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LT. GOVERNOR

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DIRECTOR  
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DEPUTY DIRECTOR

**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION**

**TO THE HOUSE COMMITTEE ON  
JUDICIARY**

**THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017**

**WEDNESDAY, MARCH 29, 2017  
2:00 P.M.**

**TESTIMONY OPPOSING S.B. 288, S.D. 2, H.D.1 , RELATING TO SELF-SERVICE STORAGE FACILITIES.**

**TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR,  
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”) opposes S.B. 288, S.D. 2, H.D 1, Relating to the Self-Service Storage Facilities. My name is Stephen Levins and I am the Executive Director of the OCP.

S.B. 288, S.D. 2, H.D. 1 makes several significant changes to the current law governing self-service storage facilities. It authorizes motor vehicle and boat towing

options for self-service storage facilities after sixty days or more delinquency, provides liability limitations, changes notice provisions, and imposes new statutory late fees.

The OCP is opposed to S.B. 288, S.D. 2, H.D. 1 because it does not believe that it promotes consumer protection.

#### Towing and Liability Provision

S.B. 288, S.D. 2, H.D. 1 authorizes self-service storage facilities to dispose of motor vehicles and boats pursuant to the towing law, section 290-11 of the Hawaii Revised Statutes (“HRS”), without liability. The OCP remains opposed to this provision since if adopted, an owner of a motor vehicle or a boat would have no recourse against a self-service storage facility even if it recklessly allowed an unscrupulous towing company to take possession of a vehicle or boat that was subsequently damaged or stolen.

The OCP and the representative for the Self Storage Association (“SSA”) have met several times in an effort to iron out differences, some of which we have been able to reach an agreement on. In this regard, with respect to the towing provision the parties have agreed to the following clarifying language to this section: “For purposes of applying section 290-11 to this section, the term “vehicle” shall be deemed to correspond to the terms “motor vehicle” and “boat.”

#### Notice Provisions

The OCP has grave concerns with the notice provisions of this measure. S.B. 288, S.D. 2, H.D. 1 requires the notice provisions for rent due, lien, final demand and sale be sent by electronic mail then by verified mail to the occupant’s last known postal address. Current law requires that certain documents, including the lien notices be sent by the

facility owner to the occupant either by certified or postage prepaid mail. These important documents inform occupants of the itemized fees due, their rights to redeem their property under the law, and the procedures and options available to them to protect their property rights and avoid a lien sale. In general, consumers are not likely to be aware that a notice has not been received if an electronic mail transmission is for some reason unsuccessful, and the risk of unknowingly failing to receive such documents if transmitted electronically is the loss of the occupant's property.

Most troubling of the notice provisions is the one that replaces "certified mail" with "verified mail" as a means of sending the final demand, notice of lien and notice of sale. According to this Bill, "verified mail" is defined as any method of mailing that is offered by the United States Postal Service or a private delivery service that provides evidence of the mailing. This differs markedly from "certified mail" which requires an effort to provide proof that the mailed document was received, and not just sent. If someone's cherished personal possessions are about to be permanently taken away the most superior form of notice should be mandated by governing law.

### Late Fees

Hawaii law governing Self-Service Storage Facilities currently has no provision authorizing late fees. The OCP is concerned that the requested amounts requested in this measure are grossly excessive. This measure seeks to establish late fees at \$20 or twenty per cent of the monthly rental amount, whichever is greater. A recent online review of prices on Oahu reveals that the monthly cost of storage units rentals range from \$57 to \$82 for a small unit to \$140 to \$430 for a large unit. Applying the proposed

late fee to these charges would mean that someone who pays only \$57 a month for a unit and is one day late for payment could be subject to a late fee of \$20 or a late fee of 35 per cent. Someone late on a \$430 unit would be subject to a late fee of \$86. These amounts are even more egregious when compared with the late fees allowed under Hawaii's credit sales contract law, HRS Chapter 476, which limits them at \$50 or five per cent, whichever is less.

#### Rental Agreement Liability Limitation

This measure's proposed contractual liability limitations are not in the interest of consumers.<sup>1</sup> It would countenance a liability provision even if it were unconscionable. It is widely recognized that businesses and consumers have unequal bargaining power in consumer contracts. Because of this courts have regularly invalidated provisions that attempt to restrict a business' liability to the detriment of consumers. Allowing a self-service storage facility to limit its liability to an amount that has no correlation to its culpability is simply improper. If this provision were to be enacted into law, a storage facility could limit its liability to a nominal amount and point to the law for justification, even if its conduct was egregious and a consumer's monetary loss was substantial. Since current Hawaii's tort and contract law already adequately cover the responsibilities of the parties in the event of a loss, there is simply no need to enact this type of one sided provision into law.

