

Updating the Self Storage Lien Law

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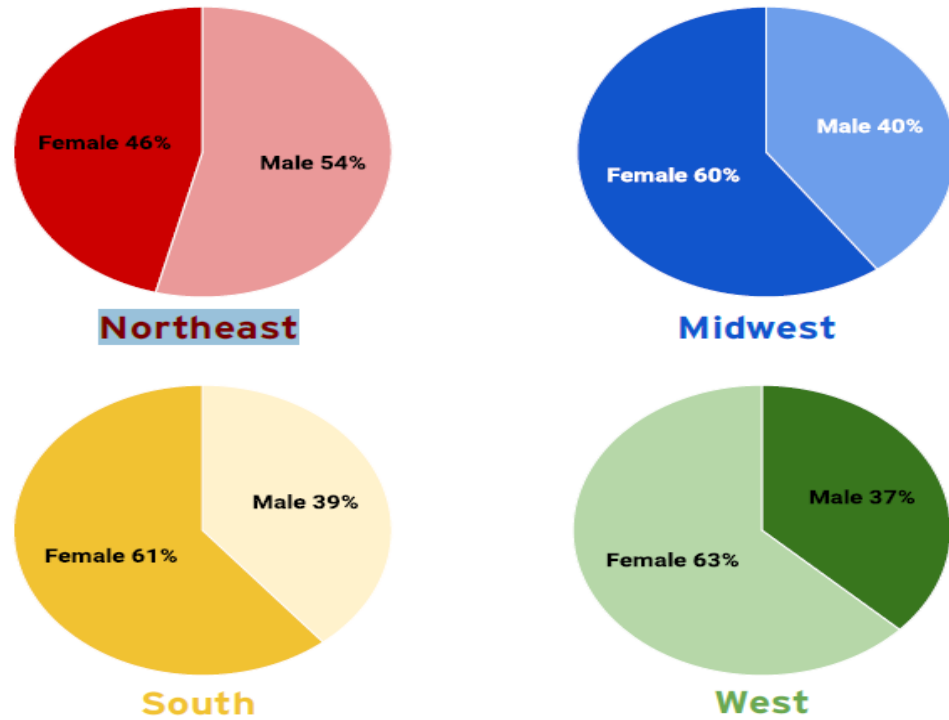
Road Map

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

Who are self storage customers?

(All data from SSA's 2020 Demand Study conducted by NAXION)

FIGURE 4-6:
Gender



- Nearly 1 in 6 Northeast and West renters have a college or post-graduate degree
- Just under 2/3 of renters in the Midwest, South, and West are female

