

SENATE BILL NO. 101

INTRODUCED BY B. BEARD, M. VINTON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SQUATTING; CREATING THE OFFENSE OF UNLAWFUL SQUATTING; CREATING THE OFFENSE OF FRAUDULENT SALE OR LEASE OF PROPERTY; PROVIDING A PROCESS FOR REMOVAL OF THE PERSON FROM THE PROPERTY; ALLOWING A FEE FOR SERVICE FOR LAW ENFORCEMENT; ALLOWING A CIVIL CAUSE OF ACTION FOR WRONGFUL REMOVAL; PROVIDING INDEMNITY FOR GOOD FAITH CONDUCT OF LAW ENFORCEMENT; AND AMENDING ~~SECTION SECTIONS 70-24-104 AND~~ 70-24-113, MCA."

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

NEW SECTION. Section 1. Unlawful squatting. (1) A person commits the offense of unlawful squatting when the person knowingly, without the consent of the owner, rightful occupant, or an authorized representative of the owner:

- (a) enters the premises of another; and
- (b) resides on the premises for any period of time.

(2) A person convicted of unlawful squatting is guilty of a misdemeanor. In addition to the penalties provided in 46-18-212, the person must be ordered to make restitution in an amount equal to the fair market value rent for the duration of the party's occupancy of the premises.

(3) A person who knowingly presents a false document purporting to convey authorization to enter and remain on the premises commits the offense of forgery and is subject to the penalties provided in 45-6-325.

(4) A person who commits the offense of unlawful squatting and intentionally damages the property commits the offense of criminal mischief and is subject to the penalties provided in 45-6-101.

NEW SECTION. Section 2. Fraudulent sale or lease of property. (1) A person who knowingly lists or advertises residential or commercial property for sale or rent without legal title or authority commits the

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1 offense of fraudulent sale or lease of property.

2 (2) A person convicted of the offense of fraudulent sale or lease of property shall be fined at least
3 \$1,000 or be imprisoned in the county jail for a term of not less than 6 months, or both.

4
5 **NEW SECTION. Section 3. Limited alternative remedy to remove unauthorized persons from**
6 **real property -- affidavit.** (1) A property owner or an authorized agent of a property owner may request from
7 the sheriff or sheriff's office of the county in which the real property is located the immediate removal of a
8 person or persons unlawfully occupying residential or commercial property pursuant to this section if all of the
9 following conditions are met:

10 (a) The requesting person is the property owner or the authorized agent of the property owner.

11 (b) An unauthorized person or trespasser has unlawfully entered and remains or continues to
12 reside on the property owner's property.

13 (c) The real property was not open to members of the public at the time the unauthorized person
14 or trespasser entered, or the unauthorized person or trespasser remained in or on the real property after the
15 property was closed to the public.

16 (d) The property owner has directed the unauthorized person or trespasser to leave the property.

17 (e) The unauthorized person or trespasser is not a current or former tenant pursuant to a written or
18 oral rental agreement authorized by the property owner or the authorized agent of the property owner.

19 (f) The unauthorized person or trespasser is not an immediate family member of the property
20 owner.

21 (g) There is no pending litigation that has been filed in good faith and is not subject to dismissal
22 related to the real property between the property owner and the unauthorized person or trespasser.

23 (2) To request the removal of an unlawful person or trespasser from residential or commercial
24 property, the property owner or an authorized agent of the property owner shall present to the local sheriff or
25 sheriff's office an affidavit attesting to the ownership or the authorization and requesting the removal. The
26 affidavit must be in substantially the following form:

27 **AFFIDAVIT TO REMOVE PERSONS UNLAWFULLY OCCUPYING REAL PROPERTY**

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1 I, the owner or authorized agent of the owner of the real property located at _____,
2 declare under the penalty of perjury that (owner or authorized agent shall initial each line):
3 1.____ I am the owner of the real property or the authorized agent of the owner of the real property.
4 2.____ The owner of the real property purchased it on _____.
5 3.____ An unauthorized person or trespasser has unlawfully entered and is remaining or residing
6 unlawfully on the real property.
7 4.____ The real property was not open to members of the public at the time the unauthorized person
8 or trespasser entered, or the unauthorized person or trespasser remained in or on the real property after the
9 property was closed to the public.
10 5.____ I have directed the unauthorized person or trespasser to leave the real property, but the
11 unauthorized person or trespasser has not done so.
12 6.____ The unauthorized person or trespasser is not a current or former tenant pursuant to any valid
13 lease authorized by the property owner or the authorized agent of the property owner, and any lease that may
14 be produced by the unauthorized person or trespasser is fraudulent.
15 7.____ The unauthorized person or trespasser sought to be removed is not an owner or a co-owner of
16 the property and has not been listed on the title to the property unless the unauthorized person or trespasser
17 has engaged in title fraud.
18 8.____ The unauthorized person or trespasser is not an immediate family member of the property
19 owner.
20 9.____ There is no pending litigation that has been filed in good faith and is not subject to dismissal
21 related to the real property between the property owner and the unauthorized person or trespasser.
22 10.____ I understand that a person or persons removed from the property pursuant to this procedure
23 may bring a cause of action against me for any false statements made in this affidavit or for wrongfully using
24 this procedure. As a result of either of these actions, I may be held liable for actual damages, penalties, costs,
25 and reasonable attorney fees.
26 11.____ I am requesting the sheriff to immediately remove the unauthorized person or trespasser from
27 the real property.

