

2009 DRAFTING REQUEST

Bill

Received: **01/27/2009**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Peter Barca (608) 266-5504**

By/Representing: **Matt**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Barca@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Self-storage lien law changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	rnelson2 02/06/2009	kfollett 02/23/2009	rschluet 02/23/2009	_____	cduerst 02/23/2009		
/1	rnelson2 03/06/2009	kfollett 03/10/2009	rschluet 03/10/2009	_____	lparisi 03/10/2009		
/2	rnelson2 09/07/2009	kfollett 09/09/2009	jfrantze 09/09/2009	_____	lparisi 09/09/2009		mbarman

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/6	rnelson2 02/02/2010	kfollett 02/02/2010	mduchek 02/02/2010	_____	lparisi 02/02/2010	sbasford 02/03/2010	

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-bf/RF

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Send jacket back

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Handwritten notes:
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 DK
 mharran

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

_____ 09/22/2009

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→ e-mail only
→ see attached

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FE Sent For:

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<END>
PK

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*3/5 Matt
Add analysis &
make it*

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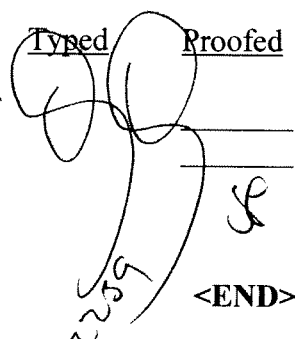
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/?	rnelson2	1P1/gf 2/2/09					
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FE Sent For:

<END>

Nelson, Robert P.

From: Egerer2, Matt
Sent: Monday, January 26, 2009 2:05 PM
To: Nelson, Robert P.
Subject: Rep. Barca - Lien law for self-service storage facilities

Mr. Nelson,

Representative Barca would like to request a bill draft that makes several changes to Wisconsin's lien law for self-service storage facilities – 704.90. These changes were suggested by the National Self Storage Association.

First, he would like to remove 704.90(12) completely.

Second, he would like to include a clearer explanation for the term “commercially reasonable.” The association suggested language like:

704.90(6)(a)7.

7. The sale is conducted in a commercially reasonable manner and conforms to the terms of the notices under sub. (5) (b). A lien sale is conducted in a commercially reasonable manner when the sale conforms to any of the following:

a. The ^{personal} property is offered at a public sale either as a single unit or multiple parcels. If there are four (4) or more independent bidders in attendance at the public sale of the personal property, the proceeds received are deemed to be commercial reasonable.

b. The ^{personal} property is sold in a private transaction and the property has been offered to no fewer than 3 dealers in the type of property offered for sale.

c. Any other method provided that every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, are commercially reasonable.

Third, he would like to allow the second statutory notice to be sent by First-Class mail with a certificate of mailing. (5) (b) 2. (intro.)

Finally, he would like to remove the provision requiring the property to be advertised in a “newspaper of general circulation” to allow for publication in other places/mediums such as the internet. (6) (a) 4.

If in fact this area of drafting falls under another attorney, please let me know which attorney will be working on the bill.

Thank you,

Matt Egerer
Office of Representative Peter Barca
608.266.5504



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1

AN ACT ...; relating to: self-service storage facility notices and procedures.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 704.90 (4g) of the statutes is amended to read:

3 704.90 (4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults
4 or fails to pay rent for the storage of personal property abandoned after the
5 termination of the rental agreement is subject to the procedures and remedies in
6 subs. (4r) to (9) and (12).

History: 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461.

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

8 704.90 (5) (b) 2. (intro.) A 2nd notice sent by certified first-class mail with a
9 certificate of mailing to the last-known address of the lessee containing all of the
10 following:

History: 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461.

1 SECTION 3. 704.90 (6) (a) 4. of the statutes is amended to read:

2 704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2
3 consecutive weeks in a newspaper of general circulation where the self-service
4 storage facility is located, or is posted in 2 public places likely to give notice to the
5 persons affected. In this subdivision, the Internet is considered a public place.

