

SENATE BILL NO. 150—SENATOR SCHNEIDER

FEBRUARY 16, 2011

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to liens; revising certain provisions governing liens of owners of facilities for storage; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally provides that if an occupant of a storage space at a self-storage facility defaults on the payment of rent or other charges that are due to the owner of the facility pursuant to a rental agreement, the owner has a lien on the occupant's personal property contained in the storage space and is entitled to certain remedies until the lien is satisfied. (NRS 108.4753, 108.4763) In addition to being able to deny the occupant access to the storage space and remove the occupant's personal property from the storage space, an owner may also sell the occupant's personal property to satisfy the lien. (NRS 108.4763) **Section 16** of this bill further authorizes an owner to dispose of certain personal property. **Sections 13, 16, 17 and 19** of this bill revise various provisions relating to an owner's lien on an occupant's personal property as well as the sale to satisfy such a lien.

Existing law also authorizes an occupant to prevent the sale of his or her personal property to satisfy the lien by executing a declaration of opposition to the sale and returning the declaration to the owner. Upon receipt of the declaration of opposition to the sale, the owner may commence an action in court to enforce the lien. (NRS 108.4765, 108.478) **Section 22** of this bill repeals these provisions.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 108 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *“Electronic mail” means an electronic message, executable program or computer file which contains an image of a message that is transmitted between two or more computers or electronic terminals, or within or between computer networks and from which an electronic confirmation of receipt is received.*

Sec. 3. *“Protected property” means personal property, the sale of which or prohibition against the sale of which is regulated by state or federal law. The term includes, without limitation:*

1. Documents, film or electronic data that contain personal information, such as social security numbers, credit or debit card information, bank account information, passport information and medical or legal records relating to clients, customers, patients or others in connection with an occupant’s business.

2. Pharmaceuticals other than those dispensed by a licensed pharmacy for use by an occupant.

3. Alcoholic beverages.

4. Firearms.

Sec. 4. *“Storage space” means a space used for storing personal property, which is rented or leased to an individual occupant who has access to the space.*

Sec. 5. *“Verified mail” means any method of mailing offered by the United States Postal Service that provides evidence of mailing.*

Sec. 6. *If a rental agreement contains a limit on the value of property stored in the storage space of an occupant, the limit is presumed to be the maximum value of the personal property stored in the storage space.*

Sec. 7. NRS 108.473 is hereby amended to read as follows:

108.473 As used in NRS 108.473 to 108.4783, inclusive, *and sections 2 to 6, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 108.4733 to 108.4745, inclusive, *and sections 2 to 5, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 108.4733 is hereby amended to read as follows:

108.4733 “Facility” means real property divided into individual *storage* spaces. ~~For storing personal property which are rented or leased to individual occupants and to which the individual occupant has access.~~ The term does not include a garage or storage area in a private residence.



1 **Sec. 9.** NRS 108.4735 is hereby amended to read as follows:
2 108.4735 “Occupant” includes a person or a person’s
3 sublessee, successor or assignee who is entitled to the exclusive use
4 of ~~[a space for]~~ *an individual* storage *space* at a facility pursuant to
5 a rental agreement.

6 **Sec. 10.** NRS 108.4743 is hereby amended to read as follows:
7 108.4743 “Personal property” means any property not affixed
8 to land and includes ~~[goods,]~~ *, without limitation,* merchandise,
9 furniture , ~~[and]~~ household items ~~[,]~~ *, motor vehicles, boats and*
10 *personal watercraft.*

11 **Sec. 11.** NRS 108.4745 is hereby amended to read as follows:
12 108.4745 “Rental agreement” means any written agreement or
13 lease establishing or modifying the terms, conditions or rules
14 concerning the use and occupancy of an individual ~~[space in]~~
15 *storage space at* a facility.

16 **Sec. 12.** NRS 108.475 is hereby amended to read as follows:
17 108.475 1. A person shall not use a *storage space at a*
18 facility for a residence. The owner of such a facility shall evict any
19 person who uses *a storage space at* the facility as a residence in the
20 manner provided for in NRS 40.760.

21 2. A facility shall not be deemed to be a warehouse or a public
22 utility.

