



# 2009 BILL

repeal

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

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 procedures requires the operator of a self-storage facility to send two 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 two 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.

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 two public places likely to give notice and includes the Internet as a public place. The bill

failure of the tenant to pay rent

publishing one notice in a newspaper of general circulation where the facility is located in addition to a

**BILL**

*Law requires that the sale of the personal property be*

~~provides guidance as to when a sale is conducted in a commercially reasonable manner, including requiring that there be a public sale with four or more bidders, or that the personal property is offered to at least three persons who deal with that type of property, or that some other sale method be used in which the manner, time, place, and terms are commercially reasonable.~~

*Under the bill, there must*

*insert ant.*

Current law gives the Department of Agriculture, Trade and Consumer Protection 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.

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

*Insert 2-1*

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).

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 of the lessee containing all of the following:

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, *insert 2-13* 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.

*Insert 2-15*

SECTION 4. 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7.

(intro.) and amended to read:

**BILL**

1 704.90 (6) (a) 7. (intro.) The sale ~~is conducted in a commercially reasonable~~  
 2 ~~manner and~~ conforms to the terms of the notices under sub. (5) (b). ~~A sale is~~  
 3 conducted in a commercially reasonable manner when the sale conforms to any of the  
 4 following:

5 **SECTION 5.** 704.90 (6) (a) 7. a. <sup>v and e</sup> b. and c. of the statutes are created to read:

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

10 b. The personal property has been offered to at least 3 persons who deal in the  
 11 type of personal property offered for sale and is sold in a private transaction.

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

15 **SECTION 6.** 704.90 (12) of the statutes is repealed.

16 (END)

*agreements that limit maximum value of the property stored is presumed to be the maximum*

insert anl:

Currently, the notice of the sale must include a description of the personal property to be sold and the address of the self-service storage facility, the number of the space where the property is located, and the name of the lessee. This bill removes the requirement that the notice include the number of the space where the property is located.

Under current law, the sale of the personal property must be conducted in a commercially reasonable manner. This bill replaces that language with a requirement that the sale be a public sale with four or more bidders or that the personal property be offered for sale to at least three persons who deal with the type of property for sale.

*1 that The bill requires a rental agreement that include a provision that limits the value of property stored to print that provision in bold type or underlined type of the same size as the rest of the agreement. If such a provision is in the rental*

2 insert 2-1:  
3 SECTION 1. 704.90 (2m) of the statutes is amended to read:

4 704.90 (2m) WRITTEN RENTAL AGREEMENT. Every rental agreement shall be in

5 writing and shall contain a provision allowing the lessee to specify the name and  
6 last-known address of a person who, in addition to the lessee, the operator is  
7 required to notify under sub. (5) (b) 1. If the rental agreement contains a provision  
8 that places a limit on the value of property that is stored in the leased space, that  
9 provision shall be typed in bold type or underlined type of the same size as the  
10 remainder of the agreement.

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

11 SECTION 2. 704.90 (3) (c) of the statutes is created to read:

12 704.90 (3) (c) If the rental agreement contains a limit on the value of property  
13 stored in the lessee's storage space, the limit shall be presumed to be the maximum  
14 value of the property stored in that space.

15

16 insert 2-13:

*not*

1 is published once in a newspaper of general circulation where the self-storage  
2 facility is located and.

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

4 insert 2-15:

5 **SECTION 3.** 704.90 (6) (a) 5. b. of the statutes is amended to read:

6 704.90 (6) (a) 5. b. The address of the self-service storage facility, ~~the number,~~  
7 ~~if any, of the space where the personal property is located~~ and the name of the lessee.

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

## Barman, Mike

---

**From:** Nelson, Robert P.  
**Sent:** Tuesday, September 22, 2009 7:53 AM  
**To:** Barman, Mike  
**Subject:** FW: Barca LRB 1808 Self Storage Lien Law

Can you do this for rep. Barca's office.

