

2001 ASSEMBLY BILL 205

March 15, 2001 – Introduced by Representatives LA FAVE, TOWNSEND, RYBA, MILLER, STASKUNAS, J. LEHMAN, CULLEN, KREUSER, RICHARDS and COGGS, cosponsored by Senators PLACHE, BURKE, ROSENZWEIG, DARLING and COWLES. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to renumber and amend* 815.39; *to amend* 254.595 (1), 254.595 (2),
2 254.595 (3) (a), 254.595 (4) and 815.44 (1); and *to create* 815.39 (2) and 823.23
3 of the statutes; **relating to:** receiverships for public nuisance.

Analysis by the Legislative Reference Bureau

Under current law, if real property, other than an owner-occupied one-family or two-family dwelling, is in violation of a municipal building code provision that concerns health or safety, the municipality or an interested party may commence an action to have the property declared a health hazard. Under the law, a receiver may be appointed to manage and control the property if a court finds that the property is a health hazard and that the owner has not abated that hazard. This bill allows the court to declare such property to be a nuisance and allows the court to permit cities, villages, and towns to create a receivership to take control of residential property that is declared a nuisance and abate that nuisance.

The bill also allows 1st or 2nd class cities to ask a court to appoint a receiver to manage and control residential property, including a single-family dwelling, that is declared a nuisance for other reasons, including because it is dilapidated, used as a place of gambling, for the delivery or manufacture of a drug, or as a meeting place for a criminal gang. The bill requires that the owner of the residential property be given notice of the intent to petition a court for the appointment of receiver at least 60 days before filing the petition, to give the owner time to abate the nuisance.

If a court determines that abatement is required and that the owner will not rehabilitate the property, the court shall appoint a receiver. A receiver created by the

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court under this bill has authority to take possession of, and manage and maintain, the property, terminate tenancies, charge and collect rents, contract with others to conserve and rehabilitate the property, and dispose of personal property found at the residential property. Under the bill, costs of the abatement, including the fee charged by the receiver, are reviewed by the court and the costs not paid may be entered as a judgment against the property. Under the bill, the court shall terminate the receivership when the abatement or rehabilitation is completed or if the receiver shows the court that the abatement is not feasible and that the improvements on the real property have been demolished by the city, village, or town.

The bill also prohibits a landlord or receiver of residential property that is subject to an action to abate a nuisance from committing certain acts, including increasing the rent, decreasing services, or refusing to renew a rental agreement. This limit on the landlord's or receiver's authority only applies under the bill if that act would not have occurred if the abatement action was not begun and the tenant shows that no nuisance exists with respect to the tenant's rental unit, the nuisance was not caused by the tenant, or the action of the landlord or receiver is not necessary to abate the nuisance.

Under current law, within one year after the execution sale of real estate, the real estate sold may be redeemed by the payment to the purchaser of the sum paid for the real estate at the execution sale. This bill reduces the time period of redemption to two months for real estate that was sold based on a lien created as the result of the unpaid costs incurred by a receiver in rehabilitating property that was a nuisance or abating that nuisance.

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

1 **SECTION 1.** 254.595 (1) of the statutes is amended to read:

2 254.595 **(1)** If real property is in violation of those provisions of a municipal
3 building code that concern health or safety or of an order or a regulation of the local
4 board of health, the city, village or town in which the property is located may
5 commence an action to declare the property a nuisance or human health hazard. A
6 tenant or class of tenants of property that is in violation of the municipal building
7 code or of an order or regulation of the local board of health or any other person or
8 class of persons whose health, safety or property interests are or would be adversely
9 affected by property that is in violation of the municipal building code or of an order
10 or regulation of the local board of health may file a petition with the clerk of the city,

