

By: Representative Cockerham

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1138

1 AN ACT TO AMEND SECTION 85-7-121, MISSISSIPPI CODE OF 1972,
2 TO ADD THE DEFINITIONS FOR "ELECTRONIC MAIL," "LATE FEE" AND
3 "SALE" FOR THE PROVISIONS OF LAW REGULATING AN OWNER'S LIEN FOR
4 SELF-STORAGE RENTALS; TO AMEND SECTION 85-7-123, MISSISSIPPI CODE
5 OF 1972, TO CLARIFY THE REGULATION FOR RENTAL AGREEMENTS FOR
6 SELF-STORAGE FACILITIES; TO AMEND SECTION 85-7-125, MISSISSIPPI
7 CODE OF 1972, TO CLARIFY THE ENFORCEMENT PROCEDURE FOR AN OWNER'S
8 LIEN; TO AMEND SECTION 85-7-127, MISSISSIPPI CODE OF 1972, TO
9 PROVIDE A PROCEDURE FOR DISPOSITION OF VEHICLES AND WATERCRAFT;
10 AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** Section 85-7-121, Mississippi Code of 1972, is
13 amended as follows:

14 85-7-121. As used in Sections 85-7-121 through 85-7-129, the
15 following terms shall have the meaning ascribed to them herein,
16 unless the context clearly requires otherwise:

17 (a) "Default" means the failure timely to perform any
18 obligation or duty set forth in Sections 85-7-121 through
19 85-7-129 * * * or the rental agreement;

20 (b) "Electronic mail" means an electronic message or an
21 executable program or computer file that contains an image of a
22 message that is transmitted between two (2) or more computers or



23 electronic terminals and includes electronic messages that are
24 transmitted within or between computer networks;

25 (* * *c) "Last known address" means * * * the postal
26 address or electronic mail provided by the occupant in the latest
27 rental agreement or the postal address or electronic mail provided
28 by the occupant in a subsequent written notice of a change of
29 address;

30 (d) "Late fee" means any fee or charge assessed for an
31 occupant's failure to pay rent when due. Late fee does not
32 include interest on a debt; expenses incurred in the collection of
33 unpaid rent; expenses necessary for preservation of personal
34 property or expenses reasonably incurred in its sale or other
35 disposition pursuant to Sections 85-7-121 through 85-7-129; or
36 costs associated with the enforcement of any other remedy provided
37 by law or contract;

38 (* * *e) "Leased space" means the individual storage
39 space at the self-storage facility which is leased or rented to an
40 occupant pursuant to a rental agreement * * *;

41 (* * *f) "Occupant" means a person, his sublessee,
42 successor or assign entitled to the use of a leased space at a
43 self-storage facility under a rental agreement to the exclusion of
44 others;

45 (* * *g) "Owner" means the owner, operator, lessor or
46 sublessor of a self-storage facility, an agent or any person
47 authorized to manage the facility or to receive rent from an



48 occupant under a rental agreement. The term "owner" shall not be
49 construed to mean a warehouseman unless the owner issues a
50 warehouse receipt, bill of lading or other document of title for
51 the personal property stored;

52 (* * *h) "Personal property" means movable property
53 not affixed to land and includes, but is not limited to, goods,
54 wares, merchandise, watercraft, motor vehicles and household
55 items;

56 (* * *i) "Rental agreement" means any written
57 agreement or lease that establishes or modifies the terms,
58 conditions, rules or any other provisions concerning the use and
59 occupancy of leased space at a self-storage facility;

60 (j) "Sale" means a public or private sale that is
61 conducted at the self-storage facility, another suitable location
62 selected by the owner, or on a publicly accessible website that
63 conducts lien sales or personal property sales. The personal
64 property at a sale may be offered as a unit or in parcels.

65 (* * *k) "Self-storage facility" means any real
66 property used for the purpose of renting or leasing individual
67 storage space to occupants who are to have access to such space
68 for the purpose of occupants themselves storing and removing
69 personal property on "self-service basis"; provided, however, that
70 an occupant may not use a leased space for residential
71 purposes * * *;



72 (1) "Verified mail" means any method of mailing offered
73 by the United States Postal Service or private delivery service
74 that provides evidence of the mailing.

75 **SECTION 2.** Section 85-7-123, Mississippi Code of 1972, is
76 amended as follows:

77 85-7-123. (1) The owner has a lien upon all personal
78 property located at a self-storage facility for rent, late fees,
79 labor or other charges, present or future, in relation to the
80 personal property and for expenses necessary for its preservation
81 or expenses reasonably incurred in its sale or other disposition
82 pursuant to Sections 85-7-121 through 85-7-129. The lien provided
83 for in this section is superior to any other lien or security
84 interest except those which are perfected and recorded in
85 Mississippi prior to the date of default under the rental
86 agreement and except any tax lien as otherwise provided by law.
87 The lien attaches as of the date the personal property is placed
88 in the leased space and the rental agreement shall contain a
89 statement in bold type notifying the occupant of the existence of
90 the lien and that the property stored in the leased space may be
91 sold to satisfy the lien if the occupant is in default. If the
92 rental agreement specifies a limit on the value of personal
93 property that the occupant may store in the leased space, the
94 limit shall be deemed to be the maximum value of the personal
95 property in the leased space of the occupant.



96 (2) If the occupant is in default, the owner may deny the
97 occupant access to the leased space at the self-storage facility.

