

SB

137

SENATE COMMITTEE REPORT

DATE: 3/29/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered

SENATE BILL NO. 137

SB 137 EVICTING INSTITUTIONAL PROPERTY USERS

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>Ralph Debra</i>	✓			

ALASKA STATE SENATE

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Senator Ralph Seekins
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Senate Bill 137 Sponsor Statement

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060-09.45.160"

Currently the University of Alaska does not have the ability to evict problem students out of University residences. In order to remove a student from a University residence, the University must obtain a court order. Thousands of dollars of public funds and numerous hours have been spent litigating with students who have succeeded in convincing the court that they cannot be removed from student housing without a court order.

Alaska Statute 34.03.330(b) exempts certain types of institutions from the Uniform Residential Landlord and Tenant Act. The Landlord Tenant Act was designed to alleviate injustices inflicted on residential renters by unscrupulous private landlords. Public service institutional entities such as hospitals, schools, nursing homes, educational establishments, church housing, and counseling centers are not compatible with the heightened protections designed for residential renters under ULTA. AS 34.03.330(b)(1) recognizes this, and lists different types of organizations where the ULTA should not be applied.

A hospital should not be required to obtain a court order to remove a patient who no longer needs its services. A student expelled from school, should not be able to insist on remaining in student housing until a court order is obtained removing the former student. Counseling agencies dealing with individuals with problems shouldn't have to get a court order to evict or remove disruptive patients after their course of treatment has been completed.

SB 137 adds a new section to title nine under, actions relating to real property. It provides institutions listed under, AS 34.03.330, would no longer require a court action to recover possession of a residence.

3/10/05

Sponsor Statement

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 137
 (S) Publish Date: 3/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act providing that an institution providing RDU CIVIL
accommodations exempt from the provisions of the Uniform ..." Component Commercial and Fair Business
 Sponsor Senator Seekins
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill adds a new subsection to AS 09.45.070 in order to provide that institutions that are exempt from the Landlord Tenant Act (as listed in AS 34.03.330(b)(1)) can evict tenants without resorting to court action under AS 09.45.070 -0.160 (Code of Civil Procedure - Actions Relating to Real Property). This statute currently requires court action before eviction can occur.

 Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 3/21/05 11:14 AM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/21/2005
 Agency Department of Law



Alaska State Legislature

Senate Majority

Web: www.akrepublicans.org

Sponsor: Senator Ralph Seekins
Current Version: SB 137
Contact: Joe Michel, 465-2327

Fact Sheet for: Senate Bill 137

Short Title: EVICTING INSTITUTIONAL PROPERTY USERS

Summary:

- Amends the Uniform Residential Landlord and Tenant Act.
- Allows an institution to evict a person from housing owned by the institution.

Benefits:

- Allows an institution to avoid the cost of going through court in order to evict someone from property owned by the institution.

Background:

- Current law requires institutions to obtain a court order before evicting a person living in institutional residences. For example, the University of Alaska spends thousands of dollars in court costs obtaining a court order so expelled students can be evicted. This is an unnecessary financial burden for the university and other institutions like hospitals, counseling centers and nursing homes. SB 137 adds a new section to the Uniform Residential Landlord and Tenant Act that lifts the requirement for institutions to obtain a court order to evict someone from the residence.

Removing Students from Student Housing: The university has experienced unnecessary and unjustifiable expense, disruption, and delay associated with efforts to remove disruptive students from university housing. This issue arises out of judicial application of forcible entry and detainer law, which law more properly applies to non-educational rental and lease contracts, to student housing contracts. In short, the application of this law requires the university to obtain a court order before removing a student from housing, whether or not the student has been expelled. The university has so far wasted \$22,000 of public funds, not to mention a probably greater expenditure of internal time, litigating with student housing residents who have succeeded in convincing the court that they cannot be removed from student housing without a court order. But the real cost will come if the law is not changed to remedy this issue.

A number of factors distinguish student housing situations from the usual landlord tenant arrangement.

