

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 492

FINAL READING

Introduced by Harr, 8.

Read first time January 17, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to self-service storage facilities; to amend
2 sections 37-1278 and 37-1283, Reissue Revised Statutes of Nebraska,
3 and sections 60-149 and 60-166, Revised Statutes Cumulative
4 Supplement, 2016; to adopt the Self-Service Storage Facilities Act;
5 to authorize certain liens as prescribed; to change provisions
6 relating to the State Boat Act and the Motor Vehicle Certificate of
7 Title Act; to harmonize provisions; and to repeal the original
8 sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Self-Service Storage Facilities Act.

3 Sec. 2. For purposes of the Self-Service Storage Facilities Act:

4 (1) Commercially reasonable sale means a sale that (a) is conducted
5 at the self-service storage facility or on a publicly accessible web site
6 that conducts lien sales and (b) is attended by at least three persons
7 who appear personally, online, by telephone, or by any other method;

8 (2) Default means the failure to perform on time any obligation or
9 duty set forth in a rental agreement;

10 (3) Electronic mail means an electronic message or an executable
11 program or computer file that contains an image of a message that is
12 transmitted between two or more computers or electronic terminals and
13 includes electronic messages that are transmitted within or between
14 computer networks;

15 (4) Emergency means any sudden, unexpected occurrence or
16 circumstance at or near a self-service storage facility that requires
17 immediate action to avoid injury to persons or property at or near the
18 self-service storage facility, including, but not limited to, a fire;

19 (5) Last-known address means the postal address or electronic mail
20 address provided by an occupant in a rental agreement or the postal
21 address or electronic mail address provided by the occupant in a
22 subsequent written notice of a change of address;

23 (6) Leased space means the individual storage space at a self-
24 service storage facility which is rented to an occupant pursuant to a
25 rental agreement;

26 (7) Occupant means a person entitled to the use of leased space at a
27 self-service storage facility under a rental agreement or his or her
28 successors or assigns;

29 (8) Operator means the owner, operator, lessor, or sublessor of a
30 self-service storage facility or an agent or any other person authorized
31 to manage the facility. Operator does not include a warehouseman if the

1 warehouseman issues a warehouse receipt, bill of lading, or other
2 document of title for the personal property stored;

3 (9) Personal property means movable property not affixed to land.
4 Personal property includes, but is not limited to, goods, wares,
5 merchandise, motor vehicles, watercraft, household items, and
6 furnishings;

7 (10) Property which has no commercial value means property offered
8 for sale in a commercially reasonable sale that receives no bid or offer;

9 (11) Rental agreement means any written agreement or lease that
10 establishes or modifies the terms, conditions, or rules concerning the
11 use and occupancy of a self-service storage facility;

12 (12) Self-service storage facility means any real property used for
13 renting or leasing individual storage spaces in which the occupants
14 customarily store and remove their own personal property on a self-
15 service basis; and

16 (13) Verified mail means any method of mailing offered by the United
17 States Postal Service that provides evidence of the mailing.

18 Sec. 3. (1) An operator shall not knowingly permit a leased space
19 at a self-service storage facility to be used for residential purposes.

20 (2) An occupant shall not use a leased space for residential
21 purposes.

22 Sec. 4. An occupant, upon reasonable request from the operator,
23 shall allow the operator to enter a leased space for the purpose of
24 inspection or repair. If an emergency occurs, an operator may enter a
25 leased space for inspection or repair without notice to or consent from
26 the occupant.

27 Sec. 5. (1) The operator of a self-service storage facility and the
28 operator's heirs, executors, administrators, successors, and assigns
29 shall have a lien upon all of an occupant's personal property located at
30 the self-service storage facility for delinquent rent, late fees, labor,
31 or other charges incurred pursuant to a rental agreement and for expenses

1 incurred for preservation, sale, or disposition of the personal property.
2 The lien established by this subsection shall have priority over all
3 other liens except for tax liens and liens or security interests of any
4 lienholder or security interest holder of record on such personal
5 property that are perfected or recorded prior to, on, or after the date
6 on which the personal property is placed in a leased space.

7 (2) The lien described in subsection (1) of this section attaches on
8 the date on which personal property is placed in a leased space.

9 (3) The rental agreement shall contain a statement, in bold type,
10 advising the occupant:

11 (a) Of the existence of the lien; and

12 (b) That personal property stored in the leased space may be sold to
13 satisfy the lien if the occupant is in default.

