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Place On Calendar

HOUSE FILE 2244

By COMMITTEE ON STATE GOVERNMENT

(Formerly Study Bill 344)

Passed House, Date 3-7-78 (p. 835) Passed Senate, Date 4/28/78 (P. 118)

Vote: Ayes 71 Nays 21 Vote: Ayes 29 Nays 8

Approved June 27, 1978

A BILL FOR

1 An Act to adopt the Uniform Landlord Tenant Act as modified
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part I

SHORT TITLE, CONSTRUCTION, APPLICATION

AND SUBJECT MATTER OF THE ACT

Section 1. NEW SECTION. SHORT TITLE. This Act shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Sec. 2. NEW SECTION. PURPOSES--RULES OF CONSTRUCTION.

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this Act are:

a. To simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; and

b. To encourage landlord and tenant to maintain and improve the quality of housing.

Sec. 3. NEW SECTION. SUPPLEMENTARY PRINCIPLES OF LAW APPLICABLE. Unless displaced by the provisions of this Act, the principles of law and equity in this state, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, shall supplement its provisions.

Sec. 4. NEW SECTION. ADMINISTRATION OF REMEDIES-- ENFORCEMENT.

1. The remedies provided by this Act shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

2. A right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Part II

SCOPE AND JURISDICTION

1 Sec. 5. NEW SECTION. EXCLUSIONS FROM APPLICATION OF ACT.

2 Unless created to avoid the application of this Act, the
3 following arrangements are not governed by this Act:

4 1. Residence at an institution, public or private, if
5 incidental to detention or the provision of medical, geriatric,
6 educational, counseling, religious, or similar service.

7 2. Occupancy under a contract of sale of a dwelling unit
8 or the property of which it is a part, if the occupant is
9 the purchaser or a person who succeeds to his or her interest.

10 3. Occupancy by a member of a fraternal or social organiza-
11 tion in the portion of a structure operated for the benefit
12 of the organization.

13 4. Transient occupancy in a hotel, motel or other similar
14 lodgings.

15 5. Occupancy by an employee of a landlord whose right
16 to occupancy is conditional upon employment in and about the
17 premises.

18 6. Occupancy by an owner of a condominium unit or a holder
19 of a proprietary lease in a cooperative.

20 7. Occupancy under a rental agreement covering premises
21 used by the occupant primarily for agricultural purposes.

22 Sec. 6. NEW SECTION. JURISDICTION AND SERVICE OF PROCESS.

23 1. A district court of this state may exercise jurisdiction
24 over a landlord or tenant with respect to conduct in this
25 state governed by this Act or with respect to a claim arising
26 from a transaction subject to this Act which may be brought
27 as a small claim. In addition to other methods provided by
28 rule or by statute, personal jurisdiction over a landlord
29 or tenant may be acquired in a civil action or proceeding
30 instituted in a district court by the service of process in
31 the manner provided by this section.

32 2. If a landlord is not a resident of this state or is
33 a corporation not authorized to do business in this state
34 and engages in conduct in this state governed by this Act,
35 or engages in a transaction subject to this Act, the landlord

1 shall designate an agent upon whom service of process may
2 be made in this state. The agent shall be a resident of this
3 state or a corporation authorized to do business in this
4 state. The designation shall be in writing and filed with
5 the secretary of state. If a designation is not made and
6 filed or if process cannot be served in this state upon the
7 designated agent, process may be served upon the secretary
8 of state, but service upon the secretary is not effective
9 unless the plaintiff or petitioner timely mails a copy of
10 the process and pleading by registered or certified mail to
11 the defendant or respondent at his or her last reasonably
12 ascertainable address. An affidavit of compliance with this
13 section shall be filed with the clerk of the district court
14 on or before the return day of the process, or within a further
15 time as the court allows.

16 Part III

17 GENERAL DEFINITIONS AND

18 PRINCIPLES OF INTERPRETATION; NOTICE.

19 Sec. 7. NEW SECTION. GENERAL DEFINITIONS. Subject to
20 additional definitions contained in subsequent articles of
21 this Act which apply to specific articles or its parts, and
22 unless the context otherwise requires, in this Act:

23 1. "Building and housing codes" include a law, ordinance,
24 or governmental regulation concerning fitness for habitation,
25 or the construction, maintenance, operation, occupancy, use,
26 or appearance of a premise or dwelling unit.

27 2. "Dwelling unit" means a structure or the part of a
28 structure that is used as a home, residence, or sleeping
29 place.

30 3. "Good faith" means honesty in fact in the conduct of
31 the transaction concerned.

32 4. "Landlord" means the owner, lessor, or sublessor of
33 the dwelling unit or the building of which it is a part, and
34 it also means a manager of the premises who fails to disclose
35 as required by section fifteen (15) of this Act.

1 5. "Business" includes a corporation, government,
2 governmental subdivision or agency, business trust, estate,
3 trust, partnership or association, two or more persons having
4 a joint or common interest, and any other legal or commercial
5 entity.

6 6. "Owner" means one or more persons, jointly or severally,
7 in whom is vested:

8 a. All or part of the legal title to property; or

9 b. All or part of the beneficial ownership and a right
10 to present use and enjoyment of the premises, and the term
11 includes a mortgagee in possession.

12 7. "Premises" means a dwelling unit and the structure
13 of which it is a part and facilities and appurtenances of
14 it and grounds, areas and facilities held out for the use
15 of tenants generally or whose use is promised to the tenant.

16 8. "Rent" means a payment to be made to the landlord under
17 the rental agreement.

18 9. "Rental agreement" means an agreement written or oral,
19 and a valid rule, adopted under section twenty (20) of this
20 Act, embodying the terms and conditions concerning the use
21 and occupancy of a dwelling unit and premises.

22 10. "Rental deposit" means a deposit of money to secure
23 performance of a residential rental agreement, other than
24 a deposit which is exclusively in advance payment of rent.

25 11. "Roomer" means a person occupying a dwelling unit
26 that lacks a major bathroom or kitchen facility, in a structure
27 where one or more major facilities are used in common by
28 occupants of the dwelling unit and other dwelling units.
29 Major facility in the case of a bathroom means toilet, or
30 either a bath or shower, and in the case of a kitchen means
31 refrigerator, stove or sink.

32 12. "Single family residence" means a structure maintained
33 and used as a single dwelling unit. Notwithstanding that
34 a dwelling unit shares one or more walls with another dwelling
35 unit, it is a single family residence if it has direct access

1 to a street or thoroughfare and shares neither heating
2 facilities, hot water equipment, nor any other essential
3 facility or service with another dwelling unit.

4 13. "Tenant" means a person entitled under a rental agree-
5 ment to occupy a dwelling unit to the exclusion of another.

6 Sec. 8. NEW SECTION. UNCONSCIONABILITY.

7 1. If the court, as a matter of law, finds that:

8 a. A rental agreement or any provision of it was uncon-
9 scionable when made, the court may refuse to enforce the
10 agreement, enforce the remainder of the agreement without
11 the unconscionable provision, or limit the application of
12 an unconscionable provision to avoid an unconscionable result.

13 b. A settlement in which a party waives or agrees to
14 forego a claim or right under this Act or under a rental
15 agreement was unconscionable at the time it was made, the
16 court may refuse to enforce the settlement, enforce the
17 remainder of the settlement without the unconscionable
18 provision, or limit the application of an unconscionable
19 provision to avoid any unconscionable result.

20 2. If unconscionability is put into issue by a party or
21 by the court upon its own motion the parties shall be afforded
22 a reasonable opportunity to present evidence as to the setting,
23 purpose, and effect of the rental agreement or settlement
24 to aid the court in making the determination.

25 Sec. 9. NEW SECTION. NOTICE.

26 1. A person has notice of a fact if such person has actual
27 knowledge of it, has received a notice or notification of
28 it or, if from all the facts and circumstances known to that
29 person at the time in question, such person has reason to
30 know that it exists. A person "knows" or "has knowledge"
31 of a fact if such person has actual knowledge of it.

32 2. A person "notifies" or "gives" a notice or notifi-
33 cation to another by taking steps reasonably calculated to
34 inform the other in ordinary course whether or not the other
35 actually comes to know of it. A person "receives" a notice

1 or notification when it comes to that person's attention or
2 in the case of the landlord, it is delivered at the place
3 of business of the landlord through which the rental agreement
4 was made or at a place held out by the landlord as the place
5 for receipt of the communication or, when in the case of the
6 tenant, it is delivered in hand to the tenant or mailed by
7 registered or certified mail to such person at the place held
8 out by such person as the place for receipt of the
9 communication, or in the absence of such designation, to such
10 person's last known place of residence.

11 3. "Notice," knowledge or a notice or notification received
12 by an organization is effective for a particular transaction
13 from the time it is brought to the attention of the individual
14 conducting that transaction, and in any event from the time
15 it would have been brought to the attention of such person
16 if the organization had exercised reasonable diligence.

17 Part IV

18 GENERAL PROVISIONS

19 Sec. 10. NEW SECTION. TERMS AND CONDITIONS OF RENTAL
20 AGREEMENT.

21 1. The landlord and tenant may include in a rental agree-
22 ment, terms and conditions not prohibited by this Act or other
23 rule of law including rent, term of the agreement, and other
24 provisions governing the rights and obligations of the parties.

25 2. In absence of agreement, the tenant shall pay as rent
26 the fair rental value for the use and occupancy of the dwelling
27 unit.

28 3. Rent shall be payable without demand or notice at the
29 time and place agreed upon by the parties. Unless otherwise
30 agreed, rent is payable at the dwelling unit and periodic
31 rent is payable at the beginning of any term of one month
32 or less and otherwise in equal monthly installments at the
33 beginning of each month. Unless otherwise agreed, rent shall
34 be uniformly apportionable from day-to-day.

35 4. Unless the rental agreement fixes a definite term,

1 the tenancy shall be week-to-week in case of a roomer who
2 pays weekly rent, and in all other cases month-to-month.

3 Sec. 11. NEW SECTION. EFFECT OF UNSIGNED OR UNDELIVERED
4 RENTAL AGREEMENT.

5 1. If a landlord does not sign and deliver a written
6 rental agreement signed and delivered to the landlord by the
7 tenant, acceptance of rent without reservation by the landlord
8 gives the rental agreement the same effect as if it had been
9 signed and delivered by the landlord.

10 2. If a tenant does not sign and deliver a written rental
11 agreement signed and delivered to the tenant by the landlord,
12 acceptance of possession without reservation gives the rental
13 agreement the same effect as if it had been signed and
14 delivered by the tenant.

15 3. If a rental agreement given effect by the operation
16 of this section provides for a term longer than one year,
17 it is effective only for one year.

18 Sec. 12. NEW SECTION. PROHIBITED PROVISIONS IN RENTAL
19 AGREEMENTS.

20 1. A rental agreement shall not provide that the tenant
21 or landlord:

22 a. Agrees to waive or to forego rights or remedies under
23 this Act;

24 b. Authorizes a person to confess judgment on a claim
25 arising out of the rental agreement;

26 c. Agrees to pay the other party's attorney fees; or

27 d. Agrees to the exculpation or limitation of any liability
28 of the other party arising under law or to indemnify the other
29 party for that liability or the costs connected therewith.

30 2. A provision prohibited by subsection one (1) of this
31 section included in a rental agreement is unenforceable.

32 If a landlord willfully uses a rental agreement containing
33 provisions known by the landlord to be prohibited, a tenant
34 may recover actual damages sustained by the tenant and not
35 more than three months' periodic rent and reasonable attorney's

1 fees.

2 Sec. 13. NEW SECTION. SEPARATION OF RENTS AND OBLIGATIONS
3 TO MAINTAIN PROPERTY FORBIDDEN. A rental agreement,
4 assignment, conveyance, trust deed, or security instrument
5 shall not permit the receipt of rent free of the obligation
6 to comply with section seventeen (17), subsection one (1)
7 of this Act.

8 ARTICLE II

9 LANDLORD OBLIGATIONS

10 Sec. 14. NEW SECTION. RENTAL DEPOSITS.

11 1. A landlord shall not demand or receive as rental deposit
12 and prepaid rent an amount or value in excess of two month's
13 rent.

14 2. All rental deposits shall be held by the landlord for
15 the tenant, who is a party to the agreement, in a bank or
16 savings and loan association or credit union which is insured
17 by an agency of the federal government. Rental deposits shall
18 not be commingled with the personal funds of the landlord.
19 Notwithstanding the provisions of chapter one hundred seventeen
20 (117) of the Code, all rental deposits may be held in a trust
21 account, which may be a common trust account and which may
22 be an interest bearing account. Any interest earned on a
23 rental deposit shall be the property of the landlord.

24 3. A landlord shall, within thirty days from the date
25 of termination of the tenancy and receipt of the tenant's
26 mailing address or delivery instructions, return the rental
27 deposit to the tenant or furnish to the tenant a written
28 statement showing the specific reason for withholding of the
29 rental deposit or any portion thereof. If the rental deposit
30 or any portion of the rental deposit is withheld for the re-
31 storation of the dwelling unit, the statement shall specify
32 the nature of the damages. The landlord may withhold from
33 the rental deposit only such amounts as are reasonably neces-
34 sary for the following reasons:

35 a. To remedy a tenant's default in the payment of rent

1 or of other funds due to the landlord pursuant to the rental
2 agreement.

3 b. To restore the dwelling unit to its condition at the
4 commencement of the tenancy, ordinary wear and tear excepted.

5 In an action concerning the rental deposit, the burden
6 of proving, by a preponderance of the evidence, the reason
7 for withholding all or any portion of the rental deposit shall
8 be on the landlord.

9 4. A landlord who fails to provide a written statement
10 within thirty days of termination of the tenancy and receipt
11 of the tenant's mailing address or delivery instructions shall
12 forfeit all rights to withhold any portion of the rental
13 deposit. If no mailing address or instructions are provided
14 to the landlord within one year from the termination of the
15 tenancy the rental deposit shall revert to the landlord and
16 the tenant will be deemed to have forfeited all rights to
17 the rental deposit.

18 5. Upon termination of a landlord's interest in the
19 dwelling unit, the landlord or an agent of the landlord shall,
20 within a reasonable time, transfer the rental deposit, or
21 any remainder after any lawful deductions to the landlord's
22 successor in interest and notify the tenant of the transfer
23 and of the transferee's name and address or return the deposit,
24 or any remainder after any lawful deductions to the tenant.

25 Upon the termination of the landlord's interest in the
26 dwelling unit and compliance with the provisions of this
27 subsection, the landlord shall be relieved of any further
28 liability with respect to the rental deposit.

29 6. Upon termination of the landlord's interest in the
30 dwelling unit, the landlord's successor in interest shall
31 have all the rights and obligations of the landlord with re-
32 spect to the rental deposits, except that if the tenant does
33 not object to the stated amount within twenty days after writ-
34 ten notice to the tenant of the amount of rental deposit being
35 transferred or assumed, the obligations of the landlord's

1 successor to return the deposit shall be limited to the amount
2 contained in the notice. The notice shall contain a stamped
3 envelope addressed to landlord's successor and may be given
4 by mail or by personal service.

5 7. The bad faith retention of a deposit by a landlord,
6 or any portion of the rental deposit, in violation of this
7 section shall subject the landlord to punitive damages not
8 to exceed two hundred dollars in addition to actual damages.

9 8. The court may, in any action on a rental agreement,
10 award reasonable attorney fees to the prevailing party.

11 Sec. 15. NEW SECTION. DISCLOSURE.

12 1. The landlord or a person authorized to enter into a
13 rental agreement on behalf of the landlord shall disclose
14 to the tenant in writing at or before the commencement of
15 the tenancy the name and address of:

16 a. The person authorized to manage the premises.

17 b. An owner of the premises or a person authorized to
18 act for and on behalf of the owner for the purpose of service
19 of process and for the purpose of receiving and receipting
20 for notices and demands.

21 2. The information required to be furnished by this sec-
22 tion shall be kept current and this section extends to and
23 is enforceable against a successor landlord, owner, or manager.

24 3. A person who fails to comply with subsection one (1)
25 of this section becomes an agent of each person who is a
26 landlord for the purpose of:

27 a. Service of process and receiving and receipting for
28 notices and demands.

29 b. Performing the obligations of the landlord under this
30 Act and under the rental agreement and expending or making
31 available for that purpose all rent collected from the
32 premises.

33 4. The landlord or any person authorized to enter into
34 a rental agreement on the landlord's behalf shall fully explain
35 utility rates, charges and services to the prospective tenant

1 before the rental agreement is signed unless paid by the
2 tenant directly to the utility company.

3 5. Each tenant shall be notified, in writing, of any rent
4 increase at least thirty days before the effective date.
5 Such effective date shall not be sooner than the expiration
6 date of the original rental agreement or any renewal or
7 extension thereof.

8 Sec. 16. NEW SECTION. LANDLORD TO SUPPLY POSSESSION OF
9 DWELLING UNIT. At the commencement of the term, the land-
10 lord shall deliver possession of the premises to the tenant
11 in compliance with the rental agreement and section seven-
12 teen (17) of this Act. The landlord may bring an action for
13 possession against a person wrongfully in possession and may
14 recover the damages provided in section thirty-seven (37),
15 subsection three (3) of this Act.

