

BILL ANALYSIS

Senate Research Center
82R5628 NC-F

S.B. 690
By: Carona
Business & Commerce
2/25/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, like most landlord tenant relationships, self-storage facilities hold a lien against the contents of a rented unit to secure payment of the rent. However, statutory provisions relating to self-storage liens are outdated and do not allow operators or consumers to take advantage of the Internet and e-mail.

Provisions affecting the lien perfection and foreclosure process for self-storage are located both in Chapters 59 (Self Storage Facility Liens) and 70 (Miscellaneous Liens), Property Code. Under current law, certified mail is the only allowed method for sending lien notices. However, many people do not accept certified mail, making this requirement ineffective in many cases. S.B. 690 would expand the statute to allow the use of verified mail or e-mail to ensure that more tenants are notified about the potential lien auction sale of their goods and given the opportunity to cure the debt. Though this change could benefit all consumers, deployed active duty military personnel could particularly benefit as they would be very unlikely to receive certified mail.

Though federal law currently precludes self-storage companies from foreclosing on a delinquent tenant who is active in the military, many times the company is not notified of a tenant's military status at the time the initial rental agreement is signed. S.B. 690 mandates that the required "notice of claim," notifying the tenant of the potential for the lien sale, contains language notifying the tenant that if the tenant is in the military, he/she has certain rights and should contact the facility regarding his/her military status.

Current law requires the use of print newspaper advertisements for notice of an impending sale. S.B. 690 allows a self-storage company to continue to use a newspaper to provide notice to the public of an upcoming lien auction, but also allows notice to be posted on a publicly-available website as an alternative.

Sections 70.004 (Possession of Motor Vehicle, Motorboat, Vessel, or Outboard Motor), and 70.006 (Sale of Motor Vehicle, Motorboat, Vessel or Outboard Motor), Property Code, contain additional requirements for vehicle and boat seizures. This is a problem as changes to mechanics lien statutes inadvertently affect self-storage. S.B. 690 incorporates the relevant Chapter 70 provisions into Chapter 59 and makes Chapter 70 inapplicable to self storage.

As proposed, S.B. 690 amends current law relating to the enforcement of a self-service storage facility lien, and provides a penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 59.001, Property Code, by adding Subdivisions (1-a) and (5) to define "military service" and "verified mail."

SECTION 2. Amends Section 59.003(a), Property Code, to provide that Chapter 70 (Miscellaneous Liens) does not apply to a self-service storage facility.

SECTION 3. Amends Sections 59.042(b) and (c), Property Code, as follows:

(b) Requires the lessor, if the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, rather than 15th day after the day the notice is delivered, to publish or post notices advertising the sale as provided by this subchapter.

(c) Prohibits the lessor, if notice is by publication, from selling the property until the 15th day after the date the notice is first published. Authorizes the lessor, if notice is by posting, to sell the property after the 10th day after the day that the notices are posted. Makes nonsubstantive changes.

SECTION 4. Amends Section 59.043, Property Code, as follows:

Sec. 59.043. New heading: CONTENTS AND DELIVERY OF NOTICE OF CLAIM; INFORMATION REGARDING TENANT'S MILITARY SERVICE. (a) Requires that the lessor's notice to the tenant of the claim contain:

(1) an itemized account of the claim;

(2) the name, address, and telephone number of the lessor or the lessor's agent;

(3) a statement that the contents of the self-service storage facility have been seized under contractual landlord's lien;

(4) a statement that if the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, the property may be sold at public auction, rather than a statement that if the claim is not satisfied before the 15th day after the day that the notice is delivered, the property may be sold at public auction; and

(5) a statement underlined or printed in conspicuous bold print requesting a tenant who is in military service to notify the lessor of the status of the tenant's current military service immediately. Makes a nonsubstantive change.

(b) Authorizes a lessor to require written proof of a tenant's military service in the form of documentation from the United States Department of Defense or other documentation reasonably acceptable to the lessor.

(c) Requires the lessor to deliver the notice in person or by electronic mail or verified mail, rather than in person or by certified mail, to the tenant's last known electronic mail or postal address, rather than last known address, as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the agreement. Provides that notice by verified mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. Provides that notice by electronic mail is considered delivered when transmitted to the last known electronic mail address of the tenant.

