

House Engrossed Senate Bill

~~transient occupants; property; removal~~
(now: unlawful occupants; property; removal)

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SENATE BILL 1129

AN ACT

AMENDING TITLE 12, CHAPTER 8, ARTICLE 4, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-1173.02; RELATING TO FORCIBLE ENTRY AND DETAINER
ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 8, article 4, Arizona Revised
3 Statutes, is amended by adding section 12-1173.02, to read:

4 12-1173.02. Limited alternative remedy for removal of
5 unlawful occupant; affidavit; definition

6 A. A PROPERTY OWNER OR THE PROPERTY OWNER'S AUTHORIZED AGENT MAY
7 REQUEST FROM LAW ENFORCEMENT THE IMMEDIATE REMOVAL OF A PERSON WHO IS
8 UNLAWFULLY OCCUPYING A RESIDENTIAL DWELLING AS PRESCRIBED IN SUBSECTION B
9 OF THIS SECTION. A PERSON UNLAWFULLY OCCUPIES A RESIDENTIAL DWELLING IF
10 ALL OF THE FOLLOWING CONDITIONS ARE MET:

11 1. THE PERSON WHO IS REQUESTING THE REMOVAL OF THE OCCUPANT IS THE
12 PROPERTY OWNER OR AUTHORIZED AGENT OF THE PROPERTY OWNER.

13 2. THE REAL PROPERTY THAT IS BEING OCCUPIED INCLUDES A RESIDENTIAL
14 DWELLING.

15 3. THE OCCUPANT HAS UNLAWFULLY ENTERED AND REMAINS OR CONTINUES TO
16 RESIDE ON THE PROPERTY OWNER'S REAL PROPERTY.

17 4. THE PROPERTY OWNER HAS DIRECTED THE OCCUPANT THROUGH DIRECT
18 VERBAL COMMUNICATION OR WRITTEN NOTICE TO LEAVE THE REAL PROPERTY.
19 WRITTEN NOTICE MAY BE POSTED ON THE DOOR OF THE DWELLING UNIT OR ANY OTHER
20 CONSPICUOUS PLACE ON THE PROPERTY.

21 5. THE OCCUPANT IS NOT A CURRENT OR FORMER TENANT PURSUANT TO A
22 WRITTEN OR VERBAL RENTAL AGREEMENT THAT WAS AUTHORIZED BY THE PROPERTY
23 OWNER.

24 6. THE OCCUPANT IS NOT AN IMMEDIATE FAMILY MEMBER OF THE PROPERTY
25 OWNER.

26 7. THE OCCUPANT HAS NOT HAD A PRIOR VERBAL OR WRITTEN AGREEMENT TO
27 COHABITATE WITH THE PROPERTY OWNER IN THE RESIDENTIAL DWELLING.

28 8. THERE IS NO PENDING LITIGATION THAT IS RELATED TO THE REAL
29 PROPERTY BETWEEN THE PROPERTY OWNER AND THE PERSON WHO IS SOUGHT TO BE
30 REMOVED.

31 B. TO REQUEST THE IMMEDIATE REMOVAL OF A PERSON WHO UNLAWFULLY
32 OCCUPIES A RESIDENTIAL DWELLING AS PRESCRIBED BY THIS SECTION, THE
33 PROPERTY OWNER OR THE PROPERTY OWNER'S AUTHORIZED AGENT MUST SUBMIT TO LAW
34 ENFORCEMENT A SWORN AFFIDAVIT IN SUBSTANTIALLY THE FOLLOWING FORM:

35 SWORN AFFIDAVIT

36 I, (THE OWNER OR AUTHORIZED AGENT OF THE OWNER OF THE
37 REAL PROPERTY LOCATED AT _____), DECLARE UNDER THE
38 PENALTY OF PERJURY THAT:

39 (INITIAL EACH ITEM BELOW):

40 1. () I AM THE OWNER OF THE REAL PROPERTY OR THE
41 AUTHORIZED AGENT OF THE OWNER OF THE REAL PROPERTY.

42 2. () THE REAL PROPERTY INCLUDES A RESIDENTIAL
43 DWELLING.

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3. () THE OCCUPANT HAS UNLAWFULLY ENTERED AND REMAINS OR CONTINUES TO RESIDE UNLAWFULLY ON THE REAL PROPERTY.

4. () I HAVE DIRECTED THE OCCUPANT THROUGH DIRECT VERBAL COMMUNICATION OR WRITTEN NOTICE, OR BOTH, TO LEAVE THE REAL PROPERTY, BUT THE OCCUPANT HAS NOT DONE SO.

5. () THE OCCUPANT IS NOT A CURRENT OR FORMER TENANT PURSUANT TO A WRITTEN OR VERBAL RENTAL AGREEMENT THAT IS AUTHORIZED BY THE PROPERTY OWNER.

6. () THE OCCUPANT IS NOT AN IMMEDIATE FAMILY MEMBER OF THE PROPERTY OWNER.

7. () THE OCCUPANT HAS NOT HAD A PRIOR VERBAL OR WRITTEN AGREEMENT TO COHABITATE WITH THE PROPERTY OWNER IN THE RESIDENTIAL DWELLING.

8. () THERE IS NO PENDING LITIGATION THAT IS RELATED TO THE REAL PROPERTY BETWEEN THE PROPERTY OWNER AND THE PERSON WHO IS SOUGHT TO BE REMOVED.

9. () I UNDERSTAND THAT AN OCCUPANT WHO IS REMOVED FROM THE REAL PROPERTY PURSUANT TO THIS PROCEDURE MAY BRING A CAUSE OF ACTION AGAINST ME FOR ANY FALSE STATEMENTS MADE IN THIS AFFIDAVIT, OR FOR WRONGFULLY USING THIS PROCEDURE, AND THAT AS A RESULT OF THAT ACTION I MAY BE HELD LIABLE FOR ACTUAL DAMAGES, PENALTIES, COSTS AND REASONABLE ATTORNEY FEES.

10. () I AM REQUESTING LAW ENFORCEMENT TO IMMEDIATELY REMOVE THE UNAUTHORIZED OCCUPANT FROM THE REAL PROPERTY.

11. () A COPY OF MY VALID GOVERNMENT-ISSUED IDENTIFICATION IS ATTACHED, OR I AM THE AUTHORIZED AGENT OF THE PROPERTY OWNER AND DOCUMENTS EVIDENCING MY AUTHORITY TO ACT ON THE PROPERTY OWNER'S BEHALF ARE ATTACHED.

I HAVE READ EVERY STATEMENT MADE IN THIS AFFIDAVIT AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS AFFIDAVIT ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED BY ARIZONA REVISED STATUTES SECTION 13-2702.

(SIGNATURE OF PROPERTY OWNER OR AUTHORIZED AGENT OF PROPERTY OWNER)

(DATE)

C. ON RECEIPT OF THE SWORN AFFIDAVIT THAT STATES THE FACTORS PRESCRIBED BY SUBSECTION A OF THIS SECTION, LAW ENFORCEMENT SHALL VERIFY THAT THE PERSON SUBMITTING THE SWORN AFFIDAVIT IS THE RECORD OWNER OF THE REAL PROPERTY OR THE AUTHORIZED AGENT OF THE PROPERTY OWNER AND APPEARS

1 OTHERWISE ENTITLED TO RELIEF UNDER THIS SECTION. IF VERIFIED, LAW
2 ENFORCEMENT SHALL WITHOUT DELAY DIRECT THE UNLAWFUL OCCUPANT TO SURRENDER
3 POSSESSION OF THE REAL PROPERTY. LAW ENFORCEMENT SHALL SERVE A NOTICE TO
4 IMMEDIATELY VACATE ON ALL OF THE UNLAWFUL OCCUPANTS AND SHALL PUT THE
5 OWNER IN POSSESSION OF THE REAL PROPERTY. SERVICE MAY BE ACCOMPLISHED BY
6 HAND DELIVERY OF THE NOTICE TO THE OCCUPANT OR BY POSTING THE NOTICE ON
7 THE FRONT DOOR OR ENTRANCE OF THE RESIDENTIAL DWELLING. LAW ENFORCEMENT
8 SHALL ALSO ATTEMPT TO VERIFY THE IDENTITIES OF ALL PERSONS WHO ARE
9 OCCUPYING THE RESIDENTIAL DWELLING AND NOTE THE IDENTITIES ON THE RETURN
10 OF SERVICE.

11 D. AFTER LAW ENFORCEMENT SERVES THE NOTICE TO IMMEDIATELY VACATE,
12 THE PROPERTY OWNER OR AN AUTHORIZED AGENT OF THE PROPERTY OWNER MAY
13 REQUEST THAT LAW ENFORCEMENT STAND BY TO KEEP THE PEACE WHILE THE PROPERTY
14 OWNER OR AUTHORIZED AGENT OF THE PROPERTY OWNER CHANGES THE LOCKS AND
15 REMOVES THE PERSONAL PROPERTY OF THE UNLAWFUL OCCUPANT FROM THE PREMISES
16 TO OR NEAR THE PROPERTY LINE. WHEN SUCH A REQUEST IS MADE, LAW
17 ENFORCEMENT MAY CHARGE A REASONABLE HOURLY RATE AND THE PERSON REQUESTING
18 LAW ENFORCEMENT TO STAND BY AND KEEP THE PEACE IS RESPONSIBLE FOR PAYING
19 THE REASONABLE HOURLY RATE SET BY LAW ENFORCEMENT. LAW ENFORCEMENT IS NOT
20 LIABLE TO THE OCCUPANT OR ANY OTHER PARTY FOR LOSS, DESTRUCTION OR DAMAGE
21 OF PROPERTY. THE PROPERTY OWNER OR AN AUTHORIZED AGENT OF THE PROPERTY
22 OWNER IS NOT LIABLE TO AN OCCUPANT OR ANY OTHER PARTY FOR THE LOSS,
23 DESTRUCTION OR DAMAGE TO THE PERSONAL PROPERTY ON THE PREMISES UNLESS THE
24 REMOVAL WAS WRONGFUL PURSUANT TO SUBSECTION G OF THIS SECTION.

25 E. THE OWNER OF THE PROPERTY OR THE PROPERTY OWNER'S AUTHORIZED
26 AGENT MAY PRESUME THAT THE UNLAWFUL OCCUPANT HAS ABANDONED PERSONAL
27 BELONGINGS THAT REMAIN AT THE RESIDENTIAL DWELLING AFTER THE UNLAWFUL
28 OCCUPANT SURRENDERS OCCUPANCY OF THE RESIDENTIAL DWELLING OR IS REMOVED
29 FROM THE RESIDENTIAL DWELLING.

30 F. AN OCCUPANT WHO FAILS OR REFUSES TO SURRENDER POSSESSION OF THE
31 REAL PROPERTY AS DIRECTED BY A LAW ENFORCEMENT OFFICER PURSUANT TO THIS
32 SECTION IS COMMITTING TRESPASS.

33 G. A PERSON WHO IS WRONGFULLY REMOVED FROM A PREMISES MAY FILE AN
34 ACTION AGAINST THE PERSON WHO CLAIMS THE RIGHT TO POSSESSION OF THE REAL
35 PROPERTY AND MAY BE RESTORED TO POSSESSION OF THE REAL PROPERTY AND
36 RECOVER ACTUAL COSTS AND DAMAGES INCURRED, STATUTORY DAMAGES EQUAL TO
37 THREE TIMES THE FAIR MARKET RENT OF THE RESIDENTIAL DWELLING, COURT COSTS
38 AND REASONABLE ATTORNEY FEES. THE COURT SHALL ADVANCE THE CAUSE ON THE
39 CALENDAR. A PERSON WHO IS WRONGFULLY REMOVED PURSUANT TO THIS SECTION
40 DOES NOT HAVE A CAUSE OF ACTION AGAINST THE LAW ENFORCEMENT OFFICER OR THE
41 LAW ENFORCEMENT AGENCY THAT EMPLOYS THE LAW ENFORCEMENT OFFICER ABSENT A
42 SHOWING OF BAD FAITH BY THE LAW ENFORCEMENT OFFICER.

43 H. THIS SECTION DOES NOT LIMIT THE RIGHTS OF A PROPERTY OWNER OR
44 LIMIT THE AUTHORITY OF A LAW ENFORCEMENT OFFICER TO ARREST AN UNLAWFUL
45 OCCUPANT FOR TRESPASSING, VANDALISM, THEFT OR OTHER CRIMES.

1 I. FOR THE PURPOSES OF THIS SECTION:

2 1. "LAW ENFORCEMENT" OR "LAW ENFORCEMENT OFFICER" MEANS THE SHERIFF
3 OR A DEPUTY SHERIFF OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED OR
4 A CITY OR TOWN LAW ENFORCEMENT OFFICER.

5 2. "OCCUPANT" OR "UNLAWFUL OCCUPANT" DOES NOT INCLUDE A TENANT
6 UNDER TITLE 33, CHAPTER 10.

7 Sec. 2. Legislative intent

8 The right to exclude others from entering and the right to direct
9 others to immediately vacate residential real property are the most
10 important real property rights. Existing laws in this state fail to
11 adequately protect the rights of property owners amidst the rampant
12 increase of unauthorized persons occupying residential real property and
13 fails to adequately discourage theft and vandalism. The legislature
14 intends to quickly restore possession of residential real property to the
15 lawful owner of the property when the property is being unlawfully
16 occupied and to thereby preserve property rights while limiting the
17 opportunity for criminal activity.

18 (ENACTED WITHOUT THE EMERGENCY)

19 Sec. 3. Emergency

20 This act is an emergency measure that is necessary to preserve the
21 public peace, health or safety and is operative immediately as provided by
22 law.