



Bill Number: S.B. 1726

Rogers Floor Amendment

Reference to: printed bill

Amendment drafted by: Leg Council

FLOOR AMENDMENT EXPLANATION

- Allows a residential real property owner to request that a law enforcement agency of that jurisdiction, rather than the county sheriff or city or town chief of police, remove a person who is unlawfully occupying the residential dwelling.
- Allows the residential real property owner to request the expeditious, rather than immediate, removal of an unauthorized occupant.
- Removes the ability of the property owner to request that law enforcement stand by while the owner changes the locks and removes the unauthorized occupant's personal property.
- Removes the ability of a law enforcement agency to charge a fee for services associated with a request to remove an unauthorized occupant.
- Removes the ability of a person who is wrongfully removed from a premises to: 1) file an action against the person who claims the right to possession of the real property; and 2) have possession of the property restored and damages recovered as outlined.
- Specifies that the prescribed provisions related to removing and requesting the removal of an unauthorized occupant do not preclude enforcement of any criminal laws, ordinances or regulations or create any additional rights for unauthorized occupants of residential dwellings.
- Requires the law enforcement agency to conduct a preliminary investigation, rather than fact-finding, on receipt of an affidavit of complaint to remove an unauthorized occupant.
- Makes technical and conforming changes.

ROGERS FLOOR AMENDMENT
SENATE AMENDMENTS TO S.B. 1726
(Reference to printed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.

[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 33-420, Arizona Revised Statutes, is amended to
3 read:

4 33-420. False documents; liability; special action; damages;
5 violation; classification

6 A. A person purporting to claim an interest in, or a lien or
7 encumbrance against, real property, who causes a document asserting such
8 claim to be recorded in the office of the county recorder, knowing or
9 having reason to know that the document is forged, ~~OR~~ OR groundless,
10 contains a material misstatement or false claim or is otherwise invalid is
11 liable to the owner or beneficial title holder of the real property for
12 the sum of ~~not less than five thousand dollars,~~ AT LEAST \$5,000 or for
13 treble the actual damages caused by the recording, whichever is greater,
14 and reasonable attorney fees and costs of the action.

15 B. The owner or beneficial title holder of the real property may
16 bring an action pursuant to this section in the superior court in the
17 county in which the real property is located for such relief as is
18 required to immediately clear title to the real property as provided for
19 in the rules of procedure for special actions. This special action may be
20 brought based on the ground that the lien is forged, ~~OR~~ OR groundless,
21 contains a material misstatement or false claim or is otherwise
22 invalid. The owner or beneficial title holder may bring a separate
23 special action to clear title to the real property or join such action
24 with an action for damages as described in this section. In either case,
25 the owner or beneficial title holder may recover reasonable attorney fees
26 and costs of the action if ~~he~~ THE OWNER OR BENEFICIAL TITLE HOLDER
27 prevails.

28 C. A person who is named in a document ~~which~~ THAT purports to
29 create an interest in, or a lien or encumbrance against, real property and

1 who knows that the document is forged, ~~OR~~ OR groundless, contains a material
2 misstatement or false claim or is otherwise invalid shall be liable to the
3 owner or BENEFICIAL title holder for the sum of ~~not less than one thousand~~
4 ~~dollars,~~ AT LEAST \$1,000 or for treble actual damages, whichever is
5 greater, and reasonable attorney fees and costs as provided in this
6 section, if ~~he~~ THE PERSON wilfully refuses to release or correct such
7 document of record within twenty days ~~from~~ AFTER the date of a written
8 request from the owner or beneficial title holder of the real property.

9 D. A document purporting to create an interest in, or a lien or
10 encumbrance against, real property not authorized by statute, judgment or
11 other specific legal authority is presumed to be groundless and invalid.

