

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

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

HOUSE
3rd Reading Unamended
April 19, 2018

HOUSE
Amended 2nd Reading
April 18, 2018

A BILL FOR AN ACT

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

SENATE
3rd Reading Unamended
January 29, 2018

SENATE
Amended 2nd Reading
January 25, 2018

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.

1 THE RESIDENTIAL PREMISES WITHOUT ANY AGREEMENT CONCERNING THE
2 USE OF THE RESIDENTIAL PREMISES OR PAYMENT OF RENT FOR SUCH USE.

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

12 VERIFIED MOTION FOR ORDER TO
13 REMOVE UNAUTHORIZED PERSONS

14 THE UNDERSIGNED OWNER, OR AUTHORIZED AGENT
15 OF THE OWNER, OF THE RESIDENTIAL PREMISES LOCATED AT
16 REQUESTS THAT THE COURT HOLD A HEARING AS
17 SOON AS PRACTICABLE AND THAT THE COURT ENTER A
18 TEMPORARY MANDATORY INJUNCTION AND ISSUE A WRIT OF
19 EXECUTION ORDERING THAT THE PERSON OR PERSONS
20 CURRENTLY OCCUPYING THE RESIDENTIAL PREMISES BE
21 REMOVED FROM THE PREMISES AND BE ORDERED NOT TO
22 RETURN TO THE PREMISES FOR A PERIOD OF FOURTEEN
23 DAYS. IN SUPPORT OF THE REQUEST, THE UNDERSIGNED
24 OWNER OR AUTHORIZED AGENT HEREBY REPRESENTS AND
25 DECLARES UNDER THE PENALTY OF PERJURY THAT (INITIAL
26 EACH BOX):

27 1. [] THE DECLARANT IS THE OWNER OF THE PREMISES OR

1 THE AUTHORIZED AGENT OF THE OWNER OF THE PREMISES;

2 2. [] AN UNAUTHORIZED PERSON OR PERSONS HAVE
3 ENTERED AND ARE REMAINING UNLAWFULLY ON THE
4 PREMISES;

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

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

16 5. [] THE DECLARANT AGREES TO INDEMNIFY AND HOLD
17 HARMLESS ANY PEACE OFFICER AND THE OFFICER'S LAW
18 ENFORCEMENT AGENCY FOR ACTIONS OR OMISSIONS MADE
19 IN GOOD FAITH PURSUANT TO THIS DECLARATION; AND

20 6. [] ADDITIONAL OPTIONAL EXPLANATORY COMMENTS OR
21 STATEMENT THAT THE PREMISES HAS BEEN ALTERED OR
22 DAMAGED:

23

24 (3) A DECLARANT WHO FALSELY SWEARS ON A MOTION FILED WITH
25 THE COUNTY COURT PURSUANT TO THIS SECTION MAY BE PROSECUTED FOR
26 PERJURY IN THE FIRST OR SECOND DEGREE, AS DESCRIBED IN SECTION
27 18-8-502 OR 18-8-503, OR FALSE SWEARING, AS DESCRIBED IN SECTION

1 18-8-504.

2 (4) (a) THE COUNTY COURT SHALL CONSIDER THE COMPLAINT AND
3 MOTION FOR TEMPORARY MANDATORY INJUNCTION UNDER THIS SECTION
4 AND CONDUCT A HEARING ON THE MOTION AS SOON AS PRACTICABLE, BUT
5 IN NO EVENT LATER THAN TWO COURT DAYS AFTER THE FILING OF THE
6 MOTION.

