Konrad Jackson

From: Billy Brewer <Billy.Brewer@alaskadevelopers.biz>
Sent: Wednesday, April 17, 2024 10:22 AM
To: Sen. Jesse Bjorkman
Cc: Senate Labor and Commerce
Subject: House Bill 97

Follow Up Flag: Follow up
Flag Status: Flagged

Chair Bjorkman,

I would like to express by support for House Bill 97 sponsored by Representative Prax. I appreciate you holding the initial hearing but would really like you to schedule another hearing for next week so that I can share my public testimony. I am a self storage business owner in Fairbanks and this bill is way overdue and should have been done in Alaska decades ago and I urge you to allow us the opportunity to support this bill.

Thanks for you time and consideration,

William Brewer

COMMENTS AND RECOMMENDATIONS
REGARDING CS FOR HOUSE BILL 97

TO: SEN. JESSE BJORKMAN, CHAIRMAN
SEN. LABOR & COMMERCE COMMITTEE

FROM: GARY L. JENKINS
SPACE UNLIMITED, INC-JUNEAU

DATE: APRIL 10, 2024

1. This bill contains some misinformation as I mentioned at the committee hearing on April 8th. The sponsor stated that there is not any legislation on the books in Alaska that pertain to self-storage. That is incorrect. The provisions of AS 34.35.220, AS 34.35.225 and AS 34.35.175 all apply to self-storage because of specific language in those statutes.

2. The sponsor also stated that the current provisions referenced in #1 required court action. That is incorrect. All of the provisions included in the referenced statutes are included in HB 97 with some modifications and clearly provide for a specific process not requiring court involvement.

3. Sec. 34.35.620 in HB 97 contains two provisions which should be removed from the bill. These provisions would come into play only after a renter is in default which could be as little a one day late with a payment under the terms of HB 97.

   Specifically, Subsection (a) (2) provides that an owner could move the property of the renter to another place whether on the premises or off the premises. That subsection should be removed from the bill as a protection to the owner.

   All the attorneys who specialize in cases dealing with self-storage state that an owner is just opening themselves up to a lawsuit if they do that. A normal rental agreement provides that the owner will make their best effort to protect the property of the renter. Accessing and moving a renter's property is clearly a violation of that provision. One could argue that there could be a stipulation in the rental agreement that limits the liability of the owner, however, that does not prevent the renter from buying additional insurance for high value items being stored. If items stored are missing after a renter's property has been moved, the owner is clearly set up for a lawsuit.

Jeff Greenberger, one of the premiere attorneys dealing with self-storage cases in the US, states every year at the national meeting of self-storage owners that an owner is crazy to touch the property of a renter once it has been moved on the premises of the owner. He often cites multiple cases where an owner has been held liable for significant judgements for such an action. The only exception would be if there was some type of crises in the building such as fire, flood etc. and the owner entered the unit to prevent loss to the renter's property.

4. Subsection (a) (3) is even more egregious in that it permits an owner to move a renters' vehicle or boat off their premises and park it on the street or move it anywhere else in the community, with the only issue being that the renter is one day late with a payment and thus is in default.

   This provision is followed by subsection (b) which attempts to give the owner a "get out of jail free" card by stating that the owner may not be held responsible for that kind of action. I am quite confident that an enterprising attorney would challenge that provision if an owner did such an action.

   There are dozens of reasons why a payment may arrive one day late which I will discuss later in this analysis.

5. Section 34.35.625 sets the procedure that an owner must follow in order to enforce the lien which exists because the renter is in default. The proposed language in HB 97 would permit an owner to sell a renter's property in as few as 31 days, if they so choose. The language in the existing law requires an owner to wait 90 days before they sell the property of the renter in default.

   I support the requirement in the current law as there are all kinds of reasons why an individual might be late paying for 2 or more months. Among many others, the reasons include a major accident involving a member of the family, an illness of a child or parent, a credit card being compromised and the owner not realizing it, etc. When there is a major crises in someone's life, paying a self-storage bill easily gets overlooked.

   Regarding the requirements to give notice, all owners give notice by email in today's electronic age. The requirement in the current law to send the final notice before sale of the renter's property by registered mail should be modified to certified mail with the owner requesting a paper or an electronic return receipt. This provision is in the law <u>to protect the owner</u> in case a renter files suit alleging that the owner did not provide adequate notice. Obtaining a return receipt is the least expensive way an owner could prove that they had sent the final notice. This also could be done using Fedex or UPS but is significantly more expensive.

