

2024 Regular Session

HOUSE BILL NO. 895

BY REPRESENTATIVE OWEN

TRESPASS: Provides relative to the removal of unauthorized persons from residential immovable property

1 AN ACT

2 To amend and reenact R.S. 14:59(B), 63(G)(5), and 70.7(B)(3)(h) and to enact Code of
3 Criminal Procedure Article 132 and R.S. 14:59(A)(10), 63(G)(6), and 71.5, relative
4 to offenses against property; to provide for the removal of unauthorized persons from
5 residential property; to provide for legislative intent; to provide for procedures; to
6 provide for a form; to provide for service; to provide for duties of law enforcement;
7 to provide relative to liability; to provide for a cause of action; to provide for an
8 additional act of criminal mischief; to provide for an additional penalty within the
9 crime of criminal trespass; to provide relative to what constitutes "personal
10 identification information" within the crime of unlawful production, manufacturing,
11 distribution, or possession of fraudulent documents for identification purposes; to
12 provide relative to the fraudulent sale or lease of residential immovable property; to
13 provide for penalties; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Code of Criminal Procedure Article 132 is hereby enacted to read as
16 follows:

17 Art. 132. Limited alternative remedy to remove unauthorized persons from
18 residential immovable property

19 A. The legislature finds that the right to exclude others from entering, and
20 the right to direct others to immediately vacate, residential immovable property are
21 the most important immovable property rights. The legislature further finds that
22 existing remedies regarding unauthorized persons who unlawfully remain on

1 residential immovable property fail to adequately protect the rights of the property
2 owner and fail to adequately discourage theft and vandalism. The intent of this
3 Article is to quickly restore possession of residential immovable property to the
4 lawful owner of the property when the property is being unlawfully occupied and
5 to thereby preserve property rights while limiting the opportunity for criminal
6 activity.

7 B.(1) A property owner or his authorized agent may request the sheriff of the
8 parish or constable of the municipality in which the property is located to
9 immediately remove a person or persons who are unlawfully occupying residential
10 immovable property pursuant to this Article if all of the following conditions are
11 met:

12 (a) The requesting person is the property owner or an authorized agent of the
13 property owner.

14 (b) The immovable property that is being occupied includes a residential
15 dwelling.

16 (c) An unauthorized person or persons have unlawfully entered and remain
17 or continue to reside on the property owner's property.

18 (d) The immovable property was not open to members of the public at the
19 time the unauthorized person or persons entered.

20 (e) The property owner has directed the unauthorized person to leave the
21 property.

22 (f) The unauthorized person or persons are not current or former tenants
23 pursuant to a written or oral rental agreement authorized by the property owner.

24 (g) The unauthorized person or persons are not immediate family members
25 of the property owner.

26 (h) There is no pending litigation related to the immovable property between
27 the property owner and any known unauthorized person.

28 (2) To request the immediate removal of an unlawful occupant of an
29 immovable property, the property owner or his authorized agent shall submit a

1 complaint by presenting a completed and verified Complaint to Remove Persons
2 Unlawfully Occupying Residential Immovable Property form to the sheriff of the
3 parish or constable of the municipality in which the immovable property is located.

4 The submitted complaint shall be in substantially the following form:

5 "COMPLAINT TO REMOVE PERSONS UNLAWFULLY OCCUPYING
6 RESIDENTIAL IMMOVABLE PROPERTY

7 I, the owner or authorized agent of the owner of the immovable property
8 located at _____, declare under the penalty of perjury that (initial each box):

9 I am the owner of the immovable property or the authorized agent of the
10 owner of the immovable property.

11 I purchased the property on _____.

12 The immovable property is a residential dwelling.

13 An unauthorized person or persons have unlawfully entered and are
14 remaining or residing unlawfully on the immovable property.

15 The immovable property was not open to members of the public at the
16 time the unauthorized person or persons entered.

17 I have directed the unauthorized person or persons to leave the immovable
18 property, but they have not done so.

19 The person or persons are not current or former tenants pursuant to any
20 valid lease authorized by the property owner, and any lease that may be produced by
21 an occupant is fraudulent.

22 The unauthorized person or persons sought to be removed are not an
23 owner or a co-owner of the property and have not been listed on the title to the
24 property unless the person or persons have engaged in title fraud.

25 The unauthorized person or persons are not immediate family members
26 of the property owner.

27 There is no litigation related to the immovable property pending between
28 the property owner and any person sought to be removed.

1 I understand that a person or persons removed from the property pursuant
2 to this procedure may bring a cause of action against me for any false statements
3 made in this complaint, or for wrongfully using this procedure, and that as a result
4 of such action I may be held liable for actual damages, penalties, costs, and
5 reasonable attorney fees.

6 I am requesting the sheriff or constable to immediately remove the
7 unauthorized person or persons from the immovable property.

8 A copy of my valid government-issued identification is attached, or I am
9 an agent of the property owner, and documents evidencing my authority to act on the
10 property owner's behalf are attached.

11 I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND
12 EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE
13 STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER
14 PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 123 OF
15 TITLE 14 OF THE LOUISIANA REVISED STATUTES OF 1950.

16 Signature of Property Owner or Agent of _____ "

17 C.(1) Upon receipt of the complaint, the sheriff or constable shall verify with
18 the clerk of court that the person submitting the complaint is the record owner of the
19 immovable property or the authorized agent of the owner and appears otherwise
20 entitled to relief under this Article. The clerk of court shall respond to the sheriff's
21 or constable's request within eight hours of receipt.

22 (2) If verified, the sheriff or constable shall, within twelve hours of the
23 verification, serve on all the unlawful occupants a notice to immediately vacate and
24 shall put the owner in possession of the immovable property.

25 (3) Service may be accomplished by hand delivery of the notice to an
26 occupant or by posting the notice on the front door or entrance of the immovable
27 property. The sheriff or constable shall also attempt to verify the identities of all
28 persons occupying the immovable property and note the identities on the return of
29 service. If appropriate, the sheriff or constable may arrest any person who is

1 unlawfully on the immovable property for trespass, criminal mischief, outstanding
2 warrants, or any other offense provided by law.

3 D.(1) The sheriff or constable is entitled to the same fee for service of the
4 notice to immediately vacate as if the sheriff or constable were serving a writ of
5 possession or writ of ejectment under R.S. 13:2158, 5530, or 5807. After the sheriff
6 or constable serves the notice to immediately vacate, the property owner or
7 authorized agent may request that the sheriff or constable stand by to keep the peace
8 while the property owner or agent of the owner changes the locks and removes the
9 personal property of the unlawful occupants from the premises to or near the
10 property line. When such a request is made, the sheriff or constable may charge a
11 reasonable hourly rate, and the person requesting the sheriff or constable to stand by
12 and keep the peace is responsible for paying the reasonable hourly rate set by the
13 sheriff or constable.

14 (2) The sheriff or constable shall not be liable to the unlawful occupant or
15 any other party for loss, destruction, or damage of property. The property owner or
16 his authorized agent shall not be liable to an unlawful occupant or any other party for
17 the loss, destruction, or damage to the personal property unless the removal was
18 wrongful.

19 E. A person may bring a civil cause of action for wrongful removal under
20 this Article within five days of removal, but shall not remain in the immovable
21 property upon receiving a notice to vacate. A person harmed by a wrongful removal
22 under this Article may be restored to possession of the immovable property and may
23 recover actual costs and damages incurred, statutory damages equal to triple the fair
24 market rent of the dwelling, court costs, and reasonable attorney fees.

25 F. This Article does not limit the rights of a property owner or limit the
26 authority of the sheriff or constable to do either of the following:

27 (1) Arrest an unlawful occupant for trespassing, vandalism, theft, or any
28 other criminal offense.

- 1 (2) Rent or lease the residential immovable property with knowledge that he
 2 has no lawful ownership in the property or leasehold interest in the property.
- 3 B. Whoever violates the provisions of this Section shall be fined not more
 4 than ten thousand dollars, imprisoned with or without hard labor for not more than
 5 ten years, or both.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 895 Original

2024 Regular Session

Owen

Abstract: Provides relative to the removal of unauthorized persons from residential immovable property.

Proposed law (C.Cr.P. Art. 132) provides for a statement of legislative intent.

Proposed law further provides that a property owner or his authorized agent may request the sheriff of the parish or the constable of the municipality in which the property is located to immediately remove a person or persons who are unlawfully occupying a residential dwelling pursuant to proposed law if all of the following conditions are met:

- (1) The requesting person is the property owner or an authorized agent of the property owner.
- (2) The immovable property that is being occupied includes a residential dwelling.
- (3) An unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property.
- (4) The immovable property was not open to members of the public at the time the unauthorized person or persons entered.
- (5) The property owner has directed the unauthorized person to leave the property.
- (6) The unauthorized person or persons are not current or former tenants pursuant to a written or oral rental agreement authorized by the property owner.
- (7) The unauthorized person or persons are not immediate family members of the property owner.
- (8) There is no pending litigation related to the immovable property between the property owner and any known unauthorized person.

Proposed law provides that to request the immediate removal of an unlawful occupant of a residential dwelling, the property owner or his authorized agent shall submit a complaint by presenting a completed and verified Complaint to Remove Persons Unlawfully Occupying Residential Immovable Property form to the sheriff of the parish or the constable of the municipality in which the immovable property is located.

Proposed law provides for the Complaint to Remove Persons Unlawfully Occupying Residential Immovable Property form.

Proposed law provides that upon receipt of the complaint, the sheriff or constable shall verify with the clerk of court that the person submitting the complaint is the record owner of the immovable property or the authorized agent of the owner and appears otherwise entitled to relief under proposed law. Further provides that the clerk of court shall respond to the sheriff's or constable's request within eight hours of receipt.

Proposed law provides that if verified, the sheriff or constable shall, within 12 hours of the verification, serve on all the unlawful occupants a notice to immediately vacate and shall put the owner in possession of the immovable property.

Proposed law provides that service may be accomplished by hand delivery of the notice to an occupant or by posting the notice on the front door or entrance of the dwelling. Further provides that the sheriff or constable shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service and if appropriate, the sheriff may arrest any person found in the dwelling for trespass, criminal mischief, outstanding warrants, or any other offense provided by law.

Proposed law provides that the sheriff or constable is entitled to the same fee for service of the notice to immediately vacate as if the sheriff were serving a writ of possession or writ of ejectment under present law (R.S. 13:2158, 5530, or 5807).

Proposed law provides that after the sheriff or constable serves the notice to immediately vacate, the property owner or authorized agent may request that the sheriff or constable stand by to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful occupants from the premises to or near the property line.

Proposed law provides that when such a request is made, the sheriff or constable may charge a reasonable hourly rate, and the person requesting the sheriff or constable to stand by and keep the peace is responsible for paying the reasonable hourly rate set by the sheriff or constable.

Proposed law provides that the sheriff or constable is not liable to the unlawful occupant or any other party for loss, destruction, or damage of property. Further provides that the property owner or his authorized agent is not liable to an unlawful occupant or any other party for the loss, destruction, or damage to the personal property unless the removal was wrongful.

Proposed law provides that a person may bring a civil cause of action for wrongful removal under proposed law. Further provides that a person harmed by a wrongful removal under proposed law may be restored to possession of the immovable property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees.

Proposed law does not limit the rights of a property owner or limit the authority of the sheriff or constable to do either of the following:

- (1) Arrest an unlawful occupant for trespassing, vandalism, theft, or any other criminal offense.
- (2) Refer the case to any appropriate federal law enforcement agency, including but not limited to, the U.S. Immigration and Customs Enforcement, the U.S. Border Patrol, or the U.S. Dept. of Homeland Security.

Present law (R.S. 14:59) provides for the crime of criminal mischief and provides for penalties.

Proposed law retains present law.

Proposed law adds, as an additional act of criminal mischief, the detaining, occupying or trespassing upon a residential dwelling or commercial property of another person and intentionally damaging the residential dwelling in an amount of \$1,000 or more.

Present law provides that whoever commits the crime of criminal mischief shall be fined not more than \$500, or be imprisoned for not more than six months in the parish jail, or both.

Proposed law amends present law to provide that whoever violates any of the provisions of present law (R.S. 14:59(A)(1)-(9)) shall be fined not more than \$500, or be imprisoned for not more than six months in the parish jail, or both.

Proposed law further provides that whoever violates the provisions of proposed law (R.S. 14:59(A)(10)) shall be subject to the penalties provided in present law (R.S. 14:56).

Present law (R.S. 14:63) provides for the crime of criminal trespass and provides for penalties.

Proposed law retains present law.

Proposed law provides that whoever violates the provisions of present law in a manner that requires removal pursuant to proposed law (C.Cr.P. Art. 132) shall be fined not more than \$5,000 or may be imprisoned, with or without hard labor, for not more than five years, or both.

Present law (R.S. 14:70.7) provides for the crime of unlawful production, manufacturing, distribution, or possession of fraudulent documents for identification purposes and provides for penalties.

Proposed law retains present law.

Present law defines the phrase "personal identification information" to include various forms of identification. Further provides that one of these forms is any proof of residency, including utility bills, bank statements, or other government document showing the name and address of a person.

Proposed law amends present law to include a lease agreement, deed, property title, or any other instrument that conveys immovable property rights.

Proposed law (R.S. 14:71.5) provides that it shall be unlawful for any person to intentionally do any of the following:

- (1) List or advertise residential immovable property with knowledge that the purported seller of the property has no legal title or authority to sell the property.
- (2) Rent or lease the residential immovable property with knowledge that he has no lawful ownership in the property or leasehold interest in the property.

Proposed law provides for penalties consisting of a fine of not more than \$10,000, imprisonment with or without hard labor for not more than 10 years, or both.

(Amends R.S. 14:59(B), 63(G)(5), and 70.7(B)(3)(h); Adds C.Cr.P. Art. 132 and R.S. 14:59(A)(10), 63(G)(6) and 71.5)