

## CHAPTER 496—H. F. No. 262.

*An Act to amend sections 4041, 4046, 4047 and 4048 of the Revised Laws of Minnesota, 1905, relating to forcible entry and unlawful detainer, and to add thereto a new section to be known as section 4051½.*

Be it enacted by the Legislature of the State of Minnesota :

**Service of summons by publication.**—Section 1. That section 4041 be and the same is hereby, amended to read as follows, to-wit :

Section 4041. **Summons—How served**—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof;

*Provided*, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein.

**Writ of restitution to be issued on notice to quit.**—Sec. 2. That section 4046 be amended to read as follows :

**Section 4046. Writ of restitution - Effect of appeal.** If the party against whom judgment for restitution is rendered or his attorney state to the justice that he intends to take an appeal, a writ of restitution shall not issue for twenty-four hours after judgment;

*Provided*, that in an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered.

**Appeal.**—Sec. 3. That section 4047 be amended to read as follows:

**Section 4047. Appeal—Stay.**—If either party feels aggrieved by the judgment he may appeal within ten days as in other cases triable before justices of the peace except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the court may make therein and pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal.

Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof or termination thereof by notice to quit, if the plaintiff give bond as provided in section 4046, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

**Appeal on notice to quit.**—Sec. 4. That section 4048 be amended so as to read as follows:

**Section 4048. Appeal after issuance of writ—Stay.**—If a writ of restitution has issued before the taking of an appeal, the justice shall give appellant a certificate of the allowance thereof and upon service of such certificate upon the officer having the writ he shall cease all further proceedings thereunder and if the writ has not been completely executed the defendant shall remain in possession of the premises until the determination of the appeal, but this section shall not apply to a case where judgment for restitution has been entered on a lease against a tenant holding over after the expiration of the term thereof or determination thereof by notice to quit.

**Duty of officer holding writ of restitution—Lien of plaintiff.**—Sec. 5. That chapter 76 of the Revised Laws of 1905 shall be further amended by adding thereto a new section, to-wit:

Section 4051½. Execution of the writ of restitution—The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found in the county or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same, and that the defendant remove himself, his family and all of his personal property from such premises within twenty-four hours after such demand.

If defendant fails to comply with the demand, then the officer shall take with him, necessary, the force of the county and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof.

In case defendant cannot be found in said county, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of said premises, breaking in if necessary, and shall remove all property of the defendant at the expense of the plaintiff.

The plaintiff shall have a lien upon all of the goods upon said premises for the reasonable costs and expenses incurred for removing said personal property and for the proper caring and storing the same, and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from said premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of nonpayment for sixty days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale as provided for in case of sales under chapter 328 of the general laws of 1905.

Approved April 24, 1909.

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#### CHAPTER 497—H. F. No. 287.

*An Act to create a woman's department in the Bureau of Labor, prescribe the duties thereof.*

Be it enacted by the Legislature of the State of Minnesota:

**Woman's and children's department created.**—Section 1. There shall be created in the bureau of labor a woman's and children's department.

**Commissioner of labor to appoint—Collection of statistics.**—Sec. 2. There shall be appointed by the commissioner of labor a competent woman to act as assistant commissioner of labor and