

1999 DRAFTING REQUEST

Bill

Received: 03/12/1999

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Courts - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Nuisance if sell alcohol without a license or permit, allowing landlord to evict

Instructions:

See 823.113

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	nelsorp1 04/15/1999	ygeller 04/15/1999	mclark 04/21/1999	_____	lrb_docadmin 04/21/1999		
/2	nelsorp1 06/03/1999	ygeller 06/03/1999	martykr 06/04/1999	_____	lrb_docadmin 06/04/1999		
/3	nelsorp1 07/22/1999	ygeller 07/27/1999	martykr 07/28/1999	_____	lrb_docadmin 07/28/1999	lrb_docadmin 09/13/1999	

FE Sent For:

<END>

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7/27 concern about towns, etc

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/2	nelsorp1 06/3/99	ygeller 06/3/99	martykr 06/4/99	_____	lrb_docadmin 06/4/99		

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13 7/27 jg km 7/28 jg km 28

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FE Sent For:

62 9/3/99
km 6/4
JB 6/1
km 6/1

<END>

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Alt. Drafters:

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Extra Copies: PEN, PJH

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Instructions:

See 823.113 2704/17

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1?	nelsorp1	1/4/15 JG	MRC 4-20	MRC/CH 4-26			

FE Sent For:

<END>



JLg

1999 BILL

gen cat

1 AN ACT ...; relating to: making a building used to sell an alcoholic beverage
2 without a license or permit a public nuisance.

Analysis by the Legislative Reference Bureau

Under current law, if a building is used to deliver, distribute or manufacture a controlled substance or to facilitate the activities of a criminal gang, that building is a public nuisance. The city, town or village where the nuisance occurs may bring an action under current law to abate the nuisance and enjoin the persons involved from continuing the nuisance. Currently, if an action is brought to abate the nuisance, the owner of the property may appear and, upon agreeing to abate the nuisance and filing appropriate sureties with the court, the court may dismiss the action. ~~If the owner does not make an appearance and agree to abate the nuisance,~~ under current law, the court may order the removal of all property from the building, closure of the building and sale of the property and building.

⊗

Currently, if a law enforcement agency of the city, town or village notifies a property owner that property occupied by his or her tenant is a public nuisance because of the delivery, distribution or manufacture of a controlled substance on the property or ~~to~~ because the property is used to facilitate the activities of a criminal gang, the landlord may give the tenant a five-day notice to vacate the property. The tenant, under current law, has the right to contest the allegation that the property is a nuisance.

This bill adds buildings or structures where the sale of alcoholic beverages occurs without a required license, permit or other authorization to those that are

BILL

public nuisances and subject^s those buildings and structures to the abatement procedures and landlord eviction processes summarized above.

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

1 **SECTION 1.** 823.113 (title)[✓] of the statutes is amended to read:

2 **823.113 (title) Drug, alcohol or criminal gang house a public nuisance.**

3 ^{History: 1989 a. 122; 1993 a. 98; 1995 a. 448.}
 SECTION 2. 823.113 (1g)[✓] of the statutes is created to read:

4 **823.113 (1g)** Any building or structure where the sale of an alcohol^g beverage,
5 as defined in s. 125.02 (1)[✓], takes place in violation of s. 125.04 (1)[✓], is a public nuisance
6 and may be proceeded against under this section.[✓]

7 ^{History: 1989 a. 122; 1993 a. 98; 1995 a. 448.}
 SECTION 3. 704.17 (1) (c)[✓] of the statutes is amended to read:

8 704.17 (1) (c) A property owner may terminate the tenancy of a week-to-week
9 or month-to-month tenant if the property owner receives written notice from a law
10 enforcement agency of a city, town or village that a nuisance under s. 823.113 (1), (1g)[✓]
11 or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the
12 property owner's property and if the property owner gives the tenant written notice
13 requiring the tenant to vacate on or before a date at least 5 days after the giving of
14 the notice. The notice shall state the basis for its issuance and the right of the tenant
15 to contest the termination of tenancy in an eviction action under ch. 799. If the
16 tenant contests the termination of tenancy, the tenancy may not be terminated
17 without proof by the property owner by the greater preponderance of the credible
18 evidence of the allegation in the notice from the law enforcement agency of a city,
19 town or village that a nuisance under s. 823.113 (1), (1g)[✓] or (1m) (b) exists in that
20 tenant's rental unit or was caused by that tenant.

