

1 *HB* BILL NO. *80*
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4 A BILL FOR AN ACT ENTITLED: "THE MONTANA RESIDENTIAL
 5 LANDLORD AND TENANT ACT OF 1977; REPEALING 42-201, 42-202,
 6 42-204, 42-205, 42-206, and 42-207, R.C.M. 1947."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. This chapter may be cited as
 10 "The Montana Residential Landlord and Tenant Act of 1977".

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

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

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

19 (b) to encourage landlords and tenants to maintain and
 20 improve the quality of housing.

21 Section 3. Supplementary principles of law applicable.
 22 Unless displaced by the provisions of this chapter, the
 23 principles of law and equity, including the law relating to
 24 capacity to contract, mutuality of obligations, principal
 25 and agent, real property, public health, safety and fire

1 prevention, estoppel, fraud, misrepresentation, duress,
 2 coercion, mistake, bankruptcy, or other validating or
 3 invalidating causes, supplement its provisions.

4 Section 4. Construction against implicit repeal. No
 5 part of this chapter is to be construed as impliedly
 6 repealed by subsequent legislation if that construction can
 7 reasonably be avoided.

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

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

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

19 Section 7. Territorial application. This chapter
 20 applies to, regulates, and determines rights, obligations,
 21 and remedies under a rental agreement, wherever made, for a
 22 dwelling unit located within this state.

23 Section 8. Exclusions from application of chapter.
 24 Unless created to avoid the application of this chapter, the
 25 following arrangements are not governed by this chapter:

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

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

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

11 (4) transient occupancy in a hotel or motel;

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

14 (6) occupancy under a rental agreement covering
15 premises used by the occupant primarily for commercial or
16 agricultural purposes; and

17 (7) occupancy by an employee of a landlord whose right
18 to occupancy is conditional upon employment in and about the
19 premises.

20 Section 9. General definitions. Subject to additional
21 definitions contained in subsequent sections and unless the
22 context otherwise requires, in this chapter the following
23 definitions apply:

24 (1) "Action" includes recoupment, counterclaim,
25 set-off suit in equity, and any other proceeding in which

1 rights are determined, including an action for possession.

2 (2) "Dwelling unit" means a structure or the part of a
3 structure that is used as a home, residence, or sleeping
4 place by a person who maintains a household or by two or
5 more persons who maintain a common household. "Dwelling
6 unit", in the case of a person who rents space in a mobile
7 home park but does not rent the mobile home, means the space
8 rented and not the mobile home itself.

9 (3) "Good faith" means honesty in fact in the conduct
10 of the transaction concerned.

11 (4) "Landlord" means the owner, lessor, or sublessor
12 of the dwelling unit or the building of which it is a part
13 and also means a manager of the premises who fails to
14 disclose his managerial position.

15 (5) "Organization" includes a corporation, government,
16 governmental subdivision or agency, business trust, estate,
17 trust, partnership or association, two or more persons
18 having a joint or common interest, and any other legal or
19 commercial entity.

20 (6) "Owner" means one or more persons, jointly or
21 severally, in whom is vested:

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

23 (b) all or part of the beneficial ownership and a
24 right to present use and enjoyment of the premises,
25 including a mortgagee in possession.

1 (7) "Person" includes an individual or organization.
 2 (8) "Premises" means a dwelling unit and the structure
 3 of which it is a part, the facilities and appurtenances
 4 therein, and the grounds, areas, and facilities held out for
 5 the use of tenants generally or promised for the use of a
 6 tenant.
 7 (9) "Rent" means all payments to be made to the
 8 landlord under the rental agreement.
 9 (10) "Rental agreement" means all agreements, written
 10 or oral, and valid rules adopted under [section 23]
 11 embodying the terms and conditions concerning the use and
 12 occupancy of a dwelling unit and premises.
 13 (11) "Roomer" means a person occupying a dwelling unit
 14 that does not include a toilet, a bathtub or a shower, a
 15 refrigerator, a stove, or a kitchen sink, all of which are
 16 provided by the landlord and one or more of these facilities
 17 are used in common by occupants in the structure.
 18 (12) "Single family residence" means a structure
 19 maintained and used as a single dwelling unit.
 20 Notwithstanding that a dwelling unit shares one or more
 21 walls with another dwelling unit, it is a single family
 22 residence if it has direct access to a street or
 23 thoroughfare and shares neither heating facilities, hot
 24 water equipment, nor any other essential facility or service
 25 with another dwelling unit.

1 (13) "Tenant" means a person entitled under a rental
 2 agreement to occupy a dwelling unit to the exclusion of
 3 others.
 4 Section 10. Obligation of good faith. Every duty under
 5 this chapter and every act which must be performed as a
 6 condition precedent to the exercise of a right or remedy
 7 under this chapter imposes an obligation of good faith in
 8 its performance or enforcement.
 9 Section 11. Unconscionability. (1) If the court, as a
 10 matter of law, finds that:
 11 (a) a rental agreement or any provision thereof is
 12 unconscionable, the court may refuse to enforce the
 13 agreement or enforce the remainder of the agreement without
 14 the unconscionable provision to avoid an unconscionable
 15 result; or
 16 (b) a settlement in which a party waives or agrees to
 17 forego a claim or right under this chapter or under a rental
 18 agreement is unconscionable, the court may refuse to enforce
 19 the settlement, enforce the remainder of the settlement
 20 without the unconscionable provision, or limit the
 21 application of any unconscionable provision to avoid an
 22 unconscionable result.
 23 (2) If unconscionability is put into issue by a party
 24 or by the court upon its own motion, the parties shall be
 25 afforded a reasonable opportunity to present evidence as to

1 the setting, purpose, and effect of the rental agreement or
2 settlement to aid the court in making the determination.

3 Section 12. Notice. (1) A person has notice of a fact
4 if:

- 5 (a) he has actual knowledge of it;
- 6 (b) in the case of a landlord, it is delivered at the
7 place of business of the landlord through which the rental
8 agreement was made; or
- 9 (c) in the case of a landlord or tenant, it is
10 delivered in hand to the landlord or tenant or mailed by
11 registered or certified mail to him at the place held out by
12 him as the place for receipt of the communication or, in the
13 absence of such designation, to his last known address.

14 (2) Notice received by an organization is effective
15 for a particular transaction from the time it is brought to
16 the attention of the individual conducting that transaction
17 and, in any event, from the time it would have been brought
18 to his attention if the organization had exercised
19 reasonable diligence.

20 Section 13. Terms and conditions of rental agreement.

21 (1) A landlord and a tenant may include in a rental
22 agreement terms and conditions not prohibited by this
23 chapter or other rule or law, including rent, term of the
24 agreement, and other provisions governing the rights and
25 obligations of the parties.

- 1 (2) Unless the rental agreement provides otherwise:
- 2 (a) the tenant shall pay as rent the fair rental value
3 for the use and occupancy of the dwelling unit as determined
4 by the landlord;
- 5 (b) rent is payable at the landlord's address;
- 6 (c) periodic rent is payable at the beginning of a
7 term of a month or less and otherwise in equal monthly
8 installments at the beginning of each month;
- 9 (d) rent is uniformly apportionable from day to day;
10 and
- 11 (e) the tenancy is week to week in the case of a
12 roomer who pays weekly rent and in all other cases month to
13 month.
- 14 (3) Rent is payable without demand or notice at the
15 time and place agreed upon by the parties or provided for by
16 subsection (2) of this section.

17 Section 14. Effect of unsigned or undelivered rental
18 agreement. (1) If the landlord does not sign and deliver a
19 written rental agreement signed and delivered to him by the
20 tenant, acceptance of rent without reservation by the
21 landlord gives the rental agreement the same effect as if it
22 had been signed and delivered by the landlord.

23 (2) If the tenant does not sign and deliver a written
24 rental agreement signed and delivered to him by the
25 landlord, acceptance of possession and payment of rent

1 without reservation gives the rental agreement the same
2 effect as if it had been signed and delivered by the tenant.

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

6 Section 15. Prohibited provisions in rental
7 agreements. (1) A rental agreement may not provide that a
8 party:

9 (a) agrees to waive or forego rights or remedies under
10 this chapter;

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

13 (c) agrees to the exculpation or limitation of
14 liability resulting from the other party's purposeful
15 misconduct or negligence or to indemnify the other party for
16 that liability or the costs or attorney's fees connected
17 therewith.

18 (2) A provision prohibited by subsection (1) included
19 in a rental agreement is unenforceable. If a party
20 purposefully uses a rental agreement containing provisions
21 known by him to be prohibited, the other party may recover,
22 in addition to his actual damages, an amount up to 3 months'
23 periodic rent.

24 Section 16. Separation of rents and obligations to
25 maintain property forbidden. A rental agreement or a

1 document related thereto may not permit the receipt of rent
2 free of the obligation to comply with [section 20].

3 Section 17. Attorney fees. In an action on a rental
4 agreement or arising under this chapter, reasonable attorney
5 fees, together with costs and necessary disbursements, may
6 be awarded to the prevailing party notwithstanding an
7 agreement to the contrary. As used in this section,
8 "prevailing party" means the party in whose favor final
9 judgment is rendered.

10 Section 18. Disclosure. (1) A landlord or a person
11 authorized to enter into a rental agreement on his behalf
12 shall disclose to the tenant in writing at or before the
13 commencement of the tenancy the name and address of:

14 (a) the person authorized to manage the premises; and

15 (b) the owner of the premises or a person authorized
16 to act for the owner for the purpose of service of process
17 and receiving notices and demands.

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

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

24 (a) the purpose of service of process and receiving
25 notices and demands; and

1 (b) the purpose of performing the obligations of the
2 landlord under this chapter and under the rental agreement
3 and expending or making available for that purpose all rent
4 collected from the premises.

5 Section 19. Landlord to deliver possession of dwelling
6 unit. At the commencement of the term, a landlord shall
7 deliver possession of the premises to the tenant in
8 compliance with the rental agreement and [section 20]. A
9 landlord may bring an action for possession against a person
10 wrongfully in possession.

11 Section 20. 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 in effect at the time of original construction in all
16 dwelling units where construction is completed after the
17 effective date of this act;

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

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

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

1 supplied by him;

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

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

13 (2) If the duty imposed by subsection (1) (a) of this
14 section is greater than a duty imposed by subsections (1) (b)
15 through (1) (f), a landlord's duty shall be determined by
16 reference to subsection (1) (a).

17 (3) A landlord and tenant of a one-, two-, or
18 three-family residence may agree in writing that the tenant
19 perform the landlord's duties specified in subsections
20 (1) (e) and (1) (f) of this section and specified repairs,
21 maintenance tasks, alteration, and remodeling but only if
22 the transaction is entered into in good faith and not for
23 the purpose of evading the obligations of the landlord.

24 (4) A landlord and tenant of a one-, two-, or
25 three-family residence may agree that the tenant is to

1 perform specified repairs, maintenance tasks, alterations,
2 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 the obligation of
11 the landlord to other tenants in the premises.

