As Introduced

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H. B. No. 295

Representative Young

Cosponsors: Representatives Claggett, Demetriou, Gross, Johnson, King, Kishman, Lorenz, Mullins, Plummer, Salvo, Schmidt

A BILL

To amend section 2909.07 and to enact sections 1923.16 and 2913.53 of the Revised Code to provide for the expedited removal of unauthorized occupants of residential property, to prohibit the use and sale of fraudulent deeds, and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2909.07 be amended and sections 1923.16 and 2913.53 of the Revised Code be enacted to read as follows:

Sec. 1923.16. (A) Notwithstanding any contrary provision of this chapter, a record owner of real property in this state or the record owner's authorized agent may request the county sheriff to immediately remove a person who unlawfully occupies a residential premises on that real property, if all of the following apply:

(1) The requesting person is the record owner of the real property or the authorized agent of the record owner.

(2) The real property includes a residential premises, and the record owner has the right to occupy that residential premises to the exclusion of others.

(3) The unauthorized occupant unlawfully entered the residential premises and is residing or otherwise remains in the residential premises.

(4) The residential premises was not open to members of the public at the time the unauthorized occupant entered.

(5) At least three days before submitting the request, the record owner directed the unauthorized occupant to leave the residential premises by sending written notice by certified mail, return receipt requested, by handing a written copy of the notice to the unauthorized occupant, or by leaving a written copy of the notice at the unauthorized occupant's usual place of abode or at the residential premises from which the record owner seeks to remove the unauthorized occupant. The notice shall contain the following language printed or written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, you may be removed by the county sheriff. If you are in doubt regarding your legal rights and obligations as an occupant of this premises, it is recommended that you seek legal assistance."

(6) The unauthorized occupant is not currently, and was not at any time during the year preceding the date the request is submitted, a tenant of the residential premises pursuant to a written or oral rental agreement authorized by the record owner.

(7) 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.

(8) The unauthorized occupant is not a member of the record owner's immediate family, as defined in section 1349.04 of the Revised Code.

(9) There is no pending litigation related to the real property or the residential premises between the record owner and the unauthorized occupant.

(B) A request to immediately remove an unauthorized occupant under this section shall be in substantially the following form:

"COMPLAINT TO REMOVE PERSONS UNLAWFULLY OCCUPYING A RESIDENTIAL PREMISES

I, the record owner or authorized agent of the record owner of the real property located at _____ (address), declare under the penalty of perjury that (initial each box):

1. ___ I am the record owner of the real property, or the authorized agent of the record owner.

2. ___ I purchased the real property on _____ (date).

3. ___ The real property includes a residential premises.

4. ___ An unauthorized person unlawfully entered the residential premises and is residing or otherwise remains in the residential premises.

5. ___ The residential premises was not open to members of the public at the time the unauthorized occupant entered.

6. ___ I have directed the unauthorized occupant, in writing, to leave the residential premises, but the unauthorized occupant has not done so.

7. The unauthorized occupant is not currently, and was not at any time during the preceding year, a tenant of the residential premises pursuant to a written or oral rental agreement with myself or my authorized agent, and any lease that may be produced by an occupant is fraudulent.

8. The unauthorized occupant is not an owner or co-owner of the real property or the residential premises and has not been listed on the title to the property, unless the unauthorized occupant has engaged in title fraud.

9. The unauthorized occupant is not my immediate family member.

10. There is no litigation related to the real property or residential premises pending between the property owner and the unauthorized occupant.

11. I understand that a person or persons removed from the residential premises pursuant to this procedure may bring a cause of action against me for any false statements made in this complaint, or for wrongfully using this procedure, and that as a result of such action I may be held liable for actual damages, penalties, costs, and reasonable attorney's fees.

12. I am requesting the sheriff to immediately remove the unauthorized occupant from the residential premises.

13. A copy of my valid government-issued identification is attached, or I am an agent of the record owner and documents evidencing my authority to act on the record owner's behalf are attached.

14. A copy of the deed to the residential premises is attached.

I HAVE READ EVERY STATEMENT MADE IN THIS COMPLAINT AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS COMPLAINT ARE MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 2921.11 OF THE REVISED CODE.

(Signature of record owner or record owner's agent)"

(C)(1) Upon receipt of a complaint that substantially conforms to the requirements of this section, and that includes both a copy of the deed to the residential premises and a sworn affirmation that the information in the complaint is true and correct, the sheriff shall, without delay, service a notice to immediately vacate on all unauthorized occupants and shall put the record owner in possession of the real property.

(2) 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 residential premises. The sheriff shall attempt to verify the identities of all persons occupying the residential premises and note the identities on the return of service. If appropriate, the sheriff may arrest any person found in the residential premises for trespass, outstanding warrants, or any other legal cause.

(D) The sheriff is entitled to the same fee for service of the notice to immediately vacate as if the sheriff were serving a writ of possession under section 311.17 of the Revised Code.

