



## 1995 ASSEMBLY BILL 94

February 6, 1995 - Introduced by Representatives MUSSER, GOETSCH, AINSWORTH, OTT, HASENOHRL, ZIEGELBAUER, SCHNEIDERS, NASS, GREEN, LADWIG, BOYLE, ROBSON, DOBYNS, HAHN, VRAKAS, LEHMAN, ALBERS, UNDERHEIM, URBAN, RYBA and WILDER, cosponsored by Senators DRZEWIECKI, FARROW, C. POTTER, MOEN, SCHULTZ, BRESKE and BUETTNER. Referred to Committee on Criminal Justice and Corrections.

- 1     **AN ACT to create** 66.062, 66.069 (1) (f), 704.305 and 778.133 of the statutes;  
2             **relating to:** absconding without paying for municipal utility service and  
3             providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, there are various penalties for intentionally leaving without paying for lodging, food or beverages at a motel, hotel or restaurant or for rent. This bill creates a penalty for intentionally leaving leased residential property without paying for utility services (electricity, natural gas, water, sewer services and telecommunications services) provided by a municipal public utility. Under the bill, the tenant who leaves without paying for those utility services is subject to a forfeiture of not more than \$500 if the amount due is \$500 or less and a forfeiture of not more than \$1,000 if the amount due exceeds \$500.

The penalties do not apply if the premises are untenable or if the amounts due are paid into an authorized escrow account or paid within 21 days of the current due date.

The bill also allows the court to order the violator to make restitution regarding any of the amounts due for the municipal utility services to any victim.

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

- 4             **SECTION 1.** 66.062 of the statutes is created to read:  
5             **66.062 Municipal utility delinquent bill notification.** If a bill for  
6             municipal utility service, as defined in s. 704.305 (1) (b), to a dwelling unit is

1 delinquent for 45 working days, a municipal public utility, as defined in s. 704.305  
2 (1) (a), shall give the owner of the dwelling unit written notice of the delinquency by  
3 regular or other mail.

4 **SECTION 2.** 66.069 (1) (f) of the statutes is created to read:

5 66.069 (1) (f) A municipal public utility, as defined in s. 704.305 (1) (a), may  
6 not use the procedures under par. (b) to collect arrearages until after the municipal  
7 public utility has exhausted its remedies under s. 778.133.

8 **SECTION 3.** 704.305 of the statutes is created to read:

9 **704.305 Absconding without paying for municipal utility service. (1)**

10 In this section:

11 (a) "Municipal public utility" means any city, village, town or other local  
12 governmental unit that owns, operates, manages or controls any plant or equipment,  
13 or any part of a plant or equipment, within the state for the production, transmission,  
14 delivery or furnishing of heat, light, water, sewer service, telecommunications  
15 service or power either directly or indirectly to or for the public. "Municipal public  
16 utility" includes any city, village, town or other local governmental unit engaged in  
17 the transmission or delivery of natural gas for compensation within this state by  
18 means of pipes or mains.

19 (b) "Municipal utility service" means electricity, natural gas, water, sewer  
20 service and telecommunications service supplied by a municipal public utility.

21 **(2)** Any tenant who intentionally absconds from any residential property that  
22 he or she is entitled to occupy under a lease without paying all current and past  
23 amounts due for municipal utility service that the tenant is required to pay under  
24 the lease may be penalized as provided in sub. (3).

25 **(3)** Whoever violates this section:

1           (a) May be required to forfeit not more than \$500 if the amounts due total \$500  
2 or less.

3           (b) May be required to forfeit not more than \$1,000 if the amounts due total  
4 more than \$500.

5           **(4)** Under this section, any of the following establishes prima facie evidence of  
6 intent to abscond without payment:

7           (a) The tenant's vacation of the premises without paying all current and past  
8 amounts due for municipal utility service described in sub. (2).

9           (b) The drawing, endorsing, issuing or delivering of any check, draft or order  
10 for payment of money upon any bank or other depository, in payment for municipal  
11 utility service described in sub. (2), knowing at the time that there is not sufficient  
12 credit with the drawee bank or other depository for payment in full of the instrument  
13 drawn.

14           **(5)** The governing body of a city, village, town or other local governmental unit  
15 may enact an ordinance in conformity with this section. The governing body of a city,  
16 village, town or other local governmental unit may authorize the issuance of a  
17 citation for a violation of this section. Chapter 800 applies to violations of ordinances  
18 enacted under this subsection, except that any provision of s. 800.093 in conflict with  
19 s. 778.133 does not apply.

20           **(6)** A tenant has a defense to prosecution under any of the following  
21 circumstances:

22           (a) The tenant has left the premises because of the untenability of the  
23 premises.

1           (b) The tenant has deposited the amounts due for municipal utility service  
2 described in sub. (2) in an escrow account as authorized by any statute or municipal  
3 ordinance.

4           (c) With regard to each type of municipal utility service described in sub. (2) for  
5 which payment is due, the tenant pays all current and past amounts due for that  
6 municipal utility service within 21 days after the due date for the current payment  
7 for that municipal utility service.

8           (7) When the existence of a defense under sub. (6) has been placed in issue by  
9 the trial evidence, the prosecutor must prove by clear and convincing evidence that  
10 the facts constituting the defense do not exist in order to sustain a finding of guilt  
11 under sub. (2).

12           **SECTION 4.** 778.133 of the statutes is created to read:

13           **778.133 Forfeitures; restitution.** (1) In any forfeiture action under s.  
14 704.305 (3), the court may order a defendant to make full or partial restitution  
15 regarding all amounts due for municipal utility service to any victim or, if the victim  
16 is deceased, to his or her estate.

17           (2) Restitution ordered under this section is enforceable in a civil action by the  
18 victim named in the order to receive restitution.

19           (3) If the court orders that restitution be paid to more than one person, the court  
20 may direct the sequence in which payments are to be made. If more than one  
21 defendant is ordered to make payments to the same person, the court may apportion  
22 liability between the defendants or specify joint and several liability. If the court  
23 specifies that 2 or more defendants are jointly and severally liable, the court shall  
24 distribute any overpayments so that each defendant, as closely as possible, pays the  
25 same proportion of the ordered restitution.

