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**SUBSTITUTE SENATE BILL 5707**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Benton and Prentice)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to replevin; amending RCW 7.64.020, 7.64.035, and  
2 7.64.045; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.64.020 and 1990 c 227 s 2 are each amended to read  
5 as follows:

6 (1) At the time of filing the complaint or any time thereafter, the  
7 plaintiff may apply to the judge or court commissioner to issue an  
8 order directing the defendant to appear and show cause why an order  
9 putting the plaintiff in immediate possession of the personal property  
10 should not be issued.

11 (2) In support of the application, the plaintiff, or someone on the  
12 plaintiff's behalf, shall make an affidavit, or a declaration as  
13 permitted under RCW 9A.72.085, showing:

14 (a) That the plaintiff is the owner of the property or is lawfully  
15 entitled to the possession of the property by virtue of a special  
16 property interest, including a security interest, specifically  
17 describing the property and interest;

18 (b) That the property is wrongfully detained by defendant;

1 (c) That the property has not been taken for a tax, assessment, or  
2 fine pursuant to a statute and has not been seized under an execution  
3 or attachment against the property of the plaintiff, or if so seized,  
4 that it is by law exempt from such seizure; and

5 (d) The approximate value of the property.

6 (3) The order to show cause shall state the date, time, and place  
7 of the hearing(~~(, which shall be set no earlier than ten and no later~~  
8 ~~than twenty five days after the date of the order)) and contain a  
9 notice to the defendant that failure to promptly turn over possession  
10 of the property to the plaintiff or the sheriff, if an order awarding  
11 possession is issued under RCW 7.64.035(1), may subject the defendant  
12 to being held in contempt of court.~~

13 (4) A certified copy of the order to show cause, with a copy of the  
14 plaintiff's affidavit or declaration attached, shall be served upon the  
15 defendant no later than five days before the hearing date.

16 **Sec. 2.** RCW 7.64.035 and 1990 c 227 s 3 are each amended to read  
17 as follows:

18 (1) At the hearing on the order to show cause, the judge or court  
19 commissioner may issue an order awarding possession of the property to  
20 the plaintiff and directing the sheriff to put the plaintiff in  
21 possession of the property:

22 (a)(i) If the plaintiff establishes the right to obtain possession  
23 of the property pending final disposition, or (ii) if the defendant,  
24 after being served with the order to show cause, fails to appear at the  
25 hearing; and

26 (b) If the plaintiff executes to the defendant and files in the  
27 court a bond in such sum as the court may order, with sufficient  
28 surety to be approved by the clerk, conditioned that the plaintiff will  
29 prosecute the action without delay and that if the order is wrongfully  
30 sued out, the plaintiff will pay all costs that may be adjudged to the  
31 defendant and all damages, court costs, reasonable attorneys' fees, and  
32 costs of recovery that the defendant may incur by reason of the order  
33 having been issued. However, the court may waive the bond if the  
34 plaintiff has properly served the defendant in accordance with RCW  
35 7.64.020(4) and the defendant either fails to attend the hearing on the  
36 order to show cause or appears at the hearing on the order to show  
37 cause but does not object to entry of the order awarding possession.

1 If the court waives the bond, the court shall, however, establish the  
2 amount of bond that would have been required and such amount shall be  
3 considered the amount filed by the plaintiff for purposes of  
4 determining the value of the redelivery bond pursuant to RCW  
5 7.64.050(3).

6 (2) An order awarding possession shall: (a) State that a show  
7 cause hearing was held; (b) describe the property and its location; (c)  
8 direct the sheriff to take possession of the property and put the  
9 plaintiff in possession as provided in this chapter; (d) contain a  
10 notice to the defendant that failure to turn over possession of the  
11 property to the sheriff may subject the defendant to being held in  
12 contempt of court upon application to the court by the plaintiff  
13 without further notice; (e) if deemed necessary, direct the sheriff to  
14 break and enter a building or enclosure to obtain possession of the  
15 property if it is concealed in the building or enclosure; and ~~((e))~~  
16 (f) be signed by the judge or commissioner.

17 (3) If at the time of the hearing more than twenty days have  
18 elapsed since service of the summons and complaint and the defendant  
19 does not raise an issue of fact prior to or at the hearing that  
20 requires a trial on the issue of possession or damages, the judge or  
21 court commissioner may also, in addition to entering an order awarding  
22 possession, enter a final judgment awarding plaintiff possession of the  
23 property or its value if possession cannot be obtained, damages, court  
24 costs, reasonable attorneys' fees, and costs of recovery.

25 (4) When any of the property is property located in a county other  
26 than the county in which the action was commenced, the sheriff directed  
27 to take possession of the property by the order awarding possession, or  
28 the sheriff of the county where the property is found, may execute the  
29 order awarding possession and take possession of the property in any  
30 county of the state where the property is found. For the purpose of  
31 following the property, duplicate orders awarding possession may be  
32 issued, if necessary, and served as the original.

33 **Sec. 3.** RCW 7.64.045 and 1990 c 227 s 4 are each amended to read  
34 as follows:

35 After issuance of the order awarding possession, the plaintiff  
36 shall deliver a copy of the bond, unless waived by the court under RCW  
37 7.64.035(1)(b), and a certified copy of the order awarding possession

1 to the sheriff of the county where the property is located and shall  
2 provide the sheriff with all available information as to the location  
3 and identity of the defendant and the property claimed. If the  
4 property is returned to the plaintiff by the defendant or if the  
5 plaintiff otherwise obtains possession of the property, the plaintiff  
6 shall notify the sheriff of this fact as soon as possible.

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