

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

Conference Committee

*This Unproved and Unofficial Version Includes All Amendments
Adopted in the First House, Second House, and the Conference Committee*

LLS NO. 18-0423.01 Jerry Barry x4341

SENATE BILL 18-015

SENATE SPONSORSHIP

Gardner and Hill,

HOUSE SPONSORSHIP

Williams D. and Liston,

Senate Committees
Judiciary

House Committees
State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING THE "PROTECTING HOMEOWNERS AND DEPLOYED**
102 **MILITARY PERSONNEL ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill directs a peace officer to remove a person from a residential premises and to order the person to remain off the premises if the owner or owner's authorized agent (declarant) swears to a declaration making specified statements concerning ownership of the premises and the lack of authority for the person or persons who are on the premises to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

be there. The peace officer must allow the person a reasonable opportunity to obtain evidence of his or her authority to be on the premises.

A declarant:

- Agrees to indemnify a peace officer and his or her agency for acts and omissions made in reliance upon the declaration; and
- Is liable for actual damages, attorney fees, and costs for any false statements made in the declaration.

If the declaration includes a statement that the property has been altered or damaged, or if the peace officer sees evidence of alteration or damage, the peace officer shall collect the personal information of the persons removed and provide it to the declarant. A person removed from the property pursuant to the bill who alters or damages the property is guilty of a class 1 misdemeanor.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Protecting Homeowners and Deployed Military Personnel Act".

SECTION 2. In Colorado Revised Statutes, **add** article 40.1 to title 13 as follows:

ARTICLE 40.1

Removal of Unauthorized Persons

13-40.1-101. Removal of unauthorized persons - definitions.

(1) AS USED IN THIS ARTICLE 40.1, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(b) (I) "UNAUTHORIZED PERSON" MEANS A PERSON WHO OCCUPIES AN UNINHABITED OR VACANT RESIDENTIAL PREMISES WITHOUT ANY CURRENT OR PRIOR AGREEMENT OR CONSENT OF THE OWNER OR AN

1 AUTHORIZED AGENT OF THE OWNER, WHETHER WRITTEN OR ORAL,
2 CONCERNING THE USE OF THE RESIDENTIAL PREMISES.

3 (II) "UNAUTHORIZED PERSON" DOES NOT INCLUDE:

4 (A) A RELATIVE OF THE PROPERTY OWNER OR A RELATIVE OF AN
5 AUTHORIZED AGENT OF THE PROPERTY OWNER, INCLUDING A SPOUSE,
6 DESCENDANT, STEPCHILD, PARENT, STEPPARENT, GRANDPARENT,
7 BROTHER, SISTER, UNCLE, OR AUNT, WHETHER RELATED BY WHOLE OR
8 HALF BLOOD OR BY ADOPTION;

9 (B) A PERSON OR PERSONS FROM WHICH THE OWNER OR AN
10 AUTHORIZED AGENT OF THE OWNER HAS ACCEPTED MONEY OR ANYTHING
11 OF VALUE; OR

12 (C) A PERSON WHO WAS PREVIOUSLY GIVEN PERMISSION TO ENTER
13 AND REMAIN ON THE PREMISES.

14 (2) THE OWNER OF A RESIDENTIAL PREMISES, OR HIS OR HER
15 AUTHORIZED AGENT, MAY INITIATE THE INVESTIGATION OF AND REQUEST
16 THE REMOVAL OF AN UNAUTHORIZED PERSON OR PERSONS FROM THE
17 RESIDENTIAL PREMISES BY FILING WITH THE COUNTY COURT A COMPLAINT
18 AND A VERIFIED MOTION FOR A TEMPORARY MANDATORY INJUNCTION
19 RESTORING POSSESSION OF THE RESIDENTIAL PROPERTY TO THE OWNER OR
20 LAWFUL OCCUPANT. TO THE EXTENT KNOWN OR REASONABLY
21 ASCERTAINABLE, THE VERIFIED MOTION MUST IDENTIFY THE
22 UNAUTHORIZED PERSON OR PERSONS AND INCLUDE STATEMENTS
23 SUBSTANTIALLY AS FOLLOWS:

24 VERIFIED MOTION FOR ORDER TO
25 REMOVE UNAUTHORIZED PERSONS

26 THE UNDERSIGNED OWNER, OR AUTHORIZED AGENT
27 OF THE OWNER, OF THE RESIDENTIAL PREMISES LOCATED AT

1 REQUESTS THAT THE COURT HOLD A HEARING
2 WITHIN ONE COURT DAY AND THAT THE COURT ENTER A
3 TEMPORARY MANDATORY INJUNCTION AND ISSUE A WRIT OF
4 RESTITUTION ORDERING THAT THE PERSON OR PERSONS
5 CURRENTLY OCCUPYING THE RESIDENTIAL PREMISES BE
6 REMOVED FROM THE PREMISES AND BE ORDERED NOT TO
7 RETURN TO THE PREMISES FOR A PERIOD OF FOURTEEN
8 DAYS. IN SUPPORT OF THE REQUEST, THE UNDERSIGNED
9 OWNER OR AUTHORIZED AGENT HEREBY REPRESENTS AND
10 DECLARES UNDER THE PENALTY OF PERJURY THAT (INITIAL
11 EACH BOX):

12 1. THE DECLARANT IS THE OWNER OF THE PREMISES OR
13 THE AUTHORIZED AGENT OF THE OWNER OF THE PREMISES;

14 2. AN UNAUTHORIZED PERSON OR PERSONS HAVE
15 ENTERED AND ARE REMAINING UNLAWFULLY ON THE
16 PREMISES;

17 3. NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF
18 THE OWNER HAS EVER GIVEN PERMISSION FOR THE
19 UNAUTHORIZED PERSON OR PERSONS TO ENTER AND REMAIN
20 ON THE PREMISES;

21 4. NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF
22 THE OWNER HAS EVER HAD A WRITTEN OR ORAL
23 AGREEMENT WITH THE UNAUTHORIZED PERSON OR PERSONS
24 REGARDING THE USE OF THE PREMISES;

25 5. NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF
26 THE OWNER IS RELATED TO THE UNAUTHORIZED PERSON OR
27 PERSONS;

1 6. [] NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF
2 THE OWNER HAS EVER ACCEPTED MONEY OR ANYTHING OF
3 VALUE FROM THE UNAUTHORIZED PERSON OR PERSONS
4 REGARDING THE USE OF THE PREMISES;

5 7. [] THE DECLARANT HAS DEMANDED THAT THE
6 UNAUTHORIZED PERSON OR PERSONS VACATE THE PREMISES
7 BUT THEY HAVE NOT DONE SO;

8 8. [] THE DECLARANT HAS INFORMED THE UNAUTHORIZED
9 PERSON OR PERSONS THAT HE OR SHE IS GOING TO COURT TO
10 REQUEST A TEMPORARY MANDATORY INJUNCTION
11 RESTORING THE OWNER TO POSSESSION AND SHALL DELIVER
12 A COPY OF THIS VERIFIED MOTION FOR ORDER TO REMOVE
13 UNAUTHORIZED PERSONS FORM TO THE UNAUTHORIZED
14 PERSON OR PERSONS;

15
16 9. [] ADDITIONAL OPTIONAL EXPLANATORY COMMENTS OR
17 STATEMENT THAT THE PREMISES HAS BEEN ALTERED OR
18 DAMAGED:

19

20 (3) A DECLARANT WHO FALSELY SWEARS ON A MOTION FILED WITH
21 THE COUNTY COURT PURSUANT TO THIS SECTION MAY BE:

22 (a) SUBJECT TO SANCTIONS UNDER THE COLORADO RULES OF
23 COUNTY COURT CIVIL PROCEDURE;

24 (b) HELD IN CONTEMPT OF COURT; OR

25 (c) PROSECUTED FOR PERJURY IN THE FIRST OR SECOND DEGREE,
26 AS DESCRIBED IN SECTION 18-8-502 OR 18-8-503, OR FALSE SWEARING, AS
27 DESCRIBED IN SECTION 18-8-504.

1 RESTITUTION IN ORDER TO REQUIRE THE REMOVAL FROM
2 THE RESIDENTIAL PREMISES LOCATED AT [RESIDENTIAL
3 PREMISES ADDRESS] OF EACH UNAUTHORIZED PERSON
4 IDENTIFIED IN THE MOTION THAT ACCOMPANIES THIS
5 NOTICE. IF YOU ARE IDENTIFIED AS AN UNAUTHORIZED
6 PERSON AND IF YOU BELIEVE THAT IS NOT TRUE, THEN YOU
7 MUST ATTEND THE HEARING AND PRESENT ANY EVIDENCE
8 SUPPORTING YOUR POSITION. **IF YOU FAIL TO ATTEND**
9 **THE HEARING, THE COURT MAY ENTER AN**
10 **ORDER INSTRUCTING THE SHERIFF TO**
11 **REMOVE YOU FROM THE RESIDENTIAL**
12 **PREMISES IMMEDIATELY.**

13 (c) ANY OCCUPANT OF THE RESIDENTIAL PREMISES WHO DISPUTES
14 THAT HE OR SHE IS AN UNAUTHORIZED PERSON MAY APPEAR AT THE
15 HEARING AND MUST BE PERMITTED TO PROVIDE TESTIMONY AND OTHER
16 EVIDENCE THAT THE OCCUPANT IS NOT AN UNAUTHORIZED PERSON. THE
17 COURT, IN ITS DISCRETION, MAY ACCEPT A WRITTEN STATEMENT
18 SUBMITTED TO THE COURT PRIOR TO THE COMMENCEMENT OF THE
19 HEARING IN LIEU OF PERSONAL TESTIMONY FROM THE OCCUPANT.

20 (d) IF NO PERSON IDENTIFIED IN THE MOTION AS AN UNAUTHORIZED
21 PERSON APPEARS AT THE HEARING, AND NO WRITTEN STATEMENT THAT
22 THE COURT DEEMS SUFFICIENT IS FILED IN OPPOSITION TO THE MOTION, THE
23 COURT MAY PROCEED TO RULE ON THE MOTION BASED ON THE CONTENTS
24 OF THE MOTION AND ANY ADDITIONAL TESTIMONY OFFERED BY THE
25 MOVING PARTY. THE COURT MAY, BUT NEED NOT, REQUIRE THE MOVING
26 PARTY TO CONFIRM IN ORAL TESTIMONY THE FACTS RECITED IN THE
27 MOTION AND MAY MAKE SUCH OTHER INQUIRY OF THE OWNER OR

1 AUTHORIZED AGENT AS THE COURT DETERMINES PROPER UNDER THE
2 CIRCUMSTANCES. AFTER TAKING TESTIMONY FROM THE MOVING PARTY
3 AND ANY OCCUPANT WHO CONTESTS THE MOTION OR AFTER CONSIDERING
4 THE CONTENT OF THE MOTION OR WRITTEN STATEMENT, THE COURT SHALL
5 DETERMINE WHETHER THE OCCUPANT IS AN UNAUTHORIZED PERSON. IF
6 THE COURT DETERMINES THAT THE OCCUPANT IS AN UNAUTHORIZED
7 PERSON, THE COURT SHALL ENTER AN ORDER FOR A TEMPORARY
8 MANDATORY INJUNCTION AND ISSUE A WRIT OF RESTITUTION PRIOR TO
9 ADJOURNING THE HEARING, WHICH ORDER MAY INCLUDE SUCH
10 ADDITIONAL TERMS OR LIMITATIONS AS THE COURT MAY IN ITS DISCRETION
11 DETERMINE NECESSARY AND EQUITABLE UNDER THE CIRCUMSTANCES. IF
12 THE COURT DETERMINES THAT THE OCCUPANT IS NOT AN UNAUTHORIZED
13 PERSON, THE COURT SHALL DENY THE MOTION FOR AN ORDER FOR
14 TEMPORARY MANDATORY INJUNCTION. IF AN ORDER FOR TEMPORARY
15 MANDATORY INJUNCTION IS DENIED, THE OWNER IS NOT PREJUDICED FROM
16 THEREAFTER COMMENCING AN EVICTION PURSUANT TO SECTION
17 13-40-101.

18 (e) THE COURT SHALL NOT REQUIRE THE APPOINTMENT OF AN
19 ATTORNEY TO REPRESENT ANY OCCUPANT OR OTHER INTERESTED PERSON
20 AS A CONDITION OF CONSIDERING SUCH MOTION.

