

SENATE BILL NO. 155

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS FRANK, Leman, Pearce

Introduced: 3/10/93
Referred: STA, JUD

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

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

(A) in person; or

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

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

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

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

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

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

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

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

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

(B) [, OR] contrary to a condition or covenant in the lease or

1 agreement, including the breach of a condition or covenant set out in
2 AS 34.03.120(a) but not including the breach of a condition or covenant to
3 which (1) of this section applies; or

4 (C) without a written lease or agreement;

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

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

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

12 (1) delivered to the tenant or person;

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

14 or

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

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

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

21 (1) to the five days' notice if,

22 (A) under AS 09.45.090(1)(A), the tenant or person in
23 possession of the premises fails or refuses to pay the rent due on the lease or
24 agreement under which the tenant holds or deliver up the possession of the
25 premises; or

26 (B) under AS 09.45.090(1)(B), the tenant or person in
27 possession of the premises fails or refuses to deliver up the possession of the
28 premises; or

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

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

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

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

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

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

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

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

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

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

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

1 building, structure, or place, or the ground itself in or upon which or in any part of
2 which the activity [LEWDNESS, ASSIGNATION, OR PROSTITUTION] is
3 conducted, permitted, [OR] carried on, continues, or exists, and its [THE] furniture,
4 fixtures, and other contents, constitute a nuisance and may be enjoined and abated;

5 (1) prostitution; or

6 (2) an illegal activity involving

7 (A) alcoholic beverages;

8 (B) a controlled substance; or

9 (C) an imitation controlled substance.

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

11 (b) In this section, "illegal activity involving alcoholic beverages," "illegal
12 activity involving a controlled substance," and "illegal activity involving an imitation
13 controlled substance" have the meaning 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), the court may consider evidence of
17 reputation within a community to prove the existence of a nuisance.

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

19 Sec. 09.50.210. ORDER OF ABATEMENT. (a) If the court finds and

20 enters [UPON] judgment that a nuisance exists, the court shall enter an order of
21 abatement. The order of abatement must direct

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 17.30.160. NOTICE TO LANDLORD FOLLOWING ARREST. (a) A
23 peace officer who arrests a person for illegal activity involving a controlled substance
24 or illegal activity involving an imitation controlled substance on premises that the
25 peace officer believes are occupied by a person who is not the owner of the premises
26 shall

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

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

30 (A) in person; or

31 (B) in writing, at the last address listed on the assessment roll

1 maintained by the municipality under AS 29.45.160 if the premises are located
2 within a municipality that levies and collects a property tax; if an address is not
3 available, notice of the person's arrest may be sent to the property owner at
4 any other address known to the peace officer.

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

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

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

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

21 (b) Upon termination of the tenancy, property or money held by the landlord
22 as prepaid rent or as a security deposit may be applied to the payment of accrued rent
23 and the amount of damages that the landlord has suffered by reason of the tenant's
24 noncompliance with AS 34.03.120. ["DAMAGES" DOES NOT INCLUDE WEAR
25 RESULTING FROM ORDINARY USE OF THE PREMISES.] The accrued rent and
26 damages must be itemized by the landlord in a written notice mailed to the tenant's
27 last known address within the time limit prescribed by (g) of this section, together with
28 the amount due the tenant. In this subsection, "damages"

29 (1) means deterioration of the premises and, if applicable, of the
30 contents of the premises;

31 (2) does not include deterioration

1 (A) a premises condition statement prepared under
2 AS 34.03.020(e) between the landlord and the tenant remains valid as
3 between the purchaser and the tenant until a new premises condition
4 statement is entered into between the purchaser and the tenant; and

5 (B) a contents inventory prepared under AS 34.03.020(e)
6 between the landlord and the tenant remains valid as between the
7 purchaser and the tenant for the contents remaining on the premises after
8 the conveyance of the premises until a new contents inventory is entered
9 into between the purchaser and the tenant.