16 Sec. 17. NEW SECTION. LANDLORD TO MAINTAIN FIT PREMISES.

17 1. The landlord shall:

18 a. Comply with the requirements of applicable building
19 and housing codes materially affecting health and safety.

20 b. Make all repairs and do whatever is necessary to put
21 and keep the premises in a fit and habitable condition.

22 c. Keep all common areas of the premises in a clean and
23 safe condition.

24 d. Maintain in good and safe working order and condition
25 all electrical, plumbing, sanitary, heating, ventilating,
26 air-conditioning, and other facilities and appliances,
27 including elevators, supplied or required to be supplied by
28 the landlord.

29 e. Provide and maintain appropriate receptacles and con-
30 veniences for the removal of ashes, garbage, rubbish, and
31 other waste incidental to the occupancy of the dwelling unit
32 and arrange for their removal.

33 f. Supply running water and reasonable amounts of hot
34 water at all times and reasonable heat, except where the
35 building that includes the dwelling unit is not required by

1 law to be equipped for that purpose, or the dwelling unit
2 is so constructed that heat or hot water is generated by an
3 installation within the exclusive control of the tenant and
4 supplied by a direct public utility connection.

5 If the duty imposed by paragraph a of this subsection is
6 greater than a duty imposed by another paragraph of this sub-
7 section, the landlord's duty shall be determined by reference
8 to paragraph a of this subsection.

9 2. The landlord and tenant of a single family residence
10 may agree in writing that the tenant perform the landlord's
11 duties specified in paragraphs e and f of subsection one (1)
12 and also specified repairs, maintenance tasks, alterations,
13 and remodeling, but only if the transaction is entered into
14 in good faith.

15 3. The landlord and tenant of a dwelling unit other than
16 a single family residence may agree that the tenant is to
17 perform specified repairs, maintenance tasks, alterations,
18 or remodeling only:

19 a. If the agreement of the parties is entered into in
20 good faith and is set forth in a separate writing signed by
21 the parties and supported by adequate consideration;

22 b. If the work is not necessary to cure noncompliance
23 with subsection one (1), paragraph a of this section; and

24 c. If the agreement does not diminish or affect the obliga-
25 tion of the landlord to other tenants in the premises.

26 4. The landlord may not treat performance of the separate
27 agreement described in subsection three (3) of this section
28 as a condition to an obligation or performance of a rental
29 agreement.

30 Sec. 18. NEW SECTION. LIMITATION OF LIABILITY.

31 1. Unless otherwise agreed, a landlord, who conveys prem-
32 ises that include a dwelling unit subject to a rental agree-
33 ment in a good faith sale to a bona fide purchaser, is relieved
34 of liability under the rental agreement and this Act as to
35 events occurring subsequent to written notice to the tenant

1 of the conveyance.

2 2. A manager of premises that includes a dwelling unit
3 is relieved of liability under the rental agreement and this
4 Act as to events occurring after written notice to the tenant
5 of the termination of his or her management.

6

ARTICLE III

7

TENANT OBLIGATIONS

8 Sec. 19. NEW SECTION. TENANT TO MAINTAIN DWELLING UNIT.

9 The tenant shall:

10 1. Comply with all obligations primarily imposed upon
11 tenants by applicable provisions of building and housing codes
12 materially affecting health and safety.

13 2. Keep that part of the premises that the tenant occupies
14 and uses as clean and safe as the condition of the premises
15 permit.

16 3. Dispose from the tenant's dwelling unit all ashes,
17 rubbish, garbage, and other waste in a clean and safe manner.

18 4. Keep all plumbing fixtures in the dwelling unit or
19 used by the tenant as clean as their condition permits.

20 5. Use in a reasonable manner all electrical, plumbing,
21 sanitary, heating, ventilating, air-conditioning and other
22 facilities and appliances including elevators in the premises.

23 6. Not deliberately or negligently destroy, deface, damage,
24 impair or remove a part of the premises or knowingly permit
25 a person to do so.

26 7. Conduct himself or herself in a manner that will not
27 disturb a neighbor's peaceful enjoyment of the premises.

28 Sec. 20. NEW SECTION. RULES. A landlord, from time to
29 time, may adopt rules, however described, concerning the
30 tenant's use and occupancy of the premises. It is enforceable
31 against the tenant only if:

32 1. Its purpose is to promote the convenience, safety,
33 or welfare of the tenants in the premises, preserve the land-
34 lord's property from abusive use, or make a fair distribution
35 of services and facilities held out for the tenants generally.

1 2. It is reasonably related to the purpose for which it
2 is adopted.

3 3. It applies to all tenants in the premises in a fair
4 manner.

5 4. It is sufficiently explicit in its prohibition, direc-
6 tion, or limitation of the tenant's conduct to fairly inform
7 the tenant of what the tenant must or must not do to comply.

8 5. It is not for the purpose of evading the obligations
9 of the landlord.

10 6. The tenant has notice of it at the time the tenant
11 enters into the rental agreement.

12 A rule adopted after the tenant enters into the rental
13 agreement is enforceable against the tenant if reasonable
14 notice of its adoption is given to the tenant and it does
15 not work a substantial modification of the rental agreement.

16 Sec. 21. NEW SECTION. ACCESS.

17 1. The tenant shall not unreasonably withhold consent
18 to the landlord to enter into the dwelling unit in order to
19 inspect the premises, make necessary or agreed repairs,
20 decorations, alterations, or improvements, supply necessary
21 or agreed services, or exhibit the dwelling unit to prospective
22 or actual purchasers, mortgagees, tenants, workmen, or
23 contractors.

24 2. The landlord may enter the dwelling unit without consent
25 of the tenant in case of emergency.

26 3. The landlord shall not abuse the right of access or
27 use it to harass the tenant. Except in case of emergency
28 or if it is impracticable to do so, the landlord shall give
29 the tenant at least twenty-four hours notice of the landlord's
30 intent to enter and enter only at reasonable times.

31 4. The landlord does not have another right of access
32 except by court order, and as permitted by sections thirty-
33 one (31) and thirty-two (32) of this Act, or if the tenant
34 has abandoned or surrendered the premises.

35 Sec. 22. NEW SECTION. TENANT TO USE AND OCCUPY. Unless

1 otherwise agreed, the tenant shall occupy his or her dwelling
2 unit only as a dwelling unit and uses incidental thereto.
3 The rental agreement may require that the tenant notify the
4 landlord of an anticipated extended absence from the premises
5 not later than the first day of the extended absence.

6 ARTICLE IV

7 REMEDIES

8 Part I

9 TENANT REMEDIES

10 Sec. 23. NEW SECTION. NONCOMPLIANCE BY THE LANDLORD--
11 IN GENERAL.

12 1. Except as provided in this Act, if there is a material
13 noncompliance by the landlord with the rental agreement or
14 a noncompliance with section seventeen (17) of this Act
15 materially affecting health and safety, the tenant may deliver
16 a written notice to the landlord specifying the acts and
17 omissions constituting the breach and that the rental agreement
18 will terminate upon a date not less than thirty days after
19 receipt of the notice if the breach is not remedied in fourteen
20 days, and the rental agreement shall terminate and the tenant
21 shall surrender as provided in the notice subject to the
22 following:

23 a. If the breach is remediable by repairs or the payment
24 of damages or otherwise, and if the landlord adequately
25 remedies the breach prior to the date specified in the notice,
26 the rental agreement shall not terminate.

27 b. If substantially the same act or omission which
28 constituted a prior noncompliance of which notice was given
29 recurs within six months, the tenant may terminate the rental
30 agreement upon at least fourteen days' written notice
31 specifying the breach and the date of termination of the
32 rental agreement.

33 c. The tenant may not terminate for a condition caused
34 by the deliberate or negligent act or omission of the tenant,
35 a member of the tenant's family, or other person on the

1 premises with the tenant's consent.

2 2. Except as provided in this Act, the tenant may recover
3 damages and obtain injunctive relief for any noncompliance
4 by the landlord with the rental agreement or section seven-
5 teen (17) of this Act unless the landlord demonstrates af-
6 firmatively that the landlord has exercised due diligence
7 and effort to remedy any noncompliance, and that any failure
8 by the landlord to remedy any noncompliance was due to
9 circumstances reasonably beyond the control of the landlord.
10 If the landlord's noncompliance is willful the tenant may
11 recover reasonable attorney's fees.

12 3. The remedy provided in subsection two (2) of this
13 section is in addition to any right of the tenant arising
14 under subsection one (1) of this section.

15 4. If the rental agreement is terminated, the landlord
16 shall return all prepaid rent and security recoverable by
17 the tenant under section fourteen (14) of this Act.

18 Sec. 24. NEW SECTION. FAILURE TO DELIVER POSSESSION.

19 1. If the landlord fails to deliver possession of the
20 dwelling unit to the tenant as provided in section sixteen
21 (16) of this Act, rent abates until possession is delivered
22 and the tenant shall:

23 a. Upon at least five days' written notice to the landlord,
24 terminate the rental agreement and upon termination the land-
25 lord shall return all prepaid rent and security; or

26 b. Demand performance of the rental agreement by the land-
27 lord and, if the tenant elects, maintain an action for posses-
28 sion of the dwelling unit against the landlord or a person
29 wrongfully in possession and recover the damages sustained
30 by the tenant.

31 2. If a person's failure to deliver possession is willful
32 and not in good faith, an aggrieved person may recover from
33 that person an amount not more than three months' periodic
34 rent or threefold the actual damages sustained by such person,
35 whichever is greater, and reasonable attorney's fees.

1 Sec. 25. NEW SECTION. SELF-HELP FOR MINOR DEFECTS.

2 1. If the landlord fails to comply with the rental agree-
3 ment or section seventeen (17) of this Act, and the reasonable
4 cost of compliance is less than one hundred dollars, or an
5 amount equal to one-half of the periodic rent, whichever
6 amount is greater, the tenant may recover damages for the
7 breach under section twenty-three (23) of this Act or in the
8 alternative shall notify the landlord of the tenant's inten-
9 tion to correct the condition at the landlord's expense.

10 If the landlord fails to comply within fourteen days after
11 being notified by the tenant in writing or as promptly as
12 conditions require in case of emergency, the tenant may cause
13 the work to be done, which work shall be done in a workmanlike
14 manner, and after submitting to the landlord an itemized
15 statement, deduct from the tenant's rent the actual and
16 reasonable cost or the fair and reasonable value of the work,
17 not exceeding the amount specified in this subsection.

18 2. However, if within seven days of being notified by
19 the tenant of noncompliance with any applicable building or
20 housing codes regulation materially affecting the health and
21 safety of the tenant as provided in paragraph a, subsection
22 one (1) of section seventeen (17) of this Act, the landlord
23 notifies the tenant that the landlord in good faith does not
24 believe there is a noncompliance, the tenant shall notify
25 the proper health or housing code inspection authority which
26 shall determine whether the dwelling unit or premises are
27 in noncompliance with the requirements of applicable building
28 and housing codes.

29 If the health or housing inspector finds that the landlord
30 is in noncompliance, the landlord shall remedy or contract
31 to remedy the defect within seven days. If the landlord fails
32 to remedy or contract to remedy the defect within seven days
33 after the notice from the health or housing inspector, the
34 tenant may exercise the right to self-help as provided in
35 subsection one (1) of this section and subsection two (2)

1 of section thirty (30) of this Act, shall not apply to the
2 amount deducted for self-help.

3 3. A tenant may not repair at the landlord's expense if
4 the condition was caused by the deliberate or negligent act
5 or omission of the tenant, a member of the tenant's family,
6 or other person on the premises with the tenant's consent.

7 4. The recovery of separate amounts expended for self-
8 help in any rent period may be cumulative in each rental
9 period, but recovery for a single rent period shall not exceed
10 the greater of one-half the periodic rent or one hundred
11 dollars.

12 Sec. 26. NEW SECTION. WRONGFUL FAILURE TO SUPPLY HEAT,
13 WATER, HOT WATER OR ESSENTIAL SERVICES.

14 1. If contrary to the rental agreement or section seven-
15 teen (17) of this Act the landlord deliberately or negligently
16 fails to supply running water, hot water, or heat, or essential
17 services, the tenant may give written notice to the landlord
18 specifying the breach and may:

19 a. Procure reasonable amounts of hot water, running water,
20 heat and essential services during the period of the landlord's
21 noncompliance and deduct their actual and reasonable cost
22 from the rent;

23 b. Recover damages based upon the diminution in the fair
24 rental value of the dwelling unit; or

25 c. Any rent already paid for the period of the landlord's
26 noncompliance shall be reimbursed on a pro rata basis.

27 2. If the tenant proceeds under this section, the tenant
28 may not proceed under section twenty-three (23) or twenty-
29 five (25) of this Act as to that breach.

30 3. The rights under this section do not arise until the
31 tenant has given notice to the landlord or if the condition
32 was caused by the deliberate or negligent act or omission
33 of the tenant, a member of his family, or other person on
34 the premises with the consent of the tenant.

35 Sec. 27. NEW SECTION. LANDLORD'S NONCOMPLIANCE AS DEFENSE

1 TO ACTION FOR POSSESSION OR RENT.

2 1. In an action for possession based upon nonpayment of
3 the rent or in an action for rent where the tenant is in
4 possession, the tenant may counterclaim for an amount which
5 the tenant may recover under the rental agreement or this
6 Act. In that event the court from time to time may order
7 the tenant to pay into court all or part of the rent accrued
8 and thereafter accruing, and shall determine the amount due
9 to each party. The party to whom a net amount is owed shall
10 be paid first from the money paid into court, and the balance
11 by the other party. If rent does not remain due after
12 application of this section, judgment shall be entered for
13 the tenant in the action for possession. If the defense or
14 counterclaim by the tenant is without merit and is not raised
15 in good faith the landlord may recover reasonable attorney's
16 fees.

17 2. In an action for rent where the tenant is not in
18 possession, the tenant may counterclaim as provided in
19 subsection one (1) of this section, but the tenant is not
20 required to pay any rent into court.

21 Sec. 28. NEW SECTION. FIRE OR CASUALTY DAMAGE.

22 1. If the dwelling unit or premises are damaged or
23 destroyed by fire or casualty to an extent that enjoyment
24 of the dwelling unit is substantially impaired, the tenant
25 may:

26 a. Immediately vacate the premises and notify the landlord
27 in writing within fourteen days of the tenant's intention
28 to terminate the rental agreement, in which case the rental
29 agreement terminates as of the date of vacating; or

30 b. If continued occupancy is lawful, vacate a part of
31 the dwelling unit rendered unusable by the fire or casualty,
32 in which case the tenant's liability for rent is reduced in
33 proportion to the diminution in the fair rental value of the
34 dwelling unit.

35 2. If the rental agreement is terminated, the landlord

1 shall return all prepaid rent and security recoverable under
2 section fourteen (14) of this Act. Accounting for rent in
3 the event of termination or apportionment is to occur as of
4 the date of the casualty.

5 Sec. 29. NEW SECTION. TENANT'S REMEDIES FOR LANDLORD'S
6 UNLAWFUL OUSTER, EXCLUSION, OR DIMINUTION OF SERVICE. If
7 the landlord unlawfully removes or excludes the tenant from
8 the premises or willfully diminishes services to the tenant
9 by interrupting or causing the interruption of electric, gas,
10 water or other essential service to the tenant, the tenant
11 may recover possession or terminate the rental agreement and,
12 in either case, recover an amount not more than three months'
13 periodic rent or threefold the actual damages sustained by
14 the tenant, whichever is greater and reasonable attorney's
15 fees. If the rental agreement is terminated, the landlord
16 shall return all prepaid rent and security.

17 Part II

18 LANDLORD REMEDIES

19 Sec. 30. NEW SECTION. NONCOMPLIANCE WITH RENTAL AGREE-
20 MENT--FAILURE TO PAY RENT.

21 1. Except as provided in this Act, if there is a material
22 noncompliance by the tenant with the rental agreement or a
23 noncompliance with section nineteen (19) of this Act materially
24 affecting health and safety, the landlord may deliver a written
25 notice to the tenant specifying the acts and omissions
26 constituting the breach and that the rental agreement will
27 terminate upon a date not less than thirty days after receipt
28 of the notice if the breach is not remedied in fourteen days,
29 and the rental agreement shall terminate as provided in the
30 notice subject to the provisions of this section. If the
31 breach is remediable by repairs or the payment of damages
32 or otherwise and the tenant adequately remedies the breach
33 prior to the date specified in the notice, the rental agreement
34 shall not terminate. If substantially the same act or omission
35 which constituted a prior noncompliance of which notice was

1 given recurs within six months, the landlord may terminate
2 the rental agreement upon at least fourteen days' written
3 notice specifying the breach and the date of termination of
4 the rental agreement.

5 2. If rent is unpaid when due and the tenant fails to
6 pay rent within three days after written notice by the landlord
7 of nonpayment and the landlord's intention to terminate the
8 rental agreement if the rent is not paid within that period
9 of time, the landlord may terminate the rental agreement.

10 3. Except as provided in this Act, the landlord may recover
11 damages and obtain injunctive relief for noncompliance by
12 the tenant with the rental agreement or section nineteen (19)
13 of this Act unless the tenant demonstrates affirmatively that
14 the tenant has exercised due diligence and effort to remedy
15 any noncompliance, and that the tenant's failure to remedy
16 any noncompliance was due to circumstances beyond the tenant's
17 control. If the tenant's noncompliance is willful, the
18 landlord may recover reasonable attorney's fees.

