

1 *House* BILL NO. *262*
 2 INTRODUCED BY *Palmer, Fedico*
 3 *Kemmis Lester Rasmussen*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENACT THE UNIFORM
 5 RESIDENTIAL LANDLORD AND TENANT ACT; FIXING THE RIGHTS AND
 6 DUTIES OF LANDLORDS AND TENANTS IN RENTED DWELLINGS;
 7 REPEALING SECTIONS 42-201, 42-202, 42-204, 42-205, 42-206,
 8 42-207, AND 42-301 THROUGH 42-309, R.C.M. 1947; AND
 9 PROVIDING AN EFFECTIVE DATE."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This chapter shall be known
12 and may be cited as the "Uniform Residential Landlord and
13 Tenant Act."
14

15 Section 2. Purposes and rules of construction. (1)
16 This chapter shall be liberally construed and applied to
17 promote its underlying purposes and policies.

18 (2) Underlying purposes and policies of this chapter
19 are:

20 (a) to simplify, clarify, modernize, and revise the
21 law governing the rental of dwelling units and the rights
22 and obligations of landlords and tenants;

23 (b) to encourage landlords and tenants to maintain and
24 improve the quality of housing; and

25 (c) to make uniform the law with respect to the

1 subject of this chapter among those states which enact it.

2 Section 3. Supplementary principles of law applicable.
3 Unless displaced by the provisions of this chapter, the
4 principles of law and equity, including the law relating to
5 capacity to contract, mutuality of obligations, principal
6 and agent, real property, public health, safety and fire
7 prevention, estoppel, fraud, misrepresentation, duress,
8 coercion, mistake, bankruptcy, or other validating or
9 invalidating cause supplement its provisions.

10 Section 4. Construction against implicit repeal. This
11 chapter being a general act intended as a unified coverage
12 of its subject matter, no part of it is to be construed as
13 impliedly repealed by subsequent legislation if that
14 construction can reasonably be avoided.

15 Section 5. Administration of remedies -- enforcement.

16 (1) The remedies provided by this chapter shall be so
17 administered that an aggrieved party may recover appropriate
18 damages. The aggrieved party has a duty to mitigate damages.

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

22 Section 6. Settlement of disputed claim or right. A
23 claim or right arising under this chapter or on a rental
24 agreement, if disputed in good faith, may be settled by
25 agreement.

1 Section 7. Territorial application. This chapter
2 applies to, regulates, and determines rights, obligations,
3 and remedies under a rental agreement, wherever made, for a
4 dwelling unit located within this state.

5 Section 8. Exclusions from application of chapter.
6 Unless created to avoid the application of this chapter, the
7 following arrangements are not governed by this chapter:

8 (1) residence at an institution, public or private, if
9 incidental to detention or the provision of medical,
10 geriatric, educational, counseling, religious, or similar
11 service;

12 (2) occupancy under a contract of sale of a dwelling
13 unit or the property of which it is a part, if the occupant
14 is the purchaser or a person who succeeds to his interest;

15 (3) occupancy by a member of a fraternal or social
16 organization in the portion of a structure operated for the
17 benefit of the organization;

18 (4) transient occupancy in a hotel or motel; and

19 (5) occupancy by an owner of a condominium unit or a
20 holder of a proprietary lease in a cooperative.

21 Section 9. Jurisdiction and service of process. (1)
22 The district courts of this state may exercise jurisdiction
23 over any landlord with respect to any conduct in this state
24 governed by this chapter or with respect to any claim
25 arising from a transaction subject to this chapter. In

1 addition to any other method provided by rule or by statute,
2 personal jurisdiction over a landlord may be acquired in a
3 civil action or proceeding instituted in the court by the
4 service of process in the manner provided by this section.

5 (2) If a landlord is not a resident of this state or
6 is a corporation not authorized to do business in this state
7 and engages in any conduct in this state governed by this
8 chapter, or engages in a transaction subject to this
9 chapter, he may designate an agent upon whom service of
10 process may be made in this state. The agent shall be a
11 resident of this state or a corporation authorized to do
12 business in this state. The designation shall be in writing
13 and filed with the secretary of state. If no designation is
14 made and filed or if process cannot be served in this state
15 upon the designated agent, process may be served upon the
16 secretary of state, but service upon him is ~~not~~ effective
17 unless the plaintiff or petitioner forthwith mails a copy of
18 the process and pleading by registered or certified mail to
19 the defendant or respondent at his last reasonably
20 ascertainable address. An affidavit of compliance with this
21 section shall be filed with the clerk of the court on or
22 before the return day of the process, if any, or within any
23 further time the court allows.

24 Section 10. General definitions. Subject to
25 additional definitions contained in subsequent sections, and

1 unless the context otherwise requires, in this chapter:

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

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

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

14 (4) "Good faith" means honesty, in fact, in the
15 conduct of the transaction concerned.

16 (5) "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 who fails to
19 disclose as required by section 2 of this act.

20 (6) "Organization" includes a corporation, government,
21 governmental subdivision or agency, business trust, estate,
22 trust, partnership or association, two (2) or more persons
23 having a joint or common interest, and any other legal or
24 commercial entity.

25 (7) "Owner" means one (1) or more persons, jointly or

1 severally, in whom is vested:

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

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

11 (9) "Rent" means all payments to be made to the
12 landlord under the rental agreement.

13 (10) "Rental agreement" means all agreements, written
14 or oral, and valid rules and regulations adopted under
15 section 24 embodying the terms and conditions concerning the
16 use and occupancy of a dwelling unit and premises.

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

22 (12) "Single family residence" means a structure
23 maintained and used as a single dwelling unit.
24 Notwithstanding that a dwelling unit shares one (1) or more
25 walls with another dwelling unit, it is a single family

HB262

1 residence if it has direct access to a street or
2 thoroughfare and shares neither heating facilities, hot
3 water equipment, nor any other essential facility or service
4 with any other dwelling unit.

5 (13) "Tenant" means a person entitled under a rental
6 agreement to occupy a dwelling unit to the exclusion of
7 others.

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

13 Section 12. Unconscionability. (1) If the court, as a
14 matter of law, finds:

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

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

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

3 (2) If unconscionability is put into issue by a party
4 or by the court upon its own motion the parties shall be
5 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 Section 13. Notice. (1) A person has notice of a fact
9 if:

10 (a) he has actual knowledge of it;

11 (b) in the case of the landlord, it is delivered at
12 the place of business of the landlord through which the
13 rental agreement was made or at any place held out by him as
14 the place for receipt of the communication; or

15 (c) in the case of the tenant, it is delivered in hand
16 to the tenant or mailed by registered or certified mail to
17 him at the place held out by him as the place for receipt of
18 the communication, or in the absence of such designation, to
19 his last known place of residence.

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

1 Section 14. Terms and conditions of rental agreement.

2 (1) A landlord and a tenant may include in a rental
3 agreement terms and conditions not prohibited by this
4 chapter or other rule of law, including rent, term of the
5 agreement, and other provisions governing the rights and
6 obligations of the parties.

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

10 (3) Rent is payable without demand or notice at the
11 time and place agreed upon by the parties. Unless otherwise
12 agreed, rent is payable at the dwelling unit and periodic
13 rent is payable at the beginning of any term of one month or
14 less and otherwise in equal monthly installments at the
15 beginning of each month. Unless otherwise agreed, rent is
16 uniformly apportionable from day-to-day.

17 (4) Unless the rental agreement fixes a definite term,
18 the tenancy is week-to-week in case of a roomer who pays
19 weekly rent, and in all other cases month-to-month.

20 Section 15. Effect of unsigned or undelivered rental
21 agreement. (1) If the landlord does not sign and deliver a
22 written rental agreement signed and delivered to him by the
23 tenant, acceptance of rent without reservation by the
24 landlord gives the rental agreement the same effect as if it
25 had been signed and delivered by the landlord.

1 (2) If the tenant does not sign and deliver a written
2 rental agreement signed and delivered to him by the
3 landlord, acceptance of possession and payment of rent
4 without reservation gives the rental agreement the same
5 effect as if it had been signed and delivered by the tenant.

6 (3) If a rental agreement given effect by the
7 operation of this section provides for a term longer than
8 one (1) year, it is effective for only one (1) year.

9 Section 16. Prohibited provisions in rental
10 agreements. (1) A rental agreement may not provide that the
11 tenant:

12 (a) agrees to waive or forego rights or remedies under
13 this chapter;

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

16 (c) agrees to pay the landlord's attorney's fees; or

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

21 (2) A provision prohibited by subsection (1) included
22 in a rental agreement is unenforceable. If a landlord
23 deliberately uses a rental agreement containing provisions
24 known by him to be prohibited, the tenant may recover in
25 addition to his actual damages an amount up to three (3)

1 months' periodic rent and reasonable attorney's fees.
 2 Section 17. Separation of rents and obligations to
 3 maintain property forbidden. A rental agreement,
 4 assignment, conveyance, trust deed, or security instrument
 5 may not permit the receipt of rent free of the obligation to
 6 comply with section 21 of this act.
 7 Section 18. Security deposits -- prepaid rent. (1) A
 8 landlord may not demand or receive security, however
 9 denominated, in any amount or value in excess of one (1)
 10 month's periodic rent.
 11 (2) Upon termination of the tenancy, property or money
 12 held by the landlord as security may be applied to the
 13 payment of accrued rent and the amount of damages which the
 14 landlord has suffered by reason of the tenant's
 15 noncompliance with section 23, all as itemized by the
 16 landlord in a written notice, delivered to the tenant
 17 together with the amount due fourteen (14) days after
 18 termination of the tenancy and delivery of possession and
 19 demand by the tenant.
 20 (3) If the landlord fails to comply with subsection
 21 (2) or if he fails to return any prepaid rent required to be
 22 paid to the tenants under this chapter the tenant may
 23 recover the property and money due him together with damages
 24 in an amount equal to twice the amount wrongfully withheld
 25 and reasonable attorney's fees.

1 (4) This section does not preclude the landlord or
 2 tenant from recovering other damages to which he may be
 3 entitled under this chapter.
 4 (5) The holder of the landlord's interest in the
 5 premises at the time of the termination of the tenancy is
 6 bound by this section.
 7 Section 19. Disclosure. (1) A landlord or any person
 8 authorized to enter into a rental agreement on his behalf
 9 shall disclose to the tenant in writing at or before the
 10 commencement of the tenancy, the name and address of:
 11 (a) the person authorized to manage the premises; and
 12 (b) an owner of the premises or a person authorized to
 13 act for and on behalf of the owner for the purpose of
 14 service of process and receiving and receipting for notices
 15 and demands.
 16 (2) The information required to be furnished by this
 17 section shall be kept current and this section extends to
 18 and is enforceable against any successor landlord, owner, or
 19 manager.
 20 (3) A person who fails to comply with subsection (1)
 21 becomes an agent of each person who is a landlord for:
 22 (a) service of process and receiving and receipting
 23 for notices and demands; and
 24 (b) performing the obligations of the landlord under
 25 this chapter and under the rental agreement and expending or

1 making available for the purpose all rent collected from the
2 premises.

3 Section 20. Landlord to deliver possession of dwelling
4 unit. At the commencement of the term a landlord shall
5 deliver possession of the premises to the tenant in
6 compliance with the rental agreement and section 21 of this
7 act. The landlord may bring an action for possession
8 against any person wrongfully in possession and may recover
9 the damages provided in section 41 (3) of this act.

10 Section 21. Landlord to maintain premises. (1) A
11 landlord shall:

12 (a) comply with the requirements of applicable
13 building and housing codes materially affecting health and
14 safety;

15 (b) make all repairs and do whatever is necessary to
16 put and keep the premises in a fit and habitable condition;

17 (c) keep all common areas of the premises in a clean
18 and safe condition;

19 (d) maintain in good and safe working order and
20 condition all electrical, plumbing, sanitary, heating,
21 ventilating, air-conditioning, and other facilities and
22 appliances, including elevators, supplied or required to be
23 supplied by him;

24 (e) provide and maintain appropriate receptacles and
25 conveniences for the removal of ashes, garbage, rubbish, and

1 other waste incidental to the occupancy of the dwelling unit
2 and arrange for their removal; and

3 (f) supply running water and reasonable amounts of hot
4 water at all times and reasonable heat between October 1 and
5 May 1 except where the building that includes the dwelling
6 unit is not required by law to be equipped for that purpose,
7 or the dwelling unit is so constructed that heat or hot
8 water is generated by an installation within the exclusive
9 control of the tenant and supplied by a direct public
10 utility connection.

11 (2) If the duty imposed by paragraph (a) of subsection
12 (1) is greater than any duty imposed by any other paragraph
13 of that subsection, the landlord's duty shall be determined
14 by reference to paragraph (a) of subsection (1).

15 (3) The landlord and tenant of a single family
16 residence may agree in writing that the tenant perform the
17 landlord's duties specified in paragraphs (e) and (f) of
18 subsection (1) and also specified repairs, maintenance
19 tasks, alterations, and remodeling, but only if the
20 transaction is entered into in good faith and not for the
21 purpose of evading the obligations of the landlord.

22 (4) The landlord and tenant of any dwelling unit other
23 than a single family residence may agree that the tenant is
24 to perform specified repairs, maintenance tasks,
25 alterations, or remodeling only if:

1 (a) the agreement of the parties is entered into in
2 good faith and not for the purpose of evading the
3 obligations of the landlord and is set forth in a separate
4 writing signed by the parties and supported by adequate
5 consideration;

6 (b) the work is not necessary to cure noncompliance
7 with subsection (1) (a) of this section; and

8 (c) the agreement does not diminish or affect the
9 obligation of the landlord to other tenants in the premises.

10 (5) The landlord may not treat performance of the
11 separate agreement described in subsection (4) as a
12 condition to any obligation or performance of any rental
13 agreement.

14 Section 22. Limitation of liability. (1) Unless
15 otherwise agreed, a landlord who conveys premises that
16 include a dwelling unit subject to a rental agreement in a
17 good faith sale to a bona fide purchaser is relieved of
18 liability under the rental agreement and this chapter as to
19 events occurring after written notice to the tenant of the
20 conveyance. However, he remains liable to the tenant for
21 all security recoverable by the tenant under section 18 of
22 this chapter and all prepaid rent.

23 (2) Unless otherwise agreed, a manager of premises
24 that include a dwelling unit is relieved of liability under
25 the rental agreement and this chapter as to events occurring

1 after written notice to the tenant of the termination of his
2 management.

3 Section 23. Tenant to maintain dwelling unit. A
4 tenant shall: (1) comply with all obligations primarily
5 imposed upon tenants by applicable provisions of building
6 and housing codes materially affecting health and safety;

7 (2) keep that part of the premises that he occupies
8 and uses as clean and safe as the condition of the premises
9 permit;

10 (3) dispose from his dwelling unit all ashes, garbage,
11 rubbish, and other waste in a clean and safe manner;

12 (4) keep all plumbing fixtures in the dwelling unit or
13 used by the tenant as clean as their condition permits;

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

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

21 (7) conduct himself and require other persons on the
22 premises with his consent to conduct themselves in a manner
23 that will not disturb his neighbors' peaceful enjoyment of
24 the premises.

25 Section 24. Rules and regulations. (1) A landlord,

1 from time to time, may adopt a rule or regulation, however
2 described, concerning the tenant's use and occupancy of the
3 premises. It is enforceable against the tenant only if:

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

9 (b) it is reasonably related to the purpose of which
10 it is adopted;

11 (c) it applies to all tenants in the premises in a
12 fair manner;

13 (d) it is sufficiently explicit in its prohibition,
14 direction, or limitation of the tenant's conduct to fairly
15 inform him of what he must or must not do to comply;

16 (e) it is not for the purpose of evading the
17 obligations of the landlord; and

18 (f) the tenant has notice of it at the time he enters
19 into the rental agreement, or when it is adopted.

20 (2) If a rule or regulation is adopted after the
21 tenant enters into the rental agreement that works a
22 substantial modification of his bargain it is not valid
23 unless the tenant consents to it in writing.

24 Section 25. Access. (1) A tenant shall not
25 unreasonably withhold consent to the landlord to enter into

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

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

8 (3) A landlord shall not abuse the right of access or
9 use it to harass the tenant. Except in case of emergency or
10 unless it is impracticable to do so, the landlord shall give
11 the tenant at least two (2) days' notice of his intent to
12 enter and may enter only at reasonable times.

13 (4) A landlord has no other right of access except:

14 (a) pursuant to court order;

15 (b) as permitted by sections 35 and 36 (2); or

16 (c) unless the tenant has abandoned or surrendered the
17 premises.

18 Section 26. Tenant to use and occupy. Unless
19 otherwise agreed, a tenant shall occupy his dwelling unit
20 only as a dwelling unit. The rental agreement may require
21 that the tenant notify the landlord of any anticipated
22 extended absence from the premises in excess of seven (7)
23 days no later than the first day of the extended absence.

24 Section 27. Noncompliance by the landlord -- in
25 general. (1) Except as provided in this chapter, if there

1 is a material noncompliance by the landlord with the rental
 2 agreement or a noncompliance with section 21 materially
 3 affecting health and safety, the tenant may deliver a
 4 written notice to the landlord specifying the acts and
 5 omissions constituting the breach and that the rental
 6 agreement will terminate upon a date not less than thirty
 7 (30) days after receipt of the notice if the breach is not
 8 remedied in fourteen (14) days, and the rental agreement
 9 shall terminate as provided in the notice subject to the
 10 following:

11 (a) If the breach is remediable by repairs, the
 12 payment of damages or otherwise and the landlord adequately
 13 remedies the breach before the date specified in the notice,
 14 the rental agreement shall not terminate by reason of the
 15 breach.

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

22 (c) The tenant may not terminate for a condition
 23 caused by a member of his family, or other person on the
 24 premises with his consent.

25 (2) Except as provided in this chapter, the tenant may

1 recover actual damages and obtain injunctive relief for any
 2 noncompliance by the landlord with the rental agreement or
 3 section 21. If the landlord's noncompliance is willful the
 4 tenant may recover reasonable attorney's fees.

5 (3) The remedy provided in subsection (2) is in
 6 addition to any right of the tenant arising under subsection
 7 (1).

8 (4) If the rental agreement is terminated, the
 9 landlord shall return all security recoverable by the tenant
 10 under section 18 of this chapter.

11 Section 28. Failure to deliver possession. (1) If the
 12 landlord fails to deliver possession of the dwelling unit to
 13 the tenant as provided in section 20 of this chapter, rent
 14 abates until possession is delivered and the tenant may:

15 (a) terminate the rental agreement upon at least five
 16 (5) days' written notice to the landlord and upon
 17 termination the landlord shall return all prepaid rent and
 18 security; or

19 (b) demand performance of the rental agreement by the
 20 landlord and, if the tenant elects, maintain an action for
 21 possession of the dwelling unit against the landlord or any
 22 person wrongfully in possession and recover the actual
 23 damages sustained by him.

24 (2) If a person's failure to deliver possession is
 25 willful and not in good faith, an aggrieved person may

1 recover from that person an amount not more than three (3)
2 months' periodic rent or threefold the actual damages
3 sustained, whichever is greater, and reasonable attorney's
4 fees.

5 Section 29. Self-help for minor defects. (1) If the
6 landlord fails to comply with the rental agreement or
7 section 21 of this act, and the reasonable cost of
8 compliance is less than the periodic rent, the tenant may
9 recover damages for the breach under section 27(2) of this
10 chapter or may notify the landlord of his intention to
11 correct the condition at the landlord's expense. If the
12 landlord fails to comply within fourteen (14) days after
13 being notified by the tenant in writing or as promptly as
14 conditions require in case of emergency, the tenant may
15 cause the work to be done in a workmanlike manner and, after
16 submitting to the landlord an itemized statement, deduct
17 from his rent the actual and reasonable cost or the fair and
18 reasonable value of the work, not exceeding the amount
19 specified in this subsection.

20 (2) A tenant may not repair at the landlord's expense
21 if the condition was caused by the deliberate or negligent
22 act or omission of the tenant, a member of his family, or
23 other person on the premises with his consent.

24 Section 30. Wrongful failure to supply heat, water,
25 hot water, or essential services. (1) If contrary to the

1 rental agreement or section 21 of this chapter the landlord
2 willfully or negligently fails to supply heat, running
3 water, hot water, electric, gas, or other essential service,
4 the tenant may give written notice to the landlord
5 specifying the breach and may:

6 (a) procure reasonable amounts of heat, hot water,
7 running water, electric, gas, and other essential service
8 during the period of the landlord's noncompliance and deduct
9 their actual and reasonable cost from the rent; or

10 (b) recover damages based upon the diminution in the
11 fair rental value of the dwelling unit; or

12 (c) procure reasonable substitute housing during the
13 period of the landlord's noncompliance, in which case the
14 tenant is excused from paying rent for the period of the
15 landlord's noncompliance.

16 (2) In addition to the remedy provided in paragraph
17 (c) of subsection (1) the tenant may recover the actual and
18 reasonable cost or fair and reasonable value of the
19 substitute housing not in excess of an amount equal to the
20 periodic rent, and in any case under subsection (1)
21 reasonable attorney's fees.

22 (3) If the tenant proceeds under this section, he may
23 not proceed under section 27 or section 29 as to that
24 breach.

25 (4) Rights of the tenant under this section do not

1 arise until he has given notice to the landlord or if the
2 condition was caused by the deliberate or negligent act or
3 omission of the tenant, a member of his family, or other
4 person on the premises with his consent.

5 Section 31. Landlord's noncompliance as defense to
6 action for possession or rent. (1) In an action for
7 possession based upon nonpayment of the rent or in an action
8 for rent when the tenant is in possession, the tenant may
9 counterclaim for any amount he may recover under the rental
10 agreement of this chapter. In that event the court from
11 time to time may order the tenant to pay into court all or
12 part of the rent accrued and thereafter accruing, and shall
13 determine the amount due to each party. The party to whom a
14 net amount is owed shall be paid first from the money paid
15 into court, and the balance by the other party. If no rent
16 remains due after application of this section, judgment
17 shall be entered for the tenant in the action for
18 possession. If the defense or counterclaim by the tenant is
19 without merit and is not raised in good faith, the landlord
20 may recover reasonable attorney's fees.

21 (2) In an action for rent when the tenant is not in
22 possession, he may counterclaim as provided in subsection
23 (1) but is not required to pay any rent into court.

24 Section 32. Fire or casualty damage. (1) If the
25 dwelling unit or premises are damaged or destroyed by fire

1 or casualty to an extent that enjoyment of the dwelling unit
2 is substantially impaired, the tenant may:

3 (a) immediately vacate the premises and notify the
4 landlord in writing within fourteen (14) days thereafter of
5 his intention to terminate the rental agreement, in which
6 case the rental agreement terminates as of the date of
7 vacating; or

8 (b) if continued occupancy is lawful, vacate any part
9 of the dwelling unit rendered unusable by the fire or
10 casualty, in which case the tenant's liability for rent is
11 reduced in proportion to the diminution in the fair rental
12 value of the dwelling unit.

13 (2) If the rental agreement is terminated the landlord
14 shall return all security recoverable under section 18 of
15 this chapter and all prepaid rent. Accounting for rent in
16 the event of termination or apportionment shall be made as
17 of the date of the fire or casualty.

18 Section 33. Tenant's remedies for landlord's unlawful
19 ouster, exclusion, or diminution of service. If a landlord
20 unlawfully removes or excludes the tenant from the premises
21 or willfully diminishes services to the tenant by
22 interrupting or causing the interruption of heat, running
23 water, hot water, electric, gas, or other essential service,
24 the tenant may recover possession or terminate the rental
25 agreement and, in either case, recover an amount not more

1 than three (3) months' periodic rent or threefold the actual
 2 damages sustained by him, whichever is greater, and
 3 reasonable attorney's fees. If the rental agreement is
 4 terminated the landlord shall return all security
 5 recoverable under section 18 and all prepaid rent.

6 Section 34. Landlord remedies -- noncompliance with
 7 rental agreement -- failure to pay rent. (1) Except as
 8 provided in this chapter, if there is a material
 9 noncompliance by the tenant with the rental agreement or a
 10 noncompliance with section 23 materially affecting health
 11 and safety, the landlord may deliver a written notice to the
 12 tenant specifying the acts and omissions constituting the
 13 breach and that the rental agreement will terminate upon a
 14 date not less than thirty (30) days after receipt of the
 15 notice. If the breach is not remedied in fourteen (14)
 16 days, the rental agreement shall terminate as provided in
 17 the notice subject to the following. If the breach is
 18 remediable by repairs or the payment of damages or otherwise
 19 and the tenant adequately remedies the breach before the
 20 date specified in the notice, the rental agreement shall not
 21 terminate. If substantially the same act or omission which
 22 constituted a prior noncompliance of which notice was given
 23 recurs within six (6) months, the landlord may terminate the
 24 rental agreement upon at least fourteen (14) days' written
 25 notice specifying the breach and the date of termination of

1 the rental agreement.

2 (2) If rent is unpaid when due and the tenant fails to
 3 pay rent within fourteen (14) days after written notice by
 4 the landlord of nonpayment and his intention to terminate
 5 the rental agreement if the rent is not paid within that
 6 period, the landlord may terminate the rental agreement.

7 (3) Except as provided in this chapter, the landlord
 8 may recover actual damages and obtain injunctive relief for
 9 any noncompliance by the tenant with the rental agreement or
 10 section 23. If the tenant's noncompliance is willful the
 11 landlord may recover reasonable attorney's fees.

12 Section 35. Failure to maintain. If there is
 13 noncompliance by the tenant with section 23 materially
 14 affecting health and safety that can be remedied by repair,
 15 replacement of a damaged item, or cleaning, and the tenant
 16 fails to comply as promptly as conditions require in case of
 17 emergency or within fourteen (14) days after written notice
 18 by the landlord specifying the breach and requesting that
 19 the tenant remedy it within that period of time, the
 20 landlord may enter the dwelling unit and cause the work to
 21 be done in a workmanlike manner and submit the itemized bill
 22 for the actual and reasonable cost or the fair and
 23 reasonable value thereof as rent on the next date periodic
 24 rent is due, or if the rental agreement has terminated, for
 25 immediate payment.

1 Section 36. Remedies for absence, nonuse, and
 2 abandonment. (1) If the rental agreement requires the
 3 tenant to give notice to the landlord of an anticipated
 4 extended absence in excess of seven (7) days, as required in
 5 section 26 and the tenant willfully fails to do so, the
 6 landlord may recover actual damages from the tenant.

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

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

23 Section 37. Waiver of landlord's right to terminate.
 24 Acceptance of rent with knowledge of a default by the tenant
 25 or acceptance of performance by him that varies from the

1 terms of the rental agreement constitutes a waiver of the
 2 landlord's right to terminate the rental agreement for that
 3 breach, unless otherwise agreed after the breach has
 4 occurred.

5 Section 38. Landlord liens -- distraint for rent.

6 (1) A lien or security interest on behalf of the landlord
 7 in the tenant's household goods is not enforceable unless
 8 perfected before the effective date of this chapter.

9 (2) Distraint for rent is abolished.

10 Section 39. Remedy after termination. If the rental
 11 agreement is terminated, the landlord has a claim for
 12 possession and for rent and a separate claim for actual
 13 damages for breach of the rental agreement and reasonable
 14 attorney's fees as provided in section 34(3).

15 Section 40. Recovery of possession limited. A
 16 landlord may not recover or take possession of the dwelling
 17 unit by action or otherwise, including willful diminution of
 18 services to the tenant by interrupting or causing the
 19 interruption of heat, running water, hot water, electric,
 20 gas, or other essential service to the tenant, except in
 21 case of abandonment, surrender, or as permitted in this
 22 chapter.

23 Section 41. Periodic tenancy -- holdover remedies.

24 (1) The landlord or the tenant may terminate a week-to-week
 25 tenancy by a written notice given to the other at least ten

1 (10) days before the termination date specified in the
2 notice.

3 (2) The landlord or the tenant may terminate a
4 month-to-month tenancy by a written notice given to the
5 other at least sixty (60) days before the periodic rental
6 date specified in the notice.

7 (3) If the tenant remains in possession without the
8 landlord's consent after expiration of the term of the
9 rental agreement or its termination, the landlord may bring
10 an action for possession and if the tenant's holdover is
11 willful and not in good faith the landlord may also recover
12 an amount not more than three (3) month's periodic rent or
13 threefold the actual damages sustained by him, whichever is
14 greater, and reasonable attorney's fees. If the landlord
15 consents to the tenant's continued occupancy, section 14(4)
16 applies.

17 Section 42. Landlord and tenant remedies for abuse of
18 access. (1) If the tenant refuses to allow lawful access,
19 the landlord may obtain injunctive relief to compel access,
20 or terminate the rental agreement. In either case the
21 landlord may recover actual damages and reasonable
22 attorney's fees.

23 (2) If the landlord makes an unlawful entry or a
24 lawful entry in an unreasonable manner or makes repeated
25 demands for entry otherwise lawful but which have the effect

1 of unreasonably harassing the tenant, the tenant may obtain
2 injunctive relief to prevent the recurrence of the conduct
3 or terminate the rental agreement. In either case the
4 tenant may recover actual damages not less than an amount
5 equal to one (1) month's rent and reasonable attorney's
6 fees.

7 Section 43. Retaliatory conduct prohibited.

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

12 (a) the tenant has complained to a governmental agency
13 charged with responsibility for enforcement of a building or
14 housing code of a violation applicable to the premises
15 materially affecting health and safety; or

16 (b) the tenant has complained to the landlord of a
17 violation under section 21; or

18 (c) the tenant has organized or become a member of a
19 tenant's union or similar organization.

20 (2) If the landlord acts in violation of subsection
21 (1), the tenant is entitled to the remedies provided in
22 section 33 and has a defense in any retaliatory action
23 against him for possession. In an action by or against the
24 tenant, evidence of a complaint within one (1) year before
25 the alleged act of retaliation creates a presumption that

1 the landlord's conduct was in retaliation. The presumption
 2 does not arise if the tenant made the complaint after notice
 3 of a proposed rent increase or diminution of services.
 4 "Presumption" means that the trier of fact must find the
 5 existence of the fact presumed unless and until evidence is
 6 introduced which would support a finding of its
 7 nonexistence.

8 (3) Notwithstanding subsections (1) and (2), a
 9 landlord may bring an action for possession if:

10 (a) the violation of the applicable building or
 11 housing code was caused primarily by lack of reasonable care
 12 by the tenant, a member of his family, or other person on
 13 the premises, with his consent; or

14 (b) the tenant is in default in rent; or

15 (c) compliance with the applicable building or housing
 16 code requires alteration, remodeling, or demolition which
 17 would effectively deprive the tenant of use of the dwelling
 18 unit.

19 (4) The maintenance of an action under subsection (3)
 20 does not release the landlord from liability under section
 21 27(2).

22 Section 44. Savings clause. Transactions entered into
 23 before the effective date of this chapter, and not extended
 24 or renewed on and after that date, and the rights, duties,
 25 and interests flowing from them remain valid and may be

1 terminated, completed, consummated, or enforced as required
 2 or permitted by any statute or other law amended or repealed
 3 by this chapter as though the repeal or amendment had not
 4 occurred.

5 Section 45. Severability. If any provision of this
 6 chapter or the application thereof to any person or
 7 circumstance is held invalid, the invalidity does not affect
 8 other provisions or application of this chapter which can be
 9 given effect without the invalid provision or application,
 10 and to this end the provisions of this chapter are
 11 severable.

12 Section 46. Repeals. Sections 42-201, 42-202, 42-204,
 13 42-205, 42-206, 42-207, and 42-301 through 42-309, R.C.M.
 14 1947, are repealed.

15 Section 47. The department of intergovernmental
 16 relation shall prepare a simplified summary version of the
 17 major provisions of this act and publish such summary in
 18 each daily newspaper of the state twice, between sixty (60)
 19 and thirty (30) days before the effective date of this act.

20 Section 48. Effective date. This act becomes
 21 effective on January 1, 1976. It applies to rental
 22 agreements entered into, or extended or renewed, on and
 23 after that date.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 262

INTRODUCED BY PALMER, FEDERICO, KEMMIS, LESTER, RASMUSSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ENACT THE UNIFORM
RESIDENTIAL LANDLORD AND TENANT ACT; FIXING THE RIGHTS AND
DUTIES OF LANDLORDS AND TENANTS IN RENTED DWELLINGS;
REPEALING SECTIONS 42-201, 42-202, 42-204, 42-205, 42-206,
AND 42-207, ~~AND 42-301--THROUGH--42-309~~, R.C.M. 1947; AND
PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This chapter shall be known
and may be cited as the "Uniform Residential Landlord and
Tenant Act."

Section 2. Purposes and rules of construction. (1)
This chapter shall be liberally construed and applied to
promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter
are:

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

(b) to encourage landlords and tenants to maintain and
improve the quality of housing; and

(c) to make uniform the law with respect to the

subject of this chapter among those states which enact it.

Section 3. Supplementary principles of law applicable.
Unless displaced by the provisions of this chapter, the
principles of law and equity, including the law relating to
capacity to contract, mutuality of obligations, principal
and agent, real property, public health, safety and fire
prevention, estoppel, fraud, misrepresentation, duress,
coercion, mistake, bankruptcy, or other validating or
invalidating cause supplement its provisions.

Section 4. Construction against implicit repeal. This
chapter being a general act 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.

Section 5. Administration of remedies -- enforcement.
(1) The remedies provided by this chapter shall be so
administered that an aggrieved party may recover appropriate
damages. The aggrieved party has a duty to mitigate damages.

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

Section 6. Settlement of disputed claim or right. A
claim or right arising under this chapter or on a rental
agreement, if disputed in good faith, may be settled by
agreement.

1 Section 7. Territorial application. This chapter
2 applies to, regulates, and determines rights, obligations,
3 and remedies under a rental agreement, wherever made, for a
4 dwelling unit located within this state.

5 Section 8. Exclusions from application of chapter.
6 Unless created to avoid the application of this chapter, the
7 following arrangements are not governed by this chapter:

8 (1) residence at an institution, public or private, if
9 incidental to detention or the provision of medical,
10 geriatric, educational, counseling, religious, or similar
11 service;

12 (2) occupancy under a contract of sale of a dwelling
13 unit or the property of which it is a part, if the occupant
14 is the purchaser or a person who succeeds to his interest;

15 (3) occupancy by a member of a fraternal or social
16 organization in the portion of a structure operated for the
17 benefit of the organization;

18 (4) transient occupancy in a hotel or motel; and

19 (5) occupancy by an owner of a condominium unit or a
20 holder of a proprietary lease in a cooperative.

21 Section 9. Jurisdiction and service of process. (1)
22 The district courts of this state may exercise jurisdiction
23 over any landlord with respect to any conduct in this state
24 governed by this chapter or with respect to any claim
25 arising from a transaction subject to this chapter. In

1 addition to any other method provided by rule or by statute,
2 personal jurisdiction over a landlord may be acquired in a
3 civil action or proceeding instituted in the court by the
4 service of process in the manner provided by this section.

5 (2) If a landlord is not a resident of this state or
6 is a corporation not authorized to do business in this state
7 and engages in any conduct in this state governed by this
8 chapter, or engages in a transaction subject to this
9 chapter, he may designate an agent upon whom service of
10 process may be made in this state. The agent shall be a
11 resident of this state or a corporation authorized to do
12 business in this state. The designation shall be in writing
13 and filed with the secretary of state. If no designation is
14 made and filed or if process cannot be served in this state
15 upon the designated agent, process may be served upon the
16 secretary of state, but service upon him is not effective
17 unless the plaintiff or petitioner forthwith mails a copy of
18 the process and pleading by registered or certified mail to
19 the defendant or respondent at his last reasonably
20 ascertainable address. An affidavit of compliance with this
21 section shall be filed with the clerk of the court on or
22 before the return day of the process, if any, or within any
23 further time the court allows.

24 Section 10. General definitions. Subject to
25 additional definitions contained in subsequent sections, and

1 unless the context otherwise requires, in this chapter:

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

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

10 (3) "Dwelling unit" means a structure or the part of a
11 structure that is used as a home, residence, or sleeping
12 place by one (1) person who maintains a household or by two

13 (2) or more persons who maintain a common household.

14 (4) "Good faith" means honesty, in fact, in the
15 conduct of the transaction concerned.

16 (5) "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 who fails to
19 disclose as required by section 2 19 of this act.

20 (6) "Organization" includes a corporation, government,
21 governmental subdivision or agency, business trust, estate,
22 trust, partnership or association, two (2) or more persons
23 having a joint or common interest, and any other legal or
24 commercial entity.

25 (7) "Owner" means one (1) or more persons, jointly or

1 severally, in whom is vested:

2 (a) all or part of the legal title to property; or

3 (b) all or part of the beneficial ownership and a
4 right to present use and enjoyment of the premises. The
5 term includes a mortgagee in possession.

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

11 (9) "Rent" means all payments to be made to the
12 landlord under the rental agreement.

13 (10) "Rental agreement" means all agreements, written
14 or oral, and valid rules and regulations adopted under
15 section 24 embodying the terms and conditions concerning the
16 use and occupancy of a dwelling unit and premises.

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

22 (12) "Single family residence" means a structure
23 maintained and used as a single dwelling unit.
24 Notwithstanding that a dwelling unit shares one (1) or more
25 walls with another dwelling unit, it is a single family

1 residence if it has direct access to a street or
 2 thoroughfare and shares neither heating facilities, hot
 3 water equipment, nor any other essential facility or service
 4 with any other dwelling unit.

