

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 309 (L&C)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-  
7 ship; relating to tenancies in property secured by  
8 financial obligations; relating to the availability  
9 of the information pamphlet on landlord and tenant  
10 rights; and amending Rule 85 of the Alaska Rules of  
11 Civil Procedure and Rule 8 of the Alaska District  
12 Court Rules of Civil Procedure."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 \* Section 1. AS 09.45.070 is amended by adding a new subsection to  
15 read:

16 (c) The court shall give priority on the calendar to an action  
17 filed under AS 09.45.070 - 09.45.160.

18 \* Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit  
20 shall be in writing and shall be served upon the tenant or person in  
21 possession by being delivered to the tenant or person or left at the  
22 premises in case of absence from the premises, or the notice may be  
23 sent by registered or certified mail, in which case an additional  
24 three days shall be added to the notice period required under AS 09.-  
25 45.110 [10 DAYS].

26 \* Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION  
28 BROUGHT. An action for the recovery of the possession of the premises  
29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession  
 2 for the period of 10 days before the commencement of the action. If  
 3 an action for the recovery of the premises was filed against the  
 4 tenant within the previous 12 months, the notice to quit need be  
 5 served upon the tenant or the person in possession only five days  
 6 before the commencement of the action. If [UNLESS] the leasing or  
 7 occupation is for the purpose of farming or agriculture, [IN WHICH  
 8 CASE] the notice shall be served 90 days before the commencement of  
 9 the action.

10 \* Sec. 4. AS 09.45.120 is amended to read:  
 11       Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for  
 12 forcible entry and detainer shall be served not less than two [NOR  
 13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may  
 14 not [SHALL] be granted for a longer period than two days unless the  
 15 defendant applying for the continuance gives an undertaking to the  
 16 adverse party, with sureties approved by the court conditioned to the  
 17 payment of the rent that may accrue if judgment is rendered against  
 18 the defendant.

19 \* Sec. 5. AS 22.15.040(a) is amended to read:  
 20       (a) When a claim for relief does not exceed \$5,000 exclusive of  
 21 costs, interest, and attorney fees, and request is so made, the dis-  
 22 trict judge or magistrate shall hear the action as a small claim  
 23 unless important or unusual points of law are involved. When a claim  
 24 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-  
 25 sive of costs, interest, and attorney fees, the district judge or  
 26 magistrate shall hear the action as a small claim unless important or  
 27 unusual points of law are involved. The supreme court shall prescribe  
 28 the procedural rules and standard forms to assure simplicity and the  
 29 expeditious handling of small claims.

1 \* Sec. 6. AS 34.03.010 is amended by adding a new subsection to read:

2 (c) Notwithstanding AS 09.45.110 and AS 34.03.220(b), a person  
3 who has not paid rent in full for the first rental period under a  
4 rental agreement acquires no right to the use of the premises beyond  
5 that portion of the period equitably earned by the amount of rent  
6 actually paid and the person is subject to eviction on 24 hour's  
7 notice. A person whose right to the use of premises depends upon  
8 rights acquired by another person does not acquire rights unless the  
9 other person has acquired rights under this chapter.

10 \* Sec. 7. AS 34.03.070(a) is amended to read:

11 (a) A landlord may not demand or receive prepaid rent or a  
12 security deposit, however denominated, in an amount or value in excess  
13 of two months' periodic rent. This section does not apply to rental  
14 units where the rent exceeds \$1,000 a month.

15 \* Sec. 8. AS 34.03.070(g) is amended to read:

16 (g) If the landlord or tenant gives notice that complies with  
17 AS 34.03.290, the landlord shall mail the written notice and refund  
18 required by (b) of this section within 14 days after the tenancy is  
19 terminated and possession is delivered by the tenant to the address  
20 supplied by the tenant. If the tenant does not give notice that  
21 complies with AS 34.03.290, the landlord shall mail the written notice  
22 and refund required by (b) of this section within 30 days after the  
23 tenancy is terminated, possession is delivered by the tenant, or the  
24 landlord becomes aware that the dwelling unit is abandoned. If the  
25 landlord does not know the mailing address of the tenant, but knows or  
26 has reason to know how to contact the tenant to give the notice re-  
27 quired by (b) of this section, the landlord shall make a reasonable  
28 effort to deliver the notice and refund to the tenant. If the tenant  
29 does not provide the landlord with an address within 90 days after the

1 tenancy is terminated and if the landlord is unable to contact the  
2 tenant, the landlord may retain the amount not applied under (b) of  
3 this section.