23 3. If an owner of a facility issues a warehouse receipt, bill of
24 lading or other document of title for the personal property stored in
25 *a storage space at* the facility, the owner and occupant are subject to
26 the provisions of NRS 104.7101 to 104.7603, inclusive, and the
27 provisions of NRS 108.473 to 108.4783, inclusive, *and sections 2 to*
28 *6, inclusive, of this act* do not apply.

29 **Sec. 13.** NRS 108.4753 is hereby amended to read as follows:
30 108.4753 1. The owner of a facility and the owner’s heirs,
31 assignees or successors have a *possessory lien , from the date the*
32 *rent for a storage space at the facility is due and unpaid,* on all
33 personal property , *including protected property,* located ~~[at the~~
34 ~~facility]~~ *in the storage space* for the rent, labor or other charges
35 incurred by the owner pursuant to a rental agreement and for those
36 expenses ~~[necessarily]~~ *reasonably* incurred by the owner to
37 preserve, sell or otherwise dispose of the personal property.

38 2. Any lien created by a document of title for a motor vehicle
39 or boat has priority over a lien attaching to that motor vehicle or
40 boat pursuant to NRS 108.473 to 108.4783, inclusive.

41 **Sec. 14.** NRS 108.4755 is hereby amended to read as follows:
42 108.4755 1. Each rental agreement must be in writing and
43 must contain:



(a) A provision printed in a size equal to at least 10-point type that states, "IT IS UNLAWFUL TO USE ~~[THIS]~~ A STORAGE *SPACE IN THIS* FACILITY AS A RESIDENCE."

(b) A statement that the occupant's personal property will be subject to a claim for a lien and may be sold ~~[to satisfy that lien]~~ *or disposed of* if the rent or other charges described in the rental agreement remain unpaid for 14 consecutive days.

(c) *A provision requiring the occupant to:*

(1) *Disclose to the owner any items of protected property in the storage space.*

(2) *If the occupant is subject to mandatory licensing, registration, permitting or other professional or occupational regulation by a governmental agency, board or commission and the protected property to be stored is related to the practice of that profession or occupation by the occupant, provide written notice to that agency, board or commission stating that the occupant is storing protected property at the facility, identifying the general type of protected property being stored at the facility and providing complete contact information for the facility. The occupant shall give the owner a copy of any written notice provided to such an agency, board or commission.*

(3) *Provide complete contact information for a secondary contact who may be contacted by the owner if the owner is unable to contact the occupant.*

2. If any provision of the rental agreement provides that an owner, lessor, operator, manager or employee of the facility, or any combination thereof, is not liable, jointly or severally, for any loss or theft of personal property stored in *a storage space at* the facility, the provision is unenforceable unless:

(a) The rental agreement contains a statement advising the occupant to purchase insurance for any personal property stored in *a storage space at* the facility and informing the occupant that such insurance is available through most insurers;

(b) The provision and the statement are:

(1) Printed in all capital letters or, if the rental agreement is printed in all capital letters, printed in all capital letters and boldface type, italic type or underlined type; and

(2) Printed in a size equal to at least 10-point type or, if the rental agreement is printed in 10-point type or larger, printed in type that is at least 2 points larger than the size of type used for other provisions of the rental agreement; and

(c) The provision is otherwise enforceable pursuant to the laws of this state.

3. NRS 108.473 to 108.4783, inclusive, *and sections 2 to 6, inclusive, of this act* do not apply and the lien for charges for



1 storage does not attach unless the rental agreement contains a space
2 for the occupant to provide the name and address of an alternative
3 person to whom the notices under those sections may be sent. The
4 occupant's failure to provide an alternative address does not affect
5 the owner's remedies under those sections.

6 4. The parties may agree in the rental agreement to additional
7 rights, obligations or remedies other than those provided by NRS
8 108.473 to 108.4783, inclusive ~~[]~~, *and sections 2 to 6, inclusive, of*
9 *this act*. The rights provided in those sections are in addition to any
10 other rights of a creditor against a debtor.