Thanks, Bob

---

**From:** Egerer, Matt  
**Sent:** Monday, September 21, 2009 3:58 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

I know we've received your draft, because I have it in my hands, however I believe our new scheduler may have inadvertently deleted the official e-mail with the jacket button that comes from LRB for LRB 1808/2.

Can you have them send that again? Thanks.

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

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**From:** Nelson, Robert P.  
**Sent:** Monday, September 07, 2009 10:52 AM  
**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

---

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

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.

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

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

## Nelson, Robert P.

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**From:** Egerer, Matt  
**Sent:** Thursday, September 24, 2009 10:02 AM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

Can we get a draft that calls for 3 bidders, rather than 4?

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

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Matt Egerer  
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## 2009 BILL

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

---

### *Analysis by the Legislative Reference Bureau*

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 procedures requires the operator of a self-storage facility to send two 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 two consecutive weeks by publication in a newspaper of general circulation where the facility is located.

This bill requires the facility operator to send the second notice of the failure to pay rent 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 publishing one notice in a newspaper of general circulation where the

**BILL**

facility is located in addition to a posting in two public places likely to give notice and includes the Internet as a public place.

Currently, the notice of the sale must include a description of the personal property to be sold and the address of the self-service storage facility, the number of the space where the property is located, and the name of the lessee. This bill removes the requirement that the notice include the number of the space where the property is located.

Under current law, the sale of the personal property must be conducted in a commercially reasonable manner. This bill replaces that language with a requirement that the sale be a public sale with ~~four~~<sup>three</sup> or more bidders or that the personal property be offered for sale to at least three persons who deal with the type of property for sale.

The bill requires a rental agreement that includes a provision that limits the value of property stored to print that provision in bold type or underlined type of the same size as the rest of the agreement. If such a provision is in the rental agreement, that limit is presumed to be the maximum value of the property stored.

Current law gives the Department of Agriculture, Trade and Consumer Protection 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.

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

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

2           704.90 (2m) WRITTEN RENTAL AGREEMENT. Every rental agreement shall be in  
3 writing and shall contain a provision allowing the lessee to specify the name and  
4 last-known address of a person who, in addition to the lessee, the operator is  
5 required to notify under sub. (5) (b) 1. If the rental agreement contains a provision  
6 that places a limit on the value of property that is stored in the leased space, that  
7 provision shall be typed in bold type or underlined type of the same size as the  
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2 stored in the lessee's storage space, the limit shall be presumed to be the maximum  
3 value of the property stored in that space.

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

5           704.90 (4g) DEFAULT OR FAILURE TO PAY AFTER TERMINATION. A lessee who defaults  
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8 subs. (4r) to (9) ~~and (12)~~.

9           **SECTION 4.** 704.90 (5) (b) 2. (intro.) of the statutes is amended to read:

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

13           **SECTION 5.** 704.90 (6) (a) 4. of the statutes is amended to read:

14           704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2  
15 consecutive weeks in a newspaper of general circulation where the self-service  
16 storage facility is located, or is published once in a newspaper of general circulation  
17 where the self-storage facility is located and is posted in 2 public places likely to give  
18 notice to the persons affected. In this subdivision, the Internet is considered a public  
19 place.

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

21           704.90 (6) (a) 5. b. The address of the self-service storage facility, ~~the number,~~  
22 ~~if any, of the space where the personal property is located~~ and the name of the lessee.

23           **SECTION 7.** 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7.

24 (intro.) and amended to read:



## Nelson, Robert P.

---

**From:** Egerer, Matt  
**Sent:** Friday, October 16, 2009 4:02 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

We would like to remove the "likely" because the concern of those in the industry is that even if this was posted publicly on bulletin boards at, for example, the city hall, a county building, a library, etc... it still would not "likely" give notice to a customer who has been failing to pay rent on what is likely property they are abandoning. It would seem that there is no place that a notice of this nature could be posted that could be interpreted as actually "likely" to give notice.

Also a final provision we would like to add, and this would probably be a new point "9." under 704.90 (6)(a), would be that "If the fair market value of the property has a value of less than one hundred dollars, the property may be disposed of in a reasonable manner."

