



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5179

Introduced 2/8/2012, by Rep. Deborah Mell

SYNOPSIS AS INTRODUCED:

735 ILCS 5/9-120
735 ILCS 5/9-120.5 new

Amends the Code of Civil Procedure. Provides that a gang-related activity, as defined by the Illinois Streetgang Terrorism Omnibus Prevention Act, is a sufficient basis to terminate a lessee's lease. Provides a procedure and standards for a person who resides, works, or owns property in a building, or a neighbor within a 2-block radius of the building, to report that a tenant in the building is using leased premises in gang-related activity. Provides that this person may give notice of the tenant's gang-related activity and demand that the landlord commence an investigation and a wrongful entry and detainer action. Provides that if the landlord, after receipt of a notice and demand, refuses to investigate or finds no such activity, that the person who issued the notice and demand may petition the court under these provisions to determine if gang-related activity is occurring at the tenant's leased premises, and if so, to order the tenant to vacate the premises. Provides remedies to the prevailing party in an action initiated pursuant to these provisions by a person other than the landlord, in the form of an award of costs and attorney's fees.

LRB097 16992 AJ0 64068 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 9-120 and by adding Section 9-120.5 as
6 follows:

7 (735 ILCS 5/9-120)

8 Sec. 9-120. Leased premises used in furtherance of a
9 criminal offense; lease void at option of lessor or assignee.

10 (a) If any lessee or occupant, on one or more occasions,
11 uses or permits the use of leased premises for the commission
12 of any act that would constitute a felony or a Class A
13 misdemeanor under the laws of this State, the lease or rental
14 agreement shall, at the option of the lessor or the lessor's
15 assignee become void, and the owner or lessor shall be entitled
16 to recover possession of the leased premises as against a
17 tenant holding over after the expiration of his or her term. A
18 written lease shall notify the lessee that if any lessee or
19 occupant, on one or more occasions, uses or permits the use of
20 the leased premises for the commission of a felony or Class A
21 misdemeanor under the laws of this State, the lessor shall have
22 the right to void the lease and recover the leased premises.
23 Failure to include this language in a written lease or the use

1 of an oral lease shall not waive or impair the rights of the
2 lessor or lessor's assignee under this Section or the lease.
3 This Section shall not be construed so as to diminish the
4 rights of a lessor, if any, to terminate a lease for other
5 reasons permitted under law or pursuant to the lease agreement.

6 (a-5) If any lessee or occupant, on one or more occasions,
7 uses or permits the use of leased premises for gang-related
8 activity, as defined in Section 10 of the Illinois Streetgang
9 Terrorism Omnibus Prevention Act, the lease or rental agreement
10 shall, at the option of the lessor or the lessor's assignee,
11 become void and the owner or lessor shall be entitled to
12 recover possession of the leased premises as against a tenant
13 holding over after the expiration of his or her term. A written
14 lease shall notify the lessee that if any lessee or occupant,
15 on one or more occasions, uses or permits the use of the leased
16 premises for gang-related activity, the lessor shall have the
17 right to void the lease and recover the leased premises.
18 Failure to include this language in a written lease or the use
19 of an oral lease shall not waive or impair the rights of the
20 lessor or lessor's assignee under this Section or the lease.
21 This Section shall not be construed so as to diminish the
22 rights of a lessor, if any, to terminate a lease for other
23 reasons permitted under law or pursuant to the lease agreement.

24 (b) The owner or lessor may bring a forcible entry and
25 detainer action, or, if the State's Attorney of the county in
26 which the real property is located or the corporation counsel

1 of the municipality in which the real property is located
2 agrees, assign to that State's Attorney or corporation counsel
3 the right to bring a forcible entry and detainer action on
4 behalf of the owner or lessor, against the lessee and all
5 occupants of the leased premises. The assignment must be in
6 writing on a form prepared by the State's Attorney of the
7 county in which the real property is located or the corporation
8 counsel of the municipality in which the real property is
9 located, as applicable. If the owner or lessor assigns the
10 right to bring a forcible entry and detainer action, the
11 assignment shall be limited to those rights and duties up to
12 and including delivery of the order of eviction to the sheriff
13 for execution. The owner or lessor shall remain liable for the
14 cost of the eviction whether or not the right to bring the
15 forcible entry and detainer action has been assigned.

16 (c) A person does not forfeit any part of his or her
17 security deposit due solely to an eviction under the provisions
18 of this Section, except that a security deposit may be used to
19 pay fees charged by the sheriff for carrying out an eviction.

20 (d) If a lessor or the lessor's assignee voids a lease or
21 contract under the provisions of this Section and the tenant or
22 occupant has not vacated the premises within 5 days after
23 receipt of a written notice to vacate the premises, the lessor
24 or lessor's assignee may seek relief under this Article IX.
25 Notwithstanding Sections 9-112, 9-113, and 9-114 of this Code,
26 judgment for costs against a plaintiff seeking possession of

1 the premises under this Section shall not be awarded to the
2 defendant unless the action was brought by the plaintiff in bad
3 faith. An action to possess premises under this Section shall
4 not be deemed to be in bad faith when the plaintiff based his
5 or her cause of action on information provided to him or her by
6 a law enforcement agency, the State's Attorney, or the
7 municipality.

