

No. 611, S.]

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CHAPTER 597.

AN ACT to repeal and recreate 234.26 of the statutes, relating to the emergency control of rents and evictions from housing accommodations, and providing a penalty.

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

234.26 of the statutes is repealed and recreated to read:

234.26 EMERGENCY CONTROL OF RENTALS. (1) DECLARATION OF PUBLIC EMERGENCY. (a) The legislature of 1947 in the enactment of Chapter 442, Laws of 1947, made findings and a declaration as to the existence, causation, extent and results of an emergency relative to the shortage of housing accommodations in the state and the public emergency resulting therefrom.

(b) The legislature of 1949 hereby declares that while such emergency is less serious at the present time it has not completely passed in the defense-rental areas in the state; that the federal government has and is presently exercising controls over rentals of and evic-

tions from housing facilities in such areas; that the problems which presently exist in respect to housing accommodations in this state can best be dealt with by state regulation; that all controls over rentals and evictions should be terminated at the earliest date which will not jeopardize the public health, safety and welfare; that a present cessation of all controls over rentals and evictions might result in undue hardship and cause some threat to the public health, safety and welfare; that state regulation and control of rentals and evictions in such defense-rental areas for a definite but limited period hereafter will provide a reasonable time for such economic and social adjustments as will warrant a complete cessation of all controls over such rentals and evictions thereafter; that the period ending June 1, 1950 is such a reasonable time; that it is therefore imperative that the state of Wisconsin provide regulation and control of rentals of and evictions from housing accommodations in the defense-rental areas in this state which are now subject to federal rent control; and that the provisions of this section are necessary and designed to protect the public health, safety and welfare.

(c) It is hereby further expressly declared that it is the intent of the legislature that this section provides state rent control which, pursuant to the provisions of section 204 (j) (1) of the Housing and Rent Act of 1947 as added thereto by section 203 (h) of the Housing and Rent Act of 1949, shall be in lieu of Federal rent control with respect to housing accommodations within defense-rental areas in the state of Wisconsin.

(2) DEFINITIONS. When used in this section, unless a different meaning clearly appears from the context:

(a) "Housing accommodation" includes any building, structure, trailer or trailer space, or part thereof, occupied or intended to be occupied by one or more individuals as a residence, home, sleeping place, boarding house, or lodging house, together with the land and buildings appurtenant thereto, and all services, privileges, furnishings, furniture and facilities in connection with the occupation thereof, but does not include a hospital, convent, dormitory, dwelling situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon; dwelling space occupied by domestic servants, caretakers, managers or other employes to whom the space is provided as part or all of their compensation and who are employed for the purpose or rendering services in connection with the premises of which the dwelling space is a part; hotel accommodations; and dwelling accommodations used for summer or winter resort purposes and customarily rented or occupied on a seasonal basis.

(b) "Defense-rental area" means any area designated by federal rent control authorities as an area wherein abnormal conditions have resulted or threaten to result in rents for housing accommodations and in which maximum legal rentals fixed by federal rent control authorities were operative on the last day prior to the date this section becomes effective.

(c) "Rent" means the consideration, including any bonus, benefit or gratuity, demanded, accepted or received for or in connection with the use or occupancy of housing accommodations or the transfer of a lease of such housing accommodations.

(d) "Owner occupancy" means occupancy, in good faith and not for the purpose of circumventing a tenancy theretofore existing, (1) by the owner for his immediate and personal use and occupancy, whether as a housing accommodation or for use by such owner for commercial or business operations carried on by him, or (2) by a member of the immediate family of the owner for immediate and personal use and occupancy as a housing accommodation. For the purposes of this subsection only, the term "immediate family" includes only a son, son-in-law, daughter, daughter-in-law, father, father-in-law, mother, mother-in-law, step child or adopted child and they need not be residing with the owner to come within such classification.

