

LEGISLATIVE BILL 492

Approved by the Governor May 12, 2017

Introduced by Harr, 8.

A BILL FOR AN ACT relating to self-service storage facilities; to amend sections 37-1278 and 37-1283, Reissue Revised Statutes of Nebraska, and sections 60-149 and 60-166, Revised Statutes Cumulative Supplement, 2016; to adopt the Self-Service Storage Facilities Act; to authorize certain liens as prescribed; to change provisions relating to the State Boat Act and the Motor Vehicle Certificate of Title Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Self-Service Storage Facilities Act.

Sec. 2. For purposes of the Self-Service Storage Facilities Act:

(1) Commercially reasonable sale means a sale that (a) is conducted at the self-service storage facility or on a publicly accessible web site that conducts lien sales and (b) is attended by at least three persons who appear personally, online, by telephone, or by any other method;

(2) Default means the failure to perform on time any obligation or duty set forth in a rental agreement;

(3) Electronic mail means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals and includes electronic messages that are transmitted within or between computer networks;

(4) Emergency means any sudden, unexpected occurrence or circumstance at or near a self-service storage facility that requires immediate action to avoid injury to persons or property at or near the self-service storage facility, including, but not limited to, a fire;

(5) Last-known address means the postal address or electronic mail address provided by an occupant in a rental agreement or the postal address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(6) Leased space means the individual storage space at a self-service storage facility which is rented to an occupant pursuant to a rental agreement;

(7) Occupant means a person entitled to the use of leased space at a self-service storage facility under a rental agreement or his or her successors or assigns;

(8) Operator means the owner, operator, lessor, or sublessor of a self-service storage facility or an agent or any other person authorized to manage the facility. Operator does not include a warehouseman if the warehouseman issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(9) Personal property means movable property not affixed to land. Personal property includes, but is not limited to, goods, wares, merchandise, motor vehicles, watercraft, household items, and furnishings;

(10) Property which has no commercial value means property offered for sale in a commercially reasonable sale that receives no bid or offer;

(11) Rental agreement means any written agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility;

(12) Self-service storage facility means any real property used for renting or leasing individual storage spaces in which the occupants customarily store and remove their own personal property on a self-service basis; and

(13) Verified mail means any method of mailing offered by the United States Postal Service that provides evidence of the mailing.

Sec. 3. (1) An operator shall not knowingly permit a leased space at a self-service storage facility to be used for residential purposes.

(2) An occupant shall not use a leased space for residential purposes.

Sec. 4. An occupant, upon reasonable request from the operator, shall allow the operator to enter a leased space for the purpose of inspection or repair. If an emergency occurs, an operator may enter a leased space for inspection or repair without notice to or consent from the occupant.

Sec. 5. (1) The operator of a self-service storage facility and the operator's heirs, executors, administrators, successors, and assigns shall have a lien upon all of an occupant's personal property located at the self-service storage facility for delinquent rent, late fees, labor, or other charges incurred pursuant to a rental agreement and for expenses incurred for preservation, sale, or disposition of the personal property. The lien established by this subsection shall have priority over all other liens except for tax liens and liens or security interests of any lienholder or security interest holder of record on such personal property that are perfected or recorded prior to, on, or after the date on which the personal property is placed in a leased space.

(2) The lien described in subsection (1) of this section attaches on the date on which personal property is placed in a leased space.

(3) The rental agreement shall contain a statement, in bold type, advising the occupant:

(a) Of the existence of the lien; and

(b) That personal property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

(4) If the rental agreement specifies a limit on the value of personal property that the occupant may store in the leased space, such limit shall be deemed to be the maximum value of the personal property in the occupant's leased space.

Sec. 6. If any part of the rent or other charges due from the occupant are in default, the operator shall have the right to deny the occupant access to the leased space at the self-service storage facility.

Sec. 7. (1) If an occupant is in default for a period of more than forty-five days, the operator may enforce the lien granted in section 5 of this act by selling the occupant's stored personal property for cash. Sale of the occupant's personal property may be by public or private proceedings. Such personal property may be sold as a unit or in parcels, by way of one or more contracts, at any time or place, and on any terms as long as the sale is a commercially reasonable sale. The operator may otherwise dispose of any property which has no commercial value.

(2) Before conducting a sale under this section, the operator shall:

(a) At least forty-five days before the sale, send notice of default to the occupant by verified mail or electronic mail pursuant to subdivision (8)(a) of this section. The notice of default shall include:

(i) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(ii) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date such additional charges shall become due;

(iii) A demand for payment of the charges due within a specified time, which shall not be less than ten days after the date of the notice;

(iv) A statement that unless the claim is paid within the time stated, the contents of the occupant's leased space will be sold after a specified time; and

(v) The name, street address, and telephone number of the operator or a designated agent whom the occupant may contact to respond to the notice; and

(b) At least seven days before the sale, advertise the time, place, and terms of the sale in any commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if at least three independent bidders attend the sale in person or online at the time and place advertised. A copy of the advertisement of sale shall be provided at least seven days before the sale to the holder of any lien or security interest of record on the personal property being sold.

