less than three hundred dollars, the owner, at the owner’s sole discretion, may hold the property for sixty days from the date notice was provided pursuant to this section. If the occupant fails to claim the goods and pay the rent owed during that period, the owner may destroy or dispose of the property without further notice to occupant and occupant’s debt shall be extinguished and the owner shall have no liability to the occupant or any other person for the personal property.

(H) If the property upon which the lien is claimed is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for sixty days following the maturity of the obligation to pay rent, the lienor may have the property towed by a towing company licensed pursuant to law. If a motor vehicle is towed as authorized in this subsection, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(I) If no one purchases the property at the public sale and if the owner has complied with the foregoing procedures, the owner may otherwise dispose of the property and shall notify the occupant of the action taken. Any sale or disposition of the personal property must be held either through a publicly accessible Internet website or at the self‑service storage facility or at the nearest suitable place to where the personal property is held or stored.

(J) Before any sale or other disposition of personal property pursuant to this agreement, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred, and by that action redeem the personal property and after that the owner shall have no liability to any person with respect to the personal property. A partial payment of rent shall not satisfy the lien, stop or delay the owner’s right to proceed with a sale or disposition of the occupant’s property as provided in this section unless the owner agrees to the stop or delay in a writing signed by the owner.

(K) A purchaser in good faith of the personal property sold to satisfy owner’s lien takes the property subject to any other liens or security interests which are perfected and recorded or liens by any lienholder with an interest in the property of whom the owner has knowledge either through the disclosure provision of the rental agreement or through other written notice.

(L) In the event of a sale, the owner may satisfy his lien from the proceeds of the sale. The owner shall hold the balance of the proceeds, if any, for the occupant or any notified, secured interest holder. If not claimed within two years of the date of sale, the balance of the proceeds must be disposed of in accordance with Chapter 18, Title 27. In no event may the owner’s liability exceed the proceeds of the sale.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 39‑20‑45, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENFORCEMENT OF SELF‑SERVICE STORAGE FACILITY LIENS, SO AS TO REVISE THE MANNER OF ENFORCEMENT TO REQUIRE COMMERCIALLY REASONABLE SALES, AND TO PROVIDE REQUIREMENTS FOR SUCH SALES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 39‑20‑45 of the 1976 Code, as last amended by Act 136 of 2014, is further amended to read:

“Section 39‑20‑45. (A) If the occupant has been in default continuously for fifty days, owner may enforce its lien, provided owner shall comply with, during the fifty‑day default period, the following procedure.

(B) When rent is fourteen or more days past due the occupant must be notified by written notice delivered to the occupant’s last known address (1) in person, (2) by personal delivery service as provided by court rule, (3) by first‑class mail with a certificate of mailing, (4) by certified mail, or (5) by electronic mail.

(C) Owner’s notice to occupant shall include:

(1) a brief and general description of what is believed to constitute the personal property contained in the storage unit;

(2) a statement of the owner’s claim, showing the sum due at the time of the notice and the date the sum became due;

(3) a demand for payment within a specified time not less than fourteen days after delivery of notice;

(4) a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or disposed of as provided by law and will be sold or otherwise disposed of after a specified date;

(5) a conspicuous statement that partial payment of the owner’s claim does not stop or delay the owner’s right to proceed with the sale or disposition of the property; and

(6) a conspicuous statement notifying the occupant of denial of access to the personal property and provide the name, street address, and telephone number of the owner or its designated agent, whom the occupant may contact to respond to this notice.

(D) Any notice given pursuant to this section is presumed delivered when it is (1) properly addressed to the last known address, and (2) either deposited with the United States Postal Service with postage prepaid for first class mail with a certificate of mailing or certified mail or sent by electronic mail from which a confirmation of receipt is received.

(E) After the expiration of the fifty‑day default period, the owner ~~shall publish an advertisement of the public sale to the highest bidder once a week for two consecutive weeks in a newspaper of general circulation where the self‑service storage facility is located~~ may enforce its lien by arranging for the commercially reasonable public sale to the highest bidder if, at least seven days before the sale, the owner advertises the public sale in a commercially reasonable manner and in accordance with requirements in subsection (F). For purposes of this chapter, ‘commercially reasonable sale’ includes, but is not limited to, the offering of property to an audience of bidders through an online, publicly accessible auction website. An advertisement is considered to be made in a commercially reasonable manner if at least three independent bidders attend the sale at the time and place as advertised.

(F) The advertisement shall include:

(1) a brief and general description of what is believed to constitute the personal property, contained in the storage unit;

(2) the address of the self‑storage facility or the address where the self‑contained storage unit is located and the name of the occupant; and

(3) the time, place, and manner of the public sale or other disposition. In the event that a public sale is planned to be held through a publicly available Internet website, the advertisement must include the URL/website address, which must constitute the ‘place’ for purposes of fulfilling this requirement.

(G) If the owner determines that the property in the storage space has a sale value of less than three hundred dollars, the owner, at the owner’s sole discretion, may hold the property for sixty days from the date notice was provided pursuant to this section. If the occupant fails to claim the goods and pay the rent owed during that period, the owner may destroy or dispose of the property without further notice to occupant and occupant’s debt shall be extinguished and the owner shall have no liability to the occupant or any other person for the personal property.

(H) If the property upon which the lien is claimed is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for sixty days following the maturity of the obligation to pay rent, the lienor may have the property towed by a towing company licensed pursuant to law. If a motor vehicle is towed as authorized in this subsection, the lienor shall not be liable for the motor vehicle or any damages to the motor vehicle once the tower takes possession of the property.

(I) If no one purchases the property at the public sale and if the owner has complied with the foregoing procedures, the owner may otherwise dispose of the property and shall notify the occupant of the action taken. Any sale or disposition of the personal property must be held in a commercially reasonable manner either through a publicly accessible Internet website or at the self‑service storage facility or at the nearest suitable place to where the personal property is held or stored.

(J) Before any sale or other disposition of personal property pursuant to this agreement, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred, and by that action redeem the personal property and after that the owner shall have no liability to any person with respect to the personal property. A partial payment of rent shall not satisfy the lien, stop or delay the owner’s right to proceed with a sale or disposition of the occupant’s property as provided in this section unless the owner agrees to the stop or delay in a writing signed by the owner.

(K) A purchaser in good faith of the personal property sold to satisfy owner’s lien takes the property subject to any other liens or security interests which are perfected and recorded or liens by any lienholder with an interest in the property of whom the owner has knowledge either through the disclosure provision of the rental agreement or through other written notice.

(L) In the event of a sale, the owner may satisfy his lien from the proceeds of the sale. The owner shall hold the balance of the proceeds, if any, for the occupant or any notified, secured interest holder. If not claimed within two years of the date of sale, the balance of the proceeds must be disposed of in accordance with Chapter 18, Title 27. In no event may the owner’s liability exceed the proceeds of the sale.”

SECTION 2. This act takes effect upon approval by the Governor.

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