"Reasonable manner" would likely be defined under the definitions provision at 704.90(1) and we would define it as "Reasonable manner" means to dispose of personal property by donation to a not-for-profit charitable organization, removal of the personal property from the self-service storage facility by a trash hauler or recycler, or any other method that in the discretion of the owner is reasonable under the circumstances."

This is based off of a provision that Washington uses for their lien law.

Hopefully these are some of the final 'final' changes - you probably are beginning to think I don't understand the meaning of the word. ☺

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

---

**From:** Nelson, Robert P.  
**Sent:** Friday, October 16, 2009 3:38 PM  
**To:** Egerer, Matt  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

As to the second suggestion, the term "likely to give notice" is used in a number of places in the statutes, including in the public notice requirements in ch. 985. Removing that word from the sentence changes the meaning of the sentence. Instead of public places where it is likely to give notice, it becomes any public places, no matter how obscure they may be. Is that what you want to do?

---

**From:** Egerer, Matt  
**Sent:** Friday, October 16, 2009 1:18 PM  
**To:** Nelson, Robert P.  
**Subject:** Barca LRB 1808 Self Storage Lien Law

Rob,

We have a few, hopefully final changes to the self storage lien law bill.

1. We would like the second notice to be either first class mail with a certificate of mailing or certified mail.
2. In the provision that reads "or is posted in 2 public places likely to give notice to the persons affected....,"

we would like to remove the word 'likely.'

3. We would like to revisit 704.90(6)(a) 7 to add a provision "c" that reads "Any other method of sale provided that the disposition of the personal property is commercially reasonable." In addition to the methods laid out in a. and b. which allow for explain specific methods for selling the property, the c. provision is a coverall. While not defined, we believe that a court could interpret "commercially reasonable" and would likely find this to be a standard for normal business conducted in good faith.

4. In provision "a" in this section we would like to remove the word "independent" from "independent bidders."

Thanks for you assistance on this,

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

## Nelson, Robert P.

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Also a final provision we would like to add, and this would probably be a new point "9." under 704.90 (6)(a), would be that "If the fair market value of the property has a value of less than one hundred dollars, the property may be disposed of in a reasonable manner."

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10/20  
State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1808/3

RPN:kjf:ph

4  
stays

2009 BILL

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new P

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**BILL**

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125 3-8  
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18 notice to the persons affected. In this subdivision, the Internet is considered a public  
19 place.

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

21           704.90 (6) (a) 5. b. The address of the self-service storage facility, ~~the number,~~  
22 ~~if any, of the space where the personal property is located~~ and the name of the lessee.

23           **SECTION 7.** 704.90 (6) (a) 7. of the statutes is renumbered 704.90 (6) (a) 7.

24 (intro.) and amended to read:

**BILL**

1           704.90 (6) (a) 7. (intro.) The sale is ~~conducted in a commercially reasonable~~  
 2 ~~manner and~~ conforms to the terms of the notices under sub. (5) (b); and to any of the  
 3 following:

✓ ↓ ↑ and c.

4           **SECTION 8.** 704.90 (6) (a) 7. a. and b. of the statutes are created to read:

5           704.90 (6) (a) 7. a. The personal property is offered either as a single parcel or  
 6 multiple parcels at a public sale attended by 3 or more independent bidders.

7           b. The personal property has been offered to at least 3 persons who deal in the  
 8 type of personal property offered for sale and is sold in a private transaction.

Ins 48 7

9           **SECTION 9.** 704.90 (12) of the statutes is repealed.

10

(END)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1808/4ins  
RPN:kjf:ph

1 ins. anl:

4 If the personal property is worth less than \$100, the bill allows the facility operator, after providing proper notice, to donate the property to a nonprofit organization, dispose of the property in a solid waste facility, recycle the property, or remove the property from the facility in another reasonable manner.

