

In the Supreme Court of the State of California

SAMUEL HECKART,

Plaintiff-Appellant,

v.

A-1 SELF STORAGE, INC., et al.,

**Defendants and
Respondents.**

Case No. S232322

**SUPREME COURT
FILED**

SEP 12 2017

Jorge Navarrete Clerk

Court of Appeal, Fourth Appellate District, Division One,
Case No. D066831

Deputy

San Diego County Superior Court,
Case No. 37-2013-00042315-CU-BT-CTL
The Honorable John Meyer, Judge

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF BRIEF
OF THE INSURANCE COMMISSIONER OF THE STATE OF
CALIFORNIA, INVITED AMICUS CURIAE; SUPPORTING
DECLARATION OF MOLLY K. MOSLEY AND EXHIBITS A-B**

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Attorney General of California
DIANE S. SHAW
Senior Assistant Attorney General
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*Attorneys for Amicus Curiae, Dave Jones,
Insurance Commissioner for the State of
California*

AMICUS CURIAE REQUEST FOR JUDICIAL NOTICE

PLEASE TAKE NOTICE that pursuant to California Rules of Court, rules 8.252 and 8.520(g) and Evidence Code sections 452 and 459, the Insurance Commissioner of the State of California requests that this Court take judicial notice of the following documents, which are attached as Exhibits A through B to the Supporting Declaration of Molly K. Mosley, filed with this request:

- Exhibit A: Senate Commission on Insurance, Assembly Bill No. 2520 (2003-2004 Regular Session) as amended April 27, 2004; and
- Exhibit B: Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of Assembly Bill No. 2520 (2003-2004 Regular Session) as amended Jul. 22, 2004.

The legislative history of Assembly Bill (AB) 2520 is relevant to the issues before this Court, including the issues raised in the Commissioner's amicus curiae brief and addressed therein, because the legislative history identifies the purpose of the provisions of Article 16.3, Insurance Code sections 1758.7 et seq. and the Commissioner's contemporaneous position regarding AB 2520.

Exhibits A through B were not presented to the trial court or to the court of appeal because the filing of the Commissioner's invited amicus curiae brief in this Court is the Commissioner's first involvement in this action.

Under Evidence Code sections 452 and 459, the legislative history of AB 2520 is subject to judicial notice by this Court because all of the portions of the legislative history referred to in the Commissioner's brief are "[o]fficial acts of the legislative, executive, and judicial departments" of California. (Evid. Code, § 452, subd. (c).) Further, this Court has taken

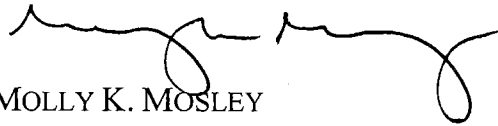
judicial notice of legislative history introduced by amicus curiae. (*Post v. Palo/Haklar & Assocs.* (2000) 23 Cal.4th 942, 950.)

For the foregoing reasons, the Commissioner respectfully requests that the Court take Judicial Notice of Exhibits A through B to the supporting declaration of Molly K. Mosley.

Dated: September 8, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
DIANE S. SHAW
Senior Assistant Attorney General



MOLLY K. MOSLEY
Supervising Deputy Attorney General
*Attorneys for Amicus Curiae, Dave Jones,
Insurance Commissioner for the State of
California*

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DECLARATION OF MOLLY K. MOSLEY

I, MOLLY K. MOSLEY, declare:

1. I am admitted to practice in the State of California and employed with the California Attorney General's Office, which serves as counsel for Dave Jones, Insurance Commissioner of the State of California. I am the attorney of record. I have personal knowledge of the facts set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of a portion of the legislative history of Assembly Bill No. 2520, specifically the Senate Committee on Insurance, Assembly Bill No. 2520 (2003-2004 Regular Session), as amended April 27, 2004. I obtained it from the official website, <https://leginfo.legislature.ca.gov>, on September 8, 2017.

3. Attached hereto as Exhibit B is a true and correct copy of a portion of the legislative history of Assembly Bill No. 2520, specifically the Sen. Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Assembly Bill No. 2520 (2003-2004 Reg. Sess.), as amended Jul. 22, 2004. I obtained it from the official website, <https://leginfo.legislature.ca.gov>, on August 20, 2017.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Sacramento, California on September 8, 2017.

