

Updating the Self Storage Lien Law

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Introduction

- Chairman Marcotte, members of the committee. Thank you for welcoming me today. My name is Daniel Bryant, I am Legal & Legislative Counsel to the national Self Storage Association, which is based in Alexandria, Virginia. The national Self Storage Association also manages the Vermont Self Storage Association.

Road Map

- Overview of self storage customers
- How self storage business works
- Lien law overview
- How the lien sale process works
- Proposed amendments to lien law

Who are self storage customers?

As seen in the previous chapter, there are approximately 11.8 million current consumer self storage rentals

Furthermore, there are approximately 12.2 million consumers who rented a unit within the last 5 years, (recent renters), and 5 million additional consumers who plan to rent a self storage unit in the next year (future renters)

About a quarter of current and recent renters rent/rented their units for 1 to 2 years

Nearly 1/3 of current customers say they will continue to rent for 1 to 2 years

See appendix for detailed explanation of Current, Recent, and Future renters

Current User N = 560

Recent User N = 639

Future User N = 303

Figure 2-1: Length of Current and Recent Rentals

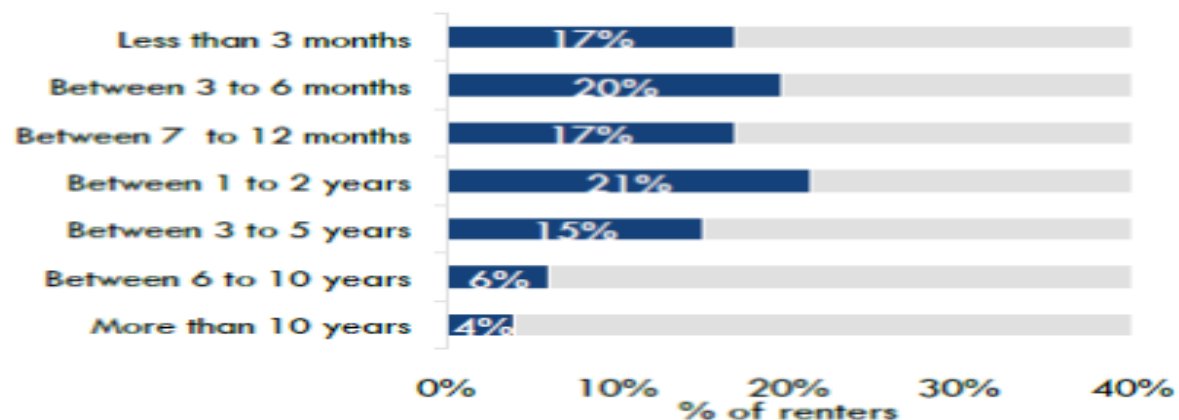


Figure 2-2: Future Rental Intentions of Current Customers

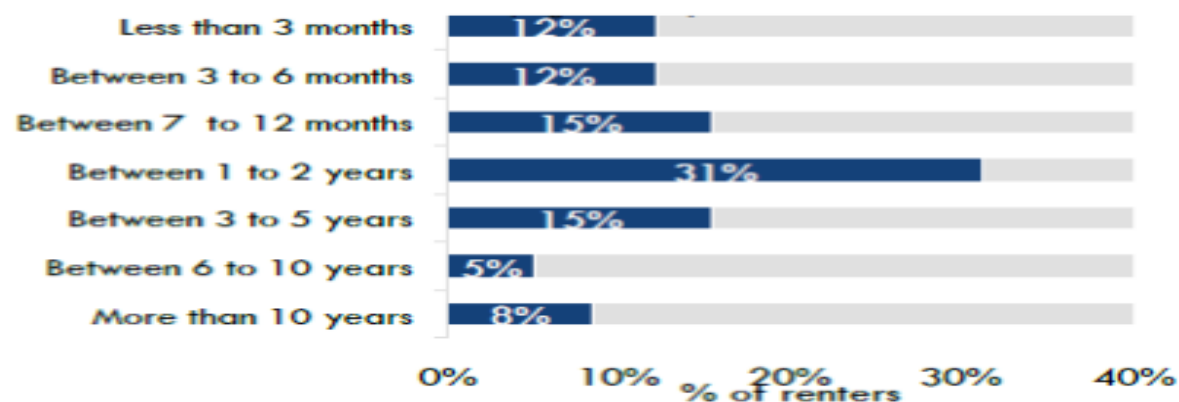


Figure 2-4: Gender

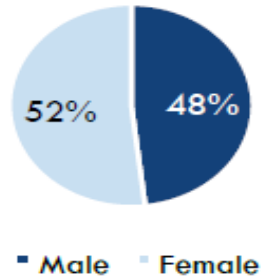


