S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N S E N A T E

March 19, 2009

Introduced by Sen. ESPADA -- (at request of the Division of Housing & Community Renewal) -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, in relation to the civil penalties that may be imposed for violations of such laws; notices of deregulation under the rent regulatory laws and the statute of limitations based on such notices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs 1 and 2 of subdivision c of section 26-516 of the administrative code of the city of New York, paragraph 2 as amended by chapter 116 of the laws of 1997, are amended to read as follows:

(1) to have violated an order of the division the commissioner may impose by administrative order after hearing, a civil penalty in the amount of [two hundred fifty] ONE THOUSAND dollars for the first such offense and [one] TWO thousand dollars for each subsequent offense; or

(2) to have harassed a tenant to obtain vacancy of his or her housing accommodation, the commissioner may impose by administrative order after hearing, a civil penalty for any such violation. Such penalty shall be in the amount of [not less than one] TWO thousand dollars [nor more than five] FOR A FIRST SUCH OFFENSE AND UP TO TEN thousand dollars for each [such] SUBSEQUENT offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation.

S 2. Subparagraph (a) of paragraph 2 of subdivision b of section 26-413 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(a) Impose by administrative order after hearing, a civil penalty for any violation of said section and bring an action to recover same in any court of competent jurisdiction. Such penalty in the case of a violation

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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of subdivision d of such section shall be in the amount of [not less than one] TWO thousand dollars [nor more than five] FOR THE FIRST SUCH OFFENSE AND TEN thousand dollars for each SUBSEQUENT offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation; and in the case of any other violation of such section in the amount of [one hundred] ONE THOUSAND dollars for the first such offense and [five hundred] TWO THOUSAND dollars for each subsequent offense. Such order by the city rent agency shall be deemed a final determination for the purposes of judicial review as provided in section 26-411 of this chapter. Such action shall be brought on behalf of the city and any amount recovered shall be paid into the city treasury. Such right of action may be released, compromised or adjusted by the city rent agency at any [item] TIME subsequent to the issuance of such administrative order.

S 3. Clauses (i) and (ii) of paragraph 3 of subdivision a of section 12 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, clause (i) as amended by chapter 403 of the laws of 1983 and clause (ii) as amended by chapter 116 of the laws of 1997, are amended to read as follows:

(i) to have violated an order of the division the commissioner may impose by administrative order after hearing, a civil penalty in the amount of [two hundred fifty] ONE THOUSAND dollars for the first such offense and [one] TWO thousand dollars for each subsequent offense; or

(ii) to have harassed a tenant to obtain vacancy of his OR HER housing accommodation, the commissioner may impose by administrative order after hearing, a civil penalty for any such violation. Such penalty shall be in the amount of [not less than one] TWO thousand dollars [nor more than five] FOR THE FIRST SUCH OFFENSE AND TEN thousand dollars for each offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation.

S 4. Paragraph 13 of subdivision c of section 26-511 of the administrative code of the city of New York, as added by chapter 253 of the laws of 1993, is amended to read as follows:

(13) provides that an owner is entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The permanent increase in the legal regulated rent for the affected housing accommodation shall be one-fortieth of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges. Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. THE OWNER SHALL GIVE WRITTEN NOTICE TO THE DIVISION AND THE TENANT ON FORMS PRESCRIBED BY THE COMMISSIONER OF ANY SUCH ADJUSTMENT PURSUANT TO THIS PARAGRAPH AND THE FAILURE TO PROVIDE SUCH WRITTEN NOTICE AS PROVIDED IN THIS PARAGRAPH SHALL PRECLUDE THE COLLECTION OF ANY SUCH ADJUSTMENT.

S 5. Paragraph 1 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection

act of nineteen seventy-four, as added by chapter 253 of the laws of 1993, is amended to read as follows:

(1) there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. The permanent increase in the legal regulated rent for the affected housing accommodation shall be one-fortieth of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges. Provided further [than] THAT an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. THE OWNER SHALL GIVE WRITTEN NOTICE TO THE DIVISION AND THE TENANT ON FORMS PRESCRIBED BY THE COMMISSIONER OF ANY SUCH ADJUSTMENT PURSUANT TO THIS PARAGRAPH AND THE FAILURE TO PROVIDE SUCH WRITTEN NOTICE AS PROVIDED IN THIS PARAGRAPH SHALL PRECLUDE THE COLLECTION OF ANY SUCH ADJUSTMENT.

S 6. Section 26-504.2 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

C. NOTWITHSTANDING SECTION 26-516 OF THIS CHAPTER AND SECTION TWO HUNDRED THIRTEEN-A OF THE CIVIL PRACTICE LAW AND RULES, THE PERIODS PROVIDED FOR THEREIN FOR EXAMINATION OF THE RENTAL HISTORY OF THE ACCOMMODATION FOR THE DETERMINATION OF AN OVERCHARGE AND WHETHER THE ACCOMMODATION IS SUBJECT TO THIS LAW ARE EXTENDED BY THE PERIOD DURING WHICH THE OWNER IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF SUBDIVISION B OF THIS SECTION.