The requirement in the proposed law that the final notice before sale be sent 20 days before date of sale is a very acceptable timeline.

6. Sec. 34.35.635 includes a provision that the owner could move the renter's property to another location prior to sale. This opens the owner up to the same liability that was discussed earlier. It must be remembered that the property still belongs to the renter up to the time of the sale. I cannot think of a reason that would justify moving a renter's property prior to sale.

7. Sec. 34.35.640 is worded very strangely. It implies that if a renter pays the total amount due on the rental because of the default, the owner would then have them move their stuff from the facility and the rental agreement would terminate. What happens in real life normally is that the current rental agreement continues in force until either the renter or owner gives notice of a move out.

8. Sec. 34.35.645 is another "get out of jail free" card for the owner. What it says is, if an owner ignores all the requirements in the law and proceeds with a sale of the renter's property, the owner would have no liability to the renter or a lien holder. That should not be allowed. The provisions that the owner needs to comply with before a sale are not that difficult and the owner should not be given a pass if they don't follow the stipulated provisions.

9. Sec. 34.35.670 (11) defines a "vehicle" by reference to AS 28.90.990 (a) (31) and the language in that subsection is so broad that it includes anything with wheels or tracks from a child's tricycle up to a multimillion dollar RV. I can't think of a specific issue this could cause except in the case that proposed Sec. 34.35.620 is left unchanged. The committee may want to consider modifying the wording of the definition of "vehicle" for this legislation.

April 2, 2024

Via e-mail and hand delivery

The Honorable Jesse Bjorkman
Chair
Labor & Commerce Committee
Alaska Senate
120 4th Street
Juneau, Alaska 99801

RE: House Bill 97 (Rep. Mike Prax) – Self Storage Bill

Dear Chair Bjorkman, Vice Chair Bishop, and Members of the Senate Labor & Commerce Committee:

The undersigned group of self storage facility owners and operators strongly support House Bill 97 that is currently pending in the Senate Labor & Commerce Committee. House Bill 97 would provide statutory certainty to both self storage unit renters and owners regarding the appropriate process to follow in the event of a unit renter default. Alaska is the last remaining state without such a law. The bill strikes the appropriate balance for consumer protection for unit renters while also providing a clear and straightforward process for facility owners. We ask this committee to take up this important legislation and schedule the bill for a hearing as soon as possible. Thank you for your consideration.

Respectfully submitted,

Valerie Buss
Valerie Buss
Bay Avenue Storage
Homer, Alaska 99603

Courtney Deckard
Courtney Deckard
U-Haul Self Storage
Kenai, Alaska 99611

Sharon Beeman
Sharon Beeman
Forbes Self Storage
North Pole, Alaska 99705

Nathaniel Dye
Nathaniel Dye
Juneau & Snowy Self Storage
Juneau, Alaska 99801

William Brewer
William Brewer
Fairbanks Self Storage
Fairbanks, Alaska 99708

Elizabeth Mann
Elizabeth Mann
Alaska Mini Storage
Wasilla, Alaska 99654

Tyler Scott
Tyler Scott
Publix Self Storage
Anchorage, Alaska 99507

Garrett Schoenberger
Garrett Schoenberger
American Mini Storage
Palmer, Alaska 99645

Wendie MacNaughton
Wendie MacNaughton
Blue Moose Self Storage
Fairbanks, Alaska 99701

Lonnie Bickford
Lonnie Bickford
AK Storage Centers
Wasilla, Alaska 99654

April 5, 2024

The Honorable Mike Prax
Alaska House of Representatives
Capitol Building, Room 108
Juneau, Alaska 99081

RE: House Bill 97

Dear Representative Prax:

Credit Union 1 is a state-chartered credit union, home grown in Alaska. We are proud to have been serving Alaskans since 1952 and continue to serve our more than 95,000 members throughout Alaska.

House Bill 97 has the potential to affect many of those members in ways that could be financially detrimental. We believe that if lien superiority is granted to self-storage facility owners, many more safeguards need to be put in place to protect our members.

House Bill 97 should include clear notification deadlines to both our members and any lien holders of property contained in storage units or storage yards. Lien information is easily attainable and is not a burden upon storage unit owners. All notifications of default should be timely and delivered to the renter and lien holder no less than 10 days and no more than 20 days after a renter is in default.

Liability should not be waived for damages that occur to collateral stored in storage units or in storage yards. All parties have a responsibility to due care. This legislation should not insulate a self-storage facility from standards of care under UCC § 7-204 Duty of Care; Contractual Limitation of Warehouse's Liability.

