

**Senator J. Stuart Adams** proposes the following substitute bill:

**STORAGE UNIT AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: Ryan D. Wilcox

---

**LONG TITLE**

**General Description:**

This bill amends the enforcement procedures that apply to liens described in Title 38, Chapter 8, Self-Service Storage Facilities, against property stored in self-service storage facilities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ allows an owner of a self-service storage facility to send notices related to the enforcement of a lien described in Title 38, Chapter 8, Self-Service Storage Facilities, by email;
- ▶ provides that an owner may advertise a sale of personal property to enforce its lien in any commercially reasonable manner;
- ▶ allows an owner to have a vehicle towed from the self-storage facility if the occupant has been in default for a continuous 60-day period; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **38-8-1**, as last amended by Laws of Utah 2009, Chapter 356

30 **38-8-2**, as last amended by Laws of Utah 2000, Chapter 252

31 **38-8-3**, as last amended by Laws of Utah 2011, Chapter 102

32 **38-8-4**, as enacted by Laws of Utah 1981, Chapter 171

33 ENACTS:

34 **38-8-3.5**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **38-8-1** is amended to read:

38 **38-8-1. Definitions.**

39 As used in this chapter:

40 (1) "Certified mail" means:

41 (a) a method of mailing that is offered by the United States Postal Service and provides  
42 evidence of mailing; or

43 (b) a method of mailing that is accompanied by a certificate of mailing executed by the  
44 individual who caused the notice to be mailed.

45 ~~(1)~~ (2) "Default" means the failure to perform in a timely manner any obligation or  
46 duty ~~set forth~~ described in this chapter or the rental agreement.

47 (3) "Email" means an electronic message or an executable program or computer file  
48 that contains an image of a message that is transmitted between two or more computers or  
49 electronic terminals, including electronic messages that are transmitted within or between  
50 computer networks.

51 (4) "Independent bidder" means a bidder that is not related to, and shares no pecuniary  
52 interest with, the owner or any other bidder present at the auction.

53 ~~(2)~~ (5) "Last known address" means ~~that~~ the postal address provided by ~~the~~ an  
54 occupant in ~~the latest~~ a rental agreement or ~~the~~, if the occupant provides a subsequent  
55 written notice of a change of address, the postal address provided ~~by the occupant in a~~  
56 subsequent] in the written notice of a change of address.

57           (6) "Last known email address" means the email address provided by an occupant in a  
58 rental agreement or, if the occupant provides a subsequent written notice of a change of  
59 address, the email address provided in the written notice of a change of address.

60           ~~[(3)]~~ (7) "Occupant" means a person, or ~~[his]~~ the person's sublessee, successor, or  
61 assignee, entitled to the use of ~~[the]~~ a storage space at a self-service storage facility under a  
62 rental agreement, to the exclusion of others.

63           ~~[(4)]~~ (8) "Owner" means:

64           (a) the owner, operator, lessor, or sublessor of a self-service storage facility~~[-his]~~;

65           (b) an agent[-] of a person described in Subsection (11)(a); or

66           (c) any other person authorized by ~~[him]~~ a person described in Subsection (11)(a) to  
67 manage the facility or to receive rent from an occupant under a rental agreement.

68           ~~[(5)]~~ (9) "Personal property" means movable property not affixed to land and includes~~[-~~  
69 ~~but is not limited to;~~ goods, merchandise, and household items.

70           ~~[(6)]~~ (10) "Rental agreement" means any written agreement or lease ~~[which]~~ that  
71 establishes or modifies the terms, conditions, rules, or any other provisions ~~[concerning]~~  
72 relating to the use and occupancy of a unit or space at a self-service storage facility ~~[and which~~  
73 ~~contains a notice stating that all articles stored under the terms of the agreement will be sold or~~  
74 ~~otherwise disposed of if no payment has been received for a continuous 30-day period. The~~  
75 ~~agreement shall contain a provision directing the occupant to disclose any lienholders with an~~  
76 ~~interest in property that is or will be stored in the self-service storage facility].~~

77           ~~[(7)]~~ (11) (a) "Self-service storage facility" means ~~[any]~~ real property designed and  
78 used for the purpose of renting or leasing individual storage space to occupants who ~~[are to]~~  
79 have access to the facility for the purpose of storing ~~[and removing]~~ personal property. ~~[No~~  
80 ~~occupant may use a self-service storage facility for residential purposes. The owner of a~~  
81 ~~self-service]~~

