

1 S.79

2 Introduced by Senator Starr

3 Referred to Committee on

4 Date:

5 Subject: Housing; landlord and tenant; farm employee housing

6 Statement of purpose of bill as introduced: This bill proposes to expedite the  
7 process for evictions in cases of occupation without right or permission in farm  
8 housing and other housing; to require that utilities confirm a person who  
9 requests service has the right to occupy the residence served; and to provide for  
10 training to State and municipal police concerning landlord and tenant issues.

11 An act relating to miscellaneous housing issues

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 9 V.S.A. § 4469a is amended to read:

14 § 4469a. TERMINATION OF OCCUPANCY OF FARM EMPLOYEE

15 HOUSING

16 (a) As used in this section:

17 (1) "Farm employee" means an individual employed by a farm  
18 employer for farming operations.

19 (2) "Farm employer" means a person earning at least one-half of his or  
20 her annual gross income from the business of farming as that term is defined in

1 Section 1.175-3 of the regulations issued by the U.S. Department of the  
2 Treasury under the U.S. Internal Revenue Code, as amended.

3 (3) “~~Housing provided as a benefit of farm employment~~ Farm housing”  
4 means housing owned or controlled by ~~the~~ a farm employer, whether located  
5 on or off the farm premises, and provided for the occupancy of ~~the~~ a farm  
6 employee and ~~the farm employee’s~~ his or her family or household members for  
7 no payment other than the farm employee’s labor. Payment of utility and fuel  
8 charges paid by the farm employee does not affect the designation of housing  
9 ~~provided as a benefit of farm employment~~ as farm housing for purposes of this  
10 section.

11 (b) Unless otherwise provided in a written employment contract, a farm  
12 employer who provides farm housing ~~to a farm employee and the farm~~  
13 ~~employee’s family or household members~~ as a benefit of ~~the~~ employment may  
14 terminate that benefit and all rights of the farm employee, ~~and~~ the employee’s  
15 family or household members, and any sublessee to occupy the farm housing  
16 when the farm employee’s employment is terminated.

17 (c) The termination of the housing benefit shall be by written notice served  
18 upon the former farm employee by a law enforcement officer in accordance  
19 with Rule 4 of the Vermont Rules of Civil Procedure. The notice shall be  
20 served together with a summons and complaint seeking a writ of possession  
21 under this section to remove the former farm employee from occupancy of the

1 farm housing. The notice shall include the following statements, in boldface  
2 print:

3 “Your employment and farm housing benefit have been terminated.

4 “Your employer has filed a legal proceeding in \_\_\_\_\_ County Superior Court  
5 to obtain a court order directing you and any family or household member  
6 cohabitating in the ~~dwelling~~ farm housing to vacate and leave the ~~dwelling~~  
7 farm housing and remove all of your possessions. The address and telephone  
8 number of the Court are as follows:

9 “The Court will hold a hearing on your former employer’s request for a court  
10 order directing you to leave and vacate the ~~dwelling~~ farm housing. The  
11 hearing will be held on \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_ am/pm at the courthouse  
12 at the address listed above. You have the right to be served with notice of the  
13 hearing at least ten days prior to the hearing date. You have the right to appear  
14 at this hearing. At the hearing, your former employer must prove that the  
15 ~~dwelling~~ farm housing is needed for housing a replacement employee, and that  
16 your failure to vacate is causing actual hardship.

17 “If you believe that your employment was terminated wrongfully, that your  
18 ~~dwelling~~ farm housing was not habitable, or if you have any other claim  
19 against your former employer, you may file a counterclaim against your former  
20 employer as explained in the summons and complaint that are being served  
21 upon you with this notice.

1 “Filing a counterclaim against your former employer will not delay or stop the  
2 Court from ordering you to leave and vacate the ~~dwelling~~ farm housing.

3 “You may wish to seek legal advice from a licensed attorney. If you believe  
4 you cannot afford an attorney, you may contact the Clerk of the Court listed  
5 above for information about the availability of an attorney at public expense,  
6 although you may not be entitled to an attorney at public expense.”