12 E. A person purporting to claim an interest in, or a lien or
13 encumbrance against, real property, who causes a document asserting such
14 claim to be recorded in the office of the county recorder, INCLUDING A
15 DOCUMENT THAT PURPORTS TO CONVEY AN OWNERSHIP OR LEASEHOLD INTEREST IN
16 REAL PROPERTY, knowing or having reason to know that the document is
17 forged, ~~OR~~ OR groundless, contains a material misstatement or false claim or
18 is otherwise invalid, is guilty of a class 1 misdemeanor.

19 Sec. 2. Title 33, chapter 23, article 1, Arizona Revised Statutes,
20 is amended by adding section 33-2502, to read:

21 33-2502. Unlawful occupants; affidavit of complaint; removal;
22 wrongful removal; remedies; violation;
23 classification

24 A. A PROPERTY OWNER OF RESIDENTIAL REAL PROPERTY OR THE OWNER'S
25 AUTHORIZED AGENT MAY REQUEST THAT ~~[THE COUNTY SHERIFF OR CITY OR TOWN~~
26 ~~CHIEF OF POLICE, AS APPLICABLE, IMMEDIATELY]~~ [A LAW ENFORCEMENT AGENCY OF
27 THAT JURISDICTION EXPEDITIOUSLY] REMOVE A PERSON WHO IS UNLAWFULLY
28 OCCUPYING THE RESIDENTIAL DWELLING IF ALL OF THE FOLLOWING APPLY:

29 1. THE REQUESTING PERSON IS THE PROPERTY OWNER OR THE OWNER'S
30 AUTHORIZED AGENT.

31 2. THE PROPERTY INCLUDES A RESIDENTIAL DWELLING OR IS BEING USED
32 FOR RESIDENTIAL PURPOSES.

33 3. AN UNAUTHORIZED PERSON IS UNLAWFULLY OCCUPYING THE PROPERTY.

34 4. THE PROPERTY OWNER HAS DIRECTED THE UNAUTHORIZED PERSON TO
35 LEAVE.

36 5. THE PROPERTY WAS NOT OPEN TO THE PUBLIC AT THE TIME THE
37 UNAUTHORIZED PERSON ENTERED THE PROPERTY.

38 6. THE UNAUTHORIZED PERSON IS NOT A CURRENT OR FORMER TENANT AT
39 THAT PROPERTY.

40 7. THE UNAUTHORIZED PERSON DID NOT HAVE A PRIOR VERBAL OR WRITTEN
41 AGREEMENT TO COHABITATE WITH THE PROPERTY OWNER IN THAT RESIDENTIAL
42 DWELLING.

43 8. THE UNAUTHORIZED PERSON IS NOT AN IMMEDIATE FAMILY MEMBER OF THE
44 PROPERTY OWNER.

45 9. THERE IS NO LITIGATION PENDING BETWEEN THE PROPERTY OWNER AND
46 THE UNAUTHORIZED PERSON.

1 B. THE PERSON ENTITLED TO POSSESSION OF THE RESIDENTIAL REAL
2 PROPERTY SHALL SUBMIT AN AFFIDAVIT OF COMPLAINT TO THE ~~[COUNTY SHERIFF OR~~
3 ~~CITY OR TOWN CHIEF OF POLICE, AS APPLICABLE,]~~ [LAW ENFORCEMENT AGENCY OF
4 THAT JURISDICTION] TO REQUEST THE ~~[IMMEDIATE]~~ [EXPEDITIOUS] REMOVAL OF THE
5 UNAUTHORIZED PERSON. THE AFFIDAVIT OF COMPLAINT SHALL BE THE SWORN
6 STATEMENT OF THE PROPERTY OWNER OR THE OWNER'S AUTHORIZED AGENT REGARDING
7 ALL OF THE FACTORS PRESCRIBED BY SUBSECTION A OF THIS SECTION.

8 C. ON RECEIPT OF THE AFFIDAVIT OF COMPLAINT, THE LAW ENFORCEMENT
9 AGENCY THAT RECEIVES THE COMPLAINT SHALL CONDUCT A PRELIMINARY
10 ~~[FACT-FINDING]~~ [INVESTIGATION], WHICH MAY INCLUDE REVIEWING ANY ALLEGED
11 LEASE AGREEMENT, INTERVIEWING THE NEIGHBORS OF THE PROPERTY IN QUESTION
12 AND OTHER RELEVANT INQUIRIES TO DETERMINE THE VALIDITY OF THE
13 COMPLAINT. IF THE LAW ENFORCEMENT AGENCY FINDS PROBABLE CAUSE THAT THE
14 CONDITIONS PRESCRIBED IN SUBSECTION A OF THIS SECTION ARE MET, THE LAW
15 ENFORCEMENT AGENCY SHALL SERVE ON THE UNLAWFUL OCCUPANT A NOTICE TO
16 IMMEDIATELY VACATE THE PROPERTY AND PUT THE PROPERTY OWNER INTO POSSESSION
17 OF THE REAL PROPERTY.

18 ~~[D. THE LAW ENFORCEMENT AGENCY MAY CHARGE A FEE FOR THE SERVICES~~
19 ~~PRESCRIBED BY THIS SECTION. THE PROPERTY OWNER MAY REQUEST THE LAW~~
20 ~~ENFORCEMENT AGENCY TO STAND BY WHILE CHANGING THE LOCKS AND REMOVING THE~~
21 ~~UNLAWFUL OCCUPANT'S PERSONAL PROPERTY.]~~

22 ~~[E.]~~ [D.] THE OWNER OF THE PROPERTY OR THE PROPERTY OWNER'S
23 AUTHORIZED AGENT MAY PRESUME THAT THE UNLAWFUL OCCUPANT HAS ABANDONED ANY
24 PERSONAL BELONGINGS THAT REMAIN AT THE RESIDENTIAL DWELLING AFTER THE
25 UNLAWFUL OCCUPANT SURRENDERS OCCUPANCY OF THE RESIDENTIAL DWELLING OR IS
26 REMOVED FROM THE RESIDENTIAL DWELLING.

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

38 ~~[G.]~~ [F.] THIS SECTION DOES NOT:

39 1. PRECLUDE OR OTHERWISE LIMIT OTHER PROPERTY OWNER RIGHTS~~[.]~~ ~~[OR]~~
40 [2. PRECLUDE OR OTHERWISE LIMIT] LAW ENFORCEMENT ACTIONS
41 [, INCLUDING ENFORCEMENT OF ANY CRIMINAL LAWS, ORDINANCES OR REGULATIONS
42 OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE] .

43 ~~[2.]~~ [3.] PRECLUDE A SUBSEQUENT CIVIL ACTION FOR WRONGFUL REMOVAL,
44 WHICH MAY INCLUDE REMEDIES THAT RESTORE POSSESSION AND PAY ACTUAL COSTS,
45 DAMAGES AND ATTORNEY FEES.

46 [4. CREATE OR ESTABLISH ANY ADDITIONAL RIGHTS FOR UNAUTHORIZED
47 OCCUPANTS OF RESIDENTIAL DWELLINGS.]

1 ~~[H.]~~ [G.] A PERSON WHO UNLAWFULLY OCCUPIES A RESIDENTIAL DWELLING
2 AS PRESCRIBED BY THIS SECTION, INTENTIONALLY DAMAGES THE DWELLING AND:

3 1. CAUSES LESS THAN \$1,000 IN DAMAGE IS GUILTY OF A CLASS 1
4 MISDEMEANOR.

5 2. CAUSES \$1,000 OR MORE IN DAMAGE IS GUILTY OF A CLASS 6 FELONY.

6 ~~[F.]~~ [H.] A PERSON WHO KNOWINGLY LISTS OR ADVERTISES FOR SALE OR
7 FOR RENT A RESIDENTIAL REAL PROPERTY WITHOUT LEGAL TITLE OR OTHER
8 AUTHORITY TO DO SO IS GUILTY OF A CLASS 6 FELONY.

9 Sec. 3. Legislative intent

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

20 Enroll and engross to conform

21 Amend title to conform

WENDY ROGERS

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C: MR