



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0335/3
PJK&MES:med:jm

steps
13

SENATE SUBSTITUTE AMENDMENT,
TO 2011 SENATE BILL 466

1
steps

pp. 2-5

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

Analysis by the Legislative Reference Bureau

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 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. The substitute amendment also provides that any person who suffers a pecuniary loss from a violation of the requirements related to returning security deposits may sue for twice the amount of his or her pecuniary loss.

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 and that the requirement does not apply to the rental of a plot of ground on which to locate a manufactured or mobile home.

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 manufactured or mobile home or a titled motor vehicle.

removes the provision related to the tenant's responsibility for disposal costs and

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:

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

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

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

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

10 321.62 (15) (a) Notwithstanding ~~ss. 704.05 (5) and s. 704.90~~, no person may
11 enforce a lien for storage of any household goods, furniture, or personal effects of a
12 service member during the period in which the service member is in state active duty
13 and for 90 days after the member’s completion of state active duty, except as
14 permitted by a court order under par. (b).

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

16 **704.02 Severability of rental agreement provisions.** The provisions of a
17 rental agreement are severable. If any provision of a rental agreement is rendered
18 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
19 invalidity or unenforceability of that provision does not affect other provisions of the
20 rental agreement that can be given effect without the invalid provision.

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

22 704.03 (1) ORIGINAL AGREEMENT. ~~A Notwithstanding s. 704.02~~, a lease for more
23 than a year, or a contract to make such a lease, is not enforceable unless it meets the
24 requirements of s. 706.02 and in addition sets forth the amount of rent or other
25 consideration, the time of commencement and expiration of the lease, and a

1 reasonably definite description of the premises, or unless a writing, including by
2 means of electronic mail or facsimile transmission, signed by the landlord and the
3 tenant sets forth the amount of rent or other consideration, the duration of the lease,
4 and a reasonably definite description of the premises and the commencement date
5 is established by entry of the tenant into possession under the writing. Sections
6 704.05 and 704.07 govern as to matters within the scope of such sections and not
7 provided for in such written lease or contract.

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

9 704.05 (1) **WHEN SECTION APPLICABLE.** So far as applicable, this section governs
10 the rights and duties of the landlord and tenant in the absence of any inconsistent
11 provision in writing signed by both the landlord and the tenant. This Except as
12 otherwise provided in this section, this section applies to any tenancy.

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

14 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
15 TENANT.

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

17 704.05 (5) (a) (title) *At the landlord's discretion.*

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

20 704.05 (5) (a) 1. If a tenant removes from the premises and leaves personal
21 property, the landlord may do all of the following: ~~1. Store the personalty, on or off~~
22 ~~the premises, with a lien on the personalty for the actual and reasonable cost of~~
23 ~~removal and storage or, if stored by the landlord, for the actual and reasonable value~~
24 ~~of storage. The landlord shall give written notice of the storage to the tenant within~~
25 ~~10 days after the charges begin. The landlord shall give the notice either personally~~

1 or by ordinary mail addressed to the tenant's last known address and shall state the
2 daily charges for storage. The landlord may not include the cost of damages to the
3 premises or past or future rent due in the amount demanded for satisfaction of the
4 lien. The landlord may not include rent charged for the premises in calculating the
5 cost of storage. Medicine and medical equipment are not subject to the lien under
6 this subdivision, and presume, in the absence of a written agreement between the
7 landlord shall promptly return them to and the tenant upon request to the contrary,
8 that the tenant has abandoned the personal property and may dispose of the
9 abandoned personal property in any manner that the landlord, in its sole discretion,
10 determines is appropriate. The tenant is responsible for any costs that the landlord
11 incurs with respect to disposition of the abandoned personal property. ← keep period

12 SECTION 9. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act
13 32, is amended to read:

14 704.05 (5) (a) 2. ~~Give the tenant notice, personally or by ordinary mail~~
15 ~~addressed to the tenant's last known address, of the landlord's intent to dispose of~~
16 ~~the personal property by sale or other appropriate means if the property is not~~
17 ~~repossessed by the tenant. If the tenant fails to repossess the property within 30 days~~
18 ~~after the date of personal service or the date of the mailing of the notice, If the~~
19 ~~landlord may dispose~~ disposes of the property by private or public sale ~~or any other~~
20 ~~appropriate means. The, the~~ landlord may ~~deduct from~~ send the proceeds of the sale
21 minus any costs of sale and any storage charges if the landlord has first stored the
22 ~~personalty under subd. 1. If the proceeds minus the costs of sale and minus any~~
23 ~~storage charges are not claimed within 60 days after the date of the sale of the~~
24 ~~personalty, the landlord is not accountable to the tenant for any of the proceeds of the~~
25 ~~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) (b) of the statutes is created to read:

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

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

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

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

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

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

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

20 **SECTION 12.** 704.05 (5) (c) of the statutes is amended to read:

21 704.05 (5) (c) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
22 as provided by this subsection ~~apply~~ applies to any property left on the premises by
23 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~
24 ~~any ownership or security interest, and the~~ The power to dispose under this
25 subsection applies notwithstanding any rights of others existing under any claim of

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

7 **SECTION 13.** 704.05 (5) (cm) of the statutes is created to read:

8 704.05 (5) (cm) *Inapplicability to self-storage facilities.* This subsection does
9 not apply to a lessee of a self-storage unit or space within a self-storage facility
10 under s. 704.90.

