



2007 ASSEMBLY BILL 967

March 13, 2008 – Introduced by Representatives ALBERS, PRIDEMORE, A. WILLIAMS, VOS and MUSSER. Referred to Committee on Housing.

1 **AN ACT to amend** 349.13 (3m), 704.05 (5) (a) 2., 704.05 (5) (c) and 799.44 (1); and
2 **to create** 66.0104, 704.05 (5) (b), 704.05 (5) (e), 704.065, 704.08 and 704.35 of
3 the statutes; **relating to:** disposal of a tenant's personal property, offsetting
4 personal property storage and disposal charges against a security deposit,
5 prohibiting ordinances that limit a landlord's ability to get certain information,
6 providing double damages in eviction actions, and other miscellaneous
7 provisions related to residential rental practices.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the residential rental practices statutes, including the following:

1. Under current law, if a tenant leaves behind personal property after moving out of the rental premises, the landlord may store the property without a lien and return it to the tenant or store the property with a lien for the cost of storage and give the tenant notice of the storage within ten days after the charges begin. Another option for the landlord is to give the tenant notice that after 30 days the landlord intends to dispose of the property by sale or other appropriate means. If the landlord disposes of the property by sale, the landlord may deduct the costs of sale from the proceeds, the tenant has 60 days after the date of the sale to claim the remaining proceeds, and any proceeds not claimed by the tenant must be sent to the

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Department of Administration (DOA) to be used for providing grants to agencies and shelter facilities for the homeless.

Under the bill, if the landlord provides notice of his or her intent to dispose of the property by sale or other appropriate means and the tenant fails to repossess or make a good faith effort to repossess the property within 30 days after receiving notice, the tenant loses the right to redeem or claim the property, including any proceeds of a sale. If the landlord sells the property, any proceeds, minus the costs of the sale, must be sent to DOA for providing grants to agencies and shelter facilities for the homeless.

The bill also provides a new alternative for dealing with property left behind by a tenant. Under this alternative, a landlord may give written notice to a tenant either before or at the commencement of the tenant's tenancy, as a provision in the lease or in a separate writing, such as in a nonstandard rental provisions form, that if the tenant leaves personal property behind the landlord may after 30 days after the tenant moves out of the premises dispose of the property as the landlord sees fit. The landlord is under no obligation to store or sell the property, and the tenant, after 30 days after moving out, has no right to redeem or claim the property or any proceeds of sale if the landlord disposes of the property by sale.

The bill also provides that in any case in which a tenant leaves behind personal property and the landlord removes, stores, or disposes of the property by means other than a sale, the landlord may deduct from the tenant's security deposit the actual and reasonable cost that the landlord has incurred to remove, store, and dispose of the property.

2. Under the bill, if as a result of a tenant's action or inaction a landlord receives an order to cease and desist from violating a county or local ordinance or notice from a law enforcement agency or local government that the condition of the rental premises are in violation of a local ordinance, the landlord must give the tenant written notice to correct the violation. If the tenant does not correct the violation within five days, the landlord may remove from the exterior of the premises any personal property of the tenant that is necessary to correct the ordinance violation. The landlord must then provide the tenant with written notice as to how the property was disposed of, as well as any costs that the landlord incurred for the removal and disposal. If the landlord makes a good faith effort to correct the ordinance violation, the landlord may not be subject to any penalties for the violation. However, if the landlord does not provide the tenant with the required notices, the landlord is not entitled to recover any costs that were incurred for the removal and disposal of the property and the tenant is entitled to the proceeds if the landlord sells the property.

3. The bill prohibits a city, village, town, or county from enacting an ordinance that prohibits or limits a landlord with respect to obtaining and using various types of information about a tenant, such as household income, occupation, court records, and rental history.

4. The bill provides that a landlord who is responsible for the payment of heat may install a locking mechanism on the thermostat that controls heat to maintain the temperature at not less than 68 degrees Fahrenheit. The landlord must give a tenant advance disclosure of this right either before or at the commencement of the

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tenant's tenancy in a written lease or separate writing, such as a nonstandard rental provisions form. If a landlord who installs such a locking mechanism and who gives the proper advance disclosure discovers that the tenant has set the thermostat at a higher setting by breaking the locking mechanism or some other means, the landlord may bill the tenant for any increase in heating costs and must include in the bill the calculation that the landlord used to determine the amount for which the tenant is responsible.

5. The bill requires a court to award double the amount of money damages in an eviction action if the court finds that any party in the action is entitled to money damages. Additionally, if a landlord and a tenant have entered into a written agreement that resolves a dispute between them and the written agreement requires one of the parties to pay an amount to the other party or to vacate the premises by a certain date, a circuit court commissioner or judge must award three times the amount of any damages to a party who has been injured by the failure of the other party to pay the amount required in the agreement or to vacate the premises by the specified date.