Figure 2-10: Generation

	Millennials	Gen-X	Boomers	Greatest
Generations	28%	32%	32%	8%

Figure 2-9: Education Level

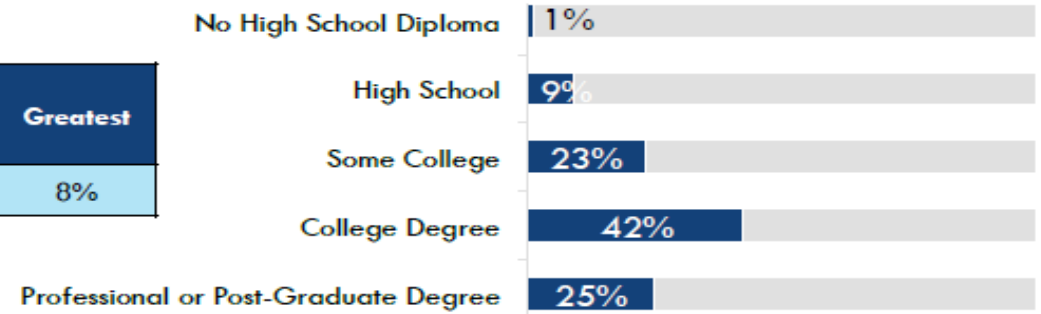


Figure 2-5: Spanish/Hispanic/Latino

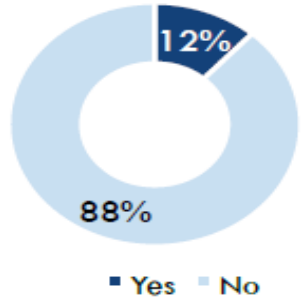


Figure 2-7: Race

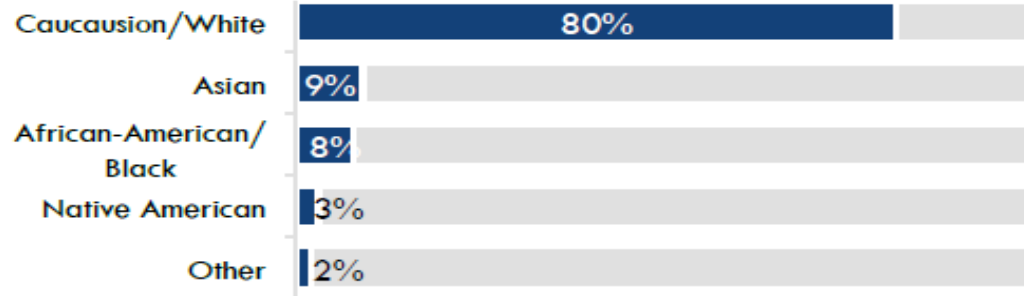


Figure 2-6: Marital Status

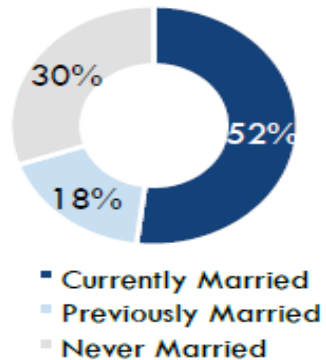


Figure 2-8: Household Size

	Mean # of Adults Age 18+	Mean # of Children	Mean # of Dependent Adults
Self Storage Renter Households	1.79	0.35	0.07

Demographically, self storage renters are typically younger, married, college-educated adults. The percentage of never-married renters has increased by 6% since 2013.

Figure 2-11: Type of Residence

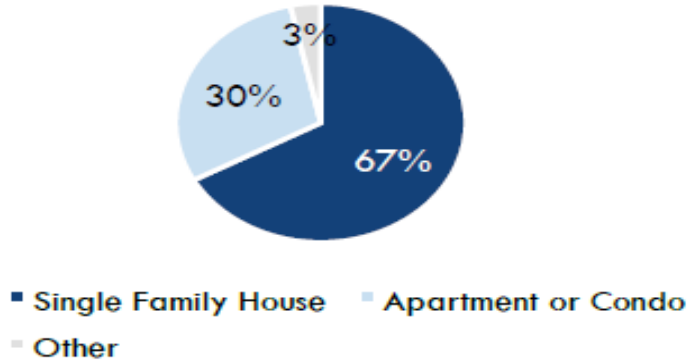


Figure 2-15: Own vs Rent

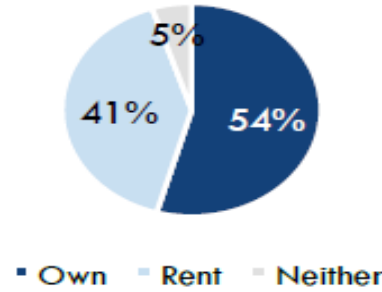


Figure 2-13: Household Income of Renters

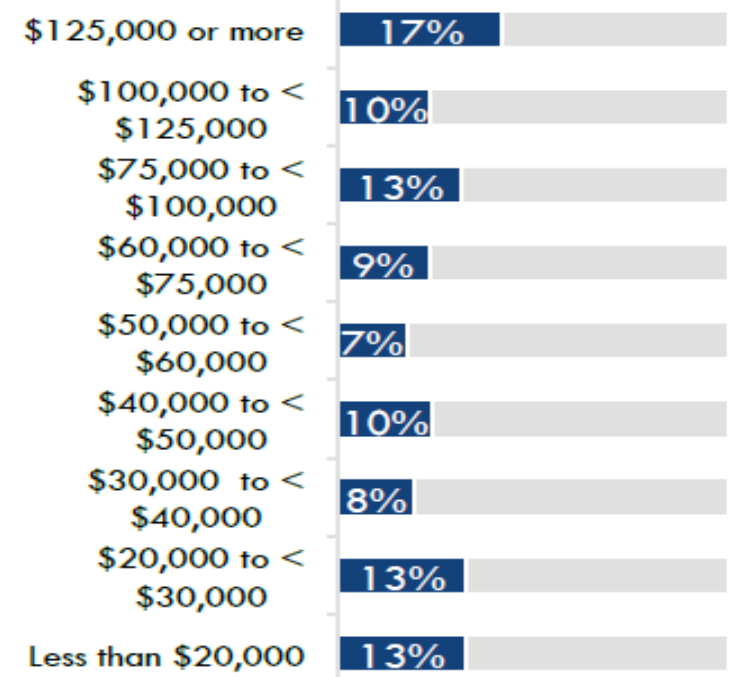
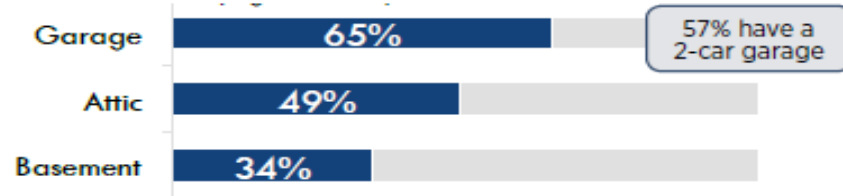


Figure 2-12: Renters with Extra Storage



Self storage renters generally live in single family homes, and have extra storage available in garages, attics and basements.

The percentage of renters with garages, attics, or basements has changed by 2% or less since 2013.

A majority of self storage consumer renters are employed and about a quarter have a household income of \$100,000 of more.

There has been about a 3% increase since 2013 in the percentage of self storage renters who have a household income of \$100,000 or more.