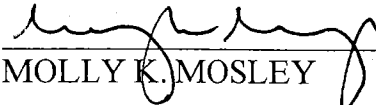

MOLLY K. MOSLEY

EXHIBIT A

SENATE COMMITTEE ON INSURANCE
 Senator Jackie Speier, Chair

AB 2520 (Vargas)
 2004

Hearing Date: June 16,

As Amended: April 27, 2004

Fiscal: Yes

Urgency: No

VOTES: Asm. Ins. DPA:15-0
 Asm. Appr. DP: 20-1
 Asm. Fl. Passed:73-6

SUMMARY

Would require self-service storage facilities and their franchisees that sell insurance in connection with self-service storage rental agreements to obtain a license from the Insurance Commissioner (IC), require such licensees to provide training to their employees, allow the facility to collect the monthly storage fee and insurance premium in one check, and would impose other specified duties.

DIGEST

Existing law

1. Provides that, in general, a person shall not negotiate or sell contracts of insurance unless he or she has been licensed by the IC to act in that capacity, and makes it a crime to act in that capacity without a license;
2. Allows for the sale of limited lines of insurance by retail vendors of communications equipment and rental cars and their agents, and credit insurance agents, under specified conditions.

This bill

1. Would create a new limited line of insurance category to regulate the offering for sale of insurance by self-service storage facilities in California;

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2. Would require any self-service storage facility, or franchisee of that facility, that sells insurance in connection with, and incidental to, self service rental agreements to be licensed by the IC;
3. Would require that license to be renewed every two years;
4. Would require the applicant for a license under this article pay a fee, to be determined by the DOI and sufficient to defray the actual costs of implementing this article, upon application and renewal;
5. Would require licensees to provide certain written information to the IC, including a certificate by the insurer that is named in the self-service storage agent license stating that the applicant is trustworthy and competent to act as its agent for the purpose of selling insurance specific to self-service storage agreements;
6. Would require each self-service storage licensee to provide training and instruction to its employees regarding the types of insurance offered for sale to prospective renters, ethical sales practices, and disclosures to renters required by this article, and would require all training materials, and any subsequent modifications, to be submitted to the DOI at least 30 days prior to use;
7. Would provide that if the licensee or any of its employees violate any of these provisions, the IC may revoke or suspend its license or impose other fines and penalties;
8. Would provide that the self-service storage facility license to sell insurance is limited to hazard insurance coverage to renters for the loss of, or damage to, tangible personal property in storage or in transit during the rental period or any other coverage the IC may approve as appropriate;
9. Would require the licensee to provide brochures or other written materials to the prospective renter that

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- summarizes the material terms and conditions of coverage offered, including the identity of the insurer, and to describe the process for filing a claim, including a toll-free telephone number to report a claim;
10. Would require the licensee to post conspicuously and disclose to renters in writing, with a signed acknowledgement by the renter, that:
 - a. The purchase of insurance from the self-service storage facility is not required to rent the space, but the licensee or its employees may advise the renter that the self storage agreement may contain provisions requiring the renter to provide insurance on his or her property in the storage unit;
 - b. The insurance offered may duplicate coverage already provided by the renter's homeowners' insurance policy or other source of coverage;
 - c. The self-service storage facility and its employees are not qualified or authorized to evaluate the renter's existing insurance coverage;
 11. Would define "self-service storage facility", "storage space", "renter", "rental agreement", and "self-service storage agent" for purposes of this article;
 12. Would permit the IC to adopt fee differentials for smaller self-service storage facilities.

COMMENTS

1. Purpose of the bill . To create a limited agent license for self-service storage facilities to sell hazard insurance to renters of storage units.
2. Background . Many self-service storage facilities have been selling personal property insurance coverage to their tenants for many years, but have not been licensed by the DOI. According to the sponsor, the DOI has now taken the position that self-service storage facilities making such insurance available and

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collecting premiums for licensed agents and/or insurers should be licensed, and has issued cease and desist orders against several self-service storage facilities.

This bill is the industry's response to the DOI position.

The law regulating the sale of insurance by the rental car industry was enacted in 1999, largely in response to a class action lawsuit in Texas filed on behalf of all persons who have been offered insurance in connection with the rental of a vehicle. According to the sponsors, this bill is modeled on the law governing the sale of insurance by rental car companies and their agents, with a few modifications. _

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3. Support . According to The Bob Bader Company, self-service storage facilities have been offering optional personal property insurance coverage to their tenants for more than 20 years for two reasons:

A large percentage of self-service storage tenants do not have personal property coverage, and coverage provided by the self-service storage facilities helps tenants recover financially when there is a loss;

The courts have relieved self-service storage facilities of liability for loss of, or damage to, the tenant's property when there is a loss, the tenant has been advised that it is his/her responsibility to insure the property, and optional coverage has been offered.

