

3859

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. KRUEGER, DUANE, HUNTLEY, MONSERRATE -- 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 emergency housing rent control law, the administra-
tive code of the city of New York, and the emergency tenant protection
act of nineteen seventy-four, in relation to providing for a hearing
before the division of housing and community renewal prior to issuance
of an order of decontrol for failure to respond to income certif-
ication material; and in relation to excluding certain tenants from
inclusion for annual income determination

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

1 Section 1. Subdivision (a) of section 2-a of chapter 274 of the laws
2 of 1946, constituting the emergency housing rent control law, as added
3 by chapter 253 of the laws of 1993, is amended to read as follows:
4 (a) For purposes of this section, annual income shall mean the federal
5 adjusted gross income as reported on the New York state income tax
6 return. Total annual income means the sum of the annual incomes of all
7 persons who occupy the housing accommodation as their primary residence
8 on other than a temporary basis, excluding bona fide employees of such
9 occupants residing therein in connection with such employment, EXCLUDING
10 SENIOR CITIZENS AND DISABLED PERSONS, and excluding bona fide subtenants
11 in occupancy pursuant to the provisions of section [two hundred twenty-
12 six-b] 226-B of the real property law. [In the case where a housing
13 accommodation is sublet, the annual income of the sublessor shall be
14 considered.] FOR THE PURPOSES OF THIS SUBDIVISION, DISABLED PERSON SHALL
15 MEAN AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL IMPAIRMENT, INCLUDING,
16 BUT NOT LIMITED TO, THOSE OF NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS,
17 WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE
18 ACTIVITIES, AND (II) WHO IS REGARDED AS HAVING SUCH AN IMPAIRMENT AS
19 CERTIFIED BY A LICENSED PHYSICIAN OF THIS STATE. FOR THE PURPOSES OF

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

LBD00821-01-9

1 THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN ANY PERSON WHO IS SIXTY-TWO
2 YEARS OF AGE OR OLDER.

3 S 2. Subdivision (c) of section 2-a of chapter 274 of the laws of
4 1946, constituting the emergency housing rent control law, as added by
5 chapter 253 of the laws of 1993, paragraphs 1 and 2 as amended by chap-
6 ter 116 of the laws of 1997, is amended to read as follows:

7 (c) 1. In the event that the tenant or tenants either fail to return
8 the completed certification to the owner on or before the date required
9 by subdivision (b) of this section or the owner disputes the certif-
10 ication returned by the tenant or tenants, the owner may, on or before
11 June thirtieth of such year, petition the state division of housing and
12 community renewal to verify, pursuant to section [one hundred seventy-
13 one-b] 171-B of the tax law, whether the total annual income exceeds one
14 hundred seventy-five thousand dollars in each of the two preceding
15 calendar years. Within twenty days after the filing of such request with
16 the division, the division shall notify the tenant or tenants that such
17 tenant or tenants must provide the division with such information as the
18 division and the department of taxation and finance shall require to
19 verify whether the total annual income exceeds one hundred seventy-five
20 thousand dollars in each such year. The division's notification shall
21 require the tenant or tenants to provide the information to the division
22 within [sixty] NINETY days of service upon such tenant or tenants and
23 shall include a warning in bold faced type AT THE TOP OF THE PAGE that
24 failure to respond [will] MAY RESULT IN AN ORDER OF DECONTROL BEING
25 ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION FOLLOWING A HEAR-
26 ING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE DATE THE DIVISION
27 SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN THIS PARAGRAPH, THE
28 NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS THAT FAILURE TO APPEAR
29 AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY result in an order of
30 decontrol being issued by the division for such housing accommodation.
31 SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRESENT
32 SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

33 2. If the department of taxation and finance determines that the total
34 annual income is in excess of one hundred seventy-five thousand dollars
35 in each of the two preceding calendar years, the division shall, on or
36 before November fifteenth of such year, notify the owner and tenants of
37 the results of such verification. Both the owner and the tenants shall
38 have [thirty] SIXTY days within which to comment on such verification
39 results. Within forty-five days after the expiration of the comment
40 period, the division shall, where appropriate, issue an order of decon-
41 trol providing that such housing accommodation shall not be subject to
42 the provisions of this law as of the first day of March in the year next
43 succeeding the filing of the owner's petition with the division. A copy
44 of such order shall be mailed by regular and certified mail, return
45 receipt requested, to the tenant or tenants and a copy thereof shall be
46 sent to the owner.