Figure 2-14: Employment Status

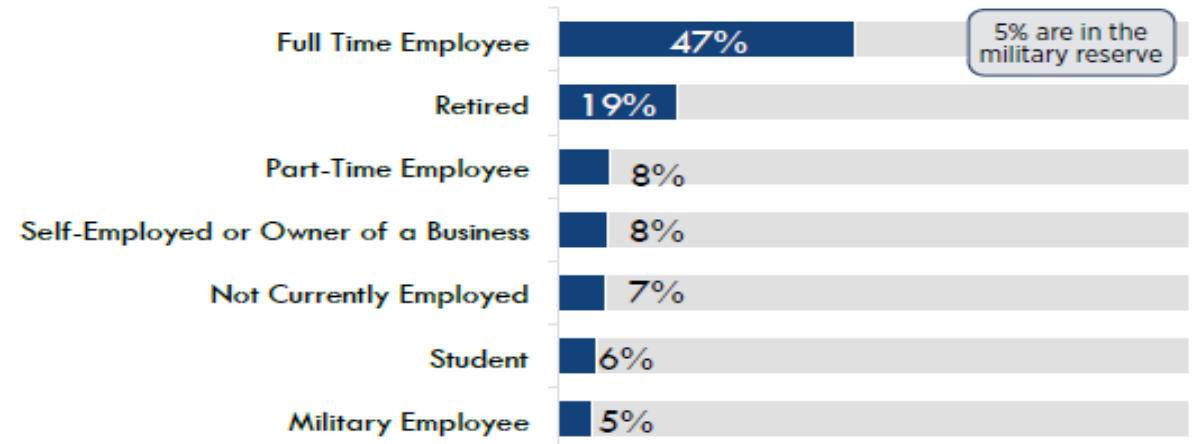


Figure 2-21: Visits to Unit

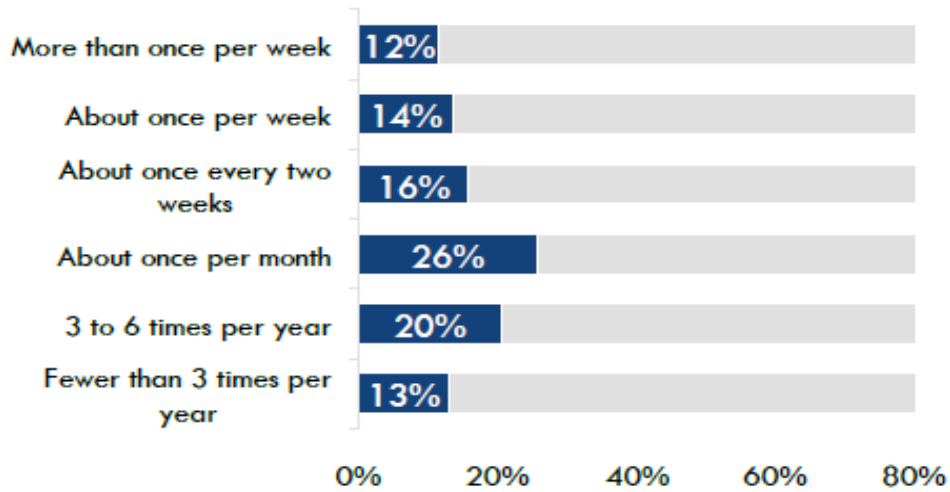


Figure 2-22: Means of Transportation to Unit

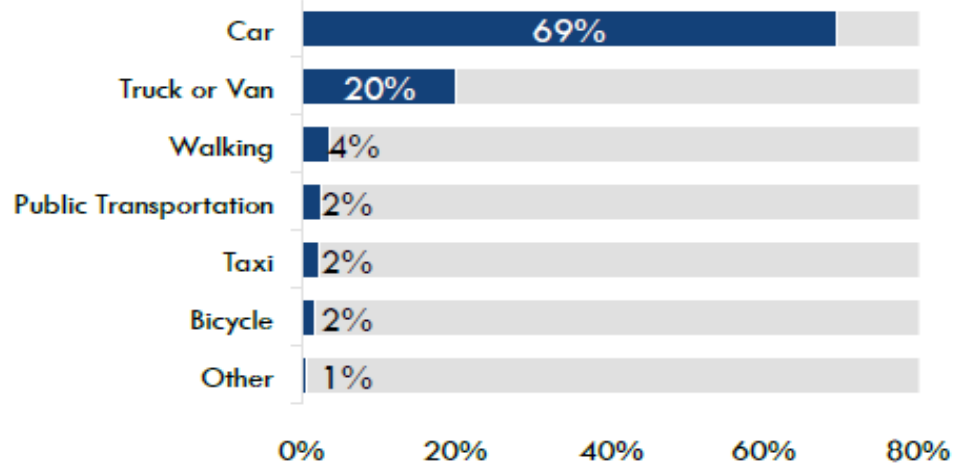


Figure 2-23: Travel Time to Unit

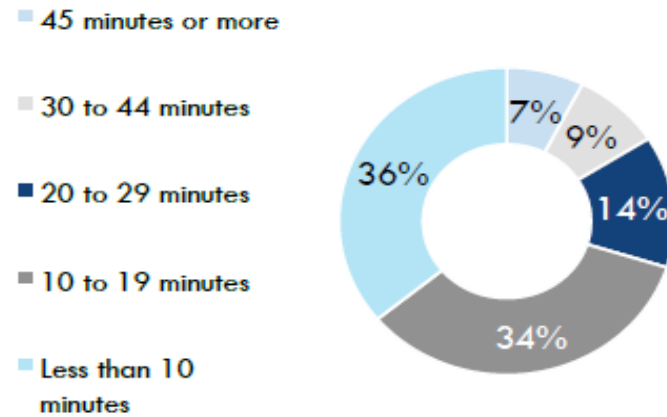
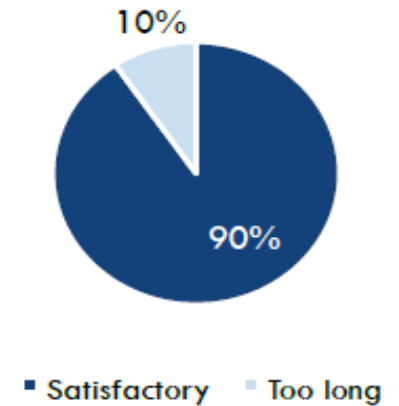


Figure 2-24: Travel Time Satisfactory?



