

1 SENATE BILL 299

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Harold Pope

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9  
10 AN ACT

11 RELATING TO SELF-SERVICE STORAGE; PROVIDING FOR ALTERNATIVE  
12 METHODS TO PUBLISH AN ADVERTISEMENT FOR A SALE TO ENFORCE A  
13 LIEN; PROVIDING THAT THE LIMIT FOR THE MAXIMUM VALUE OF STORED  
14 PERSONAL PROPERTY ALLOWED FOR IN RENTAL AGREEMENTS IS DEEMED TO  
15 BE THE MAXIMUM VALUE OF THE STORED PERSONAL PROPERTY; ALLOWING  
16 THE IMPOSITION OF LATE FEES FOR RENTAL PAYMENTS IN DEFAULT.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 48-11-5 NMSA 1978 (being Laws 1987,  
20 Chapter 314, Section 5) is amended to read:

21 "48-11-5. LIEN ESTABLISHED.--When an owner has a lien, it  
22 is on all personal property located at the self-service storage  
23 facility for rent, late fees for any rental payments in  
24 default, labor or other charges in relation to the personal  
25 property and for expenses necessary for its preservation or

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1 expenses reasonably incurred in its sale or other disposition  
2 pursuant to the provisions of the Self-Service Storage Lien  
3 Act. The lien attaches as of the date the occupant goes into  
4 default and continues as long as the owner retains possession  
5 of the personal property and until the default is corrected or  
6 a sale is conducted or the property is otherwise disposed of to  
7 satisfy the lien."

8 SECTION 2. Section 48-11-7 NMSA 1978 (being Laws 1987,  
9 Chapter 314, Section 7, as amended) is amended to read:

10 "48-11-7. ENFORCEMENT OF LIEN.--

11 A. An owner's lien, as provided under the Self-  
12 Service Storage Lien Act, for a claim that has become due may  
13 be satisfied as follows:

14 (1) after the occupant has been in default  
15 continuously for a period of five days, the owner may deny the  
16 occupant access to the occupant's space for storage;

17 (2) after the occupant has been in default  
18 continuously for a period of thirty days, the owner may enter  
19 the space and may remove the personal property within it to a  
20 safe place; provided that the owner has sent a notice of intent  
21 to enforce a lien, pursuant to Subsection B of this section, to  
22 the occupant at the occupant's last known address within five  
23 days of entering the space. The owner shall also give notice  
24 to all lienholders listed in the disclosure provision in the  
25 rental agreement; and

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1 (3) no action to sell ~~[any]~~ property as  
2 provided in the Self-Service Storage Lien Act shall be taken by  
3 an owner until the occupant has been in default continuously  
4 for a period of ninety days.

5 B. The notice of intent to enforce a lien shall  
6 include:

7 (1) an itemized statement of the owner's claim  
8 showing the sum due at the time of the notice and the date when  
9 the sum became due;

10 (2) a brief and general statement of the  
11 personal property subject to the lien; ~~[That description shall~~  
12 ~~be]~~ provided that the description is reasonably adequate to  
13 permit the person notified to identify the property, except  
14 that any container, including a trunk, valise or box that is  
15 locked, fastened, sealed or tied in a manner ~~[which]~~ that  
16 deters immediate access to its contents, may be so described  
17 without describing its contents;

18 (3) a notification of denial of access to the  
19 personal property ~~[That notification shall provide]~~ that  
20 includes the name, street address and telephone number of the  
21 owner or the owner's designated agent whom the occupant may  
22 contact to respond to that notification;

23 (4) a demand for payment within a specified  
24 time, not less than fifteen days after the delivery of the  
25 notice; and

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1 (5) a conspicuous statement that unless the  
2 claim is paid within the time stated in the notice, the  
3 personal property will be advertised for sale or other  
4 disposition and will be sold or otherwise disposed of to  
5 satisfy the owner's lien.

6 C. All notices made pursuant to this section shall  
7 be by verified mail or electronic mail pursuant to the  
8 occupant's option at the time of entering into the current  
9 rental agreement.

10 D. An owner shall provide written notice by  
11 verified mail to the occupant's last known address or by  
12 electronic mail to the occupant's last known electronic  
13 address. If an owner sends a notice by electronic mail and  
14 does not receive a response, return receipt or delivery  
15 confirmation from the electronic address to which the notice  
16 was sent within three business days after the day on which the  
17 notice was sent, the owner shall deliver a one-time notice by  
18 verified mail to the occupant's last known address.

