
Judiciary Committee

SB 5894

Title: An act relating to unlawful activities on certain properties.

Brief Description: Addressing unlawful activities on certain properties.

Sponsors: Senators Sheldon, Warnick, King and Padden.

Brief Summary of Bill

- Creates the crime of Criminal Trespass of a Dwelling in Foreclosure, including provisions authorizing persons other than the owner of the property to proceed to an unlawful detainer action against an alleged tenant and have the alleged tenant arrested for activity that constitutes a public nuisance substantially affecting the safety of the neighborhood.
- Authorizes an owner or agent of the owner who has demanded that a tenant by sufferance vacate property to request law enforcement to remove the person for Criminal Trespass in the first degree.
- Requires law enforcement, under the Residential Landlord-Tenant Act, to make a reasonable attempt to discover the identity of the landlord and notify him or her, in writing, whenever it is found that a tenant or other resident of a dwelling is engaged in criminal street gang activity or human trafficking or there has been a call to a rental property to investigate such crimes.

Hearing Date: 2/23/16

Staff: Cece Clynch (786-7195).

Background:

Criminal Trespass.

Knowingly entering or remaining unlawfully in a building is Criminal Trespass in the first degree, a gross misdemeanor. A person is guilty of Criminal Trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under

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circumstances not constituting Criminal Trespass in the first degree. Criminal Trespass in the second degree is a misdemeanor.

A person "enters or remains unlawfully" in or upon premises when he or she is not licensed, invited, or privileged to enter or remain. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in a part of a building which is not open to the public. "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property.

In a prosecution for criminal trespass in the first or second degree, it is a defense that:

- the building was abandoned ("Abandoned" is not defined by the statute. Giving the word its ordinary, dictionary definition, the Court of Appeals has held that testimony that a home was being prepared for sale was sufficient to show that it was *not* abandoned in that the owner, a bank, did not intend to surrender the property or its interest in the property due to its condition or for any other reason.);
- the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to, or remaining in, the premises;
- the actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or
- the actor was attempting to serve legal process, the actor did not enter into a private residence or other building not open to the public, and the entry onto the premises was reasonable and necessary in order to accomplish service.

Unlawful Detainer.

Washington's Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes each parties' duties, and establishes procedures for each side to enforce their rights. Duties of tenants include the following:

- pay the rent in a timely manner;
- keep the premises clean and sanitary, and properly dispose of garbage;
- not intentionally or negligently destroy or damage the structure of dwelling;
- not permit a nuisance or common waste;
- not engage in drug-related activity or allow anyone else to do so;
- not engage in any activity that is imminently hazardous to the physical safety of other persons on the premises, which entails physical assaults upon another person which results in an arrest, or which entails the unlawful use of a firearm or other deadly weapon which results in an arrest, including threatening another tenant or the landlord; and
- not engage in gang-related activity or allow others to so engage.

The RLTA prohibits a landlord from removing or excluding a tenant from the premises except via a court order which so authorizes. It is also unlawful for a landlord to intentionally cause termination of a tenant's utility services unless it is necessary to make repairs, and then only for a reasonable time necessary for the repairs.

The initial step of the remedial process which landlords may use to address tenant noncompliance varies depending upon the duty at issue. With respect to failure to pay rent in a timely fashion, the landlord may begin the process by utilizing a 3-day notice to pay or vacate. If the tenant pays in full within the 3 days, the landlord must stop the process. Some breaches,

such as breach of a no-pet-rule, require a 10-day notice to comply or vacate. Permanently damaging the property or engaging in drug-related or gang-related activity may be addressed by a 3-day notice to vacate. With respect to these latter violations, the landlord is not required to allow the tenant to correct the problem and stay.

A 3-day notice to vacate is also the first step in a process aimed at evicting a person who, without the permission of the owner and without having color of title thereto, enters on land of another. Such a person may also be subject to prosecution for criminal trespass.

In the event that a tenant fails to comply with a notice to comply or vacate, or after a notice to vacate has been served on a tenant or someone unlawfully holding the premises, the landlord may utilize the RLTA's court process, called an unlawful detainer action, in order to accomplish eviction. The landlord must serve the defendant with a summons and complaint of the unlawful detainer action, and the defendant has the opportunity to respond. If the court issues a writ of restitution (order directing the sheriff to physically evict), the sheriff must serve a copy of the writ, informing the defendant that he or she can be physically removed from the premises after a certain date.

An unlawful detainer action commenced as a result of a trustee's sale under the Deed of Trust Act (DOTA) must also comply with notice provisions found in the DOTA.