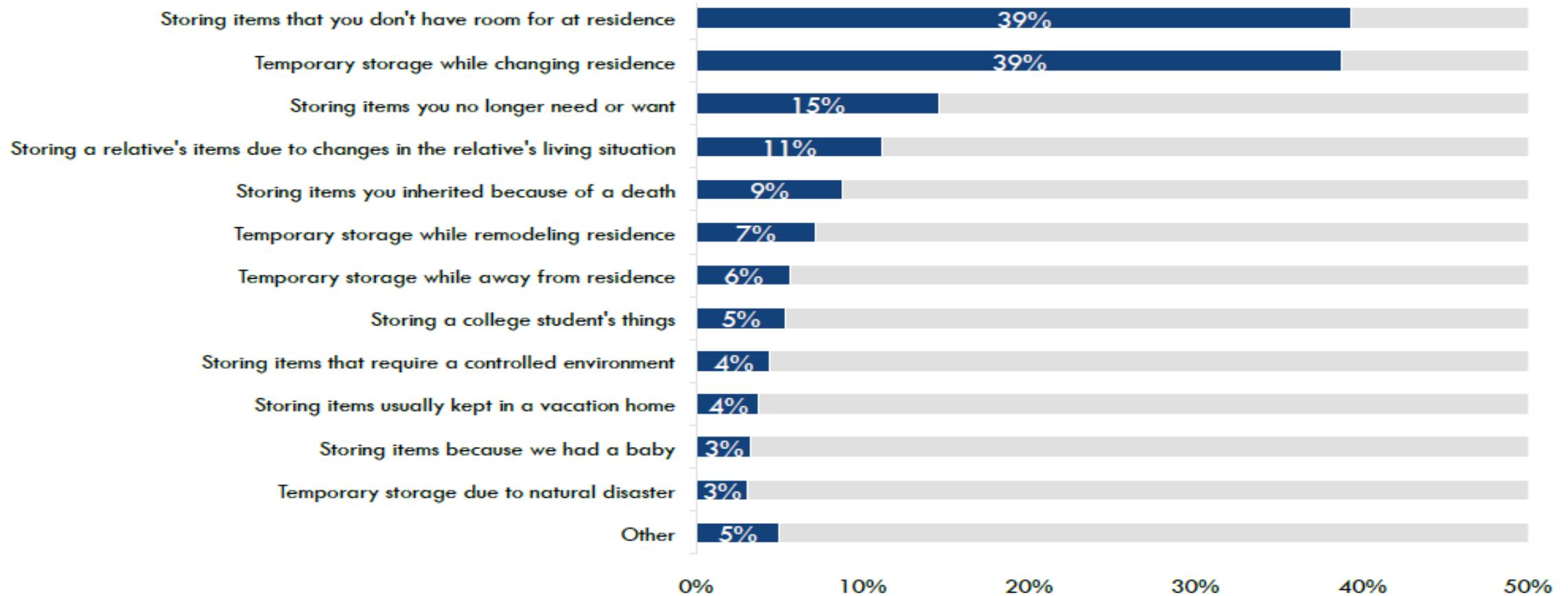
Most consumer self storage renters travel by car to their self storage unit, and for the majority, the trip takes them less than 20 minutes.

Just over 90% are satisfied with the travel time to their self storage unit.

About 1 in 4 consumers visit their self storage unit about once per month.

Those who say they visit their unit more than once a week has increased from 6% in 2013 to 12% in 2017.

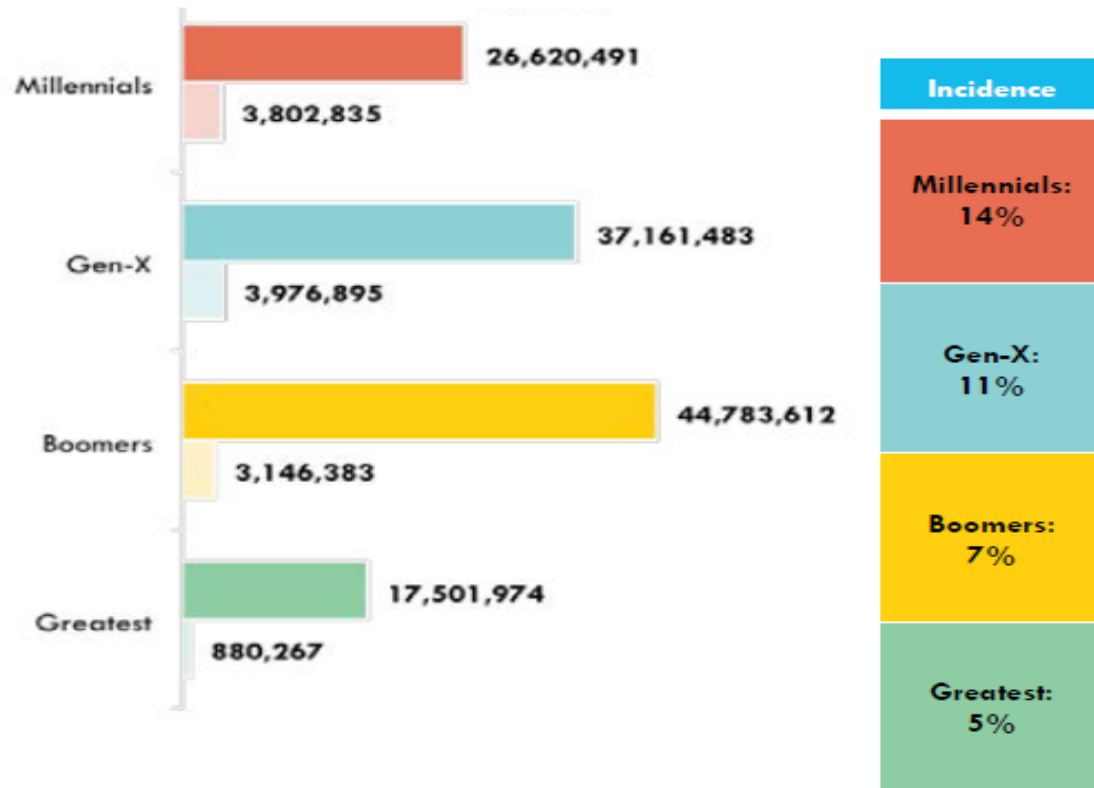
Figure 2-25: Reasons for Renting a Self Storage Unit



As in 2013, the most popular reasons for renting a self storage unit are: storing items that you don't have room for at your residence and temporary storage while changing residences.

