

ACLU Comments H. 772 As Passed by the House

Bill Section *We only included bill sections we have large concerns with	Bill Language	Comments *bolded comments are high-level concerns. Further context is placed next to each specific language section.
§ 4451. DEFINITIONS		Allows all eviction proceedings to move forward without reliable notice
	(1)(A) “Actual notice” means receipt of written notice either: (i) hand-delivered (ii) delivered by sheriff service; (iii) mailed to the last known address or the address provided in the residential rental agreement; (iv) emailed to an email address included in the lease agreement and mailed as described in subdivision (iii) of this subdivision (1)(A); or (v) if the last address is unknown, posted to the door of the dwelling unit.	This gives landlords presumption of receipt for emailed or door-posted notice of termination of tenancy, notice methods found to be unreliable by courts.
§ 4455. TENANT OBLIGATIONS; PAYMENT OF RENT; RENT INCREASES		Tenants have no security that rent will not be raised
	(c) A landlord shall not increase rent more than once in any 12-month period. This subsection shall not prohibit a landlord from increasing rent after the purchase of a dwelling unit subject to the requirements of this section.	Rent would still be able to be raised for tenants each year, without limits. Annual rent increases are common practice currently, and there would be no protections if buildings are sold.
§ 4456a. RESIDENTIAL RENTAL APPLICATION		Gives landlords the right to charge fees to applicants.
	(3) A landlord or a landlord’s agent may charge actual costs to conduct a background or credit check of an applicant	This would expressly give landlords the right to charge for these services.
§ 4461. SECURITY DEPOSITS		Increases security deposit costs from what is currently standard practice
	(2) A landlord shall not charge for or receive a security deposit exceeding an amount equal to two months’ rent, in addition to any rent for the first month paid on or before initial occupancy.	This would override local ordinances limiting security deposits to one month. Security deposits equaling one month's rent is standard practice.
§ 4467. TERMINATION		<ul style="list-style-type: none"> • Adds multiple new grounds for eviction

<p>OF TENANCY; NOTICE:</p>		<ul style="list-style-type: none"> • Expands vague and overly broad grounds for eviction • Creates an expedited eviction process across eviction categories, such as with non-payment • Limits tenants' ability to resolve issues before losing their homes
	<p><i>(1)(A) The landlord may terminate a tenancy for:</i> <i>(ii) a tenant's late payment of rent more than three times in a 12-month period; or</i> <i>(iii) a tenant's refusal to allow a landlord or a landlord's agent access to the dwelling unit in accordance with section 4460 of this title.</i></p>	<p>This bill adds new eviction justifications that could result in removal prior to the end of a lease term, such as repeated late payment, tenant denial of landlord access to a unit, and damage to the dwelling unit or premises.</p>
	<p><i>2) When termination is based on acts of violence, damage to the dwelling unit or premises, or other activity any of which threatens the health or safety of other residents, the landlord or landlord's agent, or neighbors, the landlord may terminate the tenancy by providing actual notice to the tenant of the date on which the tenancy will terminate, which shall be at least five days from the date of the actual notice.</i></p>	<ul style="list-style-type: none"> • This adds a new eviction reason—the undefined category of “other activity any of which threatens health and safety of other residents, the landlord or the landlord’s agent or neighbors” - this is separate and in addition to the category of “acts of violence” currently under 9 V .S.A. § 4467 (b)(2). • These vague and overly broad eviction grounds related to health and safety would require five days notice (changed from 14).
	<p><i>(a) Termination for nonpayment of rent. The landlord may terminate a tenancy for nonpayment of rent by providing actual notice to the tenant of the date on which the tenancy will terminate, which shall be at least 10 days after the date of the actual notice.</i></p> <p><i>(b) Termination for breach of rental agreement. (1)(B) A landlord shall provide actual notice given to the tenant at least 21 days prior to the termination date specified in the notice.</i></p>	<p>This section gives landlords shorter termination notice times before eviction, reducing tenants' opportunities to find new housing, access support, or prepare a defense.</p> <ul style="list-style-type: none"> • Nonpayment would be reduced to just 10 days after the date of actual notice (changed from 14) • Lease breach, late rent payment, or not allowing a landlord into a unit would be 21 days (changed from 30).