(e) "Owner" means any person who has acquired title (legal or equitable) to the housing accommodation and has made a bona fide payment of not less than 20 per cent of the purchase price thereof. Any credit extended by or guarantee of credit granted by the federal administration of veterans' affairs under Title III of the Servicemen's Readjustment Act of 1944, as amended, or by the state board of veterans' affairs shall be deemed a bona fide payment under this paragraph. "Owner" may include joint tenants or tenants in common. "Owner" includes also the lessee or his assignee of a valid and existing lease of housing accommodations who has lawfully sublet the same or any part thereof, and also a person who has fee title to the housing accommodations acquired by bona fide gift not made for the purpose of circumventing a tenancy theretofore existing.

(f) "Hotel" means any establishment containing housing accommodations, which on June 30, 1947 was commonly known as a hotel in the community in which it is located and was occupied by an appreciable number of persons who were provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service.

(3) MAXIMUM RENT. (a) On and after the effective date of this section the maximum rent of housing accommodations legally chargeable therefor is the maximum amount of rent fixed by or pursuant to federal rent control for such premises on the day previous to the day this section takes effect, subject to the following:

A tenant who entered into a lease of the housing accommodation pursuant to the provisions of the Housing and Rent Act of 1947 or the Housing and Rent Act of 1948 at a rental not to exceed 15 per cent above the maximum rent otherwise chargeable or a tenant of the housing accommodations during the time such a lease could be validly entered into under said federal acts who was not tendered or offered such a lease by the owner, may not be charged any increase hereunder except (1) pursuant to a written lease providing therefor which expires on or after December 31, 1950 covering the accommodations entered into after the effective date of this section or (2) after such a written lease has been duly tendered or offered to him by the owner after the effective date of this section and such tenant refuses or fails to enter into such lease within 10 days after such lease is offered or tendered to him. Such a lease shall contain a provision for cancellation thereof by the tenant upon 30 days' written notice, but may not contain any provisions for cancellation by the lessor except for violation of terms of the lease and also in the event of a bona fide sale, not made to circumvent the tenancy, upon 60 days' written notice.

1. Plus 15 per cent of said base amount as to any tenant who was in occupancy of the housing accommodation any time subsequent to June 30, 1947 and refused or failed to enter into a written lease of the accommodation at rental of not to exceed 15 per cent above the maximum rent otherwise chargeable, as permitted by the Housing and Rent Act of 1947 and the Housing and Rent Act of 1948, if such a lease was duly tendered or offered to him by the owner.

2. Plus 15 per cent of said base amount as to all tenants, which may be charged only (1) pursuant to a written lease covering the accommodations providing therefor entered into after the effective date of this section and expiring on or after December 31, 1950, or (2) after such a written lease has been duly tendered or offered to him by the owner after the effective date of this section and such tenant refuses or fails to enter into such lease within 10 days after such lease is offered or tendered to him. Such a lease shall contain a provision for cancellation thereof by the tenant upon 30 days' written notice, but may not contain any provisions for cancellation by the lessor except for violation of terms of the lease and also in the event of a bona fide sale, not made to circumvent the tenancy, upon 60 days' written notice. The increase permitted under this subdivision shall be in addition to the increase provided in subdivision 1 of this paragraph and shall be applicable to tenants subject to the increase therein set forth.

(b) The maximum rent of a housing accommodation with respect to which a valid lease was entered into in accordance with and as permitted by the provisions of the Housing and Rent Act of 1947 and of the Housing and Rent Act of 1948, shall be the amount of the rent set forth in such lease or the amount fixed by the federal rent control authorities as the maximum rent for such accommodations on the day previous to the date this section takes effect, whichever is the greater, and the additional increases provided in subdivisions 1 and 2 of paragraph (a) of this subsection shall be applicable thereto.

(c) The maximum rent for a trailer or trailer space shall be the amount of rent legally charged therefor on June 30, 1947, or if not rented on that date then the amount of rent charged therefor when first rented thereafter. The additional increase provided in subdivisions 1 and 2 of paragraph (a) of this subsection shall be applicable thereto.

(d) The maximum rent hereinbefore provided shall be applicable to housing accommodations notwithstanding the conversion or division thereof into small units, unless in the conversion or division thereof there has been substantial alteration, remodeling or construction.

(e) Nothing in the provisions of this section shall operate to authorize any increase or change in the rent chargeable during the term of any lease, except by voluntary agreement of the parties thereto or after termination of such lease.

