

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0166.01 Duane Gall

SENATE BILL 11-039

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SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Massey,

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Senate Committees  
Business, Labor and Technology

House Committees

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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.

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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

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.*

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.

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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, and the said 38-21.5-103 is further  
25 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

1 follows:

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

16 (d) Any notice made pursuant to this section ~~shall be~~ IS presumed  
17 delivered when it is deposited with the United States postal service and  
18 properly addressed with postage prepaid OR SENT BY ELECTRONIC MAIL TO  
19 THE LAST-KNOWN ADDRESS PROVIDED BY THE OCCUPANT.

20 (e) ~~(f)~~ After the expiration of the time given in the notice, ~~an~~  
21 ~~advertisement of the sale or other disposition shall be published once a~~  
22 ~~week for two consecutive weeks in a newspaper of general circulation in~~  
23 ~~the county where the self-service storage facility is located. The~~  
24 ~~advertisement shall include:~~ THE OWNER SHALL ADVERTISE THE SALE OF  
25 THE PERSONAL PROPERTY IN A COMMERCIALY REASONABLE MANNER.  
26 THE MANNER OF ADVERTISEMENT IS DEEMED COMMERCIALY  
27 REASONABLE IF AT LEAST THREE INDEPENDENT BIDDERS ATTEND THE SALE

1 AT THE TIME AND PLACE ADVERTISED.

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

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

11 ~~(H) If there is no newspaper of general circulation in the county~~  
12 ~~where the self-service storage facility is located, the advertisement shall~~  
13 ~~be posted at least ten days before the date of the sale or other disposition~~  
14 ~~in not less than six conspicuous places in the neighborhood where the~~  
15 ~~self-service storage facility is located.~~

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

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

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

24 (A) THE OWNER MAY HAVE THE PROPERTY TOWED FROM THE  
25 SELF-SERVICE STORAGE FACILITY BY AN INDEPENDENT TOWING CARRIER;  
26 AND

27 (B) THE OWNER IS NOT LIABLE FOR THE PROPERTY, OR FOR ANY

1 DAMAGES TO THE PROPERTY, ONCE THE TOWING CARRIER TAKES  
2 POSSESSION OF THE PROPERTY.

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

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

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

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

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

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

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

17 (2) IF THE RENTAL AGREEMENT CONTAINS A LIMIT ON THE VALUE  
18 OF PROPERTY STORED IN THE OCCUPANT'S SPACE, SUCH LIMIT CONSTITUTES  
19 THE MAXIMUM VALUE OF THE STORED PROPERTY AND THE MAXIMUM  
20 LIABILITY OF THE OWNER FOR ANY CLAIM.

21 **SECTION 3. Act subject to petition - effective date -**  
22 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
23 following the expiration of the ninety-day period after final adjournment  
24 of the general assembly (August 10, 2011, if adjournment sine die is on  
25 May 11, 2011); except that, if a referendum petition is filed pursuant to  
26 section 1 (3) of article V of the state constitution against this act or an  
27 item, section, or part of this act within such period, then the act, item,

1 section, or part shall not take effect unless approved by the people at the  
2 general election to be held in November 2012 and shall take effect on the  
3 date of the official declaration of the vote thereon by the governor.

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