HB 222

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/21/94 FURTHER:

DATE TURNED INTO OFFICE: 5-1-94

Finance Committee considered CS FOR HOUSE BILL NO. 222(FIN)

Landlords and tenants and to the applicability of the Uniform Residential Landlord and Tenant Act, to termination of tenancies and recovery of rental premises; and amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure.

and recommends:

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[✓] replace with S CS CS HB 222 (FINANCE)

or [ ] adopt previous ____ CS _____ (____)

[ ] attaches amendment(s)

[ ] adopts _____ Letter of Intent

[ ] further referral to the _____

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Safety	4/12/94	✓	
Law	12/13/93		$10.0

[ ] Appropriation No Fiscal Note

DO PASS:

Steve Rieger

Bert Sharp

1. Do Pass
Co-Chair Signature/Recommendation

OTHER RECOMMENDATIONS:

Geoff Haggo DO NOT PASS

2. Irene Nolan Do Pass
Co-Chair Signature/Recommendation

FISCAL NOTE

No. 3

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: CSHB 222(FIN)
(H) Publish Date: 4/15/94

Revision Date: December 13, 1993
Title: "...relating to landlords and tenants...termination of tenancies...recovery of rental premises..."
Sponsor: Representative James
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Legal Services
Component: Fair Business Practices
COMPONENT SERIAL NO. 1823

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL	10.0					
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF	10.0					
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: December 13, 1993

Richard L. Pegues FOR

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: December 13, 1993

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 222

ANALYSIS CONTINUATION:

This bill amends several statutes relating to termination of tenancies and recovery of rental premises for nonpayment of rent and certain illegal activities. The bill adds illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance to the list of activities that constitute a nuisance that may be enjoined and abated in a place used for the activity. All of the changes will have the effect of substantially changing the information the Department of Law provides to the public in its pamphlet on landlord and tenant rights. The department's publication of the pamphlet is mandated by AS 44.23.020(b)(8).

The department therefore requests $10,000 to revise and republish the information pamphlet. Of this amount, $2,500 will be used to publish a pamphlet supplement in the state Bar Association's monthly newsletter and $7,500 will be used to publish a revised pamphlet for use by the general public. These funds should be sufficient to publish between 7,500 and 10,000 pamphlets.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL N

No. 4
Bill Version: CSHB 222(FIN)
(H) Publish Date: 4/15/94

Revision Date: 04/12/94
Dept. Affected: Public Safety
Title: "An Act relating to landlords and tenants. termination."
BRU: Alaska State Troopers
Component: Criminal Investigations Bureau
Sponsor: Representative James
Requestor: H. FIN
COMPONENT SERIAL NO. 830

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( ) Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 94) impact: $

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
No fiscal impact to the Department of Public Safety is anticipated.

Prepared By: Lee Ann Lucas
Phone: 465-4322
Division: Commissioner's Office
Date: 04/12/94
Approved by Commissioner:
Date: 04/12/94
Agency: Richard L. Burton, Dept. of Public Safety

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SENATE CS FOR CS FOR HOUSE BILL NO. 222(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter, Therriault

A BILL

FOR AN ACT ENTITLED

"An Act relating to landlords and tenants and to the applicability of the Uniform Residential Landlord and Tenant Act, to termination of tenancies and recovery of rental premises, to tenant responsibilities, and to the civil remedies of forcible entry and detainer and nuisance abatement; and amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure."

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

* **Section 1.** AS 09.45.090 is repealed and reenacted to read:

Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) apply, unlawful holding by force includes each of the following:

(1) when, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person holds, and after service, under

AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for recovery of possession of the premises if the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent within five days;

(2) when,

(A) after a violation of a condition or covenant set out in AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the deliberate infliction of substantial damage to the premises, or after a breach or violation of a condition or covenant in a lease or rental agreement and following service of written notice to quit, the tenant fails or refuses to remedy the breach or to deliver up the possession of the premises within the number of days provided for termination under AS 34.03.220(a)(2);

(B) after a violation of AS 34.03.120(a)(5) by deliberate infliction of substantial damage to the premises, following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises by the date set out in the written notice to quit under AS 34.03.220(a)(1);

(C) after a violation of AS 34.03.220(e) following discontinuance of a public utility service, following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises by the date set out in the written notice to quit under AS 34.03.220(e);

(D) the landlord requires the tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within the longer of 30 days or the period of notice for the landlord's recovery of possession of the premises set out in the rental agreement;

(E) in a mobile home park, there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4), following service of written notice to quit, the mobile home dweller or tenant fails or refuses to vacate within the number of days provided for termination under AS 34.03.225(a)(4);

(F) after termination of a periodic tenancy as prescribed by AS 34.03.290(a) or (b), following service of written notice to quit, the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after the date of its expiration;

(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

(b) For property to which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) do not apply, unlawful holding by force includes each of the following:

(1) when, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person in possession holds, after service, under AS 09.45.100(c), of demand made in writing by the landlord for the possession of the premises if the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent due within five days;

(2) when, following service of a written notice to quit,

(A) after the tenant or person in possession has breached or violated a condition or covenant of the lease or rental agreement other than breach of a covenant or condition set out in (B) of this paragraph, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises within 10 days;

(B) after the tenant or person in possession has deliberately

inflicted substantial damage to the premises, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises on the date required by the landlord; the date specified may not be less than 24 hours after demand for possession of the premises by the landlord;

(C) after the tenant or person in possession has violated AS 34.05.100(a) or has used the premises for or allowed the premises to be used for an illegal purpose, the tenant or person in possession fails or refuses to deliver up the possession of the premises within five days;

(D) for premises the lease or occupation of which is primarily for the purpose of farming or agriculture, after the tenant or person in possession has violated of AS 34.05.025, other than a violation that is a breach under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up possession of the premises within 30 days;

(E) a tenancy based upon an estate at will terminates, and the tenant or person in possession continues in possession of the premises; or

(F) a person in possession continues in possession of the premises

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

(ii) without a written lease or agreement and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in the possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

(c) When a landlord who is required to provide written notice to a tenant or person in possession under (a) or (b) of this section, provides notice by mail, notwithstanding any other provision of law, three days must be added to the period set out in (a) or (b) of this section to determine the date on and after which the tenant or person in possession unlawfully holds by force.

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

Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. **(a) Except where**

service of written notice is made under AS 09.45.090(a)(1) or (b)(1), or except when notice to quit is not required by AS 09.45.090(a)(3) or (b)(3), a person entitled to the premises who seeks to recover possession of the premises may not commence and maintain an action to recover possession of premises under AS 09.45.060 - 09.45.160 unless the person first gives a notice to quit to the person in possession.

(b) To recover possession of premises after a tenant or person in possession has failed or refused to pay rent due, service of the written notice required by AS 34.03.220(b) or of a demand in writing for possession of the premises

(1) constitutes notice to quit, and service of a separate notice to quit is not required; and

(2) satisfies the requirements of (c) of this section and AS 34.03.310(c).

(c) A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being

(1) delivered to the tenant or person;

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

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

* Sec. 3. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.105. CONTENT OF NOTICE TO QUIT. Notice to quit served upon the tenant or person in possession must

(1) state

(A) the nature of the breach or violation of the lease or rental agreement or other reason for termination of the tenancy of the tenant or person in possession;

(B) in circumstances in which the breach or violation described in (A) of this paragraph may be corrected by the tenant or person in possession

to avoid the termination of the tenancy, the nature of the remedial action to be taken, and the date and time by which the corrective actions must be completed in order to avoid termination of the tenancy;

(C) the date and time when the tenancy of the tenant or person in possession under the lease or rental agreement will terminate;

(2) direct the tenant or person in possession to quit the premises not later than the date and time of the termination of the tenancy; and

(3) give notice to the tenant or person in possession that, if the tenancy terminates and the tenant or person in possession continues to occupy the premises, the landlord may commence a civil action to remove the tenant or person and recover possession.

* **Sec. 4.** AS 09.45.110 is repealed and reenacted to read:

Sec. 09.45.110. TIME WHEN ACTION TO RECOVER POSSESSION MAY BE BROUGHT. An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds possession of the dwelling unit or rental premises by force, as determined under AS 09.45.090.

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

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

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

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

enforcing the order to vacate.

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

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

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

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

(1) prostitution;

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

(3) an illegal activity involving

(A) alcoholic beverages;

(B) a controlled substance;

(C) an imitation controlled substance; or

(D) gambling or promoting gambling.

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

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

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

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

(1) evidence of reputation within a community;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) does not include deterioration

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

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

* **Sec. 15.** AS 34.03.090 is amended to read:

Sec. 34.03.090. LANDLORD TO SUPPLY POSSESSION OF THE DWELLING UNIT. At the commencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and AS 34.03.100. The landlord may**, after serving a notice to quit under AS 09.45.100 - 09.45.105 to a person who is wrongfully in possession,**

(1) bring an action for possession against any person wrongfully in possession; and

(2) [MAY] recover the damages provided in AS 34.03.290.

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

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

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

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

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

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

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

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

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

(2) the provisions of

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

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

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

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

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

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

(3) **shall** keep all plumbing fixtures in the dwelling unit or used by the

tenant as clean as their condition permits;

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

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

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

(7) shall maintain smoke detection devices as required under AS 18.70.095; and

(8) may not, except in an emergency when the landlord cannot be contacted after reasonable effort to do so, change the locks on doors of the premises without first securing the written agreement of the landlord and, immediately after changing the locks, providing the landlord a set of keys to all doors for which locks have been changed; in an emergency, the tenant may change the locks and shall, within five days, provide the landlord a set of keys to all doors for which locks have been changed and written notice of the change.

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

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

* **Sec. 20.** AS 34.03.140(a) is amended to read:

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

purchasers, mortgagees, tenants, workers, or contractors.

* **Sec. 21.** AS 34.03.140(d) is amended to read:

(d) The landlord **does not have a** [HAS NO OTHER] right **of** [TO] access **to the dwelling unit**

(1) except

(A) as permitted by this section;

(B) by court order**; or**

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

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

* **Sec. 22.** AS 34.03.220(a) is amended to read:

(a) Except as provided in this chapter,

(1) if the tenant or someone in the tenant's control deliberately inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.105 specifying the act constituting the breach and specifying that the rental agreement will terminate upon a date that is not less than 24 hours after service of the notice; for purposes of this paragraph, damage to premises is "substantial" if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds $400;

(2) if there is a material noncompliance by the tenant with the rental agreement**,** or **if there is** noncompliance with AS 34.03.120**, other than deliberate infliction of substantial damage to the premises or other than noncompliance as to a utility service for which the provisions of (e) of this section apply,** materially affecting health and safety, the landlord may deliver a written notice **to quit** to the tenant **under AS 09.45.100 - 09.45.110** specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than **10** [20] days after **service** [RECEIPT] of the notice**; if** [. IF] the breach is not remedied [IN 10 DAYS], the rental agreement terminates as provided in the notice subject to the provisions of this section**; if** [. IF] the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate**; in** [.

IN] the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least **five** [10] days written notice **to quit** specifying the breach and the date of termination of the rental agreement.

* **Sec. 23.** AS 34.03.220(b) is amended to read:

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

* **Sec. 24.** AS 34.03.220 is amended by adding new subsections to read:

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

(e) If a public utility providing electricity, natural gas, or water to the premises occupied by the tenant discontinues the service to the premises due to the failure of the tenant to pay for the utility service, the landlord may deliver a written notice to quit to the tenant advising that, notwithstanding (a) of this section, the tenancy will terminate five days after the landlord's service of the notice. If, within three days from the service of the notice, the tenant reinstates the discontinued service and repays the landlord for any amounts paid by the landlord to reinstate service, and if damage did not occur to the rental unit as a result of the discontinuance of service, the rental agreement will not terminate. However, in the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance under this subsection for which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the

breach and the date of termination of the rental agreement.

* **Sec. 25.** AS 34.03.225 is amended by adding a new subsection to read:

(c) When, under (a) of this section, a mobile home park owner is required to give notice to evict a mobile home owner or a mobile home park dweller or tenant, provision of notice to quit under AS 09.45.100 - 09.45.105 satisfies the requirement of notice.

* **Sec. 26.** AS 34.03.230(b) is amended to read:

(b) During an absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary as provided in AS 34.03.140. **The landlord may reenter the dwelling unit and, if there is evidence that the tenant has abandoned the dwelling unit, unless the landlord and tenant have made a specific agreement to the contrary, the landlord may terminate the rental agreement.**

* **Sec. 27.** AS 34.03.260(d) is amended to read:

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

* **Sec. 28.** AS 34.03.290(c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination **under (a) or (b) of this section**, the landlord may, **after serving a notice to quit to the tenant under AS 09.45.100 - 09.45.105,** bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.03.020 applies.

* **Sec. 29.** AS 34.03.310(c) is amended to read:

(c) Notwithstanding (a) and (b) of this section, **after serving a notice to quit to the tenant under AS 09.45.100 - 09.45.105,** a landlord may bring an action for

possession if

(1) the tenant is in default in rent;

(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;

(3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;

(4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purposes;

(5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;

(6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5) or (6) of this subsection.

* **Sec. 30.** AS 34.03.330(b) is amended to read:

(b) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at an institution, public or private, **or in premises used as temporary housing, public or private,** if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part [,] if the occupant is the purchaser or a person who succeeds to the interest of a purchaser;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, motel, lodgings, or other transient

facility;

(5) occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment substantially for services, maintenance, or repair to the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

* **Sec. 31.** AS 34.03 is amended by adding a new section to read:

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

* **Sec. 32.** AS 34.03 is amended by adding a new section to read:

Sec. 34.03.345. MEDIATION AND BINDING ARBITRATION. (a) A landlord and a tenant may agree to mediate disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to mediate disputes, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate attachment to the rental agreement.

(b) A landlord and a tenant may agree to binding arbitration of the disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to binding arbitration, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate

attachment to the rental agreement.

* Sec. 33. AS 34.03.360 is amended by adding new paragraphs to read:

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

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

(21) "illegal activity involving gambling or promoting gambling" means a violation of

(A) AS 11.66.200, other than a social game as that term is defined by AS 11.66.280(9); and

(B) AS 11.66.210 or 11.66.220;

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

(23) "illegal activity involving a place of prostitution" means a violation of AS 11.66.120(a)(1) or 11.66.130(a)(1) or (4);

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

* Sec. 34. AS 34.05 is amended by adding a new section to read:

ARTICLE 3. ILLEGAL ACTIVITIES IN PREMISES NOT SUBJECT TO UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES NOT SUBJECT TO AS 34.03. (a) In rented premises other than premises to which the provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving gambling or promoting gambling, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

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

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

(d) In this section,

(1) "illegal activity involving alcoholic beverages," "illegal activity involving a controlled substance," "illegal activity involving an imitation controlled substance," "illegal activity involving gambling or promoting gambling," "illegal activity involving a place of prostitution," and "prostitution" have the meanings given in AS 34.03.360;

(2) "premises" means a structure or the structure of which it is a part, and facilities and appurtenances in it, and grounds, areas, and facilities held out for the use of persons entitled to possession under an agreement that relates to its use.

* **Sec. 35.** AS 34.03.360(18) is repealed.

* **Sec. 36.** AS 09.45.125, added by sec. 6 of this Act, allowing orders to vacate and writs of assistance to issue at the same time as the entry of judgment or at any later date, has the effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure by eliminating the respective periods of automatic stays of enforcement upon judgment for orders to vacate premises.

* **Sec. 37.** AS 09.45.125, added by sec. 6 of this Act, takes effect only if sec. 36 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

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Chenoweth
5/1/94

ADOPTED
& amended

SENATE CS FOR CS FOR HOUSE BILL NO. 222( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Porter, Therriault

A BILL

FOR AN ACT ENTITLED

"An Act relating to landlords and tenants and to the applicability of the Uniform Residential Landlord and Tenant Act, to termination of tenancies and recovery of rental premises, to tenant responsibilities, and to the civil remedies of forcible entry and detainer and nuisance abatement; and amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure."