SECTION 5. Amends Section 59.044(b), Property Code, as follows:

(b) Requires the lessor to publish the notice:

(1) at least once in each of two consecutive weeks in the print or electronic version of a newspaper of general circulation in the county in which the self-service storage facility is located. Authorizes the lessor, if there is not a newspaper of general circulation in the county, to instead post a copy of

the notice at the self-service storage facility and at least five other conspicuous locations near the facility; or

(2) for at least 10 consecutive days on an Internet website accessible at no cost to the general public.

SECTION 6. Amends Subchapter C, Chapter 59, Property Code, by adding Section 59.0445, as follows:

Sec. 59.0445. NOTICE TO OWNER AND LIENHOLDERS. (a) Provides that this section applies to the enforcement of a lien under this chapter on:

(1) a motor vehicle subject to Chapter 501 (Certificate of Title Act), Transportation Code;

(2) a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B (Identification of Vessels; Required Numbering), Chapter 31 (Water Safety), Parks and Wildlife Code; or

(3) a motor vehicle, motorboat, vessel, or outboard motor registered outside this state.

(b) Requires the lessor, in addition to the notices required by Section 59.042 and 59.044, not later than the 30th day after the date the lessor takes possession of the motor vehicle, motorboat, vessel, or outboard motor to enforce a lien under this chapter, to give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title of the motor vehicle, motorboat, vessel, or outboard motor or, if the registration or title is outside this state, the owner and each lienholder of record in the location in which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled.

(c) Requires that, except as provided by Subsection (d), the notice required by this section be sent by verified mail. Provides that notice by verified mail is considered mailed when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. Requires that the notice include:

(1) the amount of the charges secured by the lien;

(2) a request for payment; and

(3) a statement that if the charges are not paid in full before the 31st day after the date the notice is mailed or published, as applicable, the property may be sold at public auction.

(d) Authorizes that the notice required by this section be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the lessor submits a written request by verified mail to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled requesting information relating to the identity of the last known owner of record and any lienholder of record;

(2) the lessor is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled that the entity is unwilling or unable to provide information on the last known owner of record or any lienholder of record, or does not receive a response from the governmental entity with which the motor

vehicle, motorboat, vessel, or outboard motor is registered or titled on or before the 21st day after the date the lessor submits the request;

(3) the identity of the last known owner of record cannot be determined;

(4) the registration or title does not contain an address for the last known owner of record; and

(5) the lessor cannot determine the identities and addresses of the lienholders of record.

(e) Provides that the lessor is not required to publish notice under Subsection (d) if a correctly addressed notice is sent with sufficient postage in accordance with Subsections (b) and (c) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address or the forwarding order has expired.

(f) Authorizes the owner or lienholder, after notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, to take possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the lessor before the 31st day after the date the notice is mailed or published as provided by this section.

(g) Authorizes the lessor, if the charges are not paid before the 31st day after the date the notice is mailed or published, as applicable, to sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges.

(h) Provides that a person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. Provides that an offense under this subsection is a Class B misdemeanor.

SECTION 7. Amends Sections 70.006(a) and (e), Property Code, as follows:

(a) Requires a holder of a lien under this subchapter, rather than under this subchapter or Chapter 59 (Self-Service Storage Facility Liens), on a motor vehicle subject to Chapter 501, Transportation Code, or on a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code, as amended, who retains possession of the motor vehicle, motorboat, vessel, or outboard motor to, not later than the 30th day after the date on which the charges accrue, give written notice to the owner and each holder of a lien recorded on the certificate title.

(e) Makes a conforming change.

SECTION 8. Amends Section 501.074(c), Transportation Code, as follows:

(c) Authorizes the Texas Department of Motor Vehicles, if a constitutional or statutory lien is foreclosed, to issue a new certificate of title in the name of the purchaser at the foreclosure sale on receiving proof of notice as required by Sections 70.004 (Possession of Motor Vehicle, Motorboat, Vessel, or Outboard Motor) and 70.006 (Sale of Motor Vehicle, Motorboat, Vessel, or Outboard Motor), Property Code, or by Section 59.0445, Property Code.

SECTION 9. Repealer: Section 59.047 (Additional Procedures for Sale of Certain Property), Property Code.

SECTION 10. Makes application of the changes in law made by this Act to Chapter 59, Property Code, prospective.

SECTION 11. Effective date: January 1, 2012.