



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 179

**Senate Substitute
Amendment 1, Senate
Amendments 17 and 18, and
Assembly Amendment 1**

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This memorandum describes Senate Substitute Amendment 1 to 2013 Senate Bill 179, as amended by Senate Amendments 17 and 18, relating to landlord-tenant law, small claims actions, and towing of vehicles. In addition, this Memo describes Assembly Amendment 1 to 2013 Senate Bill 179, as passed by the Senate. The section numbers in brackets refer to the sections of Senate Bill 179 that are described under each heading, below.

RESTRICTIONS ON LOCAL ORDINANCES [SECTIONS 1 TO 4]

Under **current law**, a city, village, town, or county (municipality) is prohibited from enacting or enforcing certain ordinances relating to landlords and tenants, such as an ordinance imposing a moratorium on eviction actions or an ordinance that places certain limitations on what information a landlord may obtain and use concerning a prospective tenant. [ss. 66.0104 and 66.1010, Stats.]

Senate Bill 179 additionally prohibits a municipality from enacting or enforcing an ordinance that does any of the following:

- Limits a tenant's responsibility, or a landlord's right to recover, for any damage or waste to, or neglect of, the premises that occurs during the tenant's occupancy of the premises.
- Limits a tenant's responsibility or a landlord's right to recover for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.
- Requires a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law.

- Requires a landlord to communicate to the municipality any information concerning the landlord unless the information is required under federal or state law or is required of all residential real property owners.

Senate Substitute Amendment 1 authorizes a municipality to enact or enforce an ordinance that requires a landlord to communicate to the municipality any information concerning the landlord **if** the information is solely information that will enable a person to contact the owner or, at the option of the owner, an agent of the owner.

Senate Amendment 17 to Senate Substitute Amendment 1 authorizes a municipality to enact or create an ordinance that requires a landlord to communicate information to tenants that is not required to be communicated to tenants under federal or state law **if** the ordinance has a reasonable and clearly defined objective of regulating the manufacture of illegal narcotics.

Assembly Amendment 1 to Senate Bill 179, as passed by the Senate (i.e., as amended by Senate Substitute Amendment 1 and Senate Amendments 17 and 18) modifies the provision described above that generally prohibits a municipality from enacting or enforcing an ordinance requiring a landlord to communicate to the municipality any information concerning the landlord, unless an exception applies. **Assembly Amendment 1** provides that the general prohibition relates to communication to the municipality of any information concerning the landlord **or a tenant**, unless an exception applies.

NOTIFICATION TO A PROSPECTIVE TENANT OF BUILDING CODE OR HOUSING CODE VIOLATIONS [SECTION 11]

Under **current law**, if a landlord has **actual knowledge** of any uncorrected building code or housing code violation in the dwelling unit or a common area that presents a significant threat to the prospective tenant's health or safety, the landlord must disclose the violation to a prospective tenant before entering into a rental agreement or accepting any earnest money or security deposit. [s. 704.07 (2) (bm), Stats.]

Under **Senate Bill 179**, the landlord must disclose the types of violations described above only if he or she has received written notice of the violation from a local housing code enforcement agency.

Senate Substitute Amendment 1 deletes this provision from the bill.

COMMISSION OF CRIMES ON RENTAL PROPERTY [SECTION 18]

Under **current law**, if a lease contains any of a list of prohibited provisions, the lease is void and unenforceable. Among the prohibited provisions is a provision that allows the landlord to terminate the tenancy of a tenant if a crime is committed in or on the rental property, even if the tenant could not reasonably have prevented the crime. [s. 704.44 (9), Stats.]

Senate Bill 179 repeals the provision of current law describe above.

Senate Substitute Amendment 1 replaces the current law provision described above with a provision that states that the lease is void and unenforceable if it contains a provision that allows the

landlord to terminate a tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant, or someone who lawfully resides with the tenant, is the victim of that crime. Victim is defined by reference to s. 950.02 (4), which generally provides that “victim” means a person against whom a crime has been committed, unless he or she is the person charged with or alleged to have committed the crime.

In addition, the substitute amendment requires a lease to include a specified notice, in the lease agreement or an addendum to the lease agreement, of certain domestic abuse protections available under ss. 106.50 (5m) (dm) and 704.16, Stats. The first of these sections prohibits a landlord from evicting a tenant because of the tenant’s status as a victim of domestic abuse, sexual assault, or stalking. The second of these sections provides that a residential tenant may terminate his or her tenancy if the tenant or a child of the tenant faces an imminent threat of serious physical harm from another person if the tenant remains on the premises.

The substitute amendment also provides that a lease is void and unenforceable if it allows the landlord to terminate the tenancy of a tenant for criminal activity in relation to the property and the lease does not include the notice regarding domestic abuse protections described above.

