

1 HB287  
2 82659-4  
3 By Representatives McLaughlin, Coleman (M), Coleman (L),  
4 Newton (D), Hinshaw and Hall (L)  
5 RFD: Commerce  
6 First Read: 10-JAN-06

1  
2 ENROLLED, An Act,

3 Adopting the Uniform Residential Landlord and Tenant  
4 Act; regulating landlord-tenant relationships under  
5 residential rental agreements; providing for general  
6 provisions and definitions; landlord obligations; tenant  
7 obligations; remedies; and prohibitions against retaliatory  
8 conduct; amending Section 6-6-350 of the Code of Alabama 1975,  
9 relating to appeals from district court to circuit court and  
10 Section 35-9-60 of the Code of Alabama 1975, relating to liens  
11 for the rent of buildings, to remove references to dwelling  
12 houses; repealing Section 35-9-4, Code of Alabama 1975,  
13 relating to the hiring of lodging for an indefinite term and  
14 Article 3, commencing with Section 35-9-80, of Chapter 9 of  
15 Title 35, Code of Alabama 1975, relating to possession  
16 wrongfully withheld and specifying a prospective effective  
17 date.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Chapter 9A is added to Title 35 of the  
20 Code of Alabama 1975, to read as follows:

21 CHAPTER 9A.

22 UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT.

23 ARTICLE I

24 GENERAL PROVISIONS AND DEFINITIONS.

25 DIVISION I

1                   SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT  
2 MATTER OF THE CHAPTER.

3                   35-9A-101. Short Title

4                   This chapter shall be known and may be cited as the  
5 "Alabama Uniform Residential Landlord and Tenant Act."

6                   35-9A-102. Purposes; Rules of Construction.

7                   (a) This chapter shall be liberally construed and  
8 applied to promote its underlying purposes and policies.

9                   (b) Underlying purposes and policies of this chapter  
10 are:

11                   (1) to simplify, clarify, modernize, and revise the  
12 law governing the rental of dwelling units and the rights and  
13 obligations of landlords and tenants;

14                   (2) to encourage landlords and tenants to maintain  
15 and improve the quality of housing; and

16                   (3) to make uniform the law with respect to the  
17 subject of this chapter among those states which enact it.

18                   (c) This chapter shall be construed as applying only  
19 to the residential landlord and tenant relationship. The  
20 chapter does not create any duties in tort or causes of action  
21 in tort, nor does it deprive anyone of any causes of action in  
22 tort that may exist apart from this chapter.

23                   35-9A-103. Supplementary Principles of Law  
24 Applicable.

1           Unless displaced by the provisions of this chapter,  
2 the principles of law and equity, including, but not limited  
3 to, the law relating to capacity to contract, mutuality of  
4 obligations, principal and agent, real property, public  
5 health, safety and fire prevention, estoppel, fraud,  
6 misrepresentation, duress, coercion, mistake, bankruptcy, or  
7 other validating or invalidating cause supplement its  
8 provisions.

9           35-9A-104. Construction Against Implicit Repeal.

10           This chapter being a general act intended as a  
11 unified coverage of its subject matter, no part of it is to be  
12 construed as impliedly repealed by subsequent legislation if  
13 that construction can reasonably be avoided.

14           35-9A-105. Administration of Remedies; Enforcement.

15           (a) The remedies provided by this chapter shall be  
16 so administered that an aggrieved party may recover  
17 appropriate damages. The aggrieved party has a duty to  
18 mitigate damages; provided, the duty of a landlord shall not  
19 take priority over the landlord's right to first rent other  
20 vacant units.

21           (b) Any right or obligation declared by this chapter  
22 is enforceable by action unless the provision declaring it  
23 specifies a different and limited effect.

24           35-9A-106. Settlement of Disputed Claim or Right.

1           A claim or right arising under this chapter or on a  
2 rental agreement, if disputed in good faith, may be settled by  
3 agreement.

4           36-9A-107. Notice Requirement.

5           A cause of action or civil complaint initiated  
6 pursuant to this chapter is not subject to the notice  
7 requirement of subsection (j) of Section 34-27-31.

8           DIVISION II

9           SCOPE AND JURISDICTION.

10          35-9A-121. Territorial Application.

11          This chapter applies to and is the exclusive remedy  
12 to regulate, and determine rights, obligations, and remedies  
13 under a rental agreement, wherever made, for a dwelling unit  
14 located within this state. No resolution or ordinance relative  
15 to landlords, rental housing codes, or the rights and  
16 obligations governing landlord and tenant relationships shall  
17 be enacted by any county or municipality that contravenes any  
18 provision of this chapter and any resolution or ordinance  
19 enacted both prior to or after the effective date of this  
20 chapter which contravenes any portion of this chapter is  
21 superseded by this chapter.

22          35-9A-122. Exclusions from Application of Chapter.

23          Unless created to avoid the application of this  
24 chapter, the following arrangements are not governed by this  
25 chapter:

1           (1) residence at an institution, public or private,  
2 if incidental to detention or the provision of medical,  
3 geriatric, educational, counseling, religious, or similar  
4 service;

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

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

12           (4) transient occupancy in a hotel, motel, or  
13 lodgings;

14           (5) occupancy by an employee of a landlord whose  
15 right to occupancy is conditional upon employment in and about  
16 the premises;

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

19           (7) occupancy under a rental agreement covering  
20 premises rented by the occupant primarily for agricultural  
21 purposes; ~~i~~

22           (8) continuation of occupancy by the seller or a  
23 member of the seller's family for a period of not more than  
24 thirty-six (36) months after the sale of a dwelling unit or  
25 the property of which it is a part.