19 E. After the expiration of the time given in the  
20 notice of intent to enforce a lien, the owner shall publish an  
21 advertisement of the sale or other disposition of the property:

22 (1) once a week for two consecutive weeks in a  
23 newspaper of general circulation in the county where the self-  
24 service storage facility is located ~~[The]~~; or

25 (2) on a publicly accessible online website

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1 that customarily conducts or advertises online auctions or  
2 sales.

3 F. An advertisement made pursuant to Subsection E  
4 of this section shall include:

5 (1) a brief and general description of the  
6 personal property reasonably adequate to permit its  
7 identification as provided in Paragraph (2) of Subsection B of  
8 this section, the address of the self-service storage facility  
9 where the personal property is located and the name and last  
10 known address of the occupant; and

11 (2) the time, place and manner of the sale or  
12 other disposition; provided that the sale or disposition [~~shall~~  
13 ~~take~~] takes place [~~not sooner than~~] at least fifteen days after  
14 the first publication.

15 [~~If there is no newspaper of general circulation in the~~  
16 ~~county where the self-service storage facility is located, the~~  
17 ~~owner shall post the advertisement at least ten days prior to~~  
18 ~~the sale or other disposition in at least six conspicuous~~  
19 ~~places in the neighborhood where the self-service storage~~  
20 ~~facility is located.~~

21 ~~F. Any] G. A sale or other disposition of the~~  
22 personal property shall conform to the terms of the  
23 notification as provided for in this section.

24 [~~G. Any] H. A sale or other disposition of the~~  
25 personal property shall be held at the self-service storage

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1 facility or at the nearest suitable place within the county to  
2 where the personal property is held or stored or may be  
3 conducted on a publicly accessible online ~~[web site]~~ website.

4 ~~[H.]~~ I. Before ~~[any]~~ a sale or other disposition of  
5 personal property pursuant to this section is made, the  
6 occupant may pay the amount necessary to satisfy the lien and  
7 the reasonable expenses incurred under this section and thereby  
8 redeem the property. Upon receipt of the payment, the owner  
9 shall return the personal property and thereafter the owner  
10 shall have no liability to any person with regard to that  
11 personal property.

12 ~~[I.]~~ J. A good faith purchaser takes the property  
13 free of any rights of an unsecured lienholder and free of any  
14 rights of a secured lienholder who has received notice by owner  
15 as provided in this section.

16 ~~[J.]~~ K. In the event of a sale under this section,  
17 the owner may satisfy the owner's lien from the proceeds of the  
18 sale, subject to the rights of any prior lienholder who has not  
19 received notice. The lien rights of such prior lienholder are  
20 automatically transferred to the proceeds of the sale. If the  
21 sale was made in good faith and conducted in a reasonable  
22 manner, the owner shall not be subject to any surcharge for a  
23 deficiency in the amount of a prior secured lien, but shall  
24 hold the balance, if any, for delivery to the occupant,  
25 lienholder or other person in interest. If the occupant,

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1     lienholder or other person in interest does not claim the  
2     balance of the proceeds within two years of the date of sale,  
3     it shall become the property of the owner without further  
4     recourse by the occupant, lienholder or other person in  
5     interest.

6             [~~K.~~] L. Nothing in this section affects the rights  
7     and liabilities of the owner, occupant or any other person if  
8     there is a willful violation of any of the provisions of the  
9     Self-Service Storage Lien Act. If the property subject to a  
10    lien described in this section is a vehicle, watercraft or  
11    trailer, the occupant is in default for a continuous sixty-day  
12    period and the owner chose not to sell the vehicle, the owner  
13    may have the vehicle towed from the self-storage facility by an  
14    independent towing carrier that is licensed by the public  
15    regulation commission pursuant to the Motor Carrier Act.  
16    Within one day after the day on which a vehicle is towed, the  
17    owner shall send verified notice to the occupant's last known  
18    address or electronic address that states:

- 19                     (1) the date the vehicle was towed; and  
20                     (2) the address and telephone number of the  
21    person that towed the vehicle.

22             M. If a rental agreement specifies a limit on the  
23    value of personal property that may be stored in an occupant's  
24    leased space, the limit is deemed to be the maximum value of  
25    the stored personal property.

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1                   N. An owner may charge and collect a late fee of no  
2 more than twenty dollars (\$20.00) or twenty percent of the  
3 monthly rent, whichever is greater, for each month that the  
4 occupant's rental payment is in default."

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