12 Section 21. Limitation of liability. (1) Unless
13 otherwise agreed, a landlord who conveys, in a good faith
14 sale to a bona fide purchaser, premises that include a
15 dwelling unit subject to a rental agreement is relieved of
16 liability under the rental agreement and this chapter as to
17 events occurring after written notice to the tenant of the
18 conveyance. He remains liable to the tenant for all security
19 recoverable by the tenant pursuant to 42-301 through 42-309
20 and all prepaid rent.

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

1 Section 22. Tenant to maintain dwelling unit. (1) A
2 tenant shall:

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

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

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

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

13 (e) 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 (f) conduct himself and require other persons on the
18 premises with his consent to conduct themselves in a manner
19 that will not disturb his neighbors' peaceful enjoyment of
20 the premises; and

21 (g) use the parts of the premises including the living
22 room, bedroom, kitchen, bathroom, and dining room in a
23 reasonable manner considering the purposes for which they
24 were designed and intended.

25 (2) A tenant may not destroy, deface, damage, impair,

1 or remove any part of the premises or permit any person to
2 do so.

3 Section 23. Landlord authorized to adopt rules. (1) A
4 landlord may adopt a rule concerning the tenant's use and
5 occupancy of the premises. A rule is enforceable against the
6 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 for 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 is adopted after a tenant enters into a
24 rental agreement that works a substantial modification of
25 his bargain, it is not valid until 7 days after notice to

1 the tenant in the case of a week to week tenancy or 30 days'
2 notice in the case of tenancies from month to month.

3 Section 24. Access to premises by landlord. (1) A
4 tenant may not unreasonably withhold consent to the landlord
5 or his agent to enter into the dwelling unit in order to
6 inspect the premises, make necessary or agreed repairs,
7 decorations, alterations, or improvements, supply necessary
8 or agreed services, or exhibit the dwelling unit to
9 prospective or actual purchasers, mortgagees, tenants,
10 workmen, or contractors.

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

13 (3) A landlord may not abuse the right of access or
14 use it to harass the tenant. Except in case of emergency or
15 unless it is impracticable to do so, the landlord shall give
16 the tenant at least 24 hours' notice of his intent to enter
17 and may enter only at reasonable times.

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

19 (a) pursuant to court order;

20 (b) as permitted by [sections 34 and 35 (2)]; or

21 (c) when the tenant has abandoned or surrendered the
22 premises.

23 Section 25. Use and occupancy by tenant — extended
24 absence. Unless otherwise agreed, a tenant shall occupy his
25 dwelling unit only as a dwelling unit. The rental agreement

1 may require that the tenant notify the landlord of an
2 anticipated extended absence from the premises in excess of
3 7 days no later than the first day of the extended absence.

4 Section 26. Noncompliance by the landlord generally.

5 (1) Except as provided in this chapter, if there is a
6 noncompliance with [section 20] affecting health and safety,
7 the tenant may deliver a written notice to the landlord
8 specifying the acts and omissions constituting the breach
9 and that the rental agreement will terminate upon a date not
10 less than 30 days after receipt of the notice if the breach
11 is not remedied in 14 days. The rental agreement terminates
12 as provided in the notice subject to the following
13 exceptions:

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

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

25 (c) The tenant may not terminate for a condition

1 caused by himself, a member of his family, or other persons
2 on the premises with his consent.

3 (2) Except as provided in this chapter, the tenant may
4 recover actual damages and obtain injunctive relief for any
5 noncompliance by the landlord with the rental agreement or
6 [section 20].

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

10 (4) If the rental agreement is terminated, the
11 landlord shall return all security recoverable by the tenant
12 pursuant to 42-301 through 42-309.

13 Section 27. 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 19], rent abates until
16 possession is delivered and the tenant may:

17 (a) terminate the rental agreement upon at least 5
18 days' written notice to the landlord and, upon termination,
19 the landlord shall return all prepaid rent and 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 a
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 purposeful and not in good faith, an aggrieved party may
2 recover from that person an amount not more than 3 months'
3 periodic rent or treble damages, whichever is greater.

4 Section 28. Damages for minor defects. If the landlord
5 fails to comply with the rental agreement or [section 20]
6 and the reasonable cost of compliance is less than the 1
7 month's rent, the tenant may recover damages for the breach
8 under [section 26 (2)].

9 Section 29. Purposeful failure to supply heat, water,
10 hot water, or essential services. (1) If contrary to the
11 rental agreement or [section 20] the landlord purposefully
12 or negligently fails to supply heat, running water, hot
13 water, electric, gas, or other essential services, the
14 tenant may give written notice to the landlord specifying
15 the breach and may:

16 (a) procure reasonable amounts of heat, hot water,
17 running water, electricity, gas, and other essential
18 services during the period of the landlord's noncompliance
19 and deduct their actual and reasonable cost from the rent;

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

22 (c) procure reasonable substitute housing during the
23 period of the landlord's noncompliance, in which case the
24 tenant is excused from paying rent for the period of the
25 landlord's noncompliance.

1 (2) If the tenant proceeds under this section, he may
2 not proceed under [section 26] or [section 28] as to that
3 breach.

4 (3) Rights of the tenant under this section do not
5 arise until he has given notice to the landlord and the
6 landlord has had a reasonable opportunity to correct the
7 conditions or if the conditions were caused by the act or
8 omission of the tenant, a member of his family, or other
9 person on the premises with his consent.

10 Section 30. Landlord's noncompliance as defense to
11 action for possession or rent. (1) In an action for
12 possession based upon nonpayment of the rent or in an action
13 for rent when the tenant is in possession, the tenant may
14 counterclaim for any amount he may recover under the rental
15 agreement or this chapter. The court from time to time may
16 order the tenant to pay into court all or part of the rent
17 accrued and thereafter accruing and shall determine the
18 amount due to each party. The party to whom a net amount is
19 owed shall be paid first from the money paid into court and
20 the balance by the other party. The court may at any time
21 release money paid into the court to either party if the
22 parties so agree or if the court finds a party entitled to
23 the sums released. If no rent remains due after application
24 of this section, judgment shall be entered for the tenant in
25 the action for possession.

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

5 Section 31. Fire or casualty damage. (1) If the
6 dwelling unit or premises are damaged or destroyed by fire
7 or casualty to an extent that enjoyment of the dwelling unit
8 is substantially impaired, the tenant may:

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

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

19 (2) This section does not apply when the fire and
20 casualty damage was caused by the purposeful or negligent
21 act of the tenant, the tenant's family, or guests.

22 (3) If the rental agreement is terminated, the
23 landlord shall return all security recoverable pursuant to
24 42-301 through 42-309 and all prepaid rent. Accounting for
25 rent in the event of termination or apportionment shall be

1 made as of the date of the fire or casualty.

2 Section 32. Tenant's remedies for landlord's unlawful
3 ouster, exclusion, or diminution of service. If a landlord
4 unlawfully removes or excludes the tenant from the premises
5 or purposefully diminishes services to the tenant by
6 interrupting or causing the interruption of heat, running
7 water, hot water, electricity, gas, or other essential
8 services, the tenant may recover possession or terminate the
9 rental agreement and, in either case, recover an amount not
10 more than 3 months' periodic rent or treble damages,
11 whichever is greater. If the rental agreement is terminated,
12 the landlord shall return all security recoverable pursuant
13 to 42-301 through 42-309 and all prepaid rent.

14 Section 33. Landlord remedies for noncompliance with
15 rental agreement or failure to pay rent. (1) Except as
16 provided in this chapter, if there is a noncompliance by the
17 tenant with the rental agreement or a noncompliance with
18 [section 22] affecting health and safety, the landlord may
19 deliver a written notice to the tenant pursuant to [section
20 12] specifying the acts and omissions constituting the
21 breach and that the rental agreement will terminate upon a
22 date not less than 14 days after receipt of the notice. If
23 the breach is not remedied within that time, the rental
24 agreement terminates as provided in the notice subject to
25 the following exceptions:

1 (a) If the breach is remediable by repairs, the
2 payment of damages, or otherwise and the tenant adequately
3 remedies the breach before the date specified in the notice,
4 the rental agreement does not terminate.

5 (b) If substantially the same act or omission which
6 constituted a prior noncompliance of which notice was given
7 recurs within 6 months, the landlord may terminate the
8 rental agreement upon at least 5 days' written notice
9 specifying the breach and the date of the termination of the
10 rental agreement.

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

16 (3) Except as provided in this chapter, the landlord
17 may recover actual damages and obtain injunctive relief for
18 any noncompliance by the tenant with the rental agreement or
19 [section 22]. If the tenant's noncompliance is purposeful,
20 the landlord may recover treble damages.

21 Section 34. Failure of tenant to maintain dwelling. If
22 there is noncompliance by the tenant with [section 22]
23 affecting health and safety that can be remedied by repair,
24 replacement of a damaged item, or cleaning and the tenant
25 fails to comply as promptly as conditions require in case of

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

10 Section 35. Remedies for absence, nonuse, and
11 abandonment. (1) If the rental agreement requires the tenant
12 to give notice to the landlord of an anticipated extended
13 absence in excess of 7 days, as provided for in [section
14 25], and the tenant fails to do so, the landlord may recover
15 actual damages from the tenant.

16 (2) During an absence of the tenant in excess of 7
17 days, the landlord may enter the dwelling unit at times
18 reasonably necessary.

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

1 the abandonment as a surrender, the rental agreement is
 2 terminated by the landlord as of the date the landlord has
 3 notice of the abandonment. If the tenancy is from month to
 4 month or week to week, the term of the rental agreement for
 5 this purpose is a month or a week, as the case may be.

6 Section 36. Waiver of landlord's right to terminate.
 7 Acceptance by the landlord of full payment of rent due with
 8 knowledge of a tenant's default or acceptance by the
 9 landlord of a tenant's performance that varies from the
 10 terms of the rental agreement constitutes a waiver of the
 11 landlord's right to terminate the rental agreement for that
 12 breach unless otherwise agreed after the breach has
 13 occurred. The acceptance of partial payment of rent due does
 14 not constitute a waiver of any right.

15 Section 37. Disposition of personal property abandoned
 16 by tenant. (1) If a tenancy terminates in any manner except
 17 by court order and the landlord reasonably believes the
 18 tenant has abandoned all personal property which the tenant
 19 has left on the premises, the landlord shall:

20 (a) make reasonable attempts to notify the tenant in
 21 writing that the property must be removed:

22 (i) from the premises; or

23 (ii) from the place of safekeeping if the landlord has
 24 stored the goods as provided in subsection (3) of this
 25 section; and

1 (b) specify a day not less than 15 days after delivery
 2 of a notice mailed by certified mail to the last known
 3 address of the tenant, at which specified time the property
 4 will be disposed of if not removed.

5 (2) The landlord may dispose of the property by:

6 (a) selling all or part of the property at a public or
 7 private sale; or

8 (b) destroying or otherwise disposing of all or part
 9 of the property if he reasonably believes the value of the
 10 property is so low that the cost of storage or sale exceeds
 11 the reasonable value thereof.

12 (3) After notifying the tenant as required by
 13 subsection (1) of this section, the landlord shall store all
 14 goods, chattels, and personal property of the tenant in a
 15 place of safekeeping and shall exercise reasonable care for
 16 the property. The landlord may store the property in a
 17 commercial storage company, in which case the storage cost
 18 includes the actual storage charge plus the cost of removal
 19 of the property to the place of storage.

