



## 2011 ASSEMBLY BILL 561

February 13, 2012 - Introduced by Representatives STROEBEL, JACQUE, LITJENS and PRIDEMORE, cosponsored by Senator LASEE. Referred to Committee on Housing.

1     **AN ACT** *to repeal* 704.05 (5) (a) 3. and 704.05 (5) (d); *to renumber and amend*  
2           704.05 (5) (c); *to consolidate, renumber and amend* 704.05 (5) (a) (intro.)  
3           and 1.; *to amend* 321.62 (15) (a), 704.03 (1), 704.05 (5) (title), 704.05 (5) (a) 2.,  
4           704.07 (1), 704.11, 704.27, 704.29 (title) and 704.44 (intro.); *to repeal and*  
5           *recreate* 704.05 (5) (a) (title); and *to create* 66.1010, 704.02, 704.05 (5) (cm),  
6           704.07 (2) (bm), 704.07 (3) (bm), 704.08, 704.17 (2) (d), 704.28, 704.29 (5) and  
7           799.40 (1m) of the statutes; **relating to:** miscellaneous landlord-tenant  
8           provisions and prohibiting a local government from imposing a moratorium on  
9           eviction actions.

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### *Analysis by the Legislative Reference Bureau*

This bill makes a number of changes to current law relating to landlord-tenant relations, including the following:

1. Current law provides that, if a tenant leaves behind personal property after moving out of the rental premises, the landlord may store the property without a lien and return it to the tenant; store the property with a lien for the cost of storage and give the tenant notice of the storage within ten days after the charges begin; or give the tenant notice that after 30 days the landlord intends to dispose of the property

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by sale or other appropriate means. If the landlord disposes of the property by sale, the landlord may deduct the costs of sale from the proceeds. The tenant has 60 days after the date of the sale to claim the remaining proceeds, and any proceeds not claimed by the tenant must be sent to the Department of Administration (DOA) to be used for providing grants to agencies and shelter facilities for the homeless. Current law allows the tenant or any person with a security interest in the property to redeem the property before the landlord disposes of it or enters into a contract for its disposal by paying the landlord's costs for removal, storage, disposition, and arranging for the sale, of the property.

The bill eliminates the procedures under current law for disposing of personal property that a tenant leaves behind and provides that, in the absence of a written agreement to the contrary between the landlord and tenant, the landlord may presume that the personal property has been abandoned and may dispose of it in any manner that the landlord determines is appropriate. The tenant is responsible for any costs that the landlord incurs with respect to the property's disposal. If the landlord sells the property, the landlord may send the proceeds, minus any costs of sale and storage, to DOA for use in providing grants to homeless shelters. As under current law, the tenant or a secured party, however, may redeem the property before the landlord disposes of the property, or enters into a contract for its disposal, by paying all charges that the landlord has incurred with respect to the disposal.

2. Currently, what a landlord may deduct from a tenant's security deposit when the tenant vacates the premises is specified, not in the statutes, but in the Wisconsin Administrative Code (Code). The bill incorporates the Code provisions into the statutes and thus provides that a landlord may deduct amounts from a security deposit for tenant damage to the premises, unpaid rent, unpaid utility services for which the tenant was responsible, any unpaid monthly municipal permit fees, and any other reason provided in a nonstandard rental provision to which the tenant has agreed. A landlord specifically may not deduct amounts from a security deposit for normal wear and tear.

The bill also provides that, if a tenant removes from the premises before the end of his or her lease term, the landlord must return the tenant's security deposit within 21 days after the end of the lease term or, if the landlord rerents the premises before the end of that lease term, within 21 days after the new tenant's tenancy begins.

3. The bill requires a landlord to provide to a new tenant a standardized information check-in sheet with an itemized description of the condition of the premises at the time of the tenant's check-in. In addition, a landlord must disclose to a prospective tenant any uncorrected building code violation: 1) that affects the prospective tenant's dwelling unit or a common area of the premises; 2) for which the landlord has received notice from a local housing code enforcement agency; and 3) for which the date for correction is past due.

4. The bill requires a tenant to notify the landlord in writing of any repair or maintenance that the premises requires before reporting the problem to a building inspector, elected public official, or local housing code enforcement agency.