■ Northeast
 ■ Midwest
 ■ South
 ■ West

FIGURE 4-7:
Education Level

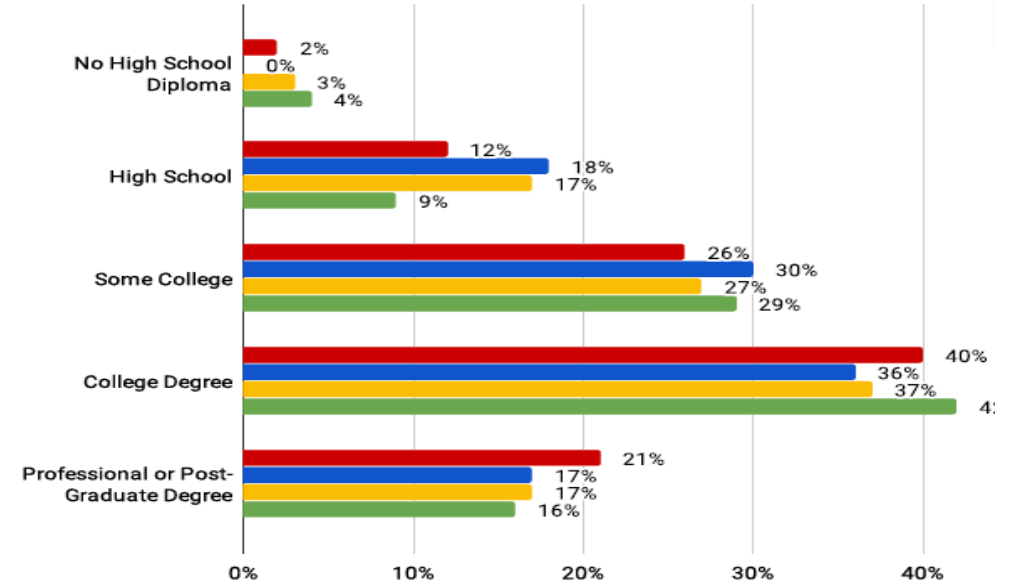


FIGURE 4-8:
Race

