

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 11-0166.01 Duane Gall

SENATE BILL 11-039

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Massey,

Senate Committees
Business, Labor and Technology

House Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING THE CONSEQUENCES OF DEFAULT IN PAYMENTS DUE FOR**
102 **STORAGE OF PERSONAL PROPERTY IN A SELF-STORAGE**
103 **FACILITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In statutes dealing with enforcement of the lien granted to the owner of a self-storage facility in the event of a default in rental payments, the bill makes the following changes:

! Allows use of the tenant's e-mail address, as an alternative

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Am ended 2nd Reading
March 18, 2011

SENATE
3rd Reading Unam ended
February 21, 2011

SENATE
Am ended 2nd Reading
February 18, 2011

to a postal (street) address, for the purpose of giving required notices of default and of the sale or other disposition of the tenant's property.

- ! Construes any dollar limit on the value of property stored in a unit, as stated in the rental agreement, as the total dollar value of all property stored in the unit and as the maximum liability of the owner for any claim.
- ! Eliminates the owner's responsibility to notify the sheriff before selling property to satisfy the lien.
- ! Eliminates the owner's responsibility to advertise a pending sale in a local newspaper, substituting a requirement that the sale be advertised in a "commercially reasonable manner". Deems the advertisement to have been commercially reasonable if at least 3 independent bidders attend the sale.
- ! Allows a boat or vehicle that is subject to state registration to be towed from the self-storage facility if rent is unpaid for 60 days. Absolves the owner of liability for the boat or vehicle once it is given to an independent towing carrier for transport.
- ! Absolves the owner of liability for the misuse of personal information contained in documents, computer hard drives, etc., of which the owner did not have actual knowledge.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 38-21.5-101 (2) and (6), Colorado Revised Statutes,
3 are amended, and the said 38-21.5-101 is further amended BY THE
4 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **38-21.5-101. Definitions.** As used in this article, unless the
6 context otherwise requires:

7 (1.5) "ELECTRONIC MAIL" OR "E-MAIL" MEANS AN ELECTRONIC
8 MESSAGE OR AN EXECUTABLE PROGRAM OR COMPUTER FILE THAT
9 CONTAINS AN IMAGE OF A MESSAGE THAT IS TRANSMITTED BETWEEN TWO
10 OR MORE COMPUTERS OR ELECTRONIC TERMINALS. THE TERM INCLUDES
11 ELECTRONIC MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN
12 COMPUTER NETWORKS.

1 (2) "Last-known address" means that POSTAL address OR E-MAIL
2 ADDRESS provided by the occupant in the latest rental agreement or ~~the~~
3 ~~address provided by the occupant~~ in a subsequent written notice of a
4 change of address.

5 (6) "Rental agreement" means any written agreement or lease
6 ~~which~~ THAT establishes or modifies the terms, conditions, rules, or any
7 other provisions concerning the use and occupancy at a self-service
8 storage facility and ~~which~~ THAT contains a notice stating that all articles
9 stored under the terms of such agreement will be sold or otherwise
10 disposed of if no payment has been received for a continuous thirty-day
11 period. ~~Such~~ THE agreement ~~shall~~ MUST contain a provision directing the
12 occupant to disclose any lienholders with an interest in property that is or
13 will be stored in ~~such~~ THE self-service storage facility.

14 (8) "VEHICLE" MEANS ANY ITEM OF PERSONAL PROPERTY
15 REQUIRED TO BE REGISTERED WITH THE DEPARTMENT OF REVENUE
16 PURSUANT TO SECTION 42-3-103, C.R.S.

17 (9) "VERIFIED MAIL" MEANS ANY METHOD OF MAILING THAT IS
18 OFFERED BY THE UNITED STATES POSTAL SERVICE AND THAT PROVIDES
19 EVIDENCE OF MAILING.

20 (10) "WATERCRAFT" MEANS ANY VESSEL, INCLUDING A PERSONAL
21 WATERCRAFT, AS DEFINED IN SECTION 33-13-102, C.R.S.

