

HOUSE CS FOR CS FOR SENATE BILL NO. 35 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/11/92

Referred: Rules

Sponsor(s): SENATORS POURCHOT, Halford

REPRESENTATIVE Zawacki

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to termination of tenancies and recovery of rental premises for
 2 nonpayment of rent and certain illegal activities, to tenant responsibilities, and to the civil
 3 remedies of forcible entry and detainer and nuisance abatement; and providing for an
 4 effective date."

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

6 * Section 1. AS 09.45.090 is amended to read:

7 Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. The following are cases of
 8 unlawful holding by force within the meaning of AS 09.45.060 - 09.45.160:

9 (1) when the tenant or person in possession of a premises

10 (A) fails to pay rent in full for the first rental period under a rental
 11 agreement; for premises to which the provisions of AS 34.03 (Uniform Residential
 12 Landlord and Tenant Act) apply, notice provided under AS 34.03.220(e) by the
 13 person seeking to recover possession of the premises satisfies the notice requirements
 14 of AS 09.45.060 - 09.45.110;

1 **(B) other than a person described in (A) of this paragraph** fails or
2 refuses to pay **within five days** the rent due on the lease or agreement under which the
3 tenant or person holds, or **fails to** deliver up the possession of the premises **within five**
4 **[FOR 10] days after demand made in writing for the possession; for premises to which**
5 **the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) apply,**
6 **notice provided under AS 34.03.220(b) by the person seeking to recover possession**
7 **of the premises satisfies the notice requirements of this subparagraph; or**

8 **(C) violates AS 34.03.120(b) or AS 34.05.100(a) and, after a notice to**
9 **quit as provided in AS 09.45.100, the tenant or person in possession of the premises**
10 **fails or refuses to deliver up the possession of the premises within five days after**
11 **demand made in writing for the possession;**

12 (2) when, after a notice to quit as provided in **AS 09.45.100** [AS 09.45.060 -
13 09.45.160], a person continues in [THE] possession of the premises

14 **(A)** at the expiration of the time limited in the lease or agreement under
15 which that person holds;

16 **(B)** [, OR] contrary to a condition or covenant in the lease or agreement,
17 **including the breach of a condition or covenant set out in AS 34.03.120(a), but not**
18 **including a condition or covenant relating to nonpayment of rent or the prohibition**
19 **set out in AS 34.03.120(b) or AS 34.05.100(a); or**

20 **(C)** without a written lease or agreement;

21 (3) when, **except as otherwise provided in this section,** after a notice to
22 terminate the tenancy **or after receipt of an order of abatement under AS 09.50.210(a),** [AS
23 PROVIDED IN THIS TITLE WITH REFERENCE TO TERMINATION OF ESTATE AT WILL
24 OR BY SUFFERANCE] a person continues in possession of the premises after expiration of the
25 time for determining the tenancy.

26 * Sec. 2. AS 09.45.100 is amended to read:

27 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit shall be in
28 writing and shall be served upon the tenant or person in possession by being

29 **(1)** delivered to the tenant or person;

30 **(2)** [OR] left at the premises **and sent to the tenant or person by mail;** [IN
31 CASE OF ABSENCE FROM THE PREMISES,] or

1 (3) [THE NOTICE MAY BE] sent by registered or certified mail [, IN WHICH
2 CASE AN ADDITIONAL THREE DAYS SHALL BE ADDED TO THE 10 DAYS].

3 * Sec. 3. AS 09.45.100 is amended by adding a new subsection to read:

4 (b) If notice is provided by mail under (a)(3) of this section, an additional three days
5 shall be added to the required number of days of notice.

6 * Sec. 4. AS 09.45.110 is amended to read:

7 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
8 BROUGHT. An action for the recovery of the possession of the premises may be maintained

9 (1) in the cases specified in AS 09.45.090(2), when the notice to quit has been
10 served upon the tenant or person in possession for the period of 10 days before the
11 commencement of the action unless the leasing or occupation is for the purpose of farming or
12 agriculture, in which case the notice shall be served 90 days before commencement of the action;

13 (2) in the cases specified in AS 09.45.090(3), when the notice to quit has been
14 served upon the tenant or person in possession for a period of 24 hours before the
15 commencement of the action.

