

Bill as
Introduced

HB 413 - AS INTRODUCED

2013 SESSION

13-0484
05/04

HOUSE BILL **413**

AN ACT making relinquishment or abandonment of leased premises a defense for landlords.

SPONSORS: Rep. Warden, Hills 39

COMMITTEE: Judiciary

ANALYSIS

This bill makes relinquishment or abandonment of the premises a defense for landlords in an action under RSA 540-A.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT making relinquishment or abandonment of leased premises a defense for landlords.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Defense of Relinquishment or Abandonment by Tenant. Amend RSA 540-A:4
2 by inserting after paragraph XI the following new paragraph:

3 XII. Relinquishment of possession or abandonment of possession shall be a defense to an
4 action brought pursuant to this chapter.

5 (a) Relinquishment of possession occurs when all tenants of a rented or leased premises
6 provide a landlord a signed statement that the tenant or tenants have relinquished possession of the
7 premises.

8 (b) The tenant will be determined to have abandoned the premises if the landlord proves
9 2 or more of the following with regard to each tenant named under the lease or rental agreement:

10 (1) The tenant has given the landlord written notice that the tenant will vacate the
11 premises by a certain date, and that date has passed.

12 (2) The tenant has terminated one or more utilities that are furnished to the
13 premises, or one or more of the utilities for which the tenant is responsible under the terms of the
14 lease or rental agreement have been terminated by the tenant or due to the tenant's failure to pay
15 for such utility.

16 (3) The tenant has returned the keys to the premises to the landlord, which shall
17 include leaving the keys in the leased premises.

18 (4) The tenant has filed a change of address with the United States Postal Service
19 that is in effect as of the date the landlord claims the premises have been abandoned.

20 (5) The tenant has removed from the leased premises the majority of his or her
21 personal property, and the only items remaining in the premises are of no or nominal value.

22 (6) The tenant is incarcerated for a period of more than 61 days.

23 (7) The tenant has failed or neglected to pay rent for the premises for a period of
24 more than 61 days and the rent is 61 days or more in arrears.

25 (8) Any other facts or circumstances that the court determines would lead a
26 reasonable person to conclude that the tenant has abandoned the premises.

27 2 Effective Date. This act shall take effect January 1, 2014.

Amendments

Amendment to HB 413

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to property abandoned by tenants.
4

5 Amend the bill by replacing all after the enacting clause with the following:
6

7 1 New Paragraph; Landlord Defense; Property Relinquished or Abandoned by Tenant. Amend
8 RSA 540-A:4 by inserting after paragraph XI the following new paragraph:

9 XII. Relinquishment of possession or abandonment of possession shall be an affirmative
10 defense to an action brought pursuant to this chapter.

11 (a) Relinquishment of possession occurs when the landlord receives a statement signed
12 by each adult tenant of a rented or leased premises stating that the tenant has relinquished
13 possession of the rented or leased premises and has no intent to return.

14 (b) Abandonment of possession means all tenants have physically vacated the premises
15 without the intent to return. There shall be a rebuttable presumption that the tenants have
16 abandoned the premises if:

17 (1) The landlord provided all tenants with a written property abandonment notice,
18 by leaving the notice at the rented or leased premises and by sending the notice by certified mail to
19 the last known address of at least one adult tenant. The property abandonment notice shall also
20 comply with subparagraph (d); and

21 (2) At least 2 of the following conditions were present:

22 (A) All adult tenants of the rented or leased premises have notified the landlord
23 in writing of their intent to vacate the premises by a certain date and that date has passed, provided
24 that the written notice of one adult tenant who has lawful possession to the premises pursuant to an
25 order under RSA 173-B shall suffice.

26 (B) All keys to the rented or leased premises have been returned to the landlord,
27 which shall include leaving all keys in the rented or leased premises.

28 (C) The tenant or tenants have removed from the rented or leased premises all
29 or the majority of their personal property, and the only items remaining in the premises are
30 inconsistent with the intended use of the premises.

