

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



Survey of State Laws Regarding Retaliatory Provisions

ALABAMA

NO RETALIATORY EVICTION STATUTE

ALASKA

RETALIATORY EVICTION STATUTE

Retaliatory conduct prohibited, ALASKA STAT. § 34.03.310 (1975) (omits some clauses in the Model Code; also includes some clauses from the Uniform Act)

(a) Except as provided in (c) and (d) of this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has

- (1) complained to the landlord of a violation of AS 34.03.100 ;
- (2) sought to enforce rights and remedies granted the tenant under this chapter;
- (3) organized or become a member of a tenant's union or similar organization; or
- (4) complained to a governmental agency responsible for enforcement of governmental housing, wage, price, or rent controls.

(b) If the landlord acts in violation of (a) of this section, the tenant is entitled to the remedies provided in AS 34.03.210 and has a defense in an action against the tenant for possession.

(c) Notwithstanding (a) and (b) of this section, after serving a notice to quit to the tenant under AS 09.45.100 - 09.45.105, a landlord may bring an action for possession if

- (1) the tenant is in default in rent;
- (2) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit;
- (3) the tenant is committing waste or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the rental agreement;
- (4) the landlord seeks in good faith to recover possession of the dwelling unit for personal purposes;
- (5) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
- (6) the landlord seeks in good faith to recover possession of the dwelling unit for the purpose of immediately terminating for at least six months use of the dwelling unit as a dwelling unit; or
- (7) the landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to (4), (5) or (6) of this subsection.

(d) Notwithstanding (a) of this section, the landlord may increase the rent if the landlord

- (1) has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with compliance with the complaint or request, not less than four months before the demand for an increase in rent; and the increase in rent bears a reasonable relationship to the net increase in taxes or costs;
 - (2) has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount that may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;
 - (3) can establish by competent evidence that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in the building or, in the case of a single-family residence or if there is no similar dwelling unit in the building, does not exceed the fair rental value of the dwelling unit.
- (e) Maintenance of the action under (c) of this section does not release the landlord from liability under AS [34.03.160](#) (b).

ALASKA ADMINISTRATIVE CODE

Eviction complaints by tenants, 3 ALASKA ADMIN. CODE tit. 90, § 125 (1975)

- (a) Upon delivery of a notice of eviction, an aggrieved tenant who believes that the proposed eviction is not valid or consistent with the purposes of AS 34.06 as set out in sec. 145 of this chapter may file a complaint with the board so long as formal eviction proceedings have not been filed against the tenant in a court of competent jurisdiction.
- (b) Complaints may be on forms provided by the board, but any written statement which clearly delineates the complaint of the tenant shall be accepted as a properly filed complaint. A person who is unable to prepare a written complaint may make an oral statement to the board which clearly delineates his or her complaint, and this complaint shall be accepted by the board. The board shall prepare a memorandum of an oral complaint which shall be signed by the complaining party.
- (c) Within five days after a tenant has filed a complaint with the board regarding a proposed eviction, the board, acting through its designated staff, shall review the notice of eviction and the complaint to determine if there is reasonable cause to believe that the reasons for the eviction are not valid or not consistent with the purposes of AS 34.06 as set out in sec. 145 of this chapter. It shall be presumed that there is reasonable cause to believe that the reasons given for the eviction are not valid or are not consistent with the purposes of AS 34.06 if the proposed eviction involves a tenant who has previously filed a complaint against the same landlord pursuant to sec. 30 of this chapter.
- (d) If it is determined that there is not reasonable cause to believe that the reasons for the eviction are not valid or not consistent with the purposes of AS 34.06, the board, acting through the staff, shall notify the complaining tenant that the complaint will not be heard by the board, but that this determination does not preclude the tenant's pursuing his legal remedies in court under AS 34.03 or AS 34.06.
- (e) If it is determined that there is reasonable cause to believe that the reasons for the eviction are not valid or are not consistent with the purposes of AS 34.06, the board shall send to the landlord a notice of the filing of the complaint and a copy of the complaint. A hearing shall then be held in accordance with sec. 85 of this chapter to determine if the reasons for the eviction are valid and consistent with the purposes of AS 34.06 as set out

in sec. 145 of this chapter. After receiving notice of the complaint, the landlord may not implement the proposed eviction until issued a certificate of eviction specifying that the reasons for the eviction are valid and consistent with the purposes of AS 34.06.

Retaliatory conduct prohibited, 3 ALASKA ADMIN. CODE tit. 90, § 130 (1975)

A landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has exercised his rights under this chapter or AS 34.06.

ARIZONA

ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT:

Retaliatory Conduct Prohibited, ARIZONA REV. STAT. ANN. § 33-1381 (1973)

A. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after any of the following:

1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
2. The tenant has complained to the landlord of a violation under section 33-1324.
3. The tenant has organized or become a member of a tenants' union or similar organization.
4. The tenant has complained to a governmental agency charged with the responsibility for enforcement of the wage-price stabilization act.

B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in section 33-1367 and has a defense in action against him for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. "Presumption", in this subsection, means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

C. Notwithstanding subsections A and B of this section, a landlord may bring an action for possession if either of the following occurs:

1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
2. The tenant is in default in rent. The maintenance of the action does not release the landlord from liability under section 33-1361, subsection B.

ARKANSAS

NO RETALIATORY EVICTION STATUTE

CALIFORNIA

RETALIATORY EVICTION STATUTE:

Retaliatory Rent Increase and Eviction, CAL. CIV. CODE § 1942.5 (West Supp.1976).

(a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days:

- (1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenability; or
- (2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenability; or
- (3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice; or
- (4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenability; or
- (5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenability is determined adversely to the lessor. In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke the provisions of subdivision (a) more than once in any 12-month period.

(c) It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of such acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his rights under any lease or agreement or any law pertaining to the hiring of property or his right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his rights under this section shall be void as contrary to public policy.

(e) Notwithstanding the provisions of subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If such statement be controverted, the lessor shall establish its truth at the trial or other hearing.

(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following: (1) The actual damages sustained by the lessee. (2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to such act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

COLORADO

NO RETALIATORY EVICTION STATUTE

CONNECTICUT

RETALIATORY EVICTION STATUTE:

Prohibiting retaliatory action by landlord, CONN. GEN. STAT. ANN. § 47a-20 (West 1972). A landlord shall not maintain an action or proceeding against a tenant to recover possession of a dwelling unit, demand an increase in rent from the tenant, or decrease the services to which the tenant has been entitled within six months after:

- 1) The tenant has in good faith attempted to remedy by any lawful means, including contacting officials of the state or of any town, city or borough or public agency or filing a complaint with a fair rent commission, any condition constituting a violation of any provisions of chapter 368o, or of chapter 412, or of any other state statute or regulation, or of the housing and health ordinances of the municipality wherein the premises which are the subject of the complaint lie;
- 2) any municipal agency or official has filed a notice, complaint or order regarding such a violation;
- 3) the tenant has in good faith requested the landlord to make repairs;
- 4) the tenant has in good faith instituted an action under subsections (a) to (i), inclusive, of section 47a-14h; or
- 5) the tenant has organized or become a member of a tenants' union.

Actions deemed not retaliatory, CONN. GEN. STAT. ANN. § 47a-20a

(a) Notwithstanding the provisions of section 47a-20, the landlord may maintain an action to recover possession of the dwelling unit if:

- 1) The tenant is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement or for nonpayment of rent;
- 2) the landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode;
- 3) the condition complained of was caused by the willful actions of the tenant or another person in his household or a person on the premises with his consent; or
- 4) the landlord seeks to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant before the tenant's complaint.

(b) Notwithstanding the provisions of section 47a-20, a landlord may increase the rent of a tenant if:

- 1) The condition complained of was caused by the lack of due care by the tenant or another person of his household or a person on the premises with his consent or
- 2) the landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with his complying with the complaint, not less than four months before the demand for an increase in rent, and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs.

(c) Nothing in this section or section 47a-20 shall be construed to in any way limit the defense provided in section 47a-33.

Defense that action is retaliatory, CONN. GEN. STAT. ANN. § 47a-33 (West 1975). In any action for summary process under this chapter or section 21-80 it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency or filing a complaint with a fair rent commission, any condition constituting a violation of any of the provisions of chapter 368o, or of chapter 412, or of any other state statute or regulation or of the housing or health ordinances of the municipality wherein the premises which are the subject of the complaint lie. The obligation on the part of the defendant to pay rent or the reasonable value of the use and occupancy of the premises which are the subject of any such action shall not be abrogated or diminished by any provision of this section.

DELAWARE

RETALIATORY EVICTION STATUTE:

Retaliatory Acts Prohibited, DEL. CODE ANN. tit. 25 § 5516 (1975)

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after:

- (1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; or
- (2) A state or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other code or ordinance; or
- (3) The tenant has organized or is an officer of a tenant's organization; or
- (4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.

(c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) of this section within 90 days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.

(d) It shall be a defense to a claim that the landlord has committed a retaliatory act if:

- (1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early;
 - (2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;
 - (3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;
 - (4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;
 - (5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;
 - (6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all codes, statutes and ordinances;
 - (7) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation by the purchaser conforming to paragraphs (2), (3) or (4) of this subsection;
 - (8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;
 - (9) The condition complained of was impossible to remedy prior to the end of the cure period;
 - (10) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;
 - (11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 four months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or
 - (12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.
- (e) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover 3 months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

DISTRICT OF COLUMBIA

RETALIATORY EVICTION STATUTE:

Retaliatory action, D.C. CODE ANN. § 42-3505.02 (1985)

(a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

(b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

- (1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;
- (2) Contacted appropriate officials of the District government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations in the rental unit the tenant occupies or pertaining to the housing accommodation in which the rental unit is located, or reported to the officials suspected violations which, if confirmed, would render the rental unit or housing accommodation in noncompliance with the housing regulations;
- (3) Legally withheld all or part of the tenant's rent after having given a reasonable notice to the housing provider, either orally in the presence of a witness or in writing, of a violation of the housing regulations;
- (4) Organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;
- (5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider; or
- (6) Brought legal action against the housing provider.

