2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB561)

Received: **02/29/2012**

Received By: **pkahler**

Wanted: **Soon**

Companion to LRB:

For: **Duey Stroebel (608) 267-2369**

By/Representing: **Lauren Kiesow**

May Contact:

Drafter: **pkahler**

Subject: **Real Estate - landlord/tenant**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **rep.stroebel@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Modifications to landlord/tenant rights and duties

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/1			rschluet 03/01/2012	_____ _____	mbarman 03/01/2012	mbarman 03/01/2012	

FE Sent For:

<END>

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/?	pkahler	/1 gs 3/12					

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2-29

Lauren – Rep Stroebel
by phone

need a substitute amendment to AB561
that is the same as SSA1 to SB466
(companion bills – companion subs)

State of Wisconsin
2011 - 2012 LEGISLATURE

LRBs0335/5 → s0373/1
PJK&MES:med&cjs:ph
slays

ASSEMBLY
SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 466 → 561

today, please (Thurs)

ASSEMBLY

February 29, 2012 – Offered by Senator LASEE.

(only changes are on p. 1)

SAV

Con Cat

AN ACT ***to repeal*** 704.05 (5) (a) 3. and 704.05 (5) (d); ***to renumber*** 704.44 (1), 704.44 (2), 704.44 (3) and 704.44 (4); ***to renumber and amend*** 704.44 (5); ***to consolidate, renumber and amend*** 704.05 (5) (a) (intro.) and 1.; ***to amend*** 321.62 (15) (a), 704.03 (1), 704.05 (1), 704.05 (5) (title), 704.05 (5) (a) 2., 704.05 (5) (c), 704.07 (1), 704.11, 704.27 and 704.44 (intro.); ***to repeal and recreate*** 704.05 (5) (a) (title); and ***to create*** 66.1010, 704.02, 704.05 (5) (am), 704.05 (5) (b), 704.05 (5) (cm), 704.07 (2) (bm), 704.08, 704.17 (2) (d), 704.28, 704.44 (2m), 704.44 (3m), 704.44 (4m), 704.44 (5m), 704.44 (6), 704.44 (7), 704.44 (8), 704.95 and 799.40 (1m) of the statutes; **relating to:** miscellaneous landlord-tenant provisions, and prohibiting a local government from imposing a moratorium on eviction actions, and providing a penalty.

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

1 **SECTION 1.** 66.1010 of the statutes is created to read:

2 **66.1010 Moratorium on evictions. (1)** In this section, "political subdivision"
3 has the meaning given in s. 66.1011 (1m) (e).

4 **(2)** A political subdivision may not enact or enforce an ordinance that imposes
5 a moratorium on a landlord from pursuing an eviction action under ch. 799 against
6 a tenant of the landlord's residential or commercial property.

7 **(3)** If a political subdivision has in effect on the effective date of this subsection
8 .... [LRB inserts date], an ordinance that is inconsistent with sub. (2), the ordinance
9 does not apply and may not be enforced.

10 **SECTION 2.** 321.62 (15) (a) of the statutes is amended to read:

11 321.62 **(15)** (a) Notwithstanding ~~ss. 704.05 (5) and~~ s. 704.90, no person may
12 enforce a lien for storage of any household goods, furniture, or personal effects of a
13 service member during the period in which the service member is in state active duty
14 and for 90 days after the member's completion of state active duty, except as
15 permitted by a court order under par. (b).

16 **SECTION 3.** 704.02 of the statutes is created to read:

17 **704.02 Severability of rental agreement provisions.** The provisions of a
18 rental agreement are severable. If any provision of a rental agreement is rendered
19 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
20 invalidity or unenforceability of that provision does not affect other provisions of the
21 rental agreement that can be given effect without the invalid provision.

22 **SECTION 4.** 704.03 (1) of the statutes is amended to read:

23 704.03 **(1)** ORIGINAL AGREEMENT. ~~A~~ Notwithstanding s. 704.02, a lease for more
24 than a year, or a contract to make such a lease, is not enforceable unless it meets the
25 requirements of s. 706.02 and in addition sets forth the amount of rent or other

consideration, the time of commencement and expiration of the lease, and a reasonably definite description of the premises, or unless a writing, including by means of electronic mail or facsimile transmission, signed by the landlord and the tenant sets forth the amount of rent or other consideration, the duration of the lease, and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

SECTION 5. 704.05 (1) of the statutes is amended to read:

704.05 **(1)** WHEN SECTION APPLICABLE. So far as applicable, this section governs the rights and duties of the landlord and tenant in the absence of any inconsistent provision in writing signed by both the landlord and the tenant. ~~This~~ Except as otherwise provided in this section, this section applies to any tenancy.