21
22 (f) IF THE COURT ENTERS THE ORDER FOR TEMPORARY
23 MANDATORY INJUNCTION AND ISSUES A WRIT OF RESTITUTION THE OWNER
24 OR HIS OR HER AUTHORIZED AGENT MAY DELIVER THE ORDER FOR
25 TEMPORARY MANDATORY INJUNCTION TO THE SHERIFF HAVING
26 JURISDICTION TO ENFORCE THE ORDER.

27 (5) (a) EXCEPT AS PROVIDED IN SUBSECTION (5)(b) OF THIS

1 SECTION, THE WRIT OF RESTITUTION MUST BE EXECUTED PURSUANT TO
2 SECTION 13-40-122.

3 (b) NO LATER THAN TWENTY-FOUR HOURS AFTER RECEIPT OF
4 ORDER FOR TEMPORARY MANDATORY INJUNCTION, A SHERIFF,
5 UNDERSHERIFF, OR DEPUTY SHERIFF, AS DESCRIBED IN SECTION 16-2.5-103
6 (1) OR (2), WHILE OFF DUTY OR ON DUTY AT RATES CHARGED BY THE
7 EMPLOYING SHERIFF'S OFFICE IN ACCORDANCE WITH SECTION 30-1-104
8 (1)(gg), SHALL:

9 (I) REMOVE THE PERSON OR PERSONS FROM THE RESIDENTIAL
10 PREMISES, WITH OR WITHOUT ARRESTING THE PERSON OR PERSONS; AND

11 (II) ORDER THE PERSON OR PERSONS TO REMAIN OFF THE
12 RESIDENTIAL PREMISES OR BE SUBJECT TO ARREST FOR CRIMINAL
13 TRESPASS.

14 (c) IF THE MOTION FILED WITH THE COUNTY COURT INCLUDES A
15 STATEMENT THAT THE PROPERTY HAS BEEN ALTERED OR DAMAGED OR THE
16 SHERIFF, UNDERSHERIFF, OR DEPUTY SHERIFF SEES EVIDENCE THAT THE
17 PROPERTY HAS BEEN ALTERED OR DAMAGED, THE SHERIFF, UNDERSHERIFF,
18 OR DEPUTY SHERIFF SHALL COLLECT PERSONAL INFORMATION FROM THE
19 PERSON OR PERSONS AND SHALL PROVIDE THAT INFORMATION TO THE
20 DECLARANT.

21

22

23 **13-40.1-102. Unauthorized alteration or damage of a**
24 **residential property.** (1) IF A PERSON'S CONDUCT SATISFIES ALL OF THE
25 ELEMENTS OF SECTION 18-4-501, THE PERSON WHO IS REMOVED FROM A
26 RESIDENTIAL PROPERTY PURSUANT TO SECTION 13-40.1-101 AND WHO
27 KNOWINGLY DAMAGES THE REAL OR PERSONAL PROPERTY OF ONE OR

1 MORE OTHER PERSONS MAY HAVE COMMITTED CRIMINAL MISCHIEF.

2 (2) NOTHING IN THIS SECTION PRECLUDES THE PROSECUTION OF
3 VIOLATIONS UNDER ANY OTHER PROVISION OF LAW.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 13-21-129 as
5 follows:

6 **13-21-129. Civil liability for false statement to recover**
7 **possession of real property.** IN ADDITION TO ANY OTHER REMEDIES, A
8 PERSON REMOVED FROM A RESIDENTIAL PREMISES PURSUANT TO SECTION
9 13-40.1-101 ON THE BASIS OF FALSE STATEMENTS MADE BY A DECLARANT
10 HAS A PRIVATE CAUSE OF ACTION AGAINST THE DECLARANT. IN THE
11 ACTION, THE PLAINTIFF IS ENTITLED TO ACTUAL DAMAGES, ATTORNEY
12 FEES, AND COSTS.

13 **SECTION 4. Effective date - applicability.** This act takes effect
14 July 1, 2018, and applies to requests for removal and offenses committed
15 on or after said date.

16 **SECTION 5. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.