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2001 MAY -1 P 7

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

Committee Substitute for

SENATE BILL NO. 69

(By Senator Wooten **)**



PASSED April 14, 2001

In Effect 90 days from **Passage**

FILED

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 69

(SENATOR WOOTON, *original sponsor*)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creating a self-service storage lien act; imposing lien; providing method of enforcing lien; owners duties to lienholders; late fees; and rights and duties of occupant and owner.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-1. Short title.

1 This article may be known as the “Self-Service Storage
2 Lien Act”.

§38-14-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires otherwise:

3 (1) “Default” means the failure to perform on time any
4 obligation or duty set forth in the rental agreement or this
5 article;

6 (2) “Late fee” means a fee or charge assessed for a
7 default;

8 (3) “Leased space” means the individual storage space
9 at the self-service facility which is leased or rented to an
10 occupant pursuant to a rental agreement;

11 (4) “Occupant” means a person entitled to the use of a
12 leased space at a self-service storage facility under a rental
13 agreement, or the person’s sublessee, successor or assign;

14 (5) “Owner” means the owner, operator, lessor or
15 sublessor of a self-service storage facility or the person’s
16 agent or any other person authorized to manage the
17 facility or to receive rent from any occupant under a rental
18 agreement. The owner of a self-service storage facility is
19 not a warehouseman as defined in section one hundred
20 two, article seven, chapter forty-six of this code unless the
21 owner issues a warehouse receipt, bill of lading or other
22 document of title for the personal property stored, in
23 which event the owner and the occupant are subject to the
24 provisions of article seven, chapter forty-six of this code
25 dealing with warehousemen;

26 (6) “Personal property” means movable property not
27 affixed to land and includes, but is not limited to, goods,

28 wares, merchandise, motor vehicles and household items
29 and furnishings;

30 (7) "Primary address" means that address provided by
31 the occupant in the rental agreement or the address
32 provided by the occupant in a subsequent notice of a
33 change of address;

34 (8) "Rental agreement" means any agreement or lease
35 that establishes or modifies the terms, conditions or rules
36 concerning the lawful and reasonable use and occupancy
37 of a self-service storage facility;

38 (9) "Secondary address" means any address provided on
39 the rental agreement and is in addition to the primary
40 address;

41 (10) "Self-service storage facility" means any real
42 property used for renting or leasing individual storage
43 spaces, other than storage spaces which are leased or
44 rented as an incident to the lease or rental of residential
45 property or dwelling units, to which the occupants have
46 access for storing or removing their personal property; and

47 (11) "Self-service storage lien" means a lien imposed on
48 the personal property of an occupant by the owner of a
49 self-service storage facility.

§38-14-3. Self-service storage lien.

1 (a) The owner has a self-service storage lien on all
2 personal property stored within each leased space for
3 agreed rent, labor or other charges and for expenses
4 reasonably incurred in its sale or destruction pursuant to
5 this article. The self-service storage lien attaches as of the
6 date the personal property is stored within each leased
7 space and remains a lien until the occupant has satisfied
8 the terms of the rental agreement.

9 (b) In the case of any motor vehicle or watercraft which
10 is subject to a lien previously recorded on the certificate of
11 title, the owner has a self-service storage lien on the

12 vehicle or watercraft so long as the motor vehicle or
13 watercraft remains stored within the leased space.

14 (c) The rental agreement must contain:

15 (1) A statement, in bold type, advising the occupant of
16 the existence of the self-service storage lien and that the
17 personal property stored within the leased space may be
18 sold to satisfy the self-service storage lien or destroyed if
19 the value of the property would not reasonably discharge
20 the costs of the sale and self-service storage lien;

21 (2) A space for a secondary address immediately follow-
22 ing the space provided for the primary address; and

23 (3) A statement that the occupant may not store hazard-
24 ous waste or contraband in the leased space.

§38-14-4. Late fees.

1 The owner may charge a late fee not to exceed ten
2 dollars or ten percent of the monthly rental fee, whichever
3 is greater, for each month the occupant defaults for a
4 period of fifteen days or more.

§38-14-5. Enforcement of self-service storage lien.