SECTION 6. 704.05 (5) (title) of the statutes is amended to read:

704.05 **(5)** (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY TENANT.

SECTION 7. 704.05 (5) (a) (title) of the statutes is repealed and recreated to read:

704.05 **(5)** (a) (title) *At the landlord's discretion.*

SECTION 8. 704.05 (5) (a) (intro.) and 1. of the statutes are consolidated, renumbered 704.05 (5) (a) 1. and amended to read:

704.05 **(5)** (a) 1. If a tenant removes from the premises and leaves personal property, the landlord may ~~do all of the following: 1. Store the personalty, on or off the premises, with a lien on the personalty for the actual and reasonable cost of removal and storage or, if stored by the landlord, for the actual and reasonable value of storage. The landlord shall give written notice of the storage to the tenant within~~

~~10 days after the charges begin. The landlord shall give the notice either personally or by ordinary mail addressed to the tenant's last-known address and shall state the daily charges for storage. The landlord may not include the cost of damages to the premises or past or future rent due in the amount demanded for satisfaction of the lien. The landlord may not include rent charged for the premises in calculating the cost of storage. Medicine and medical equipment are not subject to the lien under this subdivision, and~~ presume, in the absence of a written agreement between the landlord ~~shall promptly return them to~~ and the tenant ~~upon request~~ to the contrary, that the tenant has abandoned the personal property and may, subject to par. (am), dispose of the abandoned personal property in any manner that the landlord, in its sole discretion, determines is appropriate.

SECTION 9. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

704.05 **(5)** (a) 2. ~~Give the tenant notice, personally or by ordinary mail addressed to the tenant's last-known address, of the landlord's intent to dispose of the personal property by sale or other appropriate means if the property is not repossessed by the tenant. If the tenant fails to repossess the property within 30 days after the date of personal service or the date of the mailing of the notice,~~ If the landlord ~~may dispose~~ disposes of the property by private or public sale ~~or any other appropriate means. The,~~ the landlord may ~~deduct from~~ send the proceeds of the sale minus any costs of sale and any storage charges if the landlord has first stored the personalty ~~under subd. 1. If the proceeds minus the costs of sale and minus any storage charges are not claimed within 60 days after the date of the sale of the personalty, the landlord is not accountable to the tenant for any of the proceeds of the sale or the value of the property. The landlord shall send the proceeds of the sale~~

1 ~~minus the costs of the sale and minus any storage charges~~ to the department of
2 administration for deposit in the appropriation under s. 20.505 (7) (h).

3 **SECTION 10.** 704.05 (5) (a) 3. of the statutes is repealed.

4 **SECTION 11.** 704.05 (5) (am) of the statutes is created to read:

5 704.05 **(5)** (am) *Exception for medical items.* If the personal property that the
6 tenant leaves behind is prescription medication or prescription medical equipment,
7 the landlord shall hold the property for 7 days from the date on which the landlord
8 discovers the property. After that time, the landlord may dispose of the property in
9 the manner that the landlord determines is appropriate, but shall promptly return
10 the property to the tenant if the landlord receives a request for its return before the
11 landlord disposes of it.

12 **SECTION 12.** 704.05 (5) (b) of the statutes is created to read:

13 704.05 **(5)** (b) *Notice required if property is a manufactured or mobile home or*
14 *a vehicle.* 1. In this paragraph:

15 a. "Manufactured home" has the meaning given in s. 101.91 (2).

16 b. "Mobile home" has the meaning given in s. 101.91 (10), but does not include
17 a recreational vehicle, as defined in s. 340.01 (48r).

18 c. "Titled vehicle" means a vehicle, as defined in s. 340.01 (74), for which a
19 certificate of title has been issued by any agency of this state or another state.

20 2. If the abandoned personal property is a manufactured home, mobile home,
21 or titled vehicle, before disposing of the abandoned property the landlord shall give
22 notice of the landlord's intent to dispose of the property by sale or other appropriate
23 means to all of the following:

24 a. The tenant, personally or by regular or certified mail addressed to the
25 tenant's last-known address.

b. Any secured party of which the landlord has actual notice, personally or by regular or certified mail addressed to the secured party's last-known address.

SECTION 13. 704.05 (5) (c) of the statutes is amended to read:

704.05 **(5)** (c) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose as provided by this subsection ~~apply~~ applies to any property left on the premises by the tenant, whether owned by the tenant or by others. ~~That lien has priority over any ownership or security interest, and the~~ The power to dispose under this subsection applies notwithstanding any rights of others existing under any claim of ownership or security interest, but is subject to s. 321.62. The tenant or any secured party has the right to redeem the property at any time before the landlord has disposed of it or entered into a contract for its disposition by payment of ~~the landlord's charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any expenses that the landlord has incurred with respect to the disposition of the property.

SECTION 14. 704.05 (5) (cm) of the statutes is created to read:

704.05 **(5)** (cm) *Inapplicability to self-storage facilities.* This subsection does not apply to a lessee of a self-storage unit or space within a self-storage facility under s. 704.90.

SECTION 15. 704.05 (5) (d) of the statutes is repealed.

SECTION 16. 704.07 (1) of the statutes is amended to read:

704.07 **(1)** APPLICATION OF SECTION. This section applies to any nonresidential tenancy if there is no contrary provision in writing signed by both parties and to all residential tenancies. An agreement to waive the requirements of this section in a residential tenancy, including an agreement in a rental agreement, is void. Nothing

in this section is intended to affect rights and duties arising under other provisions of the statutes.

SECTION 17. 704.07 (2) (bm) of the statutes is created to read:

704.07 **(2)** (bm) A landlord shall disclose to a prospective tenant, before entering into a rental agreement with or accepting any earnest money or security deposit from the prospective tenant, any building code or housing code violation to which all of the following apply:

1. The landlord has received notice of the violation from a local housing code enforcement agency.

2. The violation affects the dwelling unit that is the subject of the prospective rental agreement or a common area of the premises.

3. The violation presents a significant threat to the prospective tenant's health or safety.

4. The violation has not been corrected.

SECTION 18. 704.08 of the statutes is created to read:

704.08 Information check-in sheet. A landlord shall provide to a new residential tenant when the tenant commences his or her occupancy of the premises a standardized information check-in sheet that contains an itemized description of the condition of the premises at the time of check-in. The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the information check-in sheet to a tenant upon renewal of a rental agreement. This section does not apply to the rental of a plot of ground on which a manufactured home, as defined in s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be located.

1 **SECTION 19.** 704.11 of the statutes is amended to read:

2 **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5),~~ 704.90 and
3 779.43 or by express agreement of the parties, the landlord has no right to a lien on
4 the property of the tenant; the common-law right of a landlord to distrain for rent
5 is abolished.

6 **SECTION 20.** 704.17 (2) (d) of the statutes is created to read:

7 704.17 **(2)** (d) This subsection does not apply to week-to-week or
8 month-to-month tenants.

9 **SECTION 21.** 704.27 of the statutes is amended to read:

10 **704.27 Damages for failure of tenant to vacate at end of lease or after**
11 **notice.** If a tenant remains in possession without consent of the tenant's landlord
12 after expiration of a lease or termination of a tenancy by notice given by either the
13 landlord or the tenant, or after termination by valid agreement of the parties, the
14 landlord ~~may~~ shall, at the landlord's discretion, recover from the tenant damages
15 suffered by the landlord because of the failure of the tenant to vacate within the time
16 required. In absence of proof of greater damages, the landlord ~~may~~ shall recover as
17 minimum damages twice the rental value apportioned on a daily basis for the time
18 the tenant remains in possession. As used in this section, rental value means the
19 amount for which the premises might reasonably have been rented, but not less than
20 the amount actually paid or payable by the tenant for the prior rental period, and
21 includes the money equivalent of any obligations undertaken by the tenant as part
22 of the rental agreement, such as payment of taxes, insurance and repairs. Nothing
23 in this section prevents a landlord from seeking and recovering any other damages
24 to which the landlord may be entitled.

25 **SECTION 22.** 704.28 of the statutes is created to read:

1 **704.28 Withholding from and return of security deposits. (1)** STANDARD
2 WITHHOLDING PROVISIONS. When a landlord returns a security deposit to a tenant after
3 the tenant vacates the premises, the landlord may withhold from the full amount of
4 the security deposit only amounts reasonably necessary to pay for any of the
5 following:
6 (a) Except as provided in sub. (3), tenant damage, waste, or neglect of the
7 premises.
8 (b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.
9 (c) Payment that the tenant owes under the rental agreement for utility service
10 provided by the landlord but not included in the rent.
11 (d) Payment that the tenant owes for direct utility service provided by a
12 government-owned utility, to the extent that the landlord becomes liable for the
13 tenant's nonpayment.
14 (e) Unpaid monthly municipal permit fees assessed against the tenant by a
15 local unit of government under s. 66.0435 (3), to the extent that the landlord becomes
16 liable for the tenant's nonpayment.
17 (f) Any other payment for a reason provided in a nonstandard rental provision
18 document described in sub. (2).
19 **(2)** NONSTANDARD RENTAL PROVISIONS. Except as provided in sub. (3), a rental
20 agreement may include one or more nonstandard rental provisions that authorize
21 the landlord to withhold amounts from the tenant's security deposit for reasons not
22 specified in sub. (1) (a) to (e). Any such nonstandard rental provisions shall be
23 provided to the tenant in a separate written document entitled "NONSTANDARD
24 RENTAL PROVISIONS." The landlord shall specifically identify and discuss each
25 nonstandard rental provision with the tenant before the tenant enters into a rental

1 agreement with the landlord. If the tenant signs a nonstandard rental provision, it
2 is rebuttably presumed that the landlord has specifically identified and discussed
3 the nonstandard rental provision with the tenant and that the tenant has agreed to
4 it.

5 **(3)** NORMAL WEAR AND TEAR. This section does not authorize a landlord to
6 withhold any amount from a security deposit for normal wear and tear, or for other
7 damages or losses for which the tenant cannot reasonably be held responsible under
8 applicable law.

9 **(4)** TIMING FOR RETURN. A landlord shall deliver or mail to a tenant the full
10 amount of any security deposit paid by the tenant, less any amounts that may be
11 withheld under subs. (1) and (2), within 21 days after any of the following:

12 (a) If the tenant vacates the premises on the termination date of the rental
13 agreement, the date on which the rental agreement terminates.

14 (b) If the tenant vacates the premises before the termination date of the rental
15 agreement, the date on which the tenant's rental agreement terminates or, if the
16 landlord rerents the premises before the tenant's rental agreement terminates, the
17 date on which the new tenant's tenancy begins.

18 (c) If the tenant vacates the premises after the termination date of the rental
19 agreement, the date on which the landlord learns that the tenant has vacated the
20 premises.

21 (d) If the tenant is evicted, the date on which a writ of restitution is executed
22 or the date on which the landlord learns that the tenant has vacated the premises,
23 whichever occurs first.

24 **SECTION 23.** 704.44 (intro.) of the statutes is amended to read:

1 **704.44 Rental agreement that ~~restricts access to~~ contains certain**
2 **~~services~~ provisions is void.** (intro.) ~~A~~ Notwithstanding s. 704.02, a rental
3 agreement is void and unenforceable if it ~~allows~~ does any of the following:
4 (1m) Allows a landlord in a residential tenancy to do any of the following
5 because a tenant has contacted an entity for law enforcement services, health
6 services, or safety services:
7 **SECTION 24.** 704.44 (1) of the statutes is renumbered 704.44 (1m) (a).
8 **SECTION 25.** 704.44 (2) of the statutes is renumbered 704.44 (1m) (b).
9 **SECTION 26.** 704.44 (2m) of the statutes is created to read:
10 704.44 **(2m)** Authorizes the eviction or exclusion of a tenant from the premises,
11 other than by judicial eviction procedures as provided under ch. 799.
12 **SECTION 27.** 704.44 (3) of the statutes is renumbered 704.44 (1m) (c).
13 **SECTION 28.** 704.44 (3m) of the statutes is created to read:
14 704.44 **(3m)** Provides for an acceleration of rent payments in the event of
15 tenant default or breach of obligations under the rental agreement, or otherwise
16 waives the landlord's obligation to mitigate damages as provided in s. 704.29.
17 **SECTION 29.** 704.44 (4) of the statutes is renumbered 704.44 (1m) (d).
18 **SECTION 30.** 704.44 (4m) of the statutes is created to read:
19 704.44 **(4m)** Requires payment by the tenant of attorney fees or costs incurred
20 by the landlord in any legal action or dispute arising under the rental agreement.
21 This subsection does not prevent a landlord or tenant from recovering costs or
22 attorney fees under a court order under ch. 799 or 814.
23 **SECTION 31.** 704.44 (5) of the statutes is renumbered 704.44 (1m) (e) and
24 amended to read:

704.44 **(1m)** (e) Threaten to take any action under ~~subs. (1) to (4)~~ pars. (a) to (d).

SECTION 32. 704.44 (5m) of the statutes is created to read:

704.44 **(5m)** Authorizes the landlord or an agent of the landlord to confess judgment against the tenant in any action arising under the rental agreement.

SECTION 33. 704.44 (6) of the statutes is created to read:

704.44 **(6)** States that the landlord is not liable for property damage or personal injury caused by negligent acts or omissions of the landlord. This subsection does not affect ordinary maintenance obligations of a tenant under s. 704.07 or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

SECTION 34. 704.44 (7) of the statutes is created to read:

704.44 **(7)** Imposes liability on a tenant for any of the following:

(a) Personal injury arising from causes clearly beyond the tenant's control.

(b) Property damage caused by natural disasters or by persons other than the tenant or the tenant's guests or invitees. This paragraph does not affect ordinary maintenance obligations of a tenant under s. 704.07 or assumed by a tenant under a rental agreement or other written agreement between the landlord and the tenant.

SECTION 35. 704.44 (8) of the statutes is created to read:

704.44 **(8)** Waives any statutory or other legal obligation on the part of the landlord to deliver the premises in a fit or habitable condition or to maintain the premises during the tenant's tenancy.

SECTION 36. 704.95 of the statutes is created to read:

704.95 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also

1 constitute unfair methods of competition or unfair trade practices under s. 100.20.
2 However, the department of agriculture, trade and consumer protection may not
3 issue an order or promulgate a rule under s. 100.20 that changes any right or duty
4 arising under this chapter.

5 **SECTION 37.** 799.40 (1m) of the statutes is created to read:

6 799.40 **(1m)** ACCEPTANCE OF RENT. If a landlord commences an action under this
7 section against a tenant whose tenancy has been terminated for failure to pay rent,
8 the action under this section may not be dismissed solely because the landlord
9 accepts past due rent from the tenant after the termination of the tenant's tenancy.

10 **SECTION 38. Initial applicability.**

11 (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)
12 (title), (a) (title), (intro.), 1., 2., and 3., (am), (b), (c), and (d), and 704.11 of the statutes
13 first applies to property left behind by a tenant on the effective date of this
14 subsection.

15 (2) DAMAGES FOR FAILURE TO VACATE. The treatment of section 704.27 of the
16 statutes first applies to actions for damages, including eviction actions, that are
17 commenced on the effective date of this subsection.

18 (3) RETURN OF SECURITY DEPOSITS.

19 (a) *Timing for return.* Except as provided in paragraph (b), the treatment of
20 section 704.28 (4) (b) of the statutes first applies to tenants vacating before the
21 termination date of a rental agreement who vacate the premises on the effective date
22 of this paragraph.

23 (b) *Inconsistent provision.* If a rental agreement that is in effect on the effective
24 date of this paragraph contains a provision that is inconsistent with the treatment
25 of section 704.28 (4) (b) of the statutes, the treatment of section 704.28 (4) (b) of the

1 statutes first applies to that rental agreement with respect to the timing of returning
2 a security deposit upon renewal.

3 (4) SEVERABILITY OF PROVISIONS. The treatment of section 704.02 of the statutes
4 first applies to rental agreements that are entered into or renewed on the effective
5 date of this subsection.

6 **(END)**