



2023 ASSEMBLY BILL 698

November 27, 2023 - Introduced by Representatives CLANCY, J. ANDERSON, MADISON, PALMERI, BALDEH, BARE, CABRERA, DRAKE, EMERSON, SHELTON, SINICKI, SNODGRASS, STUBBS, HONG, CONLEY, JOERS, JACOBSON and MOORE OMOKUNDE, cosponsored by Senators LARSON, L. JOHNSON and HESSELBEIN. Referred to Committee on Housing and Real Estate.

1 **AN ACT** *to renumber and amend* 799.20 (4); *to amend* 704.17 (4), 799.09,
2 799.12 (6) (c) (intro.), 799.14 (2), 799.16 (3) (b), 799.16 (4) (c) (title), 799.20 (title),
3 799.20 (1), 799.206 (3), 799.207 (1) (a), 799.207 (1) (b), 799.21 (2), 799.22 (2),
4 799.41 (1), 977.02 (2m), 977.05 (4) (gm), 977.08 (1) and 977.08 (2) (intro.); and
5 **to create** 20.550 (1) (b), 704.145, 799.05 (8), 799.16 (4) (d), 799.20 (3), 799.20
6 (4) (a), 799.22 (4) (b) 4., 799.40 (4) (c), 799.425, 977.05 (4) (i) 10. and 977.08 (2)
7 (i) of the statutes; **relating to:** a residential tenant's right to counsel in an
8 eviction action and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill generally provides that a residential tenant has the right to counsel at public expense in an eviction action.

The bill provides that, in a residential eviction action, a statutory notice must be attached to the summons informing the tenant that the tenant has the right to have counsel provided at public expense, and, if service is made by publication, the statutory notice also must be published. If a tenant contacts the clerk of court to request the appointment of counsel, files an answer without the assistance of counsel, or appears in court without counsel on the return date of the summons, the bill requires the court or circuit court commissioner to inquire of the tenant whether

ASSEMBLY BILL 698

the tenant waives counsel, and, if the tenant does not waive counsel, the court or commissioner must appoint counsel and stay the proceedings. Under the bill, such a stay generally remains in effect until counsel is appointed for the tenant, and the tenant is entitled to continued possession or occupancy of the premises while the stay remains in effect. If a tenant is entitled to counsel under the bill, the court may appoint counsel for the tenant or refer the tenant to the State Public Defender, which must appoint counsel without a determination of indigency.

The bill also requires that residential rental agreements include a notice of the tenant's right to counsel in eviction cases, and requires that landlords providing notice of residential tenant eviction must include in such notice information about how the tenant has the right to counsel in an eviction action. The required language of these notices is included in the bill.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 20.550 (1) (b) of the statutes is created to read:

2 20.550 (1) (b) *Counsel for termination of residential tenancy.* A sum sufficient
3 for the cost of providing legal services under s. 977.05 (4) (i) 10.

4 **SECTION 2.** 704.145 of the statutes is created to read:

5 **704.145 Notices of right to counsel in eviction actions.** (1) A residential
6 rental agreement shall include the following notice in the agreement or in an
7 addendum to the agreement:

8 **NOTICE OF RIGHT TO COUNSEL IN EVICTION ACTIONS**

9 As provided under s. 799.425 of the Wisconsin Statutes, in an action against a
10 tenant whose residential tenancy has been terminated for any reason, the tenant has
11 a right to counsel at public expense and, once referred to the state public defender,
12 the state public defender shall appoint counsel for the tenant under s. 977.08 of the
13 Wisconsin Statutes without a determination of indigency, unless the tenant
14 knowingly and voluntarily waives the right to counsel. A tenant who wants counsel

ASSEMBLY BILL 698

1 appointed in an eviction action must appear on the date specified in the summons
2 or request that counsel be appointed by contacting the clerk of court of the county in
3 which the residential eviction action has been brought on or before the return date
4 specified in the summons. A tenant is advised that this notice is only a summary of
5 the tenant's rights and the specific language of the statutes governs in all instances.

6 (2) A landlord providing notice under ss. 704.16, 704.17, and 704.19 shall
7 include in the notice the following information:

8 **RIGHT TO COUNSEL IN EVICTION ACTIONS**

9 As provided under s. 799.425 of the Wisconsin Statutes, in an action against a
10 tenant whose residential tenancy has been terminated for any reason, the tenant has
11 a right to counsel at public expense and, once referred to the state public defender,
12 the state public defender shall appoint counsel for the tenant under s. 977.08 of the
13 Wisconsin Statutes without a determination of indigency, unless the tenant
14 knowingly and voluntarily waives the right to counsel. A tenant who wants counsel
15 appointed in an eviction action must appear on the date specified in the summons
16 or request that counsel be appointed by contacting the clerk of court of the county in
17 which the residential eviction action has been brought on or before the return date
18 specified in the summons. A tenant is advised that this notice is only a summary of
19 the tenant's rights and the specific language of the statutes governs in all instances.

20 **SECTION 3.** 704.17 (4) of the statutes is amended to read:

21 704.17 (4) FORM OF NOTICE AND MANNER OF GIVING. Notice must be in writing and
22 given as specified in s. 704.21. If so given, and unless ordered otherwise by a court
23 in an eviction action under ch. 799, the tenant is not entitled to possession or
24 occupancy of the premises after the date of termination specified in the notice.

25 **SECTION 4.** 799.05 (8) of the statutes is created to read:

ASSEMBLY BILL 698**SECTION 4**

1 799.05 (8) NOTICE OF RIGHT TO COUNSEL IN RESIDENTIAL EVICTION ACTIONS. In a
2 residential eviction action, a notice shall be attached to the summons informing the
3 tenant that the tenant has the right to have counsel provided at public expense, as
4 provided under s. 799.425. The notice shall be substantially in the following form:

5 **NOTICE OF RIGHT TO COUNSEL IN EVICTION ACTIONS**

6 As provided under s. 799.425 of the Wisconsin Statutes, in an action against a
7 tenant whose residential tenancy has been terminated for any reason, the tenant has
8 a right to counsel at public expense and, once referred to the state public defender,
9 the state public defender shall appoint counsel for the tenant under s. 977.08 of the
10 Wisconsin Statutes without a determination of indigency, unless the tenant
11 knowingly and voluntarily waives the right to counsel. A tenant who wants counsel
12 appointed must appear on the return date specified in the attached summons or
13 contact the clerk of court on or before the return date at (contact information) to
14 request that counsel be appointed.

15 **SECTION 5.** 799.09 of the statutes is amended to read:

16 **799.09 Public information.** ~~Information~~ The clerk of court shall disseminate
17 and publicize throughout the county information regarding the existence, location,
18 and hours of the circuit court's small claims system ~~shall be disseminated and~~
19 ~~publicized throughout the county by the clerk of court.~~ Each county shall produce
20 and make available to all litigants in small claims actions publications explaining
21 the procedures to be followed by litigants in small claims actions and information
22 regarding the rights of tenants in residential eviction actions to have counsel
23 provided at public expense, as provided under s.799.425.

24 **SECTION 6.** 799.12 (6) (c) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 698

1 799.12 (6) (c) (intro.) If the defendant's post-office address cannot be
2 ascertained with reasonable diligence, the mailing may be omitted and service may
3 be made by publishing as a class 1 notice under ch. 985 a notice in substantially the
4 following form, except as provided in s. 799.22 (4) (b) 3., along with the notice
5 required under s. 799.05 (8), if applicable:

6 **SECTION 7.** 799.14 (2) of the statutes is amended to read:

7 799.14 (2) EFFECT OF ACTUAL APPEARANCE. This section shall not apply to a
8 defendant who actually appeared and submitted to the jurisdiction of the court
9 without filing application as provided in sub. (1), unless the defendant is a tenant in
10 a residential eviction action who was not represented by counsel and did not waive
11 the tenant's right to counsel as provided under s. 799.425 (1) (b).

