

HOUSE BILL REPORT

HB 1867

As Reported by House Committee On:
Judiciary

Title: An act relating to replevin.

Brief Description: Establishing replevin procedures.

Sponsors: Representatives Lantz, Carrell and Rockefeller.

Brief History:

Committee Activity:

Judiciary: 2/27/03, 2/28/03 [DPS].

Brief Summary of Substitute Bill

- Amends the replevin statute to:
 - Remove the time limitations relating to the hearing on an order to show cause;
 - Provide an exception to the requirement that the plaintiff post a bond;
 - Subject a defendant to contempt of court for failure to turn over the property; and
 - Allow enforcement of an order awarding possession by the sheriff in any county where the property may be found.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

Replevin is a judicial action that allows a party to recover possession of property that is wrongfully taken or wrongfully retained by a third party. At the time of instituting a replevin action, the plaintiff may apply to the court for an order to show cause, which

directs the defendant to appear and show cause why the court should not issue an order giving the plaintiff possession of the property. A hearing on the order to show cause must be set within the period of 10 to 25 days after the issuance of the order to show cause. The defendant must be served with a copy of the order to show cause within five days of the hearing.

The court may enter an order awarding possession of the property to the plaintiff pending a final disposition only if the plaintiff posts a bond in an amount determined by the court. The purpose of the bond requirement is to ensure that the plaintiff will prosecute the case without delay and that if the case is wrongfully sued out, that the plaintiff will pay all costs and damages suffered by the defendant.

A defendant may post a redelivery bond to retain possession of the property, or to regain possession of the property from the sheriff prior to it being turned over to the plaintiff, pending a final disposition of the case. The re-delivery bond is to ensure that the defendant will turn over the property to the plaintiff and pay any sums ordered if judgment in the action is for the plaintiff. The re-delivery bond must be in the same amount as the plaintiff's bond.

A court order awarding possession of the property to the plaintiff directs the sheriff to take possession of the property and deliver it to the plaintiff. If the defendant refuses to turn over the property, the sheriff may break into any building where the property is located to regain possession. The sheriff must serve copies of the bond and order awarding possession on the defendant at the time he or she takes possession of the property.

Contempt of court is any intentional: (1) disorderly conduct towards a judge that impairs the court's authority or interrupts a judicial proceeding; (2) disobedience of any lawful judgment, decree, order, or process of the court; (3) refusal as a witness to appear, be sworn, or answer a question; or (4) refusal to produce a record, document, or other object.

Sanctions imposed for contempt of court are remedial if imposed to coerce performance with a court order and punitive if imposed to punish a past contempt of court. The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court. After notice and hearing, the court may impose the following remedial sanctions: (1) imprisonment; (2) a forfeiture not to exceed \$2,000 for each day the contempt continues; (3) an order designed to ensure compliance; or (4) any other remedial order if the above sanctions are ineffective.

An action to impose a punitive sanction must be filed by a prosecuting attorney or city attorney on his or her own initiative or at the request of an aggrieved person or judge. After a hearing, the court may impose a punitive sanction of either a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year, or both.

Summary of Substitute Bill:

The replevin statute is amended to alter time limitations, bond requirements and enforcement mechanisms.

The requirement that a hearing on the order to show cause be set within 10 to 25 days of the order is removed. The defendant must still be served with a copy of the order to show cause within five days of the hearing.

An exception is provided to the requirement that the plaintiff post a bond when property is awarded to the plaintiff pending final disposition. The plaintiff does not have to post a bond if the defendant was properly served with the order to show cause and the defendant either fails to appear, or appears but does not contest the order. If the court waives the bond requirement, the court must set the amount of bond that would have been required, and that amount is to be used by the court in determining the amount of any redelivery bond.

A defendant who fails to turn over property to the plaintiff or sheriff after the court has awarded the property to the plaintiff may be held in contempt of court. A notice of this potential contempt sanction must be included in the initial order to show cause and the order awarding possession of the property to the plaintiff.

If the property is located in a county other than the county where the action was commenced, the sheriff of the original county, or the sheriff of the county where the property is found, may execute the order in any county of the state where the property is found. Duplicate copies of the order awarding possession may be made and served as the original if necessary in following the property.

Substitute Bill Compared to Original Bill:

The substitute makes technical and clarifying amendments. The original bill required the order awarding possession to direct the defendant to turn the property over to the plaintiff, in addition to the sheriff. The substitute bill also added the requirement that, if the court waives the plaintiff's bond, the court must determine the amount of bond that would have been required and that amount is used for the amount of any redelivery bond.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill updates the law to be consistent with our more transient society. The current time frame for holding a hearing creates a problem with serving the defendant on time, and this results in the creditor having to go back to court to get another order to show cause. The contempt sanction is very important to give the statute some teeth. Currently, if the defendant refuses to turn over the property, there is nothing the sheriff can do. The inter-county enforcement provision is also very important since if the property is moved to another county, the creditor has to start the court proceeding all over again in the new county.

Testimony Against: None.

Testified: Steve Gano, Wells Fargo Bank; and Brad Jones.