

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 299

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

AN ACT

RELATING TO SELF-SERVICE STORAGE; PROVIDING FOR ALTERNATIVE METHODS TO PUBLISH AN ADVERTISEMENT FOR A SALE TO ENFORCE A LIEN; PROVIDING THAT THE LIMIT FOR THE MAXIMUM VALUE OF STORED PERSONAL PROPERTY ALLOWED FOR IN RENTAL AGREEMENTS IS DEEMED TO BE THE MAXIMUM VALUE OF THE STORED PERSONAL PROPERTY; ALLOWING THE IMPOSITION OF LATE FEES FOR RENTAL PAYMENTS IN DEFAULT; PROVIDING FOR AN ALTERNATIVE CONTACT IN A RENTAL AGREEMENT TO RECEIVE A NOTICE OF INTENT TO ENFORCE A LIEN.

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

SECTION 1. Section 48-11-3 NMSA 1978 (being Laws 1987, Chapter 314, Section 3) is amended to read:

"48-11-3. RENTAL AGREEMENT.--

A. The rental agreement shall contain a notice stating that all articles stored under the terms of that

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underscored material = new
[bracketed material] = delete

1 agreement will be sold or otherwise disposed of under the terms
2 and conditions of the Self-Service Storage Lien Act if the
3 [~~tenant~~] occupant is in default. The agreement shall contain a
4 disclosure provision stating the name and address of any
5 lienholder with an interest in the property that is or will be
6 stored in the self-service storage facility. The agreement
7 shall also contain the address of the [~~tenant~~] occupant.

8 B. The rental agreement shall include a space for
9 the occupant to designate an alternative contact, including the
10 name and the postal or electronic address of the alternative
11 contact, to receive the notice of intent to enforce a lien
12 pursuant to Paragraph (2) of Subsection A of Section 48-11-7
13 NMSA 1978. The failure or refusal of an occupant to designate
14 an alternative contact shall not affect an occupant's or
15 owner's rights or remedies under the Self-Service Storage Lien
16 Act or any other provision of law. The alternative contact, if
17 any, shall not have any rights to access the storage space or
18 to the personal property stored in the storage space unless
19 expressly stated in the rental agreement.

20 C. For a rental agreement entered into before the
21 2023 changes made to this section, the owner may comply with
22 this section by sending a notice to the occupant by verified
23 mail or electronic mail informing the occupant of the option to
24 designate an alternative contact to receive the notice of
25 intent to enforce a lien pursuant to Paragraph (2) of

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1 Subsection A of Section 48-11-7 NMSA 1978. The notice shall
2 include a form for the occupant to designate an alternative
3 contact, including the name and the postal or electronic
4 address of the alternative contact, and an address where the
5 occupant may return the completed form."

6 SECTION 2. Section 48-11-5 NMSA 1978 (being Laws 1987,
7 Chapter 314, Section 5) is amended to read:

8 "48-11-5. LIEN ESTABLISHED.--When an owner has a lien, it
9 is on all personal property located at the self-service storage
10 facility for rent, late fees for any rental payments in
11 default, labor or other charges in relation to the personal
12 property and for expenses necessary for its preservation or
13 expenses reasonably incurred in its sale or other disposition
14 pursuant to the provisions of the Self-Service Storage Lien
15 Act. The lien attaches as of the date the occupant goes into
16 default and continues as long as the owner retains possession
17 of the personal property and until the default is corrected or
18 a sale is conducted or the property is otherwise disposed of to
19 satisfy the lien."

20 SECTION 3. Section 48-11-7 NMSA 1978 (being Laws 1987,
21 Chapter 314, Section 7, as amended) is amended to read:

22 "48-11-7. ENFORCEMENT OF LIEN.--

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

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

4 (2) after the occupant has been in default
5 continuously for a period of thirty days, the owner may enter
6 the space and may remove the personal property within it to a
7 safe place; provided that the owner has sent a notice of intent
8 to enforce a lien, pursuant to Subsection B of this section, to
9 the occupant [~~at the occupant's~~] and the alternative contact,
10 if any, at the last known address of the occupant and
11 alternative contact within five days of entering the space.

