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HOUSE BILL 2897

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State of Washington                      64th Legislature                      2016 Regular Session

By Representatives Zeiger, Kirby, Stokesbary, Stambaugh, and Hickel

Read first time 01/26/16. Referred to Committee on Judiciary.

1            AN ACT Relating to unlawful activities on certain properties;  
2 amending RCW 9A.52.070, 9A.52.090, 59.04.050, and 59.18.075; adding a  
3 new section to chapter 9A.52 RCW; prescribing penalties; and  
4 providing an effective date.

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

6            **Sec. 1.** RCW 9A.52.070 and 2011 c 336 s 372 are each amended to  
7 read as follows:

8            (1) A person is guilty of criminal trespass in the first degree  
9 if:

10            (a) He or she knowingly enters or remains unlawfully in a  
11 building; or

12            (b) He or she is a tenant by sufferance as described in RCW  
13 59.04.050, or resides at a rental property and is not listed as a  
14 tenant on a rental agreement or as a guest in an affidavit signed by  
15 the owner or an agent of the owner of the property, and he or she  
16 refuses to immediately upon demand surrender possession of the  
17 premises to the owner, or vacate the property, including other rental  
18 areas or common areas held by the owner.

19            (2)(a) In any prosecution under subsection (1)(b) of this  
20 section, it is a defense that the person who refuses to surrender  
21 possession or vacate the property can produce:

1 (i) An executed copy of a written rental agreement as provided in  
2 RCW 59.18.065, identifying the person as a lawful tenant of the  
3 rental property; or

4 (ii) An affidavit signed by the owner or an agent of the owner  
5 that allows the person to reside as a guest at the rental property  
6 for a specified period of time.

7 (b) It is not a defense in any prosecution under subsection  
8 (1)(b) of this section that the person who refuses to surrender  
9 possession or vacate the property was invited into the property by a  
10 lawful tenant of the property unless the tenant was an agent of the  
11 owner.

12 (3) Criminal trespass in the first degree is a gross misdemeanor.

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

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

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

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

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

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

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

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

8 (2) Criminal trespass of a dwelling in foreclosure is a gross  
9 misdemeanor.

10 (3) If a person arrested under this section claims to be a tenant  
11 under a written or oral lease, then the alleged landlord or a  
12 neighbor who has made every reasonable effort to notify the property  
13 owner of record regarding the nuisance or trespass may proceed  
14 directly to an unlawful detainer action. A person may petition the  
15 appropriate district or superior court to have an alleged tenant  
16 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  
19 safety of the neighborhood; or

20 (b) Landlord fails to evict the tenant causing the public  
21 nuisance 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  
24 the 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  
29 whether the lease is in writing or oral and must make every possible  
30 effort to provide notice to the owner of record of the property to  
31 confirm the alleged tenant's status;

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

37 In determining whether an alleged tenant is engaged in public  
38 nuisance activity, a court must consider the totality of the  
39 circumstances, including factors such as whether there have been a  
40 significant number of complaints to the landlord about the alleged

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

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

10 **Sec. 4.** RCW 59.04.050 and 2010 c 8 s 19002 are each amended to  
11 read as follows:

12 (1) Whenever any person obtains possession of premises without  
13 the consent of the owner or other person having the right to give  
14 said possession, he or she shall be deemed a tenant by sufferance  
15 merely, and shall be liable to pay reasonable rent for the actual  
16 time he or she occupied the premises, and shall forthwith on demand  
17 surrender his or her said possession to the owner or person who had  
18 the right of possession before said entry, and all his or her right  
19 to possession of said premises shall terminate immediately upon said  
20 demand.

21 (2) Any owner or agent of the owner who has demanded a tenant by  
22 sufferance to vacate the owner's property may request law enforcement  
23 to remove the tenant by sufferance as a trespasser under RCW  
24 9A.52.070.

25 **Sec. 5.** RCW 59.18.075 and 1992 c 38 s 4 are each amended to read  
26 as follows:

27 (1) Any law enforcement agency which seizes a legend drug  
28 pursuant to a violation of chapter 69.41 RCW, a controlled substance  
29 pursuant to a violation of chapter 69.50 RCW, or an imitation  
30 controlled substance pursuant to a violation of chapter 69.52 RCW,  
31 shall make a reasonable attempt to discover the identity of the  
32 landlord and shall notify the landlord in writing, at the last  
33 address listed in the property tax records and at any other address  
34 known to the law enforcement agency, of the seizure and the location  
35 of the seizure of the illegal drugs or substances.

36 (2) Any law enforcement agency which arrests a tenant for  
37 threatening another tenant with a firearm or other deadly weapon, or  
38 for some other unlawful use of a firearm or other deadly weapon on

1 the rental premises, or for physically assaulting another person on  
2 the rental premises, shall make a reasonable attempt to discover the  
3 identity of the landlord and notify the landlord about the arrest in  
4 writing, at the last address listed in the property tax records and  
5 at any other address known to the law enforcement agency.

6 (3) Any law enforcement agency that has found that a tenant or  
7 other resident of a dwelling unit is engaged in criminal street gang  
8 activity as identified in RCW 9.94A.030 or human trafficking as  
9 identified in RCW 9A.40.100, or has been called to a rental property  
10 to investigate criminal street gang activity or human trafficking,  
11 shall make a reasonable attempt to discover the identity of the  
12 landlord and shall notify the landlord in writing, at the last  
13 address listed in the property tax records and at any other address  
14 known to the law enforcement agency, of the criminal street gang  
15 activity or human trafficking occurring at the landlord's rental  
16 property.

17 (4) The law enforcement agency shall include with the notice in  
18 subsections (1) through (3) of this section:

19 (a) The names of the tenant and individual or individuals who  
20 were engaged in any activity described in this subsection;

21 (b) The dwelling unit where the incident occurred;

22 (c) The date of the incident;

23 (d) Actions taken by the law enforcement agency;

24 (e) A statement outlining the authority of a landlord to:

25 (i) Evict under this chapter a tenant who possesses a lawful  
26 rental agreement but is engaged in an activity identified in  
27 subsection (1), (2), or (3) of this section; or

28 (ii) Identify to law enforcement that the person is a tenant by  
29 sufferance, and the landlord may exercise the owner's authority under  
30 RCW 59.04.050; and

31 (f) Any penalties that may be assessed against the landlord for  
32 failure to abate the nuisance created by the activity identified in  
33 subsection (1), (2), or (3) of this section.

34 NEW SECTION. Sec. 6. This act takes effect August 1, 2016.

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