11 **SECTION 14.** 704.05 (5) (d) of the statutes is repealed.

12 **SECTION 15.** 704.07 (1) of the statutes is amended to read:

13 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential
14 tenancy if there is no contrary provision in writing signed by both parties and to all
15 residential tenancies. An agreement to waive the requirements of this section in a
16 residential tenancy, including an agreement in a rental agreement, is void. Nothing
17 in this section is intended to affect rights and duties arising under other provisions
18 of the statutes.

19 **SECTION 16.** 704.07 (2) (bm) of the statutes is created to read:

20 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before
21 entering into a rental agreement with or accepting any earnest money or security
22 deposit from the prospective tenant, any building code or housing code violation to
23 which all of the following apply:

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

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

3 3. The violation has not been corrected.

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

5 **SECTION 17.** 704.08 of the statutes is created to read:

6 **704.08 Information check-in sheet.** A landlord shall provide to a new
7 residential tenant when the tenant commences his or her occupancy of the premises
8 a standardized information check-in sheet that contains an itemized description of
9 the condition of the premises at the time of check-in. The tenant shall be given 7 days
10 from the date the tenant commences his or her occupancy to complete the check-in
11 sheet and return it to the landlord. The landlord is not required to provide the
12 information check-in sheet to a tenant upon renewal of a rental agreement. This
13 section does not apply to the rental of a plot of ground on which a manufactured
14 home, as defined in s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05
15 (5) (b) 1. b., may be located.

16 **SECTION 18.** 704.11 of the statutes is amended to read:

17 **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5)~~, 704.90 and
18 779.43 or by express agreement of the parties, the landlord has no right to a lien on
19 the property of the tenant; the common-law right of a landlord to distrain for rent
20 is abolished.

21 **SECTION 19.** 704.17 (2) (d) of the statutes is created to read:

22 704.17 (2) (d) This subsection does not apply to week-to-week or
23 month-to-month tenants.

24 **SECTION 20.** 704.27 of the statutes is amended to read:

1 **704.27 Damages for failure of tenant to vacate at end of lease or after**
2 **notice.** If a tenant remains in possession without consent of the tenant's landlord
3 after expiration of a lease or termination of a tenancy by notice given by either the
4 landlord or the tenant, or after termination by valid agreement of the parties, the
5 landlord ~~may shall, at the landlord's discretion,~~ recover from the tenant damages
6 suffered by the landlord because of the failure of the tenant to vacate within the time
7 required. In absence of proof of greater damages, the landlord ~~may shall~~ recover as
8 minimum damages twice the rental value apportioned on a daily basis for the time
9 the tenant remains in possession. As used in this section, rental value means the
10 amount for which the premises might reasonably have been rented, but not less than
11 the amount actually paid or payable by the tenant for the prior rental period, and
12 includes the money equivalent of any obligations undertaken by the tenant as part
13 of the rental agreement, such as payment of taxes, insurance and repairs. Nothing
14 in this section prevents a landlord from seeking and recovering any other damages
15 to which the landlord may be entitled.

16 **SECTION 21.** 704.28 of the statutes is created to read:

17 **704.28 Withholding from and return of security deposits.** (1) STANDARD
18 WITHHOLDING PROVISIONS. When a landlord returns a security deposit to a tenant after
19 the tenant vacates the premises, the landlord may withhold from the full amount of
20 the security deposit only amounts reasonably necessary to pay for any of the
21 following:

- 22 (a) Tenant damage, waste, or neglect of the premises.
23 (b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.
24 (c) Payment that the tenant owes under the rental agreement for utility service
25 provided by the landlord but not included in the rent.

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

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

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

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

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

24 (4) STATEMENT OF CLAIMS. (a) If a landlord withholds any amount from a
25 security deposit, the landlord shall, within the time specified in sub. (5), deliver or

1 mail to the tenant a written, itemized statement accounting for all amounts
2 withheld. The statement shall describe each item of physical damage or other claim
3 made against the security deposit and the amount that was withheld for the item as
4 reasonable compensation.

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

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

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

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

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

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

23 **(6) RECOVERY FOR PECUNIARY LOSS.** Any person who suffers a pecuniary loss
24 because of a violation of this section may sue for damages in any court of competent
25 jurisdiction to recover twice the amount of the pecuniary loss.

1 **SECTION 22.** 704.44 (title) of the statutes is amended to read:

2 **704.44 (title) Rental Provision in rental agreement that restricts access**
3 **to certain services is void.**

4 **SECTION 23.** 704.44 of the statutes is renumbered 704.44 (1m), and 704.44 (1m)
5 (intro.) and (e), as renumbered, are amended to read:

6 704.44 (1m) (intro.) A provision in a rental agreement is ~~void and~~
7 ~~unenforceable if it~~ that allows a landlord in a residential tenancy to do any of the
8 following because a tenant has contacted an entity for law enforcement services,
9 health services, or safety services is void and unenforceable:

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

11 **SECTION 24.** 704.44 (2m) of the statutes is created to read:

12 704.44 (2m) Any landlord that includes a provision specified in sub. (1m) in a
13 rental agreement may be required to forfeit not more than \$500.

