

## CHAPTER 67

## ( SB 150 )

AN ACT relating to self-storage liens.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 359.200 is amended to read as follows:

As used in KRS 359.210 to 359.250, unless the context clearly requires otherwise:

- (1) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a "self-service" basis.
- (2) "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility or self-contained storage unit.
- (3) "Leased space" means the individual storage space at a self-service storage facility or in a self-contained storage unit which is rented to an occupant pursuant to a rental agreement.
- (4) "Occupant" means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility or in a self-contained storage unit under a rental agreement.
- (5) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage facility or a self-contained storage unit, or an agent or any other person authorized to manage the facility or storage unit, but does not mean a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.
- (6) "Personal property" means movable property located within leased space at a self-service storage facility or in a self-contained storage unit and includes but is not limited to goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings.
- (7) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement.
- (8) "Last known address" means that *postal* address *or electronic mail address* provided by the occupant in the *latest* rental agreement or the *postal* address *or electronic mail address* provided by the occupant in a subsequent written notice of a change of address.
- (9) "Self-contained storage unit" means any unit, including but not limited to a trailer, box, or other shipping container, which is leased by an occupant primarily for use as a storage space, whether the unit is located at a self-service storage facility or at another location designated by the occupant.
- (10) "*Verified electronic mail*" means an *electronic message or an executable program or computer file that is transmitted between two (2) or more computers or electronic terminals that the sender has verified by any reasonable means as being a working electronic mail address. The term includes electronic messages that are transmitted within or between computer networks.*
- (11) "*Verified mail*" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

➔Section 2. KRS 359.230 is amended to read as follows:

- (1) (a) If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce a lien by selling the property stored in the leased space at a public or private sale, for cash.
- (b) Proceeds shall then be applied to satisfy the lien, with any surplus disbursed as provided in subsection (5) of this section.
- (2) Before conducting a sale under subsection (1) of this section, the operator shall:
  - (a) Notify the occupant of the default by regular *or verified electronic* mail at the occupant's last known address;
  - (b) Send a second notice of default by *verified mail or verified electronic* ~~certified~~ mail to the occupant at the occupant's last known address which includes:

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1. A statement that the contents of the occupant's leased space are subject to the operator's lien;
  2. A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;
  3. A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date of the notice;
  4. A statement that unless the claim is paid within the time stated, the contents of the occupant's leased space shall be sold at a specified time and place; and
  5. The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice; and
- (c) At least three (3) days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the jurisdiction where the sale is to be held.
- (3) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.
- (4) The sale under this section shall be held at the self-service storage facility, ~~or~~ the location of the self-contained storage unit where the personal property is stored, *or a publically accessible Web site*.
- (5) If a sale is held under this section, the operator shall:
- (a) Satisfy the lien from the proceeds of the sale;
  - (b) Hold the balance, if any, for delivery to any other recorded lienholders who present claims within sixty (60) days. Notwithstanding Article 9 of KRS Chapter 355, claims shall be satisfied on a first come first served basis; and
  - (c) Deliver, upon expiration of sixty (60) days, the balance of any remaining proceeds to the occupant.
- (6) A purchaser in good faith of any personal property sold under KRS 359.200 to 359.250 takes the property free and clear of any rights of:
- (a) Persons against whom the lien was valid; and
  - (b) Other lienholders.
- (7) If the operator complies with the provisions of KRS 359.200 to 359.250, the operator's liability:
- (a) To the occupant shall be limited to the net proceeds received from the sale of the personal property;
  - (b) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien; and
  - (c) To the occupant or valid lienholders shall be relieved upon full distribution of proceeds in accordance with the provisions of KRS 359.200 to 359.250.
- (8) If an occupant is in default, the operator may deny the occupant access to the leased space.
- (9) (a) Unless otherwise specifically provided, all notices required by KRS 359.200 to 359.250 shall be sent by *verified mail or verified electronic* ~~certified~~ mail.
- (b) 1. Notices sent to the operator shall be sent to the operator's principal office, as listed on the rental agreement.
  2. Notices to the occupant shall be sent to the occupant at the occupant's last known address.
- (c) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in paragraph (b) of this subsection, with postage paid, *or sent by verified electronic mail*.
- (10) Provided, however, unless the rental agreement specifically provides otherwise and until a lien sale under KRS 359.200 to 359.250, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.
- (11) *If the rental agreement specifies a limit on the value of the personal property that may be stored in the occupant's leased space, the limit shall be deemed to be the maximum value of the stored personal property.*

- (12) *If the occupant is in default for more than sixty (60) days and the personal property stored in the leased space is a motor vehicle as defined in KRS 376.268, the operator may, in lieu of a sale authorized in KRS Chapter 359, have the vehicle or watercraft towed or removed from the self-service storage facility, and the towing company shall execute the notice provisions as specified in KRS Chapter 376.275.*

➔SECTION 3. A NEW SECTION OF KRS 359.200 to 359.250 IS CREATED TO READ AS FOLLOWS:

- (1) *A reasonable late fee may be imposed and collected by an owner for each service period that an occupant does not pay rent when due under a rental agreement, provided that the due date for the rental payment is not earlier than the day before the first day of the service period to which the rental payment applies. No late payment fee shall be assessed unless the rental fee remains unpaid for at least five (5) days after the date specified within the rental agreement for the payment of the rental fee.*
- (2) *No late fee may be collected pursuant to this section unless the amount of the fee and the conditions for imposing the fee are stated in the rental agreement or in an addendum to that agreement.*
- (3) *For the purposes of this section, a late fee of twenty dollars (\$20) or twenty percent (20%) of the rental fee for each month an occupant does not pay rent, whichever is greater, is deemed reasonable and does not constitute a penalty.*
- (4) *Any reasonable expense incurred as a result of rent collection or lien enforcement by an owner may be charged to the occupant in addition to the late fees permitted by this section.*

**Signed by Governor April 9, 2014.**