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**SUBSTITUTE SENATE BILL 5280**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Carrell, King, Holmquist Newbry, Padden, Becker, Sheldon, Rivers, Tom, Bailey, Roach, and Honeyford)

READ FIRST TIME 02/22/13.

1       AN ACT Relating to unlawful activities on certain properties;  
2 amending RCW 9A.52.070, 9A.52.090, 59.04.050, and 59.18.075; adding a  
3 new section to chapter 9A.52 RCW; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 9A.52.070 and 2011 c 336 s 372 are each amended to  
6 read as follows:

7       (1) A person is guilty of criminal trespass in the first degree if:

8       (a) He or she knowingly enters or remains unlawfully in a building;

9       or

10       (b) He or she is a tenant by sufferance as described in RCW  
11 59.04.050, or resides at a rental property and is not listed as a  
12 tenant on a rental agreement or as a guest in an affidavit signed by  
13 the owner or an agent of the owner of the property, and he or she  
14 refuses to immediately upon demand surrender possession of the premises  
15 to the owner, or vacate the property, including other rental areas or  
16 common areas held by the owner.

17       (2)(a) In any prosecution under subsection (1)(b) of this section,  
18 it is a defense that the person who refuses to surrender possession or  
19 vacate the property can produce:

1       (i) An executed copy of a written rental agreement as provided in  
2 RCW 59.18.065, identifying the person as a lawful tenant of the rental  
3 property; or

4       (ii) An affidavit signed by the owner or an agent of the owner that  
5 allows the person to reside as a guest at the rental property for a  
6 specified period of time.

7       (b) It is not a defense in any prosecution under subsection (1)(b)  
8 of this section that the person who refuses to surrender possession or  
9 vacate the property was invited into the property by a lawful tenant of  
10 the property unless the tenant was an agent of the owner.

11       (3) Criminal trespass in the first degree is a gross misdemeanor.

12       **Sec. 2.** RCW 9A.52.090 and 2011 c 336 s 374 are each amended to  
13 read as follows:

14       In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a  
15 defense that:

16       (1) A building involved in an offense under RCW 9A.52.070 was  
17 abandoned; or

18       (2) The premises were at the time open to members of the public and  
19 the actor complied with all lawful conditions imposed on access to or  
20 remaining in the premises; or

21       (3) The actor reasonably believed that the owner of the premises,  
22 or other person empowered to license access thereto, would have  
23 licensed him or her to enter or remain; or

24       (4) The actor was attempting to serve legal process which includes  
25 any document required or allowed to be served upon persons or property,  
26 by any statute, rule, ordinance, regulation, or court order, excluding  
27 delivery by the mails of the United States. This defense applies only  
28 if the actor did not enter into a private residence or other building  
29 not open to the public and the entry onto the premises was reasonable  
30 and necessary for service of the legal process.

31       These defenses do not apply to a person trespassing in a dwelling  
32 in which a foreclosure action is currently pending or where the  
33 dwelling has been foreclosed upon and the dwelling is being prepared  
34 for sale.

35       NEW SECTION. **Sec. 3.** A new section is added to chapter 9A.52 RCW  
36 to read as follows:

1 (1) A person is guilty of criminal trespass of a dwelling in  
2 foreclosure if he or she knowingly enters or remains unlawfully in a  
3 dwelling in which an action is currently pending for foreclosure or has  
4 been recently filed on the dwelling and which has been vacated by the  
5 owner of record. Any person with knowledge of the status of a property  
6 may report the trespass to law enforcement regardless of his or her  
7 status as owner of the property.

8 (2) Criminal trespass of a dwelling in foreclosure is a gross  
9 misdemeanor.

10 (3) If a person arrested under this section claims to be a tenant  
11 under a written or oral lease, then the alleged landlord or a neighbor  
12 who has made every reasonable effort to notify the property owner of  
13 record regarding the nuisance or trespass may proceed directly to an  
14 unlawful detainer action. A person may petition the appropriate  
15 district or superior court to have an alleged tenant arrested under  
16 this section and removed from a premise if the:

17 (a) Alleged tenant is engaging in activity that constitutes a  
18 public nuisance, and the noncompliance substantially affects the safety  
19 of the neighborhood; or

20 (b) Landlord fails to evict the tenant causing the public nuisance  
21 or to notify the tenant to cease the public nuisance.

22 (4) A person may not be held liable in any cause of action for  
23 bringing an eviction action against a tenant under this section if the  
24 eviction action was brought in good faith.