31 (D) The tenant or tenants have failed or neglected to pay rent for the rented or

Amendment to HB 413

- Page 2 -

1 leased premises for a period of more than 91 days, provided that during those 91 days the landlord, if
2 requested to do so, provided ordinary and reasonable verification of rental information to any agency
3 assisting the tenant or tenants, and that the landlord did not refuse to accept payment on behalf of
4 the tenant or tenants by any agency offering assistance.

5 (c) The defense of abandonment does not abrogate the landlord's duty under RSA 540-
6 A:3, VII to maintain and exercise reasonable care in the storage of the personal property of tenants
7 who have vacated the premises for a period of 7 days after the date upon which such tenants have
8 vacated the rented or leased premises. The 7 days shall begin the day after the landlord serves the
9 written property abandonment notice.

10 (d) In providing the property abandonment notice required under subparagraph (b), the
11 landlord shall use conspicuous language identifying, with specificity, the reasons the landlord deems
12 the property abandoned. The notice shall also advise the tenant or tenants of their right to retrieve
13 any personal property as well as their right to file an action under RSA 540-A. The notice must be
14 signed by the landlord, or the landlord's agent. The use of the following notice language, in at least
15 12-point type, shall be deemed sufficient notice language:

16 NOTICE OF PROPERTY ABANDONMENT

17 This residence, known as _____, has been abandoned. I certify that, on this date,
18 the property is believed to have been abandoned for the following circled reasons:

- 19 1.) You notified me in writing that you intended to vacate the premises;
20 2.) You have returned your keys to the premises;
21 3.) You have removed from the premises all or the majority of your personal property, and
22 the only items remaining in the premises are inconsistent with the intended use of the property;
23 4.) You have failed or neglected to pay rent for the premises for a period of more than 91
24 days.

25 Because you have abandoned the premises, we will retake possession of this property and the
26 locks may be changed. We will store your personal property for 7 days, and you have a right to get
27 your personal property during that time.

28 If you disagree with any action we take, you should notify us immediately. You are also entitled
29 to file what is called a "540-A petition" at your nearest court. You may have other additional legal
30 rights as well.

31 Signed: _____ Date: _____

32 Landlord's or Landlord's Agent's Mailing Address: _____

33 Landlord's or Landlord's Agent's Telephone Number: _____

34 2 New Subparagraph; Prohibited Practices; Remedies; Unlawful Dispossession. Amend
35 RSA 540-A:4, IX by inserting after subparagraph (c) the following new subparagraph:

36 (d) Landlord damages for any unlawful dispossession or lock-out of a tenant from the
37 premises where the landlord has re-let the premises or has a new tenant in the premises shall not be

Amendment to HB 413

- Page 3 -

- 1 less than \$3,000. In the event the damages exceed the \$3,000 minimum, the award shall not exceed
- 2 the amount that would have been awarded pursuant to subparagraph (a).
- 3 3 Effective Date. This act shall take effect January 1, 2014.

Amendment to HB 413
- Page 4 -

2013-0345h

AMENDED ANALYSIS

This bill provides that, under certain circumstances and if the landlord has provided the tenant with a notice of property abandonment, the landlord may assert that tenant has relinquished possession or abandoned the premises.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 413

BILL TITLE: making relinquishment or abandonment of leased premises a defense for landlords.

DATE: January 31, 2 013

LOB ROOM: 208 **Time Public Hearing Called to Order:** 2:05 pm

Time Adjourned: 2:40 pm

(please circle if present)

Committee Members: Reps. Marjorie Smith, Wall, P. Sullivan, ~~Horrigan~~, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan.

Bill Sponsors: Rep. Winters, Hills 18; Rep. Long, Hills 42; Rep. Warden, Hills 39

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Mark Warden, prime sponsor
Introduced the bill to the committee.

***Nick Norman**, New Hampshire Rental Property Owners Association – support
Abandoned property represent a chronic problem for landlords (“state sanctioned scam against landlords” the way the law is currently written).

Rep. Joel Winters - support

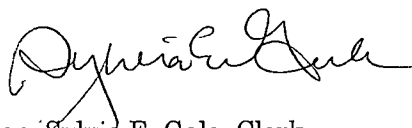
***Attorney Dan Feltes**, New Hampshire Legal Association - oppose
This bill is an attempt to “end run” the eviction process and is proposed annually. Willing to work with subcommittee also submitted a proposed amendment.

