

HOUSE BILL 1760

By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 66,
Chapter 28, relative to landlords and tenants.

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

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 28, is amended by deleting such chapter in its entirety and by substituting instead the following:

66-28-101. This chapter shall be known and may be cited as the "Uniform Residential Landlord and Tenant Act."

66-28-102.

(a) This chapter applies only in counties having a population of more than sixty-eight thousand (68,000), according to the 1970 federal census or any subsequent federal census.

(b) This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, 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may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

(c) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar 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 the purchaser's interest;

(3) Transient occupancy in a hotel, or motel or lodgings subject to city, state, transient lodgings or room occupancy under the Excise Tax Act, compiled in title 67, chapter 4, part 20;

(4) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(5) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

66-28-103.

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

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

(1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) Encourage landlord and tenant to maintain and improve the quality of housing;

(3) Promote equal protection to all parties; and

(4) Make uniform the law in Tennessee.

(c) Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, health, safety and fire

prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

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

66-28-104. Subject to additional definitions contained in this chapter, which apply to specific portions of this chapter, and unless the context otherwise requires, in this chapter:

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

(2) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit;

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "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 § 66-28-302;

(6) "Nuisance vehicle" means any vehicle that is incapable of operating under its own power and is detrimental to the health, welfare or safety of persons in the community;

(7) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(8)

(A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(i) All or part of the legal title to property; or

(ii) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

(B) "Owner" also means a mortgagee in possession;

(9) "Person" means an individual or organization;

(10) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 66-28-402 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "Rents" means all payments to be made to the landlord under the rental agreement;

(13)

(A) "Security deposit" means an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear and any monetary damage due to the tenant's breach of the rental agreement;

(B) "Security deposit" shall in no way infer that the landlord is providing any service for the personal protection or safety of the tenant beyond that prescribed by law;

(14) "Substantially impaired" means a dwelling unit or premises that has been deemed unfit for human habitation by a governmental authority or is in a condition that renders more than half of the dwelling unit or premises unusable by the tenant or that has caused a failure of utilities to the dwelling unit or apartment for a period of more than three (3) days.

(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(16) "Unauthorized vehicle" means a vehicle that is not registered to a tenant, an occupant or a tenant's known guest, and has remained for more than seven (7) consecutive days on real property leased or rented by a landlord for residential purposes; and

(17) "Vehicle" means any device for carrying passengers, livestock, goods or equipment that moves on wheels and or runners.

66-28-105.

(a) The general sessions and circuit courts of this state shall exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over the parties may be acquired in a civil action or proceeding instituted in law or equity by service of process in the manner provided by law.

(b) A landlord who is not a resident of this state or is a corporation not authorized to do business in this state and engages in a transaction subject to this chapter may designate an agent upon whom service of process may be made in this

state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing, filed with the secretary of state, and must set forth the name and street address, including zip code, of the agent, the name and street address, including zip code, of the landlord and be accompanied by a ten dollar (\$10.00) filing fee. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state forthwith by mailing a copy of the process and pleading by registered or certified mail to the defendant or respondent at that party's last known address. The process must be accompanied by a ten dollar (\$10.00) fee and specify the address of the defendant. An affidavit of service shall be filed by the secretary of state with the clerk of the court on or before the return day of the process.

66-28-106.

(a) Either party has notice of a fact if such person:

- (1) Has actual knowledge of it; or
- (2) Has been given written notice.

(b) All parties must give written notice to the last known or designated address contained in the lease agreement.

66-28-201.

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportionable from day to day.

(d) There shall be a five-day grace period from the day the rent was due and the day a fee for the late payment of rent may be charged. The date the rent was due shall be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent, provided that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent shall not exceed two (2%) of the amount of rent past due. If the office where tenant is to pay rent is located in the same county where tenant resides, payment of rent is deemed late if not actually received by landlord prior to the end of the grace period.

(e)

(1) No charge or fee for the late payment of rent due from a tenant in a public housing project shall exceed five dollars (\$5.00) per month. No late charge or fee shall be assessed such tenant unless more than fifteen (15) days have elapsed since the rent was due.

(2) The provisions of this subsection (e) shall apply only to counties with a population between two hundred fifty thousand (250,000) and three hundred thousand (300,000) according to the 1980 federal census or any subsequent federal census.

66-28-202.

(a) If the landlord does not sign a written rental agreement, acceptance of rent without reservation by the landlord binds the parties on a month to month tenancy.

(b) Any person or persons taking possession without payment and failing to sign a written rental agreement delivered to them by the landlord or who enter without oral agreement are deemed to be trespassers and may be evicted forthwith and may be liable for damages and rent for the term of trespass.

66-28-203.

