

1-1 By: Carona S.B. No. 690  
1-2 (In the Senate - Filed February 14, 2011;  
1-3 February 23, 2011, read first time and referred to Committee on  
1-4 Business and Commerce; March 9, 2011, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9,  
1-6 Nays 0; March 9, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 690 By: Carona

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the enforcement of a self-service storage facility  
1-11 lien; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 59.001, Property Code, is amended by  
1-14 adding Subdivisions (1-a) and (5) to read as follows:

1-15 (1-a) "Military service" means:

1-16 (A) military service as defined by Section 101,  
1-17 Servicemembers Civil Relief Act (50 U.S.C. App. Section 511); and

1-18 (B) active duty service for a period of more than  
1-19 30 consecutive days as a member of the Texas State Guard or Texas  
1-20 National Guard under the call of the governor.

1-21 (5) "Verified mail" means any method of mailing that  
1-22 provides evidence of mailing.

1-23 SECTION 2. Subsection (a), Section 59.003, Property Code,  
1-24 is amended to read as follows:

1-25 (a) Subchapter B, Chapter 54, and Chapter 70 do ~~does~~ not  
1-26 apply to a self-service storage facility.

1-27 SECTION 3. Subchapter A, Chapter 59, Property Code, is  
1-28 amended by adding Section 59.010 to read as follows:

1-29 Sec. 59.010. RIGHTS OF CERTAIN MILITARY MEMBERS. (a) In  
1-30 this section, "servicemember" has the meaning assigned by Section  
1-31 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511).

1-32 (b) A member of the Texas State Guard or Texas National  
1-33 Guard who is in military service is entitled to the same protections  
1-34 and rights relating to the enforcement of storage liens under the  
1-35 Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et  
1-36 seq.) to which a servicemember is entitled.

1-37 SECTION 4. Subsections (b) and (c), Section 59.042,  
1-38 Property Code, are amended to read as follows:

1-39 (b) If the tenant fails to satisfy the claim on or before the  
1-40 14th ~~15th~~ day after the date ~~day that~~ the notice is delivered,  
1-41 the lessor must publish or post notices advertising the sale as  
1-42 provided by this subchapter.

1-43 (c) If notice is by publication, the lessor may not sell the  
1-44 property until the 15th day after the date ~~day that~~ the notice is  
1-45 first ~~notice is~~ published. If notice is by posting, the lessor  
1-46 may sell the property after the 10th day after the date ~~day that~~   
1-47 the notices are posted.

1-48 SECTION 5. Section 59.043, Property Code, is amended to  
1-49 read as follows:

1-50 Sec. 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM;  
1-51 INFORMATION REGARDING TENANT'S MILITARY SERVICE. (a) The lessor's  
1-52 notice to the tenant of the claim must contain:

1-53 (1) an itemized account of the claim;

1-54 (2) the name, address, and telephone number of the  
1-55 lessor or the lessor's agent;

1-56 (3) a statement that the contents of the self-service  
1-57 storage facility have been seized under the contractual landlord's  
1-58 lien; ~~and~~

1-59 (4) a statement that if the tenant fails to satisfy the  
1-60 claim ~~is not satisfied~~ on or before the 14th ~~15th~~ day after the  
1-61 date ~~day that~~ the notice is delivered, the property may be sold at  
1-62 public auction; and

1-63 (5) a statement underlined or printed in conspicuous

2-1 bold print requesting a tenant who is in military service to notify  
 2-2 the lessor of the status of the tenant's current military service  
 2-3 immediately.

2-4 (b) A lessor may require written proof of a tenant's  
 2-5 military service in the form of documentation from the United  
 2-6 States Department of Defense or other documentation reasonably  
 2-7 acceptable to the lessor.

2-8 (c) Subject to Subsection (d), the [The] lessor must deliver  
 2-9 the notice in person or by e-mail or verified [by certified] mail to  
 2-10 the tenant's last known e-mail or postal address as stated in the  
 2-11 rental agreement or in a written notice from the tenant to the  
 2-12 lessor furnished after the execution of the rental agreement.  
 2-13 Notice by verified mail is considered delivered when the notice,  
 2-14 properly addressed with postage prepaid, is deposited with the  
 2-15 United States Postal Service or a common carrier. Notice by e-mail  
 2-16 is considered delivered when sent to the last known e-mail address  
 2-17 of the tenant.

