
CHAPTER 18—H.F.No.416

An act relating to legal process; providing for replevin of personal property before and after a hearing; providing for bonds; providing a penalty; amending Minnesota Statutes 1978, Sections 542.06; and 546.23; repealing Minnesota Statutes 1978, Sections 565.01; 565.02; 565.03; 565.04; 565.05; 565.06; 565.07; 565.08; 565.09; 565.10; and 565.11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[565.21] POSSESSION OF PERSONAL PROPERTY.** In an action to recover possession of personal property, the claimant may obtain possession of the property prior to final judgment in the manner prescribed in this act.

Sec. 2. **[565.22] DEFINITIONS. Subdivision 1.** For the purposes of this act the terms in this section have the meanings given them.

Subd. 2. "Claimant" means a party asserting, in a pleading before a court, a claim for the recovery of possession of personal property, whether the claim is asserted in a complaint, counterclaim or reply.

Subd. 3. "Respondent" means a person against whom a claimant asserts a claim and who has, or is alleged to have, possession of the personal property which the claimant seeks to recover.

Sec. 3. **[565.23] RECOVERY OF POSSESSION AFTER NOTICE AND HEARING. Subdivision 1.** A claimant seeking to recover possession of property after service of a summons and complaint but prior to final judgment shall proceed by motion. The motion shall be accompanied by an affidavit which states:

(a) The particular property sought to be recovered by the claimant;

(b) The facts giving rise to claimant's right to possession, referring to the documents, if any, evidencing the claimant's right to possession and the underlying obligation supporting the right;

(c) The facts showing that respondent is wrongfully detaining the property;

(d) If the property being claimed is security for an obligation, the date and the amount of the original obligation, the amount which has been paid by respondent and the amount now owing to claimant;

(e) If the claimant asserts that the respondent is wrongfully detaining the property by reason of a breach of contractual duty other than the failure to pay money, the claimant shall state the specific contractual provision and the facts relating thereto; and

(f) A good faith approximation of the current market value of each item of Changes or additions indicated by underline deletions by strikeout

property being claimed. Where the property is inventory, accounts receivable or other property where separate valuation is not practicable, claimant may provide a good faith approximation of the current market value of each category of property.

Subd. 2. The claimant's motion to recover possession of property together with claimant's affidavit and a notice of hearing shall be served upon respondent in the manner prescribed for service of a summons in a civil action in district court. If the respondent has already appeared in the action, the motion shall be served in the manner prescribed for service of pleadings subsequent to the summons. The date of hearing shall be fixed in accordance with rule 6 of the Minnesota rules of civil procedure, unless a different date is fixed by order of the court.

The notice of hearing served upon the respondent shall be signed by the claimant or the attorney for the claimant and shall provide, at a minimum, the following information in substantially the following language:

“NOTICE OF HEARING

TO: [the Respondent]

A hearing will be held on the day of 19... at o'clock, ..M., [place] to determine whether the sheriff shall remove from your possession and deliver to [claimant] (hereinafter “claimant”) the following property:

[list property]

You have a right to appear at this hearing on your own behalf or with an attorney. You will have the opportunity to present defenses to the claimant's claims and to state reasons why the property described above should not be taken.

If the court determines that the claimant has a right to have possession of the property while this lawsuit is pending, you may nevertheless keep the property until the lawsuit is decided if you file with the court a surety bond in the amount of \$..... [In amount computed pursuant to section 5]. This amount is [1-1/4 times the claimant's estimate of the value of the property] [1-1/2 times the claimant's claim against you]. If you believe the [value of the property] [amount of the claim] is overstated, you may ask the court to lower it.

If you do not appear at the hearing, the court has authority to issue an order directing that the above described property be immediately taken from your possession.”

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Subd. 3. After a hearing, the court shall order seizure of the property from respondent and delivery to claimant if claimant has demonstrated the probability of success on the merits entitling claimant to possession of the property and upon compliance with the bonding requirements set forth in section 5, subdivision 1, unless the court makes the following findings:

(a) Respondent has shown a defense to the merits of claimant's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle respondent to retain possession of the property;

(b) The interests of respondent cannot be adequately protected by the bond filed by claimant pursuant to section 5, subdivision 1 if the property is delivered to the claimant prior to final decision on the merits; and

(c) The harm suffered by the respondent would be substantially greater than the harm which would be suffered by the claimant if the property were not delivered to the claimant prior to final decision on the merits.

Subd. 4. If the court makes the findings prescribed by subdivision 3 and orders that respondent may retain possession pending final decision on the merits, the court shall enter a further order protecting the rights of the claimant to the extent possible. The order may require that respondent make partial payment of the debt which may be due and that the payment shall be made either directly to claimant or into an escrow, that respondent post a bond in an amount set by the court, that respondent make the property available for inspection from time to time, that respondent be restrained from certain activities, including, but not limited to, selling, disposing or otherwise encumbering the property, or any other provision the court may deem just and appropriate.

Subd. 5. An order requiring seizure of property may be stayed up to three days to allow the respondent time to post a bond pursuant to section 5, subdivision 2.

Sec. 4. [565.24] RECOVERY OF POSSESSION PRIOR TO NOTICE AND HEARING. Subdivision 1. A claimant seeking to recover possession of property prior to notice and hearing as provided in section 3 shall proceed by motion seeking such relief. The motion shall be accompanied by an affidavit setting forth:

(a) The information required by section 3, subdivision 1;

(b) The facts establishing grounds for a prehearing seizure, as specified in subdivision 2.

Subd. 2. The court may order seizure of the property from the respondent prior to a hearing only if it makes specific findings, based upon competent evidence in the form of affidavit or oral testimony, that:

(a) A good faith effort has been made to inform respondent of the motion for a prehearing seizure or that so informing respondent would endanger the ability of the claimant to recover the property;

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(b) Claimant has demonstrated the probability of success on the merits entitling the claimant to possession of the property; and

(c) (1) respondent is about to remove the property in question from the state with the intent to hinder, delay or defraud the claimant;

(2) respondent is about to conceal, damage or dispose of the property with intent to hinder, delay or defraud the claimant; or

(3) due to other circumstances, which must be specified in the court's order, the claimant will suffer irreparable harm if possession of the property is not obtained prior to a hearing; and

(d) Claimant's interest in the property cannot be protected, pending a hearing pursuant to section 3 by an appropriate order of the court other than directing seizure.

Subd. 3. If the court makes the findings required by subdivision 2, clauses (a), (b) and (c), but does not direct seizure, it may issue an appropriate order protecting the claimant's interest in the property pending a hearing pursuant to section 3.

Subd. 4. If the court issues an order pursuant to subdivisions 2 or 3, the order shall establish a date for a hearing at which respondent may be heard and which shall be conducted at the earliest practicable time and shall take precedence over all matters except older matters of the same character.

Subd. 5. The hearing held pursuant to subdivision 4 shall be conducted in accordance with the criteria established in section 3, subdivisions 3, 4 and 5. In addition, if the court finds that the motion for a prehearing seizure was made in bad faith the court may, in its discretion, award respondent the actual damages incurred by reason of seizure of the property.

Subd. 6. The respondent shall be served with a copy of the order issued pursuant to this section together with a copy of all pleadings and supporting documents and a notice of hearing. Service shall be in the manner prescribed for personal service of a summons or the court in its discretion may prescribe alternative methods of service calculated to provide actual notice to respondent.

The notice of hearing served upon the respondent shall be signed by claimant or the attorney for claimant and shall provide, at a minimum, the following information in substantially the following language:

''NOTICE OF HEARING

Court action has been taken which affects the following property:

[list property]

[Claimant] (hereinafter ''claimant'') has claimed that claimant is entitled to this property and that claimant's interest in this property would have been harmed unless

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this court took immediate action.

You have a right to challenge claimant's claims at a hearing before a judge. This hearing has been scheduled for the day of 19... at o'clock ..M., at [place]..... After this hearing the judge will decide, what should be done with the property pending a final decision on claimant's claim.'

Sec. 5. **[565.25] BONDING REQUIREMENTS.** Subdivision 1. An order for seizure of property from the respondent shall provide that the seizure shall be contingent upon claimant's filing of a bond approved by the court conditioned for the return of the property to the respondent, if a return be adjudged, and for the payment to the respondent of any sum adjudged against the claimant. The bond shall be in an amount which is 1-1/2 times the fair market value of the property seized.

Subd. 2. (a) Except as otherwise provided in clause (b), the respondent may retain or regain possession of the property by filing of a bond approved by the court conditioned that the property shall be delivered to the claimant, if delivery be adjudged, and for the payment to the claimant of any sum adjudged against the respondent. The bond shall be in an amount 1-1/4 times the fair market value of the property or 1-1/2 times the amount of the claimant's claim, whichever is less. An order for seizure may specify a time limitation within which the bond must be filed. For the purpose of protecting or preserving the property pending final hearing on the merits, the court may in extraordinary circumstances, which shall be specified in its order, provide that the respondent may not retain or regain possession of the property upon rebonding, or may limit or condition the right to retain or regain the property upon rebonding. The costs of regaining possession of the property from the sheriff or the claimant shall be borne by respondent except as set forth in clause (b).

