

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2099

103RD GENERAL ASSEMBLY

3873H.04P

JOSEPH ENGLER, Chief Clerk

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Section A. Sections 534.602, 534.604, and 569.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 534.602, 534.604, and 569.200, to read as follows: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 otherwise have no legal right to occupy the property under state law, and who are not afforded any protections provided to a tenant under state law.

2. Notwithstanding any provision of this chapter to the contrary, a property owner or his or her authorized agent may seek relief for the removal of a person or persons unlawfully

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 occupying **private noncommercial** property [~~containing a residential dwelling~~] under this
18 section by filing a verified petition in the county or city not within a county where the
19 property is located.

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

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

34 5. (1) Upon the filing of a verified petition under this section, and for good cause
35 shown in the verified petition, the court shall immediately issue an ex parte order to remove
36 the respondent. The assertion of sufficient evidence that the person or persons are unlawfully
37 occupying **private noncommercial** property [~~containing a residential dwelling~~] shall
38 constitute good cause for purposes of this section. The verified petition shall set forth the
39 following:

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

41 (b) [~~The property that is being occupied includes a residential dwelling;~~

42 ~~(c)~~ (e) An unlawful occupant or unlawful occupants have entered and remain or
43 continue to reside on the property owner's property;

44 ~~(d)~~ (c) The real property was not open to members of the public at the time the
45 unlawful occupant or unlawful occupants entered;

46 ~~(e)~~ (d) The unlawful occupant or unlawful occupants are occupying the property
47 without the permission of the property owner and are not guests of the property owner nor
48 otherwise authorized to make use of the property;

49 ~~(f)~~ (e) The property owner has directed the unlawful occupant or unlawful
50 occupants to leave the property and the unlawful occupant or unlawful occupants have failed
51 or refused to vacate the [~~premises~~] **property**;

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

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

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

59 (2) An ex parte order **entered by the court** to have the unlawful occupant or unlawful
60 occupants removed from **private noncommercial** property ~~[containing a residential dwelling~~
61 ~~entered by the court]~~ shall take effect when entered and shall remain in effect until there is
62 valid service of process and a hearing is held on the motion. Such hearing shall be held
63 within forty-eight hours of filing the verified petition unless good cause is shown for a delay.
64 The court shall deny the ex parte order and dismiss the petition if the petitioner is not
65 authorized to seek relief or does not show good cause.

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

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

72 (1) Restraining the respondent from committing or threatening to commit any act of
73 violence, molestation, stalking, assault, or disturbing the peace of the petitioner or the
74 petitioner's property, including violence against a pet;

75 (2) Restraining the respondent from entering the petitioner's ~~[premises]~~ **property** or
76 dwelling unit or coming within a certain proximity of the petitioner's ~~[premises]~~ **property** or
77 dwelling unit; and

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

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

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

86 (2) Permanently restrain the respondent from entering the petitioner's ~~[premises]~~
87 **property** or dwelling unit or coming within a certain proximity of the petitioner's ~~[premises]~~
88 **property** or dwelling unit;

89 (3) Permanently restrain the respondent from communicating with the petitioner in
90 any manner or through any medium;

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

93 (5) Permanently expel the respondent's personal property from the petitioner's
94 [~~premises~~] **property** or dwelling unit;

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

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

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

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

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

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

107 11. The sheriff is entitled to the same fee for the service of the ex parte order granted
108 under this section as if the sheriff were serving a writ of possession under section 57.280.
109 After the sheriff serves the order, the property owner or authorized agent may request that the
110 sheriff stand by to keep the peace while the property owner or agent of the property owner
111 changes the locks **if the property contains a residential dwelling** and removes the
112 [~~personal~~] property, **including personal property**, of the unlawful occupants from the
113 premises to or near the property line. When such a request is made, the sheriff may charge a
114 reasonable hourly rate, and the person requesting the sheriff to stand by and keep the peace is
115 responsible for paying the reasonable hourly rate set by the sheriff. The sheriff shall not be
116 liable to the unlawful occupant or occupants or to any other party for the loss, destruction, or
117 damage of property. The property owner or his or her authorized agent shall not be liable to
118 an unlawful occupant or any other party for the loss, destruction, or damage to the [~~personal~~]
119 property, **including personal property**, unless the removal was wrongful.

120 12. A person may bring a civil cause of action if the person was removed from the
121 property under this section without just cause. Such person may seek restored possession to
122 the real property, actual damages to [~~personal~~] property, **including personal property** when
123 [~~personal~~] **such** property was removed, statutory damages in the amount of one thousand
124 dollars, and reimbursement of court costs. Any damages authorized under this subsection
125 shall be offset by any damages to the real property inflicted by the person who was removed

126 from the real property without just cause. Such damages to real property shall be proven by
127 the property owner. Awards of actual damages shall not exceed the value of the damaged
128 [~~personal~~] property.

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

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

134 15. (1) The court shall retain jurisdiction over the ex parte order or full order of
135 protection issued under this section for its entire duration. The court may schedule
136 compliance review hearings to monitor the respondent's compliance with the order.

137 (2) The terms of the ex parte order or full order of protection issued under this section
138 are enforceable by all remedies available at law for the enforcement of a judgment, and the
139 court may punish a respondent who willfully violates the ex parte order to the same extent as
140 provided by law for contempt of the court in any other suit or proceeding cognizable by the
141 court.

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

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

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

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

16 (2) Notice is given by actual communication to the respondent in a manner
17 reasonably likely to advise the respondent.

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

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

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

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