

2022 South Dakota Legislature

House Bill 1289**AMENDMENT 1289B FOR THE INTRODUCED BILL**

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)~~ § 57A-9-102, despite
13 noncompliance by the owner with the requirements of this section. For the purpose
14 of this section, personal property for which ownership is evidenced by a certificate
15 of title is not 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~~ three years of the
20 date of sale, the proceeds ~~shall become the property of the owner and the occupant~~
21 ~~has no further recourse. **Must must** be remitted ~~to the unclaimed refund amount~~~~
22 to the Office 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 (13) If the personal property subject to a lien under § 44-14-2 is a titled motor vehicle,
31 boat, trailer, snowmobile, or off-road vehicle, and rent or other charges under the
32 rental agreement remain unpaid for sixty days, the personal property is considered
33 abandoned. The owner shall dispose of the personal property using the process
34 prescribed in §§ 32-36-8 to 32-36-11, inclusive. The Department of Revenue shall
35 provide the owner with the last known address of the record holder of title and any

1 readily identifiable lien holders free of charge. An owner may not be held liable for
2 damage incurred to an occupant's motor vehicle, boat, or trailer after the owner
3 relinquishes possession of the personal property and the personal property is
4 removed from the self-service storage facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 The rental agreement must contain a statement in bold type that the occupant
8 must disclose the name and address of any other person with an ownership interest in the
9 personal property. If the occupant does not disclose any other person, the personal
10 property is deemed wholly owned by the occupant.