1           35-9A-123. Jurisdiction and Service of Process.

2           (a) The district and circuit courts of this state,  
 3 according to their respective established jurisdictions, may  
 4 exercise jurisdiction over any landlord with respect to any  
 5 conduct in this state governed by this chapter or with respect  
 6 to any claim arising from a transaction subject to this  
 7 chapter. In addition to any other method provided by rule or  
 8 by statute, personal jurisdiction over a landlord may be  
 9 acquired in a civil action or proceeding instituted in the  
 10 court by the service of process in the manner provided by this  
 11 section.

12           (b) If a landlord is not a resident of this state or  
 13 is a business entity not authorized to do business in this  
 14 state and engages in any conduct in this state governed by  
 15 this chapter, or engages in a transaction subject to this  
 16 chapter, the entity may be served as provided by Rule 4 of the  
 17 Alabama Rules of Civil Procedure.

18           DIVISION III

19           GENERAL DEFINITIONS AND PRINCIPLES OF  
 20 INTERPRETATION: NOTICE.

21           35-9A-141. General Definitions.

22           Subject to additional definitions contained in  
 23 subsequent articles of this chapter which apply to specific  
 24 articles or divisions thereof, and unless the context  
 25 otherwise requires, in this chapter:

1           (1) "action" includes recoupment, counterclaim,  
2 set-off, suit in equity, and any other proceeding in which  
3 rights are determined, including an action for possession;

4           (2) "building and housing codes" include any law,  
5 ordinance, or governmental regulation concerning fitness for  
6 habitation, or the construction, maintenance, operation,  
7 occupancy, use, or appearance of any premises or dwelling  
8 unit;

9           (3) "day" means calendar day unless otherwise  
10 specified;

11           (4) "dwelling unit" means a structure or the part of  
12 a structure, including a manufactured home, that is rented as  
13 a home, residence, or sleeping place by one or more persons;

14           (5) "good faith" means honesty in fact in the  
15 conduct of the transaction concerned;

16           (6) "landlord" means the owner, lessor, or sublessor  
17 of the dwelling unit or the building of which it is a part,  
18 and it also means a manager of the premises;

19           (7) "organization" includes a corporation,  
20 government, governmental subdivision or agency, business  
21 trust, estate, trust, partnership or association, 2 or more  
22 persons having a joint or common interest, and any business  
23 entity;

24           (8) "owner" means one or more persons, jointly or  
25 severally, in whom is vested (i) all or part of the legal

1 title to property or (ii) all or part of the beneficial  
2 ownership and a right to present use and enjoyment of the  
3 premises. The term includes a mortgagee only when in  
4 possession;

5 (9) "person" includes an individual, individuals, or  
6 organization;

7 (10) "premises" means a dwelling unit and the  
8 structure of which it is a part and facilities and  
9 appurtenances therein and grounds, areas, and facilities held  
10 out for the use of tenants generally or whose use is promised  
11 by the rental agreement to the tenant;

12 (11) "rent" means all payments to be made to or for  
13 the benefit of the landlord under the rental agreement;

14 (12) "rental agreement" means all agreements,  
15 written or oral, and valid rules and regulations adopted under  
16 Section 35-9A-302 embodying the terms and conditions  
17 concerning the use and occupancy of a dwelling unit and  
18 premises;

19 (13) "roomer" means a person occupying a dwelling  
20 unit that does not include a toilet, a refrigerator, stove,  
21 kitchen sink, and either a bath tub or a shower, all provided  
22 by the landlord, and where one or more of these facilities are  
23 used in common by occupants in the structure;

24 (14) "single family residence" means a structure  
25 maintained and used as a single dwelling unit. Notwithstanding

1 that a dwelling unit shares one or more walls with another  
2 dwelling unit, it is a single family residence if it has  
3 direct access to a street or thoroughfare and shares neither  
4 heating facilities, hot water equipment, nor any other  
5 essential facility or service with any other dwelling unit;

6 (15) "tenant" means a person entitled under a rental  
7 agreement to occupy a dwelling unit to the exclusion of  
8 others.

9 35-9A-142. Obligation of Good Faith.

10 Every agreement and duty under this chapter and  
11 every act which must be performed as a condition precedent to  
12 the exercise of a right or remedy under this chapter imposes  
13 an obligation of good faith in its performance or enforcement.

14 35-9A-143. Unconscionability.

15 (a) If the court, as a matter of law, finds:

16 (1) a rental agreement or any provision thereof was  
17 unconscionable when made, the court may refuse to enforce the  
18 agreement, enforce the remainder of the agreement without the  
19 unconscionable provision, or limit the application of any  
20 unconscionable provision to avoid an unconscionable result; or

21 (2) a settlement in which a party waives or agrees  
22 to forego a claim or right under this chapter or under a  
23 rental agreement was unconscionable when made, the court may  
24 refuse to enforce the settlement, enforce the remainder of the  
25 settlement without the unconscionable provision, or limit the

1 application of any unconscionable provision to avoid an  
2 unconscionable result.

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

8 35-9A-144. Notice.

9 (a) A person has notice of a fact if:

10 (1) the person has actual knowledge of it;

11 (2) the person has received a notice or notification  
12 of it; or

13 (3) from all the facts and circumstances known to  
14 the person at the time in question, the person has reason to  
15 know that it exists.