1 (a)(1) If an occupant is in default under a rental agree-
2 ment and the owner wishes to enforce the lien, the owner
3 shall notify the occupant of the default in a form as
4 prescribed by subsection (c) of this section. If the default
5 is not cured within sixty days after the service of the
6 notice, the owner may:

7 (A) Proceed to enforce the self-service storage lien by
8 selling the contents of the occupant's unit at public
9 auction, for cash, and apply the proceeds to satisfaction of
10 the self-service storage lien, with the surplus, if any, to be
11 disbursed as provided in this article; or

12 (B) Destroy the personal property if he or she can
13 demonstrate by photographs or other images and affidavit

14 of a knowledgeable and credible person that the personal
15 property lacks a value sufficient to cover the reasonable
16 expense of a public auction plus the amount of the self-
17 service storage lien;

18 (2) In the case of personal property having a fair market
19 value in excess of one thousand dollars and against which
20 a secured party has filed a financing statement in the name
21 of the occupant with the secretary of state or in the office
22 of the clerk of the county commission in the county where
23 the self-service storage facility is located or in the county
24 in West Virginia shown as the last known address of the
25 occupant or if the personal property is a motor vehicle or
26 watercraft required by the laws of this state to be regis-
27 tered and the division of motor vehicles shows a lien on the
28 certificate of title, the owner shall notify the lienholder of
29 record, by certified mail, at the address on the financing
30 statement or certificate of title, of the time and place of
31 the proposed public auction, at least thirty days prior to
32 the auction. At any time prior to the public sale or de-
33 struction, a secured party may pay the reasonable fees and
34 costs due to the person possessing the self-service storage
35 lien and take possession of the personal property which is
36 subject to the lien;

37 (3) If a lienholder of record of the personal property
38 cannot be ascertained, the name of "Jane Doe" shall be
39 substituted in the proceedings brought under this article
40 and no written notice is required except as prescribed by
41 subsection (c) of this section. Whenever a motor vehicle or
42 watercraft is sold under the provisions of this article, the
43 division of motor vehicles shall issue a certificate of title
44 and registration to the purchaser upon the purchaser's
45 application containing the serial or motor number of the
46 vehicle or watercraft purchased, together with an affidavit
47 by the person conducting the public auction, evidencing
48 compliance with the provisions of this article.

49 (b) The owner may, without judicial process, deny the
50 occupant access to the personal property stored at the self-

51 service storage facility if the occupant has been in default
52 for fifteen days: *Provided*, That the owner clearly states in
53 the rental agreement that he or she may deny the occupant
54 access to the personal property stored in the rental space
55 after a default lasting fifteen or more days and the owner
56 maintains a conspicuous sign on the premises of the self-
57 service storage facility stating the name, street address and
58 telephone number of the owner or the owner's designated
59 agent who the occupant may contact to redeem his or her
60 personal property and upon redemption, the occupant or
61 lienholder be permitted access to his or her personal
62 property at a time not later than the close of business on
63 the next following business day.

64 (c) Anytime after the occupant has been in default and
65 before the owner can sell or destroy the occupant's per-
66 sonal property in accordance with the terms of this article,
67 the owner shall send a notice of default, by regular mail,
68 and registered or certified mail, postage prepaid, to the
69 occupant at the occupant's last-known primary address
70 and secondary address, if any. The notice of default shall
71 include:

72 (1) An itemized statement of the owner's claim, indicat-
73 ing the charges due on the date of the notice, the date
74 when the charges became due and those charges that will
75 accrue through the date of sale or destruction of the
76 occupant's personal property;

77 (2) A demand for payment of the charges due to the
78 owner with an address where payment can be made;

79 (3) A statement that the contents of the occupant's
80 leased space are subject to the owner's self-service storage
81 lien;

82 (4) A conspicuous statement that unless the claim is paid
83 prior to the enforcement of the self-storage lien:

84 (A) The personal property contained in the occupant's
85 space will be sold at public auction at a specified time and

86 place which may not be less than sixty days from the date
87 of the service; or

88 (B) The personal property contained in the occupant's
89 space will be disposed of at a commercially reasonable cost
90 to the occupant at a specified time and place which may
91 not be less than sixty days from the date of the service; and

92 (d) At any time prior to the public auction or destruction
93 of the personal property pursuant to this section the
94 occupant may pay the full amount necessary to satisfy the
95 self-service storage lien. A lienholder of record may pay
96 an amount not to exceed one hundred seventy-five dollars
97 for incurred rental fees, late fees and safekeeping of the
98 property in addition to an amount not to exceed seventy-
99 five dollars for notice and redeem only the personal
100 property subject to the lien.

