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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Edwards and LaRe

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SUMMARY

- Permits property owners to request the immediate removal of a person unlawfully occupying residential property when certain conditions are met.
- Expands the definition of criminal mischief to include unlawfully detaining, occupying, or trespassing upon a residential dwelling and intentionally causing damage to the dwelling.
- Creates a criminal offense specific to title fraud.

DETAILED ANALYSIS

Removal of unauthorized occupants

Under continuing law, when an unauthorized occupant refuses to leave real property, the property owner may obtain a writ of execution through a Forcible Entry and Detainer action. Within ten days after receiving a writ of execution, a sheriff, police officer, constable, or bailiff must restore the property owner to possession of the premises.¹ The bill establishes an alternative nonjudicial process under which certain property owners and their agents may request the county sheriff to remove an unauthorized occupant.

Conditions and limitations

In order for the sheriff to remove an unauthorized occupant under the process created by the bill, all of the following conditions must be met:

- The requester is the record owner of the real property or the owner's agent;

¹ Chapter 1923 of the Revised Code.

- The real property includes a residential premises, and the record owner has the exclusive right to occupy the premises;
- The unauthorized occupant unlawfully entered the property and remains in the residential premises;
- The residential premises was not open to the public at the time the unauthorized occupant entered;
- The record owner directed the unauthorized occupant to leave the residential premises;
- The unauthorized occupant is not a current or former tenant of the residential premises pursuant to a rental agreement authorized by the record owner (it is not clear whether current or former tenants of a previous record owner could be removed by a new record owner following a transfer of the residential premises);
- The unauthorized occupant is not a current or former owner of any interest in the real property or the residential premises, and is not listed on the title to the real property, unless the unauthorized occupant has engaged in title fraud;
- The unauthorized occupant is not a member of the record owner's immediate family – i.e., a spouse residing in the same household; full- or half-siblings; biological children, adopted children, or stepchildren; parents; and grandparents;
- There is no pending litigation related to the real property or the residential premises between the record owner and the unauthorized occupant.²

Complaint

If all of the conditions described above are met, the owner or the owner's agent may file a complaint to have the unauthorized occupant removed. The bill provides the form to which the complaint must substantially adhere. The form consists primarily of sworn affirmations as to the conditions precedent to removing an unlawful occupant under the new procedure. However, it also requires certain additional items such as:

- The date the record owner acquired the property;
- A copy of the record owner's government-issued identification or, if the form is submitted by the record owner's agent, documents evidencing the agent's authority to act on the record owner's behalf;
- An acknowledgment that the record owner or agent may be civilly liable for making false statements in the complaint or wrongfully using the removal process.³

² R.C. 1923.16(A); R.C. 1349.04(A)(2), not in the bill.

³ R.C. 1923.16(B).

Notice and removal

Upon receiving a complaint to remove an unauthorized occupant, the sheriff must verify that the complainant is the owner of the property or the owner's agent. Once verified, the sheriff is required to serve notice "without delay" that the unauthorized occupant must immediately vacate the property. Notice may be served by hand or posted on the front door of the property. The sheriff must also attempt to verify the identities of unauthorized occupants and may arrest them if legally appropriate.⁴ The sheriff is entitled to a \$60 service fee, to be paid by the record owner or agent that made the complaint.⁵

After delivering notice, the owner or their agent may request that the sheriff stand by to keep the peace while the owner or agent removes the unauthorized occupier's personal property and changes the locks. The sheriff may charge the owner or their agent a reasonable hourly rate to do so. The sheriff is not liable to the unauthorized occupant for loss, destruction, or damage to their property. The owner or their agent is also shielded from liability for such damages unless the removal was wrongful.⁶

Wrongful removal

If a person is wrongfully removed from real property, they may bring a civil action for wrongful removal. A court may restore possession of the real property to the person wrongfully removed, award actual damages, statutory damages of triple the fair market rent of the residential premises, court costs, and attorney's fees.⁷

Criminal prohibitions

Criminal mischief

The bill expands the current definition of criminal mischief to include a prohibition on unlawfully detaining, occupying, or trespassing upon a residential dwelling and intentionally causing damage to the dwelling. A violation of this prohibition is a misdemeanor of the first degree, unless the damage to the dwelling is more than \$5,000, in which case it is a felony of the fourth degree.⁸

Title fraud

The bill creates a new criminal prohibition for title fraud. A person commits title fraud when they knowingly do any of the following:

⁴ R.C. 1923.16(C).

⁵ R.C. 1923.16(D); R.C. 311.17(A)(7), not in the bill.

⁶ R.C. 1923.16(E).

⁷ R.C. 1923.16(F).

⁸ R.C. 2909.07.

- With the purpose to detain or remain upon real property, present to another person a false document purporting to be a valid lease, agreement, deed, or other instrument conveying real property rights;
- List or advertise residential real property that the purported seller has no legal title or authority to sell;
- Rent or lease residential real property that the purported owner has no lawful ownership in to another person.

A violation of the first category of title fraud is a misdemeanor in the first degree. A violation of the second or third categories is a felony of the first degree.⁹

HISTORY

Action	Date
Introduced	04-08-24

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⁹ R.C. 2913.53.