Most important reason for renting a Self Storage unit:
Temporary storage while changing residence, 33%

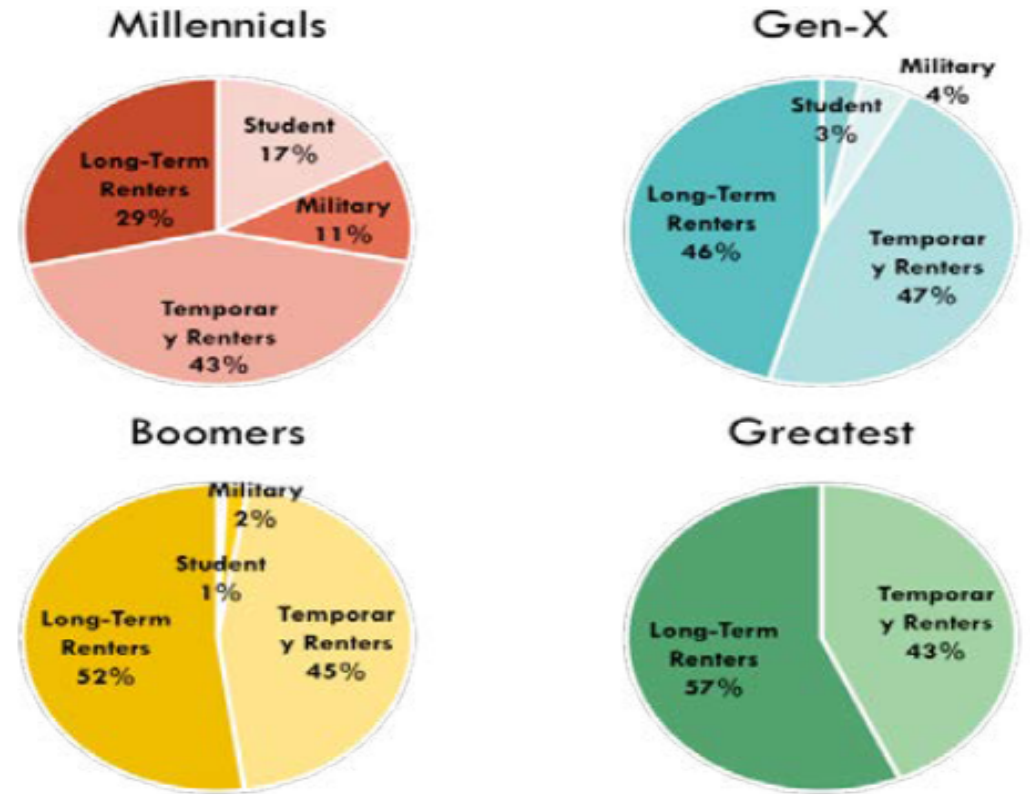
Figure 3-1: Total Households vs. Self Storage Renter Households



Millennials have the largest share of military and student renters, but nevertheless, their largest category is still temporary renters. Less than 5% of the other generations are military or student renters.

Longer-term rentals are very low among millennials, but as generations age, so does the percentage of long-term rentals.

Figure 3-2: Segments



Between 43-47% of every generation is temporary renters.

The overall incidence of self storage renters declines with age, from about 14% of millennials to about 5% of the Greatest generation.

Millennial: N = 351
Gen-X N: = 327

Boomers N: = 432
Greatest N: = 89

Vermont Operators

- There are 164 facilities in the state.
- Over 95% of Vermont storage operators are small businesses based in Vermont or nearby states. Very few national operators have a presence in Vermont.
- About 103 facilities have websites and 61 do not – or about 63% of operators have a website.
- Vermont storage operators have used the current lien law since January 2009.

How Does Self Storage Work?

- The self storage operator and tenant have a landlord-tenant relationship.
- As previously outlined, a broad swath of consumers use self storage for a variety of reasons.
- If desired, 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.
- 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.
- 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.
- 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.

How Does The Lien Sale Process Work?

- No sooner than seven days after payment is overdue, the occupant must be notified of the issue by mail to his or her last known address.
- No sooner than 14 days after mailing of the first notice, the occupant must be notified again of the payment issue by certified mail that contains several pieces of information such as the sum due, description of the property in the unit, a demand for payment not less than 15 days after the mailing of the second notice, and a statement that unless paid the contents of the unit will be sold at auction.
- After the expiration of the time period outlined in the second notice, the sale is then advertised in the newspaper for two consecutive weeks.
- All lien holders are notified least 21 days prior to the sale.
- In practice, all tenants will be contacted more than twice. The SSA encourages all members to reach out via mail and over the phone to resolve the payment issue.
- If all attempts to resolve the payment issue fail, then the operator will proceed with the sale to recoup the debt owed and recover the space for rental by a paying customer.

VERMONT DELINQUENT PAYMENT & FORECLOSURE TIMELINE

Day of Month/ Elapsed Time	Action	Legal Reference	Notice
Day One	Rent due		
Day Six			Late Notice
Day Fourteen	First Notice of Default Deny access (If provided for in rental agreement)	§ 3905(1)	Notice by regular mail Contact occupant by phone
Day Thirty	Second Notice of Default	§ 3905(2)	Send Certified Mail
Day Fifty (At least 15 days after mailing of lien notice)	Publish Advertisement of Lien Sale Conduct lien search	§ 3905(3) §3905(4)	Send copy of ad to occupant Send Notice of Lien Sale to disclosed lienholders
Day Fifty-Seven	Publish Second Advertisement of Lien Sale	§3905(3)	
Day Seventy	Review occupant files and prepare for sale		Contact occupant by telephone
Day Seventy-Five (at least 15 days after publication)	Sale Complete all required book-keeping of sale proceeds/deficiency		Send occupant notice of proceeds/deficiency