8 (e) After a trial, if the court finds, by a preponderance
9 of the evidence, that the allegations in the complaint have
10 been proven, the court shall enter judgment for possession of
11 the premises in favor of the plaintiff and the court shall
12 order that the plaintiff shall be entitled to re-enter the
13 premises immediately.

14 (f) A judgment for possession of the premises entered in an
15 action brought by a lessor or lessor's assignee, if the action
16 was brought as a result of a lessor or lessor's assignee
17 declaring a lease void pursuant to this Section, may not be
18 stayed for any period in excess of 7 days by the court unless
19 all parties agree to a longer period. Thereafter the plaintiff
20 shall be entitled to re-enter the premises immediately. The
21 sheriff or other lawfully deputized officers shall execute an
22 order entered pursuant to this Section within 7 days of its
23 entry, or within 7 days of the expiration of a stay of
24 judgment, if one is entered.

25 (g) Nothing in this Section shall limit the rights of an
26 owner or lessor to bring a forcible entry and detainer action

1 on the basis of other applicable law.

2 (Source: P.A. 97-236, eff. 8-2-11.)

3 (735 ILCS 5/9-120.5 new)

4 Sec. 9-120.5. Leased premises used in furtherance of
5 gang-related activity; demand on landlord to commence action.

6 (a) Any person whose life, safety, health, or use of
7 property is harmed or endangered by a tenant's gang-related
8 activity, who resides, works, or owns property in the same
9 multi-family building or apartment complex or within a 2-block
10 radius may serve the landlord with a 10-day notice and demand
11 that the landlord commence a forcible entry and detainer action
12 against the tenant. The notice and demand must set forth, in
13 reasonable detail, facts and circumstances that lead the person
14 to believe gang-related activity is occurring. The notice and
15 demand shall be served by delivering a copy personally to the
16 landlord or the landlord's agent. If the person is unable to
17 personally serve the landlord after exercising due diligence,
18 the person may deposit the notice and demand in the mail,
19 postage prepaid, to the landlord's or the landlord's agent's
20 last known address.

21 (b) A copy of the notice and demand must also be served
22 upon the tenant engaging in the gang-related activity by
23 delivering a copy personally to the tenant. However, if the
24 person is prevented from personally serving the tenant due to
25 threats or violence, or if personal service is not reasonable

1 under the circumstances, the person may deposit the notice and
2 demand in the mail, postage prepaid, to the tenant's address,
3 or leave a copy of the notice and demand in a conspicuous
4 location at the tenant's residence.

5 (c) Within 10 days after the time the notice and demand are
6 served, the landlord has a duty to take reasonable steps to
7 investigate the tenant's alleged non-compliance with
8 subsection (a-5) of Section 9-120. The landlord must notify the
9 person who gave the notice and demand that an investigation is
10 occurring. The landlord has 10 days from the time he or she
11 notifies the person in which to conduct a reasonable
12 investigation.

13 (d) If, after a reasonable investigation, the landlord
14 finds that the tenant is not in compliance with subsection
15 (a-5) of Section 9-120, the landlord may proceed directly to
16 file a forcible entry and detainer action or take reasonable
17 steps to ensure that the tenant discontinues the prohibited
18 activity and is not in violation of subsection (a-5) of Section
19 9-120. The landlord shall notify the person who gave the notice
20 and demand of whatever action the landlord takes.

21 (e) If, after a reasonable investigation, the landlord
22 finds that the tenant is not in violation of subsection (a-5)
23 of Section 9-120, the landlord shall notify the person who gave
24 the notice and demand of the landlord's findings.

25 (f) The person who served the notice and demand may
26 petition the appropriate court to have the tenancy terminated

1 and the tenant removed from the premises if: (i) within 10 days
2 after service of the notice and demand, the tenant fails to
3 discontinue the gang-related activity and the landlord fails to
4 conduct a reasonable investigation; (ii) the landlord notifies
5 the person that the landlord conducted a reasonable
6 investigation and found that the tenant is not engaged in
7 gang-related activity as prohibited by subsection (a-5) of
8 Section 9-120; or (iii) the landlord took reasonable steps to
9 have the tenant comply with subsection (a-5) of Section 9-120,
10 but the tenant has failed to comply within a reasonable time.

11 (g) If the court finds that the tenant is not in compliance
12 with subsection (a-5) of Section 9-120, the court shall enter
13 an order terminating the tenancy and requiring the tenant to
14 vacate the premises. The court shall not issue the order
15 terminating the tenancy unless it has found that the
16 allegations of gang-related activity are corroborated by a
17 source other than the person who has petitioned the court.

18 (h) The prevailing party shall recover reasonable
19 attorneys' fees and costs. The court may impose sanctions, in
20 addition to attorneys' fees, on a person who brought an action
21 under this Section against the same tenant on more than one
22 occasion if the court finds that the petition was brought with
23 the intent to harass. However, the court must order the
24 landlord to pay costs and reasonable attorneys' fees to the
25 person petitioning for termination of the tenancy if the court
26 finds that the landlord failed to comply with the duty to

1 investigate, regardless of which party prevails.