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

5041--A

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 determining primary residency of rent regulated housing accommodations

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

Section 1. Clause 10 of subparagraph (i) of paragraph 2 of subdivision e of section 26-403 of the administrative code of the city of New York, as amended by chapter 422 of the laws of 2010, is amended to read as follows:

(10) Housing accommodations not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THERE SHALL BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE, WHERE:

(I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL

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

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INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOMMODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY SUCH TENANT, OR

(II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. No action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds.

S 2. Subparagraph (f) of paragraph 1 of subdivision a of section 26-504 of the administrative code of the city of New York, as amended by chapter 422 of the laws of 2010, is amended to read as follows:

(f) not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction[, provided, however that no]. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS CHAPTER, THERE SHALL BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE, WHERE:

(I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOMMODATION WHICH IS SUBJECT TO THIS CHAPTER, PROVIDED, HOWEVER, THAT WHERE A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH OTHER RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY SUCH TENANT, OR

(II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION SUBJECT TO THIS CHAPTER LOCATED IN THE CITY. NO action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PURSUANT TO THIS SUBPARAGRAPH PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO, A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the

purposes of this subparagraph where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants, or

S 3. Paragraph 11 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 422 of the laws of 2010, is amended to read as follows:

(11) housing accommodations which are not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction. FOR PURPOSES OF DETERMINING PRIMARY RESIDENCY, AS SUCH TERM IS USED IN THIS ACT, THERE SHALL BE A PRESUMPTION, REBUTTABLE BY THE TENANT, THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE, WHERE:

(I) SUCH TENANT IS REQUIRED BY LAW TO FILE AN INCOME TAX RETURN AND SUCH TENANT EITHER (A) FAILS TO FILE ONE OR MORE CITY RESIDENT INCOME TAX RETURNS OR (B) SUCH TENANT FILES ONE OR MORE FEDERAL, STATE OR LOCAL INCOME TAX RETURNS BASED UPON A RESIDENCE OTHER THAN THE HOUSING ACCOMMODATION WHICH IS SUBJECT TO THIS ACT, PROVIDED, HOWEVER, THAT WHERE A TENANT IS THE RECIPIENT OF A PROPERTY TAX EXEMPTION OR ANY OTHER TAX BENEFIT ARISING FROM OR ATTRIBUTABLE TO THE OWNERSHIP OF SUCH RESIDENCE, THE PRESUMPTION THAT THE TENANT DOES NOT OCCUPY SUCH HOUSING ACCOMMODATION AS HIS OR HER PRIMARY RESIDENCE SHALL NOT BE REBUTTABLE BY SUCH TENANT, OR

(II) ONE OR MORE VOTES ARE CAST BY SUCH TENANT DURING THEIR TENANCY IN ANY ELECTION HELD IN ACCORDANCE WITH THE PROVISIONS OF THE ELECTION LAW CONDUCTED IN ANY ELECTION DISTRICT OTHER THAN THE ONE DESIGNATED FOR THE HOUSING ACCOMMODATION SUBJECT TO THIS ACT LOCATED IN THE CITY, TOWN OR VILLAGE. SUCH ACTION OR PROCEEDING MAY BE BROUGHT AT ANY TIME DURING THE COURSE OF A TENANT'S LEASE OR ANY RENEWAL LEASE. IN THE EVENT AN ACTION OR PROCEEDING IS COMMENCED PURSUANT TO THIS PARAGRAPH PRIOR TO THE DATE THAT AN OFFER OF A RENEWAL LEASE IS OTHERWISE REQUIRED TO BE MADE BY THE OWNER TO THE TENANT, THE COMMENCEMENT OF SUCH ACTION OR PROCEEDING SHALL SUBSTITUTE FOR THE SERVICE OF ANY OTHER NOTICE PERTAINING TO SUCH RENEWAL, INCLUDING BUT NOT LIMITED TO, A NOTICE OF NON-RENEWAL OF SUCH LEASE. For the purposes of determining primary residency, a tenant who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law, who has left the unit because of such violence, and who asserts an intent to return to the housing accommodation shall be deemed to be occupying the unit as his or her primary residence. For the purposes of this paragraph, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants. No action or proceeding shall be commenced seeking to recover possession on the ground that a housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given thirty days notice to the tenant of his or her intention to commence such action or proceeding on such grounds.

S 4. This act shall take effect immediately; provided that the amendment to section 26-403 of the city rent and rehabilitation law made by section one 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 act; and

provided further that the amendment to section 26-504 of the rent stabilization law of nineteen hundred sixty-nine made by section two of this act 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; and provided further that the amendment to section 5 of the emergency tenant protection act of nineteen seventy-four made by section three of this act 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.