14 **SECTION 25.** 799.40 (1m) of the statutes is created to read:

15 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
16 section against a tenant whose tenancy has been terminated for failure to pay rent,
17 the action under this section may not be dismissed solely because the landlord
18 accepts past due rent from the tenant after the termination of the tenant's tenancy.

19 **SECTION 26. Initial applicability.**

20 (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)
21 (title), (a) (title), (intro.), 1., 2., and 3., (b), (c), and (d), and 704.11 of the statutes first
22 applies to property left behind by a tenant under a tenancy commenced, or a lease
23 entered into or renewed, on the effective date of this subsection.

Kovach, Robert

From: Bob <rtwelch14@yahoo.com>
Sent: Monday, February 27, 2012 10:06 AM
To: Kiesow, Lauren; Kovach, Robert
Subject: Fw: Fwd: SB 466
Attachments: SB 466 additional language.docx

Rob and Lauren,

Below is the complete language and discussion I received from DATCP.

Per our drafting memo, the only thing we were waiting for is this suggested language on keeping the enforcement of the rules intact even though we are copying some of rules into the statutes.

You might check with lrb to make sure they agree that this is what this language accomplishes.

We are good to go on this - along with the other changes to the sub per the previous memo.

Any questions, I'm on my cell: 608 770 9787.

Thanks!

Bob

Sent via BlackBerry by AT&T

From: "Chalmers, Sandy S - DATCP" <Sandy.Chalmers@wisconsin.gov>
Date: Sat, 25 Feb 2012 08:19:52 -0600
To: rtwelch14@yahoo.com<rtwelch14@yahoo.com>
Subject: Fwd: SB 466

----- Forwarded message -----

From: "Ghilardi, David J - DATCP" <David.Ghilardi@Wisconsin.gov>
Date: Fri, Feb 24, 2012 4:36 pm
Subject: SB 466
To: "Chalmers, Sandy S - DATCP" <Sandy.Chalmers@wisconsin.gov>
Cc: "Meany, David V - DATCP" <David.Meany@wisconsin.gov>, "Moll, Keeley A - DATCP" <Keeley.Moll@Wisconsin.gov>, "Reinen, Michelle J - DATCP" <Michelle.Reinen@Wisconsin.gov>

Sandy – I talked with David Meany about this and we have agreed on that the bill should include the creation of a new section of chapter 704 that comes at the end of the chapter:

I think this language asserts how we have thought our rules relates to ch. 704 all along. By putting it in the statute, it protects this from attack. Let me know if you or Michelle want to discuss.

From: Ghilardi, David J - DATCP
Sent: Thursday, February 23, 2012 4:03 PM
To: Chalmers, Sandy S - DATCP
Cc: Meany, David V - DATCP; Moll, Keeley A - DATCP
Subject: SB 466

Sandy –

I talked with Bob Welch this a.m. He clarified that the memo is directed to the LRB drafter instructing the drafter on changes to the substitute amendment. So this is how the substitute amendment will look if it is changed according to the memo:

- ✓• The substitute amendment will continue to remove the requirement that the tenant inform the landlord of need for repair before reporting it to authorities.

- ✓• The substitute amendment will not provide a \$500 forfeiture if the landlord has a lease clause that punishes a tenant for contacting the police or other authorities. Instead, the substitute amendment will say that such a clause will void the entire lease (by exempting it from the provision that says an illegal clause does not void the whole lease).

- ✓• The substitute amendment will no longer add provisions to the security deposit section requiring an itemized statement and providing a right to sue for pecuniary loss.

- ✓• The substitute amendment will continue to add the 7 day requirements for the tenant to complete and return the check-in sheet.

- ✓• The substitute amendment will continue to remove from the bill the tenant's responsibility for disposal costs and adds the manufactured housing provisions.

After reviewing the memo, we then discussed the department's concerns about how SB 466 and our current ch. ATCP 134 would interact. Bob made it clear that the intent of the bill is to allow our rules to continue to apply as written, but that we may not rewrite the rules in any way that conflicts with the provisions in the bill. I said it would be helpful if this were to be made clear in the bill. He said the drafters didn't have any good ideas how to do this, and he suggested I give it a try. I said I would provide suggestions to you and let you decide what you wanted to do with them.

I see our options as follows:

- Add a provision at the end of section 21 of the bill (s. 704.28(6)) which says that "Practices in violation of this section may also constitute unfair methods of competition or unfair trade practices under s. 100.20 except that the department of agriculture, trade and consumer protection may not issue any order or promulgate any rule under s. 100.20(2) that changes rights and duties arising under this section.

- We could repeat the same as above except have it apply to the whole chapter, or selected provisions.

- We could have the above provisions placed in s. 100.20 similar to what we have in s. 100.20(2)(b), creating a para. (c).

- We could forget added language and let sleeping dogs lie.

Let me talk to David M. about this and see if we can give further advice as to which bullet point is the best option.

Amendment MEMO for SB 466 and Substitute Amendment LRBs0335/3

Sub contains 5 sections – change as follows:

- 1 – Leave section in as written
- 2 – Remove this section entirely
- 3 – Remove this section altogether – keep bill language on this issue
- 4 – Leave this section as written
- 5 – Leave this section as written

these 5 points follow the 5 bullet points in the email

In addition we will be seeking clarification from DATCP and Legislative Council on the issue of whether we are in any way cancelling the current rules regarding security deposits by only incorporating SOME of them into the statutes.

