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

S. 5860--A A. 8081--A

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

June 18, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- 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

IN ASSEMBLY -- Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property law, in relation to providing recourse for manufactured homeowners in manufactured home parks, who are confronted with unjustifiable rent increases; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subdivision e of section 233 of the real property law is amended by adding a new paragraph 4 to read as follows:

4. RENT INCREASES FOR MANUFACTURED HOMEOWNERS, INCLUDING ALL FEES, RENTS, CHARGES, ASSESSMENTS AND UTILITIES, SHALL BE SUBJECT TO THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-THREE-B OF THIS ARTICLE.

S 2. Paragraph 2 of subdivision g of section 233 of the real property law, as amended by chapter 566 of the laws of 1996, is amended to read as follows:

2. A manufactured home park owner or operator shall be required to fully disclose in writing all fees, charges, assessments, including rental fees, rules and regulations prior to [a manufactured home tenant assuming occupancy] ENTERING INTO A RENTAL AGREEMENT WITH A PROSPECTIVE TENANT in the manufactured home park.

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

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S 3. The real property law is amended by adding a new section 233-b to read as follows:

S 233-B. UNJUSTIFIED RENT INCREASES IN MANUFACTURED HOME PARKS. 1. DEFINITIONS. (A) ALL DEFINITIONS IN SUBDIVISION A OF SECTION TWO HUNDRED THIRTY-THREE OF THIS ARTICLE SHALL BE APPLICABLE TO THIS SECTION.

(B) "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR ALL ITEMS-ALL URBAN CONSUMERS FOR NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND INDEX PUBLISHED MONTHLY BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

(C) "INCREASE IN LOT RENT" MEANS ALL COST INCREASES, INCLUDING ALL INCREASED RENT, FEES, CHARGES, ASSESSMENTS AND UTILITIES.

(D) "COMMISSIONER" MEANS THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL.

(E) "OPERATING COSTS" MEANS THE COSTS OF MAINTAINING AND OPERATING THE MANUFACTURED HOME COMMUNITY, INCLUDING, BUT NOT LIMITED TO, OPERATING EXPENSES, TAXES, ASSESSMENTS AND OTHER GOVERNMENTAL FEES, COSTS OF MAINTENANCE AND OPERATION OF SEWER AND WATER SYSTEMS, DEBT SERVICE AND CAPITAL EXPENDITURES OF TEN THOUSAND DOLLARS OR MORE WHICH ARE DIRECTLY RELATED TO ACQUISITION OR MAJOR CAPITAL IMPROVEMENTS, REASONABLE RESERVES FOR FUTURE CAPITAL IMPROVEMENTS, AND A REASONABLE RATE OF RETURN ON THE MANUFACTURED HOME COMMUNITY OWNER'S EQUITY INVESTMENT.

2. APPLICABILITY. THIS SECTION SHALL APPLY TO MANUFACTURED HOME PARKS WHICH ARE USED FOR THE ACCOMMODATION OF FORTY OR MORE MANUFACTURED HOMES.

3. LOCAL OPTION. THE PROVISIONS OF THIS SECTION SHALL APPLY IN ANY COUNTY IN WHICH THE GOVERNING BOARD OF SUCH COUNTY HAS PASSED A LOCAL LAW ADOPTING THE PROVISIONS OF THIS SECTION.

4. BASIS FOR CHALLENGE. AN INCREASE IN RENT WHICH EXCEEDS THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX OR THREE PERCENT WHICHEVER IS GREATER SINCE THE CURRENT LOT RENT BECAME EFFECTIVE MAY BE CHALLENGED BY AN AGGRIEVED MANUFACTURED HOMEOWNER AS UNJUSTIFIED.

5. PRESUMPTION. IN ANY PROCEEDINGS UNDER THIS SECTION THERE SHALL BE AN IRREFUTABLE PRESUMPTION THAT A RENT INCREASE IS JUSTIFIABLE WHEN THE AMOUNT OF SUCH INCREASE DOES NOT EXCEED THE TENANT'S PRO-RATA SHARE IN OPERATING COSTS.

6. PROCEDURE. (A) NOT LESS THAN TEN PERCENT OF THE MANUFACTURED HOME TENANTS IN A MANUFACTURED HOME PARK MAY FILE A COMPLAINT WITH THE COMMISSIONER ALLEGING THAT A RENT INCREASE IS UNJUSTIFIED. SUCH COMPLAINT MUST BE FILED WITHIN FORTY-FIVE DAYS OF RECEIPT OF THE NOTICE OF THE INCREASE IN LOT RENT. IN THE EVENT THAT MORE THAN ONE COMPLAINT IS FILED IN THE SAME YEAR WITH RESPECT TO THE SAME MANUFACTURED HOME PARK, THE COMMISSIONER SHALL CONSOLIDATE SUCH COMPLAINTS FOR RESOLUTION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(B) UPON RECEIPT OF ONE OR MORE COMPLAINTS ALLEGING AN UNJUSTIFIED INCREASE IN LOT RENT, THE COMMISSIONER SHALL REVIEW THE INCREASE TO DETERMINE WHETHER SUCH INCREASE IS PRESUMPTIVELY JUSTIFIED IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION. SUCH DETERMINATION SHALL BE MADE UPON SUBMISSION OF DOCUMENTATION SUBMITTED BY THE MANUFACTURED HOME PARK OWNER AND THE COMPLAINANTS AND ANY OTHER DOCUMENTATION OR TESTIMONY AS MAY REASONABLY BE REQUIRED BY THE COMMISSIONER. THE COMPLAINANTS AND THE MANUFACTURED HOME PARK OWNER SHALL HAVE THE RIGHT TO APPEAR AND GIVE TESTIMONY TO THE COMMISSIONER.

