

CS FOR HOUSE BILL NO. 222(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/19/93
Referred: Finance

Sponsor(s): REPRESENTATIVES JAMES, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to landlords and tenants, to termination of tenancies and
2 recovery of rental premises, to tenant responsibilities, to the civil remedies of
3 forcible entry and detainer and nuisance abatement, and to the duties of peace
4 officers to notify landlords of arrests involving certain illegal activity on rental
5 premises."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 04.21 is amended by adding a new section to read:

8 **Sec. 04.21.075. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A**
9 **peace officer who arrests a person for illegal activity involving alcoholic beverages on**
10 **premises that the peace officer believes are occupied by a person who is not the owner**
11 **of the premises shall**

12 **(1) make a reasonable attempt to discover the identity of the owner of**
13 **the premises; and**

1 (2) notify the owner of the person's arrest
2 (A) in person; or
3 (B) in writing, at the last address listed on the assessment roll
4 maintained by the municipality under AS 29.45.160 if the premises are located
5 within a municipality that levies and collects a property tax; if an address is not
6 available, notice of the person's arrest may be sent to the property owner at
7 any other address known to the peace officer.

8 (b) In this section, "illegal activity involving alcoholic beverages" has the
9 meaning given in AS 34.03.360.

10 * Sec. 2. AS 09.45.090 is amended to read:

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

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

14 (A) fails or refuses to pay the rent due on the lease or
15 agreement under which the tenant or person holds, or fails to deliver up the
16 possession of the premises within [FOR] 10 days after demand made in writing
17 for the possession; for premises to which the provisions of AS 34.03
18 (Uniform Residential Landlord and Tenant Act) apply, notice provided
19 under AS 34.03.220(b) by the person seeking to recover possession of the
20 premises satisfies the notice requirements of this subparagraph; or

21 (B) violates AS 34.03.120(b) or AS 34.05.100(a) and, after a
22 notice to quit as provided in AS 09.45.100, the tenant or person in
23 possession of the premises fails or refuses to deliver up the possession of
24 the premises within five days after demand made in writing for the
25 possession;

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

28 (A) at the expiration of the time limited in the lease or
29 agreement under which that person holds;

30 (B) [, OR] contrary to a condition or covenant in the lease or
31 agreement, including the breach of a condition or covenant set out in

1 AS 34.03.120(a) but not including the breach of a condition or covenant to
2 which (1) of this section applies; or

3 (C) without a written lease or agreement;

4 (3) when, after a notice to terminate the tenancy as provided in this title
5 with reference to termination of estate at will or by sufferance or after receipt of an
6 order of abatement under AS 09.50.210(a), a person continues in possession of the
7 premises after expiration of the time for determining the tenancy.

8 * Sec. 3. AS 09.45.100 is amended to read:

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

11 (1) delivered to the tenant or person;

12 (2) [OR] left at the premises in case of absence from the premises; [,]

13 or

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

17 * Sec. 4. AS 09.45.100 is amended by adding a new subsection to read:

18 (b) If notice is provided by mail under (a)(3) of this section, an additional
19 three days shall be added

20 (1) to the 10 days' notice if, under AS 09.45.090(1)(A), the tenant or
21 person in possession of the premises fails or refuses to pay the rent due on the lease
22 or agreement under which the tenant holds or deliver up the possession of the
23 premises;

24 (2) to the five days' notice if, under AS 09.45.090(1)(B), the tenant or
25 person in possession of the premises fails or refuses to deliver up the possession of the
26 premises; or

27 (3) to the required number of days of notice if notice to quit is given
28 for a reason other than that set out in AS 09.45.090(1).

29 * Sec. 5. AS 09.45.110 is amended to read:

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

1 maintained

2 (1) in [THE] cases specified in AS 09.45.090(2)(A), [AS 09.45.090(2)]
3 when the notice to quit has been served upon the tenant or person in possession for the
4 period of five [10] days before the commencement of the action unless the leasing or
5 occupation is for the purpose of farming or agriculture, in which case the notice shall
6 be served 90 days before commencement of the action; and

7 (2) in cases specified in AS 09.45.090(2)(B) and (C), when the notice
8 to quit has been served upon the tenant or person in possession before the
9 commencement of the action.

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

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

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

18 Sec. 09.45.135. ACTION AGAINST TENANT OCCUPYING PREMISES
19 ABATED AS NUISANCE. In an action under AS 09.45.060 - 09.45.160 against a
20 tenant or person in possession of premises for which an order of abatement has been
21 entered under AS 09.50.210(a), a certified copy of the order of abatement is prima
22 facie evidence of unlawful holding of the premises by force by a person who remains
23 on the premises.

