



TESTIMONY

HB 2112

An Act concerning self-storage rental units; relating to sales by operators of property due to abandonment or nonpayment of rent; occupant's designation of alternative contact; contractual value of property.

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On behalf of the
Self Storage Association
www.selfstorage.org**

**House Commerce, Labor and Economic Development Committee
January 25, 2021**

Good afternoon Chairman Tarwater and Members of the Committee:

I am Whitney Damron and I appear before you today in support of HB 2112 on behalf of the Self Storage Association, a national trade organization headquartered in Alexandria, Virginia representing thousands of owners and operators of self-storage facilities in all fifty states. With me today is Paul Davis, who is also a registered lobbyist for the Self Storage Association this year.

Members of the Committee who were in the House in 2020 may recall similar legislation from last session in the form of HB 2454 that the committee heard, advanced to the floor and the House passed on Final Action on a vote of 114-9. The Senate Committee on Commerce could not act on the bill before an expedited First Adjournment last year, so we are back again.

HB 2112 is similar to last year's bill with a few changes designed to address concerns and misconceptions raised in hearings in the Senate which we believe make this legislation appropriate for reconsideration this year.

HB 2112 makes four changes to the current self-storage act:

1. Make damage loss limitations in contract enforceable in law.

Section 1. (b) found on page one, lines 13-18 and line 27 will allow contractual limitations on the value of stored items to be enforceable in court under contract law. Typically, a self-storage rental agreement will place a contractual limit on stored items to a value not greater than the maximum value permitted to be stored in the leased space under terms of the rental agreement. Some jurisdictions (e.g., state and local courts) have not adhered to these limitations absent statutory authority. A self-storage operator may have good reason to limit the value of items stored in their facility, including limitations on their own insurance coverage and an interest in not having certain high-value items stored onsite that make theft difficult to discourage (e.g., classic vehicles, firearms, gold coins, rare art, etc.).

This or similar language allowing for damage loss limitations in contract has been approved in a majority of states, including Missouri, Nebraska, Colorado, and Oklahoma.

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2. Third party notification of potential default in contractual obligations.

A concern with HB 2454 expressed in Senate committee hearings centered on the potential for a renter to fail to receive notification of a default for lack of payment thus triggering a possible auction of their stored items. This amendment is found in Section 1. (d) on page one, lines 28-36.

Under current law a renter is notified before a sale can be conducted as follows:

1. By first class mail to the occupant's last-known address and by electronic mail if the occupant has provided an electronic mail address to the self-storage operator.
2. Send a second notice of default, not less than seven days after the first notice is sent by first class mail and electronic mail, if known. The second notice requires disclosure of the occupants leased space, statement of contents subject to the operator's lien, statement of charges, demand for payment not less than ten days after the date of the notice; statement of when contents can be sold after a specified time; and the name, address and telephone number of the operator or designated agent to be contacted by the renter for additional information in regard to the notice.

In our 2021 legislation, we add the requirement in self-storage rental contracts that a renter shall be given the opportunity to designate a third-party contact in case of default and/or to receive communications from the self-storage operator.

In practice, most all self-storage operators already provide for this option to the renter. Concerns were expressed that a renter may be unavailable for an extended period of time (e.g., hospitalization, change of address, nursing home, etc.) and this requirement would allow for third-party notification to provide notice.

First class mail is forwarded if appropriate forward notice is made with the USPS. Most people have email addresses, and these remain consistent over time regardless of location. Also, during Senate committee hearings it was made clear that a self-storage operator is prohibited under Federal law from placing stored items up for auction owned by active duty military servicemembers.

The self-storage operator wants to find the renter and will work diligently to communicate with such person and work with them to bring their account current, which is clearly in the best interest of both parties.

This new requirement is pro-consumer new language and generally not a part of statutory requirements found in other states.

3. Allow auctions to be conducted in-person and/or online.

Section 2. found on page two on line 5 allows for auctions to be conducted online or in person. National trends, even before Covid-19 restrictions were imposed, are for these kinds of auctions to be conducted in both in-person and online formats. Online sales allow for greater participation in an auction, which ultimately benefits both the self-storage operator and the renter in default, as the likelihood of increased recovery exists with more potential bidders partaking in an auction.

This or similar language allowing for online auctions has been approved in a majority of states, including Missouri, Nebraska, Colorado, and Oklahoma.

4. Public Notice of Sale; Auction.

Under current law, the notice of a sale of the time, place, and terms of the sale must be placed in a newspaper of general circulation in the jurisdiction where the sale is to be held. Our proposal would amend Section 2. (b)(3) found on page two, lines 38-43 to allow for a sale to also be conducted “in any other commercially reasonable manner.” This language was contained in last year’s bill, but we have clarified what “commercially reasonable manner” means.

Our proposal clarifies this issue as follows:

If less than three independent bidders attend the sale in person or view the sale online at the time and place advertised, the manner of advertising the sale shall not be considered to have been commercially reasonable and the sale shall be canceled, rescheduled, and readvertised. Further notice to the occupant shall not be required.

The purpose of the newspaper publication is to give notice of the auction to those who are interested in bidding on the contents of the self-storage unit up and not to notify the renter of a scheduled auction of their property. *Kansas law does not require the name of the renter or other identifying information be included in a newspaper notice – only the time, place, and terms of the sale (K.S.A. 58-817 (b)(3)).* The renter is notified through statutorily required means other than a newspaper publication (e.g., first class mail, email, phone call, text and under our 2021 proposal, third-party notification is possible).

Official public notices in newspapers with expensive print subscriptions, online paywalls and diminishing subscribers is simply not the way the public is being notified of these sales anymore. Most self-storage operators have a list of interested bidders; they publish scheduled auctions on their own website and/or post notifications on self-storage trade websites that generate public interest. Notices placed on self-storage operator websites and trade websites can be viewed for free and are readily available from search engines. Public notices on newspaper websites are oftentimes a challenge to find embedded within any number of links, may require a paid subscription and are difficult to search or otherwise locate sought-after information in a timely manner.

The self-storage operator is incentivized to get as many people to an auction as possible so they can obtain payment of some or all of their past due rent and costs. Any revenues exceeding the amount owed to the operator are remitted to the renter or eventually to the State Treasurer as unclaimed property if the renter cannot be found, which is often the case.

Consumers are rapidly transitioning to online information sources other than print media and this proposal is consistent with this trend and contains suitable protections for the consumer.

This or similar language allowing for online notification of a pending auction has been approved in 17 states, including Colorado and Nebraska. In addition, five states have reduced publication requirements and three states have no publication requirements whatsoever.

The changes proposed in this legislation are consistent with statutory amendments to self-storage laws in many other states and reflective of how the relationship between the renter and self-storage operator is changing to reflect customer preferences and business norms in regard to contractual provisions, communications, and business practices.

On behalf of the Self Storage Association I thank you for your time today and will stand for questions when appropriate.