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AMENDED IN SENATE MAY 20, 2010

AMENDED IN ASSEMBLY MAY 19, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 655**

**Introduced by Assembly Member Emmerson**

February 25, 2009

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An act to amend Sections 21702.5, 21705, 21706, 21707, and 21709 of, and to repeal and add Section 21710 of, the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safekeeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a

date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken.

This bill would provide that, if the occupant has not paid the full amount specified ~~by the~~ *within 14 days of the termination date specified* in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safekeeping. The bill would require the owner to send the occupant a notice of lien sale stating, *among other things*, that: *the amount of the lien will continue to increase if rent is not paid; the property will be sold to satisfy the lien after a specified date that is not less than 14 days from the date of mailing unless the occupant executes and returns by certified mail a specified declaration in opposition to lien sale; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; and other information, as specified.* ~~The bill would specify procedures for an occupant to challenge a lien sale in court~~ *require the lien sale to be advertised in a newspaper of general circulation in the county where the sale is to be held. The bill would require the sale to be conducted in a commercially reasonable manner and would provide for the disposition of excess proceeds.* The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained *and would make other technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 21702.5 of the Business and Professions  
2 Code is amended to read:

3 21702.5. (a) Any lien on a vehicle or vessel subject to  
4 registration or identification under the Vehicle Code which has  
5 attached and is set forth in the documents of title to the vehicle or  
6 vessel shall have priority over any lien created pursuant to this  
7 chapter.

8 (b) Any lien created pursuant to this chapter on a vehicle or  
9 vessel subject to registration or identification under the Vehicle  
10 Code shall be enforced in accordance with the provisions of Section  
11 3071 of the Civil Code, in the case of a vehicle, or Section 503 of  
12 the Harbors and Navigation Code, in the case of a vessel, and not  
13 as prescribed in Sections 21705 to 21711, inclusive.

14 (c) Any lien created pursuant to this chapter on a vehicle or  
15 vessel subject to registration or identification under the Vehicle  
16 Code shall not include any charges for rent, labor, or other services  
17 incurred pursuant to the rental agreement, accruing more than 60  
18 days after the date the lien imposed pursuant to this chapter  
19 attaches, as set forth in Section 21705, and before application is  
20 made for authorization to conduct the lien sale pursuant to the  
21 requirements of Section 3071 of the Civil Code or Section 503 of  
22 the Harbors and Navigation Code.

23 (d) Any proceeds from a lien sale shall be disposed of pursuant  
24 to Section 3073 of the Civil Code, in the case of a vehicle, or  
25 Section 507.5 of the Harbors and Navigation Code, in the case of  
26 a vessel.

27 SEC. 2. Section 21705 of the Business and Professions Code  
28 is amended to read:

29 21705. (a) If the notice has been sent as required by Section  
30 21703 and the total sum due has not been paid within 14 days of  
31 the termination date specified in the preliminary lien notice, the  
32 lien imposed by this chapter attaches as of that date and the owner  
33 may do all of the following:

- 34 (1) Deny an occupant access to the space.  
35 (2) Enter the space.  
36 (3) Remove any property found therein to a place of safekeeping.

37 (b) Upon taking the actions described in subdivision (a), the  
38 owner shall send to the occupant, addressed to the occupant's last

1 known address, and to the alternative address specified in  
2 subdivision (b) of Section 21712, by certified mail or by first-class  
3 mail, if the owner obtains a certificate of mailing, postage prepaid,  
4 both of the following:

5 (1) A notice of lien sale that states all of the following:

6 (A) That the occupant’s right to use the storage space has  
7 terminated and that the occupant no longer has access to the stored  
8 property.

9 (B) That the stored property is subject to a lien, the current  
10 amount of the lien, and that the lien will continue to increase if  
11 rent is not paid.

12 (C) That the property will be sold to satisfy the lien after a  
13 specified date that is not less than 14 days from the date of mailing  
14 the notice, unless the occupant executes and returns by certified  
15 mail a declaration in opposition to lien sale in the form set forth  
16 in paragraph (2).

17 (D) A statement that the occupant may regain full use of the  
18 space by paying the full lien amount prior to the date specified in  
19 subparagraph (C).

20 ~~(E) A conspicuous statement that the occupant may challenge~~  
21 ~~the sale by filing an action in any court having jurisdiction to render~~  
22 ~~a judgment in the amount of the lien.~~

23 ~~(F)~~

24 (E) That any excess proceeds of the sale over the lien amount  
25 and costs of sale will be retained by the owner and may be  
26 reclaimed by the occupant or claimed by another person at any  
27 time for a period of one year from the sale and that thereafter the  
28 proceeds will escheat to the county in which the sale is to take  
29 place.

30 (2) A blank declaration in opposition to lien sale that shall be  
31 in substantially the following form:

32

33 DECLARATION IN OPPOSITION TO LIEN SALE

34

35 You must complete all sections of this declaration. If the owner cannot contact  
36 or serve you at the address and telephone number that you provide below, this  
37 declaration shall be void and the owner may sell your stored property.

38

39 I, \_\_\_\_\_, have received the notice of lien sale  
40 (occupant’s name)

1 of the property stored at \_\_\_\_\_ .  
2 (location and space #)

3 I oppose the lien sale of the property, because (provide a brief explanation  
4 of the reason the owner’s lien may not be valid. For example, “I have paid my  
5 rent and other charges in full”):

6 \_\_\_\_\_  
7 \_\_\_\_\_

8  
9 My address is:  
10 (address) \_\_\_\_\_  
11 (city) \_\_\_\_\_  
12 (state) \_\_\_\_\_  
13 (ZIP Code) \_\_\_\_\_  
14 (telephone number) \_\_\_\_\_

15 I understand that the lienholder may file an action against me in any court  
16 of competent jurisdiction, including small claims court, at the address provided  
17 above, and if a judgment is given in his or her favor, I may be liable for the  
18 court costs. I also understand that ~~the~~ *this* declaration is not valid if (a) the  
19 address provided in this declaration is not my current address or (b) I change  
20 my address at any time prior to service of an action on the lien and I do not  
21 provide the owner the address within 10 days of the change.