4 \* Sec. 9. AS 34.03.100(c) is amended to read:

5 (c) The landlord and tenant of a one- or two-family residence  
6 may agree in writing that the tenant perform the landlord's duties  
7 specified in (a)(4), (5), (6), and (7) of this section. A tenant may  
8 agree to perform the duties specified in (a)(3) of this section in  
9 rental units where the rent exceeds \$1,000 a month. The tenant may  
10 not agree to maintain elevators in good and safe working order. They  
11 may also agree in writing that the tenant perform specified repairs,  
12 maintenance tasks, alterations, and remodeling. Agreements are al-  
13 lowed under this subsection only if the transaction is entered into in  
14 good faith and not for the purpose of evading the obligations of the  
15 landlord.

16 \* Sec. 10. AS 34.03.140(a) is amended to read:

17 (a) The tenant may not unreasonably withhold consent to the  
18 landlord to enter into the dwelling unit in order to inspect the  
19 premises, make necessary or agreed repairs, decorations, alterations,  
20 or improvements, supply necessary or agreed services, remove personal  
21 property belonging to the landlord that is not covered by a written  
22 rental agreement, or exhibit the dwelling unit to prospective or  
23 actual purchasers, mortgagees, tenants, workers or contractors.

24 \* Sec. 11. AS 34.03 is amended by adding a new section to article 4 to  
25 read:

26 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord  
27 defaults on a financial obligation that secures property occupied by a  
28 tenant of the landlord, the holder of the financial obligation may  
29 advise the landlord and the tenant of the landlord to make payments

1 otherwise due to the landlord directly to the holder of the financial  
2 obligation for the benefit of the landlord and holder. A payment made  
3 under this section to the holder of the financial obligation dis-  
4 charges to that extent the debt of tenant to the landlord.

5 \* Sec. 12. AS 34.03.190 is amended to read:

6 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION  
7 FOR POSSESSION OR RENT. (a) In an action for possession based upon  
8 nonpayment of the rent or in an action for rent when the tenant is in  
9 possession, the tenant may counterclaim for any amount recoverable  
10 under the rental agreement or this chapter. A tenant may not counter-  
11 claim under this section unless, before the landlord filed an action  
12 for possession or rent, the tenant had provided the landlord with  
13 written notice under AS 34.03.160 specifying the acts and omissions  
14 described in AS 34.03.100 that constitute the breach. If a counter-  
15 claim is made, the court shall determine whether the defense is sup-  
16 ported by the evidence and, if so, may order that

17 (1) the periodic rent [IS TO] be reduced to reflect the  
18 diminution in value of the dwelling unit during the period of noncom-  
19 pliance;

20 (2) the action be continued for a reasonable time to enable  
21 the landlord to cure the violation;

22 (3) the tenant pay into court all or part of the rent that  
23 has accrued and that is continuing to accrue [THEREAFTER ACCRUING]; if  
24 the violations have not been cured within six months, the court shall  
25 enter judgment for the defendant and either refund to the defendant  
26 all money deposited or use the money for the purpose of making the  
27 dwelling fit for human habitation; if the violations have been cured,  
28 the court shall determine the amount due to each party; the party to  
29 whom a net amount is owed shall be paid first from the money paid into

1 the court, and the balance by the other party; if no rent remains due  
2 after application of this section, judgment shall be entered for the  
3 tenant in the action for possession;

4 (4) the tenant vacate the dwelling during the making of  
5 necessary repairs, when the repairs cannot be made without vacation of  
6 the premises, the tenant to be reinstated upon completion of the  
7 repairs.

8 (b) In an action for rent where the tenant is not in possession,  
9 the tenant may counterclaim if authorized under [AS PROVIDED IN] (a)  
10 of this section but the tenant is not required to pay rent into court.

11 \* Sec. 13. AS 34.03.220(a) is amended to read:

12 (a) Except as provided in this chapter, if there is a material  
13 noncompliance by the tenant with the rental agreement or noncompliance  
14 with AS 34.03.120 materially affecting health and safety, the landlord  
15 may deliver a written notice to the tenant specifying the acts and  
16 omissions constituting the breach and specifying that the rental  
17 agreement will terminate upon a date not less than 20 days after  
18 receipt of the notice. If the breach is not remedied in 10 days, the  
19 rental agreement terminates as provided in the notice subject to the  
20 provisions of this section. If a public utility providing electric-  
21 ity, natural gas, or water to the premises occupied by the tenant  
22 discontinues the service to the premises for the failure of the tenant  
23 to pay for the utility service, the landlord may deliver a written  
24 notice to the tenant advising that the tenancy will terminate five  
25 days after the delivery of the notice. If, within the three days from  
26 the receipt of the notice, the tenant reinstates the discontinued  
27 service, repays the landlord for any amounts paid by the landlord to  
28 reinstate service, and no damage occurred to the rental unit as a  
29 result of the discontinuance of service [IF THE BREACH IS REMEDIABLE

