



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-4619/1  
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## 2021 ASSEMBLY BILL 738

December 7, 2021 - Introduced by Representatives HONG, ANDERSON, GOYKE, SNODGRASS, BROSTOFF, EMERSON, NEUBAUER, HEBL, VINING, HESSELBEIN, SHELTON, POPE, SUBECK, CONLEY, OHNSTAD, CONSIDINE, MOORE OMOKUNDE, STUBBS, BALDEH, BOWEN, SPREITZER and SINICKI, cosponsored by Senators AGARD, L. TAYLOR, JOHNSON, LARSON and ROYS. Referred to Committee on Housing and Real Estate.

1     **AN ACT** *to amend* 704.17 (1p) (a), 704.17 (2) (a), 704.17 (3) (a), 710.15 (5r) and  
2           799.40 (1m); and *to create* 704.155, 704.17 (3d) and 799.40 (5) of the statutes;  
3           **relating to:** requiring landlords or tenants to apply for emergency rental  
4           assistance and participate in mediation prior to eviction during certain  
5           declared public health emergencies and prohibiting certain rent increases.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a tenant is late in paying rent, the landlord may give the tenant a notice that requires the tenant to pay rent or vacate within at least five days after the notice is given or, under certain circumstances, a notice requiring the tenant to vacate within at least 14 days after the notice is given without the option to cure by paying rent. If the tenant fails to pay the rent by that date, the tenancy is terminated. Under current law, a landlord may bring a small claims eviction action against a tenant whose tenancy has been terminated for failure to pay rent.

Under the bill, during a public health emergency, if a residential tenant fails to pay rent when due, the tenant's tenancy is terminated only if the landlord gives the tenant a notice that requires the tenant to pay rent or vacate within at least 30 days after the notice is given; the tenant fails to pay the rent; and the landlord applies for and is denied emergency rental assistance under a federal assistance program, if such a program exists, or is ineligible for such emergency rental assistance. The bill defines "public health emergency" as a state or federal public health emergency declared in response to an infectious disease outbreak. Under the bill, a 30-day

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notice must include certain information, including contact information for the emergency rental assistance provider serving the county where the tenant resides; a statement as to whether the landlord is qualified to receive emergency rental assistance under a federal assistance program, and, if eligible, that the landlord is required to apply for such funds; a statement that, if the landlord is ineligible for such funds, the tenant may be able to apply for emergency rental assistance; and a statement that the landlord may not pursue an action for eviction against the tenant for failure to pay rent if the tenant or the landlord applies for and is approved to receive emergency rental assistance, and may not pursue an action for eviction unless the landlord and tenant participate in mediation and are unable to reach a settlement or the landlord shows that the tenant has refused to participate in mediation.

The bill also provides that, during a public health emergency, a court must stay the proceedings in a residential eviction action until the landlord files proof with the court that he or she has applied for and been denied emergency rental assistance under a federal assistance program, if such a program exists, or, if the landlord is ineligible for such emergency rental assistance, that the tenant has either failed to apply or has applied for and been denied such emergency rental assistance; and until the landlord and tenant notify the court that they have participated in mediation and are unable to reach a settlement or the landlord notifies the court that the tenant has refused to participate in mediation. In addition, a court must stay residential eviction proceedings if either the tenant or the landlord has been approved to receive emergency rental assistance.

Finally, the bill prohibits a landlord that receives emergency rental assistance under a federal assistance program from raising the tenant's rent for 12 months, except that the landlord may raise rent to cover any increase in property taxes for the tenant's rental unit.

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

1           **SECTION 1.** 704.155 of the statutes is created to read:  
2           **704.155 Certain rent raises prohibited.** If a landlord receives emergency  
3 rental assistance under a federal assistance program, the landlord may not increase  
4 the amount of rent required to be paid by any tenant for which the emergency rental  
5 assistance was received for a period of 12 months following the receipt of the  
6 emergency rental assistance, except that the landlord may increase the amount of

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1 rent required to be paid by such tenant in an amount not to exceed any increase in  
2 property taxes for the tenant's rental unit.

3 **SECTION 2.** 704.17 (1p) (a) of the statutes is amended to read:

4 704.17 (1p) (a) If Except as provided under sub. (3d), if a month-to-month  
5 tenant or a week-to-week tenant fails to pay rent when due, the tenant's tenancy  
6 is terminated if the landlord gives the tenant notice requiring the tenant to pay rent  
7 or vacate on or before a date at least 5 days after the giving of the notice and if the  
8 tenant fails to pay accordingly. ~~—A—~~ Except as provided under sub. (3d), a  
9 month-to-month tenancy is terminated if the landlord, while the tenant is in default  
10 in payment of rent, gives the tenant notice requiring the tenant to vacate on or before  
11 a date at least 14 days after the giving of the notice.

12 **SECTION 3.** 704.17 (2) (a) of the statutes is amended to read:

13 704.17 (2) (a) If Except as provided under sub. (3d), if a tenant under a lease  
14 for a term of one year or less, or a year-to-year tenant, fails to pay any installment  
15 of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant  
16 notice requiring the tenant to pay rent or vacate on or before a date at least 5 days  
17 after the giving of the notice and if the tenant fails to pay accordingly. If Except as  
18 provided in sub. (3d), if a tenant has been given such a notice and has paid the rent  
19 on or before the specified date, or been permitted by the landlord to remain in  
20 possession contrary to such notice, and if within one year of any prior default in  
21 payment of rent for which notice was given the tenant fails to pay a subsequent  
22 installment of rent on time, the tenant's tenancy is terminated if the landlord, while  
23 the tenant is in default in payment of rent, gives the tenant notice to vacate on or  
24 before a date at least 14 days after the giving of the notice.

