March 10, 2025

Via email to HouseJudiciary@rilegislature.gov

The Honorable Robert E. Craven, Sr.
Chairman
Judiciary Committee
Rhode Island House of Representatives
82 Smith Street
Providence, Rhode Island 02903

RE: House Bill 5364 - RELATING TO PROPERTY -- SELF-SERVICE STORAGE FACILITIES (Reps. Hull, Biah, O'Brien, Azzinaro, and Bennett)

Dear Chair Craven, First Vice Chair McEntee, Second Vice Chair Knight, and Members of the House Judiciary Committee:

The American Civil Liberties Union of Rhode Island ("ACLU") submitted comments in opposition to HB 5364. While the Self Storage Association ("SSA") appreciates the ACLU's commitment to protecting individual rights and ensuring fair processes, the SSA wanted to correct the record and address the statements that were made.[1] The remainder of this letter takes the ACLU's comments and then provides a response.

ACLU Statement: The ACLU has deep concerns about the extent to which this bill would authorize the selling of property within a self-service storage facility without sufficient notification to the owner of the property.

SSA Response: The SSA has deep concerns about this characterization. The law currently has robust notification requirements. In the rare situations when a lien sale occurs, the occupant learns of the impending sale through several direct means. First, when the occupant signs the rental agreement, they are informed in bold type of the existence of the lien and that the property stored in their leased space may be sold to satisfy the lien upon their default.[2]

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[1] The SSA is admittedly somewhat confused by these comments as representatives from the SSA specifically traveled to Providence, Rhode Island to meet with ACLU staff last year in response to functionally the same comments submitted by the ACLU during the 2024 legislative session on a similar bill.
[2] R.I. Gen. Laws § 34-42-9 (a)(2)(3).

Before any sale may occur, operators are legally obligated to provide at least two (2) direct notices of the delinquency and lien sale directly to the occupant. The owner must send the first notice no sooner than five (5) days after default.[3] This notice must include the current balance due with a reminder to bring the past due balance current or risk the action of the owner to enforce the owner's lien.[4]

If the occupant does not resolve the outstanding debt, then the storage owner, no sooner than fourteen (14) days after default, must send the occupant a second notice.[5] The notice must include a statement of the claim showing the sums due at the time of the notice; a statement that, based on the default, the owner has the right to deny the occupant access to the leased space; a general description of the personal property subject to the lien if known; a demand for payment of the claim by a specified date not less than fourteen (14) days after mailing of the notice; a conspicuous statement that unless the claim is paid by the specified date, the occupant's right to use the storage space will terminate, and the personal property will be advertised for sale or will be otherwise disposed of at a specified time and place; and, the name, street address, and telephone number of the owner who the occupant may contact to respond to the notice.[6]

Beyond the minimum required by statute, storage owners will reach out via mail, e-mail, and over the phone to resolve the non-payment issue. Even if the ACLU does not believe that assertion based on altruistic reasons, storage owners have a vested financial interest in contacting the consumer as nearly all lien sales fail to generate proceeds to cover the consumer's debt (usually less than 30 percent of the outstanding debt), much less costs such as advertising and postage. No owner ever wishes to conduct a lien sale. Every owner wishes to make appropriate contact with the consumer to resolve the issue.

The issue here is that newspapers are simply no longer an effective means to effectuate notice.

ACLU statement: Those concerns are exacerbated by the fact that less than two years ago, the General Assembly weakened the notification requirements that this bill seeks to reduce even further. Notification requirements to delinquent storage facility occupants first began getting watered down a little over a decade ago when the General Assembly authorized those notifications to renters by email or regular mail instead of, as was previously required, by certified mail. At the time, the ACLU raised objections to the change, concerned that it unduly hampered the rights of individuals to be properly notified of their default and to respond accordingly. We noted that some renters might not receive their notices via mail in time to meet the obligations required by the law, or they might never receive messages sent via email because they went to spam, resulting in the loss of their belongings.

SSA Response: The intent behind prior legislative efforts and this legislation was and is not to "water down" notification to the renter or undermine the rights of renters but to strike a practical balance between the interests of storage renters and the operational realities faced by storage owners. Over the

[3] R.I. Gen. Laws § 34-42-4 (a)(1)
[4] *Id.*
[5] R.I. Gen. Laws § 34-42-4 (a)(2).
[6] *Id.*

past decade, adjustments to notification requirements, such as allowing email or regular mail in place of certified mail,

have been made to reflect changes in communication technology. These updates aim to maintain effective notification while adapting to modern realities, such as the widespread use of digital communication.

Furthermore, certified mail is an uncertain way to reach self storage consumers, approximately 50% of whom are in transition. It requires the consumer's signature and does not automatically forward even if the Postal Service has the consumer's new address. This is counter to the intent of the notification. For example, an unhoused individual does not have a fixed address, and it will be very challenging or impossible for the Postal Service to track down this individual to sign the certified mail receipt. On the other hand, regular mail automatically forwards to a new address. This provides a greater assurance that the consumer will receive the notice. Recognizing how ineffective certified mail is, 47 states and the District of Columbia have done away with the certified mail mandate.

Email notification is also beneficial as most individuals do not change their email address even if they move their physical address. This communication is also almost instantaneous and is much more likely to be received by the consumer than certified mail. More than 40 states permit email as the exclusive means of notice to the consumer.

Thus, the Rhode Island General Assembly did not "water down" notification requirements as the ACLU erroneously suggests. Rather, it has embraced modern forms of communication like the overwhelming majority of other states have.

ACLU statement: Despite those concerns, in 2023 the General Assembly reduced the notification obligations to renters more – first, by reducing (from three to one) the number of times a newspaper notice of the imminent sale of their property had to be published when personal notice could not be served, and second, by reducing from 30 to 20 days the time by which a claim of owed money had to be paid. Yet this legislation, if enacted, would cut back on notification requirements even more.

SSA response: The storage industry does not understand this assertion. The shift to fewer newspaper notices reflects the declining readership of print media and the growing reliance on direct communication methods, which are more immediate and accessible as noted in the responses above. The ACLU seems to suggest that the advertisement may provide some form of constructive notice to the tenant. However, the suggestion that a tenant or a friend may happen upon an advertisement, which prompts the tenant to pay his or her debt to avoid the sale is questionable, at best. This requires that the reader purchase the one newspaper where the advertisement was published, read the classified ads, notice the lien sale advertisement and the tenant's name, and alert that tenant. It strains credulity to suggest that there is more than a miniscule chance of this ever happening. In that hypothetical, an occupant would be unresponsive to all direct notices outlined above. However, then the occupant, friend, or family member would purchase the one newspaper where the one notice was published, read all the ads, see the specific advertisement, and alert that tenant who then immediately pays the debt owed. That simply does not happen.

As Late2Lien noted in their comments, their average cost of advertising is $750. That is a very high cost especially relative to the amount realized from the sale that averages between $200 - $250. Spending $750 on a newspaper advertisement that will generate $250 in a sale price defies logic.

The ACLU would like to continue to require numerous newspaper advertisements. This would harm the very consumers that the ACLU purports to want to help. While collection of the advertising fee can be a challenge for storage owners, the cost of advertising is the contractual responsibility of the consumer. Therefore, if the outstanding debt was $300 and the cost of advertising was $750, now the consumer owes $1,050. The cost of advertising is technically the obligation of the consumer. Eliminating the newspaper advertising requirement would eliminate the cost that consumers are required to pay. This benefits both the storage owner and the consumers that use the service as it does not provide an effective way to provide notice.

ACLU statement: At a time of rising poverty and extensive homelessness, people often forced to leave their belongings in a self-storage facility deserve more consideration, not less. It is important that people using storage facilities not unfairly lose the ability to retain their possessions.

SSA response: The SSA agrees that individuals deserve more consideration. Again, the SSA simply does not believe that newspaper advertisements provide any form of real notice. The amendments in this legislation would also strengthen consumer protections. After all notices have been sent, current law requires the owner to advertise the sale on a publicly accessible website once a week for two consecutive weeks, or two times total. As an example, this would require the owner to advertise the sale during the first week on a Tuesday and during the second week on a Thursday for a total of two days. The amendments would require the owner to advertise the sale for seven consecutive days, if done online – increasing the advertising duration by more than three times the current statutory requirement. This increases consumer protection and provides additional consideration, not less.

Given the purpose of the advertisement, the ACLU is wrong when he suggests that the newspaper advertisement provides a consumer benefit that the legislature should retain. The advertisement could serve as a form of constructive notice to the tenant or family/friends only if the one newspaper was purchased on the one day that the one advertisement was run. This is unlikely in the extreme. Especially for individuals facing financial difficulty. The notion that they would purchase the newspaper with limited resources seems highly, highly unlikely.

Furthermore, 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 customer. If the newspaper advertisement is retained, consumers will be disadvantaged as any potential excess proceeds will continue to be diverted to cover newspaper advertising costs.

ACLU statement: We therefore urge the committee to reject these amendments to the current notification provisions. Instead, the committee should examine if the current system provides sufficient process for individuals who may often be fighting homelessness, to help them avoid losing precious belongings without adequate notice.

SSA Response: The SSA recognizes your concern. However, the bill still mandates reasonable attempts at personal notification and provides a clear timeframe for renters to respond, which we believe remains sufficient to protect their interests. Further still, eliminating the newspaper advertising fee is beneficial to consumers as it eliminates an additional financial burden that must be paid before recovering their stored goods. Finally, the bill actually extends the online notification period – a significant consumer benefit.

Conclusion

The SSA appreciates the opportunity to respond to the ACLU's comments in opposition to HB 5364.

Respectfully submitted,

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