① SECTION 27. 704.91 of the statutes is created to read:

704.91 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also constitute unfair methods of competition or unfair trade practices under s. 100.20 except that the department of agriculture, trade and consumer protection may not issue any order or promulgate any rule under s. 100.20(2) that changes any right or duty arising under this chapter.

can't amend

add new

② get rid of 704.07(2)(b)4.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBs0335/4

PJK&MES:med:ja

Termin
Stays

SENATE SUBSTITUTE AMENDMENT,
TO 2011 SENATE BILL 466

by Tues a.m.
D. J. [unclear]

Repealed

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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.

Insert A-1

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 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. The substitute amendment also provides that any person who suffers a pecuniary loss from a violation of the requirements related to returning security deposits may sue for twice the amount of his or her pecuniary loss.

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 and that the requirement does not apply to the rental of a plot of ground on which to locate a manufactured or mobile home.

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 removes the provision related to the tenant's responsibility for disposal costs and provides specific notice requirements if the property that the tenant leaves behind is a manufactured or mobile home or a titled motor vehicle.

Insert A-2

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

1 consideration, the time of commencement and expiration of the lease, and a
2 reasonably definite description of the premises, or unless a writing, including by
3 means of electronic mail or facsimile transmission, signed by the landlord and the
4 tenant sets forth the amount of rent or other consideration, the duration of the lease,
5 and a reasonably definite description of the premises and the commencement date
6 is established by entry of the tenant into possession under the writing. Sections
7 704.05 and 704.07 govern as to matters within the scope of such sections and not
8 provided for in such written lease or contract.

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

10 704.05 (1) **WHEN SECTION APPLICABLE.** So far as applicable, this section governs
11 the rights and duties of the landlord and tenant in the absence of any inconsistent
12 provision in writing signed by both the landlord and the tenant. This Except as
13 otherwise provided in this section, this section applies to any tenancy.

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

15 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
16 TENANT.

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

18 704.05 (5) (a) (title) *At the landlord's discretion.*

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

21 704.05 (5) (a) 1. If a tenant removes from the premises and leaves personal
22 property, the landlord may do all of the following: ~~1. Store the personalty, on or off~~
23 ~~the premises, with a lien on the personalty for the actual and reasonable cost of~~
24 ~~removal and storage or, if stored by the landlord, for the actual and reasonable value~~
25 ~~of storage. The landlord shall give written notice of the storage to the tenant within~~

1 ~~10 days after the charges begin. The landlord shall give the notice either personally~~
2 ~~or by ordinary mail addressed to the tenant's last known address and shall state the~~
3 ~~daily charges for storage. The landlord may not include the cost of damages to the~~
4 ~~premises or past or future rent due in the amount demanded for satisfaction of the~~
5 ~~lien. The landlord may not include rent charged for the premises in calculating the~~
6 ~~cost of storage. Medicine and medical equipment are not subject to the lien under~~
7 ~~this subdivision, and presume, in the absence of a written agreement between the~~
8 ~~landlord shall promptly return them to and the tenant upon request to the contrary,~~
9 ~~that the tenant has abandoned the personal property and may dispose of the~~
10 ~~abandoned personal property in any manner that the landlord, in its sole discretion,~~
11 ~~determines is appropriate.~~

12 **SECTION 9.** 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act
13 32, is amended to read:

14 704.05 (5) (a) 2. ~~Give the tenant notice, personally or by ordinary mail~~
15 ~~addressed to the tenant's last known address, of the landlord's intent to dispose of~~
16 ~~the personal property by sale or other appropriate means if the property is not~~
17 ~~repossessed by the tenant. If the tenant fails to repossess the property within 30 days~~
18 ~~after the date of personal service or the date of the mailing of the notice, If the~~
19 ~~landlord may dispose disposes of the property by private or public sale or any other~~
20 ~~appropriate means. The, the landlord may deduct from send the proceeds of the sale~~
21 ~~minus any costs of sale and any storage charges if the landlord has first stored the~~
22 ~~personalty under subd. 1. If the proceeds minus the costs of sale and minus any~~
23 ~~storage charges are not claimed within 60 days after the date of the sale of the~~
24 ~~personalty, the landlord is not accountable to the tenant for any of the proceeds of the~~
25 ~~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) (b) of the statutes is created to read:

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

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

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

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

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

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

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

20 **SECTION 12.** 704.05 (5) (c) of the statutes is amended to read:

21 704.05 (5) (c) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
22 as provided by this subsection ~~apply~~ applies to any property left on the premises by
23 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~
24 ~~any ownership or security interest, and the~~ The power to dispose under this
25 subsection applies notwithstanding any rights of others existing under any claim of

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

7 **SECTION 13.** 704.05 (5) (cm) of the statutes is created to read:

8 704.05 (5) (cm) *Inapplicability to self-storage facilities.* This subsection does
9 not apply to a lessee of a self-storage unit or space within a self-storage facility
10 under s. 704.90.

11 **SECTION 14.** 704.05 (5) (d) of the statutes is repealed.