7 (d) A farm employer shall be entitled to a show cause hearing on an  
8 expedited basis for the purpose of demonstrating that the failure of the former  
9 farm employee and his or her family or household members, or his or her  
10 sublessee, to vacate the farm housing is causing an actual hardship to the farm  
11 employer. The show cause hearing shall be held not less than 10 calendar days  
12 after service on the former employee of the notice described in subsection (c)  
13 of this section. The issue before the court at the hearing shall be whether the  
14 farm employer has suffered actual hardship because of the unavailability of the  
15 farm housing for a replacement employee.

16 (e) If the court finds that the farm employer has suffered actual hardship  
17 because of the unavailability of the farm housing for a replacement employee,  
18 the court shall enter an order approving a writ of possession, which shall be  
19 executed not earlier than five business days nor later than 30 days after the writ  
20 is served, to put the plaintiff into possession.

21 (f)(1) If the court does not make a finding on behalf of the farm employer;

1           (A) the farm employer may seek an eviction of the former farm  
2 employee pursuant to ~~sections 4467 and 4468 of this title and~~ 12 V.S.A.  
3 chapter 169, subchapter 3; and

4           (B) the farm employer may seek an expedited eviction of a sublessee  
5 pursuant to 12 V.S.A. §§ 4853b or 4853c.

6           (2) In any action pursuant to this section, the farm employer may file a  
7 motion for payment of the reasonable rental value of the premises into court  
8 pursuant to 12 V.S.A. § 4853a.

9           (g) The right of a former farm employee to pursue any claim that he or she  
10 may have against the former farm employer by way of a counterclaim in a civil  
11 action brought pursuant to this section is expressly preserved. The assertion of  
12 a counterclaim shall not have the effect of delaying or preventing the removal  
13 of the farm employee from the farm housing, nor shall the farm employee be  
14 entitled to obtain injunctive relief in the form of repossession of farm housing.  
15 A former farm employee who prevails on a counterclaim shall be entitled to  
16 relief as provided by applicable law.

17           (h) Sections 4455, 4461, and 4467 and subsection 4456b(a) of this chapter  
18 shall not apply to farm housing provided to a farm employee as a benefit of the  
19 employment.

1 Sec. 2. 9 V.S.A. § 4456b is amended to read:

2 § 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND  
3 OBLIGATIONS

4 (a)(1) ~~A landlord may condition or prohibit subleasing a dwelling unit under~~  
5 ~~the terms of a written rental agreement, and may require a tenant to provide~~  
6 ~~written notice of the name and contact information of any sublessee occupying~~  
7 ~~the dwelling unit.~~ A tenant shall not sublease a dwelling unit without the  
8 landlord's prior permission.

9 (2) ~~If the terms of a written rental agreement prohibit subleasing the~~  
10 ~~dwelling unit, the~~ A landlord or tenant may bring an action for ejectment  
11 pursuant to 12 V.S.A. §§ ~~4761 and 4853b~~ or 4853c against a person that is  
12 occupying the dwelling unit without right or permission. This subdivision (2)  
13 shall not be construed to limit the rights and remedies available to a landlord  
14 pursuant to this chapter.

15 (b) ~~In the absence of a written rental agreement~~ Unless waived by a  
16 landlord, a tenant shall provide the landlord with written notice of the name  
17 and contact information of any sublessee occupying the dwelling unit.

18 Sec. 3. 12 V.S.A. § 4761 is amended to read:

19 § 4761. WHEN MAINTAINABLE; PARTIES

20 A person having claim to the seisin or possession of lands, tenements, or  
21 hereditaments shall have an action of ejectment, according to the nature of the

1 case, which shall be brought as well against the landlord, if any, as against the  
2 tenant in possession of the premises, ~~or against a person that is occupying a~~  
3 ~~dwelling unit, for which subleasing is prohibited pursuant to a written rental~~  
4 ~~agreement, without right or permission pursuant to 9 V.S.A. § 4456b(a)(2);~~  
5 and, if otherwise brought, on motion, the same shall be abated. Tenants in  
6 common of lands may join in an action concerning their common interest in  
7 such lands.

