

2011 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB466)

Received: **02/16/2012**

Received By: **pkahler**

Wanted: **Soon**

Companion to LRB:

For: **Frank Lasee (608) 266-3512**

By/Representing: **Margit Kelley**

May Contact:

Drafter: **pkahler**

Subject: **Real Estate - landlord/tenant
Local Gov't - misc**

Addl. Drafters: **mshovers**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Lasee@legis.wisconsin.gov**

Carbon copy (CC:) to: **Margit.Kelley@legis.wisconsin.gov
Robert.Kovach@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Miscellaneous landlord/tenant issues and prohibiting a local government from imposing an eviction moratorium

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>
/?	pkahler 02/16/2012	mduchek 02/17/2012		_____			
/1	pkahler 02/17/2012	mduchek 02/17/2012	jfrantze 02/17/2012	_____	lparisi 02/17/2012	lparisi 02/17/2012	
/2	pkahler 02/21/2012	mduchek 02/21/2012	jmurphy 02/17/2012	_____	mbarman 02/17/2012	mbarman 02/17/2012	

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/3			rschluet 02/21/2012	_____ _____	sbasford 02/21/2012	sbasford 02/21/2012	
/4	pkahler 02/27/2012 pkahler 02/28/2012	mduchek 02/27/2012 csicilia 02/29/2012	phenry 02/27/2012	_____ _____ _____	lparisi 02/27/2012	lparisi 02/27/2012	
/5			phenry 02/29/2012	_____ _____	mbarman 02/29/2012	mbarman 02/29/2012	

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 ~~JR~~ 2/21

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Handwritten notes:
[Signature] 2/17/12
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jon 2/17
RST/jm 2/17
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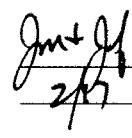
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1/?	pkahler						

FE Sent For:

<END>

Kahler, Pam

From: Kelley, Margit
Sent: Thursday, February 16, 2012 12:23 PM
To: Kahler, Pam
Cc: Kovach, Robert; Urso, Tony
Subject: request for sub to 2011 SB 466

Hi Pam,

Sen. Lasee would like to have a sub drafted for 2011 SB 466, preferably by tomorrow afternoon, that:

- ✓ 1. Incorporates the provisions of LRBa2339/2 related to a manufactured or mobile home.
- ✓ 2. Removes Section 15 of the bill.
- ✓ 3. Revises Section 16 to apply at time of occupancy, rather than when the tenant enters into a new rental agreement, and allows 7 days from the date of occupancy for the tenant to submit the check-in sheet to the landlord.
- ✓ 4. Revises Section 20 to require a written statement accounting for all amounts withheld from a security deposit, in line with s. ATCP 134.06 (4), Wis. Adm. Code.
- ✓ 5. Specifies in Section 22, in line with s. ATCP 134.06 (2) (a) and (b) 2. and 3., Wis. Adm. Code, that the timing of 21 days for the landlord's return of a security deposit also applies:
 - ✓ a. if the tenant vacates the premises on the last day of tenancy provided under the rental agreement,
 - ✓ b. from the day of surrender if the tenant vacates *after* the last day of tenancy provided under the rental agreement, and
 - ✓ c. from the day of surrender or date a writ of restitution is executed (whichever is first) from an eviction action.
- ✓ 6. Adds to Section 23 that a landlord who includes that type of provision is subject to a forfeiture of \$500.

If you have any questions, please feel free to contact me.

Thank you!

Margit Kelley
Wisconsin Legislative Council
608-266-9280
Margit.Kelley@legis.wi.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0335/1
PJK&MES:.....

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
SENATE SUBSTITUTE AMENDMENT,
TO 2011 SENATE BILL 466

Fri. by 2:00

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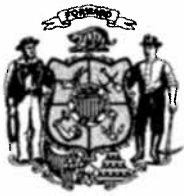
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1 AN ACT . . . relating to: ~~2?~~

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

2 (END)





2011 SENATE BILL 466

February 13, 2012 - Introduced by Senator LASEE, cosponsored by Representatives STROEBEL, JACQUE, LITJENS and PRIDEMORE. Referred to Committee on Insurance and Housing.

