

# **SENATE . . . . . No. 02402**

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## The Commonwealth of Massachusetts

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SENATE, July 30, 2012

The committee on Ways and Means, to whom was referred the Senate bill relative to housing rights for victims of domestic violence (Senate, No. 2203); reports, recommending that the same ought to pass with an amendment entitled "An Act relative to housing rights for victims of domestic violence, rape, sexual assault and stalking" (Senate, No. 2402).

For the committee,

STEPHEN M. BREWER.

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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1 SECTION 1. Chapter 186 of the General Laws is hereby amended by adding the  
2 following 7 sections:-

3 Section 23. (a) For the purposes of sections 23 to 29, inclusive, the following words shall  
4 have the following meanings:-

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

7 "Domestic violence", the occurrence of 1 or more of the following acts between family or  
8 member of a household:

9 (i) attempting to cause or causing physical harm;

10 (ii) placing another in fear of imminent serious physical harm;

11 (iii) causing another to engage involuntarily in sexual relations by force, threat or duress.

12 “Housing subsidy provider”, a local housing authority, agency or other entity providing  
13 or administering a federal or state rental subsidy within the commonwealth under applicable law.

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

18 “Owner”, as defined in 105 C.M.R. 410.020.

19 “Qualified third party”, a police officer, as defined by section of chapter 90C, law  
20 enforcement professional including but not limited to a district attorney, assistant district  
21 attorney, a victim-witness advocate, probation or parole officer; an employee of the Victims  
22 Services Unit of the department of criminal justice information services; an application assistant  
23 in the address confidentiality program of the secretary of the commonwealth under section 2 of  
24 chapter 9A; a licensed medical care provider; an employee of the department of children and  
25 families or the department of transitional assistance charged with providing direct service to  
26 clients, or a manager or designated domestic violence or abuse advocate within either  
27 department; an active licensed social worker; a licensed mental health professional; a sexual  
28 assault counselor as defined in section 20J of chapter 233; or a domestic violence victims’  
29 counselor as defined in section 20K of said chapter 233.

30 “Quitting date”, the date that a tenant or co-tenant surrenders such person’s interest in the  
31 premises; provided further that such date shall be determined as: (i) if the tenant or co-tenant has  
32 vacated the premises, the date notice is given to the owner of the intent to abandon the premises  
33 and not to return; or (ii) if the tenant or co-tenant has not vacated the premises, either (A) the  
34 date the tenant or co-tenant intends to vacate the premises or (B) the actual date that the tenant or  
35 co-tenant has vacated after providing such notice.

36 “Rape”, as set forth in sections 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter  
37 265 or sections 2, 3 or 17 of chapter 272.

38 “Sexual assault”, as set forth in sections 13B, 13B½, 13B¾, 13F, 13H or 13K of chapter  
39 265 or section 35A of chapter 272.

40 “Stalking”, stalking as set forth in section 43 of chapter 265 or criminal harassment as set  
41 forth in sections 43 or 43A chapter 265.

42 “Tenant”, (i) a person who has entered into an oral or written lease or rental agreement  
43 with the owner or (ii) a person who remains on the premises after such person’s tenancy has  
44 terminated or after the expiration of such person’s lease.

45 Section 24. (a) A tenant or co-tenant may terminate a rental agreement or tenancy and  
46 quit the premises upon written notification to the owner that a member of the household is a  
47 victim of domestic violence, rape, sexual assault or stalking, if such notification is made within 3  
48 months of the most recent act, of domestic violence, rape, sexual assault or stalking; or if a  
49 member of a tenant’s household is reasonably in fear of imminent serious physical harm from  
50 domestic violence, rape, sexual assault or stalking . An owner shall have the right to request  
51 proof of the status as a victim of domestic violence rape, sexual assault or stalking including the  
52 name of the perpetrator, if known, as provided in subsection (e).

53 (b) Within 3 months of written notification to the owner to terminate a rental agreement  
54 or tenancy under subsection (a), a tenant, co-tenant or any household member who is not the  
55 perpetrator of the domestic violence, rape, sexual assault or stalking shall quit the premises. If  
56 the tenant or co-tenant fails to quit the premises within 3 months, the notice to terminate the  
57 rental agreement or tenancy shall be void.