16 A person "knows" or "has knowledge" of a fact if the  
17 person has actual knowledge of it.

18 (b) A person "notifies" or "gives" a notice or  
19 notification to another person by taking steps reasonably  
20 calculated to inform the other in ordinary course whether or  
21 not the other actually comes to know of it. A person  
22 presumatively "receives" a notice or notification when:

23 (1) it comes to the person's attention;

24 (2) in the case of the landlord, it is delivered at  
25 the place of business of the landlord or mailed to any place

1 designated by the landlord as the place for receipt of the  
2 communication; or

3 (3) in the case of the tenant, it is delivered in  
4 hand to the tenant or three days after mailing with adequate  
5 prepaid postage in the United States mail to the tenant's last  
6 known place of residence.

7 (c) "Notice," knowledge of a notice, or notification  
8 received by an organization is effective for a particular  
9 transaction from the time it is brought to the attention of  
10 the organization.

11 (d) Notice provided in this section does not apply  
12 to the notice required to terminate a tenancy or evict a  
13 tenant.

14 DIVISION IV

15 GENERAL PROVISIONS.

16 35-9A-161. Terms and Conditions of Rental Agreement.

17 (a) A landlord and a tenant may include in a rental  
18 agreement terms and conditions not prohibited by this chapter  
19 or other law, including rent, term of the agreement, and other  
20 provisions governing the rights and obligations of the  
21 parties.

22 (b) In absence of agreement, the tenant shall pay as  
23 rent the fair rental value for the use and occupancy of the  
24 dwelling unit.

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

8           (d) Unless the rental agreement fixes a definite  
9 term, the tenancy is week-to-week in case of a tenant who pays  
10 weekly rent, and in all other cases month-to-month.

11           35-9A-162. Effect of Unsigned or Undelivered Rental  
12 Agreement.

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

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

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

1                   35-9A-163. Prohibited Provisions in Rental  
2 Agreements.

3                   (a) A rental agreement may not provide that the  
4 tenant:

5                   (1) agrees to waive or forego rights or remedies  
6 established under Section 35-9A-204, 35-9A-401, or 35-9A-404,  
7 or requirements of security deposits established by this  
8 chapter or under the law of unlawful detainer;

9                   (2) authorizes any person to confess judgment on a  
10 claim arising out of the rental agreement;

11                   (3) agrees to pay the landlord's attorney's fees or  
12 cost of collection; or

13                   (4) agrees to the exculpation or limitation of any  
14 liability of the landlord arising under law or to indemnify  
15 the landlord for that liability or the costs connected  
16 therewith.

17                   (b) A provision prohibited by subsection (a)  
18 included in a rental agreement is unenforceable. If a landlord  
19 deliberately uses a rental agreement containing provisions  
20 known by the landlord to be prohibited, the tenant may recover  
21 in addition to actual damages an amount up to 1 months'  
22 periodic rent and reasonable attorney's fees.

23                   35-9A-164. Payment of Rent Prerequisite to Enforcing  
24 Remedies under this Chapter.

1           The tenant may not withhold payment of rent to the  
2 landlord, while in possession, to enforce any of the tenant's  
3 rights under this chapter.

4           ARTICLE II

5           LANDLORD OBLIGATIONS.

6           35-9A-201. Security Deposits; Prepaid Rent.

7           (a) A landlord may not demand or receive money as  
8 security, in an amount in excess of 1 month's periodic rent  
9 except for pets, changes to the premises, or increased  
10 liability risks to the landlord or premises, for tenant's  
11 obligations under a rental agreement.

12           (b) Upon termination of the tenancy, money held by  
13 the landlord as security may be applied to the payment of  
14 accrued rent and the amount of damages that the landlord has  
15 suffered by reason of the tenant's noncompliance with Section  
16 35-9A-301 all as itemized by the landlord in a written notice  
17 delivered to the tenant together with the amount due 35 days  
18 after termination of the tenancy and delivery of possession.

19           (c) If the landlord does not refund the entire  
20 deposit, the landlord, within the 35-day period, shall provide  
21 the tenant an itemized list of amounts withheld.

22           (d) Upon vacating the premises, the tenant shall  
23 provide to the landlord a valid forwarding address, in  
24 writing, to which the deposit or itemized accounting, or both,  
25 may be mailed. If the tenant fails to provide a valid

1 forwarding address, the landlord shall mail, by first class  
2 mail, the deposit or itemized accounting, or both, to the last  
3 known address of the tenant or, if none, to the tenant at the  
4 address of the property. Any deposit unclaimed by the tenant  
5 as well as any check outstanding shall be forfeited by the  
6 tenant after a period of 180 days.

7 (e) The landlord's mailing by first class mail to  
8 the address provided in writing by the tenant, within 35 days  
9 of the refund or itemized accounting, or both, is sufficient  
10 compliance with this chapter.

11 (f) If the landlord fails to mail a timely refund or  
12 accounting within the 35-day period, the landlord shall pay  
13 the tenant double the amount of the tenant's original deposit.

14 (g) This section does not preclude the landlord or  
15 tenant from recovering other damages to which the landlord or  
16 tenant may be entitled.

17 (h) The holder of the landlord's interest in the  
18 premises at the time of the termination of the tenancy is  
19 bound by this section.

20 35-9A-202. Disclosure.

21 (a) A landlord or any person authorized to enter  
22 into a rental agreement on the landlord's behalf shall  
23 disclose to the tenant in writing at or before the  
24 commencement of the tenancy the name and business address of:

1                   (1) the person authorized to manage the premises;  
2 and

3                   (2) an owner of the premises or a person authorized  
4 to act for and on behalf of the owner for the purpose of  
5 service of process and receiving and receipting for notices  
6 and demands.

