

SENATE BILL NO. 1732

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

7120S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 534.602, 534.604, and 569.200, RSMo, and to enact in lieu thereof three new sections relating to the unlawful use of real property, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 534.602, 534.604, and 569.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 534.602, 534.604, and 569.200, to read as follows:

534.602. 1. For purposes of this section, the following terms mean:

(1) **"Authorized agent", includes but is not limited to executors, administrators, trustees, and verified heirs;**

(2) "Petitioner", the property owner, or an authorized agent of a property owner, of **private noncommercial** property [containing a residential dwelling] who has filed a verified petition under the provisions of this section;

[(2)] (3) "Respondent", the person or persons unlawfully occupying **private noncommercial** property [containing a residential dwelling], against whom a verified petition has been filed;

[(3)] (4) "Unlawful occupant" or "unlawful occupants", any person or persons who detain, occupy, or trespass on **private noncommercial** property [containing a residential dwelling] without the permission of the property owner, who

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 otherwise have no legal right to occupy the property under
18 state law, and who are not afforded any protections provided
19 to a tenant under state law.

20 2. Notwithstanding any provision of this chapter to
21 the contrary, a property owner or his or her authorized
22 agent may seek relief for the removal of a person or persons
23 unlawfully occupying **private noncommercial** property
24 [containing a residential dwelling] under this section by
25 filing a verified petition in the county or city not within
26 a county where the property is located.

27 3. Except as provided in subsection 6 of this section,
28 clerks of the court under the supervision of a circuit clerk
29 shall explain to the property owner or his or her authorized
30 agent not represented by counsel the procedures for filing
31 all forms and pleadings necessary for the presentation of
32 his or her petition to the court. Notice of the fact that
33 clerks will provide such assistance shall be conspicuously
34 posted in the clerks' offices. The location of the office
35 where a petition can be filed shall be conspicuously posted
36 in the court building. The performance of duties prescribed
37 in this section shall not constitute the practice of law as
38 defined in section 484.010. All duties of the clerk
39 prescribed in this section shall be performed without cost
40 to the litigants. The supreme court may promulgate rules as
41 necessary to govern conduct of court clerks under this
42 section and shall provide forms for petitions and written
43 instructions on filling out all forms and pleadings
44 necessary for the presentation of the petition to the court.

45 4. Filing fees and court costs under this section
46 shall be the same as filing fees and court costs required
47 when filing a claim in associate circuit court.

48 5. (1) Upon the filing of a verified petition under
49 this section, and for good cause shown in the verified
50 petition, the court shall immediately issue an ex parte
51 order to remove the respondent. The assertion of sufficient
52 evidence that the person or persons are unlawfully occupying
53 **private noncommercial** property [containing a residential
54 dwelling] shall constitute good cause for purposes of this
55 section. The verified petition shall set forth the
56 following:

57 (a) The petitioner is the property owner or authorized
58 agent of the property owner;

59 (b) [The property that is being occupied includes a
60 residential dwelling;

61 (c) An unlawful occupant or unlawful occupants have
62 entered and remain or continue to reside on the property
63 owner's property;

64 [(d)] (c) The real property was not open to members of
65 the public at the time the unlawful occupant or unlawful
66 occupants entered;

67 [(e)] (d) The unlawful occupant or unlawful occupants
68 are occupying the property without the permission of the
69 property owner and are not guests of the property owner nor
70 otherwise authorized to make use of the property;

71 [(f)] (e) The property owner has directed the unlawful
72 occupant or unlawful occupants to leave the property and the
73 unlawful occupant or unlawful occupants have failed or
74 refused to vacate the [premises] **property**;

75 [(g)] (f) The property has not been leased to any
76 person for three consecutive months, and the unlawful
77 occupant or unlawful occupants are not current or former
78 tenants of the property pursuant to any agreement with the
79 property owner;

80 [(h)] (g) The unlawful occupant or unlawful occupants
81 are not immediate family members of the property owner; and

82 [(i)] (h) There is no pending litigation related to
83 the real property between the property owner and any known
84 unlawful occupant or unlawful occupants.

85 (2) An ex parte order **entered by the court** to have the
86 unlawful occupant or unlawful occupants removed from **private**
87 **noncommercial** property [containing a residential dwelling
88 entered by the court] shall take effect when entered and
89 shall remain in effect until there is valid service of
90 process and a hearing is held on the motion. Such hearing
91 shall be held within forty-eight hours of filing the
92 verified petition unless good cause is shown for a delay.
93 The court shall deny the ex parte order and dismiss the
94 petition if the petitioner is not authorized to seek relief
95 or does not show good cause.

96 (3) Failure to serve an ex parte order on the
97 respondent shall not affect the validity or enforceability
98 of such order.

99 6. Any ex parte order granted under this section shall
100 be to protect the petitioner from trespass by an unlawful
101 occupant or unlawful occupants and may include such terms as
102 the court reasonably deems necessary to ensure the
103 petitioner's safety including, but not limited to:

104 (1) Restraining the respondent from committing or
105 threatening to commit any act of violence, molestation,
106 stalking, assault, or disturbing the peace of the petitioner
107 or the petitioner's property, including violence against a
108 pet;

109 (2) Restraining the respondent from entering the
110 petitioner's [premises] **property** or dwelling unit or coming

111 within a certain proximity of the petitioner's [premises]
112 **property** or dwelling unit; and

113 (3) Restraining the respondent from communicating with
114 the petitioner in any manner or through any medium.