2

3 insert 3-8:

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

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

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

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

12 704.90 (5) (b) (intro.) An operator may not dispose of personal property under  
13 sub. (5m) or sell personal property under sub. (6) unless the operator first delivers  
14 the following 2 notices:

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

16 ins. 3-12:

17 SECTION 1. 704.90 (5) (b) 2. d. of the statutes is amended to read:

18 704.90 (5) (b) 2. d. A statement that unless the rent and other charges are paid  
19 within the time period under subd. 2. c., the personal property may be disposed of if  
20 worth less than \$100 or will be sold, a specification of the date, time and place of the

LPS:  
Bob  
typed  
a hard  
# ←  
remove

remove had  
#

15  
the property

1 sale and a statement that if the property is sold the operator shall apply the proceeds  
2 of the sale first to satisfy the lien and shall report and deliver any balance to the state  
3 treasurer as provided under ch. 177.

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

fix

SECTION # 704.90 (5m) of the statutes is created to read: ✓

5 704.90 (5m) DISPOSAL OF CERTAIN PROPERTY. If the fair market value of personal  
6 property that was stored in the lessee's leased space is less than \$100, an operator  
7 may do any of the following:

8 (a) Donate the personal property to an organization described in section 501

9 (c) (3) of the internal revenue code that is exempt from federal income tax under s.  
10 501 (a) of the internal revenue code.

11 (b) Dispose of the personal property in a solid waste facility.

12 (c) Have the personal property recycled.

13 (d) Remove the personal property in another manner that is reasonable under  
14 the circumstances.

15

16 ins. 4-8:

17 (c) The personal property is sold in another manner that is commercially  
18 reasonable.

**Duerst, Christina**

---

**From:** Egerer, Matt  
**Sent:** Friday, January 22, 2010 4:56 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-1808/4 Topic: Self-storage lien law changes

Please Jacket LRB 09-1808/4 for the ASSEMBLY.

**Nelson, Robert P.**

---

**From:** Egerer, Matt  
**Sent:** Monday, February 01, 2010 11:28 AM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

Can we ask for a /5 on this bill that clears up this issue?

It is not even a material changes to the bill, but simply the analysis.

We think that the last line, "This bill removes the private right to bring a civil action" in the analysis is causing a great deal of confusion. Would you be willing to revise this? Perhaps something more like "This bill removes the ability to collect reasonable attorney fees and leaves only statutory attorney fees," or whatever you feel is appropriate.

I just think a little more meat on the bone would go a long way to remove any misimpression.

Thank you,

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

---

**From:** Reineking, Carol  
**Sent:** Wednesday, December 16, 2009 11:09 AM  
**To:** Egerer, Matt  
**Subject:** FW: Barca LRB 1808 Self Storage Lien Law

FYI - I asked a follow-up about the bill to Bob Nelson. I just thought I would share his response with you. As he puts it...is does add to the confusion!

---

**From:** Nelson, Robert P.  
**Sent:** Wednesday, December 16, 2009 10:58 AM  
**To:** Reineking, Carol  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Carol,

Generally, if a statute creates a right or duty and a person violates that right or duty, a person injured by that violation may bring a civil action for the injury. Perhaps under contract law or tort law. Removing this language in this statute does not effect that general rule. If, instead, the bill prohibited a person injured from bringing an action, then there would be no access to the courts by the injured party. But, this bill does not do that.

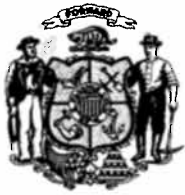
However, to add confusion, the removal of this language from the statutes by this bill may cause a court to consider what the intent of the legislature was, and to perhaps say the legislature meant to prohibit private actions. I think that would be the wrong decision, but it could happen.

Bob N.

---

**From:** Reineking, Carol  
**Sent:** Wednesday, December 16, 2009 8:41 AM  
**To:** Nelson, Robert P.





2/2  
State of Wisconsin  
2009 - 2010 LEGISLATURE

5  
LRB-1808/A

RPN:kjf:rs

Today

**2009 BILL**

see analysis  
only

Regen

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

---

***Analysis by the Legislative Reference Bureau***

Current law regulates the operation of self-storage facilities, including requiring written rental agreements, creating liens on personal 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 procedures requires the operator of a self-storage facility to send two 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 two consecutive weeks by publication in a newspaper of general circulation where the facility is located.

