



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
Second Regular Session

Senate: JUD DP 5-2-0-0 | 3rd Read DP 18-8-4-0-0

House: JUD DP 6-3-0-0 | 3rd Read DPA 39-19-2-0

Final Pass: 16-14-0-0

SB 1129: transient occupants; property; removal

Sponsor: Senator Rogers, LD 7

Vetoed

Overview

A measure that adds a new section of statute prescribing liability and remedies relating to persons who unlawfully occupy residential property.

History

The criminal code includes multiple forms of criminal trespass offenses, some of which might involve residential property. For example, a person can commit *criminal trespass in the third degree*, a class 3 misdemeanor, by knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by a law enforcement officer, the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry ([A.R.S. § 13-1502](#)). Additionally, one form of *criminal trespass in the first degree* involves a person who knowingly enters or remains unlawfully in or on a residential structure, which is a class 1 misdemeanor ([A.R.S. § 13-1504](#)).

The Arizona Residential Landlord and Tenant Act (ARLTA), codified at [A.R.S. title 33](#), chapter 10 ([A.R.S. §§ 33-1301](#) through [33-1381](#)), governs the relationship between tenants and landlords under residential leases in the state of Arizona, including prescribing their respective rights and obligations and providing remedies for noncompliance.

[A.R.S. title 12](#), chapter 8, article 4 ([A.R.S. §§ 12-1171](#) through [12-1183](#)), relating to forcible entry and detainer, generally provides remedies for obtaining possession of premises that are unlawfully withheld by a tenant. The chapter delineates the specific acts that constitute forcible entry and detainer and prescribes processes for an aggrieved party to obtain judicial recourse through a forcible entry or detainer action.

Provisions

1. Allows a property owner or the owner's agent to request from law enforcement the immediate removal of a person who is unlawfully occupying a residential dwelling and prescribes the conditions necessary in order to deem a person an unlawful occupant. (Sec. 1)
2. In order to request the removal of an unlawful occupant by law enforcement as described above, requires the property owner or owner's agent to submit to law enforcement a sworn affidavit and prescribes a form of this sworn affidavit. (Sec. 1)

<input type="checkbox"/> Prop 105 (45 votes) <input type="checkbox"/> Prop 108 (40 votes) <input checked="" type="checkbox"/> Emergency (40 votes) <input type="checkbox"/> Fiscal Note

3. After received the sworn affidavit, requires law enforcement to verify that the person submitting the affidavit is the record owner of the real property or the owner's agent and appears otherwise entitled to relief under this new section. (Sec. 1)
4. If the information is verified, requires law enforcement to without delay direct the unlawful occupant to surrender possession of the real property, subject to certain prescribed notice of process requirements, and additionally requires law enforcement to attempt to verify the identities of all person who are occupying the residential dwelling and note the identities on the return service. (Sec. 1)
5. After law enforcement serves the notice to vacate, permits the property owner or owner's agent to request that law enforcement stand by to keep the peace while the property owner or owner's agent changes the locks and removes the personal property of the unlawful occupancy from the premises to or near the property line. (Sec. 1)
6. When a request to stand by is made as prescribed above, authorizes law enforcement to charge a reasonable hourly rate, which the person making the request is responsible to pay. (Sec. 1)
7. Holds law enforcement immune from liability to the occupant or any other party for the loss, destruction or damage of property, and also holds the property owner or owner's agent immune from such liability unless the removal was wrongful as further described below. (Sec. 1)
8. States that the property owner or owner's agent may presume that the unlawful occupant has abandoned person belongings that remain at the residential dwelling after the unlawful occupant surrenders occupancy of the residential dwelling or is removed from the residential dwelling. (Sec. 1)
9. Deems an occupant who fails or refuses to surrender possession of real property as directed by law enforcement pursuant to this new section to be committing trespass. (Sec. 1)
10. 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 and to be restored to possession of the real property and recovery actual costs and damages incurred, statutory damages equal to three times the fair market rent of the residential dwelling, court costs and reasonable attorney fees. (Sec. 1)
11. Requires the court to advance the cause of action for wrongful action on the calendar and states that a person who is wrongfully removed does not have a cause of action against the law enforcement officer or the officer's employing agency absent a showing of bad faith by the law enforcement officer. (Sec. 1)
12. Specifies that this new section does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft or other crimes. (Sec. 1)
13. For the purposes of this new section:
 - a) defines *law enforcement* or *law enforcement officer* as the sheriff or a deputy sheriff of the county in which the real property is located or a city or town law enforcement officer;
 - b) specifies that *occupant* or *unlawful occupant* does not include a tenant under ARLTA. (Sec. 1)
14. States legislative intent. (Sec. 2)