

HOUSE BILL REPORT

SB 5894

As Reported by House Committee On:
Judiciary

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 History:

Committee Activity:

Judiciary: 2/23/16, 2/26/16 [DPA].

Brief Summary of Bill
(As Amended by Committee)

- Establishes a process for an owner of property, by means of a declaration signed under penalty of perjury, to request law enforcement to remove unauthorized persons from premises.
- Provides that law enforcement shall not be held liable for actions or omissions made in good faith, and further provides that the declarant shall agree to indemnify and hold law enforcement harmless.
- Allows persons removed from premises on the basis of false statements to pursue an action against the declarant for the full amount of damages, costs, and reasonable attorneys' fees.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Kuderer, Muri, Orwall and Stokesbary.

Staff: Cece Clynch (786-7195).

Background:

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.

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 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.

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 three-day notice to pay or vacate. If the tenant pays in full within the three 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 three-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.

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.

Forcible and Unlawful Detainer.

A three-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.

"Tenant by Sufferance".

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 Amended Bill:

Criminal Trespass.

The owner of premises, or his or her agent, may initiate the investigation and request the removal of unauthorized persons from premises by providing to law enforcement a declaration, declaring under penalty of perjury that:

- the declarant is the owner of the premises or the owner's authorized agent;
- unauthorized persons have entered and are remaining unlawfully on the premises;
- the persons were not authorized to enter or remain;
- the declarant has demanded that they vacate but they have not done so;
- the premises were not abandoned at the time the persons entered;
- the premises were not open to members of the public at the time the persons entered;
- the declarant understands that persons removed from the premises by law enforcement pursuant to the declaration may bring a cause of action against the declarant for any false statements, and that as a result of the court action the declarant may be held liable for actual damages, costs, and reasonable attorneys' fees; and
- the declarant agrees to indemnify and hold harmless law enforcement for its actions or omissions made in good faith pursuant to the declaration.

Upon receipt of such a declaration signed under penalty of perjury and containing all of the required information, a peace officer shall have the authority to remove the persons from the

premises, with or without arresting them, and order them to remain off the premises or be subject to arrest for criminal trespass. Neither the peace officer nor his or her law enforcement agency shall be held liable for actions or omissions made in good faith under this provision.

Cause of Action for Removal.

Persons removed from premises on the basis of false statements in such a declaration shall have a cause of action to recover, from the declarant, the full amount of damages caused thereby, together with costs and reasonable attorneys' fees.

Amended Bill Compared to Original Bill:

The original bill is stricken in its entirety. A process is put in place for an owner or an agent of premises to provide to law enforcement a declaration under penalty of perjury stating that persons have entered the premises unlawfully. Law enforcement may remove such persons, with or without arresting them, and may order them to remain off the premises or be subject to arrest for criminal trespass. Law enforcement is not to be held liable; and the owner or agent of the owner shall indemnify and hold harmless law enforcement. Persons removed from property on the basis of false statements in a declaration may pursue a cause of action against the declarant and recover actual damages, together with costs and reasonable attorneys' fees.

Appropriation: None.

Fiscal Note: Requested on February 26, 2016.

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

Staff Summary of Public Testimony:

(In support) In Mason County there are over 1,300 code violations and abatement cases. Many of them involve residential properties and drug activity. It can be extremely difficult to get squatters to leave a property, and the fact that they are there hurts property values. Neighborhoods have suffered as a result of drug activity, property crimes, mail theft, garbage, and vandalism.

Tools are needed to rectify the problem. This is trespass and must be addressed. It should not be a partisan issue. There need to be clear rules. Right now, police are unable to remove these people. Tenants should have to prove they are tenants. Written notarized rental agreements filed with the police would be a simple solution to the problem.

This bill may be a little too broad, and some language from section 5 could be removed. There is no need to fix the world, but there needs to be a way to get squatters out. The issue is important throughout the state. Many people are landlords in order to subsidize their income or retirement. This happens to landlords as well as other homeowners. Trespassers know the laws and how to use them.

There are lots of horror stories. Squatters moved into one home in foreclosure and set a fire in the house. One squatter died, and subsequently there was a lawsuit filed against both the owner and the city. The North Clover Creek Collins community in Pierce County has been hard hit by this problem. A landlord from Yakima had low-income renters who, in turn, invited guests to stay. These guests proved to be unsavory, and eventually the original renters had to move out because it was so bad. The landlord asked the police to intervene but the police advised that an eviction had to be done. An eviction was eventually accomplished but only after lots of time and money was spent by the landlord and the original renters had to move. One property manager has experienced this problem continually. Putting up a "for rent" sign attracts people who break into the house, and then the police advise that the unlawful detainer process must be used, which takes a long time. Eventually, the squatters are evicted but during this time they are trashing the house and the landlord has no income coming in. In one situation, a tenant left and turned the property over to others. There were many calls to the police, but the police couldn't do anything because there were no signs of forced entry. The owners of the property suffered \$15,000–\$20,000 in damages to the property, as well as lost rental income. In another situation, a homeowner was selling her house and had a lockbox on. Despite that, squatters got in, downloaded a lease agreement and filled in the blanks and gave it to the police. The police wouldn't let the landlord in, and told her she had to use the civil process. It took six months to get the squatters removed.

(Opposed) This bill is way too broad and threatens low-income tenants, treating them like second class citizens. The bill's requirement that tenants be able to produce the written lease is a problem. Tenants are reliant on landlords to provide them with the lease. In other situations, there will be one master tenant and other tenants come and go. This is frequently the case with young people and college students. However, other tenants don't have a lease. Under section 3 the tenants would be subject to arrest. This bill was passed out of the Senate on a 26–23 vote. The bill would restrict the right of tenants to invite guests on their property unless they had an affidavit from the landlord.

There is no need for this bill. There are already laws on the books to address the squatter situation. Trespassers can be prosecuted. Landlords can already use RCW 59.12.030(6) to file a summary unlawful detainer action if the person fails to move after being served a three-day notice to vacate. This bill criminalizes what is civil. There are many concerns with this bill, and there is not time to fix them this session. This bill should not move forward without substantial changes.

Persons Testifying: (In support) Senator Sheldon, prime sponsor; Corey Long; Carla Allred; Bill Hinkle, Yakima Valley Landlords Association and Rental Housing Association; Ike Allred, Yakima Valley Landlords Association; Tony Sloan; Enrique Jevons, Jevons Property, LLC; Nedra Ferko, North Clover Creek Collins Community; Rose Nelson; Stephanie Manley; Debi Johnson; Kristi Cardey; and Sam Boone.

(Opposed) Michele Thomas, Washington Low Income Housing Alliance; Greg Provenzano, Columbia Legal Services; and Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.