5 (13) "Tenant" means a person entitled under a rental
 6 agreement to occupy a dwelling unit to the exclusion of
 7 others.

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

13 Section 12. Unconscionability. (1) If the court, as a
 14 matter of law, finds:

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

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

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

3 (2) If unconscionability is put into issue by a party
 4 or by the court upon its own motion the parties shall be
 5 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 Section 13. Notice. (1) A person has notice of a fact
 9 if:

10 (a) he has actual knowledge of it;

11 (b) in the case of the landlord, it is delivered at
 12 the place of business of the landlord through which the
 13 rental agreement was made or at any place held out by him as
 14 the place for receipt of the communication; or

15 (c) in the case of the tenant, it is delivered in hand
 16 to the tenant or mailed by registered or certified mail to
 17 him at the place held out by him as the place for receipt of
 18 the communication, or in the absence of such designation, to
 19 his last known ~~place-of-residence~~ ADDRESS.

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

1 Section 14. Terms and conditions of rental agreement.

2 (1) A landlord and a tenant may include in a rental
3 agreement terms and conditions not prohibited by this
4 chapter or other rule of law, including rent, term of the
5 agreement, and other provisions governing the rights and
6 obligations of the parties.

7 (2) In absence of agreement, the tenant shall pay as
8 rent the fair rental value AS DETERMINED BY THE LANDLORD for
9 the use and occupancy of the dwelling unit.

10 (3) Rent is payable without demand or notice at the
11 time and place agreed upon by the parties. Unless otherwise
12 agreed, rent is payable at the dwelling unit and periodic
13 rent is payable at the beginning of any term of one month or
14 less and otherwise in equal monthly installments at the
15 beginning of each month. Unless otherwise agreed, rent is
16 uniformly apportionable from day-to-day.

17 (4) Unless the rental agreement fixes a definite term,
18 the tenancy is week-to-week in case of a roomer who pays
19 weekly rent, and in all other cases month-to-month.

20 Section 15. Effect of unsigned or undelivered rental
21 agreement. (1) If the landlord does not sign and deliver a
22 written rental agreement signed and delivered to him by the
23 tenant, acceptance of rent without reservation by the
24 landlord gives the rental agreement the same effect as if it
25 had been signed and delivered by the landlord.

1 (2) If the tenant does not sign and deliver a written
2 rental agreement signed and delivered to him by the
3 landlord, acceptance of possession and payment of rent
4 without reservation gives the rental agreement the same
5 effect as if it had been signed and delivered by the tenant.

6 (3) If a rental agreement given effect by the
7 operation of this section provides for a term longer than
8 one (1) year, it is effective for only one (1) year.

9 Section 16. Prohibited provisions in rental
10 agreements. (1) A rental agreement may not provide that the
11 tenant:

12 (a) agrees to waive or forego rights or remedies under
13 this chapter;

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

16 (c) agrees to pay the landlord's attorney's fees; or

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

21 (2) A provision prohibited by subsection (1) included
22 in a rental agreement is unenforceable. If a landlord
23 deliberately uses a rental agreement containing provisions
24 known by him to be prohibited, the tenant may recover in
25 addition to his actual damages an amount up to three (3)

1 months' periodic rent and reasonable attorney's fees.

2 Section 17. Separation of rents and obligations to
3 maintain property forbidden. A rental agreement,
4 assignment, conveyance, trust deed, or security instrument
5 may not permit the receipt of rent free of the obligation to
6 comply with section 21 of this act.

7 Section 18. Security deposits -- prepaid rent. (1) A
8 landlord may not demand or receive security, however
9 denominated, in any amount or value in excess of one (1)
10 month's periodic rent.

11 (2) Upon termination of the tenancy, property or money
12 held by the landlord as security may be applied to the
13 payment of accrued rent and the amount of damages which the
14 landlord has suffered by reason of the tenant's
15 noncompliance with section 23, all as itemized by the
16 landlord in a written notice, delivered to the tenant TO HIS
17 LAST KNOWN ADDRESS together with the amount due ~~fourteen~~
18 ~~(14)~~ days NOT MORE THAN TWENTY ONE (21) DAYS after
19 termination of the tenancy and delivery of possession and
20 demand by the tenant.

21 (3) If the landlord fails to comply with subsection
22 (2) or if he fails to return any prepaid rent required to be
23 paid to the tenants under this chapter the tenant may
24 recover the property and money due him together with damages
25 in an amount equal to twice the amount wrongfully withheld

1 and reasonable attorney's fees.

2 (4) This section does not preclude the landlord or
3 tenant from recovering other damages to which he may be
4 entitled under this chapter.

5 (5) The holder of the landlord's interest in the
6 premises at the time of the termination of the tenancy is
7 bound by this section.

8 Section 19. Disclosure. (1) A landlord or any person
9 authorized to enter into a rental agreement on his behalf
10 shall disclose to the tenant in writing at or before the
11 commencement of the tenancy, the name and address of:

- 12 (a) the person authorized to manage the premises; and
- 13 (b) an owner of the premises or a person authorized to
- 14 act for and on behalf of the owner for the purpose of
- 15 service of process and receiving and receipting for notices
- 16 and demands.

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

21 (3) A person who fails to comply with subsection (1)
22 becomes an agent of each person who is a landlord for:

- 23 (a) service of process and receiving and receipting
- 24 for notices and demands; and
- 25 (b) performing the obligations of the landlord under

1 this chapter and under the rental agreement and expending or
2 making available for the purpose all rent collected from the
3 premises.

4 Section 20. Landlord to deliver possession of dwelling
5 unit. At the commencement of the term a landlord shall
6 deliver possession of the premises to the tenant in
7 compliance with the rental agreement and section 21 of this
8 act. The landlord may bring an action for possession
9 against any person wrongfully in possession and may recover
10 the damages provided in section 41 (3) of this act.

11 Section 21. Landlord to maintain premises. (1) A
12 landlord shall:

13 (a) comply with the requirements of applicable
14 building and housing codes materially affecting health and
15 safety;

16 (b) make all repairs and do whatever is necessary to
17 put and keep the premises in a fit and habitable condition;

18 (c) keep all common areas of the premises in a clean
19 and safe condition;

20 (d) maintain in good and safe working order and
21 condition all electrical, plumbing, sanitary, heating,
22 ventilating, air-conditioning, and other facilities and
23 appliances, including elevators, supplied or required to be
24 supplied by him;

25 (e) provide and maintain appropriate receptacles and

1 conveniences for the removal of ashes, garbage, rubbish, and
2 other waste incidental to the occupancy of the dwelling unit
3 and arrange for their removal; and

4 (f) supply running water and reasonable amounts of hot
5 water at all times and reasonable heat between October 1 and
6 May 1 except where the building that includes the dwelling
7 unit is not required by law to be equipped for that purpose,
8 or the dwelling unit is so constructed that heat or hot
9 water is generated by an installation within the exclusive
10 control of the tenant and supplied by a direct public
11 utility connection.

12 (2) If the duty imposed by paragraph (a) of subsection
13 (1) is greater than any duty imposed by any other paragraph
14 of that subsection, the landlord's duty shall be determined
15 by reference to paragraph (a) of subsection (1).

16 (3) The landlord and tenant of a single family
17 residence may agree in writing that the tenant perform the
18 landlord's duties specified in paragraphs (e) and (f) of
19 subsection (1) and also specified repairs, maintenance
20 tasks, alterations, and remodeling, but only if the
21 transaction is entered into in good faith and not for the
22 purpose of evading the obligations of the landlord.

23 (4) The landlord and tenant of any dwelling unit other
24 than a single family residence may agree that the tenant is
25 to perform specified repairs, maintenance tasks,

1 alterations, or remodeling only if:

2 (a) the agreement of the parties is entered into in
3 good faith and not for the purpose of evading the
4 obligations of the landlord and is set forth in a separate
5 writing signed by the parties and supported by adequate
6 consideration;

7 (b) the work is not necessary to cure noncompliance
8 with subsection (1) (a) of this section; and

9 (c) the agreement does not diminish or affect the
10 obligation of the landlord to other tenants in the premises.

11 (5) The landlord may not treat performance of the
12 separate agreement described in subsection (4) as a
13 condition to any obligation or performance of any rental
14 agreement.

15 Section 22. Limitation of liability. (1) Unless
16 otherwise agreed, a landlord who conveys premises that
17 include a dwelling unit subject to a rental agreement in a
18 good faith sale to a bona fide purchaser is relieved of
19 liability under the rental agreement and this chapter as to
20 events occurring after written notice to the tenant of the
21 conveyance. However, he remains liable to the tenant for
22 all security recoverable by the tenant under section 18 of
23 this chapter and all prepaid rent.

24 (2) Unless otherwise agreed, a manager of premises
25 that include a dwelling unit is relieved of liability under

1 the rental agreement and this chapter as to events occurring
2 after written notice to the tenant of the termination of his
3 management.

4 Section 23. Tenant to maintain dwelling unit. A
5 tenant shall: (1) comply with all obligations primarily
6 imposed upon tenants by applicable provisions of building
7 and housing codes materially affecting health and safety;

8 (2) keep that part of the premises that he occupies
9 and uses as clean and safe as the condition of the premises
10 permit;

11 (3) dispose from his dwelling unit all ashes, garbage,
12 rubbish, and other waste in a clean and safe manner;

13 (4) keep all plumbing fixtures in the dwelling unit or
14 used by the tenant as clean as their condition permits;

15 (5) use in a reasonable manner all electrical,
16 plumbing, sanitary, heating, ventilating, air-conditioning,
17 and other facilities and appliances, including elevators, in
18 the premises;

19 (6) not ~~deliberately--or-negligently~~ destroy, deface,
20 damage, impair, or remove any part of the premises or
21 knowingly permit any person to do so; and

22 (7) conduct himself and require other persons on the
23 premises with his consent to conduct themselves in a manner
24 that will not disturb his neighbors' peaceful enjoyment of
25 the premises.

1 Section 24. Rules and regulations. (1) A landlord,
2 from time to time, may adopt a rule or regulation, however
3 described, concerning the tenant's use and occupancy of the
4 premises. It is enforceable against the tenant only if:

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

10 (b) it is reasonably related to the purpose of which
11 it is adopted;

12 (c) it applies to all tenants in the premises in a
13 fair manner;

14 (d) it is sufficiently explicit in its prohibition,
15 direction, or limitation of the tenant's conduct to fairly
16 inform him of what he must or must not do to comply;

17 (e) it is not for the purpose of evading the
18 obligations of the landlord; and

19 (f) the tenant has notice of it at the time he enters
20 into the rental agreement, or when it is adopted.

21 (2) If a rule or regulation is adopted after the
22 tenant enters into the rental agreement that works a
23 substantial modification of his bargain it is not valid
24 unless the tenant consents to it in writing.

25 Section 25. Access. (1) A tenant shall not

1 unreasonably withhold consent to the landlord to enter into
2 the dwelling unit in order to inspect the premises, make
3 necessary or agreed repairs, decorations, alterations, or
4 improvements, supply necessary or agreed services, or
5 exhibit the dwelling unit to prospective or actual
6 purchasers, mortgagees, tenants, workmen, or contractors.

7 (2) A landlord may enter the dwelling unit without
8 consent of the tenant in case of emergency.

9 (3) A landlord shall not abuse the right of access or
10 use it to harass the tenant. Except in case of emergency or
11 unless it is impracticable to do so, the landlord shall give
12 the tenant at least ~~two-(2)-days~~ ONE (1) DAY'S notice of
13 his intent to enter and may enter only at reasonable times.

14 (4) A landlord has no other right of access except:

15 (a) pursuant to court order;

16 (b) as permitted by sections 35 and 36 (2); or

17 (c) unless the tenant has abandoned or surrendered the
18 premises.

19 Section 26. Tenant to use and occupy. Unless
20 otherwise agreed, a tenant shall occupy his dwelling unit
21 only as a dwelling unit. The rental agreement may require
22 that the tenant notify the landlord of any anticipated
23 extended absence from the premises in excess of seven (7)
24 days no later than the first day of the extended absence.

25 Section 27. Noncompliance by the landlord -- in

1 general. (1) Except as provided in this chapter, if there
 2 is a material noncompliance by the landlord with the rental
 3 agreement or a noncompliance with section 21 materially
 4 affecting health and safety, the tenant may deliver a
 5 written notice to the landlord specifying the acts and
 6 omissions constituting the breach and that the rental
 7 agreement will terminate upon a date not less than thirty
 8 (30) days after receipt of the notice if the breach is not
 9 remedied in fourteen (14) days, and the rental agreement
 10 shall terminate as provided in the notice subject to the
 11 following:

12 (a) If the breach is remediable by repairs, the
 13 payment of damages or otherwise and the landlord adequately
 14 remedies the breach before the date specified in the notice,
 15 the rental agreement shall not terminate by reason of the
 16 breach.

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

23 (c) The tenant may not terminate for a condition
 24 caused by a member of his family, or other person on the
 25 premises with his consent.

1 (2) Except as provided in this chapter, the tenant may
 2 recover actual damages and obtain injunctive relief for any
 3 noncompliance by the landlord with the rental agreement or
 4 section 21. If the landlord's noncompliance is willful the
 5 tenant may recover reasonable attorney's fees.

6 (3) The remedy provided in subsection (2) is in
 7 addition to any right of the tenant arising under subsection
 8 (1).

9 (4) If the rental agreement is terminated, the
 10 landlord shall return all security recoverable by the tenant
 11 under section 18 of this chapter.

12 Section 28. Failure to deliver possession. (1) If the
 13 landlord fails to deliver possession of the dwelling unit to
 14 the tenant as provided in section 20 of this chapter, rent
 15 abates until possession is delivered and the tenant may:

16 (a) terminate the rental agreement upon at least five
 17 (5) days' written notice to the landlord and upon
 18 termination the landlord shall return all prepaid rent and
 19 security; or

20 (b) demand performance of the rental agreement by the
 21 landlord and, if the tenant elects, maintain an action for
 22 possession of the dwelling unit against the landlord or any
 23 person wrongfully in possession and recover the actual
 24 damages sustained by him.

25 (2) If a person's failure to deliver possession is

1 willful and not in good faith, an aggrieved person may
 2 recover from that person an amount not more than three (3)
 3 months' periodic rent or threefold the actual damages
 4 sustained, whichever is greater, and reasonable attorney's
 5 fees.

6 Section 29. Self-help for minor defects. (1) If the
 7 landlord fails to comply with the rental agreement or
 8 section 21 of this act, and the reasonable cost of
 9 compliance is less than the ~~periodic-rent~~ ONE (1) MONTH
 10 RENT, the tenant may recover damages for the breach under
 11 section 27(2) of this chapter or may notify the landlord of
 12 his intention to correct the condition at the landlord's
 13 expense. If the landlord fails to comply within fourteen
 14 (14) days after being notified by the tenant in writing or
 15 as promptly as conditions require in case of emergency, the
 16 tenant may cause the work to be done in a workmanlike manner
 17 and, after submitting to the landlord an itemized statement,
 18 deduct from his rent the actual and reasonable cost or the
 19 fair and reasonable value of the work, not exceeding the
 20 amount specified in this subsection.

21 (2) A tenant may not repair at the landlord's expense
 22 if the condition was caused by the ~~deliberate-or-negligent~~
 23 act or omission of the tenant, a member of his family, or
 24 other person on the premises with his consent.

25 Section 30. Wrongful failure to supply heat, water,

1 hot water, or essential services. (1) If contrary to the
 2 rental agreement or section 21 of this chapter the landlord
 3 willfully or negligently fails to supply heat, running
 4 water, hot water, electric, gas, or other essential service,
 5 the tenant may give written notice to the landlord
 6 specifying the breach and may:

7 (a) procure reasonable amounts of heat, hot water,
 8 running water, electric, gas, and other essential service
 9 during the period of the landlord's noncompliance and deduct
 10 their actual and reasonable cost from the rent; or

11 (b) recover damages based upon the diminution in the
 12 fair rental value of the dwelling unit; or

13 (c) procure reasonable substitute housing during the
 14 period of the landlord's noncompliance, in which case the
 15 tenant is excused from paying rent for the period of the
 16 landlord's noncompliance.

17 (2) In addition to the remedy provided in paragraph
 18 (c) of subsection (1) the tenant may recover the actual and
 19 reasonable cost or fair and reasonable value of the
 20 substitute housing not in excess of an amount equal to the
 21 periodic rent, and in any case under subsection (1)
 22 reasonable attorney's fees.

23 (3) If the tenant proceeds under this section, he may
 24 not proceed under section 27 or section 29 as to that
 25 breach.

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

6 Section 31. Landlord's noncompliance as defense to
 7 action for possession or rent. (i) In an action for
 8 possession based upon nonpayment of the rent or in an action
 9 for rent when the tenant is in possession, the tenant may
 10 counterclaim for any amount he may recover under the rental
 11 agreement of this chapter. In that event the court from
 12 time to time may order the tenant to pay into court all or
 13 part of the rent accrued and thereafter accruing, and shall
 14 determine the amount due to each party. The party to whom a
 15 net amount is owed shall be paid first from the money paid
 16 into court, and the balance by the other party. If no rent
 17 remains due after application of this section, judgment
 18 shall be entered for the tenant in the action for
 19 possession. If the defense or counterclaim by the tenant is
 20 without merit and is not raised in good faith, the landlord
 21 may recover reasonable attorney's fees.

22 (2) In an action for rent when the tenant is not in
 23 possession, he may counterclaim as provided in subsection
 24 (1) but is not required to pay any rent into court.

25 Section 32. Fire or casualty damage. (1) If the

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

4 (a) immediately vacate the premises and notify the
 5 landlord in writing within fourteen (14) days thereafter of
 6 his intention to terminate the rental agreement, in which
 7 case the rental agreement terminates as of the date of
 8 vacating; or

9 (b) if continued occupancy is lawful, vacate any part
 10 of the dwelling unit rendered unusable by the fire or
 11 casualty, in which case the tenant's liability for rent is
 12 reduced in proportion to the diminution in the fair rental
 13 value of the dwelling unit.

14 (2) If the rental agreement is terminated the landlord
 15 shall return all security recoverable under section 18 of
 16 this chapter and all prepaid rent. Accounting for rent in
 17 the event of termination or apportionment shall be made as
 18 of the date of the fire or casualty.

19 Section 33. Tenant's remedies for landlord's unlawful
 20 ouster, exclusion, or diminution of service. If a landlord
 21 unlawfully removes or excludes the tenant from the premises
 22 or willfully diminishes services to the tenant by
 23 interrupting or causing the interruption of heat, running
 24 water, hot water, electric, gas, or other essential service,
 25 the tenant may recover possession or terminate the rental

1 agreement and, in either case, recover an amount not more
 2 than three (3) months' periodic rent or threefold the actual
 3 damages sustained by him, whichever is greater, and
 4 reasonable attorney's fees. If the rental agreement is
 5 terminated the landlord shall return all security
 6 recoverable under section 18 and all prepaid rent.