7                   (b) The information required to be furnished by this  
8 section shall be kept current and this section extends to and  
9 is enforceable against any successor landlord, owner, or  
10 manager.

11                   (c) A person who fails to comply with subsection (a)  
12 becomes an agent of each person who is a landlord for:

13                   (1) service of process and receiving and receipting  
14 for notices and demands; and

15                   (2) performing the obligations of the landlord under  
16 this chapter and under the rental agreement and expending or  
17 making available for the purpose all rent collected from the  
18 premises.

19                   35-9A-203. Landlord to Deliver Possession of  
20 Dwelling Unit.

21                   At the commencement of the term, a landlord shall  
22 deliver possession of the premises to the tenant in compliance  
23 with the rental agreement and Section 35-9A-204. The landlord  
24 may bring an action for possession against any person

1 wrongfully in possession and may recover the damages provided  
2 in Section 35-9A-441(c).

3 35-9A-204. Landlord to Maintain Premises.

4 (a) A landlord shall:

5 (1) comply with the requirements of applicable  
6 building and housing codes materially affecting health and  
7 safety;

8 (2) make all repairs and do whatever is necessary to  
9 put and keep the premises in a habitable condition;

10 (3) keep all common areas of the premises in a clean  
11 and safe condition;

12 (4) maintain in good and safe working order and  
13 condition all electrical, plumbing, sanitary, heating,  
14 ventilating, air-conditioning, and other facilities and  
15 appliances, including elevators, supplied or required to be  
16 supplied by the landlord;

17 (5) provide and maintain appropriate receptacles and  
18 conveniences for the removal of garbage, rubbish, and other  
19 waste incidental to the occupancy of the dwelling unit and  
20 arrange for their removal; and

21 (6) supply running water and reasonable amounts of  
22 hot water at all times and reasonable heat except where the  
23 building that includes the dwelling unit is not required by  
24 law to be equipped for that purpose, or the dwelling unit is  
25 so constructed that heat or hot water is generated by an

1 installation within the exclusive control of the tenant and  
 2 supplied by a direct public utility connection.

3 (b) If the duty imposed by subdivision (1) of  
 4 subsection (a) is greater than any duty imposed by any other  
 5 subdivision of that subsection, the landlord's duty shall be  
 6 determined by reference to subdivision (1) of subsection (a).

7 (c) The landlord and tenant of a single family  
 8 residence may agree in writing that the tenant perform the  
 9 landlord's duties specified in subdivisions (5) and (6) of  
 10 subsection (a) and also specified repairs, maintenance tasks,  
 11 alterations, and remodeling.

12 (d) The landlord and tenant of any dwelling unit  
 13 other than a single family residence may agree that the tenant  
 14 is to perform specified repairs, maintenance tasks,  
 15 alterations, or remodeling only if:

16 (1) the agreement of the parties is set forth in a  
 17 separate writing signed by the parties and supported by  
 18 adequate consideration;

19 (2) the work is not necessary to cure noncompliance  
 20 with subsection (a) (1); and

21 (3) the agreement does not diminish or affect the  
 22 obligation of the landlord to other tenants in the premises.

23 (e) The landlord may not treat performance of the  
 24 separate agreement described in subsection (d) as a condition  
 25 to any obligation or performance of any rental agreement.

1 (f) Rights of the tenant under this section do not  
2 arise if the condition was caused by the willful or negligent  
3 act or omission of the tenant, a member of the tenant's  
4 family, a licensee, or other person on the premises with the  
5 tenant's consent.

6 35-9A-205. Limitation of Liability.

7 (a) Unless otherwise agreed, a landlord who conveys  
8 premises that include a dwelling unit subject to a rental  
9 agreement in a good faith sale to a bona fide purchaser is  
10 relieved of liability under the rental agreement and this  
11 chapter as to events occurring after written notice to the  
12 tenant of the conveyance. However, the landlord remains liable  
13 to the tenant for all security recoverable by the tenant under  
14 Section 35-9A-201 and all prepaid rent.

15 (b) Unless otherwise agreed, a manager of premises  
16 that include a dwelling unit is relieved of liability under  
17 the rental agreement and this chapter as to events occurring  
18 after written notice to the tenant of the termination of  
19 management by the manager.

20 ARTICLE III

21 TENANT OBLIGATIONS.

22 35-9A-301. Tenant to Maintain Dwelling Unit.

23 A tenant shall:

1           (1) comply with all obligations primarily imposed  
2 upon tenants by applicable provisions of building and housing  
3 codes materially affecting health and safety;

4           (2) keep that part of the premises that the tenant  
5 occupies and uses as clean and safe as the condition of the  
6 premises permit;

7           (3) dispose from the dwelling unit all ashes,  
8 garbage, rubbish, and other waste in a clean and safe manner;

9           (4) keep all plumbing fixtures in the dwelling unit  
10 or used by the tenant as clear as their condition permits;

11           (5) use in a reasonable manner all electrical,  
12 plumbing, sanitary, heating, ventilating, air-conditioning,  
13 and other facilities and appliances including elevators in the  
14 premises;

15           (6) not deliberately or negligently destroy, deface,  
16 damage, impair, or remove any part of the premises; or  
17 knowingly, recklessly, or negligently permit any person to do  
18 so; and

19           (7) conduct himself or herself and require other  
20 persons on the premises with the tenant's consent to conduct  
21 themselves in a manner that will not disturb the neighbors'  
22 peaceful enjoyment of the premises.

23           35-9A-302. Rules and Regulations.

