



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3896/1
MCP:emw

2023 ASSEMBLY BILL 702

November 27, 2023 - Introduced by Representatives CLANCY, C. ANDERSON, MADISON, RATCLIFF, PALMERI, J. ANDERSON, BALDEH, BARE, CABRERA, DRAKE, EMERSON, JOERS, MOORE OMOKUNDE, OHNSTAD, ORTIZ-VELEZ, SHELTON, SINICKI, SNODGRASS and STUBBS, cosponsored by Senators LARSON, L. JOHNSON, SPREITZER and ROYS. Referred to Committee on Judiciary.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 799.05 (3) (b), 799.05 (7), 799.06 (3) (a), 799.12 (3), 799.16 (4)
2 (c), 799.20 (4), 799.206 (3), 799.21 (3) (a), 799.21 (3) (b), 799.25 (10) (b) and
3 799.27 (1); and **to create** 799.01 (1) (ag) and 799.47 of the statutes; **relating**
4 **to:** actions for relief from extrajudicial eviction in small claims court.

Analysis by the Legislative Reference Bureau

Under current law, actions for eviction are heard in small claims court. Under this bill, actions brought by a tenant for relief from extrajudicial (also known as “self-help”) evictions may also be heard in small claims court.

Under the bill, a tenant is required to file a summons and complaint in small claims court and serve the summons and complaint on the defendant landlord. The return date must be held between five and 25 days from the date that the summons is issued, which is the same time period for eviction actions. Also, similar to eviction actions, if the defendant appears on the return date and raises a defense, the court or circuit court commissioner hearing the action must hold a trial within 30 days of the return date. The bill also provides that a court hearing an action for relief from extrajudicial eviction may grant a temporary injunction against a landlord or a landlord’s agent that has removed or attempted to removed the tenant or the tenant’s belongings from the premises as part of an extrajudicial eviction.

ASSEMBLY BILL 702

For further information see the state and 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.** 799.01 (1) (ag) of the statutes is created to read:

2 799.01 (1) (ag) *Extrajudicial evictions.* Actions for relief from extrajudicial
3 evictions as described in s. 799.47.

4 **SECTION 2.** 799.05 (3) (b) of the statutes is amended to read:

5 799.05 (3) (b) Except in eviction actions and actions for relief from extrajudicial
6 evictions, the return date for a summons served upon a resident of this state shall
7 be not less than 8 days nor more than 30 days from the issue date, and service shall
8 be made not less than 8 days prior to the return date. In eviction actions and actions
9 for relief from extrajudicial evictions, the return date for a summons served upon a
10 resident of this state shall be not less than 5 days nor more than 25 days from the
11 issue date, and service shall be made not less than 5 days prior to the return date.

12 **SECTION 3.** 799.05 (7) of the statutes is amended to read:

13 799.05 (7) FORM; CIRCUIT COURT COMMISSIONER. Except as provided in s. 799.22
14 (4) (b) 3., in counties in which a circuit court commissioner is assigned to assist in
15 small claims matters, the summons shall be substantially in the following form:

16 STATE OF WISCONSIN CIRCUIT COURT: ... COUNTY

17

18 A. B.

19 Address

20 City, State Zip Code File No.

ASSEMBLY BILL 702

23 E. F., Clerk of Circuit Court

24 or

1 G. H., Plaintiff's Attorney

2 State Bar No.:

3 Address:

4 City, State Zip Code:

5 Phone No.:

6 **SECTION 4.** 799.06 (3) (a) of the statutes is amended to read:

7 799.06 (3) (a) The complaint in an eviction action shall conform to s. 799.41.

8 The complaint in other actions under this chapter shall be in writing and shall be
9 substantially in the following form:

10 STATE OF WISCONSIN CIRCUIT COURT: COUNTY

11

12 A. B.

13 Address

14 City, State Zip Code File No.

15 , Plaintiff

16 vs. C O M P L A I N T

17 C. D.

18 Address (Case Classification Type): (Code No.)

19 City, State Zip Code

20 , Defendant

ASSEMBLY BILL 702

21

For the Plaintiff's claim against Defendant, Plaintiff states that:

22

1 1. Plaintiff's injuries or losses occurred on or about ... (month and day), ...
2 (year), and under the following circumstances (brief statement of the facts of
3 plaintiff's claim):

4
5
6
7

8 2. Wherefore, Plaintiff demands judgment for (return of property) (relief from
9 extrajudicial eviction) (confirmation, vacation, modification or correction of
10 arbitration award) (the sum of \$...) plus attorney fees, if any, costs of this suit and
11 such other relief as the court deems proper.

12

Signed:

13

A. B., Plaintiff

14

or

15

E. F., Plaintiff's Attorney

16

State Bar No.:

17

Address:

18

City, State Zip Code:

19

Phone No.:

20

SECTION 5. 799.12 (3) of the statutes is amended to read:

ASSEMBLY BILL 702**SECTION 5**

21 799.12 (3) If authorized by court rule under sub. (2), service may be made by
22 mail by filing the summons with the clerk of court, together with a request for mail
23 service and the fee prescribed in s. 814.62 (4). The court shall require the use of
24 certified mail with return receipt requested for all eviction and relief from
25 extrajudicial eviction cases for which service by mail is authorized under sub. (2),
1 and for all other cases may by rule require the use of certified mail with return receipt
2 requested. Whenever the use of certified mail is required, the additional fee
3 prescribed in s. 814.62 (4) shall be paid for each defendant. The clerk shall mail a
4 copy to each defendant at the last-known address as specified in the summons.
5 Service of the summons is considered completed when it is mailed, unless the
6 envelope enclosing the summons has been returned unopened to the clerk prior to
7 the return date. All mailing of summonses shall be done in envelopes upon which
8 the clerk's return address appears, with a request to return to that address. Service
9 by mail to obtain a personal judgment shall be limited to the county where the action
10 is commenced.

11 **SECTION 6.** 799.16 (4) (c) of the statutes is amended to read:

12 799.16 (4) (c) *Notice in eviction and relief from extrajudicial eviction.*

13 STATE OF WISCONSIN

14 CIRCUIT COURT

15 COUNTY

16 TO:

17 Take notice that an ~~eviction action~~ (eviction action) (action for relief from
18 extrajudicial eviction) has been commenced against you to recover the possession of
19 the following described premises, of which I, the plaintiff, am entitled to
20 possession, but which you have unlawfully detained from me.

ASSEMBLY BILL 702

21 Unless you appear and defend on the day of, (year), at o'clock ..M.,
22 in the circuit court of county, located in the courthouse in the city of, before the
23 Honorable, a Judge of said court, or before any judge to whom the action may be
24 assigned, judgment may be rendered against you for the restitution of said premises
25 and for costs.

1 Dated:, (year)

2 Plaintiff

3 By Plaintiff's Attorney

4 **SECTION 7.** 799.20 (4) of the statutes is amended to read:

5 799.20 (4) INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE. If the defendant
6 appears on the return date of the summons or any adjourned date thereof, the court
7 or circuit court commissioner shall make sufficient inquiry of the defendant to
8 determine whether the defendant claims a defense to the action. If it appears to the
9 court or circuit court commissioner that the defendant claims a defense to the action,
10 the court or circuit court commissioner shall schedule a trial of all the issues involved
11 in the action, unless the parties stipulate otherwise or the action is subject to
12 immediate dismissal. In a residential eviction action or action for relief from
13 extrajudicial eviction, the court or circuit court commissioner shall hold and
14 complete a court or jury trial of the issue of possession of the premises involved in
15 the action within 30 days of the return date of the summons or any adjourned date
16 thereof, unless the parties stipulate otherwise or the action is subject to immediate
17 dismissal.

18 **SECTION 8.** 799.206 (3) of the statutes is amended to read:

19 799.206 (3) When all parties appear in person or by their attorneys on the
20 return date in an eviction, relief from extrajudicial eviction, garnishment, or replevin

ASSEMBLY BILL 702**SECTION 8**

21 action and any party raises valid legal grounds for a contest, the matter shall be
22 forthwith scheduled for a hearing, to be held as soon as possible before a judge and
23 in the case of an eviction action or action for relief from extrajudicial eviction, not
24 more than 30 days after the return date.

25 **SECTION 9.** 799.21 (3) (a) of the statutes is amended to read:

1 799.21 (3) (a) Any party may, upon payment of the fees prescribed in ss. 814.61
2 (4) and 814.62 (3) (e), file a written demand for trial by jury. If no party demands a
3 trial by jury, the right to trial by jury is waived forever. In eviction actions and actions
4 for relief from extrajudicial eviction, the demand shall be filed at or before the time
5 of joinder of issue; in all other actions within 20 days thereafter.

6 **SECTION 10.** 799.21 (3) (b) of the statutes is amended to read:

7 799.21 (3) (b) In counties in which a circuit court commissioner is assigned to
8 assist in small claims matters, except in eviction actions and actions for relief from
9 extrajudicial eviction which shall be governed by par. (a), demand for trial by jury
10 shall be made at the time a demand for trial is filed. If the party requesting a trial
11 does not request a jury trial, any other party may request a jury trial by filing the
12 request with the court and mailing copies to all other parties within 15 days from the
13 date of mailing of the demand for trial or the date on which personal notice of demand
14 is given, whichever is applicable. If no party demands a trial by jury, the right to trial
15 by jury is waived forever. The fees prescribed in ss. 814.61 (4) and 814.62 (3) (e) shall
16 be paid when the demand for a trial by jury is filed.

17 **SECTION 11.** 799.25 (10) (b) of the statutes is amended to read:

18 799.25 (10) (b) In an action of replevin and attachment the value of the property
19 recovered shall govern the amount of the attorney fees taxable. In an action of
20 eviction or action for relief from extrajudicial eviction the attorney fees taxable shall

ASSEMBLY BILL 702

21 be \$10 plus such sum as is taxable under par. (a) on account of the recovery of
22 damages.

23 **SECTION 12.** 799.27 (1) of the statutes is amended to read:

24 799.27 (1) ON REQUEST. Except in eviction actions and actions for relief from
25 extrajudicial eviction, a party who appears on the return date shall be given, on
1 request, an adjournment of at least 7 days, or such longer period as the court grants.
2 In eviction actions and actions for relief from extrajudicial eviction, no adjournments
3 shall be granted except for cause shown under sub. (2) and (3), unless with the
4 consent of the plaintiff.

5 **SECTION 13.** 799.47 of the statutes is created to read:

6 **799.47 Actions for relief from extrajudicial evictions. (1) WHEN**
7 **COMMENCED.** A civil action for relief from extrajudicial eviction may be commenced
8 by a person entitled to the possession of real property if a landlord or landlord's agent
9 has removed or attempted to remove the person or the person's belongings from the
10 real property by any method other than by an action under s. 799.40.

11 **(2) JOINDER OF OTHER CLAIMS.** The plaintiff may join with the claim for
12 restitution of the premises or other injunction any other claim against the defendant
13 arising out of the defendant's extrajudicial eviction of the plaintiff.

14 **(3) ORDER FOR JUDGMENT.** If the court finds that the plaintiff is entitled to
15 possession of the premises, the court shall immediately enter an order for judgment
16 for the restitution of the premises to the plaintiff. If an additional cause of action is
17 joined under sub. (2) and the plaintiff prevails thereon, the court shall enter
18 judgment for such other relief as the court orders. A court may grant an injunction
19 against a person that has removed or attempted to remove a person entitled to the
20 possession of real property or the person's belongings from the real property by any

ASSEMBLY BILL 702

SECTION 13

21 method other than by an action under s. 799.40. Chapter 813 governs any temporary
22 or interlocutory injunction or ex parte restraining order in an action under this
23 section. Judgment shall be entered accordingly as provided in s. 799.24.

24 (END)