House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
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2010

CHAPTER 94

HOUSE BILL 2643

AN ACT

AMENDING SECTIONS 13-806, 33-1701, 33-1703, 33-1704 AND 33-1705, ARIZONA REVISED STATUTES; RELATING TO SELF-SERVICE STORAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-806, Arizona Revised Statutes, is amended to read:

13-806. Restitution lien

A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. A filing fee or any other charge is not required for filing a restitution lien.

B. A restitution lien shall be signed by the attorney representing the state in the criminal action or by a magistrate and shall set forth all of the following information:

1. The name and date of birth of the defendant whose property or other interests are subject to the lien.

2. The present residence or principal place of business of the person named in the lien, if known.

3. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action and the court's file number.

4. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and address of the person entitled to restitution pursuant to a court order filing the lien.

5. A statement that the notice is being filed pursuant to this section.

6. The amount of restitution the defendant in the proceeding has been ordered to pay or an estimated amount of economic loss caused by the offense alleged in the proceeding if no restitution order has been entered yet.

7. A statement that the total amount of restitution owed will change and that the clerk of the court in which the proceeding was or is pending shall maintain a record of the outstanding balance.

C. A restitution lien may be filed by:

1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of a misdemeanor complaint or felony information or indictment. At the time of arraignment the prosecutor shall give the defendant notice of any restitution lien filed.

2. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

D. A restitution lien is perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the department of transportation motor vehicle division. A restitution lien is perfected against interests in real property by filing the lien with the county recorder of the county in which the real property is located. The state or a victim may give the additional notice of the lien as either deems appropriate.

E. The filing of a restitution lien in accordance with this section creates a lien in favor of the state or the victim in all of the following:

1. Any interest of the defendant in real property situated in the county in which the lien is filed then maintained or thereafter acquired in the name of the defendant identified in the lien.

2. Any interest of the defendant in personal property situated in this state then maintained or thereafter acquired in the name of the defendant identified in the lien.

3. Any property identified in the lien to the extent of the defendant's interest in the property.

F. The filing of a restitution lien under this section is notice to all persons dealing with the person or property identified in the lien of the state's or victim's claim. The lien created in favor of the state or the victim in accordance with this section is superior and prior to the claims or interests of any other person, except a person possessing any of the following:

1. A valid lien perfected before the filing of the restitution lien.

2. In the case of real property, an interest acquired and recorded before the filing of the restitution lien.

3. In the case of personal property, an interest acquired before the filing of the restitution lien.

G. This section does not limit the right of the state or any other person entitled to restitution to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy authorized by law.

H. Following the entry of the judgment and sentence in the criminal case, if the trial court sentences the defendant to pay a fine or awards costs of investigation or prosecution, the state may file a restitution lien pursuant to this section for the amount of the fine or costs.

I. A criminal restitution lien is a criminal penalty for the purposes of any federal bankruptcy involving the defendant.

J. A SELF-SERVICE STORAGE FACILITY THAT FORECLOSES ITS LIEN PURSUANT TO SECTION 33-1704 MAY SELL PERSONAL PROPERTY THAT IS SUBJECT TO A RESTITUTION LIEN. THE PROCEEDS FROM THE SALE, LESS THE REASONABLE COSTS OF SALE, SHALL BE PAID TO THE RESTITUTION LIENHOLDER TO SATISFY THE RESTITUTION LIEN AS PRESCRIBED IN SECTION 33-1704. A PERSON WHO IS A GOOD FAITH PURCHASER PURSUANT TO SECTION 33-1704 AND WHO PURCHASES PERSONAL PROPERTY THAT IS SUBJECT TO A RESTITUTION LIEN TAKES THE PROPERTY FREE AND CLEAR OF THE RIGHTS OF THE RESTITUTION LIENHOLDER.

Sec. 2. Section 33-1701, Arizona Revised Statutes, is amended to read:

33-1701. <u>Definitions; exception</u>

A. In this article, unless the context otherwise requires:

1. "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement.

2. "Department" means the Arizona game and fish department in the case of motorized watercraft and the department of transportation in the case of all other vehicles.

3. "ELECTRONIC MAIL" 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 AND INCLUDES ELECTRONIC MESSAGES THAT ARE TRANSMITTED WITHIN OR BETWEEN COMPUTER NETWORKS FROM WHICH A CONFIRMATION OF RECEIPT IS RECEIVED.