12 **SECTION 15.** 704.07 (1) of the statutes is amended to read:

13 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential
14 tenancy if there is no contrary provision in writing signed by both parties and to all
15 residential tenancies. An agreement to waive the requirements of this section in a
16 residential tenancy, including an agreement in a rental agreement, is void. Nothing
17 in this section is intended to affect rights and duties arising under other provisions
18 of the statutes.

19 **SECTION 16.** 704.07 (2) (bm) of the statutes is created to read:

20 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before
21 entering into a rental agreement with or accepting any earnest money or security
22 deposit from the prospective tenant, any building code or housing code violation to
23 which all of the following apply:

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

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

3 3. The violation has not been corrected.

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

5 **SECTION 17.** 704.08 of the statutes is created to read:

6 **704.08 Information check-in sheet.** A landlord shall provide to a new
7 residential tenant when the tenant commences his or her occupancy of the premises
8 a standardized information check-in sheet that contains an itemized description of
9 the condition of the premises at the time of check-in. The tenant shall be given 7 days
10 from the date the tenant commences his or her occupancy to complete the check-in
11 sheet and return it to the landlord. The landlord is not required to provide the
12 information check-in sheet to a tenant upon renewal of a rental agreement. This
13 section does not apply to the rental of a plot of ground on which a manufactured
14 home, as defined in s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05
15 (5) (b) 1. b., may be located.

16 **SECTION 18.** 704.11 of the statutes is amended to read:

17 **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5)~~, 704.90 and
18 779.43 or by express agreement of the parties, the landlord has no right to a lien on
19 the property of the tenant; the common-law right of a landlord to distrain for rent
20 is abolished.

21 **SECTION 19.** 704.17 (2) (d) of the statutes is created to read:

22 704.17 (2) (d) This subsection does not apply to week-to-week or
23 month-to-month tenants.

24 **SECTION 20.** 704.27 of the statutes is amended to read:

1 **704.27 Damages for failure of tenant to vacate at end of lease or after**
 2 **notice.** If a tenant remains in possession without consent of the tenant's landlord
 3 after expiration of a lease or termination of a tenancy by notice given by either the
 4 landlord or the tenant, or after termination by valid agreement of the parties, the
 5 landlord ~~may shall, at the landlord's discretion,~~ recover from the tenant damages
 6 suffered by the landlord because of the failure of the tenant to vacate within the time
 7 required. In absence of proof of greater damages, the landlord ~~may shall~~ recover as
 8 minimum damages twice the rental value apportioned on a daily basis for the time
 9 the tenant remains in possession. As used in this section, rental value means the
 10 amount for which the premises might reasonably have been rented, but not less than
 11 the amount actually paid or payable by the tenant for the prior rental period, and
 12 includes the money equivalent of any obligations undertaken by the tenant as part
 13 of the rental agreement, such as payment of taxes, insurance and repairs. Nothing
 14 in this section prevents a landlord from seeking and recovering any other damages
 15 to which the landlord may be entitled.

16 **SECTION 21.** 704.28 of the statutes is created to read:

17 **704.28 Withholding from and return of security deposits.** (1) STANDARD
 18 WITHHOLDING PROVISIONS. When a landlord returns a security deposit to a tenant after
 19 the tenant vacates the premises, the landlord may withhold from the full amount of
 20 the security deposit only amounts reasonably necessary to pay for any of the
 21 following:

22 (a) Tenant damage, waste, or neglect of the premises.

23 (b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

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

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

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

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

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

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

24 (4) STATEMENT OF CLAIMS. (a) If a landlord withholds any amount from a
25 security deposit, the landlord shall, within the time specified in sub. (5), deliver or

1 mail to the tenant a written, itemized statement accounting for all amounts
2 withheld. The statement shall describe each item of physical damage or other claim
3 made against the security deposit and the amount that was withheld for the item as
4 reasonable compensation.

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

8 ⁽³⁾ 4 ← (5) TIMING FOR RETURN. A landlord shall deliver or mail to a tenant the full
9 amount of any security deposit paid by the tenant, less any amounts that may be
10 withheld under subs. (1) and (2), within 21 days after any of the following:

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

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

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

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

23 (6) RECOVERY FOR PECUNIARY LOSS. Any person who suffers a pecuniary loss
24 because of a violation of this section may sue for damages in any court of competent
25 jurisdiction to recover twice the amount of the pecuniary loss.

1 SECTION 22. 704.44 (title) of the statutes is amended to read:

2 704.44 (title) **Rental Provision in rental agreement that restricts access**
3 **to certain services is void.**

4 SECTION 23. 704.44 of the statutes is renumbered 704.44 (1m), and 704.44 (1m)
5 (intro.) and (e), as renumbered, are amended to read:

6 704.44 (1m) (intro.) ~~A provision in a rental agreement is void and~~
7 ~~unenforceable if it that~~ allows a landlord in a residential tenancy to do any of the
8 following because a tenant has contacted an entity for law enforcement services,
9 health services, or safety services is void and unenforceable:

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

11 SECTION 24. 704.44 (2m) of the statutes is created to read:

12 704.44 (2m) Any landlord that includes a provision specified in sub. (1m) in a
13 rental agreement may be required to ~~forfeit not more than \$500.~~

14 SECTION 25. 799.40 (1m) of the statutes is created to read:

15 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
16 section against a tenant whose tenancy has been terminated for failure to pay rent,
17 the action under this section may not be dismissed solely because the landlord
18 accepts past due rent from the tenant after the termination of the tenant's tenancy.