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

25 Sec. 09.50.170. ABATEMENT OF PLACES USED FOR CERTAIN ACTS
26 [IMMORAL ACT]. A person who erects, establishes, continues, maintains, uses,
27 owns, or leases a building, structure, or other place used for one of the following
28 activities [THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION
29 OR ANY OTHER IMMORAL ACT] is guilty of maintaining a nuisance, and the
30 building, structure, or place, or the ground itself in or upon which or in any part of
31 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is

1 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,
2 fixtures, and other contents, constitute a nuisance and may be enjoined and abated:

3 (1) prostitution:

4 (2) an illegal activity involving a place of prostitution; or

5 (3) an illegal activity involving

6 (A) alcoholic beverages;

7 (B) a controlled substance; or

8 (C) an imitation controlled substance.

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

10 (b) In this section, "illegal activity involving alcoholic beverages," "illegal
11 activity involving a controlled substance," "illegal activity involving an imitation
12 controlled substance," "illegal activity involving a place of prostitution," and
13 "prostitution" have the meanings given in AS 34.03.360.

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

15 Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.

16 In an action brought under AS 09.50.170(a) to prove the existence of a nuisance, the
17 court may consider

18 (1) evidence of reputation within a community;

19 (2) evidence derived from records of the courts of the state or of the
20 United States that relate to previous complaints concerning alleged violations of, and
21 to arrests for or convictions of violations of, laws based on activity set out in
22 AS 09.50.170.

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

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

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

31 (2) [SHALL BE ENTERED DIRECTING] the removal from the

1 building or place of the fixtures, furniture, and movable property used in the nuisance
2 and their sale in the manner provided for the sale of chattels under execution;

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

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

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

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

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

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

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

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

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

26 * Sec. 13. AS 17.30 is amended by adding a new section to read:

27 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A
28 peace officer who arrests a person for illegal activity involving a controlled substance
29 or illegal activity involving an imitation controlled substance on premises that the
30 peace officer believes are occupied by a person who is not the owner of the premises
31 shall

1 (1) make a reasonable attempt to discover the identity of the owner of
2 the premises; and

3 (2) notify the owner of the person's arrest

4 (A) in person; or

5 (B) in writing, at the last address listed on the assessment roll
6 maintained by the municipality under AS 29.45.160 if the premises are located
7 within a municipality that levies and collects a property tax; if an address is not
8 available, notice of the person's arrest may be sent to the property owner at
9 any other address known to the peace officer.

10 (b) In this section, "illegal activity involving a controlled substance" and
11 "illegal activity involving an imitation controlled substance" have the meanings given
12 in AS 34.03.360.

13 * Sec. 14. AS 34.03.020 is amended by adding a new subsection to read:

14 (e) If required by the landlord, the landlord and the tenant shall include within
15 the rental agreement, incorporate by reference in the rental agreement, or add as a
16 separate attachment to the rental agreement a premises condition statement, setting out
17 the condition of the premises, including fixtures but excluding reference to any of the
18 other contents of the premises, and, if applicable, a contents inventory itemizing or
19 describing all of the furnishings and other contents of the premises and specifying the
20 condition of each of them. In the premises condition statement and contents inventory,
21 the parties shall describe the premises and its contents at the commencement of the
22 term of the period of the occupancy covered by the rental agreement. When signed
23 by the parties, the premises condition statement and contents inventory completed
24 under this subsection become part of the rental agreement.

25 * Sec. 15. AS 34.03.070(b) is amended to read:

26 (b) Upon termination of the tenancy, property or money held by the landlord
27 as prepaid rent or as a security deposit may be applied to the payment of accrued rent
28 and the amount of damages that the landlord has suffered by reason of the tenant's
29 noncompliance with AS 34.03.120. [**"DAMAGES" DOES NOT INCLUDE WEAR
30 RESULTING FROM ORDINARY USE OF THE PREMISES.**] The accrued rent and
31 damages must be itemized by the landlord in a written notice mailed to the tenant's

1 last known address within the time limit prescribed by (g) of this section, together with
2 the amount due the tenant. In this subsection, "damages"

3 (1) means deterioration of the premises and, if applicable, of the
4 contents of the premises;

5 (2) does not include deterioration

6 (A) that is the result of the tenant's use of the premises by
7 normal, nonabusive living;

8 (B) caused by the landlord's failure to prepare for expected
9 conditions or by the landlord's failure to comply with an obligation of the
10 landlord imposed by this chapter.