~~3.~~ 4. "Last known address" means that POSTAL ADDRESS OR ELECTRONIC address provided by the occupant in the rental agreement or the POSTAL ADDRESS OR ELECTRONIC address provided by the occupant in a subsequent written notice of a change of address.

~~4.~~ 5. "Late fee" means a reasonable fee or charge that is assessed by the operator for the failure of the occupant to pay rent when due pursuant to section 33-1703, subsection D.

~~5.~~ 6. "Leased space" means the storage space or spaces at the self-service storage facility that are rented to an occupant pursuant to a rental agreement.

~~6.~~ 7. "Net proceeds" means the total proceeds received from the lien sale less the total amount of the lien.

~~7.~~ 8. "Occupant" means a person or the person's sublessee, successor or assign, entitled to the use of the leased space at a self-service storage facility under a rental agreement, to the exclusion of others.

~~8.~~ 9. "Operator" means the owner, operator, lessor or sublessor of a self-service storage facility, an agent or any other person authorized to manage the facility.

10. "PERSONAL INFORMATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 44-7501 AND INCLUDES PASSPORT INFORMATION AND MEDICAL OR LEGAL RECORDS.

~~9.~~ 11. "Personal property" means movable property that is not affixed to land and includes but is not limited to goods, wares, merchandise, household items and furnishings and vehicles.

12. "PROTECTED PROPERTY" MEANS PERSONAL PROPERTY THE SALE OR DISPOSAL OF WHICH IS REGULATED BY STATE OR FEDERAL LAW AND THAT IS ONE OF THE FOLLOWING:

(a) DOCUMENTS, FILES OR ELECTRONIC DATA THAT CONTAINS PERSONAL INFORMATION RELATING TO CLIENTS, CUSTOMERS, PATIENTS OR OTHERS IN CONNECTION WITH THE OCCUPANT'S BUSINESS.

(b) ALCOHOLIC BEVERAGES.

(c) PHARMACEUTICALS OTHER THAN THOSE DISPENSED BY A LICENSED PHARMACY FOR THE OCCUPANT'S PERSONAL USE.

(d) FIREARMS.

~~10.~~ 13. "Registered owner" means an owner of a vehicle as stated in the official records of the department.

~~11.~~ 14. "Rental agreement" means any written agreement provided to the occupant that establishes or modifies the terms, conditions or rules concerning the use and occupancy of leased space at a self-service storage facility.

~~12.~~ 15. "Self-service storage facility" means any real property used for renting or leasing storage spaces in which the occupants themselves customarily store and remove their own personal property on a self-service basis.

~~13.~~ 16. "Vehicle" means a motor vehicle, a trailer or a semitrailer as defined in section 28-101 and a motorized watercraft as defined in section 5-301.

~~14.~~ 17. "Verified mail" means any method of mailing that is offered by the United States postal service and that provides evidence of mailing.

B. This article does not apply to a warehouseman unless the warehouseman issues a warehouse receipt, bill of lading or other document of title for the personal property stored.

Sec. 3. Section 33-1703, Arizona Revised Statutes, is amended to read:

33-1703. Lien; rental agreement; contents; late fees

A. The operator of a self-service storage facility has a possessory lien from the date the rent is unpaid and due on all personal property stored within the leased space for rent, late fees and labor or other charges, and for expenses reasonably incurred in its sale, as provided in this article. The lien shall not impair any other lien or security interest at the time the storage was commenced, unless the lienor or secured party knows and consents to the storage of the personal property.

B. The rental agreement shall contain a statement, in at least ten point bold-faced type, advising the occupant:

1. Of the accrual of the lien as of the date the rent is unpaid and due.

2. That property stored in the leased space may be sold ~~to satisfy the lien~~ OR OTHERWISE DISPOSED OF if the occupant is in default.

3. That any insurance protecting the personal property stored within the storage space against fire, theft or damage must be provided by the occupant.

4. That a late fee may be charged by the operator for each month that the occupant does not pay rent when due. The rental agreement shall state the date on which rent is due and the date on which the late fee accrues.