19 SECTION 26. **Initial applicability.**

20 (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)
21 (title), (a) (title), (intro.), 1., 2., and 3., (b), (c), and (d), and 704.11 of the statutes first
22 applies to property left behind by a tenant under a tenancy commenced, or a lease
23 entered into or renewed, on the effective date of this subsection.

Insert 12-13

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

4 (3) RETURN OF SECURITY DEPOSITS.

5 (a) *Timing for return.* Except as provided in paragraph (b), the treatment of
6 section 704.28 ~~(5)~~⁴ (b) of the statutes first applies to tenants vacating before the
7 termination date of a rental agreement who vacate the premises on the effective date
8 of this paragraph.

9 (b) *Inconsistent provision.* If a rental agreement that is in effect on the effective
10 date of this paragraph contains a provision that is inconsistent with the treatment
11 of section 704.28 ~~(5)~~⁴ (b) of the statutes, the treatment of section 704.28 ~~(5)~~⁴ (b) of the
12 statutes first applies to that rental agreement with respect to the timing of returning
13 a security deposit upon renewal.

14 (4) VOID PROVISION AND SEVERABILITY OF PROVISIONS. The ^{treatment} ~~renumbering and~~
15 amendment of section 704.44 of the statutes, the amendment of section 704.44 (title)
16 of the statutes, and the creation of sections ^e 704.02 and ^e 704.44 (2m) of the statutes
17 first ^o apply to rental agreements that are entered into or renewed on the effective date
18 of this subsection.

19 (END)

applies

-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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INSERT A-1

2. 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 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 and may be severed from the rest of the rental agreement. The substitute amendment returns this provision to current law so that an entire rental agreement is void and unenforceable if it allows a landlord to take any of the specified actions.

(END OF INSERT A-1)

INSERT A-2

6. The bill requires a landlord to disclose to a prospective tenant any uncorrected building code violation that affects the prospective tenant's dwelling unit or a common area of the premises, for which the landlord has received notice from a local housing code enforcement agency, and for which the date for correction is past due. The substitute amendment requires a landlord disclose any uncorrected building code violation that affects the prospective tenant's dwelling unit or a common area of the premises and for which the landlord has received notice from a local housing code enforcement agency, regardless of whether the date for correction is past due.

7. The substitute amendment provides that violations of the landlord/tenant provisions of the statutes may constitute unfair methods of competition or unfair trade practices, but that the Department of Agriculture, Trade and Consumer Protection, which regulates unfair methods of competition and unfair trade practices under a different set of provisions in the statutes, may not issue an order or promulgate an administrative rule under that different set of provisions that changes any rights or duties under the landlord/tenant provisions of the statutes.

(END OF INSERT A-2)

INSERT 12-13

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

2 **704.44 Rental agreement that restricts access to certain services is**

3 **void.** (intro.) ~~A-Notwithstanding s. 704.02,~~ a rental agreement is void and

4 unenforceable if it allows a landlord in a residential tenancy to do any of the following

1 because a tenant has contacted an entity for law enforcement services, health
2 services, or safety services:

3 History: 2007 a. 184.

SECTION 2. 704.95 of the statutes is created to read:

4 **704.95 Practices regulated by the department of agriculture, trade**
5 **and consumer protection.** Practices in violation of this chapter may also
6 constitute unfair methods of competition or unfair trade practices under s. 100.20.
7 However, the department of agriculture, trade and consumer protection may not
8 issue an order or promulgate a rule under s. 100.20 that changes any right or duty
9 arising under this chapter.

(END OF INSERT 12-13)

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

LRBs0335/4dn

PJK:/.....

Date

med

In new proposed s. 704.95, I thought it best not to limit the orders or rules to those issued or promulgated under s. 100.20 (2), since the entire section may be the source of authority for issuing orders and promulgating rules.

Please note that, in addition to the requested changes, I added, "Except as provided in sub. (3)," to the beginning of proposed s. 704.28 (1) (a).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

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

LRBs0335/4dn
PJK:med:ph

February 27, 2012

In new proposed s. 704.95, I thought it best not to limit the orders or rules to those issued or promulgated under s. 100.20 (2), since the entire section may be the source of authority for issuing orders and promulgating rules.

Please note that, in addition to the requested changes, I added, "Except as provided in sub. (3)," to the beginning of proposed s. 704.28 (1) (a).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

meeting 2-28

3 additions to sub

- ① add that if pers property left behind & prescription medicine or ^{prescription} medical equipment, it must hold for 7 days before disposing
- ② add another factor for dislodging building code violation: violation presents a significant threat to tenant's health or safety
- ③ add ch 134.08 admin code provision to provision that a lease is void if it includes any of these provisions
- ④ for disposal of property initial ap, make it apply to prop left behind (not new leases, etc.)



State of Wisconsin
2011 - 2012 LEGISLATURE



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SENATE SUBSTITUTE AMENDMENT,
TO 2011 SENATE BILL 466

needed
by 8:30am
Wed
(in Tues. pm)

SAW

regenerate ↓

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

Analysis by the Legislative Reference Bureau

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. 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 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 and may be severed from the rest of the rental agreement. The substitute amendment returns this provision to current law so that an entire rental agreement is void and unenforceable if it allows a landlord to take any of the specified actions.