^{History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267.}

BILL

1 **SECTION 4.** 704.17 (2) (c) ✓ of the statutes is amended to read:

2 704.17 (2) (c) A property owner may terminate the tenancy of a tenant who is
3 under a lease for a term of one year or less or who is a year-to-year tenant if the
4 property owner receives written notice from a law enforcement agency of a city, town
5 or village that a nuisance under s. 823.113 (1), (1g) ✓ or (1m) (b) exists in that tenant's
6 rental unit or was caused by that tenant on the property owner's property and if the
7 property owner gives the tenant written notice requiring the tenant to vacate on or
8 before a date at least 5 days after the giving of the notice. The notice shall state the
9 basis for its issuance and the right of the tenant to contest the termination of tenancy
10 in an eviction action under ch. 799. If the tenant contests the termination of tenancy,
11 the tenancy may not be terminated without proof by the property owner by the
12 greater preponderance of the credible evidence of the allegation in the notice from
13 the law enforcement agency of a city, town or village that a nuisance under s. 823.113
14 (1), (1g) ✓ or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267.

15 **SECTION 5.** 704.17 (3) (b) ✓ of the statutes is amended to read:

16 704.17 (3) (b) A property owner may terminate the tenancy of a tenant who is
17 under a lease for a term of more than one year if the property owner receives written
18 notice from a law enforcement agency of a city, town or village that a nuisance under
19 s. 823.113 (1), (1g) ✓ or (1m) (b) exists in that tenant's rental unit or was caused by that
20 tenant on the property owner's property and if the property owner gives the tenant
21 written notice to vacate on or before a date at least 5 days after the giving of the
22 notice. The notice shall state the basis for its issuance and the right of the tenant
23 to contest the termination of tenancy in an eviction action under ch. 799. If the
24 tenant contests the termination of tenancy, the tenancy may not be terminated

BILL

1 without proof by the property owner by the greater preponderance of the credible
 2 evidence of the allegation in the notice from the law enforcement agency of a city,
 3 town or village that a nuisance under s. 823.113 (1), (1g) or (1m) (b) exists in that
 4 tenant's rental unit or was caused by that tenant.

5 History: 1981 c. 286; 1993 a. 139, 486; 1995 a. 267.

SECTION 6. 893.80 (7) of the statutes is amended to read:

6 893.80 (7) No suit may be brought against any city, town or village or any
 7 governmental subdivision or agency thereof or against any officer, official, agent or
 8 employe of any of those entities who, in good faith, acts or fails to act to provide a
 9 notice to a property owner that a public nuisance under s. 823.113 (1), (1g) or (1m)
 10 (b) exists.

History: Sup. Ct. Order, 67 W (2d) 585, 784 (1975); 1975 c. 218; 1977 c. 285, 447; 1979 c. 34; 1979 c. 323 s. 29; Stats. 1979 s. 893.80; 1981 c. 63; 1985 a. 340; 1987 a. 377; 1993 a. 139; 1995 a. 6, 158, 267; 1997 a. 27.

SECTION 7. Initial applicability.

12 (1) This act first applies to violations committed on the effective date of this

13 ~~subdivision.~~ subsection

14 (END)

Mokler Properties, Inc.
M.J. Mokler Properties
Fox Valley Laundries, Inc.
1117 West New York
Oshkosh, WI 54901
(414) 235-6470 Fax (414) 235-6486

FAX LETTER

Date: 5/25/99

Subject: Illegal Tavern Draft

To: Kate

99-2493

Message-

Our legislative committee talked last week and we have only two concerns with the draft.

law enf. agency, as defined in s. 165.33
X First we need to add the wording from SB43. This means all law enforcement agencies can be involved, Sheriff's Departments, as well as Police Departments. *(a) (b)*

X Second we want to be sure the drafters are sure that 704.29(1) applies, so that a landlord can recover lost rents and damages when an eviction occurs. Does this need to be referenced. *No*

X If the drafters could redo their analysis so that it talks about what we are trying to accomplish it would be a big help. The point is we are empowering landlords to solve a problem. *No*

Thank-you for all your efforts.

Please Reply No Reply necessary

Signed: *[Signature]*

Reply-

Date: _____

Bob, 6-2254
This is in reference to
UP 2493
- call me if the
three points
don't make sense.
Kate

Signed: _____

Proposed Legislation Five Day Eviction of Illegal Taverns

Background: "House Parties" are a common event in college communities in Wisconsin. For our purposes we are defining a "House Party" as a party open to anyone who comes, and a charge is made for drinking alcoholic beverages. Typically for a charge of \$4.00 or some other amount a person will be given a plastic cup and can drink an unlimited amount of beer. Both underage and over 21 year olds attend these parties. They are held in rental units near the campuses and the dorms. It is common to have far more than a hundred drinkers in the basement of an older home. The people giving the party are guilty of operating an illegal tavern.