11 **Sec. 15.** NRS 108.476 is hereby amended to read as follows:

12 108.476 1. If any charges for rent or other items owed by the
13 occupant remain unpaid for 14 days or more, the owner may
14 terminate the occupant's right to use the ~~[individual]~~ *storage* space
15 ~~[for storage]~~ at the facility , *for which charges are owed*, not less
16 than 14 days after sending a notice by ~~[certified]~~ *verified* mail *or*
17 *electronic mail* to the occupant at his or her last address and to the
18 alternative address provided by the occupant in the rental
19 agreement. The notice must contain:

20 (a) An itemized statement of the amount owed by the occupant
21 at the time of the notice and the date when the amount became due;

22 (b) The name, address and telephone number of the owner or the
23 owner's agent;

24 (c) A statement that the occupant's right to use the ~~[space for]~~
25 *storage space* will terminate on a specific date unless the occupant
26 pays the amount owed to the owner; and

27 (d) A statement that upon the termination of the occupant's right
28 to occupy the *storage* space and after the date specified in the
29 notice, an owner's lien pursuant to NRS 108.4753, will be imposed.

30 2. For the purposes of this section, "last known address" means
31 the *postal or electronic mail* address provided by the occupant in
32 the most recent rental agreement between the owner and occupant,
33 or the *postal or electronic mail* address provided by the occupant in
34 a written notice sent to the owner with a change of the occupant's
35 address after the execution of the rental agreement.

36 **Sec. 16.** NRS 108.4763 is hereby amended to read as follows:

37 108.4763 1. After the notice of the lien is mailed by the
38 owner, if the occupant fails to pay the total amount due by the date
39 specified in the notice, the owner may:

40 (a) Deny the occupant access to the *storage* space . ~~[for storage;~~
41 ~~and]~~

42 (b) Enter the *storage* space and remove the personal property
43 within it to a safe place.

44 (c) *Dispose of, but may not sell, any protected property*
45 *contained in the storage space in accordance with the provisions*



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1 of subsection 4 if the owner has actual knowledge of such
2 protected property. If the owner disposes of the protected property
3 in accordance with the provisions of subsection 4, the owner is not
4 liable to the occupant or any other person who claims an interest
5 in the protected property.

6 (d) If the personal property upon which the lien is claimed is a
7 motor vehicle, boat or personal watercraft, and rent and other
8 charges related to such property remain unpaid or unsatisfied for
9 60 days, have the property towed by any tow car operator subject
10 to the jurisdiction of the Nevada Transportation Authority. If a
11 motor vehicle, boat or personal watercraft is towed pursuant to
12 this paragraph, the owner is not liable for any damages to such
13 property once the tow car operator takes possession of the motor
14 vehicle, boat or personal watercraft.

15 2. The owner shall send the occupant a notice of a sale to
16 satisfy the lien by ~~[certified]~~ *verified* mail to the occupant at his or
17 her last known address and to the alternative address provided by
18 the occupant in the rental agreement at least 14 days before the sale.
19 The notice must contain:

20 (a) A statement that the occupant may no longer use the ~~[space~~
21 ~~for]~~ *space* and no longer has access to the occupant's
22 personal property stored therein. ~~[.]~~

23 (b) A statement that the personal property of the occupant is
24 subject to a lien and the amount of the lien. ~~[.]~~

25 (c) A statement that the personal property will be sold *or*
26 *disposed of* to satisfy the lien on a date specified in the notice,
27 unless the total amount of the lien is paid. ~~[for the occupant executes~~
28 ~~and returns by certified mail, the declaration in opposition to the~~
29 ~~sale; and]~~

30 (d) A statement of the provisions of subsection 3.

31 3. Proceeds of the sale over the amount of the lien and the costs
32 of the sale must be retained by the owner and may be reclaimed by
33 the occupant or the occupant's authorized representative at any time
34 up to 1 year from the date of the sale.

35 4. ~~[The notice of the sale must also contain a blank copy of a~~
36 ~~declaration of opposition to the sale to be executed by the occupant~~
37 ~~if the occupant wishes to do so.]~~ *The owner may dispose of*
38 *protected property contained in the storage space by taking the*
39 *following actions, in the following order of priority, until the*
40 *protected property is disposed of:*

41 (a) *Contacting the occupant and returning the protected*
42 *property to the occupant.*

43 (b) *Contacting the secondary contact listed by the occupant in*
44 *the rental agreement and returning the protected property to the*
45 *secondary contact.*