12 **SECTION 8.** 799.16 (3) (b) of the statutes is amended to read:

13 799.16 (3) (b) In all other cases where in which the summons and complaint
14 are returned with proof that the defendant cannot be served with personal or
15 substituted service within the state under s. 799.12 (1), the court shall, on the return
16 date, adjourn the case to a day certain not less than 7 days from the return date, and
17 the plaintiff shall affix a notice in substantial conformity with sub. (4) (c) or (d) onto
18 some part of the premises where it may be conveniently read. At least 5 days prior
19 to the return date, an additional copy of said notice, together with a copy of the
20 summons and complaint, shall be mailed to the defendant at the last-known
21 address, even if it is the premises which are the subject of the action.

22 **SECTION 9.** 799.16 (4) (c) (title) of the statutes is amended to read:

23 799.16 (4) (c) (title) *Notice in nonresidential eviction.*

24 **SECTION 10.** 799.16 (4) (d) of the statutes is created to read:

25 799.16 (4) (d) *Notice in residential eviction.*

ASSEMBLY BILL 698

1 STATE OF WISCONSIN

2 CIRCUIT COURT

3 COUNTY

4 TO:

5 Take notice that an eviction action has been commenced against you to recover
6 the possession of the following described premises, of which I, the plaintiff, am
7 entitled to possession, but which you have unlawfully detained from me.

8 Unless you appear and defend on the day of, (year), at o'clock ..M.,
9 in the circuit court of county, located in the courthouse in the city of, before the
10 Honorable, a Judge of said court, or before any judge to whom the action may be
11 assigned, judgment may be rendered against you for the restitution of said premises
12 and for costs.

NOTICE OF RIGHT TO COUNSEL IN EVICTION ACTIONS

13
14 As provided under s. 799.425 of the Wisconsin Statutes, you have a right to
15 counsel in the eviction action at public expense and, once referred to the state public
16 defender, the state public defender shall appoint counsel for you under s. 977.08 of
17 the Wisconsin Statutes without a determination of indigency, unless you knowingly
18 and voluntarily waive the right to counsel. If you want counsel appointed for you,
19 you must appear on the date specified above or contact the clerk of court on or before
20 that date at (contact information) to request that counsel be appointed.

21 Dated:, (year)

22 Plaintiff

23 By Plaintiff's Attorney

24 **SECTION 11.** 799.20 (title) of the statutes is amended to read:

ASSEMBLY BILL 698

1 **799.20** (title) **Answer; counterclaim and cross complaint; tenant**
2 **request for counsel.**

3 **SECTION 12.** 799.20 (1) of the statutes is amended to read:

4 799.20 (1) PLEADING ON RETURN DATE OR ADJOURNED DATE. On the return date
5 of the summons or any adjourned date thereof, the defendant may answer, move to
6 dismiss under s. 802.06 (2), or otherwise respond to the complaint or, if applicable,
7 request the appointment of counsel under s. 799.425.

8 **SECTION 13.** 799.20 (3) of the statutes is created to read:

9 799.20 (3) TENANT REQUEST FOR APPOINTMENT OF COUNSEL. If, on or before the
10 return date of the summons or any adjourned date thereof, a tenant in a residential
11 eviction action contacts the clerk of court to request the appointment of counsel, the
12 court or circuit court commissioner shall appoint counsel for the tenant under s.
13 799.425 (2) or (3) and stay the proceedings under s. 799.40 (4) (c).

