

ESSB 5388 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/06/2017

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) Subject to subsections (2) and (3) of this section and upon
6 the receipt of a declaration signed under penalty of perjury and
7 containing all of the required information and in the form prescribed
8 in section 2 of this act, a peace officer shall have the authority
9 to:

10 (a) Remove the person or persons from the premises, with or
11 without arresting the person or persons; and

12 (b) Order the person or persons to remain off the premises or be
13 subject to arrest for criminal trespass.

14 (2) Only a peace officer having probable cause to believe that a
15 person is guilty of criminal trespass under RCW 9A.52.070 for
16 knowingly entering or remaining unlawfully in a building considered
17 residential real property, as defined in RCW 61.24.005, has the
18 authority and discretion to make an arrest or exclude anyone under
19 penalty of criminal trespass.

20 (3) While a peace officer can take into account a declaration
21 from the property owner signed under penalty of perjury containing
22 all of the required information and in the form prescribed in section
23 2 of this act, the peace officer must provide the occupant or
24 occupants with a reasonable opportunity to secure and present any
25 credible evidence provided by the person or persons on the premises,
26 which the peace officer must consider, showing that the person or
27 persons are tenants, legal occupants, or the guests or invitees of
28 tenants or legal occupants.

29 (4) Neither the peace officer nor his or her law enforcement
30 agency shall be held liable for actions or omissions made in good
31 faith under this section.

1 (5) This section may not be construed to in any way limit rights
2 under RCW 61.24.060 or to allow a peace officer to remove or exclude
3 an occupant who is entitled to occupy a dwelling unit under a rental
4 agreement or the occupant's guests or invitees.

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

7 The owner of premises, or his or her authorized agent, may
8 initiate the investigation and request the removal of an unauthorized
9 person or persons from the premises by providing to law enforcement a
10 declaration containing all of the following required information and
11 in substantially the following form:

12 REQUEST TO REMOVE TRESPASSER(S) FORM

13 The undersigned owner, or authorized agent of the owner, of the
14 premises located at hereby represents and declares under
15 the penalty of perjury that (initial each box):

16 (1) [] The declarant is the owner of the premises or the
17 authorized agent of the owner of the premises;

18 (2) [] An unauthorized person or persons have entered and are
19 remaining unlawfully on the premises;

20 (3) [] The person or persons were not authorized to enter or
21 remain;

22 (4) [] The person or persons are not a tenant or tenants and
23 have not been a tenant or tenants, or a homeowner or homeowners who
24 have been on title, within the last twelve months on the property;

25 (5) [] The declarant has demanded that the unauthorized person
26 or persons vacate the premises but they have not done so;

27 (6) [] The premises were not abandoned at the time the
28 unauthorized person or persons entered;

29 (7) [] The premises were not open to members of the public at
30 the time the unauthorized person or persons entered;

31 (8) [] The declarant understands that a person or persons
32 removed from the premises pursuant to section 1 of this act may bring
33 a cause of action under section 3 of this act against the declarant
34 for any false statements made in this declaration, and that as a
35 result of such action the declarant may be held liable for actual
36 damages, costs, and reasonable attorneys' fees;

37 (9) [] The declarant understands and acknowledges the
38 prohibitions in RCW 59.18.230 and 59.18.290 against taking or

1 detaining an occupant's personal property or removing or excluding an
2 occupant from a dwelling unit or rental premises without an
3 authorizing court order;

4 (10) [] The declarant agrees to indemnify and hold harmless law
5 enforcement for its actions or omissions made in good faith pursuant
6 to this declaration; and

7 (11) [] Additional Optional Explanatory Comments:
8
9

10 A declarant of premises who falsely swears on a declaration
11 provided under this section may be guilty of false swearing under RCW
12 9A.72.040 or of making a false or misleading statement to a public
13 servant under RCW 9A.76.175, both of which are gross misdemeanors.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 4.24 RCW
15 to read as follows:

16 All persons removed from premises pursuant to section 1 of this
17 act on the basis of false statements made by a declarant pursuant to
18 section 2 of this act shall have a cause of action to recover from
19 the declarant for the full amount of damages caused thereby, together
20 with costs and reasonable attorneys' fees."

21 Correct the title.

EFFECT: Provides that the section authorizing removal based on a
declaration of the owner of premises, or his or her authorized agent,
may not be construed to in any way limit rights accorded, under the
Deeds of Trust Act, to previous owners, occupants, or tenants
following a trustee's sale. Provides that in the declaration the
owner or authorized agent must also declare that the person or
persons have not been a homeowner or homeowners who have been on
title within the last twelve months on the property. Provides that a
declarant (who may be an owner or the owner's authorized agent),
rather than just an owner, may be guilty of false swearing if he or
she falsely swears on the declaration.

--- END ---