

CHAPTER 393

COURTS

SENATE BILL 18-015

BY SENATOR(S) Gardner and Hill, Baumgardner, Cooke, Coram, Crowder, Holbert, Jahn, Kagan, Lambert, Lundberg, Marble, Martinez Humenik, Moreno, Neville T., Scott, Smallwood, Sonnenberg, Tate, Grantham;
 also REPRESENTATIVE(S) Williams D. and Liston, Beckman, Carver, Esgar, Gray, Kraft-Tharp, Lawrence, Melton, Pettersen, Roberts, Saine, Sandridge, Valdez, Van Winkle, Winkler, Wist, Young, Duran, Bridges, Buck, Catlin, Covarrubias, Danielson, Hooton, Leonard, Lontine, Michaelson Jenet, Neville P., Rankin, Ransom, Reyher, Rosenthal, Salazar, Sias, Singer, Weissman, Wilson, Winter.

AN ACT

CONCERNING THE "PROTECTING HOMEOWNERS AND DEPLOYED MILITARY PERSONNEL ACT".

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

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) "UNAUTHORIZED PERSON" DOES NOT INCLUDE:

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

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

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

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

VERIFIED MOTION FOR ORDER TO REMOVE UNAUTHORIZED PERSONS

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

- 1. THE DECLARANT IS THE OWNER OF THE PREMISES OR THE AUTHORIZED AGENT OF THE OWNER OF THE PREMISES;
- 2. AN UNAUTHORIZED PERSON OR PERSONS HAVE ENTERED AND ARE REMAINING UNLAWFULLY ON THE PREMISES;
- 3. NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF THE OWNER HAS EVER GIVEN PERMISSION FOR THE UNAUTHORIZED PERSON OR PERSONS TO ENTER AND REMAIN ON THE PREMISES;
- 4. NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF THE OWNER HAS EVER HAD A WRITTEN OR ORAL AGREEMENT WITH THE UNAUTHORIZED PERSON OR PERSONS REGARDING THE USE OF THE PREMISES;

5. [] NEITHER THE OWNER NOR AN AUTHORIZED AGENT OF THE OWNER IS RELATED TO THE UNAUTHORIZED PERSON OR PERSONS;

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

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

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

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

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

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

(b) HELD IN CONTEMPT OF COURT; OR

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

(4) (a) THE COUNTY COURT SHALL CONSIDER THE COMPLAINT AND MOTION FOR TEMPORARY MANDATORY INJUNCTION UNDER THIS SECTION AND CONDUCT A HEARING ON THE MOTION AS SOON AS PRACTICABLE, BUT IN NO EVENT LATER THAN THE NEXT COURT DAY AFTER THE FILING OF THE MOTION, UNLESS A LATER DATE IS REQUESTED BY THE MOVING PARTY.

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

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

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

NOTICE

ON [DATE], [YEAR], AT [TIME] IN COURTROOM [NUMBER], [COURTHOUSE NAME], [COURTHOUSE ADDRESS], THE COURT WILL HOLD A HEARING ON A MOTION FOR AN ORDER FOR TEMPORARY MANDATORY INJUNCTION AND WRIT OF RESTITUTION IN ORDER TO REQUIRE THE REMOVAL FROM THE RESIDENTIAL PREMISES LOCATED AT [RESIDENTIAL PREMISES ADDRESS] OF EACH UNAUTHORIZED PERSON IDENTIFIED IN THE MOTION THAT ACCOMPANIES THIS NOTICE. IF YOU ARE IDENTIFIED AS AN UNAUTHORIZED PERSON AND IF YOU BELIEVE THAT IS NOT TRUE, THEN YOU MUST ATTEND THE HEARING AND PRESENT ANY EVIDENCE SUPPORTING YOUR POSITION. **IF YOU FAIL TO ATTEND THE HEARING, THE COURT MAY ENTER AN ORDER INSTRUCTING THE SHERIFF TO REMOVE YOU FROM THE RESIDENTIAL PREMISES IMMEDIATELY.**

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

(d) IF NO PERSON IDENTIFIED IN THE MOTION AS AN UNAUTHORIZED PERSON APPEARS AT THE HEARING, AND NO WRITTEN STATEMENT THAT THE COURT DEEMS SUFFICIENT IS FILED IN OPPOSITION TO THE MOTION, THE COURT MAY PROCEED TO RULE ON THE MOTION BASED ON THE CONTENTS OF THE MOTION AND ANY ADDITIONAL TESTIMONY OFFERED BY THE MOVING PARTY. THE COURT MAY, BUT NEED NOT, REQUIRE THE MOVING PARTY TO CONFIRM IN ORAL TESTIMONY THE FACTS RECITED IN THE MOTION AND MAY MAKE SUCH OTHER INQUIRY OF THE OWNER OR AUTHORIZED AGENT AS THE COURT DETERMINES PROPER UNDER THE CIRCUMSTANCES. AFTER TAKING TESTIMONY FROM THE MOVING PARTY AND ANY OCCUPANT WHO CONTESTS THE MOTION OR AFTER CONSIDERING THE CONTENT OF THE MOTION OR WRITTEN STATEMENT, THE COURT SHALL DETERMINE WHETHER THE OCCUPANT IS AN UNAUTHORIZED PERSON. IF THE COURT DETERMINES THAT THE OCCUPANT IS AN UNAUTHORIZED PERSON, THE COURT SHALL ENTER AN ORDER FOR A TEMPORARY MANDATORY INJUNCTION AND ISSUE A WRIT OF RESTITUTION PRIOR TO ADJOURNING THE HEARING, WHICH ORDER MAY INCLUDE SUCH ADDITIONAL TERMS OR LIMITATIONS AS THE COURT MAY IN ITS DISCRETION DETERMINE NECESSARY AND EQUITABLE UNDER THE CIRCUMSTANCES. IF THE COURT DETERMINES THAT THE OCCUPANT IS NOT AN UNAUTHORIZED PERSON, THE COURT SHALL DENY THE MOTION FOR AN ORDER FOR TEMPORARY MANDATORY INJUNCTION. IF AN ORDER FOR TEMPORARY MANDATORY INJUNCTION IS DENIED, THE OWNER IS NOT PREJUDICED FROM THEREAFTER COMMENCING AN EVICTION PURSUANT TO SECTION 13-40-101.

(e) THE COURT SHALL NOT REQUIRE THE APPOINTMENT OF AN ATTORNEY TO

REPRESENT ANY OCCUPANT OR OTHER INTERESTED PERSON AS A CONDITION OF CONSIDERING SUCH MOTION.

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

(5)(a) EXCEPT AS PROVIDED IN SUBSECTION (5)(b) OF THIS SECTION, THE WRIT OF RESTITUTION MUST BE EXECUTED PURSUANT TO SECTION 13-40-122.

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

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

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

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

13-40.1-102. Unauthorized alteration or damage of a residential property.

(1) IF A PERSON'S CONDUCT SATISFIES ALL OF THE ELEMENTS OF SECTION 18-4-501, THE PERSON WHO IS REMOVED FROM A RESIDENTIAL PROPERTY PURSUANT TO SECTION 13-40.1-101 AND WHO KNOWINGLY DAMAGES THE REAL OR PERSONAL PROPERTY OF ONE OR MORE OTHER PERSONS MAY HAVE COMMITTED CRIMINAL MISCHIEF.

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

SECTION 3. In Colorado Revised Statutes, **add** 13-21-130 as follows:

13-21-130. Civil liability for false statement to recover possession of real property. IN ADDITION TO ANY OTHER REMEDIES, A PERSON REMOVED FROM A RESIDENTIAL PREMISES PURSUANT TO SECTION 13-40.1-101 ON THE BASIS OF FALSE STATEMENTS MADE BY A DECLARANT HAS A PRIVATE CAUSE OF ACTION AGAINST THE DECLARANT. IN THE ACTION, THE PLAINTIFF IS ENTITLED TO ACTUAL DAMAGES, ATTORNEY FEES, AND COSTS.

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

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

Approved: June 6, 2018