It should also be noted in the legislation that the Servicemembers Civil Relief Act prohibits the sale of the belongings of any service member without a court order.

Most importantly, allowing charges to continue accruing for months after a default notice without any limitation is incredibly harmful to our members and all consumers. A limit of 60 days' worth of charges after default is an appropriate amount of time and money for storage unit owners to charge and place upon renters.

Thank you,

Mark Burgess
President and CEO
Credit Union 1
burgessm@cu1.org or 907-339-8104

SPIRIT OF ALASKA
FEDERAL CREDIT UNION

April 5, 2024

The Honorable Mike Prax
Alaska House of Representatives
Capitol Building
Juneau, Alaska 99081

RE: House Bill 97

Dear Representative Prax:

Spirit of Alaska FCU is an Alaska credit union based in Fairbanks with more than 9,000 members. On behalf of those members please recognize that we have concerns about lien superiority in general and that House Bill 97 would allow for that superiority without many of the safeguards necessary to protect our members and their collateral.

House Bill 97 should include limitations on additional charges that can be placed on our members after they are in default. These additional charges drive up their costs and greatly affect their ability to pay not only their storage unit expenses, but any other bills that they may have. A limit of 60 days of additional charges after they are in default should serve as ample time for storage unit owners to come to a resolution with renters.

Additionally, there should be clear timing on notifications sent to our members and to lien holders regarding the default and the process of liquidating any collateral. This notification should be sent to all parties no more than 20 days after the notice of default.

Finally, removing all liability on a storage unit owner from damages they may cause when moving collateral is troubling. The value lost, should an owner of a storage unit or their employee damage a vehicle or other property from a storage unit, should not be borne by our members or by other lien holders. If property is damaged, the person or entity damaging the property should be responsible for those costs.

I appreciate this opportunity to let you know of our concerns.

Thank you,

Anthony Rizk, President & CEO
Spirit of Alaska Federal Credit Union

April 23, 2024

Via email

The Honorable Jesse Bjorkman
Chair
Labor and Commerce Committee
Alaska Senate
120 4th Street
Juneau, Alaska 99801

RE: House Bill 97 (Rep. Prax)

Dear Chair Bjorkman, Vice Chair Bishop, and members of the Senate Labor and Commerce Committee:

The Self Storage Association[1] (SSA) respectfully requests your support for passage of House Bill 97.[2] This legislation is needed to protect both consumers and business owners in the state. Currently, there are no statutory requirements in place to ensure that certain minimum steps are followed before a storage owner enforces their lien rights. This is problematic for consumers as each storage owner is free to create their own process without any assurance of a baseline set of standards and consumer protections.

Although most owners borrow from other lien enforcement laws in Alaska or from robust self storage laws like those in Washington, some outliers could dispossess consumers of their belongings on a very aggressive enforcement timeline and potentially without providing any notice regarding that forthcoming action. Additionally, the statutory void is problematic for storage owners as it invites claims from unit renters that whatever process was followed was inadequate. HB 97 fixes both of those issues by enhancing consumer protections and creating guardrails for both consumers and storage owners.

[1] The SSA is a national trade association based in Alexandria, Virginia that represents self storage owners and operators in all 50 states.
[2] *See* https://www.akleg.gov/basis/Bill/Detail/33?Root=HB%20%2097

Introduction to Self Storage

By way of background, in self storage the operator and unit renter have a commercial landlord-unit renter relationship. A broad swath of consumers use self storage for a variety of reasons. Once a unit size is selected, a consumer signs the rental agreement, the contract that governs the relationship between the operator and the unit renter. All rental agreements are month-to-month tenancies that renew only upon the mutual desire of both parties. In other words, unit renters can simply vacate if they are unable or unwilling to pay for the leased space. Most tenancies are successful for both parties; goods are stored, and rent is timely paid.

Forty-nine states have a self storage lien law. Alaska is the last remaining U.S. state without such a law. Self storage lien laws provide a non-judicial foreclosure process for addressing situations in which self storage unit renters fail to pay their rent, and the storage operator must sell the unit renter's property to satisfy the operator's lien for past due debts.

National data from the Self Storage Association indicate that storage operators sell approximately 1% to 3% of leased spaces annually. Anecdotally, many of the lien sales involve unit renters who have abandoned the space after removing their valuable property and are not interested in what is remaining in the space. Stated differently, 97-99% of unit renters will use the space per the rental agreement and never have their belongings subject to a lien sale. The lien process is an infrequently used procedure, but it is necessary for the successful operation of a storage facility. Operators' primary goal is to recover the space, which can then be rented by a paying customer.