***David Cline**, Dover, NH - support
This bill only gives landlord defense against 540-A. Willing to work with subcommittee; feels that proving all tenants have vacated is not possible and would place unreasonable standards on landlords to prove vacancy.

Larry Guarldi - New Hampshire Property Owners Association – support

***Maggie Fogarty**, American Friends Service Committee - oppose
Submitted written testimony only.

Respectfully submitted,



Rep. Sylvia E. Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 413

BILL TITLE: making relinquishment or abandonment of leased premises a defense for landlords.

DATE: {Type HEARING DATE here} 1-31-13

LOB ROOM: 208 Time Public Hearing Called to Order: {Time} 2:05
Time Adjourned: {Time} 2:40

(please circle if present)

Committee Members: Reps. Marjorie Smith, Wall, P. Sullivan, Horrigan, Watrous, Hackel, Woodbury, Berch, Phillips, Gale, Heffron, Rowe, Luther, Sylvia, Hopper, Peterson, Takesian, D. Thompson, Kappler and Hagan.

Subcommittee to be assigned

Bill Sponsor: Rep. Warden, Hills 39

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Warden - prime sponsor - presented bill to Cmte.

* Nick Norman - supports bill
Rental Property Owner's Ass'n.
- abandoned property represents a chronic problem for landlords ("state sanctioned scam against landlords" the way the law is currently written)

Rep Winters supports bill

Respectfully submitted,

~~David Cline~~

Rep. Sylvia E. Gale, Clerk

↓
* Atty Dan Felts - NH Legal Assistance opposes bill - this bill is an attempt to "end run" the eviction process - is proposed annually - ~~1000~~

↓
Con't

Feltes (con't)
willing to work with
sub-committee.

* David Cline This bill only
gives landlord defense
against 540-A ~~actions~~
(supports bill)
willing to work with sub-committee
feels that proving all
tenants have vacated is
not possible and
would place unreasonable
standards on landlords
to prove vacancy

Harry Guaraldi - supports bill
IHA Property Owners Assn.

* Maggie Fogarty written testimony
(only) Opposed to Bill

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 413

BILL TITLE: making relinquishment or abandonment of leased premises a defense for landlords.

DATE: February 19, 2013

Subcommittee Members: Reps. Woodbury, Sullivan, Kappler, Thomas and Berch

Comments and Recommendations:

Amendments:

Sponsor: Rep. Woodbury	OLS Document #: 2013-03454
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

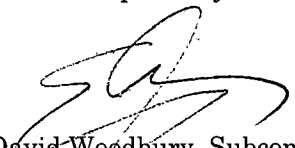
Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Kappler 2013-03754
Seconded by Rep. Berch
Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,


Rep. David Woodbury, Subcommittee Chairman

Sub-Committee Minutes

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 413

BILL TITLE: making relinquishment or abandonment of leased premises a defense for landlords.

DATE: February 12, 2013

Subcommittee Members: Reps Woodbury, Sullivan, Kappler, Thomas and Berch

Comments and Recommendations:

Substantial disagreement between parties and late offered suggested amendments; suggest more time and study needed.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

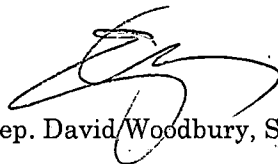
Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,



Rep. David Woodbury, Subcommittee Chairman

Testimony

HB413, Abandonment

I belong to multiple landlord organizations and over the years have spoken with many landlords and been guest speaker many times at landlord meetings. I can tell you it has long been standard training to landlords that the only way to, with confidence, regain legal possession of your apartment is to get a written statement from all your tenants stating they have left and give you authority to re-rent or to complete an eviction all the way through the sheriff's lock out process. It is highly stressed in the training to landlords to continue all the way through the lock out so that the landlord will be protected against 540A action, the infamous "\$1000/day".

People abandon their apartments all the time with no notice to the landlord, we call it the "midnight moveout", leaving the landlord stuck either taking the risk of \$1000/day fines for taking possession or the cost & wasted time of an eviction.

There are actual cases of tenants abandoning their apartments, moving out their belongings for many weeks, the landlord eventually taking possession to renovate and re-rent, the tenant sneaking back in claiming the landlord violated their rights and sued against the landlord for \$1000/day fines pursuant to RSA 540:A. It's a state sanctioned scam against landlords.

This is an expensive problem that is very expensive to the landlord.

The cost of an eviction varies depending on the number of tenants and the travel time of the sheriff. I have seen eviction costs as little as \$170 and as much as \$320. And that's with \$0 attorney's fees, processing the eviction entirely myself. An average unchallenged eviction takes about 6 to 8 weeks. 2 months rent plus \$200-\$300 legal costs is a huge price to pay for the situation of some one clearly abandoning their apartment. This creates a waste of time for the landlords, waste of time for the court and double waste of time for the Sheriff's because they come to the property twice, once for the LT-Writ and later for the Writ of Possession.

The other unfortunate thing is that the tenant now has an eviction and even worse a lock out on their record which makes it way harder to re-rent again. That eviction stays on their record for long time.

The further insult to injury is that the landlord, to be safe from 540A action, must not even enter the apartment for the 2 months of the eviction process. So the landlord can't show it and if it is shown its going to look terrible until it is clean up, repaired, repainted. So now not only can we not show the apartment for re-rent for two months, lose 2 month's rent & legal fees but we then also have the continued delay for normal fix up, repair, repaint time that can not start until after the sheriff lock out.

This is a ridiculous situation.

I urge you to vote for HB413. Help us provide some relief for the real estate economy, eliminate unnecessary court eviction cases both for the tenant, the landlords & the courts & eliminate unnecessary Sheriff's time.

We fully realize that defining abandonment has always been a challenge and would be very happy to work with alternative conditions that define abandonment.

Please feel free to call me any time on this or other real estate legislative issues.

Nick Norman
RPOA Director of Legislative Affairs
603-432-5549, nicknorman@yahoo.com

David Cline

Reason for HB 413

This bill was drafted to address situations when tenant is believed to have moved from an apartment, and it is unclear to the landlord if he can enter the apartment and take possession without violating RSA 540-A and be subject to a \$1,000 fine plus \$1,000 per day fine after a court order is entered against the landlord.

There is no statute or case law in New Hampshire that we are aware of that directly addresses this, or provides any guidance to the Courts, Landlords or Tenants.

If there is any doubt that a tenant has moved from the apartment, the only guaranteed thing the landlord can do to avoid violating RSA 540-A is to file an eviction action against the tenant. In many instances this just does not make sense and is harmful to the tenant, costly for the landlord, and adds unnecessary cases to the workload of the Courts.

There are a number of credit reporting agencies that track evictions in New Hampshire, including The Landlord Connection, which is based in NH. Once the eviction is filed, it remains on a tenants record with these companies for up to 7 years. Even if the eviction is unnecessary, the tenant will have this negative information on his or her record for years, and can affect the tenant's ability to obtain an apartment in the future.

Evictions take at a minimum 4 to 6 weeks, and cost with filing fees and sheriff's fees generally a minimum of \$150 to \$200. During this time, the apartment would sit empty, not generating any rent to be used to pay expenses, and once the eviction is finalized, the landlord will still need time to clean and fix up the unit as well as find another tenant.

The intent of HB 413 is to allow landlords to retake possession when it is reasonably clear that the tenant has moved from the apartment, without the need of court action.

How HB 413 is structured

There have been bills on abandonment in prior years. One of the concerns that were raised by the advocates for tenants is that those bills waived the protections that tenants currently have in RSA 540-A against landlords improperly entering their apartments and locking them out of the apartment.

HB 413 is written to address this concern. Instead of waiving any of these protections, HB 413 gives the landlord a defense to an action brought under RSA 540-A. The landlord would have the burden to prove that the tenant either relinquished possession or abandoned the apartment. If the landlord fails to meet this burden, the landlord is still subject to the fines, actual damages, costs and attorney fees. The landlord would still be taking possession the apartment at his or her own risk.