115 7. When the court has, after a hearing on the
116 petition, issued an order for relief to permanently exclude
117 an unlawful occupant or unlawful occupants from the
118 petitioner's property, it may additionally:

119 (1) Permanently restrain the respondent from
120 committing or threatening to commit any act of violence,
121 molestation, stalking, assault, or disturbing the peace of
122 the petitioner or the petitioner's property, including
123 violence against a pet;

124 (2) Permanently restrain the respondent from entering
125 the petitioner's [premises] **property** or dwelling unit or
126 coming within a certain proximity of the petitioner's
127 [premises] **property** or dwelling unit;

128 (3) Permanently restrain the respondent from
129 communicating with the petitioner in any manner or through
130 any medium;

131 (4) Permanently expel the respondent from occupying
132 the petitioner's [premises] **property** or dwelling unit;

133 (5) Permanently expel the respondent's personal
134 property from the petitioner's [premises] **property** or
135 dwelling unit;

136 (6) Order the respondent to pay all costs of repair to
137 the petitioner's [premises] **property** or dwelling unit
138 relating to damages caused by the respondent;

139 (7) Order the respondent to pay all costs associated
140 with service of any ex parte order authorized against the
141 respondent; or

142 (8) Order the respondent to pay court costs.

143 8. A verified petition seeking an ex parte order under
144 this section shall contain allegations relating to those
145 orders and shall pray for the orders desired.

146 9. Once the court grants an order under this section,
147 the sheriff of the county or city not within a county in
148 which the property is located shall enforce such order by
149 removing the respondent from the property.

150 10. If appropriate, the sheriff may arrest any person
151 found **[in the dwelling] on the property** for trespass,
152 outstanding warrants, or any other legal cause.

153 11. The sheriff is entitled to the same fee for the
154 service of the ex parte order granted under this section as
155 if the sheriff were serving a writ of possession under
156 section 57.280. After the sheriff serves the order, the
157 property owner or authorized agent may request that the
158 sheriff stand by to keep the peace while the property owner
159 or agent of the property owner changes the locks **if the**
160 **property contains a residential dwelling** and removes the
161 **[personal] property, including personal property,** of the
162 unlawful occupants from the premises to or near the property
163 line. When such a request is made, the sheriff may charge a
164 reasonable hourly rate, and the person requesting the
165 sheriff to stand by and keep the peace is responsible for
166 paying the reasonable hourly rate set by the sheriff. The
167 sheriff shall not be liable to the unlawful occupant or
168 occupants or to any other party for the loss, destruction,
169 or damage of property. The property owner or his or her
170 authorized agent shall not be liable to an unlawful occupant
171 or any other party for the loss, destruction, or damage to
172 the **[personal] property, including personal property,** unless
173 the removal was wrongful.

174 12. A person may bring a civil cause of action if the
175 person was removed from the property under this section
176 without just cause. Such person may seek restored
177 possession to the real property, actual damages to
178 [personal] property, **including personal property** when
179 [personal] **such** property was removed, statutory damages in
180 the amount of one thousand dollars, and reimbursement of
181 court costs. Any damages authorized under this subsection
182 shall be offset by any damages to the real property
183 inflicted by the person who was removed from the real
184 property without just cause. Such damages to real property
185 shall be proven by the property owner. Awards of actual
186 damages shall not exceed the value of the damaged [personal]
187 property.

188 13. The provisions of this section do not limit the
189 rights of a property owner or limit the authority of a law
190 enforcement officer to arrest an unlawful occupant for
191 trespassing, vandalism, theft, or other crimes.

192 14. All proceedings under this section are in addition
193 to any other available civil or criminal remedies, unless
194 otherwise specifically provided in this section.

195 15. (1) The court shall retain jurisdiction over the
196 ex parte order or full order of protection issued under this
197 section for its entire duration. The court may schedule
198 compliance review hearings to monitor the respondent's
199 compliance with the order.

200 (2) The terms of the ex parte order or full order of
201 protection issued under this section are enforceable by all
202 remedies available at law for the enforcement of a judgment,
203 and the court may punish a respondent who willfully violates
204 the ex parte order to the same extent as provided by law for

205 contempt of the court in any other suit or proceeding
206 cognizable by the court.

534.604. 1. When a law enforcement officer has
2 probable cause to believe that a party, against whom an ex
3 parte order under section 534.602 has been entered and who
4 has notice of such order entered, has committed an act in
5 violation of such order, the law enforcement officer shall
6 arrest the offending party-respondent regardless of whether
7 the violation occurred in the presence of the arresting law
8 enforcement officer.

9 2. In an arrest in which a law enforcement officer
10 acted in good faith reliance on this section, the arresting
11 and assisting law enforcement officers and **[their] the**
12 **arresting and assisting law enforcement officer's** employing
13 entities and superiors shall be immune from liability in any
14 civil action alleging false arrest, false imprisonment, or
15 malicious prosecution.

16 3. A violation of the terms and conditions of an ex
17 parte order under section 534.602 shall be a class A
18 misdemeanor. For the purposes of this subsection, in
19 addition to the notice provided by actual service of the
20 order, a party is deemed to have notice of an ex parte order
21 under section 534.602 if:

22 (1) The law enforcement officer responding to a call
23 of a violation of an ex parte order under section 534.602
24 presented a copy of the ex parte order to the respondent; or

25 (2) Notice is given by actual communication to the
26 respondent in a manner reasonably likely to advise the
27 respondent.

28 4. Nothing in this section shall be interpreted as
29 creating a civil cause of action for damages to enforce the
30 provisions set forth in this section.

569.200. 1. A person commits the offense of criminal
2 mischief if [he or she] **the person** unlawfully detains,
3 occupies, or trespasses upon a [residential dwelling]
4 **private noncommercial property.**

5 2. The offense of criminal mischief is a class A
6 misdemeanor.

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