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

1 **SECTION 1.** 66.0104 of the statutes is created to read:

2 **66.0104 Prohibiting ordinances that limit a landlord's ability to obtain**
3 **information.** No city, village, town, or county may enact an ordinance that prohibits
4 a landlord from, or that places limitations on a landlord with respect to, obtaining
5 and using or attempting to obtain and use information with respect to a tenant about
6 any of the following:

7 (1) Monthly household income.

8 (2) Occupation.

9 (3) Rental history.

10 (4) Credit report.

11 (5) Court records, including arrest and conviction records, to which there is
12 public access.

13 (6) Social security number or other proof of identity.

ASSEMBLY BILL 967**SECTION 2**

1 **SECTION 2.** 349.13 (3m) of the statutes is amended to read:

2 349.13 **(3m)** ~~No~~ Except as provided in s. 704.08 (3), no vehicle involved in
3 trespass parking on a private parking lot or facility shall be removed without the
4 permission of the vehicle owner, except upon the issuance of a repossession judgment
5 or upon formal complaint and a citation for illegal parking issued by a traffic or police
6 officer.

7 **SECTION 3.** 704.05 (5) (a) 2. of the statutes is amended to read:

8 704.05 **(5)** (a) 2. Give the tenant notice, personally or by ordinary mail
9 addressed to the tenant's last-known address, of the landlord's intent to dispose of
10 the personal property by sale or other appropriate means if the property is not
11 repossessed by the tenant. ~~If the tenant fails to repossess, or make a good faith effort~~
12 ~~to repossess,~~ the property within 30 days after the date of personal service or the date
13 of the mailing of the notice, ~~the tenant loses the right to redeem or claim the property~~
14 ~~and the~~ landlord may dispose of the property by private or public sale or any other
15 appropriate means. ~~The~~ If the landlord disposes of the property by private or public
16 sale, the landlord may deduct from the proceeds of sale any costs of sale and any
17 storage charges if the landlord has first stored the personalty under subd. 1. ~~If the~~
18 ~~proceeds minus the costs of sale and minus any storage charges are not claimed~~
19 ~~within 60 days after the date of the sale of the personalty, the~~ The landlord is not
20 accountable to the tenant for any of the proceeds of the sale or the value of the
21 property. The landlord shall send the proceeds of the sale minus the costs of the sale
22 and minus any storage charges to the department of administration for deposit in the
23 appropriation under s. 20.143 (2) (h).

24 **SECTION 4.** 704.05 (5) (b) of the statutes is created to read:

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1 704.05 (5) (b) *Prior notice of disposition right.* As an alternative to any
2 procedure under par. (a), the landlord may provide written notice to the tenant,
3 either before or at the commencement of the tenant's tenancy, either as a provision
4 in a written lease or as a separate writing, such as in a nonstandard rental provisions
5 form, that if the tenant leaves behind any personal property after the tenant removes
6 from the premises, the landlord has the right after 30 days after the tenant removes
7 from the premises to dispose of the property as the landlord sees fit. Any landlord
8 that provides such notice is under no obligation to store or sell any property that the
9 tenant leaves behind, and any tenant that receives such notice relinquishes after 30
10 days after the tenant removes from the premises any right to redeem or claim any
11 property, or the proceeds from a sale of any property, that the tenant leaves behind.

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

13 704.05 (5) (c) *Rights of 3rd persons.* The landlord's lien and power to dispose
14 as provided by this subsection apply to any property left on the premises by the
15 tenant, whether owned by the tenant or by others. That lien has priority over any
16 ownership or security interest, and the power to dispose under this subsection
17 applies notwithstanding rights of others existing under any claim of ownership or
18 security interest. The Except as provided in pars. (a) 2. and (b), the tenant or any
19 secured party has the right to redeem the property at any time before the landlord
20 has disposed of it or entered into a contract for its disposition by payment of the
21 landlord's charges under par. (a) for removal, storage, disposition, and arranging for
22 the sale.

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

24 704.05 (5) (e) *Security deposit offset.* If the landlord stores, on or off the
25 premises, personal property that the tenant leaves behind, or if the landlord disposes

ASSEMBLY BILL 967**SECTION 6**

1 of personal property that the tenant leaves behind by means other than a sale, the
2 landlord may withhold from any security deposit paid by the tenant any of the
3 following:

4 1. The actual and reasonable cost of removal and storage or, if stored by the
5 landlord, the actual and reasonable value of the storage.

6 2. Any disposal costs incurred by the landlord.

