



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1983/1
PJK/ARG/PJH:sac:rs

2013 SENATE BILL 179

May 8, 2013 - Introduced by Senators LASEE and SCHULTZ, cosponsored by Representatives STROEBEL, PRIDEMORE, JACQUE, KERKMAN and BIES. Referred to Committee on Insurance and Housing.

1 **AN ACT to repeal** 704.28 (4) (d), 704.44 (9), 799.45 (3) (am) 1., 799.45 (3) (am) 2.,
2 799.45 (3) (am) 3., 799.45 (3) (am) 4., 799.45 (3) (am) 5., 799.45 (3) (am) 6. and
3 799.45 (3) (am) 7.; **to renumber and amend** 66.0104 (3), 349.13 (3m) and
4 799.45 (3) (am) (intro.); **to amend** 349.13 (5) (b) 2., 349.13 (5) (c), 704.05 (5) (a)
5 1., 704.05 (5) (bf), 704.07 (2) (bm) 1., 704.07 (3) (a), 704.08, 704.28 (2), 704.28
6 (4) (b), 704.95, 799.05 (3) (b), 799.06 (2), 799.12 (2), 799.20 (4), 799.206 (3),
7 799.40 (1), 799.40 (1m), 799.42, 799.44 (2), 799.45 (title), 799.45 (1), 799.45 (2)
8 (b), 799.45 (2) (bg), 799.45 (2) (c), 799.45 (3) (title), 799.45 (3) (a), 799.45 (3) (b),
9 799.45 (3) (c) and 799.45 (4); and **to create** 66.0104 (2) (c), 66.0104 (2) (d),
10 66.0104 (3) (b), 349.13 (3m) (a), (c), (d) and (e), 704.28 (5) and 895.489 of the
11 statutes; **relating to:** miscellaneous provisions related to rental and vehicle
12 towing practices and eviction proceedings, prohibitions on enacting ordinances

SENATE BILL 179

- 1 that place certain limitations or requirements on landlords, providing an
2 exemption from emergency rule procedures, granting rule-making authority.
-

Analysis by the Legislative Reference Bureau***Provisions relating to landlords and tenants***

This bill makes a number of miscellaneous changes to the statutes related to landlords and tenants, including the following:

1. Under current law, if a tenant removes from the rental premises and leaves personal property behind, in the absence of written agreement to the contrary, there is a presumption that the tenant has abandoned the personal property, and the landlord may dispose of it in any way that the landlord determines is appropriate, with the exception of prescription drugs, which the landlord must hold for seven days before disposal. If the landlord does not intend to store the property, the landlord must provide written notice of that fact to the tenant when the tenant enters into or renews a rental agreement. Also under current law, if a tenant is evicted from the premises and a writ of restitution is delivered to the sheriff, the sheriff executes the writ by removing the defendant, who is the tenant, and the defendant's personal property. However, in counties other than Milwaukee County, the plaintiff, who is the landlord, may notify the sheriff that the plaintiff or his or her agent will remove and store the property. Current law provides specific requirements for storage of the property and notice to the defendant, regardless of whether the sheriff or the plaintiff removes the personal property.

Under this bill, if a tenant is evicted from the rental premises, the sheriff executes a writ of restitution in the same manner as under current law. If the sheriff removes the personal property, the requirements under current law as to storage and notice to the defendant apply. The bill provides that a plaintiff in any county may notify the sheriff that the plaintiff or his or her agent will remove the personal property, in which case the provisions under current law that apply to personal property that is left behind if the tenant removes from the premises apply. There is a presumption that the defendant has abandoned the property and, in the absence of a written agreement to the contrary, the plaintiff may remove and dispose of the property in any manner that the plaintiff determines is appropriate, except for prescription drugs, which must be held for seven days before disposal. The bill provides that, if the landlord does not intend to store any property left behind, either if the tenant removes from the premises or is evicted, the landlord must provide written notice to the tenant when the tenant enters into or renews a rental agreement or at any other time before the tenant removes from or is evicted from the premises. If the landlord has not done that, the landlord may not dispose of the property in any manner that the landlord determines is appropriate, but must follow the notice, storage, and sale requirements that applied under former law when a tenant removed from the premises and left personal property behind.

2. Under current law, if an employee or a prospective employer of an employee requests an employer to provide a reference about the employee's job performance

SENATE BILL 179

or qualifications, the employer is exempt from civil liability for providing the reference. The bill provides a landlord with an exemption from civil liability for providing a reference about the rental performance of an applicant for tenancy if the applicant or a prospective landlord of the applicant requests the landlord to provide the reference. As under current law for employers, there is a presumption that the landlord is acting in good faith. The presumption may be overcome only by clear and convincing evidence that the landlord knowingly provided false information in the reference or made the reference maliciously.

3. Current law provides that, if a tenant damages the premises through negligence or improper use of the premises, the tenant must repair the damage. However, the landlord may elect to do the repair, in which case the tenant must reimburse the landlord. The bill specifically provides that an infestation of insects or other pests may constitute damage to the premises and that, if the premises are damaged by the acts or inaction of the tenant, the landlord may elect to allow the tenant to remediate or repair the damage or may elect to remediate or repair the damage himself or herself, in which case the tenant must reimburse the landlord.

4. Under current law, a landlord must disclose to a prospective tenant any building or housing code violation to which certain specified criteria apply, including that the landlord has actual knowledge of the violation. The bill changes that criterion from the landlord having actual knowledge to the landlord having received written notice of the violation from a local housing code enforcement agency.

5. Under current law, a city, village, town, or county (municipality) is prohibited from enacting or enforcing certain ordinances relating to landlords and tenants, such as an ordinance imposing a moratorium on eviction actions or an ordinance that places certain limitations on what information a landlord may obtain and use concerning a prospective tenant. The bill additionally prohibits a municipality from enacting or enforcing an ordinance that limits a tenant's responsibility, or a landlord's right to recover, for any damage to, or neglect of, the premises; that requires a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law; or that requires a landlord to communicate to the municipality any information concerning the landlord unless the information is required under federal or state law or is required of all residential real property owners.

6. Current law specifies what costs may be withheld from a security deposit and the timing for the return of a security deposit after a tenant removes from the premises. The bill limits these provisions to residential tenancies. In addition, the bill provides that if a tenant is evicted from the premises, his or her security deposit must be returned within 21 days after either the date on which the tenant's rental agreement terminates or the date on which a new tenant's tenancy begins if the landlord re-rents the premises before the tenant's rental agreement terminates. Under current law, an evicted tenant's security deposit must be returned within 21 days after the earlier of the date on which a writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises.

7. Current law provides that a residential rental agreement is void and unenforceable if it contains a provision that does any of a number of certain specified

SENATE BILL 179

things, including allowing the landlord to terminate the tenancy of a tenant if a crime is committed in or on the rental property, even if the tenant could not have prevented the crime. The bill removes that item from the list of provisions that, if contained in a residential rental agreement, make it void and unenforceable.

8. Current law provides that any violation of the chapter of the statutes that contains the landlord-tenant provisions may constitute unfair methods of competition or unfair trade practices under the provisions of the statutes under which the Department of Agriculture, Trade and Consumer Protection regulates marketing and trade practices. The bill limits the landlord-tenant provisions that, if violated, may constitute unfair methods of competition or unfair trade practices to the provisions relating to withholding from and returning security deposits and the provisions that, if contained in a residential rental agreement, make it void and unenforceable.

9. Current law provides that a person who is entitled to possession of real property may commence an eviction action. The bill adds that an agent of such a person, authorized in writing, may also commence the eviction action. Under current law, a person who commences an eviction action may appear in his, her, or its own proper person or by an attorney. A person is considered to be appearing in its own proper person if it appears by a full-time authorized employee. The bill adds that a person may appear in its own proper person by a member, or an agent of a member or authorized employee, of the person. Current law provides that an eviction action based on failure to pay rent may not be dismissed solely because the landlord accepts past due rent from the tenant after the termination of the tenant's tenancy. The bill provides that an eviction action based on failure to pay rent or for any other reason may not be dismissed because the landlord accepts past due rent or any other payment from the tenant after serving notice of default or commencing the eviction action.

10. Under current law, a landlord must provide to a tenant when the tenant commences his or her occupancy of the premises a standardized information check-in sheet that contains an itemized description of the condition of the premises. The bill changes this requirement so that the landlord must provide to the tenant a check-in sheet that the tenant may use to make comments about the condition of the premises.