47 3. In the event the tenant or tenants fail to [provide the informa-
48 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant
49 to paragraph one of this subdivision, the division [shall] MAY issue, on
50 or before December first of such year, an order of decontrol providing
51 that such housing accommodation shall not be subject to the provisions
52 of this law as of the first day of March in the year next succeeding the
53 last day on which the tenant or tenants were required to [provide the
54 information] APPEAR AT THE HEARING required by such paragraph. A copy of
55 such order shall be mailed by regular and certified mail, return receipt

1 requested, to the tenant or tenants and a copy thereof shall be sent to
2 the owner.

3 4. The provisions of the state freedom of information act shall not
4 apply to any income information obtained by the division pursuant to
5 this section.

6 S 3. Subdivision (a) of section 26-403.1 of the administrative code of
7 the city of New York, as added by chapter 253 of the laws of 1993, is
8 amended to read as follows:

9 (a) For purposes of this section, annual income shall mean the federal
10 adjusted gross income as reported on the New York state income tax
11 return. Total annual income means the sum of the annual incomes of all
12 persons who occupy the housing accommodation as their primary residence
13 other than on a temporary basis, excluding bona fide employees of such
14 occupants residing therein in connection with such employment, EXCLUDING
15 SENIOR CITIZENS AND DISABLED PERSONS, and excluding bona fide subtenants
16 in occupancy pursuant to the provisions of section two hundred twenty-
17 six-b of the real property law. [In the case where a housing accommo-
18 dation is sublet, the annual income of the sublessor shall be consid-
19 ered.] FOR THE PURPOSES OF THIS SUBDIVISION, DISABLED PERSON SHALL MEAN
20 AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL IMPAIRMENT, INCLUDING, BUT
21 NOT LIMITED TO, THOSE OF NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS,
22 WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE
23 ACTIVITIES, AND (II) WHO IS REGARDED AS HAVING SUCH AN IMPAIRMENT AS
24 CERTIFIED BY A LICENSED PHYSICIAN OF THIS STATE. FOR THE PURPOSES OF
25 THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN ANY PERSON WHO IS SIXTY-TWO
26 YEARS OF AGE OR OLDER.

27 S 4. Subdivision (c) of section 26-403.1 of the administrative code of
28 the city of New York, as added by chapter 253 of the laws of 1993, para-
29 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended
30 to read as follows:

31 (c) 1. In the event that the tenant or tenants either fail to return
32 the completed certification to the owner on or before the date required
33 by subdivision (b) of this section or the owner disputes the certif-
34 ication returned by the tenant or tenants, the owner may, on or before
35 June thirtieth of such year, petition the state division of housing and
36 community renewal to verify, pursuant to section one hundred seventy-
37 one-b of the tax law, whether the total annual income exceeds one
38 hundred seventy-five thousand dollars in each of the two preceding
39 calendar years. Within twenty days after the filing of such request with
40 the division, the division shall notify the tenant or tenants that such
41 tenant or tenants must provide the division with such information as the
42 division and the department of taxation and finance shall require to
43 verify whether the total annual income exceeds one hundred seventy-five
44 thousand dollars in each such year. The division's notification shall
45 require the tenant or tenants to provide the information to the division
46 within [sixty] NINETY days of service upon such tenant or tenants and
47 shall include a warning in bold faced type AT THE TOP OF THE PAGE that
48 failure to respond [will] MAY RESULT IN AN ORDER OF DECONTROL BEING
49 ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION FOLLOWING A HEAR-
50 ING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE DATE THE DIVISION
51 SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN THIS PARAGRAPH, THE
52 NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS THAT FAILURE TO APPEAR
53 AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY result in an order of
54 decontrol being issued by the division for such housing accommodation.
55 SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRESENT
56 SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

1 2. If the department of taxation and finance determines that the total
2 annual income is in excess of one hundred seventy-five thousand dollars
3 in each of the two preceding calendar years, the division shall, on or
4 before November fifteenth of such year, notify the owner and tenants of
5 the results of such verification. Both the owner and the tenants shall
6 have [thirty] SIXTY days within which to comment on such verification
7 results. Within forty-five days after the expiration of the comment
8 period, the division shall, where appropriate, issue an order of decon-
9 trol providing that such housing accommodation shall not be subject to
10 the provisions of this law as of the first day of March in the year next
11 succeeding the filing of the owner's petition with the division. A copy
12 of such order shall be mailed by regular and certified mail, return
13 receipt requested, to the tenant or tenants and a copy thereof shall be
14 sent to the owner.