98 (3) The rental agreement may provide for a reasonable late
99 fee for failure of the occupant to timely make payments for the
100 leased space when due. A monthly late fee of no more than Twenty
101 Dollars (\$20.00) or twenty percent (20%) of the monthly rental
102 amount, whichever is greater, shall be considered reasonable and
103 is not a penalty.

104 (4) If the owner offers notice by electronic mail, the
105 occupant may elect to receive notice by electronic mail only by
106 indicating the election in the rental agreement.

107 **SECTION 3.** Section 85-7-125, Mississippi Code of 1972, is
108 amended as follows:

109 85-7-125. The enforcement of the owner's lien against an
110 occupant who is in default shall be in accordance with the
111 following:

112 (a) No enforcement action shall be taken by the owner,
113 other than denial of access, as provided for in the rental
114 agreement until the occupant has been in default continuously for
115 a period of fourteen (14) days.

116 (b) During the default period the occupant shall be
117 notified in writing. The notice shall be delivered in person or
118 sent by * * * verified or electronic mail * * * to the last known
119 address of the occupant. Notices shall be deemed delivered when
120 deposited in the United States mail * * *, with a private delivery



121 service with postage paid or when an electronic message is sent to
122 the last known address provided by the occupant. If the owner
123 receives an automated message that the electronic mail cannot be
124 delivered, the owner shall deliver the notice in person or send
125 the notice by verified mail. The notice shall include an itemized
126 statement of the owner's claim showing the sum due at the time of
127 the notice, the date when the sum became due and any other sums
128 that shall accrue. The notice shall also include a demand for
129 payment of the sum due within a specified time not less than
130 fourteen (14) days after the date of the notice, a statement that
131 the contents of the occupant's lease space are subject to the
132 owner's lien, the name, street address and telephone number of the
133 owner, or his designated agent, whom the occupant may contact to
134 respond to the notice, a conspicuous statement that unless the
135 claim is paid within the time stated, the personal property will
136 be advertised for public or private sale or will be otherwise
137 disposed of at a specified time and place.

138 (c) After the expiration of the time given in the
139 owner's notice, the owner shall publish * * * advertisement of the
140 sale to the highest bidder in * * * any commercially reasonable
141 manner. The manner of advertisement is deemed commercially
142 reasonable if it is likely to attract at least three (3)
143 independent bidders to attend or view the sale in person or online
144 at the time and place advertised. The notice shall include the
145 address of the self-storage facility where the personal property



146 is located, and the name of the occupant, and the time, place and
147 manner of the sale.

148 (d) A sale to the highest bidder shall take place not
149 sooner than fifteen (15) days after the publication. * * *

150 (e) If no one purchases the property at the sale and if
151 the owner has complied with the foregoing procedures, the owner
152 may otherwise dispose of the property. * * *

153 **SECTION 4.** Section 85-7-127, Mississippi Code of 1972, is
154 amended as follows:

155 85-7-127. (1) Before any sale or other disposition of
156 personal property pursuant to Sections 85-7-121 through 85-7-129,
157 the occupant may pay the amount necessary to satisfy the owner's
158 lien and the reasonable expenses incurred under Sections 85-7-121
159 through 85-7-129, and thereby redeem the personal property. Upon
160 the payment and satisfaction of the amount necessary to satisfy
161 the lien and the reasonable expenses incurred under Sections
162 85-7-121 through 85-7-129, the owner shall return the personal
163 property and thereafter the owner shall have no liability to any
164 person with respect to such personal property. Unless the rental
165 agreement specifically provides otherwise and until a * * * sale
166 under Sections 85-7-121 through 85-7-129, the exclusive care,
167 custody and control of all personal property stored in the
168 leased * * * space remains vested in the occupant.

169 (2) The owner may buy at any sale of personal property to
170 enforce the owner's lien.



171 (3) A purchaser in good faith of the personal property sold
172 to satisfy the owner's lien takes the property free of any rights
173 of persons against whom the lien was valid, despite noncompliance
174 by the owner with the requirements of this section.

175 (4) In the event of a sale under Sections 85-7-121 through
176 85-7-129, the owner may satisfy his lien from the proceeds of the
177 sale but shall hold the balance, if any, for delivery on demand to
178 the occupant. In no event shall the owner's liability exceed the
179 proceeds of the sale. If the occupant does not claim the balance
180 of the proceeds within one (1) year of the date of the sale, such
181 balance shall be deemed to be abandoned and the owner shall pay
182 such balance to the Treasurer of the State of Mississippi, * * *
183 in accordance with the Uniform Disposition of Unclaimed Property
184 Act.

185 (5) (a) If the personal property subject to the owner's
186 lien is a vehicle, watercraft, or trailer and rent or other
187 charges remain unpaid for sixty (60) days, the owner may have the
188 vehicle, watercraft, or trailer towed from the self-storage
189 facility. This removal shall not release the owner's lien. The
190 owner shall not be liable for any damages to the vehicle,
191 watercraft, or trailer once the tower takes possession of the
192 property.

193 (b) Not less than ten days before having personal
194 property towed pursuant to this section, an owner shall notify the
195 occupant by regular mail or electronic mail at the occupant's last



196 known address and shall include the name, address, and telephone
197 number of the tower and the owner or his designated agent.

198 (6) Nothing in this article shall be construed as in any
199 manner impairing or affecting the right of parties to create
200 additional rights, duties, and obligations in and by virtue of a
201 rental agreement. In addition to the rights and remedies set
202 forth in this article, the owner has the same rights of and
203 remedies available to a creditor or landlord.

204 **SECTION 5.** This act shall take effect and be in force from
205 and after July 1, 2020.

