

HOUSE BILL REPORT

SSB 5405

As Reported by House Committee On:
Judiciary

Title: An act relating to judicial orders concerning distraint of personal property.

Brief Description: Providing procedures for judicial orders concerning distraint of personal property.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Carrell, Kline and McCaslin).

Brief History:

Committee Activity:

Judiciary: 3/23/07 [DP].

Brief Summary of Substitute Bill

- Authorizes a sheriff executing a writ of execution or a writ of attachment to break open a building or enclosure where property subject to the writ is concealed in order to take possession of the property.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Edie Adams (786-7180).

Background:

A creditor may seek enforcement of a debt owed by a debtor through execution, attachment, or garnishment of the debtor's property. Attachment is a process that allows a plaintiff in a court action to ask the court to attach the defendant's property during the pendency of the action as security for satisfaction of a judgment that may be rendered in favor of the plaintiff. Execution is the process for enforcing a court judgment for the payment of money or property by "levying" on the judgment debtor's property.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, a judgment may be enforced for a period of 10 years from the date of judgment, and for an additional 10 years if the judgment is extended within 90 days of the end of the initial 10-year period. All real and personal property of a judgment debtor is subject to execution to satisfy the judgment unless the property is exempt from execution. There are a number of exemptions for personal property, up to a certain value, for such things as household goods, clothing, vehicles, and tools of the trade.

A writ of execution issued by a court is directed to the sheriff of the county where the property is located. If the writ of execution is against the property of the judgment debtor, the sheriff must set a date of sale and serve on the judgment debtor a copy of the writ, notice of the date of sale, and notice of property exemption rights. The sheriff executes the writ against personal property that is capable of manual delivery by taking the property into custody. When property is subject to attachment, the sheriff levies on the property to be attached in the same manner as under a writ of execution.

The execution laws do not specifically authorize a sheriff who is executing a writ of execution to break and enter a building or enclosure where property is concealed in order to take the property into custody. In a 1995 federal district court case, the court found that Washington's execution statutes do not authorize breaking and entering to retrieve property. The court based this determination in part on the fact that the ability of a sheriff to break and enter to retrieve property is specifically authorized under the replevin statutes, but not under the execution statutes, and therefore the Legislature must have intended a different rule to apply.

Replevin is a judicial action that allows a person to recover possession of property that is wrongfully taken or wrongfully retained by a third person. 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.

Summary of Bill:

When a sheriff executes a writ of execution or writ of attachment against personal property that is concealed in a building or enclosure, the sheriff may publicly demand delivery of the property. If the property is not delivered, the sheriff may break open the building or enclosure to take possession of the property, if authorized under the writ.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Staff Summary of Public Testimony:

(In support) This is an important bill to provide to sheriffs as they perform one of their civil functions in helping to enforce creditors' rights. This process is already authorized under the replevin statutes, which allow for the repossession of property. Judges expect the sheriffs to enforce their orders and if we don't have this ability to break and enter to retrieve concealed property, we can't enforce the court's order. The Senate amended the language to allow sheriffs to break and enter, rather than requiring it, when property is being concealed.

(Opposed) None.

Persons Testifying: Senator Carrell, prime sponsor; and Craig Adams, Pierce County Sheriff's Office.

Persons Signed In To Testify But Not Testifying: None.