(C) UPON COMPLETION OF SUCH REVIEW, IF THE INCREASE IS NOT DETERMINED TO BE PRESUMPTIVELY JUSTIFIED, OR AT ANY OTHER TIME AFTER THE FILING OF A COMPLAINT PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL ATTEMPT TO

INFORMALLY RESOLVE THE DISPUTE BETWEEN THE MANUFACTURED HOME PARK OWNER AND THE COMPLAINANTS.

(D) IF SUCH INFORMAL ATTEMPTS AT RESOLUTION ARE UNSUCCESSFUL, THE COMMISSIONER SHALL REQUIRE THE MANUFACTURED HOME PARK OWNER AND COMPLAINANTS TO APPEAR BEFORE A MEDIATOR TO BE SELECTED BY THE COMMISSIONER. THE COSTS OF SUCH MEDIATION SHALL BE BORNE EQUALLY BY THE MANUFACTURED PARK COMMUNITY OWNER AND THE COMPLAINANTS. IF, AT THE CONCLUSION OF THE MEDIATION, THERE IS NO AGREEMENT BETWEEN THE MANUFACTURED HOME PARK OWNER AND THE COMPLAINANTS, THE MANUFACTURED HOME PARK OWNER SHALL HAVE THE OPPORTUNITY WITHIN TEN DAYS TO MAKE A FINAL, BINDING OFFER TO REDUCE THE AMOUNT OF THE RENT INCREASE.

(E) IF NO SUCH OFFER IS MADE OR SUCH OFFER IS REJECTED, THE COMMISSIONER SHALL THEREUPON PROCEED TO MAKE A FINAL DETERMINATION AS TO WHETHER THE AMOUNT OF THE PROPOSED RENT INCREASE, AS FINALLY OFFERED BY THE MANUFACTURED HOME PARK OWNER IS UNJUSTIFIED.

(F) IN DETERMINING WHETHER THE PROPOSED INCREASE IN LOT RENT IS UNJUSTIFIABLE, THE COMMISSIONER SHALL ALLOW THE MANUFACTURED PARK OWNER TO RECOUP OPERATING COSTS.

(G) WHILE A PROCEEDING CHALLENGING AN INCREASE IN LOT RENT PURSUANT TO THIS SECTION IS PENDING, MANUFACTURED HOME PARK TENANTS SHALL PAY THE AMOUNT OF THE RENT INCREASE TO THE MANUFACTURED HOME PARK OWNER, WHO SHALL HOLD SUCH AMOUNTS IN ESCROW PENDING A MEDIATED AGREEMENT BETWEEN THE PARTIES OR A FINAL DETERMINATION OF THE COMMISSIONER, PROVIDED HOWEVER, THAT NO MANUFACTURED HOME PARK TENANT SHALL BE EVICTED FOR NON-PAYMENT OF THE RENT INCREASE PRIOR TO A FINAL DISPOSITION OF THE MATTER BY THE COMMISSIONER. FAILURE BY THE MANUFACTURED HOME PARK OWNER TO PLACE SUCH CHALLENGED INCREASE IN LOT RENT IN ESCROW SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS. IF THE COMPLAINANTS APPEAL, THE MANUFACTURED HOME PARK OWNER MAY REMOVE THE RENT INCREASE FUNDS FROM ESCROW, MINGLE SUCH FUNDS WITH ANY OTHER FUNDS, AND EVICT A TENANT WHO HAS NOT PAID THE INCREASE FOR NON-PAYMENT OF RENT. IF THE COMMISSIONER DECLARES INCREASE IN LOT RENT OR ANY PART THEREOF UNJUSTIFIED, THE MANUFACTURED HOME PARK OWNER SHALL REFUND THE AMOUNT OF UNJUSTIFIED INCREASE TO EACH MANUFACTURED HOME TENANT.

(H) ANY FINDINGS MADE BY THE COMMISSIONER WITH RESPECT TO WHETHER A PROPOSED INCREASE IN LOT RENT IS PRESUMPTIVELY LAWFUL OR IS UNJUSTIFIED SHALL BE BINDING UPON ALL MANUFACTURED HOME TENANTS IN THE MANUFACTURED HOME PARK.

7. REVIEW. THE FINAL DETERMINATION OF THE COMMISSIONER SHALL BE SUBJECT TO REVIEW PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 4. This act shall take effect immediately; provided, however, that sections one and three of this act shall expire and be deemed repealed December 31, 2018.