C. The rental agreement shall contain a provision requiring the occupant to disclose THE FOLLOWING:

1. Any lienholders or secured parties who have an interest in property that is or will be stored in the self-service storage facility.

2. WHETHER ANY PROTECTED PROPERTY IS OR WILL BE STORED IN THE LEASED SPACE.

D. The operator may impose a reasonable late fee on the occupant for each month the occupant does not pay rent when due. For purposes of this section, a reasonable late fee may be computed as the greater of ten dollars per month or twenty per cent of the amount of monthly rent. Any late fee imposed by the operator pursuant to this section is in addition to any other remedy provided by law or contract.

E. The operator shall provide adequate notice to the occupant before a late fee is imposed. Adequate notice is provided if the rental agreement complies with subsection B or if a notice is sent to the occupant by verified mail that notifies the occupant that a late fee may be charged in any month in which the occupant does not pay rent when due.

Sec. 4. Section 33-1704, Arizona Revised Statutes, is amended to read:

33-1704. Enforcement of lien

A. If the occupant is in default for a period of more than thirty days, the operator may foreclose the lien by selling the property stored in the leased space at a public sale, for cash, OR IF THE PROPERTY IS PROTECTED PROPERTY, BY DISPOSING OF THE PROPERTY PURSUANT TO THIS SECTION. Proceeds shall then be applied as provided in subsection ~~E~~ G of this section. If the contents of the leased space include a vehicle, section 28-4839 does not apply.

B. Before conducting a sale under subsection A of this section, the operator shall:

1. Send notice of the default by verified mail OR ELECTRONIC MAIL to the occupant at the occupant's last known address.

2. Send a second notice of default by first class mail not less than seven days after the mailing date of the first notice to the occupant at the occupant's last known address that includes:

(a) A statement that the contents of the occupant's leased space are subject to the operator's lien.

(b) A statement of the operator's claim, indicating the charges due on the date of the notice and any other charges that may accrue.

(c) A demand for payment of the charges due within a specified time, not less than fourteen days after the mailing date of the second notice or thirty additional days if the address of the occupant is outside of the continental United States.

(d) A statement that unless the claim is paid within the time stated the contents of the leased space will be sold at a specified time and place, OR IN THE CASE OF PROTECTED PROPERTY, OTHERWISE DISPOSED OF AT A SPECIFIED TIME AND PLACE.

(e) The name, street address and telephone number of the operator, or the operator's designated agent, whom the occupant may contact to respond to the notice.

3. If the contents of the leased space include a vehicle:

(a) At the time the notice is sent pursuant to paragraph 1 of this subsection, send a notice of default by verified mail to the registered owner at the registered owner's most recent address as shown in the records of the department.

(b) At the time the notice is sent pursuant to paragraph 2 of this subsection, send a notice of default by first class mail to the registered owner at the registered owner's most recent address as shown in the records of the department.

(c) The operator is not required to send a notice pursuant to this paragraph if ownership information for a vehicle is unavailable.

(d) In any notice that is sent, include a description of the vehicle and its vehicle identification number.

4. At least ten days before the sale, send notice by verified mail to any record lienholder or secured party who has an interest in the property to be sold, of whom the operator has actual or constructive knowledge either through the disclosure provision of the rental agreement or through any other written or recorded notice of the sale, that any prior record lienor or secured party may at any time before the sale recover possession of the item of personal property to which the record lien or security interest attaches.

C. At any time before a sale under this section OR BEFORE THE DISPOSAL OF PROTECTED PROPERTY, WHICHEVER OCCURS FIRST, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

D. If the personal property includes a vehicle, any person listed as a registered owner or lienholder on the records of the department may pay the amount necessary to satisfy the lien, redeem the vehicle and recover possession of the vehicle. The operator is not liable to the occupant or any other person who claims an interest in the vehicle if the operator releases the vehicle to a person listed as a registered owner or lienholder pursuant to this subsection.

