

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1305

Introduced by

Representatives Kasper, Bosch, Headland, Koppelman, Louser, Motschenbacher, Steiner
Senators Clemens, Cory, Meyer

1 A BILL for an Act to ~~create and enact a new section to chapter 47-10 and a new section to~~
2 ~~chapter 47-32 of the North Dakota Century Code, relating to the fraudulent sale or lease of~~
3 ~~residential real property and an alternative remedy to removing an unauthorized individual from~~
4 ~~residential real property; to~~ amend and reenact section 12.1-22-03 and subsection 1 of section
5 12.1-22-06 of the North Dakota Century Code, relating to criminal trespass; and to provide a
6 penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 12.1-22-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-22-03. Criminal trespass - Noncriminal offense on posted property.**

- 11 1. An individual is guilty of a class C felony if, knowing the individual is not licensed or
12 privileged to do so, the individual enters or remains in a dwelling or in highly secured
13 premises.
- 14 2. An individual who unlawfully detains, occupies, or trespasses upon a residential
15 dwelling ~~in violation of section 3 of this Act~~ is guilty of a class C felony for the first
16 offense and a class B felony for a second or subsequent offense if the second or
17 subsequent offense occurred at the same residential dwelling as the first offense.
- 18 3. An individual is guilty of a class A misdemeanor if, knowing the individual is not
19 licensed or privileged to do so, the individual:

- 1 a. Enters or remains in or on any building, occupied structure, or storage structure,
2 or separately secured or occupied portion thereof; or
- 3 b. Enters or remains in any place enclosed by a fence or otherwise enclosed as
4 manifestly to exclude intruders, unless the individual is a licensed hunter or
5 angler who is lawfully hunting or fishing. For purposes of this subdivision, "fence"
6 means a permanent structure on nonurban, private property which is maintained
7 and capable of containing livestock.
- 8 ~~3.4.~~ a. An individual is guilty of a class B misdemeanor if, knowing the individual is not
9 licensed or privileged to do so, the individual enters or remains in any place as to
10 which notice against trespass is given by actual communication to the actor by
11 the owner or an individual authorized by the owner or by posting in a manner
12 reasonably likely to come to the attention of intruders. The name of the person
13 posting the premises must appear on each sign in legible characters.
- 14 b. Even if the conduct of the owner or individual authorized by the owner varies
15 from the provisions of subdivision a, an individual may be found guilty of violating
16 subdivision a if the owner or individual authorized by the owner substantially
17 complied with subdivision a and notice against trespass is clear from the
18 circumstances.
- 19 c. An individual who violates subdivision a is guilty of a class A misdemeanor for the
20 second or subsequent offense within a two-year period.
- 21 ~~4.5.~~ a. A peace officer may cite an individual who, knowing the individual is not licensed
22 or privileged to do so, entered or remained in a place as to which notice against
23 trespass is given by posting in a manner reasonably likely to come to the
24 attention of intruders or a place enclosed by a fence as defined in subsection 2,
25 with a noncriminal offense. An individual cited under this subsection may not be
26 prosecuted under subsection 2 or 3 for the same offense.
- 27 b. The fine for a citation under subdivision a is two hundred fifty dollars for each
28 violation.
- 29 c. The peace officer citing the individual shall:
- 30 (1) Take the name and address of the individual; and
- 31 (2) Notify the individual of the right to request a hearing if posting bond by mail.