5. Current law provides that a rental agreement is void and unenforceable if it allows a landlord to take various actions, such as increasing rent or refusing to

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renew a rental agreement, because the tenant has contacted an entity for law enforcement services, health services, or safety services. The bill changes this to provide that, rather than the entire rental agreement being void and unenforceable, any provision in a rental agreement that allows a landlord to take the specified actions is void and unenforceable. The bill also provides generally that provisions in rental agreements are severable and that the invalidity or unenforceability of any provision does not affect the other provisions that can be given effect without the invalid provision.

6. Under current law, if a tenant does not remove from the premises after his or her lease has expired or his or her tenancy has been terminated, such as for nonpayment of rent, the landlord may recover damages from the tenant for the tenant's failure to vacate. The statute provides that the landlord may recover as minimum damages twice the rental value of the premises for the time that the tenant remained in possession if the landlord does not prove that he or she suffered greater damages. The bill provides that the landlord, at the landlord's discretion, shall recover damages for the tenant's failure to vacate. The amount of the damages shall be, at a minimum, twice the rental value of the premises for the time that the tenant remained in possession, in the absence of proof of greater damages. The bill also clarifies that the landlord may seek and recover any other damages to which the landlord may be entitled.

7. The bill provides that, if a landlord commences an eviction action against a tenant whose tenancy was terminated for nonpayment of rent and the landlord accepts past due rent from the tenant, the eviction action may not be dismissed solely because of the acceptance of the rent.

8. The bill also prohibits any city, village, town, or county from enacting an ordinance, or enforcing an existing ordinance, that imposes a moratorium on a landlord from pursuing an eviction action against a tenant of the landlord's residential or commercial property.

For further information see the *state and 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.** 66.1010 of the statutes is created to read:

2           **66.1010 Moratorium on evictions. (1)** In this section, "political subdivision"  
3 has the meaning given in s. 66.1011 (1m) (e).

4           **(2)** A political subdivision may not enact or enforce an ordinance that imposes  
5 a moratorium on a landlord from pursuing an eviction action under ch. 799 against  
6 a tenant of the landlord's residential or commercial property.

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1           **(3)** If a political subdivision has in effect on the effective date of this subsection  
2     .... [LRB inserts date], an ordinance that is inconsistent with sub. (2), the ordinance  
3     does not apply and may not be enforced.

4           **SECTION 2.** 321.62 (15) (a) of the statutes is amended to read:

5           321.62 **(15)** (a) Notwithstanding ~~ss. 704.05 (5) and s.~~ 704.90, no person may  
6     enforce a lien for storage of any household goods, furniture, or personal effects of a  
7     service member during the period in which the service member is in state active duty  
8     and for 90 days after the member's completion of state active duty, except as  
9     permitted by a court order under par. (b).

10          **SECTION 3.** 704.02 of the statutes is created to read:

11          **704.02 Severability of rental agreement provisions.** The provisions of a  
12     rental agreement are severable. If any provision of a rental agreement is rendered  
13     void or unenforceable by reason of any statute, rule, regulation, or judicial order, the  
14     invalidity or unenforceability of that provision does not affect other provisions of the  
15     rental agreement that can be given effect without the invalid provision.

16          **SECTION 4.** 704.03 (1) of the statutes is amended to read:

17          704.03 **(1) ORIGINAL AGREEMENT.** ~~A~~ Notwithstanding s. 704.02, a lease for more  
18     than a year, or a contract to make such a lease, is not enforceable unless it meets the  
19     requirements of s. 706.02 and in addition sets forth the amount of rent or other  
20     consideration, the time of commencement and expiration of the lease, and a  
21     reasonably definite description of the premises, or unless a writing, including by  
22     means of electronic mail or facsimile transmission, signed by the landlord and the  
23     tenant sets forth the amount of rent or other consideration, the duration of the lease,  
24     and a reasonably definite description of the premises and the commencement date  
25     is established by entry of the tenant into possession under the writing. Sections

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1 704.05 and 704.07 govern as to matters within the scope of such sections and not  
2 provided for in such written lease or contract.

3 **SECTION 5.** 704.05 (5) (title) of the statutes is amended to read:

4 704.05 (5) (title) ~~STORAGE OR DISPOSITION~~ DISPOSITION OF PERSONALTY LEFT BY  
5 TENANT.