E. IF THE PERSONAL PROPERTY IS SUBJECT TO A RESTITUTION LIEN, ANY PERSON LISTED AS THE HOLDER OF THE RESTITUTION LIEN IN THE PUBLIC RECORDS MAY PAY THE AMOUNT NECESSARY TO SATISFY THE LIEN, REDEEM THE PERSONAL PROPERTY AND RECOVER POSSESSION OF THE PERSONAL PROPERTY. THE OPERATOR IS NOT LIABLE TO THE OCCUPANT OR ANY OTHER PERSON WHO CLAIMS AN INTEREST IN THE PERSONAL PROPERTY IF THE OPERATOR RELEASES THE PERSONAL PROPERTY TO A PERSON LISTED AS A RESTITUTION LIENHOLDER PURSUANT TO THIS SUBSECTION.

F. IF THE LEASED SPACE CONTAINS PROTECTED PROPERTY AND THE OPERATOR HAS ACTUAL KNOWLEDGE OF THE PROTECTED PROPERTY, THE PROTECTED PROPERTY SHALL NOT BE SOLD BUT IS SUBJECT TO DISPOSAL BY THE OPERATOR. THE OPERATOR IS NOT LIABLE TO THE OCCUPANT OR TO ANY OTHER PERSON WHO CLAIMS AN INTEREST IN PROTECTED PROPERTY IF THE OPERATOR DISPOSES OF THE PROTECTED PROPERTY PURSUANT TO THIS SECTION. PROPER DISPOSAL METHODS INCLUDE DESTRUCTION OF THE PROTECTED PROPERTY OR SURRENDERING THE PROTECTED PROPERTY TO APPROPRIATE

STATE OR FEDERAL AUTHORITIES IF THOSE APPROPRIATE STATE OR FEDERAL AUTHORITIES ACCEPT THE PROTECTED PROPERTY.

~~E.~~ G. If a sale is held under this section, the operator shall distribute the proceeds in the following manner:

1. To pay all reasonable costs of sale.

2. To satisfy the valid claims of any lienholder or secured party not otherwise subordinated pursuant to section 33-1703, subsection A.

3. To satisfy the operator's lien.

4. To satisfy the valid claims of any record lienholder or secured party subordinated pursuant to section 33-1703, subsection A.

5. To the occupant on demand.

6. If the occupant does not claim the balance due to the occupant within ninety days of the sale, the operator shall pay the balance to the department of revenue. If the occupant, at any time within two years from the date of payment to the department of revenue, establishes the occupant's right to the money to the satisfaction of the director of the department of administration, it shall be paid to the occupant. After two years, all unclaimed monies shall be deposited in the permanent state school fund.

~~F.~~ H. If five or more bidders who are unrelated to the operator are in attendance at a sale held under this section, the sale and its proceeds are deemed to be commercially reasonable.

~~G.~~ I. A purchaser in good faith of any personal property sold under this article:

1. DOES NOT ACQUIRE OWNERSHIP OF PROTECTED PROPERTY CONTAINED IN THE LEASED SPACE AND SHALL RETURN TO THE OPERATOR ANY PROTECTED PROPERTY THAT IS FOUND IN THE LEASED SPACE.

2. EXCEPT FOR PROTECTED PROPERTY PRESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION, takes the property free and clear of any rights of any party.

~~H.~~ J. If the operator complies with this article, the operator's liability arising from the sale:

1. To the occupant is limited to the net proceeds received from the sale of the personal property.

2. To other lienholders or a secured party is limited to the net proceeds received from the sale of any personal property covered by that other lien.

~~I.~~ K. If an occupant is in default, the operator may deny the occupant access to the leased space.

~~J.~~ L. Unless the rental agreement specifically provides otherwise and until a lien sale under this article, the exclusive care, custody and control of all personal property stored in the leased space remain vested in the occupant. If the occupant is in default for a period of more than thirty days and until the time of sale, the operator, in addition to denying the occupant access to the personal property, may transfer the personal property to a place of safekeeping.

Sec. 5. Section 33-1705, Arizona Revised Statutes, is amended to read:

33-1705. Notice posted in the office

Each operator acting pursuant to this article shall at all times keep posted in a prominent place in ~~his~~ THE OPERATOR'S office or on the premises of the self-service storage facility, a notice ~~which shall read~~ THAT READS as follows:

~~"All~~ Articles stored pursuant to a rental agreement ~~will~~ MAY be sold ~~to pay~~ OR DISPOSED OF IF any storage charges ARE overdue for more than thirty days.~~"~~

APPROVED BY THE GOVERNOR APRIL 19, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2010.