

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1192

2001 HOUSE POLITICAL SUBDIVISIONS

HB 1192


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1192

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 1-19-01

Tape Number	Side A	Side B	Meter #
1	xx		24-1707
1	xx		5111 - end
Committee Clerk Signature 			

Minutes: Chair Froseth opened the hearing on HB1192 with all committee members present.

Rep. Klemin, Dist. 47 : This law was initially passed by the legislature in 1997 and it provides the method for enforcement of liens for self-service storage units when the rent is not paid. This bill is brought before the committee mainly to clarify legislation that was passed in 1997.

Supporters will be testifying later, that will be better able to explain why this bill has been brought forth.

Harvey L. Schilling, Pres. ND Self-Storage Assoc. : (208) testified in support of HB1192. (See **Attached Testimony**)

Rep. Ekstrom : (583) Do you know the average cost of 8' X 12' storage unit? And what is the average length rent is in arrears before proceeding with a sale?

Harvey : Average cost in Bismarck and Fargo is guess is \$45/month and generally four months in arrears.

Rep. Herbel : After you have a sale, what happens to the excess money, if there is any?

Harvey : The balance that is remaining is held in a separate account for two years, after we take out our expenses. If the owner of the property comes back to claim, he must show proof he was original owner. We in turn show record of our expenses and give him any excess.

Rep. Herbel : What determines your expenses?

Harvey : (710) The amount of money in arrears, public notification costs, certified letter fees, and auction fees.

Vice-Chair Severson :(764) After the sale, do you attempt to notify the former renter?

Harvey : For the most part, I doubt it. We try to find them before we have to take action by a sale. We are in the business to make money. We don't make money by having renter in arrears. We don't like to have to cut the lock on a storage unit to get in. We have about 400 units, and it's only happened a few times that there has been a balance remaining after our expenses.

Vice Chair Severson :(900) Would you be opposed to trying to notify after the sale?

Harvey : No. But realistically, after three years, who can remember content particulars.

Vice Chair Severson :(1008) When you make these notifications to the renter, do they notify you before the sale or are they just gone and don't care? Is abandonment the norm?

Harvey : Yes, that is the norm. 99 times out of a 100 they just abandon. I think they forget what's in the storage unit.

Rep. Delmore :(1077) How many times in a typical year does a sale happen?

Harvey :(1092) We try to do that twice a year.

Rep. Eckre :(1136) If there is money above your expenses that goes in to a separate fund, is that required by law?

Harvey : (1170) The law says it has to be held for two years. We just set it into a separate fund.

I don't know if all the owner/operators do that. Law doesn't say it has to be in a separate fund.

You need to have a record.

Rep. Eckre : Have you ever had to give money back after two years?

Harvey : No, we never had to give money back to an occupant after the sale was conducted in my 18 years.

Rep. Disrud : (1255) Is there any interest on this left over money that would go to the renter?

Harvey : There is nothing in the law that would say that, but there are other lien laws. We have never hit that situation.

Rep. Disrud : With no contact with them, does the money just go into the company?

Harvey : Yes

Rep. Disrud : (1347) I am wondering about senior citizens and those with Alzheimer's in rest homes. What if the family doesn't know they have valuables in storage and the seniors are too sick to know themselves? You may have notifications, etc., but is there anything that will protect the vulnerable people?

Harvey : I don't think there is anything in present law. That is why public notice is so important in hometown newspapers.

Rep. Disrud (1532) When you sent certified mail to the sick senior and they sign it, what if she/he doesn't know what they did?

Harvey : (1590) We require a signature and we also send this notice by regular mail. Maybe a family member is reading the sick person's mail, then they will catch the notice.

Chair Froseth : Any more testimony in HB1192? Seeing none, the hearing is closed.

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House Political Subdivisions Committee
Bill/Resolution Number HB1192
Hearing Date 1-19-01

Tape 1 side A, (5111-end) 1-19-01 Chairman Froseth : What does the committee wish?

Rep. Maragos : (5157) I move a **DO PASS** on HB1192.

Rep. Tieman : **Second.**

Rep. Ekstrom : (1581) Wouldn't 1 year be better than six months in the change?

Rep. Herbel : (5300) I think six months is plenty.

Rep. Fairfield : (5349) Since this has happened to Harvey twice in 18 years, why is this even a pressing matter?

VOTE: 14 YES and 1 NO, HB1192 PASSED. Rep. Herbel will carry.