(3) The operator may buy the occupant's personal property at any public sale held pursuant to this section.

(4) If the personal property subject to the operator's lien is a vehicle, watercraft, or trailer and rent and other charges remain unpaid for sixty days, the operator may have the vehicle, watercraft, or trailer towed from the self-service storage facility. The operator shall not be liable for any damages to the vehicle, watercraft, or trailer once the tower takes possession of the property. Removal of any vehicle, watercraft, or trailer from the self-service storage facility shall not release the operator's lien.

(5) At any time before a sale is held under this section or before a vehicle, watercraft, or trailer is towed under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

(6) If a sale is held under this section, the operator shall:

(a) Apply the proceeds of the sale in the following order:

(i) To satisfy the actual expenses incurred in conducting the sale, including the costs for notice and advertisement of the sale, in an amount not to exceed five hundred dollars;

(ii) To satisfy the obligations secured by the lien or security interest of any lienholder or security interest holder of record; and

(iii) To satisfy the operator's lien; and

(b) Hold the balance of the proceeds remaining after the disbursements described in subdivision (6)(a) of this section, if any, for delivery on demand to the occupant for a period of one year after the date of such sale. The operator shall have no liability to any party for excess proceeds paid to the occupant. After the one-year period, any remaining proceeds shall be considered abandoned property to be reported and paid to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act.

(7) A purchaser in good faith of any personal property sold pursuant to this section to satisfy the lien granted in section 5 of this act takes the property free and clear of any rights of persons against whom the lien was valid. If the property is a vehicle, watercraft, or trailer, such sale shall extinguish any lien or security interest in the property of any holder of such lien or security interest to whom notice of the sale was sent in compliance with this section.

(8)(a) Notices to the occupant under subdivision (2)(a) of this section shall be sent to the occupant's last-known address by verified mail or electronic mail. Notices sent by verified mail shall be deemed delivered when deposited with the United States Postal Service if they are properly addressed

with postage prepaid. Notices sent by electronic mail shall be deemed delivered when an electronic message is sent to the last-known address provided by the occupant. If the operator sends notice by electronic mail and receives an automated message stating that the electronic mail cannot be delivered, the operator shall send notice by verified mail to the occupant's last-known address with postage prepaid.

(b) The copy of the advertisement of sale provided to the holder of any lien or security interest of record under subdivision (2)(b) of this section shall be sent to the last-known address of the lienholder or security interest holder by United States mail. The copy of the advertisement shall be deemed delivered when deposited with the United States Postal Service if it is properly addressed with postage prepaid.

(9) If the operator complies with the requirements of this section, the operator's liability:

(a) To the occupant shall be limited to the net proceeds received from the sale of the occupant's personal property less any proceeds paid to the holders of any lien or security interest of record on the personal property being sold; and

(b) To the holders of any lien or security interest of record on the personal property being sold shall be limited to the net proceeds received from the sale of any personal property covered by the holder's lien or security interest.

Sec. 8. Unless the rental agreement specifically provides otherwise and until a lien sale under section 7 of this act, the exclusive care, custody, and control of all personal property stored in a leased space remains vested in the occupant.

Sec. 9. The Self-Service Storage Facilities Act does not impair the power of the parties to a rental agreement to create rights, duties, or obligations that do not arise from the act. The rights provided to an operator by the act are in addition to all other rights provided by law to a creditor against a debtor.

Sec. 10. Section 37-1278, Reissue Revised Statutes of Nebraska, is amended to read:

37-1278 (1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 7 of this act shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2020. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i) the full legal name as defined in section 60-468.01 of each owner and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by husband and wife, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Sec. 11. Section 37-1283, Reissue Revised Statutes of Nebraska, is amended to read:

37-1283 (1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage or repair charges or under section 7 of this act, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be. If from the records of the county treasurer or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Sec. 12. Section 60-149, Revised Statutes Cumulative Supplement, 2016, is amended to read:

60-149 (1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (vii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05 or documentation of compliance with section 7 of this act; or

(vii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable pursuant to section 52-1801, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, ~~or~~ 60-2401 to 60-2411, or documentation of compliance with section 7 of this act; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county treasurer to issue a certificate of title, as the case may be.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county treasurer shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Sec. 13. Section 60-166, Revised Statutes Cumulative Supplement, 2016, is amended to read:

60-166 (1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges or under section 7 of this act, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be.

(2) If from the records of the county treasurer or the department there appear to be any liens on such vehicle, such certificate of title shall comply with section 60-164 or 60-165 regarding such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Sec. 14. Original sections 37-1278 and 37-1283, Reissue Revised Statutes of Nebraska, and sections 60-149 and 60-166, Revised Statutes Cumulative Supplement, 2016, are repealed.