

HOUSE No. 959

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 adoption 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>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>

HOUSE No. 959

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 959) 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.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1597 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 warehouseman 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 warehouseman 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 warehouseman
42 from liability as a condition of release of any stored property.

43 (c) The warehouseman selected shall pay the costs of removing the property to the place of
44 storage. The warehouseman 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 warehouseman 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 warehouseman may sell any property unclaimed after six months and retain that
51 portion of the proceeds necessary to compensate the warehouseman 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 warehouseman'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 warehouseman 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.