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

*** Section 1.** AS 09.45.090 is repealed and reenacted to read:

Sec. 09.45.090. UNLAWFUL HOLDING BY FORCE. (a) For property to which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) apply, unlawful holding by force includes each of the following:

(1) when, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person holds, and after service, under

AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for recovery of possession of the premises if the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent within five days;

(2) when,

(A) after a violation of a condition or covenant set out in AS 34.03.120(a), other than a breach of AS 34.03.120(a)(5) due to the deliberate infliction of substantial damage to the premises, or after a breach or violation of a condition or covenant in a lease or rental agreement and following service of written notice to quit, the tenant fails or refuses to remedy the breach or to deliver up the possession of the premises within the number of days provided for termination under AS 34.03.220(a)(2);

(B) after a violation of AS 34.03.120(a)(5) by deliberate infliction of substantial damage to the premises, following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises by the date set out in the written notice to quit under AS 34.03.220(a)(1);

(C) after a violation of AS 34.03.220(e) following discontinuance of a public utility service, following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises by the date set out in the written notice to quit under AS 34.03.220(e);

(D) the landlord requires the tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4) - (7), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within the longer of 30 days or the period of notice for the landlord's recovery of possession of the premises set out in the rental agreement;

(E) in a mobile home park, there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4), following service of written notice to quit, the mobile home dweller or tenant fails or refuses to vacate within the number of days provided for termination under AS 34.03.225(a)(4);

(F) after termination of a periodic tenancy as prescribed by AS 34.03.290(a) or (b), following service of written notice to quit, the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after the date of its expiration;

(G) after the tenant has violated AS 34.03.120(b) or the tenant has used the dwelling unit or allowed the dwelling unit to be used for an illegal purpose in violation of AS 34.03.310(c)(3) other than a breach of AS 34.03.120(b), following service of written notice to quit, the tenant fails or refuses to deliver up the possession of the premises within five days; or

(H) following service of written notice to quit, a person in possession continues in possession of the premises without a valid rental agreement, as that term is defined in AS 34.03.360, and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

(b) For property to which the provisions of AS 34.03 (Uniform Residential Landlord and Tenant Act) do not apply, unlawful holding by force includes each of the following:

(1) when, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person in possession holds, after service, under AS 09.45.100(c), of demand made in writing by the landlord for the possession of the premises if the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent due within five days;

(2) when, following service of a written notice to quit,

(A) after the tenant or person in possession has breached or violated a condition or covenant of the lease or rental agreement other than breach of a covenant or condition set out in (B) of this paragraph, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises within 10 days;

(B) after the tenant or person in possession has deliberately

inflicted substantial damage to the premises, the tenant or person in possession of a premises fails or refuses to deliver up the possession of the premises on the date required by the landlord; the date specified may not be less than 24 hours after demand for possession of the premises by the landlord;

(C) after the tenant or person in possession has violated AS 34.05.100(a) or has used the premises for or allowed the premises to be used for an illegal purpose, the tenant or person in possession fails or refuses to deliver up the possession of the premises within five days;

(D) for premises the lease or occupation of which is primarily for the purpose of farming or agriculture, after the tenant or person in possession has violated of AS 34.05.025, other than a violation that is a breach under (B) or (C) of this paragraph, the tenant fails or refuses to deliver up possession of the premises within 30 days;

(E) a tenancy based upon an estate at will terminates, and the tenant or person in possession continues in possession of the premises; or

(F) a person in possession continues in possession of the premises

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

(ii) without a written lease or agreement and without the consent of the landlord; or

(3) when, without a notice to quit, a tenant or person in possession continues in the possession of the premises after the tenancy has been terminated by issuance of an order of abatement under AS 09.50.210(a).

(c) When a landlord who is required to provide written notice to a tenant or person in possession under (a) or (b) of this section, provides notice by mail, notwithstanding any other provision of law, three days must be added to the period set out in (a) or (b) of this section to determine the date on and after which the tenant or person in possession unlawfully holds by force.

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

Sec. 09.45.100. [REQUISITES OF] NOTICE TO QUIT. **(a) Except where**

service of written notice is made under AS 09.45.090(a)(1) or (b)(1), or except when notice to quit is not required by AS 09.45.090(a)(3) or (b)(3), a person entitled to the premises who seeks to recover possession of the premises may not commence and maintain an action to recover possession of premises under AS 09.45.060 - 09.45.160 unless the person first gives a notice to quit to the person in possession.

(b) To recover possession of premises after a tenant or person in possession has failed or refused to pay rent due, service of the written notice required by AS 34.03.220(b) or of a demand in writing for possession of the premises

(1) constitutes notice to quit, and service of a separate notice to quit is not required; and

(2) satisfies the requirements of (c) of this section and AS 34.03.310(c).

(c) A notice to quit shall be in writing and shall be served upon the tenant or person in possession by being

(1) delivered to the tenant or person;

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

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

* Sec. 3. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.105. CONTENT OF NOTICE TO QUIT. Notice to quit served upon the tenant or person in possession must

(1) state

(A) the nature of the breach or violation of the lease or rental agreement or other reason for termination of the tenancy of the tenant or person in possession;

(B) in circumstances in which the breach or violation described in (A) of this paragraph may be corrected by the tenant or person in possession

to avoid the termination of the tenancy, the nature of the remedial action to be taken, and the date and time by which the corrective actions must be completed in order to avoid termination of the tenancy;

(C) the date and time when the tenancy of the tenant or person in possession under the lease or rental agreement will terminate;

(2) direct the tenant or person in possession to quit the premises not later than the date and time of the termination of the tenancy; and

(3) give notice to the tenant or person in possession that, if the tenancy terminates and the tenant or person in possession continues to occupy the premises, the landlord may commence a civil action to remove the tenant or person and recover possession.

*** Sec. 4.** AS 09.45.110 is repealed and reenacted to read:

Sec. 09.45.110. TIME WHEN ACTION TO RECOVER POSSESSION MAY BE BROUGHT. An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds possession of the dwelling unit or rental premises by force, as determined under AS 09.45.090.

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

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

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

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

enforcing the order to vacate.

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

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

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

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

(1) prostitution;

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

(3) an illegal activity involving

(A) alcoholic beverages;

(B) a controlled substance; or

(C) an imitation controlled substance.

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

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

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

Sec. 09.50.175. ADMISSIBILITY OF EVIDENCE TO PROVE NUISANCE.

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

(1) evidence of reputation within a community;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) does not include deterioration

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

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

*** Sec. 15.** AS 34.03.090 is amended to read:

Sec. 34.03.090. LANDLORD TO SUPPLY POSSESSION OF THE DWELLING UNIT. At the nmencement of the term the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and AS 34.03.100. The landlord may**, after serving a notice to quit under AS 09.45.100 - 09.45.105 to a person who is wrongfully in possession,**

(1) bring an action for possession against any person wrongfully in possession: and

(2) [MAY] recover the damages provided in AS 34.03.290.

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

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

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

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

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

(2) is, in an action initiated by a party to recover damages or to obtain other relief to which a party may be entitled under this chapter, presumptive evidence

of the condition of the premises and its contents at the commencement of the term of the period of occupancy covered by the rental agreement.

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

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

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

(2) the provisions of

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

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

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

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

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

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

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

(4) **shall** use in a reasonable manner all electrical, plumbing, sanitary,

heating, ventilating, air-conditioning, kitchen, and other facilities and appliances including elevators in the premises;

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

(6) **may** not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises; [AND]

(7) **shall** maintain smoke detection devices as required under AS 18.70.095**; and**

(8) may not, except in an emergency when the landlord cannot be contacted after reasonable effort to do so, change the locks on doors of the premises without first securing the written agreement of the landlord and, immediately after changing the locks, providing the landlord a set of keys to all doors for which locks have been changed; in an emergency, the tenant may change the locks and shall, within five days, provide the landlord a set of keys to all doors for which locks have been changed and written notice of the change.

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

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

*** Sec. 20.** AS 34.03.140(a) is amended to read:

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

*** Sec. 21.** AS 34.03.140(d) is amended to read:

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

the dwelling unit

(1) except

(A) as permitted by this section;

(B) by court order**; or**

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

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

*** Sec. 22.** AS 34.03.220(a) is amended to read:

(a) Except as provided in this chapter,

(1) if the tenant or someone in the tenant's control deliberately inflicts substantial damage to the premises in breach of AS 34.03.120(a)(5), the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.105 specifying the act constituting the breach and specifying that the rental agreement will terminate upon a date that is not less than 24 hours after service of the notice; for purposes of this paragraph, damage to premises is "substantial" if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds $400 or the amount of the security deposit held by the landlord under AS 34.03.070, whichever is greater;

(2) if there is a material noncompliance by the tenant with the rental agreement**,** or **if there is** noncompliance with AS 34.03.120**, other than deliberate infliction of substantial damage to the premises or other than noncompliance as to a utility service for which the provisions of (e) of this section apply,** materially affecting health and safety, the landlord may deliver a written notice **to quit** to the tenant **under AS 09.45.100 - 09.45.110** specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than **10** [20] days after **service** [RECEIPT] of the notice**; if** [. IF] the breach is not remedied [IN 10 DAYS], the rental agreement terminates as provided in the notice subject to the provisions of this section**; if** [. IF] the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate**; in** [. IN] the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within six months,

the landlord may terminate the rental agreement upon at least **five** [10] days written notice **to quit** specifying the breach and the date of termination of the rental agreement.

*** Sec. 23.** AS 34.03.220(b) is amended to read:

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

*** Sec. 24.** AS 34.03.220 is amended by adding new subsections to read:

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

(e) If a public utility providing electricity, natural gas, or water to the premises occupied by the tenant discontinues the service to the premises due to the failure of the tenant to pay for the utility service, the landlord may deliver a written notice to quit to the tenant advising that, notwithstanding (a) of this section, the tenancy will terminate five days after the landlord's service of the notice. If, within three days from the service of the notice, the tenant reinstates the discontinued service and repays the landlord for any amounts paid by the landlord to reinstate service, and if damage did not occur to the rental unit as a result of the discontinuance of service, the rental agreement will not terminate. However, in the absence of due care by the tenant, if substantially the same act or omission that constituted a prior noncompliance under this subsection for which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least three days' written notice specifying the breach and the date of termination of the rental agreement.

*** Sec. 25.** AS 34.03.225 is amended by adding a new subsection to read:

(c) When, under (a) of this section, a mobile home park owner is required to give notice to evict a mobile home owner or a mobile home park dweller or tenant, provision of notice to quit under AS 09.45.100 - 09.45.105 satisfies the requirement of notice.

* **Sec. 26.** AS 34.03.230(b) is amended to read:

(b) During an absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary as provided in AS 34.03.140. **The landlord may reenter the dwelling unit and, if there is evidence that the tenant has abandoned the dwelling unit, unless the landlord and tenant have made a specific agreement to the contrary, the landlord may terminate the rental agreement.**

* **Sec. 27.** AS 34.03.260(d) is amended to read:

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

* **Sec. 28.** AS 34.03.290(c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination **under (a) or (b) of this section**, the landlord may, **after serving a notice to quit to the tenant under AS 09.45.100 - 09.45.105,** bring an action for possession and if the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.03.020 applies.

* **Sec. 29.** AS 34.03.310(c) is amended to read:

(c) Notwithstanding (a) and (b) of this section, **after serving a notice to quit to the tenant under AS 09.45.100 - 09.45.105,** a landlord may bring an action for possession if

(1) the tenant is in default in rent;

(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;

(3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;

(4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purposes;

(5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;

(6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5) or (6) of this subsection.

* **Sec. 30.** AS 34.03.220(b) is amended to read:

(b) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at an institution, public or private, **or in premises used as temporary housing, public or private,** if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part [,] if the occupant is the purchaser or a person who succeeds to the interest of a purchaser;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel, motel, lodgings, or other transient facility;

(5) occupancy by an employee of a landlord whose right to occupancy

is conditioned upon employment substantially for services, maintenance, or repair to the premises;

(6) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(7) occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

*** Sec. 31.** AS 34.03 is amended by adding a new section to read:

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

*** Sec. 32.** AS 34.03 is amended by adding a new section to read:

Sec. 34.03.345. MEDIATION AND BINDING ARBITRATION. (a) A landlord and a tenant may agree to mediate disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to mediate disputes, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate attachment to the rental agreement.

(b) A landlord and a tenant may agree to binding arbitration of the disputes between them as to an obligation of either of them arising out of the rental agreement. If the landlord and tenant agree to binding arbitration, they shall include the scope of the agreement within the executed rental agreement, incorporate a reference to that agreement within the rental agreement, or add the text of the agreement as a separate attachment to the rental agreement.

*** Sec. 33.** AS 34.03.360 is amended by adding new paragraphs to read:

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

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

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

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

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

* **Sec. 34.** AS 34.05 is amended by adding a new section to read:

ARTICLE 3. ILLEGAL ACTIVITIES IN PREMISES NOT SUBJECT TO UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

Sec. 34.05.100. TENANT RESPONSIBILITIES IN PREMISES NOT SUBJECT TO AS 34.03. (a) In rented premises other than premises to which the provisions of AS 34.03 apply, the tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

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

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

(d) In this section,

(1) "illegal activity involving alcoholic beverages," "illegal activity

involving a controlled substance," "illegal activity involving an imitation controlled substance," "illegal activity involving a place of prostitution," and "prostitution" have the meanings given in AS 34.03.360;

(2) "premises" means a structure or the structure of which it is a part, and facilities and appurtenances in it, and grounds, areas, and facilities held out for the use of persons entitled to possession under an agreement that relates to its use.

*** Sec. 35.** AS 34.03.360(18) is repealed.

*** Sec. 36.** AS 09.45.125, added by sec. 6 of this Act, allowing orders to vacate and writs of assistance to issue at the same time as the entry of judgment or at any later date, has the effect of amending Rule 62(a) of the Alaska Rules of Civil Procedure and Rule 24(a) of the Alaska District Court Rules of Civil Procedure by eliminating the respective periods of automatic stays of enforcement upon judgment for orders to vacate premises.

*** Sec. 37.** AS 09.45.125, added by sec. 6 of this Act, takes effect only if sec. 36 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

8-LS0832\R.7
Chenoweth
3/11/94

FAILED

AMENDMENT

SENATE FINANCE COMMITTEE
Amendment Number: 3
Bill Number: HB 222
Sponsor: Date: 4/28/94
Logged In By: (BM)

OFFERED IN THE HOUSE

TO: CSHB 222( ) "R" Version

Requested by Sen. Lemm

Page 12, following line 31:

Insert a new bill section to read:

"* Sec. 20. AS 34.03 is amended by adding a new section to read:

Sec. 34.03.325. LANDLORD'S REFUSAL TO RENT TO UNMARRIED PERSONS. Notwithstanding AS 18.80.240(1) - (3) and (5), a landlord may refuse to lease or rent a dwelling unit to a prospective tenant, or, if so provided in the rental agreement, may terminate the rental agreement for a dwelling unit occupied by a tenant, if

(1) the landlord reasonably believes that

(A) the tenant occupies, or the prospective tenant will occupy, the dwelling unit with another person who is not married to the tenant or prospective tenant; and

(B) the prospective tenant and the other person have a sexual relationship with each other; and

(2) the personal religious beliefs of the landlord prevent the landlord from leasing or renting premises to persons who have a sexual relationship but are not married to each other."

Renumber the following bill sections accordingly.

Page 16, line 16:

Delete "sec. 26"

Insert "sec. 27"

Alaska State Legislature

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SPONSOR STATEMENT

HOUSE BILL 222

House Bill 222 is based in part on the 1992 Senate Bill 35 in response to concern that current landlord-tenant laws are weighted in favor of protecting abusive tenants. HB222 has several purposes:

* * To allow for an expedited eviction of a tenant who deliberately damages the premises.

* * To clarify the legal obligations of both the tenant and the landlord; and to allow a premises inventory, signed by both parties, as legal evidence.

* * To make the state's nuisance abatement process more accessible in tenant-landlord proceedings.

* * To simplify cross-references between Title 9 (Civil Procedure) and Title 34 (Property).

* * To provide much-needed protection from abusive tenants, for BOTH LAW-ABIDING TENANTS and LANDLORDS.

Back-up

Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Representative Ramona L. Barnes
Speaker of the House

FROM: Douglas A. Wooliver
Staff Attorney

SUBJECT: Sectional Analysis of CSHB 222(FIN)

DATE: April 17, 1994

The following is a sectional analysis of CSHB 222(FIN); "An Act relating to landlords and tenants and to the applicability of the Uniform Residential Landlord and Tenant Act, to termination of tenancies and recovery of rental premises, to tenant responsibilities, and to the civil remedies of forcible entry and detainer and nuisance abatement; and amending Rule 62(a) of the Alaska Rules of Civil Procedure."

Section 1 repeals and reenacts AS 09.45.090 which deals with forcible entry and detainer and unlawful holding by force.

Subsection (a) defines "unlawful holding by force" with respect to property that falls under the Uniform Residential Landlord and Tenant Act.

Subsection (b) defines "unlawful holding by force" with respect to property that does not fall under the Uniform Residential Landlord and Tenant Act.

Subsections (a) and (b) both expand the scope of the definition of "unlawful holding by force" which currently only covers; (1)failure to pay rent, (2) refusing to leave after a lease or other agreement

has ended and (3) continuing in possession contrary to a condition or covenant or without a lease or agreement.

Section 2 amends AS 09.45.100 which deals with notices to quit. Subsection (a) is amended to read that except where notice to quit is issued under section 1 of this Act, and except for those cases where a notice to quit is not required, a notice to quit is required before a person entitled to possession may commence and maintain an action to recover possession of the premises.

Subsection (b) states that in situations where a person has failed to pay rent, service of written notice stating the breach or a demand in writing for possession will constitute a notice to quit.

Subsection (c) deletes that section of current law that allows an extra three days to be added to the ten days that a person has to vacate the premises if the notice is sent by registered or certified mail.

Section 3 adds a new section that lists what is required to be contained in a notice to quit. A notice to quit must contain; (1) an explanation of the cause of the notice, (2) what the tenant can do to remedy the problem (if anything) (3) the time frame in which the problem may be remedied, (4) the date and time that the agreement will terminate, (5) the date that the tenant must vacate the premises, and (6) a statement to the effect that if the tenant does not vacate then a civil action will be brought against them.

Section 4 repeals and reenacts AS 09.45.110 which is entitled "Time when action to recover possession may be brought." Under this provision a landlord may commence an action to recover the premises on or after the date the tenant unlawfully holds possession as determined under section 1 of this Act.