1 BY REPAIRS OR THE PAYMENT OF DAMAGES OR OTHERWISE AND THE TENANT  
2 ADEQUATELY REMEDIES THE BREACH BEFORE THE DATE SPECIFIED IN THE  
3 NOTICE], the rental agreement will not terminate. In the absence of  
4 due care by the tenant, if substantially the same act or omission that  
5 constituted a prior noncompliance of which notice was given recurs  
6 within six months, the landlord may terminate the rental agreement  
7 upon at least 10 days written notice specifying the breach and the  
8 date of termination of the rental agreement.

9 \* Sec. 14. AS 34.03.220(b) is amended to read:

10 (b) If rent is unpaid when due and the tenant fails to pay rent  
11 in full within 10 days after written notice by the landlord of nonpay-  
12 ment and the intention to terminate the rental agreement if the rent  
13 is not paid within that period of time, the tenancy terminates unless  
14 the landlord agrees to allow the tenant to remain in occupancy, and  
15 the landlord may terminate the rental agreement and immediately re-  
16 cover possession of the rental unit. Only [; ONLY] one written notice  
17 of default need be given the tenant by the landlord as to any one  
18 default. A landlord who has given written notice to the tenant under  
19 this subsection may accept a partial payment of the rent due under the  
20 rental agreement and extend the date for the eviction accordingly.

21 \* Sec. 15. AS 34.03.230(b) is amended to read:

22 (b) During an absence of the tenant in excess of seven days, the  
23 landlord may enter the dwelling unit at times reasonably necessary as  
24 provided in AS 34.03.140. The landlord may reenter the dwelling unit  
25 and terminate the rental agreement when the rent has not been paid,  
26 the tenant failed to give the landlord notice of the absence, and the  
27 tenant  
28 (1) in a week-to-week tenancy has been absent for three  
29 consecutive days;

1                   (2) in a month-to-month tenancy has been absent for 10  
2                   consecutive days.

3   \* Sec. 16. AS 34.03.260(d) is amended to read:

4                   (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in  
5                   damages in an action by a tenant claiming loss by reason of the land-  
6                   lord's storage [ELECTION, DESTRUCTION,] or disposition of property  
7                   under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who  
8                   deliberately or negligently violates the provisions of this section [,  
9                   THE LANDLORD] is liable for actual damages and penal damages of an  
10                   amount not to exceed actual damages.

11   \* Sec. 17. AS 34.20.090 is amended by adding a new subsection to read:

12                   (d) A lease or a periodic tenancy created by the party or the  
13                   assigns of the party executing the deed of trust continue according to  
14                   the terms of the lease or periodic tenancy.

15   \* Sec. 18. AS 42.30 is amended by adding a new section to read:

16                   ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

17                   Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE  
18                   DISCONTINUANCE OF SERVICE. A public utility that provides electric-  
19                   ity, natural gas, or water to individual customers shall permit a  
20                   landlord to register as the owner of an improvement served by the  
21                   public utility. The public utility may not discontinue service to a  
22                   tenant of the improvement until 10 days after the public utility has  
23                   provided to the landlord written notice of an intention to discontinue  
24                   service.

25   \* Sec. 19. Rule 85 of the Alaska Rules of Civil Procedure is amended by  
26                   adding a new paragraph to read:

27                   (c) Priority on the Calendar. The trial court shall give pri-  
28                   ority on the calendar to an action brought under the forcible entry or  
29                   detainer provisions of law.

1     \* Sec. 20. Rule 8 of the Alaska District Court Rules of Civil Procedure  
2 is amended by adding a new paragraph to read:

3             (d) Notwithstanding (a) - (c) of this rule, when a claim for  
4 possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive  
5 of costs, interest, and attorney fees, the district judge or magis-  
6 trate shall hear the action as a small claim unless important or  
7 unusual points of law are involved.

8     \* Sec. 21. The Legislative Affairs Agency shall make copies of the  
9 pamphlet prepared by the Department of Law under AS 44.23.020(b)(8) avail-  
10 able to members of the public at Legislative Information Offices throughout  
11 the state.