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I N S E N A T E

February 21, 2012

Introduced by Sen. YOUNG -- 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 tenant protection act of nineteen seventy-four and the administrative code of the city of New York, in relation to providing that vacancy leases and renewals thereof for rent regulated housing accommodations shall be for a term of one year

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

1 Section 1. Subdivisions a and (a-1) of section 10 of section 4 of  
2 chapter 576 of the laws of 1974, constituting the emergency tenant  
3 protection act of nineteen seventy-four, subdivision a as amended by  
4 chapter 234 of the laws of 1984 and subdivision (a-1) as amended by  
5 section 8 of part B of chapter 97 of the laws of 2011, are amended to  
6 read as follows:  
7 a. For cities having a population of less than one million and towns  
8 and villages, the state division of housing and community renewal shall  
9 be empowered to implement this act by appropriate regulations. Such  
10 regulations may encompass such speculative or manipulative practices or  
11 renting or leasing practices as the state division of housing and commu-  
12 nity renewal determines constitute or are likely to cause circumvention  
13 of this act. Such regulations shall prohibit practices which are likely  
14 to prevent any person from asserting any right or remedy granted by this  
15 act, including but not limited to retaliatory termination of periodic  
16 tenancies and shall require owners to grant a new one or two year vacan-  
17 cy or renewal lease at the option of the tenant; PROVIDED, HOWEVER, THAT  
18 FOR VACANCY AND RENEWAL LEASES WHICH TAKE EFFECT ON OR AFTER JANUARY  
19 FIRST, TWO THOUSAND THIRTEEN, SUCH REGULATIONS SHALL REQUIRE OWNERS TO  
20 GRANT A NEW ONE YEAR VACANCY OR RENEWAL LEASE, except where a mortgage  
21 or mortgage commitment existing as of the local effective date of this  
22 act provides that the owner shall not grant a one-year lease; and shall  
23 prescribe standards with respect to the terms and conditions of new and  
24 renewal leases, additional rent and such related matters as security  
25 deposits, advance rental payments, the use of escalator clauses in leas-  
26 es and provision for increase in rentals for garages and other ancillary  
27 facilities, so as to insure that the level of rent adjustments author-  
28 ized under this law will not be subverted and made ineffective. Any

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

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1 provision of the regulations permitting an owner to refuse to renew a  
2 lease on grounds that the owner seeks to recover possession of the hous-  
3 ing accommodation for his own use and occupancy or for the use and occu-  
4 pancy of his immediate family shall require that an owner demonstrate  
5 immediate and compelling need and shall not apply where a member of the  
6 housing accommodation is sixty-two years of age or older, has been a  
7 tenant in a housing accommodation in that building for twenty years or  
8 more, or has an impairment which results from anatomical, physiological  
9 or psychological conditions, other than addiction to alcohol, gambling,  
10 or any controlled substance, which are demonstrable by medically accept-  
11 able clinical and laboratory diagnostic techniques, and which are  
12 expected to be permanent and which prevent the tenant from engaging in  
13 any substantial gainful employment.

14 [(a-1)] A-1. provides that, notwithstanding any provision of this act,  
15 the legal regulated rent for any vacancy lease entered into after the  
16 effective date of this subdivision shall be as hereinafter set forth.  
17 The previous legal regulated rent for such housing accommodation shall  
18 be increased by [the following: (i) if the vacancy lease is for a term  
19 of two years,] twenty percent of the previous legal regulated rent[; or  
20 (ii) if the vacancy lease is for a term of one year the increase shall  
21 be twenty percent of the previous legal regulated rent less an amount  
22 equal to the difference between (a) the two year renewal lease guideline  
23 promulgated by the guidelines board of the county in which the housing  
24 accommodation is located applied to the previous legal regulated rent  
25 and (b) the one year renewal lease guideline promulgated by the guide-  
26 lines board of the county in which the housing accommodation is located  
27 applied to the previous legal regulated rent]. In addition, if the legal  
28 regulated rent was not increased with respect to such housing accommo-  
29 dation by a permanent vacancy allowance within eight years prior to a  
30 vacancy lease executed on or after the effective date of this subdivi-  
31 sion, the legal regulated rent may be further increased by an amount  
32 equal to the product resulting from multiplying such previous legal  
33 regulated rent by six-tenths of one percent and further multiplying the  
34 amount of rent increase resulting therefrom by the greater of (A) the  
35 number of years since the imposition of the last permanent vacancy  
36 allowance, or (B) if the rent was not increased by a permanent vacancy  
37 allowance since the housing accommodation became subject to this act,  
38 the number of years that such housing accommodation has been subject to  
39 this act. Provided that if the previous legal regulated rent was less  
40 than three hundred dollars the total increase shall be as calculated  
41 above plus one hundred dollars per month. Provided, further, that if  
42 the previous legal regulated rent was at least three hundred dollars and  
43 no more than five hundred dollars in no event shall the total increase  
44 pursuant to this subdivision be less than one hundred dollars per month.  
45 Such increase shall be in lieu of any allowance authorized for the one  
46 or two year renewal component thereof, but shall be in addition to any  
47 other increases authorized pursuant to this act including an adjustment  
48 based upon a major capital improvement, or a substantial modification or  
49 increase of dwelling space or services, or installation of new equipment  
50 or improvements or new furniture or furnishings provided in or to the  
51 housing accommodation pursuant to section six of this act. The increase  
52 authorized in this subdivision may not be implemented more than one time  
53 in any calendar year, notwithstanding the number of vacancy leases  
54 entered into in such year.

