

First Extraordinary Session, 2005

HOUSE BILL NO. 149

BY REPRESENTATIVE GRAY

LESSOR/LESSEE: Provides for the removal and preservation of lessee's property (Item #52)

1 AN ACT

2 To enact R.S. 9:2554, relative to the removal and preservation of property by the lessor
3 during certain emergency periods; to provide for the preservation of a tenant's
4 property; to provide for liability of the lessor for failure to preserve salvageable
5 property of the lessee; to provide for applicability; to provide for retroactive
6 application; to provide for termination of provisions; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2554 is hereby enacted to read as follows:

10 §2554. Leased premises; obligations regarding property; presumption of intent to
11 abandon; applicability to certain emergencies and disasters
12 A. The legislature finds that Hurricanes Katrina and Rita created a statewide
13 emergency disrupting and forcing the closure of certain courts and public offices,
14 and further resulting in the displacement of courts, offices, clients, and counsel. This
15 Section is enacted for the benefit and protection of the state as a whole and its
16 citizens and to prevent injustice, inequity, and undue hardship to persons who were
17 prevented by these hurricanes from timely access to courts and offices in the exercise
18 of their legal rights, including the filing of documents and pleadings as authorized
19 or required by law. This Section is intended to provide additional remedies relative
20 to the removal and preservation of a lessee's property not otherwise provided by law.

1 B. This Section applies to leased premises in the areas directly affected by
2 Hurricanes Katrina and Rita during the period of August 26, 2005, until June 30,
3 2006.

4 C.(1) The lessor of an immovable may enter the leased premises without the
5 permission of the lessee to inspect the premises and to make necessary repairs. The
6 lessor may remove the lessee's property from the premises to make necessary repairs.
7 The lessor shall preserve the salvageable property and may dispose of any property
8 that is unsalvageable. Until the removal or preservation of movable property of the
9 lessee begins, the lessor shall maintain each group of movable property in the same
10 condition as he found it, and he shall keep wet items wet, dry items dry, and damp
11 items damp.

12 (2) The lessor shall keep written records of contacts with insurance agents
13 and other investigators and of decisions on retrieval, salvage, and removal of
14 movable property and shall make visual, written, and voice records for each step of
15 salvage or removal procedures.

16 (3) The lessor's duty to preserve salvageable, damaged, movable property
17 shall not include actual treatments beyond those which need to be done immediately
18 to prevent further damage to movable property. However, the lessor shall separate
19 movable property that has exhibited mold growth from all other property.

20 (4) The lessor shall salvage water-damaged books, heirlooms, photographs,
21 and documents.

22 (5) The lessor may take the following into consideration in prioritizing the
23 salvageability of the other movable property:

24 (a) Immediate susceptibility to damage.

25 (b) Rarity.

26 (c) Importance to collection.

27 (d) Monetary value.

28 (e) Whether the object(s) are on loan.

1 (f) Ability to move the object particularly without introducing the risk of
2 additional damage. This takes into consideration height, shape, weight, and fragility.

3 (g) Degree of apparent damage.

4 (h) Degree of susceptibility over the time period of the salvage operation.

5 (i) If undamaged movable property is in an unstable environment or area that
6 is not secure, the lessor shall move the undamaged movable property to a secure,
7 environmentally controlled area.

8 D.(1) The lessor shall not move the movable property without documenting
9 its condition. In order to document the condition of the movable property, the lessor
10 may do either of the following:

11 (a) Use a camera or video camera to record conditions of the movable and
12 immovable property and may make notes and voice recordings to accompany
13 photographs or video.

14 (b) Cause an inventory to be made of the property.

15 (2) The lessor shall make a reasonable effort to notify the lessee at least
16 fifteen days before preserving or disposing of the lessee's property. The notice shall
17 include information that the lessee's unsalvageable property will be discarded, and
18 if salvageable property is to be preserved, a statement to that effect, including
19 information as to the location where the property will be stored.

