

Towing Option Becomes Law with Passage of SB 1181

by TSSA Legal Counsel

Texas Senate Bill 1181 (“**SB 1181**”) provides a self-service storage facility (a “**Facility**”) with the ability to tow certain vehicles away from the Facility following a tenant’s abandonment of property at the Facility (in lieu of holding a public auction). Governor Abbott signed SB 1181 into law on May 24, 2021 and the law will become effective on September 1, 2021.

How does SB 1181 affect self-service storage facilities?

Under existing Texas law, if a tenant abandons a unit or stops paying rent for it, a Facility must provide the required statutory notice to the tenant and conduct a public auction of the unit’s contents. This can be a lengthy process and necessitates taking up valuable storage space at the property (particularly when the space is taken up by motor vehicles, trailers, motorboats or the like).

SB 1181 attempts to lighten this burden by providing Facilities with the ability to tow certain vehicles to vehicle storage facilities, which allows Facilities to free up space on a quicker timeline than is possible under the current public auction rules.

While a Facility’s lien on such towed property will be extinguished the moment the vehicle is towed away from the Facility, the Facility receives the benefit of (a) no longer having the storage space at the Facility taken up by such vehicle, and (b) not being liable for any damage that occurs to the vehicle while the vehicle is being towed or after the vehicle has been towed from the Facility.

If a Facility does not want to extinguish the lien on the vehicle, the Facility will need to go through the steps to proceed with foreclosure and public auction.

How can self-storage facilities utilize the changes brought by SB 1181?

First, the written rental agreement between the tenant and the owner, lessor, sublessor, or managing agent of the Facility (a “**Lessor**”) must explicitly authorize the transfer of possession and towing of the applicable vehicles.¹

Next, similar to the current requirements for selling property at a public auction, the Lessor must provide written notice of the claim to the tenant.² Such notice must contain the following information.³

1. An itemized account of the claim;
2. The name, address, and telephone number of the Lessor (or its agent);
3. A statement that the contents of the self-service storage facility have been seized under the contractual landlord’s lien;

¹ Tex. Prop. Code Ann. § 59.052(1)

² Tex. Prop. Code Ann. § 59.042(a)

³ Tex. Prop. Code Ann. § 59.043(a)

4. A statement that if the tenant fails to satisfy the claim on or before the 14th day after the date notice is delivered, the property may either be: (a) sold at public auction (in compliance with Texas law), or (b) towed to a vehicle storage facility and disposed of by the vehicle storage facility under Subchapter D, Chapter 2303, Occupations Code; and
5. A statement underlined or printed in conspicuous bold print requesting a tenant who is in military service to notify the Lessor of the status of the tenant's current military service immediately.

If the tenant fails to satisfy the claim on or before the 14th day after the above notice and the vehicle storage facility agrees in writing to accept possession of the towed property, then the Lessor may transfer possession of the vehicle and tow it to the vehicle storage facility.⁴

What items are subject to SB 1181?

The following vehicles are applicable to the provisions of SB 1181⁵:

1. A motor vehicle, trailer, or semitrailer titled or registered under Texas law;
2. A motorboat, vessel, or outboard motor for which a certificate of title is required under Texas law; and
3. A motor vehicle, trailer, semitrailer, motorboat, vessel, or outboard motor registered or titled outside of Texas.

Where must vehicles be towed?

Vehicles may only be towed to "vehicle storage facilities," meaning a garage, parking lot, or other facility that is (a) owned by a person other than a governmental entity; and (b) used to store or park at least 10 vehicles each year.⁶

As a condition to towing the vehicle to such vehicle storage facility, the vehicle storage facility must agree in writing to accept possession of the property.⁷

What happens to the vehicles after they have been towed?

The Lessor's lien on such towed property will be extinguished the moment the vehicle is towed away from a Facility.⁸ However, the Lessor will not be liable for any damage that occurs to the vehicle while the vehicle is being towed or after the vehicle has been towed from the Facility.⁹

Further, once the vehicle has been towed to the vehicle storage facility, the vehicle storage facility (a) is required to accept the transferred vehicles, and (b) may dispose of the vehicle in the manner authorized by state law for other vehicles towed to such a vehicle storage facility.¹⁰

⁴ Tex. Prop. Code Ann. § 59.052

⁵ Tex. Prop. Code Ann. § 59.051

⁶ Tex. Occ. Code Ann. § 2303.002

⁷ Tex. Prop. Code Ann. § 59.052

⁸ Tex. Prop. Code Ann. § 59.053

⁹ Tex. Prop. Code Ann. § 59.055

¹⁰ Tex. Occ. Code Ann. §§ 2303.203 - .204

Conclusion

TSSA is currently drafting the needed changes to the TSSA rental agreement (“lease”) to allow for towing of vehicles by an authorized vehicle storage facility. We will notify members as soon as the new version is available, but keep in mind that you cannot avail yourself of towing in lieu of foreclosure until after September 1, 2021 and not until your tenants have signed the lease with the necessary towing language.

SB 1181 was drafted with the concerns of owners of self-storage facilities in mind, specifically how to quickly free up significant space at owners’ facilities without holding public auctions. However, as with any recently enacted statute, unforeseen questions are bound to arise. If owners and managers of facilities have questions regarding the towing process of SB 1181, they are advised to reach out to TSSA for guidance.