

SENATE BILL REPORT

ESSB 5388

As Amended by House, 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: Law & Justice: 1/26/17, 2/08/17 [DPS].

Floor Activity:

Passed Senate: 2/27/17, 49-0.

Passed House: 4/06/17, 96-0; 4/20/17, 95-0; 4/20/17, 96-0.

Brief Summary of Engrossed First Substitute Bill

- Establishes a process for an owner or an agent to provide to law enforcement a declaration under penalty of perjury stating that persons have entered the premises unlawfully.
- Gives the occupant the opportunity to secure and provide contrary credible evidence which must be considered by the officer.
- Allows law enforcement to remove the persons, with or without arresting them, and to order them to remain off the premises or be subject to arrest for criminal trespass.
- Provides that law enforcement is not be held liable.
- Allows a person or persons removed from property on the basis of false statements in a declaration to pursue a cause of action against the declarant.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5388 be substituted therefor, and the substitute bill do pass.

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.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

Staff: Aldo Melchiori (786-7439)

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 of Engrossed First Substitute Bill: 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 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;
- 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.

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.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute: PRO: This simplifies the process for removing unauthorized people off of property. Property owners across the state are encountering this issue. Without a forced entry, these offenses are not being charged. Unlawful detainer actions take a long time to resolve. Squatters often present falsified leases. Owners have to go to court and incur those litigation costs for an action against someone with whom they have no contractual relationship.

Persons Testifying: PRO: Senator Zeiger, Prime Sponsor; Maynard Man, citizen; Rose Nelson, citizen; Michele Thomas, WA Low Income Housing; Michael Althaus, Attorney, Columbia Legal Services; Laura Parks, citizen; Bobbie Garver, citizen.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Clarifies 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 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.
- 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 that the declarant must declare the truth of all of these required elements

- Confirms terms used in the act to make them consistent with respect to the damages that a person may recover.