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<sup>1</sup> These types of clauses have consistently been disfavored by Hawai'i Courts. See Courbat v. Dahana Ranch, Inc., 111 Haw. 254, 141 P.3d 427 (2006).

The Self Storage Association recently provided OCP with a new proposal. Although it appears to be an improvement over H.D. 1, the OCP remains opposed to several of its provisions, most noteworthy are those involving limitation of liability.

Proposed changes to S.B. 288, H.D. 1

Attached is OCP's proposed H.D. 2 that addresses its concerns regarding the towing provision, notice requirements, limitation of liability and late fees with the following amendments:

1. Page 4, Lines 4 –Line 19. Boats are not referred to in the towing statute, H.R.S. § 290-11, therefore clarification is needed to include boats in the definition of vehicles in H.R.S. §290-11. The OCP and Self-Storage Association representative propose the following language to this section:  
“For purposes of applying section 290-11 to this section, the term “vehicle” shall be deemed to correspond to the terms “motor vehicle” and “boat”;
2. Page 4, Line 17. Delete “verified” mail and require owner to send notice stating the towing company’s name, address and contact information by “certified” mail;
3. Page 4, Line 20-Page 5, Line 2. Delete this provision which removes liability of an owner for damage to property once a third party has possession because an owner should remain liable for damages if an owner negligently transfers property to an unscrupulous tow company;

4. Page 7, Line 21. Replace “verified” mailing with “certified” mailing. Occupants should be afforded the highest level of notice when a lien is placed on their property (§507-64);
5. Page 7, Line 15-Page 8, Line 16. Proposed amendments to this provision are for clarity (§507-64);
6. Page 9, Line 6. Require notice of final demand and notice of sale to be mailed by certified mail because OCP believes taking one’s property should require the best notice available (§507-65);
7. Page 9, Line 6. Notice of final demand and sale terms should be sent to occupant by email and mailed via certified mail to occupant to provide them with the best notice available for the possible sale of their property to satisfy the sums due for rent and charges demanded and not paid (§507-65);
8. Page 13, Lines 8 –13. Delete section 507-70 (c) because Hawaii courts have found these types of clauses limiting liability to be disfavored since they are often unfair to the consumer (See Courbat v. Dahana Ranch, Inc., 111 Haw. 254, 141 P.3d 427 (2006)); and
9. Page 13, Lines 14-21. Delete the proposed late charge fee because it is grossly excessive when compared to the late fee allowed in Hawaii’s credit sales contract law in HRS Chapter 476 (§507-70 (d)). Self Storage Association and OCP have reached agreement to delete the late fee provision.

Thank you for the opportunity to offer comments opposing S.B. 288, S.D. 2, H.D.1. I would be happy to answer any questions members of the Committee may have.

**Office of Consumer Protection's proposed S.B. 288, S.D. 2, H.D. 2**

THE SENATE  
TWENTY-NINTH LEGISLATURE, 2017  
STATE OF HAWAII

**S.B. NO.** 288  
Prop. H.D. 2

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## A BILL FOR AN ACT

RELATING TO SELF-SERVICE STORAGE FACILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

**[SECTION 1 omitted from draft but NOT suggested for deletion.]**

SECTION 2. Chapter 507, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**"§507- Occupant in default; motor vehicle or boat removal.** (a) If an occupant is in default for sixty or more days and the personal property stored in the leased space is a motor vehicle or boat, the motor vehicle or boat shall be deemed to be left unattended on private property without authorization of the owner of the property and may be towed away, at the expense of the owner of the vehicle or boat; provided that for



purposes of this section, a vehicle may be towed pursuant to section 290-11; provided further that a towing company engaged pursuant to this section shall be a towing company registered in Hawaii. At least fifteen days prior to having the vehicle or boat towed, the owner shall provide notice to the occupant, stating the name, address, and contact information of the towing company, by ~~[verified]~~ certified mail at the occupant's last known postal address and by electronic mail at the last known electronic mail address.

