

Legislative Analysis



ALLOW STORAGE FACILITY OWNERS TO DESTROY CERTAIN PERSONAL INFORMATION UPON DEFAULT

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House Bill 4484 (reported from committee as Substitute H-1)
Sponsor: Rep. Peter Pettalia

House Bill 4485 (reported from committee as Substitute H-3)
Sponsor: Rep. Bruce R. Rendon
Committee: Regulatory Reform

Revised First Analysis (10-24-13)

BRIEF SUMMARY: House Bill 4484, among other things, would allow storage facility owners to destroy documents or other media that contain personal or confidential information without liability if a storage unit tenant defaults on a rental agreement and the contents of the unit are put up for auction. Under current law, the owner of a self-storage facility has a lien on all personal property stored at the facility for rent and other lawful charges. If a tenant defaults on a rental agreement and the contents of the unit are sold at public auction, the facility owner does not currently have legal authority to remove or destroy personal or confidential materials (financial information, medical records, business documents, etc.); the materials must be offered for sale as part of auction.

The bill would also allow storage facility owners to assess reasonable late charges for past-due rent of \$20 or 20% of the monthly rent, whichever is more.

House Bill 4485 would exempt from licensure as an insurance producer, individuals whose only sale of insurance is for property stored at a storage facility, as long as they have provided certain disclosure information to customers.

FISCAL IMPACT: House Bill 4484 would have no fiscal impact on state or local government.

House Bill 4485 would have a nominal fiscal impact on the Department of Insurance and Financial Services (DIFS) to the extent that individuals who sell insurance in connection and incidental to the rental of storage space in a self-service storage facility would no longer require licensure as an insurance producer. It is not known how many, if any, such individuals are currently licensed as insurance producers. Licensure fees for insurance producers are \$10 for application for perpetual licensure.

THE APPARENT PROBLEM:

Self-storage units are utilized by individuals who may need additional storage space or have items that they may not need immediate access to. Under the Self-Service Storage Facility Act, the storage facility owner has a lien on all personal property that is located at the facility for the purposes of recouping lost rent and covering other lawful charges. Storage units can contain any variety of personal property, including personal

information (including financial records, medical records, business records, etc.) that is potentially damaging to the individual if released.

As the economy worsened, more people defaulted on their lease agreements. Under the act, the owner of a storage facility can offer the contents of the past-due unit for sale at a public auction once all of the notification and time requirements of the act are met. Under the act, the facility owner is required to provide an inventory of the unit but is not required to go through boxes to determine the exact nature of all of the property. Currently, under the act, a storage facility owner has no legal authority to remove items of a personal or confidential nature from a unit prior to conducting an auction and the items must be offered for sale along with the rest of the units contents.

The bill is intended to allow storage facility owners to destroy and/or dispose of certain types of personal information prior to offering a unit for sale. Facility owners that destroy documents or other items would not be liable to the tenant for the destruction.

Storage facility owners would be protected from damage claims for the release, use, or misuse of personal or confidential information after the materials have been sold or otherwise disposed of. According to testimony, although the majority of owners conduct auctions in good faith and do not knowingly sell personal information, it is possible that boxes or other containers could contain confidential information could be sold. In that instance, the facility owner would not be liable for damages for the release of that information.

Additionally, House Bill 4485 would eliminate the requirement that individuals only selling insurance for property stored within a storage facility be licensed as an insurance producer. According to testimony, insurance of this nature is generally a short term need that is offered at the point-of-sale. Supporters of the bill contend it should be treated in the same way as insurance for portable electronic devices and rental cars.

THE CONTENT OF THE BILL:

Generally, House Bill 4484 would amend the Self-Service Facility Act (at MCL 520.523 & 520.525) to do the following:

- Protect storage facility owners from damage claims when they destroy personal or confidential information in lieu of offering it for sale (when a tenant defaults on a rental agreement).
- Protect storage facility owners from damage claims for the release, use, or misuse of personal or confidential information contained in any documents or other media stored by a tenant in a storage facility after the materials have been sold or otherwise disposed of.
- Allow storage facility owners to charge tenants reasonable late charges for failing to make timely rental payments.
- Allow rental agreements to set maximum monetary values for the property being stored in a rental unit.