15 3. In the event the tenant or tenants fail to [provide the informa-
16 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant
17 to paragraph one of this subdivision, the division [shall] MAY issue, on
18 or before December first of such year, an order of decontrol providing
19 that such housing accommodation shall not be subject to the provisions
20 of this law as of the first day of March in the year next succeeding the
21 last day on which the tenant or tenants were required to [provide the
22 information] APPEAR AT THE HEARING required by such paragraph. A copy of
23 such order shall be mailed by regular and certified mail, return receipt
24 requested, to the tenant or tenants and a copy thereof shall be sent to
25 the owner.

26 4. The provisions of the state freedom of information act shall not
27 apply to any income information obtained by the division pursuant to
28 this section.

29 S 5. Subdivision (a) of section 26-504.3 of the administrative code of
30 the city of New York, as added by chapter 253 of the laws of 1993, is
31 amended to read as follows:

32 (a) For purposes of this section, annual income shall mean the federal
33 adjusted gross income as reported on the New York state income tax
34 return. Total annual income means the sum of the annual incomes of all
35 persons whose names are recited as the tenant or co-tenant on a lease
36 who occupy the housing accommodation and all other persons that occupy
37 the housing accommodation as their primary residence on other than a
38 temporary basis, excluding bona fide employees of such occupants resid-
39 ing therein in connection with such employment, EXCLUDING SENIOR CITI-
40 ZENS AND DISABLED PERSONS, and excluding bona fide subtenants in occu-
41 pancy pursuant to the provisions of section two hundred twenty-six-b of
42 the real property law. [In the case where a housing accommodation is
43 sublet, the annual income of the tenant or co-tenant recited on the
44 lease who will reoccupy the housing accommodation upon the expiration of
45 the sublease shall be considered.] FOR THE PURPOSES OF THIS SUBDIVISION,
46 DISABLED PERSON SHALL MEAN AN INDIVIDUAL (I) WITH A PHYSICAL OR MENTAL
47 IMPAIRMENT, INCLUDING, BUT NOT LIMITED TO, THOSE OF NEUROLOGICAL,
48 EMOTIONAL OR SENSORY ORGANS, WHICH SUBSTANTIALLY LIMITS ONE OR MORE OF
49 THE INDIVIDUAL'S MAJOR LIFE ACTIVITIES, AND (II) WHO IS REGARDED AS
50 HAVING SUCH AN IMPAIRMENT AS CERTIFIED BY A LICENSED PHYSICIAN OF THIS
51 STATE. FOR THE PURPOSES OF THIS SUBDIVISION, SENIOR CITIZEN SHALL MEAN
52 ANY PERSON WHO IS SIXTY-TWO YEARS OF AGE OR OLDER.

53 S 6. Subdivision (c) of section 26-504.3 of the administrative code of
54 the city of New York, as added by chapter 253 of the laws of 1993, para-
55 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended
56 to read as follows:

1 (c) 1. In the event that the tenant or tenants either fail to return
2 the completed certification to the owner on or before the date required
3 by subdivision (b) of this section or the owner disputes the certifi-
4 cation returned by the tenant or tenants, the owner may, on or before
5 June thirtieth of such year, petition the state division of housing and
6 community renewal to verify, pursuant to section one hundred seventy-
7 one-b of the tax law, whether the total annual income exceeds one
8 hundred seventy-five thousand dollars in each of the two preceding
9 calendar years. Within twenty days after the filing of such request with
10 the division, the division shall notify the tenant or tenants named on
11 the lease that such tenant or tenants must provide the division with
12 such information as the division and the department of taxation and
13 finance shall require to verify whether the total annual income exceeds
14 one hundred seventy-five thousand dollars in each such year. The divi-
15 sion's notification shall require the tenant or tenants to provide the
16 information to the division within [sixty] NINETY days of service upon
17 such tenant or tenants and shall include a warning in bold faced type AT
18 THE TOP OF THE PAGE that failure to respond [will] MAY RESULT IN AN
19 ORDER OF DECONTROL BEING ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOM-
20 MODATION FOLLOWING A HEARING TO BE SCHEDULED NOT MORE THAN NINETY DAYS
21 FROM THE DATE THE DIVISION SENT SUCH TENANT OR TENANTS THE NOTICE
22 PROVIDED IN THIS PARAGRAPH, THE NOTIFICATION SHALL ADVISE SUCH TENANT OR
23 TENANTS THAT FAILURE TO APPEAR AT SUCH HEARING WITHOUT GOOD OR JUST
24 CAUSE MAY result in an order being issued by the division providing that
25 such housing accommodation shall not be subject to the provisions of
26 this law. SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO
27 REPRESENT SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

