

**HOUSE . . . . . No. 1616**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Alan Silvia*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act preventing foreclosures by reducing administrative costs for small business property owners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Alan Silvia</i>	<i>7th Bristol</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>

**HOUSE . . . . . No. 1616**

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1616) of Alan Silvia and others relative to the disposition of the personal property of tenants in actions for possession of land or tenements. The Judiciary.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act preventing foreclosures by reducing administrative costs for small business property owners.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 239 of the General Laws is hereby amended by striking out section  
2 4, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

3 Section 4.

4 (a) If an officer, serving an execution issued on a judgment for the plaintiff for possession  
5 of land or tenements, removes personal property, belonging to a person other than the plaintiff,  
6 from the land or tenements, he shall forthwith cause it to be stored for the benefit of the owners  
7 thereof. Such property shall be stored with the licensed public warehouse identified in the notice  
8 provided to the defendant pursuant to section 3, except that the officer shall store the property  
9 with a warehouse or other storage facility of the defendant’s choosing if the defendant notifies  
10 the officer of his choice in writing at or before the time of removal of the property. The officer  
11 shall file with the court that issued the summary process judgment and provide to the defendant  
12 in hand, or if the defendant is not present at the time of execution by receipted mail to the  
13 defendant’s last and best known address, a receipt containing a description of the goods removed  
14 or of the packages containing them, as well as name and signature of the officer. For the  
15 purposes of this section, the term “warehouse or other storage facility” shall mean a public  
16 warehouse licensed and bonded pursuant to section 1 of chapter 105, located in the  
17 commonwealth and within a 20 mile radius of the land or tenements from which the personal  
18 property is removed.

19 (b) Any public warehouse who accepts property for storage pursuant to this section: (1)  
20 shall be licensed and bonded pursuant to section 1 of chapter 105 ; (2) shall file its current  
21 storage rates with the commissioner of public safety and shall not change such rates more than  
22 once annually, unless the commissioner of public safety or his designee gives prior written  
23 approval upon a showing of extraordinary circumstances; (3) shall not impose charges for  
24 storage under this section in excess of the rates filed with and not rejected by the commissioner  
25 of public safety at the time of service of the notice provided for in section 3; (4) shall not impose  
26 charges for storage under this section in excess of the fair market rates for storage facilities of  
27 similar quality in the warehouse's general locale; (5) shall not impose charges other than those  
28 for the actual storage of goods pursuant to this section, including, but not limited to, docking  
29 fees, warehouse labor fees, administrative fees, or other similar fees imposed in addition to the  
30 storage rates listed with the commissioner of public safety; (6) shall not impose minimum fees or  
31 otherwise charge storage fees for any period other than the period of actual storage; (7) shall  
32 credit toward the defendant's costs of storage any amount paid by the plaintiff or other third  
33 party in connection with the storage of the property in question; (8) shall send by first class mail  
34 to the defendant's last and best known address monthly statements of the amount of advances  
35 made and of liabilities incurred for which the warehouseman claims a lien or security interest  
36 pursuant to this section; and (9) shall insure the defendant's property against fire and theft in the  
37 amount of no less than \$10,000. A warehouse who accepts goods under this section is liable for  
38 any loss or injury to the goods caused by his or her failure to exercise such care in regard to them  
39 as a reasonably careful person would exercise under like circumstances but unless otherwise  
40 agreed or provided in this section, the warehouse is not liable for damages which could not have  
41 been avoided by the exercise of such care. No person shall be required to release a warehouse  
42 from liability as a condition of release of any stored property.

43 (c) The warehouse selected shall pay the costs of removing the property to the place of  
44 storage. The warehouse shall be entitled to reimbursement by the defendant for any costs and  
45 fees so advanced.