History: 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461.

6 SECTION 4. 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7.
7 (intro.) and amended to read:

8 704.90 (6) (a) 7. (intro.) The sale is conducted in a commercially reasonable
9 manner and conforms to the terms of the notices under sub. (5) (b). A sale is
10 conducted in a commercially reasonable manner when the sale conforms to any of the
11 following:

b. and c.

12 SECTION 5. 704.90 (6) (a) 7. a. of the statutes is created to read:

13 704.90 (6) (a) 7. a. The personal property is offered at a public sale either as
14 a single parcel or multiple parcels. If there are four or more independent bidders in
15 attendance at the public sale, the proceeds received are considered to be
16 commercially reasonable.

17 SECTION 6. 704.90 of the statutes is created to read:

18 704.90 (6) (a) b. The personal property has been offered to at least 3 persons
19 who deal in the type of personal property offered for sale and is sold in a private
20 transaction.

21 SECTION 7. 704.90 of the statutes is created to read:

1 ~~704.90 (6) (a) 7~~ c. Any other method of sale, provided that every aspect of the
2 disposition of the personal property, including the method, manner, time, place, and
3 terms, are commercially reasonable.

4 History: 1987 a. 23; 1991 a. 39; 1995 a. 27; 2005 a. 461.

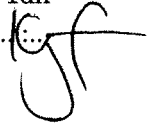
SECTION 8. ~~704.90 (12)~~ of the statutes is repealed.

5 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1808/P1dn

RPN: 



Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

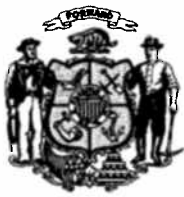
**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1808/P1dn
RPN:kjf:rs

February 23, 2009

Please review this draft carefully to ensure that it is consistent with your intent.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 Bill

Regen

1 AN ACT *to repeal* 704.90 (12); *to renumber and amend* 704.90 (6) (a) 7.; *to*
2 *amend* 704.90 (4g), 704.90 (5) (b) 2. (intro.) and 704.90 (6) (a) 4.; and *to create*
3 704.90 (6) (a) 7. a., b. and c. of the statutes; **relating to:** self-service storage
4 facility notices and procedures.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

5 SECTION 1. 704.90 (4g) of the statutes is amended to read:

6 704.90 (4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults
7 or fails to pay rent for the storage of personal property abandoned after the
8 termination of the rental agreement is subject to the procedures and remedies in
9 subs. (4r) to (9) and (12).

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

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anal

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2 certificate of mailing to the last-known address of the lessee containing all of the
3 following:

4 **SECTION 3.** 704.90 (6) (a) 4. of the statutes is amended to read:

5 704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2
6 consecutive weeks in a newspaper of general circulation where the self-service
7 storage facility is located, or is posted in 2 public places likely to give notice to the
8 persons affected. In this subdivision, the Internet is considered a public place.

9 **SECTION 4.** 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7.
10 (intro.) and amended to read:

11 704.90 (6) (a) 7. (intro.) The sale is conducted in a commercially reasonable
12 manner and conforms to the terms of the notices under sub. (5) (b). A sale is
13 conducted in a commercially reasonable manner when the sale conforms to any of the
14 following:

15 **SECTION 5.** 704.90 (6) (a) 7. a., b. and c. of the statutes are created to read:

16 704.90 (6) (a) 7. a. The personal property is offered at a public sale either as
17 a single parcel or multiple parcels. If there are 4 or more[✓] independent bidders in
18 attendance at the public sale, the proceeds received are considered to be
19 commercially reasonable.

20 b. The personal property has been offered to at least 3[✓] persons who deal in the
21 type of personal property offered for sale and is sold in a private transaction.

22 c. Any other method of sale, provided that every aspect of the disposition of the
23 personal property, including the method, manner, time, place, and terms, are
24 commercially reasonable.

2009-2010 DRAFTING INSERT
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LEGISLATIVE REFERENCE BUREAU

LRB-1808/1ins
RPN:kjf:rs

Ins anl:

procedures
Current law regulates the operation of self-storage facilities, including requiring written rental agreements, creating liens on property stored in the facility, limiting late rental fees, and establishing the procedures when a person fails to pay the rental fee. One of those provisions requires the operator of a self-storage facility to send 2 notices to the person who has failed to pay the rental fee at the facility before the operator may sell the personal property left in the facility. The notices describe the methods that will be used to sell the personal property if the person does not pay the rental fee. Currently, the facility operator must send the first notice by regular mail and the second notice by certified mail to the person's last-known address. In addition, the facility operator must advertise the sale of the personal property once a week for 2 consecutive weeks by publication in a newspaper of general circulation where the facility is located. Current law requires the facility operator to sell the personal property in a commercially reasonable manner.

two
two
four
be used
This bill requires the facility operator to send the second notice by first-class mail with a certificate of mailing to the person's last-known address. The bill allows the facility operator to advertise the sale of the personal property by a posting in 2 public places likely to give notice and includes the Internet as a public place. The bill provides guidance as to when a sale is conducted in a commercially reasonable manner, including requiring that there be a public sale with 4 or more bidders, that the personal property is offered to at least 3 persons who deal with that type of property, or ~~in~~ some other sale method in which the manner, time, place, and terms are commercially reasonable.

three
that
Current law gives the Department of Agriculture, Trade, and Consumer Affairs authority to promulgate rules regarding self-storage facilities, investigate violations of the statutory provisions, and bring court actions against violators. Current law also allows a private person to bring a civil action for any damages the person incurs as the result of a violation of the statutory provisions. This bill removes the private right to bring a civil action.

Nelson, Robert P.

From: Egerer, Matt
Sent: Thursday, September 03, 2009 4:15 PM
To: Nelson, Robert P.
Subject: Barca LRB 1808 Self Storage Lien Law

Attachments: Proposed Changes to WI Lien Sale Bill June 3 2009 (6).doc

Hi Bob,

Back in February I believe it was you that we'd worked on in drafting LRB1808, which updates the lien law for self storage facilities.

We now have some further modifications to this draft. Perhaps the easiest way to make the changes is to forward you the document that the changes are based off of, but we have some further modifications and some questions.

We are ok with changes 1, 6 and 7 from the document.

We would not like to make the change in 2, but instead keep it as drafted requiring it be by certified first class mail with a certificate of mailing.

We would like number 3 to remain mostly as drafted, however in addition to the 2 public places with one possibly being the internet, we would also like to require one week in a newspaper of general circulation.

With number 4, we were curious if there is a definition of "commercially reasonable" in the statutes, or if that was an understood legal term. If not, or depending on what you can tell us about that, we will draft the modifications as listed in the document, however we would like to remove provision "c."

We mostly agree with number 5, but were curious about ways to draft it so that it has to be made clear at the time of the agreement, in addition to being a part of the contract. I believe there are similar requirements for renting an apartment.



Proposed Changes
to WI Lien Sa...

Matt Egerer
Office of Representative Peter Barca
608.266.5504

5. Current Draft Bill	Not in current bill
Proposed Change	SECTION 7. 704.90 (3)(c) If the rental agreement contains a limit on the value of property stored in the lessee's storage space, the limit shall be presumed to be the maximum value of the property stored in that space.
6. Current Draft Bill	SECTION 6. 704.90 (12) of the statutes is repealed.
Proposed Change	No change to current draft bill. Fine as written ✓
7. Current Draft Bill	Not in current bill
Proposed Change	704.90(6)(a)5.b. b. The address of the self-service storage facility, the number, if any, of the space where the personal property is located and the name of the lessee. ✓

Proposed Revisions to WI Lien Sale Bill Provided by Matt Egerer 09-18081-2.pdf

Comparison of Current Draft Bill and Proposed Changes

<p>1. Current Draft Bill</p>	<p>SECTION 1. 704.90 (4g) of the statutes is amended to read: 704.90 (4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults or fails to pay rent for the storage of personal property abandoned after the termination of the rental agreement is subject to the procedures and remedies in subs. (4r) to (9) and (12).</p>
<p>Proposed Change</p>	<p>No change to current draft bill. Fine as written. ✓</p>
<p>2. Current Draft Bill</p>	<p>SECTION 2. 704.90 (5) (b) 2. (intro.) of the statutes is amended to read: 704.90 (5) (b) 2. (intro.) A 2nd notice sent by certified first-class mail with a certificate of mailing to the last-known address containing all of the following: ✓</p>
<p>Proposed Change</p>	<p>SECTION 2. 704.90 (5) (b) 2. (intro.) of the statutes is amended to read: 704.90 (5) (b) 2. (intro.) A 2nd notice sent by certified mail or first class mail with certificate of mailing to the last-known address containing all of the following:</p>
<p>3. Current Draft Bill</p>	<p>SECTION 3. 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 is located, or is posted in 2 public places likely to give notice to the persons affected. In this subdivision, the Internet is considered a public place. ✓</p>
<p>Proposed Change</p>	<p>SECTION 3. 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 is located, or an equivalent advertisement of sale published on the internet.</p>

<p>4. Current Draft Bill</p>	<p>SECTION 4. 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7. (intro.) and amended to read:</p> <p>704.90 (6) (a) 7. (intro.) The sale is conducted in a commercially reasonable manner and conforms to the terms of the notices under sub. (5) (b). <u>A sale is conducted in a commercially reasonable manner when the sale conforms to any of the following:</u></p> <p>SECTION 5. 704.90 (6) (a) 7. a., b. and c. of the statutes are created to read: 704.90 (6) (a) 7.</p> <p>a. The personal property is offered at a public sale either as a single parcel or multiple parcels. If there are 4 or more independent bidders in attendance at the public sale, the proceeds received are considered to be commercially reasonable.</p> <p>b. The personal property has been offered to at least 3 persons who deal in the type of personal property offered for sale and is sold in a private transaction.</p> <p>c. Any other method of sale, provided that every aspect of the disposition of the personal property, including the method, manner, time, place, and terms, are commercially reasonable.</p>
<p>Proposed Change</p>	<p>SECTION 4. 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7. (intro.) and amended to read: 704.90 (6) (a) 7. (intro.) The sale conforms to the terms of the notices under sub. (5) (b) and <u>the sale conforms to any of the following:</u></p> <p>SECTION 5. 704.90 (6) (a) 7. a., b. and c. of the statutes are created to read: 704.90 (6) (a) 7.</p> <p>a. The personal property is offered at a public sale either as a single parcel or multiple parcels and there are 3 or more bidders in attendance at the public sale.</p> <p>b. The personal property is offered as a single parcel or multiple parcels to at least 3 persons who deal in the type of personal property for sale and is sold in a private transaction.</p> <p>c. Any other method of sale provided that the disposition of the personal property is commercially reasonable.</p>

Nelson, Robert P.

To: Egerer, Matt
Subject: RE: Barca LRB 1808 Self Storage Lien Law

Matt,

As to your question regarding number 4, there are 54 hits in the statutes for "commercially reasonable", mainly in the commercial code sections, but there is no definition of the term. Number 4 was an attempt to define what that term means in the context of the sale of abandoned personal property.

I am adding language in s. 704.90 (2m) to require the limit on property value to be part of the written agreement. When you get the draft see if that address your concern raised about number 5. I could not find similar language in the rental statutes.

Bob N

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Sent: Thursday, September 03, 2009 4:15 PM
To: Nelson, Robert P.
Subject: Barca LRB 1808 Self Storage Lien Law

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<< File: Proposed Changes to WI Lien Sale Bill June 3 2009 (6).doc >>

Matt Egerer
Office of Representative Peter Barca
608.266.5504