6 **SECTION 6.** 704.05 (5) (a) (title) of the statutes is repealed and recreated to read:

7 704.05 (5) (a) (title) *At the landlord's discretion.*

8 **SECTION 7.** 704.05 (5) (a) (intro.) and 1. of the statutes are consolidated,  
9 renumbered 704.05 (5) (a) 1. and amended to read:

10 704.05 (5) (a) 1. If a tenant removes from the premises and leaves personal  
11 property, the landlord may do all of the following: ~~1. Store the personalty, on or off~~  
12 ~~the premises, with a lien on the personalty for the actual and reasonable cost of~~  
13 ~~removal and storage or, if stored by the landlord, for the actual and reasonable value~~  
14 ~~of storage. The landlord shall give written notice of the storage to the tenant within~~  
15 ~~10 days after the charges begin. The landlord shall give the notice either personally~~  
16 ~~or by ordinary mail addressed to the tenant's last-known address and shall state the~~  
17 ~~daily charges for storage. The landlord may not include the cost of damages to the~~  
18 ~~premises or past or future rent due in the amount demanded for satisfaction of the~~  
19 ~~lien. The landlord may not include rent charged for the premises in calculating the~~  
20 ~~cost of storage. Medicine and medical equipment are not subject to the lien under~~  
21 ~~this subdivision, and presume, in the absence of a written agreement between the~~  
22 ~~landlord shall promptly return them to and the tenant upon request to the contrary,~~  
23 ~~that the tenant has abandoned the personal property and may dispose of the~~  
24 ~~abandoned personal property in any manner that the landlord, in its sole discretion,~~

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1 determines is appropriate. The tenant is responsible for any costs that the landlord  
2 incurs with respect to disposition of the abandoned personal property.

3 **SECTION 8.** 704.05 (5) (a) 2. of the statutes, as affected by 2011 Wisconsin Act  
4 32, is amended to read:

5 704.05 (5) (a) 2. ~~Give the tenant notice, personally or by ordinary mail~~  
6 ~~addressed to the tenant's last-known address, of the landlord's intent to dispose of~~  
7 ~~the personal property by sale or other appropriate means if the property is not~~  
8 ~~repossessed by the tenant. If the tenant fails to repossess the property within 30 days~~  
9 ~~after the date of personal service or the date of the mailing of the notice, If the~~  
10 ~~landlord may dispose~~ disposes ~~of the property by private or public sale or any other~~  
11 ~~appropriate means. The, the~~ landlord may deduct from send the proceeds of the sale  
12 minus any costs of sale and any storage charges if the landlord has first stored the  
13 personalty under subd. 1. ~~If the proceeds minus the costs of sale and minus any~~  
14 ~~storage charges are not claimed within 60 days after the date of the sale of the~~  
15 ~~personalty, the landlord is not accountable to the tenant for any of the proceeds of the~~  
16 ~~sale or the value of the property. The landlord shall send the proceeds of the sale~~  
17 ~~minus the costs of the sale and minus any storage charges to the department of~~  
18 ~~administration for deposit in the appropriation under s. 20.505 (7) (h).~~

19 **SECTION 9.** 704.05 (5) (a) 3. of the statutes is repealed.

20 **SECTION 10.** 704.05 (5) (c) of the statutes is renumbered 704.05 (5) (b) and  
21 amended to read:

22 704.05 (5) (b) *Rights of 3rd persons.* The landlord's ~~lien and~~ power to dispose  
23 as provided by this subsection ~~apply~~ applies to any property left on the premises by  
24 the tenant, whether owned by the tenant or by others. ~~That lien has priority over~~  
25 ~~any ownership or security interest, and the~~ The power to dispose under this

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1 subsection applies notwithstanding any rights of others existing under any claim of  
2 ownership or security interest, but is subject to s. 321.62. The tenant or any secured  
3 party has the right to redeem the property at any time before the landlord has  
4 disposed of it or entered into a contract for its disposition by payment of ~~the landlord's~~  
5 ~~charges under par. (a) for removal, storage, disposition and arranging for the sale~~ any  
6 expenses that the landlord has incurred with respect to the disposition of the  
7 property.

8 **SECTION 11.** 704.05 (5) (cm) of the statutes is created to read:

9 704.05 (5) (cm) *Inapplicability to self-storage facilities*. This subsection does  
10 not apply to a lessee of a self-storage unit or space within a self-storage facility  
11 under s. 704.90.

12 **SECTION 12.** 704.05 (5) (d) of the statutes is repealed.