~~(b) The owner shall not be liable for any damage to the personal property towed or removed from the self-service storage facility pursuant to subsection (a) once the property is in the possession of a third party."~~

~~For purposes of applying section 290-11 to this section, the term "vehicle" shall be deemed to correspond to the terms "motor vehicle" and "boat".~~

SECTION 3. Section 507-61, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Electronic mail" means the transmission of information or a communication by the use of a computer or other electronic means sent to a person identified by a unique address and that is received by that person.

"Verified mail" means any method of mailing that is offered by the United States Postal Service that provides evidence of

the mailing or a private delivery service that provides evidence of the delivery of the document."

SECTION 4. Section 507-61, Hawaii Revised Statutes, is amended by amending the definition of "last known address" to read as follows:

""Last known address", "last known postal address", or "last known electronic mail address" means the postal or electronic mail address provided by the occupant in the latest rental agreement, or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address."

SECTION 5. Section 507-63, Hawaii Revised Statutes, is amended to read as follows:

**"[+]§507-63[+] Rent due; notice of default and lien.** When any part of the rent or other charges due from an occupant remain unpaid for fifteen consecutive days, an owner may deny the right of access to the occupant to the storage space at a self-service storage facility; provided that ~~[notice is sent to the occupant's or last known address, postage prepaid,~~ containing] the owner shall provide notice at the last known electronic mail address then by verified mail at the occupant's last known postal address. The notice shall contain all of the following:

(1) A statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due[-];

(2) A statement that the occupant is in default of the rental agreement[-];

(3) A statement that the occupant's right to use the storage space will be denied unless and until all sums due are paid by the occupant[-];

(4) A notice that the occupant has been denied access to the storage space and that an owner's lien, as provided for in section 507-62, may be imposed if all sums due are not paid within fifteen days of the notice[-]; and

(5) The name, street address, ~~and~~ telephone number, and electronic mail address of the owner, or a designated agent, whom the occupant may contact to respond to the notice."

SECTION 6. Section 507-64, Hawaii Revised Statutes, is amended to read as follows:

"~~[§507-64]~~ **Notice of lien.** If a notice has been sent, as required by section 507-63, and the total sum due has not been paid as specified in the notice, the owner may deny an occupant access to the space, enter the space, and remove any property found in the space to a place of safekeeping; provided that the owner shall [provide] send a notice of lien at the last known electronic mail address then by [verified] certified mail at the occupant's last known postal address. The ~~owner shall send a~~ notice of lien ~~[to the [occupant, addressed to the] occupant's [last known address, postage prepaid, a notice of lien]~~ last known electronic mail address or to the last known postal address by verified mail, which] shall state all of the following:

(1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property[-];

(2) That the stored property is subject to a lien, and the amount of the lien[-]; and

(3) That the owner will seize and take possession of the property to satisfy the lien after a specified date which is not less than fifteen days from the date of mailing the notice unless the amount of the lien is paid."

SECTION 7. Section 507-65, Hawaii Revised Statutes, is amended to read as follows:

"**§507-65 Final demand and notice of sale.** If both notices have been sent, as required by sections 507-63 and 507-64, and the total sum due has not been paid as specified in the two prior notices, the owner may prepare for the sale of the occupant's property. The owner shall provide a notice of final demand and notice of sale at the last known electronic mail address then by [verified] certified mail at the occupant's last known postal address. The owner shall [~~then~~] send, to the [~~occupant, addressed to the~~] occupant's last known electronic email address [~~or~~] and last known address, by [verified] certified mail, postage prepaid:

(1) A notice of final demand and sale which shall state all of the following:

- (A) That the sums due for rent and charges demanded have not been paid[-]; i
- (B) That the occupant's right to use the designated storage space has been terminated[-]; i
- (C) That the occupant no longer has access to the stored property[-]; i

- (D) That the stored property is subject to a lien and the amount of the lien~~[+]~~;
- (E) That the property will be sold to satisfy the lien after a specified date which is not less than thirty days from the date of mailing the notice unless prior to the specified date, the lien is paid in full~~[+]~~;
- (F) That any excess proceeds of the sale over the lien amount of costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of one year from the sale and that thereafter the proceeds will go to the State under chapter 523A~~[+]~~; and
- (G) That if the proceeds of sale do not fully cover the amount of lien and costs, the occupant will be held liable for any deficiency~~[+]~~; and

(2) An itemized statement of the owner's claim showing all sums due at the time of the notice and the date when sums became due."