22 **SECTION 2.** The introductory portion to 38-21.5-103 (1) and
23 38-21.5-103 (1) (b), (1) (d), (1) (e), (1) (f), (1) (g), and (1) (k), Colorado
24 Revised Statutes, are amended to read:

25 **38-21.5-103. Enforcement of lien.** (1) An owner's lien, as
26 provided for a claim ~~which~~ THAT has become due, may be satisfied as
27 follows:

1 (b) After the occupant has been in default continuously for a
2 ~~period of~~ thirty days, the owner may begin enforcement action if the
3 occupant has been notified in writing. ~~Said~~ THE OWNER SHALL DELIVER
4 THE notice ~~shall be delivered~~ in person or ~~sent by certified mail~~ VERIFIED
5 MAIL OR ELECTRONIC MAIL to the last-known address of the occupant, ~~and~~
6 ~~a copy of said notice shall, at the same time, be sent to the sheriff of the~~
7 ~~county where such self-service storage facility is located~~ AND SHALL
8 PROVIDE THE NOTICE TO any lienholder with an interest in the property to
9 be sold or otherwise disposed of, of whom the owner has knowledge
10 ~~either through the disclosure provision on the rental agreement, or~~
11 ~~through finding a validly filed AS EVIDENCED BY A financing statement in~~
12 ~~the county where the self-service storage facility is located or in the~~
13 ~~county of the occupant's last-known address~~ FILED WITH THE SECRETARY
14 OF STATE, or through THE OWNER'S RECEIPT OF other written notice OF
15 SUCH INTEREST FROM THE LIENHOLDER. ~~shall be included in the notice~~
16 ~~process as provided in this section.~~

17 (d) ~~Any notice made pursuant to this section shall be presumed~~
18 ~~delivered when it is deposited with the United States postal service and~~
19 ~~properly addressed with postage prepaid.~~ IF THE OWNER SENDS NOTICE OF
20 A PENDING SALE OF PROPERTY TO THE OCCUPANT'S LAST-KNOWN E-MAIL
21 ADDRESS AND DOES NOT RECEIVE A RESPONSE, RETURN RECEIPT, OR
22 DELIVERY CONFIRMATION FROM THE SAME E-MAIL ADDRESS, THE OWNER
23 MUST SEND NOTICE OF THE SALE TO THE OCCUPANT BY VERIFIED MAIL TO
24 THE OCCUPANT'S LAST-KNOWN POSTAL ADDRESS BEFORE PROCEEDING
25 WITH THE SALE.

26 (e) ~~(f)~~ After the expiration of the time given in the notice, THE
27 OWNER SHALL ADVERTISE THE SALE OF THE PERSONAL PROPERTY EITHER

1 BY:

2 (I) Publishing an advertisement of the sale or other disposition
3 shall be published once a week for two consecutive weeks in a newspaper
4 of general circulation PERIODICAL THAT CIRCULATES WEEKLY OR MORE
5 FREQUENTLY in the county where the self-service storage facility is
6 located; OR

7 (II) The advertisement shall include: ADVERTISING THE SALE IN
8 ANY OTHER COMMERCIALY REASONABLE MANNER. THE MANNER OF
9 ADVERTISEMENT IS DEEMED COMMERCIALY REASONABLE IF AT LEAST
10 THREE INDEPENDENT BIDDERS ATTEND THE SALE AT THE TIME AND PLACE
11 ADVERTISED. ==

12 ~~(A) A brief and general description of the personal property~~
13 ~~reasonably adequate to permit its identification as provided in~~
14 ~~subparagraph (H) of paragraph (c) of this subsection (1); the address of~~
15 ~~the self-service storage facility and the number, if any, of the space where~~
16 ~~the personal property is located; and the name of the occupant and his~~
17 ~~last-known address;~~

18 ~~(B) The time, place, and manner of the sale or other disposition.~~
19 ~~The sale or other disposition shall take place not sooner than fifteen days~~
20 ~~after the first publication.~~

21 ~~(H) (III) If there is no newspaper of general circulation in the~~
22 ~~county where the self-service storage facility is located, the advertisement~~
23 ~~shall be posted at least ten days before the date of the sale or other~~
24 ~~disposition in not less than six conspicuous places in the neighborhood~~
25 ~~where the self-service storage facility is located. AS USED IN THIS~~
26 ~~PARAGRAPH (e), "INDEPENDENT BIDDER" MEANS A BIDDER WHO IS NOT~~
27 ~~RELATED TO AND WHO HAS NO CONTROLLING INTEREST IN, OR COMMON~~

1 PECUNIARY INTEREST WITH, THE OWNER OR ANY OTHER BIDDER.

2 (f) ~~Any sale or other disposition of the personal property shall~~
3 ~~conform to the terms of the notification as provided for in this section.~~

4 (g) (I) Any sale or other disposition of the personal property shall
5 MUST be held at the self-service storage facility or at the nearest suitable
6 place to where the personal property is held or stored.

