

# SENATE . . . . . No. 02203

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Senate, April 3, 2012 – New draft of Senate, No. 586 reported from the committee on Housing.

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## The Commonwealth of Massachusetts

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**In the Year Two Thousand Twelve**  
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An Act relative to housing rights for victims of domestic violence.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 186 of the General Laws, as appearing in the 2008 Official Edition  
2 is hereby amended by adding the following section;-

3           Section 23. (a) For the purposes of this section the following words shall have the  
4 following meanings:-

5           “Actual and imminent threat”, a physical danger that is real, would occur within an  
6 immediate time frame and could result in death or serious bodily harm.

7           “Co-tenant”, a person who shares the legal obligation to pay rent or use and occupancy  
8 for the premises with a tenant and who occupies the premises.

9           "Domestic violence", the same meaning as “abuse” in section 1 of chapter 209A.

10 “Housing subsidy provider”, a local housing authority, agency, or other entity providing  
11 or administering a federal or state rental subsidy within the Commonwealth in accordance with  
12 applicable law.

13 “Member of the household”, a person residing with the tenant or co-tenant as an  
14 authorized occupant of the premises. In the case of an application for housing, such term shall  
15 include a proposed household member who would be living with the tenant or co-tenant in the  
16 premises.

17 “Owner”, the same meaning as “owner” as set forth at 105 C.M.R. 410.020.

18 “Qualified third party”, a police officer or law enforcement professional including but not  
19 limited to a district attorney, a victim witness advocate from a district attorney’s office, probation  
20 or parole officer; an employee of Victims Services Unit of the Department of Criminal Justice  
21 Information Services; an Application Assistant certified by the Secretary of State for the  
22 Address Confidentiality Project pursuant to section 2 of Chapter 9A of the General Laws; a  
23 licensed medical care provider; an employee of the Department of Children and Families or the  
24 Department of Transitional Assistance who is charged with providing direct service to clients, or  
25 is a manager, or is designated as a domestic violence or abuse advocate; an active licensed social  
26 worker; a licensed mental health professional; a sexual assault counselor as defined in section  
27 20J of chapter 233; or a domestic violence victims’ counselor as defined in section 20K of said  
28 chapter 233 .

29 “Quitting date”, the date of a tenant’s or co-tenant’s surrender of his or her interest in the  
30 premises. Such date shall be determined as: (a) the date notice is given to the owner of the intent  
31 to abandon the premises and not to return, if the tenant or co-tenant already vacated the premises

32 without notice; or (b) either the effective date of the tenant or co-tenant's notice to vacate or the  
33 actual date that the tenant or co-tenant has vacated after providing such notice, whichever is  
34 later, if the tenant or co-tenant has not yet vacated the premises.

35 "Rape", as set forth in sections 22, 22A, 23, 24 or 24B of chapter 265 of the General  
36 Laws or sections 2, 3 or 17 of chapter 272 of the General Laws.

37 "Sexual assault", as set forth in sections 13B, 13F, 13H or 13K of chapter 265 of the  
38 General Laws or section 35A of chapter 272 of the General Laws.

39 "Stalking", as set forth in sections 43 or 43A chapter 265 of the General Laws.

40 "Tenant", a person who has entered into a lease or rental agreement with the owner  
41 (whether oral or written) or that of a tenant at sufferance who holds over after termination of  
42 tenancy or expiration of a lease.

43 "Tenant screening service provider", a business that for a fee collects, maintains, and  
44 disseminates to owners data on applicants for housing.

45 (b) (1) A tenant or co-tenant may terminate a rental agreement or tenancy and quit  
46 the premises upon written notification to the owner that a member of the household is a victim  
47 of domestic violence, rape, sexual assault or stalking, provided such written notification occurs  
48 within three months of the most recent acts or events or circumstances that gave rise to the  
49 domestic violence, rape, sexual assault or stalking; or provided a member of the tenant's  
50 household has an ongoing risk of domestic violence, rape, sexual assault or stalking due to such  
51 violence in the past. An owner shall have the right to request proof of the status as a victim of

52 domestic violence rape, sexual assault or stalking including the name of the perpetrator, if  
53 known, as provided in subsection (c).

54 (2) A tenant or co-tenant who terminates a rental agreement or tenancy pursuant  
55 to this subsection shall quit the premises within three months of the written notification to the  
56 owner, along with any household member who is not or was not the perpetrator of the domestic  
57 violence, rape, sexual assault or stalking. If the tenant or co-tenant fails to quit the premises  
58 within three months, the notice to terminate the rental agreement or tenancy is void.

