

# Bringing a Self Storage Lien Law to Alaska

# Road Map

- How the self storage business works
- Lien law overview
- How the lien sale process works
- Proposed Alaska self storage lien law

# Alaska Operators

- There are approximately 150 facilities in the state.
- Almost 100% storage operators are small businesses based in Alaska.

# How Does Self Storage Work?

- The self storage operator and tenant have a commercial landlord-tenant relationship.
- A broad swath of consumers use self storage for a variety of reasons.
- Consumers contact storage operators over the phone, via the internet, or in person to rent a unit.
- Once a unit size is selected, a consumer signs the rental agreement, the contract that governs the relationship between the operator and the tenant.
- All rental agreements are month-to-month tenancies that renew upon the mutual desire of both parties. Consumers are free to terminate and vacate.
- Vast majority of tenancies are successful for both parties. Goods are stored and rent is timely paid.

# Lien Law Overview

- Forty-nine states and the District of Columbia have a self storage lien law.
- Alaska is the last state without a self storage lien law.
- Self storage lien laws provide a non-judicial foreclosure process for addressing situations in which self storage tenants fail to pay their rent, and the storage operator must sell the tenant's property to satisfy the operator's lien for past due rents.
- Statutory lien laws are important to provide a basic legal framework and guardrails to protect both owners and occupants.
- This bill would ensure that several steps are taken before a sale, starting with the execution of a written rental agreement that informs the occupant of the lien and the fact the property may be sold or disposed of upon default.
- Also, the occupant would have to be notified several times before sale / disposal.

# How Does The Lien Sale Process Work?

- National data from the Self Storage Association indicate that storage operators sell approximately 1% to 3% of leased spaces annually.
- Stated differently, 97-99% of tenants 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.

# *Servicemembers Civil Relief Act*

- The SCRA is a federal statute that makes it illegal for a storage owner to sell an active-duty servicemembers' belongings in all 50 states, including Alaska.
- The SCRA has a provision that specifically applies to self storage that can be found at 50 U.S.C. Section 3958 "Enforcement of storage liens." That provision makes it explicitly unlawful to sell any servicemembers' belongings absent a court order.
- In practice, every storage owner, especially in areas with a heavy military population, will have a provision in their rental agreement that asks the prospective tenant to disclose their military status.
- Even absent a disclosure, owners will still do a search through the Department of Defense's Defense Manpower Data Center prior to any sale to ensure there is no question regarding military status.
- Failure to comply with the SCRA carries both criminal and civil penalties and liability.

# Proposed Legislation Highlights:

- Rental agreement requirements;
- First default notice requirements;
- Second default notice requirements;
- Sale – manner and method; and,
- Excess proceeds.

# Rental Agreement Requirements

- The bill 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.
- Occupant must be informed about the lien upon execution of the rental agreement for the owner's lien to be enforceable.
- Page 2, lines 14-17.

