

State of Wisconsin



1997 Assembly Bill 872

Date of enactment: **June 30, 1998**
Date of publication*: **July 14, 1998**

1997 WISCONSIN ACT 317

AN ACT to amend 799.45 (1), 799.45 (2) (b), 799.45 (2) (c), 799.45 (3) (a), 799.45 (3) (b), 799.45 (3) (c) and 799.45 (4); and to create 99.02 (2) (g), 799.45 (2) (bg) and 799.45 (3) (am) of the statutes; relating to: the storage and disposition of a tenant's property upon eviction and persons required to be licensed as public warehouse keepers.

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

SECTION 1. 99.02 (2) (g) of the statutes is created to read:

99.02 (2) (g) A person who stores property received under a writ of restitution under s. 799.44 (2) if that person was the plaintiff in the action that resulted in the issuance of the writ of restitution.

SECTION 2. 799.45 (1) of the statutes is amended to read:

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

SECTION 3. 799.45 (2) (b) of the statutes is amended to read:

799.45 (2) (b) Remove or supervise removal from the premises described in the writ, using such reasonable force as may be necessary, all personal property found therein in the premises not the property of the plaintiff.

SECTION 4. 799.45 (2) (bg) of the statutes is created to read:

799.45 (2) (bg) Assist the plaintiff or his or her agent in the removal, under sub. (3) (am), of all personal property found in the premises described in the writ, not the property of the plaintiff, using such reasonable force as may be necessary.

SECTION 5. 799.45 (2) (c) of the statutes is amended to read:

799.45 (2) (c) Exercise ordinary care in the removal or supervision of removal of all persons and property from the premises and in the handling and storage of all property removed ~~therefrom~~ from the premises.

SECTION 6. 799.45 (3) (a) of the statutes is amended to read:

799.45 (3) (a) In accomplishing the removal of property from the premises described in the writ, the sheriff is authorized to engage the services of a mover or trucker unless the plaintiff notifies the sheriff under par. (am) that

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

the plaintiff will remove and store or dispose of the property.

SECTION 7. 799.45 (3) (am) of the statutes is created to read:

799.45 (3) (am) When delivering a writ of restitution to the sheriff in counties other than counties with a population of 500,000 or more, the plaintiff or his or her attorney or agent may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property that is found in the premises described in the writ and that does not belong to the plaintiff. When notifying the sheriff that the plaintiff or the plaintiff's agent will remove the property, the plaintiff or his or her attorney or agent shall file the bond or insurance policy required under subd. 5. with the clerk of court that issued the writ of restitution. If the sheriff is notified that the plaintiff or the plaintiff's agent will be responsible for the removal and storage or disposal of the property under this paragraph, the sheriff shall, in executing the writ of restitution, supervise the removal and handling of the property by the plaintiff or the plaintiff's agent. The sheriff may prevent the plaintiff or the plaintiff's agent from removing property under this paragraph if the plaintiff or the plaintiff's agent fails to comply with subd. 1., 2., 5. or 6. or if the plaintiff or the plaintiff's agent fails to exercise ordinary care in the removal and handling of the property as required under subd. 3. If the plaintiff or the plaintiff's agent remove and store the property under this paragraph, the plaintiff or the plaintiff's agent shall do all of the following:

1. Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the address of the premises where the defendant's property will be stored.
2. Notify the sheriff not later than the date on which the sheriff executes the writ of restitution of the name, address and telephone number of the person the defendant may contact to obtain possession of the property.
3. Exercise ordinary care in removing the property from the premises and in the handling and storage of all property removed from the premises.
4. Have warehouse or other receipts issued with respect to the property stored under this paragraph issued in the name of the defendant.
5. Obtain a bond or insurance policy to pay the defendant and indemnify the sheriff for any damages to the property removed from the premises that is handled or stored with less than ordinary care.
6. Impose charges for the removal and storage of the property removed from the premises that do not exceed the rate determined by the sheriff to be the average rate for such services available in the county.

7. Within 3 days of the removal of the property, notify the defendant under sub. (4) of the charges imposed under subd. 6. and of any receipt or other document required to obtain possession of the property.

SECTION 8. 799.45 (3) (b) of the statutes is amended to read:

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

SECTION 9. 799.45 (3) (c) of the statutes is amended to read:

799.45 (3) (c) When, in the exercise of ordinary care, the sheriff determines that property to be removed from premises described in the writ is without monetary value, the sheriff or the plaintiff, if he or she has agreed to remove the property under par. (am), may deliver or cause the same to be delivered to some appropriate place established for the collection, storage and disposal of refuse. In such case the sheriff shall notify the defendant as specified in sub. (4) of the place to which the goods have been delivered within 3 days of the removal of the goods. The exercise of ordinary care by the sheriff under this subsection does not include searching apparently valueless property for hidden or secreted articles of value.

SECTION 10. 799.45 (4) of the statutes is amended to read:

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

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SECTION 11. Initial applicability.

(1) This act first applies to writs of restitution issued on the effective date of this subsection.