Towing vehicles illegally parked on private property

Current law prohibits the removal (towing) of a vehicle involved in trespass parking on a private parking lot or facility without the permission of the vehicle owner, unless a parking citation is issued by a traffic officer or a repossession judgment is issued.

Under this bill, if a vehicle is parked without authorization on private property, the vehicle may be towed immediately, at the vehicle owner's expense and without the owner's permission, as follows: 1) from private property that is properly posted, whether or not a parking citation is issued; or 2) from private property that is not properly posted, only if a parking citation is issued or a repossession judgment is issued. "Properly posted" means there is clearly visible notice that an area is private property and that vehicles that are not authorized to park in this area may be

SENATE BILL 179

immediately towed. A vehicle may be towed under the bill only by a towing service at the request of the property owner or property owner's agent or of a traffic officer or parking enforcer. The vehicle owner must pay the reasonable charges for towing and, if applicable, storage of the vehicle and the towing service may impound the vehicle until these charges are paid. If these charges are not paid within 30 days or arrangements for installment payments are not made, the vehicle is considered abandoned and may be disposed of as are other abandoned vehicles. The Department of Transportation must promulgate rules establishing reasonable charges for towing and storage of vehicles under the provisions of the bill.

Eviction actions

The bill also makes changes to certain court procedures for eviction actions. Under current law, a civil action is generally commenced when the plaintiff in the action serves the defendant with a copy of the summons and complaint (summons) against him or her.

Generally, personal service of the summons must be made on the defendant or on another person who lives at the defendant's place of residence (substituted service), although current law allows a court, by rule, to authorize the service of the summons in mail in actions that are not eviction actions.

Under current law, a defendant in an eviction action must appear in court not less than five days nor more than 30 days after the summons is issued. The court generally sets the matter for a hearing when the defendant makes this initial appearance.

If the plaintiff prevails in an eviction action and the court determines that the defendant must leave the rented premises, the current law requires the court to order that a writ of restitution be issued to the sheriff in the county where the property is located. The writ of restitution requires the sheriff's department to remove the defendant and his or her personal property from the premises.

The bill allows a court, by rule, to authorize that the summons in an eviction may be served by mail. The bill also shortens the time during which a defendant in an eviction must appear from 30 days to 20 days and requires the court to set the matter for a hearing within 20 days of the date of the initial appearance. The bill requires a writ of restitution to be issued within five days after the court enters judgment in the eviction action.

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

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

- 1 **SECTION 1.** 66.0104 (2) (c) of the statutes is created to read:
- 2 66.0104 (2) (c) No city, village, town, or county may enact an ordinance that
- 3 limits a residential tenant's responsibility, or a residential landlord's right to recover,

SENATE BILL 179**SECTION 1**

1 for any damage or waste to, or neglect of, the premises that occurs during the tenant's
2 occupancy of the premises, or for any other costs, expenses, fees, payments, or
3 damages for which the tenant is responsible under the rental agreement or
4 applicable law.

5 **SECTION 2.** 66.0104 (2) (d) of the statutes is created to read:

6 66.0104 (2) (d) 1. No city, village, town, or county may enact an ordinance that
7 requires a landlord to communicate to tenants any information that is not required
8 to be communicated to tenants under federal or state law.

9 2. No city, village, town, or county may enact an ordinance that requires a
10 landlord to communicate to the city, village, town, or county any information
11 concerning the landlord, unless any of the following applies:

12 a. The information is required under federal or state law.

13 b. The information is required of all residential real property owners.

14 **SECTION 3.** 66.0104 (3) of the statutes is renumbered 66.0104 (3) (a) and
15 amended to read:

16 66.0104 (3) (a) If a city, village, town, or county has in effect on December 21,
17 2011, an ordinance that is inconsistent with sub. (2) (a) or (b), the ordinance does not
18 apply and may not be enforced.

19 **SECTION 4.** 66.0104 (3) (b) of the statutes is created to read:

20 66.0104 (3) (b) If a city, village, town, or county has in effect on the effective date
21 of this paragraph [LRB inserts date], an ordinance that is inconsistent with sub.
22 (2) (c) or (d), the ordinance does not apply and may not be enforced.

