

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

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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.

HB 413 - AS AMENDED BY THE HOUSE

6Mar2013... 0345h

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13-0484  
05/04

HOUSE BILL        **413**

AN ACT            relative to property abandoned by tenants.

SPONSORS:        Rep. Warden, Hills 39

COMMITTEE:       Judiciary

---

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.

---

Explanation:      Matter added to current law appears in *bold italics*.  
                     Matter removed from current law appears [~~in brackets and struckthrough.~~]  
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STATE OF NEW HAMPSHIRE

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AN ACT relative to property abandoned by tenants.

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

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

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

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

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

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

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

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

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

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

25           (D) The tenant or tenants have failed or neglected to pay rent for the rented or  
26 leased premises for a period of more than 91 days, provided that during those 91 days the landlord, if  
27 requested to do so, provided ordinary and reasonable verification of rental information to any agency  
28 assisting the tenant or tenants, and that the landlord did not refuse to accept payment on behalf of  
29 the tenant or tenants by any agency offering assistance.

30           (c) The defense of abandonment does not abrogate the landlord's duty under RSA 540-

HB 413 - AS AMENDED BY THE HOUSE

- Page 2 -

1 A:3, VII to maintain and exercise reasonable care in the storage of the personal property of tenants  
2 who have vacated the premises for a period of 7 days after the date upon which such tenants have  
3 vacated the rented or leased premises. The 7 days shall begin the day after the landlord serves the  
4 written property abandonment notice.

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

11 NOTICE OF PROPERTY ABANDONMENT

12 This residence, known as \_\_\_\_\_, has been abandoned. I certify that, on this date,  
13 the property is believed to have been abandoned for the following circled reasons:

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

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

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

26 Signed: \_\_\_\_\_ Date: \_\_\_\_\_

27 Landlord's or Landlord's Agent's Mailing Address: \_\_\_\_\_

28 Landlord's or Landlord's Agent's Telephone Number: \_\_\_\_\_

29 2 New Subparagraph; Prohibited Practices; Remedies; Unlawful Dispossession. Amend  
30 RSA 540-A:4, IX by inserting after subparagraph (c) the following new subparagraph:

31 (d) Landlord damages for any unlawful dispossession or lock-out of a tenant from the  
32 premises where the landlord has re-let the premises or has a new tenant in the premises shall not be  
33 less than \$3,000. In the event the damages exceed the \$3,000 minimum, the award shall not exceed  
34 the amount that would have been awarded pursuant to subparagraph (a).

35 3 Effective Date. This act shall take effect January 1, 2014.

Handout - Nick  
Norman

HB 413 - AS AMENDED BY THE HOUSE

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HOUSE BILL **413**

AN ACT relative to property abandoned by tenants.

SPONSORS: Rep. Warden, Hills 39

COMMITTEE: Judiciary

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.

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

1 New Paragraph; Landlord Defense; Property Relinquished or Abandoned by Tenant. Amend RSA 540-A:4 by inserting 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 relinquished possession of the rented or leased premises and has no intent to return.

(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:

(1) 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 shall also comply with subparagraph (d); and

(2) At least 2 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, provided that the written notice of one adult tenant who has lawful possession to the premises pursuant to an order under RSA 173-B shall suffice.

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

(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 inconsistent with the ~~intended~~ *continued* use of the premises.

(D) The tenant or tenants have failed or neglected to pay rent for the rented or leased premises for a period of more than 91 days, provided that during those 91 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) In providing the property abandonment notice required under subparagraph (b), the landlord shall use conspicuous language identifying, with specificity, the reasons the landlord deems the property abandoned. The notice shall 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. The use of the following notice language, in at least 12-point type, shall be deemed sufficient notice language:

#### NOTICE OF PROPERTY ABANDONMENT

This residence, known as \_\_\_\_\_, has been abandoned. I certify that, on this date, the property is believed to have 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 inconsistent with the continued ~~intended~~ use of the property;
- 4.) You have failed or neglected to pay rent for the premises for a period of more than 91 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 7 days, and you have a right to get your personal property during that time.