- 1 d. The peace officer may not take the individual into custody or require the
2 individual to proceed with the peace officer to any other location for the purpose
3 of posting bond. The officer shall provide the individual with an envelope for use
4 in mailing the bond.
- 5 e. An individual cited may appear before the designated official and pay the
6 statutory fine for the violation at or before the time scheduled for hearing.
- 7 f. If the individual has posted bond, the individual may forfeit bond by not appearing
8 at the designated time.
- 9 g. If the individual posts bond by mail, the bond must be submitted within fourteen
10 days of the date of the citation and the individual cited shall indicate on the
11 envelope or citation whether a hearing is requested. If the individual does not
12 request a hearing within fourteen days of the date of the citation, the bond is
13 deemed forfeited and the individual is deemed to have admitted to the violation
14 and to have waived the right to a hearing on the issue of commission of the
15 violation. If the individual requests a hearing, the court for the county in which the
16 citation is issued shall issue a summons to the individual requesting the hearing
17 notifying the individual of the date of the hearing before the designated official.
- 18 h. Upon appearing at the hearing scheduled in the citation or otherwise scheduled
19 at the individual's request, the individual may make a statement in explanation of
20 the individual's action. The official may at that time waive or suspend the statutory
21 fine or bond.
- 22 i. A citing peace officer may not receive the statutory fine or bond.
- 23 j. The bond required to secure appearance before the judge must be identical to
24 the statutory fine established in subdivision b.
- 25 ~~5-6.~~ An individual is guilty of a class B misdemeanor if that individual remains upon the
26 property of another after being requested to leave the property by a duly authorized
27 individual. An individual who violates this subsection is guilty of a class A
28 misdemeanor for the second or subsequent offense within a two-year period.
- 29 ~~6-7.~~ This section does not apply to a peace officer in the course of discharging the peace
30 officer's official duties.

1 — **SECTION 2.** A new section to chapter 47-10 of the North Dakota Century Code is created
2 and enacted as follows:

3 — **Fraudulent sale or lease of residential real property – Penalty.**

4 — A person that lists or advertises residential real property for sale knowing the person does
5 not have legal title or authority to sell the property, or rents or leases the property to a lessee
6 knowing the person does not have lawful ownership of the property or leasehold interest in the
7 property, is guilty of a class C felony.

8 — **SECTION 3.** A new section to chapter 47-32 of the North Dakota Century Code is created
9 and enacted as follows:

10 — **Limited alternative remedy to remove an unauthorized individual from residential real**
11 **property – Notice – Civil action – Penalty.**

- 12 — 1. As used in this section, "property" means real property or a residential dwelling,
13 including a building, structure, or part of a building or structure, used or intended to be
14 used as a home, residence, or sleeping place by an individual.
- 15 — 2. Notwithstanding sections 47-32-01 through 47-32-04, a property owner or the property
16 owner's authorized agent may request the sheriff of the county where the property is
17 located to remove an individual who is unlawfully occupying the property if:
- 18 — a. The requester is the property owner or the property owner's authorized agent;
19 — b. An unauthorized individual has unlawfully entered and remains or continues to
20 reside on the property owner's property;
21 — c. The property was not open to members of the public at the time the unauthorized
22 individual entered;
23 — d. The property owner has directed the unauthorized individual to leave the
24 property;
25 — e. The unauthorized individual is not a current or former tenant under a written or
26 oral rental agreement authorized by the property owner;
27 — f. The unauthorized individual is not an immediate family member of the property
28 owner; and
29 — g. Litigation related to the property is not pending between the property owner and
30 any known unauthorized individual.

1 ~~3. To request the immediate removal of an unlawful occupant, the property owner or the~~
2 ~~property owner's authorized agent shall submit a written complaint to the sheriff of the~~
3 ~~county where the property is located. The complaint must declare under the penalty of~~
4 ~~perjury:~~

5 ~~a. The address or location of the property and that the individual submitting the~~
6 ~~complaint is the owner of that property or is the property owner's authorized~~
7 ~~agent.~~

8 ~~b. The date the property was purchased or the date ownership of the property was~~
9 ~~established by the individual submitting the complaint.~~

10 ~~c. An unauthorized individual has unlawfully entered and is remaining or residing~~
11 ~~unlawfully on the property.~~

12 ~~d. The property was not open to members of the public at the time the unauthorized~~
13 ~~individual entered.~~

14 ~~e. The property owner or the property owner's authorized agent has directed the~~
15 ~~unauthorized individual to leave the property, but the individual has not done so.~~

16 ~~f. The unauthorized individual is not a current or former tenant under any valid~~
17 ~~lease authorized by the property owner, and any lease produced by the~~
18 ~~unauthorized individual is fraudulent.~~

