



PROPONENT TESTIMONY

HB 2042

**An Act concerning self-storage rental units;
relating to removal of a motor vehicle, watercraft, or trailer from a self-storage facility.**

**Whitney Damron
On behalf of the
Self Storage Association
www.selfstorage.org**

House Commerce, Labor, and Economic Development Committee

January 25, 2023

Good afternoon, Chairman Tarwater and Members of the Committee:

I am Whitney Damron and I appear before you today in support of HB 2042 on behalf of the Self Storage Association, a national trade organization headquartered in Alexandria, Virginia representing thousands of owners and operators of self-storage facilities in all fifty states. With me today is Paul Davis, who is also a registered lobbyist for the Self Storage Association.

The bill before you would amend the way a self storage operator can have a motor vehicle, watercraft or trailer removed from its property when a default under contract occurs. The change proposed in this bill is consistent with how 45 states already address this matter (see map).

HB 2042 would allow for removal of a motor vehicle by a towing company operating under a certificate of public service issued by the Kansas Corporation Commission under K.S.A. 66-1330 et. seq. under this Act when operating within a city or county that has authorized towing through an ordinance or resolution.

Why are we seeking this change? Many storage operators do not want to go through the state Department of Motor Vehicles process for selling a titled motor vehicle. The process can be cumbersome, time consuming and not a typical transaction that an operator routinely performs for non-titled property. Currently the DMV process is the only option available to an operator to have a motor vehicle removed when a contract default has occurred.

Included with this testimony is a copy of the Kansas Department of Revenue's Self Service Storage Lien Affidavit and the Department's Possessory Lien Affidavit for a Wrecker and/or Towing Service, which will provide the Committee with an idea of the steps necessary to properly remove a motor vehicle from a self storage facility, retain a lien for costs allowed under breach of contract and maintain a valid title for a subsequent owner.

The self storage operator's primary objective is to free up space in order to rent it to another tenant. Once towing occurs under this bill, the operator voluntarily gives up their lien rights to the vehicle. If the property is towed by a towing company, they are required to comply with the process for selling a titled vehicle, which is something towing companies routinely do under current law.

For background, here is how a storage operator gets to this position:

- Customer enters into a contract for storage of a motor vehicle, watercraft, or trailer at a self storage facility.
- Customer defaults on obligations set forth in the rental agreement (e.g., payment for rent).
- Operator has a lien on all stored property as allowed under existing law, including provisions for reasonable late fees and other charges, all set forth in the rental agreement and allowed under current law.
- If the occupant is in default for more than 45 days, the operator may enforce its lien by selling the property through a due process procedure outlined in statute and contract.
- Before property can be sold, the following steps must be taken:
 - o Notify occupant by first class mail at occupant's last known address, and by electronic mail, if provided.
 - o Second notice sent to occupant not less than 7 days after the first notice and by electronic mail, if provided.
 - o Statement of property subject to the lien (e.g., motor vehicle, boat, or trailer).
 - o Charges due, additional charges that may become due before the property is towed.
 - o Demand for payment of charges due within a specified time, which cannot be less than ten (10) days from date of the second notice.
 - o Statement that unless the claim is paid within the time specified, the property may be sold or towed.

Existing law sets out what steps the renter may take to halt the proceedings against their property and other consumer protections as outlined under current law.

In summary, towing of a motor vehicle, watercraft or trailer cannot occur until after at least 45 days of default that includes two notices to the renter with the second notice not less than seven days after the first and a demand for payment not less than ten days before the property can be removed.

As stated earlier, should an operator choose to make use of this provision, they relinquish any right to recovery of any lien under their rental agreement.

We see this change as making Kansas law consistent with the majority of states and allowing for properly certificated towing companies to be contracted for removal as is done on a routine basis for towing vehicles as allowed under city ordinances or county resolutions.

Finally, members of this Committee present three years ago when we proposed a self storage bill with several components, including a towing change, the Kansas Motor Carriers Association expressed opposition due to the way a self storage lien would be prioritized under that legislation. We removed that section due to KMCA concerns and proceeded with the remainder of the bill in 2020.

Since that time, we worked on a revised approach that maintains the priority of lien for the towing company and is consistent with self storage/towing statutes found in a majority of states, which is what we have here in HB 2042. We provided a copy of our language to the KMCA before seeking introduction of this bill and they indicate to us they have no objections to our language.

On behalf of the Self Storage Association I thank you for your consideration of HB 2042 and ask for your favorable consideration.

I am pleased to stand for questions at the appropriate time.

WBD

Attachments

Towing Authorized in Blue



Also Hawaii

Staple Attachments Here

KANSAS
DEPARTMENT OF REVENUE
DIVISION OF VEHICLES
www.kstrevenue.gov

SELF-SERVICE STORAGE
LIEN SALE AFFIDAVIT

COMPLETE THE INFORMATION THAT PERTAINS TO THE LIEN BEING CLAIMED

VIN		Year		Make		Name of Occupant:	
Vehicle Information		Approximate Vehicle Value \$	License Plate Number	State Registered	License Expiration Date		
I, lien claimant, certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked: <input type="checkbox"/> Excess mechanical limits <input type="checkbox"/> Not Actual - Warning: Odometer Discrepancy							
Purchaser Information		Purchased Date	Vehicle Selling Price \$	Name of Purchaser		City State Zip	
Business Information		Business/Claimant's Name Address		City State Zip		Operator's Name	
Lien Information		Date Vehicle Came into Possession/Control		Date Rent was Past Due		Date Lien Fee Assessed	
		Date of Lien Sale	Self-Storage Fee To Date \$	At the Rate of Per <input type="checkbox"/> Day <input type="checkbox"/> Month		Cost of Conducting Lien Sale \$	
		Vehicle was Sold by:		<input type="checkbox"/> Public Proceeding (Auction)		<input type="checkbox"/> Private Proceeding?	

