



2009 ASSEMBLY BILL 707

February 5, 2010 - Introduced by Representatives BARCA, CLARK, STEINBRINK, DANOU, ZIGMUNT, KERKMAN, ZEPNICK, RIPP, A. WILLIAMS and VAN ROY, cosponsored by Senators PLALE, TAYLOR, WIRCH and ELLIS. Referred to Committee on Jobs, the Economy and Small Business.

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.

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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 removes the statutory private right of action, effectively limiting an individual's right to only bringing an action based on common law, such as conversion, and limits the award to damages, costs, and statutory attorney fees.

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

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1 that places a limit on the value of property that is stored in the leased space, that
2 provision shall be typed in bold type or underlined type of the same size as the
3 remainder of the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 704.90 (5m) DISPOSAL OF CERTAIN PROPERTY. If the fair market value of personal
13 property that was stored in the lessee's leased space is less than \$100, an operator
14 may do any of the following:

15 (a) Donate the personal property to an organization described in section 501
16 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under s.
17 501 (a) of the Internal Revenue Code.

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

19 (c) Have the personal property recycled.

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

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

23 704.90 (6) (a) 4. An advertisement of the sale is published once a week for 2
24 consecutive weeks in a newspaper of general circulation where the self-service
25 storage facility is located, or is published once in a newspaper of general circulation

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1 where the self-storage facility is located and is posted in 2 public places to give notice
2 to the persons affected. In this subdivision, the Internet is considered a public place.

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

4 704.90 (6) (a) 5. b. The address of the self-service storage facility, ~~the number,~~
5 ~~if any, of the space where the personal property is located~~ and the name of the lessee.

6 **SECTION 11.** 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).~~ and to any of the
10 following:

11 **SECTION 12.** 704.90 (6) (a) 7. a., b. and c. of the statutes are created to read:

12 704.90 (6) (a) 7. a. The personal property is offered either as a single parcel or
13 multiple parcels at a public sale attended by 3 or more bidders.

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

16 c. The personal property is sold in another manner that is commercially
17 reasonable.

18 **SECTION 13.** 704.90 (12) of the statutes is repealed.

19 (END)