7 Section 34. Landlord remedies -- noncompliance with
 8 rental agreement -- failure to pay rent. (1) Except as
 9 provided in this chapter, if there is a material
 10 noncompliance by the tenant with the rental agreement or a
 11 noncompliance with section 23 materially affecting health
 12 and safety, the landlord may deliver a written notice to the
 13 tenant EITHER IN PERSON OR BY CERTIFIED MAIL specifying the
 14 acts and omissions constituting the breach and that the
 15 rental agreement will terminate upon a date not less than
 16 thirty (30) days after receipt of the notice. If the breach
 17 is not remedied in fourteen (14) days, the rental agreement
 18 shall terminate as provided in the notice subject to the
 19 following. If the breach is remediable by repairs or the
 20 payment of damages or otherwise and the tenant adequately
 21 remedies the breach before the date specified in the notice,
 22 the rental agreement shall not terminate. If substantially
 23 the same act or omission which constituted a prior
 24 noncompliance of which notice was given recurs within six
 25 (6) months, the landlord may terminate the rental agreement

1 upon at least fourteen (14) days' written notice specifying
 2 the breach and the date of termination of the rental
 3 agreement.

4 (2) If rent is unpaid when due and the tenant fails to
 5 pay rent within fourteen (14) days after written notice by
 6 the landlord of nonpayment and his intention to terminate
 7 the rental agreement if the rent is not paid within that
 8 period, the landlord may terminate the rental agreement.

9 (3) Except as provided in this chapter, the landlord
 10 may recover actual damages and obtain injunctive relief for
 11 any noncompliance by the tenant with the rental agreement or
 12 section 23. If the tenant's noncompliance is willful the
 13 landlord may recover reasonable attorney's fees.

14 Section 35. Failure to maintain. If there is
 15 noncompliance by the tenant with section 23 materially
 16 affecting health and safety that can be remedied by repair,
 17 replacement of a damaged item, or cleaning, and the tenant
 18 fails to comply as promptly as conditions require in case of
 19 emergency or within fourteen (14) days after written notice
 20 by the landlord specifying the breach and requesting that
 21 the tenant remedy it within that period of time, the
 22 landlord may enter the dwelling unit and cause the work to
 23 be done in a workmanlike manner and submit the itemized bill
 24 for the actual and reasonable cost or the fair and
 25 reasonable value thereof as rent on the next date periodic

1 rent is due, or if the rental agreement has terminated, for
2 immediate payment.

3 Section 36. Remedies for absence, nonuse, and
4 abandonment. (1) If the rental agreement requires the
5 tenant to give notice to the landlord of an anticipated
6 extended absence in excess of seven (7) days, as required in
7 section 26 and the tenant willfully fails to do so, the
8 landlord may recover actual damages from the tenant.

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

12 (3) If the tenant abandons the dwelling unit, the
13 landlord shall make reasonable efforts to rent it at a fair
14 rental. If the landlord rents the dwelling unit for a term
15 beginning before the expiration of the rental agreement, it
16 terminates as of the date of the new tenancy. If the
17 landlord fails to use reasonable efforts to rent the
18 dwelling unit at a fair rental or if the landlord accepts
19 the abandonment as a surrender, the rental agreement is
20 deemed to be terminated by the landlord as of the date the
21 landlord has notice of the abandonment. If the tenancy is
22 from month-to-month or week-to-week, the term of the rental
23 agreement for this purpose is deemed to be a month or a
24 week, as the case may be.

25 Section 37. Waiver of landlord's right to terminate.

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

7 Section 38. Landlord liens -- distraint for rent.
8 (1) A lien or security interest on behalf of the landlord
9 in the tenant's household goods is not enforceable unless
10 perfected before the effective date of this chapter.

11 (2) Distraint for rent is abolished.

12 Section 39. Remedy after termination. If the rental
13 agreement is terminated, the landlord has a claim for
14 possession and for rent and a separate claim for actual
15 damages for breach of the rental agreement and reasonable
16 attorney's fees as provided in section 34(3).

17 Section 40. Recovery of possession limited. A
18 landlord may not recover or take possession of the dwelling
19 unit by action or otherwise, including willful diminution of
20 services to the tenant by interrupting or causing the
21 interruption of heat, running water, hot water, electric,
22 gas, or other essential service to the tenant, except in
23 case of abandonment, surrender, or as permitted in this
24 chapter.

25 Section 41. Periodic tenancy -- holdover remedies.

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

5 (2) The landlord or the tenant may terminate a
6 month-to-month tenancy by a written notice given to the
7 other at least sixty (60) days before the periodic rental
8 date specified in the notice.

9 (3) If the tenant remains in possession without the
10 landlord's consent after expiration of the term of the
11 rental agreement or its termination, the landlord may bring
12 an action for possession and if the tenant's holdover is
13 willful and not in good faith the landlord may also recover
14 an amount not more than three (3) month's periodic rent or
15 threefold the actual damages sustained by him, whichever is
16 greater, and reasonable attorney's fees. If the landlord
17 consents to the tenant's continued occupancy, section 14(4)
18 applies.

19 Section 42. Landlord and tenant remedies for abuse of
20 access. (1) If the tenant refuses to allow lawful access,
21 the landlord may obtain injunctive relief to compel access,
22 or terminate the rental agreement. In either case the
23 landlord may recover actual damages and reasonable
24 attorney's fees.

25 (2) If the landlord makes an unlawful entry or a

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

9 Section 43. Retaliatory conduct prohibited. (1) Except
10 as provided in this section, a landlord may not retaliate by
11 increasing rent or decreasing services or by bringing or
12 threatening to bring an action for possession after:

13 (a) the tenant has complained to a governmental agency
14 charged with responsibility for enforcement of a building or
15 housing code of a violation applicable to the premises
16 materially affecting health and safety; or

17 (b) the tenant has complained to the landlord of a
18 violation under section 21; or

19 (c) the tenant has organized or become a member of a
20 tenant's union or similar organization.

21 (2) If the landlord acts in violation of subsection
22 (1), the tenant is entitled to the remedies provided in
23 section 33 and has a defense in any retaliatory action
24 against him for possession. In an action by or against the
25 tenant, evidence of a complaint within one (1) year before

1 the alleged act of retaliation creates a presumption that
 2 the landlord's conduct was in retaliation. The presumption
 3 does not arise if the tenant made the complaint after notice
 4 of a proposed rent increase or diminution of services.
 5 "Presumption" means that the trier of fact must find the
 6 existence of the fact presumed unless and until evidence is
 7 introduced which would support a finding of its
 8 nonexistence.

9 (3) Notwithstanding subsections (1) and (2), a
 10 landlord may bring an action for possession if:

11 (a) the violation of the applicable building or
 12 housing code was caused primarily by lack of reasonable care
 13 by the tenant, a member of his family, or other person on
 14 the premises, with his consent; or

15 (b) the tenant is in default in rent; or

16 (c) compliance with the applicable building or housing
 17 code requires alteration, remodeling, or demolition which
 18 would effectively deprive the tenant of use of the dwelling
 19 unit.

20 (4) The maintenance of an action under subsection (3)
 21 does not release the landlord from liability under section
 22 27(2).

23 Section 44. Savings clause. Transactions entered into
 24 before the effective date of this chapter, and not extended
 25 or renewed on and after that date, and the rights, duties,

1 and interests flowing from them remain valid and may be
 2 terminated, completed, consummated, or enforced as required
 3 or permitted by any statute or other law amended or repealed
 4 by this chapter as though the repeal or amendment had not
 5 occurred.

6 Section 45. Severability. If any provision of this
 7 chapter or the application thereof to any person or
 8 circumstance is held invalid, the invalidity does not affect
 9 other provisions or application of this chapter which can be
 10 given effect without the invalid provision or application,
 11 and to this end the provisions of this chapter are
 12 severable.

13 Section 46. Repeals. Sections 42-201, 42-202, 42-204,
 14 42-205, 42-206, AND 42-207, ~~and--42-301--through-42-309,~~
 15 R.C.M. 1947, are repealed.

16 Section 47. The department of intergovernmental
 17 relations shall prepare a simplified summary version of the
 18 major provisions of this act and publish such summary in
 19 each daily newspaper of the state twice, between sixty (60)
 20 and thirty (30) days before the effective date of this act.

21 Section 48. Effective date. This act ~~becomes~~ is
 22 effective on January 1, 1976. It applies to rental
 23 agreements entered into, or extended or renewed, on and
 24 after that date.

1 HOUSE BILL NO. 262

2 INTRODUCED BY PALMER, FEDERICO, KEMMIS, LESTER, RASMUSSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENACT THE UNIFORM
5 RESIDENTIAL LANDLORD AND TENANT ACT; FIXING THE RIGHTS AND
6 DUTIES OF LANDLORDS AND TENANTS IN RENTED DWELLINGS;
7 REPEALING SECTIONS 42-201, 42-202, 42-204, 42-205, 42-206,
8 AND 42-207, AND ~~42-301--THROUGH--42-309~~, R.C.M. 1947; AND
9 PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Short title. This chapter shall be known
13 and may be cited as the "Uniform Residential Landlord and
14 Tenant Act."15 Section 2. Purposes and rules of construction. (1)
16 This chapter shall be liberally construed and applied to
17 promote its underlying purposes and policies.18 (2) Underlying purposes and policies of this chapter
19 are:20 (a) to simplify, clarify, modernize, and revise the
21 law governing the rental of dwelling units and the rights
22 and obligations of landlords and tenants;23 (b) to encourage landlords and tenants to maintain and
24 improve the quality of housing; and

25 (c) to make uniform the law with respect to the

1 subject of this chapter among those states which enact it.

2 Section 3. Supplementary principles of law applicable.
3 Unless displaced by the provisions of this chapter, the
4 principles of law and equity, including the law relating to
5 capacity to contract, mutuality of obligations, principal
6 and agent, real property, public health, safety and fire
7 prevention, estoppel, fraud, misrepresentation, duress,
8 coercion, mistake, bankruptcy, or other validating or
9 invalidating cause supplement its provisions.

10 Section 4. Construction against implicit repeal. This
11 chapter being a general act intended as a unified coverage
12 of its subject matter, no part of it is to be construed as
13 impliedly repealed by subsequent legislation if that
14 construction can reasonably be avoided.15 Section 5. Administration of remedies — enforcement.
16 (1) The remedies provided by this chapter shall be so
17 administered that an aggrieved party may recover appropriate
18 damages. The aggrieved party has a duty to mitigate damages.
19 (2) Any right or obligation declared by this chapter
20 is enforceable by action unless the provision declaring it
21 specifies a different and limited effect.22 Section 6. Settlement of disputed claim or right. A
23 claim or right arising under this chapter or on a rental
24 agreement, if disputed in good faith, may be settled by
25 agreement.

1 Section 7. Territorial application. This chapter
 2 applies to, regulates, and determines rights, obligations,
 3 and remedies under a rental agreement, wherever made, for a
 4 dwelling unit located within this state.

5 Section 8. Exclusions from application of chapter.
 6 Unless created to avoid the application of this chapter, the
 7 following arrangements are not governed by this chapter:

8 (1) residence at an institution, public or private, if
 9 incidental to detention or the provision of medical,
 10 geriatric, educational, counseling, religious, or similar
 11 service;

12 (2) occupancy under a contract of sale of a dwelling
 13 unit or the property of which it is a part, if the occupant
 14 is the purchaser or a person who succeeds to his interest;

15 (3) occupancy by a member of a fraternal or social
 16 organization in the portion of a structure operated for the
 17 benefit of the organization;

18 (4) transient occupancy in a hotel or motel; and

19 (5) occupancy by an owner of a condominium unit or a
 20 holder of a proprietary lease in a cooperative.

21 Section 9. Jurisdiction and service of process. (1)
 22 The district courts of this state may exercise jurisdiction
 23 over any landlord with respect to any conduct in this state
 24 governed by this chapter or with respect to any claim
 25 arising from a transaction subject to this chapter. In

1 addition to any other method provided by rule or by statute,
 2 personal jurisdiction over a landlord may be acquired in a
 3 civil action or proceeding instituted in the court by the
 4 service of process in the manner provided by this section.

5 (2) If a landlord is not a resident of this state or
 6 is a corporation not authorized to do business in this state
 7 and engages in any conduct in this state governed by this
 8 chapter, or engages in a transaction subject to this
 9 chapter, he may designate an agent upon whom service of
 10 process may be made in this state. The agent shall be a
 11 resident of this state or a corporation authorized to do
 12 business in this state. The designation shall be in writing
 13 and filed with the secretary of state. If no designation is
 14 made and filed or if process cannot be served in this state
 15 upon the designated agent, process may be served upon the
 16 secretary of state, but service upon him is not effective
 17 unless the plaintiff or petitioner forthwith mails a copy of
 18 the process and pleading by registered or certified mail to
 19 the defendant or respondent at his last reasonably
 20 ascertainable address. An affidavit of compliance with this
 21 section shall be filed with the clerk of the court on or
 22 before the return day of the process, if any, or within any
 23 further time the court allows.

24 Section 10. General definitions. Subject to
 25 additional definitions contained in subsequent sections, and

1 unless the context otherwise requires, in this chapter:

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

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

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

14 (4) "Good faith" means honesty, in fact, in the
15 conduct of the transaction concerned.

16 (5) "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 who fails to
19 disclose as required by section 2 19 of this act.

20 (6) "Organization" includes a corporation, government,
21 governmental subdivision or agency, business trust, estate,
22 trust, partnership or association, two (2) or more persons
23 having a joint or common interest, and any other legal or
24 commercial entity.

25 (7) "Owner" means one (1) or more persons, jointly or

1 severally, in whom is vested:

2 (a) all or part of the legal title to property; or

3 (b) all or part of the beneficial ownership and a
4 right to present use and enjoyment of the premises. The
5 term includes a mortgagee in possession.

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

11 (9) "Rent" means all payments to be made to the
12 landlord under the rental agreement.

13 (10) "Rental agreement" means all agreements, written
14 or oral, and valid rules and regulations adopted under
15 section 24 embodying the terms and conditions concerning the
16 use and occupancy of a dwelling unit and premises.

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

22 (12) "Single family residence" means a structure
23 maintained and used as a single dwelling unit.
24 Notwithstanding that a dwelling unit shares one (1) or more
25 walls with another dwelling unit, it is a single family

1 residence if it has direct access to a street or
 2 thoroughfare and shares neither heating facilities, hot
 3 water equipment, nor any other essential facility or service
 4 with any other dwelling unit.

5 (13) "Tenant" means a person entitled under a rental
 6 agreement to occupy a dwelling unit to the exclusion of
 7 others.

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

13 Section 12. Unconscionability. (1) If the court, as a
 14 matter of law, finds:

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

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

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

3 (2) If unconscionability is put into issue by a party
 4 or by the court upon its own motion the parties shall be
 5 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 Section 13. Notice. (1) A person has notice of a fact
 9 if:

- 10 (a) he has actual knowledge of it;
- 11 (b) in the case of the landlord, it is delivered at
 12 the place of business of the landlord through which the
 13 rental agreement was made or at any place held out by him as
 14 the place for receipt of the communication; or
- 15 (c) in the case of the tenant, it is delivered in hand
 16 to the tenant or mailed by registered or certified mail to
 17 him at the place held out by him as the place for receipt of
 18 the communication, or in the absence of such designation, to
 19 his last known ~~place of residence~~ ADDRESS.

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

1 Section 14. Terms and conditions of rental agreement.

2 (1) A landlord and a tenant may include in a rental
3 agreement terms and conditions not prohibited by this
4 chapter or other rule of law, including rent, term of the
5 agreement, and other provisions governing the rights and
6 obligations of the parties.

7 (2) In absence of agreement, the tenant shall pay as
8 rent the fair rental value AS DETERMINED BY THE LANDLORD for
9 the use and occupancy of the dwelling unit.

10 (3) Rent is payable without demand or notice at the
11 time and place agreed upon by the parties. Unless otherwise
12 agreed, rent is payable at the dwelling unit and periodic
13 rent is payable at the beginning of any term of one month or
14 less and otherwise in equal monthly installments at the
15 beginning of each month. Unless otherwise agreed, rent is
16 uniformly apportionable from day-to-day.

17 (4) Unless the rental agreement fixes a definite term,
18 the tenancy is week-to-week in case of a roomer who pays
19 weekly rent, and in all other cases month-to-month.

20 Section 15. Effect of unsigned or undelivered rental
21 agreement. (1) If the landlord does not sign and deliver a
22 written rental agreement signed and delivered to him by the
23 tenant, acceptance of rent without reservation by the
24 landlord gives the rental agreement the same effect as if it
25 had been signed and delivered by the landlord.

1 (2) If the tenant does not sign and deliver a written
2 rental agreement signed and delivered to him by the
3 landlord, acceptance of possession and payment of rent
4 without reservation gives the rental agreement the same
5 effect as if it had been signed and delivered by the tenant.

6 (3) If a rental agreement given effect by the
7 operation of this section provides for a term longer than
8 one (1) year, it is effective for only one (1) year.

9 Section 16. Prohibited provisions in rental
10 agreements. (1) A rental agreement may not provide that the
11 tenant:

12 (a) agrees to waive or forego rights or remedies under
13 this chapter;

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

16 (c) agrees to pay the landlord's attorney's fees; or

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

21 (2) A provision prohibited by subsection (1) included
22 in a rental agreement is unenforceable. If a landlord
23 deliberately uses a rental agreement containing provisions
24 known by him to be prohibited, the tenant may recover in
25 addition to his actual damages an amount up to three (3)

1 months' periodic rent and reasonable attorney's fees.

2 Section 17. Separation of rents and obligations to
3 maintain property forbidden. A rental agreement,
4 assignment, conveyance, trust deed, or security instrument
5 may not permit the receipt of rent free of the obligation to
6 comply with section 21 of this act.

7 Section 18. Security deposits — prepaid rent. (1) A
8 landlord may not demand or receive security, however
9 denominated, in any amount or value in excess of ~~one~~ (4)
10 ~~month's~~ TWO (2) MONTHS' periodic rent.

11 (2) Upon termination of the tenancy, property or money
12 held by the landlord as security may be applied to the
13 payment of accrued rent and the amount of damages which the
14 landlord has suffered by reason of the tenant's
15 noncompliance with section 23, all as itemized by the
16 landlord in a written notice, delivered to the tenant TO HIS
17 LAST KNOWN ADDRESS together with the amount due ~~fourteen~~
18 ~~(14)~~ days NOT MORE THAN TWENTY-ONE (21) DAYS after
19 termination of the tenancy and delivery of possession and
20 demand by the tenant.

