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

4955

2015-2016 Regular Sessions

I N S E N A T E

April 24, 2015

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

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

Section 1. Article 9 and sections 90 and 91 of the civil rights law, as renumbered by chapter 310 of the laws of 1962, are renumbered article 10 and sections 100 and 101, and a new article 9 is added to read as follows:

ARTICLE 9

RIGHT TO CALL POLICE AND EMERGENCY ASSISTANCE/VICTIM PROTECTIONS

SECTION 90. LEGISLATIVE FINDINGS.

91. RIGHT TO CALL FOR POLICE AND EMERGENCY ASSISTANCE; VICTIM PROTECTIONS.

92. PROTECTIONS NOT APPLICABLE TO BREACHES OF LEASE, ILLICIT ACTIVITIES OR OTHER VIOLATIONS OF LAW.

93. RIGHT OF PROPERTY OWNERS TO BE FREE OF PENALTY FOR RESPECTING THE RIGHTS OF AN OCCUPANT TO REQUEST POLICE OR EMERGENCY ASSISTANCE.

94. LIMITATION ON RIGHT TO REQUEST POLICE OR EMERGENCY ASSISTANCE PROHIBITED.

95. DEFENSES.

96. REMOVAL OF THE PERPETRATOR OF VIOLENCE WHILE ASSURING CONTINUED OCCUPANCY BY VICTIM.

97. REMEDIES.

98. GUIDANCE AUTHORIZED.

S 90. LEGISLATIVE FINDINGS. NO VICTIM OF DOMESTIC VIOLENCE, OR OTHER PERSON THREATENED WITH VIOLENCE OR IN JEOPARDY OF HARM, SHOULD FAIL TO ACCESS POLICE OR EMERGENCY ASSISTANCE WHEN NEEDED BECAUSE OF THE FEAR

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

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THAT DOING SO MAY RESULT IN LOSING THEIR HOUSING THROUGH EVICTION OR OTHER ACTIONS TO REMOVE THEM FROM THE PROPERTY. SOME LOCAL LAWS OR POLICIES HAVE THE EFFECT OF TREATING SUCH REQUESTS FOR POLICE OR EMERGENCY AID AS A DISTURBANCE CONSTITUTING A "PUBLIC NUISANCE" OR OTHERWISE TREATING THE INDIVIDUAL FACED WITH THE VIOLENCE AND IN NEED OF ASSISTANCE AS AN UNDESIRABLE TENANT OR UNDESIRABLE INFLUENCE ON THE NEIGHBORHOOD BASED UPON A CALL FOR HELP TO THEIR HOME. LEGISLATION IS NEEDED TO ASSURE THAT VICTIMS OF VIOLENCE OR THREATS OF HARM OR VIOLENCE ARE NOT PENALIZED IN RELATION TO ANY LAW ENFORCEMENT ACTIVITY AND INTERVENTION NECESSARY TO ADDRESS OFFENDER ACCOUNTABILITY AND VICTIM SAFETY.

MUNICIPALITIES THROUGHOUT THE STATE HAVE INCREASINGLY BEGUN TO ADOPT LOCAL LAWS AND ORDINANCES TO ADDRESS PUBLIC NUISANCES OR OTHER INTRUSIONS ON THE QUIET ENJOYMENT OF THEIR RESIDENTS AND COMMUNITIES. DESPITE THEIR INTENT TO AID COMMUNITIES, OVERLY BROAD ORDINANCES HAVE INSTEAD HAD A HARMFUL CHILLING EFFECT DETERRING VICTIMS OF VIOLENCE AND CRIME FROM ACCESSING POLICE ASSISTANCE AND HAVE JEOPARDIZED PUBLIC SAFETY. GIVEN THE NEGATIVE IMPACT THAT CERTAIN PROVISIONS HAVE ON THE COMMUNITY AT LARGE, AND TO VICTIMS OF CRIME IN PARTICULAR, REMEDIAL LEGISLATION IS NECESSARY THAT WILL BOTH PROTECT THE RIGHTS OF DOMESTIC VIOLENCE AND CRIME VICTIMS TO ACCESS ESSENTIAL POLICE ASSISTANCE, AS WELL AS PRESERVE THE LOCALITY'S RIGHT TO ADDRESS CONDUCT THAT MAY UNDERMINE THE COMMUNITY'S SAFETY OR INTEGRITY.

THE LEGISLATURE THEREFORE FINDS THAT IT IS DESIRABLE TO CLARIFY THE LAW IN THIS AREA IN ORDER TO PROTECT WOMEN AND OTHERS FROM VIOLENCE AND CRIME.

THE LEGISLATURE FURTHER FINDS THAT THERE IS A NEED TO ASSURE THAT VICTIMS OF VIOLENCE, INCLUDING PERSONS THREATENED WITH HARM OR VIOLENCE, HAVE A CLEAR RIGHT TO ACCESS ASSISTANCE TO PROTECT PERSONAL OR PUBLIC SAFETY.

THE LEGISLATURE FINALLY FINDS THAT CLARIFICATION IN THIS AREA WILL ADVANCE THE STATE'S INTEREST IN STOPPING CRIME AND FURTHER THE AIMS OF PENAL LAWS THAT DEPEND ON CITIZENS TO REPORT INCIDENTS OF CRIME TO LAW ENFORCEMENT.

WITH THIS REMEDIAL LEGISLATION THE LEGISLATURE SPECIFICALLY INTENDS THAT THE COVERAGE OF THIS ARTICLE INCLUDES, BUT IS NOT LIMITED TO, LAWS OR ORDINANCES THAT USE ANY FORM OF CUMULATIVE POINT SYSTEM FOR THE PURPOSE OF IDENTIFYING ANY PERSONS OR PROPERTIES WHO OR WHICH WOULD BE SUBJECT TO MUNICIPAL ENFORCEMENT ACTION.

S 91. RIGHT TO CALL FOR POLICE AND EMERGENCY ASSISTANCE; VICTIM PROTECTIONS. 1. ANY PERSON WHO IS A VICTIM OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW, OR WHO OTHERWISE BELIEVES HE OR SHE IS IN NEED OF POLICE OR EMERGENCY ASSISTANCE HAS THE RIGHT TO REQUEST SUCH ASSISTANCE AND TO BE FREE OF ANY DIRECT OR INDIRECT PENALTY OR REPRISAL FOR ACCESSING ASSISTANCE, OR BECAUSE HE OR SHE RESIDES AT A PROPERTY WHERE DOMESTIC VIOLENCE OR OTHER LAW ENFORCEMENT ACTIVITY OCCURRED. OTHER THAN AS PROVIDED IN SECTION NINETY-TWO OF THIS ARTICLE, NO VICTIM OF CONDUCT WHICH HAS BEEN USED AS THE GROUNDS FOR THE APPLICATION OF A LOCAL LAW OR ORDINANCE ESTABLISHED FOR THE PURPOSE OF REGULATING NUISANCES SHALL BE DIRECTLY OR INDIRECTLY PENALIZED, OR OTHERWISE SUBJECT TO REPRISAL BY APPLICATION OF SUCH LOCAL LAW, INCLUDING BY TERMINATION OR REFUSAL TO RENEW A TENANCY OR BY EVICTION.

2. NO RESIDENTIAL OCCUPANT SHALL BE REQUIRED, EITHER ORALLY OR IN WRITING, TO WAIVE RIGHTS UNDER THIS ARTICLE, AND ANY SUCH WAIVER SHALL BE VOID AND UNENFORCEABLE.

S 92. PROTECTIONS NOT APPLICABLE TO BREACHES OF LEASE, ILLICIT ACTIVITIES OR OTHER VIOLATIONS OF LAW. THE PROTECTIONS OF THIS ARTICLE SHALL NOT BE DEEMED TO PROHIBIT A MUNICIPALITY FROM ENFORCING AN ORDINANCE OR LOCAL LAW, NOR RESTRICT A LANDLORD FROM TERMINATING, EVICTING OR REFUSING TO RENEW A TENANCY, WHEN SUCH ACTION IS PREMISED UPON GROUNDS OTHER THAN ACCESS OF POLICE OR EMERGENCY ASSISTANCE OR IS OTHERWISE PREMISED ON CONDUCT UNRELATED TO THE RESIDENTIAL OCCUPANT'S STATUS AS A TARGET OR VICTIM OF VIOLENCE OR HARM.

S 93. RIGHT OF PROPERTY OWNERS TO BE FREE OF PENALTY FOR RESPECTING THE RIGHTS OF AN OCCUPANT TO REQUEST POLICE OR EMERGENCY ASSISTANCE. NO LANDLORD OR OTHER PROPERTY OWNER SHALL BE SUBJECT TO FINES OR LOSS OF PERMITS OR LICENSES BY A MUNICIPALITY FOR FAILING TO TAKE STEPS TO REMOVE AN OCCUPANT WHO HAS EXERCISED RIGHTS UNDER THIS ARTICLE.

S 94. LIMITATION ON RIGHT TO REQUEST POLICE OR EMERGENCY ASSISTANCE PROHIBITED. A MUNICIPALITY, MUNICIPAL AUTHORITY, LANDLORD OR PROPERTY OWNER SHALL NOT PROHIBIT, RESTRICT, PENALIZE OR IN ANY OTHER WAY DIRECTLY OR INDIRECTLY LIMIT ANY PERSON'S EXERCISE OF RIGHTS UNDER THIS ARTICLE. THE PROTECTIONS OF THIS PROHIBITION SHALL EXTEND TO ANY RESIDENTIAL OCCUPANT UPON WHOSE BEHALF A THIRD PARTY HAS CALLED FOR POLICE OR EMERGENCY ASSISTANCE.

S 95. DEFENSES. 1. IT IS A DEFENSE TO ANY JUDICIAL OR ADMINISTRATIVE ACTION OR PROCEEDING TAKEN BY ANY MUNICIPALITY OR MUNICIPAL AUTHORITY ENFORCING ANY LOCAL LAW OR ORDINANCE THAT THE ENFORCEMENT ACTION DIRECTLY OR INDIRECTLY PENALIZES A RESIDENTIAL OCCUPANT OR PROPERTY OWNER FOR THE EXERCISE OF RIGHTS UNDER THIS ARTICLE. PRIOR TO INITIATION OF ANY SUCH ENFORCEMENT ACTION OR PROCEEDING ALL PARTIES AND ANY RESIDENTIAL OCCUPANT THAT MAY BE SO IMPACTED SHALL BE GIVEN WRITTEN NOTICE BY THE MUNICIPALITY OF THE PROTECTIONS OF THIS ARTICLE AND SHALL HAVE THE RIGHT TO BE HEARD IN THE ACTION OR PROCEEDING TO ADVANCE THE DEFENSES PROVIDED BY THIS ARTICLE.

2. IT IS A DEFENSE IN ANY ACTION OR PROCEEDING BY A LANDLORD OR OTHER OWNER OF REAL PROPERTY TO REGAIN POSSESSION OF THAT PROPERTY THAT THE ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY PENALIZES A RESIDENTIAL OCCUPANT FOR THE EXERCISE OF RIGHTS UNDER THIS ARTICLE. ANY RESIDENTIAL OCCUPANT WHOSE RIGHT TO CONTINUED OCCUPANCY MAY BE IMPACTED BY THE OUTCOME SHALL BE GIVEN NOTICE OF THE ACTION OR PROCEEDING BY THE PARTY INITIATING THE ACTION OR PROCEEDING AND SHALL HAVE THE RIGHT TO APPEAR AS A NECESSARY PARTY IN ACCORDANCE WITH THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES AND THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW IN ORDER TO ADVANCE THE DEFENSES PROVIDED BY THIS ARTICLE.

S 96. REMOVAL OF THE PERPETRATOR OF VIOLENCE WHILE ASSURING CONTINUED OCCUPANCY BY VICTIM. ACTIONS INCLUDING TERMINATION, EVICTION OR REFUSAL TO RENEW A LEASEHOLD INTEREST OR TERMINATION OF ANY OTHER FORM OF LAWFUL OCCUPANCY THROUGH A JUDICIAL PROCEEDING MAY BE CARRIED OUT AGAINST THE PERPETRATOR OF SUCH VIOLENCE OR HARM. NOTWITHSTANDING THE TERMS OF AN EXISTING LEASE, WRITTEN OR ORAL, OR OTHER FORM OF OCCUPANCY AGREEMENT, ANY PERSON WITH RIGHTS DESCRIBED IN SECTION NINETY-ONE OF THIS ARTICLE SHALL HAVE THE RIGHT TO CONTINUE IN OCCUPANCY, AND THE COURT MAY SO ORDER, FOR A TERM EQUIVALENT TO THE BALANCE OF THE ORIGINAL TERM AND UNDER THE SAME TERMS AND CONDITIONS AS PROVIDED IN THE ORIGINAL LEASE OR OCCUPANCY AGREEMENT.

S 97. REMEDIES. ANY PERSON OR ENTITY AGGRIEVED BY A VIOLATION OF THE PROTECTIONS CREATED BY THIS ARTICLE SHALL HAVE THE RIGHT TO BRING AN ACTION OR SPECIAL PROCEEDING IN A COURT OF APPROPRIATE JURISDICTION TO SEEK DAMAGES AND/OR DECLARATORY AND INJUNCTIVE RELIEF WITH RESPECT TO

SUCH VIOLATION. A PREVAILING PLAINTIFF MAY BE ENTITLED TO AN AWARD OF COSTS AND ATTORNEY'S FEES.

S 98. GUIDANCE AUTHORIZED. THE NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE AND THE DIVISION OF CRIMINAL JUSTICE SERVICES, UPON CONSULTATION WITH THE OTHER, ARE JOINTLY AUTHORIZED TO PROVIDE GUIDANCE WITH RESPECT TO DRAFTING OF LOCAL NUISANCE ORDINANCES AND EVALUATION OF THEIR IMPACT ON ACCESS TO POLICE AND EMERGENCY SERVICES.

S 2. This act shall take effect immediately and shall apply to all pending actions and proceedings.