24           (a) "Rules" or "Regulations" pertaining to a  
25 residential lease are defined as policies of the landlord

1 affecting the maintenance, operation, or governance of the  
2 common areas of the premises, or concerning the general  
3 conduct of tenants in their use and enjoyment of the leased  
4 premises.

5 (b) A landlord, from time to time, may adopt a rule  
6 or regulation. It is enforceable against the tenant only if:

7 (1) its purpose is to promote the convenience,  
8 safety, or welfare of the tenants in the premises, preserve  
9 the landlord's property from abusive use, or make a fair  
10 distribution of services and facilities held out for the  
11 tenants generally;

12 (2) it is reasonably related to the purpose of which  
13 it is adopted;

14 (3) it applies to all tenants in the premises in a  
15 fair manner;

16 (4) it is sufficiently explicit in its prohibition,  
17 direction, or limitation of the tenant's conduct to fairly  
18 inform the tenant of what the tenant must or must not do to  
19 comply;

20 (5) it is not for the purpose of evading the  
21 obligations of the landlord; and

22 (6) the tenant has notice of it at the time the  
23 tenant enters into the rental agreement, or when it is  
24 adopted.

1           (c) If a rule or regulation is adopted after the  
2 tenant enters into the rental agreement that works a  
3 substantial modification of the tenant's use of the leased  
4 premises, it is not valid unless the tenant consents to it in  
5 writing. In the case of any variance between the lease and a  
6 rule or regulation, the lease prevails.

7           35-9A-303. Access.

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

15           (b) A landlord may enter the dwelling unit without  
16 consent of the tenant in case of emergency.

17           (c) A landlord shall not abuse the right of access  
18 or use it to harass the tenant. Except in case of emergency or  
19 unless it is impracticable to do so, the landlord shall give  
20 the tenant at least 2 days' notice of the landlord's intent to  
21 enter and may enter only at reasonable times. Posting of a  
22 note on the primary door of entry to the residence of the  
23 tenant stating the intended time and purpose of the entry  
24 shall be a permitted method of notice for the purpose of the  
25 landlord's right of access to the premises.

1 (d) A landlord has no other right of access except:

2 (1) pursuant to court order;

3 (2) as permitted by Sections 35-9A-422 and  
4 35-9A-423(b); or

5 (3) unless the landlord has reasonable cause to  
6 believe the tenant has abandoned or surrendered the premises.

7 35-9A-304. Tenant to Use and Occupy.

8 Unless otherwise agreed, a tenant shall occupy the  
9 dwelling unit only as a dwelling unit. The rental agreement  
10 may require that the tenant notify the landlord of any  
11 anticipated extended absence from the premises in excess of 14  
12 days no later than the fifth day of the extended absence.

13 ARTICLE IV

14 REMEDIES.

15 DIVISION I

16 TENANT REMEDIES.

17 35-9A-401. Noncompliance by the Landlord-In General.

18 (a) Except as provided in this chapter, if there is  
19 a material noncompliance by the landlord with the rental  
20 agreement or a noncompliance with Section 35-9A-204 materially  
21 affecting health and safety, the tenant may deliver a written  
22 notice to the landlord specifying the acts and omissions  
23 constituting the breach and that the rental agreement will  
24 terminate upon a date not less than 14 days after receipt of  
25 the notice if the breach is not remedied within that period,

1 and the rental agreement shall terminate as provided in the  
2 notice subject to the following:

3 (1) If the breach is remediable by repairs or the  
4 payment of damages or otherwise and the landlord adequately  
5 remedies the breach before the date specified in the notice,  
6 the rental agreement shall not terminate by reason of the  
7 breach.

8 (2) The tenant may not terminate for a condition  
9 caused by the deliberate or negligent act or omission of the  
10 tenant, a member of the tenant's family, a licensee, or other  
11 person on the premises with the tenant's consent.

12 (b) Except as provided in this chapter, the tenant  
13 may recover actual damages and obtain injunctive relief for  
14 noncompliance by the landlord with the rental agreement or  
15 Section 35-9A-204. If the landlord's noncompliance is in bad  
16 faith, the tenant may recover reasonable attorney's fees.

17 (c) The remedy provided in subsection (b) is in  
18 addition to any right of the tenant arising under subsection  
19 (a).

20 (d) If the rental agreement is terminated pursuant  
21 to this section, the landlord shall return all security  
22 recoverable by the tenant under Section 35-9A-201 and all  
23 unearned prepaid rent.

24 35-9A-402. Failure to Deliver Possession.

1           (a) If the landlord fails to deliver possession of  
2 the dwelling unit to the tenant as provided in Section  
3 35-9A-203, rent abates until possession is delivered and the  
4 tenant may:

5           (1) terminate the rental agreement upon written  
6 notice to the landlord and within 5 days thereafter the  
7 landlord shall return all prepaid rent and security; or

8           (2) demand performance of the rental agreement by  
9 the landlord and, if the tenant elects, bring an action for  
10 possession of the dwelling unit from the person wrongfully in  
11 possession and recover the actual damages sustained by the  
12 tenant.

13           (b) If a person's failure to deliver possession is  
14 willful and not in good faith, an aggrieved party may recover  
15 from that person an amount equal to not more than 3 months'  
16 periodic rent or the actual damages sustained, whichever is  
17 greater, and reasonable attorney's fees.

18           35-9A-403. [Reserved].

19           35-9A-404. Wrongful Failure to Make Available Heat,  
20 Water, Hot Water, or Essential Services.

