

House Engrossed

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

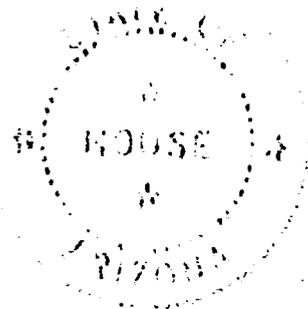
CHAPTER 91

HOUSE BILL 2518

AN ACT

AMENDING SECTIONS 12-991, 12-992 AND 33-1903, ARIZONA REVISED STATUTES;
RELATING TO ABATEMENT OF CRIME PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-991, Arizona Revised Statutes, is amended to
3 read:

4 12-991. Nuisance; applicability; residential property used for
5 crime; action to abate and prevent; notice;
6 definitions

7 A. Residential property that is regularly used in the commission of
8 a crime is a nuisance, and the criminal activity causing the nuisance shall
9 be enjoined, abated and prevented.

10 B. If there is reason to believe that a nuisance as described in
11 subsection A of this section exists, the attorney general, the county
12 attorney, the city attorney or a resident of a county or city who is affected
13 by the nuisance may bring an action in superior court against the owner, the
14 owner's managing agent or any other party responsible for the property to
15 abate and prevent the criminal activity.

16 C. The court shall not assess a civil penalty against any person
17 unless that person knew or had reason to know of the criminal activity.

18 D. An injunction that is ordered pursuant to this article shall be
19 necessary to protect the health and safety of the public or prevent further
20 criminal activity.

21 E. An order shall not affect the owner's interest in the property
22 unless all of the following apply:

- 23 1. The owner is a defendant in the action.
24 2. The owner knew of the criminal activity.
25 3. The owner failed to take reasonable, legally available actions to
26 abate the nuisance.

27 F. If the owner, the owner's managing agent or the party responsible
28 for the property knows or has reason to know of the criminal activity and
29 fails to take reasonable, legally available actions to abate the nuisance,
30 a governmental authority may abate the nuisance. The court may assess the
31 owner for the cost of abating the nuisance. On recording with the county
32 recorder in the county in which the property is located, the assessment is
33 prior to all other liens, obligations or encumbrances except for prior
34 recorded mortgages, restitution liens, child support liens and general tax
35 liens. A city, town or county may bring an action to enforce the assessment
36 in the superior court in the county in which the property is located.

37 G. For purposes of this section, an owner, the owner's managing agent
38 or the party responsible for the property is deemed to know or have reason
39 to know of the nuisance if the owner, the owner's managing agent or the party
40 responsible for the property has received notice from a governmental
41 authority of documented reports of criminal offenses occurring on the
42 residential property.

43 H. A law enforcement agency, a city attorney, a county attorney, the
44 attorney general or any other person who is at least twenty-one years of age
45 may serve the notice provided for in subsection G of this section, either

1 personally or by certified mail. If personal service or service by certified
2 mail cannot be completed or the address of the person to be notified is
3 unknown, notice may be served by publishing the notice three times within ten
4 consecutive days in a newspaper of general circulation in the county in which
5 the property is located. In all cases a copy of the notice shall be posted
6 on the premises where the nuisance exists.

7 I. The notice shall be printed in at least twelve point type in
8 substantially the following form:

9 Notice

10 This is formal notice that the property at (insert address
11 and unit number if applicable) has had (insert number of)
12 arrests or (insert number of) documented reports of alleged
13 criminal activity and is considered a nuisance under section
14 12-991, Arizona Revised Statutes. A copy of the police report
15 numbers is attached. Police reports are available at (insert
16 applicable police agency).

17 Within five business days you must begin to take action
18 that is legally available to you to abate the nuisance from the
19 property. If you fail to do so, a restraining order to abate
20 and prevent continuing or recurring criminal activity will be
21 pursued.

22 If you fail to cooperate to abate the nuisance, the
23 appropriate authorities will abate the nuisance and their costs
24 will be a lien on the property.

25 You may contact (local agency) in order to obtain
26 information on how to abate the nuisance.

27 J. For the purposes of this article, — :

28 1. "OWNER" MEANS A PERSON OR PERSONS OR A LEGAL ENTITY LISTED AS THE
29 CURRENT TITLE HOLDER AS RECORDED IN THE OFFICIAL RECORDS OF THE COUNTY
30 RECORDER IN THE COUNTY IN WHICH THE TITLE IS RECORDED.

31 2. "Owner's managing agent" means a person, corporation, partnership
32 or limited liability company that is authorized by the owner to operate and
33 manage the property.

34 Sec. 2. Section 12-992, Arizona Revised Statutes, is amended to read:
35 12-992. Residential property nuisances; temporary restraining
36 order; notice; hearing; costs

37 A. If the existence of a nuisance on a residential property as
38 described in section 12-991 is shown in the action to the satisfaction of the
39 court either by verified complaint or affidavit AND THE COURT FINDS THAT THE
40 OWNER, THE OWNER'S MANAGING AGENT OR THE PARTY RESPONSIBLE FOR THE PROPERTY
41 KNEW OR HAD REASON TO KNOW OF THE CRIMINAL ACTIVITY AND FAILED TO TAKE
42 REASONABLE, LEGALLY AVAILABLE ACTIONS TO ABATE THE NUISANCE, the court shall
43 enter a temporary restraining order to abate and prevent continuance or
44 recurrence of the criminal activity. The court may issue any other order
45 that is reasonably necessary to abate the criminal activity. The complaint

1 shall be verified unless it is filed by the attorney general or a county or
2 city attorney.