58 (c) A tenant or co-tenant to whom this section applies shall be discharged from liability  
59 for rent or use and occupancy for 30 days or 1 full rental period after the quitting date, whichever  
60 last occurs, to the extent that a rental agreement and applicable law may otherwise impose such  
61 liability beyond the quitting date. Such tenant or co-tenant shall be entitled to a refund of any  
62 prepaid rent for any period thereafter. The tenant or co-tenant shall receive a full and specific  
63 statement of the basis for retaining any of the security deposit together with any refund due in  
64 compliance with section 15B of within 30 days of the conclusion of the tenancy and the delivery  
65 of full possession of the leased premises by all occupants to the landlord.

66 (d) No other tenant or co-tenant who is a party to the rental agreement shall be released  
67 from such tenant's or co-tenant's obligations under the rental agreement or other obligations  
68 under this chapter. If the tenant or co-tenant to whom this section applies vacates but leaves  
69 belongings, such belongings shall be deemed abandoned and may be disposed of under  
70 applicable law, unless the tenant or co-tenant indicates in writing the responsibility for such  
71 belongings and the action to be taken with respect to such belongings. If the tenant or co-tenant  
72 to whom this section applies vacates, but another person remains in the premises other than  
73 another tenant or co-tenant, nothing in this section shall affect the owner's rights and obligations  
74 with regard to such remaining person. A landlord who in good faith initiates an action against a  
75 remaining tenant, co-tenant or household member, or a housing subsidy provider who terminates  
76 or denies a rental subsidy to a remaining tenant, co-tenant or household member, or takes any  
77 other action under this section, shall not be subject to a claim of retaliation or any other claim  
78 under this chapter.

79 (e) If relief is sought because of recent or ongoing domestic violence, rape, sexual assault  
80 or stalking, an owner may request that proof be provided to show that a protective order or third

81 party verification is in effect or was obtained within the prior 3 months, or a tenant or co-tenant  
82 is reasonably in fear of imminent serious physical harm. Proof of status as a victim of domestic  
83 violence, rape, sexual assault or stalking shall be satisfied by production of any 1 of the  
84 following documents:

85 (1) a copy of a valid protection order under chapter 209A or 258E obtained by  
86 the tenant, co-tenant or member of the household;

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

89 (3) a written verification from any other qualified third party to whom the tenant,  
90 co-tenant or member of the tenant or co-tenant's household reported the domestic violence, rape,  
91 sexual assault or stalking; provided, however, that the verification shall include the name of the  
92 organization, agency, clinic or professional service provider and include the date of the domestic  
93 violence, rape, sexual assault or stalking, and the name of the perpetrator if known; and provided  
94 further, that any adult victim who has the capacity to do so shall provide a statement, under the  
95 penalty of perjury, that the incident described in such verification is true and correct.

96 (f) An owner or housing subsidy provider who obtains written proof of status as a victim  
97 of domestic violence, rape, sexual assault or stalking shall keep such documentation and the  
98 information contained in the documentation confidential, and shall not provide or allow access to  
99 such documentation in any way to any other person or agency, unless the victim provides written  
100 authorization for the release of such information or unless required by court order, government  
101 regulation or governmental audit requirements.

102           Section 25. An owner shall not refuse to enter into a rental agreement, nor shall a housing  
103 subsidy provider deny assistance, based on an applicant having terminated a rental agreement  
104 under section 24 or based upon an applicant having requested a change of locks under section 26.

105           Section 26. (a) For purposes of this section, the term “household member” shall mean a  
106 person residing with the tenant or co-tenant as an authorized occupant of the premises, and who  
107 is 18 years of age or older or an emancipated minor.

108           (b) An owner shall, upon the request of a tenant, co-tenant or a household member,  
109 change the locks of the individual dwelling unit in which the tenant, co-tenant or household  
110 member lives if the tenant, co-tenant or household member reasonably believes that the tenant,  
111 co-tenant or household member is under an imminent threat of domestic violence, rape, sexual  
112 assault or stalking at the premises. An owner shall have the right to request, in good faith, proof  
113 of the status as a victim of domestic violence rape, sexual assault or stalking including the name  
114 of the perpetrator, if known, as provided in subsection (e) of section 24.