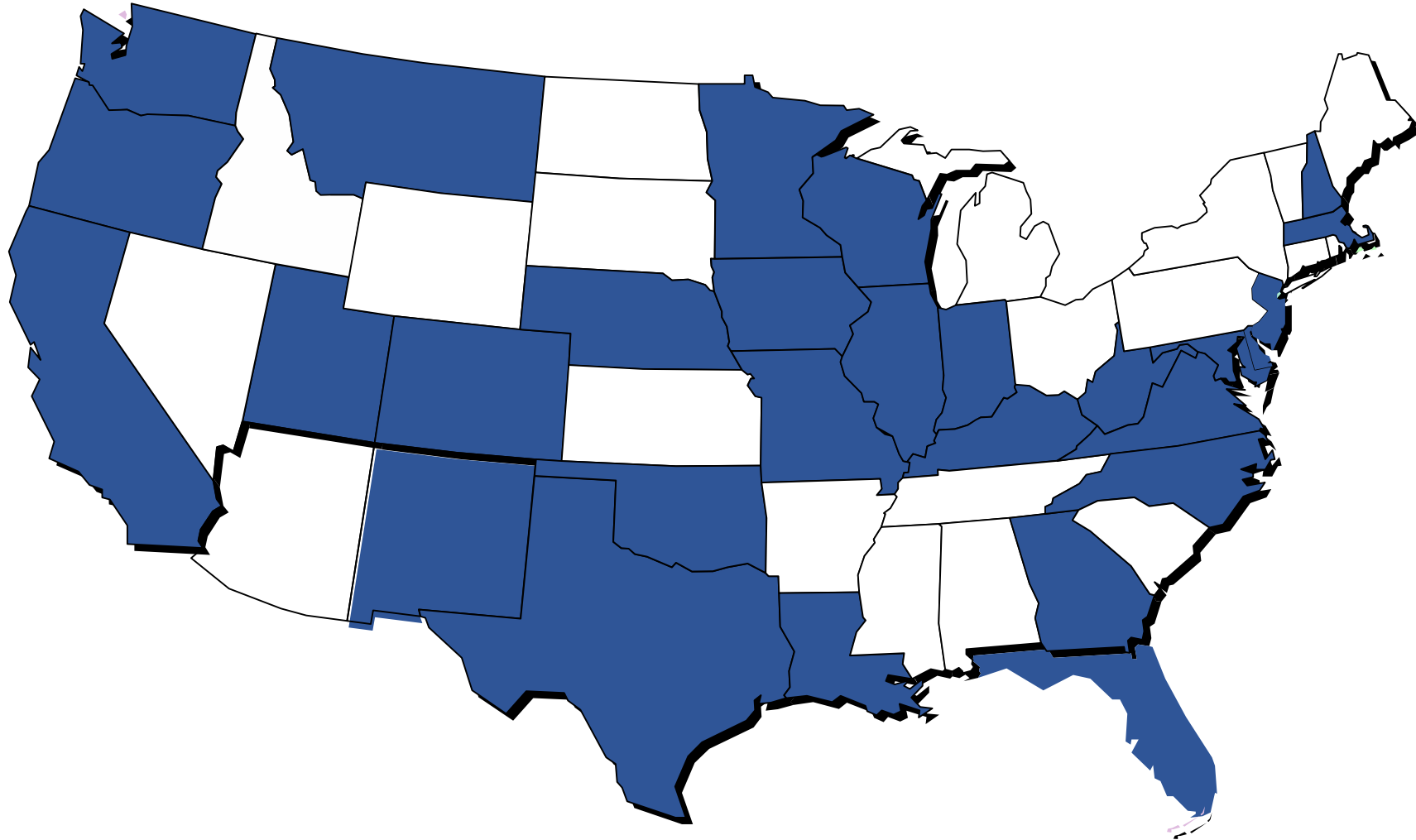
Proposed Amendments:

- Online auctions;
- Late fees;
- Alternative advertising methods;
- Simplified vehicle towing;
- Contractual value limitation;
- Verified mail; and,
- Email.

Online Auctions

- A recent 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 as currently required by law.
- More bidders increases the likelihood of higher bids, with any sale proceeds going toward reducing the tenant's debt.
- The Act currently requires that the sale occur at the storage facility or nearest suitable location. The proposed legislation would clarify that the online sales are permissible.
- Twenty-eight states, including MA and NH, expressly allow online sales.

Expressly allows online auctions



Also Hawaii

Online Auction – Proposed Amendment

§ 3905. ENFORCEMENT OF LIEN 6 (A)(iii):

The sale is held at the self-storage facility, or at the nearest suitable place., *or on a publicly accessible website . . .*

Page 11, lines 10-11.

Late Fees

- The Act currently includes “other charges” as part of the operator’s lien. These other charges includes late fees. The Act does not currently mention an amount of late fees.
- The proposed legislation includes a late fee standard of up to \$20 or 20% of the monthly rent, whichever is greater.
- The storage operator may charge less than this but is prohibited from charging more.
- The proposed legislation protects consumers by providing an upper limit to any late fees and a grace period of five days before any late fees may be imposed.
- The \$20/20% late fee standard has been adopted in 26 states, including MA, NH, and ME. A few other states expressly provide for a different late fee standard. The remaining states have language similar to the language currently in the Act.

Late Fees – Proposed Amendment

§ 3901. DEFINITIONS

(4)(A) “Late fee” means a fee or charge assessed for an occupant’s failure to pay rent or other fees, charges, or expenses when due.

(B) “Late fee” does not include:

(i) interest on a debt;

(ii) reasonable expenses, fees, or charges incurred in the collection of unpaid rent or expenses; or

(iii) fees or charges associated with the enforcement of any other remedy provided by law or a rental agreement.

Late Fee – Proposed Amendment

§ 3903. DISCLOSURES:

(c)(1) An owner may impose a late fee of not more than \$20.00 or 20 percent of a rental payment, whichever is greater, for each service period that an occupant does not pay the rent, charges, fees, or expenses when due.

(2) An owner shall not impose a late fee if the occupant pays the rent, charges, fees, and expenses in full not later than five days after the due date.

(3) An owner shall not impose a late fee unless the amount of the fee and the conditions for imposing that fee are stated in the rental agreement.