(c) *Contacting any appropriate state or federal authorities, including, without limitation, any appropriate governmental agency, board or commission listed by the occupant in the rental agreement pursuant to NRS 108.4755, ascertaining whether such authorities will accept the protected property and, if such authorities will accept the protected property, ensuring that the protected property is delivered to such authorities.*

(d) *Destroying the protected property in an appropriate manner which is authorized by law and which ensures that any confidential information contained in the protected property is completely obliterated and may not be examined or accessed by the public.*

Sec. 17. NRS 108.477 is hereby amended to read as follows:

108.477 1. ~~If the declaration in opposition to the lien sale executed by the occupant is not received by the date of the sale specified in the notice mailed to the occupant, the owner may sell the property.~~

~~—2.]~~ The owner shall advertise the sale once a week for 2 consecutive weeks immediately preceding the date of the sale *on a publicly accessible Internet website and* in a newspaper of general circulation in the judicial district where the sale is to be held. The advertisement must contain:

(a) A general description of the personal property to be sold;

(b) The name of the occupant;

(c) The number of the individual *storage* space ~~[for storage]~~ at the facility where the personal property was stored; and

(d) The name and address of the facility.

~~[3.]~~ 2. If there is no newspaper of general circulation in the judicial district where the sale is to be held, the advertisement must be posted 10 days before the sale in at least six conspicuous places near the place of the sale.

~~[4.]~~ 3. The sale must be conducted in a commercially reasonable manner. *If five or more bidders who are unrelated to the owner are in attendance at a sale held to satisfy the lien, the sale and all proceeds from the sale are deemed to be commercially reasonable.*

4. After deducting the amount of the lien and the costs of the sale, the owner shall retain any excess proceeds from the sale on the behalf of the occupant.

5. The occupant or any person authorized by the occupant or by an order of the court may claim the excess proceeds or the portion of the proceeds necessary to satisfy the person's claim at any time within 1 year after the date of the sale. After 1 year, the owner shall pay any proceeds remaining from the sale to the treasurer of



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1 the county where the sale was held for deposit in the general fund of
2 the county.

3 **Sec. 18.** NRS 108.4773 is hereby amended to read as follows:

4 108.4773 1. Any person who has a security interest in the
5 personal property perfected pursuant to NRS 104.9101 to 104.9709,
6 inclusive, may claim the personal property which is subject to the
7 security interest and to the lien for storage charges by paying
8 the amount due, as specified in the preliminary notice of the lien, for
9 the storage of the property . ~~[, if no declaration in opposition to the~~
10 ~~sale to satisfy the lien has been executed and returned by the~~
11 ~~occupant to the owner.]~~

12 2. Upon payment of the total amount due pursuant to this
13 section, the owner shall deliver the personal property subject to the
14 security interest to the person *holding such interest and* paying the
15 amount of the owner's lien. The owner is not liable to any person
16 for any action taken pursuant to this section if the owner complied
17 with the provisions of NRS 108.473 to 108.4783, inclusive ~~[.]~~ , *and*
18 *sections 2 to 6, inclusive, of this act.*

19 **Sec. 19.** NRS 108.4783 is hereby amended to read as follows:

20 108.4783 Any person who purchases the personal property in
21 good faith at a sale to satisfy the lien ~~for a sale to enforce a~~
22 ~~judgment on a lien~~ :

23 *1. Does not acquire ownership of any protected property*
24 *found in the storage space. The person who purchased the*
25 *protected property in good faith at a sale to satisfy the lien shall, as*
26 *soon as reasonably practicable, return the protected property*
27 *to the occupant or, if the occupant cannot be found after*
28 *reasonable diligence, to the owner, who shall dispose of the*
29 *protected property in accordance with the provisions of subsection*
30 *4 of NRS 108.4763.*

31 *2. Except as otherwise provided in subsection 1,* takes the
32 property free *and clear* of ~~[any interests of the occupant,]~~ *the rights*
33 *of any party,* even though the owner who conducted the sale may
34 have failed to comply with the provisions of NRS 108.473 to
35 108.4783, inclusive ~~[.]~~ , *and sections 2 to 6, inclusive, of this act.*

36 **Sec. 20.** NRS 40.760 is hereby amended to read as follows:

37 40.760 1. When a person is using a *storage space at a facility*
38 ~~[for storage]~~ as a residence, the owner or the owner's agent shall
39 serve or have served a notice in writing which directs the person to
40 cease using the ~~[facility]~~ *storage space* as a residence no later than
41 24 hours after receiving the notice. The notice must advise the
42 person that:

43 (a) NRS 108.475 requires the owner to ask the court to have the
44 person evicted if the person has not ceased using the ~~[facility]~~
45 *storage space* as a residence within 24 hours; and



(b) The person may continue to use the ~~[facility]~~ *storage space* to store the person's personal property in accordance with the rental agreement.

