

State of Wisconsin



2017 Assembly Bill 469

Date of enactment: April 16, 2018
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2017 WISCONSIN ACT 325

AN ACT *to repeal* 704.90 (5) (b) 1. b. and 704.90 (5) (b) 2. ag.; *to renumber* 349.13 (3m) (a) 1. and 704.90 (7); *to amend* 349.13 (3m) (d), 349.13 (3m) (dr) 2., 349.13 (5) (b) 2., 704.90 (1) (e), 704.90 (4b) (a), 704.90 (5) (a), 704.90 (5) (b) (intro.), 704.90 (5) (b) 1. (intro.), 704.90 (5) (b) 2. (intro.), 704.90 (5) (b) 2. d., 704.90 (6) (a) 2., 704.90 (6) (a) 4., 704.90 (6) (a) 5. a., 704.90 (6) (a) 6., 704.90 (6) (a) 7. (intro.), 704.90 (6) (a) 7. c., 704.90 (6) (a) 8., 704.90 (6) (b) and 704.90 (7) (title); and *to create* 349.13 (3m) (a) 1g., 1n., 1r. and 3., 349.13 (3m) (bm), 704.90 (1) (i), 704.90 (1) (j), 704.90 (5) (c), 704.90 (5r), 704.90 (6) (am) and 704.90 (7) (b) of the statutes; **relating to:** enforcing liens on personal property stored in self-service storage facilities and units, towing a vehicle of a lessee in default, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 349.13 (3m) (a) 1. of the statutes is renumbered 349.13 (3m) (a) 1w.

SECTION 2. 349.13 (3m) (a) 1g., 1n., 1r. and 3. of the statutes are created to read:

349.13 (**3m**) (a) 1g. “Leased space” has the meaning given in s. 704.90 (1) (b).

1n. “Lessee” has the meaning given in s. 704.90 (1) (c).

1r. “Operator” has the meaning given in s. 704.90 (1) (d).

3. “Rental agreement” has the meaning given in s. 704.90 (1) (f).

SECTION 3. 349.13 (3m) (bm) of the statutes is created to read:

349.13 (**3m**) (bm) Notwithstanding par. (b), and subject to par. (dr) 1., an operator may have a vehicle that is stored in a lessee’s leased space removed, at the vehicle owner’s expense, without the permission of the vehicle

owner, regardless of whether a citation is issued for illegal parking, if all of the following apply:

1. The lessee failed to pay rent or other charges under a rental agreement for at least 7 consecutive days after the due date under the rental agreement.

2. The operator has provided the notices under s. 704.90 (5) (b).

3. Before the operator sent the 2nd notice under s. 704.90 (5) (b) 2., the lessee had failed to pay rent or other charges under the rental agreement for more than 60 consecutive days after the due date under the rental agreement.

4. The lessee has failed to redeem the vehicle under s. 704.90 (5) (a) within the time specified in the notice under s. 704.90 (5) (b) 2. c.

SECTION 4. 349.13 (3m) (d) of the statutes is amended to read:

349.13 (**3m**) (d) 1. Subject to par. (dr), a vehicle may be removed from private property under par. (b) or (c) only by a towing service at the request of the property

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication.”

owner or property owner's agent, a traffic officer, or a parking enforcer. Subject to par. (dr), a vehicle may be removed from leased space under par. (bm) only by a towing service at the request of the operator, a traffic officer, or a parking enforcer.

2. Before any vehicle is removed under par. (b) ~~or~~ to (c) by a towing service, the towing service shall notify a local law enforcement agency of the make, model, vehicle identification number, and registration plate number of the vehicle and the location to which the vehicle will be removed.

3. Subject to par. (dr) 2., if a vehicle is removed under par. (b) ~~or~~ to (c) by a towing service, the vehicle owner shall pay the reasonable charges for removal and, if applicable, storage of the vehicle, as well as any service fee imposed under par. (dm). Subject to par. (dr) 2., if the vehicle was removed at the request of the property owner or property owner's agent or at the request of an operator, these reasonable charges shall be paid directly to the towing service, and the towing service may impound the vehicle until these charges are paid. If these charges have not been paid in full within 30 days of the vehicle's removal and the vehicle owner has not entered into a written agreement with the towing service to pay these reasonable charges in installment payments, the vehicle shall be deemed abandoned and may be disposed of as are other abandoned vehicles.

SECTION 5. 349.13 (3m) (dr) 2. of the statutes is amended to read:

349.13 (3m) (dr) 2. A towing service may not collect any charges for the removal or storage of an illegally parked vehicle under this subsection, or a vehicle removed under par. (bm), unless the towing service made a good faith effort to comply with par. (d) 2. with respect to the vehicle. A towing service operating in a 1st class city may not collect any charges for the removal or storage of an illegally parked vehicle under this subsection, or a vehicle removed under par. (bm), if the towing service has not complied with par. (d) 2. with respect to the vehicle.