(f) Nothing in this section shall preclude the receipt by a landlord or the payment by a tenant of rent of housing accommodations which is in excess of the maximum rent specified in this subsection, provided such rent is pursuant to a lease which expires on or after June 30, 1951 covering the premises which the landlord and tenant voluntarily entered into in good faith after the effective date of this section. Such lease shall contain a provision for cancellation thereof by the tenant upon 30 days' written notice, but may not contain any provisions for cancellation by the lessor except for violation of terms of the lease and also in the event of a bona fide sale, not made to circumvent the tenancy, upon 60 days' written notice.

(g) No rent shall be demanded, received, accepted or paid for a housing accommodation in excess of the maximum rent provided in this subsection, except where paid pursuant to a lease entered into as stated in paragraph (f) of this subsection. Substantially the same service, privileges, furnishings, furniture and facilities supplied in connection with the occupation of housing accommodations shall be maintained and continued as were furnished on the last day previous to the day this section takes effect.

(h) Any person who accepts or receives any payment of rent in excess of the maximum rent provided in this section (excluding rent paid pursuant to a lease entered into as stated in paragraph (f) of this subsection) shall be liable to the person from whom he accepts or receives such payment for liquidated damages of either \$25 or double the amount by which the payment or payments accepted or received exceed the maximum rent which could lawfully be accepted or received under the provisions of this section, whichever may be the greater amount, provided that such liquidated damages shall be only the amount of the overcharge or overcharges if the defendant proves that the acceptance or receipt of such excessive rent was neither wilful nor the result of failure to take practical precautions against occurrence of such violation. In any action for such damages the plaintiff, if he prevails, shall also recover taxable costs and disbursements, which shall include reasonable attorney's fee in an amount that shall be fixed by the court in such action. Action under this paragraph must be brought within 1 year after the violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this paragraph, all violations alleged in such action which were committed by the defendant with respect to the plaintiff within the one-year period immediately prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted or received in connection with all violations. A judgment in an action under this paragraph shall be a bar to a recovery under this paragraph in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

(4) The provisions of this section shall apply only to housing accommodations as to which the rent chargeable therefor was fixed by federal rent control authorities and in effect on May 1, 1949 or as to which the rent chargeable therefor on May 1, 1949 was determined and fixed by the provisions of the Federal Housing and Rent Act of 1949. The provisions of this section shall also apply to housing accommodations as to which a valid written lease was entered into in accordance with and pursuant to the provisions of the Housing and Rent Act of 1947, the Housing and Rent Act of 1948, and the Housing and Rent Act of 1949, or any of said Acts. This section shall not apply to any property which was rented for the first time after February 1, 1947, notwithstanding that the same may have been subject to federal rent control under the provisions of the Federal Housing and Rent Act of 1949 on May 1, 1949. This section shall not apply to property owned by the state or any county, city, village or town.

(5) On and after the day this section takes effect no tenant of a housing accommodation who entered into possession with the consent or permission of the landlord shall be evicted therefrom except when such tenant:

(a) Fails to pay rent which is not in excess of the maximum rent lawfully chargeable under the provisions of this section.

(b) Has violated a substantial obligation of the terms of his tenancy (other than an obligation to pay rent higher than that permitted under this section or an obligation to surrender possession) and has continued such violation after receipt of a written notice that such violation must cease. Subletting all or part of a housing accommodation by the tenant without the written consent of the landlord shall constitute a violation of a substantial obligation of the terms of tenancy. For the purposes of this paragraph subletting shall include the renting or permitting any person to occupy or use any part of or all of a housing accommodation, for the payment of any rent, unless the same is expressly permitted under the terms of the tenancy.

(c) Is committing or permitting a nuisance on or about the housing accommodation or is using the same predominantly for other than living or dwelling purposes unless expressly permitted by the terms of the tenancy, and such nuisance or use of the housing accommodation continues after receipt of a written notice that the same must cease, or is using or permitting a use of such housing accommodation for an immoral or unlawful purpose or has committed or permitted waste on or about the housing accommodation.

