

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 11-039

BY SENATOR(S) Tochtrop, Williams S.;
also REPRESENTATIVE(S) Massey, Becker, Fields, Kerr J., Labuda.

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

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

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

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

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

(2) "Last-known address" means that POSTAL address OR E-MAIL

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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.

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

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

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

(10) "WATERCRAFT" MEANS ANY VESSEL, INCLUDING A PERSONAL 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 Revised Statutes, are amended to read:

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

(b) After the occupant has been in default continuously for a ~~period~~ of thirty days, the owner may begin enforcement action if the occupant has been notified in writing. ~~Said~~ THE OWNER SHALL DELIVER 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 a copy of said notice shall, at the same time, be sent to the sheriff of the county where such self-service storage facility is located~~ AND SHALL PROVIDE THE NOTICE

TO any lienholder with an interest in the property to be sold or otherwise disposed of, of whom the owner has knowledge ~~either through the disclosure provision on the rental agreement, or through finding a validly filed~~ AS EVIDENCED BY A financing statement ~~in the county where the self-service storage facility is located or in the county of the occupant's last-known address~~ FILED WITH THE SECRETARY OF STATE, or through THE OWNER'S RECEIPT OF other written notice OF SUCH INTEREST FROM THE LIENHOLDER. ~~shall be included in the notice process as provided in this section.~~

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

(e) (I) After the expiration of the time given in the notice, THE OWNER SHALL ADVERTISE THE SALE OF THE PERSONAL PROPERTY EITHER BY:

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

~~(B) The advertisement shall include:~~ ADVERTISING THE SALE IN ANY OTHER COMMERCIALY REASONABLE MANNER. THE MANNER OF ADVERTISEMENT IS DEEMED COMMERCIALY REASONABLE IF AT LEAST THREE INDEPENDENT BIDDERS ATTEND THE SALE AT THE TIME AND PLACE ADVERTISED.

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

address;

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

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

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

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

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

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

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

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

(A) THAT ARE PART OF THE OCCUPANT'S PROPERTY SOLD OR

OTHERWISE DISPOSED OF; AND

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

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

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

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

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

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

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

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

following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to 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, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

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

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO