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

#### REREVISED

This Version Includes All Amendments Adopted in the Second House SENATE BILL 11-039

LLS NO. 11-0166.01 Duane Gall

#### SENATE SPONSORSHIP

#### Tochtrop,

Massey,

### HOUSE SPONSORSHIP

Senate Committees Business, Labor and Technology House Committees Judiciary

# A BILL FOR AN ACT

101	<b>CONCERNING TH</b>	E CO	NSEQUENCES	S OF DEFAULT	[ IN ]	PAY	MENTS DUE FOR
102	STORAGE	OF	PERSONAL	PROPERTY	IN	A	SELF-STORAGE

103 FACILITY.

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### **Bill Summary**

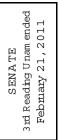
(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

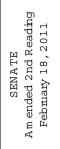
In statutes dealing with enforcement of the lien granted to the owner of a self-storage facility in the event of a default in rental payments, the bill makes the following changes:

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

HOUSE 3rd Reading Unam ended M arch 21, 2011

HOUSE Am ended 2nd Reading M arch 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.

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

SECTION 2. The introductory portion to 38-21.5-103 (1) and
 38-21.5-103 (1) (b), (1) (d), (1) (e), (1) (f), (1) (g), and (1) (k), Colorado
 <u>Revised Statutes, are amended to read:</u>

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:

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1 (b) After the occupant has been in default continuously for a2 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 MAIL OR ELECTRONIC MAIL to the last-known address of the occupant, and 5 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 properly addressed with postage prepaid. IF THE OWNER SENDS NOTICE OF 19 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

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I	<u>BY:</u>					
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 COMMERCIALLY REASONABLE MANNER. THE MANNER OF					
9	ADVERTISEMENT IS DEEMED COMMERCIALLY 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 (II) 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	(III) (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						

26 <u>PARAGRAPH (e), "INDEPENDENT BIDDER" MEANS A BIDDER WHO IS NOT</u>

27 RELATED TO AND WHO HAS NO CONTROLLING INTEREST IN, OR COMMON

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#### 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 <u>CARRIER</u>
 12 <u>HOLDING CURRENT AND VALID OPERATING AUTHORITY FROM THE</u>
 13 <u>COLORADO PUBLIC UTILITIES COMMISSION;</u> 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

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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:

**38-21.5-102.** Lien established. Where a rental agreement, as 6 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.

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

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following the expiration of the ninety-day period after final adjournment 1 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 item, section, or part of this act within such period, then the act, item, 5 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

made or renewed on or after the applicable effective date of this act.