14 (4) If the rental agreement specifies a limit on the value of
15 personal property that the occupant may store in the leased space, such
16 limit shall be deemed to be the maximum value of the personal property in
17 the occupant's leased space.

18 Sec. 6. If any part of the rent or other charges due from the
19 occupant are in default, the operator shall have the right to deny the
20 occupant access to the leased space at the self-service storage facility.

21 Sec. 7. (1) If an occupant is in default for a period of more than
22 forty-five days, the operator may enforce the lien granted in section 5
23 of this act by selling the occupant's stored personal property for cash.
24 Sale of the occupant's personal property may be by public or private
25 proceedings. Such personal property may be sold as a unit or in parcels,
26 by way of one or more contracts, at any time or place, and on any terms
27 as long as the sale is a commercially reasonable sale. The operator may
28 otherwise dispose of any property which has no commercial value.

29 (2) Before conducting a sale under this section, the operator shall:

30 (a) At least forty-five days before the sale, send notice of default
31 to the occupant by verified mail or electronic mail pursuant to

1 subdivision (8)(a) of this section. The notice of default shall include:

2 (i) A statement that the contents of the occupant's leased space are
3 subject to the operator's lien;

4 (ii) A statement of the operator's claim, indicating the charges due
5 on the date of the notice, the amount of any additional charges which
6 shall become due before the date of sale, and the date such additional
7 charges shall become due;

8 (iii) A demand for payment of the charges due within a specified
9 time, which shall not be less than ten days after the date of the notice;

10 (iv) A statement that unless the claim is paid within the time
11 stated, the contents of the occupant's leased space will be sold after a
12 specified time; and

13 (v) The name, street address, and telephone number of the operator
14 or a designated agent whom the occupant may contact to respond to the
15 notice; and

16 (b) At least seven days before the sale, advertise the time, place,
17 and terms of the sale in any commercially reasonable manner. The manner
18 of advertisement is deemed commercially reasonable if at least three
19 independent bidders attend the sale in person or online at the time and
20 place advertised. A copy of the advertisement of sale shall be provided
21 at least seven days before the sale to the holder of any lien or security
22 interest of record on the personal property being sold.

23 (3) The operator may buy the occupant's personal property at any
24 public sale held pursuant to this section.

25 (4) If the personal property subject to the operator's lien is a
26 vehicle, watercraft, or trailer and rent and other charges remain unpaid
27 for sixty days, the operator may have the vehicle, watercraft, or trailer
28 towed from the self-service storage facility. The operator shall not be
29 liable for any damages to the vehicle, watercraft, or trailer once the
30 tower takes possession of the property. Removal of any vehicle,
31 watercraft, or trailer from the self-service storage facility shall not

1 release the operator's lien.

2 (5) At any time before a sale is held under this section or before a
3 vehicle, watercraft, or trailer is towed under this section, the occupant
4 may pay the amount necessary to satisfy the lien and redeem the
5 occupant's personal property.

6 (6) If a sale is held under this section, the operator shall:

7 (a) Apply the proceeds of the sale in the following order:

8 (i) To satisfy the actual expenses incurred in conducting the sale,
9 including the costs for notice and advertisement of the sale, in an
10 amount not to exceed five hundred dollars;

11 (ii) To satisfy the obligations secured by the lien or security
12 interest of any lienholder or security interest holder of record; and

13 (iii) To satisfy the operator's lien; and

14 (b) Hold the balance of the proceeds remaining after the
15 disbursements described in subdivision (6)(a) of this section, if any,
16 for delivery on demand to the occupant for a period of one year after the
17 date of such sale. The operator shall have no liability to any party for
18 excess proceeds paid to the occupant. After the one-year period, any
19 remaining proceeds shall be considered abandoned property to be reported
20 and paid to the State Treasurer in accordance with the Uniform
21 Disposition of Unclaimed Property Act.

22 (7) A purchaser in good faith of any personal property sold pursuant
23 to this section to satisfy the lien granted in section 5 of this act
24 takes the property free and clear of any rights of persons against whom
25 the lien was valid. If the property is a vehicle, watercraft, or trailer,
26 such sale shall extinguish any lien or security interest in the property
27 of any holder of such lien or security interest to whom notice of the
28 sale was sent in compliance with this section.