(b) If at a hearing following seizure of property pursuant to section 4 claimant fails to establish a right to continued possession, the court shall order the property returned to respondent, the costs to be borne by claimant. The court may order claimant's bond to continue in an amount sufficient to offset damages claimed by respondent by reason of the seizure.

Subd. 3. The current fair market value of the property shall initially be presumed as stated in the affidavit submitted pursuant to section 3, subdivision 1. If the court determines the current fair market value of the property is different, it shall adjust the required amount of the bonds.

Subd. 4. In lieu of filing a bond, either claimant or respondent may satisfy bonding requirements by depositing with the court cash, a cashier's check, or a certified check.

Sec. 6. **[565.26] ORDER FOR SEIZURE OF PROPERTY.** Subdivision 1. An order for seizure of property shall:

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(a) Identify the property to be seized;

(b) Direct the sheriff to seize the property; and

(c) Specify that the claimant is authorized, immediately or after a specified reasonable period of time, to sell or otherwise dispose of the property pending final hearing on the merits unless the court makes a specific finding that the interests of respondent cannot be adequately protected by the bond.

Subd. 2. An order for seizure of property may:

(a) Describe the place or places which may be entered by force by the sheriff subject to the limitations of clause (c);

(b) Require that the respondent, his agents or employees deliver the property to claimant or disclose its location, and, if delivery is not made or the location is not disclosed, that respondent must appear in court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding respondent in contempt of court for failure to deliver the property or to disclose its location; and

(c) Provide that if the property, or any of it is concealed in a building or elsewhere, and a public demand made by the sheriff for its delivery is refused or there is no response, the sheriff shall cause the building or enclosure to be broken open and shall take the property therefrom. The sheriff may not enter the residence of a person other than respondent unless the order specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the court that probable cause exists to believe that the property is at this residence.

Sec. 7. [565.27] SUFFICIENCY OF SURETY. A person asserting a claim to property seized by order of the court may by motion challenge the sufficiency of the surety for the bond filed with the court. If the court finds the surety insufficient, it may grant a reasonable time for the filing of another bond.

Sec. 8. [565.28] FEES TO SHERIFF. When the sheriff has taken property pursuant to an order of the court, he shall keep it in a secure place and shall deliver it to the party entitled thereto as soon as reasonably possible upon receiving his lawful fees and expenses for taking and keeping the property.

The sheriff shall promptly return, without cost, any property taken which is not specified in the court's order.

Sec. 9. [565.29] ADVANCEMENT ON CALENDAR. A motion for advancement on the calendar or for a date certain for final hearing on the merits may be presented at any time and may be combined with any other motion and the court may advance the case or set a date certain as the ends of justice require.

Sec. 10. Minnesota Statutes 1978, Section 542.06, is amended to read:

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542.06 **REPLEVIN.** Actions to recover the possession of personal property wrongfully taken shall be tried in the county in which the taking occurred, or, at plaintiff's claimant's election, in the county in which he resides; in other cases in the county in which the property is situated.

Sec. 11. Minnesota Statutes 1978, Section 546.23, is amended to read:

546.23 **VERDICT IN REPLEVIN.** In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff claimant and the jury find that he is entitled to its recovery, or if the property is not in the possession of the defendant respondent, and by his answer he claims a return thereof, and the verdict is in his favor, the jury shall assess the value of the property and the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding, of such property. When the verdict is in favor of the party having possession of the property its value shall not be found.

Sec. 12. **REPEALER.** Minnesota Statutes 1978, Sections 565.01; 565.02; 565.03; 565.04; 565.05; 565.06; 565.07; 565.08; 565.09; 565.10; and 565.11 are repealed.

Approved April 4, 1979.

CHAPTER 19—H.F.No.303

An act validating and legalizing certain state assignment certificates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. ~~[281.328]~~ **STATE ASSIGNMENT CERTIFICATES; VALIDATING.** ~~[Subdivision 1.]~~ Any state assignment certificate duly issued prior to January 1, 1972, for which the time for redemption expired as certified by the county auditor of the county issuing the certificate, and the person to whom the certificate was issued, his heirs and assigns, paid the taxes on the real property described in the certificate since the date thereof, is hereby validated and legalized as against the objection that such certificate was not recorded or filed in the office of the county recorder or registrar of titles within seven years from the date of the certificate, as provided by Minnesota Statutes, Chapter 281. Any such state assignment certificate may after the effective date of this act be recorded or filed in the office of the proper county recorder or registrar of titles.

Sec. 2. ~~[281.328]~~ ~~[Subd. 2.]~~ Nothing herein contained shall affect any action now pending to determine the validity of any instrument validated by this act.

Sec. 3. This act is effective the day following its final enactment.

Approved April 5, 1979.

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