

1 HB328
2 126679-4
3 By Representative Hill
4 RFD: Commerce and Small Business
5 First Read: 24-MAR-11

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8 SYNOPSIS: Currently, the Alabama Uniform Residential
9 Landlord and Tenant Act provides for the legal
10 rights and remedies for rental agreements between a
11 landlord and a tenant.

12 This bill would amend the act to provide
13 further for unenforceable rental agreements, access
14 to a landlord's property, a landlord's remedy for a
15 tenant's abandonment of rental property, and a
16 landlord's action for eviction.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
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22 To amend Sections 35-9A-163, 35-9A-303, 35-9A-423,
23 and 35-9A-461, Code of Alabama 1975, relating to the Alabama
24 Uniform Residential Landlord and Tenant Act; to provide
25 further for prohibited, unenforceable provisions in a rental
26 agreement, access to rental property by a landlord for

1 repairs, a landlord's remedy for abandonment of rental
2 property by a tenant, and a landlord's action for eviction.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 35-9A-163, 35-9A-303, 35-9A-423,
5 and 35-9A-461, Code of Alabama 1975, are amended to read as
6 follows:

7 "§35-9A-163.

8 "(a) A rental agreement may not provide that the
9 tenant:

10 "(1) agrees to waive or forego rights or remedies
11 established under Section 35-9A-204, 35-9A-401, or 35-9A-404,
12 or requirements of security deposits established by this
13 chapter or under the law of unlawful detainer;

14 "(2) authorizes any person to confess judgment on a
15 claim arising out of the rental agreement;

16 "(3) agrees to pay the landlord's attorney's fees or
17 cost of collection; or

18 "(4) agrees to the exculpation or limitation of any
19 liability of the landlord arising under law or to indemnify
20 the landlord for that liability or the costs connected
21 therewith.

22 "(b) A provision prohibited by subsection (a)
23 included in a rental agreement is unenforceable. If a landlord
24 ~~deliberately uses~~ seeks to enforce a provision in a rental
25 agreement containing provisions known by the landlord to be
26 prohibited, the tenant may recover in addition to actual

1 damages an amount up to one months' periodic rent and
2 reasonable attorney's fees.

3 "§35-9A-303.

4 "(a) A tenant shall not unreasonably withhold
5 consent to the landlord to enter into the dwelling unit in
6 order to inspect the premises, make necessary or agreed
7 repairs, decorations, alterations, or improvements, supply
8 necessary or agreed services, or exhibit the dwelling unit to
9 prospective or actual purchasers, mortgagees, tenants,
10 workmen, or contractors.

11 "(b) A landlord may enter the dwelling unit without
12 consent of the tenant only in the following circumstances:

13 "(1) In case of emergency.

14 "(2) Pursuant to court order.

15 "(3) As permitted by Sections 35-9A-422 and
16 35-9A-423(b).

17 "(4) At reasonable times and with prior notice as
18 provided in subsection (c), to show the premises to a
19 prospective tenant or purchaser, if a landlord provides the
20 tenant separate from the rental agreement a general notice
21 signed by the tenant for the right to access for such a
22 purpose within four months of the expiration of the rental
23 agreement, and only in the company of a prospective tenant or
24 purchaser.

25 "(5) When the landlord has reasonable cause to
26 believe the tenant has abandoned or surrendered the premises.

1 "(c) A landlord shall not abuse the right of access
2 or use it to harass the tenant. Except as provided in this
3 section or unless it is impracticable to do so, the landlord
4 may show the premises at any reasonable time by giving the
5 tenant at least two days' notice of the landlord's intent to
6 enter and may enter only at reasonable times. Posting of a
7 note on the primary door of entry to the residence of the
8 tenant stating the intended time and purpose of the entry
9 shall be a permitted method of notice for the purpose of the
10 landlord's right of access to the premises.

11 "(d) If a landlord provides separate from the lease
12 in a general notice or an advance schedule in excess of two
13 days for repairs, maintenance, pest control, or for service
14 relating to health or safety, whether such notice is for a
15 specific time or within a designated time period, then no
16 additional day's notice is required to access the premises. A
17 tenant may consent to provide a landlord with access to the
18 premises with less than two days' notice.

19 "(e) If a tenant requests repairs or maintenance or
20 improvements to a dwelling unit, the tenant shall be deemed to
21 have granted consent to the landlord to enter into the
22 dwelling unit at a mutually agreeable time and make the
23 repairs, maintenance, or improvements as requested by the
24 tenant.

25 "§35-9A-423.

26 "(a) If a rental agreement requires the tenant to
27 give notice to the landlord of an anticipated extended absence

1 in excess of 14 days pursuant to Section 35-9A-304 and the
2 tenant willfully fails to do so, the landlord may recover
3 actual damages from the tenant.

4 "(b) During any absence of a tenant in excess of 14
5 days, the landlord may enter the dwelling unit at times
6 reasonably necessary.

