

ENFORCEMENT OF LIENS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies a provision relating to the enforcement of storage facility liens.

Highlighted Provisions:

This bill:

► requires a notice of a lien enforcement action involving the sale of a ~~§~~ [motor] ~~§~~ vehicle,

vessel, ~~§~~ [or] ~~§~~ outboard motor ~~§~~ , or aircraft ~~§~~ to be sent to the last known address of the registered

owner ~~§~~ and lienholder ~~§~~ , as disclosed by the records of the Motor Vehicle Division.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-8-3, as last amended by Laws of Utah 2009, First Special Session, Chapter 5

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

Section 1. Section **38-8-3** is amended to read:

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

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



28 (1) No enforcement action may be taken by the owner until the occupant has been in
 29 default continuously for a period of 30 days.

30 (2) After the occupant has been in default continuously for a period of 30 days, the
 31 owner may begin enforcement action if the occupant has been given notice in writing. The
 32 notice shall be delivered in person or sent by certified mail to the last known address of the
 33 occupant~~[, and a]~~. If the property to be sold in an enforcement action includes a ~~Œ~~→ [motor] ←~~Œ~~
 33a vehicle,
 34 vessel, or outboard motor, ~~Œ~~→ as those terms are defined in Section 41-1a-102, or an aircraft as
 34a defined in Section 72-10-102, ←~~Œ~~ the notice shall also be delivered to the last known address of the
 35 registered owner ~~Œ~~→ and any lienholder ←~~Œ~~ , as disclosed by the records of the Motor Vehicle
 35a Division. A copy of the
 36 notice shall, at the same time, be sent to the sheriff of the county where the self-service storage
 37 facility is located. Any lienholder with an interest in the property to be sold or otherwise
 38 disposed of, of whom the owner has knowledge either through the disclosure provision on the
 39 rental agreement or through the existence of a validly filed and perfected UCC-1 financing
 40 statement with the Division of Corporations and Commercial Code, or through other written
 41 notification, shall be included in the notice process as set forth in this section.

42 (3) This notice shall include:

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

45 (b) a brief and general description of the personal property subject to the lien, which
 46 description shall be reasonably adequate to permit the person notified to identify the property;
 47 except that any container including, but not limited to, a trunk, valise, or box that is locked,
 48 fastened, sealed, or tied in a manner which deters immediate access to its contents may be
 49 described as such without describing its contents;

50 (c) a notification of denial of access to the personal property, if such denial is permitted
 51 under the terms of the rental agreement, which notification shall provide the name, street
 52 address, and telephone number of the owner or his designated agent whom the occupant may
 53 contact to respond to the notification;

54 (d) a demand for payment within a specified time not less than 15 days after delivery of
 55 the notice; and

56 (e) a conspicuous statement that, unless the claim is paid within the time stated in the
 57 notice, the personal property will be advertised for sale or other disposition and will be sold or
 58 otherwise disposed of at a specified time and place.

59 (4) Any notice made under this section shall be presumed delivered when it is
60 deposited with the United States postal service and properly addressed with postage prepaid.

61 (5) (a) After the expiration of the time given in the notice, an advertisement of the sale
62 or other disposition shall be published:

63 (i) (A) if there is a newspaper of general circulation in the county where the
64 self-service storage facility is located, once a week for two consecutive weeks in a newspaper
65 of general circulation in that county; or

66 (B) if there is not a newspaper of general circulation in the county where the
67 self-service storage facility is located, by posting the advertisement of sale or other disposition
68 in not less than six conspicuous places in the neighborhood where the self-service storage
69 facility is located; and

70 (ii) in accordance with Section 45-1-101 for two weeks.

71 (b) The advertisement described in Subsection (5)(a) shall include:

72 (i) a brief and general description of the personal property reasonably adequate to
73 permit its identification as provided for in Subsection (3)(b); the address of the self-service
74 storage facility and the number, if any, of the space where the personal property is located; and
75 the name of the occupant and his last known address; and

76 (ii) the time, place, and manner of the sale or other disposition, which sale or other
77 disposition shall take place not sooner than 15 days after the first publication.

78 (6) Any sale or other disposition of the personal property shall conform to the terms of
79 the notice provided for in this section.

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

83 (8) Before any sale or other disposition of personal property under this section, the
84 occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred
85 under this section and thereby redeem the personal property; upon receipt of this payment, the
86 owner shall return the personal property, and thereafter the owner shall have no liability to any
87 person with respect to that personal property.

88 (9) A purchaser in good faith of the personal property sold to satisfy a lien as provided
89 for in this chapter takes the property free of any rights of persons against whom the lien was

90 valid and free of any rights of a secured creditor, despite noncompliance by the owner with the
91 requirements of this section.

92 (10) In the event of a sale under this section, the owner may satisfy his lien for the
93 proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the prior
94 lienholder are automatically transferred to the proceeds of the sale; if the sale is made in good
95 faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge
96 for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for
97 delivery to the occupant, lienholder, or other person in interest; if the occupant, lienholder, or
98 other person in interest does not claim the balance of the proceeds within one year of the date
99 of sale, it shall become the property of the Utah state treasurer as unclaimed property with no
100 further claim against the owner.

101 (11) If the requirements of this chapter are not satisfied, if the sale of the personal
102 property is not in conformity with the notice of sale, or if there is a willful violation of this
103 chapter, nothing in this section affects the rights and liabilities of the owner, occupant, or any
104 other person.

Legislative Review Note
as of 1-17-11 10:05 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 237

SHORT TITLE: **Enforcement of Liens**

SPONSOR: **Fisher, Julie**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

