

CHAPTER 152
SB 126-FN - FINAL VERSION

03/18/2021 0733s

2021 SESSION

21-0873
10/05

SENATE BILL ***126-FN***

AN ACT adopting omnibus legislation on landlord tenant proceedings.

SPONSORS: Sen. Perkins Kwoka, Dist 21

COMMITTEE: Commerce

ANALYSIS

This bill adopts legislation relative to:

I. Notice to quit for residential tenants.

II. Prohibiting certain denials of rental assistance.

III. Civil rights violations and discriminatory actions related to real estate transactions.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~in brackets and struckthrough.~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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(b) The landlord also submits prior to the hearing date a receipt of such payment to court and states in writing that a copy of same receipt has also been forwarded to the tenant prior to the time and date of the hearing on the merits. If the landlord fails to file such receipt the hearing on the merits shall proceed, and if the tenant proves that payment has been made in accordance with subparagraph (a), the case shall be dismissed.

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II. Notwithstanding the provisions of paragraph I, a tenant may not defeat an eviction for nonpayment of rent by use of this section more than 3 times within a 12-month period.

2 Rent; Payment by Voucher. Amend RSA 540:9-a, I to read as follows:

I. Any rental payment or partial rental payment tendered by the tenant in the form of a written promise to pay on behalf of the tenant by the state, a county or a municipality of this state, or a payment by any organization which disburses federal or state funds, and any application by a municipality of amounts owed to it by a landlord pursuant to RSA 165:4-a, shall constitute payment by the tenant of the amount represented in the voucher, and of any amount applied by a municipality to delinquent balances of the landlord; provided, that this section shall not be construed to obligate a landlord to accept partial rental payments ~~[or payments tendered after the expiration of the eviction notice]~~.

3 Effective Date. Part I of this act shall take effect upon its passage.

PART II

Relative to prohibiting certain denials of rental assistance.

1 New Section; Aid to Assisted Persons. Amend RSA 165 by inserting after section 4-b the following new section:

165:4-c Eviction Notice Not Required. The governing body and overseers of public welfare shall not require the issuance of an eviction notice before providing rental assistance. An eviction notice may be required to assist the applicant in documenting emergency needs for emergency assistance, timely application and decision making, and referrals to other agencies with eviction notice requirements for consideration of additional rent arrearage assistance.

2 Effective Date. Part II of this act shall take effect upon its passage.

PART III

Relative to civil rights violations and discriminatory actions related to real estate transactions.

1 Law Against Discrimination; Fair Housing; Real Estate Transactions. RSA 354-A:8 through 354-A:15 are repealed and reenacted to read as follows:

354-A:8 Equal Housing Opportunity Without Discrimination a Civil Right. The opportunity to obtain housing without discrimination because of age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental disability or national origin is hereby recognized and declared a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

354-A:9 Definitions. In this subdivision:

I. "Aggrieved person" includes any person who:

(a) Claims to have been injured by a discriminatory housing practice; or

(b) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

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1 II. "Discriminatory housing practice" means an act that is unlawful under section 804, 805,
2 806, or 818 of the Fair Housing Act, 42 U.S.C. section 3601, et seq.

3 III. "Family" includes a single individual.

4 IV. "Familial status" means one or more individuals who have not attained the age of 18
5 years and who are domiciled with:

6 (a) A parent or another person having legal custody of such individual or individuals; or

7 (b) The designee of such parent or other person having such custody, with the written
8 permission of such parent or other person.

9 V. "Person" includes one or more individuals, corporations, partnerships, associations, labor
10 organizations, legal representatives, mutual companies, joint-stock companies, trusts,
11 unincorporated organizations, trustees, trustees in bankruptcy cases under Title 11 of the United
12 States Code, receivers, and fiduciaries.

13 VI. "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds,
14 interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal,
15 or any interest therein.

16 VII. "Real estate transaction" includes the sale, exchange, rental or lease of real property.
17 "Real estate transaction" also includes the brokering or appraising of residential real property and
18 the making or purchasing of loans or providing other financial assistance:

19 (a) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

20 (b) Secured by residential real estate.

21 VIII. "Housing accommodation" includes any improved or unimproved real property, or part
22 thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the
23 home or residence of one or more individuals.

