S5614 LIU Same as A 2554 Otis (MS)
Real Property Law
TITLE....Prohibits commercial leases from including a waiver of the right to a declaratory judgment action
This bill is not active in the current session.
05/09/19 REFERRED TO JUDICIARY
06/13/19 COMMITTEE DISCHARGED AND COMMITTED TO RULES
06/13/19 ORDERED TO THIRD READING CAL.1346
06/13/19 SUBSTITUTED BY A2554

A02554 Otis (MS)

01/23/19 referred to judiciary
05/07/19 reported
05/09/19 advanced to third reading cal.284
06/04/19 passed assembly
06/04/19 delivered to senate
06/04/19 REFERRED TO RULES
06/13/19 SUBSTITUTED FOR S5614
06/13/19 3RD READING CAL.1346
06/13/19 PASSED SENATE
06/13/19 RETURNED TO ASSEMBLY
12/10/19 delivered to governor
12/20/19 signed chap.689

LIU
Add §235-h, RP L
Prohibits commercial leases from including a waiver of the right to a declaratory judgment action and states that the inclusion of such a waiver in a commercial lease shall be null and void as against public policy.

STATE OF NEW YORK

5614

2019-2020 Regular Sessions

IN SENATE

May 9, 2019

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

AN ACT to amend the real property law, in relation to prohibiting leases from including a waiver of the right to a declaratory judgment action

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 235-h to read as follows:

§ 235-h. Waiver of right to bring a declaratory judgment action. No commercial lease shall contain any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease. The inclusion of any such waiver provision in a commercial lease shall be null and void as against public policy.

§ 2. This act shall take effect immediately.

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

LBD01655-01-9

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S5614

SPONSOR: LIU

TITLE OF BILL: An act to amend the real property law, in relation to prohibiting leases from including a waiver of the right to a declaratory judgment action

PURPOSE OR GENERAL IDEA OF BILL:

Amends the real property law to prohibit a lease from containing any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease.

SUMMARY OF PROVISIONS:

Section 1 adds a new section 235-h to the real property law to prohibit a lease from containing any provision waiving or prohibiting the right of any tenant to bring a declaratory judgment action with respect to any provision, term or condition of such commercial lease.

Section 2 provides that this act shall take effect immediately.

JUSTIFICATION:

For the last 50 years, in cases where a landlord serves a commercial tenant with a notice to cure a defect, and seeks to terminate a lease if the defaults under the lease are not cured within a certain amount of time, the tenant has had the right to seek additional time to cure. The commercial tenant has been able to file for an injunction to toll the period of time allowed to cure the default, and to prevent the landlord from terminating the lease. This is known as a Yellowstone injunction, (see First Nail. Stores v. Yellowstone Shopping Ctr., 21 N.Y.2d 630 (1968).

Until recently the question of whether a commercial tenant could waive its right to obtain a Yellowstone injunction had not been ruled upon by an appeals court until a recent ruling in the Second Department of the Appellate Division (159 MP Corp. v. Redbridge Bedford, 2018 N.Y. Slip. Op. 00537 (2d Dept, Jan.31, 2018) held the waiver language in the lease was enforceable and not against public policy. The court further found that the legislature "has not enacted any specific or blanket statutory provision prohibiting as void or unenforceable a tenant's waiver of declaratory judgment remedies."

This legislation seeks to enact such a provision as a matter of public policy and restore the right of commercial tenants to cure under a declaratory judgment action as has been the practice since 1968. The ability to cure through this process protects commercial tenants from landlords seeking to remove tenants in the middle of a lease period without appropriate ability to cure or judicial review. To allow waiver

clauses of the Yellowstone injunction will be disruptive of commerce, unfair to commercial tenants and allow landlords to use minor lease issues as a method to remove and replace tenants in the middle of lease terms. Commercial landlords would be able to prematurely terminate leases whenever they wanted to force a tenant out, whether the default was legitimate or not, and the tenant who agreed to a waiver would have no recourse.

PRIOR LEGISLATIVE HISTORY:

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

N/A

EFFECTIVE DATE:
This act shall take effect immediately.