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SENATE BILL NO. 366

Offered January 20, 2000

A BILL to amend and reenact §§ 55-418 and 55-419 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-419.1, relating to the Virginia Self-Service Storage Act.

Patron—Hawkins

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-418 and 55-419 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 55-419.1 as follows:

§ 55-418. Lien.

A. The owner shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter. Such lien shall attach as of the date the personal property is stored within each leased space, and, to the extent the property remains stored within such leased space, as hereinafter provided, shall be superior to any other existing liens or security interests to the extent of $~~250~~*1,000*, and the lien shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

B. In the case of any motor vehicle or watercraft which is subject to a lien, previously recorded on the certificate of title, the owner, so long as the motor vehicle or watercraft remains stored within such leased space, shall have a lien on such vehicle or watercraft as provided for herein to the extent of $~~250~~*1,000*. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any recorded liens and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

C. The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien, and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default.

§ 55-419. Enforcement of lien.

A. 1. If any occupant ~~be~~ *is* in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address. If such default is not cured within ten days after its occurrence, then the owner may proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as hereinafter provided. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C of this section and shall advertise the time, place, and terms thereof in such manner as to give publicity thereto.

2. In the case of personal property having a fair market value in excess of $~~600~~ *1,000*, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the city or county where the self-service storage facility is located or in the city or county in Virginia shown as the last known address of the occupant, or if such personal property ~~be~~ *is* a motor vehicle or watercraft required by the laws of Virginia to be registered and the Department of Motor Vehicles or Department of Game and Inland Fisheries shows a lien on the certificate of title, the ~~owner~~ *occupant* shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior thereto of the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings hereunder and no written notice shall be required. Whenever a motor vehicle or watercraft is sold hereunder, the Department of Motor Vehicles or Department of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser thereof upon his application containing the serial or motor number of the vehicle or watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance with the provisions hereof.

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of ten days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by registered or certified mail, postage prepaid, to the occupant at his last known address. Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;

2. A demand for payment of the charges due within a specified time not less than twenty days after the date of the notice;

3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and

5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.

D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.

E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction, and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. So long as the owner complies with the provisions of this chapter, the owner's liability to the occupant under this chapter shall be limited to the net proceeds received from the public auction of any personal property, and as to other lienholders, shall be limited to the net proceeds received from the public auction of any personal property covered by such superior lien.

F. Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county, city or town in which the public auction is to be held at least once prior to the public auction. The advertisement must state (i) the fact that it is a public auction; (ii) the date, time and location of the public auction; and (iii) form of payment.

G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this chapter takes such property free and clear of any rights of persons against whom the lien was valid.

H. Any notice made pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service and properly addressed to the occupant's last known address with postage prepaid.

§ 55-419.1. Other legal remedies may be used.

The provisions of this chapter shall not preempt or limit the owner's use of any additional remedy otherwise allowed by law.