23 **SECTION 5.** 349.13 (3m) of the statutes is renumbered 349.13 (3m) (b) and
24 amended to read:

SENATE BILL 179

1 349.13 (3m) (b) ~~No~~ If private property is not properly posted and a vehicle
2 involved in trespass parking on a is parked on the private parking lot or facility shall
3 be removed property and is not authorized to be parked there, the vehicle may be
4 removed immediately, at the vehicle owner's expense, without the permission of the
5 vehicle owner, ~~except~~ upon the issuance of a repossession judgment or upon formal
6 complaint and the issuance of a citation for illegal parking issued by a traffic or police
7 officer.

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

9 349.13 (3m) (a) In this subsection:

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

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

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

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

SENATE BILL 179

1 entered into a written agreement with the towing service to pay these reasonable
2 charges in installment payments, the vehicle shall be deemed abandoned and may
3 be disposed of as are other abandoned vehicles.

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

6 **SECTION 7.** 349.13 (5) (b) 2. of the statutes is amended to read:

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

12 **SECTION 8.** 349.13 (5) (c) of the statutes is amended to read:

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

22 **SECTION 9.** 704.05 (5) (a) 1. of the statutes is amended to read:

23 704.05 (5) (a) 1. If a tenant removes from or is evicted from the premises and
24 leaves personal property, the landlord may presume, in the absence of a written
25 agreement between the landlord and the tenant to the contrary, that the tenant has

SENATE BILL 179

1 abandoned the personal property and may, subject to par. (am) and s. 799.45 (3m),
2 dispose of the abandoned personal property in any manner that the landlord, in its
3 sole discretion, determines is appropriate.

4 **SECTION 10.** 704.05 (5) (bf) of the statutes is amended to read:

5 704.05 (5) (bf) *Notice that landlord will not store property.* If the landlord does
6 not intend to store personal property left behind by a tenant, except as provided in
7 par. (am), the landlord shall provide written notice to a tenant, when the tenant
8 enters into, ~~and when the tenant~~ or renews, a rental agreement or at any other time
9 before the tenant removes from or is evicted from the premises, that the landlord will
10 not store any items of personal property that the tenant leaves behind when the
11 tenant removes from, or if the tenant is evicted from, the premises, except as
12 provided in par. (am). Notwithstanding pars. (a), (am), and (b), if the landlord does
13 ~~not provide~~ has not provided to a tenant the notice required under this paragraph,
14 the landlord shall comply with s. 704.05, 2009 stats., with respect to any personal
15 property left behind by the tenant when the tenant removes from the premises, or
16 if the tenant is evicted from the premises and the landlord notifies the sheriff under
17 s. 799.45 (3m).

18 **SECTION 11.** 704.07 (2) (bm) 1. of the statutes is amended to read:

19 704.07 (2) (bm) 1. The landlord has ~~actual knowledge~~ received written notice
20 of the violation from a local housing code enforcement agency.

21 **SECTION 12.** 704.07 (3) (a) of the statutes is amended to read:

22 704.07 (3) (a) If the premises are damaged by ~~the negligence or improper use~~
23 of the premises by, including by an infestation of insects or other pests, due to the acts
24 or inaction of the tenant, the landlord may elect to allow the tenant must to
25 remediate or repair the damage and restore the appearance of the premises by

SENATE BILL 179

1 redecorating. However, the landlord may elect to undertake the remediation, repair,
2 or redecoration, and in such case the tenant must reimburse the landlord for the
3 reasonable cost thereof; the cost to the landlord is presumed reasonable unless
4 proved otherwise by the tenant.

5 **SECTION 13.** 704.08 of the statutes is amended to read:

6 **704.08 ~~Information check-in~~ Check-in sheet.** A landlord shall provide to
7 a new residential tenant when the tenant commences his or her occupancy of the
8 premises a ~~standardized information check-in sheet that contains an itemized~~
9 ~~description of the tenant may use to make comments, if any, about the condition of~~
10 ~~the premises at the time of check-in.~~ The tenant shall be given 7 days from the date
11 the tenant commences his or her occupancy to complete the check-in sheet and
12 return it to the landlord. The landlord is not required to provide the ~~information~~
13 ~~check-in sheet to a tenant upon renewal of a rental agreement.~~ This section does not
14 apply to the rental of a plot of ground on which a manufactured home, as defined in
15 s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be
16 located.