82           (b) "Self-service storage facility" ~~[is]~~ does not include:

83           (i) a warehouse ~~[as used]~~ described in Section 70A-7a-102~~[- If an owner issues any]~~;

84           (ii) real property used for residential purposes; or

85           (iii) a facility that issues a warehouse receipt, bill of lading, or other document of title  
86 for the personal property stored~~[- the owner and the occupant are subject to the provisions of~~  
87 ~~the Uniform Commercial Code, and the provisions of this chapter do not apply]~~ at the facility.

88 (12) "Vehicle" means personal property required to be registered with the Motor  
89 Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22,  
90 Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

91 Section 2. Section **38-8-2** is amended to read:

92 **38-8-2. Lien against stored property -- Attachment and duration -- Search for**  
93 **financing statement prerequisite to enforcement of lien.**

94 (1) [~~Where~~] When an owner and an occupant enter into a rental agreement, [as defined  
95 in Subsection 38-8-1(6), is entered into between the owner and the occupant,] the owner [~~of the~~  
96 ~~self-service storage facility]~~ and the owner's heirs, executors, administrators, successors, and  
97 assigns have a lien upon all personal property located at the self-service storage facility for rent,  
98 labor, or other charges, present or future, in relation to the personal property and for expenses  
99 necessary for its preservation or expenses reasonably incurred in its sale [~~or other disposition]~~  
100 under this chapter.

101 (2) The lien described in Subsection (1) attaches [~~as of~~] on the date the personal  
102 property is brought to the self-service storage facility and continues so long as the owner  
103 retains possession and until any default is corrected[;] or a sale pursuant to a default is  
104 conducted[; ~~or the property is otherwise disposed of]~~ to satisfy the lien.

105 (3) A rental agreement shall state that:

106 (a) an owner is entitled to sell all personal property stored at the self-service storage  
107 facility pursuant to the rental agreement if the occupant is in default for a continuous 30-day  
108 period; and

109 (b) the occupant shall disclose to the owner any lienholders that have an interest in the  
110 property that will be stored at the self-service storage facility.

111 (4) If a rental agreement states a maximum, aggregate value of the personal property  
112 that may be stored at the occupant's storage space, the occupant may not assert that the value of  
113 the personal property actually stored at the occupant's storage space exceeds the maximum  
114 amount stated in the rental agreement.

115 [~~(3)~~] (5) (a) Before [~~taking~~] an owner takes enforcement action under Section 38-8-3,  
116 the owner shall determine if a financing statement filed in accordance with Title 70A, Chapter  
117 9a, Part 5, Filing, has been filed with the Division of Corporations and Commercial Code  
118 concerning the property to be sold [~~or otherwise disposed of~~].

119 (b) A security interest evidenced by a financing statement filed in accordance with  
120 Title 70A, Chapter 9a, Part 5, Filing, has priority over the lien provided by this section.

121 Section 3. Section **38-8-3** is amended to read:

122 **38-8-3. Enforcement of lien -- Notice requirements -- Sale procedure and effect.**

123 ~~[A claim of an owner which has become due against an occupant and which is secured  
124 by the owner's lien may be satisfied as follows:]~~

125 ~~[(1) No enforcement action may be taken by the owner until the occupant has been in  
126 default continuously for a period of 30 days:]~~

127 ~~[(2) After the occupant has been in default continuously for a period of 30 days, the  
128 owner may begin enforcement action if the occupant has been given notice in writing. The  
129 notice shall be delivered in person or sent by certified mail to the last known address of the  
130 occupant. If the property to be sold in an enforcement action includes a vehicle, vessel, or  
131 outboard motor, as those terms are defined in Section 41-1a-102, or an aircraft as defined in  
132 Section 72-10-102, the notice shall also be delivered to the last known address of the registered  
133 owner and any lienholder, as disclosed by the records of the Motor Vehicle Division. A copy  
134 of the notice shall, at the same time, be sent to the sheriff of the county where the self-service  
135 storage facility is located. Any lienholder with an interest in the property to be sold or  
136 otherwise disposed of, of whom the owner has knowledge either through the disclosure  
137 provision on the rental agreement or through the existence of a validly filed and perfected  
138 UCC-1 financing statement with the Division of Corporations and Commercial Code, or  
139 through other written notification, shall be included in the notice process as set forth in this  
140 section:]~~

141 (1) An owner may enforce a lien described in Section 38-8-2 against an occupant if:

142 (a) the occupant is in default for a continuous 30-day period; and

143 (b) the owner provides written notice of the owner's intent to enforce the lien, in  
144 accordance with the requirements of this section, to:

145 (i) the occupant;

146 (ii) each lienholder disclosed by the occupant under Subsection 38-8-2(3)(b);

147 (iii) each person that has filed a valid financing statement with the Division of  
148 Corporations and Commercial Code; and

149 (iv) each person identified as a lienholder in the records of the Motor Vehicle Division.

150 (2) An owner shall provide the written notice described in Subsection (1)(b):  
151 (a) in person;  
152 (b) by certified mail, to the person's last known address; or  
153 (c) subject to Subsection (3), by email, to the person's last know email address.  
154 (3) If an owner sends a notice described in Subsection (2) by email and does not  
155 receive a response, return receipt, or delivery confirmation from the email address to which the  
156 notice was sent within three business days after the day on which the notice was sent, the  
157 owner shall deliver the notice in person or by certified mail to the person's last known address.

158 ~~[(3)]~~ (4) ~~[This]~~ A written notice described in Subsection (1)(b) shall include:

159 (a) an itemized statement of the owner's claim showing the sum due at the time of the  
160 notice and the date when the sum became due;

161 (b) a brief ~~[and general]~~ description of the personal property subject to the lien~~[-which~~  
162 ~~description shall be reasonably adequate to permit the person notified to identify the property;~~  
163 ~~except that any container including, but not limited to, a trunk, valise, or box that is] that~~  
164 permits the person to identify the property, unless the property is locked, fastened, sealed, [or]  
165 tied, or otherwise stored in a manner [which deters immediate access to its contents may be  
166 described as such without describing its contents] that prevents immediate identification of the  
167 property;

168 (c) ~~if permitted by the terms of the rental agreement,~~ a ~~[notification of denial of] notice~~  
169 that the occupant may not access [to] the occupant's personal property[-if such denial is  
170 permitted under the terms of the rental agreement, which notification shall provide] until the  
171 occupant complies with the requirements described in Subsection (9);

172 (d) the name, street address, and telephone number of the owner ~~[or his designated~~  
173 ~~agent whom] or the individual~~ the occupant may contact to respond to the notification;

174 ~~[(d)]~~ (e) a demand for payment within a specified time not less than 15 days after  
175 ~~[delivery of the notice] the day on which the notice is delivered; and~~

176 ~~[(e)]~~ (f) a conspicuous statement that, unless the claim is paid within the time stated in  
177 the notice, the personal property will be advertised for sale ~~[or other disposition]~~ and will be  
178 sold ~~[or otherwise disposed of]~~ at a specified time and place.

179 ~~[(4)]~~ (5) ~~[Any]~~ A notice [made] under this section shall be presumed delivered when it  
180 is deposited with the United States Postal Service and properly addressed with postage prepaid.

181           ~~[(5)]~~ (6) (a) After the expiration of the time given in the notice, an advertisement of the  
182 sale ~~[or other disposition]~~ of the personal property subject to the lien shall be ~~[published]:~~

183           (i) ~~[(A) if there is a newspaper of general circulation in the county where the~~  
184 ~~self-service storage facility is located;]~~ published once a week for two consecutive weeks in a  
185 newspaper of general circulation in ~~[that]~~ the county where the self-service storage facility is  
186 located; or

187           ~~[(B) if there is not a newspaper of general circulation in the county where the~~  
188 ~~self-service storage facility is located, by posting the advertisement of sale or other disposition~~  
189 ~~in not less than six conspicuous places in the neighborhood where the self-service storage~~  
190 ~~facility is located; and]~~

191           (ii) advertised in any other commercially reasonable manner.

192           ~~[(ii) in accordance with Section 45-1-101 for two weeks.]~~

193           (b) A manner of advertising described in Subsection (6)(a)(ii) is commercially  
194 reasonable if:

195           (i) at least three independent bidders attend the sale at the time and place advertised; or

196           (ii) in the case of a sale that occurs on an online auction website, at least three  
197 independent bidders bid on the property during a sale that takes place at the time and website  
198 advertised.

