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2015-2016 Regular Sessions

I N S E N A T E

January 9, 2015

Introduced by Sens. ROBACH, CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the real property law and the real property actions and proceedings law, in relation to prohibiting discrimination in housing based upon domestic violence status and establishing a task force to study the impact of source of income on access to housing

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

Section 1. The real property law is amended by adding a new section 227-d to read as follows:

S 227-D. DISCRIMINATION BASED ON DOMESTIC VIOLENCE STATUS; PROHIBITED. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, A PERSON IS A "DOMESTIC VIOLENCE VICTIM" AND POSSESSES "DOMESTIC VIOLENCE VICTIM STATUS" IF SUCH PERSON IS OR HAS BEEN, OR IS A PARENT ACCOMPANIED BY A MINOR CHILD OR CHILDREN WHO IS OR HAS BEEN, IN A SITUATION IN WHICH SUCH PERSON OR CHILD IS A VICTIM OF AN ACT THAT WOULD CONSTITUTE A VIOLENT FELONY OFFENSE AS ENUMERATED IN SECTION 70.02 OF THE PENAL LAW, OR A FAMILY OFFENSE AS ENUMERATED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, AND SUCH ACT IS ALLEGED TO HAVE BEEN COMMITTED BY A MEMBER OF THE SAME FAMILY OR HOUSEHOLD, AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.

2. DISCRIMINATION BASED ON DOMESTIC VIOLENCE VICTIM STATUS PROHIBITED. (A) NO PERSON, FIRM OR CORPORATION OWNING OR MANAGING ANY BUILDING USED FOR DWELLING PURPOSES, OR THE AGENT OF SUCH PERSON, FIRM OR CORPORATION, SHALL, BECAUSE OF SUCH PERSON'S OR FAMILY MEMBER'S DOMESTIC VIOLENCE VICTIM STATUS, (1) REFUSE TO RENT A RESIDENTIAL UNIT TO ANY PERSON OR FAMILY, WHEN, BUT FOR SUCH STATUS, RENTAL WOULD NOT HAVE BEEN REFUSED, (2) DISCRIMINATE IN THE TERMS, CONDITIONS, OR PRIVILEGES OF ANY SUCH RENTAL, WHEN, BUT FOR SUCH STATUS, SUCH DISCRIMINATION WOULD NOT HAVE OCCURRED, OR (3) PRINT OR CIRCULATE, OR CAUSE TO BE PRINTED OR CIRCULATED, ANY STATEMENT, ADVERTISEMENT OR PUBLICATION WHICH EXPRESSES,

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

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DIRECTLY OR INDIRECTLY, ANY LIMITATION, SPECIFICATION, OR DISCRIMINATION. A VIOLATION OF THIS SUBDIVISION SHALL BE A MISDEMEANOR AND, ON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS AND NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH OFFENSE; PROVIDED, HOWEVER, THAT IT SHALL BE A DEFENSE THAT SUCH PERSON, FIRM, CORPORATION OR AGENT REFUSED TO RENT A RESIDENTIAL UNIT ON ANY OTHER LAWFUL GROUND.

(B) (1) WHERE DISCRIMINATORY CONDUCT PROHIBITED BY THIS SUBDIVISION HAS OCCURRED, SUCH PERSON OR FAMILY SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF APPROPRIATE JURISDICTION FOR COMPENSATORY AND PUNITIVE DAMAGES, WITH SUCH PUNITIVE DAMAGES NOT EXCEEDING TWO THOUSAND DOLLARS FOR EACH OFFENSE, AND DECLARATORY AND INJUNCTIVE RELIEF; AND (2) IN ALL ACTIONS BROUGHT UNDER THIS SECTION, REASONABLE ATTORNEYS' FEES AS DETERMINED BY THE COURT MAY BE AWARDED TO A PREVAILING PARTY, PROVIDED, HOWEVER, THAT A PREVAILING DEFENDANT IN ORDER TO RECOVER SUCH REASONABLE ATTORNEYS' FEES MUST MAKE A MOTION REQUESTING SUCH FEES AND SHOW THAT THE ACTION OR PROCEEDING BROUGHT WAS FRIVOLOUS. IN ORDER TO FIND THE ACTION OR PROCEEDING TO BE FRIVOLOUS, THE COURT MUST FIND ONE OR MORE OF THE FOLLOWING: (I) THE ACTION WAS COMMENCED, USED OR CONTINUED IN BAD FAITH, SOLELY TO DELAY OR PROLONG THE RESOLUTION OF THE LITIGATION OR TO HARASS OR MALICIOUSLY INJURE ANOTHER; OR (II) THE ACTION WAS COMMENCED OR CONTINUED IN BAD FAITH WITHOUT ANY REASONABLE BASIS AND COULD NOT BE SUPPORTED BY A GOOD FAITH ARGUMENT FOR AN EXTENSION, MODIFICATION OR REVERSAL OF EXISTING LAW. IF THE ACTION OR PROCEEDING WAS PROMPTLY DISCONTINUED WHEN THE PARTY OR ATTORNEY LEARNED OR SHOULD HAVE LEARNED THAT THE ACTION OR PROCEEDING LACKED SUCH A REASONABLE BASIS, THE COURT MAY FIND THAT THE PARTY OR THE ATTORNEY DID NOT ACT IN BAD FAITH.

(C) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING THE ABILITY OF A PERSON, FIRM OR CORPORATION OWNING OR MANAGING A BUILDING USED FOR DWELLING PURPOSES, OR THE AGENT OF SUCH PERSON, FIRM OR CORPORATION, FROM APPLYING REASONABLE STANDARDS NOT BASED ON OR DERIVED FROM DOMESTIC VIOLENCE VICTIM STATUS IN DETERMINING THE ELIGIBILITY OF A PERSON OR FAMILY SEEKING TO RENT A RESIDENTIAL UNIT.

(D) THIS SECTION SHALL NOT APPLY TO BUILDINGS USED FOR DWELLING PURPOSES THAT ARE OWNER OCCUPIED AND HAVE TWO OR FEWER RESIDENTIAL UNITS.

3. A PERSON, FIRM, OR CORPORATION OWNING OR MANAGING A BUILDING USED FOR DWELLING PURPOSES OR AGENT OF SUCH PERSON, FIRM OR CORPORATION SHALL NOT BE CIVILLY LIABLE TO OTHER TENANTS, GUESTS, INVITEES, OR LICENSEES ARISING FROM REASONABLE AND GOOD FAITH EFFORTS TO COMPLY WITH THIS SECTION.

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING A PERSON, FIRM OR CORPORATION OWNING OR MANAGING A BUILDING USED FOR DWELLING PURPOSES, OR THE AGENT OF SUCH PERSON, FIRM OR CORPORATION, FROM:

(A) PROVIDING OR PRESERVING A RENTAL PREFERENCE IN ANY PUBLIC OR PRIVATE HOUSING FOR VICTIMS OF DOMESTIC VIOLENCE;

(B) PROVIDING ANY OTHER ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE IN OBTAINING OR RETAINING ANY PUBLIC OR PRIVATE HOUSING; OR

(C) RESPONDING TO AN INQUIRY OR REQUEST BY AN APPLICANT, TENANT, OR LEASEHOLDER WHO IS A VICTIM OF DOMESTIC VIOLENCE.

5. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING A MUNICIPALITY FROM RETAINING OR PROMULGATING LOCAL LAWS OR ORDINANCES IMPOSING ADDITIONAL OR ENHANCED PROTECTIONS PROHIBITING DISCRIMINATION AGAINST VICTIMS OF DOMESTIC VIOLENCE.

6. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING, DIMINISHING, OR OTHERWISE AFFECTING ANY RIGHTS UNDER EXISTING LAW.

S 2. The real property actions and proceedings law is amended by adding a new section 744 to read as follows:

S 744. EVICTION BASED ON DOMESTIC VIOLENCE VICTIM STATUS PROHIBITED. 1. A TENANT SHALL NOT BE REMOVED FROM POSSESSION OF A RESIDENTIAL UNIT PURSUANT TO THIS ARTICLE BECAUSE OF SUCH PERSON'S DOMESTIC VIOLENCE VICTIM STATUS, AS DEFINED IN SECTION TWO HUNDRED TWENTY-SEVEN-D OF THE REAL PROPERTY LAW. IT SHALL BE A DEFENSE TO A PROCEEDING TO RECOVER POSSESSION OF A RESIDENTIAL UNIT THAT A LANDLORD SEEKS SUCH RECOVERY BECAUSE OF A PERSON'S DOMESTIC VIOLENCE VICTIM STATUS, AND THAT, BUT FOR SUCH STATUS, THE LANDLORD WOULD NOT SEEK TO RECOVER POSSESSION. A LANDLORD MAY REBUT SUCH DEFENSE BY SHOWING THAT HE OR SHE SEEKS TO RECOVER POSSESSION OF A RESIDENTIAL UNIT BECAUSE OF ANY OTHER LAWFUL GROUND.

2. NOTHING IN THIS SECTION SHALL RESTRICT A LANDLORD'S LEGAL RIGHTS TO RECOVER POSSESSION OF A RESIDENTIAL UNIT ON GROUNDS NOT BASED ON OR DERIVED FROM DOMESTIC VIOLENCE VICTIM STATUS.

3. A LANDLORD SHALL NOT BE CIVILLY LIABLE TO OTHER TENANTS, GUESTS, INVITEES, OR LICENSEES ARISING FROM REASONABLE AND GOOD FAITH EFFORTS TO COMPLY WITH THIS SECTION.

4. THIS SECTION SHALL NOT APPLY TO BUILDINGS USED FOR DWELLING PURPOSES THAT ARE OWNER OCCUPIED AND HAVE TWO OR FEWER RESIDENTIAL UNITS.

S 3. There is hereby established a task force to study the impact of source of income on access to housing including, but not limited to, any sex-based impact. The task force shall consist of the following members as appointed by the governor: (1) two members of the governor's cabinet; (2) two experts on housing policy representing the needs of both landlords and tenants; (3) two members who are local government officials, who shall each represent different geographical regions within the state; (4) two members on the recommendation of the temporary president of the senate; and (5) two members on the recommendation of the speaker of the assembly. The governor shall designate a chair of the task force from amongst such appointees. The task force shall meet as often as is appropriate under circumstances necessary to fulfill its duties under this section. The task force shall (a) review the Section 8 Housing Choice Voucher Administrative Plan and, if necessary, recommend modifications to increase the participation of landlords and property owners, which may include, but shall not be limited to: expanding the portability of Section 8 vouchers, including as may be appropriate for domestic violence victims; creating a state-sponsored special-purpose mobility counseling program; enhancing means of connecting voucher holders to approved landlords; and eliminating delays in housing quality standard inspections; and (b) review other current policies and laws and, if necessary, recommend modifications to improve access to quality and affordable housing. The task force shall submit its report and recommendations to the governor, the temporary president of the senate, and the speaker of the assembly on January 15, 2016.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 5. This act shall take effect on the ninetieth day after it shall have become a law.