21 (3) If the landlord fails to comply with subsection
22 (2) or if he fails to return any prepaid rent required to be
23 paid to the tenants under this chapter the tenant may
24 recover the property and money due him together with damages
25 in an amount equal to twice the amount wrongfully withheld

1 and reasonable attorney's fees.

2 (4) This section does not preclude the landlord or
3 tenant from recovering other damages to which he may be
4 entitled under this chapter.

5 (5) The holder of the landlord's interest in the
6 premises at the time of the termination of the tenancy is
7 bound by this section.

8 Section 19. Disclosure. (1) A landlord or any person
9 authorized to enter into a rental agreement on his behalf
10 shall disclose to the tenant in writing at or before the
11 commencement of the tenancy, the name and address of:

- 12 (a) the person authorized to manage the premises; and
- 13 (b) an owner of the premises or a person authorized to
- 14 act for and on behalf of the owner for the purpose of
- 15 service of process and receiving and receipting for notices
- 16 and demands.

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

21 (3) A person who fails to comply with subsection (1)
22 becomes an agent of each person who is a landlord for:

- 23 (a) service of process and receiving and receipting
- 24 for notices and demands; and
- 25 (b) performing the obligations of the landlord under

1 this chapter and under the rental agreement and expending or
 2 making available for the purpose all rent collected from the
 3 premises.

4 Section 20. Landlord to deliver possession of dwelling
 5 unit. At the commencement of the term a landlord shall
 6 deliver possession of the premises to the tenant in
 7 compliance with the rental agreement and section 21 of this
 8 act. The landlord may bring an action for possession
 9 against any person wrongfully in possession and may recover
 10 the damages provided in section 41 (3) of this act.

11 Section 21. Landlord to maintain premises. (1) A
 12 landlord shall:

13 (a) comply with the requirements of applicable
 14 building and housing codes materially affecting health and
 15 safety;

16 (b) make all repairs and do whatever is necessary to
 17 put and keep the premises in a fit and habitable condition

18 AS DEFINED BY WRITTEN OR ORAL AGREEMENT WITH THE TENANT:

19 (c) keep all common areas of the premises in a clean
 20 and safe condition;

21 (d) maintain in good and safe working order and
 22 condition all electrical, plumbing, sanitary, heating,
 23 ventilating, air-conditioning, and other facilities and
 24 appliances, including elevators, supplied or required to be
 25 supplied by him;

1 (e) provide and maintain appropriate receptacles and
 2 conveniences for the removal of ashes, garbage, rubbish, and
 3 other waste incidental to the occupancy of the dwelling unit
 4 and arrange for their removal; and

5 (f) supply running water and reasonable amounts of hot
 6 water at all times and reasonable heat between October 1 and
 7 May 1 except where the building that includes the dwelling
 8 unit is not required by law to be equipped for that purpose,
 9 or the dwelling unit is so constructed that heat or hot
 10 water is generated by an installation within the exclusive
 11 control of the tenant and supplied by a direct public
 12 utility connection.

13 (2) If the duty imposed by paragraph (a) of subsection
 14 (1) is greater than any duty imposed by any other paragraph
 15 of that subsection, the landlord's duty shall be determined
 16 by reference to paragraph (a) of subsection (1).

17 (3) The landlord and tenant of a single family
 18 residence may agree in writing that the tenant perform the
 19 landlord's duties specified in paragraphs (e) and (f) of
 20 subsection (1) and also specified repairs, maintenance
 21 tasks, alterations, and remodeling, but only if the
 22 transaction is entered into in good faith and not for the
 23 purpose of evading the obligations of the landlord.

24 (4) The landlord and tenant of any dwelling unit other
 25 than a single family residence may agree that the tenant is

1 to perform specified repairs, maintenance tasks,
2 alterations, or remodeling only if:

3 (a) the agreement of the parties is entered into in
4 good faith and not for the purpose of evading the
5 obligations of the landlord and is set forth in a separate
6 writing signed by the parties and supported by adequate
7 consideration;

8 (b) the work is not necessary to cure noncompliance
9 with subsection (1) (a) of this section; and

10 (c) the agreement does not diminish or affect the
11 obligation of the landlord to other tenants in the premises.

12 (5) The landlord may not treat performance of the
13 separate agreement described in subsection (4) as a
14 condition to any obligation or performance of any rental
15 agreement.

16 Section 22. Limitation of liability. (1) Unless
17 otherwise agreed, a landlord who conveys premises that
18 include a dwelling unit subject to a rental agreement in a
19 good faith sale to a bona fide purchaser is relieved of
20 liability under the rental agreement and this chapter as to
21 events occurring after written notice to the tenant of the
22 conveyance. However, he remains liable to the tenant for
23 all security recoverable by the tenant under section 18 of
24 this chapter and all prepaid rent.

25 (2) Unless otherwise agreed, a manager of premises

1 that include a dwelling unit is relieved of liability under
2 the rental agreement and this chapter as to events occurring
3 after written notice to the tenant of the termination of his
4 management.

5 Section 23. Tenant to maintain dwelling unit. A
6 tenant shall: (1) comply with all obligations primarily
7 imposed upon tenants by applicable provisions of building
8 and housing codes materially affecting health and safety;

9 (2) keep that part of the premises that he occupies
10 and uses as clean and safe as the condition of the premises
11 permit;

12 (3) dispose from his dwelling unit all ashes, garbage,
13 rubbish, and other waste in a clean and safe manner;

14 (4) keep all plumbing fixtures in the dwelling unit or
15 used by the tenant as clean as their condition permits;

16 (5) use in a reasonable manner all electrical,
17 plumbing, sanitary, heating, ventilating, air-conditioning,
18 and other facilities and appliances, including elevators, in
19 the premises;

20 (6) not ~~deliberately or negligently~~ destroy, deface,
21 damage, impair, or remove any part of the premises or
22 knowingly permit any person to do so; and

23 (7) conduct himself and require other persons on the
24 premises with his consent to conduct themselves in a manner
25 that will not disturb his neighbors' peaceful enjoyment of

1 the premises.

2 Section 24. Rules and regulations. (1) A landlord,
3 from time to time, may adopt a rule or regulation, however
4 described, concerning the tenant's use and occupancy of the
5 premises. It is enforceable against the tenant only if:

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

11 (b) it is reasonably related to the purpose of which
12 it is adopted;

13 (c) it applies to all tenants in the premises in a
14 fair manner;

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

18 (e) it is not for the purpose of evading the
19 obligations of the landlord; and

20 (f) the tenant has notice of it at the time he enters
21 into the rental agreement, or when it is adopted.

22 (2) If a rule or regulation is adopted after the
23 tenant enters into the rental agreement that works a
24 substantial modification of his bargain it is not valid
25 unless the tenant consents to it in writing.

1 Section 25. Access. (1) A tenant shall not
2 unreasonably withhold consent to the landlord to enter into
3 the dwelling unit in order to inspect the premises, make
4 necessary or agreed repairs, decorations, alterations, or
5 improvements, supply necessary or agreed services, or
6 exhibit the dwelling unit to prospective or actual
7 purchasers, mortgagees, tenants, workmen, or contractors.

8 (2) A landlord may enter the dwelling unit without
9 consent of the tenant in case of emergency.

10 (3) A landlord shall not abuse the right of access or
11 use it to harass the tenant. Except in case of emergency or
12 unless it is impracticable to do so, the landlord shall give
13 the tenant at least ~~two (2) days~~ ONE (1) DAY'S notice of
14 his intent to enter and may enter only at reasonable times.

15 (4) A landlord has no other right of access except:

16 (a) pursuant to court order;

17 (b) as permitted by sections 35 and 36 (2); or

18 (c) unless the tenant has abandoned or surrendered the
19 premises.

20 Section 26. Tenant to use and occupy. Unless
21 otherwise agreed, a tenant shall occupy his dwelling unit
22 only as a dwelling unit. The rental agreement may require
23 that the tenant notify the landlord of any anticipated
24 extended absence from the premises in excess of seven (7)
25 days no later than the first day of the extended absence.

1 Section 27. Noncompliance by the landlord — in
 2 general. (1) Except as provided in this chapter, if there
 3 is a material noncompliance by the landlord with the rental
 4 agreement or a noncompliance with section 21 materially
 5 affecting health and safety, the tenant may deliver a
 6 written notice to the landlord specifying the acts and
 7 omissions constituting the breach and that the rental
 8 agreement will terminate upon a date not less than thirty
 9 (30) days after receipt of the notice if the breach is not
 10 remedied in fourteen (14) days, and the rental agreement
 11 shall terminate as provided in the notice subject to the
 12 following:

13 (a) If the breach is remediable by repairs, the
 14 payment of damages or otherwise and the landlord adequately
 15 remedies the breach before the date specified in the notice,
 16 the rental agreement shall not terminate by reason of the
 17 breach.

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

24 (c) The tenant may not terminate for a condition
 25 caused by a member of his family, or other person on the

1 premises with his consent.

2 (2) Except as provided in this chapter, the tenant may
 3 recover actual damages and obtain injunctive relief for any
 4 noncompliance by the landlord with the rental agreement or
 5 section 21. If the landlord's noncompliance is willful the
 6 tenant may recover reasonable attorney's fees.

7 (3) The remedy provided in subsection (2) is in
 8 addition to any right of the tenant arising under subsection
 9 (1).

10 (4) If the rental agreement is terminated, the
 11 landlord shall return all security recoverable by the tenant
 12 under section 18 of this chapter.

13 Section 28. Failure to deliver possession. (1) If the
 14 landlord fails to deliver possession of the dwelling unit to
 15 the tenant as provided in section 20 of this chapter, rent
 16 abates until possession is delivered and the tenant may:

17 (a) terminate the rental agreement upon at least five
 18 (5) days' written notice to the landlord and upon
 19 termination the landlord shall return all prepaid rent and
 20 security; or

21 (b) demand performance of the rental agreement by the
 22 landlord and, if the tenant elects, maintain an action for
 23 possession of the dwelling unit against the landlord or any
 24 person wrongfully in possession and recover the actual
 25 damages sustained by him.

1 (2) If a person's failure to deliver possession is
 2 willful and not in good faith, an aggrieved person may
 3 recover from that person an amount not more than three (3)
 4 months' periodic rent or threefold the actual damages
 5 sustained, whichever is greater, and reasonable attorney's
 6 fees.

7 Section 29. Self-help for minor defects. (1) If the
 8 landlord fails to comply with the rental agreement or
 9 section 21 of this act, and the reasonable cost of
 10 compliance is less than the ~~periodic rent~~ ONE (1) MONTH
 11 RENT, the tenant may recover damages for the breach under
 12 section 27(2) of this chapter or may notify the landlord of
 13 his intention to correct the condition at the landlord's
 14 expense. If the landlord fails to comply within fourteen
 15 (14) days after being notified by the tenant in writing or
 16 as promptly as conditions require in case of emergency, the
 17 tenant may cause the work to be done in a workmanlike manner
 18 and, after submitting to the landlord an itemized statement,
 19 deduct from his rent the actual and reasonable cost or the
 20 fair and reasonable value of the work, not exceeding the
 21 amount specified in this subsection.

22 (2) A tenant may not repair at the landlord's expense
 23 if the condition was caused by the ~~deliberate or negligent~~
 24 act or omission of the tenant, a member of his family, or
 25 other person on the premises with his consent.

1 Section 30. Wrongful failure to supply heat, water,
 2 hot water, or essential services. (1) If contrary to the
 3 rental agreement or section 21 of this chapter the landlord
 4 willfully or negligently fails to supply heat, running
 5 water, hot water, electric, gas, or other essential service,
 6 the tenant may give written notice to the landlord
 7 specifying the breach and may:

8 (a) procure reasonable amounts of heat, hot water,
 9 running water, electric, gas, and other essential service
 10 during the period of the landlord's noncompliance and deduct
 11 their actual and reasonable cost from the rent; or

12 (b) recover damages based upon the diminution in the
 13 fair rental value of the dwelling unit; or

14 (c) procure reasonable substitute housing during the
 15 period of the landlord's noncompliance, in which case the
 16 tenant is excused from paying rent for the period of the
 17 landlord's noncompliance.

18 (2) In addition to the remedy provided in paragraph
 19 (c) of subsection (1) the tenant may recover the actual and
 20 reasonable cost or fair and reasonable value of the
 21 substitute housing not in excess of an amount equal to the
 22 periodic rent, and in any case under subsection (1)
 23 reasonable attorney's fees.

24 (3) If the tenant proceeds under this section, he may
 25 not proceed under section 27 or section 29 as to that

1 breach.

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

7 Section 31. Landlord's noncompliance as defense to
8 action for possession or rent. (1) In an action for
9 possession based upon nonpayment of the rent or in an action
10 for rent when the tenant is in possession, the tenant may
11 counterclaim for any amount he may recover under the rental
12 agreement of this chapter. In that event the court from
13 time to time may order the tenant to pay into court all or
14 part of the rent accrued and thereafter accruing, and shall
15 determine the amount due to each party. The party to whom a
16 net amount is owed shall be paid first from the money paid
17 into court, and the balance by the other party. If no rent
18 remains due after application of this section, judgment
19 shall be entered for the tenant in the action for
20 possession. If the defense or counterclaim by the tenant is
21 without merit and is not raised in good faith, the landlord
22 may recover reasonable attorney's fees.

23 (2) In an action for rent when the tenant is not in
24 possession, he may counterclaim as provided in subsection
25 (1) but is not required to pay any rent into court.

1 Section 32. Fire or casualty damage. (1) If the
2 dwelling unit or premises are damaged or destroyed by fire
3 or casualty to an extent that enjoyment of the dwelling unit
4 is substantially impaired, the tenant may:

5 (a) immediately vacate the premises and notify the
6 landlord in writing within fourteen (14) days thereafter of
7 his intention to terminate the rental agreement, in which
8 case the rental agreement terminates as of the date of
9 vacating; or

10 (b) if continued occupancy is lawful, vacate any part
11 of the dwelling unit rendered unusable by the fire or
12 casualty, in which case the tenant's liability for rent is
13 reduced in proportion to the diminution in the fair rental
14 value of the dwelling unit.

15 (2) If the rental agreement is terminated the landlord
16 shall return all security recoverable under section 18 of
17 this chapter and all prepaid rent. Accounting for rent in
18 the event of termination or apportionment shall be made as
19 of the date of the fire or casualty.

20 Section 33. Tenant's remedies for landlord's unlawful
21 ouster, exclusion, or diminution of service. If a landlord
22 unlawfully removes or excludes the tenant from the premises
23 or willfully diminishes services to the tenant by
24 interrupting or causing the interruption of heat, running
25 water, hot water, electric, gas, or other essential service,

1 the tenant may recover possession or terminate the rental
 2 agreement and, in either case, recover an amount not more
 3 than three (3) months' periodic rent or threefold the actual
 4 damages sustained by him, whichever is greater, and
 5 reasonable attorney's fees. If the rental agreement is
 6 terminated the landlord shall return all security
 7 recoverable under section 16 and all prepaid rent.

8 Section 34. Landlord remedies — noncompliance with
 9 rental agreement — failure to pay rent. (1) Except as
 10 provided in this chapter, if there is a material
 11 noncompliance by the tenant with the rental agreement or a
 12 noncompliance with section 23 materially affecting health
 13 and safety, the landlord may deliver a written notice to the
 14 tenant EITHER IN PERSON OR BY CERTIFIED MAIL specifying the
 15 acts and omissions constituting the breach and that the
 16 rental agreement will terminate upon a date not less than
 17 thirty (30) days after receipt of the notice. If the breach
 18 is not remedied in fourteen (14) days, the rental agreement
 19 shall terminate as provided in the notice subject to the
 20 following. If the breach is remediable by repairs or the
 21 payment of damages or otherwise and the tenant adequately
 22 remedies the breach before the date specified in the notice,
 23 the rental agreement shall not terminate. If substantially
 24 the same act or omission which constituted a prior
 25 noncompliance of which notice was given recurs within six

1 (6) months, the landlord may terminate the rental agreement
 2 upon at least fourteen (14) days' written notice specifying
 3 the breach and the date of termination of the rental
 4 agreement.

5 (2) If rent is unpaid when due and the tenant fails to
 6 pay rent within fourteen (14) days after written notice by
 7 the landlord of nonpayment and his intention to terminate
 8 the rental agreement if the rent is not paid within that
 9 period, the landlord may terminate the rental agreement AND
 10 TRIPLE DAMAGES.

11 (3) Except as provided in this chapter, the landlord
 12 may recover actual damages and obtain injunctive relief for
 13 any noncompliance by the tenant with the rental agreement or
 14 section 23. If the tenant's noncompliance is willful the
 15 landlord may recover reasonable attorney's fees.

16 Section 35. Failure to maintain. If there is
 17 noncompliance by the tenant with section 23 materially
 18 affecting health and safety that can be remedied by repair,
 19 replacement of a damaged item, or cleaning, and the tenant
 20 fails to comply as promptly as conditions require in case of
 21 emergency or within fourteen (14) days after written notice
 22 by the landlord specifying the breach and requesting that
 23 the tenant remedy it within that period of time, the
 24 landlord may enter the dwelling unit and cause the work to
 25 be done in a workmanlike manner and submit the itemized bill

1 for the actual and reasonable cost or the fair and
 2 reasonable value thereof as rent on the next date periodic
 3 rent is due, or if the rental agreement has terminated, for
 4 immediate payment.

5 Section 36. Remedies for absence, nonuse, and
 6 abandonment. (1) If the rental agreement requires the
 7 tenant to give notice to the landlord of an anticipated
 8 extended absence in excess of seven (7) days, as required in
 9 section 26 and the tenant willfully fails to do so, the
 10 landlord may recover actual damages from the tenant.

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

14 (3) If the tenant abandons the dwelling unit, the
 15 landlord shall make reasonable efforts to rent it at a fair
 16 rental. If the landlord rents the dwelling unit for a term
 17 beginning before the expiration of the rental agreement, it
 18 terminates as of the date of the new tenancy. If the
 19 landlord fails to use reasonable efforts to rent the
 20 dwelling unit at a fair rental or if the landlord accepts
 21 the abandonment as a surrender, the rental agreement is
 22 deemed to be terminated by the landlord as of the date the
 23 landlord has notice of the abandonment. If the tenancy is
 24 from month-to-month or week-to-week, the term of the rental
 25 agreement for this purpose is deemed to be a month or a

1 week, as the case may be.

2 Section 37. Waiver of landlord's right to terminate.
 3 Acceptance of rent with knowledge of a default by the tenant
 4 or acceptance of performance by him that varies from the
 5 terms of the rental agreement constitutes a waiver of the
 6 landlord's right to terminate the rental agreement for that
 7 breach, unless otherwise agreed after the breach has
 8 occurred.