11 * Sec. 16. AS 34.03.090 is amended by adding a new subsection to read:

12 (b) As a condition of delivery of possession of the premises to the tenant, the
13 landlord may require the tenant to acknowledge or verify by the tenant's signature the
14 accuracy of the premises condition statement and contents inventory prepared under
15 AS 34.03.020(e). Before requiring the tenant's signature, the landlord shall first advise
16 the tenant that the premises condition statement and contents inventory

17 (1) may be used by the landlord as the basis

18 (A) to determine whether prepaid rent or a security deposit shall
19 be applied to the payment of damages to the premises when authorized by
20 AS 34.03.070(b); and

21 (B) to compute the recovery of other damages to which the
22 parties may be entitled under this chapter; and

23 (2) is, in an action initiated by a party to recover damages or to obtain
24 other relief to which a party may be entitled under this chapter, presumptive evidence
25 of the condition of the premises and its contents at the commencement of the term of
26 the period of occupancy covered by the rental agreement.

27 * Sec. 17. AS 34.03.110(a) is amended to read:

28 (a) Unless otherwise agreed, a landlord who conveys premises that include a
29 dwelling unit subject to a rental agreement in a good faith sale to a bona fide
30 purchaser is relieved of liability under the rental agreement and this chapter as to
31 events occurring subsequent to written notice to the tenant of the conveyance.

1 However,

2 (1) the landlord remains liable to the tenant for the property and money
3 to which the tenant is entitled under AS 34.03.070, unless the property and money are
4 specifically assigned to and accepted by the purchaser; and

5 (2) the provisions of

6 (A) a premises condition statement prepared under
7 AS 34.03.020(e) between the landlord and the tenant remains valid as
8 between the purchaser and the tenant until a new premises condition
9 statement is entered into between the purchaser and the tenant; and

10 (B) a contents inventory prepared under AS 34.03.020(e)
11 between the landlord and the tenant remains valid as between the
12 purchaser and the tenant for the contents remaining on the premises after
13 the conveyance of the premises until a new contents inventory is entered
14 into between the purchaser and the tenant.

15 * Sec. 18. AS 34.03.120 is amended to read:

16 Sec. 34.03.120. TENANT TO MAINTAIN DWELLING UNIT. The tenant
17 shall

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

20 (2) dispose all ashes, rubbish, garbage, and other waste from the
21 dwelling unit in a clean and safe manner;

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

24 (4) use in an ordinary, nonabusive [A REASONABLE] manner all
25 electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other
26 facilities and appliances including elevators in the premises;

27 (5) not [DELIBERATELY OR NEGLIGENTLY] destroy, deface,
28 damage, impair, or remove a part of the premises or knowingly permit any person to
29 do so;

30 (6) not [UNREASONABLY] disturb, or permit others on the premises
31 with the tenant's consent to [UNREASONABLY] disturb, a neighbor's peaceful

1 enjoyment of the premises; and

2 (7) maintain smoke detection devices as required under AS 18.70.095.

3 * Sec. 19. AS 34.03.120 is amended by adding a new subsection to read:

4 (b) The tenant may not knowingly engage at the premises in prostitution, an
5 illegal activity involving a place of prostitution, an illegal activity involving alcoholic
6 beverages, an illegal activity involving a controlled substance, or an illegal activity
7 involving an imitation controlled substance, or knowingly permit others in the premises
8 to engage in one or more of those activities at the rental premises.

9 * Sec. 20. AS 34.03.220(a) is amended to read:

10 (a) Except as provided in this chapter, if there is [A MATERIAL]
11 noncompliance by the tenant with the rental agreement or noncompliance with
12 AS 34.03.120(a) [AS 34.03.120 MATERIALLY AFFECTING HEALTH AND
13 SAFETY], the landlord may deliver a written notice to the tenant specifying the acts
14 and omissions constituting the breach and specifying that the rental agreement will
15 terminate 24 hours [UPON A DATE NOT LESS THAN 20 DAYS] after receipt of
16 the notice. If the breach is remediable by repairs or the payment of damages or
17 otherwise and the tenant remedies the breach to the satisfaction of the landlord
18 before the date specified in the notice, the rental agreement will not terminate.
19 If the breach is not remedied [IN 10 DAYS], the rental agreement terminates as
20 provided in the notice, and at that time the landlord may serve a notice under
21 AS 09.45.100 to quit the premises. This subsection does not apply unless the
22 tenant's acts or omissions constituting noncompliance