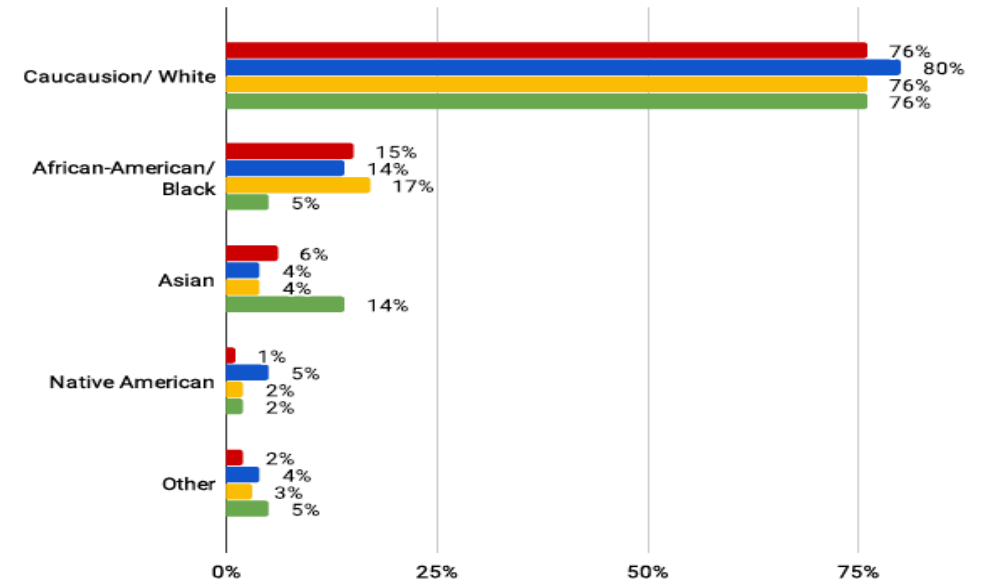


FIGURE 4-12:
Marital Status

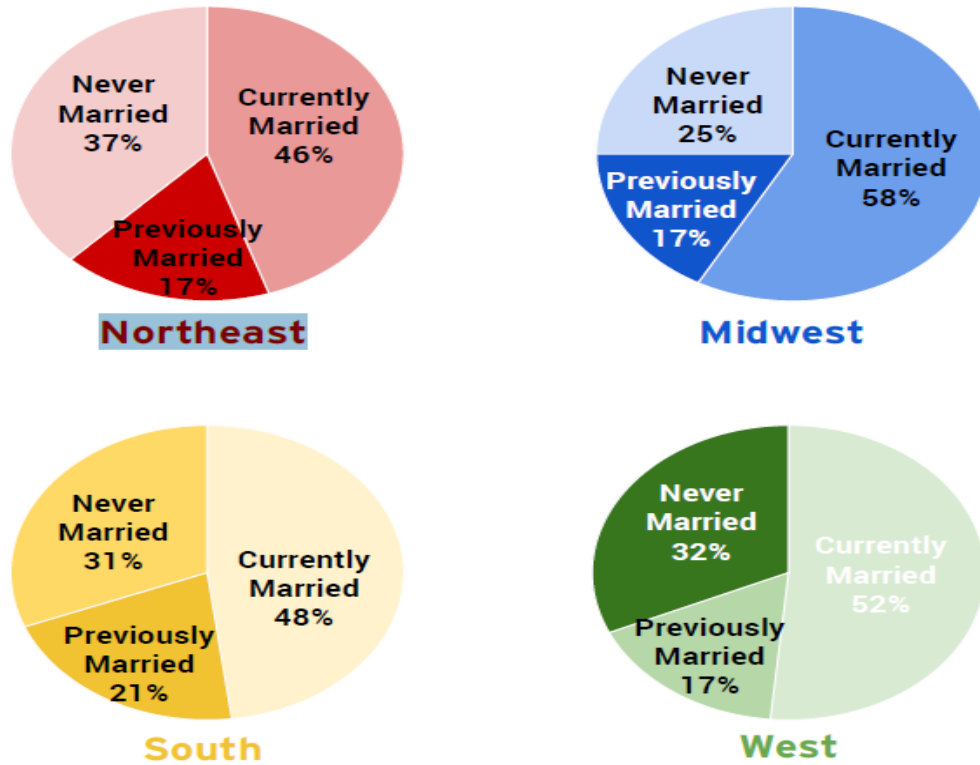
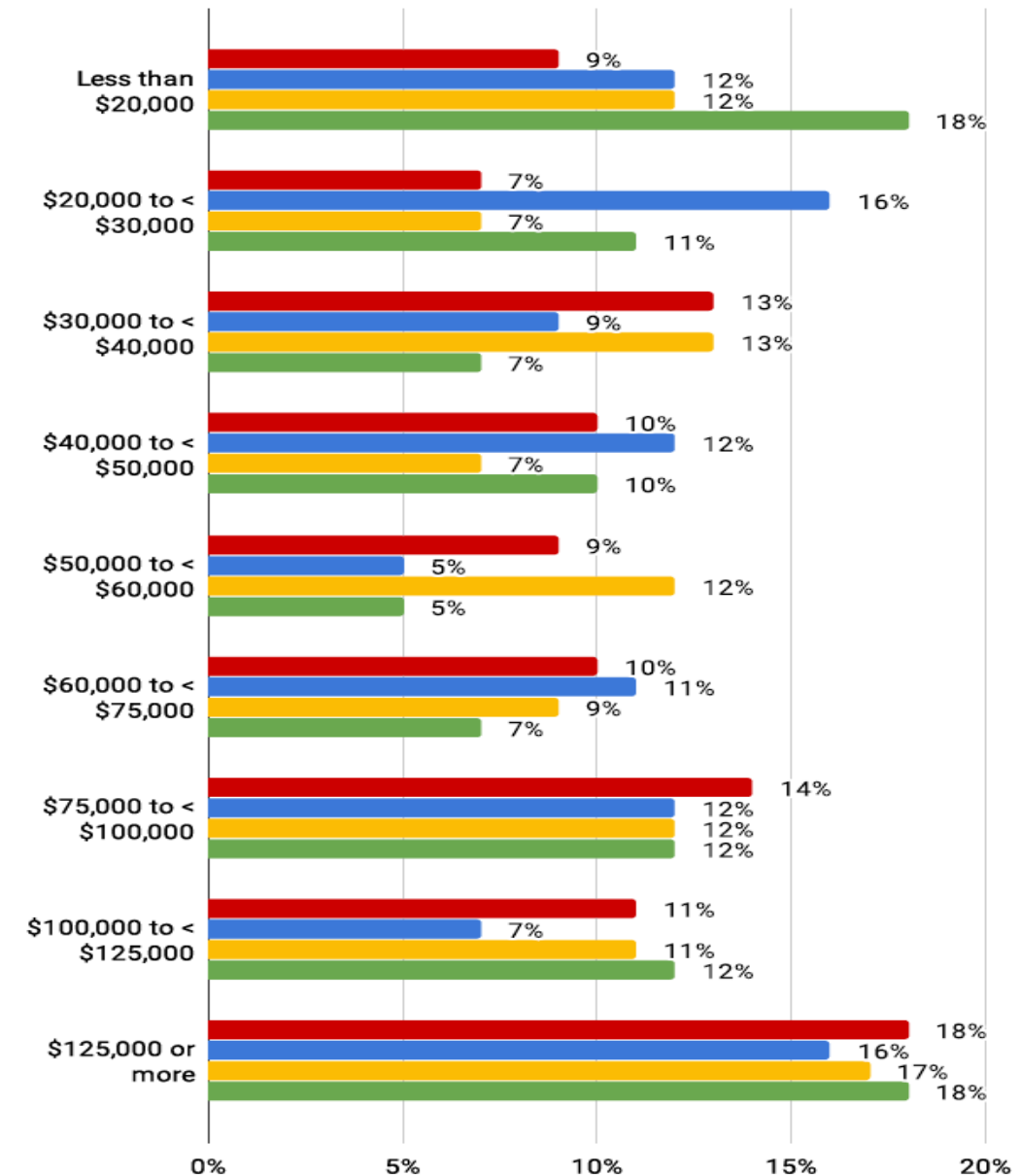


FIGURE 4-13:
Household Income



- Slightly more renters in the Northeast have never been married, compared to the other regions, though this number has decreased by 9% since 2017
- The number of households earning less than \$20,000 has increased by 6% among Northeast renters since 2017

■ Northeast
 ■ Midwest
 ■ South
 ■ West

FIGURE 4-16:
Generation

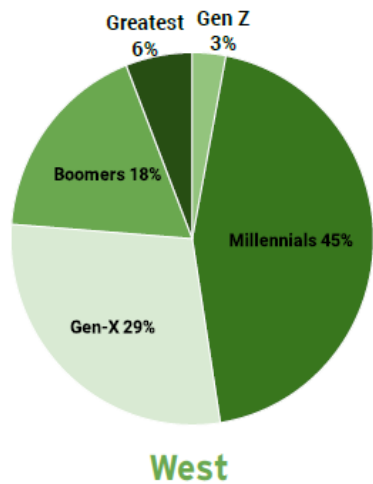
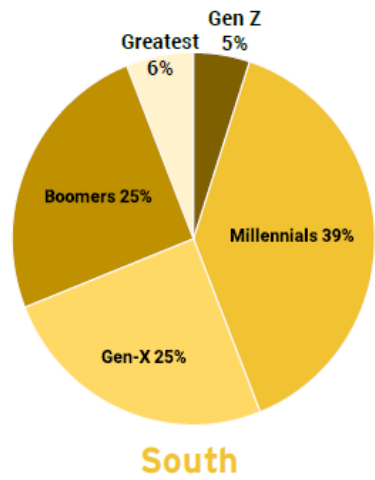
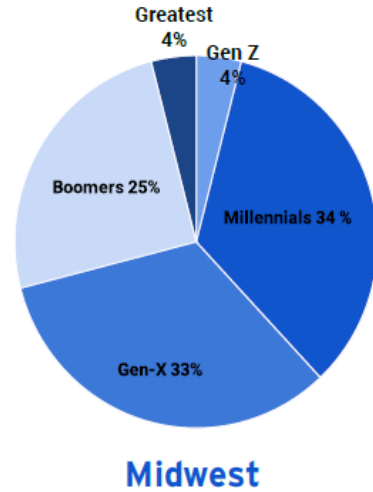
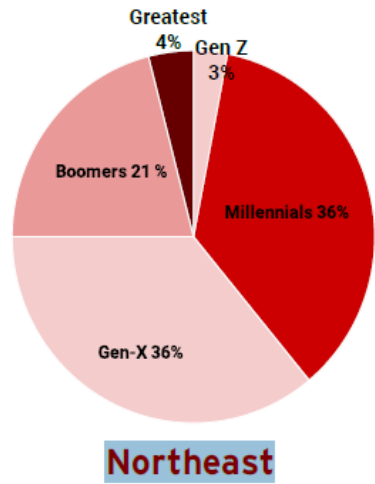
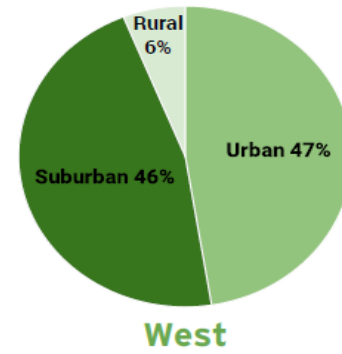
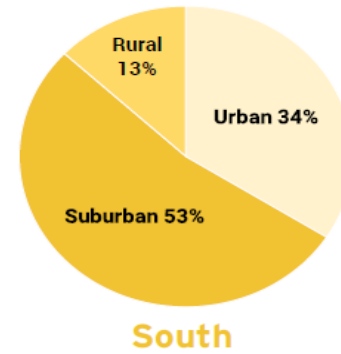
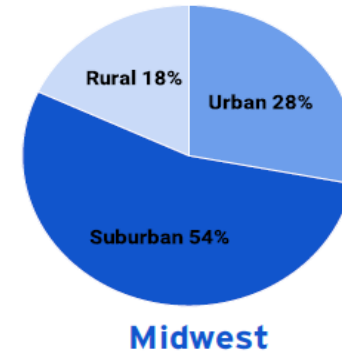
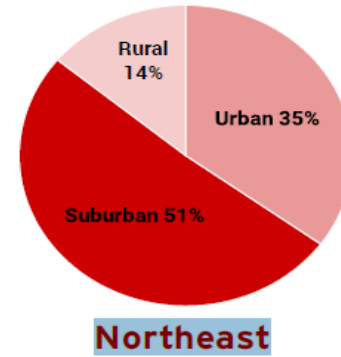
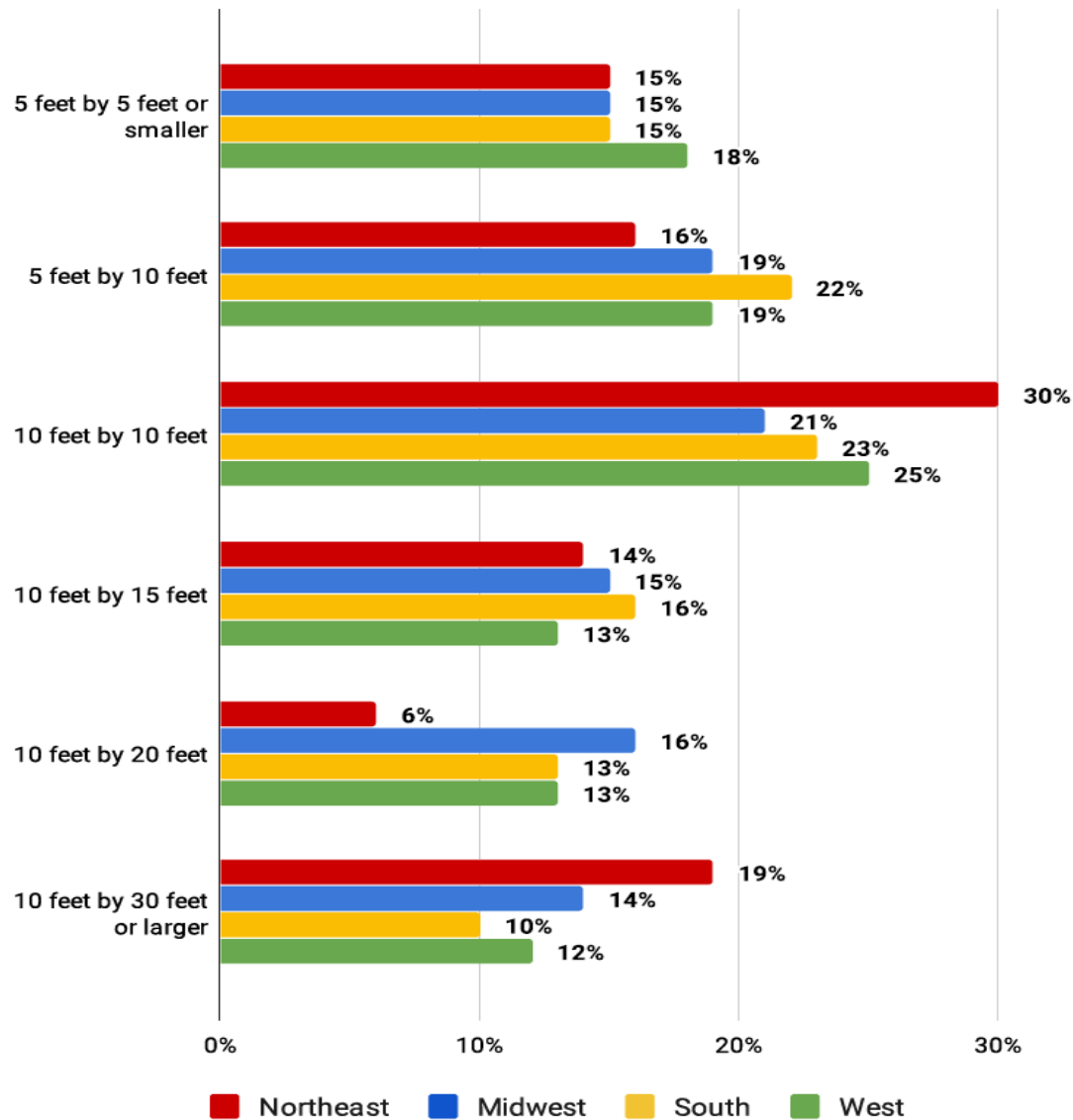


FIGURE 4-18:
Urbanization



- West has the most urban renters, which is an increase of 9% since 2017
- Renters across regions tend to be fairly even across unit size, with the exception of Northeast renters - nearly 1 in 3 have a primary unit size of 10 feet by 10 feet, and nearly 1 in 5 have a 10x30 or larger sized unit

FIGURE 4-19:
Size of Primary Unit



Northeast: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, and Pennsylvania.

Vermont Operators

- There are approximately 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.
- 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, email, 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.

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

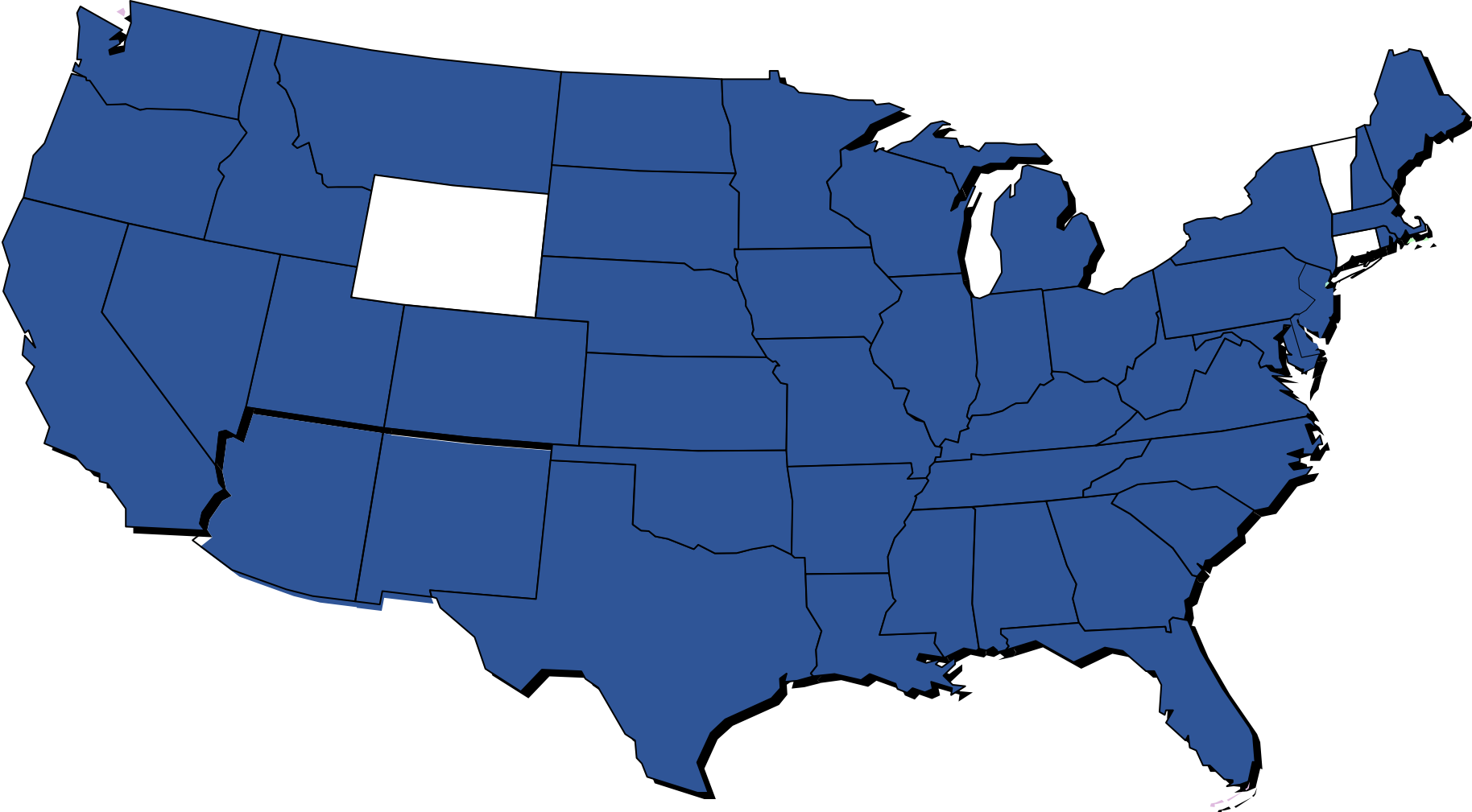
Proposed Amendments:

- First-class mail with certificate of mailing;
- Email;
- Alternative advertising methods;
- Online auctions;
- Late fees;
- Simplified vehicle towing; and
- Contractual value limitation.

First-Class Mail with Certificate of Mailing

- 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.
- First-Class Mail with a 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.
- 46 states, including MA, NH, and ME, allow operators to send lien notices by First-Class Mail with a certificate of mailing.

Notices may be sent by First-Class Mail with Certificate of Mailing



Mail – Proposed Amendment

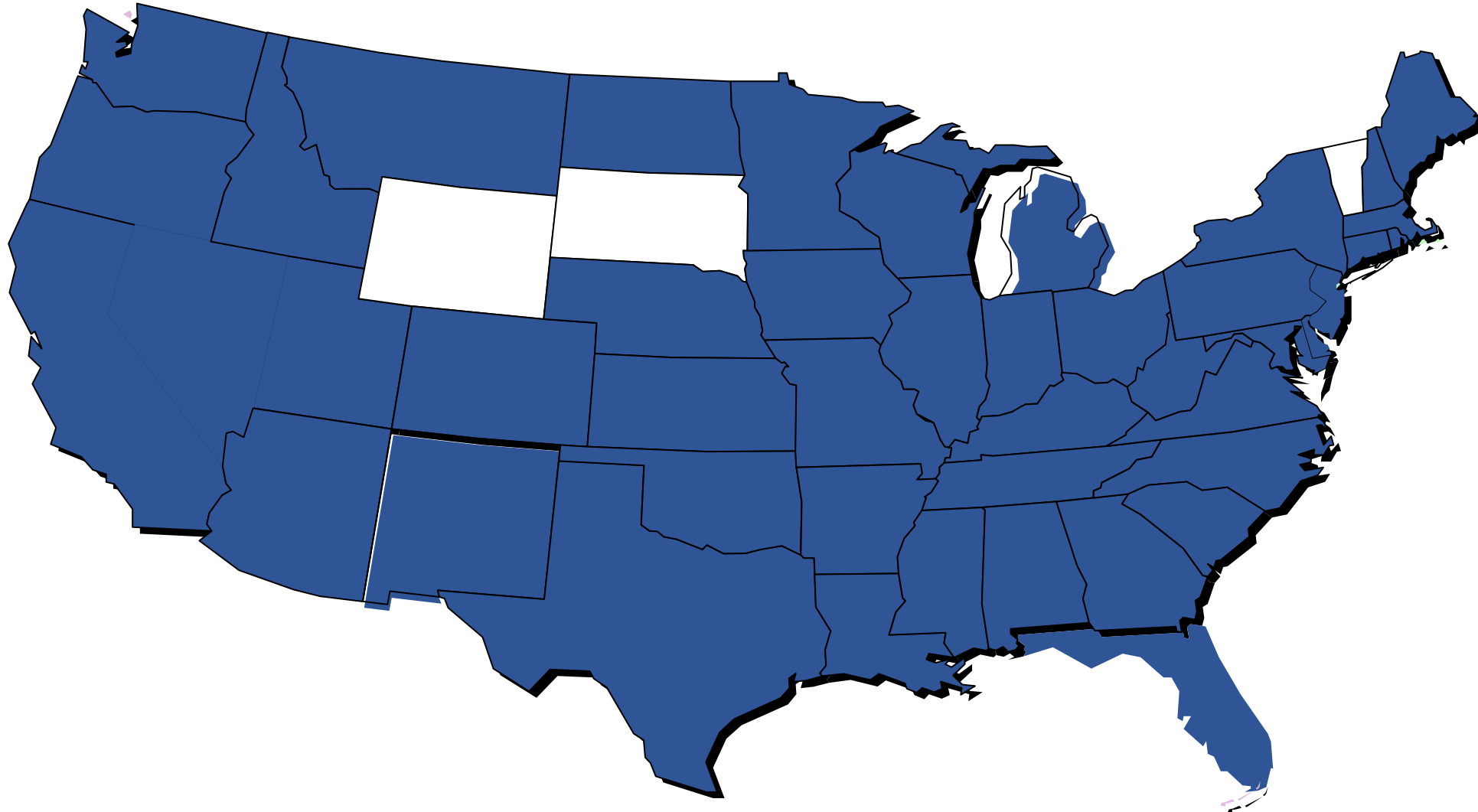
§ 3905. ENFORCEMENT OF LIEN. Permits the second notice of default to be sent via First-Class Mail with a Certificate of Mailing

Page 7, lines 8-11

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 if they elect to receive notice in that manner in the rental agreement.
- Tenants may continue to receive notices via the mail if that is their preference.
- Approximately 40 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 may be sent by email



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.

Page 1, lines 14-16

§ 3905. ENFORCEMENT OF LIEN

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

If the owner send notice by electronic mail and does not receive a response, return receipt, or delivery confirmation from the same electronic mail address within two days, then before proceeding with a sale the owner shall send the notice to the occupant either by certified mail or by first-class mail with a certificate of mailing.

Page 7, lines 3-16

Email – Proposed Amendment

- Owner may only send notice by electronic mail if the tenant makes an express decision to receive notice in that manner in the rental agreement.
- Page 5, lines 5-7

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 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 advertise upcoming sales.
- Operators have a strong incentive to advertise in the most effective means possible in their community to maximize the sale price.
- This also benefits the customer as any excess must be held for the former occupant.

Alternative to Newspaper Advertising

- In the self storage context, online auction sites or other platforms like Facebook Marketplace are typically the most effective means of reaching potential bidders.
- The proposed legislation would allow for online 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.
- 28 states either permit alternative advertising or have no advertising requirement at all, including MA, NH, and ME.

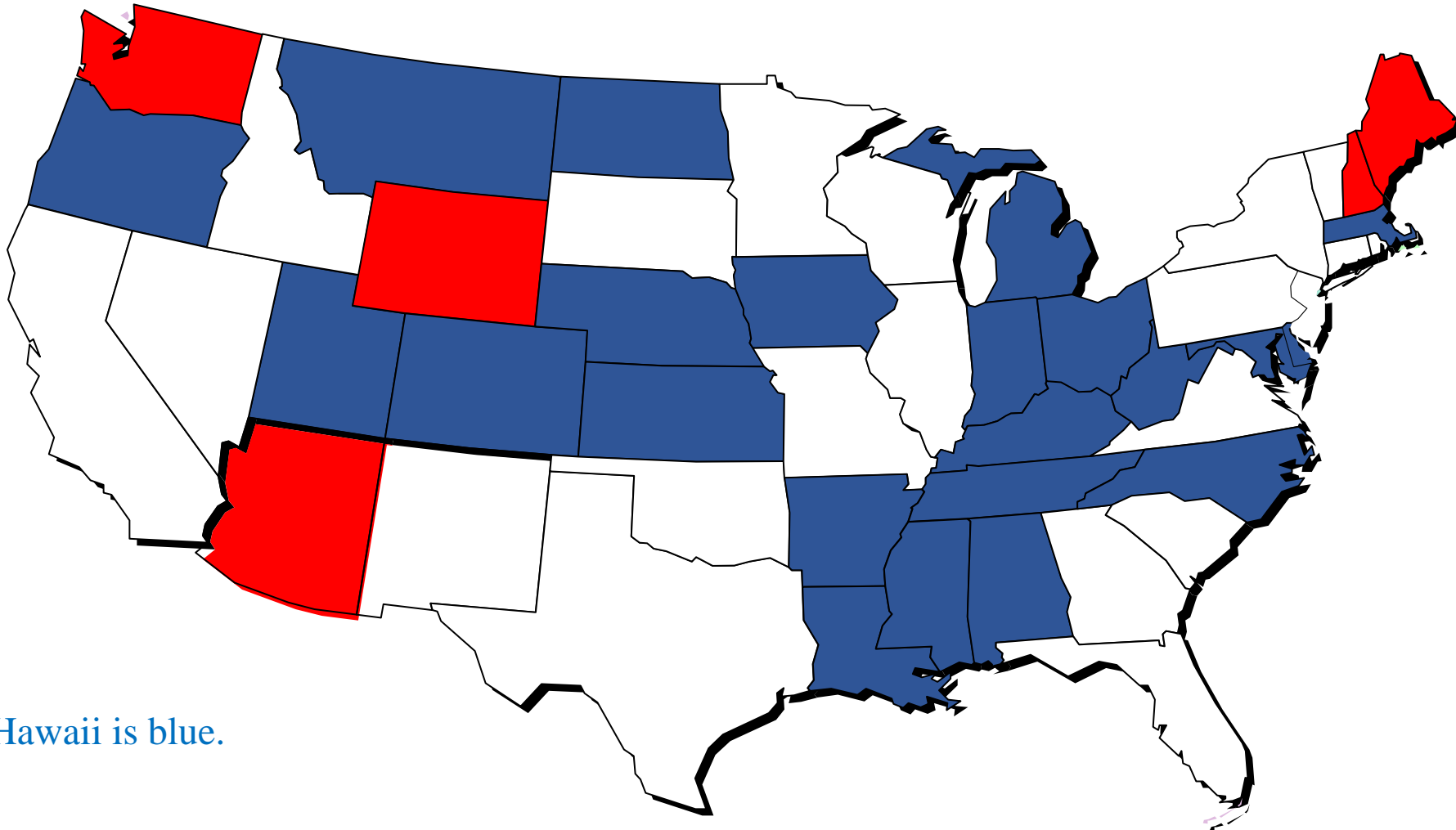
Advertising – Proposed Amendment

§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 15-20

Modernized Advertising Adoption



- Blue indicates state lien law provides for alternative advertising methods.
- Red indicates that no advertising is required.

Hawaii is blue.

Online Auctions

- 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 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.
- This has become increasingly important during the pandemic to permit sales to occur without in-person interaction.
- 36 states, including MA and NH, expressly allow online sales.

