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**Judiciary Committee**

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**HB 1867**

**Title:** An act relating to replevin.

**Brief Description:** Establishing replevin procedures.

**Sponsors:** Representatives Lantz, Carrell and Rockefeller.

**Brief Summary of 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.

**Hearing Date:** 2/27/03

**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 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 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.

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 removed from 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.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect ninety days after adjournment of session in which bill is passed.