

1 SB316  
2 127165-2  
3 By Senator Marsh  
4 RFD: Commerce, Transportation, and Utilities  
5 First Read: 31-MAR-11

1 SB316

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4 ENROLLED, An Act,

5 Relating to landlord and tenant agreements pursuant  
6 to the Uniform Residential Landlord and Tenant Act; to amend  
7 Sections 35-9A-141, 35-9A-163, 35-9A-303, 35-9A-401,  
8 35-9A-421, 35-9A-423, and 35-9A-426, Code of Alabama 1975; to  
9 provide further for a defined term; to provide further for  
10 unenforceable rental agreements; to provide access to a  
11 landlord's property; to further provide for the tenant to  
12 recover reasonable attorney fees under certain conditions in  
13 the event of noncompliance by the landlord; to further provide  
14 for material noncompliance with the rental agreement by the  
15 tenant; to further provide for certain noncurable acts or  
16 omissions by a tenant or occupant; to further provide for the  
17 landlord's remedy for a tenant's abandonment of rental  
18 property; and to clarify the landlord's damages after  
19 termination of a rental agreement.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 35-9A-141, 35-9A-163, 35-9A-303,  
22 35-9A-401, 35-9A-421, 35-9A-423, and 35-9A-426 of the Code of  
23 Alabama 1975, are amended to read as follows:

24 "§35-9A-141.

1           "Subject to additional definitions contained in  
2 subsequent articles of this chapter which apply to specific  
3 articles or divisions thereof, and unless the context  
4 otherwise requires, in this chapter:

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

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

13           "(3) "day" means calendar day , notwithstanding Rule  
14 6 of the Alabama Rules of Civil Procedure; however, in any  
15 case where the application of a time period in this chapter  
16 consisting of a specific number of days results in the last  
17 day of that time period falling on a weekend or an official  
18 holiday, then the last day of that time period shall be  
19 considered the next official business day when the court is  
20 open;

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

1           "(5) "eviction" means a civil action filed as a  
2           remedy, where a tenant has lawfully taken possession of a  
3           premises and fails or refuses, after the termination of the  
4           possessory interest of the tenant, to deliver possession of  
5           the premises to anyone lawfully entitled or to his or her  
6           agent or attorney;

7           "(6) "good faith" means honesty in fact in the  
8           conduct of the transaction concerned;

9           "(7) "landlord" means the owner, lessor, or  
10          sublessor of the dwelling unit or the building of which it is  
11          a part, and it also means a manager of the premises;

12          "(8) "organization" includes a corporation,  
13          government, governmental subdivision or agency, business  
14          trust, estate, trust, partnership or association, two or more  
15          persons having a joint or common interest, and any business  
16          entity;

17          "(9) "owner" means one or more persons, jointly or  
18          severally, in whom is vested (i) all or part of the legal  
19          title to property or (ii) all or part of the beneficial  
20          ownership and a right to present use and enjoyment of the  
21          premises. The term includes a mortgagee only when in  
22          possession;

23          "(10) "person" includes an individual, individuals,  
24          or organization;

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

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

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

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

18           "(15) "single family residence" means a structure  
19 maintained and used as a single dwelling unit. Notwithstanding  
20 that a dwelling unit shares one or more walls with another  
21 dwelling unit, it is a single family residence if it has  
22 direct access to a street or thoroughfare and shares neither  
23 heating facilities, hot water equipment, nor any other  
24 essential facility or service with any other dwelling unit;  
25 and

1           "(16) "tenant" means a person entitled under a  
2 rental agreement to occupy a dwelling unit to the exclusion of  
3 others.

4           "§35-9A-163.

5           "(a) A rental agreement may not provide that the  
6 tenant:

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

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

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

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

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

25           "§35-9A-303.

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

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

10           "(1) In case of emergency.

11           "(2) Pursuant to court order.

12           "(3) As permitted by Sections 35-9A-422 and  
13 35-9A-423(b).

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

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

24           "(c) A landlord shall not abuse the right of access  
25 or use it to harass the tenant. Except as provided in this

1 section or unless it is impracticable to do so, the landlord  
2 may show the premises at any reasonable time by giving the  
3 tenant at least two days' notice of the landlord's intent to  
4 enter and may enter only at reasonable times. Posting of a  
5 note on the primary door of entry to the residence of the  
6 tenant stating the intended time and purpose of the entry  
7 shall be a permitted method of notice for the purpose of the  
8 landlord's right of access to the premises.