HB 413 adds two possible defenses for retaking possession. The first is relinquishment of possession. This only occurs when all of the tenants to the apartment sign a statement stating that they have relinquished possession.

If tenant say they have moved out in writing, there is no reason why the landlord cannot retake possession of the apartment and not be subject to a RSA 540-A action.

This is also intended to be a guideline to landlords – have the tenants whenever possible to give you a one-sentence statement signed statement such as: “We relinquish possession of Apartment (address) on (Date).”

The second part of HB 413, paragraph B, is for the situations when the tenants do not want to or do not bother with giving statement. The idea behind this is to look at the actions of the tenants and the circumstances of their moving to see if they have reasonably manifested their intent to never return to the apartment.

The factors in paragraph B were written as a starting point for discussion. We expect that there are factors that either members of the committee or other people will object to. We have no problem modifying the list, by editing, adding or removing factors.

This bill is not to give or take away any rights either the landlords or tenant have. The intent is to give guidance of what is reasonable conduct. We are not trying to circumvent the eviction process; we are only trying to avoid unnecessary evictions, which are not in anyone’s interest.

To: The House Judiciary Committee

From: David Cline

Re: HB 413 – Response to bill proposed by New Hampshire Legal Assistance

Date: January 31, 2013

1. Stating that relinquishment of possession or abandonment of possession an affirmative defense is what was intended when the original bill was drafted.
2. In paragraph XII(a) the proposed changes are problematic. It is very difficult for landlords to have tenants word documents in an exact manner. The more complicated the requirements, the less likely the tenants will provide the correct wording.

The proposed amendment adds the requirement that tenants write that they have no intention to return, as well as they relinquish possession. With a large number of tenants it will be difficult to get such a notice

Further the proposal now adds a requirement that the tenants have “physically vacated the premises.” This additional language makes the entire concept of obtaining the writing worthless.

The idea behind the signed statement was to not have any factual disputes if there was anything filed in court. By adding the requirement that the tenants have physically vacated the premise reopens the door to such factual disputes. A court would first have to determine what physically vacated the premises means. Then the court would have to determine what actually occurred. This is exactly what the original draft of the bill was trying to avoid.

If people have signed a statement that they have vacated or moved from the apartment and relinquish possession, we have to assume that they understand what they signed.

3. I also object to the words in paragraph (b) that the landlord has to prove “all of the” following. It contradicts the opening of paragraph (b) (3) where only two have to be proved.
4. Paragraph (b) 1 of the proposed amendment again requires that all tenants have vacated the premises. Again, it is not clear what this means. The whole idea of this concept of abandonment is to clarify when this has happened, and giving everyone guidelines.

5. I do not object to the idea of the abandonment notice proposed by the amendment. I do feel that if that is included in the bill, that language should be included in the bill stating how long it should be posted before the landlord takes possession of the premises. I suggest 24 hours.
6. Paragraph (b)(3)(A) is very difficult to obtain for all tenants especially when roommates or couples that have split up. If we could obtain such a notice from all the tenants, then we could have a realistic chance of the tenants relinquishing possession. This notice should be from one of the tenants not every tenant.
7. The same apply with Paragraph (b)(3)(E). Some people go months without filing a change of address form with the Postal Service after they move. This should be one or more tenant have given such notice.
8. The proposed amendment deletes the following factor that is in the original bill: "Any other facts or circumstances that the court determines would lead a reasonable person to conclude that the tenant has abandoned the premises." This should remain in the bill as there are circumstances that will occur that we cannot anticipate or do not want to put into the bill that would show the premises are abandoned.

An example is when a domestic violence petition is granted with the perpetrator being ordered not to have any contact with the victim. The perpetrator moves out of the area leaving no forwarding address, and the victim moves back with her parents, but leaving all of the perpetrators things in the apartment, and with the utilities remaining on in the perpetrators name.

Under the proposed amendment, the landlord would have to go through the eviction process. The only factor we might have is notice from the victim that she has moved.

