

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1275
HOUSE BILL 1208

AN ACT TO PROVIDE FOR LIENS ON PERSONAL PROPERTY STORED AT SELF-SERVICE STORAGE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. General Statutes Chapter 44A is amended by adding a new Article 4 to read:

"ARTICLE 4.

"Self-Service Storage Facilities.

"§ 44A-40. **Definitions.** — As used in this Article, unless the context clearly requires otherwise:

- (1) 'Last known address' means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.
- (2) 'Lienor' means any person entitled to a lien under this Article.
- (3) 'Occupant' means a person, his sublessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.
- (4) 'Owner' means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to receive rent from an occupant under a rental agreement.
- (5) 'Personal property' means movable property not affixed to land and includes, but is not limited to, goods, merchandise, and household items.
- (6) 'Rental agreement' means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility.
- (7) 'Self-service storage facility' means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not subject to the provisions of Article 7 of General Statutes Chapter 25. Provided, however, if an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to the provisions of Article 7 of General Statutes Chapter 25 and the provisions of this Article do not apply.

"§ 44A-41. **Self-service storage facility owner entitled to lien.** — The owner of a self-service storage facility has a lien upon all personal property stored at the facility for rent, expenses necessary for the preservation of the personal property, and expenses reasonably incurred in the sale or other disposition of the personal property pursuant to this Article. This lien shall not have priority over any security interest which is perfected at the time the occupant stores the property at the self-service storage facility.

"§ 44A-42. When self-service storage facility lien arises and terminates. — The lien conferred under this Article arises only when the owner acquires possession of the property stored in the self-service storage facility; and it shall terminate when the owner relinquishes possession of the property upon which the lien might be claimed, or when the occupant or any other person having a security or other interest in the property tenders prior to sale the amount of the rent, plus the expenses incurred by the owner for the preservation of the property. The reacquisition of possession of the property stored in the self-service storage facility, which was relinquished, shall not reinstate the lien.

"§ 44A-43. Enforcement of self-storage facility lien. (a) If the rent and other charges for which the lien is claimed under this Article remain unpaid or unsatisfied for 15 days following the maturity of the obligation to pay rent, the owner may enforce the lien by a public sale or other disposition of the property as provided in this section. The owner may bring an action to collect rent and other charges in any court of competent jurisdiction at any time following the maturity of the obligation to pay the rent.

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

(b) Notice and Hearing:

- (1) If the property upon which the lien is claimed is a motor vehicle, the lienor, following the expiration of the 15-day period provided by subsection (a), shall give notice to the Division of Motor Vehicles that a lien is asserted and that a sale is proposed. The lienor shall remit to the Division a fee of two dollars (\$2.00); and shall also furnish the Division with the last known address of the occupant. The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested to the person having legal title to the vehicle, if reasonably ascertainable, and to the occupant, if different, at his last known address. The notice shall:
 - a. State: (i) that a lien is being asserted against the specific vehicle by the lienor or owner of the self-service storage facility, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the vehicle in satisfaction of the lien;
 - b. Inform the person having legal title and the occupant of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place; and
 - c. State that the legal title holder and the occupant have a period of 10 days from the date of receipt of the notice in which to notify the Division of Motor Vehicles by registered or certified mail, return receipt requested, that a hearing is desired to contest the sale of the vehicle pursuant to the lien.

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

Failure of the person with legal title or the occupant to notify the Division that a hearing is desired shall be deemed a waiver of the right to a hearing prior to sale of the vehicle against which the lien is asserted. Upon such failure, the Division shall so notify the lienor; the lienor

may proceed to enforce the lien by a public sale as provided by this section; and the Division shall transfer title to the property pursuant to such sale.

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

- (2) If the property upon which the lien is claimed is other than a motor vehicle, the lienor following the expiration of the 15-day period provided by subsection (a) shall issue notice to the person having a security or other interest in the property, if reasonably ascertainable, and to the occupant, if different, at his last known address by registered or certified mail, return receipt requested.