28 2. If the department of taxation and finance determines that the total
29 annual income is in excess of one hundred seventy-five thousand dollars
30 in each of the two preceding calendar years, the division shall, on or
31 before November fifteenth of such year, notify the owner and tenants of
32 the results of such verification. Both the owner and the tenants shall
33 have [thirty] SIXTY days within which to comment on such verification
34 results. Within forty-five days after the expiration of the comment
35 period, the division shall, where appropriate, issue an order providing
36 that such housing accommodation shall not be subject to the provisions
37 of this law upon the expiration of the existing lease. A copy of such
38 order shall be mailed by regular and certified mail, return receipt
39 requested, to the tenant or tenants and a copy thereof shall be sent to
40 the owner.

41 3. In the event the tenant or tenants fail to [provide the informa-
42 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant
43 to paragraph one of this subdivision, the division [shall] MAY issue, on
44 or before December first of such year, an order providing that such
45 housing accommodation shall not be subject to the provisions of this law
46 upon the expiration of the current lease. A copy of such order shall be
47 mailed by regular and certified mail, return receipt requested, to the
48 tenant or tenants and a copy thereof shall be sent to the owner.

49 4. The provisions of the state freedom of information act shall not
50 apply to any income information obtained by the division pursuant to
51 this section.

52 S 7. Subdivision (a) of section 5-a of section 4 of chapter 576 of the
53 laws of 1974, constituting the emergency tenant protection act of nine-
54 teen seventy-four, as added by chapter 253 of the laws of 1993, is
55 amended to read as follows:

1 (a) For purposes of this section, annual income shall mean the federal
2 adjusted gross income as reported on the New York state income tax
3 return. Total annual income means the sum of the annual incomes of all
4 persons whose names are recited as the tenant or co-tenant on a lease
5 who occupy the housing accommodation and all other persons that occupy
6 the housing accommodation as their primary residence on other than a
7 temporary basis, excluding bona fide employees of such occupants resid-
8 ing therein in connection with such employment, EXCLUDING SENIOR CITI-
9 ZENS AND DISABLED PERSONS, and excluding bona fide subtenants in occu-
10 pancy pursuant to the provisions of section [two hundred twenty-six-b]
11 226-B of the real property law. [In the case where a housing accommo-
12 dation is sublet, the annual income of the tenant or co-tenant recited
13 on the lease who will reoccupy the housing accommodation upon the expi-
14 ration of the sublease shall be considered.] FOR THE PURPOSES OF THIS
15 SUBDIVISION, DISABLED PERSON SHALL MEAN AN INDIVIDUAL (I) WITH A PHYS-
16 ICAL OR MENTAL IMPAIRMENT, INCLUDING, BUT NOT LIMITED TO, THOSE OF
17 NEUROLOGICAL, EMOTIONAL OR SENSORY ORGANS, WHICH SUBSTANTIALLY LIMITS
18 ONE OR MORE OF THE INDIVIDUAL'S MAJOR LIFE ACTIVITIES, AND (II) WHO IS
19 REGARDED AS HAVING SUCH AN IMPAIRMENT AS CERTIFIED BY A LICENSED PHYSI-
20 CIAN OF THIS STATE. FOR THE PURPOSES OF THIS SUBDIVISION, SENIOR CITIZEN
21 SHALL MEAN ANY PERSON WHO IS SIXTY-TWO YEARS OF AGE OR OLDER.

