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SENATE BILL 5062

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Carrell, Becker, Padden, Harper, Benton, Roach, Darneille, Delvin, and Rolfes

Read first time 01/16/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to squatters on foreclosed property; amending RCW  
2 9A.52.090; adding a new section to chapter 9A.52 RCW; creating a new  
3 section; prescribing penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that due to the  
6 national economic crisis, home foreclosures have become a significant  
7 problem in our state. During the crisis, thousands of families have  
8 been forced to leave their residences, and due to difficulties in  
9 obtaining buyers and the number of foreclosed properties on the market,  
10 some homes are vacant for months or years awaiting a buyer. While this  
11 condition has improved slightly in recent months, economic forecasts  
12 indicate the foreclosure crisis will continue for months or years.

13 A related problem is the presence of unauthorized persons in  
14 properties which have been vacated during the foreclosure process.  
15 These persons take advantage of the sometimes ambiguous legal status of  
16 a particular property and the fact that a significant delay may occur  
17 while a particular home is prepared to be placed on the market  
18 following legal action. Because the vacant properties may lack basic  
19 utilities and sanitation, and because there have been instances of

1 criminal activity including vandalism and drug abuse occurring at these  
2 vacant homes, the legislature finds that squatters on foreclosed  
3 properties pose a threat to the health, safety, and welfare of persons  
4 residing in the neighborhoods and communities in which the distressed  
5 properties they seek to occupy are located as well as to the squatters  
6 themselves. An additional problem exists when neighbors who report the  
7 nuisance caused by unauthorized persons to the authorities may not have  
8 the precise information as to the owner or status of the property,  
9 thereby leading to confusion and difficulty on the part of law  
10 enforcement to address the complaint. The legislature finds that it is  
11 necessary to clarify the law to provide additional tools to courts, law  
12 enforcement, and communities to deal with the threat squatters on  
13 foreclosed property pose.

14 **Sec. 2.** RCW 9A.52.090 and 2011 c 336 s 374 are each amended to  
15 read as follows:

16 In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a  
17 defense that:

18 (1) A building involved in an offense under RCW 9A.52.070 was  
19 abandoned; or

20 (2) The premises were at the time open to members of the public and  
21 the actor complied with all lawful conditions imposed on access to or  
22 remaining in the premises; or

23 (3) The actor reasonably believed that the owner of the premises,  
24 or other person empowered to license access thereto, would have  
25 licensed him or her to enter or remain; or

26 (4) The actor was attempting to serve legal process which includes  
27 any document required or allowed to be served upon persons or property,  
28 by any statute, rule, ordinance, regulation, or court order, excluding  
29 delivery by the mails of the United States. This defense applies only  
30 if the actor did not enter into a private residence or other building  
31 not open to the public and the entry onto the premises was reasonable  
32 and necessary for service of the legal process.

33 These defenses do not apply to a person trespassing in a dwelling  
34 in which a foreclosure action is currently pending or where the  
35 dwelling has been foreclosed upon and the dwelling is being prepared  
36 for sale.

1           NEW SECTION.   **Sec. 3.** A new section is added to chapter 9A.52 RCW  
2 to read as follows:

3           (1) A person is guilty of criminal trespass of a dwelling in  
4 foreclosure if he or she knowingly enters or remains unlawfully in a  
5 dwelling in which an action is currently pending for foreclosure or has  
6 been recently filed on the dwelling and which has been vacated by the  
7 owner of record. Any person with knowledge of the status of a property  
8 may report the trespass to law enforcement regardless of his or her  
9 status as owner of the property.

10          (2) Criminal trespass of a dwelling in foreclosure is a gross  
11 misdemeanor.

12          (3) If a person arrested under this section claims to be a tenant  
13 under a written or oral lease, then the alleged landlord or a neighbor  
14 may proceed directly to an unlawful detainer action. A person may  
15 petition the appropriate district or superior court to have an alleged  
16 tenant arrested under this section and removed from a premise if the:

17           (a) Alleged tenant is engaging in activity that constitutes a  
18 public nuisance, and the noncompliance substantially affects the safety  
19 of the neighborhood; or

20           (b) Landlord fails to evict the tenant causing the public nuisance  
21 or to notify the tenant to cease the public nuisance.

22          (4) A person may not be held liable in any cause of action for  
23 bringing an eviction action against a tenant under this section if the  
24 eviction action was brought in good faith.

25          (5) At the unlawful detainer action, the court must determine the  
26 following:

27           (a) Whether the person arrested is actually a tenant at the  
28 dwelling. In making the determination, the court must consider whether  
29 the lease is in writing or oral and must make every possible effort to  
30 provide notice to the owner of record of the property to confirm the  
31 alleged tenant's status;

32           (b) Whether the person arrested has been engaged in an activity at  
33 the premises that is considered a public nuisance to the neighborhood,  
34 or has allowed anyone else to engage in an activity at the premises  
35 that is considered a public nuisance to the neighborhood.

36          In determining whether an alleged tenant is engaged in public  
37 nuisance activity, a court must consider the totality of the  
38 circumstances, including factors such as whether there have been a

1 significant number of complaints to the landlord about the alleged  
2 tenant's activities at the property, damages done by the alleged tenant  
3 to the property, damages done by the alleged tenant to the property of  
4 other tenants or neighbors, harassment or threats made by the alleged  
5 tenant to other tenants or neighbors that have been reported to law  
6 enforcement agencies, any police incident reports involving the alleged  
7 tenant, and the alleged tenant's criminal history.

8 (6) For the purposes of this section, "public nuisance" has the  
9 same meaning as defined in RCW 9.66.010.

10 NEW SECTION. **Sec. 4.** This act takes effect August 1, 2013.

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