46 (d) Upon receipt of personal property under this section, a public warehouse shall  
47 forthwith, but no later than 7 days after the removal of the property from the land or tenements at  
48 issue in the summary process action, issue a warehouse receipt that complies with the  
49 requirements of section 7-202 of chapter 106. Such receipt shall contain as additional terms: (1) a  
50 statement that the warehouse may sell any property unclaimed after six months and retain that  
51 portion of the proceeds necessary to compensate the warehouse for lawful storage fees actually  
52 accrued as of the date of the auction, except as provided in this section; (2) a list of the  
53 warehouse's storage rates and a statement that such rates may be verified by contacting the  
54 commissioner of public safety, as well as the address and telephone number of such agency; (3) a  
55 conspicuous statement that the defendant should notify the warehouse in writing at the business  
56 address listed in the notice of any change in the defendant's mailing address; (4) a description of  
57 the applicable procedures for reclaiming the stored property, including, but not limited to, a

58 statement that the defendant is entitled to reclaim items of personal or sentimental value but  
59 limited auction value once during the period of storage without payment of any fee and that the  
60 defendant shall be entitled to purchase individual items at any auction held to enforce the  
61 warehouse's lien created under this section and an identification of the publication in which any  
62 such auction will be advertised pursuant to subsection (f) of section 7-210 of said chapter 106. A  
63 duplicate copy of the warehouse receipt shall be kept on file at the place of storage and the  
64 original shall be served by receipted mail or hand delivery to the defendant at his last and best  
65 known address. The warehouse shall keep separate the goods covered by each receipt so as to  
66 permit at all times identification and delivery of those goods. A warehouse who fails to comply  
67 with the requirements of this subsection shall be liable for damages caused by the omission to a  
68 person injured thereby.

69 (e) Any warehouse who accepts personal property pursuant to this section shall have a  
70 lien thereon for charges for storage, insofar as such charges are imposed in accordance with this  
71 section. The lien shall not be enforced by sale or disposal of the property until it has been kept in  
72 storage for at least 6 months. Thereafter, the warehouse may enforce the lien in the manner  
73 provided for in subsection (2) of section 7-210 of chapter 106, except as otherwise provided in  
74 this section. The defendant shall be entitled to postpone the sale or disposal of his property for 3  
75 months upon payment of one half of all storage fees incurred plus costs reasonably incurred in  
76 preparation for their sale pursuant to law. The warehouse may satisfy his lien from the proceeds  
77 of any sale or disposition under this section and may profit from any gain received from the sale.  
78 A warehouse's failure to comply with any of the requirements of this section shall result in the  
79 forfeiture of his lien.

80 (f) The defendant may access his stored property once, without charge or payment of  
81 storage fees, either to inspect the property or to remove items having primarily personal or  
82 sentimental value, or both. Items having primarily personal or sentimental value, shall include  
83 but not be limited to photographs, passports, documents, funeral urns, and the like. All personal  
84 property stored under this section may be reclaimed at any time upon payment of all storage fees  
85 lawfully owed by the defendant. If the property is sold at auction, the defendant shall be entitled  
86 to purchase the property in bloc or in parcels, regardless of the terms of the public sale. The  
87 failure of any third party to pay monies owed by him to the warehouse shall not affect the rights  
88 of the property owner to reclaim property under this subsection.

89 (g) A warehouse who violates this section shall pay a civil penalty of not more than  
90 \$5,000, in an amount to be determined by the commissioner of public safety after notice and an  
91 opportunity for an adjudicatory hearing under chapter 30A. The commissioner or his or her  
92 designee may at any time conduct an inspection of a public warehouse storing goods under this  
93 section for the purpose of assessing compliance with applicable health and safety codes and the  
94 requirements of this section. The commissioner may reject the rates filed by a warehouse for  
95 storage pursuant to this section if the commissioner determines that such rates are not  
96 commercially reasonable or otherwise violate this section. The failure of the commissioner to

97 reject a warehouse's rates shall not create a presumption that such rates are commercially  
98 reasonable for purposes of liability under chapter 93A or this section.

99 (h) Notwithstanding any civil penalty imposed pursuant to subsection (g), the defendant  
100 may petition the court in which the summary process action was heard for damages or injunctive  
101 relief in connection with any violation of this section. A violation of this section shall also be a  
102 violation of section 2 of chapter 93A.