16 * Sec. 5. AS 09.45.120 is amended to read:

17 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for forcible
18 entry and detainer shall be served not less than two [NOR MORE THAN FOUR] days before
19 the date of trial. A [NO] continuance may not [SHALL] be granted for a longer period than two
20 days unless the defendant applying for the continuance gives an undertaking to the adverse party,
21 with sureties approved by the court conditioned to the payment of the rent that may accrue if
22 judgment is rendered against the defendant.

23 * Sec. 6. AS 09.45 is amended by adding a new section to read:

24 Sec. 09.45.125. ORDER. If, after trial, the court finds and enters judgment against the
25 tenant or person in possession, the court shall enter an order to vacate directed to the tenant or
26 person in possession and, at the request of the person recovering possession of the premises, at
27 the same time or at any later date may issue a writ of assistance to a peace officer to secure that
28 officer's assistance in serving and enforcing the order to vacate.

29 * Sec. 7. AS 09.45 is amended by adding a new section to read:

30 Sec. 09.45.135. ACTION AGAINST TENANT OCCUPYING PREMISES ABATED AS
31 NUISANCE. In an action under AS 09.45.060 - 09.45.160 against a tenant or person in

1 possession of premises for which an order of abatement has been entered under AS 09.50.210(a),
2 a certified copy of the order of abatement is prima facie evidence of unlawful holding of the
3 premises by force by a person who remains on the premises.

4 * Sec. 8. AS 09.50.170 is amended to read:

5 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS [IMMORAL
6 ACT]. A person who erects, establishes, continues, maintains, uses, owns, or leases a building,
7 structure, or other place used for one of the following activities [THE PURPOSES OF
8 LEWDNESS, ASSIGNATION, OR PROSTITUTION OR ANY OTHER IMMORAL ACT] is
9 guilty of maintaining a nuisance, and the building, structure, or place, or the ground itself in or
10 upon which or in any part of which the activity [LEWDNESS, ASSIGNATION, OR
11 PROSTITUTION] is conducted, permitted, [OR] carried on, continues, or exists, and its [THE]
12 furniture, fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

13 (1) prostitution; or

14 (2) an illegal activity involving

15 (A) alcoholic beverages;

16 (B) a controlled substance;

17 (C) an imitation controlled substance; or

18 (D) promoting gambling in the first degree.

19 * Sec. 9. AS 09.50.170 is amended by adding a new subsection to read:

20 (b) In this section, "illegal activity involving alcoholic beverages," "illegal activity
21 involving a controlled substance," and "illegal activity involving an imitation controlled
22 substance," and "illegal activity involving promoting gambling in the first degree" have the
23 meanings given in AS 34.03.360.

24 * Sec. 10. AS 09.50 is amended by adding a new section to read:

25 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE. In an
26 action brought under AS 09.50.170(a), the court may consider evidence of reputation within a
27 community to prove the existence of a nuisance.

28 * Sec. 11. AS 09.50.210 is amended to read:

29 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and enters [UPON]
30 judgment that a nuisance exists, the court shall enter an order of abatement. The order of
31 abatement shall direct

1 (1) termination of the lease or rental agreement, if any, on the premises
2 subject to the order of abatement, if the tenant who occupies under the lease or rental
3 agreement has been given notice of the proceedings under AS 09.50.170 - 09.50.240:

4 (2) [BE ENTERED DIRECTING] the removal from the building or place of the
5 fixtures, furniture, and movable property used in the nuisance and their sale in the manner
6 provided for the sale of chattels under execution;

7 (3) [. THE ORDER SHALL ALSO DIRECT] the closing of the building or place
8 against its use for any purpose for a period of one year unless sooner released.

9 (b) A person who breaks and enters or uses a building, structure, or other place [SO]
10 directed to be closed by an order entered under (a)(3) of this section is guilty of contempt and
11 shall be punished for contempt as provided in AS 09.50.200.

