



## 2022 South Dakota Legislature

# House Bill 1289

Introduced by: **Representative Thomason**

1 **An Act to update provisions regarding self-service storage.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 44-14-1 be AMENDED:**

4 **44-14-1.** Terms used in this chapter mean:

5 (1) "Default," any failure of an occupant to perform any obligation or duty at the time  
6 and in the manner set forth in the rental agreement or under this chapter;

7 (2) "Last known address," that postal or e-mail address provided by the occupant in  
8 the latest rental agreement or the postal or e-mail address provided by the  
9 occupant in a subsequent written notice of a change of address;

10 ~~(2)(3)~~ "Occupant," any person entitled to the use of the storage space at a self-service  
11 storage facility under a rental agreement, to the exclusion of others a person who  
12 rents storage space at a self-service storage facility under a rental agreement, or  
13 a sublessee, successor, or assignee;

14 ~~(3)(4)~~ "Owner," the owner of a self-service storage facility any person who owns, leases,  
15 subleases, manages, or operates a self-service storage facility, or an owner's  
16 designee, who receives rent from an occupant under a rental agreement;

17 ~~(4)(5)~~ "Personal property," movable property, including goods, merchandise, and  
18 household items stored in a self-service storage facility;

19 (6) "Property that has no commercial value," property offered for sale in a sale,  
20 conducted pursuant to this chapter, at the self-service storage facility, at the  
21 nearest suitable place to where the personal property is held or stored, or online,  
22 that receives no bid or offer;

23 ~~(5)(7)~~ "Rental agreement," any written agreement or lease, written or oral, that  
24 establishes or modifies the terms, conditions, rules, or any other provisions  
25 concerning the use and occupancy of a storage space at a self-service storage  
26 facility; and

1       ~~(6)~~(8) "Self-service storage facility," any real property designed and used for the purpose  
 2           of renting or leasing individual storage space to occupants who are to have access  
 3           to such for the purpose of storing and removing personal property;

4       (9) "Storage space," an individual space at a self-service storage facility that is rented  
 5           or leased by an occupant under a rental agreement.

6       **Section 2. That § 44-14-2 be AMENDED:**

7           **44-14-2.** The owner of a self-service storage facility has a lien upon all personal  
 8           property located at a self-service storage facility for rent, labor, late fees, or other charges,  
 9           present or future, in relation to the personal property, and for expenses necessary for its  
 10          preservation, or expenses reasonably incurred in its sale or other disposition pursuant to  
 11          this chapter. The lien provided in this chapter attaches as of the date the occupant defaults  
 12          on the rental agreement. Any lien provided in this chapter, ~~which is recorded pursuant to~~  
 13          ~~chapter 44-2,~~ is prior to any other lien or security interest, except for those liens and  
 14          security interests which were perfected earlier.

15       **Section 3. That § 44-14-3 be AMENDED:**

16           **44-14-3.** An owner's lien for a claim which has become due ~~shall~~ must be satisfied  
 17          as follows:

18          (1) The occupant and the holder of any lien ~~shall be in the name of the occupant in this~~  
 19             state is notified;

20          (2) The notice ~~shall be~~ is delivered in person, sent by e-mail if provided in the rental  
 21             agreement, or sent by regular first-class mail postage prepaid to the last known  
 22             address of the occupant ~~and,~~ lienholders, and any other person disclosed by the  
 23             occupant in the rental agreement. A notice under this section is deemed delivered:

24             (a) If sent by first-class mail, when deposited with the United States Postal  
 25                 Service and properly addressed with postage prepaid; or

26             (b) If sent by e-mail, when sent to the occupant's last-known e-mail address;

27          (3) The notice ~~shall include~~ includes:

28             (a) An itemized statement of the owner's claim showing the sum due at the  
 29             time of the notice and the date when the sum became due;

30             (b) If known to the owner, a brief and general description of the personal  
 31             property subject to the lien. The description shall be reasonably adequate  
 32             to permit the person notified to identify it, except that any container  
 33             including a trunk, valise, or box that is locked, fastened, sealed, or tied in

