

FINAL BILL REPORT

ESSB 5388

C 284 L 17
Synopsis as Enacted

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).

Senate Committee on Law & Justice
House Committee on Judiciary

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 person complied with all lawful conditions imposed, (3) the person 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 person was attempting to serve legal process.

Summary: The owner of premises, or their authorized agent, may initiate the investigation and request the removal of an unauthorized person or persons from the premises by providing to law enforcement a declaration containing all of the following required information:

- the declarant is the owner of the premises or the authorized agent of the owner;
- an unauthorized person or persons have entered and are remaining unlawfully on the premises;
- the person has not been a tenant on that property for the preceding 12 months;
- the person or persons have not been a homeowner or homeowners who have been on title within the last 12 months;
- the person or persons were not authorized to enter or remain;
- the declarant has demanded that the unauthorized person or persons vacate the premises but they have not done so;

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.

- the premises were not abandoned at the time the unauthorized person or persons entered;
- the premises were not open to members of the public at the time the unauthorized person or persons entered;
- the declarant understands that a person or persons removed from the premises may bring a cause of action against the declarant for any false statements made in this declaration, and that as a result of such action the declarant may be held liable for actual damages, costs, and reasonable attorneys' fees;
- the declarant agrees to indemnify and hold harmless law enforcement for its actions or omissions made in good faith pursuant to this declaration; and
- additional optional explanatory comments.

The law enforcement officer must provide the occupant with a reasonable opportunity to secure and present any credible evidence, which the officer must consider, showing that the person or persons are tenants, legal occupants, or the guests or invitees of tenants or legal occupants.

An owner or the owner's authorized agent may be guilty of false swearing if the owner or the owner's authorized agent falsely swears on the declaration. Upon the receipt of a declaration signed under penalty of perjury and containing all of the required information and any evidence provided by the occupant, a peace officer has the authority to:

- remove the person or persons from the premises, with or without arresting the person or persons; and
- order the person or persons to remain off the premises or be subject to arrest for criminal trespass.

Neither the peace officer nor their law enforcement agency are liable for actions or omissions made in good faith. All persons removed from premises on the basis of false statements made by a declarant have a cause of action to recover from the declarant for the full amount of damages, together with costs and reasonable attorneys' fees.

Votes on Final Passage:

Senate	49	0	
House	96	0	(House amended)
Senate			(Senate refused to concur)
House	96	0	(House receded/amended)
Senate	49	0	(Senate concurred)

Effective: July 23, 2017