19 Sec. 31. NEW SECTION. FAILURE TO MAINTAIN. If there
20 is noncompliance by the tenant with section nineteen (19)
21 of this Act, materially affecting health and safety that can
22 be remedied by repair or replacement of a damaged item or
23 cleaning, and the tenant fails to comply as promptly as
24 conditions require in case of emergency or within fourteen
25 days after written notice by the landlord specifying the
26 breach and requesting that the tenant remedy it within that
27 period of time, the landlord may enter the dwelling unit and
28 cause the work to be done in a workmanlike manner and submit
29 an itemized bill for the actual and reasonable cost or the
30 fair and reasonable value of it as rent on the next date when
31 periodic rent is due, or if the rental agreement has
32 terminated, for immediate payment.

33 Sec. 32. NEW SECTION. REMEDIES FOR ABSENCE, NONUSE AND
34 ABANDONMENT.

35 1. If the rental agreement requires the tenant to give

1 notice to the landlord of an anticipated extended absence
2 as provided in section twenty-two (22) of this Act, and the
3 tenant willfully fails to do so, the landlord may recover
4 actual damages from the tenant.

5 2. During an absence of the tenant in excess of fourteen
6 days, the landlord may enter the dwelling unit at times
7 reasonably necessary.

8 3. If the tenant abandons the dwelling unit, the land-
9 lord shall make reasonable efforts to rent it at a fair ren-
10 tal. If the landlord rents the dwelling unit for a term
11 beginning prior to the expiration of the rental agreement,
12 it is deemed to be terminated as of the date the new tenancy
13 begins. The rental agreement is deemed to be terminated by
14 the landlord as of the date the landlord has notice of the
15 abandonment, if the landlord fails to use reasonable efforts
16 to rent the dwelling unit at a fair rental or if the landlord
17 accepts the abandonment as a surrender. If the tenancy is
18 from month-to-month, or week-to-week, the term of the rental
19 agreement for this purpose shall be deemed to be a month or
20 a week, as the case may be.

21 Sec. 33. NEW SECTION. WAIVER OF LANDLORD'S RIGHT TO
22 TERMINATE. Acceptance of performance by the tenant that
23 varies from the terms of the rental agreement or rules
24 subsequently adopted by the landlord constitutes a waiver
25 of the landlord's right to terminate the rental agreement
26 for that breach, unless otherwise agreed after the breach
27 has occurred.

28 Sec. 34. NEW SECTION. LANDLORD LIENS--DISTRESS FOR RENT.

29 1. A lien on behalf of the landlord on the tenant's
30 household goods is not enforceable unless perfected before
31 the effective date of this Act.

32 2. Distraint for rent is abolished.

33 Sec. 35. NEW SECTION. REMEDY AFTER TERMINATION. If the
34 rental agreement is terminated, the landlord may have a claim
35 for possession and for rent and a separate claim for actual

1 damages for breach of the rental agreement and reasonable
2 attorney's fees as provided in section thirty (30) of this
3 Act.

4 Sec. 36. NEW SECTION. RECOVERY OF POSSESSION LIMITED.

5 A landlord may not recover or take possession of the dwelling
6 unit by action or otherwise, including willful diminution
7 of services to the tenant by interrupting or causing the
8 interruption of electric, gas, water or other essential service
9 to the tenant, except in case of abandonment, surrender, or
10 as permitted in this Act.

11 Part III

12 PERIODIC TENANCY: HOLDOVER: ABUSE OF ACCESS

13 Sec. 37. NEW SECTION. PERIODIC TENANCY; HOLDOVER REMEDIES.

14 1. The landlord or the tenant may terminate a week-to-
15 week tenancy by a written notice given to the other at least
16 ten days prior to the termination date specified in the notice.

17 2. The landlord or the tenant may terminate a month-to-
18 month tenancy by a written notice given to the other at least
19 thirty days prior to the periodic rental date specified in
20 the notice.

21 3. If the tenant remains in possession without the land-
22 lord's consent after expiration of the term of the rental
23 agreement or its termination, the landlord may bring an action
24 for possession and if the tenant's holdover is willful and
25 not in good faith the landlord, in addition, may recover an
26 amount not more than three months' periodic rent or threefold
27 the actual damages sustained by the landlord, whichever is
28 greater, and reasonable attorney's fees. If the landlord
29 consents to the tenant's continued occupancy, subsection four
30 (4) of section ten (10) of this Act applies.

31 Sec. 38. NEW SECTION. LANDLORD AND TENANT REMEDIES FOR
32 ABUSE OF ACCESS.

33 1. If the tenant refuses to allow lawful access, the
34 landlord may obtain injunctive relief to compel access, or
35 terminate the rental agreement. In either case, the landlord

1 may recover actual damages and reasonable attorney's fee.
2 2. If the landlord makes an unlawful entry or a lawful
3 entry in an unreasonable manner or makes repeated demands
4 for entry otherwise lawful but which have the effect of
5 unreasonably harassing the tenant, the tenant may obtain
6 injunctive relief to prevent the recurrence of the conduct,
7 or terminate the rental agreement. In either case, the tenant
8 may recover actual damages not less than an amount equal to
9 one month's rent and reasonable attorney's fees.

10 ARTICLE V

11 RETALIATORY ACTION

12 Sec. 39. NEW SECTION. RETALIATORY CONDUCT PROHIBITED.

13 1. Except as provided in this section, a landlord may
14 not retaliate by increasing rent or decreasing services or
15 by bringing or threatening to bring an action for possession
16 after:

17 a. The tenant has complained to a governmental agency
18 charged with responsibility for enforcement of a building
19 or housing code of a violation applicable to the premises
20 materially affecting health and safety;

21 b. The tenant has complained to the landlord of a violation
22 under section seventeen (17) of this Act; or

23 c. The tenant has organized or become a member of a
24 tenants' union or similar organization.

25 2. If the landlord acts in violation of subsection one
26 (1) of this section, the tenant is entitled to the remedies
27 provided in section twenty-nine (29) of this Act, and has
28 a defense in action against the landlord for possession.
29 In an action by or against the tenant, evidence of a good
30 faith complaint within one year prior to the alleged act of
31 retaliation creates a presumption that the landlord's conduct
32 was in retaliation. The presumption does not arise if the
33 tenant made the complaint after notice of a proposed rent
34 increase or diminution of services. "Presumption" means that
35 the trier of fact must find the existence of the fact presumed

1 unless and until evidence is introduced which would support
2 a finding of its nonexistence.

3 3. Notwithstanding subsections one (1) and two (2) of
4 this section, a landlord may bring an action for possession
5 if:

6 a. The violation of the applicable building or housing
7 code was caused primarily by lack of reasonable care by the
8 tenant or other person in the tenant's household or upon the
9 premises with his consent;

10 b. The tenant is in default in rent; or

11 c. Compliance with the applicable building or housing
12 code requires alteration, remodeling, or demolition which
13 would effectively deprive the tenant of use of the dwelling
14 unit. The maintenance of the action does not release the
15 landlord from liability under subsection two (2) of section
16 twenty-three (23) of this Act.

17

ARTICLE VI

18

EFFECTIVE DATE AND REPEALER

19 Sec. 40. This Act shall apply to rental agreements entered
20 into or extended or renewed after the effective date of this
21 Act.

22 Sec. 41. Sections five hundred sixty-two point eight
23 (562.8) through five hundred sixty-two point sixteen (562.16),
24 Code 1977, are repealed.

25 Sec. 42. Transactions entered into before the effective
26 date of this Act, and not extended or renewed after that date,
27 and the rights, duties, and interests flowing from them remain
28 valid and may be terminated, completed, consummated, or
29 enforced as required or permitted by any statute or other
30 law amended or repealed by this Act as though the repeal or
31 amendment had not occurred.

32 Sec. 43. If a provision of this Act or the application
33 of it to a person or circumstances is held invalid, the
34 invalidity does not affect other provisions or application
35 of this Act which can be given effect without the invalid

1 provision or application, and to this end the provisions of
2 this Act are severable.

3 Sec. 44. This Act is effective January 1, 1979.

4 EXPLANATION

5 This bill adopts the uniform landlord and tenant Act with
6 some modifications. The bill is divided into six articles.
7 Article I contains general provisions which include scope
8 and jurisdiction, exclusions from the Act, jurisdiction
9 regarding service of process, general definitions and
10 principles of interpretation, statements regarding the
11 obligation of good faith, findings of unconscionability, and
12 what constitutes notice under this Act, and the terms and
13 conditions which shall not be embodied in a rental agreement.

14 Article II contains general provisions relating to the
15 duties and obligations of the landlord in the areas of rental
16 deposits, rental disclosure information, fit premises, and
17 liability limitations.

18 Article III contains general provisions relating to obliga-
19 tions of the tenant which include tenant's obligation to main-
20 tain a dwelling unit, rules, and proper access by the landlord.

21 Article IV contains provisions relating to landlord and
22 tenant remedies which includes the tenant use and occupancy,
23 tenant remedies for landlord noncompliance, landlord's failure
24 to deliver possession, self-help for minor defects, wrongful
25 failure to supply essential services, fire or casualty damage,
26 and unlawful ouster.

27 Article IV provides remedies to the landlord for the
28 tenant's noncompliance with a rental agreement, failure to
29 pay rent, failure to maintain a dwelling unit by the tenant,
30 remedies for abandonment and nonuse of a dwelling unit, waiver
31 of landlord's right to terminate, repeal of landlord's lien
32 and contains provisions relating to holdover tenancies and
33 periodic tenancies.

34 Article V provides for the prohibition of retaliatory con-
35 duct by the landlord.

1 Article VI establishes the effective date and repealer
2 section to the Act, and repeals sections 562.8 through 562.16
3 of the Code relating to farm tenancies.

4 The Act is to become effective January 1, 1979.

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HOUSE FILE 2244

H-5558

- 1 Amend House File 2244 as follows:
- 2 1. Page 11, line 23, by inserting after the word
- 3 "condition." the following: "The landlord shall not
- 4 be liable for any injury caused by any objects or
- 5 materials which belong to or which have been placed
- 6 by a tenant in the common areas of the premises used
- 7 by the tenant."

H-5558 FILED *Adopted* BY THOMPSON of Polk
MARCH 7, 1978 *3/7 (p. 827)*

HOUSE FILE 2244

H-5562

- 1 Amend House File 2244 as follows:
- 2 1. Page 12, line 26, by striking the word
- 3 "may" and inserting in lieu thereof the word
- 4 "shall".

H-5562 FILED *Adopted* BY SMALL of Johnson
MARCH 7, 1978 *3/7 (p. 831)*

HOUSE FILE 2244

H-5563

- 1 Amend House File 2244 as follows:
- 2 1. Page 24, by inserting after line 9 the
- 3 following new section:
- 4 " NEW SECTION. UNLAWFUL DISCRIMINATION
- 5 AGAINST TENANT WITH CHILDREN. It shall be unlawful
- 6 for a landlord to refuse to rent a dwelling unit
- 7 to any person because that person has a child or
- 8 children who will reside in the dwelling unit, or to
- 9 advertise in connection with the rental agreement a
- 10 restriction against children either by the display of
- 11 a sign, placard, printed notice, or by publication or
- 12 general circulation.
- 13 Nothing in this section shall require any public
- 14 institution owned or operated by the state or local
- 15 government, or any bona fide residential institution
- 16 for the elderly, handicapped, or disabled to conform
- 17 with the provisions of this section.
- 18 Any person who violates the provisions of this
- 19 section shall be guilty of a simple misdemeanor."

H-5563 FILED, ~~ADOPTED~~ ^{Last} BY BYERLY of Polk
MARCH 7, 1978 *no amendment*
By 5567 2/7 (p. 835)
motion to rescind last 2/7 (p. 835)

HOUSE FILE 2244

H-5567

- 1 Amend amendment H-5563, to House File 2244, as
- 2 follows:
- 3 1. Page 1, line 8, by inserting after the word
- 4 "children" the words "is elderly or and".
- 5 2. Page 1, line 10, by inserting after the word
- 6 "children" the words "is elderly or single and".

H-5567 FILED, ADOPTED BY CONNORS of Polk
BY UNANIMOUS CONSENT *(p. 835)*
MARCH 7, 1978

HOUSE FILE 2244

H-5545

- 1 Amend House File 2244 as follows:
(A) 2 1. Page 14, lines 32 and 33, by striking the words
3 "sections thirty-one (31) and", and inserting in lieu
4 thereof the word "section".
B 5 2. Page 18, lines 28 and 29, by striking the words
6 "or twenty-five (25)".
A 7 3. Page 21, by striking lines 19 through 32.

H-5545 FILED BY PATCHETT of Johnson
MARCH 6, 1978
B. Adopted, A. w/d 3/7 (p. 831)
HOUSE FILE 2244

H-5546

- 1 Amend House File 2244 as follows:
2 1. Page 2, by inserting after line 21 the following:
3 "8. Occupancy under a rental agreement covering a
4 single family residence.

H-5546 FILED Lost 3/6 BY BAKER of Buena Vista
MARCH 6, 1978 (p. 808) DAVITT of Warren
WOODS of Polk
HARBOR of Mills

HOUSE FILE 2244

H-5551

- 1 Amend amendment H-5544 to House File 2244 as
2 follows:
(3 1. Page 1, line 31, by striking the word "three"
4 and inserting in lieu thereof the word "seven".
5 2. Page 1, line 33, by striking the word "fourteen"
6 and inserting in lieu thereof the word "thirty".

H-5551 FILED Adopted 3/7 BY SMALLEY of Polk
MARCH 6, 1978 (p. 830)

HOUSE FILE 2244

H-5550

- 1 Amend House File 2244 as follows:
2 1. Page 8, by striking lines 20 through 23 and
3 inserting in lieu thereof the following: "(117) of
4 the Code, all rental deposits shall be held in an
5 interest bearing account. Any interest earned on a
6 rental deposit shall be the property of the tenant
7 if the term of the rental agreement is for a minimum
8 of one year, and the tenant fulfills the rental
9 agreement."

H-5550 FILED Lost 3/7 BY SPENCER of Clay
MARCH 6, 1978 (p. 826) RINAS of Linn
MONROE of Des Moines

H-5544

1 Amend House File 2244 as follows:

2 1. Page 20, by inserting after line 16 the
3 following:

4 "Sec. ____ . NEW SECTION. IMPLIED WARRANTY.

5 1. Except as provided in subsection two (2) of
6 section seventeen (17) of this Act, a landlord who
7 rents or leases residential property in this state
8 shall have the duty to keep the premises in repair
9 and in a habitable condition. A landlord who represents
10 to a tenant, whether orally or in writing or by
11 demonstration, that one or more accessories, including
12 but not limited to a shower, bath, electrical
13 appliance, fixture, or other facility or service,
14 are part of the rental agreement, shall be deemed
15 to warrant that the accessories at all times shall
16 be serviceable and fit for the particular purposes
17 for which they are to be used.

18 2. In the event of a breach of the duty or warranty
19 specified in subsection one (1) of this section, the
20 tenant shall have the right to cause the defects
21 constituting the breach to be corrected or repaired
22 if:

23 a. The reasonable cost of correcting or repairing
24 the defects is less than one hundred dollars or an
25 amount equal to one-half of the periodic rent,
26 whichever is greater; and

27 b. The tenant notifies the landlord in writing
28 of the defects and of the tenant's intention to correct
29 the condition at the landlord's expense; and

30 c. The landlord either fails to initiate action
31 to correct or repair the defects within three days
32 after receiving the notice or fails to complete the
33 work within fourteen days after receiving the notice.
34 In the event the tenant causes the defects to be
35 corrected or repaired, the tenant shall have the duty
36 to see that the work is done in a workmanlike manner,
37 and the duty to submit to the landlord an itemized
38 statement of the actual and reasonable cost or value
39 of the work.

40 3. In lieu of exercising the right to correct
41 or repair minor defects under subsection two (2) of
42 this section, the tenant may commence an action to
43 recover damages under section twenty-three (23) of
44 this Act.

45 4. A tenant who causes defects to be corrected
46 or repaired as provided in subsection two (2) of this
47 section shall be entitled to deduct the actual and
48 reasonable cost or value of the work from the periodic
49 rent; provided that in no event shall the tenant be
50 entitled to deduct an amount greater than that

5544

Page 2

1 specified in paragraph a of subsection two (2) of
2 this section."

HOUSE FILE 2244

H-5537

- 1 Amend House File 2244 as follows:
- 2 1. Page 2, by inserting after line 21 the following:
- 3 "8. Occupancy under a rental agreement covering a
- 4 single family residence located on land assessed as
- 5 agricultural land and located in an unincorporated area."

H-5537 FILED *Law 3/6* BY PERKINS of Greene
MARCH 6, 1978 *(p. 808)*

HOUSE FILE 2244

H-5532

- 1 Amend House File 2244 as follows:
- 2 Page 4, line 22, by inserting after the word
- 3 "money" the following: "and any interest accrued
- 4 thereon".