The notice shall:

- a. State: (i) that a lien is being asserted against the specific property by the lienor, (ii) that the lien is being asserted for rental charges at the self-service storage facility, (iii) the amount of the lien, and (iv) that the lienor intends to sell or otherwise dispose of the property in satisfaction of the lien;
- b. provide a brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;
- c. inform the person with a security or other interest in the property and occupant, if different, of their right to a judicial hearing at which a determination will be made as to the validity of the lien prior to a sale taking place;
- d. state that the person with a security or other interest in the property or the occupant, if different, has a period of 10 days from the date of receipt of the notice to notify the lienor by registered, or certified mail, return receipt requested, that a hearing is desired, and that if the legal title holder or occupant wishes to contest the sale of his property pursuant to the lien he should notify the lienor that a hearing is desired.

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

Failure of the person with a security or other interest in the property, or the occupant to notify the lienor that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted. Upon such failure the lienor may proceed to enforce the lien by a public sale as provided by this section.

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

(c) Public Sale.

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

- a. Shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, to the occupant if different, and to each secured party or other person claiming an interest in the

- property who is actually known to the lienor or can be reasonably ascertained, provided that notices provided pursuant to subsection (b) hereof shall be sufficient for these purposes if such notices contain the information required by subsection (d) hereof; and
- b. Shall advertise the sale by posting a copy of the notice of sale at the courthouse door in the county where the sale is to be held; and shall publish notice of sale once a week for two consecutive weeks in a newspaper of general circulation in the same county, the date of the last publication being not less than five days prior to the sale.
- (2) The sale must be held on a day other than Sunday and between the hours of 10:00 a.m. and 4:00 p.m.:
 - a. at the self-service storage facility or at the nearest suitable place to where the property is held or stored; or
 - b. in the county where the obligation secured by the lien was contracted for.
 - (3) A lienor may purchase at public sale.
 - (d) Notice of Sale. The notice of sale shall include:
 - (1) the name and address of the lienor;
 - (2) a statement to the effect that various items of personal property are being sold pursuant to the assertion of a lien for rental at the self-service storage facility;
 - (3) the place, date, and time of the sale.

"§ 44A-44. Right of redemption, good faith purchaser's right, disposition of proceeds, lienor's liability. — (a) Before the sale authorized by G.S. 44A-43, or other disposition of the property, the occupant may pay the amount necessary to satisfy the lien plus the reasonable expenses incurred by the owner for the preservation of the property and thereby redeem the property. Upon receipt of such payment, the owner shall return the personal property to the occupant; and thereafter shall have no further claim against such personal property on account of the lien which was asserted.

(b) A purchaser in good faith, and without knowledge of any defect in the sale of the personal property sold to satisfy a lien provided for in this Article takes the property free of any rights of persons against whom the lien was valid.

- (c) Proceeds of a sale under this section shall be applied as follows:
 - (1) Payment of reasonable expenses incurred in connection with the sale;
 - (2) Payment of the obligation secured by any security interest that was perfected at the time the occupant stored the property at the self-service storage facility;
 - (3) Payment of the obligation secured by the self-service storage facility lien;
 - (4) Any balance shall be paid to the occupant or other person lawfully entitled thereto; but if such person cannot be found, the balance shall be paid to the clerk of superior court of the county in which the sale took place, to be held by the clerk for the person entitled thereto.

(d) If the lienor fails to comply substantially with any of the provisions of this section, he shall be liable to the occupant or any other party injured by such noncompliance in the sum of one hundred dollars (\$100.00), together with reasonable attorney's fees as awarded by the court. Damages provided by this section shall be in addition to actual damages to which any party is otherwise entitled.

"§ 44A-45. Article is supplemental to lien created by contract. — Nothing in this Article shall be construed as in any manner impairing or affecting the right of parties to create liens by contract or agreement.

"§ 44A-46. Application. — All rental agreements entered into before the effective date of this Article, and not extended or renewed after that date, and the rights and duties and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other law of this State."

Sec. 2. G.S. 44A-2 is amended by adding a new subsection (e) to read as follows:

"(e) This Article shall not apply to liens created by storage of personal property at a self-service storage facility."

Sec. 3. This act shall apply only to rental agreements, as defined in Section 1 of this act, that are entered into, extended, or renewed on or after the effective date of this act.

Sec. 4. This act shall become effective September 1, 1982.

In the General Assembly read three times and ratified, this the 22nd day of June, 1982.