SECTION 6. 349.13 (5) (b) 2. of the statutes is amended to read:

349.13 (5) (b) 2. A person who has custody of a vehicle removed or stored under subs. (3) to (4) or otherwise at the request of a law enforcement officer, traffic officer, parking enforcer, property owner, or property owner's agent, or operator, as defined in s. 704.90 (1) (d), shall release the personal property within the vehicle to the owner of the vehicle during regular office hours upon presentation by the owner of proper identification.

SECTION 9. 704.90 (1) (e) of the statutes is amended to read:

704.90 (1) (e) "Personal property" means movable property not affixed to land, including goods, wares, merchandise, ~~motor~~ vehicles, watercraft, household items, and furnishings.

SECTION 10. 704.90 (1) (i) of the statutes is created to read:

704.90 (1) (i) "Vehicle" has the meaning given in s. 340.01 (74).

SECTION 11. 704.90 (1) (j) of the statutes is created to read:

704.90 (1) (j) "Verified mail" means any method of mailing that is offered by the U.S. postal service or other commercial mail delivery service and that provides evidence of mailing.

SECTION 12. 704.90 (4b) (a) of the statutes is amended to read:

704.90 (4b) (a) The operator may charge a reasonable late fee for each month a lessee does not pay rent by 5 ~~weekdays~~ days after the rent is due if the amount of the late fee is contained in the rental agreement.

SECTION 13. 704.90 (5) (a) of the statutes is amended to read:

704.90 (5) (a) At any time prior to disposal under sub. (5m), removal under sub. (5r), or sale under sub. (6), a lessee may redeem personal property by paying the operator any the full amount of rent and all other charges, if any, that are due. Upon receipt of such payment, the operator shall return the personal property, and thereafter the operator shall have no liability to any person with respect to such personal property.

SECTION 14. 704.90 (5) (b) (intro.) of the statutes is amended to read:

704.90 (5) (b) (intro.) An operator may not dispose of personal property under sub. (5m), have a vehicle removed under sub. (5r), or sell personal property under sub. (6) unless the operator first delivers the following 2 notices:

SECTION 15. 704.90 (5) (b) 1. (intro.) of the statutes is amended to read:

704.90 (5) (b) 1. (intro.) ~~A~~ Subject to sub. (7) (b), a first notice sent by either regular mail or electronic mail to the last-known address or electronic mail address of the lessee and the last-known address or electronic mail address of the person, if any, specified in the rental agreement under sub. (2m) containing all of the following:

SECTION 16. 704.90 (5) (b) 1. b. of the statutes is repealed.

SECTION 17. 704.90 (5) (b) 2. (intro.) of the statutes is amended to read:

704.90 (5) (b) 2. (intro.) ~~A~~ Subject to sub. (7) (b), a 2nd notice sent by certified mail or 1st class mail with a certificate of mailing verified mail to the last-known address of the lessee, or by electronic mail to the last-known electronic mail address of the lessee, containing all of the following:

SECTION 18. 704.90 (5) (b) 2. ag. of the statutes is repealed.

SECTION 19. 704.90 (5) (b) 2. d. of the statutes is amended to read:

704.90 (5) (b) 2. d. A statement that, unless the rent and other charges are paid within the time period under subd. 2. c., the personal property may be disposed of if the fair market value of the property is less than \$100, may be removed by a towing company if the property is a vehicle, or will be sold; a specification of the date, time, and place of the sale if the property is to be sold; and a statement that if the property is sold the operator first shall apply the proceeds of the sale first to satisfy the lien and then shall return any balance to the lessee or, if the operator cannot with due diligence locate the lessee, report and deliver any balance to the secretary of revenue as provided under ch. 177.

SECTION 20. 704.90 (5) (c) of the statutes is created to read:

704.90 (5) (c) When the operator sends the 2nd notice under par. (b) 2., the operator shall have available, at the operator's discretion, either photographs or a video of the personal property. The operator shall make the photographs or video available to the lessee upon the lessee's request.

SECTION 21. 704.90 (5r) of the statutes is created to read:

704.90 (5r) REMOVAL OF VEHICLE. (a) If the personal property stored in the lessee's leased space is a vehicle, in lieu of a sale under sub. (6), the operator may have the vehicle removed from the leased space by a towing company as provided in s. 349.13 (3m) if all of the following apply:

1. The lessee failed to pay rent or other charges under a rental agreement for at least 7 consecutive days after the due date under the rental agreement.
2. The operator has complied with the notice requirements under subs. (5) (b) and (7) (b).
3. Before the operator sent the 2nd notice under sub. (5) (b) 2., the lessee had failed to pay rent or other charges due under the rental agreement for more than 60 consecutive days after the due date under the rental agreement.
4. The lessee has failed to redeem the personal property under sub. (5) (a) within the time specified in the notice under sub. (5) (b) 2. c.

(b) The operator shall be immune from civil liability for any damage to or loss of the vehicle arising from or related to the removal and towing of the vehicle.

SECTION 22. 704.90 (6) (a) 2. of the statutes is amended to read:

704.90 (6) (a) 2. The operator has complied with the notice requirements under ~~sub.~~ subs. (5) (b) and (7) (b).