8 Sec. 4. 12 V.S.A. 4853b is amended to read:

9 § 4853b. UNLAWFUL OCCUPANT; EXPEDITED HEARING

10 ~~(a)(1) In an action for ejectment, the landlord, the landlord's agent, or the~~  
11 ~~tenant may file a motion for a judgment that the plaintiff is entitled to~~  
12 ~~immediate possession of the premises on the grounds that the defendant is a~~  
13 ~~person that is occupying a dwelling unit without right or permission and the~~  
14 ~~written rental agreement for the dwelling unit prohibits subleasing pursuant to~~  
15 ~~9 V.S.A. § 4456b(a)(2).~~

16 ~~(2) The motion may be filed and served with the complaint or at any time~~  
17 ~~after the complaint has been filed. The motion shall be accompanied by an~~  
18 ~~affidavit setting forth particular facts in support of the motion and a copy of the~~  
19 ~~lease agreement.~~

20 ~~(b) A hearing on the motion shall be held any time after 10 days' notice to~~  
21 ~~the parties.~~

1       ~~(c) At any time before the hearing, the defendant may oppose the motion~~  
2       ~~pursuant to Rule 78(b) of the Vermont Rules of Civil Procedure by filing an~~  
3       ~~affidavit, a signed written statement, or a memorandum in opposition to the~~  
4       ~~motion. The affidavit, signed written statement, or memorandum shall set forth~~  
5       ~~particular facts to show that a genuine dispute of fact exists in relation to the~~  
6       ~~motion.~~

7       ~~(d)(1) If the defendant fails to appear for the hearing, or to file an affidavit,~~  
8       ~~signed written statement, or memorandum in opposition to the plaintiff's~~  
9       ~~motion, or has failed to file an answer in the time provided pursuant to Rule 12~~  
10       ~~of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to~~  
11       ~~judgment by default for immediate possession of the premises.~~

12       ~~(2) If the court finds that the defendant is a person that is occupying the~~  
13       ~~dwelling unit without right or permission and the written rental agreement for~~  
14       ~~the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2), the~~  
15       ~~court shall grant the plaintiff's motion and issue judgment in favor of the~~  
16       ~~plaintiff for immediate possession of the premises.~~

17       ~~(e) If the court issues judgment in favor of the plaintiff pursuant to~~  
18       ~~subsection (d) of this section, the court shall, on the date judgment is entered,~~  
19       ~~issue a writ of possession directing the sheriff of the county in which the~~  
20       ~~property or a portion thereof is located to serve the writ upon the defendant~~



1 and, not sooner than five days after the writ is served, to put the plaintiff into  
2 possession.

3 (f) ~~At any time prior to the execution of the writ of possession, the~~  
4 ~~defendant may file an affidavit, signed written statement, or a motion with the~~  
5 ~~court setting forth facts demonstrating that the defendant is occupying the~~  
6 ~~premises lawfully. The court shall treat an affidavit, signed written statement,~~  
7 ~~or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of~~  
8 ~~the Vermont Rules of Civil Procedure, as appropriate.~~

9 (a) Right to expedited eviction. Notwithstanding any provision of this  
10 subchapter or the Vermont Rules of Civil Procedure to the contrary, in an  
11 action for ejectment a landlord may file a motion for a judgment that the  
12 landlord is entitled to immediate possession of a dwelling unit that is occupied  
13 by a person without right or permission in violation of 9 V.S.A. § 4456b.

14 (b) Commencement; service of process.

15 (1) A landlord may commence an action by delivering to the defendant a  
16 complaint, summons, motion for possession, and an affidavit supporting the  
17 motion, which the landlord may serve on the defendant by certified mail, or by  
18 leaving a copy, at the address of the dwelling unit the defendant occupies.

19 (2) The landlord shall file the complaint, motion, and supporting  
20 affidavit with the court, along with a certificate of service specifying the

1 method and date of delivery to the defendant, not later than 10 days after the  
2 completion of service.