SECTION 8. Section 507-66, Hawaii Revised Statutes, is amended to read as follows:

**"§507-66 Method of sale.** (a) [~~Fifteen~~] No sooner than fifteen days after sending the final demand and notice of sale,

pursuant to section 507-65(1), the owner shall cause an advertisement of the sale [shall] to be [published]:

(1) Published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held[-]; or

(2) Disseminated in any other commercially reasonable manner; provided that at least three independent bidders participate in the sale.

The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, the total sums due, and the name and location of the storage facility.

(b) The sale shall be conducted in a commercially reasonable manner[~~;~~ and, after], which shall include a sale conducted on an online website that customarily conducts self-storage lien sales. After deducting the amount of the lien and costs, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the State as provided in chapter 523A."

SECTION 9. Section 507-70, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]~~507-70~~[§]~~ **Self-storage contracts.** (a) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement that the occupant's property will be subject to a claim of lien and may be sold to satisfy the lien if the rent or other charges due remain unpaid for fifteen consecutive days and that such actions are authorized by this part.

(b) This part shall not apply, and the lien authorized by this part shall not attach, unless the rental agreement or supporting documentation requests, and provides space for, the occupant to give the name ~~[and]~~, address, and telephone number of another person to whom notices required to be given under this part may be sent. If ~~[both]~~ an address ~~[and]~~, an alternative address, and an alternative telephone number are provided by the occupant, notices pursuant to sections 507-63 or 507-64 shall be sent to both addresses~~[+]~~ and by contact at the alternative telephone number. If both addresses and an alternative telephone number are provided by the occupant, the owner shall send the final demand and notice of sale, pursuant to section 507-65, to both addresses by ~~[certified]~~ verified mail, postage prepaid~~[+]~~, and contact the occupant at the alternative telephone number. Failure of an occupant to provide an alternative address shall not affect an

owner's remedies under this part or under any other provision of law.

~~(c) For the purpose of determining any liability of the owner of the self-service storage facility, if a rental agreement specifies a limit on the monetary value of personal property that may be stored in an occupant's space, that limit shall be deemed the maximum value of the personal property stored in the occupant's space.~~

~~(d) Any late fee charged by the owner shall be provided for in the rental agreement. No late fee shall be collected unless the late fee is written in the rental agreement or as an addendum to the agreement. An owner may impose a reasonable late fee for each month that an occupant does not pay rent when due. A late fee of \$20 or twenty per cent of the monthly rental amount, whichever is greater, for each late rental payment shall be deemed reasonable and shall not constitute a penalty."~~

SECTION 10. An owner of a self-service storage facility shall notify each occupant of the self-service storage facility regarding the changes to the self-service storage facility law pursuant to sections 2 through 9 of this Act. Each owner shall update the rental agreements modified pursuant to this Act and obtain the initials of the occupants under each rental agreement.



SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on January 7, 2059.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. 288, SD2 HD1**

March 29, 2017  
2:00 p.m.  
CR 325

To: Chairman Scott Y. Nishimoto and Members of the House Committee on Judiciary.

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to S.B. 288, SD2 HD1, relating to Self-Storage Facilities with regard to two provisions that limit self-storage owners' liability.

S.B. 288, SD2 HD1 includes language that limits the liability placed on Self-Storage facilities on pages 4-5 and 13 of the bill. HAJ objects to these limits as it is against public policy and gives inadequate protection to consumers.

The subsection at page 4, lines 20 to page 5, line 2 reads:

“(b) The owner shall not be liable for any damage to the personal property towed or removed from the self-service storage facility pursuant to subsection (a) once the property is in the possession of a third party.”

HAJ opposes this provision because it is overly broad and applies to any property damage which occurs once it is in the possession a third-party, even if the damage happens on the storage property and is caused by the owner's negligence or reckless hiring of the third-party. For example, once a stored car is hooked up to a third-party tow truck it is in the “possession of a third party.” If a storage owner, angry that payment was late, intentionally scratched the car as it was being towed away, the owner would be immune from responsibility for that damage because the car was “in the possession of a third party.” Similarly, an owner who recklessly keeps hiring a towing company with a history of routinely damaging cars or ransacking their contents would

be immune. This immunity breeds indifference to the safe handling of cars in storage and is bad public policy. This provision should be removed entirely and regular negligence should apply in these circumstances. The owner would then only be liable for damages caused by its own negligence in causing damage or in allowing a third-party to damage the property of another.