Law Enforcement Notice to Landlords Under the RLTA.

Pursuant to the RLTA, a law enforcement agency that seizes certain drugs and controlled substances must make a reasonable attempt to discover the identity of the landlord and notify the landlord, in writing, of the seizure and the location of the seizure. Similar requirements apply when law enforcement arrests a tenant for threatening another tenant with a firearm or other deadly weapon, or for some other unlawful use of a firearm or other deadly weapon, or for physically assaulting another person on the rental premises.

"Tenant by Sufferance" Statute.

Whenever a person obtains possession of premises without consent of the owner or another person having the right to give possession, the person is deemed a "tenant by sufferance". A tenant by sufferance is liable to pay reasonable rent for the actual time of occupancy and must, on demand, surrender possession. All right to possession terminates immediately upon demand. The chapter in which this statute is located is explicitly not applicable to any rental agreement included under the RLTA.

Summary of Bill:

Criminal Trespass of a Dwelling in Foreclosure.

A new crime is created. A person is guilty of Criminal Trespass of a Dwelling in Foreclosure, a gross misdemeanor, if he or she knowingly enters or remains unlawfully in a dwelling in which an action is currently pending for foreclosure or has been recently filed on the dwelling and which has been vacated by the owner of record. The defenses available for criminal trespass in the first or second degree do not apply to a person trespassing in a dwelling in which a foreclosure action is currently pending or where the dwelling has been foreclosed upon and the dwelling is being prepared for sale.

A number of additional provisions are included in this new section being added to the criminal code:

- Any person with knowledge of the status of a property may report the trespass to law enforcement, regardless of whether the person is the owner of the property.
- A person may petition the appropriate district or superior court to have an alleged tenant arrested for criminal trespass of a dwelling in foreclosure and removed from the premises if:
 - the alleged tenant is engaging in activity that constitutes a public nuisance, and the noncompliance substantially affects the safety of the neighborhood; or
 - the landlord fails to evict the tenant causing the public nuisance or to notify the tenant to cease the public nuisance.
- If one arrested for Criminal Trespass of a Dwelling in Foreclosure claims to be a tenant under a written or oral lease, then the alleged landlord or a neighbor who has made every reasonable effort to notify the property owner of record regarding the nuisance or trespass may proceed directly to an unlawful detainer action.
- At the unlawful detainer action, the court must determine the following:
 - whether the person arrested is actually a tenant at the dwelling. In making this determination, the court must consider whether the lease is in writing or oral and must make every possible effort to provide notice to the owner of record of the property to confirm the alleged tenant's status;
 - whether the person arrested has been engaged in an activity at the premises that is considered a public nuisance to the neighborhood, or has allowed anyone else to do so. In making this determination, a court must consider the totality of the circumstances, including: whether there have been a significant number of complaints to the landlord about the alleged tenant's activities; damages done by the alleged tenant to the property; damage done by the alleged tenant to the property of other tenants or neighbors; harassment or threats made by the alleged tenant to other tenants or neighbors; any police incident reports involving the alleged tenant; and the alleged tenant's criminal history.
- A person may not be held liable in any cause of action for bringing an eviction action against a tenant under this section if the eviction action was brought in good faith.

Law Enforcement Notice to Landlords Under the RLTA.

Law enforcement must make a reasonable attempt to discover the identity of the landlord and notify him or her, in writing, whenever it is found that a tenant or other resident of a dwelling is engaged in criminal street gang activity or human trafficking or there has been a call to a rental property to investigate such crimes.

Written notice regarding a tenant's unlawful drug activity, threats with a firearm or deadly weapon, criminal street gang activity, or human trafficking must include:

- the names of the tenant and individual(s) who were engaged in any activity;
- the dwelling unit where the incident occurred;
- the date of the incident;
- actions taken by law enforcement;
- a statement outlining the authority of a landlord to:
 - evict, under the RLTA, a tenant who possesses a lawful rental agreement but is engaged in unlawful drug activity, threats with a firearm or deadly weapon, criminal street gang activity, or human trafficking; and

- identify to law enforcement that the person is a tenant by sufferance, and the landlord may exercise the owner's authority to request law enforcement to remove such a tenant;
- any penalties that may be assessed against the landlord for failure to abate the nuisance created by any of these activities.

"Tenant by Sufferance" Statute.

Any owner or agent of the owner who has demanded that a tenant by sufferance vacate property is also authorized to request law enforcement to remove the tenant for Criminal Trespass in the first degree.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on August 1, 2015.