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

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Landlord's or Landlord's Agent's Mailing Address:  
\_\_\_\_\_

Landlord's or Landlord's Agent's Telephone Number: \_\_\_\_\_

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

(d) Landlord damages for any unlawful dispossession or lock-out of a tenant from  
the premises where the landlord has re-let the premises or has a new tenant in the  
premises shall not be less than \$3,000. In the event the damages exceed the \$3,000  
minimum, the award shall not exceed the amount that would have been awarded  
pursuant to subparagraph (a).

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

HB 413 - FINAL VERSION

6Mar2013... 0345h  
05/23/13 1485s  
5June2013... 2101EBA

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10 abandoned the premises if:

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13 the last known address of at least one adult tenant. The property abandonment notice shall also  
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15           (2) At least 2 of the following conditions were present:

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17 in writing of their intent to vacate the premises by a certain date and that date has passed, provided  
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19 order under RSA 173-B shall suffice.

20           (B) All keys to the rented or leased premises have been returned to the landlord,  
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22           (C) The tenant or tenants have removed from the rented or leased premises all  
23 or the majority of their personal property, and the only items remaining in the premises are  
24 inconsistent with the continued use of the premises.

25           (D) The tenant or tenants have failed or neglected to pay rent for the rented or  
26 leased premises for a period of more than 91 days, provided that during those 91 days the landlord, if  
27 requested to do so, provided ordinary and reasonable verification of rental information to any agency  
28 assisting the tenant or tenants, and that the landlord did not refuse to accept payment on behalf of

1 the tenant or tenants by any agency offering assistance.

2 (c) The defense of abandonment does not abrogate the landlord's duty under RSA 540-  
3 A:3, VII to maintain and exercise reasonable care in the storage of the personal property of tenants  
4 who have vacated the premises for a period of 7 days after the date upon which such tenants have  
5 vacated the rented or leased premises. The 7 days shall begin the day after the landlord serves the  
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7 (d) In providing the property abandonment notice required under subparagraph (b), the  
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14 This residence, known as \_\_\_\_\_, has been abandoned. I certify that, on  
15 this date, the property is believed to have been abandoned for the following circled reasons:

16 (1) You notified me in writing that you intended to vacate the premises.

17 (2) You have returned your keys to the premises.

18 (3) You have removed from the premises all or the majority of your personal property, and  
19 the only items remaining in the premises are inconsistent with the continued use of the premises.

20 (4) You have failed or neglected to pay rent for the premises for a period of more than 91  
21 days.

22 Because you have abandoned the premises, we will retake possession of this property and the  
23 locks may be changed. We will store your personal property for 7 days from the date of the notice,  
24 and you have a right to get your personal property during that time.

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

28 Signed: \_\_\_\_\_ Date: \_\_\_\_\_

29 Landlord's or Landlord's Agent's Mailing Address: \_\_\_\_\_

30 Landlord's or Landlord's Agent's Telephone Number: \_\_\_\_\_

31 2 New Subparagraph; Prohibited Practices; Remedies; Unlawful Dispossession. Amend RSA  
32 540-A:4, IX by inserting after subparagraph (d) the following new subparagraph:

33 (e) Landlord damages for any unlawful dispossession or lock-out of a tenant from the  
34 premises where the landlord has re-let the premises or has a new tenant in the premises shall not be  
35 less than \$3,000. In the event the damages exceed the \$3,000 minimum, the award shall not exceed  
36 the amount that would have been awarded pursuant to subparagraph (a).

37 3 Effective Date. This act shall take effect January 1, 2014.

# Amendments



Sen. Carson, Dist. 14  
 April 8, 2013  
 2013-1232s  
 05/04

Amendment to HB 413

1 Amend RSA 540-A:4, XII(b)(2)(C) as inserted by section 1 of the bill by replacing it with the  
 2 following:

3

4 (C) The tenant or tenants have removed from the rented or leased premises all  
 5 or the majority of their personal property, and the only items remaining in the premises are  
 6 inconsistent with the continued use of the premises.

7

8 Amend RSA 540-A:4, XII(d) as inserted by section 1 of the bill by replacing it with the following:

9

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  
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(2) You have returned your keys to the premises.

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(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 continued 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 from the date of the notice,  
 27 and you have a right to get your personal property during that time.