17 **SECTION 14.** 704.28 (2) of the statutes is amended to read:

18 **704.28 (2) NONSTANDARD RENTAL PROVISIONS.** Except as provided in sub. (3), a
19 rental agreement may include one or more nonstandard rental provisions that
20 authorize the landlord to withhold amounts from the tenant's security deposit for
21 reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions
22 shall be provided to the tenant in a separate written document entitled
23 "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify
24 ~~and discuss~~ each nonstandard rental provision with the tenant before the tenant
25 enters into a rental agreement with the landlord. If the tenant signs his or her name,

SENATE BILL 179

1 or writes his or her initials, by a nonstandard rental provision, it is rebuttably
2 presumed that the landlord has specifically identified ~~and discussed~~ the
3 nonstandard rental provision with the tenant and that the tenant has agreed to it.

4 **SECTION 15.** 704.28 (4) (b) of the statutes is amended to read:

5 704.28 (4) (b) If the tenant vacates the premises before the termination date
6 of the rental agreement or if the tenant is evicted, the date on which the tenant's
7 rental agreement terminates or, if the landlord rerents the premises before the
8 tenant's rental agreement terminates, the date on which the new tenant's tenancy
9 begins.

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

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

12 704.28 (5) APPLICATION TO RESIDENTIAL TENANCIES. This section applies to
13 residential tenancies only.

14 **SECTION 18.** 704.44 (9) of the statutes is repealed.

15 **SECTION 19.** 704.95 of the statutes is amended to read:

16 **704.95 Practices regulated by the department of agriculture, trade**
17 **and consumer protection.** Practices in violation of ~~this chapter s. 704.28 or 704.44~~
18 may also constitute unfair methods of competition or unfair trade practices under s.
19 100.20. However, the department of agriculture, trade and consumer protection may
20 not issue an order or promulgate a rule under s. 100.20 that changes any right or duty
21 arising under this chapter.

22 **SECTION 20.** 799.05 (3) (b) of the statutes is amended to read:

23 799.05 (3) (b) Except in eviction actions, the return date for a summons served
24 upon a resident of this state shall be not less than 8 days nor more than 30 days from
25 the issue date, and service shall be made not less than 8 days prior to the return date.

SENATE BILL 179

1 In eviction actions, the return date for a summons served upon a resident of this state
2 shall be not less than 5 days nor more than ~~30~~ 14 days from the issue date, and service
3 shall be made not less than 5 days prior to the return date.

4 **SECTION 21.** 799.06 (2) of the statutes is amended to read:

5 799.06 (2) A person may commence and prosecute or defend an action or
6 proceeding under this chapter and may appear in his, her, or its own proper person
7 or by an attorney regularly authorized to practice in the courts of this state. Under
8 this subsection, a person is considered to be acting in his, her, or its own proper
9 person if the appearance is by a ~~full-time~~ member or authorized employee of the
10 person, or by an agent of the member or an authorized employee of the agent. An
11 assignee of any cause of action under this chapter shall not appear by a full-time
12 authorized employee, unless the employee is an attorney regularly authorized to
13 practice in the courts of this state.

14 **SECTION 22.** 799.12 (2) of the statutes is amended to read:

15 799.12 (2) Any circuit court may by rule authorize the service of summons in
16 some or all actions under this chapter, ~~except eviction actions,~~ by mail under sub. (3)
17 in lieu of personal or substituted service under s. 801.11.

18 **SECTION 23.** 799.20 (4) of the statutes is amended to read:

19 799.20 (4) **INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE.** If the defendant
20 appears on the return date of the summons or any adjourned date thereof, the court
21 or circuit court commissioner shall make sufficient inquiry of the defendant to
22 determine whether the defendant claims a defense to the action. If it appears to the
23 court or circuit court commissioner that the defendant claims a defense to the action,
24 the court or circuit court commissioner shall schedule a trial of all the issues involved
25 in the action, unless the parties stipulate otherwise or the action is subject to

SENATE BILL 179

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

5 **SECTION 24.** 799.206 (3) of the statutes is amended to read:

6 799.206 (3) When all parties appear in person or by their attorneys on the
7 return date in an eviction, garnishment, or replevin action and any party claims that
8 a contest exists, the matter shall be forthwith scheduled for a hearing, to be held as
9 soon as possible before a judge and in the case of an eviction action, not more than
10 20 days after the return date.

