

Proposed Amendments to H.606 from the Self Storage Association – 1/13/20

1 H.606

2 Introduced by Representative Marcotte of Coventry

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; storage units

6 Statement of purpose of bill as introduced: This bill proposes to amend the
7 laws governing storage units in Vermont.

8 An act relating to regulating storage units

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 9 V.S.A. chapter 98 is amended to read:

11 CHAPTER 98. STORAGE UNITS

12 § 3901. DEFINITIONS

13 As used in this chapter, the following terms shall have the following
14 meanings:

15 (1) “Default” means the violation or failure to perform a duty or
16 obligation created in this chapter or in a rental agreement.

17 (2) “Electronic mail” means the transmission of information through
18 computer or other electronic means, or a communication sent to a person
19 identified by a unique electronic address.

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1 (3) “Last known address” means ~~that~~ the address provided by the
2 occupant in ~~the~~ a rental agreement or ~~the address provided by the occupant~~ in a
3 subsequent written notice of a change of address.

4 (4)(A) “Late fee” means a fee or charge assessed for an occupant’s
5 failure to pay rent or other fees, charges, or expenses when due.

6 (B) “Late fee” does not include:

7 (i) interest on a debt;

8 (ii) reasonable expenses, fees, or charges incurred in the collection
9 of unpaid rent or expenses; or

10 (iii) fees or charges associated with the enforcement of any other
11 remedy provided by law or a rental agreement.

12 (2)(5) “Occupant” means a person, successor, assignee, agent, or
13 representative entitled to ~~the use of~~ storage space ~~in a self-storage facility~~
14 under a rental agreement to the exclusion of others.

15 (3)(6) “Owner” means the owner, operator, lessor, or sublessor of a self-
16 storage facility, an agent, or any other person authorized by the owner to
17 manage the facility or to receive rent from an occupant under a rental
18 agreement.

19 (4)(7) “Personal property” means movable property not affixed to land,
20 and includes goods, merchandise, and household items.

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1 ~~(5)~~(8) “Rental agreement” means ~~any~~ a written agreement that
2 establishes or modifies the terms, conditions, rules, or any other provision
3 concerning the use and occupancy of ~~a self-storage facility~~ storage space.

4 ~~(6)~~(9)(A) “Self-storage facility” means ~~any~~ real property designed and
5 used for the purpose of renting or leasing individual storage space to ~~occupants~~
6 an occupant ~~who are to have access to such space for the purpose of storing~~
7 ~~and removing personal property~~.

8 (B) A self-storage facility is not a “warehouse” as ~~used in Article 7 of~~
9 ~~the Uniform Commercial Code (U.C.C.) as codified in Title~~ defined in 9A § 7-
10 102. ~~If an owner issues any warehouse receipt, bill of lading, or other~~
11 ~~document of title for the personal property stored, the owner and the occupant~~
12 ~~are subject to the U.C.C., and this act does not apply.~~

13 (10) “Storage space” means the individual space at a self-storage facility
14 that is rented to an occupant under a rental agreement.

15 (11) “Verified mail” means a method of mailing that is offered by the
16 U.S. Postal Service or another carrier and that provides evidence of mailing.

17 § 3902. RESIDENTIAL PURPOSES

18 (a) ~~No occupant shall~~ An occupant shall not use storage space at a self-
19 storage facility for residential purposes.

20 (b) ~~No owner shall~~ An owner shall not knowingly permit the use of a
21 storage space at a self-storage facility ~~to be used~~ for residential purposes.

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1 § 3903. DISCLOSURES

2 (a) A rental agreement shall contain the following:

3 (1) ~~The~~ the name and address of the owner and occupant;₁

4 (2) ~~The~~ the actual monthly occupancy charge, rent, or lease amount for
5 the storage space provided, expressed in dollars;₁

6 (3) ~~An itemization of other charges imposed or which may be imposed~~
7 ~~in connection with~~

8 (A) disclosure of the charges the owner may impose for the
9 occupancy;₁

10 (B) a description of the charges;₁

11 (C) whether the charges are mandatory or optional;₁ and

12 (D) the amount of each charge,₁ expressed in dollars;₁

13 (4) ~~A statement of~~ a provision that states:

14 (A) whether property stored in the leased storage space is ~~or is not~~
15 insured by the owner against loss or damage; and

16 (B) ~~of~~ the requirement that the occupant must provide his or her own
17 insurance for any property stored; and

18 (5) ~~A statement advising~~ notice to an occupant that:

19 (A) ~~the occupant of the existence of the lien created by this chapter,~~
20 this chapter creates a lien on property stored in the storage space;

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1 (B) that the owner may sell the property stored in the leased storage
2 space may be sold to satisfy the lien; and

3 (C) that the owner shall not be is not liable for damage, loss, or
4 alienation of items of sentimental nature or value.

5 **(D) if the owner offers notice by electronic mail, the occupant may**
6 **elect to receive notice by electronic mail only by indicating the election in**
7 **the rental agreement.**

8 (b) If a rental agreement contains a limit on the value of property that may
9 be stored in a storage space, the limit is deemed to be the maximum value of
10 the property in the storage space and the maximum liability of the owner for
11 any claim.

12 (c)(1) An owner may impose a late fee of not more than \$20.00 or
13 20 percent of a rental payment, whichever is greater, for each service period
14 that an occupant does not pay the rent, charges, fees, or expenses when due.

15 (2) An owner shall not impose a late fee if the occupant pays the rent,
16 charges, fees, and expenses in full not later than five days after the due date.

17 (3) An owner shall not impose a late fee unless the amount of the fee
18 and the conditions for imposing that fee are stated in the rental agreement.

19 (d) Except as otherwise provided in a rental agreement, an occupant has the
20 exclusive care, custody, and control of property in a storage space until the
21 property is sold or otherwise disposed pursuant to this chapter.

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1 (e) The disclosures required under subdivisions (a)(4) and (a)(5) and
2 subsections (b)–(d) of this section shall be written in bold type and of a font
3 size equal to or greater than the general text of the agreement.

4 § 3904. LIEN

5 ~~The owner of a self storage facility~~

6 (a) An owner has a possessory lien upon all personal property located in a
7 storage space ~~at a self storage facility~~ for:

8 (1) rent;

9 (2) labor; ~~or~~

10 (3) late fees or other charges, present or future, in relation to relating to
11 the personal property; and

12 (4) ~~for expenses relevant to its preservation or expenses reasonably~~
13 ~~incurred in its~~ arising from the preservation or sale of the property pursuant to
14 this chapter.

15 (b) The lien created in this section attaches as of the date ~~the personal~~
16 ~~property is brought to or placed in a regular storage space at a self storage~~
17 ~~facility in accordance with the provisions of a valid~~ an occupant stores
18 personal property in a storage space pursuant to a rental agreement.

19 § 3905. ENFORCEMENT OF LIEN

20 ~~In the event of a default under the terms of a rental agreement, the lien~~
21 ~~created under this chapter may be enforced in accordance with the provisions~~

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1 ~~of this section~~ If an occupant defaults under a rental agreement, the owner may
2 enforce the lien created in section 3904 of this title pursuant to this section.

3 (1) First notice of default. ~~No~~ Not sooner than seven days after a
4 default, the owner shall notify the occupant ~~shall be notified~~ of the default by
5 regular mail or electronic mail sent to ~~his or her~~ the occupant's last known
6 address.

7 (2) Second notice of default. ~~No~~ Not sooner than 14 days after mailing
8 ~~of the first notice,~~ the owner shall notify the occupant ~~shall be notified~~ of the
9 default by ~~certified~~ verified mail or electronic mail sent to ~~his or her~~ the
10 occupant's last known address. **If the owner sends the second notice of**
11 **default to the occupant by electronic mail and does not receive a response,**
12 **return receipt or delivery confirmation from the same electronic mail**
13 **address, the owner shall send the notice to the occupant by verified mail**
14 **before proceeding with the sale.** The second notice shall contain the

15 following:

16 (A) An itemized statement of the owner's claim showing the sum due
17 at the time of the notice and the date when the sum became due.

18 (B) A brief and general description of the personal property subject
19 to the lien. ~~There shall be no requirement~~ An owner is not required to describe
20 the specific contents of a storage space in a self-storage facility beyond stating

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1 that it is the contents of a specific storage space in a specific self-storage
2 facility rented by a specific occupant.