59 (3) A tenant or co-tenant protected under this subsection shall be discharged from  
60 liability for rent or use and occupancy for the longer of any period following thirty days or one  
61 full rental period after the quitting date to the extent that a rental agreement and applicable law  
62 may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be  
63 entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall  
64 receive a full and specific statement of the basis for retaining any of the security deposit together  
65 with any refund due in compliance with section 15B of chapter one hundred and eighty-six of the  
66 General Laws within thirty (30) days of the conclusion of the tenancy and the delivery of full  
67 possession of the leased premises by all occupants to the landlord

68 (4) Any other tenant or co-tenant who is a party to the rental agreement shall not  
69 be released from such tenant's or co-tenant's obligations under the rental agreement or other  
70 obligations under Chapter 186. If the tenant or co-tenant protected under this section vacates but  
71 leaves belongings and does not indicate in writing that they can be treated as abandoned,  
72 responsibility for such belongings and for use and occupancy until such belongings are disposed  
73 of shall be determined in accordance with applicable law. If the tenant or co-tenant protected

74 under this section vacates but there are remaining persons in the premises other than another  
75 tenant or co-tenant, nothing in this provision shall affect the owner's rights and obligations with  
76 regard to such other persons. A landlord who in good faith initiates an action against remaining  
77 tenant, co-tenant, or household member, or a housing subsidy provider who terminates or denies  
78 a rental subsidy to a remaining co-tenant or household member, or takes any other action  
79 pursuant to this chapter, shall not be subject to a claim of retaliation or any other claim pursuant  
80 to this chapter.

81 (c) Where relief is sought because of recent or ongoing domestic violence, rape, sexual  
82 assault, or stalking, proof may be requested to show that an order or third party verification is in  
83 effect, or was obtained within the prior three months, or shows an ongoing risk due to such  
84 violence in the past. For purposes of entitlement to protection under this section, proof of status  
85 as a victim of domestic violence, rape, sexual assault or stalking shall be made by any one of the  
86 following:

87 (1) a copy of a valid order for protection under chapter 209A or under chapter  
88 258E of the General Laws obtained by the tenant, co-tenant, or member of the household;

89 (2) a record from a federal, state or local court or police of an act of domestic  
90 violence, rape, sexual assault or stalking and the name of the perpetrator if known;

91 (3) a written verification from any other qualified third party to whom the tenant,  
92 co-tenant or member of her or his household reported the domestic violence, rape, sexual assault,  
93 or stalking; provided the verification shall include the name of the organization, agency, clinic or  
94 professional service provider and include the date of the domestic violence, rape, sexual assault,  
95 or stalking, and the name of the perpetrator if known; and that any adult victim who has the

96 capacity to do so shall provide a statement, under the penalty of perjury, that the incident  
97 described in the verification is true and correct.

98 (d) An owner or housing subsidy provider who obtains written proof of status as a victim  
99 of domestic violence, rape, sexual assault or stalking shall keep the documentation confidential  
100 and shall not provide or allow access to it in any way to any other persons or agencies except  
101 with the written authorization of the victim or to the extent required by court order or applicable  
102 regulations or governmental audit requirements.

103 (e) (1) An owner shall not terminate a tenancy, fail to renew a tenancy, or refuse to  
104 enter into a rental agreement, based on a tenant's or co-tenant's or a member of the household's  
105 status as a victim of domestic violence, rape, sexual assault or stalking or based upon an act or  
106 omission that resulted from such domestic violence, rape, sexual assault or stalking.

107 (2) A housing subsidy provider shall not deny or terminate rental assistance,  
108 based on a tenant's or co-tenant's or applicant's or a member of the household's status as a  
109 victim of domestic violence, rape, sexual assault or stalking or based upon an act or omission  
110 that resulted from such domestic violence, rape, sexual assault or stalking.

111 (3) Nothing in this subsection shall be construed to limit the authority of an owner  
112 or a housing subsidy provider, when notified, to honor court orders addressing rights of access to  
113 or control of the property, including civil protection orders issued to protect the victim and issued  
114 to address the distribution or possession of property among the household members in cases  
115 where a household breaks up.

116 (4) Nothing in this subsection shall be construed to limit any otherwise available  
117 authority of an owner to evict a tenant, or of a housing subsidy provider to deny or terminate

118 rental assistance, for any violation of a lease or any other subsidy requirements not premised on  
119 the act or acts of violence in question against the tenant, co-tenant or a member of the tenant's  
120 household, provided that the owner or provider does not subject an individual who is or has been  
121 a victim of domestic violence, rape, sexual assault or stalking to a more demanding standard than  
122 other tenants in determining whether to evict or to deny or terminate assistance.

