



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

MARCH 2, 2017
9:35 AM

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

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE KARL RHOADS, 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 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. 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. 1 because it does not believe that it promotes consumer protection.

Towing and Liability Provision

S.B. 288, S.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.

Additionally, the reference to boats in this section should be removed because boats are not covered by HRS § 290-11.

Notice Provisions

The OCP has grave concerns with the notice provisions of this measure. S.B. 288, S.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 is not in the interest of consumers.¹ 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.

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

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

1. Page 3, Line 17 – Page 4, Line 6. Remove all references to boats because H.R.S. § 290-11 does not refer to boats;

¹ 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).

2. Page 4, Line 9. 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, Lines 12-15. 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 11. Replace “verified” mailing with “certified” mailing. Occupants should be afforded the highest level of notice when a lien is placed on their property;
5. Page 7, Lines 5-16. Proposed amendments to this provision are for clarity;
6. Page 8, Line 14. 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;
7. Page 8, Line 17. 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;
8. Page 12, Line 18 – Page 13, Line 2. 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 3-10. 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.

Thank you for the opportunity to offer comments opposing S.B. 288 S.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

THE SENATE
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

Proposed **S.B.** 288
S.D. 2
NO.

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, the vehicle ~~or boat~~ may be towed pursuant to section 290-11; provided further that a towing company engaged pursuant to this section shall be 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 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.~~

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 or a private delivery service that provides evidence of the mailing or 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:

"~~[(1)]~~**§507-64**~~[(1)]~~ **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~~[.]~~;
 - (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~~] Not 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 certified 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 July 1, 2050.



February 28, 2017

Hearing Date: Thursday, March 2, 2017

Time: 9:00 a.m.

Place: Senate Conference Room 016

The Honorable Gilbert S.C. Agaran, Chair

The Honorable Karl Rhoads, Vice Chair

Senate Committee on Judiciary and Labor

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

Chair Baker, Vice Chair Nishihara, and Members of the Senate Committee on Commerce, Consumer Protection, and Health:

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. 1, which updates and clarifies Hawaii's self-storage facilities lien law. The bill is similar to S.B. No. 3033, S.D. 1 (2016), which was passed unanimously by the Senate last year.

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. 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 the State Office of

Consumer Protection, the S.D. 1 requires that any towing be consistent with HRS §290-11, which regulates towing of vehicles left unattended on private and public property.

- 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. Many customers prefer to be contacted by e-mail, particularly if they are in a transitory situation. E-mail actually provides greater reach to relocating tenants and members of the military who are being deployed. The 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 storage unit renters usually avoid, lengthening the time and expense for the self-storage operator). The new notice provisions are a better way of making sure that the consumer actually gets notice of his or her delinquency and the consequences of such delinquency.
- Section 8 of the bill amends HRS §507-66 (Method of sale) to allow for public notice of a sale in any commercially reasonable manner, provided that at least three independent bidders participate in the sale, and allows the sale to be conducted on an online website that customarily conducts self-storage lien sales. These amendments will allow self-storage operators to take advantage of technologies that have developed over the past 32 years regarding public notice and advertising of lien sales, as well as conducting such sales. (Please note that, at auction, self-storage operators on average recover only 20% of what is owed.)
- Section 9 of the bill amends HRS §507-70 to add language allowing the lease contract to contain value limitation and late fee provisions. The value limitation provision allows a self-storage owner to make a reasonable calculation of its liability insurance needs, among other things, and is reasonable because only the tenant knows the type and nature of the property to be stored. For example, a storage operator may be very happy to rent to someone storing furniture worth \$5,000 or even \$20,000. The operator might have second thoughts about renting a unit to someone who plans to store property (e.g., fine art) worth \$100,000. Finally, the late fee provision provides a standard (\$20.00 or 20% of rent owed monthly, whichever is greater) that has been accepted as reasonable in 20 states to date.

We respectfully request that you pass S.B. No. 288, S.D. 1.

Sincerely,



Timothy J. Dietz
President & CEO of the National Self Storage Association