24 IX. "Real estate broker or salesman" means a person, whether licensed or not, who, for or
25 with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases
26 real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself
27 or herself out as engaged in these.

28 X. "Conciliation" means the attempted resolution of issues raised by a charge, or by the
29 investigation of such charge, through informal negotiations involving the aggrieved party, the
30 respondent, and the commission.

31 XI. "Conciliation agreement" means a written agreement setting forth the resolution of the
32 issues in conciliation.

33 354-A:10 Civil Rights Violations; Real Estate Transactions. It shall be an unlawful
34 discriminatory practice because of age, sex, gender identity, race, religion, color, marital status,
35 familial status, physical or mental disability or national origin to:

36 I. Refuse to engage in a real estate transaction with a person or to discriminate in making
37 available such a transaction.

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1 II. Alter the terms, conditions or privileges of a real estate transaction or in the furnishing of
2 facilities or services in connection therewith.

3 III. Refuse to receive or to fail to transmit a bona fide offer to engage in a real estate
4 transaction from a person.

5 IV. Refuse to negotiate for a real estate transaction with a person.

6 V. Represent to a person that real property is not available for inspection, sale, rental, or
7 lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to
8 refuse to permit him or her to inspect real property.

9 VI. Make, print, or publish, or cause to be made, printed, or published, any notice,
10 statement, advertisement, or sign, with respect to the sale or rental of a dwelling, or commercial
11 structure, that indicates any preference, limitation, or discrimination based on race, color, religion,
12 sex, marital status, familial status, physical or mental disability, sexual orientation, or national
13 origin, or an intention to make any such preference, limitation, or discrimination.

14 VII. Offer, solicit, accept, use or retain a listing of real property with knowledge that
15 unlawful discrimination or discrimination on the basis of familial status or an arrest record in a real
16 estate transaction is intended.

17 354-A:11 Disability.

18 I. It is a civil rights violation to refuse to sell or rent or to otherwise make unavailable or
19 deny a dwelling to any buyer or renter because of a disability of that buyer or renter, a disability of a
20 person residing or intending to reside in that dwelling after it is sold, rented, or made available, or a
21 disability of any person associated with the buyer or renter.

22 II. It is a civil rights violation to alter the terms, conditions, or privileges of sale or rental of
23 a dwelling or the provision of services or facilities in connection with such dwelling because of a
24 disability of a person with a disability or a disability of any person residing or intending to reside in
25 that dwelling after it is sold, rented, or made available, or a disability of any person associated with
26 that person.

27 III. It is a civil rights violation:

28 (a) To refuse to permit, at the expense of the person with a disability, reasonable
29 modifications of existing premises occupied or to be occupied by such person if such modifications
30 may be necessary to afford such person full enjoyment of the premises; except that, in the case of a
31 rental, the landlord may, where it is reasonable to do so, condition permission for a modification on
32 the renter agreeing to restore the interior of the premises to the condition that existed before
33 modifications, reasonable wear and tear excepted. The landlord may not increase for persons with a
34 disability any customarily required security deposit. However, where it is necessary in order to
35 ensure with reasonable certainty that funds will be available to pay for the restorations at the end of
36 the tenancy, the landlord may negotiate as part of such a restoration agreement a provision
37 requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a

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1 reasonable amount of money not to exceed the cost of the restorations. The interest in any such
2 account shall accrue to the benefit of the tenant. A landlord may condition permission for a
3 modification on the renter providing a reasonable description of the proposed modifications as well
4 as reasonable assurances that the work will be done in a workmanlike manner and that any
5 required building permits will be obtained;

6 (b) To refuse to make reasonable accommodations in rules, policies, practices, or
7 services, when such accommodations may be necessary to afford such person equal opportunity to
8 use and enjoy a dwelling; or

9 (c) In connection with the design and construction of covered multifamily dwellings for
10 first occupancy after March 13, 1991, to fail to design and construct those dwellings in such a
11 manner that:

12 (1) The public use and common use portions of such dwellings are readily accessible
13 to and usable by persons with a disability;

14 (2) All the doors designed to allow passage into and within all premises within such
15 dwellings are sufficiently wide to allow passage by persons with a disability in wheelchairs; and

16 (3) All premises within such dwellings contain the following features of adaptive
17 design:

18 (A) An accessible route into and through the dwelling;

19 (B) Light switches, electrical outlets, thermostats, and other environmental
20 controls in accessible locations;

21 (C) Reinforcements in bathroom walls to allow later installation of grab bars;
22 and

23 (D) Usable kitchens and bathrooms such that an individual in a wheelchair can
24 maneuver about the space.