7 **SECTION 7.** 704.065 of the statutes is created to read:

8 **704.065 Heating thermostat setting. (1) DISCLOSURE OF RIGHT TO INSTALL**
9 LOCK. If a landlord of premises that are subject to a residential tenancy is responsible
10 for the cost of heating the premises, the landlord may install a locking mechanism
11 to maintain the thermostat that controls heating at a setting of not less than 68
12 degrees Fahrenheit. A landlord that installs or that intends to install a locking
13 mechanism shall disclose, either before or at the commencement of a tenant's
14 tenancy, either as a provision in a written lease or as a separate writing, such as in
15 a nonstandard rental provisions form, that the landlord has the right to install a
16 locking mechanism to maintain the thermostat at a setting of not less than 68
17 degrees Fahrenheit.

18 **(2) TENANT RESPONSIBLE FOR INCREASE IN HEATING COST.** If a landlord who installs
19 a locking mechanism on a thermostat and who provides the disclosure required
20 under sub. (1) discovers that the tenant, by breaking the locking mechanism or
21 through some other means, has set the thermostat above the temperature at which
22 it had been set with the locking mechanism, the landlord may hold the tenant
23 responsible for any increase in heating costs and may bill the tenant for the increase.
24 The bill shall set forth the calculation that the landlord used to determine the
25 amount for which the tenant is responsible.

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1 **SECTION 8.** 704.08 of the statutes is created to read:

2 **704.08 Landlord's rights and responsibilities when premises in**
3 **violation of local ordinance. (1) NOTICE AND CORRECTION OF VIOLATION.**
4 Notwithstanding s. 704.17 (1) (c), (2) (c), and (3) (b), if a landlord of premises that are
5 subject to a residential tenancy receives notice from a law enforcement agency or
6 local government that the tenant's activities on the premises or the condition of the
7 premises as a result of the tenant's action or inaction is in violation of a local
8 ordinance, or if the landlord receives from a county or local zoning authority an order
9 to cease and desist from violating a county or local ordinance and the violation is a
10 result of the tenant's action or inaction, all of the following apply:

11 (a) The landlord shall give written notice to the tenant as provided in s. 704.21
12 to correct the violation. If the tenant does not take action to correct the violation
13 within 5 days after the landlord has given the notice, the landlord or landlord's
14 authorized agent may go onto the premises and remove from the exterior of the
15 premises any personal property of the tenant, including animals, that is necessary
16 to correct the violation. After removing the personal property, the landlord must
17 provide written notice to the tenant as provided in s. 704.21 of how the landlord
18 disposed of the property, as well as any costs that the landlord incurred for removal
19 and disposal of the property.

20 (b) The landlord may not be subject to any penalties for the ordinance violation
21 if the landlord shows that the landlord made a good faith effort to correct the
22 violation.

23 **(2) FAILURE TO PROVIDE PROPER NOTICE.** If a landlord who removes and disposes
24 of a tenant's property under sub. (1) (a) fails to provide the proper notice required
25 under sub. (1) (a), the landlord is not entitled to the recovery of any costs that the

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1 landlord incurred for the removal and disposal of the property and the tenant is
2 entitled to the proceeds from any sale of the property.

3 (3) REMOVAL OF VEHICLE. The requirements for removal of a vehicle under s.
4 349.13 (3m) do not apply to the removal of a vehicle under sub. (1) (a) to correct an
5 ordinance violation.

6 **SECTION 9.** 704.35 of the statutes is created to read:

7 **704.35 Treble damages for violation of agreement.** If a landlord and a
8 tenant have entered into a written stipulation, settlement agreement, mediation
9 agreement, or other agreement resolving a dispute and the written stipulation or
10 agreement requires a party to pay an amount to another party or a party to vacate
11 the premises by a date certain, a circuit court commissioner or judge shall award
12 treble damages to any party injured by the failure of another party to pay the amount
13 required under the written stipulation or agreement or to vacate the premises by the
14 specified date. The circuit court commissioner or judge may also hold the party
15 failing to pay or vacate the premises in contempt of court under ch. 785.

16 **SECTION 10.** 799.44 (1) of the statutes is amended to read:

17 799.44 (1) ORDER FOR JUDGMENT. In an eviction action, if the court finds that
18 the plaintiff is entitled to possession, the order for judgment shall be for the
19 restitution of the premises to the plaintiff and, if an additional cause of action is
20 joined under s. 799.40 (2) and plaintiff prevails thereon, for such other relief as the
21 court orders. If the court finds that a party is entitled to any money damages in an
22 eviction action, the court shall provide in the judgment for double the damages found.
23 Judgment shall be entered accordingly as provided in s. 799.24.

24 **SECTION 11. Initial applicability.**