1 **AN ACT to repeal** 704.05 (5) (a) 3. and 704.05 (5) (d); **to renumber and amend**
 2 704.05 (5) (c); **to consolidate, renumber and amend** 704.05 (5) (a) (intro.)
 3 and 1.; **to amend** 321.62 (15) (a), 704.03 (1), 704.05 (5) (title), 704.05 (5) (a) 2.,
 4 704.07 (1), 704.11, 704.27, 704.29 (title) and 704.44 (intro.); **to repeal and**
 5 **recreate** 704.05 (5) (a) (title); and **to create** 66.1010, 704.02, 704.05 (5) (cm),
 6 704.07 (2) (bm), 704.07 (3) (bm), 704.08, 704.17 (2) (d), 704.28, 704.29 (5) and
 7 799.40 (1m) of the statutes; **relating to:** miscellaneous landlord-tenant

8 provisions and prohibiting a local government from imposing a moratorium on
 9 eviction actions, and providing a penalty

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to current law relating to landlord-tenant relations, including the following:

1. Current law provides that, if a tenant leaves behind personal property after moving out of the rental premises, the landlord may store the property without a lien and return it to the tenant; store the property with a lien for the cost of storage and give the tenant notice of the storage within ten days after the charges begin; or give the tenant notice that after 30 days the landlord intends to dispose of the property

SENATE BILL 466

by sale or other appropriate means. If the landlord disposes of the property by sale, the landlord may deduct the costs of sale from the proceeds. The tenant has 60 days after the date of the sale to claim the remaining proceeds, and any proceeds not claimed by the tenant must be sent to the Department of Administration (DOA) to be used for providing grants to agencies and shelter facilities for the homeless. Current law allows the tenant or any person with a security interest in the property to redeem the property before the landlord disposes of it or enters into a contract for its disposal by paying the landlord's costs for removal, storage, disposition, and arranging for the sale, of the property.

The bill eliminates the procedures under current law for disposing of personal property that a tenant leaves behind and provides that, in the absence of a written agreement to the contrary between the landlord and tenant, the landlord may presume that the personal property has been abandoned and may dispose of it in any manner that the landlord determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to the property's disposal. If the landlord sells the property, the landlord may send the proceeds, minus any costs of sale and storage, to DOA for use in providing grants to homeless shelters. As under current law, the tenant or a secured party, however, may redeem the property before the landlord disposes of the property, or enters into a contract for its disposal, by paying all charges that the landlord has incurred with respect to the disposal.

2. Currently, what a landlord may deduct from a tenant's security deposit when the tenant vacates the premises is specified, not in the statutes, but in the Wisconsin Administrative Code (Code). The bill incorporates the Code provisions into the statutes and thus provides that a landlord may deduct amounts from a security deposit for tenant damage to the premises, unpaid rent, unpaid utility services for which the tenant was responsible, any unpaid monthly municipal permit fees, and any other reason provided in a nonstandard rental provision to which the tenant has agreed. A landlord specifically may not deduct amounts from a security deposit for normal wear and tear.

The bill also provides that, if a tenant removes from the premises before the end of his or her lease term, the landlord must return the tenant's security deposit within 21 days after the end of the lease term or, if the landlord re-rents the premises before the end of that lease term, within 21 days after the new tenant's tenancy begins.

3. The bill requires a landlord to provide to a new tenant a standardized information check-in sheet with an itemized description of the condition of the premises at the time of the tenant's check-in. In addition, a landlord must disclose to a prospective tenant any uncorrected building code violation: 1) that affects the prospective tenant's dwelling unit or a common area of the premises; 2) for which the landlord has received notice from a local housing code enforcement agency; and 3) for which the date for correction is past due.

4. The bill requires a tenant to notify the landlord in writing of any repair or maintenance that the premises requires before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency.

5. Current law provides that a rental agreement is void and unenforceable if it allows a landlord to take various actions, such as increasing rent or refusing to

SENATE BILL 466

renew a rental agreement, because the tenant has contacted an entity for law enforcement services, health services, or safety services. The bill changes this to provide that, rather than the entire rental agreement being void and unenforceable, any provision in a rental agreement that allows a landlord to take the specified actions is void and unenforceable. The bill also provides generally that provisions in rental agreements are severable and that the invalidity or unenforceability of any provision does not affect the other provisions that can be given effect without the invalid provision.