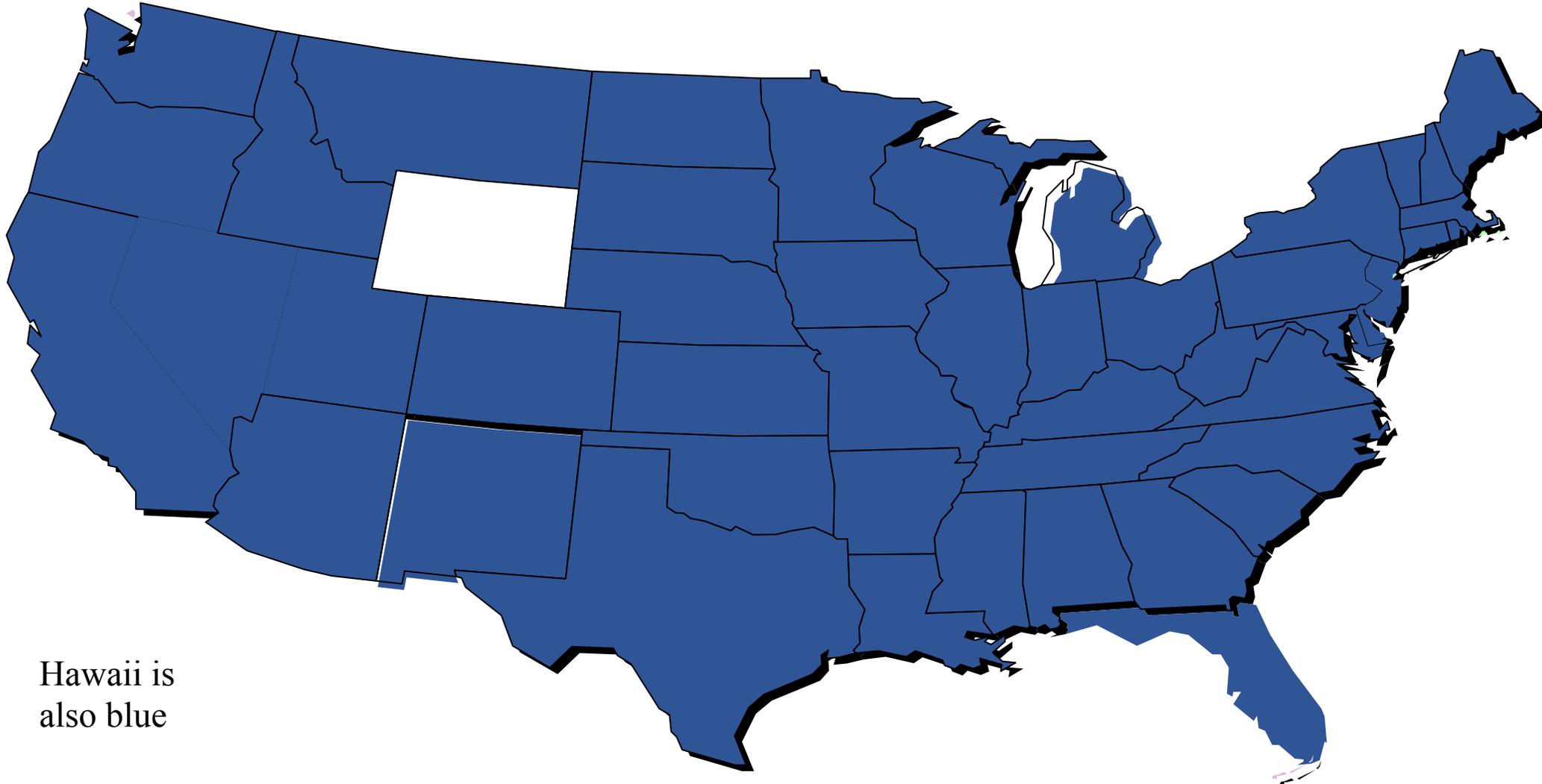
# Default Notices

- After being informed of the owner's lien rights in the rental agreement, if the tenant defaults, the owner must send at least two (2) notices to the occupant regarding the default and provide an opportunity to cure.
- First notice may be sent by email or first-class mail to occupant after they are in default for at least ten (10) days (page 3, lines 1-4)
- Second notice is sent by email, certified mail, U.S. mail with a certificate of mailing at least 10 days after the first notice is sent and provides a minimum of 20 days to cure the default (page 3, lines 5-23)

# Email

- Approximately 50% of self storage tenants are in transition.
- Unlike physical addresses, email addresses typically remain the same when an individual moves.
- The proposed legislation gives tenants the choice to receive lien notices by email.
- Most states allow tenants to choose to receive lien notices by email.
- Storage owners nationally have found that tenants are more responsive due to the immediacy, as well as the accessibility of email.

