



## 1997 ASSEMBLY BILL 872

March 2, 1998 - Introduced by Representatives GROTHMAN, WASSERMAN, ALBERS, DUFF, GOETSCH, HANDRICK, KEDZIE, F. LASEE, NASS, SERATTI, STASKUNAS, WALKER, WARD, ZIEGELBAUER and ZUKOWSKI, cosponsored by Senators WEEDEN, ROSENZWEIG, ROESSLER, FARROW and WELCH. Referred to Committee on Housing.

1     **AN ACT to amend** 100.20 (5), 100.20 (6), 704.05 (2), 704.05 (5) (a) (intro.), 799.45  
2             (1), 799.45 (2) (b), 799.45 (2) (c), 799.45 (3) (a), 799.45 (3) (b) and 799.45 (3) (c);  
3             and **to create** 704.04, 704.08, 799.45 (2) (bg) and 799.45 (3) (am) of the statutes;  
4             **relating to:** charging a tenant for a credit check, presumption that tenant  
5             caused damage, allowing plaintiffs to remove and store property under a writ  
6             of restitution and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law addresses some issues related to the rental of residential property, such as certain lease requirements and how to terminate a tenancy. The Wisconsin Administrative Code provides regulations related to other rental practices, which are administered and enforced by the department of agriculture, trade and consumer protection.

Under current law, if a tenant, at the termination of his or her tenancy, leaves personal property on the premises, the landlord has certain rights and responsibilities regarding that property. The landlord may store the property and notify the former tenant that the property may be claimed, subject to a lien by the landlord for the costs of the removal and storage of the property. The current law allows the landlord to dispose of the property after giving the former tenant notice that the property will be disposed of if the tenant does not claim the property within 30 days after receipt of the property. Current law also allows the landlord to store

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the property without charging the tenant with any storage costs and to return the property to the tenant.

This bill creates 2 additional statutory provisions related to residential rental practices. The bill authorizes a landlord to charge a prospective tenant up to \$25 for the cost of a credit or background check. The bill creates a rebuttable presumption that any damage to leased premises that occurs during a tenant's tenancy was caused by the tenant. The bill provides that the penalties that apply to a violation of the rental practices set out in the Wisconsin Administrative Code, such as double damages and reasonable attorneys fees, also apply to a violation of the rental practices provisions created in the bill.

Current law requires the sheriff, when executing a writ to evict a tenant, to remove property left on the premises by the tenant. The sheriff is required to take the removed property to a place of safekeeping and to notify the former tenant of the place where the property is being kept and of the right to obtain possession of the goods after the payment of the expenses of moving and storing the property.

The bill gives landlords the same rights and responsibilities to remove, store and dispose of the property of former tenants who are evicted as they currently have over property of former tenants whose tenancy is terminated. A landlord is given the option under the bill to have the sheriff take possession of the former tenant's property or to take possession himself or herself and follow the procedures used when a tenancy is terminated regarding the removal, storage and disposal of the property. If the sheriff determines that a piece of property is worth less than \$50, the bill gives the landlord who has agreed to remove the property the right to dispose of that piece of property.

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

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

1           **SECTION 1.** 100.20 (5) of the statutes is amended to read:

2           100.20 (5) Any person suffering pecuniary loss because of a violation by any  
3 other person of s. 704.04 or 704.08 or of any order issued under this section may sue  
4 for damages therefor in any court of competent jurisdiction and shall recover twice  
5 the amount of such pecuniary loss, together with costs, including a reasonable  
6 attorney's fee.

7           **SECTION 2.** 100.20 (6) of the statutes is amended to read:

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1           100.20 (6) The department may commence an action in circuit court in the  
2 name of the state to restrain by temporary or permanent injunction the violation of  
3 s. 704.04 or 704.08 or of any order issued under this section. The court may in its  
4 discretion, prior to entry of final judgment make such orders or judgments as may  
5 be necessary to restore to any person any pecuniary loss suffered because of the acts  
6 or practices involved in the action, provided proof thereof is submitted to the  
7 satisfaction of the court. The department may use its authority in ss. 93.14 and 93.15  
8 to investigate violations of s. 704.04 or 704.08 or of any order issued under this  
9 section.

