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Senate Bill 204 (as enacted)

PUBLIC ACT 177 of 2009

Sponsor: Senator Dennis Olshove

Senate Committee: Senior Citizens and Veterans Affairs

House Committee: Military and Veterans Affairs and Homeland Security

Date Completed: 4-30-10

RATIONALE

The Self-Service Storage Facility Act provides for an owner's lien upon personal property located at a self-service storage facility or self-contained storage unit. To enforce the lien, if a tenant defaults on a rental agreement, the owner of the storage facility or unit must notify the tenant and advertise the sale or other disposition of the property in the facility or unit. It was pointed out that tenants who are active duty military personnel and are transferred or deployed overseas for an extended period may not have the opportunity to respond to the notice and advertisement in a timely manner. It was suggested that, under these circumstances, a storage tenant should not be subject to the enforcement of a lien under the Act until after his or her return from overseas service.

In addition, the Act's notification and advertisement requirements did not reflect current communications trends. Notification of enforcement of a lien had to be made in person or by certified mail, and advertisement of a subsequent sale was required to be in a newspaper of general circulation or posted in at least three conspicuous places in the neighborhood. Some felt the Act should provide for notification by first-class mail or electronic mail, and allow advertisement in a newspaper's on-line edition or other publicly available website.

CONTENT

The bill amended the Self-Service Storage Facility Act to specify that, if an owner receives a notice that a tenant who is a service member is transferred

or deployed overseas on active duty for at least 180 days, the owner may not enforce an owner's lien until 90 days after the end of the tenant's overseas service. The bill also allows delivery of notice by first-class mail (rather than certified mail) or by e-mail; and allows the sale of property to be advertised electronically.

The bill took effect on December 15, 2009.

Enforcement of Owner's Lien

Under the Act, the owner of a self-service storage facility or a self-contained storage unit and the heirs, personal representatives, successors, and assignees of the owner have a lien upon all personal property, whether or not owned by the tenant, located at the facility or unit. The lien attaches as of the date the personal property arrives at the facility or unit or the date a rental agreement is signed by the tenant, whichever is earlier.

An owner's lien may be enforced only as provided in the Act. The tenant and a person designated by the tenant must be given a written notice that includes, among other things, a demand for payment within a specified time of not less than 14 days after delivery of the notice. After that time, the sale or other disposition of the personal property in the storage facility or unit must be advertised. Before a sale or other disposition, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred to redeem the property.

Under the bill, a tenant who is a service member and who is transferred or deployed overseas on active duty for a period of 180 days or more may give the owner notice of the transfer or deployment. The tenant must provide written evidence of the transfer or deployment with the notice. If an owner receives a notice with supporting evidence that the tenant is a service member transferred or deployed overseas on active duty for 180 days or more, the owner may not enforce an owner's lien until 90 days after the end of the tenant's overseas service.

The Act defines "owner" as the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit, or his or her agent, or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement. "Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space to the exclusion of others at a self-service storage facility or in a self-contained storage unit under a rental agreement.

The bill defines "service member" as a member of the Armed Forces, a reserve branch of the Armed Forces, or the Michigan National Guard. "Armed forces" means that term as defined in the Veteran Right to Employment Services Act, i.e., the Army, Air Force, Navy, Marine Corps, Coast Guard, or other military force designated by Congress as part of the Armed Forces of the United States. The bill defines "active duty" as active duty pursuant to an executive order of the U.S. President, an act of Congress, or an order of the Governor.

Delivery of Notice & Advertisement of Sale

The Act requires an owner to notify a tenant, or a person designated by the tenant, of the intent to enforce an owner's lien. Under the bill, the written notice must be delivered in person, by first-class mail, or by electronic mail to the tenant's last known address and, if applicable, to the occupant's last known address. Previously, notice had to be delivered in person or by certified mail to the tenant's last known address.

Under the bill, an owner who notifies a tenant of his or her intent to enforce an owner's lien must make an affidavit stating

how and when the notice was delivered to the tenant. A copy of the notice must be attached to the affidavit. The owner must retain the affidavit for introduction into evidence in any potential action by a tenant claiming damages because of an owner's failure to comply with the Act.

The bill defines "last known address" as the street address, post office box, or electronic mail address provided by the tenant in the latest rental agreement or subsequent written notice by hand delivery, first-class mail, or electronic mail. Previously, the term meant the address provided by the tenant in the latest rental agreement or in a subsequent written notice of change of address by hand delivery or first-class mail.

In addition, the Act previously required an advertisement of the sale or other disposition of property subject to an owner's lien to be published once a week for two consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit was located. If there were no newspaper of general circulation in the area, the advertisement had to be posted at least 10 days before the sale or other disposition of property in at least three conspicuous places in the neighborhood where the storage facility or storage unit was located.

Under the bill, the newspaper advertisement must be published once a week for two consecutive weeks in the print or electronic version of a newspaper of general circulation in the area, or be posted once per week for two consecutive weeks on a publicly available website identified in the rental agreement. If there is no newspaper of general circulation in the area, and a publicly available website is not identified in the rental agreement, then the ad must be posted in three locations as required under the Act.

MCL 570.522-570.525

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In recent years, many Michigan residents have been deployed to perform military duty

overseas, as part of regular or reserve Armed Forces or National Guard units. When a service member is transferred or deployed overseas for an extended period, he or she must make arrangements for various personal and financial matters before shipping out. Transferred or deployed military personnel should not have to be concerned about missing a notice or advertisement issued in relation to the enforcement of an owner's lien under the Self-Service Storage Facility Act. Under the bill, therefore, if the owner of a storage facility or unit is made aware of the tenant's overseas deployment or transfer for at least 180 days, enforcement of a lien must be delayed until at least 90 days after the tenant returns.

Supporting Argument

The types of notification and advertisement required to enforce a lien under the Act were outdated and inefficient. Those who rent self-storage facilities or units often have transient lifestyles and the address kept on file at a facility might not reflect the tenant's current residence. Consequently, certified mail may not be the most effective way to contact a tenant, and e-mail might be more effective since a person does not have to change an e-mail address whenever he or she moves. The bill allows a storage facility owner to use less-expensive first-class mail, delivered to a residence or post office box, or electronic mail to notify a tenant of the owner's claim and the lien-enforcement process.

In addition, the Act required an owner to advertise in a newspaper when the owner was going to sell or otherwise dispose of property left in a storage unit for which rent is overdue. Most newspapers now have both print and electronic versions, and many have reduced or eliminated printed versions and publish primarily or exclusively on-line. The bill recognizes this reality by allowing the required ad to appear in a newspaper's print or electronic version or be posted on a publicly available website identified in the rental agreement.

These changes not only will save storage facility owners time and money, but also will help prevent tenants from losing their possessions, which sometimes occurs when owners cannot contact them.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.