2-18 (d) The notice may not be sent by e-mail unless a written  
 2-19 rental agreement between the lessor and the tenant contains  
 2-20 language underlined or in conspicuous bold print that notice may be  
 2-21 given by e-mail if the tenant elects to provide an e-mail address.

2-22 SECTION 6. Subchapter C, Chapter 59, Property Code, is  
 2-23 amended by adding Section 59.0445 to read as follows:

2-24 Sec. 59.0445. NOTICE TO OWNER AND LIENHOLDERS. (a) This  
 2-25 section applies to the enforcement of a lien under this chapter on:

2-26 (1) a motor vehicle subject to Chapter 501,  
 2-27 Transportation Code;

2-28 (2) a motorboat, vessel, or outboard motor for which a  
 2-29 certificate of title is required under Subchapter B, Chapter 31,  
 2-30 Parks and Wildlife Code; or

2-31 (3) a motor vehicle, motorboat, vessel, or outboard  
 2-32 motor registered or titled outside this state.

2-33 (b) In addition to the notices required by Sections 59.042  
 2-34 and 59.044, not later than the 30th day after the date the lessor  
 2-35 takes possession of the motor vehicle, motorboat, vessel, or  
 2-36 outboard motor to enforce a lien under this chapter, the lessor  
 2-37 shall give written notice of sale to the last known owner and each  
 2-38 holder of a lien recorded on the registration or certificate of  
 2-39 title of the motor vehicle, motorboat, vessel, or outboard motor  
 2-40 or, if the registration or title is outside this state, the owner  
 2-41 and each lienholder of record in the location in which the motor  
 2-42 vehicle, motorboat, vessel, or outboard motor is registered or  
 2-43 titled.

2-44 (c) Except as provided by Subsection (d), the notice  
 2-45 required by this section must be sent by verified mail. Notice by  
 2-46 verified mail is considered mailed when the notice, properly  
 2-47 addressed with postage prepaid, is deposited with the United States  
 2-48 Postal Service or a common carrier. The notice must include:

2-49 (1) the amount of the charges secured by the lien;

2-50 (2) a request for payment; and

2-51 (3) a statement that if the charges are not paid in  
 2-52 full before the 31st day after the date the notice is mailed or  
 2-53 published, as applicable, the property may be sold at public  
 2-54 auction.

2-55 (d) The notice required by this section may be given by  
 2-56 publishing the notice once in a print or electronic version of a  
 2-57 newspaper of general circulation in the county in which the motor  
 2-58 vehicle, motorboat, vessel, or outboard motor is stored if:

2-59 (1) the lessor submits a written request by verified  
 2-60 mail to the governmental entity with which the motor vehicle,  
 2-61 motorboat, vessel, or outboard motor is registered or titled  
 2-62 requesting information relating to the identity of the last known  
 2-63 owner of record and any lienholder of record;

2-64 (2) the lessor:

2-65 (A) is advised in writing by the governmental  
 2-66 entity with which the motor vehicle, motorboat, vessel, or outboard  
 2-67 motor is registered or titled that the entity is unwilling or unable  
 2-68 to provide information on the last known owner of record or any  
 2-69 lienholder of record; or

3-1 (B) does not receive a response from the  
3-2 governmental entity with which the motor vehicle, motorboat,  
3-3 vessel, or outboard motor is registered or titled on or before the  
3-4 21st day after the date the lessor submits the request;

3-5 (3) the identity of the last known owner of record  
3-6 cannot be determined;

3-7 (4) the registration or title does not contain an  
3-8 address for the last known owner of record; and

3-9 (5) the lessor cannot determine the identities and  
3-10 addresses of the lienholders of record.

3-11 (e) The lessor is not required to publish notice under  
3-12 Subsection (d) if a correctly addressed notice is sent with  
3-13 sufficient postage in accordance with Subsections (b) and (c) and  
3-14 is returned as unclaimed or refused or with a notation that the  
3-15 addressee is unknown or has moved without leaving a forwarding  
3-16 address or the forwarding order has expired.