HAI is not unsympathetic to the plight of storage facility owners who end up with abandoned property. However, it must be kept in mind that this measure allows the towing of cars and boats after only two months of missed payments. Even ordinary cars, such as a Toyota Camry or Honda Accord can cost \$25,000 to \$30,000. Luxury cars or boats can easily cost much more. There must be a balance between consumer protection and the ability of a storage business to remove and sell abandoned property. This measure does not strike a fair balance.

Subsection (c) at page 13, lines 8-13, caps the amount of damages that an owner may seek to the monetary value of the personal property. Courts have rejected contracts that limit a business' liability when there is unequal bargaining power. See Courbat v. Dahana Ranch, Inc., 111 Haw. 254, 141 P.2d 427 (2006). This section would give the owner an unfair advantage and would allow them to limit their monetary liability to whatever amount they include in their contracts no matter how unreasonable. It could be set at \$25. The potential for abuse is great and would give consumers no recourse. Damages, as with liability, should be determined on a case-by-case basis, especially in light of the different values of property that are expected to be held in self-storage facilities. For these reasons this subsection should also be deleted from the bill.

Thank you for allowing me to testify on this measure. Please feel free to contact me should you have any questions or desire additional information.

**LATE**

JUDtestimony

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, March 29, 2017 11:50 AM  
To: JUDtestimony  
Cc: gordonarakaki@hawaiiantel.net  
Subject: Submitted testimony for SB288 on Mar 29, 2017 14:00PM  
Attachments: SB 0288, HD1--SSA testimony--JUD hearing (2017-03-29).pdf

**SB288**

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon M. Arakaki	Self Storage Association	Support	Yes

Comments: Aloha! Attached is the Self Storage Association's testimony in support of SB 288, SD2, HD1, for which JUD is having hearing on Wednesday, March 29 at 2:00 PM. I tried to attach the proposed HD2 as well, but it appears that only 1 file at a time can be sent so I am sending it separately. Please let me know if you have questions. Sincerely, Gordon Arakaki (cell: (808) 542-1542

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

March 29, 2017

Hearing Date: Wednesday, March 29, 2017

Time: 2:00 p.m.

Place: House Conference Room 325

The Honorable Scott Y. Nishimoto, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
House Committee on Judiciary

Re: Testimony in Support of S.B. No. 288, S.D. 2, H.D. 1 – Relating to Self-Storage Facilities

Chair Nishimoto, Vice Chair San Buenaventura, and Members of the House Committee on Judiciary:

My name is Timothy J. Dietz, President & CEO of the National Self Storage Association, testifying in strong support of S.B. No. 288, S.D. 2, H.D. 1, which updates and clarifies Hawaii's self-storage facilities lien law. We note, however, that the State Office of Consumer Protection ("OCP") has raised some concerns about certain provisions in the bill, and we have been meeting with them to try to address their concerns. To that end, we have crafted a proposed H.D. 2 (which we have shared with OCP) for your consideration (attached).

The Self Storage Association is a not-for-profit trade organization representing the best interests of the self-storage industry nationally. We work to build business viability for our members and to grow the industry. The association also represents the industry in the U.S. Congress, federal regulatory agencies, and other national, state, and regional associations.

Thirty-three years ago, in 1984, Hawaii adopted its self-storage facilities lien law. It has remained virtually unchanged since that time. As reflected in the purpose section of the bill, S.B. No. 288, S.D. 2, H.D. 1 will update and clarify Hawaii's self-storage lien laws as follows:

- Section 2 of the bill adds a new section to Chapter 507, Hawaii Revised Statutes ("HRS"), to allow for the towing of motor vehicles and boats after 60 or more days delinquency. Allowing for the motor vehicle and boat towing option makes sense because: (1) vehicle liens are more complicated than the usual self-storage lien circumstances; (2) providing an option to have the vehicle towed is a simple resolution because towing companies are better prepared to proceed with vehicle lien situations, which are similar to parking garage facilities' situations; and (3) the self-storage operator gives up its lien rights (the lien is only on property at the facility) for a speedy solution to the problem that self-storage owners have when the property subject to the lien is titled property such as a motor vehicle or boat; once towed, the towing company will deal with the vehicle or boat in the same way that it deals with vehicles towed from a parking lot or other place where the vehicle should not have parked. As recommended by OCP, the S.D. 2 requires that any towing be consistent with HRS §290-1, which regulates towing of vehicles left unattended on private and public property. Our proposed H.D. 1 incorporates the term "boats" in the term "vehicles" for the purposes of applying HRS §290-11 to the self-storage lien law.
- Sections 5, 6, and 7 of the bill [amendments to HRS §§507-63, 507-64, and 507-65] add notification by e-mail and verified mail. Our proposed H.D. 1 reverts back to the current law for all but the last step. Current law requires only notice by regular mail, except for the final demand and notice of sale, for which certified mail is required (and delinquent