21           (a) The landlord is not responsible for the payment  
22 of utility services unless agreed in the lease.

23           (b) If contrary to the rental agreement or Section  
24 35-9A-204, after receiving notice of the breach from the  
25 tenant, the landlord willfully or negligently fails to

1 promptly make available heat, running water, hot water,  
2 electric, gas, or other essential service, the tenant may:

3 (1) send a written notice specifying the date of  
4 termination not less than 14 days after receipt of notice and  
5 upon vacation of the premises, the rental agreement shall be  
6 rightfully terminated without further obligation or penalty.  
7 If the rental agreement is terminated pursuant to this  
8 section, the landlord shall return all security recoverable by  
9 the tenant under Section 35-9A-201 and all unearned prepaid  
10 rent; or

11 (2) recover damages based upon the diminution in the  
12 fair rental value of the dwelling unit.

13 (c) If the tenant proceeds under this section, the  
14 tenant may not proceed under Section 35-9A-401 as to that  
15 breach.

16 (d) Rights of the tenant under this section do not  
17 arise if the condition was caused by the wilful or negligent  
18 act or omission of the tenant, a member of the tenant's  
19 family, a licensee or other person on the premises with the  
20 tenant's consent.

21 35-9A-405. Counterclaims for Action for Possession  
22 or Rent.

23 (a) In an action for possession or in an action for  
24 rent when the tenant is in possession, the tenant may  
25 counterclaim for any amount the tenant may recover under the

1 rental agreement or this chapter. It is in the court's  
2 discretion whether the tenant is to remain in possession. The  
3 tenant shall pay into court rent accrued and thereafter  
4 accruing as it comes due. The court shall determine the amount  
5 due to each party. The party to whom a net amount is owed  
6 shall be paid first from the money paid into court, and the  
7 balance by the other party. If no rent remains due after  
8 application of this section, judgment shall be entered for the  
9 tenant in the action for possession. If the defense or  
10 counterclaim by the tenant is without merit and is not raised  
11 in good faith, the landlord may recover reasonable attorney's  
12 fees.

13 (b) In an action for rent when the tenant is not in  
14 possession, the tenant may counterclaim as provided in  
15 subsection (a) but is not required to pay any rent into court.

16 35-9A-406. Fire or Casualty Damage.

17 (a) If the dwelling unit or premises are damaged or  
18 destroyed by fire or casualty not caused by the tenant to an  
19 extent that enjoyment of the dwelling unit is substantially  
20 impaired, the tenant may:

21 (1) immediately vacate the premises and notify the  
22 landlord in writing within 14 days thereafter of the tenant's  
23 intention to terminate the rental agreement, in which case the  
24 rental agreement terminates as of the date of vacating; or

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

6           (b) If the rental agreement is terminated pursuant  
7 to this section, the landlord shall return all security  
8 recoverable under Section 35-9A-201 and all unearned prepaid  
9 rent. Accounting for rent in the event of termination or  
10 apportionment shall be made as of the date of the fire or  
11 casualty.

12           35-9A-407. Tenant's Remedies for Landlord's Unlawful  
13 Ouster, Exclusion, or Diminution of Service.

14           If a landlord unlawfully removes or excludes the  
15 tenant from the premises or willfully diminishes services to  
16 the tenant by interrupting or causing the interruption of  
17 heat, running water, hot water, electric, gas, or other  
18 essential service, the tenant may recover possession or  
19 terminate the rental agreement and, in either case, recover an  
20 amount equal to not more than 3 months' periodic rent or the  
21 actual damages sustained by the tenant, whichever is greater,  
22 and reasonable attorney's fees. If the rental agreement is  
23 terminated under this section, the landlord shall return all  
24 security recoverable under Section 35-9A-201 and all unearned  
25 prepaid rent.

1                   DIVISION II

2                   LANDLORD REMEDIES.

3                   35-9A-421. Noncompliance with Rental Agreement;  
4 Failure to Pay Rent.

5                   (a) Except as provided in this chapter, if there is  
6 a material noncompliance by the tenant with the rental  
7 agreement or a noncompliance with Section 35-9A-301 materially  
8 affecting health and safety, the landlord may deliver a  
9 written notice to terminate the lease to the tenant specifying  
10 the acts and omissions constituting the breach and that the  
11 rental agreement will terminate upon a date not less than 14  
12 days after receipt of the notice. If the breach is not  
13 remedied within the 14 days after receipt of the notice to  
14 terminate the lease, the rental agreement shall terminate on  
15 the date provided in the notice to terminate the lease unless  
16 the tenant adequately remedies the breach before the date  
17 specified in the notice, in which case the rental agreement  
18 shall not terminate.

19                   (b) If rent is unpaid when due and the tenant fails  
20 to pay rent within 7 days after receipt of written notice to  
21 terminate the lease for nonpayment and if the rent is not paid  
22 within the 7-day period, the landlord may terminate the rental  
23 agreement at the expiration of the 7-day period. If a  
24 noncompliance of rental agreement occurs under both subsection  
25 (a) and this subsection, the 7-day notice period to terminate

1 the lease for nonpayment of rent in this subsection shall  
2 govern.

3 (c) Except as provided in this chapter, a landlord  
4 may recover actual damages and obtain injunctive relief for  
5 noncompliance by the tenant with the rental agreement or  
6 Section 35-9A-301. If the tenant's noncompliance is willful,  
7 the landlord may recover reasonable attorney's fees.

8 35-9A-422. Failure to Maintain.