(d) Fails or refuses to surrender possession for bona fide owner occupancy after 60 days' written notice by the owner to such tenant to surrender the premises, given as provided in section 234.04. Transfer from other accommodation owned by the owner shall not be deemed bona fide owner occupancy unless the tenant is offered at the time of

notice such accommodation vacated by the owner at a rent proportionately comparable to the rent of the accommodation covered by the notice. No such notice shall be valid unless the person giving it was at that time an owner as defined in paragraph (e) of subsection (2) and it includes a sworn statement showing that he is such owner and that said notice is not given to circumvent the existing tenancy.

(e) Unreasonably interferes with the peaceable possession or quiet of other residents in the same building.

(f) Fails or refuses to surrender possession to the holder of a certificate authorizing eviction which was issued prior to the effective date of this section by federal rent control authorities pursuant to the rules and regulations issued on March 31, 1949 by the federal Housing Expediter under the provisions of the Housing and Rent Act of 1949, and where the period of time specified in such certificate has expired, and due and proper notice of termination of the tenancy has been given in accordance with section 234.03 or other applicable provision of the statutes.

(g) Fails or refuses to surrender possession for the purpose of substantially altering, remodeling or demolishing the housing accommodation after a 60 days' written notice by the owner to such tenant to surrender the premises for such purposes, given as provided in section 234.04. No such notice shall be valid unless it contains a sworn statement that the necessary permit or approval required by local law, ordinance or regulation for the proposed alteration, remodeling or demolition, or if new construction is contemplated in the case of demolition then for such new construction, has been obtained and that the same cannot be done with such tenant in occupancy.

(h) Unreasonably refuses the landlord access to the housing accommodations for the purpose of inspection or showing the same to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein, provided such refusal shall not be a ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement.

(i) Fails or refuses to surrender possession after 60 days' written notice to surrender the housing accommodations where the same are a part of a company housing development in which occupancy has customarily been limited to employees of the landlord and the tenant is no longer his employe. Where such tenant voluntarily terminated his employment a notice as provided in section 234.03 for the eviction from such housing accommodations shall be sufficient.

(j) Fails or refuses to surrender possession for bona fide owner occupancy by the purchaser of the premises after 60 days' written notice by such purchaser to such tenant to surrender the premises given as provided in Section 234.04. No such notice shall be valid unless the person giving it (1) was at that time one who has purchased the premises within 30 days prior to the giving of such notice and qualifies as an owner under the provisions of paragraph (e) of subsection (2) hereof; or (2) has an enforceable contract to purchase the housing accommodation entered into not more than 90 days prior to the giving of such notice under which he qualifies as an owner under the provisions of paragraph (e) of subsection (2) and is entitled to possession of the premises or will become entitled to possession of the premises prior to the expiration of the 60 days' notice; and (3) seeks in good faith to recover possession thereof for his own immediate and personal use and occupancy as housing accommodations or for the immediate and personal use and occupancy as housing accommodations by a member or members of his immediate family as defined in paragraph (d) of subsection (2) hereof; and (4) such notice includes a sworn statement showing the foregoing and that said notice is not given to circumvent the existing tenancy.

(k) Fails or refuses to surrender possession after a 60 days' written notice by the owner to such tenant to surrender the premises, given as provided in section 234.04, where the owner seeks in good faith to recover possession of the housing accommodations for the immediate purpose of (1) making a permanent conversion to commercial use or (2) personally making a permanent use of them for nonhousing purposes or (3) permanently withdrawing them from both the housing and nonhousing rental markets without any intent to sell the housing accommodations. No such notice shall be valid unless the person giving it was at the time the owner as defined in paragraph (e) of subsection (2) and it includes a sworn statement showing that he is such owner and that he seeks recovery of possession upon one or more of the grounds set forth in this paragraph.

(l) After this section takes effect no eviction proceeding involving a housing accommodation in respect to which this section is operative shall be predicated upon any notice of termination of tenancy given prior to said date, except a notice given under paragraph (f) of this subsection or a notice given prior to the effective date of this

section which was given pursuant to and in conformity with the provisions of section 234.26 as created by Chapters 442 and 614, Laws of 1947.