Problem: These parties encourage underage drinking and gross over consumption of alcohol by young people. If the same \$4.00 was spent in a legal tavern it would not result in as much alcohol consumption. The amounts served would be moderated because of cost and the supervision of the licensed bartender. Underage drinking would be much less prevalent.

The basements of these rental homes are not safe for entertaining these large numbers of people. Fire and other safety considerations should be of concern to everyone.

These types of parties contribute to the decline of neighborhoods in the areas surrounding the college campuses. Other residents flee the neighborhood because of the problems and noise associated with these parties. Home owners and non-student renters do not want to live in areas where house parties are occurring resulting in severe decline in housing quality and living conditions. Many students wish to live off-campus and do not appreciate this kind of activity. They also find their quality of life greatly affected by this party atmosphere.

Enforcement of the laws violated is difficult for police departments because of the size of the parties and limited manpower. Penalties are not large in relation to the profits these parties generate.

Landlords do not have an effective method of controlling these activities. Only the civil eviction process is available to them. This requires notices for two lease violations before the tenants can be taken to court and evicted. This means at least two and probably more illegal parties will occur before the landlord can do anything. The landlord would, of course, have to prove the lease violation. Landlords do not have police powers or resources, nor can they enter the rented premises without proper notification.

Solution: Currently state law provides for a five day eviction of tenants who create certain nuisances on the property. The police department must notify the landlord of this nuisance and the tenant may go to court and contest it. An eviction can take place quickly with one offense. These nuisances are illegal drug activity and gang related activities. A similar bill is before the legislature now regarding prostitution (SB 14).

A bill defining illegal taverns as a nuisance and giving landlords and police departments this solution would go a long way towards solving this problem, potentially save lives, fight alcohol abuse and improve neighborhoods and quality of life near our college campuses. An eviction would penalize the parties operating the illegal tavern and remove the financial motivation. The evicted tenants would still be responsible for the rent, and utilities for the rental property, unless the landlord could rent it for the remainder of the lease term, which is unlikely in most circumstances





State of Wisconsin
1999 - 2000 LEGISLATURE

D-Note

LRB-2493/1

RPN:jlg:mrc

2

1999 BILL

Regen

1 AN ACT *to amend* 823.113 (title), 704.17 (1) (c), 704.17 (2) (c), 704.17 (3) (b) and
2 893.80 (7); and *to create* 823.113 (1g) of the statutes; **relating to:** making a
3 building used to sell an alcoholic beverage without a license or permit a public
4 nuisance.

Analysis by the Legislative Reference Bureau

Under current law, if a building is used to deliver, distribute or manufacture a controlled substance or to facilitate the activities of a criminal gang, that building is a public nuisance. The city, town or village where the nuisance occurs may bring an action under current law to abate the nuisance and enjoin the persons involved from continuing the nuisance. Currently, if an action is brought to abate the nuisance, the owner of the property may appear and, upon agreeing to abate the nuisance and filing appropriate sureties with the court, the court may dismiss the action. Under current law, if the owner does not make an appearance and agree to abate the nuisance, the court may order the removal of all property from the building, closure of the building and sale of the property and building.

Currently, if a law enforcement agency of the city, town or village notifies a property owner that property occupied by his or her tenant is a public nuisance because of the delivery, distribution or manufacture of a controlled substance on the property or because the property is used to facilitate the activities of a criminal gang, the landlord may give the tenant a five-day notice to vacate the property. The tenant, under current law, has the right to contest the allegation that the property is a nuisance.

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5 or (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the
6 property owner's property and if the property owner gives the tenant written notice
7 requiring the tenant to vacate on or before a date at least 5 days after the giving of
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9 to contest the termination of tenancy in an eviction action under ch. 799. If the
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15 **SECTION 2.** 704.17 (2) (c) of the statutes is amended to read:

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9 **SECTION 3.** 704.17 (3) (b) of the statutes is amended to read:

10 704.17 (3) (b) A property owner may terminate the tenancy of a tenant who is
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 13 s. 823.113 (1), (1g) or (1m) (b) exists in that tenant's rental unit or was caused by that
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24 **823.113 (title) Drug, alcohol or criminal gang house a public nuisance.**

25 **SECTION 5.** 823.113 (1g) of the statutes is created to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2493/2dn
RPN:jlg:mrc

This draft is in response to the fax letter you sent me. The letter suggested making three changes in the bill. I did not follow the third suggestion, to add the purpose of the bill to the analysis, because the LRB is required to explain only what a bill does, not the reasons for a bill being proposed. I also did not follow the second suggestion, to refer to s. 704.29 (1) in the bill. Current law does not include that reference because that statute stands on its own and there is no need for a cross-reference to that statutory section. If I did add that cross-reference here, the failure to also add it to other parts of the statutes would create doubt as to the applicability of that statute to those other sections.

