

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2517

103RD GENERAL ASSEMBLY

5859H.02P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 534.602, 534.604, and 569.200, RSMo, and to enact in lieu thereof four new sections relating to certain new sections relating to 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Section A. Sections 534.602, 534.604, and 569.200, RSMo, are repealed and four
2 new sections enacted in lieu thereof, to be known as sections 407.3600, 534.602, 534.604,
3 and 569.200, to read as follows:

407.3600. 1. For purposes of this section, the following terms mean:

2 **(1) "Residential real property", real property that is improved by a building or**
3 **other structure that has one to four dwelling units;**

4 **(2) "Wholesaler", a person or entity that for a fee, commission, or other valuable**
5 **consideration, or with the intention, expectation, or upon the promise of receiving or**
6 **collecting a fee, commission, or other valuable consideration, enters into a purchase**
7 **contract for residential real property either:**

8 **(a) As the grantee, and assigns or novates the contract to another person or**
9 **entity; or**

10 **(b) As the grantor, and, without holding legal title to the real property, assigns or**
11 **novates the contract to another person or entity.**

12

13 **"Wholesaler" shall not include:**

14 **a. An individual who assigns or novates the contract to another individual who is**
15 **related by blood; or**

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.

16 **b. A person or entity that assigns or novates the contract to a parent, affiliate,**
17 **subsidiary, or affiliated group under common control with the person or entity.**

18 **2. Not less than fourteen calendar days before entering into a contract that**
19 **transfers an interest in residential real property, a wholesaler acting as a grantee or a**
20 **wholesaler's representative, if applicable, shall provide to the record owner a written**
21 **disclosure statement, separate from the purchase contract or agreement, printed in**
22 **boldface type font size not less than twelve points, that contains the following disclosure:**

23 **"Missouri law requires a wholesaler acting as a grantee, before**
24 **entering into a contract or agreement that conveys an interest in**
25 **residential real property, to provide certain information to the record**
26 **owner in a conspicuous manner printed in boldface type font size not**
27 **less than twelve points. Failure by a wholesaler to present or**
28 **complete this form shall be considered an unlawful and unfair**
29 **practice under the Missouri Merchandising Practices Act. Any**
30 **person who enters into an agreement that conveys an interest in**
31 **residential real property to a wholesaler acting as a grantee without**
32 **receiving this disclosure has a cause of action against the wholesaler.**
33 **A wholesaler acting as a grantee is prohibited from entering into a**
34 **binding contract to acquire an interest in residential real property**
35 **unless this statement is signed and dated by the record owner of the**
36 **property.**

37 **The owner acknowledges that the person presenting this document is**
38 **a wholesaler, as defined in section 407.3600 of the Revised Statutes of**
39 **Missouri, and that the owner is advised to seek legal advice before**
40 **entering into any agreement or contract with the wholesaler. A**
41 **wholesaler is acting on the wholesaler's own behalf and does not**
42 **represent the owner in this transaction. A wholesaler enters**
43 **assignable contracts with owners and seeks to sell or assign the**
44 **wholesaler's interest for a profit. The wholesaler may assign the**
45 **wholesaler's interest in the purchase contract to a third party without**
46 **the owner's consent before closing. The wholesaler may charge a fee**
47 **to the third-party buyer separately for profit. The agreed purchase**
48 **price between the owner and wholesaler may be below market value**
49 **and is conveyed voluntarily.**

50 **The owner acknowledges disclosure of the information provided in**
51 **this form by signing and dating below:**

52 _____ (Property owner signature) ____ (date)

53 _____ (Wholesaler signature) ____ (date)."

54 **3. A wholesaler acting as the grantee shall not enter into a binding contract that**
 55 **transfers an interest in residential real property until both the wholesaler and the record**
 56 **owner of the property sign and date the disclosure statement required under subsection**
 57 **2 of this section.**

58 **4. If a wholesaler acting as the grantee fails to make the disclosures required**
 59 **under subsection 2 of this section before entering into a binding contract that transfers**
 60 **an interest in residential real property, the record owner of the residential real property**
 61 **may cancel the contract at any time prior to the close of escrow without penalty and the**
 62 **escrow or closing agent shall disburse any earnest money paid by the wholesaler to the**
 63 **record owner within thirty days after such cancellation.**

64 **5. Provisions of this section shall not be modified or waived by any oral or**
 65 **written agreement. Any portion of an agreement that is executed, modified, or extended**
 66 **after the effective date of this section that modifies or waives any provision of this**
 67 **section shall be null and void.**

68 **6. Any violation of this section shall be considered an unlawful practice under**
 69 **the Missouri merchandising practices act under this chapter. A party that enters into an**
 70 **agreement without receiving the disclosures required under subsection 2 of this section**
 71 **may bring a private action against a wholesaler.**

72 **7. The attorney general shall have the authority to enforce the provisions of this**
 73 **section. If the attorney general finds that a violation occurred, the attorney general may**
 74 **commence a civil action in a court of competent jurisdiction. If the court finds that a**
 75 **violation occurred, the court may grant damages, injunctive relief, attorney's fees, and**
 76 **any such other relief the court finds appropriate.**

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

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

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

7 [~~2~~] (3) "Respondent", the person or persons unlawfully occupying **private**
 8 **noncommercial** property [~~containing a residential dwelling~~], against whom a verified
 9 petition has been filed;

10 [~~3~~] (4) "Unlawful occupant" or "unlawful occupants", any person or persons who
 11 detain, occupy, or trespass on **private noncommercial** property [~~containing a residential~~
 12 ~~dwelling~~] without the permission of the property owner, who otherwise have no legal right to

13 occupy the property under state law, and who are not afforded any protections provided to a
14 tenant under state law.

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