

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 168

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 occupancy of 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Section A. Sections 534.602, 534.604, and 569.200, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 534.602, 534.604, and 569.200, to read as follows: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) "Commercial vacant building", a building used for commercial purposes, not including buildings containing a single or multifamily residential dwelling, where less than thirty percent of the total square footage of the building is unoccupied and not used for the intended commercial purpose of the building;

(2) "Petitioner", the property owner, or an authorized agent of a property owner, of property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, who has filed a verified petition under the provisions of this section;

~~[(2)]~~ (3) "Respondent", the person or persons unlawfully occupying property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, 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 property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, 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;

(5) "Vacant land", any parcel or combination of parcels of real property not used for industrial, commercial, or residential buildings. The term "vacant land" shall not include agricultural and horticultural property, as such term is defined in section 137.016.

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 occupying property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, under this section by filing a verified petition in the county or city not within a county where the property is located.

3. Except as provided in subsection 6 of this section, clerks of the court under the supervision of a circuit clerk shall explain to the property owner or his or her authorized agent not represented by counsel the procedures for filing all forms and pleadings necessary for the presentation of his or her petition to the court. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerks' offices. The location of the office where a petition can be filed shall be conspicuously posted in the court building. The performance of duties prescribed in this section shall not constitute the practice of law as

defined in section 484.010. All duties of the clerk prescribed in this section shall be performed without cost to the litigants. The supreme court may promulgate rules as necessary to govern conduct of court clerks under this section and shall provide forms for petitions and written instructions on filling out all forms and pleadings necessary for the presentation of the petition to the court.

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

5. (1) Upon the filing of a verified petition under this section, and for good cause shown in the verified petition, the court shall immediately issue an ex parte order to remove the respondent. The assertion of sufficient evidence that the person or persons are unlawfully occupying property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, shall constitute good cause for purposes of this section. The verified petition shall set forth the following:

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

(b) The property that is being occupied includes a residential dwelling or a commercial vacant building, or exclusively consists of vacant land;

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

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

(e) The unlawful occupant or unlawful occupants are occupying the property without the permission of the

property owner and are not guests of the property owner nor otherwise authorized to make use of the property;

(f) The property owner has directed the unlawful occupant or unlawful occupants to leave the property and the unlawful occupant or unlawful occupants have failed or refused to vacate the premises;

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

(h) The unlawful occupant or unlawful occupants are not immediate family members of the property owner; and

(i) There is no pending litigation related to the real property between the property owner and any known unlawful occupant or unlawful occupants.

(2) An ex parte order to have the unlawful occupant or unlawful occupants removed from property containing a residential dwelling, property containing a commercial vacant building, or property exclusively consisting of vacant land, entered by the court shall take effect when entered and shall remain in effect until there is valid service of process and a hearing is held on the motion. Such hearing shall be held within **[forty-eight]** twenty-four hours of filing the verified petition unless good cause is shown for a delay. The court shall deny the ex parte order and dismiss the petition if the petitioner is not authorized to seek relief or does not show good cause.

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

6. (1) If the court is unavailable after business hours or on holidays or weekends, a verified petition for removal of the unlawful occupant or unlawful occupants from

property under this section may be filed before any available court in the city or county having jurisdiction to hear the verified petition under the guidelines developed under subdivision (3) of this subsection.

(2) All papers in connection with the filing of a verified petition or the granting of an ex parte order under this subsection shall be certified by such court or the clerk within the next regular business day to the circuit court having jurisdiction to hear the verified petition.

(3) The supreme court shall develop guidelines that ensure a verified petition under this section may be filed on evenings, holidays, and weekends.

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

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

(2) Restraining the respondent from entering the petitioner's premises or dwelling unit or coming within a certain proximity of the petitioner's premises or dwelling unit; and

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

[7.] 8. When the court has, after a hearing on the verified petition, issued an order for relief to permanently exclude **[an unlawful occupant or unlawful occupants]** the respondent from the petitioner's property, it may additionally:

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

(2) Permanently restrain the respondent from entering the petitioner's premises or dwelling unit or coming within a certain proximity of the petitioner's premises or dwelling unit;

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

(4) Permanently expel the respondent from occupying the petitioner's premises or dwelling unit;

(5) Permanently expel the respondent's personal property from the petitioner's premises or dwelling unit;

(6) Order the respondent to pay all costs of repair to the petitioner's premises or dwelling unit relating to damages caused by the respondent;

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

(8) Order the respondent to pay court costs.

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

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

[10.] 11. If appropriate, the sheriff may arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

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

[12.] 13. A person may bring a civil cause of action if the person was removed from the property under this section without just cause. Such person may seek restored possession to the real property, actual damages to personal property when personal property was removed, statutory damages in the amount of one thousand dollars, and reimbursement of court costs. Any damages authorized under this subsection shall be offset by any damages to the real property inflicted by the person who was removed from the real property without just cause. Such damages to real property shall be proven by the property owner. Awards of actual damages shall not exceed the value of the damaged personal property.

[13.] 14. The provisions of this section do 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.

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

[15.] 16. (1) The court shall retain jurisdiction over the ex parte order or full order of protection issued under this section for its entire duration. The court may schedule compliance review hearings to monitor the respondent's compliance with the order.

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

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

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

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

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

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

4. Nothing in this section shall be interpreted as creating a civil cause of action for 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 unlawfully detains, occupies, or trespasses upon a residential dwelling, commercial vacant building, or property exclusively consisting of vacant land.

2. The offense of criminal mischief is a class [A misdemeanor] E felony.

3. The terms "commercial vacant building" and "vacant land" shall have the same meanings as such terms in section 534.602.