9 If there is noncompliance by the tenant with Section  
10 35-9A-301 materially affecting health and safety that can be  
11 remedied by repair, replacement of a damaged item, or  
12 cleaning, and the tenant fails to comply as promptly as  
13 conditions require in case of emergency or within 7 days after  
14 written notice by the landlord specifying the breach and  
15 requesting that the tenant remedy it within that period of  
16 time, the landlord may enter the dwelling unit and cause the  
17 work to be done in a workmanlike manner and submit the  
18 itemized bill for the actual and reasonable cost or the fair  
19 and reasonable value thereof as rent on the next date periodic  
20 rent is due, or if the rental agreement has terminated, for  
21 immediate payment.

22 35-9A-423. Remedies for Absence, Nonuse and  
23 Abandonment.

24 (a) If a rental agreement requires the tenant to  
25 give notice to the landlord of an anticipated extended absence

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

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

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

21 (d) If a tenant leaves property in the unit more  
22 than 14 days after termination pursuant to this chapter, the  
23 landlord has no duty to store or protect the tenant's property  
24 in the unit and may dispose of it without obligation.

25 35-9A-424. Waiver of Landlord's Right to Terminate.

1           Acceptance of rent with knowledge of a default by  
2 the tenant or acceptance of performance by the tenant that  
3 varies from the terms of the rental agreement constitutes a  
4 waiver of the landlord's right to terminate the rental  
5 agreement for that breach, unless otherwise agreed after the  
6 breach has occurred.

7           35-9A-425. Landlord Liens; Distress for Rent.

8           (a) A lien or security interest on behalf of the  
9 landlord in the tenant's household goods is not enforceable  
10 unless perfected before January 1, 2007.

11           (b) Distraint for rent is abolished.

12           35-9A-426. Remedy after Termination.

13           If a rental agreement is terminated, the landlord  
14 has a claim for possession and for rent and a separate claim  
15 for actual damages for breach of the rental agreement and  
16 reasonable attorney's fees as provided in Section  
17 35-9A-421(c).

18           35-9A-427. Recovery of Possession Limited.

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

1 DIVISION III

2 PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS.

3 35-9A-441. Periodic Tenancy; Holdover Remedies.

4 (a) The landlord or the tenant may terminate a  
5 week-to-week tenancy by a written notice given to the other at  
6 least 7 days before the termination date specified in the  
7 notice.

8 (b) The landlord or the tenant may terminate a  
9 month-to-month tenancy by a written notice given to the other  
10 at least 30 days before the periodic rental date specified in  
11 the notice.

12 (c) If a tenant remains in possession without the  
13 landlord's consent after expiration of the term of the rental  
14 agreement or its termination, the landlord may bring an action  
15 for possession and if the tenant's holdover is willful and not  
16 in good faith the landlord may also recover an amount equal to  
17 not more than 3 month's periodic rent or the actual damages  
18 sustained by the landlord, whichever is greater, and  
19 reasonable attorney's fees. If the landlord consents to the  
20 tenant's continued occupancy, Section 35-9A-161(d) applies.

21 35-9A-442. Landlord and Tenant Remedies for Abuse of  
22 Access.

23 (a) If a tenant refuses to allow lawful access, the  
24 landlord may obtain injunctive relief to compel access, or

1 terminate the rental agreement pursuant to Section 35-9A-421.  
2 In either case, the landlord may recover actual damages.

3 (b) If a landlord makes an unlawful entry or a  
4 lawful entry in an unreasonable manner or makes excessive  
5 demands for entry otherwise lawful but which have the effect  
6 of unreasonably harassing the tenant, the tenant may obtain  
7 injunctive relief to prevent the recurrence of the conduct, or  
8 terminate the rental agreement pursuant to Section 35-9A-401.  
9 In either case, the tenant may recover actual damages.

10 DIVISION IV

11 COURT ACTIONS BY LANDLORD.

12 35-9A-461. Landlord's Action for Eviction, Rent,  
13 Monetary Damages, and/or Other Relief.

14 (a) A landlord's action for eviction, rent, monetary  
15 damages, or other relief relating to a tenancy subject to this  
16 chapter shall be governed by the Alabama Rules of Civil  
17 Procedure and the Alabama Rules of Appellate Procedure except  
18 as modified by this act.

19 (b) District courts and circuit courts, according to  
20 their respective established jurisdictions, shall have  
21 jurisdiction over eviction actions, and venue shall lie in the  
22 county in which the leased property is located. Eviction  
23 actions shall be entitled to precedence in scheduling over all  
24 other civil cases.

1           (c) Service of process shall be made in accordance  
2 with the Alabama Rules of Civil Procedure. However, if a  
3 sheriff, constable, or process server is unable to serve the  
4 defendant personally, service may be had by delivering the  
5 notice to any person who is sui juris residing on the  
6 premises, or if after reasonable effort no person is found  
7 residing on the premises, by posting a copy of the notice on  
8 the door of the premises, and on the same day of posting or by  
9 the close of the next business day, the sheriff, the  
10 constable, the person filing the complaint, or anyone on  
11 behalf of the person, shall mail notice of the filing of the  
12 unlawful detainer action by enclosing, directing, stamping,  
13 and mailing by first class a copy of the notice to the  
14 defendant at the mailing address of the premises and if there  
15 is no mailing address for the premises to the last known  
16 address, if any, of the defendant and making an entry of this  
17 action on the return filed in the case. Service of the notice  
18 by posting shall be complete as of the date of mailing the  
19 notice.