- ✓ Students need to study. Other students who repeatedly play loud music, or allow their children (in the case of family student housing) to run unsupervised, can seriously interfere with a threshold requirement of a successful university, i.e. to maintain an effective learning environment.
- ✓ Students who live on campus do not have many good options for alternative housing. They are essentially a captive audience, and should not have to bear the insults to their study atmosphere that in other circumstances they could avoid by moving elsewhere.
- ✓ By statute, the President of the university or designee can "expel" students: "The power to suspend and expel a student for misconduct or other cause and to reinstate the student is vested solely in the president of the University of Alaska." AS 14.40.240. But, courts have taken the rather arbitrary view that a student housing contract overrides this power, by placing the power to evict a student from student housing solely with the courts. And, in some cases, the university chooses to remove students from housing, but would prefer that they be allowed to continue as students. But, as the law currently reads, the university may be forced to expel students just to get them to leave student housing.
- ✓ Distinct from the usual landlord/tenant relationship, the university's provision of student housing is only part, but an integral part, of a larger relationship with the student. Under the approach followed by the courts, a student could be expelled from school, but insist on remaining in student housing until a court order is obtained removing the student.
- ✓ Distinct from the usual landlord/tenant relationship, the university has two additional reasons to accept people into its student housing that a private/commercial entity would not: First, as a public entity, the university has less latitude in rejecting people who might be difficult residents. Second, society benefits when it takes in socially challenged residents in an effort help them become more productive citizens. The university should not be saddled with the expense and delay of going to court to remove from housing students who have proven themselves too disruptive.

One way to address this issue would be to amend AS 14.40.240 to define the power to suspend or expel a student to include the power to terminate a student housing contract and remove the occupants from housing without going through court proceedings under AS 09.45, as follows:

AS 14.40.240. Power of president to suspend and expel students. The power to suspend and expel a student for misconduct or other cause and to reinstate the student is vested solely in the president of the University of Alaska. The president may delegate the exercise of the power to the chancellor or other official on each campus of the university or to the administrative head or director of the community college or other campus or extended unit of the university. For the purposes of this section, the power to suspend or expel a student includes the power to restrict a student from entering or remaining on or in all or a portion of university premises, to terminate a student housing contract, or, notwithstanding AS 09.45, to forcibly remove a student from university provided housing, if the student refuses to leave peacefully.

Another approach that would work well in combination with the first would be to amend the statute upon which the courts' rulings are based. The legal history of student housing includes exclusion from operation of the Uniform Landlord Tenant Act. ULTA was designed to alleviate injustices inflicted on residential renters by unscrupulous private landlords. Because public service institutional entities such as hospitals, schools, nursing homes, church housing, and counseling operations were not among the offenders, and because the realities of operating such services are not compatible with the heightened protections designed for residential renters, these public service institutions were exempted from the ULTA. See AS 34.30.330(b) exempting from ULTA "residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services." But, according to the courts, this exemption does not apply to exempt these entities from having to obtain a court order to remove patrons from their premises.

The issue as it applies to the university is one that could apply equally to these other public service entities. For instance, a hospital should not be required to obtain a court order to remove a patient who no longer needs its services, or who is disrupting operations. And a church should not be required to seek a court order to remove a convent resident who takes to preaching a different faith. Thus, it would be reasonable to also propose an exemption to the forcible entry and detainer statute that eliminates any requirement of seeking a court order to recover possession of such institutional property from users.

Sec. 09.45.060 Prohibition of use of force for entry on realty.

(a) A person may not enter upon any land, tenement, or other real property except in cases where entry is given by law. In those cases the entry may not be made with force but only in a peaceable manner.

(b) Nothing in this section or chapter shall be read to require court action to recover possession of institutional property that is excepted from the provisions of the Uniform Residential Landlord and Tenant Act by AS 34.03.330(b)(1).

Sec. ~~34.03.330~~. Application and exclusions.

(a) This chapter applies to and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit in this state.

(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, 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;

(8) occupancy under a rental agreement covering premises used as part of a transitional or supportive housing program that is sponsored or operated by a public corporation or by a nonprofit corporation and that provides shelter and

related support services intended to improve the occupant's opportunity to obtain permanent housing.

Sec. ~~14.40.240~~. Power of president to suspend and expel students.

The power to suspend and expel a student for misconduct or other cause and to reinstate the student is vested solely in the president of the University of Alaska. The president may delegate the exercise of the power to the chancellor or another official on each campus of the university or to the administrative head or director of a community college or other campus or extended unit of the university.