3 B. Notice of the entry of a restraining order, copies of the
4 restraining order and the complaint, and notice of an opportunity for a
5 hearing shall be served on the defendant named in the action or on the
6 statutory agent, if applicable. Service shall be made pursuant to section
7 12-991.

8 C. Notice of the entry of a restraining order, copies of the
9 restraining order and the complaint, and a notice of the possibility of a
10 hearing shall be served on any legal occupant whom the plaintiff believes may
11 claim an interest related to the property that is the subject of the action.
12 Notice may be served personally, by first class mail or by posting on the
13 occupant's door. The name of the legal occupant is not required to be
14 included on the notice.

15 D. The notice required by subsection C of this section of the
16 possibility of a hearing shall be printed in at least twelve point type in
17 substantially the following form:

18 Notice

19 A notice of a nuisance action has been delivered to your
20 property owner or managing agent (landlord). A copy of that
21 notice is attached. If your property owner or managing agent
22 does not remedy the problem, the appropriate government
23 authority is authorized to abate, or end, the nuisance. This
24 could include a closing order that may require you to move out
25 and remove all your belongings. If you do not exercise your
26 right to appear in the case, you may lose your right to contest
27 a closing order or present other concerns.

28 You may request the court, the name of which is on the
29 attached notice, to permit you to appear in the action.

30 E. Any action filed pursuant to this article shall not be stayed or
31 dismissed due to the failure to serve notice pursuant to subsection C of this
32 section if a good faith attempt is made to serve the notice.

33 F. A person who is directed to abate criminal activity pursuant to a
34 temporary restraining order issued pursuant to subsection A of this section
35 may request a hearing within ten days after receiving the notice. If a
36 hearing is requested, the person shall file a verified answer to the
37 complaint with the request for a hearing and shall serve notice of the
38 request on the plaintiff. The temporary restraining order remains in effect
39 until the hearing is completed.

40 G. A hearing shall be scheduled within ten days after a verified
41 answer and request for a hearing is filed. The court may order any discovery
42 that it considers to be reasonably necessary and appropriate.

43 H. Any legal occupant who claims an interest related to the property
44 that is the subject of the action and who is so situated that the disposition

1 of the action may as a practical matter impair or impede the person's ability
2 to protect that interest shall be permitted to intervene in the action.

3 1. At the hearing, evidence of the general reputation of the property,
4 building or place is admissible for the purpose of proving the existence of
5 the nuisance.

6 J. If at the hearing the court determines that reasonable grounds
7 exist to believe that a nuisance, as described in section 12-991, exists, the
8 court shall issue a permanent injunction abating the criminal activity and
9 may do any of the following:

10 1. Issue any other order that is reasonably necessary to abate the
11 criminal activity, including orders to pay damages.

12 2. Award expenses incurred in abating the nuisance, including the
13 costs of investigation and enforcement of the restraining order, temporary
14 injunction or permanent injunction, the costs of compensation for a temporary
15 receiver, the expenditures incurred by a temporary receiver and reasonable
16 attorney fees.

17 3. Order a civil penalty of not more than ten thousand dollars.

18 4. Order the appointment of a temporary receiver pursuant to section
19 12-996.

20 5. Issue a closing order pursuant to section 12-997.

21 K. If an answer to the complaint is not filed or a hearing is not
22 requested, the allegations are deemed to be admitted. The court shall enter
23 judgment for the plaintiff and shall issue a permanent injunction abating the
24 criminal activity.

25 L. On entry of a second or subsequent injunction under this section
26 within a three year period, the court may order the property owner to pay
27 three times the costs of the abatement. For the purposes of this subsection,
28 "costs" includes all of the costs provided for in subsection J of this
29 section.

30 M. The court shall terminate a restraining order and dismiss the
31 complaint that was issued solely based on criminal activity committed by a
32 tenant if the defendant attempts a forcible entry and detainer action against
33 the tenant, unless the court finds that the defendant prosecuted the forcible
34 entry and detainer action in bad faith.

35 Sec. 3. Section 33-1903, Arizona Revised Statutes, is amended to read:

36 33-1903. Appointment of temporary receiver; term; duties,
37 accounting

38 A. This state or a city, town or county of this state may apply to the
39 superior court for the appointment of a temporary receiver to manage a
40 property that is not in compliance with section 33-1902 and that is
41 designated as a slum property by a city, town or county or the state.

42 B. If the court determines that the appointment of a temporary
43 receiver is necessary to remedy the condition for which the property is
44 registered or to cause the owner to register the property, the court may
45 order the appointment of a temporary receiver to manage or operate the

1 premises for as long as the court deems necessary. The court shall not
2 appoint a temporary receiver for a term of more than one year.

3 C. A temporary receiver who is appointed pursuant to subsection B of
4 this section either shall be a real estate licensee specializing in property
5 management or an attorney specializing in real estate law and shall swear or
6 affirm to faithfully and fairly discharge the receiver's duties. The court
7 may require the temporary receiver to post a bond in an amount fixed by the
8 court.

9 D. The court shall determine the following:

- 10 1. The management duties of the receiver.
- 11 2. The amount of compensation to be paid to the receiver.
- 12 3. The method of payment.
- 13 4. The payment periods.

14 E. The temporary receiver shall continue to manage the property during
15 the pendency of any appeal or until relieved by the court. The court may
16 remove a temporary receiver on its own motion or on the motion of any party
17 or the temporary receiver.

18 F. The temporary receiver may do any of the following:

- 19 1. Take control of the property.
- 20 2. Pay the mortgage on the property if there are sufficient monies
21 derived from the income of the property to do so.
- 22 3. Collect rents due on the property.
- 23 4. Make or have made any repairs that are necessary to bring the
24 property into compliance with any statute or ordinance.
- 25 5. Make payments that are necessary for the maintenance or restoration
26 of utilities to the property.
- 27 6. Purchase materials that are necessary to make repairs.
- 28 7. Renew, terminate or modify existing rental contracts and leases as
29 provided by law.
- 30 8. Enter into new rental contracts and leases.
- 31 9. Affirm, renew or terminate an existing insurance contract that
32 covers the property as provided by law.
- 33 10. Enter into a new contract that provides for insurance coverage on
34 the property.
- 35 11. Hire security or other personnel that are necessary for the safe
36 and proper operation and maintenance of the property.
- 37 12. Prosecute or defend suits that flow from the management of the
38 property and retain counsel.
- 39 13. Exercise all other authority that an owner of the property would
40 have except the authority to sell the property.

41 G. Before the receiver spends monies in excess of ten thousand dollars
42 the court and the party who is responsible for the payment of the temporary
43 receiver's expenditures shall approve the expenditure of those monies.

44 H. The costs of compensation to and expenditures by the temporary
45 receiver shall be paid in the following order of priority:

1 1. From the income that is derived from the property and that is
2 available after all taxes and mortgages are satisfied.

3 2. By the party who requested the appointment of the temporary
4 receiver.

5 I. On filing with the county recorder of the county in which the
6 property is located, a lien is created in favor of the party who pays the
7 temporary receiver's costs of compensation and expenditures other than the
8 defendant. The lien is prior to all other liens, obligations or encumbrances
9 except for prior recorded mortgages, restitution liens, child support liens
10 and general tax liens.

11 J. On the completion of the receivership, the temporary receiver shall
12 file with the court a full accounting of all costs and expenses incurred and
13 all income received during course of the receivership.

14 K. On finding that the appointment of a temporary receiver is no
15 longer warranted, the court on its own motion or the motion of any party may
16 terminate the temporary receivership.

17 L. ~~On compliance with section 33-1902 and~~ After all violations have
18 been cured, the temporary receivership shall be terminated.

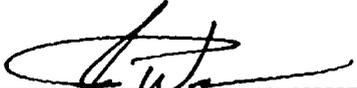
APPROVED BY THE GOVERNOR APRIL 29, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2002.

Passed the House April 2, 2002,

by the following vote: 47 Ayes,

7 Nays, 6 Not Voting


Speaker of the House

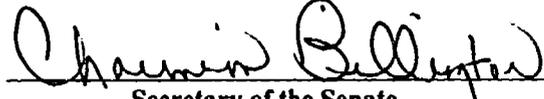

Chief Clerk of the House

Passed the Senate April 23, 2002,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting


President of the Senate

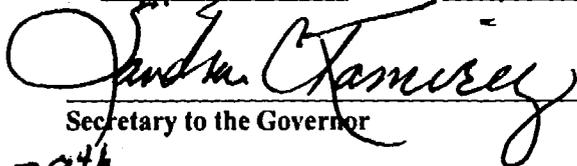

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of April, 2002,

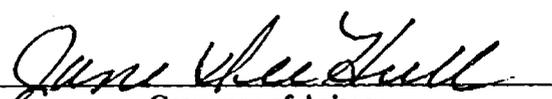
at 11:00 o'clock A M.


Secretary to the Governor

Approved this 29th day of

April, 2002,

at 2:00 o'clock P M.

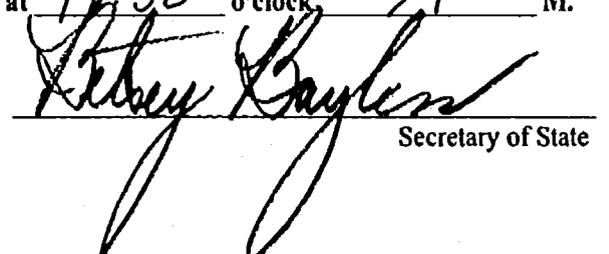

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30 day of April, 2002,

at 11:50 o'clock A M.


Secretary of State

H.B. 2518