23 (1) with or breach of the obligation imposed by AS 34.03.120(a)(5)
24 are substantial; an act or omission is "substantial" if the loss of property
25 attributable to the destruction, defacement, damage, impairment, or removal
26 affecting the premises exceeds the amount of the security deposit held by the
27 landlord under AS 34.03.070;

28 (2) with or breach of an obligation imposed by AS 34.03.120(a)(1) -
29 (4) materially affect the health or safety of the tenant or other tenants;

30 (3) with the rental agreement, other than a provision of the rental
31 agreement that addresses an obligation imposed by AS 34.03.120(a), detrimentally

1 affect the landlord's investment in the premises, the quiet enjoyment of the
2 premises by other tenants, or the use and occupancy of adjacent premises
3 [SUBJECT TO THE PROVISIONS OF THIS SECTION. IF THE BREACH IS
4 REMEDIABLE BY REPAIRS OR THE PAYMENT OF DAMAGES OR
5 OTHERWISE AND THE TENANT ADEQUATELY REMEDIES THE BREACH
6 BEFORE THE DATE SPECIFIED IN THE NOTICE, THE RENTAL AGREEMENT
7 WILL NOT TERMINATE. IN THE ABSENCE OF DUE CARE BY THE TENANT,
8 IF SUBSTANTIALLY THE SAME ACT OR OMISSION THAT CONSTITUTED A
9 PRIOR NONCOMPLIANCE OF WHICH NOTICE WAS GIVEN RECURS WITHIN
10 SIX MONTHS, THE LANDLORD MAY TERMINATE THE RENTAL
11 AGREEMENT UPON AT LEAST 10 DAYS WRITTEN NOTICE SPECIFYING THE
12 BREACH AND THE DATE OF TERMINATION OF THE RENTAL AGREEMENT].

13 * Sec. 21. AS 34.03.220 is amended by adding a new subsection to read:

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

16 * Sec. 22. AS 34.03 is amended by adding a new subsection to read:

17 Sec. 34.03.335. PROOF OF BASIS IN CERTAIN PROPERTY DAMAGE
18 CLAIMS. In an action initiated by a party to recover damages or to obtain other relief
19 to which a party may be entitled under this chapter, a premises condition statement and
20 contents inventory prepared under AS 34.03.020(e) is presumptive evidence of the
21 condition of the premises and its contents at the commencement of the term of the
22 period of occupancy covered by the rental agreement between the parties. Unless its
23 authenticity is rebutted by clear and convincing evidence by the party against whom
24 the statement and contents inventory is offered, the statement and contents inventory
25 may be offered by a party, without additional supporting evidence, as the basis on
26 which to compute the recovery of damages to which the party may be entitled under
27 this chapter.

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

29 (19) "illegal activity involving alcoholic beverages" means a person's
30 delivery of an alcoholic beverage in violation of AS 04.11.010(b) in an area where the
31 results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the

1 Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor
2 license or permit under AS 04;

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

6 (21) "illegal activity involving an imitation controlled substance" means
7 a violation of AS 11.73.010 - 11.73.030;

8 (22) "illegal activity involving a place of prostitution" means a violation
9 of AS 11.66.120(a)(1), 11.66.130(a)(1), or 11.66.130(a)(4);

10 (23) "prostitution" means an act in violation of AS 11.66.100.

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

12 **ARTICLE 3. ILLEGAL ACTIVITIES IN NONRESIDENTIAL PREMISES.**

13 **Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES OTHER**
14 **THAN DWELLING UNITS.** (a) In rented premises other than premises to which the
15 provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises
16 in prostitution, an illegal activity involving a place of prostitution, an illegal activity
17 involving alcoholic beverages, an illegal activity involving a controlled substance, or
18 an illegal activity involving an imitation controlled substance, or knowingly permit
19 others in the premises to engage in one or more of those activities at the rental
20 premises.

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

23 (c) An order of abatement entered by a court under AS 09.50.210 against
24 premises under this section terminates a rental agreement on the premises subject to
25 the order of abatement.

26 (d) In this section, "dwelling unit," "illegal activity involving alcoholic
27 beverages," "illegal activity involving a controlled substance," "illegal activity
28 involving an imitation controlled substance," "illegal activity involving a place of
29 prostitution," and "prostitution" have the meanings given in AS 34.03.360.

30 * **Sec. 25.** AS 34.03.360(18) is repealed.