



NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**REPORT ON LEGISLATION BY
THE COMMITTEE ON CIVIL RIGHTS AND
THE COMMITTEE ON DOMESTIC VIOLENCE**

**A.9024
S.6994**

**M. of A. Englebright
Sen. Grisanti**

AN ACT to amend the executive law, in relation to preventing housing discrimination against victims of domestic violence; and to repeal certain provisions of such law relating thereto

THIS BILL IS APPROVED

The New York City Bar Association supports the enactment of A.9024/S.6994 into law. This bill amends the state's Human Rights Law to prohibit housing discrimination against victims of domestic violence.

Victims of domestic violence often lose housing due to discrimination based on their status as victims of such violence. Landlords fear that the victim's presence in a housing complex will attract further violence by the abuser and harm to third parties, such as other tenants. However, the economic security provided by housing is critical to allowing a victim of violence (and his or her children) to leave a dangerous situation in a safe manner.

A.9024/S.6994 would amend the state's Human Rights Law, N.Y. Exec. L. § 296, to add victims of domestic violence to the list of groups protected from housing discrimination. The bill would also amend the Human Rights Law, N.Y. Exec. L. § 292, to cross-reference the definition of "victim of domestic violence" with the definition found at § 459-a of the Social Services Law.¹ This bill is critical to assisting victims of domestic violence in New York State to separate from violent situations in a safe manner.

Domestic violence victims are often faced with a stark choice: remain in abusive relationships in order to have a place to live, or risk homelessness to ensure their safety and that of their family members. While homelessness can result from a number of factors, a December

¹The definition of "victim of domestic violence" found in Soc. Serv. L. § 459-a determines who qualifies for domestic violence services. On April 13, 2011, Governor Cuomo signed A.627/S.4222 into law (as Chapter 11 of the Laws of 2011), which amended and updated Soc. Serv. L. § 459-a to: (i) include the expanded definition of "family or household member" found in Family Court Act § 812, and (ii) include all conduct that qualifies as a family offense under Family Court Act § 812. With the amendments to § 459-a, the Committees support the proposed bill's use of a cross-referenced definition of "victim of domestic violence".

2005 study found that half of the 24 cities surveyed in 2005 by the U.S. Conference of Mayors identified domestic violence as a “primary cause” of homelessness. And a 1999 study indicated that 67% of domestic violence service providers identified housing discrimination as a barrier to battered women seeking alternative housing.²

Victims of domestic violence leaving emergency shelters, which only provide a temporary refuge, must quickly find permanent housing in order for them and their children to stay safe. But they have few safe, viable options. Currently there is a serious shortage of permanent public housing options that are available in a timely manner. Moreover, many communities have been forced to freeze their federally subsidized (“Section 8”) housing voucher programs and project-based Section 8 programs due to recent federal funding cuts. Many victims of domestic violence are then forced to seek private housing; and when they do, they often face discrimination from landlords and sellers of property. Numerous women report being denied housing outright, and others report being threatened with eviction due to the violent acts of their abusers or because they have sought protection from the police and/or courts. This response to domestic abuse and related criminal activity -- eviction of the victim of violence in an attempt to “get rid” of the problem -- is a common one among landlords, as Congress has recognized. Congress also found that this response has serious consequences for women and their children who are dealing with violence.³

The bill would protect persons who are victims of domestic violence living in private and publicly-assisted housing from a variety of discriminatory housing practices. Landlords would be prohibited from: refusing to sell, rent or lease or otherwise deny or withhold housing accommodation; representing that any housing accommodation is not available for inspection, sale, rental or lease when it is in fact available; discriminating in the terms, conditions or privileges of publicly-assisted housing accommodations; making any written or oral inquiry or recording concerning the domestic violence status of anyone seeking to rent or lease publicly-assisted housing accommodations; discriminating in the terms, conditions or privileges of housing accommodations; and printing or circulating any statement or publication in connection with the prospective purchase, rental or lease of housing accommodation that expresses a limitation against domestic violence victims. Furthermore, it would be unlawful for any person or entity to obtain or provide information relating to the domestic violence status of someone who rents, leases or sub-leases a housing accommodation or who seeks to do so.