Verified Mail

- Currently, notices informing tenants that their rent is delinquent and their property will be sold if the rent is not paid must be sent by certified mail.
- Certified mail is an uncertain way to reach self storage tenants, approximately 50% of whom are in transition. It requires the tenant's signature and does not automatically forward even if the Postal Service has the tenant's new address.
- Verified mail is a term of art and includes U.S. Mail with certificate of mailing. U.S. Mail with certificate of mailing provides proof that the notice has been sent and automatically forwards to a new address.
- This provides a greater assurance that the tenant will receive the notice.
- More than 40 states, including MA, NH, and ME, allow operators to send lien notices by verified mail.

Verified Mail – Proposed Amendment

§ 3901. DEFINITIONS

(11) “Verified mail” means a method of mailing that is offered by the U.S. Postal Service or another carrier and that provides evidence of mailing.

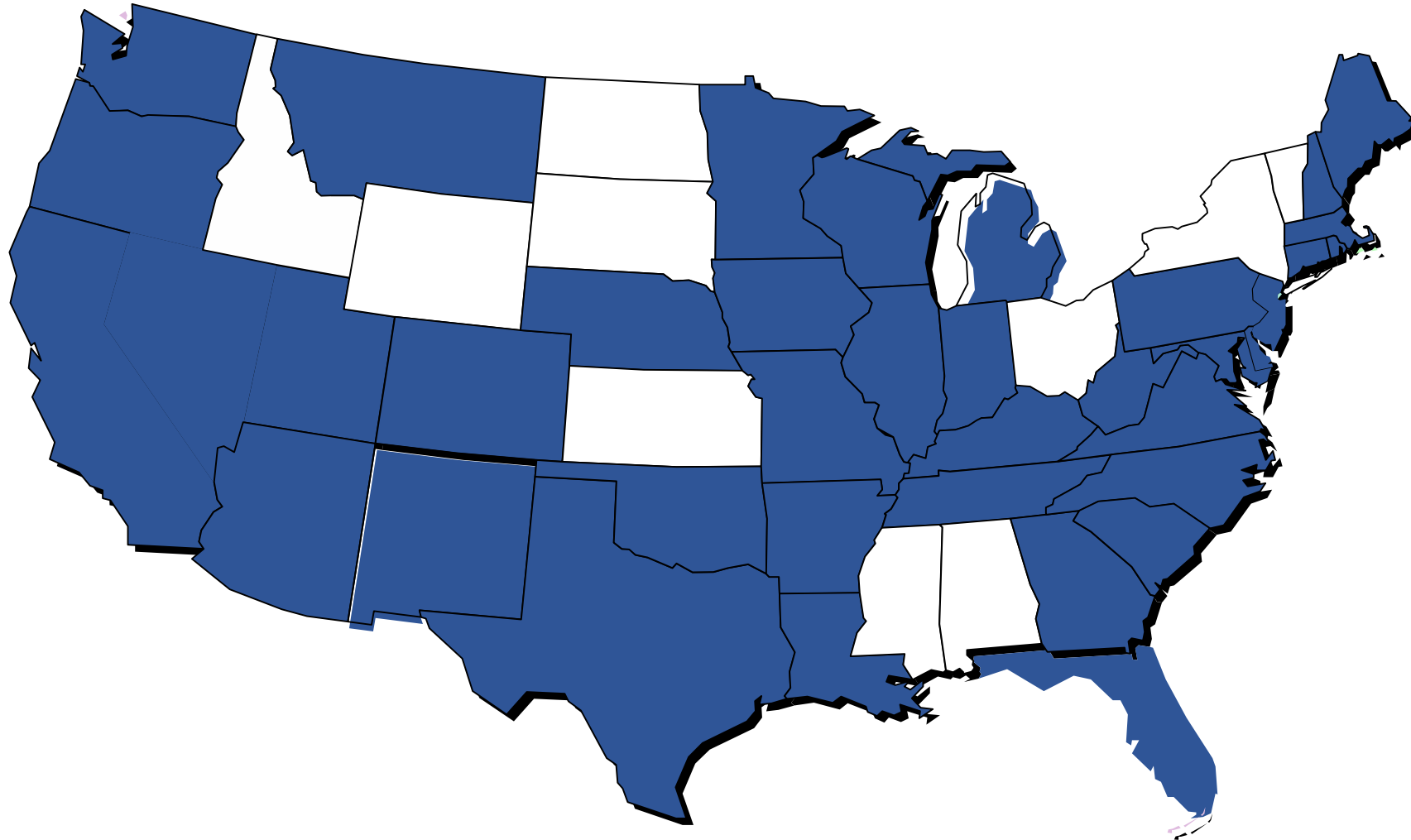
§ 3905. ENFORCEMENT OF LIEN. Permits the second notice of default to be sent via verified mail.

Page 3, lines 15-16; Page 7, lines 5-8

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 only.
- Tenants may continue to receive notices via the mail if that is their preference.
- Thirty-eight states, including MA, NH, and ME, allow tenants to choose to receive lien notices by email.
- Email is also less costly and we have found that tenants are more responsive due to the immediacy, as well as the accessibility of email.

Lien notices by email in lieu of certified mail



Email – Proposed Amendment

§ 3901. DEFINITIONS

(2) “Electronic mail” means the transmission of information through computer or other electronic means, or a communication sent to a person identified by a unique electronic address.