3-17 (f) After notice is given under this section to the owner of  
3-18 or the holder of a lien on the motor vehicle, motorboat, vessel, or  
3-19 outboard motor, the owner or lienholder may take possession of the  
3-20 motor vehicle, motorboat, vessel, or outboard motor by paying all  
3-21 charges due to the lessor before the 31st day after the date the  
3-22 notice is mailed or published as provided by this section.

3-23 (g) If the charges are not paid before the 31st day after the  
3-24 date the notice is mailed or published, as applicable, the lessor  
3-25 may sell the motor vehicle, motorboat, vessel, or outboard motor at  
3-26 a public sale and apply the proceeds to the charges.

3-27 (h) A person commits an offense if the person knowingly  
3-28 provides false or misleading information in a notice required by  
3-29 this section. An offense under this subsection is a Class B  
3-30 misdemeanor.

3-31 SECTION 7. Subsections (a) and (e), Section 70.006,  
3-32 Property Code, are amended to read as follows:

3-33 (a) A holder of a lien under this subchapter [~~or Chapter 59~~]  
3-34 on a motor vehicle subject to Chapter 501, Transportation Code, or  
3-35 on a motorboat, vessel, or outboard motor for which a certificate of  
3-36 title is required under Subchapter B, Chapter 31, Parks and  
3-37 Wildlife Code, as amended, who retains possession of the motor  
3-38 vehicle, motorboat, vessel, or outboard motor shall, not later than  
3-39 the 30th day after the date on which the charges accrue, give  
3-40 written notice to the owner and each holder of a lien recorded on  
3-41 the certificate of title. A holder of a possessory lien on a motor  
3-42 vehicle under Section 70.001, other than a person licensed as a  
3-43 franchised dealer under Chapter 2301, Occupations Code, shall file  
3-44 a copy of the notice and all information required by this section  
3-45 with the county tax assessor-collector's office in the county in  
3-46 which the repairs were made with an administrative fee of \$25  
3-47 payable to the county tax assessor-collector. If the motor  
3-48 vehicle, motorboat, vessel, or outboard motor is registered outside  
3-49 this state, the holder of a lien under this subchapter who retains  
3-50 possession during that period shall give notice to the last known  
3-51 registered owner and each lienholder of record.

3-52 (e) After notice is given under this section to the owner of  
3-53 or the holder of a lien on the motor vehicle, motorboat, vessel, or  
3-54 outboard motor, the owner or holder of the lien may obtain  
3-55 possession of the motor vehicle, motorboat, vessel, or outboard  
3-56 motor by paying all charges due to the holder of a lien under this  
3-57 subchapter [~~and Chapter 59~~] before the 31st day after the date the  
3-58 notice is mailed or published as provided by this section.

3-59 SECTION 8. Subsection (c), Section 501.074, Transportation  
3-60 Code, is amended to read as follows:

3-61 (c) If a constitutional or statutory lien is foreclosed, the  
3-62 department may issue a new certificate of title in the name of the  
3-63 purchaser at the foreclosure sale on receiving:

3-64 (1) the affidavit of the lienholder of the fact of the  
3-65 creation of the lien and of the divestiture of title according to  
3-66 law; and

3-67 (2) proof of notice as required by Sections 70.004 and  
3-68 70.006, Property Code, or by Section 59.0445, Property Code.

3-69 SECTION 9. Section 59.047, Property Code, is repealed.

4-1 SECTION 10. The changes in law made by this Act to Chapter  
4-2 59, Property Code, apply only to a self-service storage facility  
4-3 rental agreement entered into, extended, or renewed on or after the  
4-4 effective date of this Act. A self-service storage facility rental  
4-5 agreement entered into, extended, or renewed before the effective  
4-6 date of this Act is governed by the law in effect immediately before  
4-7 the effective date of this Act, and the former law is continued in  
4-8 effect for that purpose.

4-9 SECTION 11. This Act takes effect January 1, 2012.

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