14 **SECTION 14.** 799.20 (4) of the statutes is renumbered 799.20 (4) (intro.) and
15 amended to read:

16 799.20 (4) INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE. (intro.) If the
17 defendant appears on the return date of the summons or any adjourned date thereof,
18 all of the following apply:

19 (b) If par. (a) does not apply or if the defendant who is a residential tenant is
20 represented by counsel or waives the tenant's right to counsel, the court or circuit
21 court commissioner shall make sufficient inquiry of the defendant to determine
22 whether the defendant claims a defense to the action.

23 (c) If it appears to the court or circuit court commissioner under par. (b) that
24 the defendant claims a defense to the action, the court or circuit court commissioner
25 shall schedule a trial of all the issues involved in the action, unless the parties

ASSEMBLY BILL 698**SECTION 14**

1 stipulate otherwise or the action is subject to immediate dismissal. In a residential
2 eviction action, the court or circuit court commissioner shall hold and complete a
3 court or jury trial of the issue of possession of the premises involved in the action
4 within 30 days of the return date of the summons ~~or~~, any adjourned date thereof, or
5 the return date set when a stay under s. 799.40 (4) (c) is lifted, unless the parties
6 stipulate otherwise or the action is subject to immediate dismissal.

7 **SECTION 15.** 799.20 (4) (a) of the statutes is created to read:

8 799.20 (4) (a) In a residential eviction action, the court or circuit court
9 commissioner shall make sufficient inquiry of a defendant who is a tenant and who
10 is not represented by counsel to determine whether the tenant waives the tenant's
11 right to counsel as provided under s. 799.425 (1) (b). If the tenant does not waive the
12 tenant's right to counsel, the court or circuit court commissioner shall appoint
13 counsel under s. 799.425 (2) or (3) and stay the proceedings under s. 799.40 (4) (c).

14 **SECTION 16.** 799.206 (3) of the statutes is amended to read:

15 799.206 (3) ~~When~~ Subject to s. 799.20 (4) (a), when all parties appear in person
16 or by their attorneys on the return date in an eviction, garnishment, or replevin
17 action and any party raises valid legal grounds for a contest, the matter shall be
18 forthwith scheduled for a hearing, to be held as soon as possible before a judge and,
19 in the case of an eviction action, not more than 30 days after the return date.

20 **SECTION 17.** 799.207 (1) (a) of the statutes is amended to read:

21 799.207 (1) (a) ~~Any~~ Except as provided in s. 799.20 (4) (a), a circuit court
22 commissioner assigned to assist in small claims matters may hold a conference with
23 the parties or their attorneys or both on the return date, examine pleadings, and
24 identify issues.

25 **SECTION 18.** 799.207 (1) (b) of the statutes is amended to read:

ASSEMBLY BILL 698

1 799.207 (1) (b) Except as provided in par. (e), and s. 799.20 (4) (a), the circuit
2 court commissioner shall render a decision ~~shall be rendered by the circuit court~~
3 ~~commissioner~~ on the return date if there is time available for a hearing, the parties
4 do not intend to call witnesses, and the parties agree to such a hearing. If, for any
5 of the reasons stated in this paragraph, the matter cannot be heard on the return
6 date, an adjourned date shall be set.

7 **SECTION 19.** 799.21 (2) of the statutes is amended to read:

8 799.21 (2) TRIAL BY COURT. If trial is to the court, the case may, with the consent
9 of all the parties and subject to s. 799.20 (4) (a), be tried on the return day.

10 **SECTION 20.** 799.22 (2) of the statutes is amended to read:

11 799.22 (2) WHEN DEFENDANT FAILS TO APPEAR OR REQUEST APPOINTMENT OF
12 COUNSEL. If the defendant fails to appear on the return date or on the date set for trial
13 and the defendant has not requested the appointment of counsel under s. 799.20 (3),
14 the court may enter a judgment upon due proof of facts ~~which~~ that show the plaintiff
15 entitled thereto.