<p>§ 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING</p>		<p>Removes court discretion to order partial rent into court</p>
	<p><i>(d) If the court finds the tenant is obligated to pay rent and has failed to do so, the court shall order full payment into court of rent as it accrues while the proceeding is pending and rent accrued from the date of filing with the court the complaint for ejectment or the date the summons and complaint for ejectment were served on the tenant pursuant to Rule 3 of the Vermont Rules of Civil Procedure, whichever occurs first.</i></p>	<ul style="list-style-type: none"> • Removes court discretion to order partial rent into court unless further action is taken by tenants. The courts could not initially order less than full rent even if there is a subsidy. • Current statute states “full or partial payment.”
<p>Subchapter 4</p>		
<p>Bill Section</p> <p>§ 4863. ANSWER; HEARING</p>	<p>Language</p> <p>In the new subchapter 4, any nonpayment or breach of lease has to be adjudicated in 90 days (not enough time); there is also a burden shift in process for most eviction classifications.</p>	<p>Issue</p> <p>Shifts the burden of proof to tenants- not just within instances related to health or safety- but even for eviction processes related to most classifications</p> <p>Gives landlords a faster court scheduling for non-payment or breach of a lease.</p>
	<p><i>(a) An answer to a complaint filed under this subchapter shall be accompanied by an affidavit setting forth particular facts in opposition to the complaint.</i></p>	<ul style="list-style-type: none"> • Subchapter 9 V.S.A. § 4467(a) or (b): (nonpayment, lease breach, violence, damage to unit, threats to health or safety) • We don't think the guardrails around the complaint (12 V.S.A. § 4862(a)) will give tenants sufficient information to plan a defense. • For 12 V.S.A. 4863 “particular facts in opposition to the case”; this is a reversal of due process; tenants should not need to initially disprove a negative- landlords should need to affirmatively prove wrong-doing. • A complaint is the landlords allegations- they file a document that lists out the things they will prove in court. The law allows the court to review and see if this is a claim the law can remedy. An answer is similarly a response that states whether you agree with their assertion, to be later proved in court. Requiring tenants to

		provide an affidavit of “particular facts in opposition” essentially asks the tenant to provide evidence before the landlord does.
	<i>(b)(1) Upon receipt of an answer to a complaint based on a termination under 9 V.S.A. § 4467(a) or (b), the court shall set a final hearing date not later than 90 days after the filing of the complaint absent good cause.</i>	<ul style="list-style-type: none"> • § 4853. Service of process (current statute) reads: “The process shall be served and notice given as in other civil actions.” Currently there are no special/expedited process deadlines for eviction cases. • Any nonpayment or breach of lease would be required to be adjudicated in 90 days (not enough time)
	<i>(2) The timeline in this subsection shall not apply when the plaintiff is in possession of the lands or tenements in question or has received from the court a writ of possession for the lands or tenements.</i>	
§ 4865. THREATENING BEHAVIOR; EXPEDITED HEARING	<p>*this whole section applies only to <i>continued</i> threats to health or safety as claimed by the plaintiff (landlord) through an affidavit.</p> <p>They take parts of current statute Subchapter 3: SUPERIOR COURT EJECTMENT, which authorizes an expedited process for unlawful occupants, and applies it to anything under their proposed 9 V.S.A. § 4467 (b)(2).</p>	<p>Creates significant process barriers for tenants</p> <p>Shifts the burden of proof to tenants.</p>
	<ul style="list-style-type: none"> • <i>(a)(1) In an action for ejectment based on a termination under 9 V.S.A. § 4467(b)(2), the plaintiff may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that the defendant’s continued occupation of the lands or tenements is threatening the health or safety of other residents, the landlord or the landlord’s agent, or neighbors.</i> • <i>(2) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by an affidavit setting forth particular facts in support of the motion and a copy of the lease agreement</i> 	<ul style="list-style-type: none"> • In VT there is a complaint, answer, and merits hearing, and you can have motions in-between. Defining the procedure as a “Motion” has process implications: under motion rules, it would be the tenant’s burden to show that live testimony is needed. Because the intent is to secure a final result based on evidentiary findings by the court, using motion rules where live testimony is not always granted is not fair. When it's a motion the defendant must request an opportunity evidence to be reviewed and the court can say no (see sec C of this section). • We don't think the guardrails around the affidavit will give tenants sufficient information to plan a defense. A tenant's ability to do this relies on the facts told to you through the landlord’s complaint.

(b) A hearing on the motion shall be held promptly any time after 10 days' notice to the parties but not later than 21 days after the motion is filed absent good cause.

- This section gives a landlord an expedited process where landlord alleges a tenant “threatens harm” and that this harm would continue to impact the health and safety of others if the tenant was not removed.
- It would give tenants potentially 10 days to prepare a defense and file paperwork.
- Good cause means a valid reason that was not expected. “I need more time” is not good cause, because the statute expects the hearing to occur within ten days.

(c) At any time before the hearing, the defendant may oppose the motion pursuant to Rule 7(b)(6) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion

- Rule 7(b)(6): Evidentiary Hearings. “The court shall provide an opportunity to present evidence if requested, unless the court finds that an evidentiary hearing is not necessary. The request for an opportunity to present evidence shall include a statement of the evidence which the party wishes to offer.”
- For “shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion”:
this is a reversal of due process; tenants should not need to initially disprove a negative-landlords should need to affirmatively prove wrong-doing.
- Section (a) does not provide enough requirements that the tenant will have enough information to dispute the landlord’s affidavit “facts”, which could just be hearsay. You could also be calling in other facts unrelated to what is in the complaint. This is especially important for reasonable accommodations.

This essentially asks the tenant to provide evidence before the landlord does.

(d)(1) If the defendant fails to appear for the hearing, or to file an affidavit, signed written statement, or memorandum in opposition to the plaintiff's motion, or has failed to file an answer in the time provided pursuant to Rule 12 of the

- In certain instances, some of which are notably broad and vague (other activity any of which threatens the health or safety of

	<p><i>Vermont Rules of Civil Procedure, the plaintiff shall be entitled to judgment by default for immediate possession of the premises.</i></p>	<p>other residents, the landlord or landlord’s agent, or neighbors) the landlord would be granted possession of the unit without live testimony.</p> <ul style="list-style-type: none"> • This would give a landlord the chance for possession of the unit based on affidavit if the tenant does not or cannot respond in writing by affidavit. This would grant a landlord an expedited hearing based solely on filing; there is no expressed discretion of court to deny need for expedited hearing- “the plaintiff <i>shall</i> be entitled to judgment by default.” • This changes what a tenant needs to do to avoid a default judgement. Currently, a tenant only has to do any one of the things under (d)(1). This would require a tenant do all of the things listed, creating process barriers. • This will be hard without legal representation and for people with disabilities that may impact their ability to engage in this process.
	<p><i>(e) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, not sooner than five days after the writ is served, to put the plaintiff into possession.</i></p>	<ul style="list-style-type: none"> • The hearing would result in the landlord getting immediate possession if the tenant does not comply with new process burdens or if they cannot prepare evidence before the hearing.
<p>§ 4866. COSTS; JUDGMENT FOR PLAINTIFF; POSSESSION</p>		
	<p><i>If the court finds the plaintiff is entitled to possession, the plaintiff shall have a judgment for possession and rents due, if applicable, including damages and costs, and when a written rental agreement so provides, the court may award reasonable attorney’s fees. A writ of possession shall issue on the date of judgment and shall direct any sheriff to serve the writ upon the defendant and, not earlier than 14 days after the writ is served, put the plaintiff in possession.</i></p>	<ul style="list-style-type: none"> • This appears to apply to 9 V.S.A. § 4467(a) or (b): (nonpayment, lease breach, violence, damage to unit, threats to health or safety)
<p>§ 4867. PROPERTY OF</p>		<p>Gives landlords the right to dispose of tenant property immediately</p>