Section 5 adds a new section entitled "order" stating that if a court enters a judgement against a tenant then, at the same time the court enters an order to vacate, the court shall, at the request of the landlord, issue a writ of assistance to a police officer to secure that officer's assistance in serving and enforcing the order to vacate.

Section 6 adds a new section entitled "Action against tenant occupying premises abated as nuisance" This section states that a

copy of an order of abatement is prima facie evidence of unlawful holding of of the premises by force by the person who remains on the premises.

Section 7 amends AS 09.50.170 by adding to the list of activities that are to be considered as nuisances. The list as amended would include; (1) prostitution, (2) an illegal activity involving a place of prostitution, or (3) an illegal activity involving alcoholic beverages, controlled substances or imitation controlled substances.

Section 8 references the activities mentioned under section 7 of this Act to the meanings provided under AS 34.03.360.

Section 9 adds a new section to AS 09.50 entitled "Admissibility of evidence to prove nuisance" stating that when an action is brought under the nuisance provisions added under section 7 of this Act, the court may consider (1) evidence of reputation in the community and (2) past complaints, violations or convictions.

Section 10 amends AS 09.50.210 which is entitled "Order of abatement." This amendment directs a court that finds that a nuisance exists to enter an order of abatement that includes the termination of the lease or rental agreement, provided that the tenant has been served proper notice.

Section 11 amends AS 09.50.230 which is entitled "Release of premises to owner." This section states that a court may release abated property to the owner under certain circumstances and upon the filing of a bond in an amount set by the court. This section also states that the cancellation of the order of abatement does not affect the termination of the lease or rental agreement.

Section 12 adds a new subsection to AS 34.03.020 which deals with the Uniform Residential Landlord and Tenant Act. New subsection (e) states that a rental agreement may contain a section that describes the condition of the premises at the time the renter or lessor takes possession. When signed by the parties this section becomes part of the rental agreement.

Section 13 amends AS 34.03.070(b) which deals with security deposits and prepaid rent. The amendment offered here defines "damages" as that term is used with respect to the withholding of security depcsits and prepaid rent. Specifically excluded from the

definition is any deterioration caused by normal nonabusive living and any damage caused by the landlord's own neglect or fault.

Section 14 amends AS 34.03.090 which is entitled "Landlord to supply possession of the dwelling unit." This section states that a landlord must serve a notice to quit prior to bringing an action for possession.

Section 15 adds a new subsection to AS 34.03.090 which establishes some conditions that are to be followed when landlords and tenants sign agreements relating to the condition of a premises and relating to content inventories.

Section 16 amends AS 34.03.110(a) by adding a provision stating that if a landlord sells the rental property, the premises condition statement and any contents inventory agreed to between the landlord and tenant remain valid until and unless new agreements are entered into between the tenant and new owner.

Section 17 adds a new section to AS 34.03.120 which deals with the tenant's responsibilities to maintain the rental unit. This section states that a tenant may not knowingly engage in any of the activities that are defined as nuisances under section 7 of this Act. This section also prohibits a tenant from knowingly permitting others to engage in those activities at the rental presence.

Section 18 amends AS 34.03.160(a) which deals with general issues regarding noncompliance by the landlord."

Subsection (a) establishes the various steps that a tenant may take if the landlord fails to comply with a rental agreement.

Subsection (b) changes from 20 days to 10 days the amount of time that a landlord has after service (as opposed to receipt) of notice that they are in breach in which to remedy the breach. If they fail to remedy the breach within 10 days the rental agreement terminates.

Subsection (b) also states that if the same breach occurs within the next 6 months the landlord has 5 (rather than the current 10) days within which to remedy the breach.

Subsection (c) further states that a tenant may not charge the landlord for damage that they themselves have caused.

Section 19 amends AS 34.03.210 which is entitled "Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service." This section changes ~~from~~ to two times actual damages ~~to~~ From one and one-half actual damages the amount of damages that a tenant may recover from a landlord under this section.

Section 20 amends AS 34.03.220(a) which deals with the failure to pay rent. This section is amended by adding language that states that if a tenant or someone in the tenant's control deliberately inflicts substantial damage (more than the greater of $400 or the amount of the security deposit) to the premises, the landlord may terminate the rental agreement not less than 24 hours after service of notice.

Section 20 also reduces from 20 days to 10 days the time in which a tenant has to remedy other breaches and reduces from 10 days to 5 days the time in which the tenant has to remedy a breach that has already occurred once before in the last 6 months.

Section 21 amends AS 34.03.220 by adding a new subsection stating that an order of abatement entered by a court terminates a rental agreement.

Section 22 amends AS 34.03.225 by adding a new subsection dealing with mobile homes. This new subsection states that if a landlord is required to give notice to evict a mobile home tenant then a notice to quit will satisfy the notice requirement.

Section 23 amends AS 34.03.290(c) which deals with periodic tenancy and holdover tenants. This section is amended to read that if, without the landlord's permission, a person remains in possession of a rental property after the term of their rental agreement is up, the landlord may bring an action for possession only after serving notice to quit to the tenant.

Section 24 amends AS 34.03.310(c) which prohibits certain retaliatory conduct. The amendment adds a notice requirement to the provisions related to a landlord seeking an action for possession under this section.

Section 25 amends AS 34.03.330(b) which lists the applications and exclusions of the Uniform Residential Landlord and Tenant Act. This

amendment adds public or private premisses that are used as temporary housing to the list of arrangements that are not covered by this chapter.

Section 26 adds a new section to AS 34.03. The new section is entitled 'Proof of certain property damage claims" and it states that unless rebutted by clear and convincing evidence, a premises condition statement is presumptive evidence of the condition of the dwelling prior to occupancy in any action to recover damages from a tenant. This also applies to content inventories.

Section 27 adds a new section to AS 34.03 entitled "Mediation" which allows landlords and tenants to mediate their disputes if such an agreement is included in the rental agreement.

Section 28 adds new definitions to the definition section of AS 34.03.360.

Section 29 adds a new section to AS 34.05 which is the chapter dealing with agricultural and personal property. The new section is entitled "Article 3. Illegal activities in premises not subject to Uniform Residential Landlord and Tenant Act."

New section 34.05.100 is entitled "Tenant responsibilities in premises not subject to AS 34.03" and states that in any premises that is not subject to the Uniform Residential Landlord and Tenant Act a tenant is prohibited from engaging in those acts listed as nuisance acts in section 7 of this Act. This section also states that an order of abatement under this section terminates a rental agreement.

Section 30 repeals AS 34.03.360(18) which is the current definition of "wear resulting form ordinary use."

Sections 31 and 32 deal with the fact that section 5 of this Act makes a court rule change and requires a two-thirds majority vote.

HB222

Alaska State Legislature

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House of Representatives

TO: Senator Drue Pearce, Co-Chair, Senate Finance

FROM: Representative Jeannette James

DATE: April 21, 1994

RE: HB 222

Please schedule House Bill 222, "LANDLORD/TENANT REFORM", to be heard in Senate Finance at your earliest convenience. A packet of information is attached.

HB222 was filed last year along with Senator Frank's companion bill, SB155; HB222 has received a great deal of work in sub-committees, and passed the house unanimously 37-0. It has the support of both landlords and tenants, and will greatly simplify and expedite landlord/tenant proceedings.

Thanks for your help in scheduling this bill.

HB 222, LANDLORD/TENANT REFORM

Sec1 UNLAWFUL HOLDING BY FORCE includes:

a For property to which Uniform Landlord/Tenant Act DOES APPLY,
UNLAWFUL HOLDING BY FORCE includes:

1. when tenant fails to pay rent 10 days after service of written notice;
2. when

   A tenant fails to maintain premises, affecting health and safety, and fails to vacate 10 days after service of written notice

   B tenant has deliberately inflicted substantial damage of $400 or security deposit, whatever is greater, written notice has been served that agreement will terminate in 24 hours, and tenant fails to vacate in specified time

   C tenant fails to vacate 30 days after landlord gives notice of: remodeling due to code; good faith recovery for personal purposes or remodeling; or sale of property

   D tenant in mobile home park fails to vacate in specified time after land use change

   E tenant fails to vacate within 14 days after expiration of week-to-week agreement or 30 days after expiration of month-to-month agreement

   F tenant knowingly engages in illegal activity and fails to vacate in 5 days after service of written notice

   G tenant has no valid rental agreement and fails to vacate immediately after service of written notice.

3. when without a notice to quit, but after an order of abatement, tenant fails to vacate.

b For property to which Uniform Landlord/Tenant Act DOES NOT APPLY,
UNLAWFUL HOLDING BY FORCE includes:

1. when tenant fails to pay rent 10 days after service of written notice;

2. when, following service of notice to quit

   A tenant has breached rental agreement and fails to vacate in 10 days

   B tenant has deliberately inflicted substantial damage and fails to vacate in 24 hours

   C tenant has used premises for illegal purposes and fails to vacate in 5 days

   D tenant on agricultural property breaches agreement and fails to vacate in 30 days

   E tenant fails to vacate after estate at will terminates

   F tenant fails to vacate

      i. at expiration of time limited in agreement

      ii. without written agreement or consent

3. when tenant fails to vacate after order of abatement.

c when landlord is required to provide written notice by mail, 3 days must be added to a and b above.

See a.1

Tenant fails to pay rent when due

Tenant fails to pay rent when due (Violation of AS 09.45.090(a)(1))

Landlord may serve notice under AS 09.45.100(b), of written notice required by, AS 34.03.220(b)

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if the rent is not paid and the tenant or person in possession of premises fails to vacate within 10 days of service of notice

Unlawful holding of force occurs if the rent is not paid and the tenant or person in possession of premises fails to vacate within 13 days of service of notice

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

09.45.090(a)(1)
When, for failure or refusal to pay rent due on the lease or agreement under which the tenant or person holds, and after service, under AS 09.45.100(b), of the written notice required by AS 34.03.220(b) by the landlord for recovery of possession of the premises of the rent is not paid, the tenant or person in possession fails or refuses to vacate or pay the rent within 10 days;

09.45.100(b)
To recover possession of premises after a tenant or person in possession has failed or refused to pay rent due, for purposes of (c) of this section and AS 09.45.110, service of the written notice required by AS 34.03.220(b) or a demand in writing for possession of the premises constitutes notice to quit, and service of a separate notice to quit is not required.

34.03.220(b)
If rent is unpaid when due and the tenant fails to pay rent within 10 days after written notice by the landlord of nonpayment and the intention to terminate the rental agreement if the rent is not paid within that period of time, the tenancy terminates unless the landlord agrees to allow the tenant to remain in occupancy, and the landlord may terminate the rental agreement and immediately recover possession of the rental unit; only one written notice of default need be given tne tenant by the landlord as to any one default.

See 9.2.A.

Tenant violates condition under AS 34.03.120(a), other than AS 34.03.120(a)(5)

Tenant violates condition of AS 34.03.120(a), other than AS 34.03.120(a)(5), or condition in the rental agreement

Landlord may serve notice under AS 09.45.100, of written notice required by AS 34.03.220(a)(2)

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if noncompliance is not satisfied within the number of days specified under AS 34.03.220(a)(2)

Unlawful holding of force occurs if noncompliance is not satisfied within three days added to the number of days specified under AS 34.03.220(a)(2)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

AS 34.03.120(a) Tenant to maintain dwelling unit.
The tenant shall
(1) keep that part of the premises occupied and used by the tenant as clean and safe as the condition of the premises permit,
(2) dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;
(3) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
(4) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilation, air-conditioning, kitchen, and other facilities and appliance including elevators in the premises;
(6) not unreasonable disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises; and
(7) maintain smoke detection devices as required under AS 18.70.095.

AS 34.03.220(a)(2)
If there is a material noncompliance by the tenant with the rental agreement, or if there is noncompliance with AS 34.03.120, other than deliberate infliction of substantial damage to the premises, materially affecting health and safety, the landlord may deliver a written notice to quit to the tenant under AS 09.45.100 - 09.45.110 specifying the acts and omission constituting the breach and specifying that the rental agreement will terminate upon a date not less than 10 days after receipt of the notice; if the breach is not remedied the rental agreement terminates as provided in the notice subject to the provisions of this section; if the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate; if noncompliance recurs within six months, the landlord may terminate the rental agreement upon at least five days written notice to quit.

Sec. 2. B

Tenant violates condition under AS 34.03.120(a)(5), deliberately inflicting substantial damage to the premises

Tenant violates condition under AS 34.03.120(a)(5), deliberately inflicting substantial damage to the premises

AS 34.03.120(a)(5) Tenant to maintain dwelling unit. The tenant shall
(5) not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so.

Landlord may serve notice under AS 09.45.100, of written notice required by AS 34.03.220(a)(1)

AS 34.03.220(a)(1)
...for purposes of this paragraph, damage to premises is "substantial" if the loss, destruction, or defacement of property attributable to the deliberate infliction of damage to the premises exceeds $400 or the amount of the security deposit held by the landlord under AS 34.03.070, whichever is greater.

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant refuses to vacate within 24 hours after receipt of notice specified under AS 34.03.220(a)(1)

Unlawful holding of force occurs if the tenant refuses to vacate the premises within 4 days of service of notice specified under AS 34.03.220(a)(1)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

See a.2.c.

Landlord requires tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4)-(7)

Landlord requires tenant to vacate the premises for a reason set out in AS 34.03.310(c)(2) or (c)(4)-(7)

Landlord may serve notice under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant fails to vacate within the longer of 30 days or period of notice for the landlord's recovery of premises set out in rental agreement

Unlawful holding of force occurs if tenant fails to vacate within three days added to the longer of 30 days or period of notice for the landlord's recovery of premises set out in rental agreement

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

AS 34.03.310 Retaliatory conduct prohibited

(c) Notwithstanding (a) and (b) of this section, a landlord may bring an action for possession if

(2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;

(4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purpose;

(5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantial altering, remodeling, or demolishing the premises;

(6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or

(7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5), or (6) of this subsection.

Sec 1 a.2. D.

In a mobile home park, if there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4)

In a mobile home park, if there is to be a change in the use of land for which termination of tenancy is authorized by AS 34.03.225(a)(4)

Landlord may serve notice under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant fails to vacate within the longer of 180 days or period of notice for the landlord's recovery of premises set out in rental agreement

Unlawful holding of force occurs if tenant fails to vacate within three days added to the longer of 180 days or period of notice for the landlord's recovery of premises set out in rental agreement

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

AS 34.03.225(a)(4) Limitations on mobile home park operator's right to terminate

(a) A mobile home park operator may evict a mobile home or a mobile home park dweller or tenant only for one of the following reasons:

(4) a change in the use of the land comprising the mobile home park, or the portion of it on which the mobile home to be evicted is located; however, all dwellers or tenant so affected by a change in land use shall be given at least 180 days notice, or longer if a longer notice period is provided in a valid lease.

See 1 a.2. E.

Tenant remains in possession of the premises without the landlord's consent after the termination of a periodic tenancy prescribed by AS 34.03.290(a) or (b)

Tenant remains in possession of the premises without the landlord's consent after the termination of a periodic tenancy prescribed by AS 34.03.290(a) or (b)

Landlord may serve a notice to quit under AS 09.45.100 of written notice required by AS 34.03.290(a) & (b)

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant refuses to vacate within time specified under AS 34.03.290(a) & (b)

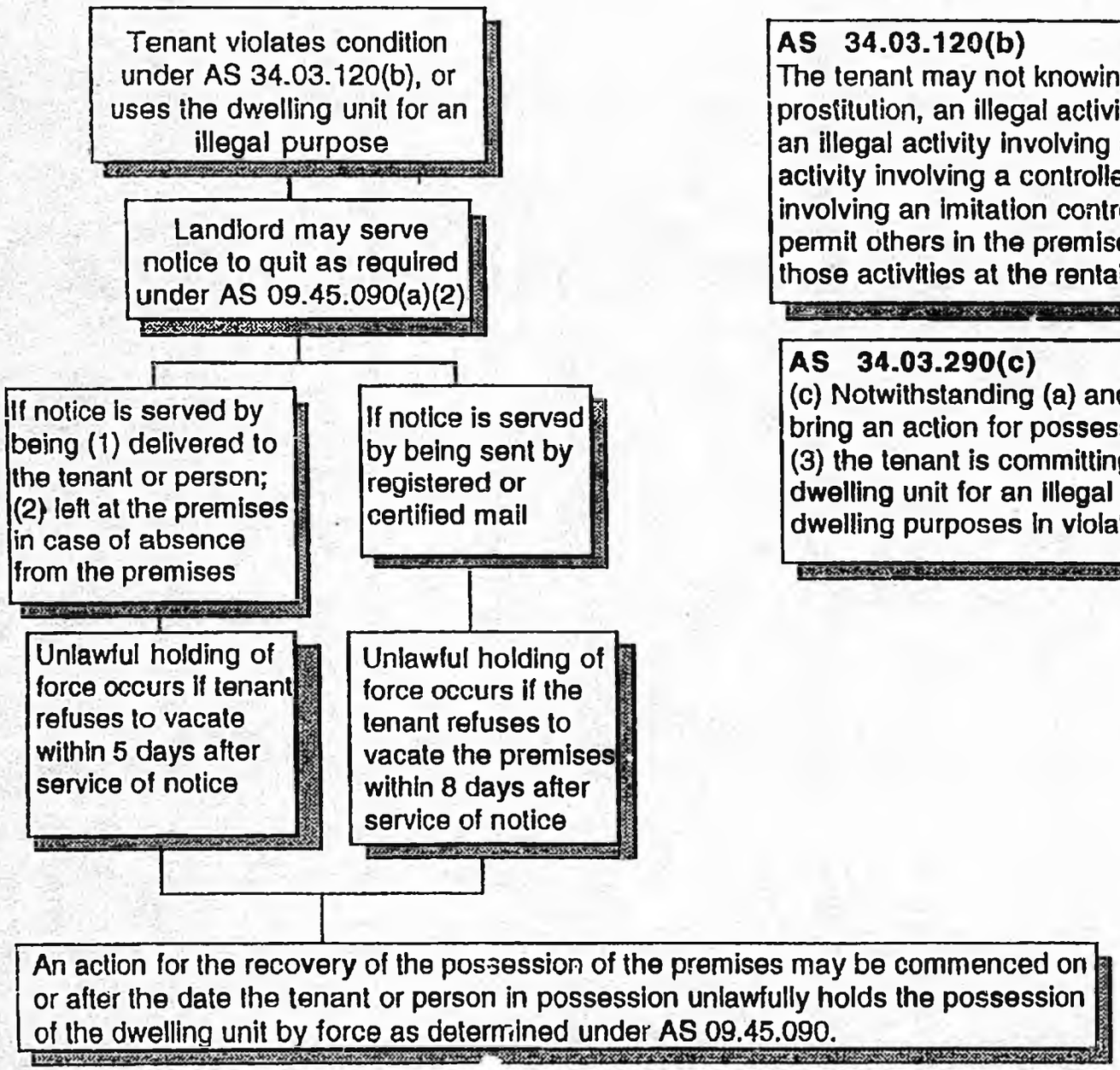
Unlawful holding of force occurs if tenant refuses to vacate within three days added to time specified under AS 34.03.290(a) & (b)

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

AS 34.03.290 Periodic tenancy and holdover
(a) While rent is current, the landlord or the tenant may terminate a week to week tenancy by written notice given to the other at least 14 days before the termination date specified in the notice
(b) The landlord or the tenant may terminate a month to month tenancy by written notice given to the other at least 30 days before the rental due date specified in the notice.