20 (4) If the tenant, upon receipt of the notice provided
 21 in subsection (1) of this section, responds in writing to
 22 the landlord on or before the day specified in the notice
 23 that he intends to remove his property and does not do so
 24 within 15 days after delivery of the tenant's response, the
 25 tenant's property shall be conclusively presumed to be

1 abandoned. If the tenant removes the property, the landlord
2 is entitled to reasonable or actual storage costs for the
3 period the property remains in safekeeping plus the cost of
4 removal of the property to the place of storage.

5 (5) The landlord is not responsible for any loss to
6 the tenant resulting from storage unless the loss is caused
7 by the landlord's purposeful or negligent act. On the event
8 of purposeful violation, the landlord is liable for double
9 damages.

10 (6) A public or private sale authorized by this
11 section shall be conducted under the provisions of
12 87A-9-504 (3).

13 (7) The landlord may deduct from the proceeds of the
14 sale the reasonable costs of notice, storage, and sale and
15 must remit to the tenant the remaining proceeds, if any,
16 together with an itemized accounting. If the tenant cannot
17 after due diligence be found, the remaining proceeds shall
18 be deposited with the county treasurer of the county in
19 which the sale occurred and, if not claimed within 3 years,
20 shall revert to the general fund of the county available for
21 general purposes.

22 Section 38. Remedy after termination. If the rental
23 agreement is terminated, the landlord has a claim for
24 possession and for rent and a separate claim for actual
25 damages for any breach of the rental agreement.

1 Section 39. Recovery of possession limited. Except in
2 the case of abandonment, surrender, or as permitted in this
3 chapter, a landlord may not recover or take possession of
4 the dwelling unit by action or otherwise, including
5 purposeful diminution of services to the tenant by
6 interrupting or causing the interruption of heat, running
7 water, hot water, electricity, gas, or other essential
8 services.

9 Section 40. Termination of tenancy — holdover
10 remedies. (1) The landlord or the tenant may terminate a
11 week-to-week tenancy by a written notice given to the other
12 at least 7 days before the termination date specified in the
13 notice.

14 (2) The landlord or the tenant may terminate a
15 month-to-month tenancy by giving to the other at any time
16 during the tenancy at least 30 days' notice in writing prior
17 to the date designated in the notice for the termination of
18 the tenancy. The tenancy terminates on the date designated
19 and without regard to the expiration of the period for
20 which, by the terms of the tenancy, rents are to be paid.
21 Unless otherwise agreed, rent is uniformly apportionable
22 from day to day.

23 (3) If the tenant remains in possession without the
24 landlord's consent after expiration of the term of the
25 rental agreement or its termination, the landlord may bring

1 an action for possession. If the tenant's holdover is
 2 purposeful and not in good faith, the landlord may recover
 3 an amount not more than 3 months' periodic rent or treble
 4 damages, whichever is greater. If the landlord consents to
 5 the tenant's continued occupancy, [section 13(4)] applies.

6 Section 41. Landlord and tenant remedies for refusal
 7 or abuse of access. (1) If the tenant refuses to allow
 8 lawful access, the landlord may either obtain injunctive
 9 relief to compel access or terminate the rental agreement.
 10 In either case the landlord may recover actual damages.

11 (2) If the landlord makes an unlawful entry or a
 12 lawful entry in an unreasonable manner or makes repeated
 13 demands for entry otherwise lawful but which have the effect
 14 of unreasonably harassing the tenant, the tenant may either
 15 obtain injunctive relief to prevent the recurrence of the
 16 conduct or terminate the rental agreement. In either case
 17 the tenant may recover actual damages.

18 Section 42. Retaliatory conduct prohibited. (1) Except
 19 as provided in this section, a landlord may not retaliate by
 20 increasing rent, decreasing services, or by bringing or
 21 threatening to bring an action for possession after the
 22 tenant:

23 (a) has complained of a violation applicable to the
 24 premises materially affecting health and safety to a
 25 governmental agency charged with responsibility for

1 enforcement of a building or housing code;

2 (b) has complained to the landlord in writing of a
 3 violation under [section 20]; or

4 (c) has organized or become a member of a tenant's
 5 union or similar organization.

6 (2) If the landlord acts in violation of subsection
 7 (1) of this section, the tenant is entitled to the remedies
 8 provided in [section 32] and has a defense in any
 9 retaliatory action against him for possession. In an action
 10 by or against the tenant, evidence of a complaint within 6
 11 months before the alleged act of retaliation creates a
 12 rebuttable presumption that the landlord's conduct was in
 13 retaliation. The presumption does not arise if the tenant
 14 made the complaint after notice of a proposed rent increase
 15 or diminution of services. For purposes of this section,
 16 "rebuttable presumption" means that the trier of fact must
 17 find the existence of the fact presumed unless and until
 18 evidence is introduced which would support a finding of its
 19 nonexistence.

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

22 (a) the violation of the applicable building or
 23 housing code was caused primarily by lack of reasonable care
 24 by the tenant, a member of his family, or other persons on
 25 the premises with his consent;

1 (b) the tenant is in default in rent; or
 2 (c) compliance with the applicable building or housing
 3 code requires alteration, remodeling, or demolition which
 4 would effectively deprive the tenant of use of the dwelling
 5 unit.
 6 (4) The maintenance of an action under subsection (3)
 7 of this section does not release the landlord from liability
 8 under [section 27 (2)].
 9 Section 43. Savings clause. Transactions entered into
 10 before July 1, 1977, and not extended or renewed on or after
 11 that date and the rights, duties, and interests flowing from
 12 them remain valid and may be terminated, completed,
 13 consummated, or enforced as required or permitted by any
 14 statute or other law amended or repealed by this chapter as
 15 though the repeal or amendment had not occurred.
 16 Section 44. Severability. If a part of this act is
 17 invalid, all valid parts that are severable from the invalid
 18 part remain in effect. If a part of this act is invalid in
 19 one or more of its applications, the part remains in effect
 20 in all valid applications that are severable from the
 21 invalid applications.
 22 Section 45. Repealer. Sections 42-201, 42-202, 42-204,
 23 42-205, 42-206, and 42-207, R.C.M. 1947, are repealed.
 24 Section 46. Summary of act — publication. The
 25 department of community affairs shall prepare a simplified

1 summary version of the major provisions of this act and
 2 publish such summary in each daily newspaper of the state
 3 twice between 30 and 60 days before July 1, 1977.
 4 Section 47. Effective date. This act is effective on
 5 July 1, 1977. It applies to rental agreements entered into,
 6 extended, or renewed on and after that date.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 80

INTRODUCED BY PALMER, O'KEEFE,
COONEY, DASSINGER, WALDRON, LOBY, FAGG

A BILL FOR AN ACT ENTITLED: "THE MONTANA RESIDENTIAL
LANDLORD AND TENANT ACT OF 1977; REPEALING 42-201, 42-202,
42-204, 42-205, 42-206, and 42-207, R.C.M. 1947."

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

Section 1. Short title. This chapter may be cited as
"The Montana Residential Landlord and Tenant Act of 1977".

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; and

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

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 causes, supplement its provisions.

Section 4. Construction against implicit repeal. No
part of this chapter 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) A 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.

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

Section 8. Exclusions from application of chapter.
Unless created to avoid the application of this chapter, the

1 following arrangements are not governed by this chapter:

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

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

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

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

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

15 (6) occupancy under a rental agreement covering
16 premises used by the occupant primarily for commercial or
17 agricultural purposes; and

18 (7) occupancy by an employee of a landlord whose right
19 to occupancy is conditional upon employment in and about the
20 premises.

21 Section 9. General definitions. Subject to additional
22 definitions contained in subsequent sections and unless the
23 context otherwise requires, in this chapter the following
24 definitions apply:

25 (1) "Action" includes recoupment, counterclaim,

1 set-off suit in equity, and any other proceeding in which
2 rights are determined, including an action for possession.

3 (2) "Dwelling unit" means a structure or the part of a
4 structure that is used as a home, residence, or sleeping
5 place by a person who maintains a household or by two or
6 more persons who maintain a common household. "Dwelling
7 unit", in the case of a person who rents space in a mobile
8 home park but does not rent the mobile home, means the space
9 rented and not the mobile home itself.

10 (3) "Good faith" means honesty in fact in the conduct
11 of the transaction concerned.

12 (4) "Landlord" means the owner, lessor, or sublessor
13 of the dwelling unit or the building of which it is a part
14 and also means a manager of the premises who fails to
15 disclose his managerial position.

16 (5) "Organization" includes a corporation, government,
17 governmental subdivision or agency, business trust, estate,
18 trust, partnership or association, two or more persons
19 having a joint or common interest, and any other legal or
20 commercial entity.

21 (6) "Owner" means one or more persons, jointly or
22 severally, in whom is vested:

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

24 (b) all or part of the beneficial ownership and a
25 right to present use and enjoyment of the premises,

1 including a mortgagee in possession.

2 (7) "Person" includes an individual or organization.

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

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

10 (10) "Rental agreement" means all agreements, written
11 or oral, and valid rules adopted under [section 23]
12 embodying the terms and conditions concerning the use and
13 occupancy of a dwelling unit and premises.

14 (11) "Roomer" means a person occupying a dwelling unit
15 that does not include a toilet, a bathtub or a shower, a
16 refrigerator, a stove, or a kitchen sink, all of which are
17 provided by the landlord and one or more of these facilities
18 are used in common by occupants in the structure.

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

1 with another dwelling unit.

2 (13) "Tenant" means a person entitled under a rental
3 agreement to occupy a dwelling unit to the exclusion of
4 others.

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

10 Section 11. Unconscionability. (1) If the court, as a
11 matter of law, finds that:

12 (a) a rental agreement or any provision thereof is
13 unconscionable, the court may refuse to enforce the
14 agreement or enforce the remainder of the agreement without
15 the unconscionable provision to avoid an unconscionable
16 result; or

17 (b) a settlement in which a party waives or agrees to
18 forego a claim or right under this chapter or under a rental
19 agreement is unconscionable, the court may refuse to enforce
20 the settlement, enforce the remainder of the settlement
21 without the unconscionable provision, or limit the
22 application of any unconscionable provision to avoid an
23 unconscionable result.

24 (2) If unconscionability is put into issue by a party
25 or by the court upon its own motion, the parties shall be

1 afforded a reasonable opportunity to present evidence as to
2 the setting, purpose, and effect of the rental agreement or
3 settlement to aid the court in making the determination.

4 Section 12. Notice. (1) A person has notice of a fact
5 if:

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

15 (2) Notice received by an organization is effective
16 for a particular transaction from the time it is brought to
17 the attention of the individual conducting that transaction
18 and, in any event, from the time it would have been brought
19 to his attention if the organization had exercised
20 reasonable diligence.

21 Section 13. Terms and conditions of rental agreement.
22 (1) A landlord and a tenant may include in a rental
23 agreement terms and conditions not prohibited by this
24 chapter or other rule or law, including rent, term of the
25 agreement, and other provisions governing the rights and

1 obligations of the parties.