House Bill 97 Notice Requirements

The bill would mandate several consumer protections that presently do not exist. First, it would require that the rental agreement (the lease) be a written document agreed upon and executed by both parties. The lien attaches on the date on which property is placed in the unit. Storage owners would be legally obligated to ensure that the rental agreement contained a statement in bold type notifying the unit renter of the existence of the storage lien. The unit renter must be informed about the lien upon execution of the rental agreement for the owner's lien to be enforceable.[3]

After being informed of the owner's lien rights in the rental agreement, if the unit renter defaults, the owner must send at least two (2) notices to the unit renter regarding the default and provide an opportunity to cure. The first notice must be sent after the renter is in default for at least ten (10) days.[4] If the unit renter fails to cure the default, the storage owner must send a second notice at least 10 days after the first notice is sent, and it must provide a minimum of 20 days to cure the default.[5]

---

[3] Page 2, lines 15-18.
[4] Page 3, lines 4-8.
[5] Page 3, lines 9-27.

If the unit renter does not cure the default following the two notices, HB 97 permits owners to either tow[6] certain property, conduct a sale of the property, or dispose of the property that receives no bid or offer. Lien sales nationally are not money-makers for storage owners – most are lucky to get thirty cents on the dollar. Many do not even realize that much. The owner's primary goal is to return the unit back to inventory to be rented to a paying customer. Importantly, all unit renters may redeem their property prior to any final sale.[7]

As stated above, most sales fail to generate even the amount owed to the storage facility owner. However, after the sale, the bill outlines the order of payment from the proceeds obtained from the sale.[8] If excess proceeds remain, the facility owner must hold the balance for three (3) years. If unclaimed, the owner must remit the excess proceeds to the State.[9]

In practice, all unit renters will be contacted several times before a sale is conducted. The SSA encourages all members to reach out via mail, e-mail, and over the phone to resolve the payment issue. If all attempts to resolve the payment issue fail, or more commonly, the unit renter is simply unresponsive, then the operator will proceed with the sale to recoup the debt owed and recover the space for rental by a paying customer. However, storage owners have a vested financial interest in diligently communicating with the consumer as nearly all lien sales fail to generate proceeds to cover the consumer's debt (usually less than 30 percent of the outstanding debt), much less costs such as advertising and postage. No owner ever wishes to conduct a lien sale. Every owner wishes to make appropriate contact with the consumer to resolve the issue. However, sometimes sales are necessary, and HB 97 would ensure that certain steps are taken before conducting it.

Statutory Structure is Needed to Protect Consumers and Business Owners

Since there is no current statute in effect that governs the relationship between storage owners and unit renter, there are inconsistent industry standards among self storage facilities that creates confusion for unit renters. In states with self storage lien laws, there are clear statutory procedures for handling delinquent unit renters. The absence of such laws in Alaska makes it harder for customers to understand their rights and obligations.

Further, storage owners in Alaska face legal uncertainty when dealing with delinquent unit renters. The absence of clear regulatory guidelines on how to properly handle non-payment issues creates issues. Self storage facilities rely on rental income to cover their costs and generate income. Without a streamlined and clear legal process, these facility owners face financial losses due to unpaid rent and delays in recovering abandoned units. This can result in higher rental rates for customers when facility owners must account for potential losses when setting rental prices.

---

[6] Page 2, lines 28-30. 47 states permit unit owners to tow vehicles under similar circumstances.
[7] Page 4, lines 8-12.
[8] Page 4, lines 28-31
[9] Page 4, line 31; page 5 lines 1-2.

HB 97 provides a process for addressing these situations in which a self storage unit renter fails to pay their rent or otherwise abandons their unit, and the facility owner must sell the unit renter's property to recover the debt.

This bill provides much needed certainty to storage businesses in Alaska to know the precise legal process and steps to follow to lawfully enforce lien rights in the event of a default. Further, it provides significant consumer protections as it would require every storage facility in the state to precisely follow all the mandatory requirements of the statute outlined above. Additionally, the various requirements and elements contained in the bill are consistent with the overwhelming majority of the 49 other states' self storage laws.

Concerns About House Bill 97 Are Overstated

This committee has heard some concerns raised about House Bill 97. The SSA respects those concerns but disagrees with them. It is important to remember that this bill sets a floor, or a minimum set of requirements that every owner must follow. No such minimum requirements exist presently. This bill does not establish a statutory ceiling. If any owner wishes to go above and beyond the minimum standards contained in this bill, they are free to do so. Any owner can afford their unit renters with a much longer enforcement timeline or provide significantly more notices if they wish to do so.