If the personal property is worth less than \$100, the bill allows the facility operator, after providing proper notice, to donate the property to a nonprofit organization, dispose of the property in a solid waste facility, recycle the property, or remove the property from the facility in another reasonable manner.

BILL

*refer the matter to the Department of Justice (DOJ) or district attorney to*

This bill requires the facility operator to send the second notice of the failure to pay rent by certified mail or 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 publishing one notice in a newspaper of general circulation where the facility is located in addition to a posting in two public places. The Internet is included as a public place in the bill.

Currently, the notice of the sale must include a description of the personal property to be sold and the address of the self-service storage facility, the number of the space where the property is located, and the name of the lessee. This bill removes the requirement that the notice include the number of the space where the property is located.

Under current law, the sale of the personal property must be conducted in a commercially reasonable manner. This bill replaces that language with a requirement that the sale be a public sale with three or more bidders or that the personal property be offered for sale to at least three persons who deal with the type of property for sale, or that the sale be conducted in another manner that is commercially reasonable.

The bill requires a rental agreement that includes a provision that limits the value of property stored to print that provision in bold type or underlined type of the same size as the rest of the agreement. If such a provision is in the rental agreement, that limit is presumed to be the maximum value of the property stored.

Current law gives the Department of Agriculture, Trade and Consumer Protection authority to promulgate rules regarding self-storage facilities, investigate violations of the statutory provisions, and bring court action 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.

*(DATCP)*

*9*

*NO # This bill limits enforcement of the law's provisions to DATCP, DOJ, and the district attorney.*

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

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

2 704.90 (2m) WRITTEN RENTAL AGREEMENT. Every rental agreement shall be in  
3 writing and shall contain a provision allowing the lessee to specify the name and  
4 last-known address of a person who, in addition to the lessee, the operator is  
5 required to notify under sub. (5) (b) 1. If the rental agreement contains a provision  
6 that places a limit on the value of property that is stored in the leased space, that

*which allows the person to recover his or her damages, costs, disbursements, and attorney fees*

**BILL**

1 provision shall be typed in bold type or underlined type of the same size as the  
2 remainder of the agreement.

3 **SECTION 2.** 704.90 (3) (c) of the statutes is created to read:

4 704.90 (3) (c) If the rental agreement contains a limit on the value of property  
5 stored in the lessee's storage space, the limit shall be presumed to be the maximum  
6 value of the property stored in that space.

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

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

12 **SECTION 4.** 704.90 (5) (a) of the statutes is amended to read:

13 704.90 (5) (a) At any time prior to disposal under sub. (5m) or sale under sub.  
14 (6), a lessee may redeem personal property by paying the operator any rent and other  
15 charges due. Upon receipt of such payment, the operator shall return the personal  
16 property, and thereafter the operator shall have no liability to any person with  
17 respect to such personal property.

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

19 704.90 (5) (b) (intro.) An operator may not dispose of personal property under  
20 sub. (5m) or sell personal property under sub. (6) unless the operator first delivers  
21 the following 2 notices:

22 **SECTION 6.** 704.90 (5) (b) 2. (intro.) of the statutes is amended to read:

23 704.90 (5) (b) 2. (intro.) A 2nd notice sent by certified mail or 1st class mail with  
24 a certificate of mailing to the last-known address of the lessee containing all of the  
25 following:

**BILL**

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

2           704.90 (5) (b) 2. d. A statement that unless the rent and other charges are paid  
3 within the time period under subd. 2. c., the personal property may be disposed of if  
4 the property is worth less than \$100 or will be sold, a specification of the date, time  
5 and place of the sale and a statement that if the property is sold the operator shall  
6 apply the proceeds of the sale first to satisfy the lien and shall report and deliver any  
7 balance to the state treasurer as provided under ch. 177.