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12.____ A copy of my valid government-issued identification is attached or will be presented, or I am an agent of the property owner and documents evidencing my authority to act on the property owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS AFFIDAVIT AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS AFFIDAVIT ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED UNDER SECTION 45-7-201, Montana Code Annotated.

(Signature of Owner or Authorized Agent)

(3) On receipt of the affidavit, the sheriff or officer shall verify that the person submitting the affidavit is the record owner of the real property or the authorized agent of the owner. If the affidavit is verified, the sheriff or officer shall, without delay, deliver notice to the unauthorized person or trespasser to immediately vacate the real property. Notice may be delivered by personal delivery to the unauthorized person or trespasser or by posting notice on the real property. If appropriate, the sheriff may arrest any person found in or on the real property for trespass, outstanding warrants, or any other legal cause. If any unauthorized person or trespasser remains on the real property after the service of the notice to immediately vacate, the sheriff or officer may remove the unauthorized person or trespasser from the premises or arrest the unauthorized person or trespasser for criminal trespass pursuant to 45-6-203 or for criminal mischief pursuant to 45-6-101.

(4) The sheriff or officer is entitled to the same fee for the service of the notice to immediately vacate as if the sheriff or officer were serving a summons. In conjunction with the service of the notice to immediately vacate by the sheriff or officer, the property owner or authorized agent may request that the sheriff or officer stand by to keep the peace while the property owner or agent changes the locks and removes the personal property of the unauthorized person or trespasser from the property to or near the property line. When this type of request is made, the sheriff or officer may charge a reasonable hourly rate, and the person requesting the sheriff or officer to stand by is responsible for paying the reasonable hourly rate. The sheriff or officer is not liable to the unauthorized person or trespasser or to any other party for loss, destruction, or damage of property. The property owner or the authorized agent of the property owner is not liable to the

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unlawful occupant or any other party for loss, destruction, or damage to the personal property of an unauthorized person or trespasser unless the removal was wrongful.

(5) A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this section may be restored to possession of the real property and may recover actual costs and damages incurred, court costs, and reasonable attorney fees. A property owner or authorized agent who knowingly provides false information in an affidavit under this section shall indemnify the sheriff or officer for any damages awarded against the sheriff or officer for the good faith conduct of the sheriff or officer based on the request.

(6) This 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.

(7) The remedies provided in this section do not limit, and are in addition to, the provisions of 70-24-113.

Section 4. Section 70-24-104, MCA, is amended to read:

"70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana university system and other postsecondary institutions;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for

commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; ~~and~~

(8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges, along with the use of the dwelling unit; and

(9) occupancy by an unauthorized person or trespasser except as set forth in 70-24-113."

Section 5. Section 70-24-113, MCA, is amended to read:

"70-24-113. Removal of unauthorized person or trespasser -- indemnification for providing false information to law enforcement. (1) An unauthorized person or trespasser has no legal right to occupy, enter, or trespass on a premises. A person who cannot produce authorization allowing the person to occupy a premises is an unauthorized person or trespasser for the purpose of this section and may be removed from the premises immediately by law enforcement.

(2) For the purposes of this section, authorization includes:

(a) a written rental agreement entitling the person to occupy the premises;

(b) written or verbal authorization from the landlord; or

(c) written or verbal authorization from a tenant if the person is a guest of the tenant.

(3) For the purposes of this section, verbal authorization is valid only if it is verified by the individual or entity entitled to give it under subsection (2)(b) or (2)(c).

(4) A property owner or authorized agent may request law enforcement to remove an unauthorized person or trespasser pursuant to this section.

(5) A law enforcement agency is entitled to ~~a the same~~ fee for service ~~pursuant to for~~ a request under subsection (4) ~~as if the law enforcement officer were serving a summons~~. The property owner may request law enforcement to stand by to keep the peace while changing locks and removing personal property belonging to the unlawful occupant.

(6) A property owner or authorized agent who knowingly provides false information in a request under subsection (4) shall indemnify the law enforcement agency and its agents for any damages awarded

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1 against the law enforcement agency or its agents for their good faith conduct based on the request.

2 (7) A civil cause of action for wrongful removal is allowed, with remedies including a restoration of
3 possession, actual costs, damages, and attorney fees."

4
5 NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be
6 codified as an integral part of Title 45, chapter 6, part 2, and the provisions of Title 45, chapter 6, part 2, apply
7 to [sections 1 and 2].

8 (2) [Section 3] is intended to be codified as an integral part of Title 70, chapter 27, part 1, and the
9 provisions of Title 70, chapter 27, part 1, apply to [section 3].

10 - END -