FLORIDA

RETALIATORY EVICTION STATUTE:

Retaliatory Conduct, FLA. STAT. ch. 83.64 (2003)

1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

- (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;
 - (b) The tenant has organized, encouraged, or participated in a tenants' organization;
 - (c) The tenant has complained to the landlord pursuant to s. 83.56(1); or
 - (d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682.
- (2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.
- (3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.
- (4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

GEORGIA

NO RETALIATORY EVICTION STATUTE

HAWAII

RETALIATORY EVICTION STATUTE

Retaliatory evictions and rent increases prohibited, HAW. REV. STAT. § 521-74 (1975)

(a) Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant; nor decrease the services to which the tenant has been entitled, after:

- (1) The tenant has complained in good faith to the department of health, landlord, building department, office of consumer protection, or any other governmental agency concerned with landlord-tenant disputes of conditions in or affecting the tenant's dwelling unit which constitutes a violation of a health law or regulation or of any provision of this chapter; or
 - (2) The department of health or other governmental agency has filed a notice or complaint of a violation of a health law or regulation or any provision of this chapter; or
 - (3) The tenant has in good faith requested repairs under section 521-63 or 521-64.
- (b) Notwithstanding subsection (a), the landlord may recover possession of the dwelling unit if:
- (1) The tenant is committing waste, or a nuisance, or is using the dwelling unit for an illegal purpose or for other than living or dwelling purposes in violation of the tenant's rental agreement;
 - (2) The landlord seeks in good faith to recover possession of the dwelling unit for immediate use as the landlord's own abode or that of the landlord's immediate family;

- (3) The landlord seeks in good faith to recover possession of the dwelling unit for the purpose of substantially altering, remodeling, or demolishing the premises;
 - (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the lack of ordinary care by the tenant or another person in the tenant's household or on the premises with the tenant's consent;
 - (5) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by or affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request in compliance with health laws and regulations;
 - (6) The landlord has in good faith contracted to sell the property, and the contract of sale contains a representation by the purchaser corresponding to paragraph (2) or (3); or
 - (7) The landlord is seeking to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant previous to the complaint or request of subsection (a).
- (c) Any tenant from whom possession has been recovered or who has been otherwise involuntarily dispossessed, in violation of this section, is entitled to recover the damages sustained by the tenant and the cost of suit, including reasonable attorney's fees.
- (d) Notwithstanding subsection (a), the landlord may increase the rent if:
- (1) The landlord has received from the department of health certification that the dwelling unit and other property and facilities used by and affecting the use and enjoyment of the tenant were on the date of filing of the complaint or request of subsection (a) in compliance with health laws and regulations;
 - (2) The landlord has become liable for a substantial increase in property taxes, or a substantial increase in other maintenance or operating costs not associated with the landlord's complying with the complaint or request, not less than four months prior to the demand for an increase in rent; and the increase in rent does not exceed the prorated portion of the net increase in taxes or costs;
 - (3) The landlord has completed a capital improvement of the dwelling unit or the property of which it is a part and the increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the dwelling units benefited by the improvement;
 - (4) The complaint or request of subsection (a) relates only to a condition or conditions caused by the want of due care by the tenant or another person of the tenant's household or on the premises with the tenant's consent; or
 - (5) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar dwelling units in the landlord's building or, in the case of a single-family residence or where there is no similar dwelling unit in the building, does not exceed the market rental value of the dwelling unit.

IDAHO

NO RETALIATORY EVICTION STATUTE

CASELAW:

Wright v. Brady, 889 P.2d 105 (Idaho Ct. App. 1995). Retaliatory eviction is an affirmative defense available to tenants. A landlord's request for eviction of a tenant under § 6-301 through § 6-316 may be defeated by a showing that the primary motive for the eviction is retaliation against the tenant for reporting violations of housing or safety codes to authorities and seeking specific performance of repairs under this section. The tenant will carry the burden to prove the retaliatory nature of the eviction.

ILLINOIS

RETALIATORY EVICTION STATUTE

Retaliatory eviction prohibited, 765 ILL. COMP. STAT. 720/1 (West 1963)

Sec. 1. It is declared to be against the public policy of the State for a landlord to terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to any governmental authority of a bona fide violation of any applicable building code, health ordinance, or similar regulation. Any provision in any lease, or any agreement or understanding, purporting to permit the landlord to terminate or refuse to renew a lease or tenancy for such reason is void.

INDIANA

NO RETALIATORY EVICTION STATUTE

TENANT RELIEF:

Actions by tenants – Relief, IND. CODE § 32-31-8-6 (2004)

(a) A tenant may bring an action in a court with jurisdiction to enforce an obligation of a landlord under this chapter.

(b) A tenant may not bring an action under this chapter unless the following conditions are met:

- (1) The tenant gives the landlord notice of the landlord's noncompliance with a provision of this chapter.
- (2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice.
- (3) The landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

(c) This section may not be construed to limit a tenant's rights under IC 32-31-3, IC 32-31-5, or IC 32-31-6.

(d) If the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances:

- (1) Recovery of the following:
 - (A) Actual damages and consequential damages.
 - (B) Attorney's fees and court costs.
- (2) Injunctive relief.
- (3) Any other remedy appropriate under the circumstances.

(e) A landlord's liability for damages under subsection (d) begins when:

- (1) the landlord has notice or actual knowledge of noncompliance; and
- (2) the landlord has:
 - (A) refused to remedy the noncompliance; or
 - (B) failed to remedy the noncompliance within a reasonable amount of time following the notice or actual knowledge;whichever occurs first.

IOWA

RETALIATORY EVICTION STATUTE

Retaliatory Conduct Prohibited, IOWA CODE § 562A.36 (1979)

1. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
 - a. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;
 - b. The tenant has complained to the landlord of a violation under section 562A.15; or
 - c. The tenant has organized or become a member of a tenants' union or similar organization.
2. If the landlord acts in violation of subsection 1 of this section, the tenant may recover from the landlord the actual damages sustained by the tenant and reasonable attorney's fees, and has a defense in action against the landlord for possession. In an action by or against the tenant, evidence of a good faith complaint within one year prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. Evidence by the landlord that legitimate costs and charges of owning, maintaining or operating a dwelling unit have increased shall be a defense against the presumption of retaliation when a rent increase is commensurate with the increase in costs and charges. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
3. Notwithstanding subsections 1 and 2 of this section, a landlord may bring an action for possession if:
 - a. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;
 - b. The tenant is in default in rent; or
 - c. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under section 562A.21, subsection 2.

KANSAS

RETALIATORY EVICTION STATUTE

Certain retaliatory actions by landlord prohibited; remedies; increased rent, when; action for possession, when, KAN. STAT. ANN. § 58-2572 (Supp.1975)

(a) Except as otherwise provided in this section, a landlord may not retaliate by increasing rent or decreasing services after:

- (1) The tenant has complained to a governmental agency, charged with responsibility for enforcement of a building or housing code, of a violation applicable to the premises materially affecting health and safety; or
- (2) the tenant has complained to the landlord of a violation under K.S.A. 58-2553; or
- (3) the tenant has organized or become a member of a tenants' union or similar organization.

(b) If the landlord acts in violation of subsection (a) of this section, the tenant is entitled to the remedies provided in K.S.A. 58-2563 and has a defense in an action against such tenant for possession.

(c) Notwithstanding the provisions of subsection (a), the landlord may increase the rent of a tenant even though the tenant has complained of a violation as described in clauses (1) or (2) of subsection (a) or has organized or become a member of an organization as described in clause (3) of subsection (a), if such rent increase does not conflict with a lease agreement in effect and is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operations.

(d) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

- (1) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person or animal or pet upon the premises with his or her express or implied consent;
- (2) the tenant is in default in rent; or
- (3) compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of an action under this subsection does not release the landlord from liability under subsection (b) of K.S.A. 58-2559.

KENTUCKY

Retaliatory Conduct, KY. REV. STAT. ANN. § 383.705 (Supp.1974)

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

- (a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;
- (b) The tenant has complained to the landlord of a violation under KRS 383.595;
- (c) The tenant has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in KRS 383.655 and has a defense in any retaliatory action

against him for possession. In an action by or against the tenant, evidence of a complaint within one (1) year before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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

- (a) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;
- (b) The tenant is in default in rent; or
- (c) Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(4) The maintenance of an action under subsection (3) of this section does not release the landlord from liability under KRS 383.625(2).

LOUISIANA

NO RETALIATORY EVICTION STATUTE

CASELAW:

Steier v. Heller, 732 So. 2d 787 (LA 1999). "Abuse of Rights" Doctrine: The abuse of rights doctrine applies only when one of the following conditions are met:

- (1) the predominant motive for exercise of the right is to cause harm;
- (2) there is no serious or legitimate motive for exercise of the right;
- (3) the exercise of the right violates moral rules, good faith, or elementary fairness; or
- (4) the exercise of the right is for a purpose other than that for which it was granted.

Capone v. Kenny, 646 So. 2d 510 (La. Ct. App. 1994) The lessor, at the expiration of the lease, whether month-to-month, or a fixed term, had the right to demand possession of his property without giving any reason. In addition, it was error for the trial court to refuse to consider the lessees' defense of abuse of right. However, if the lessees' allegations of abuse of right were accepted as true, the lessees failed to allege any abuse so egregious that it would be sufficient to outweigh the lessor's right to terminate a month-to-month lease at the end of the month without giving any reason.

MAINE

TENANT REMEDIES:

Availability of Entry & Detainer Remedy, ME. REV.STAT.ANN. tit. 14 § 6001 (Supp.1975)

1. Persons against whom process may be maintained. Process of forcible entry and detainer may be maintained against a disseisor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such a tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term,

without notice, if commenced within 7 days from the expiration or forfeiture of the term; against a tenant at will, whose tenancy has been terminated as provided in section 6002; and against mobile home owners and tenants pursuant to Title 10, chapter 951, subchapter VI. When there are multiple occupants of an apartment or residence, the process of forcible entry and detainer is effective against all occupants if the plaintiff names as parties "all other occupants" together with all adult individuals whose names appear on the lease or rental agreement for the premises or whose tenancy the plaintiff has acknowledged by acceptance of rent or otherwise.

2. Persons who may not maintain process. The process of forcible entry and detainer may not be maintained against a tenant by a 3rd party lessee, grantee, assignee or donee of the tenant's premises, unless a tenant at will has received notice of termination in accordance with section 6002 by either the grantor or the grantee of the conveyance

3. Presumption of retaliation. In any action of forcible entry and detainer there shall be a presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:

A. Asserted his rights pursuant to section 6021;

B. Complained as an individual, or a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit which may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation;

C. Complained in writing or made a written request, in good faith, to the landlord or the landlord's agent to make repairs on the premises as required by any applicable building, housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; or

No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.

4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.

MARYLAND

RETALIATORY EVICTION STATUTE

Retaliatory Evictions, MARYLAND ANN. CODE REAL PROP. § 8-208.1 (1999)

(a) Prohibited evictions. -- No landlord shall evict a tenant of any residential property or arbitrarily increase the rent or decrease the services to which the tenant has been entitled for any of the following reasons:

(1) Solely because the tenant or the tenant's agent has filed a good faith written complaint, or complaints, with the landlord or with any public agency or agencies against the landlord;

(2) Solely because the tenant or the tenant's agent has filed a lawsuit, or lawsuits, against the landlord; or

(3) Solely because the tenant is a member or organizer of any tenants' organization.

(b) "Retaliatory evictions" defined. -- Evictions described in subsection (a) of this section shall be called "retaliatory evictions".

- (c) Attorney's fees and costs. --
 - (1) If in any eviction proceeding the judgment be in favor of the tenant for any of the aforementioned defenses, the court may enter judgment for reasonable attorney fees and court costs against the landlord.
 - (2) If in any eviction proceeding the court finds that a tenant's assertion of a retaliatory eviction defense was in bad faith or without substantial justification, the court may enter judgment for reasonable attorney fees and court costs against the tenant.
- (d) Conditions for relief. -- The relief provided under this section is conditioned upon:
 - (1) In the case of tenancies measured by a period of one month or more, the court having not entered against the tenant more than 3 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord.
 - (2) In the case of tenancies requiring the weekly payment of rent, the court having not entered against the tenant more than 5 judgments of possession for rent due and unpaid in the 12-month period immediately prior to the initiation of the action by the tenant or by the landlord, or, if the tenant has lived on the premises 6 months or less, the court having not entered against the tenant 3 judgments of possession for rent due and unpaid.
- (e) Evictions not deemed "retaliatory evictions". -- No eviction shall be deemed to be a "retaliatory eviction" for purposes of this section upon the expiration of a period of 6 months following the determination of the merits of the initial case by a court (or administrative agency) of competent jurisdiction.
- (f) Rights not affected. -- Nothing in this section may be interpreted to alter the landlord's or the tenant's rights to terminate or not renew a tenancy governed by a written lease for a stated term of greater than 1 month at the expiration of the term or at any other time as the parties may specifically agree.
- (g) Effect of ordinance comparable in subject matter. -- In the event any county or Baltimore City shall have enacted an ordinance comparable in subject matter to this section, that ordinance shall supersede the provisions of this section.

Retaliatory Evictions in Montgomery County, MARYLAND ANN. CODE REAL PROP. § 8-206 (2002).

- (a) "Retaliatory evictions" defined. -- Evictions described in subsection (b) of this section are called "retaliatory evictions."
- (b) Evictions under certain circumstances prohibited. -- No landlord may evict a tenant of any residential property in Montgomery County because --
 - (1) The tenant has filed a complaint against the landlord with any public agency;
 - (2) The tenant has filed a lawsuit against the landlord; or
 - (3) The tenant is a member of any tenants' organization.
- (c) Judgment for defendant. -- If the judgment is in favor of the tenant in any eviction proceeding for any of the defenses in subsection (b) of this section, the court may enter judgment for reasonable attorney fees and court costs against the landlord.
- (d) Scope. -- Nothing in this section restricts the authority of Montgomery County to legislate in the area of landlord-tenant affairs.

(e) Authority for local agency to invoke enforcement procedures. -- In addition to any other remedies provided under this title, Montgomery County may, by local law, establish authorization for a local agency to invoke enforcement procedures upon an administrative determination that a proposed eviction is retaliatory as prohibited by State or local law. These enforcement procedures may include injunctive or other equitable relief.

Retaliatory Actions for Informing Landlord of Lead Poisoning Hazards, MARYLAND ANN. CODE REAL PROP. § 8-208.2 (2002).

(a) Prohibited. -- Notwithstanding the provisions of § 8-208.1 of this subtitle, a landlord of real property subject to the provisions of Title 6, Subtitle 8 of the Environment Article may not evict or take any other retaliatory action against a tenant primarily as a result of the tenant providing information to the landlord under Title 6, Subtitle 8 of the Environment Article.

(b) Retaliatory actions. -- For purposes of this section, a retaliatory action includes:

- (1) An arbitrary refusal to renew a lease;
- (2) Termination of a tenancy;
- (3) An arbitrary rent increase or decrease in services to which the tenant is entitled; or
- (4) Any form of constructive eviction.

(c) Remedies. -- A tenant subject to an eviction or retaliatory action under this section is entitled to the relief, and is eligible for reasonable attorney's fees and costs, authorized under § 8-208.1 of this subtitle.

(d) Breach of lease provisions. -- Nothing in this section may be interpreted to alter the landlord's or the tenant's rights arising from a breach of any provision of a lease.

MASSACHUSETTS

RETALIATORY EVICTION STATUTE

Reprisal for reporting violations of law or for tenant's union activity; defense; presumption, MASS. GEN. LAWS ANN. ch. 239 § 2A (Supp.1975)

It shall be a defense to an action for summary process that such action or the preceding action of terminating the tenant's tenancy, was taken against the tenant for the tenant's act of commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action was to obtain damages under or otherwise enforce, any federal, state or local law, regulation, by-law, or ordinance, which has as its objective the regulation of residential premises, or exercising rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four, or reporting a violation or suspected violation of law as provided in section eighteen of chapter one hundred and eighty-six, or organizing or joining a tenants' union or similar organization or making, or expressing an intention to make, a payment of rent to an organization of unit owners pursuant to paragraph (c) of section six of chapter one hundred and eighty-three A. The commencement of such action against a tenant, or the sending of a notice to quit upon which the summary process action is based, or the sending of a notice, or performing any act, the purpose of which is to materially alter the terms of the tenancy, within six months after the tenant has commenced, proceeded with or obtained relief in such action, exercised such rights, made such report, organized or joined such tenants' union, or made or expressed an intention to make a payment of rent to an organization of

unit owners, or within six months after any other person has taken such action or actions on behalf of the tenant or relating to the building in which such tenant resides, shall create a rebuttable presumption that such summary process action is a reprisal against the tenant for engaging in such activities or was taken in the belief that the tenant had engaged in such activities. Such presumption may be rebutted only by clear and convincing evidence that such action was not a reprisal against the tenant and that the plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not commenced any legal action, made such report or engaged in such activity.

Reprisal for reporting violations of law or for tenant's union activity; damages and costs; notice of termination, presumption; waiver in leases or other rental agreements prohibited, MASS. GEN. LAWS ANN. ch. 186 § 18 (Supp.1975).

Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises for the tenant's act of, commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action is to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises; or exercising the tenant's rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four; or reporting to the board of health or, in the city of Boston to the commissioner of housing inspection or to any other board having as its objective the regulation of residential premises a violation or a suspected violation of any health or building code or of any other municipal by-law or ordinance, or state or federal law or regulation which has as its objective the regulation of residential premises; or reporting or complaining of such violation or suspected violation in writing to the landlord or to the agent of the landlord; or for organizing or joining a tenants' union or similar organization, or for making or expressing an intention to make, a payment of rent to an organization of unit owners pursuant to paragraph (c) of section six of chapter one hundred and eighty-three A shall be liable for damages which shall not be less than one month's rent or more than three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney's fee.

The receipt of any notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, or, of any substantial alteration in the terms of tenancy within six months after the tenant has commenced, proceeded with, or obtained relief in such action, exercised such rights, made such report or complaint, or organized or joined such tenants' union or within six months after any other person has taken such action or actions on behalf of the tenant or in, or relating to, the building in which the tenant resides, shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities. Such presumption shall be rebutted only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action

was taken, regardless of tenants engaging in, or the belief that tenants had engaged in, activities protected under this section.

Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

MICHIGAN

RETALIATORY EVICTION STATUTE

Judgment for possession of premises for alleged termination of tenancy; grounds for not entering; retaliatory termination of tenancy; presumptions; burden, MICH. COMP. LAWS § 600.5720 (1963)

(1) A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a defendant if 1 or more of the following is established:

- (a) That the alleged termination was intended primarily as a penalty for the defendant's attempt to secure or enforce rights under the lease or agreement or under the laws of the state, of a governmental subdivision of this state, or of the United States.
- (b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or ordinance.
- (c) That the alleged termination was intended primarily as retribution for a lawful act arising out of the tenancy, including membership in a tenant organization and a lawful activity of a tenant organization arising out of the tenancy.
- (d) That the alleged termination was of a tenancy in housing operated by a city, village, township, or other unit of local government and was terminated without cause.
- (e) That the plaintiff attempted to increase the defendant's obligations under the lease or contract as a penalty for the lawful acts as are described in subdivisions (a) to (c) and that the defendant's failure to perform the additional obligations was the primary reason for the alleged termination of tenancy.
- (f) That the plaintiff committed a breach of the lease which excuses the payment of rent if possession is claimed for nonpayment of rent.
- (g) That the rent allegedly due, in an action where possession is claimed for nonpayment of rent, was paid into an escrow account under section 130 of Act No. 167 of the Public Acts of 1917, being section 125.530 of the Michigan Compiled Laws; was paid pursuant to a court order under section 134(5) of Act No. 167 of the Public Acts of 1917, as amended, being section 125.534 of the Michigan Compiled Laws; or was paid to a receiver under section 135 of Act No. 167 of the Public Acts of 1917, being section 125.535 of the Michigan Compiled Laws.

(2) If a defendant who alleges a retaliatory termination of the tenancy shows that within 90 days before the commencement of summary proceedings the defendant attempted to secure or enforce rights against the plaintiff or to complain against the plaintiff, as provided in subsection (1)(a), (b), (c), or (e), by means of official action to or through a court or other governmental agency and the official action has not resulted in dismissal or denial of the attempt or complaint, a presumption in favor of the defense of retaliatory termination arises, unless the plaintiff establishes by a preponderance of the evidence that

the termination of tenancy was not in retaliation for the acts. If the defendant's alleged attempt to secure or enforce rights or to complain against the plaintiff occurred more than 90 days before the commencement of proceedings or was terminated adversely to the defendant, a presumption adverse to the defense of retaliatory termination arises and the defendant has the burden to establish the defense by a preponderance of the evidence.

MINNESOTA

RETALIATORY EVICTION STATUTE

Residential tenant may not be penalized for complaint, MINN. STAT. ANN. § 504B.441 (1999)

A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's complaint of a violation. The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant.

Eviction actions; grounds; retaliation defense; combined allegations, MINN. STAT. ANN. § 504B.285 (1999)

Subdivision 1. Grounds. The person entitled to the premises may recover possession by eviction when:

- (1) any person holds over real property:
 - (i) after a sale of the property on an execution or judgment;
 - (ii) on foreclosure of a mortgage and expiration of the time for redemption; or
 - (iii) after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for redemption or termination is a tenant, the person has received:
 - (A) at least one month's written notice to vacate no sooner than one month after the expiration of the time for redemption or termination, provided that the tenant pays the rent and abides by all terms of the lease; or
 - (B) at least one month's written notice to vacate no later than the date of the expiration of the time for redemption or termination, which notice shall also state that the sender will hold the tenant harmless for breaching the lease by vacating the premises if the mortgage is redeemed or the contract is reinstated;
- (2) any person holds over real property after termination of the time for which it is demised or leased to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or
- (3) any tenant at will holds over after the termination of the tenancy by notice to quit.

Subd. 2. Retaliation defense. It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:

- (1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or
- (2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.

If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.

Subd. 3. Rent increase as penalty. In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in subdivision 2, providing that the tenant tender to the court or to the plaintiff the amount of rent due and payable under the tenant's original obligation.

Subd. 4. Nonlimitation of landlord's rights. Nothing contained in subdivisions 2 and 3 limits the right of the landlord pursuant to the provisions of subdivision 1 to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under the tenant's direction or control.

- Subd. 5. Combining allegations.* (a) An action for recovery of the premises may combine the allegation of nonpayment of rent and the allegation of material violation of the lease, which shall be heard as alternative grounds.
- (b) In cases where rent is outstanding, a tenant is not required to pay into court the amount of rent in arrears, interest, and costs as required under [section 504B.291](#) to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.
- (c) If the landlord does not prevail in proving material violation of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due. The court may order the tenant to pay rent and any costs determined to be due directly to the landlord or to be deposited with the court.

MISSISSIPPI

GOOD FAITH STATUTE

Obligation to act in good faith, MISS. CODE ANN. § 89-8-9 (1991)

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter, including the landlord's termination of a tenancy or nonrenewal of a lease, imposes an obligation of good faith in its performance or enforcement.

MISSOURI

NO RETALIATORY EVICTION STATUTE

CASELAW:

Leve v. Delph, 710 S.W.2d 389 (Mo. Ct. App. 1986) Tenants were precluded under Missouri law from raising the equitable defense of retaliatory eviction in an unlawful detainer action; matters of equity could not be interposed as a defense because the sole issue was landlord's right to immediate possession of the premises after the tenants were placed on notice of the eviction date.

MONTANA

RETALIATORY EVICTION STATUTE

Retaliatory conduct by landlord prohibited, MONT. CODE ANN. § 70-24-431

- (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:
- (a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;
 - (b) has complained to the landlord in writing of a violation under 70-24-303; or
 - (c) has organized or become a member of a tenant's union, mobile home park tenant association, or similar organization.
- (2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.
- (3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
- (4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:
- (a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or other persons on the premises with his consent;
 - (b) the tenant is in default in rent; or
 - (c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.
- (5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

NEBRASKA

RETALIATORY EVICTION STATUTE

Retaliatory Conduct Prohibited, NEB. REV. STAT. § 76-1439 (1974)

- (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after:
- (a) The tenant has complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety; or
 - (b) The tenant has organized or become a member of a tenants' union or similar organization.
- (2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in section 76-1430 and has a defense in action against him for possession. Nothing in this section shall be construed as prohibiting reasonable rent increases or changes in services notwithstanding the occurrence of acts specified in subsection (1).
- (3) Notwithstanding subsections (1) and (2), a landlord may bring an action for possession if:
- (a) The violation of the applicable minimum building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent;
 - (b) The tenant is in default in rent; or
 - (c) Compliance with the applicable minimum building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit. The maintenance of the action does not release the landlord from liability under subsection (2) of section 76-1425.

Retaliatory Conduct Prohibited; remedies; landlord action for possession; when, NEB. REV. STAT. § 76-14,106 (1984) (from the Mobile Home Landlord and Tenant Act).

- (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, bringing or threatening to bring an action for possession, or failing to renew a rental agreement after any of the following: (a) A tenant has complained in good faith to a government agency charged with responsibility for enforcement of any code of a violation applicable to the mobile home park materially affecting health and safety; (b) A tenant has complained to the landlord of a violation of section 76-1492; (c) A tenant has organized or become a member of a tenants' union or similar organization; or (d) A tenant has exercised any of the rights or remedies provided by the Mobile Home Landlord and Tenant Act or otherwise available at law.
- (2) If a landlord acts in violation of subsection (1) of this section, the tenant shall be entitled to the remedies provided in section 76-1498 and shall have a defense in an action for possession.
- (3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if: (a) The violation of any applicable housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent; or (b) The tenant is in default in rent five days after rent is due unless otherwise agreed to by the landlord and tenant. The maintenance of the action shall not release the landlord from liability under subsection (2) of section 76-1498

NEVADA

RETALIATORY EVICTION STATUTE

Retaliatory conduct by landlord against tenant prohibited; remedies; exceptions, NEV. REV. STATE. 118A.510 (1999).

1. Except as otherwise provided in subsection 3, the landlord may not, in retaliation, terminate a tenancy, refuse to renew a tenancy, increase rent or decrease essential services required by the rental agreement or this chapter, or bring or threaten to bring an action for possession if:

(a) The tenant has complained in good faith of a violation of a building, housing or health code applicable to the premises and affecting health or safety to a governmental agency charged with the responsibility for the enforcement of that code;

(b) The tenant has complained in good faith to the landlord or a law enforcement agency of a violation of this chapter or of a specific statute that imposes a criminal penalty;

(c) The tenant has organized or become a member of a tenant's union or similar organization;

(d) A citation has been issued resulting from a complaint described in paragraph (a);

(e) The tenant has instituted or defended against a judicial or administrative proceeding or arbitration in which he raised an issue of compliance with the requirements of this chapter respecting the habitability of dwelling units;

(f) The tenant has failed or refused to give written consent to a regulation adopted by the landlord, after the tenant enters into the rental agreement, which requires the landlord to wait until the appropriate time has elapsed before it is enforceable against the tenant; or

(g) The tenant has complained in good faith to the landlord, a government agency, an attorney, a fair housing agency or any other appropriate body of a violation of [NRS 118.010](#) to [118.120](#), inclusive, or the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq., or has otherwise exercised rights which are guaranteed or protected under those laws.

2. If the landlord violates any provision of subsection 1, the tenant is entitled to the remedies provided in [NRS 118A.390](#) and has a defense in any retaliatory action by the landlord for possession.

3. A landlord who acts under the circumstances described in subsection 1 does not violate that subsection if:

(a) The violation of the applicable building, housing or health code of which the tenant complained was caused primarily by the lack of reasonable care by the tenant, a member of his household or other person on the premises with his consent;

(b) The tenancy is terminated with cause;

(c) A citation has been issued and compliance with the applicable building, housing or health code requires alteration, remodeling or demolition and cannot be accomplished unless the tenant's dwelling unit is vacant; or

(d) The increase in rent applies in a uniform manner to all tenants.

The maintenance of an action under this subsection does not prevent the tenant from seeking damages or injunctive relief for the landlord's failure to comply with the

rental agreement or maintain the dwelling unit in a habitable condition as required by this chapter.

Retaliatory conduct by landlord and harassment by landlord, management or tenant prohibited, NEV. REV. STATE. 118B.210 (2003).