8           **SECTION 8.** 704.90 (5m) of the statutes is created to read:

9           704.90 (5m) DISPOSAL OF CERTAIN PROPERTY. If the fair market value of personal  
10 property that was stored in the lessee's leased space is less than \$100, an operator  
11 may do any of the following:

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13 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under s.  
14 501 (a) of the Internal Revenue Code.

15           (b) Dispose of the personal property in a solid waste facility.

16           (c) Have the personal property recycled.

17           (d) Remove the personal property in another manner that is reasonable under  
18 the circumstances.

19           **SECTION 9.** 704.90 (6) (a) 4. of the statutes is amended to read:

20           704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2  
21 consecutive weeks in a newspaper of general circulation where the self-service  
22 storage facility is located, or is published once in a newspaper of general circulation  
23 where the self-storage facility is located and is posted in 2 public places to give notice  
24 to the persons affected. In this subdivision, the Internet is considered a public place.

25           **SECTION 10.** 704.90 (6) (a) 5. b. of the statutes is amended to read:



**Nelson, Robert P.**

---

**From:** Egerer, Matt  
**Sent:** Tuesday, February 02, 2010 1:11 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

Thank you for your draft, but we thought that the bill did the opposite.

It was my understanding that I, as a private individual, would still be able to sue after a violation of the self storage law. However, when I sued I could only collect for any actual damages and the lower statutory attorneys fees, not the higher reasonable attorneys fees. Presumably this would be a disincentive against this type of suit, but not an out-and-out roadblock.

But it seems based on the revised analysis that this is not the case, and that there is no role for private action under this bill, and only executives could seek remedies.

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

*AG + Eric agree w/ Matt*

---

**From:** Egerer, Matt  
**Sent:** Monday, February 01, 2010 11:28 AM  
**To:** Nelson, Robert P.  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Bob,

Can we ask for a /5 on this bill that clears up this issue?

It is not even a material changes to the bill, but simply the analysis.

We think that the last line, "This bill removes the private right to bring a civil action" in the analysis is causing a great deal of confusion. Would you be willing to revise this? Perhaps something more like "This bill removes the ability to collect reasonable attorney fees and leaves only statutory attorney fees," or whatever you feel is appropriate.

I just think a little more meat on the bone would go a long way to remove any misimpression.

Thank you,

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

---

**From:** Reineking, Carol  
**Sent:** Wednesday, December 16, 2009 11:09 AM  
**To:** Egerer, Matt  
**Subject:** FW: Barca LRB 1808 Self Storage Lien Law

FYI - I asked a follow-up about the bill to Bob Nelson. I just thought I would share his response with you. As he puts it...is does add to the confusion!

---

**From:** Nelson, Robert P.  
**Sent:** Wednesday, December 16, 2009 10:58 AM  
**To:** Reineking, Carol  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Carol,

Generally, if a statute creates a right or duty and a person violates that right or duty, a person injured by that violation may bring a civil action for the injury. Perhaps under contract law or tort law. Removing this language in this statute does not effect that general rule. If, instead, the bill prohibited a person injured from bringing an action, then there would be no access to the courts by the injured party. But, this bill does not do that.

However, to add confusion, the removal of this language from the statutes by this bill may cause a court to consider what the intent of the legislature was, and to perhaps say the legislature meant to prohibit private actions. I think that would be the wrong decision, but it could happen.

Bob N.

---

**From:** Reineking, Carol  
**Sent:** Wednesday, December 16, 2009 8:41 AM  
**To:** Nelson, Robert P.  
**Subject:** FW: Barca LRB 1808 Self Storage Lien Law

Good morning, Bob:

I had discussed LRB 1808 with Rep. Barca's staff and I have a follow-up question that I hope you can help me with.

According to the bill summary, "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."

Does this mean that if an operator violates the law a person suffers damages that the person's only legal recourse is through DATCP? Or can they still sue for damages through a civil action?

Thanks for your help!

Carol Reineking  
Office of Rep. Terry Van Akkeren

---

**From:** Egerer, Matt  
**Sent:** Tuesday, December 15, 2009 3:29 PM  
**To:** Reineking, Carol  
**Subject:** FW: Barca LRB 1808 Self Storage Lien Law

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504

---

**From:** Nelson, Robert P.  
**Sent:** Monday, November 02, 2009 11:07 AM  
**To:** Egerer, Matt  
**Subject:** RE: Barca LRB 1808 Self Storage Lien Law

Matt,

Generally, if a person suffers a loss as the result of someone's violation of a statutory requirement, the injured party can sue and recover the loss incurred, plus costs and statutory attorney fees. Section 704.90 (4g) goes one step further, and allows a person who suffers a loss as the result of a violation of the self-service storage facility requirements to recover reasonable attorney fees, which generally are higher than statutory attorney fees. This may give the party injured access to an attorney that they might otherwise not have.

Removing this section does not effect a persons ability to sue if the facility operator has fulfilled all of the obligations under the statute. If a facility operator has fulfilled all of the obligations under the statute, a person does not suffer a loss as the result of a violation because there is no violation.

If this is confusing call me and we can talk about it.

Bob N

---

**From:** Egerer, Matt  
**Sent:** Thursday, October 29, 2009 1:25 PM  
**To:** Nelson, Robert P.  
**Subject:** Barca LRB 1808 Self Storage Lien Law

Bob,

In our self storage bill, we want to make sure what we are doing by removing the provision at 704.90 (12), which states:

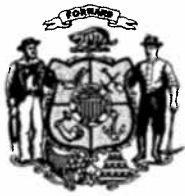
"Right To Action For Violation. In addition to the remedies otherwise provided by law, any person injured by a violation of this section or any rule promulgated under sub. (9) may bring a civil action to recover damages together with costs, disbursements and reasonable attorney fees, notwithstanding s. 814.04 (1), and any equitable relief as may be determined by the court.

This is referenced in 704.90 (4g).

Could you please give me a fuller explanation of this than the analysis?

Matt Egerer  
Office of Representative Peter Barca  
608.266.5504





2/2  
State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1808/5

RPN:kjf:rs

wanted 2/3

## 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 (2m), 704.90 (4g), 704.90 (5) (a), 704.90 (5) (b) (intro.), 704.90 (5)  
3 (b) 2. (intro.), 704.90 (5) (b) 2. d., 704.90 (6) (a) 4. and 704.90 (6) (a) 5. b.; and *to*  
4 *create* 704.90 (3) (c), 704.90 (5m) and 704.90 (6) (a) 7. a., b. and c. of the statutes;  
5 *relating to:* self-service storage facility notices and procedures.

---

### *Analysis by the Legislative Reference Bureau*

Current law regulates the operation of self-storage facilities, including requiring written rental agreements, creating liens on personal 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 procedures requires the operator of a self-storage facility to send two 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 two consecutive weeks by publication in a newspaper of general circulation where the facility is located.

If the personal property is worth less than \$100, the bill allows the facility operator, after providing proper notice, to donate the property to a nonprofit organization, dispose of the property in a solid waste facility, recycle the property, or remove the property from the facility in another reasonable manner.

**BILL**

This bill requires the facility operator to send the second notice of the failure to pay rent by certified mail or 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 publishing one notice in a newspaper of general circulation where the facility is located in addition to a posting in two public places. The Internet is included as a public place in the bill.

Currently, the notice of the sale must include a description of the personal property to be sold and the address of the self-service storage facility, the number of the space where the property is located, and the name of the lessee. This bill removes the requirement that the notice include the number of the space where the property is located.

Under current law, the sale of the personal property must be conducted in a commercially reasonable manner. This bill replaces that language with a requirement that the sale be a public sale with three or more bidders or that the personal property be offered for sale to at least three persons who deal with the type of property for sale, or that the sale be conducted in another manner that is commercially reasonable.

The bill requires a rental agreement that includes a provision that limits the value of property stored to print that provision in bold type or underlined type of the same size as the rest of the agreement. If such a provision is in the rental agreement, that limit is presumed to be the maximum value of the property stored.