Again, this bill establishes a minimum framework that every owner must comply with. It creates a needed baseline and rules of the road for a storage owner to enforce their lien rights in the event of default. It also sets minimum guardrails and safeguards so that consumers are protected and know what to expect should a default ever occur.

Overall, policy making is a balancing act and a blending of various viewpoints to reach a reasonable and fair middle ground compromise. House Bill 97 achieves that objective by providing significant consumer protections and establishing statutory certainty for storage owners.

Conclusion

The SSA strongly supports House Bill 97 and respectfully requests support for its passage.

Respectfully submitted,

Daniel Bryant

Daniel Bryant
Legal & Legislative Counsel
Self Storage Association

April 10, 2024

Via email

The Honorable Mike Prax
Alaska House of Representatives
Capitol Building
Juneau, Alaska 99081

RE: House Bill 97

Dear Representative Prax:

First, thank you for sponsoring House Bill 97 and your strong advocacy for its passage. The Self Storage Association (SSA) strongly supports the bill to bring a self storage lien statute to the last state without such a law.

The SSA recently received a copy of the letter sent from Spirit of Alaska Federal Credit Union (SOAFCU) to you that outlines concerns with the bill. The remainder of this letter takes the individual statements and assertions from the SOAFCU and provides a response.

SOAFCU statement:
House Bill 97 should include limitations on additional charges that can be placed on our members after they are in default. These additional charges drive up their costs and greatly affect their ability to pay not only their storage unit expenses, but any other bills that they may have. A limit of 60 days of additional charge after they are in default should serve as ample time for storage unit owners to come to a resolution with renters.

SSA Response:
The storage industry strongly disagrees with these statements. As a threshold matter, renting a storage unit is an entirely voluntary decision. If the prospective occupant reviews the terms and conditions of the occupancy and decides it is not to their liking, they are free to walk away and see if they can find more favorable terms at another facility or simply not rent any space. Freedom of contract should prevail.

A limit of 60 days of rental charges is not workable. Unlike an involuntary tow from a private property parking lot, self storage is an entirely voluntary transaction. If an owner and consumer wish to engage in a negotiation or work to resolve the non-payment issue on a different timeline, the owner should not be limited in the amount of legitimate rental income that is owed to the facility and that can be obtained through subsequent collection efforts.

This would be the functional equivalent of proposing a bill that said that no credit union that provides a loan could have a lien on a vehicle that exceeded $5,000 even if the loan amount and the vehicle value were far greater.

SOAFCU statement:
Additionally, there should be clear timing on notifications sent to our members and to lienholders regarding the default and the process of liquidating any collateral. This notification should be sent to all parties no more than 20 days after the notice of default.

SSA response:
The SSA has no issue with a required notice to lienholders within a certain amount of time following the renter's default. However, the SSA has significant issues with a requirement that the lien enforcement process commence on a certain timeline for all unit renters, which is what is essentially proposed by mandating notice to ALL parties no more than 20 days after default. House Bill 97 envisions a floor that all storage owners must comply with and certain minimum timelines that must be adhered to. However, owners should not be mandated to enforce their lien rights on the shortest period possible allowed by the statute. No other state self storage law requires an owner to enforce their lien rights on a specific timeline. All those statutes simply outline a minimum amount of time that must elapse before enforcement. That enforcement timeline should be an individual business decision and not one dictated by a third-party credit union.

SOAFCU statement:
Finally, removing all liability on a storage unit owner from damages they may cause when moving collateral is troubling. The value lost, should an owner of a storage unit or their employee damage a vehicle or other property from a storage unit, should not be borne by our members or by other lienholders. If property is damaged, the person or entity that damaged the property should be responsible for those costs.

SSA response:
The SSA assumes the above statements refer to the section of the bill below (page 2 lines 28-31; page 3 lines 1-4).

> [M]ove the unit renter's unit property to another place for storage; and If the unit property includes a vehicle or watercraft, tow or otherwise remove the vehicle or watercraft from the storage facility, or have the vehicle or watercraft towed or otherwise removed from the storage facility to another place for safe storage.

> (b) A facility owner may not be held liable for damage incurred to a unit renter's vehicle or watercraft after the facility owner removes the vehicle or watercraft from the storage facility under this section. Removal of unit property from a self storage facility under this section releases the storage lien under AS 34.35.600.

The SSA disagrees with the SOAFCU that the bill purports to absolve the storage owners for damage that they may cause. These sections authorize two entirely different things. The first allows the storage owner to move property following a default. Generally, the SSA discourages this action as it opens the door to claims that property was damaged or stolen in the process. However, there are legitimate reasons this authority is necessary and why the action might be taken. For example, if the unit renter had a 10x25 unit and then goes into default. After the door is opened, the storage owner discovers almost everything has been removed from the unit except for two (2) small boxes. It is sensible in this scenario for the owner to be able to place those boxes in a much smaller unit and return the larger unit back to inventory more quickly to be able to rent again. Further, this section says nothing about liability. If the owner moves the stored property and damages something, they are responsible and nothing in the above text states otherwise.

The second item addressed in these sections is regarding vehicle towing following a default. This is clearly delineated and differentiated above by use of the words “move” for unit renter property vs. “remove” for vehicle towing. This section outlines the relevant time when the liability shifts.

> A facility owner may not be held liable for damage incurred to a unit renter's vehicle or watercraft **after the facility owner removes** the vehicle or watercraft from the storage facility under this section.

This means the property has been towed and is no longer at the storage facility. It is now with the tow company. Any damage that occurs after the property is removed and with the tow company should not be the responsibility of the storage facility.

Conclusion

Thank you for the opportunity to respond to the concerns raised by the SOAFCU.

Respectfully submitted,

Daniel Bryant

Daniel Bryant
Legal & Legislative Counsel
Self Storage Association

April 12, 2024

Via email

The Honorable Mike Prax
Alaska House of Representatives
Capitol Building
Juneau, Alaska 99081

RE: House Bill 97

Dear Representative Prax:

Thank you again for sponsoring House Bill 97 and your strong advocacy for its passage. The Self Storage Association (SSA) strongly supports the bill to bring a self storage lien statute to the last state without such a law.

The SSA recently reviewed a copy of the letter sent from Global Federal Credit Union (GFCU) to you dated April 14, 2023 that outlines concerns with the bill. The remainder of this letter takes the individual statements and assertions from the GFCU and provides a response.

GFCU statement and recommendation:
Sec. 34.35.605- Priority of Lien. The language in subsections (a) and (b) impose an obligation on an otherwise first-position lienholder like Global FCU to fully satisfy a storage lien to protect its own secured interest. As currently written, a self-storage facility lien is superior to that of a properly obtained and perfected lien by a financial institution or lender. This creates both a super and a secret lien, a result that far outweighs the legitimate interests at stake. Such a result is unnecessary and fails to consider the universally recognized need for both lien priority and proper notice to lienholders. The first position lender with a recorded interest has taken the substantially more significant risk with respect to the collateral and followed all the required steps to put the public on notice of its lien. In the case of a properly perfected lien, the lender should remain in first position to recover the collateral and apply the proceeds to its loan, with remaining funds disbursed to lienholders second (and third and fourth) in line.

GFCU Recommendation: at a minimum, the bill should require that lienholders receive timely notice of an action by a self-storage facility prior to any sale and be given the opportunity to pay reasonable storage fees to secure its collateral. This is not a heavy lift - lien information is publicly available for the precise purpose of placing the public on notice to avoid conflict and uncertainty in these situations.

SSA Response:
As a threshold matter, GFCU seems to believe that virtually all property stored at a storage facility is encumbered by a lien or security interest. That simply is not true. The overwhelming majority of stored goods are simple household items that are unencumbered.

The SSA agrees that notice to lienholders is fair and appropriate. However, HB 97 already requires every unit renter to disclose any property with a lien on it at page 2, lines 19-20 and then requires notice to those lienholders at page 3, lines 5-9. This already accomplishes what the GFCU has recommended.

GFCU statement:
No Limitation on Lienholder Responsibility for Charges. The bill lacks language setting a reasonable cap on the maximum storage charges allowed, which can de-incentivize a self-storage facility to act in a timely manner. As currently drafted, a self-storage facility can delay taking action (intentionally or unintentionally) for an extended period of time secure in the knowledge that when it decides to act it will be fully reimbursed out of the proceeds of the sale of the collateral. This harms both lienholders and the consumer. Unbeknownst to lienholders, the collateral becomes increasingly encumbered and the consumer, who is likely already in financial straits, incurs compounding additional debt.

GFCU Recommendation: a maximum cap of 60 days for accrued self-storage facility charges, which would include rent, labor, and any other fees permissible under the storage unit agreement.