11 **SECTION 25.** 799.40 (1) of the statutes is amended to read:

12 799.40 (1) WHEN COMMENCED. A civil action of eviction may be commenced by
13 a person entitled to the possession of real property, or by that person's agent
14 authorized in writing, to remove therefrom any person who is not entitled to either
15 the possession or occupancy of such real property.

16 **SECTION 26.** 799.40 (1m) of the statutes is amended to read:

17 799.40 (1m) ACCEPTANCE OF RENT OR OTHER PAYMENT. If a landlord commences
18 an action under this section against a tenant whose tenancy has been terminated for
19 failure to pay rent or for any other reason, the action under this section may not be
20 dismissed solely because the landlord accepts past due rent or any other payment
21 from the tenant after the termination of the tenant's tenancy serving notice of default
22 or after commencing the action.

23 **SECTION 27.** 799.42 of the statutes is amended to read:

SENATE BILL 179

1 **799.42 Service and filing in eviction actions.** The complaint shall be
2 served with the summons when ~~personal or substituted~~ service is had under s. 799.12
3 ~~(1)~~.

4 **SECTION 28.** 799.44 (2) of the statutes is amended to read:

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

10 **SECTION 29.** 799.45 (title) of the statutes is amended to read:

11 **799.45 (title) Execution of writ of restitution; disposal of personal**
12 **property.**

13 **SECTION 30.** 799.45 (1) of the statutes is amended to read:

14 799.45 (1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff,
15 and after payment to the sheriff of the fee required by s. 814.70 (8), the sheriff shall
16 execute the writ. If the plaintiff, or the plaintiff's attorney or agent, does not notify
17 the sheriff under sub. ~~(3)~~ ~~(am)~~ (3m) that the plaintiff or his or her agent will remove
18 and store or dispose of the property, the sheriff may require that prior to the
19 execution of any writ of restitution the plaintiff deposit a reasonable sum
20 representing the probable cost of removing the defendant's property chargeable to
21 the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s.
22 814.70 (8). In case of dispute as to the amount of the required deposit, the amount
23 of that deposit shall be determined by the court under s. 814.70 (10).

24 **SECTION 31.** 799.45 (2) (b) of the statutes is amended to read:

SENATE BILL 179

1 799.45 (2) (b) ~~Remove~~ If the plaintiff or his or her agent does not notify the
2 sheriff under sub. (3m) that the plaintiff or his or her agent will remove and store or
3 dispose of the personal property, remove or supervise removal from the premises
4 described in the writ, using such reasonable force as may be necessary, all personal
5 property found in the premises not the property of the plaintiff.

6 **SECTION 32.** 799.45 (2) (bg) of the statutes is amended to read:

7 799.45 (2) (bg) ~~Assist~~ If requested by the plaintiff or his or her agent, assist the
8 plaintiff or his or her agent in the removal, under sub. ~~(3) (am)~~ (3m), of all personal
9 property found in the premises described in the writ, not the property of the plaintiff,
10 using such reasonable force as may be necessary.

11 **SECTION 33.** 799.45 (2) (c) of the statutes is amended to read:

12 799.45 (2) (c) Exercise ordinary care in the removal or supervision of removal
13 of all persons ~~and property~~ from the premises ~~and~~, in the removal or supervision of
14 removal of personal property under par. (b), and in the handling and storage of all
15 property removed from the premises under par. (b).

16 **SECTION 34.** 799.45 (3) (title) of the statutes is amended to read:

17 799.45 (3) (title) MANNER OF REMOVAL AND DISPOSITION OF REMOVED GOODS BY
18 SHERIFF.

19 **SECTION 35.** 799.45 (3) (a) of the statutes is amended to read:

20 799.45 (3) (a) In accomplishing the removal of property from the premises
21 described in the writ, the sheriff is authorized to engage the services of a mover or
22 trucker unless the plaintiff notifies the sheriff under ~~par. (am)~~ sub. (3m) that the
23 plaintiff will remove and store or dispose of the property.