9 Section 38. Landlord liens -- distraint for rent.
 10 (1) A lien or security interest on behalf of the landlord
 11 in the tenant's household goods is not enforceable unless
 12 perfected before the effective date of this chapter. IF THE
 13 TENANT ABANDONS THE DWELLING, THE PROPERTY REMAINING THEREIN
 14 SHALL BE CONSIDERED ABANDONED.

15 (2) Distraint for rent is abolished.

16 Section 39. Remedy after termination. If the rental
 17 agreement is terminated, the landlord has a claim for
 18 possession and for rent and a separate claim for actual
 19 damages for breach of the rental agreement and reasonable
 20 attorney's fees as provided in section 34(3).

21 Section 40. Recovery of possession limited. A
 22 landlord may not recover or take possession of the dwelling
 23 unit by action or otherwise, including willful diminution of
 24 services to the tenant by interrupting or causing the
 25 interruption of heat, running water, hot water, electric,

1 gas, or other essential service to the tenant, except in
2 case of abandonment, surrender, or as permitted in this
3 chapter.

4 Section 41. Periodic tenancy -- holdover remedies.

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

9 (2) The landlord or the tenant may terminate a
10 month-to-month tenancy by a written notice given to the
11 other at least sixty (60) days before the periodic rental
12 date specified in the notice.

13 (3) If the tenant remains in possession without the
14 landlord's consent after expiration of the term of the
15 rental agreement or its termination, the landlord may bring
16 an action for possession and if the tenant's holdover is
17 willful and not in good faith the landlord may also recover
18 an amount not more than three (3) month's periodic rent or
19 threefold the actual damages sustained by him, whichever is
20 greater, and reasonable attorney's fees. If the landlord
21 consents to the tenant's continued occupancy, section 14(4)
22 applies.

23 Section 42. Landlord and tenant remedies for abuse of
24 access. (1) If the tenant refuses to allow lawful access,
25 the landlord may obtain injunctive relief to compel access,

1 or terminate the rental agreement. In either case the
2 landlord may recover actual damages and reasonable
3 attorney's fees.

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

13 Section 43. Retaliatory conduct prohibited. (1) Except
14 as provided in this section, a landlord may not retaliate by
15 increasing rent or decreasing services or by bringing or
16 threatening to bring an action for possession after:

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

21 (b) the tenant has complained to the landlord of a
22 violation under section 21; or

23 (c) the tenant has organized or become a member of a
24 tenant's union or similar organization.

25 (2) If the landlord acts in violation of subsection

1 (1), the tenant is entitled to the remedies provided in
 2 section 33 and has a defense in any retaliatory action
 3 against him for possession. In an action by or against the
 4 tenant, evidence of a complaint within one (1) year before
 5 the alleged act of retaliation creates a presumption that
 6 the landlord's conduct was in retaliation. The presumption
 7 does not arise if the tenant made the complaint after notice
 8 of a proposed rent increase or diminution of services.
 9 "Presumption" means that the trier of fact must find the
 10 existence of the fact presumed unless and until evidence is
 11 introduced which would support a finding of its
 12 nonexistence.

13 (3) Notwithstanding subsections (1) and (2), a
 14 landlord may bring an action for possession if:

15 (a) 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 his family, or other person on
 18 the premises, with his consent; or

19 (b) the tenant is in default in rent; or

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

24 (4) The maintenance of an action under subsection (3)
 25 does not release the landlord from liability under section

1 27(2).

2 Section 44. Savings clause. Transactions entered into
 3 before the effective date of this chapter, and not extended
 4 or renewed on and after that date, and the rights, duties,
 5 and interests flowing from them remain valid and may be
 6 terminated, completed, consummated, or enforced as required
 7 or permitted by any statute or other law amended or repealed
 8 by this chapter as though the repeal or amendment had not
 9 occurred.

10 Section 45. Severability. If any provision of this
 11 chapter or the application thereof to any person or
 12 circumstance is held invalid, the invalidity does not affect
 13 other provisions or application of this chapter which can be
 14 given effect without the invalid provision or application,
 15 and to this end the provisions of this chapter are
 16 severable.

17 Section 46. Repeals. Sections 42-201, 42-202, 42-204,
 18 42-205, 42-206, AND 42-207, and ~~42-301 through 42-309~~,
 19 R.C.M. 1947, are repealed.

20 Section 47. The department of intergovernmental
 21 relations shall prepare a simplified summary version of the
 22 major provisions of this act and publish such summary in
 23 each daily newspaper of the state twice, between sixty (60)
 24 and thirty (30) days before the effective date of this act.

25 Section 48. Effective date. This act becomes IS

1 effective on January 1, 1976. It applies to rental
2 agreements entered into, or extended or renewed, on and
3 after that date.

-End-

March 22, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 262

That House Bill No. 262, third reading, be amended as follows:

1. Amend page 3, section 8, line 18.
Following: "motel;"
Strike: "and"
2. Amend page 3, section 8, line 20.
Following: "cooperative"
Strike: "."
Insert: "; (6) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes; and

(7) Occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises."
3. Amend page 5, section 10, line 13.
Following: "household."
Insert: " "Dwelling unit" in the case of a person who rents space in a mobile home park but does not rent the mobile home means the space rented and not the mobile home itself."
4. Amend page 6, section 10, line 5.
Following: line 5
Insert: "(8) "Person" includes an individual or organization."
Renumber: All subsequent subsections
5. Amend page 8, section 13, lines 13 and 14.
Following: "made"
Strike: "or at any place held out by him as the place for receipt of the communication"
6. Amend page 8, section 13, line 15.
Following: "the"
Insert: "landlord or"
7. Amend page 8, section 13, line 16.
Following: "the"
Insert: "landlord or"
8. Amend page 10, section 16, lines 10 and 11.
Following: "that"
Strike: "the tenant"
Insert: "a party"
9. Amend page 10, section 16, line 16.
Following: "pay"
Strike: "the landlord's"
Insert: "another party's"
10. Amend page 10, section 16, line 18.
Following: "liability"
Strike: "of the landlord"
11. Amend page 10, section 16, line 18.
Following: "arising"
Strike: "under law"
Insert: "as a result of the other party's wilfull misconduct or negligence"
12. Amend page 10, section 16, line 19.
Following: "the"
Strike: "landlord"
Insert: "other party"
13. Amend page 10, section 16, line 19.
Following: "costs"
Insert: "or attorney's fees"
14. Amend page 10, section 16, line 22.
Following: "If a"
Strike: "landlord"
Insert: "party"
15. Amend page 11, section 16, line 1.
Following: "rent"
Strike: "and reasonable attorney's fees"
16. Amend page 12, section 18, line 1.
Strike: "and reasonable attorney's fees"
17. Amend page 12, section 18, line 7.
Following: line 7
Insert: "Section 19. Attorney fees. In any action on a rental agreement or arising under this act reasonable attorney fees may be awarded to the prevailing party together with costs and necessary disbursements, notwithstanding any agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered."

Renumber: All subsequent sections
18. Amend page 13, section 21, line 15.
Following: "safety"
Insert: "in all dwelling units where construction is completed after the effective date of this act"

19. Amend page 13, section 21, line 17.
Following: line 17
Strike: "AS DEFINED BY WRITTEN OR ORAL AGREEMENT WITH THE TENANT"
20. Amend page 15, section 21, line 10.
Following: "diminish"
Strike: "or affect"
21. Amend page 15, section 21, lines 12 through 15.
Following: line 11
Strike: subsection (5) in its entirety
22. Amend page 16, section 23, line 22.
Following: "so;"
Strike: "and"
23. Amend page 17, section 23, line 1.
Following: "premises"
Strike: "."
Insert: "; and (8) use the parts of the premises including the living room, bedroom, kitchen, bathroom and dining room in a reasonable manner considering the purposes for which they were designed and intended."
24. Amend page 18, section 25, line 13.
Following: "~~days~~"
Strike: "ONE (1) DAY'S"
Insert: "twenty-four (24) hours' "
25. Amend page 18, section 25, line 18.
Following: "(c)"
Strike: "unless"
Insert: "when"
26. Amend page 19, section 27, line 25.
Following: "by"
Insert: "himself,"
27. Amend page 20, section 27, lines 5 through 6.
Following: "21."
Strike: lines 5 through 6 in their entirety
28. Amend page 21, section 28, lines 5 and 6.
Following: "greater"
Strike: ", and reasonable attorney's fees"
29. Amend page 21, section 29, line 7.
Following: "29."
Strike: "Self-help"
Insert: "Damages"
30. Amend page 21, section 29, lines 12 through 25.
Following: "chapter"
Strike: lines 12 through 25 in their entirety
Insert: "."
31. Amend page 23, section 31, line 17.
Following: "party."
Insert: "The court may at any time release money paid into court to either party if the parties so agree or if the court finds a party entitled to the sums released."
32. Amend page 23, section 31, lines 20 through 22.
Following: "possession."
Strike: lines 20 through 22 in their entirety
33. Amend page 25, section 33, lines 4 and 5.
Following: "greater"
Strike: ", and reasonable attorney's fees"
34. Amend page 25, section 34, line 14.
Following: "tenant"
Strike: "EITHER IN PERSON OR BY CERTIFIED MAIL"
Insert: ", pursuant to section 13 of this act,"
35. Amend page 25, section 34, line 17.
Following: line 16
Strike: "thirty (30)"
Insert: "fourteen (14)"
36. Amend page 25, section 34, line 18.
Following: "in"
Strike: "fourteen (14)"
Insert: "ten (10)"
37. Amend page 26, section 34, line 2.
Following: "least"
Strike: "fourteen (14)"
Insert: "ten (10)"
38. Amend page 26, section 34, line 6.
Following: "within"
Strike: "fourteen (14)"
Insert: "ten (10)"
39. Amend page 26, section 34, lines 9 and 10.
Following: "agreement"
Strike: "AND TRIPLE DAMAGES"
40. Amend page 26, section 34, line 15.
Following: "recover"
Strike: "reasonable attorney's fees"
Insert: "triple damages"
41. Amend page 28, section 38, lines 12 through 14.
Following: "chapter."
Strike: lines 12 through 14 in their entirety

42. Amend page 28, section 38, line 15.

Following: line 15

Insert: "Section 39. Disposition of personal property abandoned by tenant. (1) If a tenancy terminates by means including expiration of a lease of surrender or abandonment of the premises but not including termination by court order, and the landlord reasonably believes that the tenant has abandoned goods, chattels or personal property which the tenant has left upon the premises, the landlord shall make reasonable attempts to notify the tenant in writing that the property must be removed from the premises or from the place of safekeeping, if the landlord has stored the goods as provided in subsection (2) of this section, by a specified day not less than 15 days after delivery of the notice or the property will be sold or otherwise disposed of, and if the property is not removed:

(a) the landlord may sell the property at a public or private sale; or

(b) the landlord may destroy or otherwise dispose of the property if he reasonably determines that the value of the property is so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) the landlord may sell certain items and destroy or otherwise dispose of the remaining property.

(2) After notifying the tenant as required by subsection (1) of this section the landlord shall store all goods, chattels and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may store the property in a commercial storage company, in which case the storage cost shall include the actual storage charge plus the cost of removal of the property to the place of storage.

(3) If the tenant upon the receipt of the notice provided by subsection (1) of this section or otherwise responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property from the premises or from the place of safekeeping, if the landlord has stored the goods as provided in subsection (2) of this section, and does not do so within fifteen (15) days after the delivery of the tenant's response, whichever is later, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property the landlord shall be entitled to the cost of storage for the period the property remains in his safekeeping

(4) The landlord shall not be responsible for any loss to the tenant resulting from storage unless the loss was caused by the landlord's deliberate or negligent act. In the event of deliberate and malicious violation the landlord shall be liable for twice the actual damages sustained by the tenant.

(5) A public or private sale authorized by this section shall be conducted under the provisions of subsection (3) of section 87A-9-504, R.C.M. 1947.

(6) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage and sale and remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred, and if not claimed within three years shall revert to the general fund of the county available for general purposes."

Renumber: All subsequent sections

43. Amend page 28, section 39, lines 19 and 20.

Following: "agreement"

Strike: "and reasonable attorney's fees as provided in section 34 (3)"

44. Amend page 29, section 41, lines 9 through 12.

Following: "{2}"

Strike: lines 9 through 12 in their entirety

Insert: "The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy, at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy shall terminate on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day."

45. Amend page 29, section 41, line 20.

Following: "greater"

Strike: ", and reasonable attorney's fees"

46. Amend page 29, section 42, line 23.

Following: "for"

Insert: "refusal or"

47. Amend page 30, section 42, lines 2 and 3.

Following: "damages"

Strike: "and reasonable attorney's fees"

48. Amend page 30, section 42, lines 11 and 12.
Following: "rent"
Strike: "and reasonable attorney's fees"
49. Amend page 31, section 43, line 4.
Following: "within"
Strike: "one (1) year"
Insert: "six (6) months"
50. Amend page 31, section 43, line 5.
Following: "a"
Insert: "rebuttable"
51. Amend page 31, section 43, line 9.
Following: line 8
Strike: " "Presumption" "
Insert: "For purposes of this section "rebuttable presumption" "
52. Amend page 32, section 46, line 24.
Following: line 24
Insert: "Section 48. The attorney general shall prepare a

model residential rental agreement form to conform to the provisions of this act. The attorney general shall make the forms available to the public at cost through the office of the secretary of state. The attorney general shall add to, amend or revise the model agreement from time to time as he deems necessary to conform to current legal developments."

Renumber: Subsequent section

1 HOUSE BILL NO. 262

2 INTRODUCED BY PALMER, FEDERICO, KEMMIS, LESTER, RASMUSSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ENACT THE UNIFORM
5 RESIDENTIAL LANDLORD AND TENANT ACT; FIXING THE RIGHTS AND
6 DUTIES OF LANDLORDS AND TENANTS IN RENTED DWELLINGS;
7 REPEALING SECTIONS 42-201, 42-202, 42-204, 42-205, 42-206,
8 AND 42-207, ~~AND 42-301--THROUGH--42-309,~~ R.C.M. 1947; AND
9 PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. This chapter shall be known
13 and may be cited as the "Uniform Residential Landlord and
14 Tenant Act."

15 Section 2. Purposes and rules of construction. (1)
16 This chapter shall be liberally construed and applied to
17 promote its underlying purposes and policies.

18 (2) Underlying purposes and policies of this chapter
19 are:

20 (a) to simplify, clarify, modernize, and revise the
21 law governing the rental of dwelling units and the rights
22 and obligations of landlords and tenants;

23 (b) to encourage landlords and tenants to maintain and
24 improve the quality of housing; and

25 (c) to make uniform the law with respect to the

1 subject of this chapter among those states which enact it.

2 Section 3. Supplementary principles of law applicable.
3 Unless displaced by the provisions of this chapter, the
4 principles of law and equity, including the law relating to
5 capacity to contract, mutuality of obligations, principal
6 and agent, real property, public health, safety and fire
7 prevention, estoppel, fraud, misrepresentation, duress,
8 coercion, mistake, bankruptcy, or other validating or
9 invalidating cause supplement its provisions.

10 Section 4. Construction against implicit repeal. This
11 chapter being a general act intended as a unified coverage
12 of its subject matter, no part of it is to be construed as
13 impliedly repealed by subsequent legislation if that
14 construction can reasonably be avoided.

15 Section 5. Administration of remedies -- enforcement.
16 (1) The remedies provided by this chapter shall be so
17 administered that an aggrieved party may recover appropriate
18 damages. The aggrieved party has a duty to mitigate damages.

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

22 Section 6. Settlement of disputed claim or right. A
23 claim or right arising under this chapter or on a rental
24 agreement, if disputed in good faith, may be settled by
25 agreement.

1 Section 7. Territorial application. This chapter
2 applies to, regulates, and determines rights, obligations,
3 and remedies under a rental agreement, wherever made, for a
4 dwelling unit located within this state.

5 Section 8. Exclusions from application of chapter.
6 Unless created to avoid the application of this chapter, the
7 following arrangements are not governed by this chapter:

8 (1) residence at an institution, public or private, if
9 incidental to detention or the provision of medical,
10 geriatric, educational, counseling, religious, or similar
11 service;

12 (2) occupancy under a contract of sale of a dwelling
13 unit or the property of which it is a part, if the occupant
14 is the purchaser or a person who succeeds to his interest;

15 (3) occupancy by a member of a fraternal or social
16 organization in the portion of a structure operated for the
17 benefit of the organization;

18 (4) transient occupancy in a hotel or motel; and

19 (5) occupancy by an owner of a condominium unit or a
20 holder of a proprietary lease in a cooperative;

21 (6) OCCUPANCY UNDER A RENTAL AGREEMENT COVERING
22 PREMISES USED BY THE OCCUPANT PRIMARILY FOR AGRICULTURAL
23 PURPOSES; AND

24 (7) OCCUPANCY BY AN EMPLOYEE OF A LANDLORD WHOSE RIGHT
25 TO OCCUPANCY IS CONDITIONAL UPON EMPLOYMENT IN AND ABOUT THE

1 PREMISES.

2 Section 9. Jurisdiction and service of process. (1)
3 The district courts of this state may exercise jurisdiction
4 over any landlord with respect to any conduct in this state
5 governed by this chapter or with respect to any claim
6 arising from a transaction subject to this chapter. In
7 addition to any other method provided by rule or by statute,
8 personal jurisdiction over a landlord may be acquired in a
9 civil action or proceeding instituted in the court by the
10 service of process in the manner provided by this section.

11 (2) If a landlord is not a resident of this state or
12 is a corporation not authorized to do business in this state
13 and engages in any conduct in this state governed by this
14 chapter, or engages in a transaction subject to this
15 chapter, he may designate an agent upon whom service of
16 process may be made in this state. The agent shall be a
17 resident of this state or a corporation authorized to do
18 business in this state. The designation shall be in writing
19 and filed with the secretary of state. If no designation is
20 made and filed or if process cannot be served in this state
21 upon the designated agent, process may be served upon the
22 secretary of state, but service upon him is not effective
23 unless the plaintiff or petitioner forthwith mails a copy of
24 the process and pleading by registered or certified mail to
25 the defendant or respondent at his last reasonably

1 ascertainable address. An affidavit of compliance with this
2 section shall be filed with the clerk of the court on or
3 before the return day of the process, if any, or within any
4 further time the court allows.

5 Section 10. General definitions. Subject to
6 additional definitions contained in subsequent sections, and
7 unless the context otherwise requires, in this chapter:

8 (1) "Action" includes recoupment, counterclaim, set-off
9 suit in equity, and any other proceeding in which rights are
10 determined, including an action for possession.

11 (2) "Building and housing codes" include any law,
12 ordinance, or governmental regulation concerning fitness for
13 habitation, or the construction, maintenance, operation,
14 occupancy, use, or appearance of any premises or dwelling
15 unit.