# Lien notices may be sent by email



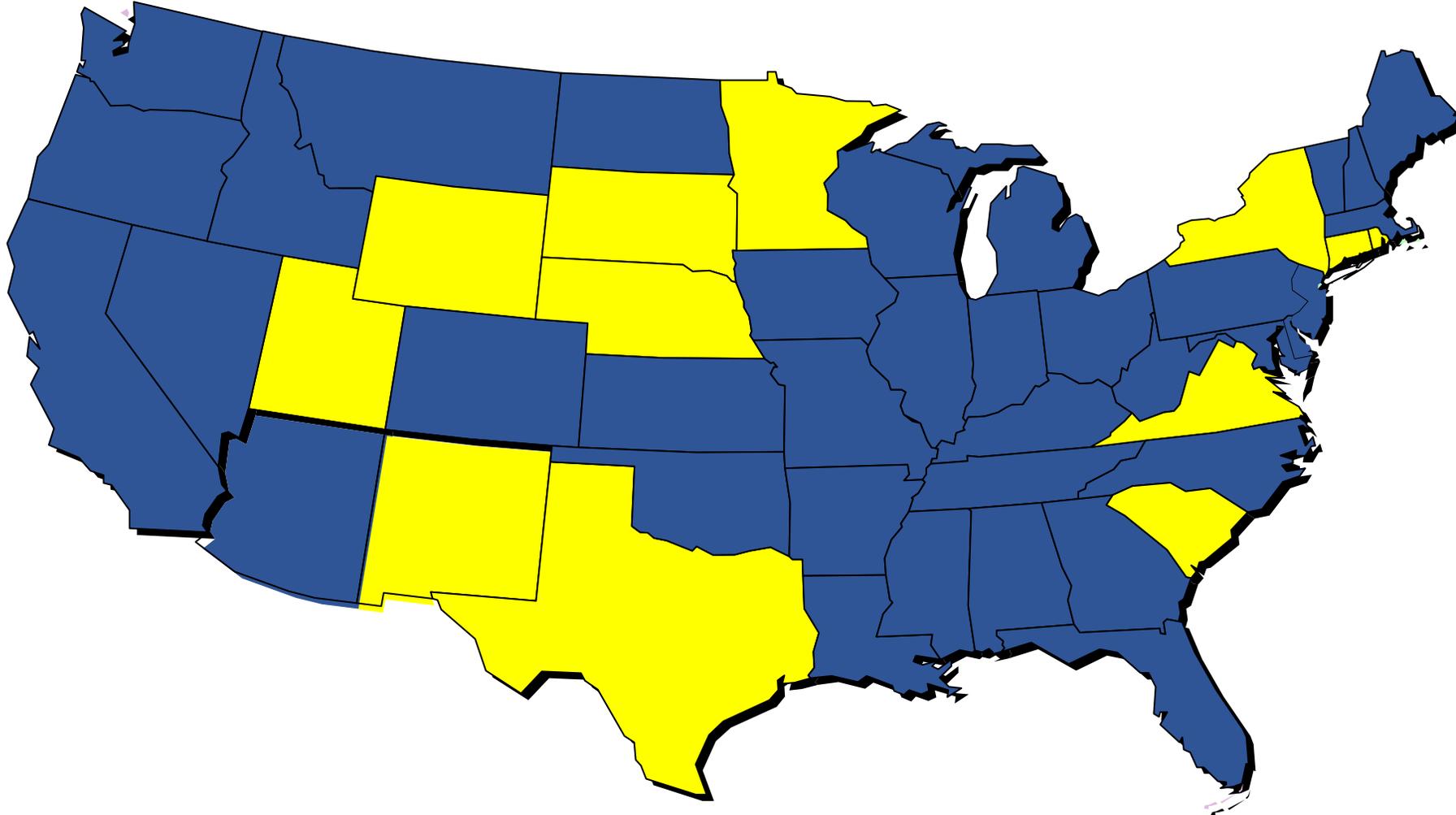
Blue: state  
permits  
notice via  
email

Hawaii is  
also blue

# Late Fees

- The proposed legislation includes a late fee standard of up to \$20 or 20% of the monthly rent, whichever is greater.
- The proposed legislation protects consumers by providing an amount that is fair and reasonable while still compensating the storage owner for lost revenue.
- 37 states recognize a late fee in statute
- Page 2, lines 3-7

# Provides for statutory late fee



States in **blue** provide a statutory late fee.

States in **yellow** allow for late fees but do not have it set in statute.