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

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

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

24 NOTICE

25 ON [DATE], [YEAR], AT [TIME] IN COURTROOM [NUMBER],
26 [COURTHOUSE NAME], [COURTHOUSE ADDRESS], THE COURT
27 WILL HOLD A HEARING ON A MOTION FOR AN ORDER FOR

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

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

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

1 PARTY TO CONFIRM IN ORAL TESTIMONY THE FACTS RECITED IN THE
2 MOTION AND MAY MAKE SUCH OTHER INQUIRY OF THE OWNER OR
3 AUTHORIZED AGENT AS THE COURT DETERMINES PROPER UNDER THE
4 CIRCUMSTANCES. AFTER TAKING TESTIMONY FROM THE MOVING PARTY
5 AND ANY OCCUPANT WHO CONTESTS THE MOTION OR AFTER CONSIDERING
6 THE CONTENT OF THE MOTION OR WRITTEN STATEMENT, THE COURT SHALL
7 DETERMINE WHETHER THE OCCUPANT IS AN UNAUTHORIZED PERSON. IF
8 THE COURT DETERMINES THAT THE OCCUPANT IS AN UNAUTHORIZED
9 PERSON, THE COURT SHALL ENTER AN ORDER FOR A TEMPORARY
10 MANDATORY INJUNCTION AND ISSUE A WRIT OF EXECUTION PRIOR TO
11 ADJOURNING THE HEARING, WHICH ORDER MAY INCLUDE SUCH
12 ADDITIONAL TERMS OR LIMITATIONS AS THE COURT MAY IN ITS DISCRETION
13 DETERMINE NECESSARY AND EQUITABLE UNDER THE CIRCUMSTANCES. IF
14 THE COURT DETERMINES THAT THE OCCUPANT IS NOT AN UNAUTHORIZED
15 PERSON, THE COURT SHALL DENY THE MOTION FOR AN ORDER FOR
16 TEMPORARY MANDATORY INJUNCTION. IF AN ORDER FOR TEMPORARY
17 MANDATORY INJUNCTION IS DENIED, THE OWNER IS NOT PREJUDICED FROM
18 THEREAFTER COMMENCING AN EVICTION PURSUANT TO SECTION
19 13-40-101.

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

25 (f) NOTWITHSTANDING THE PROVISIONS OF SECTION 13-32-101
26 (1)(c), NEITHER A PETITIONER NOR A RESPONDENT IN AN ACTION
27 COMMENCED PURSUANT TO THIS SECTION IS REQUIRED TO PAY A DOCKET

1 FEE.

2 (g) IF THE COURT ENTERS THE ORDER FOR TEMPORARY
3 MANDATORY INJUNCTION AND ISSUES A WRIT OF EXECUTION THE OWNER
4 OR HIS OR HER AUTHORIZED AGENT MAY DELIVER THE ORDER FOR
5 TEMPORARY MANDATORY INJUNCTION TO ANY LAW ENFORCEMENT
6 AGENCY HAVING JURISDICTION TO ENFORCE THE ORDER.

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

10 (b) WITHIN TWENTY-FOUR HOURS, OR AS SOON AS POSSIBLE, AFTER
11 RECEIPT OF ORDER FOR TEMPORARY MANDATORY INJUNCTION, A PEACE
12 OFFICER SHALL:

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

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

18 (c) IF THE MOTION FILED WITH THE COUNTY COURT INCLUDES A
19 STATEMENT THAT THE PROPERTY HAS BEEN ALTERED OR DAMAGED OR THE
20 PEACE OFFICER SEES EVIDENCE THAT THE PROPERTY HAS BEEN ALTERED
21 OR DAMAGED, THE PEACE OFFICER SHALL COLLECT PERSONAL
22 INFORMATION FROM THE PERSON OR PERSONS AND SHALL PROVIDE THAT
23 INFORMATION TO THE DECLARANT.

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26 **13-40.1-102. Unauthorized alteration or damage of a**
27 **residential property.** (1) IF A PERSON'S CONDUCT SATISFIES ALL OF THE

1 ELEMENTS OF SECTION 18-4-501, THE PERSON WHO IS REMOVED FROM A
2 RESIDENTIAL PROPERTY PURSUANT TO SECTION 13-40.1-101 AND WHO
3 KNOWINGLY DAMAGES THE REAL OR PERSONAL PROPERTY OF ONE OR
4 MORE OTHER PERSONS MAY HAVE COMMITTED CRIMINAL MISCHIEF.

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

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

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

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

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