I did add the wording in SB 43, allowing all law enforcement agencies to provide written notice. But, I did not include the language added at the end of the affected statutory sections saying the change does not require the Milwaukee County sheriff to provide a property owner notice because that language is unnecessary and limiting. Current law does not require a law enforcement agency to notify a landlord; that notification is discretionary. Referring only to Milwaukee County also raises questions about all other law enforcement agencies.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511

DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU

LRB-2493/2dn
RPN;jlg:km

June 4, 1999

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Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511



1999 BILL

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1 AN ACT *to amend* 704.17 (1) (c), 704.17 (2) (c), 704.17 (3) (b), 823.113 (title) and
2 893.80 (7); and *to create* 823.113 (1g) of the statutes; **relating to:** making a
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1 **SECTION 1.** 704.17 (1) (c) of the statutes is amended to read:

2 704.17 (1) (c) A property owner may terminate the tenancy of a week-to-week
3 or month-to-month tenant if the property owner receives written notice from a law
4 enforcement agency ~~of a city, town or village, as defined in s. 165.83 (1) (b),~~ that a
5 nuisance under s. 823.113 (1), (1g) or (1m) (b) exists in that tenant's rental unit or
6 was caused by that tenant on the property owner's property and if the property owner
7 gives the tenant written notice requiring the tenant to vacate on or before a date at
8 least 5 days after the giving of the notice. The notice shall state the basis for its
9 issuance and the right of the tenant to contest the termination of tenancy in an
10 eviction action under ch. 799. If the tenant contests the termination of tenancy, the
11 tenancy may not be terminated without proof by the property owner by the greater
12 preponderance of the credible evidence of the allegation in the notice from the law
13 enforcement agency ~~of a city, town or village~~ that a nuisance under s. 823.113 (1), (1g)
14 or (1m) (b) exists in that tenant's rental unit or was caused by that tenant.

15 **SECTION 2.** 704.17 (2) (c) of the statutes is amended to read:

16 704.17 (2) (c) A property owner may terminate the tenancy of a tenant who is
17 under a lease for a term of one year or less or who is a year-to-year tenant if the
18 property owner receives written notice from a law enforcement agency ~~of a city, town~~
19 ~~or village, as defined in s. 165.83 (1) (b),~~ that a nuisance under s. 823.113 (1), (1g) or
20 (1m) (b) exists in that tenant's rental unit or was caused by that tenant on the

BILL

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9 tenant's rental unit or was caused by that tenant.

10 **SECTION 3.** 704.17 (3) (b) of the statutes is amended to read:

11 704.17 (3) (b) A property owner may terminate the tenancy of a tenant who is
12 under a lease for a term of more than one year if the property owner receives written
13 notice from a law enforcement agency ~~of a city, town or village, as defined in s. 165.83~~
14 (1) (b), that a nuisance under s. 823.113 (1), (1g) or (1m) (b) exists in that tenant's
15 rental unit or was caused by that tenant on the property owner's property and if the
16 property owner gives the tenant written notice to vacate on or before a date at least
17 5 days after the giving of the notice. The notice shall state the basis for its issuance
18 and the right of the tenant to contest the termination of tenancy in an eviction action
19 under ch. 799. If the tenant contests the termination of tenancy, the tenancy may
20 not be terminated without proof by the property owner by the greater preponderance
21 of the credible evidence of the allegation in the notice from the law enforcement
22 agency ~~of a city, town or village~~ that a nuisance under s. 823.113 (1), (1g) or (1m) (b)
23 exists in that tenant's rental unit or was caused by that tenant.

24 **SECTION 4.** 823.113 (title) of the statutes is amended to read:

25 **823.113 (title) Drug, alcohol or criminal gang house a public nuisance.**

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 07/28/1999

To: Representative Underheim

Relating to LRB drafting number: LRB-2493

Topic

Nuisance if sell alcohol without a license or ~~permit~~^{Permit}, allowing landlord to evict

Subject(s)

Courts - miscellaneous

1. **JACKET** the draft for introduction



in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511

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