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

20 "DWELLING UNIT" IN THE CASE OF A PERSON WHO RENTS SPACE IN A
21 MOBILE HOME PARK BUT DOES NOT RENT THE MOBILE HOME MEANS THE
22 SPACE RENTED AND NOT THE MOBILE HOME ITSELF.

23 (4) "Good faith" means honesty, in fact, in the
24 conduct of the transaction concerned.

25 (5) "Landlord" means the owner, lessor, or sublessor

1 of the dwelling unit or the building of which it is a part,
2 and it also means a manager of the premises who fails to
3 disclose as required by section ~~2~~ 19 of this act.

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

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

11 (a) all or part of the legal title to property; or

12 (b) all or part of the beneficial ownership and a
13 right to present use and enjoyment of the premises. The
14 term includes a mortgagee in possession.

15 (8) "PERSON" INCLUDES AN INDIVIDUAL OR ORGANIZATION.

16 ~~(9)~~ (9) "Premises" means a dwelling unit and the
17 structure of which it is a part and facilities and
18 appurtenances therein and grounds, areas, and facilities
19 held out for the use of tenants generally or whose use is
20 promised to the tenant.

21 ~~(10)~~ (10) "Rent" means all payments to be made to the
22 landlord under the rental agreement.

23 ~~(11)~~ (11) "Rental agreement" means all agreements,
24 written or oral, and valid rules and regulations adopted
25 under section 24 embodying the terms and conditions

1 concerning the use and occupancy of a dwelling unit and
2 premises.

3 ~~(11)~~ (12) "Roomer" means a person occupying a dwelling
4 unit that does not include a toilet and either a bath tub or
5 a shower and a refrigerator, stove, and kitchen sink, all
6 provided by the landlord, and where one or more of these
7 facilities are used in common by occupants in the structure.

8 ~~(12)~~ (13) "Single family residence" means a structure
9 maintained and used as a single dwelling unit.
10 Notwithstanding that a dwelling unit shares one (1) or more
11 walls with another dwelling unit, it is a single family
12 residence if it has direct access to a street or
13 thoroughfare and shares neither heating facilities, hot
14 water equipment, nor any other essential facility or service
15 with any other dwelling unit.

16 ~~(13)~~ (14) "Tenant" means a person entitled under a
17 rental agreement to occupy a dwelling unit to the exclusion
18 of others.

19 Section 11. Obligation of good faith. Every duty
20 under this chapter and every act which must be performed as
21 a condition precedent to the exercise of a right or remedy
22 under this chapter imposes an obligation of good faith in
23 its performance or enforcement.

24 Section 12. Unconscionability. (1) If the court, as a
25 matter of law, finds:

1 (a) a rental agreement or any provision thereof was
2 unconscionable when made, the court may refuse to enforce
3 the agreement, enforce the remainder of the agreement
4 without the unconscionable provision, or limit the
5 application of any unconscionable provision to avoid an
6 unconscionable result; or

7 (b) a settlement in which a party waives or agrees to
8 forego a claim or right under this chapter or under a rental
9 agreement was unconscionable when made, the court may refuse
10 to enforce the settlement, enforce the remainder of the
11 settlement without the unconscionable provision, or limit
12 the application of any unconscionable provision to avoid an
13 unconscionable result.

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

19 Section 13. Notice. (1) A person has notice of a fact
20 if:

21 (a) he has actual knowledge of it;

22 (b) in the case of the landlord, it is delivered at
23 the place of business of the landlord through which the
24 rental agreement was made ~~or-at-any-place-held-out-by-him-as-~~
25 ~~the-place-for-receipt-of-the-communication;~~ or

1 (c) in the case of the LANDLORD OR tenant, it is
 2 delivered in hand to the LANDLORD OR tenant or mailed by
 3 registered or certified mail to him at the place held out by
 4 him as the place for receipt of the communication, or in the
 5 absence of such designation, to his last known ~~place-of~~
 6 residence ADDRESS.

7 (2) "Notice", knowledge or 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 individual conducting that transaction, and in any event
 11 from the time it would have been brought to his attention if
 12 the organization had exercised reasonable diligence.

13 Section 14. Terms and conditions of rental agreement.

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

19 (2) In absence of agreement, the tenant shall pay as
 20 rent the fair rental value AS DETERMINED BY THE LANDLORD for
 21 the use and occupancy of the dwelling unit.

22 (3) Rent is payable without demand or notice at the
 23 time and place agreed upon by the parties. Unless otherwise
 24 agreed, rent is payable at the dwelling unit and periodic
 25 rent is payable at the beginning of any term of one month or

1 less and otherwise in equal monthly installments at the
 2 beginning of each month. Unless otherwise agreed, rent is
 3 uniformly apportionable from day-to-day.

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

7 Section 15. Effect of unsigned or undelivered rental
 8 agreement. (1) If the landlord does not sign and deliver a
 9 written rental agreement signed and delivered to him by the
 10 tenant, acceptance of rent without reservation by the
 11 landlord gives the rental agreement the same effect as if it
 12 had been signed and delivered by the landlord.

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

18 (3) If a rental agreement given effect by the
 19 operation of this section provides for a term longer than
 20 one (1) year, it is effective for only one (1) year.

21 Section 16. Prohibited provisions in rental
 22 agreements. (1) A rental agreement may not provide that ~~the~~
 23 tenant A PARTY:

24 (a) agrees to waive or forego rights or remedies under
 25 this chapter;

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

3 (c) agrees to pay ~~the--landlord's~~ ANOTHER PARTY'S
4 attorney's fees; or

5 (d) agrees to the exculpation or limitation of any
6 liability ~~of--the-landlord~~ arising under-law AS A RESULT OF
7 THE OTHER PARTY'S WILLFUL MISCONDUCT OR NEGLIGENCE or to
8 indemnify the ~~landlord~~ OTHER PARTY for that liability or the
9 costs OR ATTORNEY'S FEES connected therewith.

10 (2) A provision prohibited by subsection (1) included
11 in a rental agreement is unenforceable. If a ~~landlord~~ PARTY
12 deliberately uses a rental agreement containing provisions
13 known by him to be prohibited, the tenant may recover in
14 addition to his actual damages an amount up to three (3)
15 months' periodic rent ~~and-reasonable-attorney's-fees.~~

16 Section 17. Separation of rents and obligations to
17 maintain property forbidden. A rental agreement,
18 assignment, conveyance, trust deed, or security instrument
19 may not permit the receipt of rent free of the obligation to
20 comply with section 21 of this act.

21 Section 18. Security deposits -- prepaid rent. (1) A
22 landlord may not demand or receive security, however
23 denominated, in any amount or value in excess of ~~one--(1)~~
24 ~~month's~~ TWO (2) MONTHS' periodic rent.

25 (2) Upon termination of the tenancy, property or money

1 held by the landlord as security may be applied to the
2 payment of accrued rent and the amount of damages which the
3 landlord has suffered by reason of the tenant's
4 noncompliance with section 23, all as itemized by the
5 landlord in a written notice, delivered to the tenant TO HIS
6 LAST KNOWN ADDRESS together with the amount due ~~fourteen~~
7 ~~(14)---days~~ NOT MORE THAN TWENTY-ONE (21) DAYS after
8 termination of the tenancy and delivery of possession and
9 demand by the tenant.

10 (3) If the landlord fails to comply with subsection
11 (2) or if he fails to return any prepaid rent required to be
12 paid to the tenants under this chapter the tenant may
13 recover the property and money due him together with damages
14 in an amount equal to twice the amount wrongfully withheld
15 ~~and-reasonable-attorney's-fees.~~

16 (4) This section does not preclude the landlord or
17 tenant from recovering other damages to which he may be
18 entitled under this chapter.

19 (5) The holder of the landlord's interest in the
20 premises at the time of the termination of the tenancy is
21 bound by this section.

22 SECTION 19. ATTORNEY FEES. IN ANY ACTION ON A RENTAL
23 AGREEMENT OR ARISING UNDER THIS ACT REASONABLE ATTORNEY FEES
24 MAY BE AWARDED TO THE PREVAILING PARTY TOGETHER WITH COSTS
25 AND NECESSARY DISBURSEMENTS, NOTWITHSTANDING ANY AGREEMENT

1 TO THE CONTRARY. AS USED IN THIS SECTION, "PREVAILING
2 PARTY" MEANS THE PARTY IN WHOSE FAVOR FINAL JUDGMENT IS
3 RENDERED.

4 Section 20. Disclosure. (1) A landlord or any person
5 authorized to enter into a rental agreement on his behalf
6 shall disclose to the tenant in writing at or before the
7 commencement of the tenancy, the name and address of:

- 8 (a) the person authorized to manage the premises; and
 - 9 (b) an owner of the premises or a person authorized to
- 10 act for and on behalf of the owner for the purpose of
11 service of process and receiving and receipting for notices
12 and demands.

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

17 (3) A person who fails to comply with subsection (1)
18 becomes an agent of each person who is a landlord for:

- 19 (a) service of process and receiving and receipting
- 20 for notices and demands; and
- 21 (b) performing the obligations of the landlord under
- 22 this chapter and under the rental agreement and expending or
- 23 making available for the purpose all rent collected from the
- 24 premises.

25 Section 21. Landlord to deliver possession of dwelling

1 unit. At the commencement of the term a landlord shall
2 deliver possession of the premises to the tenant in
3 compliance with the rental agreement and section 21 of this
4 act. The landlord may bring an action for possession
5 against any person wrongfully in possession and may recover
6 the damages provided in section 41 (3) of this act.

7 Section 22. Landlord to maintain premises. (1) A
8 landlord shall:

9 (a) comply with the requirements of applicable
10 building and housing codes materially affecting health and
11 safety IN ALL DWELLING UNITS WHERE CONSTRUCTION IS COMPLETED
12 AFTER THE EFFECTIVE DATE OF THIS ACT;

13 (b) make ~~all~~ repairs and do whatever is necessary to
14 put and keep the premises in a fit and habitable condition
15 AS DEFINED BY WRITTEN OR ORAL AGREEMENT WITH THE TENANT;

16 (c) keep all common areas of the premises in a clean
17 and safe condition;

18 (d) maintain in good and safe working order and
19 condition all electrical, plumbing, sanitary, heating,
20 ventilating, air-conditioning, and other facilities and
21 appliances, including elevators, supplied or required to be
22 supplied by him;

23 (e) provide and maintain appropriate receptacles and
24 conveniences for the removal of ashes, garbage, rubbish, and
25 other waste incidental to the occupancy of the dwelling unit

1 and arrange for their removal; and
 2 (f) supply running water and reasonable amounts of hot
 3 water at all times and reasonable heat between October 1 and
 4 May 1 except where the building that includes the dwelling
 5 unit is not required by law to be equipped for that purpose,
 6 or the dwelling unit is so constructed that heat or hot
 7 water is generated by an installation within the exclusive
 8 control of the tenant and supplied by a direct public
 9 utility connection.

10 (2) If the duty imposed by paragraph (a) of subsection
 11 (1) is greater than any duty imposed by any other paragraph
 12 of that subsection, the landlord's duty shall be determined
 13 by reference to paragraph (a) of subsection (1).

14 (3) The landlord and tenant of a single family
 15 residence may agree in writing that the tenant perform the
 16 landlord's duties specified in paragraphs (e) and (f) of
 17 subsection (1) and also specified repairs, maintenance
 18 tasks, alterations, and remodeling, but only if the
 19 transaction is entered into in good faith and not for the
 20 purpose of evading the obligations of the landlord.

21 (4) The landlord and tenant of any dwelling unit other
 22 than a single family residence may agree that the tenant is
 23 to perform specified repairs, maintenance tasks,
 24 alterations, or remodeling only if:

25 (a) the agreement of the parties is entered into in

1 good faith and not for the purpose of evading the
 2 obligations of the landlord and is set forth in a separate
 3 writing signed by the parties and supported by adequate
 4 consideration;

5 (b) the work is not necessary to cure noncompliance
 6 with subsection (1) (a) of this section; and

7 (c) the agreement does not diminish ~~or affect~~ the
 8 obligation of the landlord to other tenants in the premises.

9 ~~(5) The landlord may not treat performance of the~~
 10 ~~separate agreement described in subsection (4) as a~~
 11 ~~condition to any obligation or performance of any rental~~
 12 ~~agreement.~~

13 Section 23. Limitation of liability. (1) Unless
 14 otherwise agreed, a landlord who conveys premises that
 15 include a dwelling unit subject to a rental agreement in a
 16 good faith sale to a bona fide purchaser is relieved of
 17 liability under the rental agreement and this chapter as to
 18 events occurring after written notice to the tenant of the
 19 conveyance. However, he remains liable to the tenant for
 20 all security recoverable by the tenant under section 18 of
 21 this chapter and all prepaid rent.

22 (2) Unless otherwise agreed, a manager of premises
 23 that include a dwelling unit is relieved of liability under
 24 the rental agreement and this chapter as to events occurring
 25 after written notice to the tenant of the termination of his

1 management.

2 Section 24. Tenant to maintain dwelling unit. A
3 tenant shall: (1) comply with all obligations primarily
4 imposed upon tenants by applicable provisions of building
5 and housing codes materially affecting health and safety;

6 (2) keep that part of the premises that he occupies
7 and uses as clean and safe as the condition of the premises
8 permit;

9 (3) dispose from his dwelling unit all ashes, garbage,
10 rubbish, and other waste in a clean and safe manner;

11 (4) keep all plumbing fixtures in the dwelling unit or
12 used by the tenant as clean as their condition permits;

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

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

20 (7) conduct himself and require other persons on the
21 premises with his consent to conduct themselves in a manner
22 that will not disturb his neighbors' peaceful enjoyment of
23 the premises; AND

24 (8) USE THE PARTS OF THE PREMISES INCLUDING THE LIVING
25 ROOM, BEDROOM, KITCHEN, BATHROOM AND DINING ROOM IN A

1 REASONABLE MANNER CONSIDERING THE PURPOSES FOR WHICH THEY
2 WERE DESIGNED AND INTENDED.

3 Section 25. Rules and regulations. (1) A landlord,
4 from time to time, may adopt a rule or regulation, however
5 described, concerning the tenant's use and occupancy of the
6 premises. It is enforceable against the tenant only if:

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

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

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

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

19 (e) it is not for the purpose of evading the
20 obligations of the landlord; and

21 (f) the tenant has notice of it at the time he enters
22 into the rental agreement, or when it is adopted.

23 (2) If a rule or regulation is adopted after the
24 tenant enters into the rental agreement that works a
25 substantial modification of his bargain it is not valid

1 unless the tenant consents to it in writing.

2 Section 26. Access. (1) A tenant shall not
 3 unreasonably withhold consent to the landlord to enter into
 4 the dwelling unit in order to inspect the premises, make
 5 necessary or agreed repairs, decorations, alterations, or
 6 improvements, supply necessary or agreed services, or
 7 exhibit the dwelling unit to prospective or actual
 8 purchasers, mortgagees, tenants, workmen, or contractors.

9 (2) A landlord may enter the dwelling unit without
 10 consent of the tenant in case of emergency.

11 (3) A landlord shall not abuse the right of access or
 12 use it to harass the tenant. Except in case of emergency or
 13 unless it is impracticable to do so, the landlord shall give
 14 the tenant at least ~~two-(2)-days'~~ ONE-(1)-DAY'S TWENTY-FOUR
 15 (24) HOURS' notice of his intent to enter and may enter only
 16 at reasonable times.

17 (4) A landlord has no other right of access except:

18 (a) pursuant to court order;

19 (b) as permitted by sections 35 and 36 (2); or

20 (c) unless WHEN the tenant has abandoned or
 21 surrendered the premises.

22 Section 27. Tenant to use and occupy. Unless
 23 otherwise agreed, a tenant shall occupy his dwelling unit
 24 only as a dwelling unit. The rental agreement may require
 25 that the tenant notify the landlord of any anticipated

1 extended absence from the premises in excess of seven (7)
 2 days no later than the first day of the extended absence.

3 Section 28. Noncompliance by the landlord -- in
 4 general. (1) Except as provided in this chapter, if there
 5 is a material noncompliance by the landlord with the rental
 6 agreement or a noncompliance with section 21 materially
 7 affecting health and safety, the tenant may deliver a
 8 written notice to the landlord specifying the acts and
 9 omissions constituting the breach and that the rental
 10 agreement will terminate upon a date not less than thirty
 11 (30) days after receipt of the notice if the breach is not
 12 remedied in fourteen (14) days, and the rental agreement
 13 shall terminate as provided in the notice subject to the
 14 following:

15 (a) If the breach is remediable by repairs, the
 16 payment of damages or otherwise and the landlord adequately
 17 remedies the breach before the date specified in the notice,
 18 the rental agreement shall not terminate by reason of the
 19 breach.

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

1 (c) The tenant may not terminate for a condition
2 caused by HIMSELF, a member of his family, or other person
3 on the premises with his consent.

4 (2) Except as provided in this chapter, the tenant may
5 recover actual damages and obtain injunctive relief for any
6 noncompliance by the landlord with the rental agreement or
7 section 21. ~~If the landlord's noncompliance is willful, the~~
8 ~~tenant may recover reasonable attorney's fees.~~

9 (3) The remedy provided in subsection (2) is in
10 addition to any right of the tenant arising under subsection
11 (1).

12 (4) If the rental agreement is terminated, the
13 landlord shall return all security recoverable by the tenant
14 under section 18 of this chapter.

15 Section 29. Failure to deliver possession. (1) If the
16 landlord fails to deliver possession of the dwelling unit to
17 the tenant as provided in section 20 of this chapter, rent
18 abates until possession is delivered and the tenant may:

19 (a) terminate the rental agreement upon at least five
20 (5) days' written notice to the landlord and upon
21 termination the landlord shall return all prepaid rent and
22 security; or

23 (b) demand performance of the rental agreement by the
24 landlord and, if the tenant elects, maintain an action for
25 possession of the dwelling unit against the landlord or any

1 person wrongfully in possession and recover the actual
2 damages sustained by him.