24 **SECTION 36.** 799.45 (3) (am) (intro.) of the statutes is renumbered 799.45 (3m)
25 and amended to read:

SENATE BILL 179

1 799.45 (3m) ALTERNATIVE DISPOSITION OF PROPERTY BY PLAINTIFF When
2 delivering a writ of restitution to the sheriff ~~in counties other than counties with a~~
3 ~~population of 500,000 or more, as a complete alternative to the procedure for~~
4 ~~disposition of the property under sub. (3), the plaintiff or his or her attorney or agent~~
5 may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for
6 the removal and storage or disposal of the property that is found in the premises
7 described in the writ and that does not belong to the plaintiff. ~~When notifying the~~
8 ~~sheriff that the plaintiff or the plaintiff's agent will remove the property, the plaintiff~~
9 ~~or his or her attorney or agent shall file the bond or insurance policy required under~~
10 ~~subd. 5. with the clerk of court that issued the writ of restitution in accordance with~~
11 ~~s. 704.05. If the sheriff is notified that the plaintiff or the plaintiff's agent will be~~
12 responsible for the removal and storage or disposal of the property under this
13 ~~paragraph subsection, the sheriff shall, in executing the writ of restitution if~~
14 ~~requested by the plaintiff or his or her agent, supervise the removal and handling of~~
15 the property by the plaintiff or the plaintiff's agent. The sheriff may prevent the
16 ~~plaintiff or the plaintiff's agent from removing property under this paragraph if the~~
17 ~~plaintiff or the plaintiff's agent fails to comply with subd. 1., 2., 5. or 6. or if the~~
18 ~~plaintiff or the plaintiff's agent fails to exercise ordinary care in the removal and~~
19 ~~handling of the property as required under subd. 3. If the plaintiff or the plaintiff's~~
20 ~~agent remove and store the property under this paragraph, the plaintiff or the~~
21 ~~plaintiff's agent shall do all of the following:~~

22 **SECTION 37.** 799.45 (3) (am) 1. of the statutes is repealed.

23 **SECTION 38.** 799.45 (3) (am) 2. of the statutes is repealed.

24 **SECTION 39.** 799.45 (3) (am) 3. of the statutes is repealed.

25 **SECTION 40.** 799.45 (3) (am) 4. of the statutes is repealed.

SENATE BILL 179

1 **SECTION 41.** 799.45 (3) (am) 5. of the statutes is repealed.

2 **SECTION 42.** 799.45 (3) (am) 6. of the statutes is repealed.

3 **SECTION 43.** 799.45 (3) (am) 7. of the statutes is repealed.

4 **SECTION 44.** 799.45 (3) (b) of the statutes is amended to read:

5 799.45 (3) (b) Except as provided in ~~pars. (am) and par.~~ (c), the property
6 removed from such premises under this subsection shall be taken to some place of
7 safekeeping within the county selected by the sheriff. Within 3 days of the removal
8 of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4)
9 stating the place where the goods are kept and, ~~if the plaintiff had not removed the~~
10 ~~property under par. (am)~~, shall deliver to the defendant any receipt or other
11 document required to obtain possession of the goods. Warehouse or other similar
12 receipts issued with respect to goods stored by the sheriff under this subsection shall
13 be taken in the name of the defendant. All expenses incurred for storage and other
14 like charges after delivery by the sheriff ~~or by the plaintiff~~ to a place of safekeeping
15 shall be the responsibility of the defendant. Any person accepting goods from the
16 sheriff ~~or the plaintiff~~ for storage under this subsection, ~~or the plaintiff, if he or she~~
17 ~~stores the property in his or her premises~~, shall have all of the rights and remedies
18 accorded by law against the defendant personally and against the property stored for
19 the collection of such charges, including the lien of a warehouse under s. 407.209.
20 Risk of damages to or loss of such property shall be borne by the defendant after
21 delivery by the sheriff to the place of safekeeping.

22 **SECTION 45.** 799.45 (3) (c) of the statutes is amended to read:

23 799.45 (3) (c) When, in the exercise of ordinary care, the sheriff determines that
24 property to be removed from premises described in the writ is without monetary
25 value, the sheriff ~~or the plaintiff, if he or she has agreed to remove the property under~~

SENATE BILL 179

1 ~~par. (am)~~, may deliver or cause the same to be delivered to some appropriate place
2 established for the collection, storage, and disposal of refuse. In such case the sheriff
3 shall notify the defendant as specified in sub. (4) of the place to which the goods have
4 been delivered within 3 days of the removal of the goods. The exercise of ordinary
5 care by the sheriff under this subsection does not include searching apparently
6 valueless property for hidden or secreted articles of value.