3 (C) A notice of denial of access to the personal property, if such
4 denial is permitted under the terms of the rental agreement.

5 (D) A demand for payment within a specified time not less than
6 ~~fifteen~~ 15 days after the mailing of the second notice of default.

7 (E) A conspicuous statement that unless the claim is paid in full
8 within the time stated in the notice, the personal property will be advertised for
9 sale and sold according to law.

10 (3) Advertisement. Except as otherwise provided in subdivision (C) or
11 (D) of this subdivision (3):

12 (A) After the expiration of the time given in the second notice under
13 subdivision (2) of this section, the owner shall publish an advertisement of the
14 sale ~~shall be published~~ once a week for two consecutive weeks in the print or
15 electronic version of a newspaper of general circulation where the self-storage
16 facility is located.

17 (B) The advertisement shall contain the following:

18 ~~(A)(i)~~ A a brief and general description of the personal property as
19 provided in subdivision (2)(B) of this section;

20 ~~(B)(ii)~~ The the address of the self-storage facility; and

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1 (iii) the number, if any, of the space where the personal property is
2 located;

3 (iv) the name of the occupant; and

4 (v) the time, place, and manner of the sale.

5 ~~(C) The time, place, and manner of the sale.~~ If there is no newspaper
6 of general circulation where the self-storage facility is located, the owner shall
7 post the advertisement shall be posted at least 15 days before the date of the
8 sale at the town hall where the self-storage facility is located in ~~such fashion~~
9 the same manner as the auction sales of real property are posted.

10 ~~(D) A sale or other disposition of goods as provided for in this~~
11 ~~chapter shall not be defeated or deemed not in compliance with this provisions~~
12 ~~of this chapter if the owner attempted, but was not able to obtain personal~~
13 ~~service on those persons entitled to notice or if the certified mail return receipt~~
14 ~~is not signed by the person to whom notice must be sent, unless the owner fails~~
15 ~~to publish in accordance with this section.~~ As an alternative to the
16 advertisement required in subdivisions (A)–(C) of this subdivision (3), an
17 owner may advertise the sale of personal property in a commercially
18 reasonable manner. For purposes of this subdivision (D), a manner of
19 advertisement is commercially reasonable if three or more independent bidders
20 attend or view the sale.

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1 (4) Notice to other lienholders. Before the expiration of the time given
2 in the second notice under subdivision (2) of this section, the owner shall
3 determine whether the occupant owns any personal property subject to an
4 active lien registered with the Vermont Secretary of State. If any such lien
5 exists, the owner shall notify the lienholder ~~shall be notified by certified by~~
6 **certified** mail not less than 21 days prior to the sale of the property. ~~Such~~ The
7 notice shall include the following:

8 (A) A statement describing the property to be sold. There shall be no
9 requirement to describe the specific contents of a storage space in a self-
10 storage facility beyond stating that it is the contents of a specific storage space
11 in a specific self-storage facility rented by a specific occupant.

12 (B) A statement of the lienholder's rights under this chapter.

13 (C) A statement of the time, place, and manner of the sale of the
14 property.

15 (5) Delivery. For purposes of this chapter:

16 (A) notice by regular mail or verified mail is delivered when
17 deposited with the U.S. Postal Service or another carrier if the mail is properly
18 addressed to the occupant's last known address and postage is prepaid; and

19 (B) notice by electronic mail is delivered when properly addressed
20 and sent to an occupant's last known electronic mail address.

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1 ~~(6) Sale. Upon fulfillment of the notification and advertisement~~
2 ~~requirements of this section, sale of the personal property shall be permitted,~~
3 ~~provided the following conditions are met~~

4 (A) An owner that fulfills the notice and advertisement requirements
5 of this section may sell personal property stored in a storage space, subject to
6 the following conditions:

7 ~~(A) The sale of the personal property shall take place~~

8 (i) the sale occurs not sooner than 15 days after the first
9 publication under subdivision (3) of this section;