22 S 8. Subdivision (c) of section 5-a of section 4 of chapter 576 of the
23 laws of 1974, constituting the emergency tenant protection act of nine-
24 teen seventy-four, as added by chapter 253 of the laws of 1993, para-
25 graphs 1 and 2 as amended by chapter 116 of the laws of 1997, is amended
26 to read as follows:

27 (c) 1. In the event that the tenant or tenants either fail to return
28 the completed certification to the owner on or before the date required
29 by subdivision (b) of this section or the owner disputes the certif-
30 ication returned by the tenant or tenants, the owner may, on or before
31 June thirtieth of such year, petition the state division of housing and
32 community renewal to verify, pursuant to section [one hundred seventy-
33 one-b] 171-B of the tax law, whether the total annual income exceeds one
34 hundred seventy-five thousand dollars in each of the two preceding
35 calendar years. Within twenty days after the filing of such request with
36 the division, the division shall notify the tenant or tenants that such
37 tenant or tenants named on the lease must provide the division with such
38 information as the division and the department of taxation and finance
39 shall require to verify whether the total annual income exceeds one
40 hundred seventy-five thousand dollars in each such year. The division's
41 notification shall require the tenant or tenants to provide the informa-
42 tion to the division within [sixty] NINETY days of service upon such
43 tenant or tenants and shall include a warning in bold faced type AT THE
44 TOP OF THE PAGE that failure to respond [will] MAY RESULT IN AN ORDER OF
45 DECONTROL BEING ISSUED BY THE DIVISION FOR SUCH HOUSING ACCOMMODATION
46 FOLLOWING A HEARING TO BE SCHEDULED NOT MORE THAN NINETY DAYS FROM THE
47 DATE THE DIVISION SENT SUCH TENANT OR TENANTS THE NOTICE PROVIDED IN
48 THIS PARAGRAPH, THE NOTIFICATION SHALL ADVISE SUCH TENANT OR TENANTS
49 THAT FAILURE TO APPEAR AT SUCH HEARING WITHOUT GOOD OR JUST CAUSE MAY
50 result in an order being issued by the division providing that such
51 housing accommodations shall not be subject to the provisions of this
52 act. SUCH TENANT OR TENANTS MAY AUTHORIZE A PERSON OR PERSONS TO REPRE-
53 SENT SUCH TENANT'S OR TENANTS' INTEREST AT THE HEARING.

54 2. If the department of taxation and finance determines that the total
55 annual income is in excess of one hundred seventy-five thousand dollars
56 in each of the two preceding calendar years, the division shall, on or

1 before November fifteenth of such year, notify the owner and tenants of
2 the results of such verification. Both the owner and the tenants shall
3 have [thirty] SIXTY days within which to comment on such verification
4 results. Within forty-five days after the expiration of the comment
5 period, the division shall, where appropriate, issue an order providing
6 that such housing accommodation shall not be subject to the provisions
7 of this act upon expiration of the existing lease. A copy of such order
8 shall be mailed by regular and certified mail, return receipt requested,
9 to the tenant or tenants and a copy thereof shall be sent to the owner.

10 3. In the event the tenant or tenants fail to [provide the informa-
11 tion] APPEAR WITHOUT GOOD OR JUST CAUSE AT THE HEARING required pursuant
12 to paragraph one of this subdivision, the division [shall] MAY issue, on
13 or before December first of such year, an order providing that such
14 housing accommodation shall not be subject to the provisions of this act
15 upon the expiration [or] OF the current lease. A copy of such order
16 shall be mailed by regular and certified mail, return receipt requested,
17 to the tenant or tenants and a copy thereof shall be sent to the owner.

18 4. The provisions of the state freedom of information act shall not
19 apply to any income information obtained by the division pursuant to
20 this section.

21 S 9. This act shall take effect immediately; provided that the amend-
22 ments to section 2-a of the emergency housing rent control law made by
23 sections one and two of this act shall expire on the same date as such
24 law expires and shall not affect the expiration of such law as provided
25 in subdivision 2 of section 1 of chapter 274 of the laws of 1946;
26 provided that the amendments to section 26-403.1 of the city rent and
27 rehabilitation law made by sections three and four of this act shall
28 remain in full force and effect only so long as the public emergency
29 requiring the regulation and control of residential rents and evictions
30 continues, as provided in subdivision 3 of section 1 of the local emer-
31 gency housing rent control act; provided that the amendments to section
32 26-504.3 of the rent stabilization law of nineteen hundred sixty-nine
33 made by sections five and six of this act shall expire on the same date
34 as such law expires and shall not affect the expiration of such law as
35 provided under section 26-520 of such law; and provided that the amend-
36 ments to section 5-a of the emergency tenant protection act of nineteen
37 seventy-four made by sections seven and eight of this act shall expire
38 on the same date as such act expires and shall not affect the expiration
39 of such act as provided in section 17 of chapter 576 of the laws of
40 1974.