H-5532 FILED BY RINAS of Linn
MARCH 6, 1978

HOUSE FILE 2244

H-5531

- 1 Amend House File 2244 as follows:
- 2 1. Page 1, line 10, by striking the word
- 3 "liberally" and inserting in lieu thereof the
- 4 word "strictly".

H-5531 FILED *Law 3/6* BY MILLER of Buchanan
MARCH 6, 1978 *(p. 806)*

HOUSE FILE 2244

H-5513

- 1 Amend amendment H-5503, to House File 2244, as
- 2 follows:
- 3 1. Page 1, by striking lines 2 through 8 and
- 4 inserting in lieu thereof the following:
- 5 "1. Page 8, by striking lines 20 through 23 and
- 6 inserting in lieu thereof the following: "(117) of
- 7 the Code, all rental deposits shall be held in an
- 8 interest bearing account. Any interest earned on a
- 9 rental deposit shall be the property of the tenant."

H-5513 FILED, LOST BY SPENCER of Clay
MARCH 2, 1978 (p. 767) RINAS of Linn

HOUSE FILE 2244

H-5515

- 1 Amend House File 2244 as follows:
- 2 1. Page 2, by inserting after line 21 the following:
- 3 "8. Occupancy under a rental agreement covering a
- 4 single family residence located on land assessed as
- 5 agricultural land and located in an unincorporated area."

H-5515 FILED *w/d (p. 765)* BY PERKINS of Greene
MARCH 2, 1978

HOUSE FILE 2244

H-5512

- 1 Amend amendment H-5510, to House File 2244, as
- 2 follows:
- 3 1. Page 1, line 5, by inserting after the word
- 4 "Act" the words "affecting single family dwellings
- 5 located on agricultural land".

H-5512 FILED *Loss 3/2 (p. 761)* BY SCHNEKLOTH of Scott
MARCH 2, 1978

HOUSE FILE 2244

H-5518

- 1 Amend amendment H-5503 to House File 2244 as follows;
- 2 1. Page 1, line 8, by inserting after the word
- 3 "landlord", the words:
- 4 "No interest shall be paid to the tenant unless the
- 5 rental deposit is held for 6 months or more."

H-5518 FILED *Adopted 3/2 (p. 805)* BY BAKER of Buena Vista
MARCH 2, 1978

HOUSE FILE 2244

H-5519

- 1 Amend House File 2244 as follows:
- 2 1. Page 1, by striking lines 10 through 17.

H-5519 FILED *w/d 3/6 (p. 805)* BY MILLER of Buchanan
MARCH 2, 1978

HOUSE FILE 2244

H-5520

- 1 Amend House File 2244 as follows:
- 2 1. Page 1, by striking lines 10 and 11.

H-5520 FILED *w/d 3/6 (805)* BY MILLER of Buchanan
MARCH 2, 1978

MARCH 6, 1978

PAGE 11

HOUSE FILE 2244

H-5514

1 Amend House File 2244 as follows:

2 1. Page 5, by inserting after line 5 the
3 following: " _____ " Reasonable attorney's
4 fees" means fees determined by the time reasonably
5 expended by the attorney and not by the amount
6 of the recovery on behalf of the tenant or landlord."

H-5514 FILED, ADOPTED BY RINAS of Linn
MARCH 2, 1978 (p 762)

HOUSE FILE 2244

H-5517

1 Amend House File 2244 as follows:

2 1. Page 10, line 34 by striking the words
3 "fully explain" and inserting in lieu thereof the
4 words "provide a written explanation of".
5 2. Page 16, by striking lines 31 through 34
6 and inserting in lieu thereof the following:
7 "2. If a landlord's failure to deliver
8 possession is willful and not in good faith, a
9 tenant may recover from the landlord an amount
10 not more than three months' periodic rent or three-
11 fold the actual damages sustained by such tenant,".
12 3. Page 18, line 25 by striking the word "Any"
13 and inserting in lieu thereof the words "Recover
14 any".
15 4. Page 18, line 26 by inserting after the
16 word "noncompliance" the word "which".

H-5517 FILED *Adopted 3/2* BY PATCHETT of Johnson
MARCH 2, 1978 (p 767)

HOUSE FILE 2244

H-5516

1 Amend House File 2244 as follows:

2 1. Page 7, line 23, by inserting after the word
3 "Act" the words "provided that this restriction shall
4 not apply to rental agreements covering single family
5 residences on land assessed as agricultural land and
6 located in an unincorporated area".

H-5516 FILED *Adopted 3/2* BY PERKINS of Greene
MARCH 2, 1978 (p 766)

Written to memorialize issue (p 767)
HOUSE FILE 2244

H-5508

1 Amend House File 2244 as follows:

2 1. Page 24, line 34, by inserting after the
3 word "services." the following words: "Evidence by
4 the landlord that legitimate costs and charges of
5 owning, maintaining or operating a dwelling unit have
6 increased shall be a _____ defense against the pre-
7 sumption of retaliation when a rent increase is com-
8 mensurate with the increase in costs and charges."

H-5508 FILED *Adopted 3/2* BY EVANS of Grundy
MARCH 2, 1978 (p 766)

HOUSE FILE 2244

H-5503

- 1 Amend House File 2244 as follows:
- 2 1. Page 8, line 22, by striking the words "Any
- 3 interest" and inserting in lieu thereof the words
- 4 "Interest in the amount of four percent".
- 5 2. Page 8, line 23, by striking the word "landlord"
- 6 and inserting in lieu thereof the words "tenant, and
- 7 any remaining interest earned shall be the property of
- 8 the landlord".

H-5503 FILED BY ARNOULD of Scott
MARCH 2, 1978 DYRLAND of Clayton
Adopted 2/2 (p. 765) RINAS of Linn
motion to reconsider JOCHUM' E Dubuque
adopted (p. 767) GETTINGS of Wapello
reconsidered & amended MONROE of Des Moines
by S-512a Luch 3/6 (p. 805) HARVEY of Scott

HOUSE FILE 2244

H-5504

- 1 Amend House File 2244 as follows:
- 2 1. Page 2, by striking lines 22 through 35.
- 3 2. Page 3, by striking lines 1 through 15.
- 4 3. Page 19, line 23, by inserting after the word
- 5 "casualty" the following: "not the result of an
- 6 intentional or negligent act or omission of the tenant,
- 7 the tenants' family, or person on the premises with
- 8 the permission of the tenant,".

H-5504 FILED; BY CONLON of Muscatine
DIVISION A ADOPTED;
B WITHDRAWN (*p. 762*)
MARCH 2, 1978

HOUSE FILE 2244

H-5510

- 1 Amend House File 2244 as follows:
- 2 1. Page 2, by inserting after line 21, the
- 3 following new subsection:
- 4 "_____. Occupancy under a rental agreement in
- 5 existence on the effective date of this Act."

H-5510 FILED, WITHDRAWN BY SCHNEKLOTH of Scott
MARCH 2, 1978 (*p. 761*)

HOUSE FILE 2244

H-5507

- 1 Amend House File 2244 as follows:
- 2 1. Page 8, line 12, by striking the word "two"
- 3 and inserting in lieu thereof the word "one".

H-5507 FILED, LOST (*p. 763*) BY CLARK of Cerro Gordo
MARCH 2, 1978

HOUSE FILE 2244

H-5472

- 1 Amend House File 2244 as follows:
- 2 1. Page 11, line 30, by striking the words "for
- 3 the" and inserting in lieu thereof the words ", accessible
- 4 to all tenants, for the central collection and".

H-5472 FILED *Adopted 3/2*
 FEBRUARY 28, 1978 *(p. 754)* BY EVANS of Grundy

HOUSE FILE 2244

H-5478

- 1 Amend House File 2244 as follows:
- 2 1. Page 8, line 25, by striking the word "and"
- 3 and inserting in lieu thereof the following: "or from
- 4 the date of".
- 5 2. Page 8, line 26, by inserting after the word
- 6 "instructions," the following words: "whichever is
- 7 later,".

H-5478 FILED *w/d 3/2 (p. 752)*
 FEBRUARY 28, 1978 BY EVANS of Grundy

HOUSE FILE 2244

H-5492

- 1 Amend House File 2244 as follows:
- 2 1. Page 17, line 35, by inserting after the word
- 3 "and" the following: "if he exccercises that right."
- 4 2. Page 18, line 1, by striking the word "Act,"
- 5 and inserting in lieu thereof the word "Act".

H-5492 FILED *Out of order*
 MARCH 1, 1978 *with adoption*
of 5495 BY RINAS of Linn

HOUSE FILE 2244

H-5494

- 1 Amend House File 2244 as follows:
- 2 1. Page 17, line 12, by striking the word
- 3 "emergency" and inserting in lieu thereof the words
- 4 "failure of structural, plumbing, heating or electrical
- 5 features of the dwelling unit essential to tenant health
- 6 and safety".

H-5494 FILED *Out of order*
 MARCH 1, 1978 *with adoption*
of 5495 BY EVANS of Grundy

HOUSE FILE 2244

H-5495

- 1 Amend House File 2244 as follows:
- 2 1. Page 17, by striking lines 1 through 35.
- 3 2. Page 18, by striking lines 1 through 11.

H-5495 FILED *Adopted 3/2*
 MARCH 1, 1978 *(p. 760)* BY SMALLEY of Polk
Motion to reconsider lost (p. 767)

State Government
Rush, Chairperson
Junkins
Ashcraft

Amended & Passed 4/25 (p. 976)

HOUSE FILE 2244

By COMMITTEE ON STATE GOVERNMENT

(As Amended and Passed by the House)

Passed House, Date 5-1-78 (p. 2061) Passed Senate, Date 4-25-78 (p. 1118)

Vote: Ayes 65 Nays 18 Vote: Ayes 29 Nays 8

Approved June 27, 1978
Repassed Senate 5-2-78 (p. 1153)
34-5

A BILL FOR

1 An Act to adopt the Uniform Landlord Tenant Act as modified
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

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ARTICLE I
GENERAL PROVISIONS AND DEFINITIONS
Part I
SHORT TITLE, CONSTRUCTION, APPLICATION
AND SUBJECT MATTER OF THE ACT

Section 1. NEW SECTION. SHORT TITLE. This Act shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Sec. 2. NEW SECTION. PURPOSES--RULES OF CONSTRUCTION.

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this Act are:

a. To simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; and

b. To encourage landlord and tenant to maintain and improve the quality of housing.

Sec. 3. NEW SECTION. SUPPLEMENTARY PRINCIPLES OF LAW APPLICABLE. Unless displaced by the provisions of this Act, the principles of law and equity in this state, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, shall supplement its provisions.

Sec. 4. NEW SECTION. ADMINISTRATION OF REMEDIES-- ENFORCEMENT.

1. The remedies provided by this Act shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

2. A right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Part II
SCOPE AND JURISDICTION

1 Sec. 5. NEW SECTION. EXCLUSIONS FROM APPLICATION OF ACT.

2 Unless created to avoid the application of this Act, the
3 following arrangements are not governed by this Act:

4 1. Residence at an institution, public or private, if
5 incidental to detention or the provision of medical, geriatric,
6 educational, counseling, religious, or similar service.

7 2. Occupancy under a contract of sale of a dwelling unit
8 or the property of which it is a part, if the occupant is
9 the purchaser or a person who succeeds to his or her interest.

10 3. Occupancy by a member of a fraternal or social organiza-
11 tion in the portion of a structure operated for the benefit
12 of the organization.

13 4. Transient occupancy in a hotel, motel or other similar
14 lodgings.

15 5. Occupancy by an employee of a landlord whose right
16 to occupancy is conditional upon employment in and about the
17 premises.

18 6. Occupancy by an owner of a condominium unit or a holder
19 of a proprietary lease in a cooperative.

20 7. Occupancy under a rental agreement covering premises
21 used by the occupant primarily for agricultural purposes.

22 Part III

23 GENERAL DEFINITIONS AND

24 PRINCIPLES OF INTERPRETATION; NOTICE.

25 Sec. 6. NEW SECTION. GENERAL DEFINITIONS. Subject to
26 additional definitions contained in subsequent articles of
27 this Act which apply to specific articles or its parts, and
28 unless the context otherwise requires, in this Act:

29 1. "Building and housing codes" include a law, ordinance,
30 or governmental regulation concerning fitness for habitation,
31 or the construction, maintenance, operation, occupancy, use,
32 or appearance of a premise or dwelling unit.

33 2. "Dwelling unit" means a structure or the part of a
34 structure that is used as a home, residence, or sleeping
35 place.

1 3. "Good faith" means honesty in fact in the conduct of
2 the transaction concerned.

3 4. "Landlord" means the owner, lessor, or sublessor of
4 the dwelling unit or the building of which it is a part, and
5 it also means a manager of the premises who fails to disclose
-6 as required by section fifteen (15) of this Act.

7 5. "Business" includes a corporation, government,
8 governmental subdivision or agency, business trust, estate,
9 trust, partnership or association, two or more persons having
10 a joint or common interest, and any other legal or commercial
11 entity.

12 6. "Owner" means one or more persons, jointly or severally,
13 in whom is vested:

14 a. All or part of the legal title to property; or

15 b. All or part of the beneficial ownership and a right
16 to present use and enjoyment of the premises, and the term
17 includes a mortgagee in possession.

18 7. "Premises" means a dwelling unit and the structure
19 of which it is a part and facilities and appurtenances of
20 it and grounds, areas and facilities held out for the use
21 of tenants generally or whose use is promised to the tenant.

22 8. "Rent" means a payment to be made to the landlord under
23 the rental agreement.

24 9. "Rental agreement" means an agreement written or oral,
25 and a valid rule, adopted under section twenty (20) of this
26 Act, embodying the terms and conditions concerning the use
27 and occupancy of a dwelling unit and premises.

28 10. "Rental deposit" means a deposit of money to secure
29 performance of a residential rental agreement, other than
30 a deposit which is exclusively in advance payment of rent.

31 11. "Roomer" means a person occupying a dwelling unit
32 that lacks a major bathroom or kitchen facility, in a structure
33 where one or more major facilities are used in common by
34 occupants of the dwelling unit and other dwelling units.

35 Major facility in the case of a bathroom means toilet, or

1 either a bath or shower, and in the case of a kitchen means
2 refrigerator, stove or sink.

3 12. "Single family residence" means a structure maintained
4 and used as a single dwelling unit. Notwithstanding that
5 a dwelling unit shares one or more walls with another dwelling
6 unit, it is a single family residence if it has direct access
7 to a street or thoroughfare and shares neither heating
8 facilities, hot water equipment, nor any other essential
9 facility or service with another dwelling unit.

10 13. "Tenant" means a person entitled under a rental agree-
11 ment to occupy a dwelling unit to the exclusion of another.

12 14. "Reasonable attorney's fees" means fees determined
13 by the time reasonably expended by the attorney and not by
14 the amount of the recovery on behalf of the tenant or landlord.

15 Sec. 7. NEW SECTION. UNCONSCIONABILITY.

16 1. If the court, as a matter of law, finds that:

17 a. A rental agreement or any provision of it was uncon-
18 scionable when made, the court may refuse to enforce the
19 agreement, enforce the remainder of the agreement without
20 the unconscionable provision, or limit the application of
21 an unconscionable provision to avoid an unconscionable result.

22 b. A settlement in which a party waives or agrees to
23 forego a claim or right under this Act or under a rental
24 agreement was unconscionable at the time it was made, the
25 court may refuse to enforce the settlement, enforce the
26 remainder of the settlement without the unconscionable
27 provision, or limit the application of an unconscionable
28 provision to avoid any unconscionable result.

29 2. If unconscionability is put into issue by a party or
30 by the court upon its own motion the parties shall be afforded
31 a reasonable opportunity to present evidence as to the setting,
32 purpose, and effect of the rental agreement or settlement
33 to aid the court in making the determination.

34 Sec. 8. NEW SECTION. NOTICE.

35 1. A person has notice of a fact if such person has actual

1 knowledge of it, has received a notice or notification of
2 it or, if from all the facts and circumstances known to that
3 person at the time in question, such person has reason to
4 know that it exists. A person "knows" or "has knowledge"
5 of a fact if such person has actual knowledge of it.

6 2. A person "notifies" or "gives" a notice or notifi-
7 cation to another by taking steps reasonably calculated to
8 inform the other in ordinary course whether or not the other
9 actually comes to know of it. A person "receives" a notice
10 or notification when it comes to that person's attention or
11 in the case of the landlord, it is delivered at the place
12 of business of the landlord through which the rental agreement
13 was made or at a place held out by the landlord as the place
14 for receipt of the communication or, when in the case of the
15 tenant, it is delivered in hand to the tenant or mailed by
16 registered or certified mail to such person at the place held
17 out by such person as the place for receipt of the
18 communication, or in the absence of such designation, to such
19 person's last known place of residence.

20 3. "Notice," knowledge or a notice or notification received
21 by an organization is effective for a particular transaction
22 from the time it is brought to the attention of the individual
23 conducting that transaction, and in any event from the time
24 it would have been brought to the attention of such person
25 if the organization had exercised reasonable diligence.

26 Part IV

27 GENERAL PROVISIONS

28 Sec. 9. NEW SECTION. TERMS AND CONDITIONS OF RENTAL
29 AGREEMENT.

30 1. The landlord and tenant may include in a rental agree-
31 ment, terms and conditions not prohibited by this Act or other
32 rule of law including rent, term of the agreement, and other
33 provisions governing the rights and obligations of the parties.

34 2. In absence of agreement, the tenant shall pay as rent
35 the fair rental value for the use and occupancy of the dwelling

1 unit.

2 3. Rent shall be payable without demand or notice at the
3 time and place agreed upon by the parties. Unless otherwise
4 agreed, rent is payable at the dwelling unit and periodic
5 rent is payable at the beginning of any term of one month
6 or less and otherwise in equal monthly installments at the
7 beginning of each month. Unless otherwise agreed, rent shall
8 be uniformly apportionable from day-to-day.

9 4. Unless the rental agreement fixes a definite term,
10 the tenancy shall be week-to-week in case of a roomer who
11 pays weekly rent, and in all other cases month-to-month.

12 Sec. 10. NEW SECTION. EFFECT OF UNSIGNED OR UNDELIVERED
13 RENTAL AGREEMENT.

14 1. If a landlord does not sign and deliver a written
15 rental agreement signed and delivered to the landlord by the
16 tenant, acceptance of rent without reservation by the landlord
17 gives the rental agreement the same effect as if it had been
18 signed and delivered by the landlord.

19 2. If a tenant does not sign and deliver a written rental
20 agreement signed and delivered to the tenant by the landlord,
21 acceptance of possession without reservation gives the rental
22 agreement the same effect as if it had been signed and
23 delivered by the tenant.

24 3. If a rental agreement given effect by the operation
25 of this section provides for a term longer than one year,
26 it is effective only for one year.

27 Sec. 11. NEW SECTION. PROHIBITED PROVISIONS IN RENTAL
28 AGREEMENTS.

29 1. A rental agreement shall not provide that the tenant
30 or landlord:

31 a. Agrees to waive or to forego rights or remedies under
32 this Act provided that this restriction shall not apply to
33 rental agreements covering single family residences on land
34 assessed as agricultural land and located in an unincorporated
35 area;

1 b. Authorizes a person to confess judgment on a claim
2 arising out of the rental agreement;

3 c. Agrees to pay the other party's attorney fees; or

4 d. Agrees to the exculpation or limitation of any liability
5 of the other party arising under law or to indemnify the other
6 party for that liability or the costs connected therewith.

7 2. A provision prohibited by subsection one (1) of this
8 section included in a rental agreement is unenforceable.

9 If a landlord willfully uses a rental agreement containing
10 provisions known by the landlord to be prohibited, a tenant
11 may recover actual damages sustained by the tenant and not
12 more than three months' periodic rent and reasonable attorney's
13 fees.

14 Sec. 12. NEW SECTION. SEPARATION OF RENTS AND OBLIGATIONS
15 TO MAINTAIN PROPERTY FORBIDDEN. A rental agreement,
16 assignment, conveyance, trust deed, or security instrument
17 shall not permit the receipt of rent free of the obligation
18 to comply with section seventeen (17), subsection one (1)
19 of this Act.

20 ARTICLE II

21 LANDLORD OBLIGATIONS

22 Sec. 13. NEW SECTION. RENTAL DEPOSITS.

23 1. A landlord shall not demand or receive as rental deposit
24 and prepaid rent an amount or value in excess of two month's
25 rent.

26 2. All rental deposits shall be held by the landlord for
27 the tenant, who is a party to the agreement, in a bank or
28 savings and loan association or credit union which is insured
29 by an agency of the federal government. Rental deposits shall
30 not be commingled with the personal funds of the landlord.
31 Notwithstanding the provisions of chapter one hundred seventeen
32 (117) of the Code, all rental deposits may be held in a trust
33 account, which may be a common trust account and which may
34 be an interest bearing account. Any interest earned on a
35 rental deposit shall be the property of the landlord.

1 3. A landlord shall, within thirty days from the date
2 of termination of the tenancy and receipt of the tenant's
3 mailing address or delivery instructions, return the rental
4 deposit to the tenant or furnish to the tenant a written
5 statement showing the specific reason for withholding of the
6 rental deposit or any portion thereof. If the rental deposit
7 or any portion of the rental deposit is withheld for the re-
8 storatation of the dwelling unit, the statement shall specify
9 the nature of the damages. The landlord may withhold from
10 the rental deposit only such amounts as are reasonably neces-
11 sary for the following reasons:

12 a. To remedy a tenant's default in the payment of rent
13 or of other funds due to the landlord pursuant to the rental
14 agreement.

15 b. To restore the dwelling unit to its condition at the
16 commencement of the tenancy, ordinary wear and tear excepted.

17 In an action concerning the rental deposit, the burden
18 of proving, by a preponderance of the evidence, the reason
19 for withholding all or any portion of the rental deposit shall
20 be on the landlord.

21 4. A landlord who fails to provide a written statement
22 within thirty days of termination of the tenancy and receipt
23 of the tenant's mailing address or delivery instructions shall
24 forfeit all rights to withhold any portion of the rental
25 deposit. If no mailing address or instructions are provided
26 to the landlord within one year from the termination of the
27 tenacy the rental deposit shall revert to the landlord and
28 the tenant will be deemed to have forfeited all rights to
29 the rental deposit.

30 5. Upon termination of a landlord's interest in the
31 dwelling unit, the landlord or an agent of the landlord shall,
32 within a reasonable time, transfer the rental deposit, or
33 any remainder after any lawful deductions to the landlord's
34 successor in interest and notify the tenant of the transfer
35 and of the transferee's name and address or return the deposit,

1 or any remainder after any lawful deductions to the tenant.

2 Upon the termination of the landlord's interest in the
3 dwelling unit and compliance with the provisions of this
4 subsection, the landlord shall be relieved of any further
5 liability with respect to the rental deposit.

6 6. Upon termination of the landlord's interest in the
7 dwelling unit, the landlord's successor in interest shall
8 have all the rights and obligations of the landlord with re-
9 spect to the rental deposits, except that if the tenant does
10 not object to the stated amount within twenty days after writ-
11 ten notice to the tenant of the amount of rental deposit being
12 transferred or assumed, the obligations of the landlord's
13 successor to return the deposit shall be limited to the amount
14 contained in the notice. The notice shall contain a stamped
15 envelope addressed to landlord's successor and may be given
16 by mail or by personal service.

17 7. The bad faith retention of a deposit by a landlord,
18 or any portion of the rental deposit, in violation of this
19 section shall subject the landlord to punitive damages not
20 to exceed two hundred dollars in addition to actual damages.

21 8. The court may, in any action on a rental agreement,
22 award reasonable attorney fees to the prevailing party.

23 Sec. 14. NEW SECTION. DISCLOSURE.

24 1. The landlord or a person authorized to enter into a
25 rental agreement on behalf of the landlord shall disclose
26 to the tenant in writing at or before the commencement of
27 the tenancy the name and address of:

28 a. The person authorized to manage the premises.

29 b. An owner of the premises or a person authorized to
30 act for and on behalf of the owner for the purpose of service
31 of process and for the purpose of receiving and receipting
32 for notices and demands.

33 2. The information required to be furnished by this sec-
34 tion shall be kept current and this section extends to and
35 is enforceable against a successor landlord, owner, or manager.

1 3. A person who fails to comply with subsection one (1)
2 of this section becomes an agent of each person who is a
3 landlord for the purpose of:

4 a. Service of process and receiving and receipting for
5 notices and demands.

6 b. Performing the obligations of the landlord under this
7 Act and under the rental agreement and expending or making
8 available for that purpose all rent collected from the
9 premises.

10 4. The landlord or any person authorized to enter into
11 a rental agreement on the landlord's behalf shall provide
12 a written explanation of utility rates, charges and services
13 to the prospective tenant before the rental agreement is
14 signed unless paid by the tenant directly to the utility
15 company.

16 5. Each tenant shall be notified, in writing, of any rent
17 increase at least thirty days before the effective date.
18 Such effective date shall not be sooner than the expiration
19 date of the original rental agreement or any renewal or
20 extension thereof.

21 Sec. 15. NEW SECTION. LANDLORD TO SUPPLY POSSESSION OF
22 DWELLING UNIT. At the commencement of the term, the land-
23 lord shall deliver possession of the premises to the tenant
24 in compliance with the rental agreement and section seven-
25 teen (17) of this Act. The landlord may bring an action for
26 possession against a person wrongfully in possession and may
27 recover the damages provided in section thirty-seven (37),
28 subsection three (3) of this Act.

29 Sec. 16. NEW SECTION. LANDLORD TO MAINTAIN FIT PREMISES.

30 1. The landlord shall:

31 a. Comply with the requirements of applicable building
32 and housing codes materially affecting health and safety.

33 b. Make all repairs and do whatever is necessary to put
34 and keep the premises in a fit and habitable condition.

35 c. Keep all common areas of the premises in a clean and

1 safe condition. The landlord shall not be liable for any
2 injury caused by any objects or materials which belong to
3 or which have been placed by a tenant in the common areas
4 of the premises used by the tenant.

5 d. Maintain in good and safe working order and condition
6 all electrical, plumbing, sanitary, heating, ventilating,
7 air-conditioning, and other facilities and appliances,
8 including elevators, supplied or required to be supplied by
9 the landlord.

10 e. Provide and maintain appropriate receptacles and con-
11 veniences, accessible to all tenants, for the central
12 collection and removal of ashes, garbage, rubbish, and other
13 waste incidental to the occupancy of the dwelling unit and
14 arrange for their removal.

15 f. Supply running water and reasonable amounts of hot
16 water at all times and reasonable heat, except where the
17 building that includes the dwelling unit is not required by
18 law to be equipped for that purpose, or the dwelling unit
19 is so constructed that heat or hot water is generated by an
20 installation within the exclusive control of the tenant and
21 supplied by a direct public utility connection.

22 If the duty imposed by paragraph a of this subsection is
23 greater than a duty imposed by another paragraph of this sub-
24 section, the landlord's duty shall be determined by reference
25 to paragraph a of this subsection.

26 2. The landlord and tenant of a single family residence
27 may agree in writing that the tenant perform the landlord's
28 duties specified in paragraphs e and f of subsection one (1)
29 and also specified repairs, maintenance tasks, alterations,
30 and remodeling, but only if the transaction is entered into
31 in good faith.

32 3. The landlord and tenant of a dwelling unit other than
33 a single family residence may agree that the tenant is to
34 perform specified repairs, maintenance tasks, alterations,
35 or remodeling only:

1 a. If the agreement of the parties is entered into in
2 good faith and is set forth in a separate writing signed by
3 the parties and supported by adequate consideration;

4 b. If the work is not necessary to cure noncompliance
5 with subsection one (1), paragraph a of this section; and

6 c. If the agreement does not diminish or affect the obliga-
7 tion of the landlord to other tenants in the premises.

8 4. The landlord shall not treat performance of the separate
9 agreement described in subsection three (3) of this section
10 as a condition to an obligation or performance of a rental
11 agreement.

12 Sec. 17. NEW SECTION. LIMITATION OF LIABILITY.

13 1. Unless otherwise agreed, a landlord, who conveys prem-
14 ises that include a dwelling unit subject to a rental agree-
15 ment in a good faith sale to a bona fide purchaser, is relieved
16 of liability under the rental agreement and this Act as to
17 events occurring subsequent to written notice to the tenant
18 of the conveyance.

19 2. A manager of premises that includes a dwelling unit
20 is relieved of liability under the rental agreement and this
21 Act as to events occurring after written notice to the tenant
22 of the termination of his or her management.

23 ARTICLE III

24 TENANT OBLIGATIONS

25 Sec. 18. NEW SECTION. TENANT TO MAINTAIN DWELLING UNIT.

26 The tenant shall:

27 1. Comply with all obligations primarily imposed upon
28 tenants by applicable provisions of building and housing codes
29 materially affecting health and safety.

30 2. Keep that part of the premises that the tenant occupies
31 and uses as clean and safe as the condition of the premises
32 permit.

33 3. Dispose from the tenant's dwelling unit all ashes,
34 rubbish, garbage, and other waste in a clean and safe manner.

35 4. Keep all plumbing fixtures in the dwelling unit or

1 used by the tenant as clean as their condition permits.

2 5. Use in a reasonable manner all electrical, plumbing,
3 sanitary, heating, ventilating, air-conditioning and other
4 facilities and appliances including elevators in the premises.

5 6. Not deliberately or negligently destroy, deface, damage,
6 impair or remove a part of the premises or knowingly permit
7 a person to do so.

8 7. Conduct himself or herself in a manner that will not
9 disturb a neighbor's peaceful enjoyment of the premises.

10 Sec. 19. NEW SECTION. RULES. A landlord, from time to
11 time, may adopt rules, however described, concerning the
12 tenant's use and occupancy of the premises. It is enforceable
13 against the tenant only if:

14 1. Its purpose is to promote the convenience, safety,
15 or welfare of the tenants in the premises, preserve the land-
16 lord's property from abusive use, or make a fair distribution
17 of services and facilities held out for the tenants generally.

18 2. It is reasonably related to the purpose for which it
19 is adopted.

20 3. It applies to all tenants in the premises in a fair
21 manner.

22 4. It is sufficiently explicit in its prohibition, direc-
23 tion, or limitation of the tenant's conduct to fairly inform
24 the tenant of what the tenant must or must not do to comply.

25 5. It is not for the purpose of evading the obligations
26 of the landlord.

27 6. The tenant has notice of it at the time the tenant
28 enters into the rental agreement.

29 A rule adopted after the tenant enters into the rental
30 agreement is enforceable against the tenant if reasonable
31 notice of its adoption is given to the tenant and it does
32 not work a substantial modification of the rental agreement.

33 Sec. 20. NEW SECTION. ACCESS.

34 1. The tenant shall not unreasonably withhold consent
35 to the landlord to enter into the dwelling unit in order to

1 inspect the premises, make necessary or agreed repairs,
2 decorations, alterations, or improvements, supply necessary
3 or agreed services, or exhibit the dwelling unit to prospective
4 or actual purchasers, mortgagees, tenants, workmen, or
5 contractors.

6 2. The landlord may enter the dwelling unit without consent
7 of the tenant in case of emergency.

8 3. The landlord shall not abuse the right of access or
9 use it to harass the tenant. Except in case of emergency
10 or if it is impracticable to do so, the landlord shall give
11 the tenant at least twenty-four hours notice of the landlord's
12 intent to enter and enter only at reasonable times.

13 4. The landlord does not have another right of access
14 except by court order, and as permitted by sections thirty-
15 one (31) and thirty-two (32) of this Act, or if the tenant
16 has abandoned or surrendered the premises.

17 Sec. 21. NEW SECTION. TENANT TO USE AND OCCUPY. Unless
18 otherwise agreed, the tenant shall occupy his or her dwelling
19 unit only as a dwelling unit and uses incidental thereto.
20 The rental agreement may require that the tenant notify the
21 landlord of an anticipated extended absence from the premises
22 not later than the first day of the extended absence.

23 ARTICLE IV

24 REMEDIES

25 Part I

26 TENANT REMEDIES

27 Sec. 22. NEW SECTION. NONCOMPLIANCE BY THE LANDLORD--
28 IN GENERAL.

29 1. Except as provided in this Act, if there is a material
30 noncompliance by the landlord with the rental agreement or
31 a noncompliance with section seventeen (17) of this Act
32 materially affecting health and safety, the tenant may deliver
33 a written notice to the landlord specifying the acts and
34 omissions constituting the breach and that the rental agreement
35 will terminate upon a date not less than thirty days after

1 receipt of the notice if the breach is not remedied in fourteen
2 days, and the rental agreement shall terminate and the tenant
3 shall surrender as provided in the notice subject to the
4 following:

5 a. If the breach is remediable by repairs or the payment
6 of damages or otherwise, and if the landlord adequately
7 remedies the breach prior to the date specified in the notice,
8 the rental agreement shall not terminate.

9 b. If substantially the same act or omission which
10 constituted a prior noncompliance of which notice was given
11 recurs within six months, the tenant may terminate the rental
12 agreement upon at least fourteen days' written notice
13 specifying the breach and the date of termination of the
14 rental agreement.

15 c. The tenant may not terminate for a condition caused
16 by the deliberate or negligent act or omission of the tenant,
17 a member of the tenant's family, or other person on the
18 premises with the tenant's consent.

19 2. Except as provided in this Act, the tenant may recover
20 damages and obtain injunctive relief for any noncompliance
21 by the landlord with the rental agreement or section seven-
22 teen (17) of this Act unless the landlord demonstrates af-
23 firmatively that the landlord has exercised due diligence
24 and effort to remedy any noncompliance, and that any failure
25 by the landlord to remedy any noncompliance was due to
26 circumstances reasonably beyond the control of the landlord.
27 If the landlord's noncompliance is willful the tenant may
28 recover reasonable attorney's fees.

29 3. The remedy provided in subsection two (2) of this
30 section is in addition to any right of the tenant arising
31 under subsection one (1) of this section.

32 4. If the rental agreement is terminated, the landlord
33 shall return all prepaid rent and security recoverable by
34 the tenant under section fourteen (14) of this Act.

35 Sec. 23. NEW SECTION. FAILURE TO DELIVER POSSESSION.

1 1. If the landlord fails to deliver possession of the
2 dwelling unit to the tenant as provided in section sixteen
3 (16) of this Act, rent abates until possession is delivered
4 and the tenant shall:

5 a. Upon at least five days' written notice to the landlord,
6 terminate the rental agreement and upon termination the land-
7 lord shall return all prepaid rent and security; or

8 b. Demand performance of the rental agreement by the land-
9 lord and, if the tenant elects, maintain an action for posses-
10 sion of the dwelling unit against the landlord or a person
11 wrongfully in possession and recover the damages sustained
12 by the tenant.

13 2. If a landlord's failure to deliver possession is willful
14 and not in good faith, a tenant may recover from the landlord
15 an amount not more than three months' periodic rent or
16 threefold the actual damages sustained by such tenant,
17 whichever is greater, and reasonable attorney's fees.

18 Sec. 24. NEW SECTION. WRONGFUL FAILURE TO SUPPLY HEAT,
19 WATER, HOT WATER OR ESSENTIAL SERVICES.

20 1. If contrary to the rental agreement or section seven-
21 teen (17) of this Act the landlord deliberately or negligently
22 fails to supply running water, hot water, or heat, or essential
23 services, the tenant may give written notice to the landlord
24 specifying the breach and may:

25 a. Procure reasonable amounts of hot water, running water,
26 heat and essential services during the period of the landlord's
27 noncompliance and deduct their actual and reasonable cost
28 from the rent;

29 b. Recover damages based upon the diminution in the fair
30 rental value of the dwelling unit; or

31 c. Recover any rent already paid for the period of the
32 landlord's noncompliance which shall be reimbursed on a pro
33 rata basis.

34 2. If the tenant proceeds under this section, the tenant
35 may not proceed under section twenty-three (23) of this Act

1 as to that breach.

2 3. The rights under this section do not arise until the
3 tenant has given notice to the landlord or if the condition
4 was caused by the deliberate or negligent act or omission
5 of the tenant, a member of his family, or other person on
6 the premises with the consent of the tenant.

7 Sec. 25. NEW SECTION. LANDLORD'S NONCOMPLIANCE AS DEFENSE
8 TO ACTION FOR POSSESSION OR RENT.

9 1. In an action for possession based upon nonpayment of
10 the rent or in an action for rent where the tenant is in
11 possession, the tenant may counterclaim for an amount which
12 the tenant may recover under the rental agreement or this
13 Act. In that event the court from time to time may order
14 the tenant to pay into court all or part of the rent accrued
15 and thereafter accruing, and shall determine the amount due
16 to each party. The party to whom a net amount is owed shall
17 be paid first from the money paid into court, and the balance
18 by the other party. If rent does not remain due after
19 application of this section, judgment shall be entered for
20 the tenant in the action for possession. If the defense or
21 counterclaim by the tenant is without merit and is not raised
22 in good faith the landlord may recover reasonable attorney's
23 fees.

24 2. In an action for rent where the tenant is not in
25 possession, the tenant may counterclaim as provided in
26 subsection one (1) of this section, but the tenant is not
27 required to pay any rent into court.

28 Sec. 26. NEW SECTION. FIRE OR CASUALTY DAMAGE.

29 1. If the dwelling unit or premises are damaged or
30 destroyed by fire or casualty to an extent that enjoyment
31 of the dwelling unit is substantially impaired, the tenant
32 may:

33 a. Immediately vacate the premises and notify the landlord
34 in writing within fourteen days of the tenant's intention
35 to terminate the rental agreement, in which case the rental

1 agreement terminates as of the date of vacating; or

2 b. If continued occupancy is lawful, vacate a part of
3 the dwelling unit rendered unusable by the fire or casualty,
4 in which case the tenant's liability for rent is reduced in
5 proportion to the diminution in the fair rental value of the
6 dwelling unit.

7 2. If the rental agreement is terminated, the landlord
8 shall return all prepaid rent and security recoverable under
9 section fourteen (14) of this Act. Accounting for rent in
10 the event of termination or apportionment is to occur as of
11 the date of the casualty.

12 Sec. 27. NEW SECTION. TENANT'S REMEDIES FOR LANDLORD'S
13 UNLAWFUL OUSTER, EXCLUSION, OR DIMINUTION OF SERVICE. If
14 the landlord unlawfully removes or excludes the tenant from
15 the premises or willfully diminishes services to the tenant
16 by interrupting or causing the interruption of electric, gas,
17 water or other essential service to the tenant, the tenant
18 may recover possession or terminate the rental agreement and,
19 in either case, recover an amount not more than three months'
20 periodic rent or threefold the actual damages sustained by
21 the tenant, whichever is greater and reasonable attorney's
22 fees. If the rental agreement is terminated, the landlord
23 shall return all prepaid rent and security.

24 Sec. 28. NEW SECTION. IMPLIED WARRANTY.

25 1. Except as provided in subsection two (2) of section
26 seventeen (17) of this Act, a landlord who rents or leases
27 residential property in this state shall have the duty to
28 keep the premises in repair and in a habitable condition.
29 A landlord who represents to a tenant, whether orally or in
30 writing or by demonstration, that one or more accessories,
31 including but not limited to a shower, bath, electrical
32 appliance, fixture, or other facility or service, are part
33 of the rental agreement, shall be deemed to warrant that the
34 accessories at all times shall be serviceable and fit for
35 the particular purposes for which they are to be used.

1 noncompliance with section nineteen (19) of this Act materially
2 affecting health and safety, the landlord may deliver a written
3 notice to the tenant specifying the acts and omissions
4 constituting the breach and that the rental agreement will
5 terminate upon a date not less than thirty days after receipt
6 of the notice if the breach is not remedied in fourteen days,
7 and the rental agreement shall terminate as provided in the
8 notice subject to the provisions of this section. If the
9 breach is remediable by repairs or the payment of damages
10 or otherwise and the tenant adequately remedies the breach
11 prior to the date specified in the notice, the rental agreement
12 shall not terminate. If substantially the same act or omission
13 which constituted a prior noncompliance of which notice was
14 given recurs within six months, the landlord may terminate
15 the rental agreement upon at least fourteen days' written
16 notice specifying the breach and the date of termination of
17 the rental agreement.

18 2. If rent is unpaid when due and the tenant fails to
19 pay rent within three days after written notice by the landlord
20 of nonpayment and the landlord's intention to terminate the
21 rental agreement if the rent is not paid within that period
22 of time, the landlord may terminate the rental agreement.

23 3. Except as provided in this Act, the landlord may recover
24 damages and obtain injunctive relief for noncompliance by
25 the tenant with the rental agreement or section nineteen (19)
26 of this Act unless the tenant demonstrates affirmatively that
27 the tenant has exercised due diligence and effort to remedy
28 any noncompliance, and that the tenant's failure to remedy
29 any noncompliance was due to circumstances beyond the tenant's
30 control. If the tenant's noncompliance is willful, the
31 landlord may recover reasonable attorney's fees.

32 Sec. 30. NEW SECTION. FAILURE TO MAINTAIN. If there
33 is noncompliance by the tenant with section nineteen (19)
34 of this Act, materially affecting health and safety that can
35 be remedied by repair or replacement of a damaged item or

1 cleaning, and the tenant fails to comply as promptly as
2 conditions require in case of emergency or within fourteen
3 days after written notice by the landlord specifying the
4 breach and requesting that the tenant remedy it within that
5 period of time, the landlord may enter the dwelling unit and
6 cause the work to be done in a workmanlike manner and submit
7 an itemized bill for the actual and reasonable cost or the
8 fair and reasonable value of it as rent on the next date when
9 periodic rent is due, or if the rental agreement has
10 terminated, for immediate payment.

11 Sec. 31. NEW SECTION. REMEDIES FOR ABSENCE, NONUSE AND
12 ABANDONMENT.

13 1. If the rental agreement requires the tenant to give
14 notice to the landlord of an anticipated extended absence
15 as provided in section twenty-two (22) of this Act, and the
16 tenant willfully fails to do so, the landlord may recover
17 actual damages from the tenant.

18 2. During an absence of the tenant in excess of fourteen
19 days, the landlord may enter the dwelling unit at times
20 reasonably necessary.

21 3. If the tenant abandons the dwelling unit, the land-
22 lord shall make reasonable efforts to rent it at a fair ren-
23 tal. If the landlord rents the dwelling unit for a term
24 beginning prior to the expiration of the rental agreement,
25 it is deemed to be terminated as of the date the new tenancy
26 begins. The rental agreement is deemed to be terminated by
27 the landlord as of the date the landlord has notice of the
28 abandonment, if the landlord fails to use reasonable efforts
29 to rent the dwelling unit at a fair rental or if the landlord
30 accepts the abandonment as a surrender. If the tenancy is
31 from month-to-month, or week-to-week, the term of the rental
32 agreement for this purpose shall be deemed to be a month or
33 a week, as the case may be.

34 Sec. 32. NEW SECTION. WAIVER OF LANDLORD'S RIGHT TO
35 TERMINATE. Acceptance of performance by the tenant that

1 varies from the terms of the rental agreement or rules
2 subsequently adopted by the landlord constitutes a waiver
3 of the landlord's right to terminate the rental agreement
4 for that breach, unless otherwise agreed after the breach
5 has occurred.

6 Sec. 33. NEW SECTION. LANDLORD LIENS--DISTRESS FOR RENT.

7 1. A lien on behalf of the landlord on the tenant's
8 household goods is not enforceable unless perfected before
9 the effective date of this Act.

10 2. Distraint for rent is abolished.

11 Sec. 34. NEW SECTION. REMEDY AFTER TERMINATION. If the
12 rental agreement is terminated, the landlord may have a claim
13 for possession and for rent and a separate claim for actual
14 damages for breach of the rental agreement and reasonable
15 attorney's fees as provided in section thirty (30) of this
16 Act.

17 Sec. 35. NEW SECTION. RECOVERY OF POSSESSION LIMITED.

18 A landlord may not recover or take possession of the dwelling
19 unit by action or otherwise, including willful diminution
20 of services to the tenant by interrupting or causing the
21 interruption of electric, gas, water or other essential service
22 to the tenant, except in case of abandonment, surrender, or
23 as permitted in this Act.

24 Part III

25 PERIODIC TENANCY: HOLDOVER: ABUSE OF ACCESS

26 Sec. 36. NEW SECTION. PERIODIC TENANCY; HOLDOVER REMEDIES.

27 1. The landlord or the tenant may terminate a week-to-
28 week tenancy by a written notice given to the other at least
29 ten days prior to the termination date specified in the notice.

30 2. The landlord or the tenant may terminate a month-to-
31 month tenancy by a written notice given to the other at least
32 thirty days prior to the periodic rental date specified in
33 the notice.

34 3. If the tenant remains in possession without the land-
35 lord's consent after expiration of the term of the rental

1 agreement or its termination, the landlord may bring an action
2 for possession and if the tenant's holdover is willful and
3 not in good faith the landlord, in addition, may recover an
4 amount not more than three months' periodic rent or threefold
5 the actual damages sustained by the landlord, whichever is
6 greater, and reasonable attorney's fees. If the landlord
7 consents to the tenant's continued occupancy, subsection four
8 (4) of section ten (10) of this Act applies.

9 Sec. 37. NEW SECTION. LANDLORD AND TENANT REMEDIES FOR
10 ABUSE OF ACCESS.

11 1. If the tenant refuses to allow lawful access, the
12 landlord may obtain injunctive relief to compel access, or
13 terminate the rental agreement. In either case, the landlord
14 may recover actual damages and reasonable attorney's fee.

15 2. If the landlord makes an unlawful entry or a lawful
16 entry in an unreasonable manner or makes repeated demands
17 for entry otherwise lawful but which have the effect of
18 unreasonably harassing the tenant, the tenant may obtain
19 injunctive relief to prevent the recurrence of the conduct,
20 or terminate the rental agreement. In either case, the tenant
21 may recover actual damages not less than an amount equal to
22 one month's rent and reasonable attorney's fees.

23 ARTICLE V

24 RETALIATORY ACTION

25 Sec. 38. NEW SECTION. RETALIATORY CONDUCT PROHIBITED.

26 1. Except as provided in this section, a landlord may
27 not retaliate by increasing rent or decreasing services or
28 by bringing or threatening to bring an action for possession
29 after:

30 a. The tenant has complained to a governmental agency
31 charged with responsibility for enforcement of a building
32 or housing code of a violation applicable to the premises
33 materially affecting health and safety;

34 b. The tenant has complained to the landlord of a violation
35 under section seventeen (17) of this Act; or

1 c. The tenant has organized or become a member of a
2 tenants' union or similar organization.

3 2. If the landlord acts in violation of subsection one
4 (1) of this section, the tenant is entitled to the remedies
5 provided in section twenty-nine (29) of this Act, and has
6 a defense in action against the landlord for possession.
7 In an action by or against the tenant, evidence of a good
8 faith complaint within one year prior to the alleged act of
9 retaliation creates a presumption that the landlord's conduct
10 was in retaliation. The presumption does not arise if the
11 tenant made the complaint after notice of a proposed rent
12 increase or diminution of services. Evidence by the landlord
13 that legitimate costs and charges of owning, maintaining or
14 operating a dwelling unit have increased shall be a defense
15 against the presumption of retaliation when a rent increase
16 is commensurate with the increase in costs and charges.

17 "Presumption" means that the trier of fact must find the
18 existence of the fact presumed unless and until evidence is
19 introduced which would support a finding of its nonexistence.

20 3. Notwithstanding subsections one (1) and two (2) of
21 this section, a landlord may bring an action for possession
22 if:

23 a. The violation of the applicable building or housing
24 code was caused primarily by lack of reasonable care by the
25 tenant or other person in the tenant's household or upon the
26 premises with his consent;

27 b. The tenant is in default in rent; or

28 c. Compliance with the applicable building or housing
29 code requires alteration, remodeling, or demolition which
30 would effectively deprive the tenant of use of the dwelling
31 unit. The maintenance of the action does not release the
32 landlord from liability under subsection two (2) of section
33 twenty-three (23) of this Act.

34

ARTICLE VI

35

EFFECTIVE DATE AND REPEALER

1 Sec. 39. This Act shall apply to rental agreements entered
2 into or extended or renewed after the effective date of this
3 Act.

4 Sec. 40. Sections five hundred sixty-two point eight
5 (562.8) through five hundred sixty-two point sixteen (562.16),
6 Code 1977, are repealed.

7 Sec. 41. Transactions entered into before the effective
8 date of this Act, and not extended or renewed after that date,
9 and the rights, duties, and interests flowing from them remain
10 valid and may be terminated, completed, consummated, or
11 enforced as required or permitted by any statute or other
12 law amended or repealed by this Act as though the repeal or
13 amendment had not occurred.

14 Sec. 42. If a provision of this Act or the application
15 of it to a person or circumstances is held invalid, the
16 invalidity does not affect other provisions or application
17 of this Act which can be given effect without the invalid
18 provision or application, and to this end the provisions of
19 this Act are severable.

20 Sec. 43. This Act is effective January 1, 1979.

- 1 Amend House File 2244 as amended, passed and
2 reprinted by the House as follows:
- 3 1. Page 1, by inserting after line 17 the follow-
4 ing new lettered paragraph:
5 " . To insure that the right to the receipt
6 of rent is inseparable from the duty to maintain the
7 premises."
8 2. Page 3, line 6, by striking the word and figure
9 "fifteen (15)" and inserting in lieu thereof the word
10 and figure "fourteen (14)".
11 3. Page 3, line 25, by striking the word and
12 figure "twenty (20)" and inserting in lieu thereof
13 the word and figure "nineteen (19)".
14 4. Page 6, by striking lines 32 through 35 and
15 inserting in lieu thereof the words "this Act;".
16 5. Page 7, by striking lines 14 through 19.
17 6. Page 7, line 35, by inserting after the word
18 "deposit" the words "during the first five years of
19 a tenancy".
20 7. Page 8, by inserting after line 16 the following
21 new paragraph:
22 "c. To recover expenses incurred in acquiring
23 possession of the premises from a tenant who does
24 not act in good faith in failing to surrender and
25 vacate the premises upon noncompliance with the rental
26 agreement and notification of such noncompliance
27 pursuant to this Act."
28 8. Page 10, lines 11 and 12 by striking the words
29 "provide a written explanation of" and inserting in
30 lieu thereof the words "shall fully explain".
31 9. Page 10, lines 24 and 25, by striking the word
32 and figure "seventeen (17)" and inserting in lieu
33 thereof the word and figure "sixteen (16)".
34 10. Page 10, line 27, by striking the word and
35 figure "thirty-seven (37)" and inserting in lieu
36 thereof the word and figure "thirty-six (36)".
37 11. Page 12, by striking lines 4 and 5.
38 12. Page 13, line 12, by striking the word "It"
39 and inserting in lieu thereof the words "A rule".
40 13. Page 13, line 13, by inserting after the word
41 "only" the words "if it is written and".
42 14. Page 14, lines 14 and 15, by striking the
43 words and figures "thirty-one (31) and thirty-two
44 (32)" and inserting in lieu thereof the words and
45 figures "thirty (30) and thirty-one (31)".
46 15. Page 14, line 31, by striking the word and
47 figure "seventeen (17)" and inserting in lieu thereof
48 the word and figure "sixteen (16)".
49 16. Page 14, line 32, by striking the words "the
50 tenant may" and inserting in lieu thereof the words

4413



- 1 "the tenant may elect to commence an action under
2 this section and shall".
- 3 17. Page 15, line 14, by inserting after the word
4 "agreement" the words "unless the landlord has
5 exercised due diligence and effort to remedy the
6 breach which gave rise to the noncompliance".
- 7 18. Page 15, lines 21 and 22 by striking the word
8 and figure "seventeen (17)" and inserting in lieu
9 thereof the word and figure "sixteen (16)".
- 10 19. Page 15, line 34, by striking the word and
11 figure "fourteen (14)" and inserting in lieu thereof
12 the word and figure "thirteen (13)".
- 13 20. Page 16, by striking lines 15 through 17 and
14 inserting in lieu thereof the words "the actual damages
15 sustained by the tenant and reasonable attorney's
16 fees."
- 17 21. Page 16, lines 20 and 21 by striking the word
18 and figure "seventeen (17)" and inserting in lieu
19 thereof the word and figure "sixteen (16)".
- 20 22. Page 16, line 35, by striking the word and
21 figure "twenty-three (23)" and inserting in lieu
22 thereof the word and figure "twenty-two (22)".
- 23 23. Page 18, line 9, by striking the word and
24 figure "fourteen (14)" and inserting in lieu thereof
25 the word and figure "thirteen (13)".
- 26 24. Page 18, by striking lines 19 through 21 and
27 inserting in lieu thereof the words "in either case,
28 recover the actual damages sustained by the tenant
29 and reasonable attorney's".
- 30 25. Striking page 18, line 24, through page 19,
31 line 29.
- 32 26. Page 20, line 1, by striking the word and
33 figure "nineteen (19)" and inserting in lieu thereof
34 the word and figure "eighteen (18)".
- 35 27. Page 20, line 25, by striking the word and
36 figure "nineteen (19)" and inserting in lieu thereof
37 the word and figure "eighteen (18)".
- 38 28. Page 20, by inserting after line 31 the
39 following new subsection:
- 40 "4. In any action by a landlord for possession
41 based upon nonpayment of rent, proof by the tenant
42 of the following shall be a defense to any action
43 or claim for possession by the landlord, and the
44 amounts expended by the claimant in correcting the
45 deficiencies shall be deducted from the amount claimed
46 by the landlord as unpaid rent:
- 47 a. That the landlord failed to comply either with
48 the rental agreement or with section sixteen (16)
49 of this Act; and
- 50 b. That the tenant notified the landlord at least

1 fourteen days prior to the due date of the tenant's
2 rent payment of the tenant's intention to correct
3 the condition constituting the breach referred to
4 in paragraph a of this subsection at the landlord's
5 expense; and

6 c. That the reasonable cost of correcting the
7 condition constituting the breach is equal to or less
8 than one month's periodic rent; and

9 d. That the tenant in good faith caused the
10 condition constituting the breach to be corrected
11 prior to receipt of written notice of the landlord's
12 intention to terminate the rental agreement for
13 nonpayment of rent."

14 29. Page 20, line 33, by striking the word and
15 figure "nineteen (19)" and inserting in lieu thereof
16 the word and figure "eighteen (18)".

17 30. Page 21, line 15, by striking the word and
18 figure "twenty-two (22)" and inserting in lieu thereof
19 the word and figure "twenty-one (21)".

20 31. Page 22, line 15, by striking the word and
21 figure "thirty (30)" and inserting in lieu thereof
22 the word and figure "twenty-nine (29)".

23 32. Page 23, line 3, by striking the word "an".

24 33. Page 23, by striking lines 4 through 6 and
25 inserting in lieu thereof the words "the actual damages
26 sustained by the landlord and reasonable attorney's
27 fees. If the landlord".

28 34. Page 23, line 8, by striking the word and
29 figure "ten (10)" and inserting in lieu thereof the
30 word and figure "nine (9)".

31 35. Page 23, line 35, by striking the word and
32 figure "seventeen (17)" and inserting in lieu thereof
33 the word and figure "sixteen (16)".

34 36. Page 24, by striking lines 4 and 5 and
35 inserting in lieu thereof the following: "(1) of
36 this section, the tenant may recover from the landlord
37 the actual damages sustained by the tenant and
38 reasonable attorney's fees, and has".

39 37. Page 24, line 33, by striking the word and
40 figure "twenty-three (23)" and inserting in lieu
41 thereof the word and figure "twenty-two (22)".

42 38. Renumbering the remaining sections and
43 correcting internal references in accordance with
44 this amendment.

HOUSE FILE 2244

S-5723

- 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House, as follows:
- 3 1. Page 8, by inserting after line 20 the follow-
- 4 ing new paragraph:
- 5 "c. To recover possession of the premises from
- 6 a tenant who does not act in good faith in failing to
- 7 surrender and vacate the premises upon noncompliance
- 8 with the rental agreement and notification of such
- 9 noncompliance pursuant to this Act."

S-5723 FILED & WITHDRAWN (p 117) BY RICHARD R. RAMSEY
APRIL 28, 1978

HOUSE FILE 2244

S-5728

- 1 Amend House File 2244 as amended, passed, and
- 2 reprinted by the House as follows:
- 3 1. Page 15, line 14, by inserting after the word
- 4 "agreement" the words "unless the landlord has
- 5 exercised due diligence and effort to remedy the
- 6 breach which gave rise to the noncompliance".

S-5728 FILED & ADOPTED (p 115) BY LUCAS J. DE KOSTER
APRIL 28, 1978

HOUSE FILE 2244

S-5727

1 Amend House File 2244 as amended, passed and
2 reprinted by the House, as follows:
3 1. Page 8, by inserting after line 16 the follow-
4 ing new paragraph:
5 "c. To recover expenses incurred in acquiring
6 possession of the premises from a tenant who does not
7 act in good faith in failing to surrender and vacate
8 the premises upon noncompliance with the rental agree-
9 ment and notification of such noncompliance pursuant
10 to this Act."

S-5727 FILED & ADOPTED (p. 1115) BY RICHARD R. RAMSEY
APRIL 28, 1978

HOUSE FILE 2244

S-5726

1 Amend House File 2244 as amended, passed
2 and reprinted by the House as follows:
3 1. Page 15, line 12, by striking the word
4 "fourteen" and inserting in lieu thereof the word
5 "thirty".

S-5726 FILED & WITHDRAWN (p. 1115) BY STEPHEN W. BISENIUS
APRIL 28, 1978

HOUSE FILE 2244

S-5725

1 Amend House File 2244 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 19, by striking lines 11 through 13 and
4 inserting in lieu thereof the following:
5 "c. The landlord fails to complete the work to
6 correct or repair the defects within thirty days after"

S-5725 FILED & WITHDRAWN (p. 1117) BY STEPHEN W. BISENIUS
APRIL 28, 1978

S-5710

- 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 10 by striking the word "liberally"
- 4 and inserting in lieu thereof the word "strictly".

S-5710 FILED & LOST (p. 1116)
 APRIL 28, 1978

BY RAY TAYLOR

HOUSE FILE 2244

S-5711

- 1 Amend House File 2244 as amended, passed and re-
- 2 printed by the House as follows:
- 3 1. Page 11, line 28, by inserting after the
- 4 word: "paragraphs" the letters "b, c, d,".

S-5711 FILED
 APRIL 28, 1978
 WITHDRAWN (p. 1117)

BY ROLF V. CRAFT

HOUSE FILE 2244

S-5712

- 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, by striking lines 4 through 6,
- 4 and inserting in lieu thereof the following:
- 5 "1. Residence at an institution if incidental
- 6 to detention."

S-5712 FILED & LOST (p. 1112)
 APRIL 28, 1978

BY ROLF V. CRAFT

HOUSE FILE 2244

S-5713

- 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, by striking line 4 and inserting in
- 4 lieu thereof the following:
- 5 "1. Residence at a private institution if".
- 6 2. Page 2, line 6 by striking the word
- 7 "educational,".

S-5713 FILED, WITHDRAWN (p. 1117)
 APRIL 28, 1978

BY ROLF V. CRAFT

HOUSE FILE 2244

S-5716

- 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 10, lines 11 and 12 by striking the
- 4 words "provide a written explanation of" and
- 5 inserting in lieu thereof, the words "shall fully
- 6 explain".

S-5716 FILED & ADOPTED (p. 1117)
APRIL 28, 1978

BY PHILIP B. HILL

HOUSE FILE 2244

S-5718

- 1 Amend the Committee on State Government amend-
- 2 ment, S-5623, to House File 2244 as amended, passed
- 3 and reprinted by the House as follows:
- 4 1. Page 2, line 20, by striking the words "any
- 5 of".

S-5718 FILED & ADOPTED (p. 1116)
APRIL 28, 1978

BY MINNETTE F. DODERER
PHILIP B. HILL
BOB RUSH

HOUSE AMENDMENT TO SENATE AMENDMENT to
HOUSE FILE 2244

S-5737

- 1 Amend the Senate amendment H-6397 to House File
- 2 2244 as follows:
- 3 1. Page 1, by striking lines 14 and 15.

S-5737 FILED
MAY 1, 1978

RECEIVED FROM THE HOUSE

Senate amendment 5/2 (p. 1122)

HOUSE FILE 2244

H-6413

- 1 Amend the Senate amendment H-6397 to House File
- 2 2244 as follows:
- 3 1. Page 1, by striking lines 14 and 15.

H-6413 FILED, ADOPTED (p. 2060) BY PERKINS of Greene
MAY 1, 1978 EVANS of Grundy

S-5623

- 1 Amend House File 2244 as amended, passed and
2 reprinted by the House as follows:
- 3 1. Page 3, line 6, by striking the word and figure
4 "fifteen (15)" and inserting in lieu thereof the word
5 and figure "fourteen (14)".
 - 6 2. Page 3, line 25, by striking the word and figure
7 "twenty (20)" and inserting in lieu thereof the word and
8 figure "nineteen(19)".
 - 9 3. Page 6, by striking lines 32 through 35 and
10 inserting in lieu thereof the words "this Act;".
 - 11 4. Page 7, by striking lines 14 through 19.
 - 12 5. Page 7, line 35 by inserting after the word
13 "deposit" the words "during the first five years of a
14 tenancy".
 - 15 6. Page 10, lines 24 and 25, by striking the word
16 and figure "seventeen (17)" and inserting in lieu
17 thereof the word and figure "sixteen (16)".
 - 18 7. Page 10, line 27, by striking the word and
19 figure "thirty-seven (37)" and inserting in lieu thereof
20 the word and figure "thirty-six (36)".
 - 21 8. Page 13, line 12, by striking the word "It" and
22 inserting in lieu thereof the words "A rule".
 - 23 9. Page 13, line 13, by inserting after the word
24 "only" the words "if it is written and".
 - 25 10. Page 14, lines 14 and 15, by striking the words
26 and figures "thirty-one (31) and thirty-two (32)" and
27 inserting in lieu thereof the words and figures "thirty
28 (30) and thirty-one (31)".
 - 29 11. Page 14, line 31, by striking the word and
30 figure "seventeen (17)" and inserting in lieu thereof
31 the word and figure "sixteen (16)".
 - 32 12. Page 14, line 32, by striking the words "the
33 tenant may" and inserting in lieu thereof the words
34 "the tenant may elect to commence an action under this
35 section and shall".
 - 36 13. Page 15, lines 21 and 22 by striking the word
37 and figure "seventeen (17)" and inserting in lieu
38 thereof the word and figure "sixteen (16)".
 - 39 14. Page 15, line 34, by striking the word and
40 figure "fourteen (14)" and inserting in lieu thereof
41 the word and figure "thirteen (13)".
 - 42 15. Page 16, by striking lines 15 through 17 and
43 inserting in lieu thereof the words "the actual damages
44 sustained by the tenant and reasonable attorney's fees."
 - 45 16. Page 16, lines 20 and 21 by striking the word
46 and figure "seventeen (17)" and inserting in lieu
47 thereof the word and figure "sixteen (16)".
 - 48 17. Page 16, line 35, by striking the word and figure
49 "twenty-three (23)" and inserting in lieu thereof the
50 word and figure "twenty-two (22)".

- 1 18. Page 18, line 9, by striking the word and
2 figure "fourteen (14)" and inserting in lieu thereof
3 the word and figure "thirteen (13)".
- 4 19. Page 18, by striking lines 19 through 21 and
5 inserting in lieu thereof the words "in either case,
6 recover the actual damages sustained by the tenant and
7 reasonable attorney's".
- 8 20. By striking page 18, line 24, through page 19,
9 line 29.
- 10 21. Page 20, line 1, by striking the word and
11 figure "nineteen (19)" and inserting in lieu thereof
12 the word and figure "eighteen (18)".
- 13 22. Page 20, line 25, by striking the word and
14 figure "nineteen (19)" and inserting in lieu thereof
15 the word and figure "eighteen (18)".
- 16 23. Page 20, by inserting after line 31 the
17 following new subsection:
18 "4. In any action by a landlord for possession
19 based upon nonpayment of rent, proof by the tenant of
20 any of the following shall be a defense to any action
21 or claim for possession by the landlord, and the amounts
22 expended by the claimant in correcting the deficiencies
23 shall be deducted from the amount claimed by the landlord
24 as unpaid rent:
25 a. That the landlord failed to comply either with
26 the rental agreement or with section sixteen (16) of
27 this Act; and
28 b. That the tenant notified the landlord at least
29 fourteen days prior to the due date of the tenant's rent
30 payment of the tenant's intention to correct the condition
31 constituting the breach referred to in paragraph a of this
32 subsection at the landlord's expense; and
33 c. That the reasonable cost of correcting the
34 condition constituting the breach is equal to or less
35 than one month's periodic rent; and
36 d. That the tenant in good faith caused the condition
37 constituting the breach to be corrected prior to receipt
38 of written notice of the landlord's intention to terminate
39 the rental agreement for non-payment of rent."
- 40 24. Page 20, line 33, by striking the word and figure
41 "nineteen (19)" and inserting in lieu thereof the word and
42 figure "eighteen (18)".
- 43 25. Page 21, line 15, by striking the word and figure
44 "twenty-two (22)" and inserting in lieu thereof the word
45 and figure "twenty-one (21)".
- 46 26. Page 22, line 15, by striking the word and figure
47 "thirty (30)" and inserting in lieu thereof the word and
48 figure "twenty-nine (29)".
- 49 27. Page 23, line 3, by striking the word "an".
- 50 28. Page 23, by striking lines 4 through 6 and

1 inserting in lieu thereof the words "the actual damages
2 sustained by the landlord and reasonable attorney's
3 fees. If the landlord".
4 29. Page 23, line 8, by striking the word and figure
5 "ten(10)" and inserting in lieu thereof the word and
6 figure "nine (9)".
7 30. Page 23, line 35, by striking the word and
8 figure "seventeen (17)" and inserting in lieu thereof
9 the word and figure "sixteen (16)".
10 31. Page 24, by striking lines 4 and 5 and inserting
11 in lieu thereof the following: "(1) of this section, the
12 tenant may recover from the landlord the actual damages
13 sustained by the tenant and reasonable attorney's fees, and
14 has".
15 32. Page 24, line 33, by striking the word and
16 figure "twenty-three (23)" and inserting in lieu thereof
17 the word and figure "twenty-two (22)".
18 33. By renumbering the remaining sections and
19 correcting internal references in accordance with this
20 amendment.

S-5623 FILED
APRIL 21, 1978

BY COMMITTEE ON STATE GOVERNMENT
MINNETTE DODERER, CHAIRPERSON

*A and B - Adopted 4/15 (7-1030)
C - Adopted and amended by 5718 11/20 (7-1112)*

HOUSE FILE 2244

S-5685

- 1 Amend the Committee on State Government amendment,
- 2 S-5623 to House File 2244 as amended, passed and
- 3 reprinted by the House as follows:
- 4 1. Page 1, by striking line 11 and inserting
- 5 in lieu thereof the following:
- 6 "____. Page 7, line 18, by striking the word and
- 7 figure "seventeen (17)" and inserting in lieu thereof
- 8 the word and figure "sixteen (16)".

S-5685 FILED *withdrawn 4/25 (p. 1080)* BY TOM SLATER
APRIL 26, 1978

HOUSE FILE 2244

S-5702

- A 1 Amend House File 2244 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, by inserting after line 17 the follow-
- 4 ing new lettered paragraph:
- 5 "____. To insure that the right to the receipt of
- 6 rent is inseparable from the duty to maintain the
- 7 premises."
- B 8 2. Page 12, by striking lines 4 and 5.

S-5702 FILED *Adopted 4/28 (p. 1117)* BY BOB RUSH
APRIL 27, 1978 E. KEVIN KELLY

HOUSE FILE 2244

AN ACT

TO ADOPT THE UNIFORM LANDLORD TENANT ACT AS MODIFIED AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Part I

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

Section 1. NEW SECTION. SHORT TITLE. This Act shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Sec. 2. NEW SECTION. PURPOSES--RULES OF CONSTRUCTION.

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. Underlying purposes and policies of this Act are:

a. To simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant; and

b. To encourage landlord and tenant to maintain and improve the quality of housing.

c. To insure that the right to the receipt of rent is inseparable from the duty to maintain the premises.

Sec. 3. NEW SECTION. SUPPLEMENTARY PRINCIPLES OF LAW APPLICABLE. Unless displaced by the provisions of this Act, the principles of law and equity in this state, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, shall supplement its provisions.

Sec. 4. NEW SECTION. ADMINISTRATION OF REMEDIES-- ENFORCEMENT.

1. The remedies provided by this Act shall be administered so that the aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

2. A right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect.

Part II

SCOPE AND JURISDICTION

Sec. 5. NEW SECTION. EXCLUSIONS FROM APPLICATION OF ACT. Unless created to avoid the application of this Act, the following arrangements are not governed by this Act:

1. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service.

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 his or her interest.

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 or other similar lodgings.

5. Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about 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.

Part III

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION; NOTICE.

Sec. 6. NEW SECTION. GENERAL DEFINITIONS. Subject to

additional definitions contained in subsequent articles of this Act which apply to specific articles or its parts, and unless the context otherwise requires, in this Act:

1. "Building and housing codes" include a law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of a premise or dwelling unit.
2. "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place.
3. "Good faith" means honesty in fact in the conduct of the transaction concerned.
4. "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section thirteen (13) of this Act.
5. "Business" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.
6. "Owner" means one or more persons, jointly or severally, in whom is vested:
 - a. All or part of the legal title to property; or
 - b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.
7. "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances of it and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.
8. "Rent" means a payment to be made to the landlord under the rental agreement.
9. "Rental agreement" means an agreement written or oral, and a valid rule, adopted under section eighteen (18) of this

Act, embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

10. "Rental deposit" means a deposit of money to secure performance of a residential rental agreement, other than a deposit which is exclusively in advance payment of rent.
 11. "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove or sink.
 12. "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.
 13. "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of another.
 14. "Reasonable attorney's fees" means fees determined by the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the tenant or landlord.
- Sec. 7. NEW SECTION. UNCONSCIONABILITY.
1. If the court, as a matter of law, finds that:
 - a. A rental agreement or any provision of it was unconscionable when made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provision, or limit the application of an unconscionable provision to avoid an unconscionable result.
 - b. A settlement in which a party waives or agrees to forego a claim or right under this Act or under a rental agreement was unconscionable at the time it was made, the court may refuse to enforce the settlement, enforce the

remainder of the settlement without the unconscionable provision, or limit the application of an unconscionable provision to avoid any unconscionable result.

2. If unconscionability is put into issue by a party or by the court upon its own motion the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Sec. 8. NEW SECTION. NOTICE.

1. A person has notice of a fact if such person has actual knowledge of it, has received a notice or notification of it or, if from all the facts and circumstances known to that person at the time in question, such person has reason to know that it exists. A person "knows" or "has knowledge" of a fact if such person has actual knowledge of it.

2. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when it comes to that person's attention or in the case of the landlord, it is delivered at the place of business of the landlord through which the rental agreement was made or at a place held out by the landlord as the place for receipt of the communication or, when in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to such person at the place held out by such person as the place for receipt of the communication, or in the absence of such designation, to such person's last known place of residence.

3. "Notice," knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction, and in any event from the time it would have been brought to the attention of such person if the organization had exercised reasonable diligence.

Part IV
GENERAL PROVISIONS

Sec. 9. NEW SECTION. TERMS AND CONDITIONS OF RENTAL AGREEMENT.

1. The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this Act or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

2. In absence of agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

3. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal monthly installments at the beginning of each month. Unless otherwise agreed, rent shall be uniformly apportionable from day-to-day.

4. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in case of a roomer who pays weekly rent, and in all other cases month-to-month.

Sec. 10. NEW SECTION. EFFECT OF UNSIGNED OR UNDELIVERED RENTAL AGREEMENT.

1. If a landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

2. If a tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

3. If a rental agreement given effect by the operation of this section provides for a term longer than one year,

it is effective only for one year.

Sec. 11. NEW SECTION. PROHIBITED PROVISIONS IN RENTAL AGREEMENTS.

1. A rental agreement shall not provide that the tenant or landlord:

- a. Agrees to waive or so forego rights or remedies under this Act provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;
- b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
- c. Agrees to pay the other party's attorney fees; or
- d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.

2. A provision prohibited by subsection one (1) of this section included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney's fees.

ARTICLE II

LANDLORD OBLIGATIONS

Sec. 12. NEW SECTION. RENTAL DEPOSITS.

1. A landlord shall not demand or receive as rental deposit and prepaid rent an amount or value in excess of two months' rent.

2. All rental deposits shall be held by the landlord for the tenant, who is a party to the agreement, in a bank or savings and loan association or credit union which is insured by an agency of the federal government. Rental deposits shall not be commingled with the personal funds of the landlord. Notwithstanding the provisions of chapter one hundred seventeen

(117) of the Code, all rental deposits may be held in a trust account, which may be a common trust account and which may be an interest bearing account. Any interest earned on a rental deposit during the first five years of a tenancy shall be the property of the landlord.

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

- a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.
- b. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.
- c. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this Act.

In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

4. A landlord who fails to provide a written statement within thirty days of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions shall forfeit all rights to withhold any portion of the rental deposit. If no mailing address or instructions are provided

to the landlord within one year from the termination of the tenancy the rental deposit shall revert to the landlord and the tenant will be deemed to have forfeited all rights to the rental deposit.

5. Upon termination of a landlord's interest in the dwelling unit, the landlord or an agent of the landlord shall, within a reasonable time, transfer the rental deposit, or any remainder after any lawful deductions to the landlord's successor in interest and notify the tenant of the transfer and of the transferee's name and address or return the deposit, or any remainder after any lawful deductions to the tenant.

Upon the termination of the landlord's interest in the dwelling unit and compliance with the provisions of this subsection, the landlord shall be relieved of any further liability with respect to the rental deposit.

6. Upon termination of the landlord's interest in the dwelling unit, the landlord's successor in interest shall have all the rights and obligations of the landlord with respect to the rental deposits, except that if the tenant does not object to the stated amount within twenty days after written notice to the tenant of the amount of rental deposit being transferred or assumed, the obligations of the landlord's successor to return the deposit shall be limited to the amount contained in the notice. The notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

7. The bad faith retention of a deposit by a landlord, or any portion of the rental deposit, in violation of this section shall subject the landlord to punitive damages not to exceed two hundred dollars in addition to actual damages.

8. The court may, in any action on a rental agreement, award reasonable attorney fees to the prevailing party.

Sec. 13. NEW SECTION. DISCLOSURE.

1. The landlord or a person authorized to enter into a rental agreement on behalf of the landlord shall disclose

to the tenant in writing at or before the commencement of the tenancy the name and address of:

- a. The person authorized to manage the premises.
- b. An owner of the premises or a person authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for notices and demands.

2. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against a successor landlord, owner, or manager.

3. A person who fails to comply with subsection one (1) of this section becomes an agent of each person who is a landlord for the purpose of:

- a. Service of process and receiving and receipting for notices and demands.

- b. Performing the obligations of the landlord under this Act and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

4. The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall fully explain utility rates, charges and services to the prospective tenant before the rental agreement is signed unless paid by the tenant directly to the utility company.

5. Each tenant shall be notified, in writing, of any rent increase at least thirty days before the effective date. Such effective date shall not be sooner than the expiration date of the original rental agreement or any renewal or extension thereof.

Sec. 14. NEW SECTION. LANDLORD TO SUPPLY POSSESSION OF 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 section fifteen (15) of this Act. The landlord may bring an action for possession against a person wrongfully in possession and may

recover the damages provided in section thirty-four (34), subsection three (3) of this Act.

Sec. 15. NEW SECTION. LANDLORD TO MAINTAIN FIT PREMISES.

1. The landlord shall:

- a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.
- b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
- c. Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.
- d. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.
- e. Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
- f. Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

If the duty imposed by paragraph a of this subsection is greater than a duty imposed by another paragraph of this subsection, the landlord's duty shall be determined by reference to paragraph a of this subsection.

2. The landlord and tenant of a single family residence

may agree in writing that the tenant perform the landlord's duties specified in paragraphs e and f of subsection one (1) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

- a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;
 - b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.
4. The landlord shall not treat performance of the separate agreement described in subsection three (3) of this section as a condition to an obligation or performance of a rental agreement.

Sec. 16. NEW SECTION. LIMITATION OF LIABILITY.

1. 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 Act as to events occurring subsequent to written notice to the tenant of the conveyance.

2. A manager of premises that includes a dwelling unit is relieved of liability under the rental agreement and this Act as to events occurring after written notice to the tenant of the termination of his or her management.

ARTICLE III

TENANT OBLIGATIONS

Sec. 17. NEW SECTION. TENANT TO MAINTAIN DWELLING UNIT. The tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes

materially affecting health and safety.

2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.

3. Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner.

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.

6. Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises or knowingly permit a person to do so.

7. Conduct himself or herself in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

Sec. 18. NEW SECTION. RULES. A landlord, from time to time, may adopt rules, however described, concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if it is written and if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally.

2. It is reasonably related to the purpose for which it is adopted.

3. It applies to all tenants in the premises in a fair manner.

4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.

5. It is not for the purpose of evading the obligations of the landlord.

6. The tenant has notice of it at the time the tenant

enters into the rental agreement.

A rule adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

Sec. 19. NEW SECTION. ACCESS.

1. The tenant shall 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, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

2. The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

3. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least twenty-four hours notice of the landlord's intent to enter and enter only at reasonable times.

4. The landlord does not have another right of access except by court order, and as permitted by sections twenty-eight (28) and twenty-nine (29) of this Act, or if the tenant has abandoned or surrendered the premises.

Sec. 20. NEW SECTION. TENANT TO USE AND OCCUPY. Unless otherwise agreed, the tenant shall occupy his or her dwelling unit only as a dwelling unit and uses incidental thereto. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises not later than the first day of the extended absence.

ARTICLE IV

REMEDIES

Part I

TENANT REMEDIES

Sec. 21. NEW SECTION. NONCOMPLIANCE BY THE LANDLORD--

IN GENERAL.

1. Except as provided in this Act, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with section fifteen (15) of this Act materially affecting health and safety, the tenant may elect to commence an action under this section and shall deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate and the tenant shall surrender as provided in the notice subject to the following:

a. If the breach is remediable by repairs or the payment of damages or otherwise, and if the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

b. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the tenant may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement unless the landlord has exercised due diligence and effort to remedy the breach which gave rise to the noncompliance.

c. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent.

2. Except as provided in this Act, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section fifteen (15) of this Act unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure

by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord. If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees.

3. The remedy provided in subsection two (2) of this section is in addition to any right of the tenant arising under subsection one (1) of this section.

4. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable by the tenant under section twelve (12) of this Act.

Sec. 22. NEW SECTION. FAILURE TO DELIVER POSSESSION.

1. If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in section fourteen (14) of this Act, rent abates until possession is delivered and the tenant shall:

a. Upon at least five days' written notice to the landlord, terminate the rental agreement and upon termination the landlord shall return all prepaid rent and security; or

b. Demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the damages sustained by the tenant.

2. If a landlord's failure to deliver possession is willful and not in good faith, a tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees.

Sec. 23. NEW SECTION. WRONGFUL FAILURE TO SUPPLY HEAT, WATER, HOT WATER OR ESSENTIAL SERVICES.

1. If contrary to the rental agreement or section fifteen (15) of this Act the landlord deliberately or negligently fails to supply running water, hot water, or heat, or essential services, the tenant may give written notice to the landlord specifying the breach and may:

a. Procure reasonable amounts of hot water, running water,

heat and essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

b. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

c. Recover any rent already paid for the period of the landlord's noncompliance which shall be reimbursed on a pro rata basis.

2. If the tenant proceeds under this section, the tenant may not proceed under section twenty-one (21) of this Act as to that breach.

3. The rights under this section do not arise until the tenant has given notice to the landlord or if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of his family, or other person on the premises with the consent of the tenant.

Sec. 24. NEW SECTION. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION FOR POSSESSION OR RENT.

1. In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, the tenant may counterclaim for an amount which the tenant may recover under the rental agreement or this Act. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. If rent does not remain due after application of this section, judgment shall be entered for the tenant in the action for possession. If the defense or counterclaim by the tenant is without merit and is not raised in good faith the landlord may recover reasonable attorney's fees.

2. In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in

subsection one (1) of this section, but the tenant is not required to pay any rent into court.

Sec. 25. NEW SECTION. FIRE OR CASUALTY DAMAGE.

1. If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

a. Immediately vacate the premises and notify the landlord in writing within fourteen days of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

b. If continued occupancy is lawful, vacate a part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

2. If the rental agreement is terminated, the landlord shall return all prepaid rent and security recoverable under section twelve (12) of this Act. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty.

Sec. 26. NEW SECTION. TENANT'S REMEDIES FOR LANDLORD'S UNLAWFUL OUSTER, EXCLUSION, OR DIMINUTION OF SERVICE. If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover the actual damages sustained by the tenant and reasonable attorney's fees. If the rental agreement is terminated, the landlord shall return all prepaid rent and security.

Part II

LANDLORD REMEDIES

Sec. 27. NEW SECTION. NONCOMPLIANCE WITH RENTAL AGREE-

MENT--FAILURE TO PAY RENT.

1. Except as provided in this Act, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section seventeen (17) of this Act materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate 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 prior to the date specified in the notice, the rental agreement shall not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as provided in this Act, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section seventeen (17) of this Act unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's failure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon

nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

a. That the landlord failed to comply either with the rental agreement or with section fifteen (15) of this Act; and

b. That the tenant notified the landlord at least fourteen days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph a of this subsection at the landlord's expense; and

c. That the reasonable cost of correcting the condition constituting the breach is equal to or less than one month's periodic rent; and

d. That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

Sec. 28. NEW SECTION. FAILURE TO MAINTAIN. If there is noncompliance by the tenant with section seventeen (17) of this Act, materially affecting health and safety that can be remedied by repair or replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value of it as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

Sec. 29. NEW SECTION. REMEDIES FOR ABSENCE, NONUSE AND

ABANDONMENT.

1. If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence as provided in section twenty (20) of this Act, and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

2. During an absence of the tenant in excess of fourteen days, the landlord may enter the dwelling unit at times reasonably necessary.

3. If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. The rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment, if the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.

Sec. 30. NEW SECTION. WAIVER OF LANDLORD'S RIGHT TO TERMINATE. Acceptance of performance by the tenant that varies from the terms of the rental agreement or rules subsequently adopted by the landlord constitutes a waiver of the landlord's right to terminate the rental agreement for that breach, unless otherwise agreed after the breach has occurred.

Sec. 31. NEW SECTION. LANDLORD LIENS--DISTRESS FOR RENT.

1. A lien on behalf of the landlord on the tenant's household goods is not enforceable unless perfected before the effective date of this Act.

2. Distraint for rent is abolished.

Sec. 32. NEW SECTION. REMEDY AFTER TERMINATION. If the

rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees as provided in section twenty-seven (27) of this Act.

Sec. 33. NEW SECTION. RECOVERY OF POSSESSION LIMITED.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this Act.

Part III

PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

Sec. 34. NEW SECTION. PERIODIC TENANCY; HOLDOVER REMEDIES.

1. The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten days prior to the termination date specified in the notice.

2. The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

3. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith the landlord, in addition, may recover the actual damages sustained by the landlord and reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, subsection four (4) of section nine (9) of this Act applies.

Sec. 35. NEW SECTION. LANDLORD AND TENANT REMEDIES FOR ABUSE OF ACCESS.

1. If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or

terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fee.

2. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages not less than an amount equal to one month's rent and reasonable attorney's fees.

ARTICLE V

RETTALIATORY ACTION

Sec. 36. NEW SECTION. RETALIATORY CONDUCT PROHIBITED.

1. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:

- a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;
- b. The tenant has complained to the landlord of a violation under section fifteen (15) of this Act; or
- c. The tenant has organized or become a member of a tenants' union or similar organization.

2. If the landlord acts in violation of subsection one (1) of this section, the tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees, and has a defense in action against the landlord for possession. In an action by or against the tenant, evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of

services. Evidence by the landlord that legitimate costs and charges of owning, maintaining or operating a dwelling unit have increased shall be a defense against the presumption of retaliation when a rent increase is commensurate with the increase in costs and charges. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

3. Notwithstanding subsections one (1) and two (2) of this section, a landlord may bring an action for possession if:

- a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with his consent;
- b. The tenant is in default in rent; or
- c. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under subsection two (2) of section twenty-one (21) of this Act.

ARTICLE VI

EFFECTIVE DATE AND REPEALER

Sec. 37. This Act shall apply to rental agreements entered into or extended or renewed after the effective date of this Act.

Sec. 38. Sections five hundred sixty-two point eight (562.8) through five hundred sixty-two point sixteen (562.16), Code 1977, are repealed.

Sec. 39. Transactions entered into before the effective date of this Act, and not extended or renewed after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other

law amended or repealed by this Act as though the repeal or amendment had not occurred.

Sec. 40. If a provision of this Act or the application of it to a person or circumstances is held invalid, the invalidity does not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 41. This Act is effective January 1, 1979.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2244, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 27, 1978

ROBERT D. RAY
Governor