16 **SECTION 21.** 799.22 (4) (b) 4. of the statutes is created to read:

17 799.22 (4) (b) 4. In a residential eviction action, if a defendant who is a tenant
18 attempts to join issue without appearing on the return date, regardless of whether
19 the tenant's answer is proper under the rule, and if it appears that the tenant is not
20 represented by counsel, the proceedings shall be automatically stayed until the court
21 or circuit court commissioner makes the inquiry of the tenant described under s.
22 799.20 (4) (a).

23 **SECTION 22.** 799.40 (4) (c) of the statutes is created to read:

24 799.40 (4) (c) The court shall stay the proceedings in a civil action of eviction
25 against a residential tenant who is not represented by counsel if the tenant requests

ASSEMBLY BILL 698

1 the appointment of counsel under s. 799.20 (3) or the tenant, in an inquiry under s.
2 799.20 (4) (a), does not waive the tenant's right to counsel. If the court grants a stay
3 under this paragraph, the stay remains in effect until counsel is appointed for the
4 tenant under s. 799.425 (2) or (3), the tenant retains counsel of the tenant's own
5 choosing, or the tenant waives the tenant's right to counsel as provided under s.
6 799.425 (1) (b), whichever occurs first. Notwithstanding s. 704.17 (4), the tenant is
7 entitled to continued possession or occupancy of the residential premises while the
8 stay remains in effect. When the court lifts the stay, the court shall set a new return
9 date.

10 **SECTION 23.** 799.41 (1) of the statutes is amended to read:

11 799.41 (1) The complaint in an eviction action shall be in writing and
12 subscribed by the plaintiff or attorney in accordance with s. 802.05. The complaint
13 shall identify the parties and the real property ~~which~~ that is the subject of the action,
14 specify whether the real property is residential, and state the facts ~~which~~ that
15 authorize the removal of the defendant. The description of real property is sufficient,
16 whether or not it is specific, if it reasonably identifies what is described. A
17 description by street name and number is sufficient. If the complaint relates only
18 to a portion of described real estate property, that portion shall be identified. If a
19 claim in addition to the claim for restitution is joined under s. 799.40 (2), the claim
20 shall be separately stated. The prayer shall be for the removal of the defendant or
21 the property or both and, if an additional claim is joined, for the other relief sought
22 by the plaintiff.

23 **SECTION 24.** 799.425 of the statutes is created to read:

24 **799.425 Right to counsel in residential eviction actions.** (1) RIGHT TO
25 LEGAL REPRESENTATION. (a) Except as provided in pars. (b) and (c), in an action of

ASSEMBLY BILL 698

1 eviction against a tenant whose residential tenancy has been terminated for any
2 reason, the tenant shall be afforded legal representation at all stages of the
3 proceedings.

4 (b) A residential tenant may waive the tenant's right to counsel under par. (a)
5 if the court is satisfied that the waiver is knowingly and voluntarily made and the
6 court accepts the waiver.

7 (c) A residential tenant is presumed to have waived the tenant's right to counsel
8 under par. (a) if the tenant does any of the following:

9 1. Fails to request the appointment of counsel under s. 799.20 (3) and fails to
10 appear on the return date or on the date set for trial as provided under s. 799.22 (2).

11 2. Retains counsel of the tenant's own choosing who enters a notice of
12 appearance on behalf of the tenant.

13 (d) In a proceeding under s. 799.14 (1) to set aside a judgment entered or for
14 an opportunity to be heard upon the merits, a residential tenant who waived the
15 tenant's right to counsel under par. (b) or who is presumed to have waived the
16 tenant's right to counsel under par. (c) is entitled to legal representation under par.
17 (a). If it appears that the tenant is not represented by counsel in the proceeding, the
18 court shall make the inquiry of the tenant described under s. 799.20 (4) (a).

19 **(2) POWER OF COURT TO APPOINT COUNSEL.** At any time, upon request or on the
20 court's own motion, the court may appoint counsel for a residential tenant entitled
21 to legal representation under sub. (1) (a).