Current law gives the Department of Agriculture, Trade and Consumer Protection (DATCP) authority to promulgate rules regarding self-storage facilities, investigate violations of the statutory provisions, and refer the matter to the Department of Justice (DOJ) or district attorney to bring a court action against a violator. Current law also allows a private person to bring a civil action for a violation of the statutory provisions, which allows the person to recover his or her damages, costs, disbursements, and attorney fees. This bill limits enforcement of the law's provisions to DATCP, DOJ, and the district attorney.

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

*to damages, costs, and statutory attorney fees.*

1           **SECTION 1.** 704.90 (2m) of the statutes is amended to read:

2           **704.90 (2m) WRITTEN RENTAL AGREEMENT.** Every rental agreement shall be in  
3 writing and shall contain a provision allowing the lessee to specify the name and  
4 last-known address of a person who, in addition to the lessee, the operator is  
5 required to notify under sub. (5) (b) 1. If the rental agreement contains a provision  
6 that places a limit on the value of property that is stored in the leased space, that

*removes the statutory right of action, effectively limiting an individual's right to bring an action based on common law, such as conversion, and limits the award*

**BILL**

1 provision shall be typed in bold type or underlined type of the same size as the  
2 remainder of the agreement.

3 **SECTION 2.** 704.90 (3) (c) of the statutes is created to read:

4 704.90 (3) (c) If the rental agreement contains a limit on the value of property  
5 stored in the lessee's storage space, the limit shall be presumed to be the maximum  
6 value of the property stored in that space.

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

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

12 **SECTION 4.** 704.90 (5) (a) of the statutes is amended to read:

13 704.90 (5) (a) At any time prior to disposal under sub. (5m) or sale under sub.  
14 (6), a lessee may redeem personal property by paying the operator any rent and other  
15 charges due. Upon receipt of such payment, the operator shall return the personal  
16 property, and thereafter the operator shall have no liability to any person with  
17 respect to such personal property.

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

19 704.90 (5) (b) (intro.) An operator may not dispose of personal property under  
20 sub. (5m) or sell personal property under sub. (6) unless the operator first delivers  
21 the following 2 notices:

22 **SECTION 6.** 704.90 (5) (b) 2. (intro.) of the statutes is amended to read:

23 704.90 (5) (b) 2. (intro.) A 2nd notice sent by certified mail or 1st class mail with  
24 a certificate of mailing to the last-known address of the lessee containing all of the  
25 following:

**BILL****SECTION 7**

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

2           704.90 (5) (b) 2. d. A statement that unless the rent and other charges are paid  
3 within the time period under subd. 2. c., the personal property may be disposed of if  
4 the property is worth less than \$100 or will be sold, a specification of the date, time  
5 and place of the sale and a statement that if the property is sold the operator shall  
6 apply the proceeds of the sale first to satisfy the lien and shall report and deliver any  
7 balance to the state treasurer as provided under ch. 177.

8           **SECTION 8.** 704.90 (5m) of the statutes is created to read:

9           704.90 (5m) DISPOSAL OF CERTAIN PROPERTY. If the fair market value of personal  
10 property that was stored in the lessee's leased space is less than \$100, an operator  
11 may do any of the following:

12           (a) Donate the personal property to an organization described in section 501  
13 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under s.  
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15           (b) Dispose of the personal property in a solid waste facility.

16           (c) Have the personal property recycled.

17           (d) Remove the personal property in another manner that is reasonable under  
18 the circumstances.

19           **SECTION 9.** 704.90 (6) (a) 4. of the statutes is amended to read:

20           704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2  
21 consecutive weeks in a newspaper of general circulation where the self-service  
22 storage facility is located, or is published once in a newspaper of general circulation  
23 where the self-storage facility is located and is posted in 2 public places to give notice  
24 to the persons affected. In this subdivision, the Internet is considered a public place.

25           **SECTION 10.** 704.90 (6) (a) 5. b. of the statutes is amended to read:

