



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1129

~~transient occupants; property; removal~~
(NOW: unlawful occupants; property; removal)

Purpose

Allows a property owner or the property owner's authorized agent to request, from law enforcement, the immediate removal of a person who is unlawfully occupying a residential dwelling and outlines conditions that determine if a person is unlawfully occupying a residential dwelling. Deems that a person who fails or refuses to surrender possession of the property as directed by a law enforcement officer is committing *trespass*.

Background

A person commits *criminal trespass in the third degree* by knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by a law enforcement officer, the owner, any other person having lawful control over such property or a reasonable notice prohibiting entry. *Criminal trespass in the third degree* is classified as a class 3 misdemeanor and carries a maximum imprisonment sentence of 30 days and a maximum civil penalty of \$500 (A.R.S. §§ [13-707](#); [13-802](#); and [13-1502](#)).

Adverse possession occurs when there is an actual and visible appropriation of the land, commenced and continued under a claim of right that is inconsistent with and hostile to the claim of another. Peaceable possession occurs when a person has possession of any estate which is continuous, and not interrupted by an adverse action to recover the estate. A person who has a cause of action for recovery of any lands, tenements or hereditaments from a person having peaceable and adverse possession thereof, cultivating, using and enjoying such property, must commence an action within 10 years after the cause of action accrues, and not afterward (A.R.S. §§ [12-521](#) and [12-526](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Allows a property owner or the property owner's authorized agent to request from law enforcement the immediate removal of a person who is unlawfully occupying a residential dwelling.
2. Deems that a person unlawfully occupies a residential dwelling if all the following conditions are met:
 - a) the person who is requesting the removal of the occupant is the property owner or authorized agent of the property owner;

- b) the real property that is being occupied includes a residential dwelling;
 - c) the occupant has unlawfully entered and remains or continues to reside on the property owner's real property;
 - d) the property owner has directed the occupant to leave the real property through direct oral communication, or a written notice, which may be posted on the door of the dwelling unit or any other place on the property;
 - e) the occupant is not a current or former tenant pursuant to a written or verbal rental agreement that was authorized by the property owner;
 - f) the occupant is not an immediate family member of the property owner;
 - g) the occupant has not had a prior verbal or written agreement to cohabitate with the property owner in the residential dwelling; and
 - h) there is no pending litigation that is related to the real property between the property owner and the person who is sought to be removed.
3. Stipulates that, in order to request the immediate removal of a person who unlawfully occupies a residential dwelling, the property owner or the property owner's authorized agent must submit an affidavit to law enforcement that includes outlined information.
 4. Requires law enforcement, on receipt of the outlined sworn affidavit, to verify that the person submitting the outlined sworn affidavit is the record owner of the real property or the authorized agent of the property owner and appears otherwise entitled to relief.
 5. Requires law enforcement, after verifying the sworn affidavit, to direct the unlawful occupant to surrender possession of the real property.
 6. Requires law enforcement to serve a notice to immediately vacate on all the unlawful occupants and to put the owner in possession of the real property.
 7. Allows the outlined service to be accomplished by hand delivery of the notice to the occupant or by posting the notice on the front door or entrance of the residential dwelling.
 8. Requires law enforcement to also attempt to verify the identities of all persons who are occupying the residential dwelling and note the identities on the return of service.
 9. Deems that a person who fails or refuses to surrender possession of the property as directed by a law enforcement officer is committing *trespass*.
 10. Allows the property owner or an authorized agent of the property owner, after law enforcement serves the notice to immediately vacate, to request that law enforcement stand by to keep the peace while the property owner or authorized agent of the property owner changes the locks and removes the personal property of the unlawful occupant from the premises to or near the property line.
 11. Allows law enforcement, when such outlined request for law enforcement to stand by to keep the peace is made, to charge a reasonable hourly rate to be paid by the person requesting law enforcement presence.
 12. Stipulates that law enforcement is not liable to the occupant or any other party for loss, destruction or damage of property.

13. Stipulates that the property owner or an authorized agent of the property owner is not liable to an occupant or any other party for loss, destruction or damage to the personal property on the premises unless the removal was wrongful.
14. Allows the owner of the property or the property owner's authorized agent to presume that the unlawful occupant has abandoned personal belongings that remain at the residential dwelling after the unlawful occupant surrenders occupancy of the residential dwelling or is removed from the residential dwelling.
15. Allows a person who is wrongfully removed from a premises to file an action against the person who claims the right to possession of the real property.
16. Specifies that a person wrongfully removed may be entitled to restoration of possession of the real property as well as the recovery of actual costs and damages incurred, statutory damages equal to three times the fair market rent of the residential dwelling, court costs and attorney fees.
17. Requires the court to advance the cause on the calendar.
18. Specifies that a person who is wrongfully removed does not have a cause of action against the law enforcement officer or the law enforcement agency that employs the law enforcement officer absent a showing of bad faith by the law enforcement officer.
19. Specifies that the outlined provisions relating to the removal of an unlawful occupant of a residential dwelling do not limit the rights of the property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for *trespassing*, *vandalism*, *theft* or other crimes.
20. Defines *law enforcement*, *law enforcement officer*, *occupant* and *unlawful occupant*.
21. Contains a statement of legislative intent.
22. Becomes effective on the general effective date.

Amendments Adopted by the House of Representatives

1. Allows a property owner or the property owner's authorized agent to request from law enforcement the immediate removal of a person who is unlawfully occupying a residential dwelling.
2. Deems that a person unlawfully occupies a residential dwelling if outlined conditions are met.
3. Stipulates that, in order to request the immediate removal of a person who unlawfully occupies a residential dwelling, the property owner or the property owner's authorized agent must submit an outlined sworn affidavit to law enforcement.
4. Requires law enforcement, on receipt of the outlined sworn affidavit, to verify that the person submitting the outlined sworn affidavit is the record owner of the real property or the authorized agent of the property owner and appears otherwise entitled to relief.

5. Requires law enforcement, after verifying the sworn affidavit to, without delay, direct the unlawful occupant to surrender possession of the real property.
6. Requires law enforcement to serve a notice to immediately vacate on all the unlawful occupants and to put the owner in possession of the real property.
7. Allows the outlined service to be accomplished by hand delivery of the notice to the occupant or by posting the notice on the front door or entrance of the residential dwelling.
8. Requires law enforcement to also attempt to verify the identities of all persons who are occupying the residential dwelling and note the identities on the return of service.
9. Allows the property owner or an authorized agent of the property owner, after law enforcement serves the notice to immediately vacate, to request that law enforcement stand by to keep the peace while the property owner or authorized agent of the property owner changes the locks and removes the personal property of the unlawful occupant from the premises to or near the property line.
10. Allows law enforcement, when such outlined request for law enforcement to stand by to keep the peace is made, to charge a reasonable hourly rate to be paid by the person requesting law enforcement presence.
11. Stipulates that law enforcement is not liable to the occupant or any other party for loss, destruction or damage of property.
12. Stipulates that the property owner or an authorized agent of the property owner is not liable to an occupant or any other party for loss, destruction or damage to the personal property on the premises unless the removal was wrongful.
13. Allows the owner of the property or the property owner's authorized agent to presume that the unlawful occupant has abandoned personal belongings that remain at the residential dwelling after the unlawful occupant surrenders occupancy of the residential dwelling or is removed from the residential dwelling.
13. Allows a person who is wrongfully removed from a premises to file an action against the person who claims the right to possession of the real property.
14. Specifies that a person wrongfully removed may be entitled to restoration of possession of the real property as well as the recovery of actual costs and damages incurred, statutory damages equal to three times the fair market rent of the residential dwelling, court costs and attorney fees.
15. Requires the court to advance the cause on the calendar.
16. Specifies that a person who is wrongfully removed does not have a cause of action against the law enforcement officer or the law enforcement agency that employs the law enforcement officer absent a showing of bad faith by the law enforcement officer.

17. Specifies that the outlined provisions relating to the removal of an unlawful occupant of a residential dwelling do not limit the rights of the property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for *trespassing*, vandalism, *theft* or other crimes.

Senate Action

JUD 2/1/24 DP 5-2-0
3rd Read 2/15/24 18-8-4

House Action

JUD 3/6/24 DP 6-3-0-0
3rd Read 4/4/24 39-19-2

Prepared by Senate Research
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