25 (5) At the unlawful detainer action, the court must determine the  
26 following:

27 (a) Whether the person arrested is actually a tenant at the  
28 dwelling. In making the determination, the court must consider whether  
29 the lease is in writing or oral and must make every possible effort to  
30 provide notice to the owner of record of the property to confirm the  
31 alleged tenant's status;

32 (b) Whether the person arrested has been engaged in an activity at  
33 the premises that is considered a public nuisance to the neighborhood,  
34 or has allowed anyone else to engage in an activity at the premises  
35 that is considered a public nuisance to the neighborhood.

36 In determining whether an alleged tenant is engaged in public  
37 nuisance activity, a court must consider the totality of the  
38 circumstances, including factors such as whether there have been a

1 significant number of complaints to the landlord about the alleged  
2 tenant's activities at the property, damages done by the alleged tenant  
3 to the property, damages done by the alleged tenant to the property of  
4 other tenants or neighbors, harassment or threats made by the alleged  
5 tenant to other tenants or neighbors that have been reported to law  
6 enforcement agencies, any police incident reports involving the alleged  
7 tenant, and the alleged tenant's criminal history.

8 (6) For the purposes of this section, "public nuisance" has the  
9 same meaning as defined in RCW 9.66.010.

10 **Sec. 4.** RCW 59.04.050 and 2010 c 8 s 19002 are each amended to  
11 read as follows:

12 (1) Whenever any person obtains possession of premises without the  
13 consent of the owner or other person having the right to give said  
14 possession, he or she shall be deemed a tenant by sufferance merely,  
15 and shall be liable to pay reasonable rent for the actual time he or  
16 she occupied the premises, and shall forthwith on demand surrender his  
17 or her said possession to the owner or person who had the right of  
18 possession before said entry, and all his or her right to possession of  
19 said premises shall terminate immediately upon said demand.

20 (2) Any owner or agent of the owner who has demanded a tenant by  
21 sufferance to vacate the owner's property may request law enforcement  
22 to remove the tenant by sufferance as a trespasser under RCW 9A.52.070.

23 **Sec. 5.** RCW 59.18.075 and 1992 c 38 s 4 are each amended to read  
24 as follows:

25 (1) Any law enforcement agency which seizes a legend drug pursuant  
26 to a violation of chapter 69.41 RCW, a controlled substance pursuant to  
27 a violation of chapter 69.50 RCW, or an imitation controlled substance  
28 pursuant to a violation of chapter 69.52 RCW, shall make a reasonable  
29 attempt to discover the identity of the landlord and shall notify the  
30 landlord in writing, at the last address listed in the property tax  
31 records and at any other address known to the law enforcement agency,  
32 of the seizure and the location of the seizure of the illegal drugs or  
33 substances.

34 (2) Any law enforcement agency which arrests a tenant for  
35 threatening another tenant with a firearm or other deadly weapon, or  
36 for some other unlawful use of a firearm or other deadly weapon on the

1 rental premises, or for physically assaulting another person on the  
2 rental premises, shall make a reasonable attempt to discover the  
3 identity of the landlord and notify the landlord about the arrest in  
4 writing, at the last address listed in the property tax records and at  
5 any other address known to the law enforcement agency.

6 (3) Any law enforcement agency that has found that a tenant or  
7 other resident of a dwelling unit is engaged in criminal street gang  
8 activity as identified in RCW 9.94A.030 or human trafficking as  
9 identified in RCW 9A.40.100, or has been called to a rental property to  
10 investigate criminal street gang activity or human trafficking, shall  
11 make a reasonable attempt to discover the identity of the landlord and  
12 shall notify the landlord in writing, at the last address listed in the  
13 property tax records and at any other address known to the law  
14 enforcement agency, of the criminal street gang activity or human  
15 trafficking occurring at the landlord's rental property.

16 (4) The law enforcement agency shall include with the notice in  
17 subsections (1) through (3) of this section:

18 (a) The names of the tenant and individual or individuals who were  
19 engaged in any activity described in this subsection;

20 (b) The dwelling unit where the incident occurred;

21 (c) The date of the incident;

22 (d) Actions taken by the law enforcement agency;

23 (e) A statement outlining the authority of a landlord to:

24 (i) Evict under this chapter a tenant who possesses a lawful rental  
25 agreement but is engaged in an activity identified in subsection (1),  
26 (2), or (3) of this section; or

27 (ii) Identify to law enforcement that the person is a tenant by  
28 sufferance, and the landlord may exercise the owner's authority under  
29 RCW 59.04.050; and

30 (f) Any penalties that may be assessed against the landlord for  
31 failure to abate the nuisance created by the activity identified in  
32 subsection (1), (2), or (3) of this section.

33 NEW SECTION. Sec. 6. This act takes effect August 1, 2013.

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