



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0054/1
PJK/ARG/PJH:sac;jm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 183**

May 13, 2013 – Offered by Representatives YOUNG, BEWLEY and GENRICH.

1 **AN ACT** *to repeal* 704.28 (4) (d); *to renumber and amend* 349.13 (3m); *to*
2 *amend* 349.13 (5) (b) 2., 349.13 (5) (c), 704.05 (5) (bf), 704.07 (2) (bm) 1., 704.08,
3 704.28 (2), 704.28 (4) (b), 704.95, 799.05 (3) (b), 799.06 (2), 799.20 (4), 799.206
4 (3), 799.40 (1), 799.40 (1m) and 799.44 (2); and *to create* 349.13 (3m) (a), (c),
5 (d) and (e), 704.28 (5) and 895.489 of the statutes; **relating to:** miscellaneous
6 provisions related to rental and vehicle towing practices and eviction
7 proceedings, providing an exemption from emergency rule procedures, and
8 granting rule-making authority.

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

9 **SECTION 1.** 349.13 (3m) of the statutes is renumbered 349.13 (3m) (b) and
10 amended to read:

11 349.13 (3m) (b) ~~No~~ If private property is not properly posted and a vehicle
12 involved in trespass parking on a ~~is parked on the private parking lot or facility shall~~

1 ~~be removed property and is not authorized to be parked there, the vehicle may be~~
2 ~~removed immediately, at the vehicle owner's expense,~~ without the permission of the
3 vehicle owner, ~~except~~ upon the issuance of a repossession judgment or upon formal
4 complaint and ~~the issuance of~~ a citation for illegal parking issued by a traffic or police
5 officer.

6 **SECTION 2.** 349.13 (3m) (a), (c), (d) and (e) of the statutes are created to read:

7 349.13 **(3m)** (a) In this subsection:

8 1. "Parking enforcer" has the meaning given in s. 341.65 (1) (ar).

9 2. "Properly posted" means there is clearly visible notice that an area is private
10 property and that vehicles that are not authorized to park in this area may be
11 immediately removed.

12 (c) If private property is properly posted and a vehicle is parked on the private
13 property and is not authorized to be parked there, the vehicle may be removed
14 immediately, at the vehicle owner's expense, without the permission of the vehicle
15 owner, regardless of whether a citation is issued for illegal parking.

16 (d) A vehicle may be removed from private property under par. (b) or (c) only
17 by a towing service at the request of the property owner or property owner's agent,
18 a traffic officer, or a parking enforcer. The vehicle owner shall pay the reasonable
19 charges for removal and, if applicable, storage of the vehicle. If the vehicle was
20 removed at the request of the property owner or property owner's agent, these
21 reasonable charges shall be paid directly to the towing service, and the towing service
22 may impound the vehicle until these charges are paid. If these charges have not been
23 paid in full within 30 days of the vehicle's removal and the vehicle owner has not
24 entered into a written agreement with the towing service to pay these reasonable

1 charges in installment payments, the vehicle shall be deemed abandoned and may
2 be disposed of as are other abandoned vehicles.

3 (e) The department shall promulgate rules establishing reasonable charges for
4 removal and storage of vehicles under this subsection.

5 **SECTION 3.** 349.13 (5) (b) 2. of the statutes is amended to read:

6 349.13 (5) (b) 2. A person who has custody of a vehicle removed or stored under
7 subs. (3) to (4) or otherwise at the request of a law enforcement officer, traffic officer,
8 parking enforcer, property owner, or property owner's agent shall release the
9 personal property within the vehicle to the owner of the vehicle during regular office
10 hours upon presentation by the owner of proper identification.

11 **SECTION 4.** 349.13 (5) (c) of the statutes is amended to read:

12 349.13 (5) (c) A traffic or police officer or parking enforcer who requests removal
13 of a vehicle under subs. (3) to (4) by a towing service shall, within 24 hours of
14 requesting the removal, notify the towing service of the name and last-known
15 address of the registered owner and all lienholders of record of the vehicle if the
16 vehicle is to be removed to any location other than a public highway within one mile
17 from the location from which the vehicle is to be removed and if the officer or parking
18 enforcer is not employed by a municipality or county that has entered into a towing
19 services agreement which requires the municipality or county to provide notice to
20 such owner and lienholders of the towing.

21 **SECTION 5.** 704.05 (5) (bf) of the statutes is amended to read:

22 704.05 (5) (bf) *Notice that landlord will not store property.* If the landlord does
23 not intend to store personal property left behind by a tenant, except as provided in
24 par. (am), the landlord shall provide written notice to a tenant, when the tenant
25 enters into, ~~and when the tenant~~ or renews, a rental agreement or at any other time

1 before the tenant removes from the premises, that the landlord will not store any
2 items of personal property that the tenant leaves behind when the tenant removes
3 from the premises, except as provided in par. (am). Notwithstanding pars. (a), (am),
4 and (b), if the landlord ~~does not provide~~ has not provided to a tenant the notice
5 required under this paragraph, the landlord shall comply with s. 704.05, 2009 stats.,
6 with respect to any personal property left behind by the tenant when the tenant
7 removes from the premises.

8 **SECTION 6.** 704.07 (2) (bm) 1. of the statutes is amended to read:

9 704.07 (2) (bm) 1. The landlord has ~~actual knowledge~~ received written notice
10 of the violation from a local housing code enforcement agency.

11 **SECTION 7.** 704.08 of the statutes is amended to read:

12 **704.08 Information check-in Check-in sheet.** A landlord shall provide to
13 a new residential tenant when the tenant commences his or her occupancy of the
14 premises a ~~standardized information check-in sheet that contains an itemized~~
15 ~~description of~~ the tenant may use to make comments, if any, about the condition of
16 the premises ~~at the time of check-in.~~ The tenant shall be given 7 days from the date
17 the tenant commences his or her occupancy to complete the check-in sheet and
18 return it to the landlord. The landlord is not required to provide the information
19 check-in sheet to a tenant upon renewal of a rental agreement. This section does not
20 apply to the rental of a plot of ground on which a manufactured home, as defined in
21 s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be
22 located.

23 **SECTION 8.** 704.28 (2) of the statutes is amended to read:

24 704.28 (2) **NONSTANDARD RENTAL PROVISIONS.** Except as provided in sub. (3), a
25 rental agreement may include one or more nonstandard rental provisions that

1 authorize the landlord to withhold amounts from the tenant’s security deposit for
2 reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions
3 shall be provided to the tenant in a separate written document entitled
4 “NONSTANDARD RENTAL PROVISIONS.” The landlord shall specifically identify
5 ~~and discuss~~ each nonstandard rental provision with the tenant before the tenant
6 enters into a rental agreement with the landlord. If the tenant signs his or her name,
7 or writes his or her initials, by a nonstandard rental provision, it is rebuttably
8 presumed that the landlord has specifically identified ~~and discussed~~ the
9 nonstandard rental provision with the tenant and that the tenant has agreed to it.

10 **SECTION 9.** 704.28 (4) (b) of the statutes is amended to read:

11 704.28 (4) (b) If the tenant vacates the premises before the termination date
12 of the rental agreement or if the tenant is evicted, the date on which the tenant’s
13 rental agreement terminates or, if the landlord rerents the premises before the
14 tenant’s rental agreement terminates, the date on which the new tenant’s tenancy
15 begins.

16 **SECTION 10.** 704.28 (4) (d) of the statutes is repealed.

17 **SECTION 11.** 704.28 (5) of the statutes is created to read:

18 704.28 (5) APPLICATION TO RESIDENTIAL TENANCIES. This section applies to
19 residential tenancies only.

20 **SECTION 12.** 704.95 of the statutes is amended to read:

21 **704.95 Practices regulated by the department of agriculture, trade**
22 **and consumer protection.** Practices in violation of ~~this chapter s. 704.28 or 704.44~~
23 may also constitute unfair methods of competition or unfair trade practices under s.
24 100.20. However, the department of agriculture, trade and consumer protection may

1 not issue an order or promulgate a rule under s. 100.20 that changes any right or duty
2 arising under this chapter.

3 **SECTION 13.** 799.05 (3) (b) of the statutes is amended to read:

4 799.05 (3) (b) Except in eviction actions, the return date for a summons served
5 upon a resident of this state shall be not less than 8 days nor more than 30 days from
6 the issue date, and service shall be made not less than 8 days prior to the return date.
7 In eviction actions, the return date for a summons served upon a resident of this state
8 shall be not less than 5 days nor more than ~~30~~ 14 days from the issue date, and service
9 shall be made not less than 5 days prior to the return date.

10 **SECTION 14.** 799.06 (2) of the statutes is amended to read:

11 799.06 (2) A person may commence and prosecute or defend an action or
12 proceeding under this chapter and may appear in his, her, or its own proper person
13 or by an attorney regularly authorized to practice in the courts of this state. Under
14 this subsection, a person is considered to be acting in his, her, or its own proper
15 person if the appearance is by a full-time member or authorized employee of the
16 person, or by an agent of the member or an authorized employee of the agent. An
17 assignee of any cause of action under this chapter shall not appear by a full-time
18 authorized employee, unless the employee is an attorney regularly authorized to
19 practice in the courts of this state.

20 **SECTION 15.** 799.20 (4) of the statutes is amended to read:

21 799.20 (4) INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE. If the defendant
22 appears on the return date of the summons or any adjourned date thereof, the court
23 or circuit court commissioner shall make sufficient inquiry of the defendant to
24 determine whether the defendant claims a defense to the action. If it appears to the
25 court or circuit court commissioner that the defendant claims a defense to the action,

1 the court or circuit court commissioner shall schedule a trial of all the issues involved
2 in the action, unless the parties stipulate otherwise or the action is subject to
3 immediate dismissal. In an eviction action, the court or circuit court commissioner
4 shall schedule a trial of all the issues involved in the action within 20 days of the
5 return date of the summons or any adjourned date thereof, unless the parties
6 stipulate otherwise or the action is subject to immediate dismissal.

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

8 799.206 (3) When all parties appear in person or by their attorneys on the
9 return date in an eviction, garnishment, or replevin action and any party claims that
10 a contest exists, the matter shall be forthwith scheduled for a hearing, to be held as
11 soon as possible before a judge and in the case of an eviction action, not more than
12 20 days after the return date.

13 **SECTION 17.** 799.40 (1) of the statutes is amended to read:

14 799.40 (1) WHEN COMMENCED. A civil action of eviction may be commenced by
15 a person entitled to the possession of real property, or by that person's agent
16 authorized in writing, to remove therefrom any person who is not entitled to either
17 the possession or occupancy of such real property.

18 **SECTION 18.** 799.40 (1m) of the statutes is amended to read:

19 799.40 (1m) ACCEPTANCE OF RENT OR OTHER PAYMENT. If a landlord commences
20 an action under this section against a tenant whose tenancy has been terminated for
21 failure to pay rent or for any other reason, the action under this section may not be
22 dismissed solely because the landlord accepts past due rent or any other payment
23 from the tenant after ~~the termination of the tenant's tenancy~~ servicing notice of default
24 or after commencing the action.

25 **SECTION 19.** 799.44 (2) of the statutes is amended to read:

1 799.44 (2) WRIT OF RESTITUTION. At the time of ordering judgment for the
2 restitution of premises, the court shall order that a writ of restitution be issued, and
3 ~~the writ may be~~ within 5 days and delivered to the sheriff for execution in accordance
4 with s. 799.45. No writ shall be executed if received by the sheriff more than 30 days
5 after its issuance.

6 **SECTION 20.** 895.489 of the statutes is created to read:

7 **895.489 Civil liability exemption; tenancy references.** (1) In this section:

8 (a) “Reference” means a written or oral statement about the rental performance
9 of an applicant for tenancy and may include statements about the applicant’s
10 payment history, conformance to rental agreement requirements, or conformance to
11 local and state laws; factual statements regarding any rental agreement
12 enforcement actions, including notices given under s. 704.17, 704.19, or 710.15 (5r);
13 and factual statements about any dispute settlement between the landlord and
14 applicant in accordance with any agreement between the landlord and applicant
15 relating to termination of the applicant’s tenancy.

16 (b) “Tenant” means a residential tenant, regardless of the type of tenancy or
17 rental period.

18 (2) A landlord who, on the request of a prospective landlord of an applicant for
19 tenancy or on the request of the applicant for tenancy, provides a reference to the
20 prospective landlord is presumed to be acting in good faith and, unless lack of good
21 faith is shown by clear and convincing evidence, is immune from all civil liability that
22 may result from providing that reference. The presumption of good faith under this
23 subsection may be rebutted only upon a showing by clear and convincing evidence
24 that the landlord knowingly provided false information in the reference or made the
25 reference maliciously.

SECTION 21. Nonstatutory provisions.

1 **SECTION 21. Nonstatutory provisions.**
2 (1) PROPOSED PERMANENT RULES. The department of transportation shall
3 present the statement of scope of the rules required under section 349.13 (3m) (e) of
4 the statutes, as created by this act, to the governor for approval under section
5 227.135 (2) of the statutes no later than the 60th day after the effective date of this
6 subsection.

7 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
8 the department of transportation shall promulgate the rules required under section
9 349.13 (3m) (e) of the statutes, as created by this act, for the period before the
10 effective date of the permanent rules promulgated under section 349.13 (3m) (e) of
11 the statutes, as created by this act, but not to exceed the period authorized under
12 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
13 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
14 the department is not required to provide evidence that promulgating a rule under
15 this subsection as an emergency rule is necessary for the preservation of public
16 peace, health, safety, or welfare and is not required to provide a finding of an
17 emergency for a rule promulgated under this subsection. Notwithstanding section
18 227.24 (1) (e) 1d. and 1g. of the statutes, the department is not required to prepare
19 a statement of the scope of the rules promulgated under this subsection or present
20 the rules to the governor for approval. The department of transportation shall
21 promulgate the rules under this subsection no later than the first day of the 7th
22 month beginning after the effective date of this subsection.

SECTION 22. Initial applicability.