Sec 1 a-2 F.

Tenant violates condition under AS 34.03.120(b) or uses the dwelling unit for an illegal purpose in violation of AS 34.03.310(c)(3)



AS 34.03.120(b)
The tenant may not knowingly engage at the premises in prostitution, an illegal activity involving a place of prostitution, an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance, or an illegal activity involving an imitation controlled substance, or knowingly permit others in the premises to engage in one or more of those activities at the rental premises.

AS 34.03.290(c)
(c) Notwithstanding (a) and (b) of this section, a landlord may bring an action for possession if
(3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;

See 1 a.2.G

Tenant continues in possession of the premises without a valid rental agreement as defined in AS 34.03.360

Tenant continues in possession of the premises without a valid rental agreement as defined in AS 34.03.360

Landlord may immediately serve notice to quit under AS 09.45.100

If notice is served by being (1) delivered to the tenant or person; (2) left at the premises in case of absence from the premises

Unlawful holding of force occurs if tenant refuses to vacate immediately after service of notice

If notice is served by being sent by registered or certified mail

Unlawful holding of force occurs if tenant refuses to vacate within 3 days of service of notice

An action for the recovery of the possession of the premises may be commenced on or after the date the tenant or person in possession unlawfully holds the possession of the dwelling unit by force as determined under AS 09.45.090.

AS 34.03.360 Definitions
(13) "rental agreement" means all agreements, written or oral, and valid rules and regulation adopted under AS 34.03.130 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

DIVISION OF LEGAL SERVICES

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MEMORANDUM April 27, 1994

SUBJECT: Comparison of CSHB 222 (Finance) and CSSB 155 (Judiciary), pending landlord-tenant legislation
(Work Order No. 8-LS0832\M)

TO: Senator Steve Frank
ATTN: David Skidmore

FROM: Jack Chenoweth
Legislative Counsel

You have asked me to prepare a memo comparing the contents of the House Finance Committee Substitute for House Bill 222 (CSHB 222 (Fin)) and the Senate Judiciary Committee Substitute for Senate Bill 155 (CSSB 155 (Jud)). The two bills have as their principal purposes the alteration of the landlord-tenant relationship and of the civil remedies available to the parties in the event of a breach of the obligations of that relationship.

Initially, I want to address two key areas in which the House and Senate versions differ significantly.

I

FORCIBLE ENTRY AND DETAINER; REMOVAL OF TENANT:

"Forcible Entry and Detainer (often shortened to and referred to as an "FED" or "FED action")" is the civil remedy available to the owner of the premises when a tenant retains possession and occupancy of premises after expiration of the tenancy or otherwise in violation of law. Forcible entry and detainer is set out in AS 09.45.-060 - 09.45.160.

Proposed bill sections 1 - 4 of CSHB 222 (Finance) and proposed bill sections 2 - 5 of CSSB 155 (Judiciary) amend key features of AS 09.45, relating to the forcible entry and detainer action.

After extensive House Finance Committee consideration of the provisions, the language of the respective versions is no longer substantially similar. The **House version** incorporates provisions more closely aligning the remedial provisions of AS 09.45 with the specific shortcomings or problems arising under the Uniform Residential Landlord-Tenant Act (AS 34.03) and makes parallel changes covering the contingency of termination of tenancy when the tenancy is not governed by the Uniform Act (commercial arrangements, for example). The approach used in the **Senate version** makes no distinction based on applicability of the Uniform Act and, consequently, does not make changes to AS 09.45.090 with reference back to the related provisions of the Uniform Act.

Notably, **in the Senate version**, the amendment reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due; **the House version** retains the ten day period to initiate proceedings to evict the tenant in these circumstances.

Allowing for the substantially different approach each takes to reform of forcible entry and detainer actions, in their changes to AS 09.45.090 and to AS 09.45.100 the versions differ on the notion of notice. **The House version** makes the key to a tenancy termination turn upon the delivery of a "notice to quit," usually, but not necessarily, in writing, or, in the alternative, a demand for possession, while **the Senate version** retains the features of current provisions applicable to FED actions, but makes only essential statute reference changes. Finally, in its inclusion of the new material in AS 09.45.105, the **House version** specifies the content of the "notice to quit"; the **Senate version** does not include that provision.

Apart from these, other related features are substantially similar.

REVISION OF TENANT OBLIGATIONS:

Several provisions are included in each of the two versions in order to respond to concerns expressed that tenants be held to a greater responsibility generally "for damage done by him/her or by his/her guests."

A

Current law--AS 34.03.120, part of the Uniform Residential Landlord-Tenant Act--assigns or imposes certain responsibilities in the landlord-tenant relationship to the tenant. Among them are the duty to use facilities and appliances in a reasonable manner, and the duty not to deliberately or negligently abuse the premises or to knowingly allow others to do so.

The changes to AS 34.03.120 made by bill section 22 of the **Senate version** generally make the tenant's obligations more stringent by eliminating or modifying the qualifying adjectives from before the various duties or responsibilities enumerated in AS 34.03.120. The **Senate version** requires that their use by the tenant must be in an "ordinary manner," omitting an existing "nonabusive" reference. Additionally, the **Senate version**, adds, as a paragraph (8), a prohibition against the tenant's changing door locks without obtaining the landlord's prior permission. By contrast, the **House version** omits these changes altogether.

B

The revision of AS 34.03.220(a) proposed in bill section 20 of the **House version**--bill section 26 of the **Senate version** is roughly comparable--provides the landlord the opportunity to seek summary eviction of the tenant. The **House approach** limits use of summary procedure to instances of "deliberate infliction of substantial damage" and supplies a means by which to determine whether that requirement is met. The **Senate version** makes more numerous changes to AS 34.03.220(a) and permits commencement of summary forcible entry and detainer proceedings in a larger number of situations involving the tenant's violation of these modified provisions. [1/] Summary procedure is, in both instances, the opportunity for a landlord to commence proceedings to recover tenancy on 24 hours' notice. In the **House version**, summary action may require 10 days notice for breaches and violations other than "deliberate infliction of substantial damage" to the premises. Under both versions, the summary proceeding language replaces the 20 day notice of current law. Additionally, under the **Senate version**, but not that of **the House**, the tenant has an opportunity to take corrective action to remedy the breach but the remedies need not be just "adequate" but, instead, must "satisfy the landlord."

C

The Senate version incorporates reference to termination of tenancy in the case of contingencies that are not part of the House version: the landlord's recovery of possession for the tenant's failure to pay utilities (when required to do so) and for the tenant's failure to provide the landlord with copies of keys when the tenant initiates a change in the lock; neither of these provisions is addressed in **the House version.**

[1/] Under the Senate version, the nature of the tenant's noncompliance has significance: noncompliance in the nature of destruction, defacement, or damage to the premises must be "substantial"--that is, in excess of the amount of the tenant's security deposit; noncompliance relating to the condition of the premises must materially affect health or safety; noncompliance for other reasons must be sufficient, must affect the landlord's investment, the quiet enjoyment of the premises by other tenants, or the use and occupancy of adjacent premises.

D

Importantly, where the **House version** retains language permitting termination of a tenancy when rent remains unpaid for ten days, the **Senate committee substitute** reduces the period in which the rent must be paid to five days. See bill section 27 of the **Senate version.**

*

Allowing for the substantially different approach each takes to reform of forcible entry and detainer actions, both bill versions, in essence, carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to the tenant to quit is provided by mail.

II

The House and Senate versions contain a number of sections that are identical. [2/]

A

With respect to the forcible entry and detainer changes, despite the variance in approach and language of the two bills, both versions propose to eliminate notice separate from that required to be given under the Uniform Residential Landlord and Tenant Act (AS 34.03) upon the entry of abatement by the court. See bill sections

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[2/] Those identical sections in the respective bill versions are:

CSHB 222 (FIN)	CSSB 155 (JUD)
sec. 5	sec. 8
sec. 6	sec. 9
sec. 7	sec. 10
sec. 8	sec. 11
sec. 9	sec. 12
sec. 10	sec. 13
sec. 11	sec. 14
sec. 12	sec. 17
sec. 13	sec. 19
sec. 15	sec. 20
sec. 16	sec. 21
sec. 17	sec. 23
sec. 21	sec. 28 [part]
sec. 26	sec. 31
sec. 28	sec. 33
sec. 29	sec. 34
sec. 30	sec. 35

6 and 21 of the **House version** and bill sections 9 and 28(part) of the **Senate version**. These sections authorize the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

Each version contains new authority by which, at the end of a forcible entry and detainer action, the court may enter an order to vacate against the tenant and, at the same time, may provide a landlord who requests a writ of assistance to recover possession of the premises. See bill section 5 of the **House version**, bill section 8 of **the Senate's**. Those sections, adding a proposed AS 09.45.125, describe the nature of the order that the court may enter, and explicitly authorize the court to issue, in favor of the party recovering possession of the premises, a writ of assistance to a peace officer in order to provide assistance in serving and enforcing an order to vacate.

B

Making the tenant's obligations more stringent implicates the definition of "damages" for purposes of ascertaining whether or not a tenant is due a refund of all or any portion of a security deposit. "Damages" is, in current law, a term whose definition is divided between AS 34.03.070(b) and AS 34.03.360(18). Bill section 13 of the **House version**--the same language is to be found in bill section 19 of the **Senate version**--reworks the definition of "damages," and bill section 30 of the **House version**--bill section 35 of the **Senate version**--repeals the existing definition set out as a part of AS 34.03.360(18). With these changes, one need not worry about whether, in evaluating damages to premises, a tenant acted intentionally or negligently. Rather, if the tenant caused any damage beyond wear and tear due to "normal, nonabusive living," the tenant may be held responsible for damages.

C

The bill incorporates a checklist approach "that lists the items in the apartment and describes the condition of these items and of the apartment itself." It distinguishes between a "premises condition statement" and a "contents inventory." Bill section 12 of the **House version** and bill section 18 of the **Senate version** give the landlord the right to require preparation of these documents and indicate how the documents may be made part of the rental agreement. The **House version's** bill section 15--bill section 20 of the **Senate version**--gives the landlord the right to require the tenant to execute a statement and inventory before making possession of the premises available but, when execution of one or both of these documents is required, the landlord is required to indicate to the tenant how the information on the statement/inventory may be used. Bill section 26 of the **House version**--bill section 31 of the **Senate version**--establishes the statement/inventory as "presumptive evidence of the condition

of the premises and its contents at the commencement of the term of the period of occupancy" in order to support any later claim for damages. The addition made in bill section 16 of the **House version**--bill section 21 of the **Senate's**--addresses the status of a statement/inventory in the event a landlord sells to a purchaser leaving the tenant in residence.

D

"Abatement"--technically, "nuisance abatement"--is the form of civil remedy available to remove or diminish activity that constitutes a nuisance. The applicable statutory provisions are set out in AS 09.50.170 - 09.50.240.

In the **House version**, bill section 7--in the **Senate version**, bill section 10--revises AS 09.50.170. The change deletes in that section dated references to "lewdness, assignation, . . . or any other immoral act"--currently part of the existing basis for nuisance abatement relief--but retains reference in the current law to "prostitution" and adds references to an illegal activity involving prostitution and an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance as further grounds for relief under the nuisance abatement statutes. 3/

The **House version's** bill section 8--the **Senate version's** bill section 11 supplies the definitions for each of the three additional criminal activities that may trigger nuisance abatement relief, cross-referencing them to the meanings of those terms set out in the Uniform Residential Landlord and Tenant Act.

Following the California statutory model recommended as this bill was under consideration during the Seventeenth Legislature, I included bill section 9 of the **House version**--bill section 12 of the **Senate version**--a new section, AS 09.50.175, that would allow the court to consider evidence of reputation within a community if relief is sought under the expanded version of the nuisance abatement relief statute.

Bill section 10 of the **House version**--bill section 13 of the **Senate's**--recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in AS 09.50.210(a)(1) of each bill

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3/ **Both bill versions** contain language in the respective provisions amending the forcible entry and detainer provisions to allow a landlord to demand possession of rented premises and, thereafter, to commence a forcible entry and detainer action in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act (AS 34.03.120(b)) against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act (AS 34.05.100(a)). Both also authorize the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.210(a), seek immediate relief.

and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 11 of the **House version**--bill section 14 of the **version reported in the Senate**--adds a measure of flexibility to the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. In both versions, the provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently canceled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1)--is not automatically revived.

In that part of the bill that amends the provisions of the state's version of the Uniform Residential Landlord-Tenant Act, the **House version's** bill section 21--the comparable provision in the **Senate version** is proposed AS 34.03.220(d), part of bill section 28--directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Finally, bill section 28 of the **House version**--bill section 33 of the **Senate counterpart**--identifies the particular activities involving alcoholic beverages, controlled substances, imitation controlled substances, and prostitution that warrant relief under the expanded nuisance abatement provisions. Generally, the definitions set out in these statute amendments identify sales, possession with intent to sell, and similar transactions of a serious nature in violation of law.

E

Bill section 17 of the **House version**, and its counterpart, bill section 23 of the **Senate version**, adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

The **House** measure's bill section 29--the **Senate version's** counterpart is its bill section 34--adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a basis for seeking relief through the nuisance abatement process and an order of abatement covering a premises that falls within this section terminates the rental agreement.

III

Other provisions that address the same or substantially similar material in the two bills --

Mediation: **Both versions** explicitly authorize mediation of landlord-tenant disputes, but have taken a different approach to the subject.

Mediation efforts are defined by bill section 32 of the Senate version. Additionally, under the addition made by material added in bill section 16, a commitment to mediation may be incorporated as a part of a rental agreement. The **Senate version's** bill section 7 redrafts the "summons and continuance" provision to take into account delay on a continuance due to mediation of disputes between landlords and tenants. Bill sections 36, 37, and 38 make relevant court rule changes to recognize the opportunity for mediation. Bill sections 41 and 42 set out contingent effective dates provisions relevant to the legislature's ultimate decision to include or not include the mediation provisions. 4/

By contrast, in its bill section 27, the **House version** treats with mediation summarily.

Provisions that appear in the House version but are not included in the Senate version --

Several bill sections and parts of bill sections are included in the House Finance Committee Substitute that have no counterparts in the Senate Judiciary Committee Substitute. Generally, these additional provisions incorporate new material to the House version as a result of careful examination of the measure by a subcommittee of the House Finance Committee.

A

Four bill sections of the House Committee Substitute bill are included because of the work done by the subcommittee to more closely "marry" the provisions of the Uniform Act to the forcible entry and detainer remedy. See bill section 14, relating to notice to quit to a person in wrongful possession in order to supply the tenant possession of the dwelling unit; bill section 22, relating to notice in the context of mobile home parks; bill section 23, applicable to notices to holdover tenants; and bill section 24, clarifying that an action for possession by the landlord under the Uniform Act must be preceded by the giving of notice to quit.

4/ The court rule changes may now be unnecessary in light of the Supreme Court's adoption of Civil Rule 100, which became effective in July, 1993.