\*Alaska is yellow

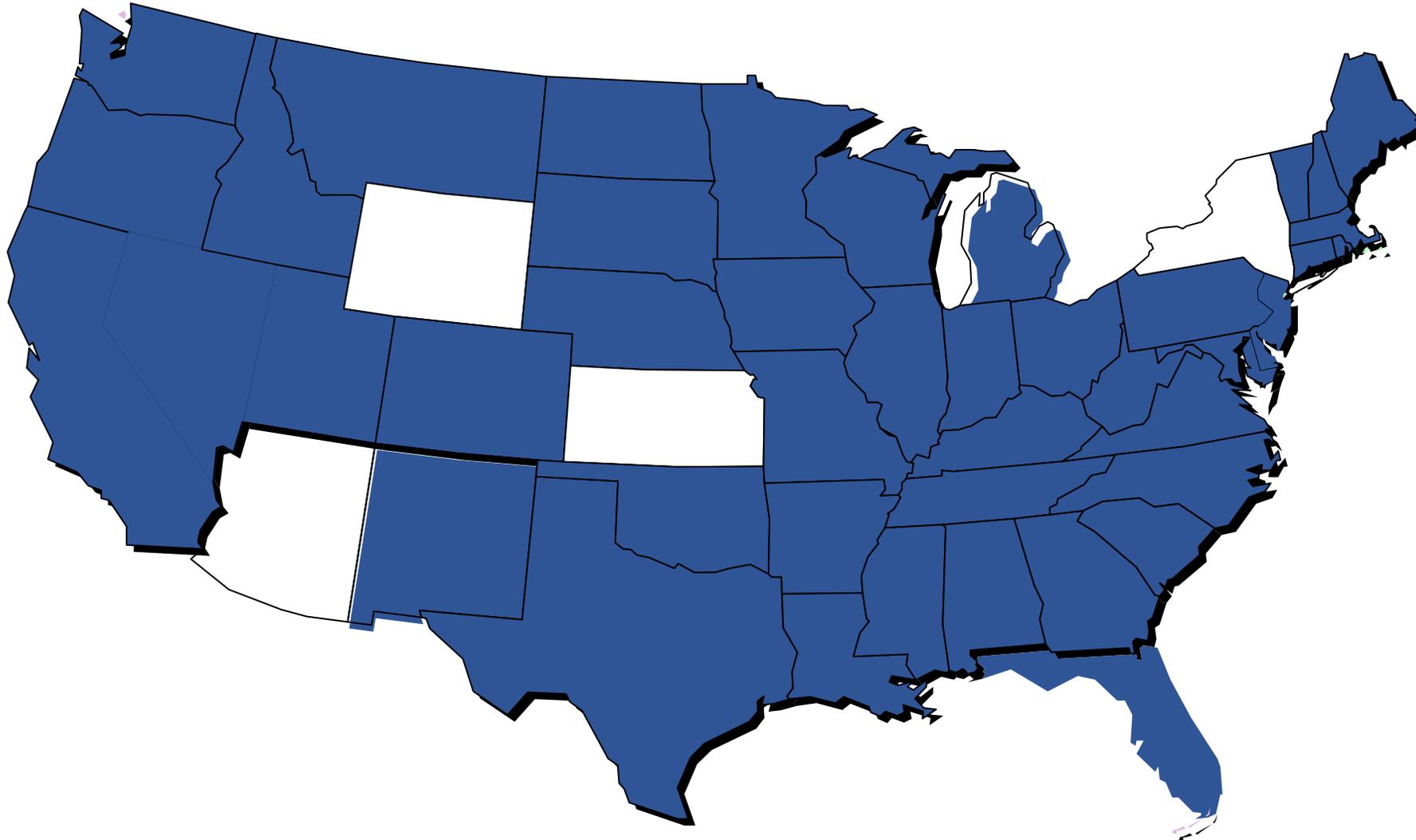
# Remedies

- The occupant has been informed of the lien in the rental agreement, attempted to be contacted about the default several times, but the occupant is completely unresponsive, now what?
- The bill affords the owner with several remedies.
  - (1) Towing;
  - (2) Sale; or,
  - (3) Disposal of property that receives no bid or offer.

# Towing

- Many storage operators do not want to go through the process for selling titled property.
- The process can be cumbersome, and many operators are not frequently called upon to do so.
- The proposed legislation would provide operators with the option to have certain property towed after default.
- The towing company would have to comply with the process for selling a titled vehicle.
- 45 states allow operators to tow vehicles under similar circumstances.

# Provides for towing



Blue – state permits towing

White: no towing authority presently exists in statute

## Towing – Proposed Language

“After a default, a facility owner may . . . Have the vehicle or watercraft towed or otherwise removed from the storage facility.”

Page 2, lines 20-27

# Lien Sale / Auction

- If a default occurs, for the limited number of sales that occur, the personal property will be sold.
- 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.

# How is the Sale Conducted?

- An owner must hold the sale at the storage facility or, if the storage facility is not a suitable place for the sale, at a suitable location that is the nearest suitable location to where the unit property is being held or stored; or on a publicly accessible Internet website.
- Page 3, lines 28-31; page 4, line 1
- Importantly, all occupants may redeem their property prior to any final sale.
- Page 4, lines 4-8.

# Online Auctions / On-Site Sales

- A trend is for self storage lien sales to occur online. Numerous websites conduct these sales for the self storage industry.
- Online sales expand the audience of potential bidders by allowing bidders to submit bids over the course of several days without attending a one-day sale in person.
- More bidders increases the likelihood of higher bids, with any sale proceeds going toward reducing the tenant's debt.
- However, the sale may also occur at the storage facility or nearest suitable location, too. Owners can choose the method that is best for their individual business.
- 41 states expressly allow online sales.
- 49 states expressly permit onsite sales.



# Disposal

- The bill affords owners with the ability to dispose of property that was offered for sale and does not receive any bid or offer.

Page 4, lines 2-3

## **Sale occurred, now what?**

- After the sale, the bill outlines the order of priority payment from the proceeds obtained from the sale.
- Page 4, lines 24-29
- If excess proceeds remain, the facility owner must hold the balance for three (3) years. If unclaimed, the property must remit the excess proceeds to the State.
- Page 4, 24-29

# Conclusion

- Self storage lien laws provide a non-judicial foreclosure process to address situations in which self storage tenants fail to pay their rent, and the storage owner must sell the tenant's property to satisfy the owner's lien for past due rents and other fees.
- The lien process is an infrequently used procedure, but it is necessary for the successful operation of a storage facility.
- A statutory lien law provides an essential framework and guardrails to protect storage owners and consumers.
- Alaska is the last remaining state without such a law.
- Now is the time to bring a self storage lien to Alaska.