SSA response:
The SSA strongly disagrees with these statements. As a threshold matter, renting a storage unit is an entirely voluntary decision. If the prospective occupant reviews the terms and conditions of the occupancy and decides it is not to their liking, they are free to walk away and see if they can find more favorable terms at another facility or simply not rent any space. Free markets and freedom of contract should prevail.

A limit of 60 days of rental charges is not workable. Unlike an involuntary tow from a private property parking lot, self storage is an entirely voluntary transaction. If an owner and consumer wish to engage in a negotiation or work to resolve the non-payment issue on a different timeline, the owner should not be limited in the amount of legitimate rental income that is owed to the facility and that can be obtained through subsequent collection efforts.

This would be the functional equivalent of proposing a bill that said that no credit union that provides a loan could have a lien on a vehicle that exceeded $5,000 even if the loan amount and the vehicle value were far greater.

Further still, this section is clearly written by someone unfamiliar with the self storage business. GFCU asserts, “As currently drafted, a self-storage facility can delay taking action (intentionally or unintentionally) for an extended period of time secure in the knowledge that when it decides to act it will be fully reimbursed out of the proceeds of the sale of the collateral.”

Storage owners will attempt contact the delinquent tenant multiple times on a reasonable timeline before proceeding to the sale through various forms of communication like email, traditional mail, phone calls, and text messages. Resolving the payment dispute in a way that does not require sale is always preferable as lien sales rarely bring in even 30% of the outstanding debt. Lien sales almost always fail to generate even a fraction of the

outstanding debt and the idea that a storage owner would intentionally wait to conduct a sale for a theoretical windfall is simply a fiction detached from reality.

Since almost all sales generate a very small amount of money, all delaying enforcement for a protracted period of time would ensure is two things: (1) the facility is not collecting rent on the unit for an even longer period; and, (2) the amount that is collected relative to the debt owed will be even smaller.

GFCU statement:
Sec. 34.35.620 - Denial of Access; removal of unit property. As currently drafted, HB 97 provides a limitation of liability for the self-storage facility to remove the collateral to create an available rental unit. However, the limitation of liability fails: (1) to consider that it may inadvertently insulate the self-storage facility from liability as a warehouseman, bailee, and from associated negligence of standards of care. (See UCC § 7-204. Duty of Care; Contractual Limitation of Warehouse's Liability), (2) to articulate standards for documenting the condition of the collateral, both at the beginning and the end of the removal process, and (3) to require notice to other lienholders before removal to potentially minimize charges.

Recommendation: the limitation of liability should be conditioned on an articulated standard of care, potentially referencing other applicable statutes, which would include condition documentation requirements and a notice provision.

SSA Response:
First, at its core, self-service storage is exactly what the name suggests. The storage owner is not a bailee. There is no care, custody, or control on the unit renter's property. The bill also explicitly makes clear that self storage owners are not warehouseman at page 1, lines 9-10 and page 6 line 4. HB 97 defines at page 5, lines 29-31 through page 6, lines 1-4 "self-storage facility" to mean real property that is designed for and used as a rental space where a person may store and retrieve property directly without going through another person. . . Storage facilities are not warehouses or bailees so applying that standard of care is inappropriate.

Further, the SSA assumes the above statements refer to the section of the bill below (page 2 lines 28-31; page 3 lines 1-4).

> [M]ove the unit renter's unit property to another place for storage; and If the unit property includes a vehicle or watercraft, tow or otherwise remove the vehicle or watercraft from the storage facility, or have the vehicle or watercraft towed or otherwise removed from the storage facility to another place for safe storage.
>
> (b) A facility owner may not be held liable for damage incurred to a unit renter's vehicle or watercraft after the facility owner removes the vehicle or watercraft from the storage facility under this section. Removal of unit property from a self storage facility under this section releases the storage lien under AS 34.35.600.

The SSA disagrees with the GFCU that the bill purports to absolve the storage owners for damage that they may cause. These sections authorize two entirely different things. The first allows the storage owner to move property following a default. Generally, the SSA discourages this action as it opens the door to claims that property was damaged or stolen in the process. However, there are legitimate reasons this authority is necessary and why the action might be taken. For example, if the unit renter had a 10x25 unit and then goes into default. After the door

is opened, the storage owner discovers almost everything has been removed from the unit except for two (2) small boxes. It is sensible in this scenario for the owner to be able to place those boxes in a much smaller unit and return the larger unit back to inventory more quickly to be able to rent again. Further, this section says nothing about liability. If the owner moves the stored property and damages something, they are responsible and nothing in the above text states otherwise.