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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: \_\_\_\_\_

Amendment to HB 413

- Page 2 -



1 Landlord's or Landlord's Agent's Telephone Number: \_\_\_\_\_

2

3 Amend the bill by replacing section 3 with the following:

4

5 3 Effective Date. This act shall take effect upon its passage.





Sen. Carson, Dist. 14  
 April 9, 2013  
 2013-1241s  
 05/04

Amendment to HB 413

1 Amend RSA 540-A:4, XII(b)(2)(C) as inserted by section 1 of the bill by replacing it with the  
 2 following:

3

4 (C) The tenant or tenants have removed from the rented or leased premises all  
 5 or the majority of their personal property, and the only items remaining in the premises are  
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(1) You notified me in writing that you intended to vacate the premises.

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(2) You have returned your keys to the premises.

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(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 continued use of the property.

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(4) You have failed or neglected to pay rent for the premises for a period of more than 91  
 24 days.

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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 from the date of the notice,  
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Signed: \_\_\_\_\_ Date: \_\_\_\_\_

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Amendment to HB 413

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Amendment to HB 413

- Page 2 -



- 1 Landlord's or Landlord's Agent's Mailing Address: \_\_\_\_\_
- 2 Landlord's or Landlord's Agent's Telephone Number: \_\_\_\_\_

# Committee Minutes

**AMENDED  
SENATE CALENDAR NOTICE  
JUDICIARY**

Printed: 03/12/2013 at 1:51 pm

Senator Sharon Carson Chairman  
Senator Bette Lasky V Chairman  
Senator David Boutin  
Senator Sam Cataldo  
Senator Donna Soucy

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: March 12, 2013**

**HEARINGS**

**Tuesday**

**3/19/2013**

JUDICIARY

SH 100

9:00 AM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** The purpose of this amended notice is to add two public hearings on House Bills followed by an Executive Session on all pending Senate Bills in Committee

9:00 AM HB211 relative to service of demand for rent and eviction notice.

9:15 AM HB413 (New Title) relative to property abandoned by tenants.

**Sponsors:**

**HB211**

Rep. Shawn Jasper

Sen. David Boutin

Sen. Sharon Carson

**HB413**

Rep. Mark Warden

# SENATE JUDICIARY COMMITTEE

*Susan Duncan, Senior Legislative Aide*

**HB 413 – (New Title) relative to property abandoned by tenants.**

Hearing Date: March 19, 2013

Time Opened: 9:15 a.m.

Time Closed: 9:50 a.m.

**Members of the Committee Present:** Senators Carson, Lasky, Boutin, Soucy and Cataldo

**Members of the Committee Absent:** No one

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

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**Sponsors:** Representative Warden

**Who supports the bill:** Representative Mark Warden; Nick Norman on behalf of the Rental Property Owners Association (RPOA); Representative David Woodbury; David Cline, RPOA; Attorney Sarah Mattson, NH Legal Aid (NHLA)

**Who opposes the bill:** No one

**Summary of testimony presented in support:**

**Representative Warden**

Explained that this is drafted to address the situation where it appears that the tenant has moved out, but the landlord is not positive this is the case. It allows the landlord to retake possession without the need for a court action.

He explained that the House subcommittee worked between the landlord interests and the NH Legal Aid (on behalf of the tenants) to come up with the proposal here today. He explained that it provides a reasonable procedure without the need to unnecessarily involve the courts

**Senator Cataldo** asked if the landlord is able to address damages done to the property.

**Senator Carson** asked how the notice of property abandonment gets to the owner. **Representative Warden** responded that it usually is very evident that they have moved out. He noted that if the landlord wishes, he or she can take the conservative approach and just wait.

**Representative Warden** noted that there will be a small amendment offered and that they are okay with this requested change.

He explained that if the landlord does not know a forwarding address, they mail the notification to the last known address. Sometimes tenants provide a post office box mailing address or a relative's address so it's not necessarily sent to the rental address – though the tenant could have left forwarding information at the post office.

**Senator Cataldo** explained that when he was a landlord in Massachusetts, the tenant had to sign an agreement when they rented.

**Representative Warden** explained that this is intended more for when folks break the lease – the furniture and possessions are gone and they just moved out without giving notice.

**Senator Cataldo** asked why the property is stored for 7 days.

**Representative Warden**, explaining that the requirement used to be 30 days, said it was changed a few years ago to 7 days.

