

By: Senator(s) Doty

To: Business and Financial
InstitutionsCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2861

1 AN ACT TO AMEND SECTION 85-7-121, MISSISSIPPI CODE OF 1972,
2 TO DEFINE CERTAIN TERMS USED IN PROVISIONS PROVIDING FOR AN
3 OWNER'S LIEN ON PERSONAL PROPERTY IN SELF-STORAGE FACILITIES; TO
4 AMEND SECTION 85-7-123, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A
5 REASONABLE LATE FEE FOR FAILURE TO TIMELY MAKE PAYMENTS FOR THE
6 LEASED SPACE; TO AMEND SECTION 85-7-125, MISSISSIPPI CODE OF 1972,
7 TO REVISE PROCEDURES TO ENFORCE THE OWNER'S LIEN; TO AMEND SECTION
8 85-7-127, MISSISSIPPI CODE OF 1972, TO AUTHORIZE TOWING OF THE
9 PERSONAL PROPERTY SUBJECT TO THE OWNER'S LIEN IF THE PROPERTY IS A
10 VEHICLE, WATERCRAFT OR TRAILER, AND RENT OR OTHER CHARGES REMAIN
11 UNPAID FOR A CERTAIN NUMBER OF DAYS; AND FOR RELATED PURPOSES.

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

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

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

18 (a) "Default" means the failure timely to perform any
19 obligation or duty set forth in Sections 85-7-121 through
20 85-7-129 * * * or the rental agreement;

21 (b) "Electronic mail" means an electronic message or an
22 executable program or computer file that contains an image of a



23 message that is transmitted between two (2) or more computers or
24 electronic terminals and includes electronic messages that are
25 transmitted within or between computer networks;

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

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

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

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

46 (* * * g) "Owner" means the owner, operator, lessor or
47 sublessor of a self-storage facility, an agent or any person



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

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

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

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

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



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

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

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



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

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

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

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

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

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

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



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

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



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

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

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

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

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

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



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

176 (4) In the event of a sale under Sections 85-7-121 through
177 85-7-129, the owner may satisfy his lien from the proceeds of the
178 sale but shall hold the balance, if any, for delivery on demand to
179 the occupant. In no event shall the owner's liability exceed the
180 proceeds of the sale. If the occupant does not claim the balance
181 of the proceeds within one (1) year of the date of the sale, such
182 balance shall be deemed to be abandoned and the owner shall pay
183 such balance to the Treasurer of the State of Mississippi * * * in
184 accordance with the Uniform Disposition of Unclaimed Property 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 charges
187 remain unpaid for sixty (60) days, the owner may have the vehicle,
188 watercraft or trailer towed from the self-storage facility. This
189 removal shall not release the owner's lien. The owner shall not
190 be liable for any damages to the vehicle, watercraft or trailer
191 once the tower takes possession of the property.

192 (b) Not less than ten (10) days before having personal
193 property towed pursuant to this section, an owner shall notify the
194 occupant by regular mail or electronic mail at the occupant's last
195 known address and shall include the name, address and telephone
196 number of the tower and the owner or his designated agent.



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

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