Senate Amendment 18 to Senate Substitute Amendment 1 modifies the language required under the notice of domestic abuse protections. Under Senate Amendment 18, the notice provides that a tenant **has a defense to** an eviction action under the circumstances provided in s. 106.50 (5m) (dm), Stats., instead of providing that a tenant may be able to stop an eviction action under such circumstances.

TERMINATION OF TENANCY IN MOBILE OR MANUFACTURED HOME COMMUNITY FOR THREAT OF SERIOUS HARM [NO PROVISION IN BILL]

Under **current law**, a landlord may terminate the tenancy of a tenant if the tenant commits one or more acts, including verbal threats, that cause another tenant, or a child of that other tenant, who occupies a dwelling unit in the same single-family rental unit, multi-unit dwelling, or apartment complex as the offending tenant, to face an imminent threat of serious physical harm from the offending tenant if the offending tenant remains on the premises. [s. 704.16 (3), Stats.]

Senate Substitute Amendment 1 authorizes a landlord to terminate the tenancy of the tenant of a mobile or manufactured home community who threatens another tenant, or child of another tenant, of the mobile or manufactured home community under the same circumstances, described above.

TIMING OF RETURN OF SECURITY DEPOSIT [SECTIONS 15 AND 16]

Under **current law**, if a tenant is evicted, a landlord must return the security deposit to the tenant, less any amounts that are appropriately withheld, within 21 days after the date on which the writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first. [s. 704.28 (4) (d), Stats.]

Under **Senate Bill 179**, if a tenant is evicted, the landlord must return the security deposit to the tenant within 21 days after the date on which the tenant’s rental agreement terminates or, if the landlord

re-rents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins.

Senate Substitute Amendment 1 provides that the timing of the return of the security deposit depends on whether the tenant is evicted before or after the termination date of the lease. If the tenant is evicted **before** that date, the landlord must return the security deposit within 21 days after the lease terminates or, if the landlord re-rents the premises before that day, the date on which the new tenant's tenancy begins. If the tenant is evicted **after** the termination date, the landlord must return the security deposit within 21 days after the date on which the landlord learns that the tenant has vacated the premises or the date the tenant is removed by eviction.

SERVICE OF SUMMONS IN EVICTION ACTION [SECTION 22]

Under **current law**, under most circumstances, the summons in an eviction action must be personally served upon the defendant (the tenant), unless this cannot be achieved with "reasonable diligence." In this case, the summons may be served by leaving a copy of the summons at the defendant's usual place of abode in the presence of either: (1) a competent member of the family who is at least 14 years old; or (2) a competent adult who resides in the abode of the defendant. The person serving the summons must inform the family member or other person of the contents of the summons. [s. 801.11 (1) (b), Stats.]

Under **Senate Bill 179**, a court may, by rule, authorize the summons in an eviction to be served by regular mail.

Senate Substitute Amendment 1 provides that use of certified mail shall be required for all eviction cases for which service by mail is authorized by a court.

TIMING OF APPEARANCE AND TRIAL IN EVICTION ACTIONS [SECTIONS 20, 23, AND 24]

Under **current law**, the summons in an eviction action specifies the date that the defendant must appear in court. That appearance date must be set at not less than five days or more than 30 days after the summons is issued. [s. 799.05 (3) (b), Stats.] Also, the court generally sets the matter for a trial or hearing when the tenant makes the initial appearance. Current law does not specify the required timing of the trial or hearing. [s. 799.20 (4) and 799.206 (3), Stats.]

Senate Bill 179 changes the appearance date to not less than five days or more than 14 days after the summons is issued. The bill also specifies that the trial or hearing must be scheduled within 20 days after the date of appearance.

Senate Substitute Amendment 1 changes the appearance date to not less than five days or more than 25 days after the summons is issued. The substitute amendment also specifies that a trial or hearing on the issue of possession of the premises involved in the action must be held and completed within 30 days after the date of appearance, and provides that this provision applies only to residential tenancies.

WHO MAY APPEAR IN A SMALL CLAIMS ACTION [SECTION 21]

Under **current law**, in any small claims action, a person may commence and prosecute or defend an action or proceeding himself or herself, or by an attorney or a full-time authorized employee of the person. [s. 799.06 (2), Stats.]

Senate Bill 179 eliminates the requirement that the employee be a full-time employee and also allows any small claims action by a member of the person, an agent of the member or an authorized employee of the agent. This provision applies to all small claims actions, not only evictions.

Senate Substitute Amendment 1 clarifies that “member” means a member as defined in s. 183.0102 (15), Stats.:

“Member” means a person who has been admitted to membership in a limited liability company as provided in s. 183.0801 and who has not dissociated from the limited liability company.

