

Good morning, Chairman Klein and members of the committee. My name is Joe Doherty, and I serve as Chief Legal & Legislative Officer for the Self Storage Association. It is my pleasure to testify in support of SB2330.

SB2330 would modernize the state's self storage lien law. The law was initially passed in 1997 and has not been updated since then. SB2330 would bring the state's self storage lien law in line with the many states that would modernized their lien laws over the last 15 years.

By way of brief background, 49 states have self storage lien laws. In case you are wondering, Alaska is the only state without a self storage lien law. Self storage lien laws were adopted to provide a statutory process for handling when a tenant fails to rent. The statutory process replaced a process that had been solely governed by the parties' contract. The statutory process provides protections and certainty to both self storage operators and consumers.

In practice, self storage operators work closely with their tenants to avoid non-payment in the first instance and to resolve non-payment issues without having to enforce the operator's lien. Enforcing the lien and selling the tenant's property to recover some of the tenant's debt are an uncommonly used, but necessary last resort. Ultimately, the operator's goal is to make the space available to a paying tenant.

The statutory lien process generally follows the same steps across the country. The parties have a written rental agreement that provides certain critical information, such as the amount of the rent and the operator's lien on the tenant's property if the tenant fails to pay rent. If the tenant fails to pay rent, the operator sends a mandated notice to the tenant. Among other things, this notice explains the tenant's space will be advertised for sale and sold to enforce the lien if the parties are unable to resolve the non-payment.

If the non-payment remains unresolved, the operator then advertises the time, place, and manner of the sale in an effort to attract bidders to the sale. If the tenant still does not pay, the operator holds a sale of the stored property. Importantly, section 35-33-06 of the Century Code allows the tenant to pay off the outstanding debt and reclaim the property up until the time of the sale.

Consistent with changes that have been adopted in up to 45 states, SB2330 would modernize the self storage lien law in several key ways. First, instead of requiring notices to be sent by certified mail, SB2330 allow notices to be sent by verified mail (what the post office calls U.S. mail with certificate of mailing) or email if the tenant provides an email address. Unlike certified mail, U.S. mail with certificate of mailing automatically forwards to the tenant's new address if it's on file with the post office. And, email addresses are likely to remain consistent even if a tenant's physical address changes. Verified mail and email are permissible methods of notice in 45 and 42 states, respectively.

SB2330 would also allow operators to have stored vehicles towed instead of selling them. Once towed, the towing company would have to follow the requirements of the Century Code for selling a vehicle. Although some operators have experience with selling vehicles, in the 38 states where towing is allowed, many prefer that option.

I would like to highlight two additional changes before concluding my testimony. First, the bill would establish a late fee safe harbor, which provides certainty to operators while also protecting tenants from unreasonable late fees. Thirty-two states have adopted this late fee safe harbor. Second, the bill would expand the methods of notifying potential bidders of the sale. Nowadays, most bidders learn about sales through the self storage companies and online auction websites. Operators have a strong incentive to bring more bidders to the sale because more bidders result in higher bids, with the winning bid applied to reduce (and, in rare cases, eliminate) the tenant's debt.

I welcome your questions on these or other aspects of the bill, and thank you for accepting my testimony in support of SB2330.