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1 village, or town requesting the governing body to commence an action to declare the
2 property a nuisance or human health hazard. If the governing body refuses or fails
3 to commence an action within 20 days after the filing of the petition, a tenant, class
4 of tenants, other person or other class of persons may commence the action directly
5 upon the filing of security for court costs. The court before which the action of the
6 case is commenced shall exercise jurisdiction in rem or quasi in rem over the property
7 and the owner of record of the property, if known, and all other persons of record
8 holding or claiming any interest in the property shall be made parties defendant and
9 service of process may be had upon them as provided by law. Any change of
10 ownership after the commencement of the action shall not affect the jurisdiction of
11 the court over the property. At the time that the action is commenced, the
12 municipality or other parties plaintiff shall file a lis pendens. If the court finds that
13 a nuisance or violation exists, it shall adjudge the property a nuisance or human
14 health hazard and the entry of judgment shall be a lien upon the premises.

15 **SECTION 2.** 254.595 (2) of the statutes is amended to read:

16 254.595 (2) A property owner or any person of record holding or claiming any
17 interest in the property shall have 60 days after entry of judgment to abate the
18 nuisance or eliminate the violation. If, within 60 days after entry of judgment under
19 sub. (1), an owner of the property presents evidence satisfactory to the court, upon
20 hearing, that the nuisance or violation has been eliminated, the court shall set aside
21 the judgment. It may not be a defense to this action that the owner of record of the
22 property is a different person, partnership or corporate entity than the owner of
23 record of the property on the date that the action was commenced or thereafter if a
24 lis pendens has been filed prior to the change of ownership. No hearing under this
25 subsection may be held until notice has been given to the municipality and all the

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1 plaintiffs advising them of their right to appear. If the judgment is not so set aside
2 within 60 days after entry of judgment, the court shall appoint a disinterested person
3 to act as receiver of the property for the purpose of abating the nuisance or human
4 health hazard.

5 **SECTION 3.** 254.595 (3) (a) of the statutes is amended to read:

6 254.595 (3) (a) Any receiver appointed under sub. (2) shall collect all rents and
7 profits accruing from the property, pay all costs of management, including all general
8 and special real estate taxes or assessments and interest payments on first
9 mortgages on the property, and make any repairs necessary to abate the nuisance or
10 meet the standards required by the building code or the order or regulation of the
11 local board of health. The receiver may, with the approval of the circuit court, borrow
12 money against and encumber the property as security for the money, in the amounts
13 necessary to abate the nuisance or meet the standards.

14 **SECTION 4.** 254.595 (4) of the statutes is amended to read:

15 254.595 (4) The receiver appointed under this section shall have a lien, for the
16 expenses necessarily incurred to abate the nuisance or in the execution of the order,
17 upon the premises upon or in respect of which the work required by the order has
18 been done or expenses incurred. The municipality that sought the order declaring
19 the property to be a nuisance or human health hazard may also recover its expenses
20 and the expenses of the receiver under subs. (3) (a) and (5), to the extent that the
21 expenses are not reimbursed under s. 632.103 (2) from funds withheld from an
22 insurance settlement, by maintaining an action against the property owner under
23 s. 74.53.

24 **SECTION 5.** 815.39 of the statutes is renumbered 815.39 (1) and amended to
25 read:

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1 815.39 (1) ~~Within~~ Except as provided in sub. (2), within one year after an
2 execution sale the real estate sold, or any lot, tract or portion that was separately
3 sold, may be redeemed by the payment to the purchaser, to the purchaser's personal
4 representatives or assigns, or to the ~~then~~ sheriff of the county where such the real
5 estate is situated, for the use of such purchaser, of the sum paid on the sale thereof,
6 together with the interest from the time of the sale.

7 **SECTION 6.** 815.39 (2) of the statutes is created to read:

8 815.39 (2) If an execution sale is for a lien filed under s. 823.23 (5), the period
9 of redemption under sub. (1) is 2 months.

10 **SECTION 7.** 815.44 (1) of the statutes is amended to read:

11 815.44 (1) WHO MAY ACQUIRE. In case the premises sold on execution or any part
12 of them are not redeemed within the year prescribed by ss. 815.39 (1) and 815.40 then
13 the interest of the purchaser may be acquired within 3 months after the expiration
14 of the redemption period by the persons and on the terms prescribed in this section.

15 **SECTION 8.** 823.23 of the statutes is created to read:

16 **823.23 Receivership for public nuisances. (1) DEFINITIONS.** In this section:

17 (a) "Abatement" means the removal or suspension of any condition at a
18 residential property that has been adjudicated to constitute a nuisance.
19 "Abatement" may include the demolition of some or all of the improvements on the
20 residential property if the residential property is unoccupied.

21 (b) "Interested party" means any person that possesses any legal or equitable
22 interest of record in the residential property, including the holder of any lien or
23 encumbrance of record on the residential property.

24 (c) "Purchase money security interest" means any of the following:

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1 1. The interest of a vendor under a land contract relating to the residential
2 property if the contract was recorded prior to the issuance of the notice under sub.
3 (2) (b).

4 2. The interest of a mortgagee under a purchase money mortgage relating to
5 the residential property if the mortgage was recorded prior to the issuance of the
6 notice under sub. (2) (b).

7 3. The interest of a beneficiary under a purchase money trust deed relating to
8 the residential property if the trust deed was recorded prior to the issuance of the
9 notice under sub. (2) (b).

10 (d) “Rehabilitate” means to make any improvements or corrections necessary
11 to remove a threat to public health, safety, or welfare.

12 (f) “Residential property” means land, together with all the improvements
13 erected on the land, that is located in a 1st or 2nd class city and used or intended to
14 be used for residential purposes, including single-family, duplex, and multifamily
15 structures, and mixed-use structures that have one or more residential units.

16 **(2) RECEIVERSHIP FOR BUILDINGS THAT CONSTITUTE A NUISANCE; PROCEDURE.** (a) If
17 a residential property is alleged to be a nuisance under this chapter or s. 254.595, the
18 1st or 2nd class city in which the property is located may apply to the circuit court
19 for the appointment of a receiver to abate or rehabilitate the residential property.

20 (b) At least 60 days before filing an application for the appointment of a receiver
21 under par. (a), the 1st or 2nd class city shall give written notice by 1st class mail to
22 all owners, owner’s agents, and interested parties at their last-known address of the
23 intent to file the application and by publication as a class 1 notice under ch. 985. The
24 notice shall include all of the following information:

25 1. The address and other information that identifies the residential property.

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1 2. The conditions of the residential property that constitute a nuisance and that
2 resulted in the decision to apply for a receiver.

3 3. The name, address, and telephone number of the person or department
4 where additional information can be obtained concerning the nuisance and the
5 action necessary to abate the nuisance.

6 4. That the appointment of a receiver may be requested unless action is taken
7 to abate the nuisance within 60 days after receipt of the notice.

8 (c) If a notice sent under par. (b) is recorded with the register of deeds in the
9 county in which the residential property is located, the notice is considered to have
10 been served, as of the date the notice is recorded, on any person claiming an interest
11 in the residential property as a result of a conveyance from the owner of record unless
12 the conveyance was recorded before the recording of the notice.

13 (d) A city may not apply for the appointment of a receiver under this subsection
14 if an interested party has commenced and is prosecuting in a timely fashion an action
15 or other judicial or administrative proceeding to foreclose a security interest on the
16 residential property, or to obtain specific performance of, or forfeit, the purchaser's
17 interest in a land contract.

18 (e) Notice of the application for the appointment of a receiver under this section
19 shall be served on all owners, owners' agents, and interested parties. At the time that
20 the application is filed with the court, the applicant shall file a lis pendens.

21 (f) If, following the application for appointment of a receiver, one or more of the
22 interested parties elects to abate the nuisance or rehabilitate the residential
23 property, the party or parties shall be required to post security in such an amount
24 and character as the court considers appropriate to ensure timely performance of all
25 work necessary to abate the nuisance or rehabilitate the residential property, as well

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1 as satisfy such other conditions as the court considers appropriate for timely
2 completion of the abatement or rehabilitation.