(a) No rental agreement may provide that the tenant:

(1) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(2) Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability.

(b) A provision prohibited by subsection (a) included in an agreement is unenforceable. Should a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained. The tenant cannot agree to waive or forego rights or remedies under this chapter.

66-28-204.

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

(1) A rental agreement or any provision thereof was unconscionable when made, the court shall enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court shall enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid the unconscionable result.

(b) 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.

66-28-301.

(a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state of Tennessee or any agency of the United States government.

(b) An inspection of the premises for determining a tenant's liability for physical damages that are the basis for any charge against the security deposit and the estimated costs to repair such damage shall be conducted as follows:

(1)

(A) Either at the time of entering into a lease agreement, upon written request by the landlord for a tenant to vacate, or within five (5) days after receipt of written notice by the landlord of

the tenant's intent to vacate, the landlord may provide notice to the tenant of the tenant's right to be present at the landlord's inspection of the premises. The notice shall also advise the tenant that the tenant may request a time of inspection to be set by the landlord during normal working hours. The landlord may require the inspection to be after the tenant has completely vacated the premises and is ready to surrender possession and return all means of access to the entire premises. The inspection shall be within three (3) working days of vacating the premises in accordance with the tenant's notice to vacate as provided in this section.

(B) If a tenant requests a mutual inspection as provided in subdivision (b)(1)(A), the landlord and tenant shall then inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord and tenant shall sign the listing. The signatures of the landlord and the tenant on the listing shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents.

(2) If a tenant has:

- (A) Vacated the rental premises without giving written notice;
- (B) Abandoned the premises;
- (C) Been judicially removed from the premises;

(D) Not contacted the landlord after the landlord's notice of right to mutual inspection of the premises;

(E) Failed to appear at the arranged time of inspection as provided in subdivision (b)(1); or

(F) Waived in writing the right of mutual inspection or is otherwise inaccessible to the landlord;

the landlord may inspect the premises and compile a comprehensive listing of any presently ascertainable damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord shall provide a copy of the listing of damages and estimated cost of repairs to the tenant upon the tenant's written request.

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in an account as required by subsection (a) and a listing of damages is not provided as required by subsection (b).

(d) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b) may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not be entitled to recover any damages under this section.

(e) Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the landlord may remove the deposit from the account and apply the moneys to the unpaid debt.

(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonable determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant's behalf.

(g) This section does not preclude the landlord from recovering the costs of any and all contractual damages to which the landlord may be entitled, plus the cost of any additional physical damages to the premises that are discovered after an inspection that has been completed pursuant to subsection (b).

66-28-302.

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

(1) The agent authorized to manage the premises; and

(2) An owner of the premises or a person or agent authorized to act for and on behalf of the owner for the acceptance of service of process and for receipt of notices and demands.

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

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the purpose of service of process and receiving and receipting for notices and demands.

66-28-303. At the commencement of the terms of the rental agreement the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 66-28-304. The landlord may bring an action for possession against any person wrongfully in possession and may recover damages provided in § 66-28-512(c).

66-28-304.

(a) The landlord shall:

(1) Comply with requirements of applicable building and housing codes materially affecting health and safety;

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

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

(4) In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

(b) If the duty imposed by subdivision (a)(1) is greater than any duty imposed by any other provision of subsection (a), the landlord's duty shall be determined by subdivision (a)(1).

(c) The landlord and tenant may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and is not for the purpose of evading the obligations of the landlord.

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

66-28-305. Unless otherwise agreed, a landlord who in a good faith sale to a bona fide purchaser, landlord or agent, or both, conveys premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice is provided to the tenant of the conveyance and transfer of the security deposit to the bona fide purchaser.

66-28-401.

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 the part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises when the tenant took possession;

(3) Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste to the designated collection areas and into receptacles;

(4) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so; and shall not engage in any illegal conduct on the premises; and

(5) Act and require other persons on the premises, with the tenant's or other occupants' consent, to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises.

66-28-402.

(a) A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. Such rules or regulations are enforceable against the tenant only if:

(1) Their 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) They are reasonably related to the purpose for which it is adopted;

(3) They apply to all tenants in the premises;

(4) They are sufficiently explicit in their 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) They are not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of them at the time the tenant enters into the rental agreement.

(b) A rule or regulation 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 is not a substantial modification of the rental agreement.

66-28-403

(a) 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, workers or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of emergency. "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(c) If any utility has been turned off for three (3) days or more, due to no fault of the landlord, the landlord shall be permitted to enter the premises upon twenty-four (24) hours written notice to the tenant. The landlord may inspect the premises to ascertain any damages to the premises and make necessary repairs for damages resulting from the lack of utility services.

(d) The landlord shall not abuse the right of access or use it to harass the tenant.

(e) The landlord has no right of access except:

(1) By court order;

(2) As permitted by § 66-28-403(b), § 66-28-403(c), § 66-28-506 and § 66-28-507(b);

(3) If the tenant has abandoned or surrendered the premises;

(4) If the tenant is deceased, incapacitated or incarcerated; or

(5) Within the final thirty (30) days of the lease termination for the purpose of showing the dwelling unit to prospective tenants or buyers provided such right of access is set forth in the lease and notice is given to the tenant at least twenty-four (24) hours prior to entry.

66-28-404. Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven (7) days. Notice shall be given on or before the first day of any extended absence.

66-28-405.

(a) The tenant's unexplained or extended absence from the premises for thirty (30) days or more without payment of rent as due shall be prima facie evidence of abandonment. The landlord is then expressly authorized to reenter and take possession of the premises.

(b)

(1) The tenant's nonpayment of rent for fifteen (15) days past the rental due date, together with other reasonable factual circumstances indicating the tenant has permanently vacated the premises, including, but not limited to, the removal by the tenant of substantially all of the tenant's possessions and personal effects from the premises, or the tenant's voluntary termination of utility service to the premises, shall also be prima facie evidence of abandonment.

(2) In cases described in subdivision (b)(1), the landlord shall post notice at the rental premises and shall also send the notice to the tenant by regular mail, postage prepaid, at the rental premises address. The notice shall state that:

(A) The landlord has reason to believe that the tenant has abandoned the premises;

(B) The landlord intends to reenter and take possession of the premises, unless the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice;

(C) If the tenant does not contact the landlord within the ten-day period, the landlord intends to remove any and all possessions and personal effects remaining in or on the premises and to rerent the dwelling unit; and

(D) If the tenant does not reclaim the possessions and personal effects within thirty (30) days of the landlord taking possession of the

possessions and personal effects, the landlord intends to dispose of the tenant's possessions and personal effects as provided for in subsection (c).

(3) The notice shall also include a telephone number and a mailing address at which the landlord may be contacted.

(4) If the tenant fails to contact the landlord within ten (10) days of the posting and mailing of the notice, the landlord may reenter and take possession of the premises. If the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice and indicates the tenant's intention to remain in possession of the rental premises, the landlord shall comply with the provisions of this chapter relative to termination of tenancy and recovery of possession of the premises through judicial process.

(c) When proceeding under either subsection (a) or (b), the landlord shall remove the tenant's possessions and personal effects from the premises and store the personal possessions and personal effects for not less than thirty (30) days. The tenant may reclaim the possessions and personal effects from the landlord within the thirty-day period. If the tenant does not reclaim the possessions and personal effects within the thirty-day period, the landlord may sell or otherwise dispose of the tenant's possessions and personal effects and apply the proceeds of the sale to the unpaid rents, damages, storage fees, sale costs and reasonable attorney's fees. Any balances are to be held by the landlord six (6) months after the sale.

66-28-501.

(a) Except as provided in this chapter, the tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the

landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice.

(b) If the rental agreement is terminated for noncompliance after sufficient notice, the landlord shall return all prepaid rent and security deposits recoverable by the tenant under § 66-28-301.

66-28-502.

(a)

(1) If the landlord deliberately or negligently fails to supply essential services, the tenant shall give written notice to the landlord specifying the breach and may do one (1) of the following:

(A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;

(B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises;
or

(C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in subdivision (a)(1)(C), the tenant may recover the actual and reasonable value of the substitute housing and under subsection (a), reasonable attorney's fees.

(3) "Essential services" means utility services, including gas, heat, electricity, and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.

(b) A tenant who proceeds under this section may not proceed under § 66-28-501 or § 66-28-503 as to such breach.

(c) The rights under this section do not arise until the tenant has given written notice to the landlord and has shown that the condition was not 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.

66-28-503.

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use of the dwelling unit is substantially impaired, the tenant:

(1) May immediately vacate the premises; and

(2) Shall notify the landlord in writing within fourteen (14) days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under § 66-28-301. Accounting for rent in the event of termination or apportionment shall occur as of the date of the casualty.

66-28-504. If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits.

66-28-505.

(a)

(1) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach.

(2) If the breach is remediable by rent, repairs or the payment of damages, landlord shall inform the tenant that if the breach is not remedied within fourteen (14) days after receipt of such notice, the rental agreement shall terminate upon a date not less than thirty (30) days after receipt of the notice, subject to the following:

(A) All repairs to remedy the breach must be requested in writing by the tenant and authorized by landlord. Authorization by the landlord shall not be reasonably refused; and

(B) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(3) If the breach is not remediable by repairs or the payment of damages, landlord shall inform the tenant the rental agreement shall terminate upon a date not less than thirty (30) days after receipt of the notice.

