

HOUSE No. 1597

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:	DATE ADDED:
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>1/13/2015</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>1/30/2015</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>1/21/2015</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>9/25/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>9/25/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>1/30/2015</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>1/29/2015</i>

HOUSE No. 1597

By Mr. Silvia of Fall River, a petition (accompanied by bill, House, No. 1597) 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. 1616 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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 warehouser identified in the notice
8 provided to the defendant pursuant to section 3, except that the officer shall store the property
9 with a warehouser or other storage facility of the defendant's choosing if the defendant notifies

the officer of his choice in writing at or before the time of removal of the property. The officer shall file with the court that issued the summary process judgment and provide to the defendant in hand, or if the defendant is not present at the time of execution by receipted mail to the defendant's last and best known address, a receipt containing a description of the goods removed or of the packages containing them, as well as name and signature of the officer. For the purposes of this section, the term "warehouser or other storage facility" shall mean a public warehouse licensed and bonded pursuant to section 1 of chapter 105, located in the commonwealth and within a 20 mile radius of the land or tenements from which the personal property is removed.

(b) Any public warehouser who accepts property for storage pursuant to this section: (1) shall be licensed and bonded pursuant to section 1 of chapter 105 ; (2) shall file its current storage rates with the commissioner of public safety and shall not change such rates more than once annually, unless the commissioner of public safety or his designee gives prior written approval upon a showing of extraordinary circumstances; (3) shall not impose charges for storage under this section in excess of the rates filed with and not rejected by the commissioner of public safety at the time of service of the notice provided for in section 3; (4) shall not impose charges for storage under this section in excess of the fair market rates for storage facilities of similar quality in the warehouse's general locale; (5) shall not impose charges other than those for the actual storage of goods pursuant to this section, including, but not limited to, docking fees, warehouse labor fees, administrative fees, or other similar fees imposed in addition to the storage rates listed with the commissioner of public safety; (6) shall not impose minimum fees or otherwise charge storage fees for any period other than the period of actual storage; (7) shall credit toward the defendant's costs of storage any amount paid by the plaintiff or other third

party in connection with the storage of the property in question; (8) shall send by first class mail to the defendant's last and best known address monthly statements of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest pursuant to this section; and (9) shall insure the defendant's property against fire and theft in the amount of no less than \$10,000. A warehouser who accepts goods under this section is liable for any loss or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed or provided in this section, the warehouser is not liable for damages which could not have been avoided by the exercise of such care. No person shall be required to release a warehouser from liability as a condition of release of any stored property.

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

(d) Upon receipt of personal property under this section, a public warehouser shall forthwith, but no later than 7 days after the removal of the property from the land or tenements at issue in the summary process action, issue a warehouse receipt that complies with the requirements of section 7-202 of chapter 106. Such receipt shall contain as additional terms: (1) a statement that the warehouser may sell any property unclaimed after six months and retain that portion of the proceeds necessary to compensate the warehouser for lawful storage fees actually accrued as of the date of the auction, except as provided in this section; (2) a list of the warehouser's storage rates and a statement that such rates may be verified by contacting the commissioner of public safety, as well as the address and telephone number of such agency; (3) a conspicuous statement that the defendant should notify the warehouser in writing at the business

address listed in the notice of any change in the defendant's mailing address; (4) a description of the applicable procedures for reclaiming the stored property, including, but not limited to, a statement that the defendant is entitled to reclaim items of personal or sentimental value but limited auction value once during the period of storage without payment of any fee and that the defendant shall be entitled to purchase individual items at any auction held to enforce the warehouse's lien created under this section and an identification of the publication in which any such auction will be advertised pursuant to subsection (f) of section 7-210 of said chapter 106. A duplicate copy of the warehouse receipt shall be kept on file at the place of storage and the original shall be served by receipted mail or hand delivery to the defendant at his last and best known address. The warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. A warehouse who fails to comply with the requirements of this subsection shall be liable for damages caused by the omission to a person injured thereby.

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

A warehouseuser's failure to comply with any of the requirements of this section shall result in the forfeiture of his lien.

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

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