## JUDtestimony

From: mailinglist@capitol.hawaii.gov  
 Sent: Wednesday, March 29, 2017 11:50 AM  
 To: JUDtestimony  
 Cc: gordonarakaki@hawaiiantel.net  
 Subject: Submitted testimony for SB288 on Mar 29, 2017 14:00PM  
 Attachments: SB 0288, HD1--SSA testimony--JUD hearing (2017-03-29).pdf

Categories: Purple Category

**SB288**

Submitted on: 3/29/2017

Testimony for JUD on Mar 29, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon M. Arakaki	Self Storage Association	Support	Yes

Comments: Aloha! Attached is the Self Storage Association's testimony in support of SB 288, SD2, HD1, for which JUD is having hearing on Wednesday, March 29 at 2:00 PM. I tried to attach the proposed HD2 as well, but it appears that only 1 file at a time can be sent so I am sending it separately. Please let me know if you have questions. Sincerely, Gordon Arakaki (cell: (808) 542-1542

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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## A BILL FOR AN ACT

RELATING TO SELF-SERVICE STORAGE FACILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that Hawaii adopted its self-service storage facilities laws in 1984 and that the laws have remained virtually unchanged during the intervening thirty-three years. Consequently, the State's self-service storage facilities laws do not adequately reflect or support current self-service storage facilities businesses, including the facility owners and storage unit occupants.

The legislature also finds that since the enactment of the self-service storage facility laws, technological advances such as electronic mail and internet websites have changed the ways that self-service storage facilities owners and occupants can, and in many instances prefer, to communicate with one another and exchange necessary information. ~~The inability, under the law, of owners and occupants to communicate through these modern forms of communication reduces efficiency and is burdensome on all parties.~~ Therefore, it is necessary to update these laws to

allow help owners and occupants to effectively make use of modern communications.

The legislature also finds that self-service storage facilities owners are ill-equipped under the law to deal efficiently with delinquent occupants who leave motor vehicles or boats stored at the facilities. Motor vehicle and boat liens, which involve titled property, are more complicated than the usual self-storage lien circumstances that facilities owners typically encounter, which can lead to unnecessary delays and confusion. Therefore, the legislature further finds that allowing self-service storage facilities owners, after providing appropriate notice, to tow motor vehicles and boats belonging to delinquent occupants would provide a workable solution for facilities owners.

The legislature further finds that current laws do not adequately address the liabilities of self-service storage facility owners, leaving owners open to unknown potential losses, which can create impediments to business. Moreover, owners may shift costs for these potential losses on to occupants.

Accordingly, the purpose of this Act is to modernize the self-service storage facilities laws to:

- (1) Allow self-service storage facility owners to tow motor vehicles and boats after sixty or more days of



delinquency; provided that owners provide delinquent occupants with appropriate notice;

- (2) Reflect the modern needs of the industry by allowing self-service storage facility owners to publish notices of sales ~~and send other notices to occupants by electronic mail and other~~ in a commercially reasonable ~~methods~~ manner, provided that at least three independent bidders participate in the sale, and conduct sales in commercially reasonable manners, which shall include sales conducted on an online website that customarily conducts self-storage lien sales;
- (3) Allow self-service storage facility owners to limit ~~their liability to the maximum~~ the monetary value of property that may be stored pursuant to a rental agreement but allow the occupant to increase the limit on the value of property with the written permission of the owner; and
- (4) ~~Require any late fees charged by self-service storage facility owners to be provided for in the rental agreement; and~~
- ~~(5)~~ Require self-service storage facility owners to notify occupants of the changes enacted by this Act.

