

SENATE BILL NO. 168

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

1340S.01H

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 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,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 534.602, 534.604, and 569.200, to read as
4 follows:

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

3 (1) "Petitioner", the property owner, or an authorized
4 agent of a property owner, of property containing a
5 residential dwelling who has filed a verified petition under
6 the provisions of this section;

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

10 (3) "Unlawful occupant" or "unlawful occupants", any
11 person or persons who detain, occupy, or trespass on
12 property containing a residential dwelling without the
13 permission of the property owner, who otherwise have no
14 legal right to occupy the property under state law, and who
15 are not afforded any protections provided to a tenant under
16 state law.

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

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

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

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

45 5. (1) Upon the filing of a verified petition under
46 this section, and for good cause shown in the verified
47 petition, the court shall immediately issue an ex parte
48 order to remove the respondent. The assertion of sufficient

49 evidence that the person or persons are unlawfully occupying
50 property containing a residential dwelling shall constitute
51 good cause for purposes of this section. The verified
52 petition shall set forth the following:

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

55 (b) The property that is being occupied includes a
56 residential dwelling;

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

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

63 (e) The unlawful occupant or unlawful occupants are
64 occupying the property without the permission of the
65 property owner and are not guests of the property owner nor
66 otherwise authorized to make use of the property;

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

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

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

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

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

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

93 **6. (1) If the court is unavailable after business**
94 **hours or on holidays or weekends, a verified petition for**
95 **removal of the unlawful occupant or unlawful occupants from**
96 **property under this section may be filed before any**
97 **available court in the city or county having jurisdiction to**
98 **hear the verified petition under the guidelines developed**
99 **under subdivision (3) of this subsection.**

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

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

108 **7.** Any ex parte order granted under this section shall
109 be to protect the petitioner from trespass by an unlawful
110 occupant or unlawful occupants and may include such terms as

111 the court reasonably deems necessary to ensure the
112 petitioner's safety including, but not limited to:

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

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

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

124 [7.] 8. When the court has, after a hearing on the
125 **verified** petition, issued an order for relief to permanently
126 exclude [an unlawful occupant or unlawful occupants] **the**
127 **respondent** from the petitioner's property, it may
128 additionally:

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

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

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

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

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

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

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

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

152 [8.] 9. A verified petition seeking an ex parte order
153 under this section shall contain allegations relating to
154 those orders and shall pray for the orders desired.

155 [9.] 10. Once the court grants an order under this
156 section, the sheriff of the county or city not within a
157 county in which the property is located shall enforce such
158 order by removing the respondent from the property.

159 [10.] 11. If appropriate, the sheriff may arrest any
160 person found in the dwelling for trespass, outstanding
161 warrants, or any other legal cause.

162 [11.] 12. The sheriff is entitled to the same fee for
163 the service of the ex parte order granted under this section
164 as if the sheriff were serving a writ of possession under
165 section 57.280. After the sheriff serves the order, the
166 property owner or authorized agent may request that the
167 sheriff stand by to keep the peace while the property owner
168 or agent of the property owner changes the locks and removes
169 the personal property of the unlawful occupants from the
170 premises to or near the property line. When such a request
171 is made, the sheriff may charge a reasonable hourly rate,
172 and the person requesting the sheriff to stand by and keep
173 the peace is responsible for paying the reasonable hourly
174 rate set by the sheriff. The sheriff shall not be liable to

175 the unlawful occupant or occupants or to any other party for
176 the loss, destruction, or damage of property. The property
177 owner or his or her authorized agent shall not be liable to
178 an unlawful occupant or any other party for the loss,
179 destruction, or damage to the personal property unless the
180 removal was wrongful.

181 [12.] 13. A person may bring a civil cause of action
182 if the person was removed from the property under this
183 section without just cause. Such person may seek restored
184 possession to the real property, actual damages to personal
185 property when personal property was removed, statutory
186 damages in the amount of one thousand dollars, and
187 reimbursement of court costs. Any damages authorized under
188 this subsection shall be offset by any damages to the real
189 property inflicted by the person who was removed from the
190 real property without just cause. Such damages to real
191 property shall be proven by the property owner. Awards of
192 actual damages shall not exceed the value of the damaged
193 personal property.

194 [13.] 14. The provisions of this section do not limit
195 the rights of a property owner or limit the authority of a
196 law enforcement officer to arrest an unlawful occupant for
197 trespassing, vandalism, theft, or other crimes.

198 [14.] 15. All proceedings under this section are in
199 addition to any other available civil or criminal remedies,
200 unless otherwise specifically provided in this section.

201 [15.] 16. (1) The court shall retain jurisdiction
202 over the ex parte order or full order of protection issued
203 under this section for its entire duration. The court may
204 schedule compliance review hearings to monitor the
205 respondent's compliance with the order.

206 (2) The terms of the ex parte order or full order of
207 protection issued under this section are enforceable by all
208 remedies available at law for the enforcement of a judgment,
209 and the court may punish a respondent who willfully violates
210 the ex parte order to the same extent as provided by law for
211 contempt of the court in any other suit or proceeding
212 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 employing
12 entities and superiors shall be immune from liability in any
13 civil action alleging false arrest, false imprisonment, or
14 malicious prosecution.

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

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

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

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

 569.200. 1. A person commits the offense of criminal
2 mischief if he or she unlawfully detains, occupies, or
3 trespasses upon a residential dwelling.

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

✓