9. Paragraph (c). There was no intent to change the landlord's responsibility to retain a tenant's possessions for 7 days after a tenant vacates. However, there is no need to restate in this subsection what is already in the statute. A period should be after RSA 540-A:3 VII and the rest of the sentence should be deleted. The last sentence in the paragraph is acceptable.
10. Abandonment notice is acceptable. However requiring a landlord to certify that all persons have vacated subject to being charged with a class b felony for perjury if the landlord is incorrect makes the entire bill useless. Rather than face potentially seven years in State Prison, every landlord should file evictions.
11. I suggest that the first paragraph read: We believe that you have vacated this property and do not intend to return for the following reasons.

Included in the list of reasons should be the other facts and circumstances paragraph discussed above.

The notice should state the date and time when the landlord will retake possession, and that if the tenant disagrees with that the property is abandoned the tenant needs to contact the landlord before the time and date of the landlord entering the apartment as well as stating the tenants rights under RSA 540-A. The landlord's name, address and phone number should also be on the notice.

This would give everyone the opportunity to resolve a dispute before anyone starts a court action.

This notice should not be signed under the penalty for perjury. There is no need for it, and it makes what is a civil matter potentially a criminal matter.

12. There is no need to increase the penalty for a violation of RSA 540:A to \$3,000. The current law gives damages of \$1,000 for the initial violation and \$1,000 per day for each day after a court order is issued. RSA 358-A:10 also allows for an award of actual damages. Both of these are substantial.

Actual damages could include the costs of a tenant moving, the difference in rent between the tenants new and old apartment, and attorney fees and costs. These are sufficient deterrent for landlords not to violate RSA 540:A.

NH LA proposed
amendment

STATE OF NEW HAMPSHIRE

HB 413

In the Year of Our Lord Two Thousand and Thirteen

AN ACT relative to property abandonment:

Be it enacted by the Senate and House of Representatives in General Court convened:

Section 1. Amend RSA 540-A:4 to insert after paragraph XI the following new paragraph:

XII. Relinquishment of possession or abandonment of possession shall be an affirmative defense to an action brought pursuant to this chapter.

(a) Relinquishment of possession occurs when the landlord receives a statement signed by each adult tenant of a rented or leased premises stating that the tenant has willfully relinquished possession of the rented or leased premises and has no intent to return, and the tenants have also physically vacated the premises.

(b) Abandonment of possession means all tenants have physically vacated the premises without the intent to return. There shall be a rebuttable presumption that the tenants have abandoned the premises if the landlord proves all of the following:

- (1) All tenants have physically vacated the premises; and
- (2) The landlord provided all tenants with a written property abandonment notice, by leaving the notice at the rented or leased premises and by sending the notice by certified mail to the last known address of at least one adult tenant. The property abandonment notice must also comply with section (d) of this paragraph; and
- (3) At least two of the following conditions were present:
 - (A) All adult tenants of the rented or leased premises have notified the landlord in writing of their intent to vacate the premises by a certain date and that date has passed;
 - (B) The keys to the rented or leased premises have been returned to the landlord;
 - (C) The tenant or tenants have removed from the rented or leased premises all or the majority of their personal property, and the only items remaining in the premises are of no or nominal value;
 - (D) One or more utilities that are furnished to the rented or leased premises and paid for by the tenant or tenants have been terminated;
 - (E) A change of address form (or forms) that cover all adult tenants has been filed with the United States Postal Service;

(F) The tenant or tenants have failed or neglected to pay rent for the rented or leased premises for a period of more than sixty-one (61) days, provided that during those sixty-one (61) days the landlord, if requested to do so, provided ordinary and reasonable verification of rental information to any agency assisting the tenant or tenants, and that the landlord did not refuse to accept payment on behalf of the tenant or tenants by any agency offering assistance.

(c) The defense of abandonment does not abrogate the landlord's duty under RSA 540-A:3, VII to maintain and exercise reasonable care in the storage of the personal property of tenants who have vacated the premises for a period of 7 days after the date upon which such tenants have vacated the rented or leased premises. The 7 days shall begin the day after the landlord serves the written property abandonment notice.

