

HOUSE BILL No. 2042

AN ACT concerning self-service storage facilities; authorizing the towing by operators of such facilities of motor vehicles, watercraft or trailers if the occupant is in default for more than 60 days; granting operators protection from liability for damages; extinguishing an operator's lien on such property upon towing; providing for notice to the occupant and opportunity for redemption prior to towing; adding self-service storage facility operators to those persons who are specifically authorized to direct a wrecker or towing service to tow a motor vehicle for purposes of the creation of a lien in favor of a wrecker or towing service; amending K.S.A. 8-1103 and K.S.A. 2022 Supp. 58-817 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 8-1103 is hereby amended to read as follows: 8-1103. (a) (1) Whenever any person providing wrecker or towing service, as defined by K.S.A. 66-1329, and amendments thereto, while lawfully in possession of a vehicle, at the direction of a law enforcement officer~~or~~, the owner *or, if a city ordinance or county resolution authorizes the towing of vehicles by a wrecker or towing service, a self-service storage facility operator as provided by K.S.A. 58-817, and amendments thereto,* or as otherwise provided by a city ordinance or county resolution, renders any service to the owner thereof by the recovery, transportation, protection, storage or safekeeping thereof, a first and prior lien on the vehicle is hereby created in favor of such person rendering such service and the lien shall amount to the full amount and value of the service rendered. The lien may be foreclosed in the manner provided in this act.

(2) If the name of the owner of the vehicle is known to the person in possession of such vehicle, then within 15 days, notice shall be given to the owner that the vehicle is being held subject to satisfaction of the lien. Any vehicle remaining in the possession of a person providing wrecker or towing service for a period of 30 days after such wrecker or towing service was provided may be sold to pay the reasonable or agreed charges for such recovery, transportation, protection, storage or safekeeping of such vehicle and personal property therein, the costs of such sale, the costs of notice to the owner of the vehicle and publication after giving the notices required by this act, unless a court order has been issued to hold such vehicle for the purpose of a criminal investigation or for use as evidence at a trial.

(3) If a court orders any vehicle to be held for the purpose of a criminal investigation or for use as evidence at a trial, then such order shall be in writing, and the court shall assess as costs the reasonable or agreed charges for the protection, storage or safekeeping accrued while the vehicle was held pursuant to such written order.

(4) Any personal property within the vehicle need not be released to the owner thereof until the reasonable or agreed charges for such recovery, transportation or safekeeping have been paid, or satisfactory arrangements for payment have been made, except as provided under subsection (c) or for personal medical supplies which shall be released to the owner thereof upon request. The person in possession of such vehicle and personal property shall be responsible only for the reasonable care of such property. Any personal property within the vehicle not returned to the owner shall be sold at the auction authorized by this act.

(b) At the time of providing wrecker or towing service, any person providing such wrecker or towing service shall give written notice to the driver, if available, of the vehicle being towed that a fee will be charged for storage of such vehicle. Failure to give such written notice shall invalidate any lien established for such storage fee.

(c) A city ordinance or county resolution authorizing the towing of vehicles from private property shall specify in such ordinance or resolution:

(1) The maximum rate such wrecker or towing service may charge for such wrecker or towing service and storage fees;

(2) that an owner of a vehicle towed shall have access to personal property in such vehicle for 48 hours after such vehicle has been towed and such personal property shall be released to the owner; and

(3) that the wrecker or towing service shall report the location of

such vehicle to local law enforcement within two hours of such tow.

(d) A person providing towing services shall not tow a vehicle to a location outside of Kansas without the consent of either:

- (1) The driver or owner of the motor vehicle;
- (2) a motor club of which the driver or owner of the motor vehicle is a member; or
- (3) the insurance company processing a claim with respect to the vehicle or an agent of such insurance company.

Sec. 2. K.S.A. 2022 Supp. 58-817 is hereby amended to read as follows: 58-817. (a) (1) If the occupant is in default for a period of more than 45 days, the operator may enforce the lien by selling the property stored in the leased space for cash. Sale of the property stored on the premises may be conducted online or in person, by public or private proceedings and may also be as a unit or in parcels, or by way of one or more contracts and at any time or place, and on any terms as long as the sale is commercially reasonable. The operator may otherwise dispose of any property that has no commercial value.

(2) The proceeds of such sale shall then be applied to satisfy the lien, with any surplus disbursed as provided in subsection (d).

(3) *If the property subject to the operator's lien is a motor vehicle, watercraft or trailer and the occupant is in default for a period of more than 60 days, the operator may have such property towed from the self-service storage facility. The operator shall not be liable for any damages to the motor vehicle, watercraft or trailer after a towing service takes possession of such property if such towing service has a certificate of public service from the state corporation commission, as provided by K.S.A. 66-1330, and amendments thereto. Towing of a motor vehicle at the direction of the operator shall only be permitted if a city ordinance or county resolution of the city or county where the self-service storage facility is located authorizes the towing of vehicles by a wrecker or towing service, as provided by K.S.A. 8-1103, and amendments thereto. The operator's lien on the motor vehicle, watercraft or trailer shall be extinguished if such property is towed from the self-service storage facility under this subsection.*

(b) Before conducting a sale or authorizing a tow under subsection (a), the operator shall:

(1) Notify the occupant of the default by first-class mail at the occupant's last-known address, and by electronic mail if the occupant has provided an electronic mail address to the operator;

(2) send a second notice of default, not less than seven days after the notice required by subsection (b)(1), by first-class mail to the occupant at the occupant's last-known address, and by electronic mail if the occupant has provided an electronic mail address to the operator. A second notice of default shall include:

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

(B) a statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of release for sale and the date those additional charges shall become due;

(C) a demand for payment of the charges due within a specified time, not less than 10 days after the date of the notice;

(D) a statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold *or, if the contents is a motor vehicle, watercraft or trailer, may be towed* after a specified time; and

(E) the name, street address and telephone number of the operator, or a designated agent whom the occupant may contact to respond to the notice.

(3) At least seven days before the sale, advertise the time, place and terms of the sale in a newspaper of general circulation in the jurisdiction where the sale is to be held or in any other commercially reasonable manner. Such advertisement shall be in the classified section of the newspaper, if notice is placed in the newspaper. If less than three

independent bidders attend the sale in person or view the sale online at the time and place advertised, the manner of advertising the sale shall not be considered to have been commercially reasonable and the sale shall be canceled, rescheduled and readvertised. Further notice to the occupant shall not be required.

(c) At any time before a sale *or a tow* under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

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

(1) Satisfy the lien from the proceeds of the sale; and

(2) hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholders for a period of one year after receipt of proceeds of the sale and satisfaction of the lien. Thereafter, the proceeds remaining after satisfaction of the lien shall be considered abandoned property to be reported and paid to the state treasurer in accordance with the disposition of unclaimed property act.

(e) A purchaser in good faith of any personal property sold under the self-service storage act takes the property free and clear of any rights of:

(1) Persons against whom the lien was valid; and

(2) other lienholders.

(f) If the operator complies with the provisions of the self-service storage act, the operator's liability:

(1) To the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) to other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by the other lien.

(g) If an occupant is in default, the operator may deny the occupant access to the leased space.

(h) Notices to the occupant shall be sent to the occupant at the occupant's last-known address. Notices shall be deemed delivered when deposited with the United States postal service, properly addressed as provided in subsection (b), with postage prepaid.

Sec. 3. K.S.A. 8-1103 and K.S.A. 2022 Supp. 58-817 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House,
and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.