199           ~~[(b)]~~ (c) ~~[The]~~ An advertisement described in Subsection (5)(a) shall include:

200           (i) a brief and general description of the personal property reasonably adequate to  
201 permit its identification ~~[as provided for in Subsection (3)(b)];~~

202           (ii) the address of the self-service storage facility and the number, if any, of the space  
203 where the personal property is located; [and]

204           (iii) the name of the occupant and [his] the occupant's last known address; and

205           ~~[(ii)]~~ (iv) the time, place, and manner of the sale [or other disposition, which sale or  
206 other disposition], which shall take place not sooner than 15 days after the [first publication]  
207 day on which the sale is first advertised under Subsection (6)(a).

208           ~~[(6)]~~ (7) ~~[Any]~~ A sale ~~[or other disposition]~~ of the personal property shall conform to  
209 the terms of the notice provided for in this section.

210           ~~[(7)]~~ (8) ~~[Any]~~ A sale ~~[or other disposition]~~ of the personal property shall be held at the  
211 self-service storage facility or at the nearest suitable place to where the personal property is

212 held or stored.

213 ~~[(8)]~~ (9) Before ~~[any]~~ a sale ~~[or other disposition]~~ of personal property under this  
214 section, the occupant may pay the amount necessary to satisfy the lien and the reasonable  
215 expenses incurred under this section and thereby redeem the personal property; upon receipt of  
216 this payment, the owner shall return the personal property, and thereafter the owner shall have  
217 no liability to any person with respect to that personal property.

218 ~~[(9)]~~ (10) A purchaser in good faith of the personal property sold to satisfy a lien as  
219 provided for in this chapter takes the property free of any rights of persons against whom the  
220 lien was valid and free of any rights of a secured creditor, despite noncompliance by the owner  
221 with the requirements of this section.

222 ~~[(10)]~~ (11) In the event of a sale under this section, the owner may satisfy ~~[his]~~ the lien  
223 for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the  
224 prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in  
225 good faith and is conducted in a reasonable manner, the owner shall not be subject to any  
226 surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if  
227 any, for delivery to the occupant, lienholder, or other person in interest; if the occupant,  
228 lienholder, or other person in interest does not claim the balance of the proceeds within one  
229 year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed  
230 property with no further claim against the owner.

231 ~~[(11)]~~ (12) If the requirements of this chapter are not satisfied, if the sale of the  
232 personal property is not in conformity with the notice of sale, or if there is a willful violation of  
233 this chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or  
234 any other person.

235 Section 4. Section **38-8-3.5** is enacted to read:

236 **38-8-3.5. Right to tow certain vehicles subject to lien.**

237 (1) If the property subject to a lien described in Section 38-3-2 is a vehicle, the  
238 occupant is in default for a continuous 60-day period, and the owner chose not to sell the  
239 vehicle under Section 38-8-3, the owner may have the vehicle towed from the self-storage  
240 facility by an independent towing carrier that is certified by the Department of Transportation  
241 as described in Section 72-9-602.

242 (2) Within one day after the day on which a vehicle is towed under Subsection (1), the

243 owner shall send written notice by certified mail, postage prepaid, to the occupant's last known  
244 address that states:

245 (a) the date the vehicle was towed; and

246 (b) the address and telephone number of the person that towed the vehicle.

247 (3) An owner that has a vehicle towed under Subsection (1) is not liable for any  
248 damage that occurs to the vehicle after the independent towing carrier takes possession of the  
249 vehicle.

250 Section 5. Section **38-8-4** is amended to read:

251 **38-8-4. Posting of notice.**

252 Each owner acting under this chapter shall keep posted in a prominent place in ~~[his]~~ the  
253 owner's office at all times a notice [which] that reads as follows:

254 "All articles stored ~~[by]~~ under a rental agreement, ~~[and]~~ for which charges have not  
255 ~~[having]~~ been paid for 30 days, will be sold ~~[or otherwise disposed of]~~ to pay charges. If this  
256 business does not sell a vehicle stored under a rental agreement, it will be towed from the  
257 self-storage facility after 60 days of nonpayment."