- Allow facility owners to have certain motor vehicles towed away, rather than offering for sale, if a tenant defaults on a rental agreement.

Limits on value of storage property

The bill would allow rental agreements for self-service storage facilities or self-contained storage units to set a maximum monetary value of the property being stored at the rental facility. The limit provided for in the rental agreement would be considered the maximum monetary value of the property stored in the unit for all purposes.

Reasonable late charges

As part of a rental agreement, owners would be able to assess tenants a *reasonable* late charge in the event the tenant fails to make the appropriate rental payments. The bill would establish a reasonable late charge (and not considered a penalty) to be the greater of \$20 or 20% of the monthly rental amount. The burden of justifying the reasonableness of a higher late fee than that provided for in the bill would be the responsibility of the storage facility owner.

Towing in lieu of sale

Under the bill, if any property to which a lien attaches under the act is a motor vehicle, aircraft, mobile home, moped, motorcycle, snowmobile, trailer, or watercraft, and the rent on the storage facility goes unpaid for 60 days, the storage facility owner may have the property towed away from the storage facility by an independent motor carrier instead of offering it for sale. In the event a storage facility owner has property towed from a storage unit, the storage facility owner would not be liable or responsible for the property after the possession of the property is transferred to the motor carrier.

Distribution of proceeds

Currently under the act, proceeds from the sale of property are distributed as follows:

- First, to satisfy the storage facility owner's liens in an amount up to four months' rent, minus any amount already paid to the storage facility owner by a prior lienholder;
- Second, to satisfy outstanding balances owed to prior perfected lienholders; and
- Third, to satisfy the balance of the storage facility owner's liens.

Under the bill, the "balance of the storage facility owner's liens" would specifically include all unpaid rent, late fees, and reasonable lien enforcement expenses.

Release, use, or misuse of confidential information

Storage facility owners would not be liable for any damages or claims relating to the release, use, or misuse of confidential, proprietary, or personal identification information contained in any documents or media stored by a tenant in a storage facility or unit after the documents or media have been sold or otherwise disposed of.

Storage facility owners would be authorized, but not required, to destroy any or all of the documents or media instead of offering them for sale if the facility owner reasonably believes the storage space contains documents or other media containing confidential,

proprietary, or personal identification information. Storage facility owners that destroy documents or other media would not be liable to any person for the destruction of such information.

In the event the storage facility owner knows of, and the space actually contains, property that is not able to be lawfully sold, the storage facility owner would be allowed, but not required, to properly dispose of the property in any other legal manner instead of offering the property for sale. Storage facility owners that dispose of property in this manner would not be liable to any person for the disposal of such property.

Enforcement of lien

Currently under the act, the owner of a storage facility must notify the tenant and any occupant designated by the tenant of the owner's intent to enforce the owner's lien. The bill would eliminate the requirement for the owner to maintain an affidavit stating how and when notice was delivered to the tenant.

Enacting Section 1

The bill would take effect 90 days after being signed into law.

House Bill 4485 amend the Insurance Code (at MCL 500.1202) to exempt from licensure as an insurance producer, an individual whose only sale of insurance is for stored personal property sold in connection with and incidental to the rental of storage space in a self-service storage facility under a rental agreement not to exceed one year, as long as written disclosure material is provided to the customer that includes both of the following:

- A disclosure that the insurance may duplicate coverage already provided by the customer's homeowners, renters, or other insurance policies.
- A summary of the material terms of the coverage, including (1) the identity of the insurer, (2) the benefits of the coverage, (3) the key terms and conditions of the coverage, and (4) a summary of the claims process.