6. Under current law, if a tenant does not remove from the premises after his or her lease has expired or his or her tenancy has been terminated, such as for nonpayment of rent, the landlord may recover damages from the tenant for the tenant's failure to vacate. The statute provides that the landlord may recover as minimum damages twice the rental value of the premises for the time that the tenant remained in possession if the landlord does not prove that he or she suffered greater damages. The bill provides that the landlord, at the landlord's discretion, shall recover damages for the tenant's failure to vacate. The amount of the damages shall be, at a minimum, twice the rental value of the premises for the time that the tenant remained in possession, in the absence of proof of greater damages. The bill also clarifies that the landlord may seek and recover any other damages to which the landlord may be entitled.

7. The bill provides that, if a landlord commences an eviction action against a tenant whose tenancy was terminated for nonpayment of rent and the landlord accepts past due rent from the tenant, the eviction action may not be dismissed solely because of the acceptance of the rent.

8. The bill also prohibits any city, village, town, or county from enacting an ordinance, or enforcing an existing ordinance, that imposes a moratorium on a landlord from pursuing an eviction action against a tenant of the landlord's residential or commercial property.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Sub A

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.

SENATE BILL 466

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

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

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

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

11 **704.02 Severability of rental agreement provisions.** The provisions of a
12 rental agreement are severable. If any provision of a rental agreement is rendered
13 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
14 invalidity or unenforceability of that provision does not affect other provisions of the
15 rental agreement that can be given effect without the invalid provision.

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

17 704.03 (1) ORIGINAL AGREEMENT. ~~A Notwithstanding s. 704.02~~, a lease for more
18 than a year, or a contract to make such a lease, is not enforceable unless it meets the
19 requirements of s. 706.02 and in addition sets forth the amount of rent or other
20 consideration, the time of commencement and expiration of the lease, and a
21 reasonably definite description of the premises, or unless a writing, including by
22 means of electronic mail or facsimile transmission, signed by the landlord and the
23 tenant sets forth the amount of rent or other consideration, the duration of the lease,
24 and a reasonably definite description of the premises and the commencement date
25 is established by entry of the tenant into possession under the writing. Sections

SENATE BILL 466

Insert 5-2

1 704.05 and 704.07 govern as to matters within the scope of such sections and not
2 provided for in such written lease or contract.

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

4 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
5 TENANT.

6 SECTION 6. 704.05 (5) (a) (title) of the statutes is repealed and recreated to read:

7 704.05 (5) (a) (title) *At the landlord's discretion.*

8 SECTION 7. 704.05 (5) (a) (intro.) and 1. of the statutes are consolidated,
9 renumbered 704.05 (5) (a) 1. and amended to read:

10 704.05 (5) (a) 1. If a tenant removes from the premises and leaves personal
11 property, the landlord may do all of the following: 1. ~~Store the personalty, on or off~~
12 ~~the premises, with a lien on the personalty for the actual and reasonable cost of~~
13 ~~removal and storage or, if stored by the landlord, for the actual and reasonable value~~
14 ~~of storage. The landlord shall give written notice of the storage to the tenant within~~
15 ~~10 days after the charges begin. The landlord shall give the notice either personally~~
16 ~~or by ordinary mail addressed to the tenant's last-known address and shall state the~~
17 ~~daily charges for storage. The landlord may not include the cost of damages to the~~
18 ~~premises or past or future rent due in the amount demanded for satisfaction of the~~
19 ~~lien. The landlord may not include rent charged for the premises in calculating the~~
20 ~~cost of storage. Medicine and medical equipment are not subject to the lien under~~
21 ~~this subdivision, and presume, in the absence of a written agreement between the~~
22 ~~landlord shall promptly return them to and the tenant upon request to the contrary,~~
23 ~~that the tenant has abandoned the personal property and may dispose of the~~
24 ~~abandoned personal property in any manner that the landlord, in its sole discretion,~~

determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to disposition of the abandoned personal property.