B

The House version incorporated provisions that added to the obligations imposed on **landlords** and the opportunity of tenants to remedy deficiencies in the landlord's obligations under the rental agreement or the Uniform Act. Bill section 18, amending AS 34.03.160(a), adds a "repair or deduct" provision for compliance failures that could be remedied for less than $300, and advances the opportunity of a tenant to quit premises by ten days. The amendment made by bill section 19 increases the damage recovery permitted a tenant for a landlord's unlawful ouster or wilful diminishment of necessary services.

C

To address a particular problem involving the applicability of the Uniform Act to temporary residential housing services for transitional living, the House amended a provision of AS 34.03.330(b) as an extension of an exclusion from the operation of the Uniform Act. See bill section 25.

Provisions that appear in the Senate version but are not included in the House version --

A series of bill sections and parts of bill sections are included in the Senate Judiciary Committee Substitute that do not appear in the House Finance Committee Substitute. Generally, these additional provisions incorporate new material to the Senate version that was not requested for inclusion in the House bill, that was added by the Senate Judiciary Committee in its consideration of SB 155 after the House version had been introduced in its original form, or that House committee members opted to drop..

*

Bill sections 1 and 15 of the **Senate version,** adding two new codified sections, AS 04.21.075 and AS 17.30.160, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs. The comparable provisions in the earlier House versions were dropped in CSHB 222 (Finance).

The Senate version incorporates reference to termination of tenancy in the case of two contingencies that are not part of the House version: the landlord's recovery of possession for the tenant's failure to pay utilities (when required to do so) and for the tenant's failure to provide the landlord with copies of keys when the tenant initiates a change in the lock; neither of these provisions is addressed in **the House version.**

In the **Senate version**, AS 34.03.120(8)--it would be restyled AS 34.03.180(a)(8) if adopted--a part of bill section 22, incorporates an unauthorized changing of the door locks provision that has no **House version** counterpart.

In the **Senate version**, AS 34.03.220(e) and (f), a part of bill section 28, giving rise to authorized action by the landlord to terminate a tenancy in the event of a tenant's nonpayment of utility services and subsequent discontinuance of those services, likewise has no **House version** counterpart.

*

In an amendment to the "summons and continuance" provision applicable to forcible entry and detainer actions, the **Senate version's** bill section 6 eliminates the "ceiling" or maximum period of four days allowable between service of summons in a forcible entry and detainer and hearing on the action. It retains the statutory two day minimum period. The **House version** omits this change.

*

Each of the following has no directly comparable provisions in the House-passed version:

Bill section 18 of the **Senate version** (1) increases from two to three months the amount of prepaid rent and security deposit that a landlord may claim as a condition of occupancy of rented premises and (2) exempts from that limitation a rental unit in which the rent exceeds $1000 per month.

Bill section 24 of the **Senate version** adds, as an authorization on access to the premises by the landlord, the right of the landlord, with prior notice to and consent of the tenant, to have access in order to secure any of the landlord's personal property for which no provision has been made or that is not mentioned in the parties' written rental agreement.

Bill section 25 revises the authority of the landlord to enter rented premises, limiting that entry to (1) opportunities explicitly identified in AS 34.03.140 [5]; (2) access

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[5] AS 34.03.140 identifies these opportunities:

Under AS 34.03.140(a) [amended in the preceding bill section], with the consent of the tenant,

-- to inspect the premises;
-- to make necessary or agreed repairs, decorations, alterations, or improvements;

(continued...)

under a court order; (3) access when, as is authorized by AS 34.03.230(b), the tenant has been absent without prior notice for seven days; and (4) access when the tenant has abandoned or surrendered the premises.

In the event the landlord believes that the tenant has abandoned premises, under the addition made in bill section 29, the landlord is given an ability to obtain access and, if there is evidence of abandonment and the landlord and tenant have not reached a different agreement, the landlord may terminate the rental agreement.

Bill section 30 rewrites the non-liability provision applicable to landlords in the event of a claim by a tenant relating to storage and disposition of abandoned property.

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5/(...continued)

-- to supply necessary or agreed services; or

-- to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors; and

under AS 34.03.140(b), without the consent of the tenant,

-- in the case of emergency.

Additionally, under AS 34.03.140(c), except in case of emergency or if it is impracticable to do so, the landlord is to give the tenant at least 24 hours notice of intention to enter and may enter only at reasonable times.

Comparison of HB 222 SB 155 (Landlord-Tenant Acts)

CS HB 222 (Finance)	CS SB 155 (Judiciary)
Similarities between bills are outlined; differences are shaded and outlined	
1) Notice to landlord following arrest * No equivalent provision	1) Notice to landlord following arrest (Sec. 1,15)
2) Forcible entry & detainer (FED) * Makes distinction between premises covered/not covered by Uniform Res. Landlord-Tenant Act. (Sec. 1)	2) Forcible entry & detainer (FED) * No equivalent provision.
* Expanded definition of unlawful holding by force. (Sec. 1)	* More limited definition of unlawful holding by force. (Sec. 2)
* Establishes linkages between FED, URLTA statutes. (Sec. 1,14,22,23,24)	* No equivalent provision.
* Retains 10-day period after non-payment of rent. (Sec. 1)	* Reduces from 10 days to 5 the period landlord must wait to commence FED after non-payment of rent. (Sec. 2,27)
3) Notice to quit * Add 3 days when notice is mailed. (Sec. 1)	3) Notice to quit * Add 3 days when notice is mailed. (Sec. 4)
* Content of notice is specified. (Sec. 3)	* No equivalent provision.
* Makes tenancy termination contingent upon delivery of notice; clarifies number of notices required. (Sec. 2)	* No equivalent provision.
* Clarifies time necessary before FED action may be brought. (Sec. 4)	* No equivalent provision.
4) Revised tenant obligations * No equivalent provision.	4) Revised tenant obligations * Statutory obligations made more stringent by removal of qualifying adjectives; tenant required to use facilities in ordinary manner. (Sec. 22)
* Definition of damages reworked. (Sec. 13,30)	* Definition of damages reworked. (Sec. 19,35)

Comparison of HB 222 SB 155 (Landlord-Tenant Acts)

CS HB 222 (Finance)	CS SB 155 (Judiciary)
* New obligation not to engage in illegal activities on premises. (Sec. 17,29)	* New obligation not to engage in illegal activities on premises. (Sec. 23,34)
5) Summary eviction * Invoked if tenant deliberately inflicts damage greater than $400 or security deposit. (Sec. 20)	5) Summary eviction * Invoked if there is substantial non-compliance by tenant w/ rental agreement or stat. obligations. (Sec. 26)
* Landlord may commence FED 24 hrs. after delivering notice. (Sec. 20)	* Landlord may commence FED 24 hrs. after delivering notice. (Sec. 26)
* No equivalent provision.	* Tenant has opportunity to take corrective action. (Sec. 26)
* For less serious breaches, summary action requires 10 days notice. (Sec. 20)	* No equivalent provision.
6) Expanded nuisance abatement remedy (Sec. 6,7,8,9,10,11,21,28)	6) Expanded nuisance abatement remedy (Sec. 9,10,11,12,13,14,28,33)
7) Premises/contents statements as evidence (Sec. 12,15,16,26)	7) Premises/contents statements as evidence (Sec. 17,20,21,31)
8) Mediation * Broad language. (Sec. 27)	8) Mediation * Specific language. (Sec. 7,16,32,36,37,38,41,42)
9) Order for writ of assistance (Sec. 5,31,32)	9) Order for writ of assistance (Sec. 8,39,40)
10) New landlord obligations (Sec. 18,19)	10) New landlord obligations * No equivalent provision.
11) Temporary housing excluded (Sec. 25)	11) Temporary housing excluded * No equivalent provision.
12) Other * No equivalent provision.	12) Other * Misc. Senate Jud. Cmte. amendments. (Sec. 2,6,18,22,24,25,26,27,28,29,30)

February 16, 1994

Senator Loren Lehman
716 W. 4th Ave.
Anchorage, AK 99501

Re: Swanner v. Anchorage Equal Rights Comm'n
Anchorage Municipal Code 5.20.020
AS 18.80.240

Dear Senator Lehman:

Enclosed is a copy of the Alaska Supreme Court's recent decision in Swanner v. Anchorage Equal Rights Comm'n, Slip Op. 4049 (Alaska February 11, 1994). By this decision the Court (1) interpreted the provisions of the Anchorage Municipal Code and the Alaska Statutes which prohibit discrimination against individuals based upon their marriage status to provide civil rights protection to single individuals who choose to cohabitate (live together in a sexual relationship outside of marriage), and (2) refused to grant a Christian landlord an exemption, based upon his constitutional right to free exercise of religion, from being required to rent his property to single individuals who choose to cohabitate.

In essence, the Court determined that it is illegal for a Christian individual, church, or organization which rents property to refuse to rent the property to individuals who desire to live in that property in a relationship which the Christian individual, church or organization believes is sinful. The Court, in its amazing wisdom, calls the Christian landlord's conduct "discrimination based upon irrelevant characteristics" and an "independent social evil." Swanner, Slip Op. at pp. 16-18 (emphasis added). In other words, the Court tells us to forget the break down of family and moral values because the real "evil" in our society is people with Christian beliefs and moral conviction.

By our court's reasoning, a sincere Christian landlord cannot decline to facilitate conduct which he believes is sinful (sexual relations outside the marriage relationship); our wise Court's response to the Christian landlord is "if you don't want to rent to unmarried cohabitators then either forfeit your livelihood and get out of the rental business or

forfeit your religious convictions and shut up." I also believe that it is not too far fetched to anticipate that, by our Court's reasoning, it will decide that it is illegal for a Christian landlord to refuse to rent property to a homosexual couple because that constitutes discrimination based upon marriage status; i.e., that would be discrimination based upon "irrelevant characteristics" (such as the fact that the couple is unmarried and of the same sex). According to our Court, that Christian landlord's conduct would constitute an "independent social evil."

Because the Alaska Supreme Court refuses to protect the right of Alaska's citizens to the free exercise of religion, perhaps the Alaska Legislature should. I believe that Title 18 should be amended to correct the Supreme Court's absurd and outrageous decision in Swanner. I request that you take action to introduce legislation to amend Title 18 to correct this situation; for example, by exempting from the State anti-marriage status discrimination law those individuals with religious convictions against cohabitation or by amending the statute's definition of "marriage status" to not include "cohabitation" or "homosexuality" (after all, wasn't the primary focus of this law to protect single parent families from discrimination in housing and single individuals from discrimination in employment?)

I would also appreciate hearing from you as to how I might assist in rectifying this situation. Is there a member of the Anchorage Municipal Assembly that will lend a friendly ear to a request that AMC 5.20.020 be amended? Thank you for your consideration.

Yours truly,

Kevin G. Clarkson

KGC:ljk

THE SUPREME COURT OF THE STATE OF ALASKA

TOM SWANNER, d/b/a WHITEHALL PROPERTIES, Appellant, vs. ANCHORAGE EQUAL RIGHTS COMMISSION, PAUL L. CONNERTY, EXECUTIVE DIRECTOR, ex rel. JOSEPH BOWLES, WILLIAM F. HARPER, and DEE MOOSE, Appellees.	Supreme Court No. S-5362 Superior Court No. 3AN-91-1898 CI O P I N I O N [No. 4049 - February 11, 1994]

On Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge.

Appearances: Stephen S. DeLisio, Staley DeLisio & Cook, Anchorage, for Appellant. Constance E. Livsey, Faulkner, Banfield, Doogan & Holmes, Anchorage, for Appellees.

Before: Moore, Chief Justice, Rabinowitz, Burke, Matthews, and Compton, Justices.

BURKE, Justice.
MOORE, Chief Justice, dissenting.

Swanner, d/b/a Whitehall Properties, appealed the superior court's decision which affirmed the Anchorage Equal Rights Commission's (AERC) order that Swanner's policy against renting to unmarried couples constituted unlawful discrimination based on marital status. Swanner disputes the decision and contends that

enforcing the applicable statute and municipal ordinance violates his constitutional right to free exercise of his religion under the United States and Alaska Constitutions. Swanner claims the AERC deprived him of due process by adopting the hearing examiner's recommended decision and proposed order without itself conducting an independent review of the case on its merits and by failing to notify him that it would do so.

We hold that Swanner discriminated against the potential tenants based on their marital status. We further hold that enforcing the fair housing laws does not deprive him of his right to free exercise of his religion. The proceedings of the AERC did not deprive Swanner of his right to due process of law. We affirm the AERC and superior court decisions.

I. FACTS AND PROCEEDINGS BELOW

Joseph Bowles, William F. Harper, and Dee Moose filed three separate complaints of marital status discrimination in the rental of real property in Anchorage. The complainants alleged that Tom Swanner, doing business as Whitehall Properties, violated municipal and state anti-discrimination laws, Anchorage Municipal Code (AMC) 5.20.020 and AS 18.80.240. Swanner refused to rent or allow inspection of residential properties after learning that each complainant intended to live with a member of the opposite sex to whom he or she was not married.

While Swanner did not specifically recall having conversations with Bowles, Harper, or Moose, he readily admitted having a policy of refusing to rent to any unmarried couple who

intend to live together on the property. Swanner's refusal to rent or show property to unmarried couples is based on his Christian religious beliefs. Under Swanner's religious beliefs, even a non-sexual living arrangement by roommates of the opposite sex is immoral and sinful because such an arrangement suggests the appearance of immorality. It is undisputed that Swanner rejected each complainant as a tenant because of this policy and for no other reason.

A. Proceedings before the Anchorage Equal Rights Commission

The AERC consolidated the three cases for hearing and appointed Robert W. Laudau as hearing examiner on April 6, 1990. Laudau conducted a hearing on October 9 and 11, 1990 and issued a 25-page Recommended Decision and proposed order in favor of the complainants on January 7, 1991. He served the recommended decision to Swanner's counsel and the AERC on January 7, 1991.

Pursuant to the AERC's administrative rules of procedure in effect at the time, each party had ten days after receipt of the recommended decision to submit written objections. AMC 5.10.015(A). When the AERC receives objections, the regulations provide for its review of the record and modification of the recommended decision where appropriate. AMC 5.10.015(B). If the parties fail to object, the proposed decision automatically becomes final. AMC 5.10.015(A). Neither Swanner nor the AERC submitted written objections. On January 23, 1991, the AERC issued a memorandum stating that, pursuant to AMC 5.10.015(A), the parties' failure to object to the hearing examiner's recommended

decision resulted in his proposed order becoming final on January 22, 1991. On January 31, 1991, Cheri C. Jacobus, AERC Chairperson, issued a Notice of Final Order which affirmed that the proposed order became final on January 22, 1991.

B. Proceedings before the Superior Court

Swanner appealed to the superior court on March 8, 1991. Judge Karen L. Hunt heard oral argument on May 15, 1992 and issued a written decision and order on August 31, 1992. She affirmed the AERC's decision, holding that (a) Swanner's conduct constituted unlawful discrimination based upon marital status; (b) enforcement of the state and municipal anti-discrimination laws does not violate Swanner's constitutional rights, pursuant to the U.S. Supreme Court's decision in Employment Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990), and our decisions in Frank v. State, 604 P.2d 1068 (Alaska 1979) and Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293 (Alaska 1982); and (c) the automatic finalization of the AERC's decision did not violate Swanner's due process rights.

C. Proceedings before this Court

Swanner appealed to this court on September 18, 1992. He contends that the superior court erred in finding that he discriminated against the complainants on the basis of marital status. He claims that he does not discriminate based on marital status, but even if he does, he is excused from compliance with the anti-discrimination laws because of his fundamental right to the free exercise of his religion, guaranteed by the Alaska and

United States Constitutions. He also claims that the automatic finalization of the AERC's decision violates his due process rights under the Alaska and United States Constitutions.[1]

II. DISCUSSION

A. Swanner Violated AMC 5.20.020 and AS 18.80.240 by Discriminating Based on Marital Status

Swanner argues that he does not discriminate against individuals based on their marital status because he will rent to people who are single, married, widowed, divorced, or separated. However, he will not rent to those whom he expects will engage in conduct repugnant to his religious beliefs, namely cohabitation outside of marriage. Swanner considers such cohabitation to be fornication and immoral.

The AERC responds that the laws at issue do not recognize a distinction between "marital status" and "cohabitation." The AERC claims the statutes' plain language demonstrates that "marital status" includes cohabitating couples.

In Foreman v. Anchorage Equal Rights Comm'n, 779 P.2d 1199, 1201-03 (Alaska 1989), we looked at the plain language of

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[1] Each issue involves the interpretation and construction of laws and regulations. On questions of law arising on appeal which do not involve particularized agency expertise, this court is to apply its own independent judgment. Kodiak Island Borough v. State of Alaska, Dep't of Labor, 853 P.2d 1111, 1113 (Alaska 1993); Alaska Transp. Comm'n v. Airpac Inc., 685 P.2d 1248, 1252 (Alaska 1984). Thus, as the superior court found and both parties agree, the substitution of judgment standard is the appropriate standard of review on the issues Swanner has raised.

AS 18.80.240[2] and AMC 5.20.020[3] and reviewed the intent behind the

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[2] AS 18.80.240 states:

Unlawful practices in the sale or rental of real property. It is unlawful . . .

> (1) to refuse to sell, lease, or rent the real property to a person because of sex, marital status, changes in marital status
>
> . . .
>
> (3) to make a written or oral inquiry or record of the sex, marital status, changes in marital status . . . of a person seeking to buy, lease or rent real property;
>
> . . .
>
> (5) to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to allow a person to inspect real property because of the . . . marital status, change in marital status . . . of that person . . . .

[3] AMC 5.20.020 provides:

> Except in the individual home wherein the renter or lessee would share common living areas with the owner, lessor, manager, agent or other person, it is unlawful. . .
>
> A. To refuse to . . . rent the real property to a person because of . . . marital status . . .;
>
> . . .
>
> C. To make a written or oral inquiry or record of the . . . marital status . . . of a person seeking to . . . rent real property;
>
> . . .
>
> E. To represent to a person that real property is not available for inspection . . . [or] rental . . . when in fact it is available, or

(continued...)

anti-discrimination laws. In Foreman, a landlord who refused to rent to an unmarried couple argued that the laws did not protect the interests of unmarried couples. Id. at 1201. We held that the landlord's policy against renting to unmarried couples unlawfully discriminated on the basis of marital status. Id. at 1203. We reasoned that because the landlord would have rented to the prospective tenants had they been married, and he refused to rent the property only after learning the couple was not married, "[t]his constitutes unlawful discrimination based on marital status." Id. The same reasoning applies here. Because Swanner would have rented the properties to the couples had they been married, and he refused to rent the property only after he learned they were not, Swanner unlawfully discriminated on the basis of marital status.[4]

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[3](...continued)
to refuse a person the right to inspect real property, because of the . . . marital status . . . of that person . . . ;

[4] Swanner agrees that the laws at issue forbid discrimination on the basis of marital status. However, he contends that he did not discriminate against anyone on the basis of his or her marital status. Instead, he asserts that he discriminates on the basis of conduct, which is not prohibited by the statutes.

The definition of "cohabit" demonstrates that marital status and conduct are inextricably combined. "Cohabit" means "to live together in a sexual relationship when not legally married." The American Heritage Dictionary 259 (1980). Swanner cannot reasonably claim that he does not rent or show property to cohabitating couples based on their conduct (living together outside of marriage) and not their marital status when their marital status (unmarried) is what makes their conduct immoral in his opinion. The undisputed facts demonstrate that Swanner would have rented to the prospective tenants if they were married.
(continued...)

B. Enforcement of AMC 5.20.020 and AS 18.80.240 Does Not Violate Swanner's Constitutional Right to the Free Exercise of His Religion Under the United States Constitution

Swanner contends that enforcement of AMC 5.20.020 and AS 18.80.240 against him has a coercive effect on the free exercise of his religious beliefs. He believes that compliance with these laws forces him to choose between his religious beliefs and his livelihood. He requests that we accommodate his religious beliefs by creating an exemption to the statute and ordinance. The AERC responds that "it is not Swanner's religious beliefs per se which run afoul of our anti-discrimination laws, but rather his actions and conduct in a commercial setting."

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U.S. Const. amend. I. The Free Exercise Clause applies to the states by its incorporation into the Fourteenth Amendment. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). It grants absolute protection to freedom of belief and profession of faith, but only limited protection to conduct dictated by religious belief. See Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990) (narrowing the scope of religious exemptions under the Free Exercise Clause by upholding a statute

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[4](...continued)
Swanner's argument that he discriminated against the prospective tenants based on their conduct and not their marital status is without merit.

that criminalized peyote use, as applied to Native American religious ceremonies).

Swanner claims that we should apply the "compelling state interest" test set forth in Sherbert v. Verner, 374 U.S. 398 (1963) to determine whether the laws at issue violate his right to free exercise of religion under the United States Constitution.[5] However, in Smith, the United States Supreme Court expressly rejected applying the Sherbert test where the law being challenged is generally applicable, or, in other words, where the law is not directed at any particular religious practice or observance.[6] Smith, 494 U.S. at 885. "[A] law that is neutral and of general applicability need not be justified by a compelling governmental

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[5] Under this balancing test, a law that incidentally burdens a religious practice must be justified by a compelling governmental interest. See Sherbert, 374 U.S. at 403, 406.

[6] The Court stated:

> We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling" -- permitting him, by virtue of his beliefs, "to become a law unto himself," -- contradicts both constitutional tradition and common sense.

494 U.S. at 885 (citations and footnote omitted).

interest even if the law has the incidental effect of burdening a particular religious practice." Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217, 2226 (1993) (citing Smith, 494 U.S. 872 (1990)).[7] "Neutrality and general applicability are interrelated. . . . [F]ailure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." Id. at 2226.

The first step in determining whether a law is neutral is whether it discriminates on its face. "A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." Id. at 2227. Neither the ordinance nor the statute contain any language singling out any religious group or practice.

Even when a law is facially neutral, however, it may not be neutral if it is crafted to impede particular religious conduct. Id. These laws clear that hurdle as well. The purpose of AMC 5.20.020 and AS 18.80.240 is to prohibit discrimination in the

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[7] In Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993), the Court used the Free Exercise Clause to strike down city ordinances that regulated animal sacrifice, but effectively prohibited only sacrifice practices of the Santeria religion. The Court held the ordinances failed to satisfy the Smith requirements because they were not neutral, generally applicable, nor narrowly tailored, and did not advance compelling governmental interests.

rental housing market.[8] Swanner does not claim that the purpose of the laws is to discriminate against people based on religion; in fact, he contends that the laws do not even cover this kind of discrimination. Therefore, the laws satisfy the requirement of neutrality.

Additionally, these laws are generally applicable. They apply to all people involved in renting or selling property, and do not specify or imply applicability to a particular religious group. Therefore, at least under the general rule, no compelling state interest is necessary.

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[8] AS 18.80.200 states the purpose of the anti-discrimination laws:

> (a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety and general welfare of the state and its inhabitants.
>
> (b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in housing accommodations and in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood.

Smith provides one ground for judicial exemptions from compliance with neutral laws of general applicability. A court may exempt an individual from a law where the facts present a hybrid situation where an additional constitutionally protected right is implicated. Smith, 494 U.S. at 881-82. Like the appellant in Smith, Swanner does not contend that the laws in question here infringe on any constitutional right other than his right to free exercise of religion. Consequently, this case does not present such a "hybrid" situation.

We conclude that enforcing AMC 5.20.020 and AS 18.80.240 against Swanner does not violate his right to free exercise of religion under the United States Constitution.

C. Enforcement of AMC 5.20.020 and AS 18.80.240 Does Not Violate Swanner's Constitutional Right to the Free Exercise of His Religion Under the Alaska Constitution

Swanner does not dispute that the ordinance and statute are generally applicable and neutral under Smith, but asserts that "this decision does not mandate use of a less restrictive standard by state courts in interpreting state constitutional protection."

Swanner is correct in asserting that a state court may provide greater protection to the free exercise of religion under the state constitution than is now provided under the United States Constitution. See, e.g., Roberts v. State, 458 P.2d 340, 342 (Alaska 1969) ("We are not bound in expounding the Alaska Constitution's Declaration of Rights by the decisions of the United States Supreme Court, past or future, which expound identical or closely similar provisions of the United States Constitution.").

Thus, even though the Free Exercise Clause of the Alaska Constitution is identical to the Free Exercise Clause of the United States Constitution, we are not required to adopt and apply the Smith test to religious exemption cases involving the Alaska Constitution merely because the United States Supreme Court adopted that test to determine the applicability of religious exemptions under the United States Constitution.[9] We will apply Frank v. State, 604 P.2d 1068 (Alaska 1979), to determine whether the anti-discrimination laws violate Swanner's right to free exercise under the Alaska Constitution.[10]

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[9] Although the Smith decision is presently valid in analyzing free exercise challenges under the United States Constitution, legal scholars have criticized the decision. See Douglas Laycock, The Remnants of Free Exercise, 1990 Sup. Ct. Rev. 1.

In the recently enacted Religious Freedom Restoration Act of 1993, 107 Stat. 1488 (1993), the United States Congress stated that in Smith, the "Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion" and that "the compelling interest test in prior Federal court rulings is a workable test."

[10] Swanner notes that two jurisdictions have held that a landlord may refuse to rent to unmarried couples because of his/her religious beliefs. He cites to decisions from Minnesota and California for the proposition that enforcement of the anti-discrimination laws against him violates his right to free exercise. In Minnesota v. French, 460 N.W.2d 2 (Minn. 1990), the Minnesota Supreme Court held that a landlord's refusal to rent to an unmarried couple did not violate Minnesota's anti-discrimination laws and enforcing such laws would violate the landlord's free exercise right. However, in French, the anti-discrimination laws at issue did not define or otherwise explain the term "marital status." The court concluded that the Minnesota Legislature did not intend to include unmarried couples in the definition. Cf. Foreman, 779 P.2d at 1203 (holding unmarried couples are included within the state and municipal prohibitions against discrimination based on marital status). Moreover, the Minnesota court relied on

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In Frank v. State, we adopted the Sherbert test to determine whether the Free Exercise Clause of the Alaska Constitution requires an exemption to a facially neutral law.[11] 604 P.2d at 1070. We held that to invoke a religious exemption, three requirements must be met: (1) a religion is involved, (2) the conduct in question is religiously based, and (3) the claimant is sincere in his/her religious belief. Id. at 1071 (citing Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972)). Once these three requirements are met, "[r]eligiously impelled actions can be forbidden only 'where they pose some substantial threat to public

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[10](...continued)
the criminal anti-fornication statute then in effect. In contrast, Alaska's fornication provision was repealed well before the discriminatory conduct giving rise to this case occurred. Compare French, 460 N.W.2d at 10, with Foreman, 779 P.2d at 1202. Further, the French court relied on the Minnesota Constitution, article I, section 16, which contains very different language from the Alaska Constitution. See French, 460 N.W.2d at 9.

In Donahue v. Fair Employment Housing Comm'n, 2 Cal. Rptr. 2d 32 (Cal. App. 1991), review granted and opinion superseded, 825 P.2d 766 (Cal. 1992), dismissed as improvidently granted, No. S-024538 (Oct. 1, 1993), the California Court of Appeal held that although the landlords' conduct did constitute prohibited marital status discrimination, the landlords were entitled to an exemption from the anti-discrimination laws because of their religious beliefs. The court based its decision "on independent state constitutional grounds." 2 Cal. Rptr. 2d at 40. However, the California Supreme Court depublished the court of appeal's opinion, thereby rendering the decision uncitable.

Neither case provides this court with meaningful guidance in interpreting the Free Exercise Clause of the Alaska Constitution.

[11] In Seward Chapel, Inc. v. City of Seward, this court held, "Our ruling in Frank establishes that there are situations in which the Alaska Constitution requires the state or a municipality to except from a facially neutral law persons whose religious beliefs dictate that they not comply with the law." 655 P.2d 1293, 1301 (Alaska 1982) (footnote omitted).

safety, peace or order, or where there are competing governmental interests 'of the highest order and . . . [are] not otherwise served. . . .'" Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1301 n.33 (Alaska 1982) (quoting Frank, 604 P.2d at 1070).

Swanner clearly satisfies the first and third requirements to invoke an exception to the laws under the Free Exercise Clause. No one disputes that a religion is involved here (Christianity), or that Swanner is sincere in his religious belief that cohabitation is a sin and by renting to cohabitators, he is facilitating the sin. However, the superior court held that he did not meet the second requirement that his conduct was religiously based because "[n]othing in the record permits a finding that refusing to rent to cohabiting unmarried couples is a religious ritual, ceremony or practice deeply rooted in religious belief." Swanner's claim that the superior court misinterpreted Frank v. State as limiting free exercise rights only to ritual or ceremony has merit. In Frank, we determined that the action at issue was a practice deeply rooted in religion. 604 P.2d at 1072-73. However, we did not intend to limit free exercise rights only to actions rooted in religious rituals, ceremonies, or practices. To meet the second requirement, a party must demonstrate that the conduct in question is religiously based; this determination is not limited to actions resulting from religious rituals. Swanner's refusal to rent to unmarried couples is not without an arguable basis in some tenets of the diverse Christian faith, and therefore, his conduct is sufficiently religiously based to meet our

constitutional test. Although Swanner meets the three preliminary requirements to invoke an exception to the anti-discrimination laws, the analysis does not end here.

As discussed previously, a religious exemption will not be granted if the religiously impelled action poses "some substantial threat to public safety, peace or order or where there are competing state interests of the highest order." Frank, 604 P.2d at 1070. The question is whether Swanner's conduct poses a threat to public safety, peace or order, or whether the governmental interest in abolishing improper discrimination in housing outweighs Swanner's interest in acting based on his religious beliefs.

In our view, the second part of the test adopted in Frank is applicable here. Under this part of the Frank test, we must determine whether "a competing state interest of the highest order exists." "The question is whether that interest, or any other, will suffer if an exemption is granted to accommodate the religious practice at issue." Frank, 604 P.2d at 1073. The government possesses two interests here: a "derivative" interest in ensuring access to housing for everyone, and a "transactional" interest in preventing individual acts of discrimination based on irrelevant characteristics. Most free exercise cases, including Frank, involve "derivative" state interests. In other words, the State does not object to the particular activity in which the individual would like to engage, but is concerned about some other variable that the activity will affect. This can be contrasted with a

"transactional" interest in which the State objects to the specific desired activity itself.

For example, in Frank, this court exempted a Central Alaska Athabascan Indian needing moose meat for a funeral potlatch from state hunting regulations. The State did not object to killing moose per se (indeed, it expressly allows moose hunting in season); the State's derivative interest was in maintaining healthy moose populations. In the instant case, the government's derivative interest is in providing access to housing for all. One could argue that if a prospective tenant finds alternative housing after being initially denied because of a landlord's religious beliefs, the government's derivative interest is satisfied. However, the government also possesses a transactional interest in preventing acts of discrimination based on irrelevant characteristics regardless of whether the prospective tenants ultimately find alternative housing.

We look to Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1943), as an analogy. In Prince, the United States Supreme Court refused to grant an exemption to child labor laws for children distributing religious literature. As in this case, the state had a transactional interest: preventing exploitation of children in employment. Thus, the state objected to child labor, the particular activity at issue, per se, not to an effect of that activity. The state legislature had prohibited children from working under certain conditions. Therefore, permitting any child to work under such conditions resulted in harming the government's

transactional interest. This transactional government interest does not involve a numerical cutoff below which the harm is insignificant unlike in Frank.

Similarly, in the instant case, the legislature and municipal assembly determined that housing discrimination based on irrelevant characteristics should be eliminated. See Hotel, Motel, Restaurant, Etc. Union Local 879 v. Thomas, 551 P.2d 942, 945 (Alaska 1976) ("[T]he statutory scheme constitutes a mandate to the agency to seek out and eradicate discrimination in . . . the rental of real property."); Loomis Electronic Protection, Inc. v. Schaefer, 549 P.2d 1341, 1343 (Alaska 1976) (recognizing the Alaska Legislature's "strong statement of purpose in enacting AS 18.80, and its avowed determination to protect the civil rights of all Alaska citizens."); see also AS 18.80.200; AAC 5.10.010. The existence of this transactional interest distinguishes this case from Frank and most other free exercise cases where courts have granted exemptions. The government's transactional interest in preventing discrimination based on irrelevant characteristics directly conflicts with Swanner's refusal to rent to unmarried couples. The government views acts of discrimination as independent social evils even if the prospective tenants ultimately find housing. Allowing housing discrimination that degrades individuals, affronts human dignity, and limits one's opportunities results in harming the government's transactional interest in preventing such discrimination. Under Frank, this interest will

clearly "suffer if an exemption is granted to accommodate the religious practice at issue."

The dissent attempts to prove that the state does not view marital status discrimination in housing as a pressing problem by pointing to other areas in which the state itself discriminates based on marital status. However, those areas are easily distinguished. The government's interest here is in specifically eliminating marital status discrimination in housing, rather than eliminating marital status discrimination in general. Therefore, the other policies which allow marital status discrimination are irrelevant in determining whether the government's interest in eliminating marital status discrimination in housing is compelling.

In the examples the dissent cites, treating married couples differently from unmarried couples is arguably necessary to avoid fraudulent availment of benefits available only to spouses. The difficulty of discerning whose bonds are genuine and whose are not may justify requiring official certification of the bonds via a marriage document. That problem is not present in housing cases: as this case demonstrates, if anything, an unmarried couple who wish to live together are at a disadvantage if they claim to be romantically involved.

It is important to note that any burden placed on Swanner's religion by the state and municipal interest in eliminating discrimination in housing fall on his conduct and not his beliefs. Here, the burden on his conduct affects his commercial activities. In United States v. Lee, 455 U.S. 252

(1982), the United States Supreme Court stated the distinction between commercial activity and religious observance:

> When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith, are not to be superimposed on the statutory schemes which are binding on others in that activity.

Id. at 261.

Swanner complains that applying the anti-discrimination laws to his business activities presents him with a "Hobson's choice" -- to give up his economic livelihood or act in contradiction to his religious beliefs. A similar argument was advanced in Seward Chapel, where Seward Chapel argued that applying the city zoning ordinances to prohibit construction of a parochial school impermissibly burdened the chapel's free exercise rights. 655 P.2d at 1299. We concluded that "there has been no showing of a religious belief which requires members of Seward Chapel to locate in [a specific place]. . . . [T]he inconvenience and economic burden of which Seward Chapel now complains is caused largely by the choice to build in [a specific place]. . ." Id. at 1302 (footnote omitted).