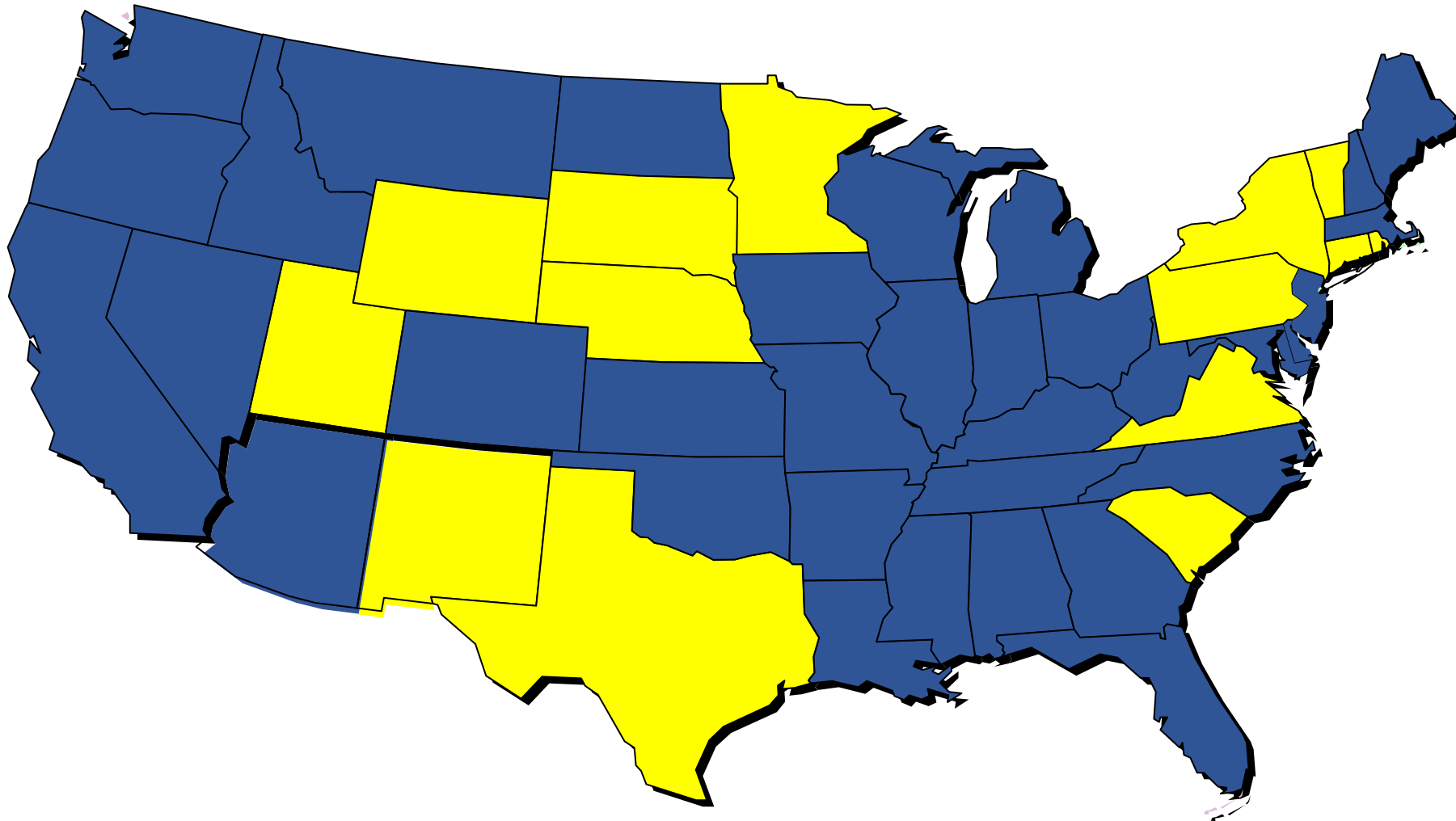
Online Auction – Proposed Amendment

§ 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 19-20.

Provides for statutory late fee safe harbor



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

States in **yellow** allow for late fees but do not have a statutory safe harbor.

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.
- 34 states recognize a late fee safe harbor in statute, including MA, NH, and ME.

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.

Page 5, lines 12-18

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 certain property towed when the rent is at least 51 days past due.
- The towing company would have to comply with the process for selling a titled vehicle.
- 43 states, including MA, NH, RI, and ME, allow operators to tow vehicles under similar circumstances.

Towing – Proposed Amendment

§ 3905. ENFORCEMENT OF LIEN (7) Towing.

(A) If rent, charges, fees, or expenses remain unpaid after 51 days, an owner may have a vehicle, vessel, snowmobile, trailer, or all-terrain vehicle towed away by a towing company.

(B) Not later than five days after having personal property towed pursuant to this subdivision (7), an owner shall notify the occupant by regular mail or electronic mail at the occupant's last known address and shall include the name, address, and telephone number of the towing company.

Page 13, lines 12-19; page 14, lines 1-3

Contractual Value Limitation

- Contractual value limitation expressly permits the operator to limit the value of goods / property 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 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 8-11

Personal Information Protections

(7) “Personal information” means written information about a person that is not publicly available and that readily identifies that person or is closely associated with that person, including a Social Security number, credit or debit card information, a bank account number, medical information, or passport information.

Page 2, lines 16-20

(C)(i) If an owner has a reasonable belief that storage space contains the personal information of an occupant or clients, customers, or others with whom the occupant does business, the owner shall not hold a lien sale of the personal information and may destroy the personal information without liability to any person.

(ii) Before taking possession of any personal property sold, a purchaser shall acknowledge that if any of the contents contain personal information, the purchaser will return the personal information to the owner, which the owner may destroy without liability to any person.

Page 12, lines 18-20; page 13, lines 1-6

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.