3 (g) In the event that all interested parties elect not to act under par. (f) or to
4 timely perform work undertaken under par. (f), the court shall make a determination
5 as to whether the residential property is a threat to public health, safety, or welfare.
6 The court shall determine if abatement or rehabilitation is required, the extent of the
7 abatement or rehabilitation necessary, and the scope of work necessary to eliminate
8 the conditions and shall appoint a receiver to complete the abatement or
9 rehabilitation.

10 (h) The court shall appoint a receiver who is one of the following:

11 1. A housing authority, redevelopment company, redevelopment corporation,
12 redevelopment authority, or community development authority under ss. 66.1201,
13 66.1301, 66.1331, 66.1333, or 66.1335.

14 2. A nonprofit corporation, the primary purpose of which is the improvement
15 of housing conditions within the city in which the property is located.

16 (i) If the court is unable to appoint a receiver from one of the entities listed in
17 par. (h), the court may appoint as a receiver any other person that the court
18 determines to be competent.

19 (j) A receiver appointed by the court pursuant to this section shall not be
20 required to give security or bond as a condition of the appointment.

21 **(3) AUTHORITY OF RECEIVER; FINANCING AGREEMENTS; FEE.** (a) A receiver
22 appointed under sub. (2) (h) or (i) shall have the authority to do all of the following
23 unless specifically limited by the court:

24 1. Take possession and control of the residential property including the right
25 to enter into and terminate tenancies, manage and maintain the property under chs.

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1 704 and 799 and rules related to residential rental practices promulgated under s.
2 100.20 (2), and charge and collect rents derived from the residential property,
3 applying the sum of those rents to the costs incurred due to the abatement or
4 rehabilitation and receivership.

5 2. Negotiate contracts and pay all expenses associated with operation and
6 conservation of the residential property including all utility, fuel, custodial, repair,
7 or insurance expenses.

8 3. Pay all accrued property taxes, penalties, assessments, and other charges
9 imposed on the residential property by a unit of government including any charges
10 accruing during the pendency of the receivership.

11 4. Dispose of any or all abandoned personal property found at the residential
12 property.

13 5. Enter into contracts and pay for the performance of any work necessary to
14 complete the abatement or rehabilitation.

15 (b) In addition to the powers under par. (a), the receiver may, under such terms
16 and conditions as a court shall allow, enter into financing agreements with public or
17 private lenders and encumber the property so as to have moneys available to abate
18 the nuisance or rehabilitate the property. The receiver may give a holder of a
19 purchase money security interest who received notice under sub. (2) the first
20 opportunity to lend the money under this paragraph.

21 (c) A receiver may charge an administration fee at an hourly rate approved by
22 the court or at a rate of 20% of the total cost of the abatement or rehabilitation,
23 whichever the court considers more appropriate.

24 **(4) LIMITS ON LANDLORD AUTHORITY.** (a) In this subsection, “anticipated action”
25 means a statement or statements by a person authorized by ordinance to bring an

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1 action under this section that leads a landlord to conclude that an action under this
2 section may be commenced.

3 (b) A landlord or receiver, or any agent of a landlord or receiver, of a residential
4 rental unit that is the subject of any action, or anticipated action, to abate an alleged
5 nuisance under this section may not with respect to the tenant of the rental unit,
6 increase rent, decrease services, bring a court proceeding for possession of the unit,
7 refuse to renew the rental agreement, or threaten or attempt to do any of the
8 foregoing if the tenant, in a court proceeding commenced by the tenant, or landlord,
9 establishes by a preponderance of the credible evidence that the foregoing conduct
10 would not have occurred but for the bringing of an action for the abatement of a
11 nuisance under this section with respect to the rental unit or the anticipation of such
12 an action being brought. To prevail, the tenant must also establish by a
13 preponderance of the evidence that one of the following applies:

- 14 1. No nuisance was found with respect to the rental unit.
- 15 2. The tenant was found not to cause a nuisance with respect to the rental unit.
- 16 3. If a nuisance exists under this section, the conduct specified in this
17 paragraph is not necessary to abate the nuisance.