12 * Sec. 12. AS 09.50.230 is amended to read:

13 Sec. 09.50.230. RELEASE OF PREMISES TO OWNER. (a) The court may order
14 premises abated under AS 09.50.210 delivered to the owner and cancel the order of
15 abatement if [IF] the owner of the premises

16 (1) has not been guilty of a contempt in the proceedings;

17 (2) [, AND] appears and pays all costs, fees, and allowances that [WHICH] are
18 a lien on the premises; [,] and

19 (3) files a bond with sureties approved by the court in an amount [THE FULL
20 VALUE OF THE PROPERTY AS] determined by the court to the effect that the owner will
21 abate the nuisance that exists at the building or place and prevent the nuisance from being
22 established within a period of one year thereafter [, THE COURT MAY ORDER THE
23 PREMISES TO BE DELIVERED TO THE OWNER AND CANCEL THE ORDER OF
24 ABATEMENT].

25 (b) The lease of the property does not release it from a judgment, lien, penalty, or
26 liability to which it may be subject by law.

27 (c) A cancellation of the order of abatement does not affect a termination of a lease
28 or rental agreement made under AS 09.50.210(a)(1).

29 * Sec. 13. AS 34.03.070(a) is amended to read:

30 (a) A landlord may not demand or receive prepaid rent or a security deposit, however
31 denominated, in an amount or value in excess of two months' periodic rent. This section does

1 not apply to one- or two-family residence rental units where the rent exceeds \$2,000 a
2 month.

3 * Sec. 14. AS 34.03.070(g) is amended to read:

4 (g) If the landlord or tenant gives notice that complies with AS 34.03.290 and the tenant
5 has provided the landlord with a current address, the landlord shall mail the written notice
6 and refund required by (b) of this section within 14 days after the tenancy is terminated and
7 possession is delivered by the tenant. The landlord shall mail the written notice and refund
8 required by (b) of this section to the address provided by the tenant. If the tenant has
9 provided the landlord with a current address but the tenant does not give notice that complies
10 with AS 34.03.290, the landlord shall mail the written notice and refund required by (b) of this
11 section within 30 days after the tenancy is terminated, possession is delivered by the tenant, or
12 the landlord becomes aware that the dwelling unit is abandoned. The landlord shall mail the
13 written notice and refund required by (b) of this section to the address provided by the
14 tenant. If the landlord does not know the mailing address of the tenant, but knows or has reason
15 to know how to contact the tenant to give the notice required by (b) of this section, the landlord
16 shall make a reasonable effort to deliver the notice and refund to the tenant.

17 * Sec. 15. AS 34.03.100(c) is amended to read:

18 (c) The landlord and tenant of a one- or two-family residence may agree in writing that
19 the tenant perform the landlord's duties specified in (a)(4), (5), (6), and (7) of this section. A
20 tenant may agree to perform the duties specified in (a)(3) of this section in rental units
21 where the rent exceeds \$2,000 a month. They may also agree in writing that the tenant
22 perform specified repairs, maintenance tasks, alterations, and remodeling, but the tenant may
23 not agree to maintain elevators in good and safe working order. Agreements are allowed
24 under this subsection only if the transaction is entered into in good faith and not for the purpose
25 of evading the obligations of the landlord.

26 * Sec. 16. AS 34.03.120 is amended to read:

27 Sec. 34.03.120. TENANT OBLIGATIONS [TO MAINTAIN DWELLING UNIT]. The
28 tenant [SHALL]

29 (1) shall keep that part of the premises occupied and used by the tenant as clean
30 and safe as the condition of the premises permit;

31 (2) shall dispose all ashes, rubbish, garbage, and other waste from the dwelling

1 unit in a clean and safe manner;

2 (3) shall keep all plumbing fixtures in the dwelling unit or used by the tenant as
3 clean as their condition permits;

4 (4) shall use in a reasonable manner all electrical, plumbing, sanitary, heating,
5 ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators in the
6 premises;

7 (5) may not deliberately or negligently destroy, deface, damage, impair, or
8 remove a part of the premises or knowingly permit any person to do so;

9 (6) may not unreasonably disturb, or permit others on the premises with the
10 tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises; and

11 (7) shall maintain smoke detection devices as required under
12 AS 18.70.095.

13 * Sec. 17. AS 34.03.120 is amended by adding a new subsection to read:

14 (b) The tenant may not knowingly engage at the premises in an illegal activity involving
15 alcoholic beverages, an illegal activity involving a controlled substance, an illegal activity
16 involving an imitation controlled substance, or an illegal activity involving promoting gambling
17 in the first degree, or knowingly permit others in the premises to engage in one or more of those
18 activities at the rental premises.