SECTION 8. 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 minus the costs of the sale and minus any storage charges to the department of administration for deposit in the appropriation under s. 20.505 (7) (h).~~

Subject to par. (b), if

SECTION 9. 704.05 (5) (a) 3. of the statutes is repealed.

SECTION 10. 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and amended to read:

704.05 (5) (b) ~~(a)~~ ^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

Insert 6-21

SENATE BILL 466

1 subsection applies notwithstanding any rights of others existing under any claim of
2 ownership or security interest, but is subject to s. 321.62. The tenant or any secured
3 party has the right to redeem the property at any time before the landlord has
4 disposed of it or entered into a contract for its disposition by payment of ~~the landlord's~~
5 ~~charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any
6 expenses that the landlord has incurred with respect to the disposition of the
7 property.

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

9 704.05 (5) (cm) *Inapplicability to self-storage facilities*. This subsection does
10 not apply to a lessee of a self-storage unit or space within a self-storage facility
11 under s. 704.90.

12 **SECTION 12.** 704.05 (5) (d) of the statutes is repealed.

13 **SECTION 13.** 704.07 (1) of the statutes is amended to read:

14 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential
15 tenancy if there is no contrary provision in writing signed by both parties and to all
16 residential tenancies. An agreement to waive the requirements of this section in a
17 residential tenancy, including an agreement in a rental agreement, is void. Nothing
18 in this section is intended to affect rights and duties arising under other provisions
19 of the statutes.

20 **SECTION 14.** 704.07 (2) (bm) of the statutes is created to read:

21 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before
22 entering into a rental agreement with or accepting any earnest money or security
23 deposit from the prospective tenant, any building code or housing code violation to
24 which all of the following apply:

SENATE BILL 466

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

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

5 3. The violation has not been corrected.

6 4. The date by which the violation must be corrected has passed.

7 **SECTION 15.** 704.07 (3) (bm) of the statutes is created to read:

8 704.07 (3) (bm) ~~If the premises is in need of any repair or other maintenance,~~
9 ~~before reporting the problem to a building inspector, elected public official, or local~~
10 ~~housing code enforcement agency, a tenant shall first notify the landlord in writing~~
11 ~~and allow the landlord adequate time to investigate and rectify the problem.~~

12 **SECTION 16.** 704.08 of the statutes is created to read:

13 **704.08 Information check-in sheet.** A landlord shall provide to a

14 ^{new} residential tenant when the tenant enters into a new rental agreement a
15 standardized information check-in sheet that contains an itemized description of
16 the condition of the premises at the time of check-in. ^{Insert 8-16} The landlord is not required
17 to provide the information check-in sheet to a tenant upon renewal of a rental
18 agreement.

19 **SECTION 17.** 704.11 of the statutes is amended to read:

20 **704.11 Lien of landlord.** Except as provided in ss. 704.05 (5), 704.90 and
21 779.43 or by express agreement of the parties, the landlord has no right to a lien on
22 the property of the tenant; the common-law right of a landlord to distrain for rent
23 is abolished.

24 **SECTION 18.** 704.17 (2) (d) of the statutes is created to read:

Insert 8-14

SENATE BILL 466

1 704.17 (2) (d) This subsection does not apply to week-to-week or
2 month-to-month tenants.

3 **SECTION 19.** 704.27 of the statutes is amended to read:

4 **704.27 Damages for failure of tenant to vacate at end of lease or after**
5 **notice.** If a tenant remains in possession without consent of the tenant's landlord
6 after expiration of a lease or termination of a tenancy by notice given by either the
7 landlord or the tenant, or after termination by valid agreement of the parties, the
8 landlord may shall, at the landlord's discretion, recover from the tenant damages
9 suffered by the landlord because of the failure of the tenant to vacate within the time
10 required. In absence of proof of greater damages, the landlord may shall recover as
11 minimum damages twice the rental value apportioned on a daily basis for the time
12 the tenant remains in possession. As used in this section, rental value means the
13 amount for which the premises might reasonably have been rented, but not less than
14 the amount actually paid or payable by the tenant for the prior rental period, and
15 includes the money equivalent of any obligations undertaken by the tenant as part
16 of the rental agreement, such as payment of taxes, insurance and repairs. Nothing
17 in this section prevents a landlord from seeking and recovering any other damages
18 to which the landlord may be entitled.