123 (5) Nothing in this subsection shall be construed to limit the authority of an  
124 owner to terminate the tenancy of any tenant, or of a housing subsidy provider to deny or  
125 terminate rental assistance, if the owner or provider can demonstrate an actual and imminent  
126 threat to other tenants or those employed at or providing service to the property, if that tenant's  
127 tenancy is not terminated, or if such assistance is not denied or terminated.

128 (6) An owner shall not refuse to enter into a rental agreement, nor shall a housing  
129 subsidy provider deny assistance, based on an applicant having terminated a rental agreement  
130 under subsection (b).

131 (7) Neither an owner or housing subsidy provider shall inquire or cause a written  
132 or oral inquiry or record to be made concerning the status of an applicant or a member of the  
133 applicant's household as a victim of domestic violence, rape, sexual assault or stalking or history  
134 of such status, unless an applicant:

135 (i) seeks a priority or preference from an owner or housing subsidy  
136 provider based upon such status;

137 (ii) asks that the owner or housing subsidy provider not contact certain  
138 past references or make certain inquiries that would normally be made regarding past history

139 based on such status and the safety risk that may be created by such contact for the applicant or a  
140 member of the applicant's household; or

141 (iii) claims that there are mitigating circumstances regarding negative past  
142 history which are related to such status.

143 In such cases as described in clauses (e)(7)(i)-(iii) above, the owner or housing subsidy  
144 provider may request documentation of the domestic violence, rape, sexual assault or stalking,  
145 and may ask for alternative forms of verification to establish suitability for tenancy which would  
146 not put the applicant or a member of the applicant's household at risk.

147 (8) (4) Neither a tenant screening service provider, an owner nor a housing  
148 subsidy provider may include information in a written or oral report to a prospective owner or  
149 housing subsidy provider indicating that the subject of the report is a victim of domestic  
150 violence, rape, sexual assault or stalking, or that the subject of the report has terminated a rental  
151 agreement under subsection (b) except as may otherwise be required by law, by court order, by  
152 regulatory authority, or by governmental audit requirements. Nothing in this provision, however,  
153 shall bar an applicant from authorizing such a disclosure to overcome negative history, to  
154 confirm status as may be necessary to establish a priority or preference for housing, or to correct  
155 inaccurate information in a report.

156 (f) (1) A tenant or co-tenant who is or has been a victim of domestic violence, rape,  
157 sexual assault or stalking may bring a civil action against an owner for violation of subsection (e)  
158 above or assert a defense based on a violation of subsection (e) above in a civil action filed by an  
159 owner. There shall be a rebuttable presumption that domestic violence, rape, sexual assault or



160 stalking that occurred more than six months before the commencement of the action or defense  
161 brought under this section is not subject to the protections provided by subsection (e) above.

162           (2) An applicant who is or has been a victim of domestic violence, rape, sexual  
163 assault or stalking may bring a civil action against a subsidy provider for violation of subsection  
164 (e) above where there exists no pre-existing statutory remedy. Such action must be brought no  
165 later than 90 days after the subsidy provider has denied or terminated the subsidy or made an  
166 inquiry into the status of an applicant or the status of a member of the applicant's household as a  
167 victim of domestic violence, rape, sexual assault or stalking, or history of such status, except as  
168 provided in subsections (d) and (e).

169           (3) Nothing in this section shall interfere with any rights or remedies, not  
170 proscribed herein and available to an owner or housing subsidy provider under existing law, to  
171 make appropriate inquiries from applicants, enforce the rental agreement, exercise appropriate  
172 discretion regarding the housing subsidy, protect other persons lawfully on the premises or  
173 protect the premises from physical damage, including but not limited to rights for appropriate  
174 injunctive relief.

175           (4) The subject of a report issued in violation of section (e) (8) above may bring a  
176 civil action for damages sustained, costs and reasonable attorney's fees against the tenant  
177 screening service provider, owner or housing subsidy provider who intentionally issued the  
178 report

179           (g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the  
180 tenant's or co-tenant's household, change the locks of the individual dwelling unit in which the  
181 tenant, co-tenant, or member of the tenant household lives if the tenant, co-tenant, or member of

182 the household reasonably believes that he or she or a member of the household is under an  
183 imminent or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises.  
184 The owner shall have the right to request, in good faith, evidence to support a claim of domestic  
185 violence, rape, sexual assault or stalking.

186 (2) If the threat of domestic violence, rape, sexual assault or stalking is posed by a  
187 person who is a tenant, co-tenant, or member of the tenant household, notice to the owner  
188 requesting a change of locks shall be accompanied by: (i) a copy of a protective order issued  
189 under chapter 209A or chapter 258E of the General Laws; or, (ii) a court record indicating which  
190 tenant, co-tenant or member of the household is posing the threat of domestic violence, rape,  
191 sexual assault or stalking. In such cases, the owner may change the locks and deny a key to the  
192 alleged perpetrator.