S 7. Paragraph 13 of subdivision a of section 5 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 82 of the laws of 2003, is amended to read as follows:

(13) (I) any housing accommodation with a legal regulated rent of two thousand dollars or more per month at any time between the effective date of this paragraph and October first, nineteen hundred ninety-three which is or becomes vacant on or after the effective date of this paragraph, or any housing accommodation with a legal regulated rent of two thousand dollars or more per month at any time on or after the effective date of the rent regulation reform act of 1997 which is or becomes vacant on or after the effective date of the rent regulation reform act of 1997. This exclusion shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than two thousand dollars a month. Provided however, that this exclusion shall not apply to housing accommodations which became or become subject to this act (a) by virtue of receiving tax benefits pursuant to section four hundred twenty-one-a or four hundred eighty-nine of the real property tax law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of section four hundred twenty-one-a of the real property tax law, or (b) by virtue of article seven-C of the multiple dwelling law. This paragraph shall not apply, however, to or become effective with respect to housing accommodations which the commissioner determines or finds that the landlord or any person acting on his or her behalf, with intent to cause the tenant to vacate, has engaged in any course of conduct (including, but not

limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations and in connection with such course of conduct, any other general enforcement provision of this act shall also apply.

(II) THE OWNER OF ANY HOUSING ACCOMMODATION THAT IS NOT SUBJECT TO THIS ACT PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH OR PARAGRAPH N OF PARAGRAPH TWO OF SECTION TWO OF THE EMERGENCY HOUSING RENT CONTROL LAW SHALL GIVE WRITTEN NOTICE CERTIFIED BY SUCH OWNER TO THE FIRST TENANT OF THAT HOUSING ACCOMMODATION AFTER SUCH HOUSING ACCOMMODATION BECOMES EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW. SUCH NOTICE SHALL CONTAIN THE LAST REGULATED RENT, THE REASON THAT SUCH HOUSING ACCOMMODATION IS NOT SUBJECT TO THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, A CALCULATION OF HOW EITHER THE RENTAL AMOUNT CHARGED WHEN THERE IS NO LEASE OR THE RENTAL AMOUNT PROVIDED FOR IN THE LEASE HAS BEEN DERIVED SO AS TO REACH TWO THOUSAND DOLLARS OR MORE PER MONTH, A STATEMENT THAT THE LAST LEGAL REGULATED RENT OR THE MAXIMUM RENT MAY BE VERIFIED BY THE TENANT BY CONTACTING THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, OR ANY SUCCESSOR THERETO, AND THE ADDRESS AND TELEPHONE NUMBER OF SUCH AGENCY, OR ANY SUCCESSOR THERETO. SUCH NOTICE SHALL BE SENT BY CERTIFIED MAIL WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR AFTER THE SIGNING OF THE LEASE BY BOTH PARTIES, WHICHEVER OCCURS FIRST OR SHALL BE DELIVERED TO THE TENANT AT THE SIGNING OF THE LEASE. IN ADDITION, THE OWNER SHALL SEND AND CERTIFY TO THE TENANT A COPY OF THE REGISTRATION STATEMENT FOR SUCH HOUSING ACCOMMODATION FILED WITH THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL INDICATING THAT SUCH HOUSING ACCOMMODATION BECAME EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, WHICH FORM SHALL INCLUDE THE LAST REGULATED RENT, AND SHALL BE SENT TO THE TENANT WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR THE FILING OF SUCH REGISTRATION, WHICHEVER OCCURS LATER.

(III) NOTWITHSTANDING SECTION TWELVE OF THIS ACT AND SECTION 213-A OF THE CIVIL PRACTICE LAW AND RULES TO THE CONTRARY, THE PERIODS PROVIDED FOR THEREIN FOR EXAMINATION OF THE RENTAL HISTORY OF THE ACCOMMODATION FOR THE DETERMINATION OF AN OVERCHARGE AND WHETHER THE ACCOMMODATION IS SUBJECT TO THIS LAW ARE EXTENDED BY THE PERIOD DURING WHICH THE OWNER IS NOT IN COMPLIANCE WITH REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH.

S 8. This act shall take effect immediately; provided that sections one, two and three of this act shall take effect on the thirtieth day after it shall have become a law; provided, further:

(a) the amendments to sections 26-516, 26-511 and 26-504.2 of the rent stabilization law of nineteen hundred sixty-nine made by sections one, four, and six of this act, respectively, shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law;

(b) the amendments to section 26-413 of the city rent and rehabilitation law made by section two of this act shall remain in full force and effect only so long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control law;

(c) the amendments to sections 12, 6 and 5 of section 4 of the emergency tenant protection act of nineteen seventy-four made by sections three, five and seven of this act, respectively, shall expire on the

same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974, as amended;

(d) the amendments to paragraph 2 of subdivision c of section 26-516 and subparagraph (a) of paragraph 2 of subdivision b of section 26-413 of the administrative code of the city of New York and clause (ii) of paragraph 3 of subdivision a of section 12 of section 4 of the emergency tenant protection act of nineteen seventy-four, made by sections one, two and three of this act, respectively, shall not affect the expiration of such provisions pursuant to subdivision 6 of section 46 of chapter 116 of the laws of 1997, as amended, and shall expire and be deemed repealed therewith;

(e) the provisions of sections four and five of this act shall apply with respect to any modification or increase of dwelling space or increase in services or installation of new equipment or improvements or new furnishings in a housing accommodation on or after the effective date of this act; and

(f) the provisions of sections six and seven of this act shall apply to housing accommodations which became vacant on or after the effective date of this act.