

ESSB 5388 - H AMD 569

By Representative Kirby

ADOPTED 04/20/2017

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, in the
7 form prescribed in section 2 of this act, declaring the truth of all
8 of the required elements set forth in subsection (4) of this section,
9 a peace officer shall have the authority 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 elements and in the form prescribed in section 2
23 of this act, the peace officer must provide the occupant or occupants
24 with a reasonable opportunity to secure and present any credible
25 evidence provided by the person or persons on the premises, which the
26 peace officer must consider, showing that the person or persons are
27 tenants, legal occupants, or the guests or invitees of tenants or
28 legal occupants.

29 (4) The declaration must include the following elements:

30 (a) That the declarant is the owner of the premises or the
31 authorized agent of the owner of the premises;

1 (b) That an unauthorized person or persons have entered and are
2 remaining unlawfully on the premises;

3 (c) That the person or persons were not authorized to enter or
4 remain;

5 (d) That the person or persons are not a tenant or tenants and
6 have not been a tenant or tenants, or a homeowner or homeowners who
7 have been on title, within the last twelve months on the property;

8 (e) That the declarant has demanded that the unauthorized person
9 or persons vacate the premises but they have not done so;

10 (f) That the premises were not abandoned at the time the
11 unauthorized person or persons entered;

12 (g) That the premises were not open to members of the public at
13 the time the unauthorized person or persons entered;

14 (h) That the declarant understands that a person or persons
15 removed from the premises pursuant to this section may bring a cause
16 of action under section 3 of this act against the declarant for any
17 false statements made in the declaration, and that as a result of
18 such action the declarant may be held liable for actual damages,
19 costs, and reasonable attorneys' fees;

20 (i) That the declarant understands and acknowledges the
21 prohibitions in RCW 59.18.230 and 59.18.290 against taking or
22 detaining an occupant's personal property or removing or excluding an
23 occupant from a dwelling unit or rental premises without an
24 authorizing court order; and

25 (j) That the declarant agrees to indemnify and hold harmless law
26 enforcement for its actions or omissions made in good faith pursuant
27 to the declaration.

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

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

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

37 The owner of premises, or his or her authorized agent, may
38 initiate the investigation and request the removal of an unauthorized
39 person or persons from the premises by providing to law enforcement a

1 declaration containing all of the following required elements and in
2 substantially the following form:

3 REQUEST TO REMOVE TRESPASSER(S) FORM

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

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

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

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

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

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

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

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

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

28 (9) [] The declarant understands and acknowledges the
29 prohibitions in RCW 59.18.230 and 59.18.290 against taking or
30 detaining an occupant's personal property or removing or excluding an
31 occupant from a dwelling unit or rental premises without an
32 authorizing court order;

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

36 (11) [] Additional Optional Explanatory Comments:
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1 A declarant of premises who falsely swears on a declaration
2 provided under this section may be guilty of false swearing under RCW
3 9A.72.040 or of making a false or misleading statement to a public
4 servant under RCW 9A.76.175, both of which are gross misdemeanors.

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

7 All persons removed from premises pursuant to section 1 of this
8 act on the basis of false statements made by a declarant pursuant to
9 section 2 of this act shall have a cause of action to recover from
10 the declarant for actual damages, together with costs and reasonable
11 attorneys' fees."

12 Correct the title.

EFFECT: Makes the following changes and additions: (1) 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; (2) 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; (3) 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; (4) includes, in section 1 of the act, a list of the required elements that are found in the declaration form in section 2 of the act, and provides in section 1 of the act that the declarant must declare the truth of all of these required elements; and (5) makes the terms used in sections 2 and 3 of the act consistent with respect to the damages that a person may recover, by changing a reference in section 3 of the act from "the full amount of damages caused thereby" to "actual damages," which is the term found in section 2 of the act.

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