55 S 2. Paragraphs 4, 5-a and 12 of subdivision c of section 26-511 of  
56 the administrative code of the city of New York, paragraph 5-a as

1 amended by section 7 of part B of chapter 97 of the laws of 2011, are  
2 amended to read as follows:

3 (4) includes provisions requiring owners to grant a one or two year  
4 vacancy or renewal lease at the option of the tenant; PROVIDED, HOWEVER,  
5 THAT FOR VACANCY AND RENEWAL LEASES WHICH TAKE EFFECT ON OR AFTER JANU-  
6 ARY FIRST, TWO THOUSAND THIRTEEN, SUCH CODE SHALL REQUIRE OWNERS TO  
7 GRANT A NEW ONE YEAR VACANCY OR RENEWAL LEASE, except where a mortgage  
8 or mortgage commitment existing as of April first, nineteen hundred  
9 sixty-nine, provides that the mortgagor shall not grant a one year  
10 lease;

11 (5-a) provides that, notwithstanding any provision of this chapter,  
12 the legal regulated rent for any vacancy lease entered into after the  
13 effective date of this paragraph shall be as hereinafter provided in  
14 this paragraph. The previous legal regulated rent for such housing  
15 accommodation shall be increased by [the following: (i) if the vacancy  
16 lease is for a term of two years,] twenty percent of the previous legal  
17 regulated rent[; or (ii) if the vacancy lease is for a term of one year  
18 the increase shall be twenty percent of the previous legal regulated  
19 rent less an amount equal to the difference between (a) the two year  
20 renewal lease guideline promulgated by the guidelines board of the city  
21 of New York applied to the previous legal regulated rent and (b) the one  
22 year renewal lease guideline promulgated by the guidelines board of the  
23 city of New York applied to the previous legal regulated rent]. In addi-  
24 tion, if the legal regulated rent was not increased with respect to such  
25 housing accommodation by a permanent vacancy allowance within eight  
26 years prior to a vacancy lease executed on or after the effective date  
27 of this paragraph, the legal regulated rent may be further increased by  
28 an amount equal to the product resulting from multiplying such previous  
29 legal regulated rent by six-tenths of one percent and further multiply-  
30 ing the amount of rent increase resulting therefrom by the greater of  
31 (A) the number of years since the imposition of the last permanent  
32 vacancy allowance, or (B) if the rent was not increased by a permanent  
33 vacancy allowance since the housing accommodation became subject to this  
34 chapter, the number of years that such housing accommodation has been  
35 subject to this chapter. Provided that if the previous legal regulated  
36 rent was less than three hundred dollars the total increase shall be as  
37 calculated above plus one hundred dollars per month. Provided, further,  
38 that if the previous legal regulated rent was at least three hundred  
39 dollars and no more than five hundred dollars in no event shall the  
40 total increase pursuant to this paragraph be less than one hundred  
41 dollars per month. Such increase shall be in lieu of any allowance  
42 authorized for the one or two year renewal component thereof, but shall  
43 be in addition to any other increases authorized pursuant to this chap-  
44 ter including an adjustment based upon a major capital improvement, or a  
45 substantial modification or increase of dwelling space or services, or  
46 installation of new equipment or improvements or new furniture or  
47 furnishings provided in or to the housing accommodation pursuant to this  
48 section. The increase authorized in this paragraph may not be imple-  
49 mented more than one time in any calendar year, notwithstanding the  
50 number of vacancy leases entered into in such year.