Swanner has made no showing of a religious belief which requires that he engage in the property-rental business. Additionally, the economic burden, or "Hobson's choice," of which he complains, is caused by his choice to enter into a commercial activity that is regulated by anti-discrimination laws. Swanner is voluntarily engaging in property management. The law and ordinance regulate unlawful practices in the rental of real

property and provide that those who engage in those activities shall not discriminate on the basis of marital status. See AS 18.80.240; AMC 5.20.020. Voluntary commercial activity does not receive the same status accorded to directly religious activity. Cf. Frank v. State, 604 P.2d at 1075 (exempting an Athabascan Indian from state hunting regulations "to permit the observance of the ancient traditions of the Athabascans.")

"As [James] Madison summarized the point, free exercise should prevail in every case where it does not trespass on private rights or the public peace." Michael W. McConnell, Free Exercise Revisionism and the Smith Decision, 57 Chi. L. Rev. 1109, 1145 (1990) (citation omitted). Because Swanner's religiously impelled actions trespass on the private right of unmarried couples to not be unfairly discriminated against in housing, he cannot be granted an exemption from the housing anti-discrimination laws. Therefore, we conclude that enforcement of AMC 5.20.020 and AS 18.80.240 against Swanner does not violate his right to free exercise of religion under the Alaska Constitution.

D. The AERC Did Not Deprive Swanner of Due Process of Law

1. AMCR 5.10.015(A) is not an unconstitutional delegation by the AERC.

Anchorage Municipal Code 5.10.040 authorizes the AERC: (a) to hold public hearings; (b) to administer oaths and issue subpoenas; (h) to delegate to its executive director all powers and duties except the power to hold hearings and issue orders; and (i) to adopt procedural and evidentiary rules necessary to fulfill the intent of Title 5. AMC 5.10.040. The AERC's power to "adopt

procedural and evidentiary rules" is effectuated by promulgating municipal regulations.

Anchorage Municipal Code of Regulations (AMCR) provides the scope of the hearing examiner's recommendation.

> The hearing examiner . . . shall rule on the admissibility of evidence and other procedural matters. On any question which would be determinative of the jurisdiction of the commission or of the culpability of any party, the hearing examiner . . . may only make recommendations to the full commission.

AMCR 5.10.013(C)(2).[12] Additionally, "[a]ll recommendations of the hearing examiner . . . shall be consistent with commission decisions and regulations." AMCR 5.10.013(C)(4).

AMCR 5.10.015(A) states:

> After a party . . . receives the hearing examiner's . . . proposed findings of fact, conclusions of law and proposed order, that person or his/her representative may, within 10 days or such other time fixed by the chair, present written objections to the commission. If no party files an objection within ten days, the proposal shall become final.

Swanner claims that AMCR 5.10.015(A) directly conflicts with AMCR 5.10.013(C)(2) because "[Section] 5.10.015 appears to permit the commission to adopt the hearing examiner's recommendations without ever considering its content, rationale or rectitude." He interprets AMCR 5.10.013(C)(2) as authorizing only "the full commission" to determine a question which is

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[12] On February 16, 1993, the AERC repealed AMCR 5.10.013 and 5.10.015. See AMCR 5.60.003(F), 5.60.012(C), (D) for the new regulations replacing these sections.

We apply the regulations as they existed when Swanner's case began at the agency level.

determinative of jurisdiction or of the culpability of a party; Swanner asserts that his culpability in housing discrimination was at issue. He contends that the AERC abdicated its responsibility by adopting the hearing examiner's recommendation, and, therefore, the AERC violated AMCR 5.10.013.

Swanner is correct that the hearing examiner did not have the authority to determine Swanner's culpability. Instead he had the authority to make a recommendation, which is exactly what he did. Hearing Examiner Landau made a recommendation to the AERC and the AERC decided to adopt it. Therefore, no conflict exists between AMCR 5.10.013(C)(2) and AMCR 5.10.015(A), and the AERC followed its own regulations in adopting the hearing examiner's recommendation.[13]

2. The regulations do not require an independent review by the AERC.

Swanner finds fault with this process and complains that the AERC's regulations do not grant it authority to approve a hearing examiner's decision without conducting an independent review. No rule of procedure provides that the AERC must independently review the hearing examiner's recommendations. AMCR 15.10.015(B) expressly provides for the AERC's review of the hearing examiner's recommendations after a party timely files an

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[13] Where an agency interprets its own regulations, a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue. Rose v. Commercial Fisheries Entry Comm'n, 647 P.2d 154, 161 (Alaska 1982) (citing Kenneth C. Davis, Administrative Law Treatise § 7.22, at 105-08 (2d ed. 1979)).

objection. Swanner did not file an objection; therefore, the regulations required no independent review by the AERC.

3. Due process did not require that the AERC personally notify Swanner that it would adopt the hearing examiner's recommendation absent an objection within ten days.

Swanner claims the AERC's adoption of the hearing examiner's recommendation violated his constitutional right to due process of law. Both the Alaska and United States Constitutions provide that a person shall not be deprived of "life, liberty, or property, without due process of law." Alaska Const., Art. 1, § 7; U.S. Const. amend. XIV, § 1. "Due process requires 'that deprivation of life, liberty or property by adjudication be proceeded by notice . . . appropriate to the nature of the case.'" Wickersham v. State Com. Fisheries Entry Comm'n, 680 P.2d 1135, 1144 (Alaska 1984) (quoting Mullane v. Central Hanover Bank and Trust Co., 229 U.S. 306, 313 (1950)). This court held "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." Aguchak v. Montgomery Ward Co., Inc., 520 P.2d 1352, 1356 (Alaska 1974) (adopting Mullane language for analysis under the Alaska Constitution).

Swanner states that he did not receive notice that his failure to object to the hearing examiner's recommended decision would result in the AERC making the decision final. He claims that he became aware of the AERC's intent to approve the hearing

examiner's recommended decision the day after objections to the proposed order were due, when the AERC issued a memorandum stating the proposed order became final. Therefore, he claims he was not given "notice reasonably calculated, under all the circumstances, to apprise [him] of the pendency of the action, as required by Alaska law."

Swanner cannot claim that he was unaware of the pendency of this action. The actual hearing in this matter occurred on October 9 and 11, 1990, and Swanner participated in seven months of formal pre-hearing procedures and discovery. Swanner was clearly aware of the "pendency of this action." Moreover, AMCR 5.10.015 was readily available to Swanner and the public from both the AERC and the State Law Library. Accordingly, the AERC did not deny Swanner due process.

III. CONCLUSION

We hold that Swanner impermissibly discriminated against Bowles, Harper, and Moose because he would not rent to them based on their marital status. The Free Exercise Clause of the United States and Alaska Constitutions do not permit Swanner to disobey the state and municipal anti-discrimination laws by entitling him to an exemption. The AERC did not deny Swanner his right to due process by following its procedural regulations.

The AERC's final order and the superior court's opinion are AFFIRMED.

MOORE, Chief Justice, dissenting.

Article I, section 4 of the Alaska Constitution declares that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." As the majority correctly recognizes, this provision may provide greater protection of free exercise rights than is now provided under the United States Constitution. Opinion at 12-13. Accordingly, while the United States Supreme Court has adopted a new test to analyze free exercise claims such as the one at issue here,[1] the majority agrees that we will continue to apply the compelling interest test in interpreting the free exercise clause of the Alaska Constitution. Opinion at 13.

Our decision in Frank v. State, 604 P.2d 1068 (Alaska 1979), sets forth the framework from which we must determine whether AMC 5.20.020 and AS 18.80.240 violate Swanner's right to the free exercise of his religion. As we stated in Frank, "[n]o value has a higher place in our constitutional system of government than that of religious freedom." 604 P.2d at 1070. For this reason, a facially neutral statute or ordinance which interferes with religious-based conduct must be justified by a compelling state interest. Id. Absent such an interest, our constitution requires an exemption from the laws at issue to accommodate religious practices. Id. at 1070-71.

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[1] See Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872, 884-90 (1990).

The majority acknowledges that Swanner's actions fall within the ambit of the free exercise clause. Swanner has shown that his refusal to rent apartments to unmarried individuals who plan to live with a member of the opposite sex is based on his Christian faith, which strictly proscribes such cohabitation. No one questions the sincerity of his religious belief that he facilitates a sin by renting to unmarried individuals such as the complainants in this case. See Opinion at 15-16. For this reason, Swanner's religiously impelled conduct must be protected under Alaska law unless the AERC can show that the conduct poses "some substantial threat to public safety, peace or order," or that there exist competing governmental interests "of the highest order" which are not otherwise served without limiting Swanner's conduct. Frank, 604 P.2d at 1070 (citing Wisconsin v. Yoder, 406 U.S. 205, 215 (1972) and Sherbert v. Verner, 374 U.S. 398, 403 (1963)); Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1301 n.33 (Alaska 1982). I do not believe the AERC has met its burden in this case. I would therefore grant Swanner an exemption to accommodate his religious beliefs.

First, I note that in determining that the governmental interest in this case is "of the highest order," the majority announces an entirely new and unnecessary test examining the state's "transactional" and "derivative" interests. Opinion at 16-17. Under this analysis, the majority concludes that the state has a transactional, or per se, interest in preventing "individual acts of discrimination based on irrelevant characteristics" which

overrides Swanner's free exercise rights in this case. Because the interest is "transactional," the majority concludes that no evidentiary basis is required to show that rental housing for unmarried couples has become scarce. However, before the court would enforce the state's "derivative" interest in "ensuring access to housing for everyone," the AERC apparently would have to make an evidentiary showing that cohabitating couples have experienced hardship in finding available housing, i.e., that Swanner's conduct poses a "substantial threat to public safety, peace or order." Frank, 604 P.2d at 1070.

In my opinion, this amorphous analysis of the state's interests ultimately will prove to be useless in resolving future free exercise cases. Even in this case, I do not believe it provides a useful distinction of the interests at issue. For example, the majority determines that the state has a per se objection to marital status discrimination in housing which overcomes Swanner's free exercise rights. The majority defines this interest as that in "preventing acts of discrimination based on irrelevant characteristics." Opinion at 17. Such an articulation of the state's interest poses myriad questions. Who is to determine what is an "irrelevant" characteristic? Obviously, marital status is not "irrelevant" to Swanner. It is central to the question whether he will be committing a sin under the dictates of his religion. Is the legislative branch the final arbiter of relevancy or irrelevancy? Further, the discrimination at issue here is not based on innate "characteristics" but rather

on the conduct of potential tenants. While this conduct is worthy of some protection, it does not warrant the same constitutional protection given to religiously compelled conduct. I am not willing to place the right to cohabitate on the same constitutional level as the right to freedom from discrimination based on either innate characteristics -- such as race or gender -- or constitutionally protected belief, such as freedom of religion.

In addition, it remains unclear to me how the state's "derivative" interests are to be identified. Here, that interest is defined with little explanation as being the state's interest in "providing access to housing for all." Opinion at 17. Does this mean the state has no per se objection to the fact that some individuals may have limited access to housing? In Frank, could it not be said that the state had a per se interest in enforcing its hunting regulations?

In Frank, this court set forth a workable and sufficient guide to determine whether a governmental interest is sufficiently compelling to overcome an individual's free exercise rights. 604 P.2d at 1070. It seems to me that the majority's effort to expand this analysis adds little to the actual analysis of interests at stake. To the contrary, I see the majority's expansion of Frank as little more than a strained effort to distinguish Frank from the present situation when such a distinction is not logically justified. In this effort, the majority totally ignores the record in this case, and it engages in a game where the

"transactional" or "derivative" label attached to any given state interest predetermines the outcome of the case.

There is no governmental interest "of the highest order" to justify the burden on Swanner's fundamental rights.

Even applying the framework announced by the court in analyzing whether the state's interest is "of the highest order," I cannot agree with the court's reasoning and resulting decision. In essence, the majority's conclusion is that marital status discrimination constitutes such an affront to human dignity that the state has a per se obligation "of the highest order" to prevent it. Based on my analysis of free exercise jurisprudence and the issues surrounding marital status discrimination, I cannot conclude that eradication of marital status discrimination in the rental housing industry constitutes a governmental interest of such high order as to justify burdening Swanner's fundamental constitutional rights.[2]

There can be no question that the state has a compelling interest in eradicating discrimination against certain

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[2] Significantly, the majority cites no cases to support the proposition that the state has a compelling interest in eradicating marital status discrimination, particularly when the discrimination at issue must be balanced against interests of constitutional magnitude. Both Loomis Elec. Protection, Inc. v. Schaefer, 549 P.2d 1341 (Alaska 1976), and Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union Local 879 v. Thomas, 551 P.2d 942 (Alaska 1976), cite the general purpose statement of AS 18.80.200; however, neither case does so to establish the existence of a compelling state interest. Both cases involved gender discrimination, the eradication of which has been held to be a compelling interest, as I discuss infra. Neither case is applicable to the instant case, where marital status discrimination is involved and where the discriminating party is asserting a core constitutional freedom.

historically disadvantaged groups. See, e.g., Bob Jones University v. United States, 461 U.S. 574, 593-95 (1983) (racial discrimination); Roberts v. United States Jaycees, 468 U.S. 609, 625 (1984) (gender discrimination). This compelling interest has been found to exist based on a determination that the discrimination at issue is so invidious to personal dignity and to our concept of fair treatment as to warrant strict protection. There is no question that Swanner's right to freely exercise his religion could and should be burdened if he engaged in such discrimination as a result of his religious beliefs.

This fact does not mean, however, that every form of discrimination is equally invidious or that the state's interest in preventing it necessarily outweighs fundamental constitutional rights. Rather, the cases which have upheld an imposition on free exercise have articulated certain specific reasons that some forms of discrimination are of particular governmental interest and deserving of heightened judicial scrutiny. In Bob Jones University v. United States, 461 U.S. 574 (1983), for example, the Supreme Court refused to grant tax-exempt status to schools that maintained racially discriminatory policies under their interpretation of the Bible. In doing so, the Court discussed this nation's long history of officially sanctioned racial segregation and discrimination in education. It further noted that, since the late 1950s, every pronouncement of the Supreme Court and myriad Acts of Congress and Executive Orders attested to a national policy prohibiting such discrimination. Id. at 594-

95, 604. It therefore concluded that "[t]here can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice." Id. at 592. Accordingly, the government's interest in eradicating racial discrimination in education was found to be compelling.

Similarly, in Roberts v. United States Jaycees, 468 U.S. 609 (1984), the Supreme Court declared that the state's compelling interest in eradicating discrimination against its female citizens justified any minimal interference with an all-male organization's freedom of expressional association. In analyzing the weight of the state's interest, the Court discussed the invidious nature of gender bias, stating:

> [D]iscrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.

Id. at 625 (citations omitted). The Court also observed that society generally had recognized the importance of removing "the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." Id. at 626. Based on these conclusions, it was no stretch to find that the state possessed a compelling interest in eradicating gender discrimination, and that this interest was sufficient to overcome the Jaycees' First Amendment claim. Id. at 626-29.

The majority today avoids engaging in any similar analysis of marital status discrimination to explain why or how it is so damaging to human dignity to become of such governmental import as to overcome a fundamental constitutional right.[3] This analysis is critical. The majority cites no evidence that marital status classifications have been associated with a history of unfair treatment that would warrant heightened governmental protection.[4] To the contrary, I believe the law is clear that marital status classifications have been accorded relatively low import on the scale of interests deserving governmental protection. For instance, the government itself discriminates based on marital status in numerous regards, and there is no suggestion that this

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[3] While the majority contends that its decision today affects only Swanner's conduct, not his religious beliefs, Opinion at 19-20, I do not believe that the Alaska Constitution distinguishes so clearly between religious belief and religious conduct. See Frank, 604 P.2d at 1070 (because of the close relationship between conduct and belief, and because of the high value we assign to religious beliefs, religiously impelled actions can be forbidden only where they are outweighed by a compelling governmental interest). See also Wisconsin v. Yoder, 406 U.S. 205, 220 (1972) ("[B]elief and action cannot be neatly confined in logic-tight compartments."); Smith, 494 U.S. at 893 (O'Connor, J., concurring) ("Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must therefore be at least presumptively protected by the Free Exercise Clause."). I would hold that conduct that is motivated by sincere religious belief is presumptively protected by Article I, section 4.

[4] The majority pronounces that "the government views acts of discrimination as independent social evils. . . ." Opinion at 18. This analysis ignores the specific issue here: discrimination in housing based on marital status. Had Swanner's religious beliefs compelled him to discriminate based on characteristics such as race or gender, I clearly would vote to deny an exemption. However, I am not convinced that marital status discrimination is or should be treated as comparable in any way to race or gender discrimination.

practice should be reexamined. Alaska law explicitly sanctions such discrimination. See, e.g., AS 13.11.015 (intestate succession does not benefit unmarried partner of decedent); AS 23.30.215(a) (workers' compensation death benefits only for surviving spouse, child, parent, grandchild, or sibling); Alaska R. Evid. 505 (no marital communication privilege between unmarried couples); Serradell v. Hartford Accident & Indemn. Co., 843 P.2d 639, 641 (Alaska 1992) (no insurance coverage for unmarried partner under family accident insurance policy).