10 ~~(B) Any sale of the personal property under this chapter shall conform~~

11 (ii) the sale conforms to the terms of ~~all~~ the notifications required
12 under this section. ~~If, or, if~~ the sale will not or does not take place as provided
13 ~~for~~ in the notifications, then the owner makes subsequent notifications ~~shall be~~
14 ~~made~~ in the same manner as the original notifications ~~had been made.~~
15 consistent with this section;

16 ~~(C) Any sale of the personal property shall be~~

17 (iii) the sale is held at the self-storage facility, ~~or~~ at the nearest
18 suitable place, or on a publicly accessible website; and

19 ~~(D) Any sale of the personal property shall be~~

20 (iv) the sale is performed in a commercially reasonable manner,
21 ~~meaning the owner sells the goods in the usual manner in any recognized~~

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1 market therefor, at the price current in such market at the time of the sale; or
2 otherwise sold in conformity with.

3 (B) For purposes of this section:

4 (i) A sale is commercially reasonable if it conforms to
5 commercially reasonable practices within a recognized market for the goods or
6 among dealers in the type of goods sold; however,

7 (ii) the The sale of more goods than apparently necessary to
8 ensure satisfaction of the satisfy an occupant's obligation is not commercially
9 reasonable unless necessary due to the nature of the goods being sold or the
10 manner in which they are customarily sold.

11 (iii) The fact that an owner could obtain a better price could have
12 been obtained by sale at a different time or by a different method from that
13 selected by the owner is not of itself sufficient to establish that the sale was not
14 made in a commercially reasonable manner. **The owner may not purchase**
15 **the personal property at a public sale.**

16 ~~(E)~~(C) Any Except as provided in subdivision (7) of this section, an
17 owner shall conduct a sale or disposition of a motor vehicle shall be performed
18 pursuant to 23 V.S.A. chapter 21 and any a sale or disposition of a vessel,
19 snowmobile, or all-terrain vehicle shall be performed pursuant to 23 V.S.A.
20 chapter 36.

21 (7) Towing.

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1 (A) If rent, charges, fees, or expenses remain unpaid after 60 days, an
2 owner may have a vehicle, vessel, snowmobile, trailer, or all-terrain vehicle
3 towed away by a towing company.

4 (B) An owner has no liability to any person for having property
5 towed or for damage to the property after the towing company takes possession
6 of the property.

7 ~~(6)~~(8) Right of satisfaction.

8 (A) Before any a sale of personal property pursuant to this chapter,
9 the occupant may pay redeem the property by paying the amount necessary to
10 satisfy the lien in full and the reasonable expenses incurred under this section,
11 and thereby redeem the personal property.

12 (B) Upon receipt of such payment, the owner shall return the
13 personal property, and thereafter the owner shall have no liability is not liable
14 to any person with respect to such the personal property.

15 ~~(7)~~(9) Proceeds in excess of lien amount.

16 (A) In the event of sale under this section, the An owner that sells
17 property pursuant to this section:

18 (i) may satisfy the owner's lien from the proceeds of the sale, but;
19 and

20 (ii) shall hold the balance, if any, for delivery on demand to the
21 occupant.

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1 (B) If the occupant does not claim the balance of the proceeds ~~such~~
2 ~~funds shall be paid over,~~ the owner shall deliver the balance without interest to
3 the Treasurer of the State of Vermont in accordance with 27 V.S.A. chapter 14.

4 ~~(8)~~(10) Rights of other lienholders. The holder of any perfected lien or
5 security interest on personal property stored in the storage unit and registered
6 with the Vermont Secretary of State may take possession of its liened property
7 at any time prior to sale or other disposition.

8 ~~(9)~~(11) Rights of purchasers. A purchaser in good faith of the personal
9 property sold to satisfy a lien, ~~as provided elsewhere in this chapter,~~ takes the
10 property free of any rights of persons against whom the lien was valid, despite
11 noncompliance by the owner with the requirements of this chapter.

12 (12) Disposal of personal property. If an owner complies with the
13 requirements of this section and a qualified buyer does not purchase the
14 property offered for sale, the owner may dispose of the property without
15 liability.

16 (13) Liability. An owner that has complied with the applicable
17 provisions of this chapter is not liable to an occupant, lienholder, or any other
18 person.

19 § 3906. SCOPE; SUPPLEMENTAL NATURE OF ACT

