



## 1997 ASSEMBLY BILL 610

November 13, 1997 - Introduced by Representatives ROBSON, F. LASEE, M. LEHMAN, LA FAVE, LORGE, AINSWORTH, HEBL, TURNER, GOETSCH, ZIEGELBAUER, GROTHMAN, MUSSER, GREEN, LADWIG, WASSERMAN, GUNDERSON, ALBERS, HASENOHRL, STASKUNAS, OTT and NASS, cosponsored by Senators WEEDEN, ROESSLER, FARROW and DARLING. Referred to Committee on Housing.

1     **AN ACT to amend** 704.05 (5) (a) (intro.), 799.25 (6), 799.44 (2), 799.44 (4), 799.45  
2           (1), 799.45 (2) (intro.), 799.45 (2) (b), 799.45 (2) (c), 799.45 (3) (a), 799.45 (3) (b),  
3           799.45 (3) (c), 799.45 (4), 799.45 (5) (a) and 799.45 (5) (b); and **to create** 799.45  
4           (2) (bg) and 799.45 (3) (am) of the statutes; **relating to:** the storage and  
5           disposition of a tenant's property upon eviction.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a tenant, at the termination of his or her tenancy, leaves personal property on the premises, the landlord has certain rights and responsibilities regarding that property. The landlord may store the property and notify the former tenant that the property may be claimed, subject to a lien by the landlord for the costs of the removal and storage of the property. The current law allows the landlord to dispose of the property after giving the former tenant notice that the property will be disposed of if the tenant does not claim the property within 30 days after receipt of the property. Current law also allows the landlord to store the property without charging the tenant with any storage costs and to return the property to the tenant.

Current law requires the sheriff, when executing a writ to evict a tenant, to remove property left on the premises by the tenant. The sheriff is required to take the removed property to a place of safekeeping and to notify the former tenant of the place where the property is being kept and of the right to obtain possession of the goods after the payment of the expenses of moving and storing the property.

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This bill gives police officers employed by cities the same powers and responsibilities as sheriffs related to executing a writ to evict a tenant. The bill gives landlords the same rights and responsibilities to remove, store and dispose of the property of former tenants who are evicted as they currently have over property of former tenants whose tenancy is terminated. A landlord is given the option under the bill to have the sheriff or the city police department take possession of the former tenant's property or to take possession himself or herself and follow the procedures used when a tenancy is terminated regarding the removal, storage and disposal of the property.

For further information see the *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.** 704.05 (5) (a) (intro.) of the statutes is amended to read:

2           704.05 (5) (a) *Procedure.* (intro.) If a tenant removes from the premises and  
3 leaves personal property, or if the landlord elects to have the landlord or his or her  
4 agent remove and store or dispose of the property under s. 799.45 (3) (am), the  
5 landlord may do all of the following:

6           **SECTION 2.** 799.25 (6) of the statutes is amended to read:

7           799.25 (6) SERVICE FEES AND OTHER CHARGES. Lawful fees or charges paid to the  
8 sheriff, constable or other person for serving the summons or any other document,  
9 and charges paid to the sheriff or a police officer employed by a city in connection with  
10 the execution of any writ of restitution.

11           **SECTION 3.** 799.44 (2) of the statutes is amended to read:

12           799.44 (2) WRIT OF RESTITUTION. At the time of ordering judgment for the  
13 restitution of premises, the court shall order that a writ of restitution be issued, and  
14 the writ may be delivered to the sheriff or the city police department for execution  
15 in accordance with s. 799.45. No writ shall be executed if received by the sheriff or  
16 the city police department more than 30 days after its issuance.

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

2           799.44 (4) WRIT OF RESTITUTION; FORM AND CONTENTS. The writ of restitution  
3 shall be in the name of the court, sealed with its seal, signed by its clerk, directed to  
4 the sheriff of the county in which the real property is located or to the city police  
5 department of the city in which the property is located, and in substantially the  
6 following form:

7           (Venue and caption)

8           THE STATE OF WISCONSIN To the Sheriff of .... County or Police Department  
9 of .... City:

10           The plaintiff, ....., of .... recovered a judgment against the defendant, ....., of .....,  
11 in an eviction action in the Circuit Court of .... County, on the .... day of ....., 19.., to  
12 have restitution of the following described premises:

13           .... (description as in complaint), located in .... County, Wisconsin.

14           YOU ARE HEREBY COMMANDED To immediately remove the defendant, .....,  
15 from the said premises and to restore the plaintiff, ....., to the possession thereof. You  
16 are further commanded to remove from said premises all personal property not the  
17 property of the plaintiff, and to store and dispose of the same according to law, and  
18 to make due return of this writ within ten days.

19           Witness the Honorable ....., Judge of the said Circuit Court, this .... day of ....., 19..

20           ..... Clerk

21           **SECTION 5.** 799.45 (1) of the statutes is amended to read:

22           799.45 (1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff  
23 or to a police officer employed by a city, and after payment to the sheriff or to the city  
24 police department of the fee required by s. 814.70 (8), the sheriff or police officer  
25 employed by the city shall execute the writ. ~~The~~ If the plaintiff, or the plaintiff's

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1 attorney or agent, does not notify the sheriff or the city police department under sub.  
2 (3) (am) that the plaintiff or his or her agent will remove and store or dispose of the  
3 property, the sheriff or the city police department may require that prior to the  
4 execution of any writ of restitution the plaintiff deposit a reasonable sum  
5 representing the probable cost of removing the defendant's property chargeable to  
6 the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s.  
7 814.70 (8). In case of dispute as to the amount of such the required deposit, the  
8 amount thereof of that deposit shall be determined by the court under s. 814.70 (10).

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

10 799.45 (2) HOW EXECUTED; DUTIES OF SHERIFF OR POLICE OFFICER EMPLOYED BY A  
11 CITY (intro.) In executing the writ of restitution the sheriff or police officer employed  
12 by a city shall:

13 **SECTION 7.** 799.45 (2) (b) of the statutes is amended to read:

14 799.45 (2) (b) Remove Unless the plaintiff or his or her agent removes and  
15 stores or disposes of the property under sub. (3) (am), remove from the premises  
16 described in the writ, using such reasonable force as may be necessary, all personal  
17 property found therein not the property of the plaintiff.

18 **SECTION 8.** 799.45 (2) (bg) of the statutes is created to read:

19 799.45 (2) (bg) Assist the plaintiff or his or her agent in the removal, under sub.  
20 (3) (am), of all personal property found in the premises described in the writ, not the  
21 property of the plaintiff, using such reasonable force as may be necessary.

22 **SECTION 9.** 799.45 (2) (c) of the statutes is amended to read:

23 799.45 (2) (c) Exercise ordinary care in the removal of all persons and property  
24 from the premises and, unless the plaintiff or his or her agent removes and stores or

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1 disposes of the property under sub. (3) (am), in the handling and storage of all  
2 property removed ~~therefrom~~ from the premises.

3 **SECTION 10.** 799.45 (3) (a) of the statutes is amended to read:

4 799.45 (3) (a) ~~In~~ Except as provided under par. (am), in accomplishing the  
5 removal of property from the premises described in the writ, the sheriff or the city  
6 police department is authorized to engage the services of a mover or trucker.

7 **SECTION 11.** 799.45 (3) (am) of the statutes is created to read:

8 799.45 (3) (am) When delivering a writ of restitution to the sheriff or the city  
9 police department, the plaintiff or his or her attorney or agent may notify the sheriff  
10 or the city police department that the plaintiff or the plaintiff's agent shall be  
11 responsible for the removal and storage or disposal of the property that is found in  
12 the premises described in the writ and that does not belong to the plaintiff. If the  
13 sheriff or the city police department is notified that the plaintiff or the plaintiff's  
14 agent shall be responsible for the removal and storage or disposal of the property,  
15 the sheriff or the city police department shall, in executing the writ of restitution,  
16 allow the plaintiff or the plaintiff's agent to take possession of the property. If the  
17 sheriff or the city police department is notified that the plaintiff or the plaintiff's  
18 agent shall be responsible for the removal and storage or disposal of the property, the  
19 plaintiff or the plaintiff's agent shall remove and store or dispose of the property  
20 following the procedures under s. 704.05 (5).

21 **SECTION 12.** 799.45 (3) (b) of the statutes is amended to read:

22 799.45 (3) (b) ~~Except as provided in par.~~ par. (am) and (c), the property  
23 removed from such premises shall be taken to some place of safekeeping within the  
24 county selected by the sheriff or the city police department. Within 3 days of the  
25 removal of the goods, the sheriff or the city police department shall mail a notice to

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1 the defendant as specified in sub. (4) stating the place where the goods are kept and  
2 shall deliver to the defendant any receipt or other document required to obtain  
3 possession of the goods. Warehouse or other similar receipts issued with respect to  
4 goods stored by the sheriff or the city police department under this subsection shall  
5 be taken in the name of the defendant. All expenses incurred for storage and other  
6 like charges after delivery by the sheriff or the police officer employed by the city to  
7 a place of safekeeping shall be the responsibility of the defendant, and any person  
8 accepting goods from the sheriff or the police officer employed by the city for storage  
9 under this subsection shall have all of the rights and remedies accorded by law  
10 against the defendant personally and against the property stored for the collection  
11 of such charges, including the lien of a warehouse keeper under s. 407.209. Risk of  
12 damages to or loss of such property shall be borne by the defendant after delivery by  
13 the sheriff or the police officer employed by the city to the place of safekeeping.

14 **SECTION 13.** 799.45 (3) (c) of the statutes is amended to read:

15 799.45 (3) (c) When, in the exercise of ordinary care, the sheriff or the police  
16 officer employed by the city determines that property removed from premises  
17 described in the writ is without monetary value, the sheriff or police officer employed  
18 by the city may deliver or cause the same to be delivered to some appropriate place  
19 established for the collection, storage and disposal of refuse. In such case the sheriff  
20 or police officer employed by the city shall notify the defendant as specified in sub.  
21 (4) of the place to which the goods have been delivered within 3 days of the removal  
22 of the goods. The exercise of ordinary care by the sheriff or police officer employed  
23 by the city under this subsection does not include searching apparently valueless  
24 property for hidden or secreted articles of value.

25 **SECTION 14.** 799.45 (4) of the statutes is amended to read:

