
DIGEST

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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)