25 IV. Compliance with the appropriate requirements of the American National Standard for
26 buildings and facilities providing accessibility and usability for physically disabled people (commonly
27 cited as "ANSI A117.1") suffices to satisfy the requirements of subparagraph III(c)(3).

28 V. If a unit of local government has incorporated into its building code the requirements set
29 forth in subparagraph III(c), compliance with the local building code shall be deemed to satisfy the
30 requirements of that subparagraph.

31 VI. A unit of local government may review and approve newly constructed covered
32 multifamily dwellings for the purpose of making determinations as to whether the design and
33 construction requirements of subparagraph III(c) are met.

34 VII. The commission shall encourage, but may not require, units of local government to
35 include in their existing procedures for the review and approval of newly constructed covered
36 multifamily dwellings, determinations as to whether the design and construction of such dwellings

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are consistent with subparagraph III(c), and shall provide technical assistance to units of local government and other persons to implement the requirements of subparagraph III(c).

VIII. Nothing in this subdivision shall be construed to require the commission to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such dwellings are consistent with the requirements of subparagraph III(c).

IX. Nothing in paragraph IV, V, VI, or VII shall be construed to affect the authority and responsibility of the commission to receive and process complaints or otherwise engage in enforcement activities under state law.

X. Determinations by a unit of local government under paragraphs IV and V shall not be conclusive in enforcement proceedings under this chapter if those determinations are not in accord with the terms of this chapter.

XI. Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

354-A:12 Blockbusting. It is a civil rights violation for any person to:

I. Solicit for sale, lease, listing or purchase any residential real estate within this state, on the grounds of loss of value due to the present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, familial status or disability.

II. Distribute or cause to be distributed, written material or statements designed to induce any owner of residential real estate in this state to sell or lease his or her property because of any present or prospective changes in the race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, familial status or disability of residents in the vicinity of the property involved.

III. Intentionally create alarm, among residents of any community, by transmitting communications in any manner, including a telephone call whether or not conversation thereby ensues, with a design to induce any owner of residential real estate in this state to sell or lease his or her property because of any present or prospective entry into the vicinity of the property involved of any person or persons of any particular race, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, marital status, familial status or disability.

IV. Evict a tenant solely on the grounds that the person has acquired immune deficiency syndrome (AIDS) or is regarded to have acquired immune deficiency syndrome.

354-A:13 Restrictive Covenants.

I. Every provision in an oral agreement or a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof on the basis of race, color, religion, or national origin is void.

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1 II.(a) Every condition, restriction or prohibition, including a right of entry or possibility of
2 reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race,
3 color, religion, or national origin is void.

4 (b) This section shall not apply to a limitation of use on the basis of religion of real
5 property held by a religious institution or organization or by a religious or charitable organization
6 operated, supervised, or controlled by a religious institution or organization, and used for religious or
7 charitable purposes.

8 III. It is a civil rights violation to insert in a written instrument relating to real property a
9 provision that is void under this section or to honor or attempt to honor such a provision in the chain
10 of title.

11 354-A:14 Interference, Coercion, or Intimidation. It is a civil rights violation to coerce,
12 intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of
13 his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any
14 other person in the exercise or enjoyment of, any right granted or protected by this subdivision.

15 354-A:15 Exemptions. Nothing contained in RSA 354-A:10 shall prohibit:

16 I. Private sales of single family homes.

17 (a) Any sale of a single family home by its owner so long as the following criteria are
18 met:

19 (1) The owner does not own or have a beneficial interest in more than three single
20 family homes at the time of the sale;

21 (2) The owner or a member of his or her family was the last current resident of the
22 home;

23 (3) The home is sold without the use in any manner of the sales or rental facilities or
24 services of any real estate broker or salesman, or of any employee or agent of any real estate broker
25 or salesman;

26 (4) The home is sold without the publication, posting or mailing, after notice, of any
27 advertisement or written notice in violation of RSA 354-A:10, VII.