TENANT REMAINING ON PREMISES AFTER EVICTION		after the final stage of the eviction process.
	<i>A landlord may dispose of any personal property remaining in a dwelling unit or leased premises without notice or liability to the tenant or owner of the personal property upon the landlord being legally restored to possession of the dwelling unit or leased premises pursuant to this subchapter.</i>	<ul style="list-style-type: none"> This applies to 9 V.S.A. § 4467(a) or (b): (nonpayment, lease breach, violence, damage to unit, threats to health or safety) <p>Note: this is also changed in 12 VSA 4854a which would apply to other reasons for termination and 7 days Writs after failure to pay rent into court</p>
§ 4868. TRESPASS ORDERS		Allows landlords to issue no trespass orders to people who they evict
	<i>After being legally restored to possession of the dwelling unit or leased premises pursuant to this chapter, the plaintiff may issue the defendant an order against trespass for the entire premises subject to the ejectment action in accordance with 13 V.S.A. § 3705</i>	<ul style="list-style-type: none"> This applies to 9 V.S.A. § 4467(a) or (b): (nonpayment, lease breach, violence, damage to unit, threats to health or safety)
Sec. 4. PURPOSE		Allows landlords to unconstitutionally obtain criminal no trespass orders for tenant's guests for highly discretionary reasons, such breaking any lease term - without the tenant's consent.
	<i>The purpose of Sec. 5 of this act is to overrule the Vermont Supreme Court's decision in State v. Dixon, 169 Vt. 15 (1999), and allow the landlord of a dwelling unit to obtain a no trespass order prohibiting the tenant's invitees or licensees from entering the dwelling unit's common areas if the invitee or licensee subject to the order has violated the terms of the lease agreement.</i>	<ul style="list-style-type: none"> This overrides person in lawful possession. Does this change who is in possession of the unit by law? Or is this saying that regardless of who is in possession, landlords can still obtain no trespass orders? State v Dixon ruling would still be in statute under: 13 V.S.A. § 3705(a)(1) <i>(a)(1) A person shall be imprisoned for not more than three months or fined not more than \$500.00, or both, if, without legal authority or the consent of the person in lawful possession, the person enters or remains on any land or in any place as to which notice against trespass is given by.</i> The law already requires that tenants are responsible for the behavior of their guests and that all people in the unit follow the restrictions of a lease
§ 3705.	Sec. 5. 13 V.S.A. § 3705 is amended to read:	Allows landlords to put tenant's guests at risk of being charged with

**UNLAWFUL
TRESPASS**

**a crime by serving them with an
order against trespass**

(g)(1) Notwithstanding subsection (a) of this section or any provision of law to the contrary, a landlord of a dwelling unit may cause to be served an order against trespass that prohibits a tenant's invitees or licensees from trespassing in the dwelling unit or any of the dwelling unit's common areas if:
(A) the tenant responsible for the invitee or licensee consents to the order;
(B) the invitee or licensee subject to the order has violated the terms of the dwelling unit's lease agreement; or
(C) the invitee or licensee has violated a State or federal law while on the premises of the dwelling unit.

- This section unconstitutionally interferes with the right to association and to privacy in one's home and proposes a deprivation of property and liberty interest without due process.
- It would subject tenant guests who are disfavored by a landlord to criminal prosecution based on trespass when they are doing no more than exercising their right to associate.
- This would allow landlords to have tenant's guests arrested when visiting the building.
- Who is deciding that this violates the lease or the law?
 - (a) "Tenant consent" would be written into every lease.
 - (b) "lease violation" is not a criminal action warranting a criminal trespass order. A violation of the lease could be many things.
 - (c) "violation of law" are determined by courts and police, not landlords. This is way too broad. There is no tribunal to determine violations of law required to issue an order against trespass, an order could issue on just a landlord's allegation.