20 (3) The cost of removing all of the property from the premises and
21 preserving the salvageable property shall be at the lessee's expense, unless otherwise
22 covered by the lessor's insurance; however, the cost of moving and preserving the
23 property while necessary repairs are being made shall be deducted from the rent.
24 The lessor shall have a privilege over the preserved property for any such costs paid
25 by the lessor. The lessor shall store the property at any available storage site closest
26 in proximity to the leased premises. If the lessor is entitled to be paid under an
27 insurance policy or has received or is entitled to receive funds from FEMA or other
28 source for loss of rental income attributable to the leased premises, the lessee shall
29 be given credit for the amounts paid to the lessor.

1 E. Unless otherwise agreed by the parties, in the event of the total destruction
2 of the immovable property, the lease is terminated, and the lessor is bound to
3 reimburse the rent paid by the lessee since the time of the total destruction of the
4 property, except that the lessor may deduct the amounts expended for the removal
5 and preservation of the lessee's property on the leased premises, unless otherwise
6 covered by insurance.

7 F. If the lessor disposes of property of the lessee that is salvageable and does
8 not comply with the provisions of this Section, the lessor shall be liable to the lessee
9 for the value of property.

10 G. As used in this Section:

11 (1) "Reasonable effort" includes but is not limited to posting a notice on the
12 door of the leased premises, notifying the lessee by telephone or other electronic
13 communications devices, transmission of information or communication by the use
14 of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, or
15 other electronic means, or publishing the notice in the official journal of the parish
16 or municipality where the premises are located.

17 (2) "Unsalvageable property" means property that has been damaged as a
18 result of Hurricane Katrina or Rita, or both, and can no longer be used for its
19 intended purpose, or if the cost of cleaning, repairing, or preserving the property is
20 greater than its fair market value. "Unsalvageable property" also includes porous
21 items that have been wet for more than forty-eight hours and that cannot be
22 thoroughly cleaned. Porous items or noncleanable items include but are not limited
23 to carpeting and carpet padding, upholstery, wallpaper, bedding, some clothing,
24 leather, paper, wood, and food.

25 H. The provisions of this Section shall not affect the laws governing eviction
26 proceedings.

27 I. The provisions of this Section shall have retroactive application to August
28 26, 2005.

29 J. The provisions of this Section shall terminate on June 30, 2006.

1 K. The provisions of this Section shall not apply to the lease or furnishing
2 of sleeping rooms, cottages, or cabins by hotels or motels.

3 Section 2. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Gray

HB No. 149

Abstract: Provides for removal and preservation of a lessee's property during the period of 5/29/05 until 6/30/06.

Present law provides that a lessor has the right to enter leased premises to make necessary repairs.

Proposed law (R.S. 9:2554(C)(1)) does not change present law but specifies the lessor's right to inspect the premises during the period of 8/26/05 until 6/30/06.

Present law provides for the duty of the lessor to preserve the lessee's property when the lessor is making necessary repairs.

Proposed law does not change present law.

Present law does not provide for the lessor's right to dispose of unsalvageable property.

Proposed law (R.S. 9:2554(C)(1)) changes present law and allows the lessor to discard unsalvageable property and requires the lessor to make every reasonable effort to notify the lessee before discarding the unsalvageable property.

Proposed law (R.S. 9:2554(C)(2)-(5)) provides for duties of the lessor relative to keeping records and preserving the lessee's property.

Proposed law (R.S. 9:2554(D)) provides a procedure for taking evidence of the lessee's property when it is being removed.

Proposed law (R.S. 9:2554(E)) provides that unless otherwise agreed by the parties, in the event of the total destruction of the immovable property, the lease is terminated, and the lessor is bound to reimburse the rent paid by the lessee since the time of the total destruction of the property, except that the lessor may deduct the amounts expended for the removal and preservation of the property on the leased premises, unless otherwise covered by insurance.

Proposed law (R.S. 9:2554(F)) provides that if the lessor disposes of property of the lessee that is salvageable and does not comply with the provisions of proposed law, the lessor shall be liable to the lessee for the value of property.

Proposed law defines "reasonable effort" and "unsalvageable property".

Proposed law applies retroactively to August 26, 2005, and also provides that proposed law shall not affect the law governing eviction proceedings.

Proposed law terminates on June 30, 2006.

Proposed law provides that its provisions shall not apply to the lease or furnishing of sleeping rooms, cottages, or cabins by hotels or motels.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2554)