2 (2) Unless the rental agreement provides otherwise:

- 3 (a) the tenant shall pay as rent the fair rental value
4 for the use and occupancy of the dwelling unit as determined
5 by the landlord;
- 6 (b) rent is payable at the landlord's address;
- 7 (c) periodic rent is payable at the beginning of a
8 term of a month or less and otherwise in equal monthly
9 installments at the beginning of each month;
- 10 (d) rent is uniformly apportionable from day to day;
11 and

12 (e) the tenancy is week to week in the case of a
13 roomer who pays weekly rent and in all other cases month to
14 month.

15 (3) Rent is payable without demand or notice at the
16 time and place agreed upon by the parties or provided for by
17 subsection (2) of this section.

18 Section 14. Effect of unsigned or undelivered rental
19 agreement. (1) If the landlord does not sign and deliver a
20 written rental agreement signed and delivered to him by the
21 tenant, acceptance of rent without reservation by the
22 landlord gives the rental agreement the same effect as if it
23 had been signed and delivered by the landlord.

24 (2) If the tenant does not sign and deliver a written
25 rental agreement signed and delivered to him by the

1 landlord, acceptance of possession and payment of rent
 2 without reservation gives the rental agreement the same
 3 effect as if it had been signed and delivered by the tenant.

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

7 Section 15. Prohibited provisions in rental
 8 agreements. (1) A rental agreement may not provide that a
 9 party:

10 (a) agrees to waive or forego rights or remedies under
 11 this chapter;

12 (b) authorizes any person to confess judgment on a
 13 claim arising out of the rental agreement; or

14 (c) agrees to the exculpation or limitation of
 15 liability resulting from the other party's purposeful
 16 misconduct or negligence or to indemnify the other party for
 17 that liability or the costs or attorney's fees connected
 18 therewith.

19 (2) A provision prohibited by subsection (1) included
 20 in a rental agreement is unenforceable. If a party
 21 purposefully uses a rental agreement containing provisions
 22 known by him to be prohibited, the other party may recover,
 23 in addition to his actual damages, an amount up to 3 months'
 24 periodic rent.

25 Section 16. Separation of rents and obligations to

1 maintain property forbidden. A rental agreement or a
 2 document related thereto may not permit the receipt of rent
 3 free of the obligation to comply with [section 20].

4 Section 17. Attorney fees. In an action on a rental
 5 agreement or arising under this chapter, reasonable attorney
 6 fees, together with costs and necessary disbursements, may
 7 be awarded to the prevailing party notwithstanding an
 8 agreement to the contrary. As used in this section,
 9 "prevailing party" means the party in whose favor final
 10 judgment is rendered.

11 Section 18. Disclosure. (1) A landlord or a person
 12 authorized to enter into a rental agreement on his behalf
 13 shall disclose to the tenant in writing at or before the
 14 commencement of the tenancy the name and address of:

15 (a) the person authorized to manage the premises; and

16 (b) the owner of the premises or a person authorized
 17 to act for the owner for the purpose of service of process
 18 and receiving notices and demands.

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

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

25 (a) the purpose of service of process and receiving

1 notices and demands; and

2 (b) the purpose of performing the obligations of the
3 landlord under this chapter and under the rental agreement
4 and expending or making available for that purpose all rent
5 collected from the premises.

6 Section 19. Landlord to deliver possession of dwelling
7 unit. At the commencement of the term, a landlord shall
8 deliver possession of the premises to the tenant in
9 compliance with the rental agreement and [section 20]. A
10 landlord may bring an action for possession against a person
11 wrongfully in possession.

12 Section 20. Landlord to maintain premises. (1) A
13 landlord shall:

14 (a) comply with the requirements of applicable
15 building and housing codes materially affecting health and
16 safety in effect at the time of original construction in all
17 dwelling units where construction is completed after the
18 effective date of this act;

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

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

23 (d) maintain in good and safe working order and
24 condition all electrical, plumbing, sanitary, heating,
25 ventilating, air-conditioning, and other facilities and

1 appliances, including elevators, supplied or required to be
2 supplied by him;

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

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

14 (2) If the duty imposed by subsection (1) (a) of this
15 section is greater than a duty imposed by subsections (1) (b)
16 through (1) (f), a landlord's duty shall be determined by
17 reference to subsection (1) (a).

18 (3) A landlord and tenant of a one-, two-, or
19 three-family residence may agree in writing that the tenant
20 perform the landlord's duties specified in subsections
21 (1) (e) and (1) (f) of this section and specified repairs,
22 maintenance tasks, alteration, and remodeling but only if
23 the transaction is entered into in good faith and not for
24 the purpose of evading the obligations of the landlord.

25 (4) A landlord and tenant of a one-, two-, or

1 three-family residence may agree that the tenant is to
2 perform specified repairs, maintenance tasks, alterations,
3 or remodeling only if:

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

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

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

13 Section 21. Limitation of liability. (1) Unless
14 otherwise agreed, a landlord who conveys, in a good faith
15 sale to a bona fide purchaser, premises that include a
16 dwelling unit subject to a rental agreement 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. He remains liable to the tenant for all security
20 recoverable by the tenant pursuant to 42-301 through 42-309
21 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 22. Tenant to maintain dwelling unit. (1) A
3 tenant shall:

4 (a) comply with all obligations primarily imposed upon
5 tenants by applicable provisions of building and housing
6 codes materially affecting health and safety;

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

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

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

14 (e) 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 (f) conduct himself and require other persons on the
19 premises with his consent to conduct themselves in a manner
20 that will not disturb his neighbors' peaceful enjoyment of
21 the premises; and

22 (g) use the parts of the premises including the living
23 room, bedroom, kitchen, bathroom, and dining room in a
24 reasonable manner considering the purposes for which they
25 were designed and intended.

1 (2) A tenant may not destroy, deface, damage, impair,
2 or remove any part of the premises or permit any person to
3 do so.

4 Section 23. Landlord authorized to adopt rules. (1) A
5 landlord may adopt a rule concerning the tenant's use and
6 occupancy of the premises. A rule is enforceable against the
7 tenant only if:

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

13 (b) it is reasonably related to the purpose for which
14 it is adopted;

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

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

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

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

24 (2) If a rule is adopted after a tenant enters into a
25 rental agreement that works a substantial modification of

1 his bargain, it is not valid until 7 days after notice to
2 the tenant in the case of a week to week tenancy or 30 days'
3 notice in the case of tenancies from month to month.

4 Section 24. Access to premises by landlord. (1) A
5 tenant may not unreasonably withhold consent to the landlord
6 or his agent to enter into the dwelling unit in order to
7 inspect the premises, make necessary or agreed repairs,
8 decorations, alterations, or improvements, supply necessary
9 or agreed services, or exhibit the dwelling unit to
10 prospective or actual purchasers, mortgagees, tenants,
11 workmen, or contractors.

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

14 (3) A landlord may not abuse the right of access or
15 use it to harass the tenant. Except in case of emergency or
16 unless it is impracticable to do so, the landlord shall give
17 the tenant at least 24 hours' notice of his intent to enter
18 and may enter only at reasonable times.

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

20 (a) pursuant to court order;

21 (b) as permitted by [sections 34 and 35(2)]; or

22 (c) when the tenant has abandoned or surrendered the
23 premises.

24 Section 25. Use and occupancy by tenant -- extended
25 absence. Unless otherwise agreed, a tenant shall occupy his

1 dwelling unit only as a dwelling unit. The rental agreement
 2 may require that the tenant notify the landlord of an
 3 anticipated extended absence from the premises in excess of
 4 7 days no later than the first day of the extended absence.

5 Section 26. Noncompliance by the landlord generally.
 6 (1) Except as provided in this chapter, if there is a
 7 noncompliance with [section 20] affecting health and safety,
 8 the tenant may:

9 [A] deliver a written notice to the landlord
 10 specifying the acts and omissions constituting the breach
 11 and that the rental agreement will terminate upon a date not
 12 less than 30 days after receipt of the notice if the breach
 13 is not remedied in 14 days. The rental agreement terminates
 14 as provided in the notice subject to the following
 15 exceptions:

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

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

1 agreement.

2 ~~(c) (III)~~ The tenant may not terminate for a condition
 3 caused by himself, a member of his family, or other persons
 4 on the premises with his consent.

5 (B) MAKE REPAIRS HIMSELF THAT DO NOT COST MORE THAN
 6 ONE MONTH'S RENT AND DEDUCT THE COST FROM THE RENT IF HE HAS
 7 GIVEN THE LANDLORD NOTICE AND HE HAS NOT MADE THE REPAIRS
 8 WITHIN A REASONABLE TIME.

9 (2) Except as provided in this chapter, the tenant may
 10 recover actual damages and obtain injunctive relief for any
 11 noncompliance by the landlord with the rental agreement or
 12 [section 20].

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

16 (4) If the rental agreement is terminated, the
 17 landlord shall return all security recoverable by the tenant
 18 pursuant to 42-301 through 42-309.

19 Section 27. Failure to deliver possession. (1) If the
 20 landlord fails to deliver possession of the dwelling unit to
 21 the tenant as provided in [section 19], rent abates until
 22 possession is delivered and the tenant may:

23 (a) terminate the rental agreement upon at least 5
 24 days' written notice to the landlord and, upon termination,
 25 the landlord shall return all prepaid rent and security; or

1 (b) demand performance of the rental agreement by the
2 landlord and, if the tenant elects, maintain an action for
3 possession of the dwelling unit against the landlord or a
4 person wrongfully in possession and recover the actual
5 damages sustained by him.

6 (2) If a person's failure to deliver possession is
7 purposeful and not in good faith, an aggrieved party may
8 recover from that person an amount not more than 3 months'
9 periodic rent or treble damages, whichever is greater.

10 Section 28. Damages for minor defects. If the landlord
11 fails to comply with the rental agreement or [section 20]
12 and the reasonable cost of compliance is less than the 1
13 month's rent, the tenant may recover damages for the breach
14 under [section 26(2)].

15 Section 29. Purposeful failure to supply heat, water,
16 hot water, or essential services. (1) If contrary to the
17 rental agreement or [section 20] the landlord purposefully
18 or negligently fails to supply heat, running water, hot
19 water, electric, gas, or other essential services, the
20 tenant may give written notice to the landlord specifying
21 the breach and may:

22 (a) procure reasonable amounts of heat, hot water,
23 running water, electricity, gas, and other essential
24 services during the period of the landlord's noncompliance
25 and deduct their actual and reasonable cost from the rent;

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

3 (c) procure reasonable substitute housing during the
4 period of the landlord's noncompliance, in which case the
5 tenant is excused from paying rent for the period of the
6 landlord's noncompliance.

7 (2) If the tenant proceeds under this section, he may
8 not proceed under [section 26] or [section 28] as to that
9 breach.

10 (3) Rights of the tenant under this section do not
11 arise until he has given notice to the landlord and the
12 landlord has had a reasonable opportunity to correct the
13 conditions or if the conditions were caused by the act or
14 omission of the tenant, a member of his family, or other
15 person on the premises with his consent.