28 (b) This exemption shall not apply to RSA 354-A:10, VII.

29 II. Rental of a housing accommodation in a building which contains housing
30 accommodations for not more than 4 families living independently of each other, if the owner resides
31 in one of the housing accommodations. This exemption does not apply to RSA 354-A:10, VII.

32 III. Rental of a room or rooms in a private home by an owner if he or she or a member of his
33 or her family resides therein or, while absent for a period of not more than 12 months, if he or she or
34 a member of his or her family intends to return to reside therein.

35 IV. Reasonable local, state, or federal restrictions regarding the maximum number of
36 occupants permitted to occupy a dwelling.

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1 V. A religious organization, association, or society, or any nonprofit institution or
2 organization operated, supervised, or controlled by or in conjunction with a religious organization,
3 association, or society, from limiting the sale, rental, or occupancy of a dwelling which it owns or
4 operates for other than a commercial purpose to persons of the same religion, or from giving
5 preference to such persons, unless membership in such religion is restricted on account of race, color,
6 or national origin.

7 VI. Conduct against a person because such person has been convicted by any court of
8 competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined
9 in the federal Controlled Substances Act, 21 U.S.C. section 802(6).

10 VII. Persons engaged in the business of furnishing appraisals of real property from taking
11 into consideration factors other than those based on unlawful discrimination or familial status in
12 furnishing appraisals.

13 VIII. No provision in this subdivision regarding familial status shall apply with respect to
14 housing for older persons.

15 (a) As used in this paragraph, "housing for older persons" means housing:

16 (1) Provided under any state or federal program that the Secretary of the United
17 States Department of Housing and Urban Development determines is specifically designed and
18 operated to assist elderly persons, as defined in the state or federal program; or

19 (2) Intended for, and solely occupied by, persons 62 years of age or older; or

20 (3) Intended and operated for occupancy by persons 55 years of age or older and:

21 (A) At least 80 percent of the occupied units are occupied by at least one person
22 who is 55 years of age or older;

23 (B) The housing facility or community publishes and adheres to policies and
24 procedures that demonstrate the intent required under this subparagraph; and

25 (C) The housing facility or community complies with rules adopted by the
26 commission for verification of occupancy, which shall:

27 (i) Provide for verification by reliable surveys and affidavits; and

28 (ii) Include examples of the types of policies and procedures relevant to a
29 determination of compliance with the requirement of subparagraph X(a)(3)(B). These surveys and
30 affidavits shall be admissible in administrative and judicial proceedings for the purposes of such
31 verification.

32 (b) Housing shall not fail to meet the requirements for housing for older persons by
33 reason of:

34 (1) Persons residing in such housing as of the effective date of this amendatory Act
35 of 1988 who do not meet the age requirements of subparagraph X(a)(2) or X(a)(3); provided, that new
36 occupants of such housing meet the age requirements of subparagraph X(a)(2) or X(a)(3); or

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1 (2) Unoccupied units; provided, that such units are reserved for occupancy by
2 persons who meet the age requirements of subparagraph X(a)(2) or X(a)(3).

3 (c)(1) A person shall not be held personally liable for monetary damages for a violation of
4 this subdivision if the person reasonably relied, in good faith, on the application of the exemption
5 under this paragraph relating to housing for older persons.

6 (2) For the purposes of this subparagraph, a person may show good faith reliance on
7 the application of the exemption only by showing that:

8 (A) The person has no actual knowledge that the facility or community is not, or
9 will not be, eligible for the exemption; and

10 (B) The facility or community has stated formally, in writing, that the facility or
11 community complies with the requirements for the exemption.

12 IX. Inquiry into or the use of an arrest record if the inquiry or use is otherwise authorized by
13 state or federal law.

14 2 Effective Date. Part III of this act shall take effect January 1, 2022.

Approved: July 23, 2021

Effective Date:

Part I shall take effect July 23, 2021.

Part II shall take effect July 23, 2021.

Part III shall take effect January 1, 2022.