In addition, marital status classifications have never been accorded any heightened scrutiny under the Equal Protection Clause of either the federal or the Alaska Constitutions. Disparate treatment of individuals based on classifications such as race, on the other hand, are reviewed under the highest scrutiny. See, e.g., Korematsu v. United States, 323 U.S. 214 (1944) (restrictions curtailing the civil rights of a single racial group are immediately suspect and deserve strict scrutiny analysis). Gender-based classifications are similarly analyzed under a heightened level of scrutiny at the federal level. See, e.g., Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 150 (1980) (gender-based discrimination must serve important governmental objectives and the discriminatory means employed must be substantially related to the achievement of those objectives). The sliding scale approach to equal protection analysis under the Alaska Constitution similarly applies a heightened level of scrutiny to laws burdening racial minorities or other suspect

classifications. See State v. Ostrosky, 667 P.2d 1184, 1193 (Alaska 1983) ("[L]aws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized."); State v. Erickson, 574 P.2d 1, 11-12 (Alaska 1978) (where fundamental rights or suspect categories are involved, equal protection analysis under the Alaska Constitution requires a compelling state interest).

At the federal level, the eradication of marital status discrimination in the housing context clearly has not been treated as a compelling interest.[5] Neither the Federal Fair Housing Act, 42 U.S.C. § 3604 (1988), nor the Federal Civil Rights Act, 42 U.S.C. §§ 1981 and 1982 (1988), would prohibit the precise form of marital status discrimination at issue here, unless it was being used as a pretext for a more egregious form of discrimination, such as that based on race. See Marable v. H. Walker & Assocs., 644 F.2d 390, 397 (5th Cir. 1981) (finding a violation of the fair housing and civil rights statutes only after concluding that, although the landlord asserted that he refused to rent housing based on the applicant's marital status, this excuse was a mere pretext for racial discrimination); see also James A. Kushner, The Fair Housing Amendments Act of 1988: The Second Generation of Fair

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[5] While I recognize that Alaska's antidiscrimination legislation is not substantially similar to comparable federal laws -- see, e.g., Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union Local 879 v. Thomas, 551 P.2d 942, 945 (Alaska 1976) -- the majority's failure to cite any authority for a compelling interest at the state level in this case leads me to make this comparison for further guidance.

Housing, 42 Vand. L. Rev. 1049, 1106 (1989) (the Fair Housing Act does not protect unmarried couples from a landlord's refusal to rent unless a case can be made that the marital status discrimination is merely a pretext for racial, ethnic, religious or gender-based discrimination).

My research has not revealed a single instance in which the government's interest in eliminating marital status discrimination has been accorded substantial weight when balanced against other state interests, let alone fundamental constitutional rights. I find nothing to suggest that marital status discrimination is so invidious as to outweigh the fundamental right to free exercise of religion.

The majority comments that its result today is justified because Swanner's right to the free exercise of his religious beliefs must be accorded less weight since he has entered the commercial arena. Opinion at 19-21. As discussed above, it is well-accepted that an individual's right to religious freedom will not and cannot always override other interests. See, e.g., United States v. Lee, 455 U.S. 252, 261 (1982) (rejecting Amish employer's claim that imposition of social security taxes violated his free exercise rights). However, neither Lee nor any other case of which I am aware stands for the proposition that individuals like Swanner altogether waive their constitutional right to the free exercise of religion simply because a conflict between their religious faith and some legislation occurs in a commercial context. To the contrary, the Lee Court recognized that, even in a commercial

setting, the state must justify its limitation on religious liberty by showing the limitation is "essential to accomplish an overriding governmental interest." Id. at 257-58. The AERC has simply failed to meet that burden here.

The majority suggests that Swanner's constitutional rights must be accorded lesser weight because he voluntarily engages in the property management industry, and his right to engage in that business is not entitled to judicial protection. Opinion at 20-21. However, this court has stated that "the right to engage in an economic endeavor within a particular industry is an 'important' right for state equal protection purposes." State v. Enserch Alaska Constr., Inc., 787 P.2d 624, 632 (Alaska 1989) (citing Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980)). The ability to participate in a particular industry, such as rental property management, is therefore entitled to more protection under our state constitution than the majority acknowledges.

The majority incorrectly relies on Seward Chapel to arrive at its contrary conclusion. Unlike the present case, Seward Chapel did not involve a forced decision between giving up one's livelihood or violating one's religious beliefs. In Seward Chapel, we merely found that no religious belief required an exception to city zoning laws prohibiting the location of a parochial school on a specific site. 655 P.2d at 1302. No activity was totally prohibited; only the place in which it could be conducted was being regulated. I believe that there is a significant difference

between the inconvenience placed upon Seward Chapel and the total abrogation of Mr. Swanner's right to earn a living in his chosen profession while abiding by his sincerely held religious beliefs.

There is no basis in the record to conclude that an exemption in this case would create a substantial threat of harm.

In Frank, this court required that the state establish precisely how its interest would suffer if an exemption was granted to accommodate the religious conduct at issue. 604 P.2d at 1073. Thus, even accepting that the government has a strong interest in assuring available housing, the AERC must show how this interest will suffer in real terms if an exemption is granted to Swanner.

I see no evidence whatsoever in the record to suggest that Swanner's conduct poses a substantial threat to public safety, peace or order such that the burden on Swanner's rights is justified. For this reason, I fail to see why an exemption to accommodate Swanner's religious beliefs is not warranted. Mere speculation that housing for unmarried couples may become scarce if an exemption is granted is insufficient to establish a compelling governmental interest. In Frank, we specifically criticized the state for speculating, without any supporting data, that an exemption to moose hunting regulations for an Athabascan funeral potlatch would open the flood gates to widespread poaching. Id. at 1074. We stated: "'Justifications founded only on fear and apprehension are insufficient to overcome rights asserted under the First Amendment.'" Id. (quoting Teterud v. Burns, 522 F.2d 357, 361-62 (8th Cir. 1975)). We further found that, since the

state had not presented any evidence that so many moose would be taken for funeral potlatch ceremonies as to jeopardize appropriate population levels, it had not met its burden to justify curtailing the religious practice at issue. Id.[6]

As in Frank, the record here is completely devoid of any evidence to suggest that there are so many landlords or property managers in Anchorage whose religious beliefs are identical to Swanner's as to constitute a substantial threat to available housing. In a city the size of Anchorage, it is difficult to conclude based on intuition alone that housing availability for unmarried couples will become so scarce as to constitute a substantial threat to community welfare. If there were some persuasive evidence to support such a conclusion, I may well have arrived at a different conclusion today.

Conclusion

I believe Swanner has been presented with a Hobson's choice of either complying with the law or abandoning the precepts of his religion. Since the government's interest in this

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[6] Our requirement of evidentiary support for the state's refusal to grant an exemption is well-supported by United States Supreme Court precedent. See Thomas v. Review Bd. of Indiana Employment Sec. Div., 450 U.S. 707, 719 (1981) (rejecting state's asserted reasons for refusing a religious exemption due to lack of evidence in the record); Wisconsin v. Yoder, 406 U.S. 205, 224-29 (1972) (rejecting state's argument concerning the dangers of a religious exemption as speculative and unsupported by the record); Sherbert v. Verner, 374 U.S. 398, 407 (1963) ("[T]here is no proof whatever to warrant such fears . . . as those which the [state] now advance[s]."); see also Smith, 494 U.S. at 911 (Blackmun, J., dissenting) (state's assertion that religious exemption for peyote use would harm health and safety of state citizens is unsupported and speculative).

particular law does not outweigh Swanner's fundamental religious rights, Swanner should be granted an exemption to accommodate his beliefs. The AERC relies on nothing more than a pure conclusion that the state has a compelling interest in preventing marital status discrimination in housing. It has not presented any evidence that an exemption in this case would result in a substantial threat to housing availability. Nor does it explain exactly what is so invidious about marital status discrimination as to make its proscription a governmental interest of the highest order, comparable with the state's interest in eradicating racial or gender discrimination. For these reasons, I fail to see how a limited exemption for Swanner and others similarly situated is not justified. In my opinion, the analysis and result set forth in this case will return to haunt this court in future decisions.

ORDER AWARDING FEES AND COSTS

File No. S-5362

Under Appellate Rules 508(e) and (f)(1), attorney's fees of $1,000. are awarded to Appellee, and Appellee shall serve and file with this court by February 22, 1994, an itemized and verified bill of costs in compliance with Appellate Rule 508(d).

Entered at the direction of Chief Justice Moore on February 11, 1994.

CLERK OF THE SUPREME COURT

C. Bourdeau

Catherine Bourdeau
Deputy Clerk

Court: Landlord can't refuse unwed couples

2/12/94

By LIZ RUSKIN
Daily News reporter

The Alaska Supreme Court has ruled that a landlord cannot refuse on religious grounds to rent to unmarried couples.

Tom Swanner, of Whitehall Properties, refused to rent to unmarried tenants who wanted to live with a member of the opposite sex, saying cohabitation outside marriage was repugnant to his Christian beliefs. Swanner also considered it sinful for roommates of the opposite sex to live together because such arrangements give the appearance of immorality.

Three would-be tenants filed separate complaints several years ago with the Anchorage Equal Rights Commission saying they had been the victims of marital-status discrimination, in violation of city and state anti-discrimination laws.

The commission agreed, so Swanner appealed to the courts.

His lawyer, Stephen DeLisio, argued that Swanner does not discriminate based on marital status because he rents to people who are married, single, widowed, divorced or separated. However, if his refusal to rent to unmarried couples who plan to live together is considered discrimination, he should be excused from compliance with the anti-discrimination laws because of his constitutional right to free exercise of religion, he argued. Otherwise, he said, he'd be faced with a Hobson's choice: Give up his economic livelihood or act against his religious beliefs.

The Supreme Court, however, said Swanner's Hobson's choice is of his own making because he chose to enter an occupation that is regulated by anti-discrimination laws.

"It is important to note that any burden placed on Swanner's religion (by the anti-discrimination laws) falls on his conduct and not on his belief," the justices said in the 4-1 opinion. Citi-

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zens have absolute freedom of belief but only limited protection for religiously motivated conduct.

Chief Justice Daniel Moore wrote the dissent.

Moore said he was not willing to place the right to cohabitate on the same constitutional level as the right to freedom of religion or to freedom from discrimination based on race and gender.

Moore also said there's no evidence to suggest housing for unmarried couples will become scarce in Anchorage if Swanner and like-minded property managers are granted limited exceptions to the rules.

Landlord says no room at inn for unmarried couples

By JAY CROFT
Times Writer

An Anchorage property manager unabashedly admits for 10 years he has refused to allow unmarried couples to rent any of the 200 homes he manages, but he says he has broken no law.

Tom Swanner says his policy does not violate statutes prohibiting discrimination based on marital status. And even if he is breaking the law, Swanner says, it doesn't matter because he follows a higher order: God's.

"You have to choose which law you're going to obey," says Swanner, who has a religious radio talk show and once was pastor at Grace Brethren Church in Chugiak. "You want to talk about what's legal; I want to talk about what's right."

But the city's Equal Rights Commission says Swanner's rental policy is discrimination based on marital status. Swanner says unmarried couples have no marital status and the city is discriminating against him because of his religious beliefs.

"I can't take money from people who are going to cohabit," Swanner said Monday in the Midtown office of Whitehall Property Management. "As a Christian, I cannot in good conscience assist someone in something

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Rent

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that's going to harm them.

"What does the community benefit by forcing me to rent to these couples? There is no benefit. What they are doing is counter to everything that is pure and wholesome and right.

"I'm in trouble because of what I believe, not because of my job description."

His belief has prompted at least three complaints to the Anchorage Equal Rights Commission.

Dee Moose in August 1989 thought she had found the perfect home. The five-bedroom, downtown duplex had plenty of room for Moose, her teen-age son, her boyfriend and another couple.

She said when she called Swanner, he asked who would be living in the house. At the mention of her boyfriend, Swanner rejected her, she said.

"Right then and there he said, 'I don't rent to fornicators. You're living in sin and I will not rent to anyone who is fornicating,'" she said. "I was just a little shocked."

She said Swanner also asked her if she intended to marry her boyfriend. She said no, and Swanner called her a sinner.

"I said, 'What religion are you?' He said, 'I'm a Christian.' I said, 'Great, I'm a Catholic, so we're in the same boat.' But he still refused. I think within half an hour I filed suit against him."

Tom Swanner
... refuses unmarried couples

Swanner on Monday said he never would tell anyone they were not a Christian or refuse to rent to a sinner. Everyone is a sinner, he said.

Moose took her case to the Equal Rights Commission. Two other people, in unrelated cases, have filed similar complaints. All gave similar accounts.

Joseph Bowles and William F. Harper each said Swanner refused to rent to them because they wanted to live with their girlfriends.

Moose, Bowles and Harper all claimed discrimination based on marital status and religion.

The commission consolidated the cases and investigated. It dropped the religious discrimination complaints, but found evidence of marital status discrimination, said Paul Connerty, the panel's executive director.

Robert Landau, an Anchorage lawyer appointed by the commission to act as hearing officer, listened to the complaints last month, more than a year after they were filed.

Moose, Swanner and other witnesses testified and the commission's attorney filed her closing arguments Nov. 13.

Swanner's lawyer has until Friday to file.

Landau is expected to make a recommendation to the panel's nine commissioners, who will decide whether Swanner broke the city's ordinance. Their decision can be appealed through state courts.

Swanner, in testimony last month and an interview Monday, said he does not remember meeting any of the people who filed complaints, but he would not dispute the meetings occurred. He said he sees hundreds of potential tenants a year.

But he readily admits to discrimination, though he claims it is not based on marital status.

"I will not rent to cohabiting couples," he said when questioned last month by Beth Behner, the commission's attorney. "I will say no to cohabiting couples every time, and I always have said no."

He said he would not rent to two people who are married to others and want to live together, or to a single man and woman.

The term "unmarried couple" is not a marital status, he said, so by denying them rentals he could not be discriminating on the basis of marital status.

"I'm talking about the appearance of marriage when it really isn't," he said.

Swanner has run Whitehall for about 10 years. He usually manages about 200 properties, he said. Swanner told Behner during last month's hearing he considers the business part of his ministry.

And although it is against city ordinance to ask about an applicant's marital status, Swanner said he asks to obtain information for a credit application form — not to ferret out unmarried couples.

But he said he is uninterested in regulating other people's behavior.

"My job is to control my conduct. That's what this is all about," he said. "If you're asking me do I feel that I am assisting the person when they cohabit by signing on the line saying, yes, you can do it with my knowledge? Yes, I feel I'm assisting.

"Just like I would be assisting a person if I was a gun salesman and he mumbled across the counter, 'She'll be sorry tonight.'"

Swanner said only once has he rented to an unmarried couple — a brother and sister. And he said he almost had to evict a young woman he had known for years, who baby-sat his children, because her boyfriend moved in.

"She moved out, but I would have evicted her if she hadn't," he said.

Even if men and women could live together platonically, he said, there always would be the appearance of evil.

Swanner said he refuses to rent to unmarried couples because they violate God's law, and he cannot help them engage in sin.

Fornication leads to all sorts of problems, including unwanted pregnancy, AIDS and abandoned women getting caught up in the welfare cycle, he said.

"Do you know how she raises her income? She engages in a little more fornication to get another baby," he said. "Now, I'm not saying no because of that reason, you understand. I'm saying no because God says it's wrong."

He said he also would not rent to someone who would run a crack house, pornography shop "or anything that is wrong, not good for the community, not socially redeeming."

He said he tells property owners about his policy, but at least one said she cannot recall him saying anything about it and it is not mentioned in the management contract.

"It wasn't something that I had even thought about," said Mary Newton, who owns the O Street duplex Moose wanted to rent last year. Swanner managed it briefly before Newton fired him over what she said was a personality clash. She refused to elaborate, but she said it had nothing to do with Moose's complaint.

"Let's face it, couples are doing this all over town," Newton said. "It's not my lifestyle, but I realize this is something you can hardly prevent."

Swanner's lawyer, Stephen Delisio, has asked the charges be dismissed, saying Moose, Bowles and Harper misunderstood Swanner's conduct.

"Mr. Swanner's reported basis for refusing to rent was not per se the marital status of the individuals in question but the use they intended to make of the premises: for sexual cohabitation outside the bonds of matrimony.

"The problem is not their marital status, but the fact they intend to use the rental premises for purposes which are immoral, and particularly in Mr. Swanner's case, for purposes which are contrary to his religious beliefs."

City law since 1975 and state law for a decade has prohibited discrimination based on marital status, commission director Connerty said.

But Swanner said he is confident of his case.

"There's no way you can get me on marital status," he said Monday. "There's no 'unmarried couple' status. The law's a good law. There's nothing wrong with the law. They're bending it. The law's an umbrella; I'm not under it."

Swanner says the dispute clearly centers on his religious beliefs.

"There's evidence everywhere in my life that I'm a religious person, maybe a religious fanatic for some people. I'm into religion here. I'm into what God wants," he said.

"I'm doing this because of my religious beliefs, not because I've got some bone to pick with people who are single or married."

But Connerty of the Equal Rights Commission disagreed.

"His religion is guiding him," Connerty said. "But it was their marital status that was his motive for the discrimination."

Swanner said regardless of how the commission and courts rule, he will remain true to his beliefs.

"I can look in the mirror and say, 'Swanner, you're true to what you believe,'" he said. "I'm just trying to be what I claim to be and I'm doing it in the marketplace. What's wrong with that?"