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 re-rents 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.

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 and that the requirement does not apply to the rental of a plot of ground on which to locate a manufactured or mobile home.

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 disposal of the property. The substitute amendment removes the provision related to the tenant's responsibility for disposal costs and provides specific notice requirements if the property that the tenant leaves behind is a manufactured or mobile home or a titled motor vehicle.

6. The bill requires a landlord to disclose to a prospective tenant any uncorrected building code violation that affects the prospective tenant's dwelling unit or a common area of the premises, for which the landlord has received notice from a local housing code enforcement agency, and for which the date for correction is past due. The substitute amendment requires a landlord disclose any uncorrected building code violation that affects the prospective tenant's dwelling unit or a common area of the premises and for which the landlord has received notice from a

local housing code enforcement agency, regardless of whether the date for correction is past due.

7. The substitute amendment provides that violations of the landlord/tenant provisions of the statutes may constitute unfair methods of competition or unfair trade practices, but that the Department of Agriculture, Trade and Consumer Protection, which regulates unfair methods of competition and unfair trade practices under a different set of provisions in the statutes, may not issue an order or promulgate an administrative rule under that different set of provisions that changes any rights or duties under the landlord/tenant provisions of the statutes.

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:

1 **704.02 Severability of rental agreement provisions.** The provisions of a
2 rental agreement are severable. If any provision of a rental agreement is rendered
3 void or unenforceable by reason of any statute, rule, regulation, or judicial order, the
4 invalidity or unenforceability of that provision does not affect other provisions of the
5 rental agreement that can be given effect without the invalid provision.

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

7 **704.03 (1) ORIGINAL AGREEMENT.** ~~A Notwithstanding s. 704.02, a lease for more~~
8 than a year, or a contract to make such a lease, is not enforceable unless it meets the
9 requirements of s. 706.02 and in addition sets forth the amount of rent or other
10 consideration, the time of commencement and expiration of the lease, and a
11 reasonably definite description of the premises, or unless a writing, including by
12 means of electronic mail or facsimile transmission, signed by the landlord and the
13 tenant sets forth the amount of rent or other consideration, the duration of the lease,
14 and a reasonably definite description of the premises and the commencement date
15 is established by entry of the tenant into possession under the writing. Sections
16 704.05 and 704.07 govern as to matters within the scope of such sections and not
17 provided for in such written lease or contract.

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

19 **704.05 (1) WHEN SECTION APPLICABLE.** So far as applicable, this section governs
20 the rights and duties of the landlord and tenant in the absence of any inconsistent
21 provision in writing signed by both the landlord and the tenant. ~~This~~ Except as
22 otherwise provided in this section, this section applies to any tenancy.

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

24 **704.05 (5) (title)** ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY
25 TENANT.

1 SECTION 7. 704.05 (5) (a) (title) of the statutes is repealed and recreated to read:
2 704.05 (5) (a) (title) *At the landlord's discretion.*

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

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

subject to par. (am) 5

21 SECTION 9. 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act
22 32, is amended to read:

23 704.05 (5) (a) 2. ~~Give the tenant notice, personally or by ordinary mail~~
24 ~~addressed to the tenant's last known address, of the landlord's intent to dispose of~~
25 ~~the personal property by sale or other appropriate means if the property is not~~

1 ~~repossessed by the tenant. If the tenant fails to repossess the property within 30 days~~
 2 ~~after the date of personal service or the date of the mailing of the notice, If the~~
 3 ~~landlord may dispose~~ disposes ~~of the property by private or public sale or any other~~
 4 ~~appropriate means. The, the~~ landlord may deduct from send the proceeds of the sale
 5 minus any costs of sale and any storage charges if the landlord has first stored the
 6 personalty under subd. 1. ~~If the proceeds minus the costs of sale and minus any~~
 7 ~~storage charges are not claimed within 60 days after the date of the sale of the~~
 8 ~~personalty, the landlord is not accountable to the tenant for any of the proceeds of the~~
 9 ~~sale or the value of the property. The landlord shall send the proceeds of the sale~~
 10 ~~minus the costs of the sale and minus any storage charges to the department of~~
 11 ~~administration for deposit in the appropriation under s. 20.505 (7) (h).~~

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

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

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

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

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

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

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

Insert 6-12



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

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

5 **SECTION 12.** 704.05 (5) (c) of the statutes is amended to read:

6 704.05 (5) (c) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose
7 as provided by this subsection ~~apply~~ applies to any property left on the premises by
8 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~
9 ~~any ownership or security interest, and the~~ The power to dispose under this
10 subsection applies notwithstanding any rights of others existing under any claim of
11 ownership or security interest, but is subject to s. 321.62. The tenant or any secured
12 party has the right to redeem the property at any time before the landlord has
13 disposed of it or entered into a contract for its disposition by payment of ~~the landlord's~~
14 ~~charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any
15 expenses that the landlord has incurred with respect to the disposition of the
16 property.

17 **SECTION 13.** 704.05 (5) (cm) of the statutes is created to read:

18 704.05 (5) (cm) *Inapplicability to self-storage facilities.* This subsection does
19 not apply to a lessee of a self-storage unit or space within a self-storage facility
20 under s. 704.90.

21 **SECTION 14.** 704.05 (5) (d) of the statutes is repealed.