7 (II) IF THE PROPERTY UPON WHICH THE LIEN IS CLAIMED IS A
8 VEHICLE OR WATERCRAFT, AND RENT AND OTHER CHARGES RELATED TO
9 THE PROPERTY REMAIN UNPAID OR UNSATISFIED FOR SIXTY DAYS:

10 (A) THE OWNER MAY HAVE THE PROPERTY TOWED FROM THE
11 SELF-SERVICE STORAGE FACILITY BY AN INDEPENDENT TOWING CARRIER
12 HOLDING CURRENT AND VALID OPERATING AUTHORITY FROM THE
13 COLORADO PUBLIC UTILITIES COMMISSION; AND

14 (B) THE OWNER IS NOT LIABLE FOR THE PROPERTY, OR FOR ANY
15 DAMAGES TO THE PROPERTY, ONCE THE TOWING CARRIER TAKES
16 POSSESSION OF THE PROPERTY.

17 (III) THE OWNER IS NOT LIABLE FOR IDENTITY THEFT OR OTHER
18 HARM RESULTING FROM THE MISUSE OF INFORMATION CONTAINED IN
19 DOCUMENTS OR ELECTRONIC STORAGE MEDIA:

20 (A) THAT ARE PART OF THE OCCUPANT'S PROPERTY SOLD OR
21 OTHERWISE DISPOSED OF; AND

22 (B) OF WHICH THE OWNER DID NOT HAVE ACTUAL KNOWLEDGE.

23 (k) NOTHING IN THIS SECTION AFFECTS THE RIGHTS AND
24 LIABILITIES OF THE OWNER OR THE OCCUPANT IF:

25 (I) If The requirements of this article are not satisfied;

26 (II) if The sale of the personal property is not in conformity with
27 the notice of sale; or if

1 (III) There is a willful violation of this article. ~~nothing in this~~
2 ~~section affects the rights and liabilities of the owner, the occupant, or any~~
3 ~~other person.~~

4 **SECTION 3.** 38-21.5-102, Colorado Revised Statutes, is
5 amended to read:

6 **38-21.5-102. Lien established.** Where a rental agreement, as
7 defined in section 38-21.5-101 (6), is entered into between the owner and
8 the occupant, the owner of a self-service storage facility and his or her
9 heirs, executors, administrators, successors, and assigns have a lien upon
10 all personal property located at the self-service storage facility for rent,
11 labor, or other charges, present or future, in relation to the personal
12 property and for expenses necessary for its preservation or expenses
13 reasonably incurred in its sale or other disposition pursuant to this article.
14 The lien attaches as of the date the personal property is brought to the
15 self-service storage facility and continues so long as the owner retains
16 possession and until the default is corrected, or a sale is conducted, or the
17 property is otherwise disposed of to satisfy the lien. Prior to taking
18 enforcement action pursuant to section 38-21.5-103 (1) (b), the owner
19 shall determine if ~~in the county where the self-service storage facility is~~
20 ~~located and in the county of the occupant's last-known address, a~~
21 ~~financing statement CONCERNING THE PROPERTY TO BE SOLD OR~~
22 ~~OTHERWISE DISPOSED OF HAS BEEN filed WITH THE SECRETARY OF STATE~~
23 ~~in accordance with part 5 of article 9 of title 4, C.R.S. has been filed~~
24 ~~concerning the property to be sold or otherwise disposed of.~~

25 ==
26 **SECTION 4. Act subject to petition - effective date -**
27 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day

1 following the expiration of the ninety-day period after final adjournment
2 of the general assembly (August 10, 2011, if adjournment sine die is on
3 May 11, 2011); except that, if a referendum petition is filed pursuant to
4 section 1 (3) of article V of the state constitution against this act or an
5 item, section, or part of this act within such period, then the act, item,
6 section, or part shall not take effect unless approved by the people at the
7 general election to be held in November 2012 and shall take effect on the
8 date of the official declaration of the vote thereon by the governor.

9 (2) The provisions of this act shall apply to rental agreements
10 made or renewed on or after the applicable effective date of this act.