

## SB0182S02 compared with SB0182S01

~~{deleted text}~~ shows text that was in SB0182S01 but was deleted in SB0182S02.

inserted text shows text that was not in SB0182S01 but was inserted into SB0182S02.

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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

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#### 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}~~specifies the maximum amount a newspaper can charge an owner ~~{may}~~to advertise a sale ~~{of personal property to enforce its lien in any~~

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~~commercially reasonable manner~~ under this chapter;

- ▶ 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:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

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

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

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

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

As used in this chapter:

(1) "Certified mail" means:

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

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

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

(3) "Email" 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, including electronic messages that are transmitted within or between

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computer networks.

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

‡ [(2)] ~~(5)(4)~~ "Last known address" means ~~[that]~~ the postal address provided by ~~[the]~~ an occupant in ~~[the latest]~~ a rental agreement or [the], if the occupant provides a subsequent written notice of a change of address, the postal address provided ~~[by the occupant in a subsequent]~~ in the written notice of a change of address.

~~(6)(5)~~ "Last known email address" means the email address provided by an occupant in a rental agreement or, if the occupant provides a subsequent written notice of a change of address, the email address provided in the written notice of a change of address.

[(3)] ~~(7)(6)~~ "Occupant" means a person, or ~~[his]~~ the person's sublessee, successor, or assignee, entitled to the use of ~~[the]~~ a storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

[(4)] ~~(8)(7)~~ "Owner" means:

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

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

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

[(5)] ~~(9)(8)~~ "Personal property" means movable property not affixed to land and includes~~[-, but is not limited to,]~~ goods, merchandise, and household items.

[(6)] ~~(10)(9)~~ "Rental agreement" means any written agreement or lease [which] that establishes or modifies the terms, conditions, rules, or any other provisions [concerning] relating to the use and occupancy of a unit or space at a self-service storage facility [and which contains a notice stating that all articles stored under the terms of the agreement will be sold or otherwise disposed of if no payment has been received for a continuous 30-day period. The agreement shall contain a provision directing the occupant to disclose any lienholders with an interest in property that is or will be stored in the self-service storage facility].

[(7)] ~~(11)(10)~~ (a) "Self-service storage facility" means ~~[any]~~ real property designed and used for the purpose of renting or leasing individual storage space to occupants who [are ~~to]~~ have access to the facility for the purpose of storing [and removing] personal property. [No occupant may use a self-service storage facility for residential purposes. The owner of a

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self-service]

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

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

(ii) real property used for residential purposes; or

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

~~(12)~~11 "Vehicle" means personal property required to be registered with the Motor Vehicle Division pursuant to Title 41, Chapter 1a, Part 2, Registration, Title 41, Chapter 22, Off-Highway Vehicles, or Title 73, Chapter 18, State Boating Act.

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

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

(1) [~~Where~~] When an owner and an occupant enter into a rental agreement, [as defined in Subsection 38-8-1(6), is entered into between the owner and the occupant,] the owner [~~of the self-service storage facility~~] and the owner's 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~~] under this chapter.

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

(3) A rental agreement shall state that:

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

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

(4) If a rental agreement states a maximum, aggregate value of the personal property

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that may be stored at the occupant's storage space, the occupant may not assert that the value of the personal property actually stored at the occupant's storage space exceeds the maximum amount stated in the rental agreement.

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

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

Section 3. 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:]~~

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

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

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

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

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

(i) the occupant;

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

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

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

(2) An owner shall provide the written notice described in Subsection (1)(b):

(a) in person;

(b) by certified mail, to the person's last known address; or

(c) subject to Subsection (3), by email, to the person's last known email address.

(3) If an owner sends a notice described in Subsection (2) by email and does not receive a response, return receipt, or delivery confirmation from the email address to which the notice was sent within three business days after the day on which the notice was sent, the owner shall deliver the notice in person or by certified mail to the person's last known address.

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

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

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

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

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

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

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

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

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

~~—————~~ (i) ~~{}~~ (A) if there is a newspaper of general circulation in the county where the self-service storage facility is located, published of the personal property subject to the lien once a week for two consecutive weeks in a newspaper of general circulation in ~~[that]~~ the county ~~[:or]~~ where the self-service storage facility is located. ~~{ or }~~

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

~~{ ——— (ii) advertised in any other commercially reasonable manner.~~

~~{ (ii) in accordance with Section 45-1-101 for two weeks.}~~

~~{ ——— (b) A manner of advertising described in Subsection (6)(a)(ii) is commercially reasonable if:~~

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

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

~~{~~ ~~{(b)}~~ ~~{(c)}~~ [The] An advertisement described in Subsection ~~[(5)(a)]~~ (6)(a) shall include:

(i) a brief and general description of the personal property reasonably adequate to permit its identification ~~{}~~ as provided for in Subsection (3)(b). ~~{}~~

~~—————~~ (ii) the address of the self-service storage facility and the number, if any, of the space

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where the personal property is located; ~~and~~

~~(iii)~~ ii) the name of the occupant ~~and his~~ the occupant's last known address;

and

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

(c) A fee charged by a newspaper for the one-time advertisement described in Subsection (6)(a) may not exceed:

(i) \$15 for the first unit in the advertisement;

(ii) \$5 for each additional unit in the advertisement; and

(iii) a total of \$30.

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

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

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

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

~~(10)~~ (11) In the event of a sale under this section, the owner may satisfy ~~[his]~~ the lien for the proceeds of the sale, subject to the rights of any prior lienholder; the lien rights of the prior lienholder are automatically transferred to the proceeds of the sale; if the sale is made in good faith and is conducted in a reasonable manner, the owner shall not be subject to any surcharge for a deficiency in the amount of a prior secured lien, but shall hold the balance, if any, for delivery to the occupant, lienholder, or other person in interest; if the occupant,



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lienholder, or other person in interest does not claim the balance of the proceeds within one year of the date of sale, it shall become the property of the Utah state treasurer as unclaimed property with no further claim against the owner.

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

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

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

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

(2) Within one day after the day on which a vehicle is towed under Subsection (1), the owner shall send written notice by certified mail, postage prepaid, to the occupant's last known address that states:

(a) the date the vehicle was towed; and

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

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

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

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

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

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