



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.

AN ACT *to amend* 799.05 (3) (b), 799.05 (7), 799.06 (3) (a), 799.12 (3), 799.16 (4) (c), 799.20 (4), 799.206 (3), 799.21 (3) (a), 799.21 (3) (b), 799.25 (10) (b) and 799.27 (1); and *to create* 799.01 (1) (ag) and 799.47 of the statutes; **relating 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**SECTION 1**

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:

SECTION 1. 799.01 (1) (ag) of the statutes is created to read:

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

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

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

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

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

STATE OF WISCONSIN

CIRCUIT COURT: COUNTY

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A. B.

Address

City, State Zip Code File No.

, Plaintiff

vs.

S U M M O N S (SMALL CLAIMS)

C.D.

Address

City, State Zip Code

, Defendant

THE STATE OF WISCONSIN, to the Defendant:

You are being sued for:

.... Eviction

.... Relief from extrajudicial eviction

.... Return of Property

.... Confirmation, vacation, modification or correction

of arbitration award

.... \$.....

If you wish to dispute this matter, you must then be in Room, of the (County) County Courthouse, (address), (city), Wisconsin before o'clock (a.m.) (p.m.), on, (year). If you do not appear, a judgment may be given to the person suing you for what that person is asking.

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You are encouraged to bring with you all papers and documents relating to this matter, but there is no need to bring witnesses at this time.

Dated at County, Wisconsin, this day of, (year)

Signed:

E. F., Clerk of Circuit Court

or

G. H., Plaintiff's Attorney

State Bar No.:

Address:

City, State Zip Code:

Phone No.:

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

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

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

STATE OF WISCONSIN

CIRCUIT COURT: COUNTY

A. B.

Address

City, State Zip Code

File No.

, Plaintiff

vs.

C O M P L A I N T

C. D.

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

City, State Zip Code

, Defendant

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

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

.....

.....

.....

.....

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

Signed:

A. B., Plaintiff

or

E. F., Plaintiff's Attorney

State Bar No.:

Address:

City, State Zip Code:

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Phone No.:

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

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

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

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

STATE OF WISCONSIN

CIRCUIT COURT

.... COUNTY

TO:

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

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

Dated:, (year)

.... Plaintiff

By Plaintiff's Attorney

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

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

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involved in the action within 30 days of the return date of the summons or any adjourned date thereof, unless the parties stipulate otherwise or the action is subject to immediate dismissal.

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

799.206 (3) When all parties appear in person or by their attorneys on the return date in an eviction, relief from extrajudicial eviction, garnishment, or replevin action and any party raises valid legal grounds for a contest, the matter shall be forthwith scheduled for a hearing, to be held as soon as possible before a judge and in the case of an eviction action or action for relief from extrajudicial eviction, not more than 30 days after the return date.

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

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

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

799.21 (3) (b) In counties in which a circuit court commissioner is assigned to assist in small claims matters, except in eviction actions and actions for relief from extrajudicial eviction which shall be governed by par. (a), demand for trial by jury shall be made at the time a demand for trial is filed. If the party requesting a trial does not request a jury trial, any other party may request a jury trial by filing the

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request with the court and mailing copies to all other parties within 15 days from the date of mailing of the demand for trial or the date on which personal notice of demand is given, whichever is applicable. If no party demands a trial by jury, the right to trial by jury is waived forever. The fees prescribed in ss. 814.61 (4) and 814.62 (3) (e) shall be paid when the demand for a trial by jury is filed.

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

799.25 (10) (b) In an action of replevin and attachment the value of the property recovered shall govern the amount of the attorney fees taxable. In an action of eviction or action for relief from extrajudicial eviction the attorney fees taxable shall be \$10 plus such sum as is taxable under par. (a) on account of the recovery of damages.

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

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

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

799.47 Actions for relief from extrajudicial evictions. (1) WHEN COMMENCED. A civil action for relief from extrajudicial eviction may be commenced by a person entitled to the possession of real property if a landlord or landlord's

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agent has removed or attempted to remove the person or the person's belongings from the real property by any method other than by an action under s. 799.40.

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

(3) ORDER FOR JUDGMENT. If the court finds that the plaintiff is entitled to possession of the premises, the court shall immediately enter an order for judgment for the restitution of the premises to the plaintiff. If an additional cause of action is joined under sub. (2) and the plaintiff prevails thereon, the court shall enter judgment for such other relief as the court orders. A court may grant an injunction against a person that has removed or attempted to remove a person entitled to the possession of real property or the person's belongings from the real property by any method other than by an action under s. 799.40. Chapter 813 governs any temporary or interlocutory injunction or ex parte restraining order in an action under this section. Judgment shall be entered accordingly as provided in s. 799.24.

(END)