SECTION 2. Chapter 507, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**"§507- Occupant in default; motor vehicle or boat**

**removal.** (a) If an occupant is in default for sixty or more days and the personal property stored in the leased space is a motor vehicle or boat, the motor vehicle or boat shall be deemed to be left unattended on private property without authorization of the owner of the property and may be towed away, at the expense of the owner of the vehicle or boat; provided that for purposes of this section, a vehicle may be towed pursuant to section 290-11; provided further that a towing company engaged pursuant to this section shall be a towing company registered in Hawaii. At least ten days prior to having the vehicle or boat towed, the owner shall provide notice to the occupant, stating the name, address, and contact information of the towing company, by verified mail at the occupant's last known postal address and by electronic mail at the last known electronic mail address.

For purposes of applying section 290-11 to this section, the term "vehicle" shall be deemed to correspond to the terms "motor vehicle" and "boat".

(b) The owner shall not be liable for any damage to the personal property towed or removed from the self-service storage

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facility pursuant to subsection (a) once the property is in the possession of a third party."

SECTION 3. Section 507-61, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Electronic mail" means the transmission of information or a communication by the use of a computer or other electronic means sent to a person identified by a unique address and that is received by that person.

"Verified mail" means any method of mailing that is offered by the United States Postal Service that provides evidence of the mailing or a private delivery service that provides evidence of the delivery of the document."

SECTION 4. Section 507-61, Hawaii Revised Statutes, is amended by amending the definition of "last known address" to read as follows:

"Last known address", "last known postal address", or "last known electronic mail address" means the postal or electronic mail address provided by the occupant in the latest rental agreement, or the postal or electronic mail address provided by the occupant in a subsequent written notice of a change of address."

SECTION 5. Section 507-63, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~§507-63~~[+]~~ **Rent due; notice of default and lien.** When

any part of the rent or other charges due from an occupant remain unpaid for fifteen consecutive days, an owner may deny the right of access to the occupant to the storage space at a self-service storage facility; provided that ~~notice is sent to the occupant's or last known address, postage prepaid,~~ ~~containing~~ the owner shall provide notice at the last known electronic mail address then by verified mail at the occupant's last known postal address. The notice shall contain all of the following:

- (1) A statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due~~[+]~~;
- (2) A statement that the occupant is in default of the rental agreement~~[+]~~;
- (3) A statement that the occupant's right to use the storage space will be denied unless and until all sums due are paid by the occupant~~[+]~~;
- (4) A notice that the occupant has been denied access to the storage space and that an owner's lien, as provided for in section 507-62, may be imposed if all sums due are not paid within fifteen days of the notice~~[+]~~; and

**Comment [GA1]:** Highlighted language is current law, which SSA prefers over the provision as it evolved.

(5) The name, street address, ~~and~~ telephone number, and electronic mail address of the owner, or a designated agent, whom the occupant may contact to respond to the notice."

SECTION 6. Section 507-64, Hawaii Revised Statutes, is amended to read as follows:

**Comment [GA2]:** Section 6 amendment is no longer necessary.

"~~[+]§507-64[+]~~ **Notice of lien.** If a notice has been sent, as required by section 507-63, and the total sum due has not been paid as specified in the notice, the owner may deny an occupant access to the space, enter the space, and remove any property found in the space to a place of safekeeping; provided that the owner shall provide a notice of lien at the last known electronic mail address then by verified mail at the occupant's last known postal address. The owner shall send a notice of lien to the ~~+~~occupant, addressed to the~~+~~ occupant's ~~+~~last known address, postage prepaid, a notice of lien~~+~~ last known electronic mail address or to the last known postal address by verified mail, which shall state all of the following:

**Comment [GA3]:** Highlighted language is current law, which SSA prefers over the provision as it evolved. Therefore, this section/amendment is no longer necessary

- (1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property~~[-]~~;
- (2) That the stored property is subject to a lien, and the amount of the lien~~[-]~~; and

- (3) That the owner will seize and take possession of the property to satisfy the lien after a specified date which is not less than fifteen days from the date of mailing the notice unless the amount of the lien is paid."