4. Opposition . None received
5. Department of Insurance . The DOI has stated that a limited agent license for self-service storage facilities should not have to meet all of the requirements currently imposed on the car rental industry. However, it raised concerns over what it considers certain omissions in the bill as currently drafted.

In addition, the department would like some additional administrative safeguards included in the bill to allow proper staffing for the process of implementation and

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to set the license fee in statute, although it has not provided proposed language for these provisions. The amendments proposed by the department are:

- a) The licensee should be at least 18 years of age;
- b) Wording should be changed to require the training materials to be submitted with the application for the license;
- c) Require each self-service storage facility to maintain a list certifying that the employees offering insurance at that location have been trained;
- d) Add a provision for accepting late renewals, but charging a late penalty fee;
- e) Add a section that mirrors that in Insurance Code section 1758.81(c) requiring the licensee to pay costs associated with any enforcement action or investigation pursuant to this article;
- f) Provide for a two-tiered fee arrangement, with those vendors having eight employees or less paying a lesser fee.

POSITIONS

Support

The Bob Bader Company (Sponsor)
Public Storage, Inc. (Sponsor)

Oppose

None received

Other

Department of Insurance--Neutral if Amended

COMMITTEE QUESTIONS

There are several, generally minor, differences between the

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laws governing the sale of insurance by the rental car industry and this bill. Some are specific to the industry served, but others seem to have some relevance to both:

1. The renewal process for the rental car industry is more explicit, including a provision added in 2002 stating that, not less than 60 days before the license will expire, the IC may mail the renewal notice to the latest address for the licensee. It is the responsibility of the licensee to file the renewal on time, and the IC may impose a late penalty of 50% in addition to the renewal fee. Should this bill provide for a late penalty to mirror that for the car rental industry?
2. The rental car industry law requires licensee to pay any costs associated with any enforcement action or investigation. Should the self-service storage industry also be required to pay these costs?
3. The rental car industry law requires the licensee and any employee acting as an agent to be at least 18 years old. Should there be an age requirement in this bill?
4. Should self-service storage employees have to be periodically retrained on the subject matter related to this law?
5. Should the license fee be set in statute rather than by regulation?

Consultant: Erin Ryan (916) 445-0825

EXHIBIT B

SENATE RULES COMMITTEE	AB 2520
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: AB 2520
Author: Vargas (D)
Amended: 7/22/04 in Senate
Vote: 21

SENATE INSURANCE COMMITTEE : 8-1, 6/16/04
AYES: Speier, Morrow, Denham, Escutia, Figueroa, Ortiz,
Scott, Soto
NOES: Oller

SENATE APPROPRIATIONS COMMITTEE : 10-0, 8/4/04
AYES: Alpert, Battin, Aanestad, Ashburn, Bowen, Burton,
Escutia, Machado, Poochigian, Speier
NO VOTE RECORDED: Johnson, Karnette, Murray

ASSEMBLY FLOOR : 73-6, 5/25/04 - See last page for vote

SUBJECT : Self-service storage agents

SOURCE : Public Storage, Inc.
The Bob Bader Company

DIGEST : This bill (1) requires self-service storage facilities and their franchisees that sell insurance in connection with self-service storage rental agreements to obtain a license from the State Insurance Commissioner, (2) requires such licensees to provide training to their employees, (3) allows the facility to collect the monthly storage fee and insurance premium in one check, and (4) imposes other specified duties.

CONTINUED

2ANALYSIS :

Existing law:

1. Provides that, in general, a person shall not negotiate or sell contracts of insurance unless he or she has been licensed by the State Insurance Commissioner (IC) to act in that capacity, and makes it a crime to act in that capacity without a license.
2. Allows for the sale of limited lines of insurance by retail vendors of communications equipment and rental cars and their agents, and credit insurance agents, under specified conditions.

