HB 828

" An Act relating to landlord tenant relations; and amending Rules 4(b), 77 and 85, Rules of Civil Procedure."

COMMITTEE REPORT

2/17/76

JUDICIARY

HOUSE

Mr. Speaker: Date _____

The Committee on COMMERCE has had HB 828 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

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February 24, 1976

MEMORANDUM

TO: Rep. Bradley - Commerce

FROM: Don Clocksin, ALSC

SUBJECT: HB 828 - Landlord-tenant evictions

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1. Present Law.

Under the present law a landlord can evict a tenant by giving a written notice giving him/her 10, 20, or 30 days to move depending on the circumstances. There are different, and conflicting notice provisions in various parts of the present law. Once the period has run and the tenant does not move, the landlord may file a lawsuit in court and serve a copy of the lawsuit on the tenant. The trial and the decision by the judge on whether the tenant must move comes two to four days after the suit is filed. The tenant has no time to prepare a defense and is, in effect, not allowed a defense.

2. What this Bill Would Do.

This bill amends the Forcible Entry and Detainer Act in order to make it consistent with the Landlord-Tenant Act. It clarifies what notices must be given and creates a new, fairer procedure for evicting a tenant.

Section 1. This section states simply that eviction of a residential tenant (not a commercial tenant or one who claims he/she owns the property) will be done under the sections set out below and AS 34.03.190 of the Landlord-Tenant Act. That latter section authorizes a judge to order a tenant to pay rent into court, to order repairs made, etc., as part of an eviction.

Section 2. This section reorganizes the provisions for giving notice to a tenant to move. The problem is that presently AS 09.45.090 conflicts with the notice provisions of the Landlord-Tenant Act (AS 34.03.170, .220(a), and .290). There are no substantial changes in the present law in this section.

Section 3. This section again makes the Forcible Entry and Detainer (eviction) statute consistent with the

Landlord-Tenant Act. It also adds language to assure that the tenant gets actual notice that he/she must move.

Section 4. Present AS 09.45.110 provides a 10 day notice to move where a tenant does not leave at the end of an agreed period of time or breaches the leave. It also creates an agricultural exception. This section is not necessary since subparagraphs (3) and (4) of AS 09.45.090 (as amended; see section 2 above) already provide for notice. The agricultural exemption conflicts with the one in AS 09.45.496(b), Which was adopted as part of the 1974 Landlord-Tenant Act.

Section 5. This section establishes in which court the eviction action must be brought and provides that the procedures set out in this article are the exclusive remedy for evicting a tenant.

Section 6. This section amends the procedure to eliminate the requirement that a summons and complaint be served between two and four days before trial. The automatic bond requirement for a postponement is repealed. The new section requires that the summons state the nature of the lawsuit, the place, date and time of trial, and the right to a continuance for good cause.

Section 7. AS 09.45.130 is repealed. It presently provides that a tenant cannot be evicted while rent has been paid in advance. An eviction notice is providedprior to the rent due date if rent is paid in advance. The section is repealed because it conflicts with the notice provisions of section .090.

Section 8. Several new sections are added to AS 09.45 creating a new eviction procedure.

Sec. 09.45.121: Motion for Immediate Possession.
Once a suit to evict a tenant is filed, a landlord who believes there is an emergency sufficient to justify immediate action can request that a court remove the tenant before the case is over. This is like a preliminary injunction. The hearing to remove the tenant will be held within 6-12 days (as compared with the 2-4 days in the present law).

Sec. 09.45.135: Hearing; Defenses and Counterclaims.
At the hearing on the motion for possession the tenant explains all his/her defenses and counterclaims. If the lawsuit has been brought improperly (e.g. inadequate notice) or if the objections raised by the tena would be valid if proven at trial, the suit shall be dismissed or scheduled

later so the objections can be properly presented. If the objections do not appear valid, and the suit has been brought properly, the judge shall order the tenant to leave. The tenant being evicted for being behind in rent will be given three days to pay all the rent and remain in the house.

Section 9. This section repeals AS 09.45.496(a) which refers to Civil Rule 85. The procedure for eviction will now appear in AS 09.45.060-.160 and AS 34.03. Besides, AS 09.45.496 appears in the wrong title of the statutes.

AS 22.15.030(a)(8) repeals the district court's jurisdiction of certain eviction actions, i.e. those where the value involved does not exceed $10,000. All actions removing a tenant should be heard in superior court.

Section 10. A number of Civil Rules are altered, i.e. those on eviction procedures, motions, and information required on the summons. Therefore, a two-thirds vote is required.

3. Amendment.

There is a drafting error in this bill. On p. 2, line 7, "3403.390(a) or (b)" should read "34.03.290(a) or (b)".

HB 827 and HB 828

Mr. Chairman, members of the Committee, I am Bernard L. Marsh, Executive Secretary of Alaska Landlord and Property Managers Association. Although the membership has not had an opportunity to study these proposals some of the officers have seen them, and parts of both are familiar to me, as they were amended out of the Landlord-Tenant Relationship Act of 1974.

In general, A L P M A is opposed to both these bills. At best they are unnecessary, and at worst HB 828 creates a possessory interest in one persons property by another person without compensation. I am referring here to Sec. 09.45.135 of HB 828.

In 1974 the landmark legislation passed by this body was the Landlord-Tenant Relationship Act, which became Chapter 3 of Title 34, Alaska Statutes. This comprehensive bill was heard very extensively, and had voluminous testimony by both landlord and tenant groups. The final result was a law, which on balance has successfully mitigated many of the problems that existed between landlords and tenants. HB 827 now seeks to enact into law a collection of the items that were most objectionable to landlords, and were amended out of the Landlord-Tenant Act.

HB 827 is anti-landlord legislation throughout. It is one-sided and punitive, and has no justification. Landlords as a group are small businessmen trying to realize a return on invested capital, and who rely on rental income from tenants. They do not victimize or prey on tenants.

To look at the bill in detail, consider Sec. 3 (d). This awards a fine for violation to the tenant, not the state. It is also a gimmick for victimizing a landlord; The violation is a technical one that does not harm the tenant. Only failure to return the deposit harms the tenant. The section is an attempt to force the landlord to pay a tenant for occupying his premises. The new subsection (1) of Sec. 3 (a) is similar to language amended out of the Landlord-Tenant Act. It would give the tenant control over the landlord's property, and allow him to run up charges against the landlord without even giving the landlord a chance to make corrections. In Paragraph (2), line 3, page 2, the question arises, who pays the appraiser that determines the diminution of value? Sec. 34.03.310, page 2, is another tenant windfall which was in an early version of the Landlord-Tenant Act, and was amended to the present language. If the tenant is entitled to $1000 from the landlord if he is unlawfully excluded from the premises, then why should not the landlord be entitled to punitive payment if the tenant willfully damages his property?

Sec. 34.03.215 on Page 3 is unnecessary. If an act is a violation of another statute, then it is a violation, It is rediculous to state it here.

HB 828 was apparently written by a lawyer, and is very difficult to understand. However, it again creates a possessory interest in another's property by setling up a situation where a tenant can retain possession of premises against the owner's will. (Sec. 09.45.135). As I read this, the tenant would have a perpetual lease on the premises, not a month-to-month agreement. We feel that there is now ample law on the books covering forceable detainer, action to recover possession, and action for recovery after unlawful exclusion.

There is one section of HB 828 to which we have no objection; that is Sec. 09.45.100 (Requisites of Notice to Quit). I say this with the reservation that the membership of A L P M A may decide differently, but it seems to me that the section clarifies the procedure for notice to quit. We are definitely opposed to the rest of the bill.