(d) Property Abandonment Notice. In providing the required notice under (b)(2), the landlord must use conspicuous language identifying, with specificity, the reasons the landlord deems the property abandoned. The notice must also advise the tenant or tenants of their right to retrieve any personal property as well as their right to file an action under RSA 540-A. The notice must be signed by the landlord, or the landlord's agent, under penalty of perjury. The use of the following notice language, in at least 12-point type, shall be deemed sufficient notice language:

NOTICE OF PROPERTY ABANDONMENT

This property has been abandoned. All persons have physically vacated. I certify that, on this date, all persons have physically vacated, and that the property has been abandoned for the following circled reasons:

- 1.) You notified me in writing that you intended to vacate the premises;
- 2.) You have returned your keys to the premises;
- 3.) You have removed from the premises all or the majority of your personal property, and the only items remaining in the premises are of no or nominal value;
- 4.) One or more utilities that are furnished to the premises and paid for by you have been terminated;
- 5.) You have filed a change of address with the United States Postal Service;
- 6.) You have failed or neglected to pay rent for the premises for a period of more than sixty-one (61) days.

Because you have abandoned the premises, we will retake possession of this property and the locks may be changed. We will store your personal property for seven (7) days, and you have a right to get your personal property during that time.

If you disagree with any action we take, you are entitled to file what is called a "540-A petition" at your nearest Court. You may have other additional legal rights as well.

Signed under penalty of perjury: _____ Date: _____

Section 2. Amend an RSA 540-A:4, IX(a) to read as follows:

Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10 for the initial violation, including costs and reasonable attorney's fees incurred in the proceedings, **provided that a landlord's damages for any unlawful dispossession or lock-out of a tenant from the premises shall not be less than \$3,000.** Each day that a violation continues after issuance of a temporary order shall constitute a separate violation.

Section 3. Effective Date. This act shall take effect January 1, 2014.



**American Friends
Service Committee**

Quaker values in action

January 31, 2013

Representative Marjorie Smith, Chairman
House Judiciary Committee
The State House
Concord, NH 03301

Dear Representative Smith and Members of the Committee,

I am writing to ask that you recommend HB 413 "**inexpedient to legislate.**" If you decide to take any actions along the lines of what is recommended in this bill, we urge that you accept, in its entirety and without further changes, the amendment proposed by NH Legal Assistance.

The American Friends Service Committee is committed to maintaining a healthy balance in landlord tenant laws so that both parties in this essential economic contract—that which provides housing to individuals and families—have adequate protections from abuse and mistreatment. **We understand HB 413 to be nothing less than an attempt to by-pass the eviction process, allowing the landlord to unilaterally determine that a unit has been abandoned, and subsequently remove a tenant without having to engage any judicial authority.**

As written this bill will remove an essential tenant protection from eviction without cause.

The amendment proposed by NH Legal Assistance sets forth reasonable requirements for notification, and provides some improved opportunities for remediation for tenants who suffer the consequences of being ejected from their rental housing without adequate justification.

Thank you for your attention to this matter.

All the best,

Maggie Fogarty, Economic Justice Project Coordinator

**American Friends Service Committee—New Hampshire Program
4 Park Street, Suite 209, Concord, NH 03301
(603)224-2407**

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 413

BILL TITLE: relative to the issuance of a default judgment in landlord-tenant actions.

DATE: February 19, 2013

LOB ROOM: 208

Amendments:

Sponsor: Rep. Woodbury OLS Document #: 2013 0345h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP (amendment #0345h), OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Woodbury

Seconded by Rep. Hopper

Vote: 19-0 (Please attach record of roll call vote.) Amendment adopted

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Woodbury

Seconded by Rep. Hopper

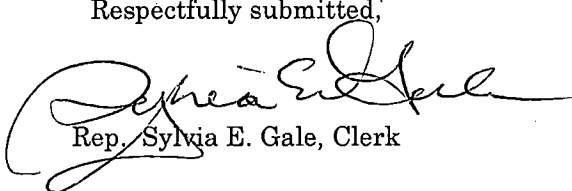
Vote: 19-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 19-0 YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Sylvia E. Gale, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 413

BILL TITLE: making relinquishment or abandonment of leased premises a defense for landlords.