193 (3) An owner who has received notice of a request for change of locks under this  
194 section shall, within two business days, make a good faith effort to change the locks or give the  
195 tenant, co-tenant, or member of the tenant household permission to change the locks. If the  
196 owner changes the locks, the owner shall make a good faith effort to give a key to the new locks  
197 to the tenant, co-tenant or member of the household requesting the lock change as soon as  
198 possible but within the same two business day period.

199 (4) An owner may charge a fee for the expense of changing the locks. The fee  
200 shall not exceed the reasonable price customarily charged for changing such locks in that  
201 community.

202 (5) If an owner fails to change the locks under this section within two business  
203 days, the tenant, co-tenant or member of the tenant household may change the locks without the

204 owner's permission. If the rental agreement requires that the owner retain a key to the leased  
205 residential premises and where the tenant, co-tenant or member of the household changes the  
206 locks, the tenant, co-tenant or member of the household shall make a good faith effort to provide  
207 a key to the new locks to the owner within two business days of the locks being changed. If a  
208 tenant, co-tenant or member of the household changes the locks without the owner's permission,  
209 the tenant, co-tenant or member of the household shall do so in a workmanlike manner with  
210 locks of similar or better quality than the original locks. An owner may replace a lock installed  
211 by the tenant, co-tenant, or member of the tenant household or seek reimbursement for additional  
212 costs if the owner believes that the locks were not of proper quality or were not installed  
213 properly.

214           (6) If the locks are changed pursuant to this section, the tenant shall not  
215 voluntarily give the new key to the perpetrator. An owner who refuses to provide a key to any  
216 person based on the belief that such person is the perpetrator of alleged domestic violence , shall  
217 not be liable for such refusal.

218           (7) An owner who takes action to prevent the tenant, co-tenant or member of the  
219 tenant household who has complied with paragraph (1) from changing the locks, or any owner  
220 who changes the locks and does not make a good faith effort to provide a key to the tenant, co-  
221 tenant or member of the household requesting the lock change as provided in paragraph (3), shall  
222 be liable for actual and consequential damages or three months' rent, whichever is greater, and  
223 the costs of the action including reasonable attorneys' fees, all of which may be applied in setoff  
224 or recoupment against any claim for rent owed or owing for use and occupancy. Damages shall  
225 not be imposed if the court determines that the owner acted in good faith.

226 (8) The superior court, housing court, district court and Boston municipal court  
227 shall have jurisdiction in equity to restrain violations of this section. Section 18 of this chapter  
228 and section 2A of chapter 239 shall apply to an act taken in reprisal against a person for  
229 requesting the locks be changed in accordance with this subsection.

230 (9) Notwithstanding the preceding paragraphs, if a court has issued an order  
231 under said chapter 209A of the General Laws or any other provision of law, ordering a tenant,  
232 co-tenant or member of the tenant household to vacate the dwelling unit, the owner shall not  
233 interfere with the order and upon a request to change the locks as described in this section, shall  
234 comply with the request

235 (10) A waiver of this provision in any lease or other rental agreement, except with  
236 respect to any restriction specified or imposed by the United States or any agency thereof or the  
237 commonwealth or any agency or political division, shall be void and unenforceable.

238 (11) An owner complying with this section or with the requirements of an order  
239 under chapter 209A of the General Laws or other order, shall be relieved of any liability to the  
240 vacated tenant, co-tenant or member of the tenant's household, or to any other third party on  
241 account of the owner's good faith compliance with the court order or the owner's good faith  
242 changing of the locks as provided in this section and not affording a key to the alleged  
243 perpetrator. Damages shall not be imposed if the court determines that the matter was one of a  
244 good faith dispute between the owner and tenants. (b) Notwithstanding any provisions to the  
245 contrary, any owner who demonstrates that their conduct was in good faith, in attempting to  
246 comply with the mandates of this Act shall not be liable to any multiple damages or attorney's  
247 fees.

248 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008  
249 Official Edition is hereby amended by inserting after the words, “eighty-three A”, in line 14, the  
250 following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant  
251 household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or  
252 seeking relief under section 23 of chapter 186, or reporting to any police officer or law  
253 enforcement professional any incident of domestic violence, rape, sexual assault or stalking  
254 against the tenant, co-tenant or member of the household, or reporting to any police officer or  
255 law enforcement professional the violation of an order issued under said section 3 of said chapter  
256 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in  
257 section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the  
258 General Laws directed against the tenant, co-tenant or member of the household.