20           (d) In eviction actions, an appeal by a tenant to  
21 circuit court or to an appellate court does not prevent the  
22 issuance of a writ of restitution or possession unless the  
23 tenant pays to the clerk of the circuit court all rents  
24 properly payable under the terms of the lease since the date  
25 of the filing of the action, and continues to pay all rent

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

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

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

13 (e) If an eviction judgment enters in favor of a  
14 landlord, a writ of possession shall issue. If a tenant  
15 without just cause re-enters the premises, the tenant can be  
16 held in contempt and successive writ may issue as are  
17 necessary to effectuate the eviction judgment.

18 ARTICLE V

19 RETALIATORY CONDUCT.

20 35-9A-501. Retaliatory Conduct Prohibited.

21 (a) Except as provided in this section, a landlord  
22 may not retaliate by discriminatorily increasing rent or  
23 decreasing services or by bringing or threatening to bring an  
24 action for possession because:

1           (1) the tenant has complained to a governmental  
2 agency charged with responsibility for enforcement of a  
3 building or housing code of a violation applicable to the  
4 premises materially affecting health and safety;

5           (2) the tenant has complained to the landlord of a  
6 violation under Section 35-9A-204; or

7           (3) the tenant has organized or become a member of a  
8 tenant's union or similar organization.

9           (b) If a landlord acts in violation of subsection  
10 (a), the tenant is entitled to the remedies provided in  
11 Section 35-9A-407 and has a defense in any retaliatory action  
12 against the tenant for possession.

13           (c) Notwithstanding subsections (a) and (b), a  
14 landlord may bring an action for possession if:

15           (1) the violation of the applicable building or  
16 housing code was caused primarily by lack of reasonable care  
17 by the tenant, a member of the tenant's family, or other  
18 person on the premises with the tenant's consent;

19           (2) the tenant is in default in rent;

20           (3) compliance with the applicable building or  
21 housing code requires alteration, remodeling, or demolition  
22 which would effectively deprive the tenant of use of the  
23 dwelling unit; or

24           (4) other material violations of the lease.

1           (d) The maintenance of an action under subsection  
2           (c) does not release the landlord from liability under Section  
3           35-9A-401(b).

4           ARTICLE VI

5           EFFECTIVE DATE, SAVINGS CLAUSE, SEVERABILITY.

6           35-9A-601. Effective Date.

7           Except for Section 35-9A-163(b) which shall become  
8           effective January 1, 2008, this chapter shall become effective  
9           on January 1, 2007. It applies to rental agreements entered  
10          into or extended or renewed on and after that date.

11          35-9A-602. Savings Clause.

12          Transactions entered into before the effective date  
13          of this chapter, and not extended or renewed on and after that  
14          date, and the rights, duties, and interests flowing from them  
15          remain valid and may be terminated, completed, consummated, or  
16          enforced as required or permitted by any statute or other law  
17          amended or repealed by this chapter as though the repeal or  
18          amendment had not occurred.

19          35-9A-603. Severability.

20          If any provision of this chapter or the application  
21          thereof to any person or circumstance is held invalid, the  
22          invalidity does not affect other provisions or application of  
23          this chapter which can be given effect without the invalid  
24          provision or application, and to this end the provisions of  
25          this chapter are severable.

1                   Section 2. Sections 6-6-350 and 35-9-60, Code of  
 2 Alabama 1975, are amended to read as follows:

3                   "§6-6-350.

4                   "Any party may appeal from a judgment entered  
 5 against him or her by a district court to the circuit court at  
 6 any time within ~~14~~ seven days after the entry thereof, and  
 7 appeal and the proceedings thereon shall in all respects,  
 8 except as provided in this article, be governed by this code  
 9 relating to appeal from district courts. However, the clerk  
 10 of the court shall schedule the action for trial as a  
 11 preferred case, and it shall be set for trial within 60 days  
 12 from the date of appeal.

13                   "§35-9-60.

14                   "The landlord of any storehouse, ~~dwelling house,~~ or  
 15 other building shall have a lien on the goods, furniture, and  
 16 effects belonging to the tenant, and subtenant, for ~~his~~ rent,  
 17 which shall be superior to all other liens, except those for  
 18 taxes, and except as otherwise provided in Section 7-9A-333.  
 19 In case the tenant or subtenant is adjudged a bankrupt, such  
 20 lien on such goods, furniture, and effects of the bankrupt,  
 21 ~~except for a dwelling house, used exclusively as a dwelling,~~  
 22 shall, as against the trustee in bankruptcy, attach only for  
 23 unpaid rent accrued and which shall accrue within six months  
 24 from the date of adjudication computed pro rata at the then  
 25 current rate. The lien amount accrued and to accrue shall not

1 be increased by reason of any default or breach of contract by  
2 the bankrupt. From the amount of such lien, so computed, the  
3 trustee in bankruptcy may deduct all payments and all demands  
4 which could be legally set up against the landlord by way of  
5 counterclaim. If the trustee in bankruptcy shall dispose of  
6 the lease as an asset of the bankrupt estate, then the  
7 landlord shall have a lien on the goods, furniture, and  
8 effects of any person holding under the trustee in  
9 bankruptcy."

10 Section 3. Section 35-9-4 of the Code of Alabama  
11 1975, relating to hiring of lodgings for indefinite term, is  
12 repealed. Article 3, commencing with Section 35-9-80, of  
13 Chapter 9 of Title 35 of the Code of Alabama 1975, relating to  
14 possession wrongfully withheld, is repealed.

15 Section 4. This act shall become effective on  
16 January 1, 2007.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 07-MAR-06, as amended.

Greg Pappas  
Clerk

Senate

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30-MAR-06

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Passed