19 * Sec. 18. AS 34.03.140(a) is amended to read:

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

25 * Sec. 19. AS 34.03.140(d) is amended to read:

26 (d) The landlord does not have a [HAS NO OTHER] right to access

27 (1) except

28 (A) as permitted by this section;

29 (B) by court order; or

30 (C) [, AND] as permitted by AS 34.03.230(b); [,] or

31 (2) unless [IF] the tenant has abandoned or surrendered the premises.

1 * **Sec. 20.** AS 34.03.220(b) is amended to read:

2 (b) If rent is unpaid when due and the tenant fails to pay rent in full within five [10]
3 days after written notice by the landlord of nonpayment and the intention to terminate the rental
4 agreement if the rent is not paid within that period of time, the tenancy terminates unless the
5 landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the
6 rental agreement and immediately recover possession of the rental unit. Only [; ONLY] one
7 written notice of default need be given the tenant by the landlord as to any one default. A
8 landlord who has given written notice to the tenant under this subsection may accept a
9 partial payment of the rent due under the rental agreement and extend the date for the
10 eviction accordingly.

11 * **Sec. 21.** AS 34.03.220 is amended by adding new subsections to read:

12 (d) An order of abatement entered by a court under AS 09.50.170 terminates a rental
13 agreement on the premises subject to the order of abatement.

14 (e) A person whose use of premises is based solely on rights acquired by a tenant, and
15 who has not individually acquired the rights of a tenant under this chapter, does not acquire rights
16 under this chapter as a result of being present on the premises.

17 * **Sec. 22.** AS 34.03.260(d) is amended to read:

18 (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in damages in an
19 action by a tenant claiming loss by reason of the landlord's storage [ELECTION], destruction,
20 or disposition of property under this section. A [, OR SALE. IF, HOWEVER, THE] landlord
21 who deliberately or negligently violates the provisions of this section [, THE LANDLORD] is
22 liable for actual damages and penal damages of an amount not to exceed actual damages.

23 * **Sec. 23.** AS 34.03.360 is amended by adding new paragraphs to read:

24 (19) "illegal activity involving alcoholic beverages" means a person's delivery of
25 an alcoholic beverage in violation of AS 04.11.010(b) in an area where the results of a local
26 option election have, under AS 04.11.490 - 04.11.500, prohibited the Alcoholic Beverage Control
27 Board from issuing, renewing, or transferring a liquor license or permit under AS 04;

28 (20) "illegal activity involving a controlled substance" means a violation of
29 AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1), 11.71.030(a)(2), 11.71.040(a)(1), 11.71.040(a)(2),
30 or 11.71.040(a)(5);

31 (21) "illegal activity involving an imitation controlled substance" means a

1 violation of AS 11.73.010 - 11.73.030;

2 (22) "illegal activity involving promoting gambling in the first degree" means a
3 violation of AS 11.66.210.

4 * Sec. 24. AS 34.05 is amended by adding a new section to read:

5 ARTICLE 3. ILLEGAL ACTIVITIES IN NONRESIDENTIAL PREMISES.

6 Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES OTHER THAN
7 DWELLING UNITS. (a) In rented premises other than premises to which the provisions of
8 AS 34.03 apply, the tenant may not knowingly engage at the premises in an illegal activity
9 involving alcoholic beverages, an illegal activity involving a controlled substance, or an illegal
10 activity involving an imitation controlled substance, or knowingly permit others in the premises
11 to engage in one or more of those activities at the rental premises.

12 (b) If there is noncompliance with (a) of this section, a person may seek relief under
13 AS 09.50.170 - 09.50.240.

14 (c) An order of abatement entered by a court under AS 09.50.170 against premises under
15 this section terminates a rental agreement on the premises subject to the order of abatement.

16 (d) In this section, "dwelling unit," "illegal activity involving alcoholic beverages,"
17 "illegal activity involving a controlled substance," and "illegal activity involving an imitation
18 controlled substance," and "illegal activity involving promoting gambling in the first degree" have
19 the meanings given in AS 34.03.360.

20 * Sec. 25. APPLICABILITY. To the extent required by the state or federal constitutions, this Act
21 does not apply to leases or rental agreements entered into before the effective date of this Act.

22 * Sec. 26. This Act takes effect July 1, 1993.