1. The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease services he normally supplies, or bring or threaten to bring an action for possession of a manufactured home lot as retaliation upon the tenant because:
 - (a) He has complained in good faith about a violation of a building, safety or health code or regulation pertaining to a manufactured home park to the governmental agency responsible for enforcing the code or regulation.
 - (b) He has complained to the landlord concerning the maintenance, condition or operation of the park or a violation of any provision of [NRS 118B.040](#) to [118B.220](#), inclusive, or [118B.240](#).
 - (c) He has organized or become a member of a tenants' league or similar organization.
 - (d) He has requested the reduction in rent required by:
 - (1) [NRS 118.165](#) as a result of a reduction in property taxes.
 - (2) [NRS 118B.153](#) when a service, utility or amenity is decreased or eliminated by the landlord.
 - (e) A citation has been issued to the landlord as the result of a complaint of the tenant.
 - (f) In a judicial proceeding or arbitration between the landlord and the tenant, an issue has been determined adversely to the landlord.
2. A landlord, manager or assistant manager of a manufactured home park shall not willfully harass a tenant.
3. A tenant shall not willfully harass a landlord, manager or assistant manager of a manufactured home park or an employee or agent of the landlord.
4. As used in this section, "harass" means to threaten or intimidate, through words or conduct, with the intent to affect the terms or conditions of a tenancy or a person's exercise of his rights pursuant to this chapter.

NEW HAMPSHIRE

RETALIATORY EVICTION STATUTE

Defense to Retaliation, N.H. REV. STAT. ANN. § 540:13-a (1979)

Except in cases in which the tenant owes the landlord the equivalent of one week's rent or more, it shall be a defense to any possessory action, as to residential property, that such possessory action was in retaliation for the tenant:

- I. Reporting a violation or reporting in good faith what the tenant reasonably believes to be a violation of RSA 540-A or an unreasonable and substantial violation of a regulation or housing code to the landlord or any board, agency or authority having powers of inspection, regulation or enforcement as to the reasonable fitness of said residential property for health or safety;
- II. Initiating an action in good faith pursuant to RSA 540-A or availing himself of the procedures of RSA 540:13-d; or
- III. Meeting or gathering with other tenants for any lawful purpose.

Evidence of Intent to Retaliate, N.H. REV. STAT. ANN. § 540:13-b (1979)

Unless the court finds that the act of the tenant in making a report or complaint or in initiating an action or in organizing relative to alleged violations by a landlord was primarily intended to prevent any eviction, a rebuttable presumption that such possessory action was in retaliation of the tenant's action shall be created when any possessory action, increase in rent or any substantial alteration in the terms of the tenancy is instituted by a landlord within 6 months after:

- I. The landlord received notice of any such alleged violation provided that:
 - (a) The tenant mailed, gave in hand to, or left at the abode of the landlord notice of the report or complaint of the alleged violation; or
 - (b) The landlord received notice of the complaint or report from the board, agency or authority; or
- II. The landlord completed repairs or otherwise successfully remedied such violation; or
- III. The landlord received notice that the tenant had initiated an action pursuant to RSA 540-A; or
- IV. The discovery by the landlord of activity protected by RSA 540:13-a, III.

NEW JERSEY

TENANT REMEDIES STATUTE

Rebuttable presumption; notice to quit or alteration of tenancy as reprisal, N.J. STAT. ANN. § 2A:42.10.12 (West 1975)

2A:42-10.12. Rebuttable presumption; notice to quit or alteration of tenancy as reprisal. In any action or proceeding instituted by or against a tenant, the receipt by the tenant of a notice to quit or any substantial alteration of the terms of the tenancy without cause after:

- a. The tenant attempts to secure or enforce any rights under the lease or contract, or under the laws of the State of New Jersey, or its governmental subdivisions, or of the United States; or
- b. The tenant, having brought a good faith complaint to the attention of the landlord and having given him a reasonable time to correct the alleged violation, complains to a governmental authority with a report of the landlord's alleged violation of any health or safety law, regulation, code or ordinance; or
- c. The tenant organizes, becomes a member of, or becomes involved in any activities of, any lawful organization; or
- d. Judgment under section 2 of this act is entered for the tenant in a previous action for recovery of premises between the parties; shall create a rebuttable presumption that such notice or alteration is a reprisal against the tenant for making such attempt, report, complaint, or for being an organizer of, a member of, or involved in any activities of, any lawful organization. No reprisal shall be presumed under this section based upon the failure of a landlord to renew a lease or tenancy when so requested by a tenant if such request is made sooner than 90 days before the expiration date of the lease or tenancy, or the renewal date set forth in the lease agreement, whichever later occurs.

NEW MEXICO

RETALIATORY EVICTION STATUTE

Unlawful removal and diminution of services prohibited, N.M. STAT. ANN. § 47-8-36 (1995).

A. Except in case of abandonment, surrender or as otherwise permitted in the Uniform Owner-Resident Relations Act, an owner or any person acting on behalf of the owner shall not knowingly exclude the resident, remove, threaten or attempt to remove or dispossess a resident from the dwelling unit without a court order by:

- (1) fraud;
- (2) plugging, changing, adding or removing any lock or latching device;
- (3) blocking any entrance into the dwelling unit;
- (4) interfering with services or normal and necessary utilities to the unit pursuant to [Section 47-8-32 NMSA 1978](#), including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service, provided that this section shall not impose a duty upon the owner to make utility payments or otherwise prevent utility interruptions resulting from nonpayment of utility charges by the resident;
- (5) removing the resident's personal property from the dwelling unit or its premises;
- (6) removing or incapacitating appliances or fixtures, except for making necessary and legitimate repairs; or
- (7) any willful act rendering a dwelling unit or any personal property located in the dwelling unit or on the premises inaccessible or uninhabitable.

B. The provisions of Subsection A of this section shall not apply if an owner temporarily interferes with possession while making legitimate repairs or inspections as provided for in the Uniform Owner-Resident Relations Act.

C. If an owner commits any of the acts stated in Subsection A of this section, the resident may:

- (1) abate one hundred percent of the rent for each day in which the resident is denied possession of the premises for any portion of the day or each day where the owner caused termination or diminishment of any service for any portion of the day;
- (2) be entitled to civil penalties as provided in [Subsection B of Section 47-8-48 NMSA 1978](#);
- (3) seek restitution of the premises pursuant to [Sections 47-8-41](#) and [Section 47-8-42 NMSA 1978](#) or terminate the rental agreement; and
- (4) be entitled to damages.

Owner Retaliation Prohibited, N.M. STAT. ANN. § 47-8-39 (1999).

A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of the Uniform Owner-Resident Relations Act by increasing rent, decreasing services or by bringing or threatening to bring an action for possession because the resident has within the previous six months:

- (1) complained to a government agency charged with responsibility for enforcement of a minimum building or housing code of a violation applicable to the premises materially affecting health and safety;
- (2) organized or become a member of a residents' union, association or similar organization;
- (3) acted in good faith to exercise his rights provided under the Uniform Owner-Resident Relations Act, including when the resident makes a written request or complaint to the owner to make repairs to comply with the owner's obligations under [Section 47-8-20 NMSA 1978](#);
- (4) made a fair housing complaint to a government agency charged with authority for enforcement of laws or regulations prohibiting discrimination in rental housing;
- (5) prevailed in a lawsuit as either plaintiff or defendant or has a lawsuit pending against the owner relating to the residency;
- (6) testified on behalf of another resident; or

(7) abated rent in accordance with the provisions of [Section 47-8-27.1](#) or [47-8-27.2 NMSA 1978](#).

B. If the owner acts in violation of Subsection A of this section, the resident is entitled to the remedies provided in [Section 47-8-48 NMSA 1978](#) and the violation shall be a defense in any action against him for possession.

NEW YORK

RETALIATORY EVICTION STATUTE

Retaliation by landlord against tenant, N.Y. REAL PROP. ACTS. § 223-b (Consol. 1979)

1. No landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:
 - a. A good faith complaint, by or in behalf of the tenant, to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or
 - b. Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, under section two hundred thirty-five-b of this chapter, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or
 - c. The tenant's participation in the activities of a tenant's organization.
2. No landlord or premises or units to which this section is applicable shall substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b, and c of subdivision one of this section. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the tenant or, upon expiration of the tenant's lease, to renew the lease or offer a new lease; provided, however, that a landlord shall not be required under this section to offer a new lease or a lease renewal for a term greater than one year and after such extension of a tenancy for one year shall not be required to further extend or continue such tenancy.
3. A landlord shall be subject to a civil action for damages and other appropriate relief, including injunctive and other equitable remedies, as may be determined by a court of competent jurisdiction in any case in which the landlord has violated the provisions of this section.
4. In any action to recover real property or summary proceeding to recover possession of real property, judgment shall be entered for the tenant if the court finds that the landlord is acting in retaliation for any action set forth in paragraphs a, b, and c of subdivision one of this section and further finds that the landlord would not otherwise have commenced such action or proceeding. Retaliation shall be asserted as an affirmative defense in such action or proceeding. The tenant shall not be relieved of the obligation to pay any rent for which he is otherwise liable.
5. In an action or proceeding instituted against a tenant of premises or a unit to which this section is applicable, a rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit,

or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within six months after:

- a. A good faith complaint was made, by or in behalf of the tenant, to a governmental authority of the landlord's violation of any health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or
- b. The tenant in good faith commenced an action or proceeding in a court or administrative body of competent jurisdiction to secure or enforce against the landlord or his agents any rights under the lease or rental agreement, under section two hundred thirty-five-b of this chapter, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree.
- c. Judgment under subdivision three or four of this section was entered for the tenant in a previous action between the parties; or an inspection was made, an order was entered, or other action was taken as a result of a complaint or act described in paragraph a or b of this subdivision. But the presumption shall not apply in an action or proceeding based on the violation by the tenant of the terms and conditions of the lease or rental agreement, including nonpayment of the agreed-upon rent. The effect of the presumption shall be to require the landlord to provide a credible explanation of a non-retaliatory motive for his acts. Such an explanation shall overcome and remove the presumption unless the tenant disproves it by a preponderance of the evidence.