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

17 "(e) If a tenant requests repairs or maintenance or  
18 improvements to a dwelling unit, the tenant shall be deemed to  
19 have granted consent to the landlord to enter into the  
20 dwelling unit and make the repairs, maintenance, or  
21 improvements as requested by the tenant.

22 "§35-9A-401.

23 "(a) Except as provided in this chapter, if there is  
24 a material noncompliance by the landlord with the rental  
25 agreement or a noncompliance with Section 35-9A-204 materially



1 affecting health and safety, the tenant may deliver a written  
2 notice to the landlord specifying the acts and omissions  
3 constituting the breach and that the rental agreement will  
4 terminate upon a date not less than 14 days after receipt of  
5 the notice if the breach is not remedied within that period,  
6 and the rental agreement shall terminate as provided in the  
7 notice subject to the following:

8 "(1) if the breach is remediable by repairs or the  
9 payment of damages or otherwise and the landlord adequately  
10 remedies the breach before the date specified in the notice,  
11 the rental agreement shall not terminate by reason of the  
12 breach.

13 "(2) the tenant may not terminate for a condition  
14 caused by the deliberate or negligent act or omission of the  
15 tenant, a member of the tenant's family, a licensee, or other  
16 person on the premises with the tenant's consent.

17 "(b) Except as provided in this chapter, the tenant  
18 may recover actual damages and reasonable attorney fees and  
19 obtain injunctive relief for noncompliance by the landlord  
20 with the rental agreement or Section 35-9A-204.

21 "(c) The remedy provided in subsection (b) is in  
22 addition to any right of the tenant arising under subsection  
23 (a).

24 "(d) If the rental agreement is terminated pursuant  
25 to this section, the landlord shall return all security

1 recoverable by the tenant under Section 35-9A-201 and all  
2 unearned prepaid rent.

3 "§35-9A-421.

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

21 "(b) If rent is unpaid when due, the landlord may  
22 deliver a written notice to terminate the lease to the tenant  
23 specifying the amount of rent and any late fees owed to remedy  
24 the breach and that the rental agreement will terminate upon a  
25 date not less than seven days after receipt of the notice. If

1 the breach is not remedied within the seven days, the rental  
2 agreement shall terminate. If a noncompliance of rental  
3 agreement occurs under both subsection (a) and this  
4 subsection, the seven-day notice period to terminate the lease  
5 for nonpayment of rent in this subsection shall govern.

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

10 "(d) The following acts or omissions by a tenant or  
11 occupant shall constitute a noncurable default of the rental  
12 agreement, and in such cases the landlord may terminate the  
13 rental agreement upon a seven-day notice. The tenant shall  
14 have no right to remedy such a default unless the landlord  
15 consents. Such acts and omissions include, but are not limited  
16 to, the following:

17 "(1) Possession or use of illegal drugs in the  
18 dwelling unit or in the common areas.

19 "(2) Discharge of a firearm on the premises of the  
20 rental property, except in cases of self-defense, defense of a  
21 third party, or as permissible in Section 13A-3-23.

22 "(3) Criminal assault of a tenant or guest on the  
23 premises of the rental property, except in cases of  
24 self-defense, defense of a third party, or as permissible in  
25 Section 13A-3-23.

1           "§35-9A-423.

2           "(a) If a rental agreement requires the tenant to  
3 give notice to the landlord of an anticipated extended absence  
4 in excess of 14 days pursuant to Section 35-9A-304 and the  
5 tenant willfully fails to do so, the landlord may recover  
6 actual damages from the tenant.

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

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

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

24           "§35-9A-426.

1                    "If a rental agreement is terminated, the landlord  
2                    has a claim for possession and for rent and a separate claim  
3                    for actual damages for breach of the rental agreement and  
4                    reasonable attorney's fees."

5                    Section 2. This act shall become effective August 1,  
6                    2011, following its passage and approval by the Governor, or  
7                    its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB316

Senate 31-MAY-11

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris  
Secretary

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House of Representatives  
Passed: 09-JUN-11

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By: Senator Marsh