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

11 Sec. 34.03.120. TENANT TO MAINTAIN DWELLING UNIT. The tenant
12 shall

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

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

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

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

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

25 (6) not [UNREASONABLY] disturb, or permit others on the premises
26 with the tenant's consent to [UNREASONABLY] disturb, a neighbor's peaceful
27 enjoyment of the premises; and

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

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

30 (b) The tenant may not knowingly engage at the premises in an illegal activity
31 involving alcoholic beverages, an illegal activity involving a controlled substance, or

1 an illegal activity involving an imitation controlled substance, or knowingly permit
2 others in the premises to engage in one or more of those activities at the rental
3 premises.

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

5 (a) Except as provided in this chapter, if there is [A MATERIAL]
6 noncompliance by the tenant with the rental agreement or noncompliance with
7 AS 34.03.120(a) [AS 34.03.120 MATERIALLY AFFECTING HEALTH AND
8 SAFETY], the landlord may deliver a written notice to the tenant specifying the acts
9 and omissions constituting the breach and specifying that the rental agreement will
10 terminate 24 hours [UPON A DATE NOT LESS THAN 20 DAYS] after receipt of
11 the notice. If the breach is remediable by repairs or the payment of damages or
12 otherwise and the tenant remedies the breach to the satisfaction of the landlord
13 before the date specified in the notice, the rental agreement will not terminate.

14 If the breach is not remedied [IN 10 DAYS], the rental agreement terminates as
15 provided in the notice, and at that time the landlord may serve a notice under
16 AS 09.45.100 to quit the premises [SUBJECT TO THE PROVISIONS OF THIS
17 SECTION. IF THE BREACH IS REMEDIABLE BY REPAIRS OR THE PAYMENT
18 OF DAMAGES OR OTHERWISE AND THE TENANT ADEQUATELY REMEDIES
19 THE BREACH BEFORE THE DATE SPECIFIED IN THE NOTICE, THE RENTAL
20 AGREEMENT WILL NOT TERMINATE. IN THE ABSENCE OF DUE CARE BY
21 THE TENANT, IF SUBSTANTIALLY THE SAME ACT OR OMISSION THAT
22 CONSTITUTED A PRIOR NONCOMPLIANCE OF WHICH NOTICE WAS GIVEN
23 RECURS WITHIN SIX MONTHS, THE LANDLORD MAY TERMINATE THE
24 RENTAL AGREEMENT UPON AT LEAST 10 DAYS WRITTEN NOTICE
25 SPECIFYING THE BREACH AND THE DATE OF TERMINATION OF THE
26 RENTAL AGREEMENT].

27 * Sec. 21. AS 34.03.220(b) is amended to read:

28 (b) If rent is unpaid when due and the tenant fails to pay rent within five [10]
29 days after written notice by the landlord of nonpayment and the intention to terminate
30 the rental agreement if the rent is not paid within that period of time, the tenancy
31 terminates unless the landlord agrees to allow the tenant to remain in occupancy, and

1 the landlord may terminate the rental agreement and immediately recover possession
2 of the rental unit; only one written notice of default need be given the tenant by the
3 landlord as to any one default.

4 * Sec. 22. AS 34.03.220 is amended by adding a new subsection to read:

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

7 * Sec. 23. AS 34.03 is amended by adding a new subsection to read:

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

19 * Sec. 24. AS 34.03.360 is amended by adding new paragraphs to read:

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

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

28 (21) "illegal activity involving an imitation controlled substance" means
29 a violation of AS 11.73.010 - 11.73.030.

30 * Sec. 25. AS 34.05 is amended by adding a new section to read:

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

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

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

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

13 (d) In this section, "dwelling unit," "illegal activity involving alcoholic
14 beverages," "illegal activity involving a controlled substance," and "illegal activity
15 involving an imitation controlled substance" have the meanings given in AS 34.03.360.

16 * Sec. 26. AS 34.03.360(18) is repealed.