Significantly, this bill would fill a gap in the 2005 federal Violence Against Women Act (“VAWA”). VAWA protects victims of domestic violence, stalking and dating violence from discrimination in access to federal public housing and Section 8 housing, and provide those victims with defenses to eviction.⁴ Since its enactment, VAWA has helped preserve the housing

² United States Conference of Mayors, *Hunger and Homelessness Survey: A Status Report on Hunger and Homelessness in America’s Cities, A 24-City Survey*, at 64 (Dec. 2005); Correia, A., *Housing and Battered Women: A Case Study of Domestic Violence Programs in Iowa*, at 7 (Harrisburg, PA: National Resource Center on Domestic Violence (Mar. 1999).

³ See Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e(3) and (4).

⁴ See 42 U.S.C. §§ 1437d(c)(3), 1437d(l)(5) & (6) (2006); 42 U.S.C. §§ 1437f(c)(9)(A); 1437f(c)(9)(B) & (C) (2006).

of victims, including those living in New York. One of the first published cases dealing with the enforcement of VAWA rights arose in New York City. *Metro North Owners LLC v. Thorpe*, 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008). However, these protections do not apply to victims living in *private* housing. Because of the temporary nature of shelters and the shortage of public housing and subsidized housing in New York, numerous victims fleeing their abusers seek shelter in the private housing market and are not afforded such protections.

The District of Columbia, Indiana, North Carolina, Oregon, Rhode Island, Washington state, Wisconsin, and Westchester County, New York already have enacted laws prohibiting housing discrimination against victims of domestic violence.⁵ New York State should follow suit. By passing these bills, New York State can ensure that when its citizens take steps to ensure their safety and that of their children by leaving violent relationships, and then seek to lease, rent, purchase, or inhabit private housing, they are not further penalized by landlords or sellers who discriminate against them simply for being victims of domestic violence.

The anti-discrimination housing bill will not impose an undue burden on landlords. Like other anti-discrimination laws, the bill prohibits adverse actions against tenants only when those actions are based on impermissible, discriminatory reasons.⁶ This bill would only protect a tenant who is discriminated against “because of” his or her status as a victim of domestic violence.

Conclusion

Based on the foregoing, the New York City Bar Association strongly urges the enactment of A.9024/S.6994.

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⁵ See D.C. CODE § 2.1402.21; IND. CODE ANN. § 32-31-9-8; N.C. GEN. STAT. §§ 42-40, 42-42.2 42-42.3 & 42-45.1; OR. REV. STAT. ANN. § 90.449; R.I. GEN. LAWS §§ 34-37-1, -2, -2.4, -3 & -4; WASH. REV. CODE ANN. §§ 59.18.570, 575, 580 & 585; WIS. STAT. ANN. § 106.50; Westchester County Code §§ 700.02, 700.05, 700.11(h)(2).

⁶ We are confident that courts, drawing on experience and extensive case law in other areas of anti-discrimination law, could distinguish between unlawful discrimination based on the stereotyping of victims of abuse (such as the eviction of a tenant solely because the landlord learned she or he was a victim of violence), and adverse actions based on legitimate tenancy requirements that apply to all tenants, regardless of their status. As early as 1985, the New York State Attorney General opined that a categorical refusal to rent to victims of domestic violence based on the fear of harm to other tenants would violate the fair housing provisions of the state Human Rights Law. See 1985 Op. Atty. Gen. N.Y. 45 (Nov. 22, 1985). See also *Metro North Owners LLC v. Thorpe*, 870 N.Y.S.2d 768 (N.Y. Civ. Ct. 2008) (dismissing an eviction case because it arose from a domestic violence incident in which the tenant was the victim); *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005) (denying landlord’s motion for summary judgment and finding domestic violence victim stated prima facie claim of sex discrimination under federal Fair Housing Act when she was evicted after obtaining an order of protection). The federal Department of Housing and Urban Development recently issued guidance to help assess claims of discrimination against domestic violence survivors under the federal Fair Housing Act. Office of Fair Housing and Equal Opportunity, HUD, Memorandum for FHEO Office Directors and FHEO Regional Directors re: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA) (Feb. 9, 2011), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>.