**Representative Woodbury**

Spoke on behalf of the House Judiciary Committee where they did a great deal of work with all of the interested parties and came up with an amendment to the bill. He said that this is to avoid unnecessary expenses via litigation when the landlord is unsure as to the status of the rental unit. They did a great deal of work to make sure that the property really has been abandoned so that the landlord can re-let the premises without having to go to court.

**Senator Cataldo** asked if it could address damages done to the premises. **Representative Woodbury** responded that they had a number of bills dealing with damages and that it is not part of this bill.

**Nick Norman**

Testified in support and said that he owns 48 units and has been a landlord since the early 1990's. He asked for a short one-word amendment which was agreed upon in the House but accidentally left out of their amendment. This is to change "intended" to "continued" in two places in the bill (line 24 of page 1; line 17 page 2). He said that he is very proud to say that the landlords and tenants (negotiated by NH Legal Aid) have agreement. He said that this helps to avoid unnecessary tenant actions in court – actions which would affect the tenant's records, credit reports, etc.

He noted that the issue of damages is totally separate – and is a huge issue – and is deliberately not addressed here. He said to put that in would probably defeat the bill.

He explained that sometimes the tenant does give them a forwarding address. He said that this does not waive any tenant rights.

**Attorney David Cline**

Testified in support and acknowledged that the initial draft of the bill was very different and that everyone spent a lot of time getting here. He said that it is the best compromise they could have and asked that the bill not be changed, other than the one word change requested earlier.



He explained that landlords have RSA 540-A – the “do’s and don’ts” of landlord/tenant law – and that there are significant penalties if they violate the process. He said that the bill addresses those instances where the landlord believes the tenant has vacated the property and gives the landlord a defense if the tenant should sue. He explained that if he had a tenant who had a lease until the end of the month, and they moved out and left the key in the drop box – but if he rents the apartment now, he could be subject to a \$1,000 a day fine – even if the tenant did not pay him the February or March rent. He said that this way, he doesn’t have to have an eviction and this does not negatively affect the tenant’s record.

Regarding damages, he explained that right now, he has the right to sue for damages – but he can also use the security deposit to cover that.

**Senator Carson**, asking about page 2, line 21 relative to stored property and 7 days – does he use the date of the certified mail. **Mr. Cline** responded that under today’s law (RSA 540-A), it is 7 days from the date the person vacated – but sometimes that is hard to know, so he uses the date of notification.

**Attorney Sarah Mattson, NHLA**

Said that she largely echoes the previous testimony and noted that abandonment of property comes up year end and year out. She said that they are very pleased to come up with a good compromise. She noted that the interest here is the landlord who needs to re-rent the property versus the tenants who are not locked out if they are still living there. She said that this provides a not overly-cumbersome process. She also noted that they completely agree with the requested word change.

Regarding 7 days, she explained that this is existing law and that they are comfortable with this.

**Senator Soucy** asked about the mail to the last known address. **Attorney Mattson** responded that this is part of the amendment to which they agreed – and that they are trying to ensure that they have provided every opportunity to let the tenant know. She said that sometimes the tenant does have a post office box – and that it’s a good backstop to let them know.

**Senator Carson** asked if it would be helpful to change the bill to being effective upon passage. It was noted that all of the parties were in agreement with this.

**Senator Lasky** asked about having the date for beginning the 7 days of storage “from the date of the notice” – so that the statute provides clarity as to when it starts. Everyone present was in agreement with this.

**Summary of testimony presented in opposition:** None

**Fiscal Note:** No fiscal note is attached

**Future Action:** The Committee took the bill under advisement.

sfd

Date hearing report completed: March 20, 2013

[file: HB 0413 report]

# Speakers





# Testimony

Written Testimony of David Cline  
Landlord for HB 413

This bill was drafted to address situations when tenants are believed to have moved from an apartment, and it is unclear to the landlord if he or she 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 all the tenants 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.

Before a Landlord can claim that the tenants have abandoned the apartment, the Landlord must provide the tenants with an abandonment notice by both leaving a copy at the apartment and sending each tenant a copy by certified mail to at least one of the tenants.

