

2A:59-1

LEGISLATIVE HISTORY CHECKLIST
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(Replevin)

NJSA: 2A:59-1

LAWS OF: 1995 **CHAPTER:** 263

BILL NO: S1010

SPONSOR(S): Sinagra

DATE INTRODUCED: May 12, 1994

COMMITTEE: **ASSEMBLY** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** November 9, 1995
SENATE: October 20, 1994

DATE OF APPROVAL: November 15, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Report mentioned in statements:
974.90 New Jersey. Law Revision Commission.
L446 Annual report...1992.
[see pp.attached]

KBG:pp

P.L.1995, CHAPTER 263, approved November 15, 1995

1994 Senate No. 1010

1 AN ACT concerning replevin, supplementing Title 2B of the New
2 Jersey Statutes, and repealing N.J.S.2A:59-1 through
3 N.J.S.2A:59-19 inclusive.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. An additional chapter, chapter 50, is added to Title 2B of
8 Title 2B of the New Jersey Statutes as follows:

9
10 TITLE 2B
11 CHAPTER 50. REPLEVIN

- 12
13 2B:50-1. Action for Replevin.
14 2B:50-2. Temporary Relief: On Notice.
15 2B:50-3. Temporary Relief: Without Notice.
16 2B:50-4. Security.
17 2B:50-5. Unrelinquished property.

18
19 2B:50-1. Action for Replevin. A person seeking recovery of
20 goods wrongly held by another may bring an action for replevin in
21 the Superior Court. If the person establishes the cause of action,
22 the court shall enter an order granting possession.

23 Source: N.J.S.2A:59-3.

24 2B:50-2. Temporary Relief: On Notice. If the court, after
25 notice and hearing, and based upon filed papers and testimony, if
26 any, finds a probability of final judgment for the plaintiff, it may,
27 prior to final judgment:

- 28 a. grant possession of the goods to the plaintiff; or
29 b. order other just relief.

30 Source: New.

31 2B:50-3. Temporary Relief: Without Notice. In an
32 extraordinary case if, before notice and hearing, the court finds
33 from specific facts in an affidavit or verified complaint that the
34 plaintiff is entitled to possession and that an immediate order is
35 necessary to prevent removal of, or irreparable damage to, the
36 goods, the court without notice, may:

- 37 a. direct a person authorized by the court to remove the goods
38 from the party in possession and hold them pending a hearing; or
39 b. order necessary temporary restraints to preserve the goods
40 pending a hearing.

41 Source: New.

42 2B:50-4. Security. As part of an order that determines who
43 shall hold the goods pending judgment, the court may further
44 order the holder to give security.

45 Source: N.J.S.2A:59-5, 2A:59-6.

46 2B:50-5. Unrelinquished property. If the court orders a person
47 to relinquish goods and the person does not relinquish them, the
48 court shall enter an order in aid of execution, or if the plaintiff

- 1 so requests, assess damages.
- 2 Source: N.J.S.2A:59-4.
- 3 2. The following statutes are repealed:
- 4 N.J.S.2A:59-1 through 2A:59-19 inclusive.
- 5 3. This act shall take effect immediately.

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STATEMENT

10 This bill implements the recommendations of the New Jersey
11 Law Revision Commission for simplification and modernization of
12 the statutes relating to civil procedure and for the recompilation
13 of these statutes as part of the new Title 2B, Courts.

14 New Jersey replevin statutes consist of 19 sections derived
15 from the 1877 Revision. This bill simplifies and modernizes
16 replevin procedure which has not changed significantly for more
17 than a century. In addition, the bill cures constitutional defects
18 raised by both New Jersey and federal court cases by providing
19 constitutionally required pre-judgment hearing and notice.

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Revises law concerning replevin.

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ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE, No. 1010

STATE OF NEW JERSEY

DATED: MAY 8, 1995

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1010.

The term "replevin" refers to a civil action whereby the owner or person entitled to repossession of goods or personal property may recover that property from a person who has wrongfully detained or taken that property. This bill implements the recommendations of the New Jersey Law Revision Commission for simplification and modernization of the statutes relating to replevin and for the recompilation of these statutes as part of the new Title 2B, Courts.

An action for replevin may be brought in the Superior Court. In an extraordinary case if, before notice and hearing, the court finds that the plaintiff is entitled to possession and that an immediate order is necessary to prevent removal of, or irreparable damage to, the goods, the court without notice, may direct a person authorized by the court to remove the goods from the party in possession and hold them pending a hearing; or order necessary temporary restraints to preserve the goods pending a hearing.

This bill would repeal New Jersey's existing statutes concerning replevin which were first enacted in 1877. N.J.S.2A:59-1 through 2A:59-19 inclusive are repealed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1010

STATE OF NEW JERSEY

DATED: JUNE 2, 1994

The Senate Judiciary Committee reports favorably Senate Bill No. 1010.

The term "replevin" refers to a civil action whereby the owner or person entitled to repossession of goods or personal property may recover that property from a person who has wrongfully detained or taken that property. This bill implements the recommendations of the New Jersey Law Revision Commission for simplification and modernization of the statutes relating to replevin and for the recompilation of these statutes as part of the new Title 2B, Courts. This bill would also repeal New Jersey's existing statutes dealing with replevin which were first enacted in 1877.

**REPORT AND RECOMMENDATIONS
RELATING TO REPLEVIN**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
November, 1992**

INTRODUCTION

New Jersey replevin statutes consist of 19 sections derived from the 1877 Revision. While some of the sections were amended between 1890 and 1963, the replevin procedure, "originally designed to test the true title to property," has not changed significantly for more than a century. To a seller-creditor, the availability of this procedure for repossessing property has made certain sales possible and has become "part of the fabric of our modern financing...." Almor Furniture & Appliances v. MacMillan, 116 N.J. Super. 65, 67 (Essex Cty. Dist. Ct. 1971).

N.J.S. 2A:59-1 states:

If the goods or chattels of any person be wrongfully taken and detained, or wrongfully detained, the sheriff, or other officer authorized by law, of the county where the goods or chattels may be, shall cause such goods and chattels to be replevied and delivered.

Following the United States Supreme Court decision, Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 2d 349 (1969), courts began declaring constitutionally infirm those replevin laws which allowed taking of property or property rights without a prior hearing. Sniadach involved a Wisconsin statute allowing garnishment of one-half salary without notice.

The first case challenging the constitutionality of New Jersey's replevin statutes, Almor Furniture & Appliances v. MacMillan, 116 N.J. Super. 65 (Essex Cty. Dist. Ct. 1971), raised three issues: 1) denial of due process by taking property without requiring prior notice or hearing; 2) violation of the fourth amendment prohibition against unreasonable searches and seizures; and 3) denial of the fourteenth amendment guarantee of equal protection. The court declined to decide the constitutional issues raised lest "the security permitted and approved by the relatively recently enacted Uniform Commercial Code should be jeopardized by a sudden declaration of unconstitutionality of one of the remedies relied upon by sellers in security transactions." Almor, supra at 69.

The next year, the United States Supreme Court found Florida and Pennsylvania replevin statutes (which were similar to New Jersey replevin statutes) violative of fourteenth amendment due process because they did not require prior notice and hearing. Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed. 2d 556, reh'g denied, 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed. 2d 165 (1972). The following year, 1973, in response to Fuentes v. Shevin, New Jersey Court Rules 4:61-1 and 4:61-2 were amended to comply with that decision's requirements of prior notice and hearing.

In The Singer Co. v. Gardner, 65 N.J. 403 (1974), the court agreed with defendant's argument that plaintiff's seizure under a writ of replevin was unconstitutional because there had been neither notice nor hearing beforehand. The court pointed to Fuentes v. Shevin as the impetus for the 1973 Rule changes.

New Jersey replevin statutes have never been amended to cure the constitutional defects. It is inappropriate to rely on court rules to make the statutes constitutional as applied. The proposed provisions provide constitutionally required pre-judgment hearing and notice. They also simplify and modernize the law. The court rules on replevin, R. 4:61-1 through -5, can then serve their appropriate function, providing greatly detailed procedural guidance.

2B:X-1. Action for replevin

A person seeking recovery of goods wrongly held by another may bring an action for replevin in the Superior Court. If the person establishes the cause of action, the court shall enter an order granting possession.

Source: 2A:59-3.

COMMENT

This section eliminates references to the former county court and the county district court and substitutes "an action for replevin" for the archaic "writ of replevin."

2B:X-2. Temporary relief; On Notice

If the court, after notice and hearing, and based upon filed papers and testimony, if any, finds a probability of final judgment for the plaintiff, it may, prior to final judgment:

- a. grant possession of the goods to the plaintiff; or**
- b. order other just relief.**

Source: New.

COMMENT

This section is based upon paragraph (a) of R. 4:61-1. The Rule was amended in 1973 to require pre-judgment notice and hearing.

2B:X-3. Temporary Relief; Without Notice

In an extraordinary case if, before notice and hearing, the court finds from specific facts in an affidavit or verified complaint that the plaintiff is entitled to possession and that an immediate order is necessary to prevent removal of, or irreparable damage to, the goods, the court without notice, may:

- a. direct a person authorized by the court to remove the goods from the party in possession and hold them pending a hearing; or**
- b. order necessary temporary restraints to preserve the goods pending a hearing.**

Source: New.

COMMENT

This section, which is based on paragraph (b) of R, 4:61-1, allows pre-judgment replevin without notice only when action is necessary to prevent irreparable damage. The Comment to R, 4:61-1 states that the standard is defined as including the imminent destruction, secretion or disposition of the chattels by the defendant.

2B:X-4. Security

As part of an order that determines who shall hold the goods pending judgment, the court may further order the holder to give security.

Source: 2A:59-5, 2A:59-6

COMMENT

This section is a general security provision that replaces the source bonding statutes, gives the court authority regarding security requirements and is compatible with the relevant rule, R, 4:61-1(c).

2B:X-5. Unrelinquished property

If the court orders a person to relinquish goods and the person does not relinquish them, the court shall enter an order in aid of execution, or if the plaintiff so requests, assess damages.

Source: 2A:59-4, R, 4:59-1(e)

COMMENT

This provision eliminates the source statute's blanket right for the sheriff to break into a building or to trespass on private property in order to seize property and substitutes the discretion of the court in determining how concealed and other unrelinquished property shall be retaken. The phrase, "enter an order in aid of execution," derives from similar language in R, 4:59-1(e), supplementary proceedings to enforce judgments.

TABLE OF DISPOSITIONS

Section	Disposition	Comment
2A:59-1	Deleted	Unconstitutional
2A:59-2	Deleted	Unnecessary
2A:59-3	2B:X-1	
2A:59-4	2B:X-5	
2A:59-5	2B:X-4	
2A:59-6	2B:X-4	
2A:59-7	Deleted	Unnecessary
2A:59-8	Deleted	Unnecessary
2A:59-9	Deleted	Unnecessary
2A:59-10	Deleted	Unnecessary
2A:59-11	Deleted	Unnecessary
2A:59-12	Deleted	Unnecessary
2A:59-13	Deleted	Unnecessary
2A:59-14	Deleted	Unnecessary
2A:59-15	Deleted	Unnecessary
2A:59-16	Deleted	Unnecessary
2A:59-17	Deleted	Unnecessary
2A:59-18	Deleted	Unnecessary
2A:59-19	Deleted	Unnecessary

third chapters are substantial re-enactments of the New Jersey Air Safety and Hazardous Zoning Act of 1983 (as amended) and the New Jersey Airport Safety Act of 1983.

C. Replevin

The Commission filed a Final Report and Recommendations Relating to Replevin (see Appendix C).

Current New Jersey replevin statutes consist of 19 sections derived from the 1877 revision of the statutes. While some of the sections were amended between 1890 and 1963, the statutory replevin procedure for repossessing property has not changed significantly for more than a century.

In 1974 the New Jersey Supreme Court held that the statutes were violative of due process because they do not require notice and hearing prior to divestment of property. The Singer Co. v. Gardner, 65 N.J. 403, 415 (1974). The Commission proposal provides constitutionally required pre-judgment notice and hearing and simplifies and modernizes the law.

D. Juries

The Commission filed a Final Report and Recommendations Relating of Juries (see Appendix D).

This project continues the work of the Law Revision Commission in revising the statutes relating to the New Jersey court system; it constitutes a complete revision of the text and organization of the statutes relating to petit jury and grand jury selection and impaneling.

In 1982 the Supreme Court Task Force on Jury Utilization and Management completed an extensive study of the jury system and issued a report recommending a wide variety of improvements and modifications in the system of jury selection. Since the issuance of the Task Force Report many improvements have been made in the management of the jury system