§ 3905. ENFORCEMENT OF LIEN

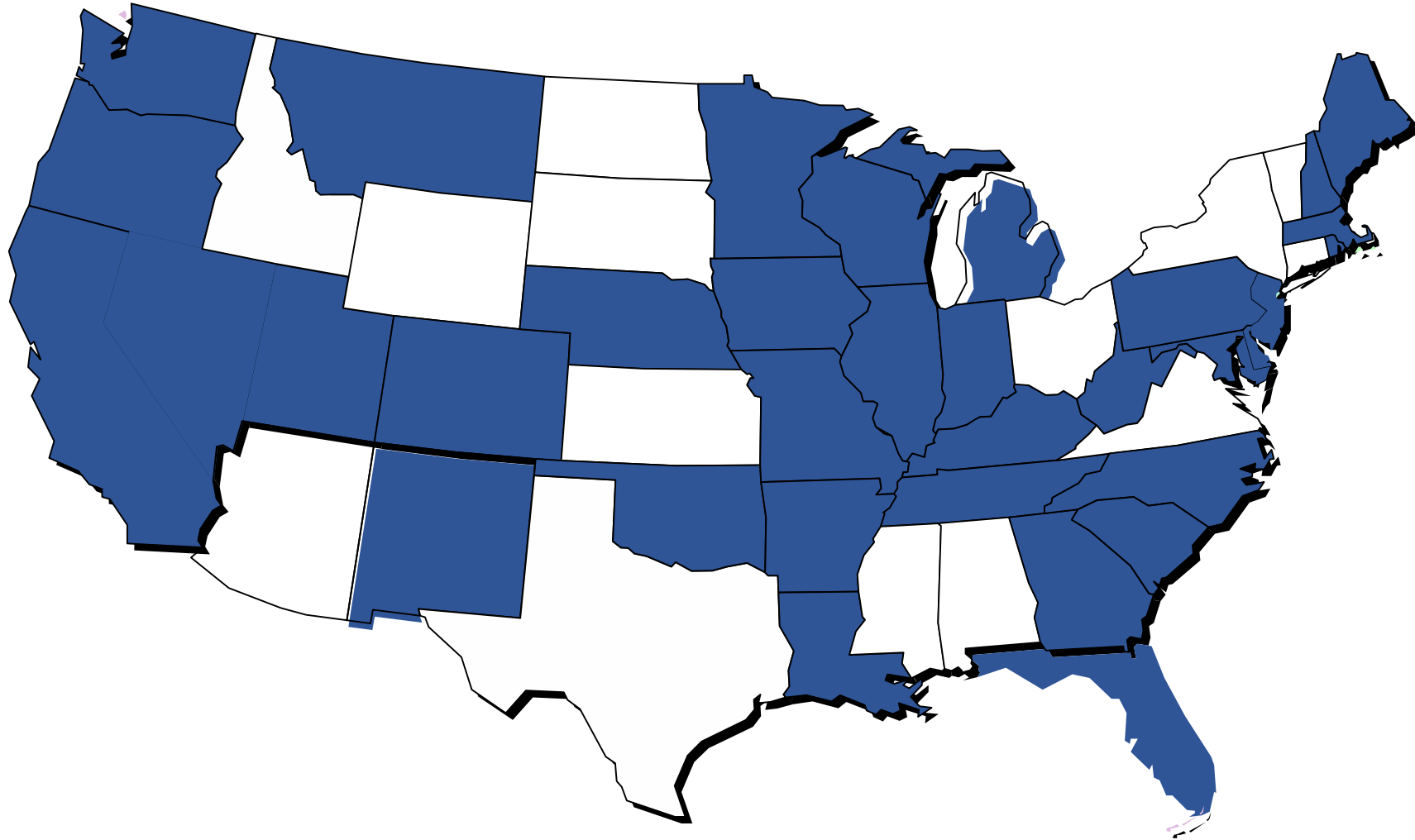
Permits the first and second notice of default to be sent via electronic mail to the occupant.

Page 1, lines 17-19; Page 7, lines 1-8

Towing

- Many storage operators do not want to go through the DMV process for selling a titled vehicle.
- The process can be cumbersome, and many operators are not frequently called upon to sell titled vehicles.
- The proposed legislation would provide operators with the option to have a vehicle, watercraft, or trailer towed when the rent is at least 60 days past due.
- The towing company would have to comply with the DMV process for selling a titled vehicle.
- Thirty-four states, including MA, NH, and ME, allow operators to tow vehicles under similar circumstances.

Provides for simplified vehicle towing



Towing – Proposed Amendment

§ 3905. ENFORCEMENT OF LIEN (7) Towing.

(A) If rent, charges, fees, or expenses remain unpaid after 60 days, an owner may have a vehicle, vessel, snowmobile, trailer, or all-terrain vehicle towed away by a towing company.

(B) An owner has no liability to any person for having property towed or for damage to the property after the towing company takes possession of the property.

Page 12, lines 14-20

Contractual Value Limitation

- Contractual value limitation expressly permits the operator to limit the value of goods that may be stored within the tenant's individual unit.
- This establishes at the outset of the storage relationship between the operator and the tenant the maximum value of goods that may be stored within the facility.
- The facility owner may permit a greater value of the goods to be stored if the tenant agrees to obtain insurance to cover the greater cost of goods stored in the event of a loss.
- The tenant's storage is done on a "self-service" basis. The operator does not know what the tenant has stored or the value of the property. The tenant has the option of insuring the property, but the operator does not.

Contractual Value Limitation – Proposed Amendment

§ 3903. DISCLOSURES (b) If a rental agreement contains a limit on the value of property that may be stored in a storage space, the limit is deemed to be the maximum value of the property in the storage space and the maximum liability of the owner for any claim.

Page 5, lines 5-8

Alternative to Newspaper Advertising

- The Act currently requires that the operator advertise the sale once per week for consecutive weeks in a newspaper of general circulation where the storage facility is located.
- The primary purpose of the newspaper advertising requirement is to drive bidders to the sale. In the more than ten years since the Act's passage, newspaper readership has dropped significantly.
- Other states have begun to recognize that newspapers are no longer an effective way to reach an audience.
- Operators have a strong incentive to advertise in the most effective means possible in their community because any funds reduce the debt owed to the operator. This also benefits the customer.

Alternative to Newspaper Advertising

- In the self storage context, online auction sites and storage facility mailing lists are typically the most effective means of reaching potential bidders.
- The proposed legislation would allow for web and email advertising in addition to newspaper advertising.
- Operators would retain the ability to advertise in the newspaper if that is the best medium to reach their intended audience.
- Approximately fifteen states, including MA, allow storage operators to advertise sales through reasonable alternatives to newspaper advertising.
- NH and ME do not require any advertising of any lien sales in any manner.

Advertising – Proposed Amendment

§3905 Enforcement of Lien

(3)(D) As an alternative to the advertisement required in subdivisions (A)-(C) of this subdivision (3), an owner may advertise the sale of personal property in a commercially reasonable manner. For purposes of this subdivision D, a manner of advertisement is commercially reasonable if three or more independent bidders attend or view the sale.

Page 9, lines 8-13

Conclusion

- These proposed amendments seek to:
 - (1) Modernize the lien law that has not been updated in over a decade;
 - (2) Bring the law in line with changes that other states have adopted over the last decade; and
 - (3) Improve the process in ways that benefit both self storage customers and operators.