- 1 a manner which deters immediate access to its contents may be described  
 2 as such without describing its contents;
- 3 (c) A notice of denial of access to the personal property, if such denial is  
 4 permitted under the terms of the rental agreement, which provides the  
 5 name, street address, and telephone number of the owner whom the  
 6 occupant may contact to respond to this notice;
- 7 (d) A demand for payment within a specified time not less than fourteen days  
 8 after delivery of the notice; and
- 9 (e) A conspicuous statement that unless the claim is paid within the time stated  
 10 in the notice, the personal property will be advertised for sale or other  
 11 disposition, and will be sold or otherwise disposed of at a specified time and  
 12 place;
- 13 (4) After the expiration of the time given in the notice, an advertisement of the sale or  
 14 other disposition ~~shall be~~ is published ~~once a week for two consecutive weeks~~ in a  
 15 newspaper of general circulation where the self-service storage facility is located  
 16 or in any other manner that results in at least three independent bidders registering  
 17 for, viewing, or attending, the sale. The advertisement ~~shall include~~ includes:
- 18 (a) A brief and general description of the personal property reasonably  
 19 adequate to permit its identification as provided for in subdivision (3) ~~of this~~  
 20 ~~section~~;
- 21 (b) The address of the self-service storage facility and the number, if any, of  
 22 the space where the personal property is located and the name of the  
 23 occupant; and
- 24 (c) The time, place, and manner of the sale or other disposition. ~~The sale or~~  
 25 ~~other disposition shall take place,~~ not sooner than ~~fifteen~~ seven days after  
 26 the ~~first~~ publication;
- 27 (5) If there is no newspaper of general circulation where the self-service storage facility  
 28 is located, in lieu of advertising as set forth in subdivision (4), the advertisement  
 29 ~~shall~~ may be posted at least ten days before the date of the sale or other disposition  
 30 in not less than six conspicuous places in the neighborhood where the self-service  
 31 storage facility is located;
- 32 (6) Any sale or other disposition of the personal property ~~shall conform~~ conforms to  
 33 the terms of the notification as provided for in this section;
- 34 (7) Any sale or other disposition of the personal property ~~shall be~~ is held at the  
 35 self-service storage facility ~~or,~~ at the nearest suitable place to where the personal

1 property is held or stored, or online. The owner may otherwise dispose of any  
 2 property that has no commercial value;

3 (8) Before any sale or other disposition of personal property pursuant to this section,  
 4 the occupant may pay the amount necessary to satisfy the lien, and the reasonable  
 5 expenses incurred under this section, and thereby redeem the personal property.  
 6 Upon receipt of such payment, the owner shall return the personal property, and  
 7 thereafter the owner has no liability to any person with respect to such personal  
 8 property;

9 (9) A purchaser in good faith of the personal property sold to satisfy a lien, as provided  
 10 for in this ~~Act~~ chapter, takes the property free of any rights of any person, ~~but~~  
 11 ~~subject to the rights of any prior lienholder unless the personal property is~~  
 12 ~~consumer goods as defined in § 57A-9-109(1),~~ despite noncompliance by the  
 13 owner with the requirements of this section. For the purpose of this section,  
 14 personal property for which ownership is evidenced by a certificate of title is not  
 15 consumer goods; ~~and~~

16 (10) In the event of a sale under this section, the owner may, after satisfying all prior  
 17 liens, satisfy the lien pursuant to this chapter from the proceeds of the sale, but  
 18 shall hold the balance, if any, for delivery on demand to the occupant. If the  
 19 occupant does not claim the balance of the proceeds within two years of the date  
 20 of sale, the proceeds ~~shall become the property of the owner and the occupant has~~  
 21 ~~no further recourse. Must be remitted to the unclaimed refund amount to the Office~~  
 22 of State Treasurer as unclaimed property pursuant to chapter 43-41B;

23 (11) An owner acting in accordance with the provisions of this chapter may not be liable  
 24 to the occupant, lienholder, or any other person unless otherwise agreed upon by  
 25 all parties in the rental agreement;

26 (12) After the time specified in the notice given under this section expires, if the owner  
 27 determines, based on the owner's previous experience, that the personal property  
 28 subject to the lien created has a value of \$300 or less, the owner may dispose of  
 29 the property at the owner's sole discretion.

30 **Section 4. That § 44-14-6 be AMENDED:**

31 **44-14-6.** This chapter is effective July 1, ~~1997~~ 2022, and applies to all rental  
 32 agreements entered into, or extended, or renewed after that date.

33 **Section 5. That chapter 44-14 be amended with a NEW SECTION:**

1           If the rental agreement specifies a limit on the value of personal property the  
2           occupant may store in the storage space, the limit is deemed to be the maximum value  
3           of the personal property in the occupant's storage space for the purposes of claims against  
4           an owner for loss of or damage to personal property.

5           **Section 6. That chapter 44-14 be amended with a NEW SECTION:**

6           The owner may charge a late fee of twenty dollars or twenty percent of a delinquent  
7           monthly rent payment due under the rental agreement, whichever is greater, for each  
8           delinquent payment of rent, fees, or other charges due under the rental agreement.

9           **Section 7. That chapter 44-14 be amended with a NEW SECTION:**

10           Unless the rental agreement provides otherwise, until a sale under this chapter,  
11           the exclusive care, custody, and control of all property stored in a storage space remains  
12           vested in the occupant, and the occupant shall bear all risks of loss or damage to that  
13           property.

14           **Section 8. That chapter 44-14 be amended with a NEW SECTION:**

15           If the personal property subject to a lien under § 44-14-2 is a motor vehicle,  
16           watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid  
17           for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from  
18           the self-service storage facility. An owner may not be held liable for damage incurred to  
19           an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession  
20           of the personal property and the personal property is removed from the self-service  
21           storage facility.

22           **Section 9. That chapter 44-14 be amended with a NEW SECTION:**

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

27           **Section 10. That chapter 44-14 be amended with a NEW SECTION:**

28           The rental agreement must contain a statement in bold type that the occupant  
29           must disclose the name and address of any other person with an ownership interest in the

- 1 personal property. If the occupant does not disclose any other person, the personal
- 2 property is deemed wholly owned by the occupant.