51 (12) permits subletting of units subject to this law pursuant to  
52 section two hundred twenty-six-b of the real property law provided that  
53 (a) the rental charged to the subtenant does not exceed the stabilized  
54 rent plus a ten percent surcharge payable to the tenant if the unit  
55 sublet was furnished with the tenant's furniture; (b) the tenant can  
56 establish that at all times he or she has maintained the unit as his or

1 her primary residence and intends to occupy it as such at the expiration  
2 of the sublease; (c) an owner may terminate the tenancy of a tenant who  
3 sublets or assigns contrary to the terms of this paragraph but no action  
4 or proceeding based on the non-primary residence of a tenant may be  
5 commenced prior to the expiration date of his or her lease; (d) where an  
6 apartment is sublet the prime tenant shall retain the right to a renewal  
7 lease and the rights and status of a tenant in occupancy as they relate  
8 to conversion to condominium or cooperative ownership; (e) where a  
9 tenant violates the provisions of subparagraph (a) of this paragraph the  
10 subtenant shall be entitled to damages of three times the overcharge and  
11 may also be awarded attorneys fees and interest from the date of the  
12 overcharge at the rate of interest payable on a judgment pursuant to  
13 section five thousand four of the civil practice law and rules; (f) the  
14 tenant may not sublet the unit for more than a total of two years,  
15 including the term of the proposed sublease, out of the four-year period  
16 preceding the termination date of the proposed sublease; PROVIDED,  
17 HOWEVER, THAT FOR SUBLEASES COMMENCING ON OR AFTER JANUARY FIRST, TWO  
18 THOUSAND THIRTEEN, A TENANT MAY NOT SUBLET THE UNIT FOR MORE THAN ONE  
19 YEAR. The provisions of this subparagraph shall only apply to subleases  
20 commencing on and after July first, nineteen hundred eighty-three; (g)  
21 for the purposes of this paragraph only, the term of the proposed  
22 sublease may extend beyond the term of the tenant's lease. In such  
23 event, such sublease shall be subject to the tenant's right to a renewal  
24 lease. The subtenant shall have no right to a renewal lease. It shall be  
25 unreasonable for an owner to refuse to consent to a sublease solely  
26 because such sublease extends beyond the tenant's lease; and (h)  
27 notwithstanding the provisions of section two hundred twenty-six-b of  
28 the real property law, a not-for-profit hospital shall have the right to  
29 sublet any housing accommodation leased by it to its affiliated person-  
30 nel without requiring the landlord's consent to any such sublease and  
31 without being bound by the provisions of subparagraphs (b), (c) and (f)  
32 of this paragraph. Commencing with the effective date of this subpara-  
33 graph, whenever a not-for-profit hospital executes a renewal lease for a  
34 housing accommodation, the legal regulated rent shall be increased by a  
35 sum equal to fifteen percent of the previous lease rental for such hous-  
36 ing accommodation, hereinafter referred to as a vacancy surcharge,  
37 unless the landlord shall have received within the seven year period  
38 prior to the commencement date of such renewal lease any vacancy  
39 increases or vacancy surcharges allocable to the said housing accommo-  
40 dation. In the event the landlord shall have received any such vacancy  
41 increases or vacancy surcharges during such seven year period, the  
42 vacancy surcharge shall be reduced by the amount received by any such  
43 vacancy increase or vacancy surcharges.

44 S 3. This act shall take effect immediately; provided that:

45 (a) the amendments to section 10 of the emergency tenant protection  
46 act of nineteen seventy-four made by section one of this act shall  
47 expire on the same date as such act expires and shall not affect the  
48 expiration of such act as provided in section 17 of chapter 576 of the  
49 laws of 1974; and

50 (b) the amendments to section 26-511 of chapter 4 of title 26 of the  
51 administrative code of the city of New York made by section two of this  
52 act shall expire on the same date as such law expires and shall not  
53 affect the expiration of such law as provided under section 26-520 of  
54 such law.