SECTION 23. 704.90 (6) (a) 4. of the statutes is amended to read:

704.90 (6) (a) 4. An advertisement of the sale is published ~~once a week for 2 consecutive weeks~~ in a newspaper of general circulation where the self-service storage facility or unit is located.

SECTION 25b. 704.90 (6) (a) 5. a. of the statutes is amended to read:

704.90 (6) (a) 5. a. A brief and general description of the personal property reasonably adequate to permit its identification, ~~as provided in the notices under sub. (5) (b)~~.

SECTION 26. 704.90 (6) (a) 6. of the statutes is amended to read:

704.90 (6) (a) 6. The sale takes place not sooner than 15 days after the ~~first~~ publication under subd. 4.

SECTION 27. 704.90 (6) (a) 7. (intro.) of the statutes is amended to read:

704.90 (6) (a) 7. (intro.) The ~~Except as provided in par. (am)~~, the sale conforms to the terms of the notices under sub. (5) (b) and to any of the following:

SECTION 28. 704.90 (6) (a) 7. c. of the statutes is amended to read:

704.90 (6) (a) 7. c. The personal property is sold in another manner that is commercially reasonable, including by means of the Internet.

SECTION 29. 704.90 (6) (a) 8. of the statutes is amended to read:

704.90 (6) (a) 8. The sale is conducted at an Internet site that is reasonably expected to attract bidders or, if conducted at a physical location, is held at the self-service storage facility, at the self-service storage unit, or at the nearest suitable place to the place where the personal property is stored.

SECTION 30. 704.90 (6) (am) of the statutes is created to read:

704.90 (6) (am) If the sale is advertised to be a public sale at a physical location, notwithstanding the date and time specified in the notice under sub. (5) (b) 2. d. for the sale, the operator may postpone the sale for up to 14 days due to inclement weather on the day of the sale. If the sale is postponed, the operator shall provide notice of the new date, time, and place of the sale in an advertisement that satisfies the requirements under par. (a) 5. and that provides the original date of the sale, that explains that the original sale was postponed, and that provides the reason for the postponement. The advertisement under this paragraph may be published in the manner provided in par. (a) 4. and the sale on the new date may be conducted as provided in par. (a) 8. The operator shall also send notice at least 5 days before the new date of the sale, by regular mail to the last-known address of the lessee or by electronic mail to the last-known electronic mail address of the lessee, stating that the sale was postponed and providing the new date, time, and place of the sale.

SECTION 31. 704.90 (6) (b) of the statutes is amended to read:

704.90 (6) (b) The operator first shall apply the proceeds of the sale first to satisfy the lien under sub. (3) (a). The operator then shall return any balance of the proceeds to the lessee or, if the operator cannot with due diligence locate the lessee, report and deliver any balance to the secretary of revenue as provided under ch. 177.

SECTION 32. 704.90 (7) (title) of the statutes is amended to read:

704.90 (7) (title) NOTICE; PRESUMPTION OF DELIVERY; USE OF ELECTRONIC MAIL.

SECTION 33. 704.90 (7) of the statutes is renumbered 704.90 (7) (a).

SECTION 34. 704.90 (7) (b) of the statutes is created to read:

704.90 (7) (b) A notice under sub. (5) (b) 1. or 2. or (6) (am) may be sent by electronic mail only if the operator uses a service that provides confirmation of the receipt of electronic mail and the operator receives confirmation that the notice was received. If the operator does not use such a service or if receipt is not confirmed, the operator must send the notice by regular or verified mail, whichever is applicable.

SECTION 35. Initial applicability.

(1) The treatment of section 704.90 (4b) (a) of the statutes first applies to a late fee charged for nonpayment of rent under a rental agreement entered into, modified, or renewed on the effective date of this subsection.

(2) The treatment of section 704.90 (5) (a) of the statutes first applies to redeeming personal property

under a rental agreement entered into, modified, or renewed on the effective date of this subsection.

(3) The treatment of section 704.90 (1) (i) and (j), (5) (b) 1. (intro.) and b. and 2. (intro.), ag., and d. and (c), and (7) (title) of the statutes, the renumbering of section 704.90 (7) of the statutes, and the creation of section 704.90 (7) (b) of the statutes first apply to notices sent with respect to a default or failure to pay rent under a rental agreement entered into, modified, or renewed on the effective date of this subsection.

(4) The treatment of sections 349.13 (3m) (a) 1., 1g., 1n., 1r., and 3., (bm), (d), and (dr) 2. and 704.90 (5) (b) (intro.) and (5r) of the statutes first applies to the removal of a vehicle stored in a leased space under a rental agreement entered into, modified, or renewed on the effective date of this subsection.

(5) The treatment of section 704.90 (6) (a) 2., 4., 6., 7. (intro.) and c., and 8., (am), and (b) of the statutes first applies to sales of personal property as a result of a default or failure to pay rent under a rental agreement entered into, modified, or renewed on the effective date of this subsection.

SECTION 36m. Effective date.

(1) This act takes effect on July 1, 2018.