ARGUMENTS:

For:

Under current law storage facility owners do not have the legal authority to remove items from a storage unit before putting it up for auction. As a result, facility owners can be left in a less than desirable position when a unit contains the tenant's personal information (business records, financial documents, etc.) that will end up being sold to the highest bidder. According to testimony, one facility owner made sure to be the high bidder on a unit known to contain confidential information to ensure the documents would not end up being sold (the documents were then destroyed). The bill would provide authority to destroy or dispose of certain personal documents in lieu of sale, which many believe is a common sense reform and removes the burden from facility owners on what to do with these types of units.

For:

If a rental unit that is being put up for auction contains a motor vehicle or other titled vehicle, the facility owner must go through a process of notifying the Secretary of State and all identified title holders and lienholders of the vehicle. This process can place a tremendous burden on smaller operations that do not have experience dealing with this sort of sale. In order to remedy this situation, the bill would allow, but not require, a facility owner to have a vehicle towed from the storage unit and taken to an impound lot. This would relieve the facility owner of having to go through the process of identifying lienholders and would shift the responsibility to motor carriers experienced in the process.

For:

Supporters of House Bill 4485 do not believe storage facility owners should have to be licensed as insurance producers if their only sale of insurance is to cover items stored within their facilities and they've provided certain disclosure information to the customer. According to testimony, the sale of this type of insurance is the same as insurance on car rentals and portable electronic devices (of a temporary nature offered at the point-of-sale). Under current law, individuals selling insurance for car rentals and for portable electronic devices do not need to be licensed under the Insurance Code.

Against:

The bill would allow storage facility owners to destroy certain documents containing personal or confidential information instead of offering the items for sale. Concern has been expressed that documents and other materials could be destroyed as a result of past-due rent without the tenant receiving sufficient notice. Under the act, a facility owner can begin enforcement of a lien within five days of non-payment and must meet certain other notification criteria and time limitations before holding a public auction. In providing notice of intent to enforce a lien, the facility owner has multiple mediums through which to inform the tenant, including the use of email. Some feel that the notification requirements should be made stronger to ensure that tenants are actually receiving the notice. [The bill does not change any of the notice procedures in the act other than to eliminate a requirement for the facility owner to maintain an affidavit describing how and when notice was provided to a tenant.]

Against:

As written, facility owners would be authorized to charge tenants a late fee for past-due rent in the greater amount of \$20 or 20% of the monthly rental amount. According to testimony, small storage units can be rented for as little as \$25 per month. Under that scenario, a tenant with past-due rent could face a \$20 late fee, which is equal to 80% of the monthly rental amount. Some feel the late charges authorized under the bill are too high for low-cost units and the bill should authorize the lower of the \$20 or 20%, or simply allow facility owners to charge a flat percentage late fee.

Against:

The bill would give facility owners the legal authority to destroy or otherwise dispose of documents and other media containing personal, confidential, or proprietary information

in lieu of offering it for sale. Under current law, facility owners do not have legal authority to remove items from a storage unit before putting it up for auction. As written, the bill authorizes a facility owner to destroy personal documents instead of selling them and, if the owner knows a unit contains property that cannot lawfully be sold, the property could be properly disposed. While the bill would authorize both of these actions it does not require a facility owner to undertake them in the event that a unit knowingly contains personal information or property that cannot lawfully be sold. It is unclear if a facility owner could knowingly sell a storage unit containing personal information.

Against:

There is concern that exempting storage facility owners from having to be licensed as insurance producers could lead to a slippery slope of other individuals seeking a similar exemption. According to testimony, insurance coverage for storage facilities should be viewed in the same way as renter's insurance and not like insurance for rental cars and portable electronics. Licensure is seen as ensuring a minimum level of professionalism and competence in the selling of insurance. Insurance for storage facilities is seen as more complex than currently exempt forms because the property contained within a facility and its value are generally unknown to the operator.

POSITIONS:

Self-Storage Association of Michigan supports both bills. (10-1-13)

Americans for Prosperity - Michigan supports House Bill 4485. (10-1-13)

Michigan Department of Insurance and Financial Services opposes House Bill 4485. (10-1-13)

Michigan Association of Insurance Agents opposes House Bill 4485. (10-1-13)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.