6. This section shall apply to all rental residential premises except owner-occupied dwellings with less than four units. However, its provisions shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

Right of tenants to form, join or participate in tenants' groups, N.Y. REAL PROP. ACTS § 230 (McKinney 1995)

Right of tenants to form, join or participate in tenants' groups.

1. No landlord shall interfere with the right of a tenant to form, join or participate in the lawful activities of any group, committee or other organization formed to protect the rights of tenants; nor shall any landlord harass, punish, penalize, diminish, or withhold any right, benefit or privilege of a tenant under his tenancy for exercising such right.
2. Tenants' groups, committees or other tenants' organizations shall have the right to meet without being required to pay a fee in any location on the premises including a community or social room where use is normally subject to a fee which is devoted to the common use of all tenants in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities. No landlord shall deny such right.

NORTH CAROLINA

RETALIATORY EVICTION STATUTE

Defense of retaliatory eviction, N.C. GEN. STAT § 42-37.1 (1979)

(a) It is the public policy of the State of North Carolina to protect tenants and other persons whose residence in the household is explicitly or implicitly known to the landlord, who seek to exercise their rights to decent, safe, and sanitary housing.

Therefore, the following activities of such persons are protected by law:

- (1) A good faith complaint or request for repairs to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair under G.S. 42-42;
- (2) A good faith complaint to a government agency about a landlord's alleged violation of any health or safety law, or any regulation, code, ordinance, or State or federal law that regulates premises used for dwelling purposes;
- (3) A government authority's issuance of a formal complaint to a landlord concerning premises rented by a tenant;
- (4) A good faith attempt to exercise, secure or enforce any rights existing under a valid lease or rental agreement or under State or federal law; or
- (5) A good faith attempt to organize, join, or become otherwise involved with, any organization promoting or enforcing tenants' rights.

(b) In an action for summary ejection pursuant to G.S. 42-26, a tenant may raise the affirmative defense of retaliatory eviction and may present evidence that the landlord's action is substantially in response to the occurrence within 12 months of the filing of such action of one or more of the protected acts described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, a landlord may prevail in an action for summary ejection if:

- (1) The tenant breached the covenant to pay rent or any other substantial covenant of the lease for which the tenant may be evicted, and such breach is the reason for the eviction; or
- (2) In a case of a tenancy for a definite period of time where the tenant has no option to renew the lease, the tenant holds over after expiration of the term; or
- (3) The violation of G.S. 42-42 complained of was caused primarily by the willful or negligent conduct of the tenant, member of the tenant's household, or their guests or invitees; or
- (4) Compliance with the applicable building or housing code requires demolition or major alteration or remodeling that cannot be accomplished without completely displacing the tenant's household; or
- (5) The landlord seeks to recover possession on the basis of a good faith notice to quit the premises, which notice was delivered prior to the occurrence of any of the activities protected by subsections (a) and (b) of this section; or
- (6) The landlord seeks in good faith to recover possession at the end of the tenant's term for use as the landlord's own abode, to demolish or make major alterations or remodeling of the dwelling unit in a manner that requires the complete displacement of the tenant's household, or to terminate for at least six months the use of the property as a rental dwelling unit.

Remedies, N.C. GEN. STAT. § 42-37.2

(a) If the court finds that an ejection action is retaliatory, as defined by this Article, it shall deny the request for ejection; provided, that a dismissal of the request for ejection shall not prevent the landlord from receiving payments for rent due or any other appropriate judgment.

(b) The rights and remedies created by this Article are supplementary to all existing common law and statutory rights and remedies.

Waiver, N.C. GEN. STAT. § 42-37.3

Any waiver by a tenant or a member of his household of the rights and remedies created by this Article is void as contrary to public policy.

NORTH DAKOTA

NO RETALIATORY EVICTION STATUTE

OHIO

RETALIATORY EVICTION STATUTE

Retaliatory conduct of landlord prohibited, OHIO REV. CODE ANN. § 5321.02 (Anderson 2003).

(A) Subject to *section 5321.03 of the Revised Code*, a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because:

- (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety;
- (2) The tenant has complained to the landlord of any violation of *section 5321.04 of the Revised Code*;
- (3) The tenant joined with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.

(B) If a landlord acts in violation of division (A) of this section the tenant may:

- (1) Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises;
- (2) Recover possession of the premises; or
- (3) Terminate the rental agreement.

In addition, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.

(C) Nothing in division (A) of this section shall prohibit a landlord from increasing the rent to reflect the cost of improvements installed by the landlord in or about the premises or to reflect an increase in other costs of operation of the premises.

Action by landlord authorized, OHIO REV. CODE ANN. § 5321.03 (Anderson 1974).

(A) Notwithstanding *section 5321.02 of the Revised Code*, a landlord may bring an action under Chapter 1923. of the Revised Code for possession of the premises if:

- (1) The tenant is in default in the payment of rent;

- (2) The violation of the applicable building, housing, health, or safety code that the tenant complained of was primarily caused by any act or lack of reasonable care by the tenant, or by any other person in the tenant's household, or by anyone on the premises with the consent of the tenant;
 - (3) Compliance with the applicable building, housing, health, or safety code would require alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit;
 - (4) A tenant is holding over the tenant's term.
 - (5) The residential premises are located within one thousand feet of any school premises, and both of the following apply regarding the tenant or other occupant who resides in or occupies the premises:
 - (a) The tenant's or other occupant's name appears on the state registry of sex offenders and child-victim offenders maintained under *section 2950.13 of the Revised Code*.
 - (b) The state registry of sex offenders and child-victim offenders indicates that the tenant or other occupant was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.
- (B) The maintenance of an action by the landlord under this section does not prevent the tenant from recovering damages for any violation by the landlord of the rental agreement or of *section 5321.04 of the Revised Code*.
- (C) This section does not apply to a dwelling unit occupied by a student tenant.

OKLAHOMA

NO RETALIATORY EVICTION STATUTE

OREGON

RETALIATORY EVICTION STATUTE

Retaliatory conduct by landlord prohibited; tenant remedies and defenses; action for possession in certain cases, OR. REV. STAT. § 90.385 (1999).

- (1) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:
 - (a) The tenant has complained to, or expressed to the landlord in writing an intention to complain to, a governmental agency charged with responsibility for enforcement of any of the following concerning a violation applicable to the tenancy:
 - (A) A building, health or housing code materially affecting health or safety;
 - (B) Laws or regulations concerning the delivery of mail; or
 - (C) Laws or regulations prohibiting discrimination in rental housing;
 - (b) The tenant has made any complaint to the landlord that is in good faith and related to the tenancy;
 - (c) The tenant has organized or become a member of a tenants' union or similar organization;
 - (d) The tenant has testified against the landlord in any judicial, administrative or legislative proceeding;

- (e) The tenant successfully defended an action for possession brought by the landlord within the previous six months except if the tenant was successful in defending the action only because:
 - (A) The termination notice by the landlord was not served or delivered in the manner required by ORS 90.155; or
 - (B) The period provided by the termination notice was less than that required by the statute upon which the notice relied to terminate the tenancy; or
- (f) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.
- (2) As used in subsection (1) of this section, "decreasing services" includes:
 - (a) Unreasonably restricting the availability of or placing unreasonable burdens on the use of common areas or facilities by tenant associations or tenants meeting to establish a tenant organization; and
 - (b) Intentionally and unreasonably interfering with and substantially impairing the enjoyment or use of the premises by the tenant.
- (3) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.375 and has a defense in any retaliatory action against the tenant for possession.
- (4) Notwithstanding subsections (1) and (3) of this section, a landlord may bring an action for possession if:
 - (a) The complaint by the tenant was made to the landlord or an agent of the landlord in an unreasonable manner or at an unreasonable time or was repeated in a manner having the effect of unreasonably harassing the landlord. A determination whether the manner, time or effect of a complaint was unreasonable shall include consideration of all related circumstances preceding or contemporaneous to the complaint;
 - (b) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the household of the tenant or upon the premises with the consent of the tenant;
 - (c) The tenant is in default in rent; or
 - (d) Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit.
- (5) For purposes of this section, a complaint made by another on behalf of a tenant is considered a complaint by the tenant.
- (6) For the purposes of subsection (4)(c) of this section, a tenant who has paid rent into court pursuant to ORS 90.370 shall not be considered to be in default in rent.
- (7) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under ORS 90.360 (2).

Prohibitions on retaliatory conduct by landlord, OR. REV. STAT. § 90.765 (2003).

- (1) In addition to the prohibitions of ORS 90.385, a landlord who rents a space for a manufactured dwelling or floating home may not retaliate by increasing rent or decreasing services, by serving a notice to terminate the tenancy or by bringing or threatening to bring an action for possession after:

- (a) The tenant has expressed an intention to complain to agencies listed in ORS 90.385;
 - (b) The tenant has made any complaint to the landlord which is in good faith;
 - (c) The tenant has filed or expressed intent to file a complaint under ORS 659A.820;
or
 - (d) The tenant has performed or expressed intent to perform any other act for the purpose of asserting, protecting or invoking the protection of any right secured to tenants under any federal, state or local law.
- (2) If the landlord acts in violation of subsection (1) of this section the tenant is entitled to the remedies provided in ORS 90.710 (1) and has a defense in any retaliatory action against the tenant for possession.