The Landlord must also prove two of the factors listed in the bill, such as the tenants have given written notice and the date they said they would be vacating has passed, and the tenants have returned all the keys to the apartment.

During the hearing process in the house, there was significant negotiations between Tenant representatives and Landlord representatives, and this bill as written, with one minor exception, is a result of a compromise by both groups.

The only amendment we are asking for, which both the Tenant representatives and the Landlord representatives have agreed upon is in paragraph 2c and on the notice of abandonment, paragraph 3, changing that the only the only items remaining the premises are inconsistent with the “continued” use rather than “intended” use.

This bill is not to give or take away any rights either the landlords or tenants. The intent is to give guidance in an area of Landlord and Tenant law that is unclear, and to establish reasonable procedures to finalize tenancies without the need of unnecessarily involving the courts.



# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Date: May 1, 2013

THE COMMITTEE ON Judiciary

to which was referred House Bill 413

AN ACT (New Title) relative to property abandoned by tenants.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 5 - 0

AMENDMENT # 1485s

CONSENT CALENDAR VOTE: 5 - 0

Senator Sharon M. Carson for the Committee

This legislation clarifies how a landlord can provide notice when it appears that a tenant has vacated a rental property and allows the landlord to retake possession without the need for court action. The amendment clarifies that the ten day window begins as of the date of the notice and corrects a drafting error.

Susan Duncan 271-3076

## New Hampshire General Court - Bill Status System

**Docket of HB413**

Docket Abbreviations

**Bill Title:** (New Title) relative to property abandoned by tenants.*Official Docket of HB413:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/3/2013	H	<b>Introduced</b> 1/3/2013 and Referred to Judiciary; <b>HJ 12</b> , PG.194
1/24/2013	H	Public Hearing: 1/31/2013 2:00 PM LOB 208
2/6/2013	H	Subcommittee Work Session: 2/12/2013 9:00 AM LOB 204
2/12/2013	H	Subcommittee Work Session: 2/19/2013 9:00 AM LOB 208
2/13/2013	H	Executive Session: 2/19/2013 1:00 PM LOB 208
2/20/2013	H	Committee Report: Ought to Pass with Amendment #0345h(NT) for Mar 6 (Vote 19-0; CC); <b>HC 20</b> , PG.412
2/20/2013	H	Proposed Committee Amendment <b>#2013-0345h</b> (New Title); <b>HC 20</b> , PG.451-452
3/6/2013	H	Amendment #0345h(NT): AA VV; <b>HJ 24</b> , PG.659-660
3/6/2013	H	<b>Ought to Pass with Amendment</b> #0345h(NT): MA VV; <b>HJ 24</b> , PG.659-660
3/7/2013	S	Introduced and Referred to Judiciary
3/12/2013	S	Hearing: 3/19/13, Room 100, SH, 9:15 a.m.; <b>SC12</b>
5/10/2013	S	Committee Report: Ought to Pass with Amendment <b>#2013-1485s</b> , 5/23/13; Vote 5-0; CC; <b>SC21</b>
5/23/2013	S	Committee Amendment 1485, AA, VV;
5/23/2013	S	<b>Ought to Pass with Amendment</b> 1485s, MA, VV; OT3rdg;
6/5/2013	H	House Concurs with Senate AM #1485s (Rep M.Smith): MA VV; <b>HJ49</b> , PG.1586
6/12/2013	S	Enrolled Bill Amendment #2101e Adopted, VV
6/25/2013	H	Enrolled Bill Amendment <b>#2013-2101e</b> Adopted [Recess of 6/5/13]; <b>HJ49</b> , PG.1657
6/26/2013	S	Enrolled
6/26/2013	H	Enrolled
7/16/2013	H	Signed By Governor 07/15/2013; Effective 01/01/2014; Chapter 0237

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

**ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:**

- AMENDMENT # 1232s       - AMENDMENT # 1485s  
 - AMENDMENT # 1241s       - AMENDMENT # \_\_\_\_\_

**ALL AVAILABLE VERSIONS OF THE BILL:**

AS INTRODUCED       AS AMENDED BY THE HOUSE  
 FINAL VERSION       AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

DATE DELIVERED TO SENATE CLERK

7/16/13

BY:

*Susan J. Duran*  
COMMITTEE AIDE