2. If the person does not cease using the ~~[facility]~~ *storage space* as a residence within 24 hours after receiving the notice to do so, the owner of the facility or the owner's agent shall apply by affidavit for summary eviction to the justice of the peace of the township wherein the facility is located. The affidavit must contain:

(a) The date the rental agreement became effective.

(b) A statement that the person is using the ~~[facility]~~ *storage space* as a residence.

(c) The date and time the person was served with written notice to cease using the ~~[facility]~~ *storage space* as a residence.

(d) A statement that the person has not ceased using the facility as a residence within 24 hours after receiving the notice.

3. Upon receipt of such an affidavit the justice of the peace shall issue an order directing the sheriff or constable of the county to remove the person within 24 hours after receipt of the order. The sheriff or constable shall not remove the person's personal property from the facility.

4. For the purposes of this section ~~[, "facility for storage"]~~:

(a) *"Facility"* means real property divided into individual *storage spaces* . ~~[which are rented or leased for storing personal property.]~~ The term does not include a garage or storage area in a private residence.

(b) *"Storage space"* means a space used for storing personal property, which is rented or leased to an individual occupant who has access to the space.

Sec. 21. NRS 597.890 is hereby amended to read as follows:

597.890 1. The owner of a facility for the storage of personal property or a person acting on his or her behalf shall not advertise that the facility is "climate controlled" unless the advertisement specifies the range of the minimum and maximum temperature and humidity within which the facility is maintained.

2. If an owner or a person acting on his or her behalf fails to indicate the range of temperature and humidity of a facility in any advertisement that refers to it as being "climate controlled" or fails to maintain the temperature and humidity of the facility within the advertised range, the owner is guilty of a misdemeanor and is liable to the occupant for any damages that are caused to the occupant's personal property as a result of extremes in temperature or humidity, notwithstanding any contrary provision in the rental agreement.

3. As used in this section, the terms "facility," "occupant," "owner," "personal property" and "rental agreement" have the



- 1 meanings ascribed to them respectively in NRS 108.4733 to
2 108.4745, inclusive ~~H~~, *and sections 2 to 5, inclusive, of this act.*
3 **Sec. 22.** NRS 108.4765 and 108.478 are hereby repealed.

TEXT OF REPEALED SECTIONS

108.4765 Occupant's declaration of opposition to sale.

The occupant may prevent a sale of the personal property to satisfy the lien if the occupant executes a declaration of opposition to the sale under penalty of perjury and returns the declaration to the owner by certified mail. The declaration must contain the following:

1. The name, address and signature of the occupant;
2. The location of the personal property which is to be sold to satisfy a lien;
3. The date the declaration was executed by the occupant; and
4. A statement that:
 - (a) The occupant has received the notice of the sale to satisfy the lien;
 - (b) The occupant opposes the sale of the property; and
 - (c) The occupant understands that the owner may commence an action for the amount of the lien and the costs of the action.

108.478 Action to enforce lien; enforcement of judgment; stay of enforcement pending appeal.

1. If the occupant signs, and returns to the owner, the declaration in opposition to the sale, the owner may commence an action in any court of competent jurisdiction to enforce the lien.

2. If, after the action to enforce the lien, the owner obtains a judgment against the occupant for the amount of the lien, the owner may enforce the judgment by a sale of the property conducted in a commercially reasonable manner more than 10 days after the notice of the entry of judgment has been filed with the court, unless within that time the occupant pays the amount of the judgment.

3. The occupant may stay the enforcement of the judgment pending an appeal by posting with the court which entered the judgment, a bond in an amount equal to 1.5 times the amount of the judgment. If the occupant posts such a bond, the court may order the owner to return the personal property to the occupant.

