

**FIRST ENGROSSMENT
with Senate Amendments**

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1229

Introduced by

Representatives Martinson, Karls, Keiser, Weiler

- 1 A BILL for an Act to create and enact a new chapter to title 35 of the North Dakota Century
2 Code, relating to a lien on property stored in a portable storage unit.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 35 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.** As used in this chapter, unless the context otherwise requires:

- 7 1. "Default" means failure of the lessee to pay the rent and other charges at the time
8 and in the manner set forth in the rental agreement.
- 9 2. "Last-known address" means the address provided by the lessee in the latest
10 rental agreement or the address provided by the lessee in a subsequent written
11 change of address notice.
- 12 3. "Lessee" means a person who leases a portable storage unit, regardless of the
13 unit's location, under a rental agreement. The term includes a sublessee,
14 successor, and assignee.
- 15 4. "Owner" means a person who owns, leases, subleases, manages, or operates a
16 portable storage unit and receives rent from a lessee under a rental agreement.
- 17 5. "Personal property" means movable property not affixed to land, including
18 merchandise and household goods.
- 19 6. "Portable storage unit" includes a portable container, overseas shipping container,
20 or semitrailer which may be moved by the owner to a location designated by the
21 lessee or moved by the lessee to one of several locations, in accordance with the
22 rental agreement, and in which the lessee customarily stores and removes
23 personal property.

7. "Rental agreement" means a written agreement between the owner and the lessee which establishes or modifies the terms and conditions of the lessee's use of the portable storage unit.

Lien against property. The owner of a portable storage unit has a lien on all personal property stored under a rental agreement in a portable storage unit for rent, labor, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default served on the occupant as provided in this chapter.

Custody and control of property. Unless the rental agreement provides otherwise, until a sale under this chapter, the lessee is responsible for the care, custody, and control of all property stored in the portable storage unit unless the owner secures the property elsewhere during the sale proceedings.

Notice of proceedings.

1. Before conducting a sale, the owner shall deliver in person or send by certified mail a notice of default to prior lienholders and to the lessee at the lessee's last-known address. A notice under this section is presumed delivered if the notice is deposited with the United States postal service and properly addressed with postage prepaid. The notice must include:

a. A statement that the contents of the portable storage unit are subject to the owner's lien and that the lessee is denied access to the portable storage unit until the owner's claim is satisfied;

b. The name of the lessee and the address at which the portable storage unit is located;

c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, which may not be fewer than ten days after the date of the notice;

d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the portable storage unit will be sold; and

e. The name, address, and telephone number of the owner or other person that the lessee may contact in response to the notice.

2. In addition to the requirements of subsection 1, an owner shall also publish, once a week for two consecutive weeks, with the first publication not more than thirty days before the sale and the last publication at least seven days before the sale, the time, place, and terms of the sale in a newspaper of general circulation in the county where the portable storage unit is located.

Sale of property - Application of proceeds. At any time before the sale, the lessee may pay the amount necessary to satisfy the lien and redeem the lessee's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the lessee or any other recorded lienholder for a period of six months from the date of sale. Any amount not claimed by the lessee from the owner within the six-month period is subject to the reporting requirements of section 47-30.1-08.

Protection of purchaser in good faith. A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, subject to the rights of prior lienholders.

Liability of owner. If the owner complies with this chapter, the owner's liability to the lessee is limited to the application of the proceeds received from the sale of the property necessary to satisfy the lien. The owner's liability to other lienholders is limited to the proceeds received from the sale of any property covered by the other lien, less the amount necessary to satisfy the owner's lien.

Validity of certain rental agreements. Any rental agreement entered before August 1, 2009, remains valid and may be enforced or terminated in accordance with its terms or as permitted by law.

Sale proceedings - Titled vehicles. The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority to obtain a transfer of title to vehicles under section 39-05-19. However, the rights of a prior listed lienholder are not affected by this transfer and the department may not remove a prior lienholder in this transfer of title without a release from the lienholder.