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

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1           704.17 (3) (a) If Except as provided under sub. (3d), if a tenant under a lease  
2 for more than one year fails to pay rent when due, or commits waste, or breaches any  
3 other covenant or condition of the tenant's lease, the tenancy is terminated if the  
4 landlord gives the tenant notice requiring the tenant to pay the rent, repair the  
5 waste, or otherwise comply with the lease on or before a date at least 30 days after  
6 the giving of the notice, and if the tenant fails to comply with the notice. A tenant  
7 is deemed to be complying with the notice if promptly upon receipt of the notice the  
8 tenant takes reasonable steps to remedy the default and proceeds with reasonable  
9 diligence, or if damages are adequate protection for the landlord and the tenant  
10 makes a bona fide and reasonable offer to pay the landlord all damages for the  
11 tenant's breach; but in case of failure to pay rent, all rent due must be paid on or  
12 before the date specified in the notice.

13           **SECTION 5.** 704.17 (3d) of the statutes is created to read:

14           704.17 (3d) NOTICES DURING A PUBLIC HEALTH EMERGENCY FOR FAILURE TO PAY  
15 RENT. (a) During a public health emergency, as defined in s. 799.40 (5) (a), if a  
16 residential tenant fails to pay rent when due, the tenant's tenancy is terminated if  
17 all of the following occur:

18           1. The landlord gives the tenant notice requiring the tenant to pay rent or  
19 vacate on or before a date at least 30 days after the giving of the notice.

20           2. The tenant fails to pay the rent.

21           3. The landlord applies for and is denied emergency rental assistance under a  
22 federal assistance program, if such a program exists, or is ineligible for such  
23 emergency rental assistance.

24           (b) A notice under par. (a) is valid only if it includes all of the following:

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1           1. The name and contact information, including phone number, address, and  
2 website, of the emergency rental assistance provider serving the county where the  
3 tenant resides, if applicable.

4           2. The name and contact information, including phone number, address, and  
5 e-mail address, of the landlord.

6           3. A statement that, if the landlord is qualified to seek emergency rental  
7 assistance under a federal assistance program, the landlord is required to apply for  
8 such funds.

9           4. A statement as to whether the landlord is qualified to receive emergency  
10 rental assistance under a federal assistance program.

11           5. If the landlord is not qualified to receive emergency rental assistance under  
12 a federal assistance program, a statement that the tenant may be able to apply for  
13 emergency rental assistance.

14           6. A statement that the landlord may not pursue an action for eviction against  
15 the tenant based on the notice provided under par. (a) if the tenant or the landlord  
16 applies for and is approved to receive emergency rental assistance.

17           7. A statement that the landlord may not pursue an action for eviction against  
18 the tenant based on the notice provided under par. (a) unless the parties participate  
19 in mediation and are unable to reach a settlement or unless the tenant refuses to  
20 participate in mediation.

21           **SECTION 6.** 710.15 (5r) of the statutes is amended to read:

22           710.15 **(5r)** NOTICE REQUIREMENTS APPLY. The notice requirements of s. 704.17  
23 (1p) (a), (2) (a) ~~and~~, (3), and (3d) apply to a termination of tenancy under sub. (5m)  
24 (a) and the notice requirements of s. 704.17 (1p) (b), (2) (b) ~~and~~, (3), and (3d) apply  
25 to a termination of tenancy under sub. (5m) (b) to (k).

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1           **SECTION 7.** 799.40 (1m) of the statutes is amended to read:

2           799.40 **(1m)** ACCEPTANCE OF RENT OR OTHER PAYMENT. If Except as provided  
3 under sub. (5), if a landlord commences an action under this section against a tenant  
4 whose tenancy has been terminated for failure to pay rent or for any other reason,  
5 the action under this section may not be dismissed because the landlord accepts past  
6 due rent or any other payment from the tenant after serving notice of default or after  
7 commencing the action.

8           **SECTION 8.** 799.40 (5) of the statutes is created to read:

9           799.40 **(5)** REQUIREMENTS DURING A PUBLIC HEALTH EMERGENCY. (a) In this  
10 subsection:

11           1. "Mediation" has the meaning given in s. 802.12 (1) (e).

12           2. "Public health emergency" means a state of emergency related to public  
13 health declared under s. 323.10 in response to an infectious disease outbreak or a  
14 public health emergency declared under 42 USC 247d by the secretary of the federal  
15 department of health and human services in response to an infectious disease  
16 outbreak.

17           (b) During a public health emergency, the court shall stay the proceedings in  
18 a residential eviction action until all of the following occur:

19           1. The landlord files proof with the court that he or she has applied for and been  
20 denied emergency rental assistance under a federal assistance program, if such a  
21 program exists, or, if the landlord files proof with the court that he or she is ineligible  
22 for such emergency rental assistance, until the landlord or tenant files proof that the  
23 tenant has failed to apply for or has applied for and been denied such emergency  
24 rental assistance, if such a program exists.

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1           2. The landlord and tenant notify the court that they have participated in the  
2 mediation process and are unable to reach a settlement or the landlord notifies the  
3 court that the tenant has refused to participate in mediation.

4           (c) During a public health emergency, the court shall stay the proceedings in  
5 a residential eviction action if the tenant or landlord files proof with the court that  
6 the tenant or landlord has been approved to receive emergency rental assistance  
7 under a federal assistance program. The stay shall remain in effect until the  
8 expiration of the public health emergency.

9           **SECTION 9. Initial applicability.**

10           (1) The treatment of s. 704.17 (3d) first applies to notices issued on the effective  
11 date of this subsection.

12

(END)