(b) If rent is unpaid when due and the tenant fails to pay, the written notice set forth in subdivision (a)(2) by the landlord for nonpayment is required unless otherwise specifically waived in a written rental agreement. If the written rental agreement contains a waiver provision, landlord may proceed to file a detainer warrant immediately

upon breach of the agreement for failure to pay rent. The rental agreement is enforceable for collection of rent for the remaining term of the rental agreement.

(c) Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(d) The landlord may recover punitive damages for willful destruction of property. 66-28-506. If there is noncompliance by the tenant with § 66-28-401 materially affecting health and safety that can be remedied by repair, 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 (14) 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 thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment. All repairs to remedy the breach must be authorized by landlord, which authorization shall not be reasonably refused.

66-28-507.

(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven (7) days as required in § 66-28-404 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

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

(c) If the tenant abandons the dwelling unit, the landlord shall use reasonable efforts to rerent the dwelling unit at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, the rental agreement is terminated as of the date of the new tenancy. 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.

66-28-508. If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach.

66-28-509. A contracted lien or security interest on behalf of the landlord in the tenant's household goods shall not be enforceable unless perfected by a Uniform Commercial Code filing with the secretary of state. All other liens are hereby expressly prohibited under this chapter. The landlord shall be responsible for releasing lien at expiration or termination of the lease.

66-28-510. 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.

66-28-511. 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 chapter.

66-28-512.

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.

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

(c) 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, back rent and reasonable attorney's fees as well as any other damages provided for in the lease. If the tenant's holdover is willful and not in good faith, the landlord, in addition, may also recover actual damages sustained by the landlord. If the landlord consents to the tenant's continued occupancy, § 66-28-201(c) shall apply. 66-28-513.

(a) 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 fees.

(b) 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 and reasonable attorney's fees. 66-28-514.

(a) 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 because the tenant:

- (1) Has complained to the landlord of a violation under § 66-28-301; or
- (2) Has made use of remedies provided under this chapter.

(b)

(1) Notwithstanding subsection (a), a landlord may bring 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 the tenant's 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.

(2) The maintenance of the action does not release the landlord from liability under § 66-28-501(b).

66-28-515.

(a) The remedies provided by this chapter shall be so administered that the aggrieved party may recover lawful damages. The aggrieved party has an obligation and duty to mitigate damages.

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

66-28-516. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

66-28-517.

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is delivered to the tenant if the tenant or any other person on the premises with the tenant's consent:

(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises; or

(3) Creates a hazardous and unsanitary condition on the property that effects the health, safety or welfare or the life or property of other tenants or persons on the premises including, but not limited to the voluntary or involuntary discontinuance of utility service caused by actions of the tenant for more than three (3) days.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall allow a landlord to recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant, except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

66-28-518.

(a) A landlord may have an unauthorized vehicle towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving ten (10) days written notice by posting the same upon the subject vehicle.

(b) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, if and when such person fails to comply with the landlord's permit parking policy as defined in the landlord's posted signage.

(c) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, for such person's failure to comply with the landlord's posted signage relative to traffic and parking restrictions, including, but not limited to, traffic lanes, fire lanes, fire hydrants, handicapped areas, and or the blocking of trash receptacles.

(d) The owner or lessee of a vehicle that has been removed pursuant to this section may make application to take possession of such vehicle and remove such vehicle from the place to which it has been removed or stored by paying the costs of removing such vehicle, plus the accrued towing and storage charges.

66-28-519. A landlord may have the following vehicles towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving a ten (10) day written notice by posting the same upon a vehicle:

- (1) With one (1) or more flat or missing tires;
- (2) That is unable to operate under its own power;
- (3) With a missing or broken windshield or more than one (1) broken or missing window;
- (4) With one (1) or more missing fenders or bumpers; or

(5) That has not been in compliance with all applicable local or state laws relative to titling, licensing, operation, and registration for more than thirty (30) days.

66-28-520. Any nuisance vehicle located on or about the premises of real property that has been leased or rented for residential purposes may be towed or otherwise removed from such premises by the landlord upon giving twenty-four (24) hours written notice by posting the same upon the subject vehicle.

66-28-521. If a written rental agreement requires the tenant to have utility services placed in the tenant's name and the tenant fails to do so within three (3) days of occupancy of the rented premises, the landlord may have such utility services terminated if the existing utility service is in the name of the landlord.

SECTION 2. This act shall take effect January 1, 2012, the public welfare requiring it and shall apply to all applicable landlord and tenant agreements entered into or renewed after such date.