22 **SECTION 15.** 704.07 (1) of the statutes is amended to read:

23 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential
24 tenancy if there is no contrary provision in writing signed by both parties and to all
25 residential tenancies. An agreement to waive the requirements of this section in a

1 residential tenancy, including an agreement in a rental agreement, is void. Nothing
2 in this section is intended to affect rights and duties arising under other provisions
3 of the statutes.

4 SECTION 16. 704.07 (2) (bm) of the statutes is created to read:

5 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before
6 entering into a rental agreement with or accepting any earnest money or security
7 deposit from the prospective tenant, any building code or housing code violation to
8 which all of the following apply:

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

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

Subject 8-12

13 4 ← 3. The violation has not been corrected.

✓
✗

14 SECTION 17. 704.08 of the statutes is created to read:

15 704.08 Information check-in sheet. A landlord shall provide to a new
16 residential tenant when the tenant commences his or her occupancy of the premises
17 a standardized information check-in sheet that contains an itemized description of
18 the condition of the premises at the time of check-in. The tenant shall be given 7 days
19 from the date the tenant commences his or her occupancy to complete the check-in
20 sheet and return it to the landlord. The landlord is not required to provide the
21 information check-in sheet to a tenant upon renewal of a rental agreement. This
22 section does not apply to the rental of a plot of ground on which a manufactured
23 home, as defined in s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05
24 (5) (b) 1. b., may be located.

25 SECTION 18. 704.11 of the statutes is amended to read:

1 **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5)~~, 704.90 and
2 779.43 or by express agreement of the parties, the landlord has no right to a lien on
3 the property of the tenant; the common-law right of a landlord to distrain for rent
4 is abolished.

5 **SECTION 19.** 704.17 (2) (d) of the statutes is created to read:

6 704.17 (2) (d) This subsection does not apply to week-to-week or
7 month-to-month tenants.

8 **SECTION 20.** 704.27 of the statutes is amended to read:

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

24 **SECTION 21.** 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 22. 704.44 (intro.) of the statutes is amended to read:

August 12-5

1 **704.44 Rental agreement that restricts access to certain services is**
 2 **void.** (intro.) ~~A~~ Notwithstanding s. 704.02, a rental agreement is void and
 3 unenforceable if it allows a landlord in a residential tenancy to do any of the following
 4 because a tenant has contacted an entity for law enforcement services, health
 5 services, or safety services:

6 **SECTION 23.** 704.95 of the statutes is created to read:

7 **704.95 Practices regulated by the department of agriculture, trade**
 8 **and consumer protection.** Practices in violation of this chapter may also
 9 constitute unfair methods of competition or unfair trade practices under s. 100.20.
 10 However, the department of agriculture, trade and consumer protection may not
 11 issue an order or promulgate a rule under s. 100.20 that changes any right or duty
 12 arising under this chapter.

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

14 799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this
 15 section against a tenant whose tenancy has been terminated for failure to pay rent,
 16 the action under this section may not be dismissed solely because the landlord
 17 accepts past due rent from the tenant after the termination of the tenant's tenancy.

18 **SECTION 25. Initial applicability.**

19 (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)
 20 (title), (a) (title), (intro.), 1., 2., and 3., ^{(am),} (b), (c), and (d), and 704.11 of the statutes first
 21 applies to property left behind by a tenant under a tenancy commenced, or a lease
 22 entered into or renewed, on the effective date of this subsection.

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

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

2 704.05 (5) (am) *Exception for medical items.* If the personal property that the
3 tenant leaves behind is prescription medication or prescription medical equipment,
4 the landlord shall hold the property for 7 days from the date on which the landlord
5 discovers the property. After that time, the landlord may dispose of the property in
6 the manner that the landlord determines is appropriate, but shall promptly return
7 the property to the tenant if the landlord receives a request for its return before the
8 landlord disposes of it.

(END OF INSERT 6-12)

INSERT 8-12

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

(END OF INSERT 8-12)

INSERT 12-5

11 SECTION 2. 704.44 (intro.) of the statutes is amended to read:

12 **704.44 Rental agreement that restricts access to contains certain**
13 **services provisions is void.** (intro.) A Notwithstanding s. 704.02, a rental
14 agreement is void and unenforceable if it allows does any of the following:

15 (1m) Allows a landlord in a residential tenancy to do any of the following
16 because a tenant has contacted an entity for law enforcement services, health
17 services, or safety services:

History: 2007 a. 184.

18 SECTION 3. 704.44 (1) of the statutes is renumbered 704.44 (1m) (a).

Insert 12-5 cont'd 3 of 3

1 704.44 (6) States that the landlord is not liable for property damage or personal
2 injury caused by negligent acts or omissions of the landlord. This subsection does
3 not affect ordinary maintenance obligations of a tenant under s. 704.07 or assumed
4 by a tenant under a rental agreement or other written agreement between the
5 landlord and the tenant.

6 **SECTION 13.** 704.44 (7) of the statutes is created to read:

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

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

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

13 **SECTION 14.** 704.44 (8) of the statutes is created to read:

14 704.44 (8) Waives any statutory or other legal obligation on the part of the
15 landlord to deliver the premises in a fit or habitable condition or to maintain the
16 premises during the tenant's tenancy.

(END OF INSERT 12-5)