

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 448  
Commerce Committee Substitute Adopted 5/4/09  
House Committee Substitute Favorable 5/27/09

Short Title: Self-Service Storage Facilities.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE LAWS REGULATING SELF-SERVICE STORAGE  
3 FACILITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 4 of Chapter 44A of the General Statutes reads as rewritten:

6 "Article 4.

7 "Self-Service Storage Facilities.

8 ...

9 "§ 44A-41. Self-service storage facility owner entitled to lien.

10 The owner of a self-service storage facility has a lien upon all personal property stored at  
11 the facility for rent, expenses necessary for the preservation of the personal property, and  
12 expenses reasonably incurred in the sale or other disposition of the personal property pursuant  
13 to this Article. This lien shall not have priority over any security interest which is perfected at  
14 the time the occupant stores the property at the self-service storage facility. For purposes of this  
15 Article, to identify an existing security interest in stored property, the owner shall conduct an  
16 online search for Uniform Commercial Code financing statements filed with the Office of the  
17 Secretary of State in the name of the occupant.

18 ...

19 "§ 44A-43. Enforcement of self-service storage facility lien.

20 (a) If the rent and other charges for which the lien is claimed under this Article remain  
21 unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner  
22 may enforce the lien by a public sale or other disposition of the property as provided in this  
23 section. The owner may bring an action to collect rent and other charges in any court of  
24 competent jurisdiction at any time following the maturity of the obligation to pay the rent.

25 The occupant or any other person having a security or other interest in the property stored  
26 in the self-service storage facility may bring an action to request the immediate possession of  
27 the property, at any time following the assertion of the lien by the owner. Before such  
28 possession is granted, the occupant or the person with a security or other interest in the property  
29 shall pay the amount of the lien asserted to the clerk of court in which the action is pending, or  
30 post a bond for double the amount. The clerk shall then issue an order to the owner to  
31 relinquish possession of the property to the occupant or other party.

32 (b) Notice and Hearing:

33 (1) If the property upon which the lien is claimed is a motor vehicle, the lienor,  
34 following the expiration of the 15-day period provided by subsection (a),  
35 shall give notice to the Division of Motor Vehicles that a lien is asserted and  
36 that a sale is proposed. The lienor shall remit to the Division a fee of two



1 dollars (\$2.00); and shall also furnish the Division with the last known  
2 address of the occupant. The Division of Motor Vehicles shall issue notice  
3 by registered or certified mail, return receipt requested to the person having  
4 legal title to the vehicle, if reasonably ascertainable, and to the occupant, if  
5 different, at his last known address. The notice shall:

- 6 a. State: (i) that a lien is being asserted against the specific vehicle by  
7 the lienor or owner of the self-service storage facility, (ii) that the  
8 lien is being asserted for rental charges at the self-service storage  
9 facility, (iii) the amount of the lien, and (iv) that the lienor intends to  
10 sell or otherwise dispose of the vehicle in satisfaction of the lien;  
11 b. Inform the person having legal title and the occupant of their right to  
12 a judicial hearing at which a determination will be made as to the  
13 validity of the lien prior to a sale taking place; and  
14 c. State that the legal title holder and the occupant have a period of 10  
15 days from the date of receipt of the notice in which to notify the  
16 Division of Motor Vehicles by registered or certified mail, return  
17 receipt requested, that a hearing is desired to contest the sale of the  
18 vehicle pursuant to the lien.

19 The person with legal title or the occupant must, within 10 days of receipt of the notice  
20 from the Division of Motor Vehicles, notify the Division of his desire to contest the sale of the  
21 vehicle pursuant to the lien, and that the Division should so notify lienor.

22 Failure of the person with legal title or the occupant to notify the Division that a hearing is  
23 desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against  
24 which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor  
25 may proceed to enforce the lien by a public sale as provided by this section; and the Division  
26 shall transfer title to the property pursuant to such sale.

27 If the Division is notified within the 10-day period provided in this section that a hearing is  
28 desired prior to the sale, the lien may be enforced by a public sale as provided in this section  
29 and the Division will transfer title only pursuant to the order of a court of competent  
30 jurisdiction.

31 (1a) If the property upon which the lien is claimed is a motor vehicle and rent and  
32 other charges related to the property remain unpaid or unsatisfied for 60 days  
33 following the maturity of the obligation to pay rent, the lienor may have the  
34 property towed. If a motor vehicle is towed as authorized in this subdivision,  
35 the lienor shall not be liable for the motor vehicle or any damages to the  
36 motor vehicle once the tower takes possession of the property.

37 (2) If the property upon which the lien is claimed is other than a motor vehicle,  
38 the lienor following the expiration of the 15-day period provided by  
39 subsection (a) shall issue notice to the person having a security or other  
40 interest in the property, if reasonably ascertainable, and to the occupant, if  
41 different, at his last known address ~~by registered or certified mail, return~~  
42 ~~receipt requested.~~ address. Notice given pursuant to this subdivision shall be  
43 presumed delivered when it is properly addressed, first-class postage  
44 prepaid, and deposited with the United States Postal Service.

