

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2330
(Senators Burckhard, Klein, Lemm)
(Representatives Keiser, Lefor)

AN ACT to create and enact a new section to chapter 35-33 of the North Dakota Century Code, relating to the rights of owners of self-service storage facilities; and to amend and reenact sections 35-33-01, 35-33-02, 35-33-03, 35-33-04, 35-33-05, 35-33-07, 35-33-09, and 35-33-10 of the North Dakota Century Code, relating to self-service storage facility liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-33-01 of the North Dakota Century Code is amended and reenacted as follows:

35-33-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Default" means failure of the occupant to ~~pay the rent and other charges~~perform any obligation or duty at the time and in the manner set forth in the rental agreement or under this chapter.
2. "Last-known address" means the postal or electronic mail address provided by the occupant in the latest rental agreement or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address.
3. "Occupant" means the person who rents storage space at a self-service storage facility under a rental agreement, or a sublessee, successor, or assignee.
4. "Owner" means any person who owns, leases, subleases, manages, or operates a self-service storage facility ~~and, or the owner's designee, who~~ receives rent from an occupant under a rental agreement.
5. "Personal property" means movable property not affixed to land, including merchandise and household goods.
6. "Rental agreement" means a written agreement between the owner and the occupant which establishes or modifies the terms and conditions of the occupant's use of storage space at a self-service storage facility.
7. "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which occupants customarily store and remove their personal property. The term does not include a garage used principally for parking motor vehicles; any property of a financial institution which contains vaults, safe deposit boxes, or other receptacles for the purposes and benefits of the financial institution's customers; or a warehouse or a public warehouse where warehouse receipts, bills of lading, or other documents of title are issued for the personal property stored.
8. "Storage space" means an ~~enclosure, cubicle, or room that is fully enclosed and equipped with a door designed to be locked for security~~individual space at a self-service storage facility which is rented or leased by the occupant under a rental agreement.
9. "Verified mail" means any method of mailing offered by the United States postal service or a private delivery service which includes evidence of mailing.

SECTION 2. AMENDMENT. Section 35-33-02 of the North Dakota Century Code is amended and reenacted as follows:

35-33-02. Lien against property - Value limit - Late fee.

1. The owner of a self-service storage facility has a lien on all personal property stored under a rental agreement in a storage space at the self-service storage facility for rent, labor, late fees, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default ~~erved~~delivered to the occupant as provided in this chapter.
2. If the rental agreement specifies a limit on the value of personal property the occupant may store in the storage space, the limit is deemed to be the maximum value of the personal property in the occupant's storage space.
3. The owner of a self-service storage facility may charge a late fee of twenty dollars or twenty percent of a delinquent monthly rent payment due under the rental agreement, whichever is greater, for each delinquent payment of rent, fees, or other charges due under the rental agreement.

SECTION 3. AMENDMENT. Section 35-33-03 of the North Dakota Century Code is amended and reenacted as follows:

35-33-03. Denial of access - Disposal of property.

If the occupant is in default, the owner may deny the occupant access to the leasedstorage space and enforce the lien by selling the property stored in the leasedstorage space. Sale of the property may be by public or private proceeding and may also be as a unit or in parcels. After the proceeding, the owner may dispose of any property that was offered for sale but which remained unsold.

SECTION 4. AMENDMENT. Section 35-33-04 of the North Dakota Century Code is amended and reenacted as follows:

35-33-04. Custody and control of property.

Unless the rental agreement provides otherwise, until a sale under this chapter, the occupant is responsible for the care, custody, and control of all property stored in the leased storage space, unless the owner secures the property elsewhere during the sale proceedings.

SECTION 5. AMENDMENT. Section 35-33-05 of the North Dakota Century Code is amended and reenacted as follows:

35-33-05. Notice of proceedings.

Before conducting a sale, the owner shall:

1. Deliver in person or send by ~~certified~~verified mail or electronic mail a notice of default to prior lienholders and to the occupant at the occupant's last-known address. A notice under this section sent by verified mail is ~~presumed~~deemed delivered if it is deposited with the United States postal service or a private delivery service and properly addressed with postage prepaid. A notice under this section sent by electronic mail is deemed delivered if it is sent to the occupant's last-known electronic mail address. The notice must include:
 - a. A statement that the contents of the occupant's leasedstorage space are subject to the owner's lien and that the occupant is denied access to the property until the owner's claim is satisfied;

- b. The address of the self-service storage facility, the number of the space where the personal property is located, and the name of the occupant;
 - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, not less than ten days after the date of notice;
 - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the occupant's leased storage space will be sold; and
 - e. The name, address, and telephone number of the owner or a designated agent whom the occupant may contact to respond to the notice.
2. ~~Publish, once a week for two consecutive weeks, with the first publication not more than thirty days before the sale and the last publication at~~ At least seven days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the county where the self-service storage facility is located ~~commercially reasonable manner. An advertisement satisfies the requirements of this subsection if at least three independent bidders attend the sale in person or online at the time and place advertised.~~

SECTION 6. AMENDMENT. Section 35-33-07 of the North Dakota Century Code is amended and reenacted as follows:

35-33-07. Protection of purchaser in good faith.

A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, ~~subject to the rights of prior lienholders.~~

SECTION 7. AMENDMENT. Section 35-33-09 of the North Dakota Century Code is amended and reenacted as follows:

35-33-09. Validity of certain rental agreements.

Any rental agreement entered before August 1, ~~1997~~ 2021, remains valid and may be enforced or terminated in accordance with its terms or as permitted by any other law of this state.

SECTION 8. AMENDMENT. Section 35-33-10 of the North Dakota Century Code is amended and reenacted as follows:

35-33-10. Sale proceedings - Titled vehicles - Towing.

1. The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority necessary to obtain a transfer of title to vehicles under section 39-05-19.
2. If the personal property subject to a lien under section 35-33-02 is a motor vehicle, watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from the self-service storage facility property by a commercial towing service as defined in section 23.1-15-01. An owner may not be held liable for damage incurred to an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility property. Removal of personal property from a self-service storage facility does not release the owner's lien under section 35-33-02.

SECTION 9. A new section to chapter 35-33 of the North Dakota Century Code is created and enacted as follows:

Owner rights - Chapter construction.

This chapter may not be construed as impairing or affecting the right of an owner and an occupant to create additional rights, duties, or obligations under a rental agreement. In addition to the rights and remedies under this chapter, an owner has the same rights and remedies available to creditors and landlords under the laws of this state.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2330.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 2 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State