

HOUSE BILL REPORT

ESSB 5388

As Passed House - Amended:

April 20, 2017

Title: An act relating to the removal of unauthorized persons from certain premises.

Brief Description: Concerning the removal of unauthorized persons from certain premises.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Zeiger, Sheldon, Kuderer, Padden, Wilson, Conway, Fortunato, Hobbs, Becker, Warnick and Honeyford).

Brief History:

Committee Activity:

Judiciary: 3/21/17, 3/23/17 [DPA].

Floor Activity:

Passed House - Amended: 4/20/17, 96-0.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Establishes a process for an owner of property or his or her authorized agent, 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 actual 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; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

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.

Staff: Cece Clynch (786-7195).

Background:

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;
- 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. As against the borrower and grantor, a purchaser at a trustee's sale under the DOTA is entitled to possession of the property 20 days following the sale. The purchaser may use the forcible and unlawful detainer process to obtain possession. With respect to a tenant or subtenant in possession of property purchased at a trustee's sale, the purchaser may give a new rental agreement or provide 60 days' written notice before the tenant can be removed.

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 Bill:

The owner of premises, or his or her agent, may initiate an 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 persons are not a tenant or tenants and have not been a tenant or tenants, or a homeowner or homeowners who have been on title, within the last 12 months;
- 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;
- the declarant acknowledges the prohibitions in the Residential Landlord-Tenant Act against taking or detaining an occupant's personal property or removing or excluding

- an occupant from a dwelling unit or rental premises without an authorizing court order; 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 elements, 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. Only with probable cause to believe that a person is guilty of Criminal Trespass in the first degree in a building considered residential real property does a peace officer have the authority and discretion to make an arrest or exclude anyone under penalty of Criminal Trespass.

While a peace officer can take into account the declaration, he or she must provide the occupant with a reasonable opportunity to secure and present any credible evidence showing that the person is a tenant, legal occupant, or the guest of a tenant or legal occupant, and the officer must consider such evidence. Neither the peace officer nor his or her law enforcement agency shall be held liable for actions or omissions made in good faith.

Persons removed from premises on the basis of false statements in a declaration shall have a cause of action to recover, from the declarant, actual damages, together with costs and reasonable attorneys' fees. In addition, a declarant who falsely swears on a declaration may be guilty of false swearing or making a false or misleading statement to a public servant, both of which are gross misdemeanors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Many House of Representatives members deserve thanks for this bill and for bringing stakeholders together to talk about policy. Unauthorized trespassers are squatting all over this state. People are outraged after having had to incur tens of thousands of dollars in expenses and headaches to get them removed from the property. It is a nightmare situation for property owners, and they are expecting the Legislature to do something about it this year. This bill allows law enforcement to intervene on the basis of a declaration by the owner or his or her agent. The agreed-upon amendment should be adopted, and the bill passed. The agreement among stakeholders is precarious, and if more amendments are made other than the agreed-upon amendment, the bill probably will not move forward due to opposition.

The provision in the declaration that the person is not a tenant and has not been a tenant for the past 12 months was added following discussions with stakeholders. It was originally requested that the owner be required to declare that the person had never been a tenant, and

some wanted this reduced to 36 months. Ultimately, the issue was resolved with an agreement to make the requirement 12 months.

This bill is needed on farm land as well as in urban residential areas. Currently, the law allows squatters to remain on farmland. There may be pieces of their land that farmers do not get to very frequently. This law will clarify the process for removal and help landowners. In one instance, a multigenerational farm family had "no trespassing" signs posted and fences to keep people out, but squatters cut the locks and moved onto the property, and they put up their own signs. There is no electricity on this property, but there is a stream. On a burn ban day, the squatters had a fire in a pit and received a citation, and the farmers were told they are responsible. The farmers cannot drive by the property without being told that they are harassing the persons who moved onto the property, and the sheriff advises that the farmers cannot lock the gate. Despite paying taxes on the property, it is proving difficult to remove the squatters. More than \$5,000 has been spent, as well as a year in the court system. Meanwhile, more squatters continue to arrive. This is akin to someone coming and setting up camp in an urban backyard. Similar situations also occur on camping lots that owners might own but not visit very often. Using the court system, the squatters continue appealing until the property owner runs out of money. There are several of these situations in Thurston County. If a tent has been in a location for two weeks, the owner cannot throw the persons off without a court order. In one instance, there is an estimate of \$2,000 to remove garbage left behind.

In one situation, after a rental property was taken over by squatters, the sheriff advised that the property owner had to leave and hire an attorney. The squatters were known criminals. At times there were over 30 of them, and they were there for one and one-half months. It cost \$21,000 to remove them and deal with the damage and the garbage. This could happen to anyone, even someone who has simply gone on vacation. There is no desire to infringe on tenants' rights, but people should have to prove they are tenants. The law needs to change.

(Opposed) None.

(Other) While some stakeholders are "other" today, once the agreed-upon amendment (which is the same as the floor amendment to House Bill 1305) is added their position will change to "in support." There is hope that the amendment will be adopted and that this bill will get off the floor. There has been compromise here, and to quote Mick Jagger, "You can't always get what you want, but if you try sometimes, well you might find, you get what you need."

Persons Testifying: (In support) Senator Zeiger, prime sponsor; Tom Davis, Washington Farm Bureau; Cal Lampers; Bonnie Lampers; and Rose Nelson.

(Other) Michele Thomas, Washington Low Income Housing Alliance; Bill Hinkle, Rental Housing Association; and Michael Althaus, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.