22 I declare under penalty of perjury that the foregoing is true and correct, and  
23 that this declaration was signed by me on \_\_\_\_\_ at \_\_\_\_\_ .  
24 (date) (place)

25 \_\_\_\_\_ .  
26 (signature of occupant)

27  
28 SEC. 3. Section 21706 of the Business and Professions Code  
29 is amended to read:

30 21706. If a declaration in opposition to the lien sale, executed  
31 under penalty of perjury, is not received by the owner *on or* prior  
32 to the date specified in the notice of lien sale by certified mail, is  
33 not completed and signed by the occupant, if the occupant cannot  
34 be contacted or served at the address provided in the declaration,  
35 or if the occupant withdraws the declaration in opposition to the  
36 lien sale in writing, the owner may, subject to the provisions of  
37 Sections 21708 and 21709, sell the property upon complying with  
38 the requirements set forth in Section 21707.

39 SEC. 4. Section 21707 of the Business and Professions Code  
40 is amended to read:

1 21707. After the expiration of the time given in the notice of  
2 lien sale, pursuant to subdivision (b) of Section 21705, or following  
3 the failure of a claimant to pay rent or obtain a court order pursuant  
4 to Section 21709, an advertisement of the sale shall be published  
5 once a week for two weeks consecutively in a newspaper of general  
6 circulation published in the ~~judicial district~~ *county* where the sale  
7 is to be held. The advertisement shall include a general description  
8 of the goods, the name of the person on whose account they are  
9 being stored, and the name and location of the storage facility. If  
10 there is no newspaper of general circulation published in the  
11 ~~judicial district~~ *county* where the sale is to be held, the  
12 advertisement shall be posted at least 10 days before the sale in  
13 not less than six conspicuous places in the neighborhood of the  
14 proposed sale. The sale shall be conducted in a commercially  
15 reasonable manner. After deducting the amount of the lien and  
16 costs of sale, the owner shall retain any excess proceeds of the sale  
17 on the occupant's behalf. The occupant, or any other person having  
18 a court order or other judicial process against the property, may  
19 claim the excess proceeds, or a portion thereof sufficient to satisfy  
20 the particular claim, at any time within one year of the date of sale.  
21 Thereafter, the owner shall pay any remaining excess proceeds to  
22 the treasury of the county in which the sale was held.

23 SEC. 5. Section 21709 of the Business and Professions Code  
24 is amended to read:

25 21709. Prior to any sale pursuant to Section 21707, any person  
26 claiming a right to the goods may pay the amount necessary to  
27 satisfy the lien together with one month's rent in advance. In that  
28 event, the goods shall not be sold, but shall be retained by the  
29 owner pending a court order directing the disposition of the  
30 property. If a court order is not obtained within 30 days following  
31 the date of the payment pursuant to this section, the claimant shall  
32 pay the owner the monthly rental charge for the space where the  
33 property is stored pursuant to the terms of the rental agreement. If  
34 the claimant does not pay this rent, the owner may sell or dispose  
35 of the personal property in accordance with Section 21707. The  
36 owner shall have no liability for the sale or other disposition of  
37 the personal property to any claimant who fails to secure a court  
38 order or pay the required rental charge as set forth in this section,  
39 provided the owner has fully complied with the requirements of  
40 this chapter.

1 SEC. 6. Section 21710 of the Business and Professions Code  
2 is repealed.

3 SEC. 7. Section 21710 is added to the Business and Professions  
4 Code, to read:

5 ~~21710. (a)~~

6 21710. (a) If a valid declaration in opposition to lien sale is  
7 received by the owner prior to the date set forth in the notice of  
8 lien sale, the owner may enforce the lien only as follows:

9 (1) File an action *to enforce the lien* in small claims court as  
10 provided in Chapter 5.5 (commencing with Section 116.110) of  
11 Title 1 of Part 1 of the Code of Civil Procedure ~~to enforce the lien,~~  
12 provided that the amount of the lien is within the monetary  
13 jurisdiction of the court. *If the action is filed in small claims court,*  
14 *all of the procedures set forth in that chapter shall apply, including*  
15 *the procedures for service of the summons and complaint.*

16 (2) File an action to enforce the lien in any other court of  
17 competent jurisdiction, *in which case the summons and complaint*  
18 *may be served by certified mail, postage prepaid, addressed to the*  
19 *occupant at the address provided by the occupant in the declaration*  
20 *of lien sale, and service shall be deemed completed on the fifth*  
21 *day after the mailing, or in any other manner authorized by*  
22 *Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2*  
23 *of the Code of Civil Procedure.*

24 ~~(3)~~

25 (b) If the owner is granted a judgment in favor of the lien, the  
26 owner may advertise the goods for sale and sell the property as  
27 provided in Section 21707.

28 ~~(b) For any action filed pursuant to this section, the summons~~  
29 ~~and complaint may be served by certified mail, postage prepaid,~~  
30 ~~addressed to the occupant at his or her last known address, in which~~  
31 ~~case service shall be deemed completed on the fifth day after the~~  
32 ~~mailing, or in any other manner authorized by Chapter 4~~  
33 ~~(commencing with Section 413.10) of Title 5 of Part 2 of the Code~~  
34 ~~of Civil Procedure.~~