

SENATE BILL REPORT

SB 5894

As Passed Senate, February 16, 2016

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: Law & Justice: 2/12/15, 2/19/15 [DP, DNP].
Passed Senate: 2/16/16, 26-23.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Darneille and Kohl-Welles.

Staff: Tim Ford (786-7423)

Background: A tenant by sufferance is a person who obtains possession of a premises without the consent of the owner or other person having the right to give possession. The tenant by sufferance is liable to pay reasonable rent for the actual time the tenant occupied the premises, and must, on demand, surrender possession to the owner or person who had the right of possession before the entry.

Criminal trespass in the first degree is a gross misdemeanor. It is committed when a person knowingly enters and remains unlawfully in a building. A person enters unlawfully when the person is not licensed, invited, or otherwise privileged to enter. In any prosecution, it is a defense that: (1) a building involved in an offense was abandoned; (2) 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; (3) the actor reasonably believed that the owner of the premises, or other person empowered to license access, would have licensed the person to enter or remain; or (4) the actor was attempting to serve legal process.

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.

Any law enforcement agency that seizes a legend drug, a controlled substance, or an imitation controlled substance, must make a reasonable attempt to discover the identity of a landlord and notify the landlord in writing of the seizure and the location of the seizure of the illegal drugs or substances. Any law enforcement agency that 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 on the rental premises, or for physically assaulting another person on the rental premises, must also make a reasonable attempt to discover the identity of the landlord and notify the landlord about the arrest in writing.

Summary of Bill: A person is guilty of criminal trespass in the first degree if the person is a tenant by sufferance or resides at a rental property and is not listed as a tenant on the rental agreement or as a guest in an affidavit signed by the owner or an agent of the owner of the property, and the person refuses to immediately upon demand surrender possession of the premises to the owner, or vacate the property, including other rental areas or common areas held by the owner. The existing defenses to criminal trespass also do not apply to a person trespassing in a dwelling in which a foreclosure action is pending or where the dwelling has been foreclosed upon and is being prepared for sale.

An owner or agent who has demanded a tenant by sufferance to vacate a premises may request law enforcement to remove the tenant as a trespasser. It is a defense that the person who refuses to surrender possession or vacate the property can produce an executed copy of a written rental agreement identifying the person as a lawful tenant of the rental property or an affidavit signed by the owner or an agent of the owner that allows the person to reside as a guest at the rental property. It is not a defense that the person was invited into the property by a lawful tenant of the property unless the tenant was an agent of the owner.

Any law enforcement agency which has found that a tenant or other resident of a dwelling unit is engaged in criminal street gang activity or human trafficking, or has been called to a rental property to investigate criminal street gang activity or human trafficking, must make a reasonable attempt to discover the identity of the landlord and must notify the landlord in writing of the criminal street gang activity or human trafficking occurring at the landlord's rental property. The notice must include the names of the tenant and individual or individuals who were engaged in any activity; the dwelling unit where the incident occurred; the date of the incident; actions taken by the law enforcement agency; a statement outlining the authority of a landlord to either evict the tenant who possesses a lawful rental agreement but is engaged in the activity or identify to law enforcement that the person is a tenant by sufferance; and any penalties that may be assessed against the landlord for failure to abate the nuisance.

A person is guilty of criminal trespass of a dwelling in foreclosure if the person 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. Any person with knowledge of the status of a property may report the trespass. Criminal trespass of a dwelling in foreclosure is a gross misdemeanor. If a person arrested for this offense claims to be a tenant, 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.

Any person may petition the district or superior court to have an alleged tenant arrested and removed from a 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. A person may not be held liable in any cause of action for bringing an eviction action against a tenant if the eviction action was brought in good faith.

At the unlawful detainer action, the court must determine whether the person arrested is actually a tenant at the dwelling. In making the 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. The court must also consider whether the person arrested engaged in an activity at the premises that is considered a public nuisance to the neighborhood or allowed anyone else to engage in an activity at the premises that is considered a public nuisance to the neighborhood.

In determining whether an alleged tenant is engaged in public nuisance activity, a court must consider the totality of the circumstances, including factors such as whether there have been a significant number of complaints to the landlord about the alleged tenant's activities at the property, damages done by the alleged tenant to the property, damages 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 that have been reported to law enforcement agencies, any police incident reports involving the alleged tenant, and the alleged tenant's criminal history.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Rental owners need more tools to deal with someone who is on the property with no legal right to be there. It is a criminal trespass, and yet law enforcement may not do anything because it is claimed to also be a civil matter. Some squatters break into a housing unit, bring drugs, and destroy property. This bill will help landlords keep people out of units that don't have a right to be there.

CON: Lawful tenants would be subject to criminal trespass if they refused immediately upon demand of their landlord to vacate their dwelling unit. Landlords should not use the criminal justice system and scarce law enforcement resources to arrest and remove lawful tenants and their guests. A tenant has a right to invite guests into their rental units. There is already a civil procedure to commence an unlawful detainer action to remove a tenant at sufferance.

Persons Testifying: PRO: Kyle Woodring, Rental Housing Assn.; Chester Baldwin, WA Rental Owners Assn.; Doug Nyhart; Rental Owner.

CON: Greg Provenzano, Columbia Legal Services.