7 "(c) If a tenant abandons the dwelling unit, the
8 landlord shall make reasonable efforts to rent it at a fair
9 rental. But such duty shall not take priority over the
10 landlord's right to first rent other vacant units. If the
11 landlord rents the dwelling unit for a term beginning before
12 the expiration of the rental agreement, it terminates as of
13 the date of the new tenancy. ~~If the landlord fails to use
14 reasonable efforts to rent the dwelling unit at a fair rental
15 or if the landlord accepts the abandonment as a surrender, the
16 rental agreement is deemed to be terminated by the landlord as
17 of the date the landlord has notice of the abandonment. If the
18 landlord fails to use reasonable efforts to rent the dwelling
19 unit at a fair rental, which may include making necessary
20 repairs to return the unit to a marketable condition, the
21 rental agreement is deemed to be terminated by the landlord as
22 of the date the landlord has notice of abandonment. If the
23 tenancy is from month-to-month or week-to-week, the term of
24 the rental agreement for this purpose is deemed to be a month
25 or a week, as the case may be.~~

26 "(d) If a tenant leaves property in the unit more
27 than 14 days after termination pursuant to this chapter, the

1 landlord has no duty to store or protect the tenant's property
2 in the unit and may dispose of it without obligation.

3 "§35-9A-461.

4 "(a) A landlord's action for eviction, rent,
5 monetary damages, or other relief relating to a tenancy
6 subject to this chapter shall be governed by the Alabama Rules
7 of Civil Procedure and the Alabama Rules of Appellate
8 Procedure except as modified by this chapter.

9 "(b) District courts and circuit courts, according
10 to their respective established jurisdictions, shall have
11 jurisdiction over eviction actions, and venue shall lie in the
12 county in which the leased property is located. Eviction
13 actions shall be entitled to precedence in scheduling over all
14 other civil cases.

15 "(c) Service of process shall be made in accordance
16 with the Alabama Rules of Civil Procedure. However, if a
17 sheriff, constable, or process server is unable to serve the
18 defendant personally, service may be had by delivering the
19 notice to any person who is sui juris residing on the
20 premises, or if after reasonable effort no person is found
21 residing on the premises, by posting a copy of the notice on
22 the door of the premises, and on the same day of posting or by
23 the close of the next business day, the sheriff, the
24 constable, the person filing the complaint, or anyone on
25 behalf of the person, shall mail notice of the filing of the
26 unlawful detainer action by enclosing, directing, stamping,
27 and mailing by first class a copy of the notice to the

1 defendant at the mailing address of the premises and if there
2 is no mailing address for the premises to the last known
3 address, if any, of the defendant and making an entry of this
4 action on the return filed in the case. Service of the notice
5 by posting shall be complete as of the date of mailing the
6 notice.

7 "(d) Notwithstanding subsection (a) of Section
8 12-12-70, any party may appeal from an eviction judgment
9 entered by a district court to the circuit court at any time
10 within seven days after the entry thereof. The filing of a
11 timely post-judgment motion pursuant to the Alabama Rules of
12 Civil Procedure shall suspend the running of the time for
13 filing a notice of appeal. In cases where post-judgment
14 motions are filed, the full time fixed for filing a notice of
15 appeal shall be computed from the date of the entry in the
16 civil docket of an order granting or denying such motion, or
17 the date of the denial of such motion by operation of law
18 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
19 Upon filing of an appeal by either party, the clerk of the
20 court shall schedule the action for trial as a preferred case,
21 and it shall be set for trial within 60 days from the date of
22 the filing of the appeal. In eviction actions, an appeal by a
23 tenant to circuit court or to an appellate court does not
24 prevent the issuance of a writ of restitution or possession
25 unless the tenant pays to the clerk of the circuit court ~~all~~
26 ~~rents properly payable~~ past due rents under the terms of the
27 lease since the date of the filing of the action, and

1 continues to pay all rent that becomes due and properly
2 payable under the terms of the lease as they become due,
3 during the pendency of the appeal. In the event of dispute,
4 the amounts properly payable shall be ascertained by the
5 court.

6 "(1) If the tenant should fail to make any payments
7 ~~determined to be properly payable~~ as they become due under
8 this subsection, upon motion, the court shall issue a writ of
9 restitution or possession and the landlord shall be placed in
10 full possession of the premises.

11 "(2) Upon disposition of the appeal, the court shall
12 direct the clerk as to the disposition of the funds paid to
13 the clerk pursuant to this subsection.

14 "(e) If an eviction judgment enters in favor of a
15 landlord, a writ of possession shall issue upon application by
16 the landlord. Notwithstanding Rule 62 of the Alabama Rules of
17 Civil Procedure, the automatic stay on the issuance of the
18 writ of possession or restitution shall be for a period of
19 seven days. If a tenant without just cause re-enters the
20 premises, the tenant can be held in contempt and successive
21 writs may issue as are necessary to effectuate the eviction
22 judgment.

23 "(f) In the event that the landlord is placed in
24 possession under a writ of restitution or possession, and on
25 appeal the judgment is reversed and one entered for the tenant
26 or the proceeding on appeal is quashed or dismissed, the
27 circuit court may award a writ of restitution or possession to

1 restore the tenant to possession as against the landlord, but
2 not as against a third party. The issuance of the writ rests
3 in the discretion of the appellate court, and the circuit
4 court, in all cases, may direct writs of restitution or
5 possession to be issued by the trial court when, in the
6 judgment of the circuit court, such writ is proper or
7 necessary."

8 Section 2. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.