19 ~~g. The unauthorized individual sought to be removed is not an owner or a co-owner~~
20 ~~of the property and is not listed on the title to the property unless the individual~~
21 ~~has engaged in title fraud.~~

22 ~~h. The unauthorized individual is not an immediate family member of the property~~
23 ~~owner.~~

24 ~~i. Litigation related to the property is not pending between the property owner and~~
25 ~~any individual sought to be removed from the property.~~

26 ~~j. The property owner understands an individual removed from the property under~~
27 ~~this section may bring a cause of action against the property owner for any false~~
28 ~~statements made in the complaint, or for wrongfully bring an action under this~~
29 ~~section, and that as a result of an action the property owner may be held liable~~
30 ~~for actual damages, penalties, costs, and reasonable attorney fees.~~

- 1 ~~k. The property owner is requesting the sheriff to immediately remove the~~
2 ~~unauthorized individual from the property.~~
- 3 ~~l. A copy of the property owner's valid government-issued identification is attached,~~
4 ~~or if the complaint is submitted by the property owner's authorized agent, a~~
5 ~~document evidencing the agent's authority to act on the property owner's behalf~~
6 ~~is attached.~~
- 7 ~~m. The property owner's signature or the signature of the property owner's~~
8 ~~authorized agent is affixed.~~
- 9 ~~4. Upon receipt of the complaint, the sheriff shall verify the individual submitting the~~
10 ~~complaint is the record owner of the property or the authorized agent of the owner and~~
11 ~~appears otherwise entitled to relief under this section. If verified, the sheriff shall:~~
- 12 ~~a. Attempt to verify the identity of an individual occupying the dwelling.~~
- 13 ~~b. Remove any individual found on the property and arrest the individual for criminal~~
14 ~~trespass.~~
- 15 ~~c. Place the owner in possession of the real property.~~
- 16 ~~5. The property owner or the property owner's authorized agent may request the sheriff~~
17 ~~remain on the premises to keep the peace while the property owner or the property~~
18 ~~owner's authorized agent changes the locks and removes from the premises the~~
19 ~~personal property of the unlawful occupant to or near the property line.~~
- 20 ~~a. The sheriff may charge the property owner or the property owner's agent a~~
21 ~~reasonable hourly rate for the amount of time the property owner or the property~~
22 ~~owner's agent requests the sheriff remain on the premises to keep the peace.~~
- 23 ~~b. The sheriff is not liable to the unlawful occupant or any other party for loss,~~
24 ~~destruction, or damage of property.~~
- 25 ~~c. The property owner or the authorized agent is not liable to an unlawful occupant~~
26 ~~or any other party for the loss of or destruction or damage to personal property~~
27 ~~unless the removal was wrongful.~~
- 28 ~~6. An individual may bring a civil cause of action for wrongful removal under this section.~~
29 ~~An individual harmed by a wrongful removal under this section may be restored to~~
30 ~~possession of the property and may recover actual costs and damages incurred.~~

1 ~~statutory damages equal to triple the fair market rent of the dwelling, court costs, and~~
2 ~~reasonable attorney fees.~~

3 ~~7. This section does not limit the rights of a property owner, or limit the authority of a law~~
4 ~~enforcement officer to arrest an unlawful occupant for criminal mischief, theft of~~
5 ~~property, or other violations of state law.~~

6 ~~8. An individual who knowingly and willfully presents to another individual a false~~
7 ~~document purporting to be a valid lease agreement, deed, or other instrument~~
8 ~~conveying property rights with the intent to detain or remain on the property is guilty of~~
9 ~~a class A misdemeanor.~~

10 **SECTION 2. AMENDMENT.** Subsection 1 of section 12.1-22-06 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 1. "Dwelling" ~~has the meaning prescribed in subsection 2 of section 12.1-05-12~~means
13 real property or residential property, including a building, structure, or part of a building
14 or structure, used or intended to be used as a home, residence, or sleeping place by
15 an individual.