45 The notice shall:

- 46 a. State: (i) that a lien is being asserted against the specific property by  
47 the lienor, (ii) that the lien is being asserted for rental charges at the  
48 self-service storage facility, (iii) the amount of the lien, and (iv) that  
49 the lienor intends to sell or otherwise dispose of the property in  
50 satisfaction of the lien;

- 1                   b.     Provide a brief and general description of the personal property  
2                   subject to the lien. The description shall be reasonably adequate to  
3                   permit the person notified to identify it, except that any container  
4                   including, but not limited to, a trunk, valise, or box that is locked,  
5                   fastened, sealed, or tied in a manner which deters immediate access  
6                   to its contents may be described as such without describing its  
7                   contents;  
8                   c.     Inform the person with a security or other interest in the property and  
9                   occupant, if different, of their right to a judicial hearing at which a  
10                  determination will be made as to the validity of the lien prior to a sale  
11                  taking place;  
12                  d.     State that the person with a security or other interest in the property  
13                  or the occupant, if different, has a period of 10 days from the date of  
14                  ~~receipt~~ the mailing of the notice to notify the lienor by registered, or  
15                  certified mail, return receipt requested, that a hearing is desired, and  
16                  that if the legal title holder or occupant wishes to contest the sale of  
17                  his property pursuant to the lien he should notify the lienor that a  
18                  hearing is desired.

19                  The person with a security or other interest in the property or the occupant must, within 10  
20                  days ~~of receipt~~ from the date of the mailing of the notice from the lienor, notify the lienor of his  
21                  desire for a hearing, and state whether or not he wishes to contest the sale of the property  
22                  pursuant to the lien.

23                  Failure of the person with a security or other interest in the property, or the occupant to  
24                  notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing  
25                  prior to the sale of the property against which the lien is asserted. Upon such failure the lienor  
26                  may proceed to enforce the lien by a public sale as provided by this section. Upon the  
27                  expiration of the 10-day notice, the occupant's tenancy shall be terminated, and the lienor may  
28                  move the occupant's property to another place of safekeeping.

29                  If the lienor is notified, within the 10-day period as provided by this section, that a hearing  
30                  is desired prior to the sale, the lien may be enforced by a public sale as provided in this section  
31                  only pursuant to the order of a court of competent jurisdiction.

32                  (c)     Public Sale. –

33                   (1)     Not less than 20 days prior to sale by public sale the lienor:

- 34                   a.     Shall cause notice to be ~~mailed-delivered~~ by registered or certified  
35                   mail to the person having ~~legal title to a security interest in~~ the  
36                   property if reasonably ascertainable, and to the occupant ~~if different,~~  
37                   ~~and to each secured party or other person claiming an interest in the~~  
38                   ~~property who is actually known to the lienor or can be reasonably~~  
39                   ~~ascertained, provided that notices provided pursuant to subsection (b)~~  
40                   ~~hereof shall be sufficient for these purposes if such notices contain~~  
41                   ~~the information required by subsection (d) hereof; and at the~~  
42                   occupant's last known address. Notice given pursuant to this  
43                   subdivision shall be presumed delivered when it is properly  
44                   addressed, first-class postage prepaid, and deposited with the United  
45                   States Postal Service.  
46                   b.     ~~Shall advertise the sale by posting a copy of the notice of sale at the~~  
47                   ~~courthouse door in the county where the sale is to be held; and shall~~  
48                   ~~publish notice of sale once a week for two consecutive weeks in a~~  
49                   ~~newspaper of general circulation in the same county, the date of the~~  
50                   ~~last publication being not less than five days prior to the sale.~~

1           (1a) Not less than five days prior to sale by public sale, the lienor shall publish  
 2           notice of sale in a newspaper of general circulation in the county where the  
 3           sale is to be held. If there is no newspaper of general circulation in the  
 4           county where the sale is to be held, notice of sale shall be published in any  
 5           publication that accepts classified advertisements and has a general  
 6           circulation in the county where the sale is to be held.

7           (2) The sale must be held on a day other than Sunday and between the hours of  
 8           9:00 A.M. and 4:00 P.M.:

- 9           a. At the self-service storage facility or at the nearest suitable place to  
 10           where the property is held or stored; or
- 11           b. In the county where the obligation secured by the lien was contracted  
 12           for.

13           (3) A lienor may purchase at public sale.

14       (d) Notice of Sale. – The notice of sale shall include:

- 15           (1) The name and address of the lienor;
- 16           (2) A statement to the effect that various items of personal property are being  
 17           sold pursuant to the assertion of a lien for rental at the self-service storage  
 18           facility;
- 19           (3) The place, date, and time of the sale.

20 **"§ 44A-44. Right of redemption; good faith purchaser's right; disposition of proceeds;  
 21       lienor's liability.**

22       (a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the  
 23       occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses  
 24       incurred by the owner for the preservation of the property and thereby redeem the property.  
 25       Upon receipt of such payment, the owner shall return the personal property to the occupant; and  
 26       thereafter shall have no further claim against such personal property on account of the lien  
 27       which was asserted. The partial payment of rent or other charges shall not satisfy the lien or  
 28       stop or delay the owner's right to sell the occupant's property unless the owner agrees to  
 29       satisfaction or a stop or delay in a writing signed by the owner.

30       ...

31 **"§ 44A-44.1. Possession vested in occupant.**

32       Unless the rental agreement specifically provides otherwise, the exclusive care, custody,  
 33       and control of all personal property stored in a storage space at a self-service storage facility  
 34       shall remain vested in the occupant until the property is sold as provided in this Article or  
 35       otherwise disposed of. The owner of a self-service storage facility is a commercial landlord  
 36       who rents space. Unless the rental agreement specifically provides otherwise, while the  
 37       personal property remains on the owner's premises, the owner is liable for damage caused by  
 38       the intentional acts or negligence of the owner or the owner's employees.

39       ...."

40       **SECTION 2.** This act becomes effective October 1, 2009.