

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 12, 2018
Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

SB18-015 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 2, strike lines 4 through 6 and substitute:
2 "SECTION 2. In Colorado Revised Statutes, **add** article 40.1 to
3 title 13 as follows:

4 **ARTICLE 40.1**
5 **Removal of Unauthorized Persons**
6 **13-40.1-101. Removal of unauthorized persons - definitions."**

7 Page 2, line 7, strike "SECTION," and substitute "ARTICLE 40.1,".

8 Page 2, strike lines 8 through 10 and substitute "REQUIRES:

9 (a) "RESIDENTIAL PREMISES" MEANS A DWELLING UNIT, THE
10 STRUCTURE OF WHICH THE UNIT IS A PART, AND ANY IMMEDIATELY
11 SURROUNDING PROPERTY THAT IS OWNED BY OR SUBJECT TO THE
12 EXCLUSIVE CONTROL OF THE SAME PERSON AS THE DWELLING UNIT ITSELF.

13 (b) "UNAUTHORIZED PERSON" MEANS A PERSON WHO ENTERS AN
14 UNINHABITED OR VACANT RESIDENTIAL PREMISES, WITHOUT PERMISSION
15 OF THE OWNER OR AN AUTHORIZED AGENT OF THE OWNER, AND OCCUPIES
16 THE RESIDENTIAL PREMISES WITHOUT ANY AGREEMENT CONCERNING THE
17 USE OF THE RESIDENTIAL PREMISES OR PAYMENT OF RENT FOR SUCH USE."

18 Page 2, strike lines 14 through 17 and substitute "RESIDENTIAL PREMISES
19 BY FILING WITH THE COUNTY COURT A COMPLAINT AND A VERIFIED
20 MOTION FOR A TEMPORARY MANDATORY INJUNCTION RESTORING
21 POSSESSION OF THE RESIDENTIAL PROPERTY TO THE OWNER OR LAWFUL

1 OCCUPANT. THE VERIFIED MOTION MUST IDENTIFY THE UNAUTHORIZED
2 PERSON OR PERSONS AND INCLUDE STATEMENTS SUBSTANTIALLY AS
3 FOLLOWS:

4 VERIFIED MOTION FOR ORDER TO
5 REMOVE UNAUTHORIZED PERSONS".

6 Page 3, strike line 3 and substitute "..... REQUESTS THAT THE COURT
7 HOLD A HEARING AS SOON AS PRACTICABLE AND THAT THE COURT ENTER
8 A TEMPORARY MANDATORY INJUNCTION ORDERING THAT THE PERSON OR
9 PERSONS CURRENTLY OCCUPYING THE RESIDENTIAL PREMISES BE
10 REMOVED FROM THE PREMISES AND BE ORDERED NOT TO RETURN TO THE
11 PREMISES FOR A PERIOD OF FOURTEEN DAYS. IN SUPPORT OF THE REQUEST,
12 THE UNDERSIGNED OWNER OR AUTHORIZED AGENT HEREBY REPRESENTS
13 AND DECLARES UNDER THE".

14 Page 3, strike lines 10 through 15.

15 Page 3, line 16, strike "5." and substitute "3."

16 Page 3, strike lines 19 through 27 and substitute:

17 "4. [] THE DECLARANT HAS INFORMED THE UNAUTHORIZED
18 PERSON OR PERSONS THAT HE OR SHE IS GOING TO COURT TO
19 REQUEST A TEMPORARY MANDATORY INJUNCTION
20 RESTORING THE OWNER TO POSSESSION AND SHALL DELIVER
21 A COPY OF THIS VERIFIED MOTION FOR ORDER TO REMOVE
22 UNAUTHORIZED PERSONS FORM TO THE UNAUTHORIZED
23 PERSON OR PERSONS;"

24 Page 4, strike lines 1 through 5.

25 Page 4, line 6, strike "9." and substitute "5."

26 Page 4, line 10, strike "10." and substitute "6."

27 Page 4, lines 14 and 15, strike "DECLARATION PROVIDED TO LAW
28 ENFORCEMENT" and substitute "MOTION FILED WITH THE COUNTY COURT".

29 Page 4, strike lines 19 through 23 and substitute:

30 "(4) (a) THE COUNTY COURT SHALL CONSIDER THE COMPLAINT
31 AND MOTION FOR TEMPORARY MANDATORY INJUNCTION UNDER THIS
32 SECTION AND CONDUCT A HEARING ON THE MOTION AS SOON AS

1 PRACTICABLE, BUT IN NO EVENT LATER THAN TWO COURT DAYS AFTER THE
2 FILING OF THE MOTION.

3 (b) (I) THE SUMMONS, COMPLAINT, MOTION, AND NOTICE
4 REQUIRED BY SUBSECTION (4)(b)(III) OF THIS SECTION SHALL EITHER BE
5 SERVED BY PERSONAL SERVICE UPON THE DEFENDANT, AS IN ANY CIVIL
6 ACTION, BY A PERSON QUALIFIED UNDER THE COLORADO RULES OF
7 COUNTY COURT CIVIL PROCEDURE TO SERVE PROCESS, OR SUCH PERSON
8 MAY MAKE SERVICE BY POSTING A COPY OF THE SUMMONS, COMPLAINT,
9 MOTION, AND NOTICE REQUIRED BY SUBSECTION (4)(b)(III) OF THIS
10 SECTION IN SOME CONSPICUOUS PLACE UPON THE PREMISES.

11 (II) PERSONAL SERVICE OR SERVICE BY POSTING MUST BE MADE AT
12 LEAST TWENTY-FOUR HOURS BEFORE THE TIME FOR APPEARANCE
13 SPECIFIED IN SUCH SUMMONS AND NOTICE, AND THE TIME AND MANNER OF
14 THE SERVICE MUST BE ENDORSED UPON SUCH SUMMONS BY THE PERSON
15 MAKING SERVICE THEREOF.

16 (III) THE WRITTEN NOTICE OF THE DATE, TIME, AND LOCATION OF
17 THE HEARING MUST BE SERVED WITH THE COMPLAINT. THE NOTICE MUST
18 BE PRINTED IN BLACK INK AND HAVE A FONT SIZE OF NOT LESS THAN
19 TWELVE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

20 NOTICE

21 ON [DATE], [YEAR], AT [TIME] IN COURTROOM [NUMBER],
22 [COURTHOUSE NAME], [COURTHOUSE ADDRESS], THE COURT
23 WILL HOLD A HEARING ON A MOTION FOR AN ORDER FOR
24 TEMPORARY MANDATORY INJUNCTION IN ORDER TO
25 REQUIRE THE REMOVAL FROM THE RESIDENTIAL PREMISES
26 LOCATED AT [RESIDENTIAL PREMISES ADDRESS] OF EACH
27 UNAUTHORIZED PERSON IDENTIFIED IN THE MOTION THAT
28 ACCOMPANIES THIS NOTICE. IF YOU ARE IDENTIFIED AS AN
29 UNAUTHORIZED PERSON AND IF YOU BELIEVE THAT IS NOT
30 TRUE, THEN YOU MUST ATTEND THE HEARING AND PRESENT
31 ANY EVIDENCE SUPPORTING YOUR POSITION. **IF YOU FAIL
32 TO ATTEND THE HEARING, THE COURT MAY
33 ENTER AN ORDER INSTRUCTING THE SHERIFF
34 OR OTHER LAW ENFORCEMENT OFFICER TO
35 REMOVE YOU FROM THE RESIDENTIAL
36 PREMISES IMMEDIATELY.**

37 (c) ANY OCCUPANT OF THE RESIDENTIAL PREMISES WHO DISPUTES
38 THAT HE OR SHE IS AN UNAUTHORIZED PERSON MAY APPEAR AT THE
39 HEARING AND MUST BE PERMITTED TO PROVIDE TESTIMONY AND OTHER
40 EVIDENCE THAT THE OCCUPANT IS NOT AN UNAUTHORIZED PERSON. THE
41 COURT, IN ITS DISCRETION, MAY ACCEPT A WRITTEN STATEMENT

1 SUBMITTED TO THE COURT PRIOR TO THE COMMENCEMENT OF THE
2 HEARING IN LIEU OF PERSONAL TESTIMONY FROM THE OCCUPANT.

3 (d) IF NO PERSON IDENTIFIED IN THE MOTION AS AN UNAUTHORIZED
4 PERSON APPEARS AT THE HEARING, AND NO WRITTEN STATEMENT THAT
5 THE COURT DEEMS SUFFICIENT IS FILED IN OPPOSITION TO THE MOTION, THE
6 COURT MAY PROCEED TO RULE ON THE MOTION BASED ON THE CONTENTS
7 OF THE MOTION AND ANY ADDITIONAL TESTIMONY OFFERED BY THE
8 MOVING PARTY. THE COURT MAY, BUT NEED NOT, REQUIRE THE MOVING
9 PARTY TO CONFIRM IN ORAL TESTIMONY THE FACTS RECITED IN THE
10 MOTION AND MAY MAKE SUCH OTHER INQUIRY OF THE OWNER OR
11 AUTHORIZED AGENT AS THE COURT DETERMINES PROPER UNDER THE
12 CIRCUMSTANCES. AFTER TAKING TESTIMONY FROM THE MOVING PARTY
13 AND ANY OCCUPANT WHO CONTESTS THE MOTION OR AFTER CONSIDERING
14 THE CONTENT OF THE MOTION OR WRITTEN STATEMENT, THE COURT SHALL
15 DETERMINE WHETHER THE OCCUPANT IS AN UNAUTHORIZED PERSON. IF
16 THE COURT DETERMINES THAT THE OCCUPANT IS AN UNAUTHORIZED
17 PERSON, THE COURT SHALL ENTER AN ORDER FOR A TEMPORARY
18 MANDATORY INJUNCTION PRIOR TO ADJOURNING THE HEARING, WHICH
19 ORDER MAY INCLUDE SUCH ADDITIONAL TERMS OR LIMITATIONS AS THE
20 COURT MAY IN ITS DISCRETION DETERMINE NECESSARY AND EQUITABLE
21 UNDER THE CIRCUMSTANCES. IF THE COURT DETERMINES THAT THE
22 OCCUPANT IS NOT AN UNAUTHORIZED PERSON, THE COURT SHALL DENY
23 THE MOTION FOR AN ORDER FOR TEMPORARY MANDATORY INJUNCTION. IF
24 AN ORDER FOR TEMPORARY MANDATORY INJUNCTION IS DENIED, THE
25 OWNER IS NOT PREJUDICED FROM THEREAFTER COMMENCING AN EVICTION
26 PURSUANT TO SECTION 13-40-101.

27 (e) THE COURT SHALL NOT REQUIRE THE APPOINTMENT OF AN
28 ATTORNEY TO REPRESENT ANY OCCUPANT OR OTHER INTERESTED PERSON
29 AS A CONDITION OF CONSIDERING SUCH MOTION, UNLESS IT APPEARS FROM
30 THE MOTION OR OTHER PAPERS FILED WITH THE COURT THAT THERE IS A
31 REASONABLE PROBABILITY THAT THE OCCUPANT IS IN MILITARY SERVICE.

32 (f) NOTWITHSTANDING THE PROVISIONS OF SECTION 13-32-101
33 (1)(c), NEITHER A PETITIONER NOR A RESPONDENT IN AN ACTION
34 COMMENCED PURSUANT TO THIS SECTION IS REQUIRED TO PAY A DOCKET
35 FEE.

36 (g) IF THE COURT GRANTS THE ORDER FOR TEMPORARY
37 MANDATORY INJUNCTION, THE OWNER OR HIS OR HER AUTHORIZED AGENT
38 MAY DELIVER THE ORDER FOR TEMPORARY MANDATORY INJUNCTION TO
39 ANY LAW ENFORCEMENT AGENCY HAVING JURISDICTION TO ENFORCE THE
40 ORDER.

41 (5) (a) WITHIN TWENTY-FOUR HOURS AFTER RECEIPT OF ORDER

- 1 FOR TEMPORARY MANDATORY INJUNCTION, A".
- 2 Page 5, line 3, strike "DECLARATION" and substitute "MOTION FILED WITH
3 THE COUNTY COURT".
- 4 Page 5, strike lines 10 through 27.
- 5 Page 6, strike lines 1 and 2.
- 6 Page 6, strike lines 3 through 9 and substitute:
7 **"13-40.1-102. Unauthorized alteration or damage of a
8 residential property. (1) IF A PERSON'S CONDUCT SATISFIES ALL OF THE
9 ELEMENTS OF SECTION 18-4-501, THE PERSON WHO IS REMOVED FROM A
10 RESIDENTIAL PROPERTY PURSUANT TO SECTION 13-40.1-101 AND WHO
11 KNOWINGLY DAMAGES THE REAL OR PERSONAL PROPERTY OF ONE OR
12 MORE OTHER PERSONS MAY HAVE COMMITTED CRIMINAL MISCHIEF."**
- 13 Renumber succeeding subsection accordingly.
- 14 Page 6, line 17, strike "18-4-504.2" and substitute "13-40.1-101".

** ** ** ** **