PENNSYLVANIA

RETALIATORY EVICTION STATUTE

Dwelling unfit for habitation, 35 PA. STAT. ANN. § 1700-1 (Supp.1976)

Notwithstanding any other provision of law, or of any agreement, whether oral or in writing, whenever the Department of Licenses and Inspections of any city of the first class, or the Department of Public Safety of any city of the second class, second class A, or third class as the case may be, or any Public Health Department of any such city, or of the county in which such city is located, certifies a dwelling as unfit for human habitation, the duty of any tenant of such dwelling to pay, and the right of the landlord to collect rent shall be suspended without affecting any other terms or conditions of the landlord-tenant relationship, until the dwelling is certified as fit for human habitation or until the tenancy is terminated for any reason other than nonpayment of rent. During any period when the duty to pay rent is suspended, and the tenant continues to occupy the dwelling, the rent withheld shall be deposited by the tenant in an escrow account in a bank or trust company approved by the city or county as the case may be and shall be paid to the landlord when the dwelling is certified as fit for human habitation at any time within six months from the date on which the dwelling was certified as unfit for human habitation. If, at the end of six months after the certification of a dwelling as unfit for human habitation, such dwelling has not been certified as fit for human habitation, any moneys deposited in escrow on account of continued occupancy shall be payable to the depositor, except that any funds deposited in escrow may be used, for the purpose of making such dwelling fit for human habitation and for the payment of utility services for which the landlord is obligated but which he refuses or is unable to pay. No tenant shall be evicted for any reason whatsoever while rent is deposited in escrow.

Retaliatory Evictions, 68 PA. STAT. ANN. § 398.16 (2004) (part of the Mobile Home Park Rights Act)

Any action by a mobile home park owner or operator to recover possession of real property from a mobile home park resident or to change the lease within six months of a resident's assertion of his rights under this act or any other legal right shall raise a presumption that such action constitutes a retaliatory and unlawful eviction by the owner or operator and is in violation of this act. Such a presumption may be rebutted by competent evidence presented in any appropriate court of initial jurisdiction within the Commonwealth.

RHODE ISLAND

RETALIATORY EVICTION STATUTE

Retaliatory Conduct Prohibited, R.I. GEN. LAWS § 34-18-46 (1986)

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

- (1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or
- (2) The tenant has complained to the landlord of a violation under § 34-18-22; or
- (3) The tenant has organized or become a member of a tenants' union or similar organization; or
- (4) The tenant has availed himself or herself of any other lawful rights and remedies.

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in § 34-18-34 and has a defense in any retaliatory action against him or her for possession. In an action by or against the tenant, evidence of a complaint within six (6) months before the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rental increase or diminution of services. "Presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:

- (1) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his or her family, or other person on the premises with his or her consent; or
- (2) The tenant is in default in rent; or
- (3) Compliance with the applicable building or housing code or other public action such as eminent domain, requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit, and the relocation requirements have been met by the municipality.

(d) The maintenance of an action under subsection (c) of this section does not release the landlord from liability under § 34-18-28(b).

Unlawful termination of tenancy in general, R.I. GEN. LAWS § 34-20-10 (1968)

When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the defendant alleges in his or her answer and if it appears by a preponderance of the evidence that any of the following situations exist, judgment shall be entered for the defendant:

- (1) That the alleged termination was intended as a penalty for the defendant's justified attempt to secure or enforce rights under a lease or contract, or under the laws of the state or its governmental subdivisions, or of the United States.

- (2) That the alleged termination was intended as a penalty for the defendant's justified complaint to a governmental authority with a report of plaintiff's violation of any health or safety code or ordinance.
- (3) That the alleged termination was intended as a penalty for any other justified lawful act of the defendant.
- (4) That the alleged termination was a tenancy in housing operated by a city, town, municipal housing authority, or other unit of a local government, and was terminated without cause.

Termination of tenancy for failure to pay increased rent imposed as penalty; R.I. GEN. LAWS § 34-20-11 (1968).

When proceedings commenced under this chapter are to regain possession of the premises following the alleged termination of a tenancy, if the defendant alleges and it appears by a preponderance of the evidence that the plaintiff attempted to increase the defendant's obligations under the letting as a penalty for the justified lawful acts described in the preceding section, and that the defendant's failure to perform the additional obligations was a material reason for the alleged termination, judgment shall be entered for the defendant on the claim of possession, and all the additional obligations shall be void.

SOUTH CAROLINA

RETALIATORY EVICTION STATUTE

Retaliatory conduct prohibited, S.C. CODE ANN. § 27-40-910 (Law Co-op 1986)

- (a) Except as provided in this section, a landlord shall not retaliate by increasing rent to an amount in excess of fair-market value or decreasing essential services or by bringing an action for possession after:
 - (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety; or
 - (2) the tenant has complained to the landlord of a violation of this chapter.
- (b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in § 27-40-660 as a defense in any retaliatory action against him for possession. If the defense by the tenant is without merit, the landlord is entitled to reasonable attorney's fees. If the defense is raised in bad faith, the landlord may recover up to three month's periodic rent or treble the actual damages, whichever is greater. If the landlord recovers damages under this section, he may not also recover damages under § 27-40-760.
- (c) Notwithstanding subsections (a) and (b), a landlord may bring an action for possession if:
 - (1) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other person on the premises with his permission or who is allowed access to the premises by the tenant, or
 - (2) there is material noncompliance by the tenant under § 27-40-710 or § 27-40-720; or

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

(d) The maintenance of an action under subsection (c) does not release the landlord from liability under subsection (b) of § 27-40-610.

(e) Notwithstanding the provisions of subsection (a) a landlord who rents more than four adjoining dwelling units on the premises may increase rent without there being a presumption of retaliation, provided that the increase applies uniformly to all tenants, or so long as the rent does not exceed the fair-market value.

(f) In an action for possession where the tenant intends to raise a defense under this section, the tenant must notify the landlord in writing within ten days after service of the Rule to Vacate or Show Cause of his intent to do so. After the tenant has filed an Answer to the Rule, the court shall hear the matter as promptly as is feasible.

(g) If the landlord retaliates against the tenant for engaging in conduct protected under section (a) by refusing to renew the lease, and if the tenant is not in default as to payment of rent, the landlord may not recover possession of the dwelling unit for seventy-five days and may not increase rent to an amount in excess of fair-market value or decrease essential services pending the recovery of the dwelling unit, provided that the tenant proves the landlord's violation of this chapter, the landlord had notice of such violation, and the landlord had notice of the tenant's complaint prior to expiration of the lease.

(h) Any landlord who acts in retaliation against the tenant for engaging in protected conduct is liable for damages up to three month's rent or treble the actual damages sustained by the tenant, whichever is greater, and reasonable attorney's fees. Nothing in this section may be construed to prohibit an action for damages after a landlord has recovered possession of the dwelling unit in subsection (c), provided the ejectment was primarily in retaliation against the tenant's protected conduct

SOUTH DAKOTA

RETALIATORY EVICTION STATUTE

Cause of action against lessor for retaliatory conduct, S.D. CODIFIED LAWS § 43-32-27 (Michie 1994)

A cause of action may arise in favor of a lessee and against a lessor of residential property, including a manufactured or mobile home community owner, for retaliation by the lessor against the lessee if the lessor increases rents above fair market value; if the lessor decreases electric, gas, water, or sewer services; or if the lessor gives the lessee notice to vacate the premises when such notice is not based upon a breach of the terms of the lease; subsequent to any of the following special events:

- (1) The lessor has received written notice from the lessee or a governmental agency that the lessee has complained to a governmental agency charged with responsibility for enforcement of a building or housing code violation applicable to the premises and materially affecting health and safety, and the complaint is determined to be reported in good faith; or
- (2) The lessee has given written notice to the lessor of a condition requiring repair pursuant to § 43-32-9; or
- (3) The lessee has organized or become a member of a tenant's union or organization.

It shall be a defense to this cause of action that the notice to vacate the premises was given by the lessor more than one hundred eighty days after the occurrence of a special event. The failure of the lessor to renew any written lease prior to or upon its expiration, is not retaliation.

Lessee's remedies for retaliatory conduct by lessor, S.D. CODIFIED LAWS § 43-32-28 (Michie 1994).

If the lessor acts in violation of § 43-32-27, the lessee is entitled to the remedies provided in § 43-32-6. The court may award the lessee reasonable attorney's fees, not to exceed five hundred dollars.

TENNESSEE

RETALIATORY EVICTION STATUTE

Retaliatory Conduct Prohibited, TENN. CODE ANN. § 66-28-514 (1975).

(a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession because the tenant:

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

(b) (1) Notwithstanding subsection (a), a landlord may bring action for possession if:

- (A) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;
- (B) The tenant is in default in rent; or
- (C) Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

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

TEXAS

RETALIATORY EVICTION STATUTE

Retaliation by Landlord, TEX. PROP. CODE § 92.331 (1995)

(a) A landlord may not retaliate against a tenant by taking an action described by

Subsection (b) because the tenant:

- (1) in good faith exercises or attempts to exercise against a landlord a right or remedy granted to the tenant by lease, municipal ordinance, or federal or state statute;
- (2) gives a landlord a notice to repair or exercise a remedy under this chapter; or
- (3) complains to a governmental entity responsible for enforcing building or housing codes, a public utility, or a civic or nonprofit agency, and the tenant:
 - (A) claims a building or housing code violation or utility problem; and
 - (B) believes in good faith that the complaint is valid and that the violation or problem occurred.

(b) A landlord may not, within six months after the date of the tenant's action under Subsection (a), retaliate against the tenant by:

- (1) filing an eviction proceeding, except for the grounds stated by Section 92.332;
- (2) depriving the tenant of the use of the premises, except for reasons authorized by law;
- (3) decreasing services to the tenant;
- (4) increasing the tenant's rent or terminating the tenant's lease; or
- (5) engaging, in bad faith, in a course of conduct that materially interferes with the tenant's rights under the tenant's lease.