3 (c) Hearing. The court shall hold a hearing on the motion not later than  
4 21 days after the landlord files the complaint, motion, affidavit, and certificate  
5 with the court.

6 (d) Judgment and possession. The court shall issue judgment and a writ of  
7 possession in favor of the landlord for immediate possession of the dwelling  
8 unit:

9 (1) by default if the defendant fails to appear at the hearing, to oppose  
10 the landlord's motion, or to file an answer; or

11 (2) if the court finds that the defendant is occupying the dwelling unit  
12 without right or permission.

13 (e) Execution. The sheriff or other person authorized by law shall serve the  
14 writ of possession on the defendant in person or by leaving a copy at the  
15 dwelling unit and shall put the landlord into possession of the dwelling unit not  
16 later than five days after the writ is served.

17 Sec. 5. 12 V.S.A. § 4853c is added to read:

18 § 4853c. EXPEDITED EVICTION; MUNICIPAL PROCESS

19 (a) Municipal process for determining lawful occupancy. Notwithstanding  
20 any provision of this subchapter or the Vermont Rules of Civil Procedure to  
21 the contrary, in the event of a dispute concerning whether a person has the

1 right to occupy a residential dwelling unit, a landlord may request a decision  
2 from the selectboard or city council of the municipality in which the dwelling  
3 unit is located, or to another person or panel designated by the selectboard or  
4 city council for that purpose, whether the landlord is entitled to immediate  
5 possession of a dwelling unit that is occupied by a person without right or  
6 permission in violation of 9 V.S.A. § 4456b.

7 (b) Request for decision. A landlord may initiate a request for a decision  
8 by delivering by mail or in person to the appropriate municipal body and to the  
9 person occupying the dwelling unit a written complaint, accompanied by an  
10 affidavit and any documentation, supporting the landlord's claim.

11 (c) Hearing.

12 (1) The municipal body shall hold a hearing on the complaint not later  
13 than 21 days after the landlord delivers the complaint to the occupant.

14 (2) The occupant shall have the burden to demonstrate to the municipal  
15 body that he or she has legal or right or permission to occupy the dwelling unit.

16 (d) Decision. The municipal body shall issue a written decision within  
17 10 days following the hearing that includes findings of fact supporting its  
18 conclusion.

19 (e) Possession.

20 (1) If the municipal body decides in favor of the landlord, unless the  
21 defendant files an action in Superior Court within 10 days following the

1 decision opposing the municipal body's findings and conclusion, the landlord  
2 may submit a copy of the municipal body's decision to a sheriff, municipal or  
3 State police officer, or other law enforcement official with sufficient legal  
4 authority, who shall restore the landlord to immediate possession of the  
5 dwelling unit.

6 (2) If the municipal body decides in favor of the occupant, the landlord  
7 may proceed with other legal action, including an action for ejectment under  
8 one or more provisions of this subchapter.

9 Sec. 6. 9 V.S.A. 4466 is added to read:

10 § 4466. UTILITY SERVICES

11 Notwithstanding any provision of law to the contrary:

12 (1) a person shall not initiate new service for heating fuel, water,  
13 electricity, cable, Internet, telephone, or other services to a dwelling unit  
14 without written proof that the person requesting such service has legal right or  
15 permission of the property owner to occupy the dwelling unit; and

16 (2) a person that initiates service to a dwelling unit without obtaining  
17 written proof of authority as required in subdivision (1) of this section shall  
18 not:

19 (A) recover any costs or damages from the owner of the property for  
20 the services provided; or

1           (B) place or enforce any lien on the property related to the services  
2           provided.

3           Sec. 7. POLICE TRAINING

4           The Department of Housing and Community Development, in collaboration  
5           with the Department of Public Safety, shall present not fewer than four  
6           sessions throughout the State to provide education and training to law  
7           enforcement officials, landlords, and tenants, concerning the rights,  
8           responsibilities, and enforcement of Vermont's landlord and tenant laws.

9           Sec. 8. EFFECTIVE DATE

10          This act shall take effect on passage.