

# SENATE BILL REPORT

## SB 5707

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As Reported By Senate Committee On:  
Judiciary, February 28, 2003

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

**Brief Description:** Establishing replevin procedures.

**Sponsors:** Senators Benton and Prentice.

**Brief History:**

**Committee Activity:** Judiciary: 2/21/03, 2/28/03 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5707 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Johnson, Kline, Roach and Thibaudeau.

**Staff:** Lidia Mori (786-7755)

**Background:** Replevin is a personal action brought to recover possession of goods alleged to be unlawfully taken. Concern exists that the current replevin statute is a less than effective creditor remedy due to (1) time constraints caused by the statute; (2) the requirement that the creditor post a bond even when the defendant does not dispute the order; (3) difficulty obtaining execution of the order awarding possession when the debtor has removed himself or the property from the county; and (4) the lack of a provision allowing the court to hold a defendant debtor in contempt if he or she does not turn over possession of the property.

**Summary of Substitute Bill:** The order to show cause in an action to obtain immediate possession of personal property must be served on the defendant no later than five days before the hearing and must contain a notice that failure to turn over the property to the plaintiff or sheriff, if an order awarding possession is issued, may subject the defendant to contempt of court. In an action to obtain possession of property, the court may waive the requirement that the plaintiff post a bond if the defendant fails to attend the hearing or appears but does not object to entry of the order. If the court waives the bond, it is directed to establish the amount of the bond that would have been required and that amount is used for purposes of determining the value of the redelivery bond. If property is removed from the county in which the action is commenced, the sheriff of the county where the property is found may execute the order awarding possession of property and take possession of the property in any county of the state where the property is found. Duplicate orders awarding possession may be issued, if necessary.

**Substitute Bill Compared to Original Bill:** The proposed substitute provides that if the plaintiff's bond is waived, the court is directed to establish the amount of the bond that would have been required and that amount is used to determine the redelivery bond.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Replevin is essentially judicial repossession. The bill improves the time constraints that currently exist in the replevin statute. It adds a default provision which allows the court to waive the bond requirement when the properly served debtor fails to attend the hearing or does not object to entry of the order. A provision which allows the plaintiff creditor to obtain an endorsement on the Order Awarding Possession is added and the court is authorized to hold a defendant in contempt if the person does not turn over possession of the property at issue.

**Testimony Against:** None.

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