

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 786

(Delegate Davis, *et al.*)

Economic Matters

Finance

Self-Service Storage Facilities - Enforcement of Lien - Procedures

This bill establishes procedures for enforcement of a lien on the property kept in a self-service storage facility. It requires a rental agreement between an operator and occupant of a self-service storage facility to contain a statement, in bold type, advising the occupant that, in the event of the occupant's default, the lien sale of personal property stored in the leased space may be advertised (1) in a newspaper of general circulation in the jurisdiction where the sale is to be held; (2) by email; or (3) on a website. The operator may not advertise the sale through email or a website unless the occupant initials the required statement in the rental agreement. Additionally, notice of default may not be given through email unless so specified in a statement, in bold type, in the rental agreement and the occupant initials the statement. The bill also requires the operator to mail the balance of any lien sale proceeds, by certified mail, to the occupant or other recorded lienholder; if the balance is returned, the operator must hold the balance for one year after the date of sale. If the balance remains unclaimed after this period, the balance is presumed abandoned and is subject to State law governing disposition of abandoned property.

Fiscal Summary

State Effect: Special fund revenues and expenditures increase, potentially significantly, due to the Comptroller's Office receiving and processing more abandoned property, as discussed below. General fund revenues also increase minimally, but general fund expenditures are not materially affected.

Local Effect: The bill does not materially affect local governmental operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Self-service Storage Facilities

The Maryland Self-Service Storage Act was adopted in 1983 and applies to all rental agreements entered into or renewed after July 1, 1983.

Under the Act, a “self-service storage facility” is any real property used for renting or leasing individual storage spaces in which the occupants themselves store and remove their own personal property on a “self-service” basis. An “operator” is defined as the owner, operator, lessor, sublessor, agent, or any other person authorized to manage the self-service storage facility. An “occupant” is defined as a person, sublessee, successor, or assignee entitled to use the leased space at a self-service storage facility under a rental agreement. “Personal property” is any movable property not affixed to land, and includes goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings. “Default” is defined as the failure to perform an obligation or duty set forth in the rental agreement on time.

An operator of a self-service storage facility has a lien on all personal property stored in each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale. The rental agreement between the operator and the occupant must contain a statement advising the occupant of the existence of the lien and that the personal property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

If an occupant is in default for more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale for cash; proceeds are applied to satisfy the lien and the operator must hold the balance, if any, for delivery on demand to the occupant or any other recorded lien holder. The operator must notify the occupant of the occupant’s default status before conducting the sale. The notice must include specified information about the operator’s lien on the personal property, including the due date by which any outstanding charges must be paid before the personal property is sold; the due date must be at least 14 days after the notice’s mailing date. The notice must be provided by hand delivery, verified mail, or email; however, email notice is only authorized if so specified in the rental agreement or in a written change to the rental agreement.

At least three days before conducting a sale of the personal property, the operator must 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.

Abandoned Property

The Maryland Uniform Disposition of Abandoned Property Act establishes criteria for various types of property to be presumed “abandoned” as well as procedures for the disposition of such property. Generally, property is presumed abandoned if it is left unclaimed for three years.

Between 30 and 120 days before filing a report with the Comptroller, any holder of presumed abandoned property must send written notice by first-class mail to the apparent owner of the presumed abandoned property, at the apparent owner’s last known address, informing the owner that the holder is in possession of the property and that the property will be considered abandoned unless the owner responds to the holder within 30 days after the notification.

A person holding abandoned property must file a report with the Comptroller that includes information on the nature of the property and the property’s presumed owner. Within 365 days after the report’s filing, the Comptroller must publish a notice in a newspaper of general circulation in the county where the presumed owner’s last known residence is located, naming the persons listed in the report and stating the means by which the owner may claim the property. Notice of property valued at \$100 or less is not required to be published unless the Comptroller considers publication to be in the public interest. The Comptroller must mail out notices to owners of abandoned property valued at \$100 or more within 120 days of receipt of the report filed by the holders.

The property must be delivered or paid to the Comptroller at the time an abandoned property report is filed, at which time the State takes custody of the property. A person who claims a legal interest in property delivered to the Comptroller must file a claim to the property or to the proceeds from its sale. There is no time limit for filing a claim.

The Comptroller currently has an electronic abandoned property database on the agency’s website (http://comptroller.marylandtaxes.com/Public_Services/Unclaimed_Property/).

A person who fails to pay or deliver abandoned property to the Comptroller must pay a penalty equal to 15% of the value of the property; a person who *willfully* refuses to pay or deliver abandoned property is subject to an additional fine of between \$500 and \$5,000 and/or imprisonment for up to six months. The Comptroller may also bring an action in court to require a person to file a report if the person failed to file the report; a person who *willfully* fails to file a report is subject to a fine of \$100 for each day the report is withheld, up to a total of \$5,000.

The Comptroller must credit all abandoned property funds to a special fund; at the end of each fiscal year, the Comptroller must retain up to \$50,000 from which abandoned property claims are paid. After deducting administrative costs from the remaining net funds, the Comptroller must distribute \$1,500,000 to the Maryland Legal Services Corporation Fund. Additionally, all unclaimed money from restitution judgments under the Criminal Procedure Article must be paid to the State Victims of Crime Fund. Any remaining net funds after the required distributions are credited to the general fund.

Background: According to the Self Storage Association, as of 2013, there were approximately 48,500 self-storage facilities in the United States; about 9% of all American households rent a self-storage unit. The State Department of Assessments and Taxation reports that there are 556 self-service storage facilities in Maryland as of February 2015.

State Fiscal Effect: The Comptroller advises that, as a result of the bill's creation of an additional class of "abandoned property," its unclaimed property unit anticipates an increased workload that requires at least one additional revenue examiner. The Comptroller advises that handling abandoned property claims is a time-consuming and significantly manual process and that the unit is already operating at capacity. However, the Comptroller was unable to estimate how many additional claims might be received as a result of the bill and so was unable to estimate the scope and magnitude of any additional workload.

The Department of Legislative Services agrees that, if the unit receives a high volume of additional claims, additional staff may be required; however, a small number of additional claims could likely be handled with existing resources. The number of additional claims depends on whether and how often an operator of a self-service storage facility receives surplus proceeds from a lien sale *and* whether the proceeds remain unclaimed one year after the lien sale. This number cannot be reliably estimated at this time. *For illustrative purposes only*, special fund expenditures could increase by \$43,122 in fiscal 2017 and by \$54,289 in fiscal 2018 for the Comptroller to hire one additional revenue examiner. This estimate reflects a delayed start date of October 1, 2016, since the unit would not receive any additional abandoned property or related claims until at least one year after the bill's effective date. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Special fund revenues also increase, potentially significantly, depending on the value of any additional unclaimed proceeds that the Comptroller receives as a result of the bill. However, the value of additional proceeds also depends on whether and how often an operator of a self-service storage facility receives surplus proceeds from a lien sale *and* whether the proceeds remain unclaimed one year after the lien sale. As noted previously, this amount cannot be reliably estimated at this time.

General fund revenues also increase minimally to the extent that additional net revenue is credited to the general fund at year-end and operators of self-service storage facilities fail to report or deliver abandoned property to the Comptroller and are prosecuted for violations, resulting in monetary penalties and fines (a fine between \$100 and \$5,000 for willfully failing to file a report; penalty of 15% of the property value for failing to deliver the property; and a fine between \$500 and \$5,000 for willfully refusing to deliver property).

Small Business Effect: The bill may have a meaningful impact on self-service storage facilities, some of which are small businesses. The bill expands the methods by which operators may advertise the sale of personal property and the methods by which operators may notify an occupant of default as long as the methods are specified and agreed to in the rental agreement. This allows operators to more widely disseminate notice of the sale (which could attract more bidders) and possibly alert occupants in a more cost-effective way.

However, the bill may also impose additional costs for operators. The bill requires operators to mail any surplus proceeds from lien sales, by certified mail, to occupants. The operator must file a report and deliver the surplus proceeds to the Comptroller; failure to do so results in possible civil and/or criminal action. Additionally, if the proceeds total more than \$100, operators must mail a notice to occupants and other recorded lienholders (the presumed owners of the proceeds) by first-class mail that the proceeds may be considered abandoned if a response is not received within the specified time period.

Additional Information

Prior Introductions: None.

Cross File: SB 613 (Senator Astle, *et al.*) - Finance.

Information Source(s): Comptroller's Office, Office of the Attorney General (Consumer Protection Division), State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Self Storage Association, Department of Legislative Services

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