

NEW SECTION. Sec. 1. A new section is added to chapter 16.52 RCW to read as follows:

(1) Any person who uses domestic dogs or cats as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, in such a fashion as to torture, torment, deprive of necessary sustenance, cruelly beat, or mutilate such animals, shall be guilty of a misdemeanor.

(2) Any person who violates the provisions of subsection (1) of this section, and whose actions result in the death of the animal, shall be guilty of a gross misdemeanor.

(3) Any person who captures by trap a domestic dog or cat to be used as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, in such a fashion as to torture, torment, deprive of necessary sustenance, cruelly beat, or mutilate such animals, shall be guilty of a misdemeanor.

(4) Any person who violates the provisions of subsection (3) of this section, and whose actions result in the death of the animal, shall be guilty of a gross misdemeanor.

(5) If a person violates this section, law enforcement authorities shall seize and hold the animals being trained. Such animals shall be disposed of by the court pursuant to the provisions of RCW 16.52.200(3).

(6) This section shall not in any way interfere with or impair the operation of any provision of Title 28B RCW, relating to higher education or biomedical research.

Passed the Senate March 5, 1990.
Passed the House March 2, 1990.
Approved by the Governor March 27, 1990.
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CHAPTER 227

[House Bill No. 2561]

REPLEVIN

AN ACT Relating to replevin; amending RCW 7.64.010, 7.64.020, 7.64.035, 7.64.045, 7.64.050, 7.64.100, and 7.64.110; adding new sections to chapter 7.64 RCW; and repealing RCW 7.64.060, 7.64.080, 7.64.090, and 7.64.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 100, page 150, Laws of 1854 as last amended by section 1, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.010 are each amended to read as follows:

The plaintiff in an action to recover the possession of personal property may claim and obtain the immediate delivery of such property, after a hearing, as provided in this chapter.

The remedies provided under this chapter are in addition to any other remedy available to the plaintiff, including a secured creditor's right of self-help repossession.

Sec. 2. Section 101, page 150, Laws of 1854 as last amended by section 2, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.020 are each amended to read as follows:

~~((When a delivery is claimed, an affidavit shall be made by))~~ (1) At the time of filing the complaint or any time thereafter, the plaintiff may apply to the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting the plaintiff in immediate possession of the personal property should not be issued.

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

~~((1))~~ (a) That the plaintiff is the owner of the property ((claimed, particularly describing it;)) or is lawfully entitled to the possession ((thereof;)) of the property by virtue of a special property ((therein)) interest, including a security interest, ((the facts in respect to which shall be set forth;)) specifically describing the property and interest;

~~((2))~~ (b) That the property is wrongfully detained by defendant((-);)

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

~~((4))~~ (d) The ((actual)) approximate value of the property.

~~((At the time of filing the complaint or any time thereafter, the plaintiff may petition the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting plaintiff in possession of the personal property should not be issued. The hearing))~~ (3) The order to show cause shall state the date, time, and place of the hearing, which shall be set no earlier than ten and no later than twenty-five days ((from)) after the date of the order. ((The order shall contain the date, time, and place of the hearing;))

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

Sec. 3. Section 5, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.035 are each amended to read as follows:

~~((The judge or court commissioner;))~~ (1) At the hearing on the order to show cause, the judge or court commissioner may issue an order awarding possession of the property to the plaintiff and directing the sheriff to put the plaintiff in possession of the property;

(a)(i) If the plaintiff establishes ((his)) the right to obtain possession of the property(;) pending final disposition, or (ii) if the defendant, after being served with the order to show cause, fails to appear at the hearing(:(~~Before the order may issue prior to final judgment~~)); and

(b) If the plaintiff ((shall)) executes to the defendant and files in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute ((his)) the action without delay(;) and that if the order is wrongfully sued out, the plaintiff will pay all costs that may be adjudged to the defendant(;) and all damages, court costs, ((including)) reasonable attorneys' fees, and costs of recovery ((which he)) that the defendant may ((sustain)) incur by reason of the order having been issued((~~should the same be wrongfully sued out~~)).

(2) An order awarding possession shall: (a) State that a show cause hearing was held; (b) describe the property and its location; (c) direct the sheriff to take possession of the property and put the plaintiff in possession as provided in this chapter; (d) if deemed necessary, direct the sheriff to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure; and (e) be signed by the judge or commissioner.

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

Sec. 4. Section 6, chapter 132, Laws of 1979 ex. sess. and RCW 7.64-.045 are each amended to read as follows:

((Upon)) After issuance of the order ((for the recovery of property)) awarding possession, the plaintiff shall deliver a copy of the bond and a certified copy of the order awarding possession to the sheriff of the county where the property is located and shall provide the sheriff with all available information as to the location and identity of the defendant and the property claimed. ((The plaintiff shall deliver a certified copy of the order to show cause and the affidavit of the plaintiff to the sheriff. The sheriff shall leave a copy of the order, affidavit, and bond with the defendant, his agent, his attorney, or the person in possession of the property when the property is taken by the sheriff.)) If the property is returned to the plaintiff by the defendant or if the plaintiff otherwise obtains possession of the property, the plaintiff shall notify the sheriff of this fact as soon as possible.

NEW SECTION. Sec. 5. A new section is added to chapter 7.64 RCW to read as follows:

(1) After receiving an order awarding possession, the sheriff shall take possession of the property. If the property or any part of it is concealed in a building or enclosure, the sheriff shall publicly demand delivery of the property. If the property is not delivered and if the order awarding possession so directs, the sheriff shall cause the building or enclosure to be broken open and take possession of the property.

(2) At the time of taking possession of the property, the sheriff shall serve copies of the bond and the order awarding possession on the defendant or, if someone other than the defendant is in possession of the property, shall serve the copies on that person. If the copies of the bond and the order are not served on the defendant at the time of taking possession, the sheriff shall, within a reasonable time after taking possession, give notice to the defendant either by serving copies of the bond and order on the defendant in the same manner as a summons in a civil action or by causing the copies to be mailed to the defendant by both regular mail and certified mail, return receipt requested.

(3) As soon as possible after taking possession of the property and after receiving lawful fees for taking possession and necessary expenses for keeping the property, the sheriff shall release the property to the plaintiff, unless before the release the defendant has, as provided in RCW 7.64.050, given a redelivery bond to the sheriff or filed a redelivery bond with the court and notified the sheriff of that fact.

Sec. 6. Section 104, page 151, Laws of 1854 as last amended by section 3, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.050 are each amended to read as follows:

(1) At the hearing on the order to show cause or at any time before the ((delivery)) sheriff takes possession of the property, the defendant may post a redelivery bond and retain possession of the property pending final judgment in the action for possession. At any time after the sheriff takes possession and before release of the property to the plaintiff as provided in section 5 of this 1990 act, the defendant may require the sheriff to return ((thereof, upon giving)) the property by posting a redelivery bond.

(2) A redelivery bond may be given to the sheriff or ((filing)) filed with the court ((a)). If the bond is filed with the court after a certified copy of the order awarding possession has been issued to the sheriff, the defendant shall give notice of the filing to the sheriff.

(3) The redelivery bond shall be executed by one or more sufficient sureties to the effect that they are bound in an amount equal to the value of the bond filed by the plaintiff ((- If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in RCW 7.64.100)), conditioned that the defendant will deliver the property to the

plaintiff if judgment is entered for the plaintiff in the action for possession and will pay any sum recovered by the plaintiff in that action.

(4) The defendant's sureties, upon a notice to the plaintiff or the plaintiff's attorney, of not less than two, nor more than six days, shall justify as provided by law; upon such justification, the sheriff shall release the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, the sheriff shall release the property to the plaintiff.

Sec. 7. Section 109, page 151, Laws of 1854 as last amended by section 4, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.100 are each amended to read as follows:

If the property taken ~~((be))~~ by the sheriff is claimed by any person other than the defendant or ~~((his))~~ the defendant's agent, ~~((and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand indemnify the sheriff against such claim by a bond, executed by one or more sufficient sureties, and no claim to such property by any person other than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity))~~ the claimant may assert the claim by intervening in the plaintiff's action for possession.

Sec. 8. Section 110, page 152, Laws of 1854 as last amended by section 1, chapter 34, Laws of 1891 and RCW 7.64.110 are each amended to read as follows:

The sheriff shall file ~~((the affidavit, with the proceedings thereon;))~~ a return of proceedings with the clerk of the court in which the action is pending~~((;))~~ within twenty days after taking possession of the property ~~((mentioned therein)).~~

NEW SECTION. Sec. 9. A new section is added to chapter 7.64 RCW to read as follows:

To the extent the final judgment entered at a show cause hearing or at any other time is not satisfied by proceedings under an order awarding possession issued at the show cause hearing, the judgment shall be executed in the same manner as any other judgment.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) Section 105, page 151, Laws of 1854, section 145, page 36, Laws of 1869, section 147, page 31, Laws of 1877, section 147, Code of 1881, section 16, chapter 51, Laws of 1957 and RCW 7.64.060;

(2) Section 107, page 151, Laws of 1854, section 147, page 37, Laws of 1869, section 149, page 31, Laws of 1877, section 149, Code of 1881 and RCW 7.64.080;

(3) Section 108, page 151, Laws of 1854, section 148, page 37, Laws of 1869, section 150, page 32, Laws of 1877, section 150, Code of 1881 and RCW 7.64.090; and

(4) Section 7, chapter 132, Laws of 1979 ex. sess. and RCW 7.64.120.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House February 6, 1990.

Passed the Senate February 28, 1990.

Approved by the Governor March 27, 1990.

Filed in Office of Secretary of State March 27, 1990.

CHAPTER 228

[House Bill No. 2633]

UNIFORM COMMERCIAL CODE—"MONEY" DEFINED

AN ACT Relating to the uniform commercial code; and amending RCW 62A.1-201.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1-201, chapter 157, Laws of 1965 ex. sess. as last amended by section 53, chapter 35, Laws of 1986 and RCW 62A.1-201 are each amended to read as follows:

Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.