19 **SECTION 20.** 704.28 of the statutes is created to read:

20 **704.28 Withholding from security deposits.** (1) STANDARD PROVISIONS.
21 When a landlord returns a security deposit to a tenant after the tenant vacates the
22 premises, the landlord may withhold from the full amount of the security deposit
23 only amounts reasonably necessary to pay for any of the following:

- 24 (a) Tenant damage, waste, or neglect of the premises.
- 25 (b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

and return of
WITHHOLDING

SENATE BILL 466

1 (c) Payment that the tenant owes under the rental agreement for utility service
2 provided by the landlord but not included in the rent.

3 (d) Payment that the tenant owes for direct utility service provided by a
4 government-owned utility, to the extent that the landlord becomes liable for the
5 tenant's nonpayment.

6 (e) Unpaid monthly municipal permit fees assessed against the tenant by a
7 local unit of government under s. 66.0435 (3), to the extent that the landlord becomes
8 liable for the tenant's nonpayment.

9 (f) Any other payment for a reason provided in a nonstandard rental provision
10 document described in sub. (2).

11 **(2) NONSTANDARD RENTAL PROVISIONS.** Except as provided in sub. (3), a rental
12 agreement may include one or more nonstandard rental provisions that authorize
13 the landlord to withhold amounts from the tenant's security deposit for reasons not
14 specified in sub. (1) (a) to (e). Any such nonstandard rental provisions shall be
15 provided to the tenant in a separate written document entitled "NONSTANDARD
16 RENTAL PROVISIONS." The landlord shall specifically identify and discuss each
17 nonstandard rental provision with the tenant before the tenant enters into a rental
18 agreement with the landlord. If the tenant signs a nonstandard rental provision, it
19 is rebuttably presumed that the landlord has specifically identified and discussed
20 the nonstandard rental provision with the tenant and that the tenant has agreed to
21 it.

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

Insert 10 - 25 →

SENATE BILL 466

1 **SECTION 21.** 704.29 (title) of the statutes is amended to read:

2 **704.29 (title) Recovery of rent and damages by landlord; mitigation;**
3 **return of security deposit.**

4 ~~**SECTION 22.** 704.29 (5) of the statutes is created to read:~~

5 ~~704.29 (5) RETURN OF SECURITY DEPOSIT. If a tenant under a rental agreement~~
6 ~~who has paid a security deposit vacates the premises before the termination date of~~
7 ~~the rental agreement, the landlord shall deliver or mail to the tenant the full amount~~
8 ~~of the security deposit, less any amounts that may be withheld under s. 704.28,~~
9 ~~within 21 days after the date on which the tenant's rental agreement terminates or,~~
10 ~~if the landlord re-rents the premises before the tenant's rental agreement terminates,~~
11 ~~within 21 days after the new tenant's tenancy begins.~~

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

13 **704.44 Rental Provision in rental agreement that restricts access to**
14 **certain services is void.** (intro.) A provision in a rental agreement is void and
15 ~~unenforceable if it~~ that allows a landlord in a residential tenancy to do any of the
16 following because a tenant has contacted an entity for law enforcement services,
17 health services, or safety services is void and unenforceable:

18 **SECTION 24.** 799.40 (1m) of the statutes is created to read:

19 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
20 section against a tenant whose tenancy has been terminated for failure to pay rent,
21 the action under this section may not be dismissed solely because the landlord
22 accepts past due rent from the tenant after the termination of the tenant's tenancy.

23 **SECTION 25. Initial applicability.**

24 (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)
25 (title), (a) (title), (intro.), 1., 2., and 3., (c), and (d), and 704.11 of the statutes first

→ (b),

Enacted 11-17

SENATE BILL 466

1 applies to property left behind by a tenant under a tenancy commenced, or a lease
2 entered into or renewed, on the effective date of this subsection.

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

6 (3) RETURN OF SECURITY DEPOSITS.

704.28(5)(b)

7 (a) *Timing for return.* Except as provided in paragraph (b), the treatment of
8 section 704.29 (5) of the statutes first applies to tenants vacating before the
9 termination date of a rental agreement who vacate the premises on the effective date
10 of this paragraph.

704.28(5)(b)

11 (b) *Inconsistent provision.* If a rental agreement that is in effect on the effective
12 date of this paragraph contains a provision that is inconsistent with the treatment
13 of section 704.29 (5) of the statutes, the treatment of section 704.29 (5) of the statutes
14 first applies to that rental agreement with respect to the timing of returning a
15 security deposit upon renewal.

16 (4) VOID PROVISION AND SEVERABILITY OF PROVISIONS. The treatment of sections

17 704.02 and 704.44 (intro.) of the statutes first applies to rental agreements that are
18 entered into or renewed on the effective date of this subsection.

19 (END)

renumbering and amendment of section 704.44 of
the statutes, the amendment of section 704.44 (title)
of the statutes, and the creation of sections 704.02
and 704.44 (2m) of the statutes first apply

**2011-2012 DRAFTING INSERT
FROM THE
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LRBs0335/ins
PJK&MES:.....

INSERT A

This substitute amendment differs from 2011 Senate Bill 466 (the bill) in the following respects:

1. The bill requires a tenant to notify the landlord in writing of any repair or maintenance that the premises requires before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency. The substitute amendment removes this requirement. ✓

2. The bill provides that any provision in a rental agreement is void and unenforceable if it allows a landlord to take various actions, such as increasing rent or refusing to renew a rental agreement, because the tenant has contacted an entity for law enforcement services, health services, or safety services. ✓ The substitute amendment provides that any landlord that includes such a provision in a rental agreement may be subject to a forfeiture of not more than \$500. ✓

3. The bill incorporates the Wisconsin Administrative Code (Code) provisions for what a landlord may deduct from a tenant's security deposit into the statutes, and also provides that, if a tenant removes from the premises before the end of his or her lease term, the landlord must return the tenant's security deposit within 21 days after the end of the lease term or, if the landlord rerents the premises before the end of that lease term, within 21 days after the new tenant's tenancy begins. ✓ The substitute amendment incorporates from the Code the requirements for when a landlord must return a security deposit in other situations, namely 21 days after the end of the term of a rental agreement if the tenant vacates at the end of the term; 21 days after the landlord learns that the tenant has vacated the premises if the tenant vacates the premises after the end of the term of the rental agreement; and 21 days after a writ of restitution is executed or the landlord learns that the tenant has vacated the premises, whichever is later, if the tenant is evicted from the premises. ✓ The substitute amendment also incorporates from the Code the requirement that a landlord deliver or mail to a tenant a written, itemized statement of every deduction from the tenant's security deposit if the landlord makes any deductions. ✓

4. The bill requires a landlord to provide to a new tenant a standardized information check-in sheet with an itemized description of the condition of the premises at the time of the tenant's check-in. The substitute amendment provides that the tenant must be given seven days to complete the check-in sheet and return it to the landlord. ✓

5. The bill provides that, in the absence of a written agreement to the contrary between the landlord and tenant, the landlord may presume that any personal property that a tenant leaves behind has been abandoned and may dispose of it in any manner that the landlord determines is appropriate. ✓ The bill also provides that the tenant is responsible for any costs, including storage charges, that the landlord incurs in the the disposal of the property. ✓ The substitute amendment provides specific notice requirements if the property that the tenant leaves behind is a



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~~requirements if the property that the tenant leaves behind is a~~ manufactured or mobile home and also specifies how storage charges are to be determined in that case. ←

(END OF INSERT A)

(inserts 5-2 + 6-21 at end)

INSERT 8-14

1 *wo 41* commences his or her occupancy of the premises

(END OF INSERT 8-14)

INSERT 8-16

2 *wo 41* The tenant shall be given 7 days from the date the tenant commences his or her
3 occupancy to complete the check-in sheet and return it to the landlord.