16 Section 30. Landlord's noncompliance as defense to
17 action for possession or rent. (1) In an action for
18 possession based upon nonpayment of the rent or in an action
19 for rent when the tenant is in possession, the tenant may
20 counterclaim for any amount he may recover under the rental
21 agreement or this chapter. The court from time to time may
22 order the tenant to pay into court all or part of the rent
23 accrued and thereafter accruing and shall determine the
24 amount due to each party. The party to whom a net amount is
25 owed shall be paid first from the money paid into court and

1 the balance by the other party. The court may at any time
2 release money paid into the court to either party if the
3 parties so agree or if the court finds a party entitled to
4 the sums released. If no rent remains due after application
5 of this section, judgment shall be entered for the tenant in
6 the action for possession.

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

11 Section 31. Fire or casualty damage. (1) If the
12 dwelling unit or premises are damaged or destroyed by fire
13 or casualty to an extent that enjoyment of the dwelling unit
14 is substantially impaired, the tenant may:

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

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

25 (2) This section does not apply when the fire and

1 casualty damage was caused by the purposeful or negligent
2 act of the tenant, the tenant's family, or guests.

3 (3) If the rental agreement is terminated, the
4 landlord shall return all security recoverable pursuant to
5 42-301 through 42-309 and all prepaid rent. Accounting for
6 rent in the event of termination or apportionment shall be
7 made as of the date of the fire or casualty.

8 Section 32. Tenant's remedies for landlord's unlawful
9 ouster, exclusion, or diminution of service. If a landlord
10 unlawfully removes or excludes the tenant from the premises
11 or purposefully diminishes services to the tenant by
12 interrupting or causing the interruption of heat, running
13 water, hot water, electricity, gas, or other essential
14 services, the tenant may recover possession or terminate the
15 rental agreement and, in either case, recover an amount not
16 more than 3 months' periodic rent or treble damages,
17 whichever is greater. If the rental agreement is terminated,
18 the landlord shall return all security recoverable pursuant
19 to 42-301 through 42-309 and all prepaid rent.

20 Section 33. Landlord remedies for noncompliance with
21 rental agreement or failure to pay rent. (1) Except as
22 provided in this chapter, if there is a noncompliance by the
23 tenant with the rental agreement or a noncompliance with
24 [section 22] affecting health and safety, the landlord may
25 deliver a written notice to the tenant pursuant to [section

1 12] specifying the acts and omissions constituting the
 2 breach and that the rental agreement will terminate upon a
 3 date not less than 14 days after receipt of the notice. If
 4 the breach is not remedied within that time, the rental
 5 agreement terminates as provided in the notice subject to
 6 the following exceptions:

7 (a) If the breach is remediable by repairs, the
 8 payment of damages, or otherwise and the tenant adequately
 9 remedies the breach before the date specified in the notice,
 10 the rental agreement does not terminate.

11 (b) If substantially the same act or omission which
 12 constituted a prior noncompliance of which notice was given
 13 recurs within 6 months, the landlord may terminate the
 14 rental agreement upon at least 5 days' written notice
 15 specifying the breach and the date of the termination of the
 16 rental agreement.

17 (2) If rent is unpaid when due and the tenant fails to
 18 pay rent within 3 days after written notice by the landlord
 19 of nonpayment and his intention to terminate the rental
 20 agreement if the rent is not paid within that period, the
 21 landlord may terminate the rental agreement.

22 (3) Except as provided in this chapter, the landlord
 23 may recover actual damages and obtain injunctive relief for
 24 any noncompliance by the tenant with the rental agreement or
 25 [section 22]. If the tenant's noncompliance is purposeful,

1 the landlord may recover treble damages.

2 Section 34. Failure of tenant to maintain dwelling. If
 3 there is noncompliance by the tenant with [section 22]
 4 affecting health and safety that can be remedied by repair,
 5 replacement of a damaged item, or cleaning and the tenant
 6 fails to comply as promptly as conditions require in case of
 7 emergency or within 14 days after written notice by the
 8 landlord specifying the breach and requesting that the
 9 tenant remedy it within that period of time, the landlord
 10 may enter the dwelling unit and cause the work to be done in
 11 a workmanlike manner and submit an itemized bill for the
 12 actual and reasonable cost, the fair and reasonable cost, or
 13 the fair and reasonable value thereof as rent on the next
 14 date periodic rent is due or, if the rental agreement has
 15 terminated, for immediate payment.

16 Section 35. Remedies for absence, nonuse, and
 17 abandonment. (1) If the rental agreement requires the tenant
 18 to give notice to the landlord of an anticipated extended
 19 absence in excess of 7 days, as provided for in [section
 20 25], and the tenant fails to do so, the landlord may recover
 21 actual damages from the tenant.

22 (2) During an absence of the tenant in excess of 7
 23 days, the landlord may enter the dwelling unit at times
 24 reasonably necessary.

25 (3) If the tenant abandons the dwelling unit, the

1 landlord shall make reasonable efforts to rent it at a fair
 2 rental. If the landlord rents the dwelling unit for a term
 3 beginning before the expiration of the rental agreement, the
 4 rental agreement terminates as of the date of the tenancy.
 5 If the landlord fails to use reasonable efforts to rent the
 6 dwelling unit at a fair rental or if the landlord accepts
 7 the abandonment as a surrender, the rental agreement is
 8 terminated by the landlord as of the date the landlord has
 9 notice of the abandonment. If the tenancy is from month to
 10 month or week to week, the term of the rental agreement for
 11 this purpose is a month or a week, as the case may be.

12 Section 36. Waiver of landlord's right to terminate.
 13 Acceptance by the landlord of full payment of rent due with
 14 knowledge of a tenant's default or acceptance by the
 15 landlord of a tenant's performance that varies from the
 16 terms of the rental agreement constitutes a waiver of the
 17 landlord's right to terminate the rental agreement for that
 18 breach unless otherwise agreed after the breach has
 19 occurred. The acceptance of partial payment of rent due does
 20 not constitute a waiver of any right.

21 Section 37. Disposition of personal property abandoned
 22 by tenant. (1) If a tenancy terminates in any manner except
 23 by court order and the landlord reasonably believes the
 24 tenant has abandoned all personal property which the tenant
 25 has left on the premises, the landlord shall:

1 (a) make reasonable attempts to notify the tenant in
 2 writing that the property must be removed:

3 (i) from the premises; or

4 (ii) from the place of safekeeping if the landlord has
 5 stored the goods as provided in subsection (3) of this
 6 section; and

7 (b) specify a day not less than 15 days after delivery
 8 of a notice mailed by certified mail to the last known
 9 address of the tenant, at which specified time the property
 10 will be disposed of if not removed.

11 (2) The landlord may dispose of the property by:

12 (a) selling all or part of the property at a public or
 13 private sale; or

14 (b) destroying or otherwise disposing of all or part
 15 of the property if he reasonably believes the value of the
 16 property is so low that the cost of storage or sale exceeds
 17 the reasonable value thereof.

18 (3) After notifying the tenant as required by
 19 subsection (1) of this section, the landlord shall store all
 20 goods, chattels, and personal property of the tenant in a
 21 place of safekeeping and shall exercise reasonable care for
 22 the property. The landlord may store the property in a
 23 commercial storage company, in which case the storage cost
 24 includes the actual storage charge plus the cost of removal
 25 of the property to the place of storage.

1 (4) If the tenant, upon receipt of the notice provided
 2 in subsection (1) of this section, responds in writing to
 3 the landlord on or before the day specified in the notice
 4 that he intends to remove his property and does not do so
 5 within 15 days after delivery of the tenant's response, the
 6 tenant's property shall be conclusively presumed to be
 7 abandoned. If the tenant removes the property, the landlord
 8 is entitled to reasonable or actual storage costs for the
 9 period the property remains in safekeeping plus the cost of
 10 removal of the property to the place of storage.

11 (5) The landlord is not responsible for any loss to
 12 the tenant resulting from storage unless the loss is caused
 13 by the landlord's purposeful or negligent act. On the event
 14 of purposeful violation, the landlord is liable for double
 15 damages.

16 (6) A public or private sale authorized by this
 17 section shall be conducted under the provisions of
 18 87A-9-504(3).

19 (7) The landlord may deduct from the proceeds of the
 20 sale the reasonable costs of notice, storage, and sale and
 21 must remit to the tenant the remaining proceeds, if any,
 22 together with an itemized accounting. If the tenant cannot
 23 after due diligence be found, the remaining proceeds shall
 24 be deposited with the county treasurer of the county in
 25 which the sale occurred and, if not claimed within 3 years,

1 shall revert to the general fund of the county available for
 2 general purposes.

3 Section 38. Remedy after termination. If the rental
 4 agreement is terminated, the landlord has a claim for
 5 possession and for rent and a separate claim for actual
 6 damages for any breach of the rental agreement.

7 Section 39. Recovery of possession limited. Except in
 8 the case of abandonment, surrender, or as permitted in this
 9 chapter, a landlord may not recover or take possession of
 10 the dwelling unit by action or otherwise, including
 11 purposeful diminution of services to the tenant by
 12 interrupting or causing the interruption of heat, running
 13 water, hot water, electricity, gas, or other essential
 14 services.

15 Section 40. Termination of tenancy — holdover
 16 remedies. (1) The landlord or the tenant may terminate a
 17 week-to-week tenancy by a written notice given to the other
 18 at least 7 days before the termination date specified in the
 19 notice.

20 (2) The landlord or the tenant may terminate a
 21 month-to-month tenancy by giving to the other at any time
 22 during the tenancy at least 30 days' notice in writing prior
 23 to the date designated in the notice for the termination of
 24 the tenancy. The tenancy terminates on the date designated
 25 and without regard to the expiration of the period for

1 which, by the terms of the tenancy, rents are to be paid.
 2 Unless otherwise agreed, rent is uniformly apportionable
 3 from day to day.

4 (3) If the tenant remains in possession without the
 5 landlord's consent after expiration of the term of the
 6 rental agreement or its termination, the landlord may bring
 7 an action for possession. If the tenant's holdover is
 8 purposeful and not in good faith, the landlord may recover
 9 an amount not more than 3 months' periodic rent or treble
 10 damages, whichever is greater. If the landlord consents to
 11 the tenant's continued occupancy, [section 13(4)] applies.

12 Section 41. Landlord and tenant remedies for refusal
 13 or abuse of access. (1) If the tenant refuses to allow
 14 lawful access, the landlord may either obtain injunctive
 15 relief to compel access or terminate the rental agreement.
 16 In either case the landlord may recover actual damages.

17 (2) If the landlord makes an unlawful entry or a
 18 lawful entry in an unreasonable manner or makes repeated
 19 demands for entry otherwise lawful but which have the effect
 20 of unreasonably harassing the tenant, the tenant may either
 21 obtain injunctive relief to prevent the recurrence of the
 22 conduct or terminate the rental agreement. In either case
 23 the tenant may recover actual damages.

24 Section 42. Retaliatory conduct prohibited. (1) Except
 25 as provided in this section, a landlord may not retaliate by

1 increasing rent, decreasing services, or by bringing or
 2 threatening to bring an action for possession after the
 3 tenant:

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

8 (b) has complained to the landlord in writing of a
 9 violation under [section 20]; or

10 (c) has organized or become a member of a tenant's
 11 union or similar organization.