(Roll call vote is half on side A and beginning of side B, Tape 1)

Date: 1-19-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1192-

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Rep. Maragos Seconded By Rep. Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	/		Rep. Wayne W. Tieman	/	
Vice-Chair Dale C. Severson	/				
Rep. Lois Delmore	/				
Rep. Rachael Disrud	/				
Rep. Bruce Eckre	/				
Rep. Mary Ekstrom	/				
Rep. April Fairfield		/			
Rep. Michael Grosz	/				
Rep. Jane Gunter	/				
Rep. Gil Herbel	/				
Rep. Nancy Johnson	/				
Rep. William E. Kretschmar	/				
Rep. Carol A. Niemeier	/				
Rep. Andrew G. Maragos	/				

Total (Yes) 14 No 1

Absent 0

Floor Assignment Rep. Herbel

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 19, 2001 11:39 a.m.

Module No: HR-09-1283
Carrier: Herbel
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1192: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO PASS (14 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1192 was placed on the Eleventh order on the calendar.

2001 SENATE POLITICAL SUBDIVISIONS

HB 1192

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1192

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 1, 2001

Tape Number	Side A	Side B	Meter #
1	x		0.6-18.7
		x	18.3-30.9
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes:

The hearing was opened on HB1192; relating to self-service storage facility liens. All were present except Senator Flakoll.

REPRESENTATIVE KLEMIN: Introduced HB1192 at the request of the North Dakota Self Storage Association. This is an association of people that own or manage self service storage units that can be rented. In 1997, there was a new chapter of the North Dakota Century Code that was passed regulating self storage service facilities and the liens that they have for unpaid rent. That would be in a situation where somebody has stored personal property in one of their storage facilities and has not paid the rent and under the law, the owner or manager of that facility is entitled to auction off the contents of the facility if the person doesn't come and claim it and pay the rent and then the sections of the law that we're amending here today has to do with that procedure, and how that works. Section 1, relates to the notice of the proceedings and what this section requires is for the owner of that facility to provide a notice to the occupants to inform

them that if the rent is not paid the contents will be sold to satisfy the lien that's on the personal property. This bill actually makes three separate changes. The first change is on line 12, where we are changing the word operator to owner. The reason for that is basically a technical correction because the term owner is actually defined in this chapter of the law, and the word operator is not. Owner is the correct term rather than operator. At the bottom of this page, beginning on line 23 and continuing over to page two, there is a change being made with the publication requirements. The owner of the property is required to give a published notice of this sale in the newspaper. The way it reads now is the publication has to be not more than fifteen days before the sale and at least seven days before the sale. So you only have a eight day window in between where the publication can be made. This can cause a problem sometimes with the timing of getting that notice in the newspaper especially in the weekly newspaper if your somewhere else in the state. So what they are doing here is to change that fifteen days to thirty days just to allow a larger window between the seven days and the thirty days. On page 2, Section 2, concerns the application of the proceeds after the property is sold after the auction is held. Proceeds are first used to pay the amount of the lien or amount of the unpaid rent of the unpaid rent that is still owing to the owner, and also the cost of the sale, including the notice and certified mail and those certain things. Then the owner is to hold this property, if there is any proceeds leftover, typically there isn't, but if there is, then the owner is to hold this, the proceeds, under the existing law for two years in case the person who left that property there claims any remaining proceeds. After a few years of experience with this law it has been determined that two years is quite a long time, in fact this is the longest of any time limit anywhere in the century code. So what they are proposing to do is to change that holding period to six months which is

still relatively a long time. SENATOR LEE: I am just curious about how this would parallel For example a landlord- tenant situation, in which a tenant may have not paid the rent or whatever reason? But was no longer in the apartment and there were personal items in the apartment and it was obvious this person was not returning. I know they are not the same situation but it seems there might be some parallels in a way they might be handled and how does this correspond to what an owner or landlord or property manager might be able to do with personal items and other parcels? REPRESENTATIVE KLEMIN: I did look up the answer to that question, because I thought it would come up. We have a section 47:16-30.1 which has to do with abandoned property and the disposal by a lessor in a apartment or other rental situations.

What that provides is if the property has a estimated value of not more that \$1500 that's left on the premises after the person moves out, then the law says that the property maybe retained by the lessor and disposed of without legal process. The lessor is entitled to the proceeds from the sale of the property. The lessor may recover from the security deposit any storage or moving expenses in excess of the proceeds from the sale that occurred in disposing of the property. So basically it is very similar except there is the \$1500 limit. SENATOR LEE: So, just to make it clear, that its under \$1500 the notice isn't required, you don't have to hold the stuff for six months, you can just get rid of it? Did I understand that correctly? REPRESENTATIVE

KLEMIN: That's correct. There is no six month holding period. There is no holding period at all. There is a 30 day period. SENATOR COOK: Representative Klemin, we also have language

dealing with trailer houses, right or mobile homes that are abandoned? REPRESENTATIVE KLEMIN: There is, Senator Cook, if somebody has a mobile home in a mobile home park and doesn't pay the rent and leaves the mobile home there, then the owner of the mobile home park

can sell the mobile home to satisfy the unpaid rent. I am not sure of all the exact procedure on that, but there is something to that effect. ROCKY GORDON: Officer with the Self-Storage Association. We come in support of the changes proposed House Bill 1192. See written testimony. SENATOR COOK: Rocky, are tenants made aware of the consequences if they abandon or don't pay their rent when they initially a contract or when close the deal? ROCKY GORDON: I would say that varies a little bit from owner operator to owner operator, but in our lease its very specifically spelled out what will happen if you don't pay your rent and abandon the property. I would guess that would be the case with most owner operators but everybody uses a little different lease form. SENATOR MATHERN: Mr. Gordon, the notice that, are they mailed the notice that they so that the bill when they are late? Does that outline also the procedures that are taken of the sale and that they would have to claim anything that was left over after the sale? ROCKY GORDON: It does, and its pretty specific and theirs' specific language that you have to use in the notification and yes, it is pretty specific. The goal for all of us in this industry is not to have to do this because its not a money making deal for us. REPRESENTATIVE KLEMIN: Senator Lee gave me a copy of the proposed amendments which I had not seen before to this bill so with your permission I would like to comment on the proposed amendments. SENATOR COOK: I have a good feeling that somebody is going to step to this podium and introduce that amendment and it would probably be a proper place. RICK LARSON: Acting State Land Commissioner, the land department administers the unclaimed property statutes in the state of North Dakota. We've just noticed this bill as it was process proceeds through the legislature. It was brought to our attention and we want to offer this amendment just to be sure that this law does not conflict with the unclaimed property statutes 47:30.1. That is all the information I have at this time. SENATOR LEE: Mr. Larson, how would

that statute differ from the area that you would be amending out of the specifics area. RICK LARSON: The unclaimed property statutes in North Dakota require that intangible personal property be sent to the land or unclaimed property division after a certain period of time. The banks uncashed checks, businesses uncashed checks, banks dormant accounts, securities that where the dividends are not cashed, different types of intangible properties. We are sort of concerned, we are concerned that this property, in excess of the lien, we want to make sure that people get their expenses out of it. But the excess of the liens, we feel should go to the unclaimed property division. Our responsibility is to try to find the owners. We advertise also, we also have Internet sites so we do have a network to trying to owners and in the mean time those proceeds benefit the common schools, kindergarten through twelve grade students in the state of North Dakota. SENATOR LEE: Mr. Larson, we're talking about two different kinds of property in a way I think. Are you currently from landlords or property owners or managers having proceeds of sales or personal property delivered to you if a tenant abandons an apartment somewhere or a house somewhere? RICK LARSON: Senator Lee, at this point in time, no were not. That is something that we have not pursued at that this point. SENATOR LEE: So are you looking to include that as well, at some point in the future, because personally I see those as being comparable. That is different from things left in a safe deposit box, which would be expected to be something of value. Compared to the junk I've seen. RICK LARSON: Those properties, I guess that your talking about, no we would not expect to collect that property. We will be looking at how we should address the household or the apartment properties. We have not pursued it in the past. REPRESENTATIVE KLEMIN: I guess I would like to mention that it should be in mind that the owner of this facility is not compensated whatsoever for all the time that's spent in trying to collect on the unpaid rent. In the time that is spent in sending out notice

and the time that is spent in publishing the notice in the newspaper and the time spent in handling the auction, and the time spent in holding the proceeds for the two years or six month period. So now, I think this is very comparable to what happens in the case of an apartment where goods are left in the apartment after the person leaves and then the landlord has to wait thirty days before he can dispose of that property. Even there in that situation, the landlord is entitled to keep the proceeds if any from the sale of that personal property which is usually household furnishings and things like that. I don't think this is much different. There is another section to and I am sure that Mr. Larson will find that in his research that deals with what happens to property that's abandoned after a mortgage is foreclosed. What happens there is the foreclosing lender and there is some dollar limit I think it is \$500 in that case. But the foreclosing lender is entitled to also keep the proceeds of the property that is left abandoned when there has been a foreclosure. So what happens under this storage facility lien is entirely consistent with all of this. It maybe in recognition of the fact that the owner of the facility is not getting anything whatsoever for his efforts to collect on this property. Additionally, I would like to point out, I guess the provisions in this law now on storage facility liens require a two tier notice system. This takes place after the owner has been trying to contact or get a hold of the tenant to come in and pay the rent and pick up their personal property. They have to give their written notice by mail to start with, then they have to publish notice in the newspaper. Now its going to be subject to the North Dakota Unclaimed Property Laws, then as I understand that section, before its turned over to the Land Commissioner, they have to send out another notice to the people telling them to get this property. So that would be the third notice. Now when the land commissioner gets it, there going to be giving notice too. How many notices do these people who took their property to the storage facility and left it there? They know where its at and they know they have to pay the rent. Before

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Senate Political Subdivisions Committee

Bill/Resolution Number HB1192

Hearing Date March 1, 2001

it even gets to the land commissioner they have three formal notices requiring to following the unclaimed property procedure. I think that the law the way it is written right now which allows the owner to retain anything is entirely consistent with other existing state law. I would hope that the committee would take that into consideration when looking at this amendment.

Hearing Closed on HB1192.

March 1, 2001 Tape 1, Side B, Meter # 18.3-30.9

Senator Cook asked the committee for discussion on HB1192.

Senator Lee moved for a Do Pass, not on the amendments but on the bill.

Senator Watne- 2nd

Further discussion continued.

Roll call vote: 7 Yeas, 0 No, 1 Absent

Carrier: Senator Lee

Date: Nov. 1, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1192

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass H.B. 1192

Motion Made By Sen. Lee Seconded By Sen. Watne

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll			Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 7 No 0

Absent 1

Floor Assignment Sen. Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 2, 2001 2:02 p.m.

Module No: SR-36-4746
Carrier: Lee
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1192: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1192 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1192

Representative Froseth and members of the Political Subdivisions committee:

My name is Harvey L. Schilling. I am President and spokesperson for the North Dakota Self-Storage Association. My wife and I own Denny's Storage Company located in Bismarck, ND.

We come to support the changes proposed in House Bill 1192.

The law as it now stands is relatively new. In fact, the current lien law was first passed with the 1997 session. The law is workable and to date have had little difficulty with the procedures as outlined. There are three changes that we are requesting to help us and our tenants should a lien need to be exercised.

The first suggested change is in line 12 (page 1); changing the word from operator to owner. It is the owner or their designated representative who should file a lien against an occupant.

The second suggested change is found on line 24 (page 1). The current language requires that the first publication must be not more than 15 days prior to the sale with the second publication at least 7 days prior to the sale. Our suggestion is that the first publication date must be not more than 30 days before the sale and the second publication at least 7 days. What we have found is that the publication deadlines are very difficult to meet especially in those areas that have a weekly paper as their local or general newspaper. Even in larger communities, some papers do not publish legal notices on certain days of the week. This change simply makes it practical for all concerned and does not restrict notification in any manner especially to the persons involved with the lien.

Let me cite an example. If a self-storage owner would want to conduct a lien sale on Saturday, January 27, 2001, the 7-day prior publication would have to be on the previous Saturday, January 20, 2001 or before. To meet the 15-day requirement, the publication would have to no earlier than Friday, January 12, 2000. This requires two publications in the same week which does not meet the two consecutive week requirement in the law. For all practical purposes, it precludes the sale on a weekend for those areas with a weekly paper.

The second requested change is in the amount of time that funds must be held if there is a balance remaining after expenses. The current language on line 9 and 10 (on page 2) is two years. We are recommending six months.

It is the exception to the rule that there is a balance remaining after a sale is conducted. In fact, in our 18 years of operation, it has happened only three or four times. In our industry, we lose approximately 5 per cent of rents to persons who abandon their property for whatever reason.

If it does happen that there is a balance remaining, we feel that it is simply too long. The timeline isn't two years as suggested in the law but more like 2 ½ to three years.

The normal scenario - the tenant becomes delinquent after the first month. The owner/operator bills for the second month with no results. The third month is spent calling and trying various collection procedures. The fourth month, we do the "official notification" and begin the publication process. By the time the publication dates are in place, the sale conducted, we now have 90 to 120 days in arrears.

If there is a balance available, we now have to hold that amount for another two years with detailed records as to the process used for the sale, the items sold, etc. All in all, this process will take approximately 30

months before the file can be closed. When a tenant has returned to collect the balance, recollections of the sale become hazy and usually result in some disagreement as to values of the items sold, etc.

We feel if the tenant has not made an effort to notify the self-storage owner in nine or more months (considering the legal notices and the six months of hold time), that the self-storage owner should no longer be held accountable to the tenant should there be a balance remaining.

Chairman Froseth and members of the committee, this ends my formal presentation on House Bill 1192. I will certainly try to answer any questions that you may have. If you wish to have other members/owners speak to the proposed changes, they are here to respond to your concerns.

PROPOSED AMENDMENT TO HOUSE BILL 1192

Page 2, line 9, overstrike "The owner may retain any"

Page 2, line 10, overstrike "balance unclaimed after the", remove "six-month", overstrike "period.",
insert immediately thereafter "Proceeds not paid out within the six-month period are subject to
North Dakota Unclaimed Property laws (NDCC 47-30.1)"

Renumber accordingly

02/20/2001 20:23 FAX 7012230215 CHADD INC 201

Senator Cook and members of the Political Subdivisions committee:

My name is Rocky Gordon. I am an officer with the North Dakota Self-Storage Association. I manage various self-storage units and apartments in Bismarck area.

As an association, we come in support the changes proposed in House Bill 1192.

The law as it now stands is relatively new. In fact, the current lien law was first passed with the 1997 session. The law is workable and to date have had little difficulty with the procedures as outlined. There are three changes that we are requesting to help us and our tenants should a lien need to be exercised.

The first suggested change is in line 12 (page 1); changing the word from operator to owner. It is the owner or their designated representative who should file a lien against an occupant.

The second suggested change is found on line 24 (page 1). The current language requires that the first publication must be not more than 15 days prior to the sale with the second publication at least 7 days prior to the sale. Our suggestion is that the first publication date must be not more than 30 days before the sale and the second publication at least 7 days. What we have found is that the publication deadlines are very difficult to meet especially in those areas that have a weekly paper as their local or general newspaper. Even in larger communities, some papers do not publish legal notices on certain days of the week. This change simply makes it practical for all concerned and does not restrict notification in any manner especially to the persons involved with the lien.

02-20-2001 20:15 FAX 7012250210 CABB INC 101

Let me cite an example. If a self-storage owner would want to conduct a lien sale on Saturday, March 3, 2001, the 7-day prior publication would have to be on the previous Saturday, February 24, 2001 or before. To meet the 15-day requirement, the publication must be no earlier than Friday, February 16, 2001. If the local paper does not publish legal notices on Friday or Saturday (which is the case with some papers), we would have to run two publications in the same week. Publishing the notice in the same week does not meet the two consecutive week requirement in the law. For all practical purposes, it precludes the sale on a weekend for those areas with a weekly newspaper or if a daily paper does not publish legal ads on Friday or Saturday.

The third requested change is in the amount of time that funds must be held if there is a balance remaining after rent in the arrears are paid and expenses related with the sale. The current language on line 9 and 10 (on page 2) is two years. We are recommending six months.

It is the exception to the rule that there is a balance remaining after a sale is conducted. In our industry, we lose approximately 5 per cent of rents to persons who abandon their property for whatever reason.

If it does happen that there is a balance remaining, we feel that it is simply too long. The timeline isn't two years as suggested in the law but more like 2 ½ to three years.

The normal scenario - the tenant becomes delinquent after the first month. The owner/operator bills for the second month with no results. The third month is spent calling and trying various collection procedures. The fourth month, we do the "official notification" and begin the publication process. By the time the publication dates are in place, the sale conducted, we now have 90 to 120 days in arrears.

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If there is a balance available, we now have to hold that amount for another two years with detailed records as to the process used for the sale, the items sold, etc. All in all, this process will take approximately 30 months before the file can be closed. When a tenant has returned to collect the balance, recollections of the sale become hazy and usually result in some disagreement as to values of the items sold, etc.

We feel if the tenant has not made an effort to notify the self-storage owner in nine or more months (considering the legal notices and the six months of hold time), the self-storage owner should no longer be held accountable to the tenant should there be a balance remaining.

During the House debate, the question was raised that six months in HB 1192 is too short and tenants may not have enough time to respond. We want to remind you that once the sale is completed, there is no further notification to the tenant. If the tenant has made no effort to contact the owner prior to the sale even with the publication notices, certified mail, billings, etc., we believe that they have simply abandoned their property.

After the passage of HB 1192 in the House of Representatives, we surveyed some of our members with our association concerning the "balance remaining". The overwhelming response was that they had not experienced a balance remaining after a lien sale. In fact, they responded that they were far from breaking even.

Our legal counsel for the North Dakota Self-Storage Association offered the suggested change from 2 years to six months. It was his recommendation that we change the language to be in line with laws relating with the apartment owners association.

Chairman Cook and members of the committee, this ends our formal presentation on House Bill 1192. I will try to answer any questions. If you wish to have other members/owners speak to the proposed changes, they are here to respond to your questions