22 **(3) PROVIDING COUNSEL.** If a residential tenant is entitled to legal
23 representation under sub. (1) (a) and the tenant does not waive, and is not presumed
24 to have waived, the tenant's right to counsel under sub. (1) (b) or (c), the court shall

ASSEMBLY BILL 698

1 refer the tenant to the state public defender, and the state public defender shall
2 appoint counsel under s. 977.08 without a determination of indigency.

3 (4) DISCHARGE OF COUNSEL. If a residential tenant waives, or is presumed to
4 have waived, the tenant's right to counsel under sub. (1) (b) or (c), the court may
5 discharge counsel.

6 (5) RETAINED COUNSEL. Notwithstanding subs. (1) to (3), a residential tenant
7 is entitled to retain counsel of the tenant's own choosing at the tenant's own expense.

8 **SECTION 25.** 977.02 (2m) of the statutes is amended to read:

9 977.02 (2m) Promulgate rules regarding eligibility for legal services under this
10 chapter, including legal services for persons who are entitled to be represented by
11 counsel without a determination of indigency, as provided in s. 48.23 (4), 51.60,
12 55.105, 799.425, 938.23 (4), or 980.03 (2) (a).

13 **SECTION 26.** 977.05 (4) (gm) of the statutes is amended to read:

14 977.05 (4) (gm) In accordance with the standards under pars. (h) and (i), accept
15 referrals from judges and courts for the provision of legal services without a
16 determination of indigency of children who are entitled to be represented by counsel
17 under s. 48.23 or 938.23 or persons who are entitled to be represented by counsel
18 under s. 51.60, 55.105, 799.425, or 980.03 (2) (a), appoint counsel in accordance with
19 contracts and policies of the board, and inform the referring judge or court of the
20 name and address of the specific attorney who has been assigned to the case.

21 **SECTION 27.** 977.05 (4) (i) 10. of the statutes is created to read:

22 977.05 (4) (i) 10. Cases involving persons who are entitled to counsel under s.
23 799.425.

24 **SECTION 28.** 977.08 (1) of the statutes is amended to read:

ASSEMBLY BILL 698

1 977.08 (1) If the representative or the authority for indigency determinations
2 specified under s. 977.07 (1) refers a case to or within the office of the state public
3 defender or if a case is referred under s. 48.23 (4), 51.60, 55.105, 799.425, 938.23 (4),
4 or 980.03 (2) (a), the state public defender shall assign counsel according to subs. (3)
5 and (4). If a defendant makes a request for change of attorney assignment, the
6 change of attorney must be approved by the circuit court.

7 **SECTION 29.** 977.08 (2) (intro.) of the statutes is amended to read:

8 977.08 (2) (intro.) All attorneys in a county shall be notified in writing by the
9 state public defender that a set of lists is being prepared of attorneys willing to
10 represent persons referred under s. 48.23 (4), 51.60, 55.105, 799.425, 938.23 (4), or
11 980.03 (2) (a) and indigent clients in the following:

12 **SECTION 30.** 977.08 (2) (i) of the statutes is created to read:

13 977.08 (2) (i) Cases involving persons who are entitled to counsel under s.
14 799.425.

15 **SECTION 31. Initial applicability.**

16 (1) The treatment of ss. 704.145 (2), 704.17 (4), 799.05 (8), 799.12 (6) (c), 799.14
17 (2), 799.16 (3) (b) and (4) (d), 799.20 (1) and (3), 799.22 (4) (b) 4., 799.40 (4) (c), 799.41
18 (1), and 799.425, the renumbering and amendment of s. 799.20 (4), and the creation
19 of s. 799.20 (4) (a) first apply to a residential eviction action commenced on the
20 effective date of this subsection.

21 (2) The treatment of s. 704.145 (1) first applies to a residential rental
22 agreement or addendum to an agreement entered into, modified, or renewed on the
23 effective date of this subsection.

24

(END)