12 (2) If the landlord acts in violation of subsection
 13 (1) of this section, the tenant is entitled to the remedies
 14 provided in [section 32] and has a defense in any
 15 retaliatory action against him for possession. In an action
 16 by or against the tenant, evidence of a complaint within 6
 17 months before the alleged act of retaliation creates a
 18 rebuttable presumption that the landlord's conduct was in
 19 retaliation. The presumption does not arise if the tenant
 20 made the complaint after notice of a proposed rent increase
 21 or diminution of services. For purposes of this section,
 22 "rebuttable presumption" means that the trier of fact must
 23 find the existence of the fact presumed unless and until
 24 evidence is introduced which would support a finding of its
 25 nonexistence.

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

3 (a) the violation of the applicable building or
4 housing code was caused primarily by lack of reasonable care
5 by the tenant, a member of his family, or other persons on
6 the premises with his consent;

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

8 (c) compliance with the applicable building or housing
9 code requires alteration, remodeling, or demolition which
10 would effectively deprive the tenant of use of the dwelling
11 unit.

12 (4) The maintenance of an action under subsection (3)
13 of this section does not release the landlord from liability
14 under [section 27(2)].

15 Section 43. Savings clause. Transactions entered into
16 before July 1, 1977, and not extended or renewed on or after
17 that date and the rights, duties, and interests flowing from
18 them remain valid and may be terminated, completed,
19 consummated, or enforced as required or permitted by any
20 statute or other law amended or repealed by this chapter as
21 though the repeal or amendment had not occurred.

22 Section 44. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 45. Repealer. Sections 42-201, 42-202, 42-204,
4 42-205, 42-206, and 42-207, R.C.M. 1947, are repealed.

5 Section 46. Summary of act -- publication. The
6 department of community affairs shall prepare a simplified
7 summary version of the major provisions of this act and
8 publish such summary in each daily newspaper of the state
9 twice between 30 and 60 days before July 1, 1977.

10 Section 47. Effective date. This act is effective on
11 July 1, 1977. It applies to rental agreements entered into,
12 extended, or renewed on and after that date.

-End-

March 16, 1977

SENATE
STANDING COMMITTEE REPORT
Judiciary Committee

That House Bill No. 80, third reading, be amended as follows:

1. Amend title, line 6.

Following: "REPEALING"

Insert: "SECTIONS"

Following: "42-201"

Strike: ", 42-202,"

Insert: "and"

2. Amend title, line 7.

Following: "42-204,"

Strike: "42-205, 42-206, and 42-207,"

3. Amend page 3, section 8, line 17.

Following: "purposes;"

Strike: "and"

4. Amend page 3, section 8, line 20.

Following: "premises"

Strike: "."

Insert: "; and"

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit."

5. Amend page 15, section 23, line 9.

Following: "of the"

Strike: "tenants"

Insert: "occupants"

6. Amend page 15, section 23, line 15.

Following: "all"

Strike: "tenants"

Insert: "occupants"

7. Amend page 29, section 40, line 11.

Following: "13"

Strike: "(4)"

Insert: "(2)(e)"

8. Amend page 32, section 45, lines 3 and 4.

Following: "42-201"

Strike: ", 42-202,"

Insert: "and"

Following: line 3

Strike: "42-205, 42-206, and 42-207,"

HOUSE BILL NO. 80

INTRODUCED BY PALMER, O'KEEFE,
COONEY, DASSINGER, WALDRON, LORY, FAGG

A BILL FOR AN ACT ENTITLED: "THE MONTANA RESIDENTIAL
LANDLORD AND TENANT ACT OF 1977; REPEALING ~~SECTIONS 42-201~~
~~42-202, AND 42-204, 42-205, 42-206, AND 42-207~~ R.C.M.
1947."

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

Section 1. Short title. This chapter may be cited as
"The Montana Residential Landlord and Tenant Act of 1977".

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; and

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

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 causes, supplement its provisions.

Section 4. Construction against implicit repeal. No
part of this chapter 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) A 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.

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

Section 8. Exclusions from application of chapter.

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

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

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

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

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

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

16 (6) occupancy under a rental agreement covering
 17 premises used by the occupant primarily for commercial or
 18 agricultural purposes; and

19 (7) occupancy by an employee of a landlord whose right
 20 to occupancy is conditional upon employment in and about the
 21 premises; AND

22 ~~(8) OCCUPANCY OUTSIDE A MUNICIPALITY UNDER A RENTAL~~
 23 ~~AGREEMENT WHICH INCLUDES HUNTING, FISHING, OR AGRICULTURAL~~
 24 ~~PRIVILEGES ALONG WITH THE USE OF THE DWELLING UNIT.~~

25 Section 9. General definitions. Subject to additional

1 definitions contained in subsequent sections and unless the
 2 context otherwise requires, in this chapter the following
 3 definitions apply:

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

7 (2) "Dwelling unit" means a structure or the part of a
 8 structure that is used as a home, residence, or sleeping
 9 place by a person who maintains a household or by two or
 10 more persons who maintain a common household. "Dwelling
 11 unit", in the case of a person who rents space in a mobile
 12 home park but does not rent the mobile home, means the space
 13 rented and not the mobile home itself.

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

16 (4) "Landlord" means the owner, lessor, or sublessor
 17 of the dwelling unit or the building of which it is a part
 18 and also means a manager of the premises who fails to
 19 disclose his managerial position.

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

25 (6) "Owner" means one 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,
- 5 including a mortgagee in possession.
- 6 (7) "Person" includes an individual or organization.
- 7 (8) "Premises" means a dwelling unit and the structure
- 8 of which it is a part, the facilities and appurtenances
- 9 therein, and the grounds, areas, and facilities held out for
- 10 the use of tenants generally or promised for the use of a
- 11 tenant.
- 12 (9) "Rent" means all payments to be made to the
- 13 landlord under the rental agreement.
- 14 (10) "Rental agreement" means all agreements, written
- 15 or oral, and valid rules adopted under [section 23]
- 16 embodying the terms and conditions concerning the use and
- 17 occupancy of a dwelling unit and premises.
- 18 (11) "Roomer" means a person occupying a dwelling unit
- 19 that does not include a toilet, a bathtub or a shower, a
- 20 refrigerator, a stove, or a kitchen sink, all of which are
- 21 provided by the landlord and one or more of these facilities
- 22 are used in common by occupants in the structure.
- 23 (12) "Single family residence" means a structure
- 24 maintained and used as a single dwelling unit.
- 25 Notwithstanding that a dwelling unit shares one or more

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

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

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

14 Section 11. Unconscionability. (1) If the court, as a
 15 matter of law, finds that:

16 (a) a rental agreement or any provision thereof is
 17 unconscionable, the court may refuse to enforce the
 18 agreement or enforce the remainder of the agreement without
 19 the unconscionable provision to avoid an unconscionable
 20 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 is unconscionable, the court may refuse to enforce
 24 the settlement, enforce the remainder of the settlement
 25 without the unconscionable provision, or limit the

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

3 (c) 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 12. 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 a landlord, it is delivered at the
12 place of business of the landlord through which the rental
13 agreement was made; or

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

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

25 section 13. Terms and conditions of rental agreement.

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

6 (2) Unless the rental agreement provides otherwise:

7 (a) the tenant shall pay as rent the fair rental value
8 for the use and occupancy of the dwelling unit as determined
9 by the landlord;

10 (b) rent is payable at the landlord's address;

11 (c) periodic rent is payable at the beginning of a
12 term of a month or less and otherwise in equal monthly
13 installments at the beginning of each month;

14 (d) rent is uniformly apportionable from day to day;
15 and

16 (e) the tenancy is week to week in the case of a
17 roomer who pays weekly rent and in all other cases month to
18 month.

19 (3) Rent is payable without demand or notice at the
20 time and place agreed upon by the parties or provided for by
21 subsection (2) of this section.

22 Section 14. Effect of unsigned or undelivered rental
23 agreement. (1) If the landlord does not sign and deliver a
24 written rental agreement signed and delivered to him by the
25 tenant, acceptance of rent without reservation by the

1 landlord gives the rental agreement the same effect as if it
2 had been signed and delivered by the landlord.

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

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

11 Section 15. Prohibited provisions in rental
12 agreements. (1) A rental agreement may not provide that a
13 party:

14 (a) agrees to waive or forego rights or remedies under
15 this chapter;

16 (b) authorizes any person to confess judgment on a
17 claim arising out of the rental agreement; or

18 (c) agrees to the exculpation or limitation of
19 liability resulting from the other party's purposeful
20 misconduct or negligence or to indemnify the other party for
21 that liability or the costs or attorney's fees connected
22 therewith.

23 (2) A provision prohibited by subsection (1) included
24 in a rental agreement is unenforceable. If a party
25 purposefully uses a rental agreement containing provisions

1 known by him to be prohibited, the other party may recover,
2 in addition to his actual damages, an amount up to 3 months'
3 periodic rent.

4 Section 16. Separation of rents and obligations to
5 maintain property forbidden. A rental agreement or a
6 document related thereto may not permit the receipt of rent
7 free of the obligation to comply with [section 20].

8 Section 17. Attorney fees. In an action on a rental
9 agreement or arising under this chapter, reasonable attorney
10 fees, together with costs and necessary disbursements, may
11 be awarded to the prevailing party notwithstanding an
12 agreement to the contrary. As used in this section,
13 "prevailing party" means the party in whose favor final
14 judgment is rendered.

15 Section 18. Disclosure. (1) A landlord or a person
16 authorized to enter into a rental agreement on his behalf
17 shall disclose to the tenant in writing at or before the
18 commencement of the tenancy the name and address of:

19 (a) the person authorized to manage the premises; and

20 (b) the owner of the premises or a person authorized
21 to act for the owner for the purpose of service of process
22 and receiving notices and demands.

23 (2) The information required to be furnished by this
24 section shall be kept current and in writing, and this
25 section extends to and is enforceable against any successor

1 landlord, owner, or manager.

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

4 (a) the purpose of service of process and receiving
5 notices and demands; and

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

10 Section 19. Landlord to deliver possession of dwelling
11 unit. At the commencement of the term, a landlord shall
12 deliver possession of the premises to the tenant in
13 compliance with the rental agreement and [section 20]. A
14 landlord may bring an action for possession against a person
15 wrongfully in possession.

16 Section 20. Landlord to maintain premises. (1) A
17 landlord shall:

18 (a) comply with the requirements of applicable
19 building and housing codes materially affecting health and
20 safety in effect at the time of original construction in all
21 dwelling units where construction is completed after the
22 effective date of this act;

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

25 (c) keep all common areas of the premises in a clean

1 and safe condition;

2 (d) maintain in good and safe working order and
3 condition all electrical, plumbing, sanitary, heating,
4 ventilating, air-conditioning, and other facilities and
5 appliances, including elevators, supplied or required to be
6 supplied by him;

7 (e) provide and maintain appropriate receptacles and
8 conveniences for the removal of ashes, garbage, rubbish, and
9 other waste incidental to the occupancy of the dwelling unit
10 and arrange for their removal; and

11 (f) supply running water and reasonable amounts of hot
12 water at all times and reasonable heat between October 1 and
13 May 1, except if the building that includes the dwelling
14 unit is not required by law to be equipped for that purpose
15 or the dwelling unit is so constructed that heat or hot
16 water is generated by an installation within the exclusive
17 control of the tenant.

18 (2) If the duty imposed by subsection (1)(a) of this
19 section is greater than a duty imposed by subsections (1)(b)
20 through (1)(f), a landlord's duty shall be determined by
21 reference to subsection (1)(a).

22 (3) A landlord and tenant of a one-, two-, or
23 three-family residence may agree in writing that the tenant
24 perform the landlord's duties specified in subsections
25 (1)(e) and (1)(f) of this section and specified repairs,

1 maintenance tasks, alteration, and remodeling but only if
 2 the transaction is entered into in good faith and not for
 3 the purpose of evading the obligations of the landlord.

4 (4) A landlord and tenant of a one-, two-, or
 5 three-family residence may agree that the tenant is to
 6 perform specified repairs, maintenance tasks, alterations,
 7 or remodeling only if:

8 (a) the agreement of the parties is entered into in
 9 good faith and not for the purpose of evading the
 10 obligations of the landlord and is set forth in a separate
 11 writing signed by the parties and supported by adequate
 12 consideration;

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

15 (c) the agreement does not diminish the obligation of
 16 the landlord to other tenants in the premises.

17 section 21. Limitation of liability. (1) Unless
 18 otherwise agreed, a landlord who conveys, in a good faith
 19 sale to a bona fide purchaser, premises that include a
 20 dwelling unit subject to a rental agreement is relieved of
 21 liability under the rental agreement and this chapter as to
 22 events occurring after written notice to the tenant of the
 23 conveyance. He remains liable to the tenant for all security
 24 recoverable by the tenant pursuant to 42-301 through 42-309
 25 and all prepaid rent.

1 (2) Unless otherwise agreed, a manager of premises
 2 that include a dwelling unit is relieved of liability under
 3 the rental agreement and this chapter as to events occurring
 4 after written notice to the tenant of the termination of his
 5 management.

6 section 22. Tenant to maintain dwelling unit. (1) A
 7 tenant shall:

8 (a) comply with all obligations primarily imposed upon
 9 tenants by applicable provisions of building and housing
 10 codes materially affecting health and safety;

11 (b) keep that part of the premises that he occupies
 12 and uses as reasonably clean and safe as the condition of
 13 the premises permit;

14 (c) dispose from his dwelling unit all ashes, garbage,
 15 rubbish, and other waste in a clean and safe manner;

16 (d) keep all plumbing fixtures in the dwelling unit or
 17 used by the tenant as clean as their condition permits;

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

22 (f) 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; and

1 (g) use the parts of the premises including the living
2 room, bedroom, kitchen, bathroom, and dining room in a
3 reasonable manner considering the purposes for which they
4 were designed and intended.

5 (2) A tenant may not destroy, deface, damage, impair,
6 or remove any part of the premises or permit any person to
7 do so.

8 Section 23. Landlord authorized to adopt rules. (1) A
9 landlord may adopt a rule concerning the tenant's use and
10 occupancy of the premises. A rule is enforceable against the
11 tenant only if:

12 (a) its purpose is to promote the convenience, safety,
13 or welfare of the tenants OCCUPANTS in the premises,
14 preserve the landlord's property from abusive use, or make a
15 fair distribution of services and facilities held out for
16 the tenants generally;

17 (b) it is reasonably related to the purpose for which
18 it is adopted;

19 (c) it applies to all tenants OCCUPANTS in the
20 premises in a fair manner;

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

24 (e) it is not for the purpose of evading the
25 obligations of the landlord; and

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

3 (2) If a rule is adopted after a tenant enters into a
4 rental agreement that works a substantial modification of
5 his bargain, it is not valid until 7 days after notice to
6 the tenant in the case of a week to week tenancy or 30 days'
7 notice in the case of tenancies from month to month.

8 Section 24. Access to premises by landlord. (1) A
9 tenant may not unreasonably withhold consent to the landlord
10 or his agent to enter into the dwelling unit in order to
11 inspect the premises, make necessary or agreed repairs,
12 decorations, alterations, or improvements, supply necessary
13 or agreed services, or exhibit the dwelling unit to
14 prospective or actual purchasers, mortgagees, tenants,
15 workmen, or contractors.

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

18 (3) A landlord may not abuse the right of access or
19 use it to harass the tenant. Except in case of emergency or
20 unless it is impracticable to do so, the landlord shall give
21 the tenant at least 24 hours' notice of his intent to enter
22 and may enter only at reasonable times.

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

24 (a) pursuant to court order;

25 (b) as permitted by [sections 34 and 35(2)]; or

1 (c) when the tenant has abandoned or surrendered the
2 premises.

3 Section 25. Use and occupancy by tenant -- extended
4 absence. Unless otherwise agreed, a tenant shall occupy his
5 dwelling unit only as a dwelling unit. The rental agreement
6 may require that the tenant notify the landlord of an
7 anticipated extended absence from the premises in excess of
8 7 days no later than the first day of the extended absence.

9 Section 26. Noncompliance by the landlord generally.

10 (1) Except as provided in this chapter, if there is a
11 noncompliance with [section 20] affecting health and safety,
12 the tenant may:

13 (A) deliver a written notice to the landlord
14 specifying the acts and omissions constituting the breach
15 and that the rental agreement will terminate upon a date not
16 less than 30 days after receipt of the notice if the breach
17 is not remedied in 14 days. The rental agreement terminates
18 as provided in the notice subject to the following
19 exceptions:

20 (a)(1) If the breach is remediable by repairs, the
21 payment of damages, or otherwise and the landlord adequately
22 remedies the breach before the date specified in the notice,
23 the rental agreement does not terminate by reason of the
24 breach.

25 (b)(1) If substantially the same act or omission which

1 constituted a prior noncompliance of which notice was given
2 recurs within 6 months, the tenant may terminate the rental
3 agreement upon at least 14 days' written notice specifying
4 the breach and the date of termination of the rental
5 agreement.

6 (c)(1) The tenant may not terminate for a condition
7 caused by himself, a member of his family, or other persons
8 on the premises with his consent.

9 (b) MAKE REPAIRS HIMSELF THAT DO NOT COST MORE THAN
10 ONE MONTH'S RENT AND DEDUCT THE COST FROM THE RENT IF HE HAS
11 GIVEN THE LANDLORD NOTICE AND HE HAS NOT MADE THE REPAIRS
12 WITHIN A REASONABLE TIME.

13 (2) Except as provided in this chapter, the tenant may
14 recover actual damages and obtain injunctive relief for any
15 noncompliance by the landlord with the rental agreement or
16 [section 20].

17 (3) The remedy provided in subsection (2) of this
18 section is in addition to a right of the tenant arising
19 under subsection (1).

20 (4) If the rental agreement is terminated, the
21 landlord shall return all security recoverable by the tenant
22 pursuant to 42-301 through 42-309.

23 Section 27. Failure to deliver possession. (1) If the
24 landlord fails to deliver possession of the dwelling unit to
25 the tenant as provided in [section 19], rent abates until

1 possession is delivered and the tenant may:

2 (a) terminate the rental agreement upon at least 5
3 days' written notice to the landlord and, upon termination,
4 the landlord shall return all prepaid rent and security; or

5 (b) demand performance of the rental agreement by the
6 landlord and, if the tenant elects, maintain an action for
7 possession of the dwelling unit against the landlord or a
8 person wrongfully in possession and recover the actual
9 damages sustained by him.

10 (2) If a person's failure to deliver possession is
11 purposeful and not in good faith, an aggrieved party may
12 recover from that person an amount not more than 3 months'
13 periodic rent or treble damages, whichever is greater.

14 Section 28. Damages for minor defects. If the landlord
15 fails to comply with the rental agreement or [section 20]
16 and the reasonable cost of compliance is less than the 1
17 month's rent, the tenant may recover damages for the breach
18 under [section 26(2)].

19 Section 29. Purposeful failure to supply heat, water,
20 not water, or essential services. (1) If contrary to the
21 rental agreement or [section 20] the landlord purposefully
22 or negligently fails to supply heat, running water, hot
23 water, electric, gas, or other essential services, the
24 tenant may give written notice to the landlord specifying
25 the breach and may:

1 (a) procure reasonable amounts of heat, hot water,
2 running water, electricity, gas, and other essential
3 services during the period of the landlord's noncompliance
4 and deduct their actual and reasonable cost from the rent;

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

7 (c) procure reasonable substitute housing during the
8 period of the landlord's noncompliance, in which case the
9 tenant is excused from paying rent for the period of the
10 landlord's noncompliance.

11 (2) If the tenant proceeds under this section, he may
12 not proceed under [section 26] or [section 28] as to that
13 breach.

14 (3) Rights of the tenant under this section do not
15 arise until he has given notice to the landlord and the
16 landlord has had a reasonable opportunity to correct the
17 conditions or if the conditions were caused by the act or
18 omission of the tenant, a member of his family, or other
19 person on the premises with his consent.

20 Section 30. Landlord's noncompliance as defense to
21 action for possession or rent. (1) In an action for
22 possession based upon nonpayment of the rent or in an action
23 for rent when the tenant is in possession, the tenant may
24 counterclaim for any amount he may recover under the rental
25 agreement or this chapter. The court from time to time may

1 order the tenant to pay into court all or part of the rent
 2 accrued and thereafter accruing and shall determine the
 3 amount due to each party. The party to whom a net amount is
 4 owed shall be paid first from the money paid into court and
 5 the balance by the other party. The court may at any time
 6 release money paid into the court to either party if the
 7 parties so agree or if the court finds a party entitled to
 8 the sums released. If no rent remains due after application
 9 of this section, judgment shall be entered for the tenant in
 10 the action for possession.

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

15 Section 31. Fire or casualty damage. (1) If the
 16 dwelling unit or premises are damaged or destroyed by fire
 17 or casualty to an extent that enjoyment of the dwelling unit
 18 is substantially impaired, the tenant may:

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

24 (b) if continued occupancy is lawful, vacate any part
 25 of the dwelling unit rendered unusable by the fire or

1 casualty, in which case the tenant's liability for rent is
 2 reduced in proportion to the diminution in the fair rental
 3 value of the dwelling unit.

4 (2) This section does not apply when the fire and
 5 casualty damage was caused by the purposeful or negligent
 6 act of the tenant, the tenant's family, or guests.

7 (3) If the rental agreement is terminated, the
 8 landlord shall return all security recoverable pursuant to
 9 42-301 through 42-309 and all prepaid rent. Accounting for
 10 rent in the event of termination or apportionment shall be
 11 made as of the date of the fire or casualty.

12 Section 32. Tenant's remedies for landlord's unlawful
 13 ouster, exclusion, or diminution of service. If a landlord
 14 unlawfully removes or excludes the tenant from the premises
 15 or purposefully diminishes services to the tenant by
 16 interrupting or causing the interruption of heat, running
 17 water, hot water, electricity, gas, or other essential
 18 services, the tenant may recover possession or terminate the
 19 rental agreement and, in either case, recover an amount not
 20 more than 3 months' periodic rent or treble damages,
 21 whichever is greater. If the rental agreement is terminated,
 22 the landlord shall return all security recoverable pursuant
 23 to 42-301 through 42-309 and all prepaid rent.