13 **SECTION 13.** 704.07 (1) of the statutes is amended to read:

14 704.07 (1) APPLICATION OF SECTION. This section applies to any nonresidential  
15 tenancy if there is no contrary provision in writing signed by both parties and to all  
16 residential tenancies. An agreement to waive the requirements of this section in a  
17 residential tenancy, including an agreement in a rental agreement, is void. Nothing  
18 in this section is intended to affect rights and duties arising under other provisions  
19 of the statutes.

20 **SECTION 14.** 704.07 (2) (bm) of the statutes is created to read:

21 704.07 (2) (bm) A landlord shall disclose to a prospective tenant, before  
22 entering into a rental agreement with or accepting any earnest money or security  
23 deposit from the prospective tenant, any building code or housing code violation to  
24 which all of the following apply:

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1           1. The landlord has received notice of the violation from a local housing code  
2 enforcement agency.

3           2. The violation affects the dwelling unit that is the subject of the prospective  
4 rental agreement or a common area of the premises.

5           3. The violation has not been corrected.

6           4. The date by which the violation must be corrected has passed.

7           **SECTION 15.** 704.07 (3) (bm) of the statutes is created to read:

8           704.07 (3) (bm) If the premises is in need of any repair or other maintenance,  
9 before reporting the problem to a building inspector, elected public official, or local  
10 housing code enforcement agency, a tenant shall first notify the landlord in writing  
11 and allow the landlord adequate time to investigate and rectify the problem.

12           **SECTION 16.** 704.08 of the statutes is created to read:

13           **704.08 Information check-in sheet.** A landlord shall provide to a  
14 residential tenant when the tenant enters into a new rental agreement a  
15 standardized information check-in sheet that contains an itemized description of  
16 the condition of the premises at the time of check-in. The landlord is not required  
17 to provide the information check-in sheet to a tenant upon renewal of a rental  
18 agreement.

19           **SECTION 17.** 704.11 of the statutes is amended to read:

20           **704.11 Lien of landlord.** Except as provided in ss. ~~704.05 (5)~~, 704.90 and  
21 779.43 or by express agreement of the parties, the landlord has no right to a lien on  
22 the property of the tenant; the common-law right of a landlord to distrain for rent  
23 is abolished.

24           **SECTION 18.** 704.17 (2) (d) of the statutes is created to read:



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1           704.17 (2) (d) This subsection does not apply to week-to-week or  
2 month-to-month tenants.

3           **SECTION 19.** 704.27 of the statutes is amended to read:

4           **704.27 Damages for failure of tenant to vacate at end of lease or after**  
5 **notice.** If a tenant remains in possession without consent of the tenant's landlord  
6 after expiration of a lease or termination of a tenancy by notice given by either the  
7 landlord or the tenant, or after termination by valid agreement of the parties, the  
8 landlord ~~may shall, at the landlord's discretion,~~ recover from the tenant damages  
9 suffered by the landlord because of the failure of the tenant to vacate within the time  
10 required. In absence of proof of greater damages, the landlord ~~may shall~~ recover as  
11 minimum damages twice the rental value apportioned on a daily basis for the time  
12 the tenant remains in possession. As used in this section, rental value means the  
13 amount for which the premises might reasonably have been rented, but not less than  
14 the amount actually paid or payable by the tenant for the prior rental period, and  
15 includes the money equivalent of any obligations undertaken by the tenant as part  
16 of the rental agreement, such as payment of taxes, insurance and repairs. Nothing  
17 in this section prevents a landlord from seeking and recovering any other damages  
18 to which the landlord may be entitled.

19           **SECTION 20.** 704.28 of the statutes is created to read:

20           **704.28 Withholding from security deposits. (1) STANDARD PROVISIONS.**  
21 When a landlord returns a security deposit to a tenant after the tenant vacates the  
22 premises, the landlord may withhold from the full amount of the security deposit  
23 only amounts reasonably necessary to pay for any of the following:

24           (a) Tenant damage, waste, or neglect of the premises.

25           (b) Unpaid rent for which the tenant is legally responsible, subject to s. 704.29.

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1 (c) Payment that the tenant owes under the rental agreement for utility service  
2 provided by the landlord but not included in the rent.

3 (d) Payment that the tenant owes for direct utility service provided by a  
4 government-owned utility, to the extent that the landlord becomes liable for the  
5 tenant's nonpayment.

6 (e) Unpaid monthly municipal permit fees assessed against the tenant by a  
7 local unit of government under s. 66.0435 (3), to the extent that the landlord becomes  
8 liable for the tenant's nonpayment.