This bill:

1. Creates a new limited line of insurance category to regulate the offering for sale of insurance by self-service storage facilities in California.
2. Requires any self-service storage facility, or franchisee of that facility, that sells insurance in connection with, and incidental to, self-service rental agreements to be licensed by the IC.
3. Requires that license to be renewed every two years.
4. Requires the applicant for a license under this article pay a fee, to be determined by the State Department of Insurance (DOI) and sufficient to defray the actual costs of implementing this article, upon application and renewal.
5. Requires licensees to provide certain written information to the IC, including a certificate by the insurer that is named in the self-service storage agent license stating that the applicant is trustworthy and competent to act as its agent for the purpose of selling insurance specific to self-service storage agreements.
6. Requires each self-service storage licensee to provide training and instruction to its employees regarding the types of insurance offered for sale to prospective

renters, ethical sales practices, and disclosures to renters required by this article, and requires all training materials, and any subsequent modifications, to be submitted to the DOI at least 30 days prior to use.

7. Provides that if the licensee or any of its employees violate any of these provisions, the IC may revoke or suspend its license or impose other fines and penalties.
8. Provides that the self-service storage facility license to sell insurance is limited to hazard insurance coverage to renters for the loss of, or damage to, tangible personal property in storage or in transit during the rental period or any other coverage the IC may approve as appropriate.
9. Requires the licensee to provide brochures or other written materials to the prospective renter that summarizes the material terms and conditions of coverage offered, including the identity of the insurer, and to describe the process for filing a claim, including a toll-free telephone number to report a claim.
10. Requires the licensee to post conspicuously and disclose to renters in writing, with a signed acknowledgement by the renter, that:
 - A. The purchase of insurance from the self-service storage facility is not required to rent the space, but the licensee or its employees may advise the renter that the self-storage agreement may contain provisions requiring the renter to provide insurance on his/her property in the storage unit.
 - B. The insurance offered may duplicate coverage already provided by the renter's homeowners' insurance policy or other source of coverage.
 - C. The self-service storage facility and its employees are not qualified or authorized to evaluate the renter's existing insurance coverage.
11. Defines "self-service storage facility," "storage space," "renter," "rental

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agreement," and "self-service storage agent" for purposes of this article.

12. Permits the IC to adopt fee differentials for smaller self-service storage facilities.

Purpose of the bill . To create a limited agent license for self-service storage facilities to sell hazard insurance to renters of storage units.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 6/16/04) (Per Senate Insurance Committee analysis)

The Bob Bader Company (co-source)
Public Storage, Inc. (co-source)

ARGUMENTS IN SUPPORT : According to The Bob Bader Company, self-service storage facilities have been offering optional personal property insurance coverage to their tenants for more than 20 years for two reasons:

1. A large percentage of self-service storage tenants do not have personal property coverage, and coverage provided by the self-service storage facilities helps tenants recover financially when there is a loss.
2. The courts have relieved self-service storage facilities of liability for loss of, or damage to, the tenant's property when there is a loss, the tenant has been advised that it is his/her responsibility to insure the property, and optional coverage has been offered.

ASSEMBLY FLOOR :

AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dutra, Dutton, Dymally, Firebaugh, Frommer, Garcia, Goldberg, Hancock, Harman, Jerome Horton, Shirley Horton, Jackson, Keene, Kehoe, Koretz, La Malfa, Laird, Leno,

Levine, Lieber, Liu, Longville, Lowenthal, Maddox,
Maldonado, Matthews, Maze, McCarthy, Montanez, Mullin,
Nakanishi, Nakano, Nation, Negrete McLeod, Oropeza,
Parra, Pavley, Plescia, Reyes, Richman, Ridley-Thomas,
Runner, Salinas, Samuelian, Simitian, Spitzer, Steinberg,
Vargas, Wesson, Wiggins, Wolk, Wyland, Yee, Nunez
NOES: Haynes, Houston, La Suer, Leslie, Mountjoy, Pacheco
NO VOTE RECORDED: Strickland

DLW:mel 8/9/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Samuel Heckart v. A-1 Self Storage, Inc. et al.**

No.: **S232322**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On September 11, 2017, I served the attached **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF BRIEF OF THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, INVITED AMICUS CURIAE; SUPPORTING DECLARATION OF MOLLY K. MOSLEY AND EXHIBITS A-B** by placing a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT**, addressed as follows:

David J. Harris
Trent Kashima
William Restis
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San Diego, CA 92101
*Attorneys for Samuel Heckart
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San Diego, CA 92101

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San Diego, CA 92121
*Attorney for California Self Storage
Association, Amicus curiae*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 11, 2017, at Sacramento, California.

Nickell T. Mosely

Declarant



Signature