18 (d) Any action or inaction by a landlord, receiver, or agent described in par. (b)
19 is subject to chs. 704 and 799, and any court proceeding regarding such an action or
20 inaction shall be heard by the following court:

- 21 1. If the court proceeding is brought by a receiver, by the court that appointed
22 the receiver.
- 23 2. If the court proceeding is brought by the tenant or landlord, in small claims
24 court as an eviction action.

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1 (e) In any action taken under par. (b), the notice given to the tenant must state
2 the basis for the action and the right of the tenant to contest the action.

3 **(5) REVIEW OF EXPENDITURES BY COURT; LIEN FOR UNPAID EXPENSES.** (a) All moneys
4 the receiver expends and all of the costs and obligations that he or she incurs in
5 performing the abatement or rehabilitation, including the receiver's administrative
6 fee, shall be reviewed by the court for reasonableness and necessity. To the extent
7 that the court finds the moneys, costs, or obligations to be reasonable and necessary,
8 it shall issue an order reciting this fact as well as the amount found to be reasonable
9 and necessary.

10 (b) If all of the costs and obligations that the court found to be reasonable and
11 necessary under par. (a) have not been paid, the court shall issue a judgment for the
12 unpaid amount and file that judgment with the office of the clerk of court within 60
13 days after the receiver files a statement of those unpaid costs and obligations with
14 the court and that judgment shall constitute a lien on the residential property from
15 the date of the filing of the judgment.

16 **(6) EFFECT ON PURCHASE MONEY SECURITY INTEREST OF LIEN FOR UNPAID ABATEMENT**
17 **EXPENSES.** (a) The issuance of the notice under sub. (2) (b) shall constitute a default
18 for waste under any purchase money security interest relating to the residential
19 property subject to the notice, and if any violations of the building code listed in the
20 notice are not corrected within 30 days after the mailing of the notice, the vendor,
21 mortgagee, or beneficiary under any purchase money security interest may
22 commence proceedings to exercise the remedies set forth in the purchase money
23 security interest.

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1 (b) A lien created under sub. (5) (b) shall be prior and superior to any purchase
2 money security interest in the residential property if all of the following apply to that
3 purchase money security interest:

4 1. The city gave the holder of the purchase money security interest and any
5 vendee, mortgagor, or grantor under such purchase money security interest the
6 notice under sub. (2) (b).

7 2. The holder of the purchase money security interest has not, prior to the
8 appointment of a receiver under sub. (2) (g), initiated proceedings to foreclose the
9 purchase money security interest, to abate the conditions resulting in issuance of the
10 notice under sub. (2) (b) or to gain possession of the property.

11 (c) Except for property tax liens, assessment liens, and purchase money
12 security interests not included in par. (b), a lien created under sub. (5) (b) shall be
13 prior and superior to all other liens, mortgages, and encumbrances against the
14 residential property upon which it is imposed without regard to the date the other
15 liens, mortgages, or encumbrances were attached to the residential property.

16 **(7) TERMINATION OF RECEIVERSHIP.** (a) The receivership into which the court
17 placed the residential property under sub. (2) (h) or (i) shall terminate only by an
18 order of the court.

19 (b) The court shall terminate the receivership if the residential property's
20 owner or owner's agent or an interested party or the receiver show the court all of the
21 following:

22 1. That the abatement or rehabilitation has been completed.

23 2. That the costs and obligations incurred due to the abatement or
24 rehabilitation, including the receiver's administrative fee, have been paid by an

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1 owner, owner's agent, or interested party or that a lien has been filed pursuant to sub.
2 (5).

3 3. That the owner, owner's agent, or interested party will manage the
4 residential property in conformance with applicable housing codes.

5 (c) The court shall terminate the receivership if the receiver shows the court
6 one of the following:

7 1. That the abatement or rehabilitation is not feasible.

8 2. That the improvements on the property have been demolished by the 1st or
9 2nd class city.

10 (END)