29 (8)(a) Notices to the occupant under subdivision (2)(a) of this
30 section shall be sent to the occupant's last-known address by verified
31 mail or electronic mail. Notices sent by verified mail shall be deemed

1 delivered when deposited with the United States Postal Service if they
2 are properly addressed with postage prepaid. Notices sent by electronic
3 mail shall be deemed delivered when an electronic message is sent to the
4 last-known address provided by the occupant. If the operator sends notice
5 by electronic mail and receives an automated message stating that the
6 electronic mail cannot be delivered, the operator shall send notice by
7 verified mail to the occupant's last-known address with postage prepaid.

8 (b) The copy of the advertisement of sale provided to the holder of
9 any lien or security interest of record under subdivision (2)(b) of this
10 section shall be sent to the last-known address of the lienholder or
11 security interest holder by United States mail. The copy of the
12 advertisement shall be deemed delivered when deposited with the United
13 States Postal Service if it is properly addressed with postage prepaid.

14 (9) If the operator complies with the requirements of this section,
15 the operator's liability:

16 (a) To the occupant shall be limited to the net proceeds received
17 from the sale of the occupant's personal property less any proceeds paid
18 to the holders of any lien or security interest of record on the personal
19 property being sold; and

20 (b) To the holders of any lien or security interest of record on the
21 personal property being sold shall be limited to the net proceeds
22 received from the sale of any personal property covered by the holder's
23 lien or security interest.

24 Sec. 8. Unless the rental agreement specifically provides otherwise
25 and until a lien sale under section 7 of this act, the exclusive care,
26 custody, and control of all personal property stored in a leased space
27 remains vested in the occupant.

28 Sec. 9. The Self-Service Storage Facilities Act does not impair the
29 power of the parties to a rental agreement to create rights, duties, or
30 obligations that do not arise from the act. The rights provided to an
31 operator by the act are in addition to all other rights provided by law

1 to a creditor against a debtor.

2 Sec. 10. Section 37-1278, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 37-1278 (1) Application for a certificate of title shall be
5 presented to the county treasurer, shall be made upon a form prescribed
6 by the Department of Motor Vehicles, and shall be accompanied by the fee
7 prescribed in section 37-1287. The owner of a motorboat for which a
8 certificate of title is required shall obtain a certificate of title
9 prior to registration required under section 37-1214. The buyer of a
10 motorboat sold pursuant to section 7 of this act shall present
11 documentation that such sale was completed in compliance with such
12 section.

13 (2)(a) If a certificate of title has previously been issued for the
14 motorboat in this state, the application for a new certificate of title
15 shall be accompanied by the certificate of title duly assigned. If a
16 certificate of title has not previously been issued for the motorboat in
17 this state, the application shall be accompanied by a certificate of
18 number from this state, a manufacturer's or importer's certificate, a
19 duly certified copy thereof, proof of purchase from a governmental agency
20 or political subdivision, a certificate of title from another state, or a
21 court order issued by a court of record, a manufacturer's certificate of
22 origin, or an assigned registration certificate, if the motorboat was
23 brought into this state from a state which does not have a certificate of
24 title law. The county treasurer shall retain the evidence of title
25 presented by the applicant on which the certificate of title is issued.
26 When the evidence of title presented by the applicant is a certificate of
27 title or an assigned registration certificate issued by another state,
28 the department shall notify the state of prior issuance that the
29 certificate has been surrendered. If a certificate of title has not
30 previously been issued for the motorboat in this state and the applicant
31 is unable to provide such documentation, the applicant may apply for a

1 bonded certificate of title as prescribed in section 37-1278.01.

2 (b) This subdivision applies beginning on an implementation date
3 designated by the Director of Motor Vehicles. The director shall
4 designate an implementation date which is on or before January 1, 2020.
5 In addition to the information required under subdivision (2)(a) of this
6 section, the application for a certificate of title shall contain (i) the
7 full legal name as defined in section 60-468.01 of each owner and (ii)(A)
8 the motor vehicle operator's license number or state identification card
9 number of each owner, if applicable, and one or more of the
10 identification elements as listed in section 60-484 of each owner, if
11 applicable, and (B) if any owner is a business entity, a nonprofit
12 organization, an estate, a trust, or a church-controlled organization,
13 its tax identification number.

14 (3) The county treasurer shall use reasonable diligence in
15 ascertaining whether or not the statements in the application for a
16 certificate of title are true by checking the application and documents
17 accompanying the same with the records of motorboats in his or her
18 office. If he or she is satisfied that the applicant is the owner of the
19 motorboat and that the application is in the proper form, the county
20 treasurer shall issue a certificate of title over his or her signature
21 and sealed with his or her seal.