Nonretaliation, TEX. PROP. CODE § 92.332 (1995)

(a) The landlord is not liable for retaliation under this subchapter if the landlord proves that the action was not made for purposes of retaliation, nor is the landlord liable, unless the action violates a prior court order under Section 92.0563, for:

- (1) increasing rent under an escalation clause in a written lease for utilities, taxes, or insurance; or
- (2) increasing rent or reducing services as part of a pattern of rent increases or service reductions for an entire multidwelling project.

(b) An eviction or lease termination based on the following circumstances, which are valid grounds for eviction or lease termination in any event, does not constitute retaliation:

- (1) the tenant is delinquent in rent when the landlord gives notice to vacate or files an eviction action;
- (2) the tenant, a member of the tenant's family, or a guest or invitee of the tenant intentionally damages property on the premises or by word or conduct threatens the personal safety of the landlord, the landlord's employees, or another tenant;
- (3) the tenant has materially breached the lease, other than by holding over, by an action such as violating written lease provisions prohibiting serious misconduct or criminal acts, except as provided by this section;
- (4) the tenant holds over after giving notice of termination or intent to vacate;
- (5) the tenant holds over after the landlord gives notice of termination at the end of the rental term and the tenant does not take action under Section 92.331 until after the landlord gives notice of termination; or
- (6) the tenant holds over and the landlord's notice of termination is motivated by a good faith belief that the tenant, a member of the tenant's family, or a guest or invitee of the tenant might:
 - (A) adversely affect the quiet enjoyment by other tenants or neighbors;
 - (B) materially affect the health or safety of the landlord, other tenants, or neighbors; or
 - (C) damage the property of the landlord, other tenants, or neighbors.

Tenant Remedies, TEX. PROP. CODE § 92.333 (1995)

In addition to other remedies provided by law, if a landlord retaliates against a tenant under this subchapter, the tenant may recover from the landlord a civil penalty of one month's rent plus \$500, actual damages, court costs, and reasonable attorney's fees in an action for recovery of property damages, moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any delinquent rents or other sums for which the tenant is liable to the landlord. If the tenant's rent payment to the landlord is subsidized

in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus \$500.

Invalid Complaints, TEX. PROP. CODE § 92.334 (1995)

(a) If a tenant files or prosecutes a suit for retaliatory action based on a complaint asserted under Section 92.331(a)(3), and the government building or housing inspector or utility company representative visits the premises and determines in writing that a violation of a building or housing code does not exist or that a utility problem does not exist, there is a rebuttable presumption that the tenant acted in bad faith.

(b) If a tenant files or prosecutes a suit under this subchapter in bad faith, the landlord may recover possession of the dwelling unit and may recover from the tenant a civil penalty of one month's rent plus \$500, court costs, and reasonable attorney's fees. If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling plus \$500.

Eviction Suits, TEX. PROP. CODE § 92.335 (1995)

In an eviction suit, retaliation by the landlord under Section 92.331 is a defense and a rent deduction lawfully made by the tenant under this chapter is a defense for nonpayment of the rent to the extent allowed by this chapter. Other judicial actions under this chapter may not be joined with an eviction suit or asserted as a defense or crossclaim in an eviction suit.

UTAH

NO RETALIATORY EVICTION STATUTE

CASELAW:

Building Monitoring Sys. v. Paxton, 905 P.2d 1215 (Utah 1995). While a landlord may evict for any legal reason or for no reason at all, he is not free to evict in retaliation for his tenant's report of housing code violations to the authorities. The trial court held that the eviction was retaliatory but declined to recognize the defense because of lack of statutory or case law defining it. On appeal, the court reversed. The court held that private initiative in reporting housing and health code violations was vital to their enforcement and that fear of reprisal by landlords must be eliminated. The court adopted a five-prong test and determined that the defense of retaliation applied. The court held that, 1) the court based the defense on a protective housing statute in Utah Code Ann. § 57-22-1 to 6, 2) the landlord was in the business of renting residential property, 3) the renters were not in breach of the rental agreement when they were served with the eviction notice, 4) the renters met their burden of proving that the landlord's primary motivation was retaliation, and 5) the renters complained to the health department in good faith and with reasonable cause. The court held that, at a minimum, the renters should be permitted to remain until required repairs were made.

VERMONT

RETALIATORY EVICTION STATUTE

Retaliatory conduct prohibited, 9 VT. STAT. ANN. tit. 9, § 4465 (1985).

(a) A landlord of a residential dwelling unit may not retaliate by establishing or changing terms of a rental agreement or by bringing or threatening to bring an action against a tenant who:

- (1) has complained to a governmental agency charged with responsibility for enforcement of a building, housing or health regulation of a violation applicable to the premises materially affecting health and safety;
- (2) has complained to the landlord of a violation of this chapter; or
- (3) has organized or become a member of a tenant's union or similar organization.

(b) If the landlord acts in violation of this section, the tenant is entitled to recover damages and reasonable attorney's fees and has a defense in any retaliatory action for possession.

VIRGINIA

RETALIATORY EVICTION STATUTE

Retaliatory conduct prohibited, VA. CODE ANN. § 55-248.39 (Michie 2000)

A. Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55-222 or § 55-248.37 after he has knowledge that: (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; or (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; or (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rents to that charged on similar market rentals nor decreasing services that shall apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55-222 or § 55-248.37 and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
2. The tenant is in default in rent;
3. Compliance with the applicable building or housing code requires alteration, remodeling or demolition which would effectively deprive the tenant of use of the dwelling unit; or
4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. The maintenance of the action provided herein does not release the landlord from liability under § 55-248.15:1.

D. The landlord may also terminate the rental agreement pursuant to § 55-222 or § 55-248.37 for any other reason not prohibited by law unless the court finds that the primary reason for the termination was retaliation.

Retaliatory conduct prohibited, VA. CODE ANN. § 55-248.50 (Michie 1992) (part of the Manufactured Home Lot Rental Act).

A. Except as provided in this section, or as otherwise provided by law, a landlord shall not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after he has knowledge that: (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety; (ii) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this chapter; (iii) the tenant has organized or become a member of a tenants' organization; or (iv) the tenant has testified in a court proceeding against the landlord.

B. The landlord shall be deemed to have knowledge of a fact if he has actual knowledge of it; he has received a notice or notification of it; or, from all the facts and circumstances known to him at the time in question, he has reason to know that it exists.

C. Notwithstanding the provisions of subsections A and B of this section, a landlord may terminate the rental agreement pursuant to subsection A of § 55-248.46 and bring an action for possession if:

1. Violation of the applicable building and housing code was caused by lack of reasonable care by the tenant or a member of his household or a person on the premises with his consent;
2. The tenant is in default in rent; or
3. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others.

WASHINGTON

RETALIATORY EVICTION STATUTE

Reprisals or retaliatory actions by landlord – Prohibited, WASH. REV. CODE § 59.18.240 (1983)

So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

- (1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or
- (2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

- (a) Eviction of the tenant;
- (b) Increasing the rent required of the tenant;

- (c) Reduction of services to the tenant; and
- (d) Increasing the obligations of the tenant.

Reprisals or retaliatory actions by landlord – Presumptions – Rebuttal -- Costs, WASH. REV. CODE § 59.18.250 (1983)

Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: PROVIDED, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: PROVIDED FURTHER, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: PROVIDED FURTHER, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: PROVIDED FURTHER, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: PROVIDED FURTHER, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them.

WEST VIRGINIA

RETALIATORY EVICTION STATUTE

TENANT REMEDIES

Defenses Available, W. Va. Code § 55-3A-2 (1983).

In a proceeding under the provisions of this article, a tenant against whom a petition has been brought may assert any and all defenses which might be raised in an action for ejection or an action for unlawful detainer.

Retaliatory conduct prohibited, W. Va. Code § 37-15-7 (1993) (under the “House Trailers, Mobile Homes, Manufactured Homes, and Modular Homes article).

(a) Except as provided in this section, or as otherwise provided by law, a landlord may not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the landlord has knowledge that: (1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises

materially affecting health or safety; (2) the tenant has made a complaint to or filed a suit against the landlord for a violation of any provision of this article; (3) the tenant has organized or become a member of a tenant's organization; or (4) the tenant has testified in a court proceeding against the landlord.

(b) Notwithstanding the provisions of subsection (a) of this section, a landlord may terminate the rental agreement pursuant to subsection (b), section six of this article unless the magistrate or circuit court finds that the reason for the termination was retaliation.

CASELAW:

Murphy v. Smallbridge, 468 S.E.2d 167 (1996) (after tenants complained to state authorities about landlord's illegal dumping on the premises, landlord raised rent; recognizing affirmative cause of action for retaliatory eviction in the absence of direct authorization in state statute).

Imperial Colliery Co. v. Fout, 373 S.E.2d 489 (1988) (retaliation may be asserted as a defense to a summary eviction proceeding under this article if the landlord's conduct is in retaliation for the tenant's exercise of a right incidental to the tenancy).

WISCONSIN

RETALIATORY EVICTION STATUTE

Retaliatory conduct in residential tenancies prohibited, WIS. STAT. ANN. § 704.45 (West 1981).

(1) Except as provided in sub. (2), a landlord in a residential tenancy may not increase rent, decrease services, bring an action for possession of the premises, refuse to renew a lease or threaten any of the foregoing, if there is a preponderance of evidence that the action or inaction would not occur but for the landlords retaliation against the tenant for doing any of the following:

(a) Making a good faith complaint about a defect in the premises to an elected public official or a local housing code enforcement agency.

(b) Complaining to the landlord about a violation of *s. 704.07* or a local housing code applicable to the premises.

(c) Exercising a legal right relating to residential tenancies.

(2) Notwithstanding sub. (1), a landlord may bring an action for possession of the premises if the tenant has not paid rent other than a rent increase prohibited by sub. (1)

(3) This section does not apply to complaints made about defects in the premises caused by the negligence or improper use of the tenant who is affected by the action or inaction.

WYOMING

NO RETALIATORY EVICTION STATUTE