DISPOSITION OF PROPERTY LEFT ON RENTAL PREMISES AFTER EVICTION [SECTIONS 9, 10 AND 29 TO 46]

Under **current law**, if a tenant leaves property of value on the rental premises after he or she has been evicted, the property must be removed and stored. The evicted tenant is notified of the location of the property and provided with the receipt needed to obtain possession of the property. The evicted tenant is responsible for the costs of storage. In Milwaukee County, the sheriff must remove and store the property. In all other counties, the landlord may choose to be responsible for the removal and storage of the property. If the landlord does not choose to remove and store the property, the sheriff must do so. [s. 799.45 (3), Stats.]

Under **Senate Bill 179**, if a tenant is evicted and leaves property on the rental premises, the landlord is not required to store the property unless the landlord and tenant have entered into a written agreement which provides otherwise. If the landlord does not intend to store personal property left behind by a tenant, the landlord must provide written notice either when the tenant enters into **or** renews the rental agreement, **or at any other time before the tenant is evicted from the premises**. If this notice is provided, the landlord may dispose of the property, other than prescription medicine or medical equipment, in any manner that the landlord determines is appropriate.

Senate Substitute Amendment 1 deletes the bill provision that authorizes a landlord to provide the notice described “at any time before the tenant is evicted,” and provides that any notice that is provided must be provided either when the tenant enters into **or** renews the rental agreement.

TOWING OF VEHICLES [SECTIONS 5 TO 8]

Under **current law**, a vehicle that is parked on a private parking lot or facility without the permission of the property owner may not be removed without the permission of the vehicle owner, unless a traffic or police officer issues a citation for illegal parking, or a repossession judgment is issued. If the vehicle is taken by a towing service to any location other than a public highway within one mile

from the location in which the vehicle was improperly parked, the municipality or the traffic or police officer must, within 24 hours, provide the towing service with the name and last-known address of the registered owner and all lienholders of record. [s. 349.19 (3m) and (5) (c), Stats.]

Under **Senate Bill 179**, a vehicle that is parked without authorization on private property that is properly posted may be towed immediately regardless of whether a parking citation is issued. “Properly posted” means there is clearly visible notice that an area is private property and that vehicles that are not authorized to park in this area may be immediately removed. The vehicle may be removed by a towing service at the request of the property owner or property owner’s agent, a traffic officer, or a parking enforcer. A parking enforcer is a person who enforces nonmoving traffic violations and who is employed by a municipality, a county, or the state. Also, the bill requires the Department of Transportation (DOT) to promulgate rules establishing reasonable charges for removal and storage of vehicles under the provisions described above.

Under **Senate Substitute Amendment 1**, if a property owner has a vehicle towed under the provisions described above, the towing service must notify a local law enforcement agency of the make, model, and license plate of the vehicle and the location to which the vehicle will be towed. The law enforcement agency is required to maintain a record of the notice as well as the identification of the towing service. Also, the substitute amendment prohibits a towing service from removing a vehicle that has been reported to a law enforcement agency as stolen.

In addition, under the substitute amendment, if requested by the municipality in which the vehicle was illegally parked, the towing service must charge the vehicle owner a service fee not to exceed \$35. The towing service must then remit the service fee to the municipality according to procedures specified in the statute.

The substitute amendment provides that the rules promulgated by DOT must establish the form, and manner of display, of the notice necessary to qualify as “properly posted” under the provisions described above, as well as guidelines for towing services to notify law enforcement of the removal of a vehicle.

BILL HISTORY

Senate Substitute Amendment 1 to 2013 Senate Bill 179 was offered by Senators Lasee, Olsen, and Schultz on September 5, 2013. The Senate Committee on Insurance and Housing recommended adoption of Senate Substitute Amendment 1 on September 9, 2013, on a vote of Ayes, 3; Noes, 2; and recommended passage of the bill, as amended, on a vote of Ayes, 3; Noes, 2.

On September 17, 2013, Senate Amendment 17 to Senate Substitute Amendment 1 was offered by Senators Lasee and Shilling, and Senate Amendment 18 to Senate Substitute Amendment 1 was offered by Senators Lasee and Erpenbach. On the same date, the Senate adopted Senate Amendments 17 and 18 to Senate Substitute Amendment 1, and adopted Senate Substitute Amendment 1, as amended, on a voice vote. On the same date, the Senate passed 2013 Senate Bill 179, as amended, on a vote of Ayes, 18; Noes, 15.

On October 3, 2013, Assembly Amendment 1 was offered by Representative Stroebel. On October 7, 2013, the Assembly adopted Assembly Amendment 1 to Senate Bill 179, as passed by the Senate, on a voice vote, and concurred in 2013 Senate Bill 179, as amended, on a vote of Ayes, 57; Noes, 37.

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