3 (2) If a person's failure to deliver possession is
4 willful and not in good faith, an aggrieved person may
5 recover from that person an amount not more than three (3)
6 months' periodic rent or threefold the actual damages
7 sustained, whichever is greater, ~~and reasonable attorney's~~
8 ~~fees.~~

9 Section 30. Self-help DAMAGES for minor defects.

10 (1) If the landlord fails to comply with the rental
11 agreement or section 21 of this act, and the reasonable cost
12 of compliance is less than the ~~periodic rent~~ ONE (1) MONTH
13 RENT, the tenant may recover damages for the breach under
14 section 27(2) of this chapter. ~~or may notify the landlord of~~
15 ~~his intention to correct the condition at the landlord's~~
16 ~~expense. If the landlord fails to comply within fourteen~~
17 ~~(14) days after being notified by the tenant in writing or~~
18 ~~as promptly as conditions require in case of emergency, the~~
19 ~~tenant may cause the work to be done in a workmanlike manner~~
20 ~~and, after submitting to the landlord an itemized statement,~~
21 ~~deduct from his rent the actual and reasonable cost or the~~
22 ~~fair and reasonable value of the work, not exceeding the~~
23 ~~amount specified in this subsection.~~

24 (2) ~~A tenant may not repair at the landlord's expense~~
25 ~~if the condition was caused by the deliberate or negligent~~

~~act or omission of the tenant, a member of his family, or other person on the premises with his consent.~~

Section 31. Wrongful failure to supply heat, water, hot water, or essential services. (1) If contrary to the rental agreement or section 21 of this chapter the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential service, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electric, gas, and other essential service during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent; or

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; 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 paragraph

(c) of subsection (1) the tenant may recover the actual and reasonable cost or fair and reasonable value of the substitute housing not in excess of an amount equal to the periodic rent, and in any case under subsection (1) reasonable attorney's fees.

(3) If the tenant proceeds under this section, he may not proceed under section 27 or section 29 as to that breach.

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

Section 32. Landlord's noncompliance as defense to action for possession or rent. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement of this chapter. In that event the court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing, and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court, and the balance by the other party. THE COURT MAY AT ANY TIME RELEASE MONEY PAID INTO THE COURT TO EITHER PARTY IF THE PARTIES SO AGREE OR IF THE COURT FINDS A PARTY ENTITLED TO THE SUMS RELEASED. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession. ~~If the defense or counterclaim by the tenant is without merit and is not~~

~~raised--in--good--faith, the landlord may recover reasonable attorney's fees~~

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) but is not required to pay any rent into court.

Section 33. Fire or casualty damage. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within fourteen (14) days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

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

(2) If the rental agreement is terminated the landlord shall return all security recoverable under section 18 of this chapter and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

Section 34. Tenant's remedies for landlord's unlawful

ouster, exclusion, or diminution of service. If a landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than three (3) months' periodic rent or threefold the actual damages sustained by him, whichever is greater, ~~and reasonable--attorney's--fees~~. If the rental agreement is terminated the landlord shall return all security recoverable under section 18 and all prepaid rent.

Section 35. Landlord remedies -- noncompliance with rental agreement -- failure to pay rent. (1) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 23 materially affecting health and safety, the landlord may deliver a written notice to the tenant EITHER IN PERSON OR BY CERTIFIED MAIL, PURSUANT TO SECTION 13 OF THIS ACT, specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ~~thirty-(30)~~ FOURTEEN (14) days after receipt of the notice. If the breach is not remedied in ~~fourteen--(14)~~ TEN (10) days, the rental agreement shall terminate as provided in the notice subject

1 to the following. If the breach is remediable by repairs or
 2 the payment of damages or otherwise and the tenant
 3 adequately remedies the breach before the date specified in
 4 the notice, the rental agreement shall not terminate. If
 5 substantially the same act or omission which constituted a
 6 prior noncompliance of which notice was given recurs within
 7 six (6) months, the landlord may terminate the rental
 8 agreement upon at least ~~fourteen-(14)~~ TEN (10) days' written
 9 notice specifying the breach and the date of termination of
 10 the rental agreement.

11 (2) If rent is unpaid when due and the tenant fails to
 12 pay rent within ~~fourteen-(14)~~ TEN (10) days after written
 13 notice by the landlord of nonpayment and his intention to
 14 terminate the rental agreement if the rent is not paid
 15 within that period, the landlord may terminate the rental
 16 agreement ~~AND-TRIPLE-DAMAGES.~~

17 (3) Except as provided in this chapter, the landlord
 18 may recover actual damages and obtain injunctive relief for
 19 any noncompliance by the tenant with the rental agreement or
 20 section 23. If the tenant's noncompliance is willful the
 21 landlord may recover ~~reasonable--attorney's--fees~~ TRIPLE
 22 DAMAGES.

23 Section 36. Failure to maintain. If there is
 24 noncompliance by the tenant with section 23 materially
 25 affecting health and safety that can be remedied by repair,

1 replacement of a damaged item, or cleaning, and the tenant
 2 fails to comply as promptly as conditions require in case of
 3 emergency or within fourteen (14) days after written notice
 4 by the landlord specifying the breach and requesting that
 5 the tenant remedy it within that period of time, the
 6 landlord may enter the dwelling unit and cause the work to
 7 be done in a workmanlike manner and submit the itemized bill
 8 for the actual and reasonable cost or the fair and
 9 reasonable value thereof as rent on the next date periodic
 10 rent is due, or if the rental agreement has terminated, for
 11 immediate payment.

12 Section 37. Remedies for absence, nonuse, and
 13 abandonment. (1) If the rental agreement requires the
 14 tenant to give notice to the landlord of an anticipated
 15 extended absence in excess of seven (7) days, as required in
 16 section 26 and the tenant willfully fails to do so, the
 17 landlord may recover actual damages from the tenant.

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

21 (3) If the tenant abandons the dwelling unit, the
 22 landlord shall make reasonable efforts to rent it at a fair
 23 rental. If the landlord rents the dwelling unit for a term
 24 beginning before the expiration of the rental agreement, it
 25 terminates as of the date of the new tenancy. If the

1 landlord fails to use reasonable efforts to rent the
2 dwelling unit at a fair rental or if the landlord accepts
3 the abandonment as a surrender, the rental agreement is
4 deemed to be terminated by the landlord as of the date the
5 landlord has notice of the abandonment. If the tenancy is
6 from month-to-month or week-to-week, the term of the rental
7 agreement for this purpose is deemed to be a month or a
8 week, as the case may be.

9 Section 38. Waiver of landlord's right to terminate.
10 Acceptance of rent with knowledge of a default by the tenant
11 or acceptance of performance by him that varies from the
12 terms of the rental agreement constitutes a waiver of the
13 landlord's right to terminate the rental agreement for that
14 breach, unless otherwise agreed after the breach has
15 occurred.

16 Section 39. Landlord liens -- distraint for rent.

17 (1) A lien or security interest on behalf of the landlord
18 in the tenant's household goods is not enforceable unless
19 perfected before the effective date of this chapter. ~~IF THE
20 TENANT ABANDONS THE DWELLING, THE PROPERTY REMAINING THEREIN
21 SHALL BE CONSIDERED ABANDONED.~~

22 (2) Distraint for rent is abolished.

23 SECTION 40. DISPOSITION OF PERSONAL PROPERTY ABANDONED
24 BY TENANT. (1) IF A TENANCY TERMINATES BY MEANS INCLUDING
25 EXPIRATION OF A LEASE OF SURRENDER OR ABANDONMENT OF THE

1 PREMISES BUT NOT INCLUDING TERMINATION BY COURT ORDER, AND
2 THE LANDLORD REASONABLY BELIEVES THAT THE TENANT HAS
3 ABANDONED GOODS, CHATTELS OR PERSONAL PROPERTY WHICH THE
4 TENANT HAS LEFT UPON THE PREMISES, THE LANDLORD SHALL MAKE
5 REASONABLE ATTEMPTS TO NOTIFY THE TENANT IN WRITING THAT THE
6 PROPERTY MUST BE REMOVED FROM THE PREMISES OR FROM THE PLACE
7 OF SAFEKEEPING, IF THE LANDLORD HAS STORED THE GOODS AS
8 PROVIDED IN SUBSECTION (2) OF THIS SECTION, BY A SPECIFIED
9 DAY NOT LESS THAN 15 DAYS AFTER DELIVERY OF THE NOTICE OR
10 THE PROPERTY WILL BE SOLD OR OTHERWISE DISPOSED OF, AND IF
11 THE PROPERTY IS NOT REMOVED:

12 (A) THE LANDLORD MAY SELL THE PROPERTY AT A PUBLIC OR
13 PRIVATE SALE; OR

14 (B) THE LANDLORD MAY DESTROY OR OTHERWISE DISPOSE OF
15 THE PROPERTY IF HE REASONABLY DETERMINES THAT THE VALUE OF
16 THE PROPERTY IS SO LOW THAT THE COST OF STORAGE AND
17 CONDUCTING A PUBLIC SALE PROBABLY EXCEEDS THE AMOUNT THAT
18 WOULD BE REALIZED FROM THE SALE; OR

19 (C) THE LANDLORD MAY SELL CERTAIN ITEMS AND DESTROY OR
20 OTHERWISE DISPOSE OF THE REMAINING PROPERTY.

21 (2) AFTER NOTIFYING THE TENANT AS REQUIRED BY
22 SUBSECTION (1) OF THIS SECTION THE LANDLORD SHALL STORE ALL
23 GOODS, CHATTELS AND PERSONAL PROPERTY OF THE TENANT IN A
24 PLACE OF SAFEKEEPING AND SHALL EXERCISE REASONABLE CARE FOR
25 THE PROPERTY. THE LANDLORD MAY STORE THE PROPERTY IN A

1 COMMERCIAL STORAGE COMPANY, IN WHICH CASE THE STORAGE COST
 2 SHALL INCLUDE THE ACTUAL STORAGE CHARGE PLUS THE COST OF
 3 REMOVAL OF THE PROPERTY TO THE PLACE OF STORAGE.

4 (3) IF THE TENANT UPON THE RECEIPT OF THE NOTICE
 5 PROVIDED BY SUBSECTION (1) OF THIS SECTION OR OTHERWISE
 6 RESPONDS IN WRITING TO THE LANDLORD ON OR BEFORE THE DAY
 7 SPECIFIED IN THE NOTICE THAT HE INTENDS TO REMOVE HIS
 8 PROPERTY FROM THE PREMISES OR FROM THE PLACE OF SAFEKEEPING,
 9 IF THE LANDLORD HAS STORED THE GOODS AS PROVIDED IN
 10 SUBSECTION (2) OF THIS SECTION, AND DOES NOT DO SO WITHIN
 11 FIFTEEN (15) DAYS AFTER THE DELIVERY OF THE TENANT'S
 12 RESPONSE, WHICHEVER IS LATER, THE TENANT'S PROPERTY SHALL BE
 13 CONCLUSIVELY PRESUMED TO BE ABANDONED. IF THE TENANT
 14 REMOVES THE PROPERTY THE LANDLORD SHALL BE ENTITLED TO THE
 15 COST OF STORAGE FOR THE PERIOD THE PROPERTY REMAINS IN HIS
 16 SAFEKEEPING.

17 (4) THE LANDLORD SHALL NOT BE RESPONSIBLE FOR ANY LOSS
 18 TO THE TENANT RESULTING FROM STORAGE UNLESS THE LOSS WAS
 19 CAUSED BY THE LANDLORD'S DELIBERATE OR NEGLIGENT ACT. IN
 20 THE EVENT OF DELIBERATE AND MALICIOUS VIOLATION THE LANDLORD
 21 SHALL BE LIABLE FOR TWICE THE ACTUAL DAMAGES SUSTAINED BY
 22 THE TENANT.

23 (5) A PUBLIC OR PRIVATE SALE AUTHORIZED BY THIS
 24 SECTION SHALL BE CONDUCTED UNDER THE PROVISIONS OF
 25 SUBSECTION (3) OF SECTION 87A-9-504, R.C.M. 1947.

1 (6) THE LANDLORD MAY DEDUCT FROM THE PROCEEDS OF THE
 2 SALE THE REASONABLE COSTS OF NOTICE, STORAGE AND SALE AND
 3 REMIT TO THE TENANT THE REMAINING PROCEEDS, IF ANY, TOGETHER
 4 WITH AN ITEMIZED ACCOUNTING. IF THE TENANT CANNOT AFTER DUE
 5 DILIGENCE BE FOUND, THE REMAINING PROCEEDS SHALL BE
 6 DEPOSITED WITH THE COUNTY TREASURER OF THE COUNTY IN WHICH
 7 THE SALE OCCURRED, AND IF NOT CLAIMED WITHIN THREE YEARS
 8 SHALL REVERT TO THE GENERAL FUND OF THE COUNTY AVAILABLE FOR
 9 GENERAL PURPOSES.

10 Section 41. Remedy after termination. If the rental
 11 agreement is terminated, the landlord has a claim for
 12 possession and for rent and a separate claim for actual
 13 damages for breach of the rental agreement ~~and reasonable~~
 14 ~~attorney's fees as provided in section 34(3).~~

15 Section 42. Recovery of possession limited. A
 16 landlord may not recover or take possession of the dwelling
 17 unit by action or otherwise, including willful diminution of
 18 services to the tenant by interrupting or causing the
 19 interruption of heat, running water, hot water, electric,
 20 gas, or other essential service to the tenant, except in
 21 case of abandonment, surrender, or as permitted in this
 22 chapter.

23 Section 43. Periodic tenancy -- holdover remedies.
 24 (1) The landlord or the tenant may terminate a week-to-week
 25 tenancy by a written notice given to the other at least ten

1 (10) days before the termination date specified in the
2 notice.

3 (2) ~~The---landlord---or---the---tenant---may---terminate---a~~
4 ~~month-to-month-tenancy-by-a-written-notice-given-to-the~~
5 ~~other---at---least---sixty-(60)-days-before-the-periodic-rental~~
6 ~~date-specified-in-the-notice. THE LANDLORD OR THE TENANT MAY~~
7 ~~TERMINATE A MONTH-TO-MONTH TENANCY BY GIVING TO THE OTHER AT~~
8 ~~ANY TIME DURING THE TENANCY, AT LEAST 30 DAYS' NOTICE IN~~
9 ~~WRITING PRIOR TO THE DATE DESIGNATED IN THE NOTICE FOR THE~~
10 ~~TERMINATION OF THE TENANCY. THE TENANCY SHALL TERMINATE ON~~
11 ~~THE DATE DESIGNATED AND WITHOUT REGARD TO THE EXPIRATION OF~~
12 ~~THE PERIOD FOR WHICH, BY THE TERMS OF THE TENANCY, RENTS ARE~~
13 ~~TO BE PAID. UNLESS OTHERWISE AGREE, RENT IS UNIFORMLY~~
14 ~~APPORTIONABLE FROM DAY TO DAY.~~

15 (3) If the tenant remains in possession without the
16 landlord's consent after expiration of the term of the
17 rental agreement or its termination, the landlord may bring
18 an action for possession and if the tenant's holdover is
19 willful and not in good faith the landlord may also recover
20 an amount not more than three (3) month's periodic rent or
21 threefold the actual damages sustained by him, whichever is
22 greater, ~~and-reasonable-attorney's-fees~~. If the landlord
23 consents to the tenant's continued occupancy, section 14(4)
24 applies.

25 Section 44. Landlord and tenant remedies for REFUSAL

1 OR abuse of access. (1) If the tenant refuses to allow
2 lawful access, the landlord may obtain injunctive relief to
3 compel access, or terminate the rental agreement. In either
4 case the landlord may recover actual damages ~~and-reasonable~~
5 ~~attorney's-fees~~.

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

15 Section 45. Retaliatory conduct prohibited. (1) Except
16 as provided in this section, a landlord may not retaliate by
17 increasing rent or decreasing services or by bringing or
18 threatening to bring an action for possession after:

19 (a) the tenant has complained to a governmental agency
20 charged with responsibility for enforcement of a building or
21 housing code of a violation applicable to the premises
22 materially affecting health and safety; or

23 (b) the tenant has complained to the landlord of a
24 violation under section 21; or

25 (c) the tenant has organized or become a member of a

1 tenant's union or similar organization.

2 (2) If the landlord acts in violation of subsection
 3 (1), the tenant is entitled to the remedies provided in
 4 section 33 and has a defense in any retaliatory action
 5 against him for possession. In an action by or against the
 6 tenant, evidence of a complaint ~~within one (1) year~~ SIX (6)
 7 MONTHS before the alleged act of retaliation creates a
 8 REBUTTABLE presumption that the landlord's conduct was in
 9 retaliation. The presumption does not arise if the tenant
 10 made the complaint after notice of a proposed rent increase
 11 or diminution of services. "Presumption" FOR PURPOSES OF
 12 THIS SECTION "REBUTTABLE PRESUMPTION" means that the trier
 13 of fact must find the existence of the fact presumed unless
 14 and until evidence is introduced which would support a
 15 finding of its nonexistence.

16 (3) Notwithstanding subsections (1) and (2), a
 17 landlord may bring an action for possession if:

18 (a) the violation of the applicable building or
 19 housing code was caused primarily by lack of reasonable care
 20 by the tenant, a member of his family, or other person on
 21 the premises, with his consent; or

22 (b) the tenant is in default in rent; or

23 (c) compliance with the applicable building or housing
 24 code requires alteration, remodeling, or demolition which
 25 would effectively deprive the tenant of use of the dwelling

1 unit.

2 (4) The maintenance of an action under subsection (3)
 3 does not release the landlord from liability under section
 4 27(2).

5 Section 46. Savings clause. Transactions entered into
 6 before the effective date of this chapter, and not extended
 7 or renewed on and after that date, and the rights, duties,
 8 and interests flowing from them remain valid and may be
 9 terminated, completed, consummated, or enforced as required
 10 or permitted by any statute or other law amended or repealed
 11 by this chapter as though the repeal or amendment had not
 12 occurred.

13 Section 47. Severability. If any provision of this
 14 chapter or the application thereof to any person or
 15 circumstance is held invalid, the invalidity does not affect
 16 other provisions or application of this chapter which can be
 17 given effect without the invalid provision or application,
 18 and to this end the provisions of this chapter are
 19 severable.

20 Section 48. Repeals. Sections 42-201, 42-202, 42-204,
 21 42-205, 42-206, AND 42-207, ~~and--42-301--through--42-309,~~
 22 R.C.M. 1947, are repealed.

23 Section 49. The department of intergovernmental
 24 relations shall prepare a simplified summary version of the
 25 major provisions of this act and publish such summary in

1 each daily newspaper of the state twice, between sixty (60)
2 and thirty (30) days before the effective date of this act.

3 SECTION 50. THE ATTORNEY GENERAL SHALL PREPARE A MODEL
4 RESIDENTIAL RENTAL AGREEMENT FORM TO CONFORM TO THE
5 PROVISIONS OF THIS ACT. THE ATTORNEY GENERAL SHALL MAKE THE
6 FORMS AVAILABLE TO THE PUBLIC AT COST THROUGH THE OFFICE OF
7 THE SECRETARY OF STATE. THE ATTORNEY GENERAL SHALL ADD TO,
8 AMEND OR REVISE THE MODEL AGREEMENT FROM TIME TO TIME AS HE
9 DEEMS NECESSARY TO CONFORM TO CURRENT LEGAL DEVELOPMENTS.

10 Section 51. Effective date. This act ~~becomes~~ IS
11 effective on January 1, 1976. It applies to rental
12 agreements entered into, or extended or renewed, on and
13 after that date.

-End-