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HOUSE BILL NO. 501

INTRODUCED BY G. OBLANDER, V. RICCI, S. KLAKKEN, E. BUTTREY, N. NICOL, J. ETCHART, B.

USHER, B. BARKER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE UNAUTHORIZED OCCUPANCY OF RESIDENTIAL DWELLINGS; PROVIDING A LIMITED ALTERNATIVE REMEDY FOR THE REMOVAL OF UNAUTHORIZED PERSONS; ALLOWING AN OWNER TO SUBMIT A COMPLAINT TO LOCAL LAW ENFORCEMENT; PROVIDING CONDITIONS THE OWNER MUST MEET BEFORE FILING A COMPLAINT; REQUESTING THAT LAW ENFORCEMENT PROVIDE NOTICE TO VACATE; PROVIDING A CAUSE OF ACTION FOR PERSONS WRONGFULLY REMOVED; PROVIDING THAT A PERSON WHO KNOWINGLY PRESENTS FALSE DOCUMENTS OR ADVERTISES FOR SALE REAL OR PERSONAL PROPERTY NOT LEGALLY OWNED BY THE PERSON COMMITS DECEPTIVE PRACTICE; PROVIDING DEFINITIONS; AND AMENDING SECTION 45-6-317, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions

apply:

- (1) "Owner" means the legal owner of a residential dwelling.
- (2) "Residential dwelling" means a dwelling or property, real or other type of property, that serves as a place of residence or other facilities held out for the occupancy of a person. The term includes real property where a dwelling or other residential facility is located.
- (3) "Unauthorized person" means a person who is not authorized or is no longer authorized to maintain a presence or residency in a residential dwelling.

NEW SECTION. **Section 2. Limited alternative remedy for removal of unauthorized persons.** (1)

An owner of a residential dwelling or the owner's authorized agent may request from local law enforcement in the county where the residential dwelling is located the immediate removal of a person unlawfully occupying or

1 possessing the owner's residential dwelling if all of the following conditions are met:

2 (a) the individual requesting the removal of an unauthorized person is the owner of the residential
3 dwelling or the owner's authorized agent;

4 (b) the unauthorized person for whom removal has been requested has unlawfully entered and
5 remains or continues to reside in the owner's residential dwelling;

6 (c) the owner or the owner's authorized agent has directed, in writing, the unauthorized person to
7 leave or vacate the residential dwelling, but the unauthorized person has not done so;

8 (d) there is no pending litigation related to the residential dwelling between the owner and any
9 known unauthorized person sought to be removed;

10 (e) the residential dwelling was not open to members of the public through permission by the
11 owner at the time the unauthorized person entered the residential dwelling;

12 (f) the unauthorized person is not a current or former tenant pursuant to a written rental or lease
13 agreement authorized by the owner or the owner's authorized agent; and

14 (g) the unauthorized person is not an immediate family member as defined in 15-61-102 of the
15 owner.

16 (2) To request the removal of an unauthorized person who is unlawfully occupying or possessing
17 the owner's residential dwelling, the owner or the owner's authorized agent shall submit to local law
18 enforcement where the residential dwelling is located a complaint for the removal of the unauthorized person.
19 The complaint must include that, at a minimum:

20 (a) the individual requesting the removal of an unauthorized person is the owner of the residential
21 dwelling or the owner's authorized agent and the date on which the residential dwelling was purchased by the
22 owner;

23 (b) the unauthorized person for whom removal has been requested has unlawfully entered and
24 remains or continues to reside in the owner's residential dwelling;

25 (c) the owner or the owner's authorized agent has directed, in writing, the unauthorized person to
26 leave or vacate the residential dwelling, but the unauthorized person has not done so;

27 (d) the unauthorized person is not an owner or co-owner of the residential dwelling and is not listed
28 on title to the property unless the unauthorized person has engaged in title fraud;

- 1 (e) there is no pending litigation related to the residential dwelling between the owner and any
2 known unauthorized person sought to be removed;
- 3 (f) the residential dwelling was not open to members of the public through permission by the
4 owner at the time the unauthorized person entered the residential dwelling;
- 5 (g) the unauthorized person is not a current or former tenant pursuant to a written rental or lease
6 agreement authorized by the owner or the owner's authorized agent;
- 7 (h) the unauthorized person is not an immediate family member of the owner;
- 8 (i) the owner acknowledges that an unauthorized person removed from the residential dwelling
9 under this section may bring a cause of action against the owner for any false statement made in the complaint
10 or for wrongfully using the procedure allowed in [sections 1 through 3], and that as a result of this action, the
11 owner may be held liable for actual damages, penalties, costs, and reasonable attorney fees;
- 12 (j) the owner is requesting local law enforcement to immediately remove the unauthorized person
13 from the residential dwelling;
- 14 (k) a copy of the owner's valid government-issued identification or a copy of documents
15 authorizing the owner's authorized agent to act on the owner's behalf is included; and
- 16 (l) the information contained in the complaint is true and correct and that the complaint is
17 submitted under penalty of perjury.
- 18 (3) (a) On receipt of a complaint under this section, local law enforcement shall verify that the
19 individual who submitted the complaint is the owner of record of the residential dwelling or the owner's
20 authorized agent and that the individual is entitled to relief under this section.
- 21 (b) If local law enforcement is unable to verify the owner of the residential dwelling or the owner's
22 authorized agent as required in subsection (3)(a), local law enforcement does not have an obligation to serve
23 notice and vacate the residential dwelling as provided in this section.
- 24 (4) (a) After verification of a complaint pursuant to subsection (3), local law enforcement shall,
25 without delay, serve a notice to vacate the premises within 24 hours on all unauthorized persons occupying the
26 residential dwelling. Service may be accomplished by hand delivery of the notice to the unauthorized person or
27 by posting the notice on the front door or entrance of the residential dwelling.
- 28 (b) Local law enforcement shall also attempt to verify the identities of all unauthorized persons

1 occupying the residential dwelling and shall document the identities on the return of service.

