

# SB288

Measure Title: RELATING TO SELF-SERVICE STORAGE FACILITIES.

Report Title: Self-service Storage Facilities; Owners; Occupants; Notice; Towing

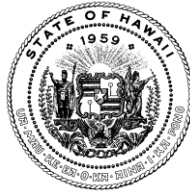
Description: Authorizes motor vehicle and boat towing options for self-service storage facilities after sixty days or more delinquency; provided that an occupant is provided notice. Requires owners to notify occupants via two of the following three methods: telephone number, electronic mail, or postal address. Allows owners to send notices by electronic mail, publish notices of sales in any commercially reasonable manner, conduct sales online, and charge late fees. Authorizes limits on the liability of the owner of self-service storage facilities to be based on the maximum monetary value of property that may be stored pursuant to the rental agreement.

Companion:

Package: None

Current Referral: CPH, JDL

Introducer(s): BAKER, IHARA, S. Chang, Espero, Nishihara



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

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CATHERINE P. AWAKUNI COLÓN  
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JO ANN M. UCHIDA TAKEUCHI  
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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

FEBRUARY 2, 2017  
9:00 AM

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

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE CLARENCE K. NISHIHARA, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

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

S.B. 288 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 because it does not believe that it promotes consumer protection.

#### Towing and Liability Provision

S.B. 288 allows self-service storage facilities to dispose of motor vehicles and boats with towing procedures that completely insulate them from liability once the vehicle or boat has been towed from their premises. 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 a towing company to take possession of a vehicle or boat that was subsequently damaged or stolen. Additionally, the Bill makes no allowance for governing how the towing company that takes possession of a motor vehicle or boat will process the vehicle or boat after it takes possession. It doesn't address storage fees, towing fees, or if unclaimed, how the property would be disposed. Compounding these uncertainties is the fact that there is nothing in the towing law, section 290-11 of the Hawaii Revised Statutes, that adequately addresses this scenario.

#### Notice Provisions

The OCP has grave concerns with the notice provisions of this measure. S.B. 288 proposes to offer as an alternative, telephone and email notices to the certified mail and postage prepaid (first class mail) notice provisions already required under Hawaii law. 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 proposed notice amendments is the one that replaces "certified mail" with "verified mail" as a means of sending the final demand 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, Chapter 476 of the Hawaii Revised Statutes, 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. 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.

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



January 27, 2017

Hearing Date: Thursday, February 2, 2017

Time: 9:00 a.m.

Place: Senate Conference Room 229

The Honorable Rosalyn H. Baker, Chair

The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health

Re: Testimony in Support of S.B. No. 288 – 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, which updates and clarifies Hawaii's self-storage facilities lien law. The bill is identical 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-two 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 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.

- Sections 5, 6, and 7 of the bill [amendments to HRS §§507-63, 507-64, and 507-65] add notification by e-mail (plus notification by telephone or to postal address) as an option that an occupant can choose. 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.
- 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.
- 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. 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 move S.B. No. 288 forward as is.

Sincerely,



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

January 27, 2017

Hearing Date: Thursday, February 2, 2017

Time: 9:00 a.m.

Place: Senate Conference Room 229

The Honorable Rosalyn H. Baker, Chair

The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health

Re: Testimony in Support of S.B. No. 288 – 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 Natolie Ochi, President & CEO of SKS Management LLC, and the current Chairperson for the California Self Storage Association, testifying in strong support of S.B. No. 288, which updates and clarifies Hawaii's self-storage facilities lien law. The bill is identical to S.B. No. 3033, S.D. 1 (2016), which was passed unanimously by the Senate last year.

Thirty-two 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 will update and clarify Hawaii's self-storage lien laws as follows:

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- 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.

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I respectfully request that you move S.B. No. 288 forward as is.

Sincerely,



Natolie Ochi  
President & CEO, SKS Management LLC  
Chairperson of the California Self Storage Association

January 30, 2017

Hearing Date: Thursday, February 2, 2017

Time: 9:00 a.m.

Place: Senate Conference Room 229

The Honorable Rosalyn H. Baker, Chair

The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health

Re: Testimony in Support of S.B. No. 288 – 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 Pam Domingue, Owner Operator of Storage Solution Honolulu, we operate as Waikele Self Storage in Waipahu. I am testifying in strong support of S.B. No. 288, which updates and clarifies Hawaii's self-storage facilities lien law. The bill is identical to S.B. No. 3033, S.D. 1 (2016), which was passed unanimously by the Senate last year.

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 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.
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I respectfully request that you move S.B. No. 288 forward as is.

Sincerely,

A handwritten signature in cursive script, reading "P. Domingue", enclosed in a thin black rectangular border.

Pam Domingue

Storage Solution Honolulu/  
Waikele Self Storage