The second item addressed in these sections is regarding vehicle towing following a default. This is clearly delineated and differentiated above by use of the words "move" for unit renter property vs. "remove" for vehicle towing. This section outlines the relevant time when the liability shifts.

> A facility owner may not be held liable for damage incurred to a unit renter's vehicle or watercraft **after the facility owner removes** the vehicle or watercraft from the storage facility under this section.

This means the property has been towed and is no longer at the storage facility. It is now with the tow company. Any damage that occurs after the property is removed and with the tow company should not be the responsibility of the storage facility.

GFCU statement:
Sec. 34.35.645 - Good Faith Purchaser. HB 97 enumerates a variety of steps to protect the interests of self-storage facilities, but provides no remedy, consequence, or protection for other interested parties in the event the self-storage facility violates any provision of the statute. While the intent may be to protect a true "good faith purchaser" it unnecessarily strips any need or motivation for a self-storage facility to follow the required steps established to protect all stakeholders.

GFCU Recommendation: HB 97 should include consequences (penalties) for violations of its provisions.

SSA Response:
The SSA disagrees that HB 97 does not provides provisions to protect the interests of interested parties like lienholders. HB 97 already requires every unit renter to disclose any property with a lien on it at page 2, lines 19-20 and then requires notice to those lienholders at page 3, lines 5-9. This is a statutory requirement to notify those interested parties. To the extent an owner fails to fulfill its statutory obligations, the lienholder has redress. There has been a violation of the statute.

GFCU Statement :
Sec. 34.35.650 - Vehicle Title. This provision requires that the Department of Administration transfer title to a purchaser at a sale. However, it does not address the impact of such a sale or title transfer on other lienholders or require notice to such lienholders.

GFCU Recommendation: clarify that prior to title transfer, reasonable notice to all lienholders is required and that the purchaser takes title subject to all prior liens.

SSA Response:
House Bill 97 already requires notice at page 2, lines 19-20 and page 3, lines 5-9.

GFCU Statement:
Sec. 34.35.655 - Proceeds of Sale. Sales conducted by self-storage facilities are typically handled via an auction bidding process, some of which are online and the results of which can reflect numerous other factors impacting price beyond the value of collateral contained in the storage unit. In the absence of language that assures meaningful notice to other lienholders and without penalties for non-compliance, this process puts lenders at significant risk for complete losses, which will ultimately restrict credit to all consumers.

GFCU Recommendation: at a minimum, prior to any sale, self-storage facilities should be required to provide notice to the unit renter and all known lienholders including:

- an itemized statement of rent, fees, and charges;
- a preliminary lien notice; and
- a blank declaration in opposition to lien sale.

The foregoing are commonly required safeguards in other storage lien statutes in other states.

SSA response:
Again, HB 97 already requires every unit renter to disclose any property with a lien on it at page 2, lines 19-20 and then requires notice to those lienholders at page 3, lines 5-9. HB 97 already requires the notices that GFCU has requested. A declaration in opposition is not commonly required. Only California and Nevada have such a requirement. The remaining 48 states have no such provision in their law.

GFCU Statement:
Omission of Servicemembers Civil Relief Act (SCRA): The SCRA, 50 U.S.C. app §§ 501 et seq., and more specifically the SCRA section that covers storage liens (§ 3958) makes it explicitly unlawful to sell the belongings of any servicemember absent a court order.

Recommendation: HB 97 should specifically reference and incorporate the applicable section of the SCRA. While most, if not all, Alaska self-storage facilities are aware of this limitation and take steps to ensure compliance with the SCRA, specifically citing it in the bill will add clarity and recognition of this important federal limitation.

SSA Response:
The SSA counsels all its members to ensure compliance with the federal *Servicemembers Civil Relief Act*. The SSA is not opposed to an additional reference to the SCRA but does not think that adding needlessly duplicative statutory language is needed either. It is not a defense to any other federal statute that a relevant state statute does not explicitly cross reference it. The SSA does not understand why such a reference is needed here.

GFCU statement:
In conclusion, while we understand and agree with the need for an Alaska statue that addresses self- storage facility liens, that statue should provide a framework that ensures fairness, which includes proper notice to all other interested parties and accountability for self-storage facilities. We appreciate the opportunity to present these concerns and are available to discuss at your convenience.

SSA response:
The SSA agrees and believes House Bill 97 does just that.

Conclusion

Thank you for the opportunity to respond to the concerns raised by the GFCU.

Respectfully submitted,

Daniel Bryant

Daniel Bryant
Legal & Legislative Counsel
Self Storage Association