24 Section 33. Landlord remedies for noncompliance with
 25 rental agreement or failure to pay rent. (1) Except as

1 provided in this chapter, if there is a noncompliance by the
 2 tenant with the rental agreement or a noncompliance with
 3 [section 22] affecting health and safety, the landlord may
 4 deliver a written notice to the tenant pursuant to [section
 5 12] specifying the acts and omissions constituting the
 6 breach and that the rental agreement will terminate upon a
 7 date not less than 14 days after receipt of the notice. If
 8 the breach is not remedied within that time, the rental
 9 agreement terminates as provided in the notice subject to
 10 the following exceptions:

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

15 (b) If substantially the same act or omission which
 16 constituted a prior noncompliance of which notice was given
 17 recurs within 6 months, the landlord may terminate the
 18 rental agreement upon at least 5 days' written notice
 19 specifying the breach and the date of the termination of the
 20 rental agreement.

21 (2) If rent is unpaid when due and the tenant fails to
 22 pay rent within 3 days after written notice by the landlord
 23 of nonpayment and his intention to terminate the rental
 24 agreement if the rent is not paid within that period, the
 25 landlord may terminate the rental agreement.

1 (3) Except as provided in this chapter, the landlord
 2 may recover actual damages and obtain injunctive relief for
 3 any noncompliance by the tenant with the rental agreement or
 4 [section 22]. If the tenant's noncompliance is purposeful,
 5 the landlord may recover treble damages.

6 Section 34. Failure of tenant to maintain dwelling. If
 7 there is noncompliance by the tenant with [section 22]
 8 affecting health and safety that can be remedied by repair,
 9 replacement of a damaged item, or cleaning and the tenant
 10 fails to comply as promptly as conditions require in case of
 11 emergency or within 14 days after written notice by the
 12 landlord specifying the breach and requesting that the
 13 tenant remedy it within that period of time, the landlord
 14 may enter the dwelling unit and cause the work to be done in
 15 a workmanlike manner and submit an itemized bill for the
 16 actual and reasonable cost, the fair and reasonable cost, or
 17 the fair and reasonable value thereof as rent on the next
 18 date periodic rent is due or, if the rental agreement has
 19 terminated, for immediate payment.

20 Section 35. Remedies for absence, nonuse, and
 21 abandonment. (1) If the rental agreement requires the tenant
 22 to give notice to the landlord of an anticipated extended
 23 absence in excess of 7 days, as provided for in [section
 24 25], and the tenant fails to do so, the landlord may recover
 25 actual damages from the tenant.

1 (2) During an absence of the tenant in excess of 7
2 days, the landlord may enter the dwelling unit at times
3 reasonably necessary.

4 (3) If the tenant abandons the dwelling unit, the
5 landlord shall make reasonable efforts to rent it at a fair
6 rental. If the landlord rents the dwelling unit for a term
7 beginning before the expiration of the rental agreement, the
8 rental agreement terminates as of the date of the tenancy.
9 If the landlord fails to use reasonable efforts to rent the
10 dwelling unit at a fair rental or if the landlord accepts
11 the abandonment as a surrender, the rental agreement is
12 terminated by the landlord as of the date the landlord has
13 notice of the abandonment. If the tenancy is from month to
14 month or week to week, the term of the rental agreement for
15 this purpose is a month or a week, as the case may be.

16 Section 36. Waiver of landlord's right to terminate.
17 Acceptance by the landlord of full payment of rent due with
18 knowledge of a tenant's default or acceptance by the
19 landlord of a tenant's performance that varies from the
20 terms of the rental agreement constitutes a waiver of the
21 landlord's right to terminate the rental agreement for that
22 breach unless otherwise agreed after the breach has
23 occurred. The acceptance of partial payment of rent due does
24 not constitute a waiver of any right.

25 Section 37. Disposition of personal property abandoned

1 by tenant. (1) If a tenancy terminates in any manner except
2 by court order and the landlord reasonably believes the
3 tenant has abandoned all personal property which the tenant
4 has left on the premises, the landlord shall:

5 (a) make reasonable attempts to notify the tenant in
6 writing that the property must be removed:

7 (i) from the premises; or

8 (ii) from the place of safekeeping if the landlord has
9 stored the goods as provided in subsection (3) of this
10 section; and

11 (b) specify a day not less than 15 days after delivery
12 of a notice mailed by certified mail to the last known
13 address of the tenant, at which specified time the property
14 will be disposed of if not removed.

15 (2) The landlord may dispose of the property by:

16 (a) selling all or part of the property at a public or
17 private sale; or

18 (b) destroying or otherwise disposing of all or part
19 of the property if he reasonably believes the value of the
20 property is so low that the cost of storage or sale exceeds
21 the reasonable value thereof.

22 (3) After notifying the tenant as required by
23 subsection (1) of this section, the landlord shall store all
24 goods, chattels, and personal property of the tenant in a
25 place of safekeeping and shall exercise reasonable care for

1 the property. The landlord may store the property in a
2 commercial storage company, in which case the storage cost
3 includes the actual storage charge plus the cost of removal
4 of the property to the place of storage.

5 (4) If the tenant, upon receipt of the notice provided
6 in subsection (1) of this section, responds in writing to
7 the landlord on or before the day specified in the notice
8 that he intends to remove his property and does not do so
9 within 15 days after delivery of the tenant's response, the
10 tenant's property shall be conclusively presumed to be
11 abandoned. If the tenant removes the property, the landlord
12 is entitled to reasonable or actual storage costs for the
13 period the property remains in safekeeping plus the cost of
14 removal of the property to the place of storage.

15 (5) The landlord is not responsible for any loss to
16 the tenant resulting from storage unless the loss is caused
17 by the landlord's purposeful or negligent act. On the event
18 of purposeful violation, the landlord is liable for double
19 damages.

20 (6) A public or private sale authorized by this
21 section shall be conducted under the provisions of
22 87A-9-504(3).

23 (7) The landlord may deduct from the proceeds of the
24 sale the reasonable costs of notice, storage, and sale and
25 must remit to the tenant the remaining proceeds, if any,

1 together with an itemized accounting. If the tenant cannot
2 after due diligence be found, the remaining proceeds shall
3 be deposited with the county treasurer of the county in
4 which the sale occurred and, if not claimed within 3 years,
5 shall revert to the general fund of the county available for
6 general purposes.

7 Section 38. Remedy after termination. If the rental
8 agreement is terminated, the landlord has a claim for
9 possession and for rent and a separate claim for actual
10 damages for any breach of the rental agreement.

11 Section 39. Recovery of possession limited. Except in
12 the case of abandonment, surrender, or as permitted in this
13 chapter, a landlord may not recover or take possession of
14 the dwelling unit by action or otherwise, including
15 purposeful diminution of services to the tenant by
16 interrupting or causing the interruption of heat, running
17 water, hot water, electricity, gas, or other essential
18 services.

19 Section 40. Termination of tenancy -- holdover
20 remedies. (1) The landlord or the tenant may terminate a
21 week-to-week tenancy by a written notice given to the other
22 at least 7 days before the termination date specified in the
23 notice.

24 (2) The landlord or the tenant may terminate a
25 month-to-month tenancy by giving to the other at any time

1 during the tenancy at least 30 days' notice in writing prior
 2 to the date designated in the notice for the termination of
 3 the tenancy. The tenancy terminates on the date designated
 4 and without regard to the expiration of the period for
 5 which, by the terms of the tenancy, rents are to be paid.
 6 Unless otherwise agreed, rent is uniformly apportionable
 7 from day to day.

8 (3) If the tenant remains in possession without the
 9 landlord's consent after expiration of the term of the
 10 rental agreement or its termination, the landlord may bring
 11 an action for possession. If the tenant's holdover is
 12 purposeful and not in good faith, the landlord may recover
 13 an amount not more than 3 months' periodic rent or treble
 14 damages, whichever is greater. If the landlord consents to
 15 the tenant's continued occupancy, [section 1344(2)(E)]
 16 applies.

17 Section 41. Landlord and tenant remedies for refusal
 18 or abuse of access. (1) If the tenant refuses to allow
 19 lawful access, the landlord may either obtain injunctive
 20 relief to compel access or terminate the rental agreement.
 21 In either case the landlord may recover actual damages.

22 (2) If the landlord makes an unlawful entry or a
 23 lawful entry in an unreasonable manner or makes repeated
 24 demands for entry otherwise lawful but which have the effect
 25 of unreasonably harassing the tenant, the tenant may either

1 obtain injunctive relief to prevent the recurrence of the
 2 conduct or terminate the rental agreement. In either case
 3 the tenant may recover actual damages.

4 Section 42. Retaliatory conduct prohibited. (1) Except
 5 as provided in this section, a landlord may not retaliate by
 6 increasing rent, decreasing services, or by bringing or
 7 threatening to bring an action for possession after the
 8 tenant:

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

13 (b) has complained to the landlord in writing of a
 14 violation under [section 20]; or

15 (c) has organized or become a member of a tenant's
 16 union or similar organization.

17 (2) If the landlord acts in violation of subsection
 18 (1) or this section, the tenant is entitled to the remedies
 19 provided in [section 32] and has a defense in any
 20 retaliatory action against him for possession. In an action
 21 by or against the tenant, evidence of a complaint within 6
 22 months before the alleged act of retaliation creates a
 23 rebuttable presumption that the landlord's conduct was in
 24 retaliation. The presumption does not arise if the tenant
 25 made the complaint after notice of a proposed rent increase

1 or diminution of services. For purposes of this section,
 2 "rebuttable presumption" means that the trier of fact must
 3 find the existence of the fact presumed unless and until
 4 evidence is introduced which would support a finding of its
 5 nonexistence.

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

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

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

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

17 (4) The maintenance of an action under subsection (3)
 18 of this section does not release the landlord from liability
 19 under [section 27(2)].

20 Section 43. Savings clause. Transactions entered into
 21 before July 1, 1977, and not extended or renewed on or after
 22 that date and the rights, duties, and interests flowing from
 23 them remain valid and may be terminated, completed,
 24 consummated, or enforced as required or permitted by any
 25 statute or other law amended or repealed by this chapter as

1 though the repeal or amendment had not occurred.

2 Section 44. Severability. If a part of this act is
 3 invalid, all valid parts that are severable from the invalid
 4 part remain in effect. If a part of this act is invalid in
 5 one or more of its applications, the part remains in effect
 6 in all valid applications that are severable from the
 7 invalid applications.

8 Section 45. Repealer. Sections ~~42-201~~~~42-202~~ AND
 9 ~~42-204~~, ~~42-205~~~~42-206~~~~and~~~~42-207~~, R.C.M. 1947, are
 10 repealed.

11 Section 46. Summary of act -- publication. The
 12 department of community affairs shall prepare a simplified
 13 summary version of the major provisions of this act and
 14 publish such summary in each daily newspaper of the state
 15 twice between 30 and 60 days before July 1, 1977.

16 Section 47. Effective date. This act is effective on
 17 July 1, 1977. It applies to rental agreements entered into,
 18 extended, or renewed on and after that date.

-End-