10           **SECTION 3.** 704.04 of the statutes is created to read:

11           **704.04 Charge for credit or background check.** A landlord may charge a  
12 prospective tenant of residential premises for the cost of a credit or background check  
13 of the prospective tenant. A prospective tenant may not be requested to pay more  
14 than \$25 under this section.

15           **SECTION 4.** 704.05 (2) of the statutes is amended to read:

16           **704.05 (2) POSSESSION OF TENANT AND ACCESS BY LANDLORD.** Until the expiration  
17 date specified in the lease, or the termination of a periodic tenancy or tenancy at will,  
18 and so long as the tenant is not in default, the tenant has the right to exclusive  
19 possession of the premises, except as hereafter provided and except as provided  
20 under ch. ATCP 134, Wis. Adm. Code. The landlord may upon advance notice and  
21 at reasonable times inspect the premises, make repairs and show the premises to  
22 prospective tenants or purchasers; and if the tenant is absent from the premises and  
23 the landlord reasonably believes that entry is necessary to preserve or protect the  
24 premises, the landlord may enter without notice and with such force as appears  
25 necessary.

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1           **SECTION 5.** 704.05 (5) (a) (intro.) of the statutes is amended to read:

2           704.05 (5) (a) *Procedure.* (intro.) If a tenant removes from the premises and  
3 leaves personal property, or if the landlord elects to have the landlord or his or her  
4 agent remove and store or dispose of the property under s. 799.45 (3) (am), the  
5 landlord may do all of the following:

6           **SECTION 6.** 704.08 of the statutes is created to read:

7           **704.08 Rebuttable presumption regarding damage.** Damage to  
8 residential premises that occurs during a tenant's tenancy is rebuttably presumed  
9 to have been caused by the negligence of, or improper use of the premises by, the  
10 tenant.

11           **SECTION 7.** 799.45 (1) of the statutes is amended to read:

12           799.45 (1) **WHEN EXECUTED.** Upon delivery of a writ of restitution to the sheriff  
13 and within 5 days after payment to the sheriff of the fee required by s. 814.70 (8), the  
14 sheriff shall execute the writ. ~~The~~ If the plaintiff, or the plaintiff's attorney or agent,  
15 does not notify the sheriff under sub. (3) (am) that the plaintiff or his or her agent  
16 will remove and store or dispose of the property, the sheriff may require that prior  
17 to the execution of any writ of restitution the plaintiff deposit a reasonable sum  
18 representing the probable cost of removing the defendant's property chargeable to  
19 the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s.  
20 814.70 (8). In case of dispute as to the amount of ~~such~~ the required deposit, the  
21 amount ~~thereof~~ of that deposit shall be determined by the court under s. 814.70 (10).

22           **SECTION 8.** 799.45 (2) (b) of the statutes is amended to read:

23           799.45 (2) (b) ~~Remove~~ Unless the plaintiff or his or her agent removes and  
24 stores or disposes of the property under sub. (3) (am), remove from the premises

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1 described in the writ, using such reasonable force as may be necessary, all personal  
2 property found therein not the property of the plaintiff.

3 **SECTION 9.** 799.45 (2) (bg) of the statutes is created to read:

4 799.45 (2) (bg) Assist the plaintiff or his or her agent in the removal, under sub.  
5 (3) (am), of all personal property found in the premises described in the writ, not the  
6 property of the plaintiff, using such reasonable force as may be necessary.

7 **SECTION 10.** 799.45 (2) (c) of the statutes is amended to read:

8 799.45 (2) (c) Exercise ordinary care in the removal of all persons and property  
9 from the premises and, unless the plaintiff or his or her agent removes and stores or  
10 disposes of the property under sub. (3) (am), in the handling and storage of all  
11 property removed ~~therefrom~~ from the premises.