1 The date vehicle came into possession/control has no impact on KSA 58-818.

2 Sale of the property stored on the premises may be by public or private proceedings as long as the sale is commercially reasonable. KSA 58-817 and 84-9-627.

The following items must be ATTACHED to this affidavit (refer to details instruction of second page):

- a) Verification of Ownership, and Lien Holder if applicable;
 - b) Copies of notices sent to occupant/owner and lien holder and proof that second notice was sent restricted mail to the owner/occupant and by certified mail to the lien holder;
 - c) Copy of the newspaper ad; and
 - d) Copy of self storage/rental agreement.
- e) An MVE-1 must be obtained by the person or business listed as purchaser above before going to the county treasurer's motor vehicle office to make application.

I, the undersigned, certify that the occupant/vehicle owner did enter into a self-storage rental agreement which resulted in the storage of the vehicle listed herein and is in default of payment for said rent for more than 45 days. The vehicle was in the occupants/vehicle owner's storage unit at the time the operator prepared for sale. I am aware of and have complied with all requirements of the Self-Service Storage Act as defined in KSA 58-813, including all additional statutes listed therein.

Further, I the undersigned, do hereby certify under penalty of perjury that, I am an operator of the self-service storage business located and doing business in the State of Kansas at the address shown above. That the information contained on this affidavit is true and correct. I accept and take all responsibility for to compliance with KSA 58-813 and statutes listed therein as well as requirements listed in this affidavit, and will be liable for any harm resulting from failure to comply with self-service storage act.

STAPLE Attachments Here

KANSAS
DEPARTMENT OF REVENUE
DIVISION OF VEHICLES
www.kstrevenue.gov

POSSESSORY LIEN AFFIDAVIT
(Wrecker and/or Towing Service)
KSA 8-1103 through 8-1108

Please Type or Print Clearly
THIS FORM MUST BE COMPLETED IN ITS ENTIRETY
Tow Service Name _____ KCC MCID No. _____

Purchaser's Name _____ Address _____ City _____ ST _____ ZIP _____ at _____

TOW REQUESTED/AUTHORIZED BY (Must Check One): Driver Law Enforcement Private Tow
(Action ordinance or resolution)

VEHICLE INFORMATION

Year _____ Make _____ Style _____ VIN _____
Possessor Date _____ Total Tow & Storage _____ Total Expenses of
(Date Towed) _____ Bill Accumulated: \$ _____ Publication and Sale \$ _____
Date of the Public Auction _____ Vehicle Selling Price \$ _____

Does this vehicle meet the definition of a salvage vehicle as per KSA 8-197(B)(2)(A or B)? Yes* NO
If yes, a Salvage, Nonhighway or Nonrepairable Vehicle Affidavit, form TR-13, must be completed and attached by seller.
Definition of a salvage vehicle is on the backside of this form.

IF THE VEHICLE OWNER IS KNOWN: Within 15 days of providing the tow service a notice shall be given to the owner that the vehicle is being held subject to satisfaction of the lien.

Vehicle remaining in the possession of a person providing wrecker or tow service for a period of 30 days after such wrecker or towing service was provided may be sold pay the reasonable or agreed charges for such recovery, transportation, protection, storage or safekeeping of such vehicle and personal property (KSA 8-1103).

THE FOLLOWING REQUIREMENTS OF KSA 8-1104 ARE NEEDED TO DISPOSE OF THIS VEHICLE:

- A. Not more than 30 days after taking possession of the vehicle, apply for a verification of last registered owner and lienholder(s), if any, from the Division of Vehicles. If no Kansas record is found, a multi-state search of registered owners and lienholders must be completed, unless 1. A non-repairable certificate is being applied for in which case form TR-13 must also be attached, or 2. The vehicle is 15 years of age or older.
 - B. Notice of sale shall be mailed by certified mail to the registered owner and any lienholder(s) within 10 days after receipt of the verification of the last owner and lienholder(s), if any, from the division of vehicles. The notice shall state that if the amount due, together with storage, publication, notice and sale cost, is not paid within 15 days from the date of the mailing, the vehicle and personal property will be sold at Public auction.
 - C. At least seven (7) days prior to auction, a notice must be published in a newspaper in the County or City where the sale (public auction) is advertised to take place. The vehicle make, year, and complete identification number as well as the date, time and place of the sale shall be included in the advertisement. Should there be no newspaper published in the county, notice shall be published in a newspaper of general circulation.
- I, the undersigned, hereby certify that I am a towing and recovery service as defined by Kansas law, located and doing business in the state of Kansas at the address shown above. The vehicle listed on this affidavit has remained in my possession since the possessory date shown to the present time. Towing and recovery charges and the storage bill have accumulated on the vehicle and remain unpaid. Therefore, I claim a lien on said vehicle based on the charges listed in this affidavit. Notice was given that the vehicle was to be sold at public auction on the date listed.
- I certify under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct.
- Executed on (date): _____
- Possessory Lienholder's Signature _____
- Handprinted Name of Person Signing Above: _____

Purchaser must make application for title and registration in the local county treasurer's motor vehicle office in the county in