SECTION 7. Section 507-65, Hawaii Revised Statutes, is amended to read as follows:

**"§507-65 Final demand and notice of sale.** If both notices have been sent, as required by sections 507-63 and 507-64, and the total sum due has not been paid as specified in the two prior notices, the owner may prepare for the sale of the occupant's property. The owner shall provide a notice of final demand and notice of sale at the last known electronic mail address then by verified mail at the occupant's last known postal address. ~~The owner shall [then] send, to the [occupant, addressed to the] occupant's last known electronic email address or last known address, by verified mail,~~ postage prepaid:

- (1) A notice of final demand and sale which shall state all of the following:
- (A) That the sums due for rent and charges demanded have not been paid[-];
- (B) That the occupant's right to use the designated storage space has been terminated[-];

- (C) That the occupant no longer has access to the stored property~~[-]~~;
  - (D) That the stored property is subject to a lien and the amount of the lien~~[-]~~;
  - (E) That the property will be sold to satisfy the lien after a specified date which is not less than thirty days from the date of mailing the notice unless prior to the specified date, the lien is paid in full~~[-]~~;
  - (F) That any excess proceeds of the sale over the lien amount of costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of one year from the sale and that thereafter the proceeds will go to the State under chapter 523A~~[-]~~; and
  - (G) That if the proceeds of sale do not fully cover the amount of lien and costs, the occupant will be held liable for any deficiency~~[-]~~; and
- (2) An itemized statement of the owner's claim showing all sums due at the time of the notice and the date when sums became due."

SECTION 8. Section 507-66, Hawaii Revised Statutes, is amended to read as follows:

**"§507-66 Method of sale.** (a) [~~Fifteen~~] No sooner than fifteen days after sending the final demand and notice of sale, pursuant to section 507-65(1), the owner shall cause an advertisement of the sale [~~shall~~] to be [~~published~~]:

- (1) Published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held[~~-~~]; or
- (2) Disseminated in any other commercially reasonable manner; provided that at least three independent bidders participate in the sale.

The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, the total sums due, and the name and location of the storage facility.

(b) The sale shall be conducted in a commercially reasonable manner[~~; and, after~~], which shall include a sale conducted on an online website that customarily conducts self-storage lien sales. After deducting the amount of the lien and costs, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of



the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the State as provided in chapter 523A."

SECTION 9. Section 507-70, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§507-70[+]~~ **Self-storage contracts.** (a) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement that the occupant's property will be subject to a claim of lien and may be sold to satisfy the lien if the rent or other charges due remain unpaid for fifteen consecutive days and that such actions are authorized by this part.

(b) This part shall not apply, and the lien authorized by this part shall not attach, unless the rental agreement or supporting documentation requests, and provides space for, the occupant to give the name ~~[and]~~, address, and telephone number of another person to whom notices required to be given under this part may be sent. If ~~both~~ an address ~~[and]~~, an alternative address, and an alternative telephone number are provided by the occupant, notices pursuant to sections 507-63 or 507-64 shall be sent to both addresses~~[--]~~ and by contact at the alternative telephone number. If both addresses and an alternative telephone number are provided by the occupant, the

owner shall send the final demand and notice of sale, pursuant to section 507-65, to both addresses by [~~certified~~] verified mail, postage prepaid[~~[-]~~], and contact the occupant at the alternative telephone number. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this part or under any other provision of law.

(c) ~~For the purpose of determining any liability of the owner of the self-service storage facility, if a rental agreement specifies a limit on the monetary value of personal property that may be stored in an occupant's space, that limit shall be deemed the maximum value of the personal property stored in the occupant's space. If the contract entered into between the owner and the occupant contains a provision placing a limit on the value of property that may be stored in the occupant's space, this limit is the maximum value of the stored property, provided that the provision is printed in bold type or underlined in the contract. The limit on the value of property may not be less than \$1,000. The contract may provide that the occupant may increase the limit on the value of property with the written permission of the owner.~~

**Comment [GA4]:** The limitation on value provision has been changed to mirror Minnesota's law. OCP does not believe that a limitation on value provision should be in Hawaii's statute. SSA believes that it should.

~~(d) Any late fee charged by the owner shall be provided for in the rental agreement. No late fee shall be collected unless the late fee is written in the rental agreement or as an addendum to the agreement. An owner may impose a reasonable~~

**Comment [GA5]:** SSA and OCP have reached agreement that the late fee provision should be deleted.

~~late fee for each month that an occupant does not pay rent when due. A late fee of \$20 or twenty per cent of the monthly rental amount, whichever is greater, for each late rental payment shall be deemed reasonable and shall not constitute a penalty."~~

SECTION 10. An owner of a self-service storage facility shall notify each occupant of the self-service storage facility regarding the changes to the self-service storage facility law pursuant to sections 2 through 9 of this Act. Each owner shall update the rental agreements modified pursuant to this Act and obtain the initials of the occupants under each rental agreement.

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on January 7, 2059.