12 **SECTION 11.** 799.45 (3) (a) of the statutes is amended to read:

13 799.45 (3) (a) ~~In~~ Except as provided under par. (am), in accomplishing the  
14 removal of property from the premises described in the writ, the sheriff is authorized  
15 to engage the services of a mover or trucker.

16 **SECTION 12.** 799.45 (3) (am) of the statutes is created to read:

17 799.45 (3) (am) When delivering a writ of restitution to the sheriff, the plaintiff  
18 or his or her attorney or agent may notify the sheriff that the plaintiff or the  
19 plaintiff's agent shall be responsible for the removal and storage or disposal of the  
20 property that is found in the premises described in the writ and that does not belong  
21 to the plaintiff. If the sheriff is notified that the plaintiff or the plaintiff's agent shall  
22 be responsible for the removal and storage or disposal of the property, the sheriff  
23 shall execute the writ of restitution at the same time that the plaintiff or the  
24 plaintiff's agent will take possession of the property. If the sheriff is notified that the  
25 plaintiff or the plaintiff's agent shall be responsible for the removal and storage or

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1 disposal of the property, the plaintiff or the plaintiff's agent shall remove and store  
2 or dispose of the property following the procedures under s. 704.05 (5).

3 **SECTION 13.** 799.45 (3) (b) of the statutes is amended to read:

4 799.45 (3) (b) Except as provided in ~~par.~~ pars. (am) and (c), the property  
5 removed from such premises shall be taken to some place of safekeeping within the  
6 county selected by the sheriff. Within 3 days of the removal of the goods, the sheriff  
7 shall mail a notice to the defendant as specified in sub. (4) stating the place where  
8 the goods are kept and shall deliver to the defendant any receipt or other document  
9 required to obtain possession of the goods. Warehouse or other similar receipts  
10 issued with respect to goods stored by the sheriff or the city police department under  
11 this subsection shall be taken in the name of the defendant. All expenses incurred  
12 for storage and other like charges after delivery by the sheriff to a place of  
13 safekeeping shall be the responsibility of the defendant, and any person accepting  
14 goods from the sheriff for storage under this subsection shall have all of the rights  
15 and remedies accorded by law against the defendant personally and against the  
16 property stored for the collection of such charges, including the lien of a warehouse  
17 keeper under s. 407.209. Risk of damages to or loss of such property shall be borne  
18 by the defendant after delivery by the sheriff to the place of safekeeping.

19 **SECTION 14.** 799.45 (3) (c) of the statutes is amended to read:

20 799.45 (3) (c) When, in the exercise of ordinary care, the sheriff determines that  
21 property removed from premises described in the writ is without monetary value, the  
22 sheriff may deliver or cause the same to be delivered to some appropriate place  
23 established for the collection, storage and disposal of refuse. When, in the exercise  
24 of ordinary care, the sheriff determines that an individual piece of personal property  
25 to be removed by the plaintiff or the plaintiff's agent from the premises described in

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1 the writ is worth less than \$50, the sheriff shall allow the plaintiff or the plaintiff's  
2 agent, at his or her discretion and notwithstanding s. 704.05 (5), to remove the  
3 personal property to a location for collection and disposal as refuse. In such case the  
4 sheriff shall notify the defendant as specified in sub. (4) of the place to which the  
5 goods have been delivered within 3 days of the removal of the goods. The exercise  
6 of ordinary care by the sheriff under this subsection does not include searching  
7 apparently valueless property for hidden or secreted articles of value. If the sheriff,  
8 in good faith, determines under this paragraph that an individual piece of personal  
9 property is worth less than \$50, the sheriff is immune from civil liability for any  
10 damages resulting from the disposal of that property.

**SECTION 15. Initial applicability.**

11  
12 (1) The treatment of sections 704.05 (5) (a) (intro.) and 799.45 (1), (2) (b), (bg)  
13 and (c) and (3) (a), (am), (b) and (c) of the statutes first applies to writs of restitution  
14 issued on the effective date of this subsection.

15 (END)