12 The owner shall also give notice to all lienholders listed in
13 the disclosure provision in the rental agreement; and

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

18 B. The notice of intent to enforce a lien shall
19 include:

20 (1) an itemized statement of the owner's claim
21 showing the sum due at the time of the notice and the date when
22 the sum became due;

23 (2) a brief and general statement of the
24 personal property subject to the lien; [~~That description shall~~
25 ~~be~~] provided that the description is reasonably adequate to

1 permit the person notified to identify the property, except
2 that any container, including a trunk, valise or box that is
3 locked, fastened, sealed or tied in a manner ~~[which]~~ that
4 deters immediate access to its contents, may be so described
5 without describing its contents;

6 (3) a notification of denial of access to the
7 personal property ~~[That notification shall provide]~~ that
8 includes the name, street address and telephone number of the
9 owner or the owner's designated agent whom the occupant may
10 contact to respond to that notification;

11 (4) a demand for payment within a specified
12 time, not less than fifteen days after the delivery of the
13 notice; and

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

19 C. All notices made pursuant to this section shall
20 be by verified mail or electronic mail pursuant to the
21 occupant's option at the time of entering into the current
22 rental agreement.

23 D. An owner shall provide written notice by
24 verified mail to the ~~[occupant's]~~ last known address of the
25 occupant or alternative contact or by electronic mail to the

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1 [occupant's] last known electronic address of the occupant or
2 alternative contact. If an owner sends a notice by electronic
3 mail and does not receive a response, return receipt or
4 delivery confirmation from the electronic address to which the
5 notice was sent within three business days after the day on
6 which the notice was sent, the owner shall deliver a one-time
7 notice by verified mail to the [occupant's] last known address
8 of the occupant or alternative contact.

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

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

15 (2) on a publicly accessible online website
16 that customarily conducts or advertises online auctions or
17 sales.

18 F. An advertisement made pursuant to Subsection E
19 of this section shall include:

20 (1) a brief and general description of the
21 personal property reasonably adequate to permit its
22 identification as provided in Paragraph (2) of Subsection B of
23 this section, the address of the self-service storage facility
24 where the personal property is located and the name and last
25 known address of the occupant; and

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

5 ~~[If there is no newspaper of general circulation in the~~
 6 ~~county where the self-service storage facility is located, the~~
 7 ~~owner shall post the advertisement at least ten days prior to~~
 8 ~~the sale or other disposition in at least six conspicuous~~
 9 ~~places in the neighborhood where the self-service storage~~
 10 ~~facility is located.~~

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

14 ~~[G. Any~~] H. A sale or other disposition of the
 15 personal property shall be held at the self-service storage
 16 facility or at the nearest suitable place within the county to
 17 where the personal property is held or stored or may be
 18 conducted on a publicly accessible online [~~web site~~] website.

19 ~~[H.]~~ I. Before [~~any~~] a sale or other disposition of
 20 personal property pursuant to this section is made, the
 21 occupant may pay the amount necessary to satisfy the lien and
 22 the reasonable expenses incurred under this section and thereby
 23 redeem the property. Upon receipt of the payment, the owner
 24 shall return the personal property and thereafter the owner
 25 shall have no liability to any person with regard to that

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1 personal property.

2 ~~[F.]~~ J. A good faith purchaser takes the property
3 free of any rights of an unsecured lienholder and free of any
4 rights of a secured lienholder who has received notice by owner
5 as provided in this section.

6 ~~[J.]~~ K. In the event of a sale under this section,
7 the owner may satisfy the owner's lien from the proceeds of the
8 sale, subject to the rights of any prior lienholder who has not
9 received notice. The lien rights of such prior lienholder are
10 automatically transferred to the proceeds of the sale. If the
11 sale was made in good faith and conducted in a reasonable
12 manner, the owner shall not be subject to any surcharge for a
13 deficiency in the amount of a prior secured lien, but shall
14 hold the balance, if any, for delivery to the occupant,
15 lienholder or other person in interest. If the occupant,
16 lienholder or other person in interest does not claim the
17 balance of the proceeds within two years of the date of sale,
18 it shall become the property of the owner without further
19 recourse by the occupant, lienholder or other person in
20 interest.

21 ~~[K.]~~ L. Nothing in this section affects the rights
22 and liabilities of the owner, occupant or any other person if
23 there is a willful violation of any of the provisions of the
24 Self-Service Storage Lien Act. If the property subject to a
25 lien described in this section is a vehicle, watercraft or

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1 trailer, the occupant is in default for a continuous sixty-day
2 period and the owner chose not to sell the vehicle, the owner
3 may have the vehicle towed from the self-storage facility by an
4 independent towing carrier that is licensed by the public
5 regulation commission pursuant to the Motor Carrier Act.
6 Within one day after the day on which a vehicle is towed, the
7 owner shall send verified notice to the occupant's last known
8 address or electronic address that states:

9 (1) the date the vehicle was towed; and

10 (2) the address and telephone number of the
11 person that towed the vehicle.

12 M. If a rental agreement specifies a limit on the
13 value of personal property that may be stored in an occupant's
14 leased space, the limit is deemed to be the maximum value of
15 the stored personal property.

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