9 (f) Any other payment for a reason provided in a nonstandard rental provision  
10 document described in sub. (2).

11 **(2) NONSTANDARD RENTAL PROVISIONS.** Except as provided in sub. (3), a rental  
12 agreement may include one or more nonstandard rental provisions that authorize  
13 the landlord to withhold amounts from the tenant's security deposit for reasons not  
14 specified in sub. (1) (a) to (e). Any such nonstandard rental provisions shall be  
15 provided to the tenant in a separate written document entitled "NONSTANDARD  
16 RENTAL PROVISIONS." The landlord shall specifically identify and discuss each  
17 nonstandard rental provision with the tenant before the tenant enters into a rental  
18 agreement with the landlord. If the tenant signs a nonstandard rental provision, it  
19 is rebuttably presumed that the landlord has specifically identified and discussed  
20 the nonstandard rental provision with the tenant and that the tenant has agreed to  
21 it.

22 **(3) NORMAL WEAR AND TEAR.** This section does not authorize a landlord to  
23 withhold any amount from a security deposit for normal wear and tear, or for other  
24 damages or losses for which the tenant cannot reasonably be held responsible under  
25 applicable law.

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1           **SECTION 21.** 704.29 (title) of the statutes is amended to read:

2           **704.29 (title) Recovery of rent and damages by landlord; mitigation;**  
3 **return of security deposit.**

4           **SECTION 22.** 704.29 (5) of the statutes is created to read:

5           704.29 (5) RETURN OF SECURITY DEPOSIT. If a tenant under a rental agreement  
6 who has paid a security deposit vacates the premises before the termination date of  
7 the rental agreement, the landlord shall deliver or mail to the tenant the full amount  
8 of the security deposit, less any amounts that may be withheld under s. 704.28,  
9 within 21 days after the date on which the tenant's rental agreement terminates or,  
10 if the landlord rerents the premises before the tenant's rental agreement terminates,  
11 within 21 days after the new tenant's tenancy begins.

12           **SECTION 23.** 704.44 (intro.) of the statutes is amended to read:

13           **704.44 Rental Provision in rental agreement that restricts access to**  
14 **certain services is void.** (intro.) A provision in a rental agreement is void and  
15 unenforceable if it that allows a landlord in a residential tenancy to do any of the  
16 following because a tenant has contacted an entity for law enforcement services,  
17 health services, or safety services is void and unenforceable:

18           **SECTION 24.** 799.40 (1m) of the statutes is created to read:

19           799.40 (1m) ACCEPTANCE OF RENT. If a landlord commences an action under this  
20 section against a tenant whose tenancy has been terminated for failure to pay rent,  
21 the action under this section may not be dismissed solely because the landlord  
22 accepts past due rent from the tenant after the termination of the tenant's tenancy.

23           **SECTION 25. Initial applicability.**

24           (1) DISPOSAL OF PROPERTY. The treatment of sections 321.62 (15) (a), 704.05 (5)  
25 (title), (a) (title), (intro.), 1., 2., and 3., (c), and (d), and 704.11 of the statutes first

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1 applies to property left behind by a tenant under a tenancy commenced, or a lease  
2 entered into or renewed, on the effective date of this subsection.

3 (2) DAMAGES FOR FAILURE TO VACATE. The treatment of section 704.27 of the  
4 statutes first applies to actions for damages, including eviction actions, that are  
5 commenced on the effective date of this subsection.

6 (3) RETURN OF SECURITY DEPOSITS.

7 (a) *Timing for return.* Except as provided in paragraph (b), the treatment of  
8 section 704.29 (5) of the statutes first applies to tenants vacating before the  
9 termination date of a rental agreement who vacate the premises on the effective date  
10 of this paragraph.

11 (b) *Inconsistent provision.* If a rental agreement that is in effect on the effective  
12 date of this paragraph contains a provision that is inconsistent with the treatment  
13 of section 704.29 (5) of the statutes, the treatment of section 704.29 (5) of the statutes  
14 first applies to that rental agreement with respect to the timing of returning a  
15 security deposit upon renewal.

16 (4) VOID PROVISION AND SEVERABILITY OF PROVISIONS. The treatment of sections  
17 704.02 and 704.44 (intro.) of the statutes first applies to rental agreements that are  
18 entered into or renewed on the effective date of this subsection.

19 (END)