7 **SECTION 46.** 799.45 (4) of the statutes is amended to read:

8 799.45 (4) MANNER OF GIVING NOTICE TO DEFENDANT. All notices required by sub.
9 (3) to be given to the defendant by the sheriff ~~or by the plaintiff~~ shall be in writing
10 and shall be personally served upon the defendant or mailed to the defendant at the
11 last-known address, even if such address be the premises which are the subject of
12 the eviction action.

13 **SECTION 47.** 895.489 of the statutes is created to read:

14 **895.489 Civil liability exemption; tenancy references. (1)** In this section:

15 (a) "Reference" means a written or oral statement about the rental performance
16 of an applicant for tenancy and may include statements about the applicant's
17 payment history, conformance to rental agreement requirements, or conformance to
18 local and state laws; factual statements regarding any rental agreement
19 enforcement actions, including notices given under s. 704.17, 704.19, or 710.15 (5r);
20 and factual statements about any dispute settlement between the landlord and
21 applicant in accordance with any agreement between the landlord and applicant
22 relating to termination of the applicant's tenancy.

23 (b) "Tenant" means a residential tenant, regardless of the type of tenancy or
24 rental period.

SENATE BILL 179

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

SECTION 48. Nonstatutory provisions.

9 (1) PROPOSED PERMANENT RULES. The department of transportation shall
10 present the statement of scope of the rules required under section 349.13 (3m) (e) of
11 the statutes, as created by this act, to the governor for approval under section
12 227.135 (2) of the statutes no later than the 60th day after the effective date of this
13 subsection.
14

15 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
16 the department of transportation shall promulgate the rules required under section
17 349.13 (3m) (e) of the statutes, as created by this act, for the period before the
18 effective date of the permanent rules promulgated under section 349.13 (3m) (e) of
19 the statutes, as created by this act, but not to exceed the period authorized under
20 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of
21 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,
22 the department is not required to provide evidence that promulgating a rule under
23 this subsection as an emergency rule is necessary for the preservation of public
24 peace, health, safety, or welfare and is not required to provide a finding of an
25 emergency for a rule promulgated under this subsection. Notwithstanding section

SENATE BILL 179

1 227.24 (1) (e) 1d. and 1g. of the statutes, the department is not required to prepare
2 a statement of the scope of the rules promulgated under this subsection or present
3 the rules to the governor for approval. The department of transportation shall
4 promulgate the rules under this subsection no later than the first day of the 7th
5 month beginning after the effective date of this subsection.

SECTION 49. Initial applicability.

7 (1) INSECT INFESTATIONS. The treatment of section 704.07 (3) (a) of the statutes
8 first applies to tenancies that are in effect on the effective date of this subsection.

9 (2) RETURN OF SECURITY DEPOSIT AFTER EVICTION. The treatment of section 704.28
10 (4) (b) and (d) of the statutes first applies to eviction actions that are commenced on
11 the effective date of this subsection.

12 (3) APPLICABILITY OF SECURITY DEPOSIT PROVISIONS. The treatment of sections
13 704.28 (5) of the statutes first applies to tenancies that are in effect on the effective
14 date of this subsection.

15 (4) VIOLATIONS THAT CONSTITUTE UNFAIR TRADE PRACTICES. The treatment of
16 section 704.95 of the statutes first applies to violations that occur on the effective
17 date of this subsection.

18 (5) EVICTION ACTIONS. The treatment of sections 799.05 (3) (b), 799.12 (2), 799.20
19 (4), 799.206 (3), 799.42, and 799.44 (2) of the statutes first applies to eviction actions
20 that are filed on the effective date of this subsection.

21 (6) REFERENCES PROVIDED BY LANDLORDS. The treatment of section 895.489 of the
22 statutes first applies to references provided on the effective date of this subsection.

23 **SECTION 50. Effective dates.** This act takes effect on the first day of the first
24 month beginning after publication, except as follows:

