



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 872**

March 16, 1998 - Offered by Representative GROTHMAN.

1 **AN ACT to amend** 799.45 (1), 799.45 (2) (b), 799.45 (2) (c), 799.45 (3) (a), 799.45
2 (3) (b), 799.45 (3) (c) and 799.45 (4); and **to create** 99.02 (2) (g), 799.45 (3) (am)
3 and 799.45 (3) (bm) of the statutes; **relating to:** the removal and storage of a
4 tenant's property upon eviction and public warehouse keepers licensing.

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

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

6 99.02 (2) (g) A person who stores property received under a writ of restitution
7 under s. 799.44 (2) if that person was the plaintiff in the action that resulted in the
8 issuance of the writ of restitution.

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

10 799.45 (1) **WHEN EXECUTED.** Upon delivery of a writ of restitution to the sheriff
11 and after payment to the sheriff of the fee required by s. 814.70 (8), the sheriff shall
12 execute the writ. The If the plaintiff, or the plaintiff's attorney or agent, does not

1 notify the sheriff under sub. (3) (am) that the plaintiff or his or her agent will remove
2 and store or dispose of the property, the sheriff may require that prior to the
3 execution of any writ of restitution the plaintiff deposit a reasonable sum
4 representing the probable cost of removing the defendant's property chargeable to
5 the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s.
6 814.70 (8). In case of dispute as to the amount of such the required deposit, the
7 amount ~~thereof~~ of that deposit shall be determined by the court under s. 814.70 (10).

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

9 799.45 (2) (b) Remove, or supervise the removal of, from the premises described
10 in the writ, using such reasonable force as may be necessary, all personal property
11 found therein not the property of the plaintiff.

12 **SECTION 4.** 799.45 (2) (c) of the statutes is amended to read:

13 799.45 (2) (c) Exercise ordinary care in the removal of all persons and in the
14 removal or supervision of the removal of property from the premises ~~and in.~~ The
15 mover or trucker selected by the sheriff under sub. (3) (a) shall exercise ordinary care
16 in the handling and storage of all property removed ~~therefrom~~ from the premises.

17 **SECTION 5.** 799.45 (3) (a) of the statutes is amended to read:

18 799.45 (3) (a) In accomplishing the removal of property from the premises
19 described in the writ, the sheriff ~~is authorized to~~ shall engage the services of a mover
20 or trucker unless the plaintiff notifies the sheriff under par. (am) that the plaintiff
21 will remove and store or dispose of the property.

22 **SECTION 6.** 799.45 (3) (am) of the statutes is created to read:

23 799.45 (3) (am) When delivering a writ of restitution to the sheriff, the plaintiff
24 or his or her attorney or agent may notify the sheriff that the plaintiff or the
25 plaintiff's agent will be responsible for the removal and storage or disposal of the

1 property that is found in the premises described in the writ and that does not belong
2 to the plaintiff. If the sheriff is notified that the plaintiff or the plaintiff's agent will
3 be responsible for the removal and storage or disposal of the property under this
4 paragraph, the sheriff shall, in executing the writ of restitution, supervise the
5 removal of the property by the plaintiff or the plaintiff's agent. The sheriff may
6 prevent the plaintiff or the plaintiff's agent from removing property under this
7 paragraph if the plaintiff or the plaintiff's agent fails to exercise ordinary care in the
8 removal of the property from the premises as required under subd. 1. or fails to
9 provide the sheriff with a \$50 bond or insurance policy providing coverage against
10 the loss of or damage to the tenant's property during the removal and storage of the
11 property. If the plaintiff or the plaintiff's agent removes and stores the property
12 under this paragraph, the plaintiff or the plaintiff's agent shall do all of the following:

13 1. Exercise ordinary care in removing the property from the premises and in
14 the handling and storage of all property removed from the premises.

15 2. Store the property in an appropriate facility.

16 3. Have warehouse or other receipts issued with respect to the property stored
17 under this paragraph issued in the name of the defendant.

18 4. Impose charges for the removal of the property that equals the actual costs
19 incurred.

20 5. Impose charges for the storage of the property removed from the premises
21 that do not exceed the average storage rates charged in the county by a bonded and
22 licensed warehouse keeper.

23 6. Within 3 days after the removal of the property, notify the defendant under
24 sub. (4) of the charges imposed under subds. 4. and 5. and provide the defendant any
25 receipt or other document required to obtain possession of the property.

1 **SECTION 7.** 799.45 (3) (b) of the statutes is amended to read:

2 799.45 (3) (b) Except as provided in ~~par. pars. (am) and~~ (c), the property
3 removed from such premises shall be taken to some place of safekeeping within the
4 county selected by the sheriff. If the sheriff selected a mover or trucker to remove
5 the property from the premises, the plaintiff shall pay the costs incurred by the
6 mover or trucker in removing the property. Within 3 days of after the removal of the
7 goods, the sheriff, or the plaintiff, if the plaintiff or the plaintiff's agent removed the
8 property under par. (am), shall mail a notice to the defendant as specified in sub. (4)
9 stating the place where the goods are kept and. If the sheriff selected a mover or
10 trucker to remove the property from the premises, the sheriff shall deliver to the
11 defendant any receipt or other document required to obtain possession of the goods.
12 Warehouse or other similar receipts issued with respect to goods stored by the sheriff
13 under this subsection shall be taken in the name of the defendant. All expenses
14 incurred for storage and other like charges after delivery by the sheriff or by the
15 plaintiff to a place of safekeeping shall be the responsibility of the defendant, and
16 any. Any person accepting goods from the sheriff or the plaintiff for storage under
17 this subsection, or the plaintiff, if he or she stores the property in his or her premises,
18 shall have all of the rights and remedies accorded by law against the defendant
19 personally and against the property stored for the collection of such charges,
20 including the lien of a warehouse keeper under s. 407.209. Risk of damages to or loss
21 of such property shall be borne by the defendant after the property is delivered to a
22 place of safekeeping by the sheriff or by the plaintiff.

23 **SECTION 8.** 799.45 (3) (bm) of the statutes is created to read:

24 799.45 (3) (bm) The person storing property placed in storage under par. (am)
25 or (b) may sell that property by auction when the costs of the removal and storage

1 exceed the value of the property if the defendant has not paid for any outstanding
2 charges for moving and storing the property and claimed the property. If the
3 property is auctioned, the person who stored the property shall deduct from the
4 proceeds of the auction the auction and storage charges and disburse any remaining
5 proceeds to the plaintiff for any moving expenses incurred and then to the defendant.
6 The warehouse keeper shall send a notice of an accounting of the auction proceeds
7 and disbursements to the defendant and to the sheriff within 3 days after the auction
8 is completed.

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

10 799.45 (3) (c) When, in the exercise of ordinary care, the sheriff determines that
11 the aggregate value of the property removed from premises described in the writ is
12 without monetary value less than \$150, the sheriff may deliver or cause the same to
13 be delivered to some appropriate place established for the collection, storage and
14 disposal of refuse. In such case the sheriff shall notify the defendant as specified in
15 sub. (4) of the place to which the goods have been delivered within 3 days of the
16 removal of the goods. When, in the exercise of ordinary care, the sheriff determines
17 that the aggregate value of the property removed from premises described in the writ
18 is equal to or greater than \$150, the sheriff may order that any individual piece of
19 the tenant's property of negligible monetary value be delivered to some appropriate
20 place established for the collection, storage and disposal of refuse. The exercise of
21 ordinary care by the sheriff under this subsection does not include searching
22 apparently valueless property for hidden or secreted articles of value. If the sheriff
23 acts in good faith under this subsection, the sheriff is immune from civil liability for
24 any damages resulting from the delivery of the property to some appropriate place
25 established for the collection, storage and disposal of refuse.