2 (c) If appropriate, local law enforcement may arrest an unauthorized person found in the
3 residential dwelling for trespass, criminal mischief, outstanding warrants, or any other legal cause.

4
5 **NEW SECTION. Section 3. Fees -- vacation of unauthorized persons -- cause of action for**
6 **wrongful removal -- liability.** (1) Local law enforcement may collect a fee of up to \$50 for implementing and
7 enforcing the provisions of [section 2].

8 (2) After local law enforcement serves the notice to immediately vacate pursuant to [section 2], the
9 owner of the residential dwelling or the owner's authorized agent may request that local law enforcement stand
10 by to keep the peace while the owner or the owner's authorized agent changes the locks and removes the
11 personal property of the unauthorized person from the premises to or near the property line. When a request is
12 made under this subsection, local law enforcement may charge a reasonable hourly rate that the owner shall
13 pay to local law enforcement.

14 (3) The owner or the owner's authorized agent may not be liable to an unauthorized person or any
15 other party for the loss of or destruction or damage to any removed personal property unless the removal was
16 wrongful or unless the personal property is wantonly lost, destroyed, or damaged.

17 (4) A person may bring a civil cause of action against an owner or the owner's authorized agent for
18 wrongful removal. A person harmed by a wrongful removal under [sections 1 through 3] may be restored to
19 possession of the residential dwelling and may recover:

- 20 (a) actual costs and damages incurred;
- 21 (b) statutory damages equal to the fair market value for renting the residential dwelling;
- 22 (c) court costs; and
- 23 (d) reasonable attorney fees.

24 (5) Nothing in [sections 1 through 3] may be construed to limit:

- 25 (a) the rights of an owner;
- 26 (b) the authority of local law enforcement or any other peace officer to arrest an unauthorized
27 person for illegal trespass, criminal mischief, burglary, theft, or any other criminal offense; or
- 28 (c) remedies available under Title 70, chapters 24, 25, or 33.

1

2 **Section 4.** Section 45-6-317, MCA, is amended to read:

3 **"45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when the
4 person purposely or knowingly:

5 (a) causes another, by deception or threat, to execute a document disposing of property or a
6 document by which a pecuniary obligation is incurred;

7 (b) makes or directs another to make a false or deceptive statement addressed to the public or any
8 person for the purpose of promoting or procuring the sale of property or services;

9 (c) makes or directs another to make a false or deceptive statement to any person respecting the
10 financial condition of the person making or directing another to make the statement for the purpose of procuring
11 a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan
12 or credit regarding that person's financial condition; ~~or~~

13 (d) obtains or attempts to obtain property, labor, or services by any of the following means:

14 (i) using a credit card that was issued to another without the other's consent;

15 (ii) using a credit card that has been revoked or canceled;

16 (iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

17 (iv) using the pretended number or description of a fictitious credit card; or

18 (v) using a credit card that has expired when the credit card clearly indicates the expiration date;

19 (e) presents to another person a false document purporting to be a valid lease agreement, deed,
20 or other instrument conveying real property rights; or

21 (f) lists or advertises residential real property for sale knowing that the purported seller has no
22 legal title or authority to sell the property, or who rents or leases the property to another person knowing that
23 the person renting or leasing the property has no lawful ownership or leasehold interest in the property.

24 (2) (a) A person convicted of the offense of deceptive practices if the value of any property, labor,
25 or services obtained or attempted to be obtained does not exceed \$1,500 in value shall be fined an amount not
26 to exceed \$500. A person convicted of a second offense shall be fined an amount not to exceed \$500 or be
27 imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or
28 subsequent offense shall be imprisoned in the county jail for a term of not less than 5 days or more than 1 year

1 and may be fined an amount not to exceed \$500.

2 (b) A person convicted of the offense of deceptive practices if the value of any property, labor, or
3 services obtained or attempted to be obtained exceeds \$1,500 in value and does not exceed \$5,000 in value
4 shall be fined an amount not to exceed \$1,500 or be imprisoned in the state prison for a term not to exceed 3
5 years, or both. A person convicted of a second offense shall be fined an amount not to exceed \$1,500 or be
6 imprisoned in the state prison for a term not to exceed 5 years, or both. A person convicted of a third or
7 subsequent offense shall be imprisoned in the state prison for a term of not less than 2 years or more than 5
8 years and may be fined an amount not to exceed \$5,000.

9 (c) A person convicted of the offense of deceptive practices if the value of any property, labor, or
10 services obtained or attempted to be obtained exceeds \$5,000 in value or as part of a common scheme shall
11 be fined an amount not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10
12 years, or both."

13
14 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 3] are intended to be
15 codified as an integral part of Title 45, chapter 6, part 2, and the provisions of Title 45, chapter 6, part 2, apply
16 to [sections 1 through 3].

17 - END -