(m) In all eviction proceedings under this section termination of tenancy shall be required. The time and manner of giving notice thereof shall be as provided in section 234.03 or other applicable provision of the statutes, except that the time of notice in proceedings under paragraphs (d), (g), (i), (j) and (k) of this subsection shall be as prescribed therein.

(n) Any person who shall make a statement required in any notice under any of the provisions of this section which is false shall be subject to the penalties provided in section 346.02.

(o) Eviction under paragraphs (d), (f), (g), (j) or (k) of this subsection shall not subject the tenant to liability under section 291.10.

(p) No notice under this subsection shall be deemed insufficient or invalid because of an inaccuracy or failure therein in stating time or dates or in describing the premises, if it shall appear there was no intention on the part of the one giving such notice to mislead the tenant and that the tenant was not in fact misled thereby.

(q) In any eviction proceeding under this section which is contested proof of service of notice required by this section shall not constitute proof of the facts requisite for eviction upon any of the grounds set forth in this section.

(6) During the time this section is operative in respect to a housing accommodation:

(a) An eviction proceeding in respect thereto may be brought before a justice of the peace under chapter 291 as modified by this section or in a court of record;

(b) Justices of the peace and courts of record are hereby granted jurisdiction in such matters; and

(c) The procedure in respect to such evictions in a court of record shall be the same as provided in chapter 291 with only such changes as may be necessary to adapt the same to proceeding in a court of record. The jurisdiction hereby granted to courts of record shall also extend to the disposition of a proceeding commenced in such court prior to the date on which this section becomes inoperative as to the housing accommodation involved therein.

(d) In the discretion of the justice of the peace or the judge, the complaint may be amended to show facts which existed at the time of the filing thereof.

(7) The governing body of any city or village, and the town board of any town, is empowered to hold a public hearing as to whether there exists such a shortage in housing accommodations therein as to require control of rents of and evictions from housing accommodations, and if as a result of such hearing it makes a finding that such a shortage no longer exists herein, may adopt a resolution terminating the provisions of this section, and upon the written approval of such resolution by the governor, who is hereby authorized to approve such resolution if it appears to him that said finding is appropriately substantiated by the record of such hearing, the provisions of this section shall cease to be effective in such city, village or town. Notice of such hearing shall be given by the clerk of said city, village or town at least 10 days prior thereto, by publication thereof in at least one newspaper of general circulation in the city, village or town or, if there be no newspaper of general circulation therein, by posting such notice in at least 5 public places in said city, village or town. An official public record, which shall include a stenographic report of the entire proceedings, shall be kept of such hearing and of the action taken at or as a result thereof.

(8) Any waiver of any of the provisions of this section shall be unenforceable and void. To the extent that the provisions of this section are inconsistent with the provisions of any general, special or local law or charter provisions the provisions of this section shall be controlling.

(9) This section shall continue in effect until June 1, 1950.

(10) The county clerk of each county in a defense-rental area at the time this Act takes effect is hereby charged with the duty of administering the provisions of this section to the extent of taking into custody, storing and furnishing access to the records and data used or held by the federal Housing Expediter in connection with the establishment and maintenance of maximum rents in that county. Upon receipt by such clerk of a subpoena issued by a justice of the peace or any court, within such county, before whom a proceeding is pending for eviction of a tenant under the provisions of this section, to transmit such of said data and records as show the establishment by the federal Housing Expediter of maximum rent for the housing accommodations involved in such proceeding, and payment of a fee of \$1.00, the county clerk shall forward the same to such justice of the peace, or the clerk of said court, by personal delivery or by registered mail accompanied by a certificate that the same were included in the records and data of the Housing Expediter, and the same thereupon shall be receivable in evidence in such

proceeding to show the maximum rent fixed by the federal Housing Authorities. When such proceeding is concluded such justice of the peace or the clerk of the court, shall return said data and records to said county clerk by personal delivery or by registered mail and a fee of \$1.00 therefor shall be included in the taxable fees or costs in such proceeding.

(11) If any provision of this section or the application of such provision to any person or circumstances shall be held invalid, the remainder of the section and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Approved July 30, 1949.