(E)(1) After the sheriff serves the notice to immediately vacate, the record owner or authorized agent may request that the sheriff stand by to keep the peace while the record owner or agent changes the locks and removes any personal property left

by the unauthorized occupants from the residential premises to or near the property line.

(2) When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by and keep the peace is responsible for paying the reasonable hourly rate set by the sheriff.

(3) The sheriff is not liable to the unauthorized occupant or any other party for loss, destruction, or damage to property.

(4) The record owner or authorized agent is not liable to an unauthorized occupant or any other party for the loss, destruction, or damage to personal property unless the removal was wrongful.

(F) A person wrongfully removed from real property under this section may bring a civil action for wrongful removal against the person that requested such removal in any court of competent jurisdiction. The court may restore possession of real property to a person wrongfully removed under this section and may award actual damages, statutory damages equal to triple the monthly fair market rent of the residential premises, court costs, and reasonable attorney's fees. An action for wrongful removal brought under this division shall not be commenced more than two years after the date the person is wrongfully removed from the real property.

(G) Whoever knowingly makes a false statement on a complaint submitted under division (B) of this section is guilty of perjury under section 2921.11 of the Revised Code.

(H) This section does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft,

or other crimes.

(I) Nothing in this section shall be construed as creating a right of action against a sheriff or county for wrongful removal.

Sec. 2909.07. (A) No person shall:

(1) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with either of the following:

(a) The property of another;

(b) One's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property, if both of the following apply:

(i) The residential real property is subject to a mortgage.

(ii) The person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action relating to that real property. As used in this division, "pending" includes the time between judgment entry and confirmation of sale.

(2) With purpose to interfere with the use or enjoyment of property of another, employ a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm;

(3) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker;

(4) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;

(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land;

(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, knowingly do any of the following:

(a) In any manner or by any means, including, but not limited to, computer hacking, alter, damage, destroy, or modify a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program;

(b) Introduce a computer contaminant into a computer, computer system, computer network, computer software, or computer program.

(7) Without privilege to do so, knowingly destroy or improperly tamper with a critical infrastructure facility;

(8) Without privilege to do so, unlawfully detain, occupy, or trespass upon a residential dwelling and intentionally cause

at least one thousand dollars in damages to the dwelling.

(B) As used in this section:

(1) "Safety device" means any fire extinguisher, fire hose, or fire axe, or any fire escape, emergency exit, or emergency escape equipment, or any life line, life-saving ring, life preserver, or life boat or raft, or any alarm, light, flare, signal, sign, or notice intended to warn of danger or emergency, or intended for other safety purposes, or any guard railing or safety barricade, or any traffic sign or signal, or any railroad grade crossing sign, signal, or gate, or any first aid or survival equipment, or any other device, apparatus, or equipment intended for protecting or preserving the safety of persons or property.

(2) "Critical infrastructure facility" has the same meaning as in section 2911.21 of the Revised Code.

(3) "Improperly tamper" means to change the physical location or the physical condition of the property.

(C)(1) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in division (C)(2), (3), or (4) of this section.

(2) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this division, if the violation of division (A)(1), (2), (3), (4), or (5) of this section creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a misdemeanor of the first degree. If the property involved in the violation of division

(A)(1), (2), (3), (4), or (5) of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is one of the following:

(a) If the violation creates a risk of physical harm to any person, except as otherwise provided in division (C)(2)(b) of this section, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fifth degree.

(b) If the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal mischief committed in violation of division (A)(1), (2), (3), (4), or (5) of this section is a felony of the fourth degree.

(3) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(6) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division, if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is one thousand dollars or more and less than ten thousand dollars, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and the

violation creates a risk of physical harm to any person, criminal mischief committed in violation of division (A)(6) of this section is a felony of the fifth degree. If the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is ten thousand dollars or more, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation of division (A)(6) of this section is used or intended to be used in the operation of an aircraft and the violation creates a substantial risk of physical harm to any person or the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(6) of this section is a felony of the fourth degree.

(4) Criminal mischief committed in violation of division (A)(7) of this section is a felony of the third degree.

(5) Except as otherwise provided in this division, criminal mischief committed in violation of division (A)(8) of this section is a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to criminal mischief committed in violation of division (A)(8) of this section, a subsequent violation is a felony of the fourth degree.

Sec. 2913.53. (A) No person, with the purpose to detain or remain upon real property, shall knowingly present to another person a false document purporting to be a valid lease agreement, deed, or other instrument conveying real property rights.

(B) No person shall knowingly do any of the following:

(1) List or advertise residential real property that the purported seller has no legal title or authority to sell;

(2) Rent or lease residential real property that the purported owner has no lawful ownership in to another person;

(3) Sell or otherwise encumber residential real property that the purported seller has no legal title or authority to sell or encumber.

(C) Whoever violates this section is guilty of title fraud. A violation of division (A) of this section is a felony of the fifth degree. A violation of division (B) of this section is a felony of the fourth degree.

Section 2. That existing section 2909.07 of the Revised Code is hereby repealed.

Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that due to the impact of loss of ownership of property, the act is needed to protect property owners. Therefore, this act shall go into immediate effect.