101 (e)(1) Any owner who conducts a public auction pursu-
102 ant to this section may satisfy the self-service storage lien
103 from the proceeds of the public auction and hold the
104 balance, if any, for delivery on demand to the occupant. If
105 an owner complies with the provisions of this article, his
106 or her liability to the occupant is limited to the net pro-
107 ceeds less the amount of the self-service storage lien and
108 costs received at the public auction;

109 (2) If an owner conducts a public auction pursuant to
110 this section, the owner's liability to a lienholder is limited
111 to the proceeds received at the public auction, less the
112 amount of the self-service storage lien and costs. If an
113 owner complies with the provisions of this article, the
114 owner is not liable to a lienholder who fails to claim an
115 interest in the net proceeds within thirty days after the
116 public auction.

117 (f) Any public auction of the personal property shall be
118 held at the self-service storage facility or at the nearest
119 suitable place to where the personal property is held or
120 stored. An advertisement shall be published in a newspa-

121 per of general circulation in the county or municipality in
122 which the public auction is to be held not less than twenty
123 days prior to the public auction. The advertisement must
124 state the:

125 (1) Fact that it is a public auction;

126 (2) Date, time and location of the public auction;

127 (3) Date, time and location which the property may be
128 inspected; and

129 (4) Form of payment acceptable.

130 (g) A purchaser in good faith of any personal property
131 sold or otherwise disposed of pursuant to this article takes
132 the property free and clear of any rights of persons against
133 whom the lien was valid.

134 (h) Any notice made pursuant to this section is presumed
135 delivered when it is deposited with the United States
136 postal service and properly addressed with postage
137 prepaid.

§38-14-6. Other legal remedies may be used.

1 The provisions of this article do not preempt or limit the
2 owner's use of any additional remedy otherwise allowed by
3 law.

§38-14-7. Duties; care, custody and control of property.

1 (a) The owner shall use reasonable care in maintaining
2 the self-service storage facility for the purposes of storage
3 of personal property and may not offer to sell insurance to
4 the occupant to cover the owner's risk or lack of care.

5 (b) Prior to the sale or destruction of personal property
6 pursuant to this section, the owner shall prepare a detailed
7 inventory of all personal property to be sold or destroyed
8 and shall maintain the inventory listing for a period of two
9 years from the date of the sale or destruction of the
10 property. The occupant shall have access to the inventory

11 listing for the period during which it is maintained by the
12 owner.

13 (c) Unless the rental agreement specifically provides
14 otherwise, the exclusive care, custody and control of all
15 personal property stored in the leased space remains
16 vested in the occupant.

17 (d) An occupant may not use a self-service storage
18 facility for residential purposes.

19 (e) An occupant may not store hazardous waste or
20 contraband in the leased space. An owner who discovers
21 hazardous waste or contraband in a leased space shall
22 promptly notify the appropriate law-enforcement agency
23 and is authorized to deliver the hazardous waste or
24 contraband to the appropriate law-enforcement agency.

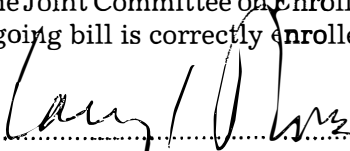
§38-14-8. Savings clause.

1 All rental agreements entered into prior to the first day
2 of July, two thousand one, which have not been extended
3 or renewed after that date remain valid and may be
4 enforced or terminated in accordance with their terms or
5 as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

1 The provisions of this article apply to all rental agree-
2 ments entered into or extended or renewed after the first
3 day of July, two thousand one.

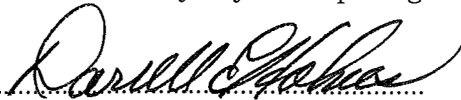
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

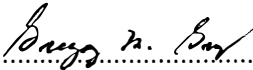

.....
Chairman Senate Committee



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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.

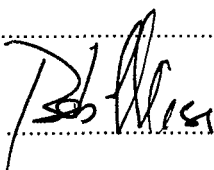

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 30th
Day of April, 2001.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 4:15 pm