(END OF INSERT 8-16)

INSERT 10-25

4 (4) STATEMENT OF CLAIMS. (a) If a landlord withholds any amount from a
5 security deposit, the landlord shall, within the time specified in sub. (5), deliver or
6 mail to the tenant a written, itemized statement accounting for all amounts
7 withheld. The statement shall describe each item of physical damage or other claim
8 made against the security deposit and the amount that was withheld for the item as
9 reasonable compensation.

10 (b) A landlord may not intentionally misrepresent or falsify any claim against
11 a security deposit, including the cost of repairs, or withhold any portion of a security
12 deposit on the basis of an intentionally falsified claim.

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

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



Ins. 10-25 cont'd

1 (b) If the tenant vacates the premises before the termination date of the rental
2 agreement, the date on which the tenant's rental agreement terminates or, if the
3 landlord rerents the premises before the tenant's rental agreement terminates, the
4 date on which the new tenant's tenancy begins.

5 (c) If the tenant vacates the premises after the termination date of the rental
6 agreement, the date on which the landlord learns that the tenant has vacated the
7 premises.

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

(END OF INSERT 10-25)

INSERT 11-17

11 SECTION 1. 704.44 (title) of the statutes is amended to read:

12 704.44 (title) ~~Rental~~ **Provision in rental agreement that restricts access**
13 **to certain services is void.**

History: 2007 a. 184.

14 SECTION 2. 704.44 (except 704.44 (title)) of the statutes is renumbered 704.44
15 (1m), and 704.44 (1m) (intro.) and (e), as renumbered, are amended to read:

16 704.44 (1m) (intro.) A provision in a rental agreement is void and
17 unenforceable if it that allows a landlord in a residential tenancy to do any of the
18 following because a tenant has contacted an entity for law enforcement services,
19 health services, or safety services is void and unenforceable:

20 (e) Threaten to take any action under subs. (1) to (4) pars. (a) to (d).

History: 2007 a. 184.

21 SECTION 3. 704.44 (2m) of the statutes is created to read:

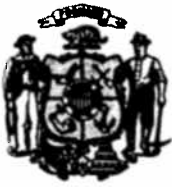


Ins 11-17 contd

✓

- 1 704.44 **(2m)** Any landlord that includes a provision specified in sub. (1m) in a
- 2 rental agreement may be required to forfeit not more than \$500.

(END OF INSERT 11-17)



SENATE AMENDMENT,
TO 2011 SENATE BILL 466

in this section

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 2: after that line insert:

3 ~~SECTION 4m.~~ 704.05 (1) of the statutes is amended to read:

4 704.05 (1) WHEN SECTION APPLICABLE. So far as applicable, this section governs
5 the rights and duties of the landlord and tenant in the absence of any inconsistent
6 provision in writing signed by both the landlord and the tenant. ~~This~~ Except as
7 otherwise provided, this section applies to any tenancy.

Insert 5-2

8 2. Page 6, line 9: delete "I" and substitute "Subject to par. (b), if".

9 3. Page 6, line 18: after "appropriation" insert "account".

10 4. Page 6, line 20: delete lines 20 and 21 and substitute:

11 ~~SECTION 10c.~~ 704.05 (5) (b) of the statutes is created to read:

12 704.05 (5) (b) *If property is a manufactured or mobile home.* 1. In this
13 paragraph:



Insert 6-21 (102)

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

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

4 2. If the abandoned personal property is a manufactured home or mobile home,
5 before disposing of the abandoned property the landlord shall give the tenant and
6 any documented secured party notice, personally or by regular or certified mail
7 addressed to the tenant's or secured party's last-known address, of the landlord's
8 intent to dispose of the property by sale or other appropriate means. If the landlord
9 disposes of the property by private or public sale, storage charges, for purposes of a
10 deduction from the proceeds of the sale, may be determined by the landlord, but may
11 not exceed an amount that is a daily proration of the monthly rent under the tenant's
12 most recent rental agreement.

13 **SECTION 10m.** 704.05 (5) (c) of the statutes is amended to read:"
(end of ins 6-21)

14 **5.** Page 6, line 22: delete "(b)" and substitute "(c)".

15 **6.** Page 8, line 9: delete ", elected public official,".

16 **7.** Page 11, line 25: before "(c)" insert "(b),".

17

(END)

insert 6-21 cont'd (2 of 2)