22 (4) In the case of the sale of a motorboat, the certificate of title
23 shall be obtained in the name of the purchaser upon application signed by
24 the purchaser, except that for titles to be held by husband and wife,
25 applications may be accepted by the county treasurer upon the signature
26 of either spouse as a signature for himself or herself and as an agent
27 for his or her spouse.

28 (5) In all cases of transfers of motorboats, the application for a
29 certificate of title shall be filed within thirty days after the delivery
30 of the motorboat. A dealer need not apply for a certificate of title for
31 a motorboat in stock or acquired for stock purposes, but upon transfer of

1 a motorboat in stock or acquired for stock purposes, the dealer shall
2 give the transferee a reassignment of the certificate of title on the
3 motorboat or an assignment of a manufacturer's or importer's certificate.
4 If all reassignments printed on the certificate of title have been used,
5 the dealer shall obtain title in his or her name prior to any subsequent
6 transfer.

7 Sec. 11. Section 37-1283, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 37-1283 (1) In the event of the transfer of ownership of a motorboat
10 by operation of law as upon inheritance, devise, or bequest, order in
11 bankruptcy, insolvency, replevin, or execution sale, (2) whenever a
12 motorboat is sold to satisfy storage or repair charges or under section 7
13 of this act, or (3) whenever repossession is had upon default in
14 performance of the terms of a chattel mortgage, trust receipt,
15 conditional sales contract, or other like agreement, the county treasurer
16 of any county or the Department of Motor Vehicles, upon the surrender of
17 the prior certificate of title or the manufacturer's or importer's
18 certificate, or when that is not possible, upon presentation of
19 satisfactory proof of ownership and right of possession to the motorboat,
20 and upon payment of the fee prescribed in section 37-1287 and the
21 presentation of an application for certificate of title, may issue to the
22 applicant a certificate of title thereto. If the prior certificate of
23 title issued for the motorboat provided for joint ownership with right of
24 survivorship, a new certificate of title shall be issued to a subsequent
25 purchaser upon the assignment of the prior certificate of title by the
26 surviving owner and presentation of satisfactory proof of death of the
27 deceased owner. Only an affidavit by the person or agent of the person to
28 whom possession of the motorboat has so passed, setting forth facts
29 entitling him or her to such possession and ownership, together with a
30 copy of the journal entry, court order, or instrument upon which such
31 claim of possession and ownership is founded shall be considered

1 satisfactory proof of ownership and right of possession, except that if
2 the applicant cannot produce such proof of ownership, he or she may
3 submit to the department such evidence as he or she may have and the
4 department may thereupon, if it finds the evidence sufficient, issue a
5 certificate of title or authorize any county treasurer to issue a
6 certificate of title, as the case may be. If from the records of the
7 county treasurer or the department there appear to be any liens on the
8 motorboat, the certificate of title shall comply with section 37-1282
9 regarding the liens unless the application is accompanied by proper
10 evidence of their satisfaction or extinction.

11 Sec. 12. Section 60-149, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 60-149 (1)(a) If a certificate of title has previously been issued
14 for a vehicle in this state, the application for a new certificate of
15 title shall be accompanied by the certificate of title duly assigned
16 except as otherwise provided in the Motor Vehicle Certificate of Title
17 Act.

18 (b) Except for manufactured homes or mobile homes as provided in
19 subsection (2) of this section, if a certificate of title has not
20 previously been issued for the vehicle in this state or if a certificate
21 of title is unavailable pursuant to subsection (4) of section 52-1801,
22 the application shall be accompanied by:

23 (i) A manufacturer's or importer's certificate except as otherwise
24 provided in subdivision (vii) of this subdivision;

25 (ii) A duly certified copy of the manufacturer's or importer's
26 certificate;

27 (iii) An affidavit by the owner affirming ownership in the case of
28 an all-terrain vehicle, a utility-type vehicle, or a minibike;

29 (iv) A certificate of title from another state;

30 (v) A court order issued by a court of record, a manufacturer's
31 certificate of origin, or an assigned registration certificate, if the

1 law of the state from which the vehicle was brought into this state does
2 not have a certificate of title law;

3 (vi) Documentation prescribed in section 60-142.01, 60-142.02,
4 60-142.04, or 60-142.05 or documentation of compliance with section 7 of
5 this act; or

6 (vii) A manufacturer's or importer's certificate and an affidavit by
7 the owner affirming ownership in the case of a minitruck.

8 (c) If the application for a certificate of title in this state is
9 accompanied by a valid certificate of title issued by another state which
10 meets that state's requirements for transfer of ownership, then the
11 application may be accepted by this state.

12 (d) If a certificate of title has not previously been issued for the
13 vehicle in this state and the applicant is unable to provide such
14 documentation, the applicant may apply for a bonded certificate of title
15 as prescribed in section 60-167.

16 (2)(a) If the application for a certificate of title for a
17 manufactured home or a mobile home is being made in accordance with
18 subdivision (4)(b) of section 60-137 or if the certificate of title for a
19 manufactured home or a mobile home is unavailable pursuant to section
20 52-1801, the application shall be accompanied by proof of ownership in
21 the form of:

22 (i) A duly assigned manufacturer's or importer's certificate;

23 (ii) A certificate of title from another state;

24 (iii) A court order issued by a court of record;

25 (iv) Evidence of ownership as provided for in section 30-24,125,
26 52-601.01 to 52-605, 60-1901 to 60-1911, ~~or~~ 60-2401 to 60-2411, or
27 documentation of compliance with section 7 of this act; or

28 (v) Assessment records for the manufactured home or mobile home from
29 the county assessor and an affidavit by the owner affirming ownership.

30 (b) If the applicant cannot produce proof of ownership described in
31 subdivision (a) of this subsection, he or she may submit to the

1 department such evidence as he or she may have, and the department may
2 thereupon, if it finds the evidence sufficient, issue the certificate of
3 title or authorize the county treasurer to issue a certificate of title,
4 as the case may be.

5 (3) For purposes of this section, certificate of title includes a
6 salvage certificate, a salvage branded certificate of title, or any other
7 document of ownership issued by another state or jurisdiction for a
8 salvage vehicle. Only a salvage branded certificate of title shall be
9 issued to any vehicle conveyed upon a salvage certificate, a salvage
10 branded certificate of title, or any other document of ownership issued
11 by another state or jurisdiction for a salvage vehicle.

12 (4) The county treasurer shall retain the evidence of title
13 presented by the applicant and on which the certificate of title is
14 issued.

15 Sec. 13. Section 60-166, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 60-166 (1) In the event of (a) the transfer of ownership of a
18 vehicle by operation of law as upon inheritance, devise, or bequest,
19 order in bankruptcy, insolvency, replevin, or execution sale or as
20 provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911,
21 and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by
22 another engine, (c) a vehicle being sold to satisfy storage or repair
23 charges or under section 7 of this act, or (d) repossession being had
24 upon default in performance of the terms of a chattel mortgage, trust
25 receipt, conditional sales contract, or other like agreement, the county
26 treasurer of any county or the department, upon the surrender of the
27 prior certificate of title or the manufacturer's or importer's
28 certificate, or when that is not possible, upon presentation of
29 satisfactory proof of ownership and right of possession to such vehicle,
30 and upon payment of the appropriate fee and the presentation of an
31 application for certificate of title, may issue to the applicant a

1 certificate of title thereto. If the prior certificate of title issued
2 for such vehicle provided for joint ownership with right of survivorship,
3 a new certificate of title shall be issued to a subsequent purchaser upon
4 the assignment of the prior certificate of title by the surviving owner
5 and presentation of satisfactory proof of death of the deceased owner.
6 Only an affidavit by the person or agent of the person to whom possession
7 of such vehicle has so passed, setting forth facts entitling him or her
8 to such possession and ownership, together with a copy of the journal
9 entry, court order, or instrument upon which such claim of possession and
10 ownership is founded, shall be considered satisfactory proof of ownership
11 and right of possession, except that if the applicant cannot produce such
12 proof of ownership, he or she may submit to the department such evidence
13 as he or she may have, and the department may thereupon, if it finds the
14 evidence sufficient, issue the certificate of title or authorize any
15 county treasurer to issue a certificate of title, as the case may be.

16 (2) If from the records of the county treasurer or the department
17 there appear to be any liens on such vehicle, such certificate of title
18 shall comply with section 60-164 or 60-165 regarding such liens unless
19 the application is accompanied by proper evidence of their satisfaction
20 or extinction.

21 Sec. 14. Original sections 37-1278 and 37-1283, Reissue Revised
22 Statutes of Nebraska, and sections 60-149 and 60-166, Revised Statutes
23 Cumulative Supplement, 2016, are repealed.