DATE: ~~{Type-DATE}~~ 2.19.13

LOB ROOM: 208

Amendments:

Sponsor: Rep. Woodbury OLS Document #: 0345 h
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

amendment approve

Motions: #2 OTP OTP/A ITL, Retained (Please circle one.)

Moved by Rep. Woodbury

Seconded by Rep. Hopper

Vote: (Please attach record of roll call vote.) 19-0

Motions: #1 OTP OTP/A, ITL, Retained (Please circle one.) **AMENDMENT**

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} yep

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Sylvia E. Gale, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 11:55:21 AM
Roll Call Committee Registers
Report

2013 SESSION

JUDICIARY

Bill #: HB 409 Title: Making relinquishment or abandonment
PH Date: 1/31/13 Exec Session Date: 2/19/13
Motion: OTP-A Amendment #: 0345h

MEMBER	YEAS	NAYS
Smith, Marjorie K, Chairman	19	
Wall, Janet G, V Chairman	1	
Hackel, Paul + <u>Carey, Lorrie</u>	2	
Watrous, Rick H	3	
Sullivan, Peter M	4	
Horrigan, Timothy O	5	
Berch, Paul S	6	
Gale, Sylvia E, Clerk	7	
Heffron, Frank H	8	
Phillips, Larry R	9	
Woodbury, David	10	
Rowe, Robert H,	11	
Hagan, Joseph M	12	
Peterson, Lenette M,	13	
Hopper, Gary S	14	
Kappler, Lawrence M	15	
Luther, Robert A	16	
Sylvia, Michael J	17	
Takesian, Charlene F	18	
Thompson, David H		
TOTAL VOTE:	19	0

Committee Report

CONSENT CALENDAR

February 20, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred

HB 413,

**AN ACT making relinquishment or abandonment of
leased premises a defense for landlords. Having
considered the same, report the same with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. David Woodbury

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	JUDICIARY
Bill Number:	HB413
Title:	making relinquishment or abandonment of leased premises a defense for landlords.
Date:	February 20, 2013
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS WITH AMENDMENT

STATEMENT OF INTENT

House Bill 413 as amended gives landlords an alternative to an unnecessary eviction procedure when a tenant relinquishes or abandons a leased premise. If the circumstances of a tenant's departure meet the requirements of this bill, a landlord has a defense to a lawsuit for an illegal eviction if such should be filed by the tenant at a later date.

Vote 19-0.

Rep. David Woodbury
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

JUDICIARY

HB 413, making relinquishment or abandonment of leased premises a defense for landlords.
OUGHT TO PASS WITH AMENDMENT.

Rep. David Woodbury for JUDICIARY. House Bill 413 as amended gives landlords an alternative to an unnecessary eviction procedure when a tenant relinquishes or abandons a leased premise. If the circumstances of a tenant's departure meet the requirements of this bill, a landlord has a defense to a lawsuit for an illegal eviction if such should be filed by the tenant at a later date. **Vote 19-0.**

CONSENT CALENDAR

JUDICIARY

MAJORITY REPORT

HB 413, making relinquishment or abandonment of leased premises a defense for landlords.

RECOMMENDATION: OUGHT TO PASS WITH AMENDMENT

VOTE: 19-0

House Bill 413 as amended gives landlords an alternative to an unnecessary eviction procedure when a tenant relinquishes or abandons a leased premise. If the circumstances of a tenant's departure meet the requirements of this bill, a landlord has a defense to a lawsuit for an illegal eviction if such should be filed by the tenant at a later date.

Rep. David Woodbury

COMMITTEE REPORT

Woodbury
OC

COMMITTEE: Judiciary

BILL NUMBER: 413

TITLE: Re Abandonment/Relinquishment
of leased premises

DATE: 2-19-13 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
<u>03454</u>

STATEMENT OF INTENT:

House Bill 413 as amended gives landlords an alternative to ^{an unnecessary} eviction process when a tenant relinquishes or abandons a leased premises. If the circumstances of a tenant's departure meet the requirements of this bill, a landlord has a defense to a lawsuit for an illegal eviction if such should be filed by the tenant at a later date.

OK
MKS

COMMITTEE VOTE: 19 - 0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. [Signature] For the Committee