115           (c) If the threat of domestic violence, rape, sexual assault or stalking is posed by a person  
116 who is a tenant, co-tenant or household member, the owner may change the locks and deny a key  
117 to the alleged perpetrator upon receipt of a request to change the locks; provided, however, that  
118 such request shall be accompanied by: (i) a copy of a valid protective order issued under chapter  
119 209A or chapter 258E issued against a tenant, co-tenant or household member; or (ii) a record  
120 from a federal, state or local court or law enforcement, indicating that a tenant, co-tenant or  
121 household member thereof poses an imminent threat of domestic violence, rape, sexual assault or  
122 stalking.

123 (d) An owner who has received notice of a request for change of locks under this section  
124 shall, within 2 business days, make a good faith effort to change the locks or give the tenant, co-  
125 tenant or household member permission to change the locks. If the owner changes the locks, the  
126 owner shall make a good faith effort to give a key to the new locks to the tenant, co-tenant or  
127 household member requesting the lock change as soon as possible, but within the same 2  
128 business day period. An owner may charge a fee for the expense of changing the locks. The fee  
129 shall not exceed the reasonable price customarily charged for changing such locks in that  
130 community.

131 (e) If an owner fails to change the locks after receipt of a request under this section within  
132 2 business days, the tenant, co-tenant or household member may change the locks without the  
133 owner's permission. If the rental agreement requires that the owner retain a key to the leased  
134 residential premises and if a tenant, co-tenant or household member changes the locks, the  
135 tenant, co-tenant or household member shall make a good faith effort to provide a key to the new  
136 locks to the owner within 2 business days of the locks being changed. If a tenant, co-tenant or  
137 household member changes the locks without the owner's permission, such person shall change  
138 the locks in a workmanlike manner with locks of similar or better quality than the original locks.  
139 An owner may replace a lock installed by the tenant, co-tenant, or household member, or seek  
140 reimbursement for additional costs incurred, if the owner believes that the locks were not of  
141 equal or better quality or were not installed properly, and such action shall be deemed not to be  
142 in retaliation.

143 (f) If the locks are changed under this section, a tenant, co-tenant or household member  
144 shall not voluntarily give the new key to the perpetrator. An owner who refuses to provide a key

145 to any person based on the reasonable belief that such person is the perpetrator of alleged  
146 domestic violence, rape, sexual assault or stalking, shall not be liable for such refusal.

147 (g) An owner who takes action to prevent the tenant, co-tenant or household member who  
148 has complied with subsection (b) from changing the locks, or any owner who changes the locks  
149 but fails to make a good faith effort to provide a key to the tenant, co-tenant or household  
150 member requesting the lock change as provided in subsection (d), shall be liable for actual and  
151 consequential damages or 3 months' rent, whichever is greater, and the costs of the action  
152 including reasonable attorneys' fees, all of which may be applied in setoff or recoupment against  
153 any claim for rent owed or owing for use and occupancy. Damages shall not be imposed if the  
154 court determines that the owner acted in good faith.

155 Section 27. The superior court, housing court, district court and Boston municipal court  
156 shall have jurisdiction in equity to restrain violations of sections 23 to 26, inclusive. Section 18  
157 of this chapter and section 2A of chapter 239 shall apply to an act taken in reprisal against a  
158 person for requesting that locks be changed under section 26.

159 Notwithstanding sections 23 to 26, inclusive, if a court has issued a protective order  
160 under chapter 209A, or any other law, ordering a tenant, co-tenant or member of the household  
161 to vacate the dwelling unit, the owner shall not interfere with the order and upon a request to  
162 change the locks as described in section 26, shall comply with such request.

163 Section 28. A waiver of sections 23 to 27, inclusive, in any lease or other rental  
164 agreement, except as otherwise provided by law or by federal, state or local regulation shall be  
165 void and unenforceable.

166 Section 29. (a) An owner complying with sections 23 to 28, inclusive, or with the  
167 requirements of an order under chapter 209A or any other law, shall be relieved of any liability  
168 to the vacated tenant, co-tenant or member of the tenant's household, or to any other third party  
169 on account of the owner's good faith compliance with a court order or changing the locks as  
170 provided in section 26 including, but not limited to, withholding a key from the alleged  
171 perpetrator, as provided in subsection (c) of section 26. Damages shall not be imposed if the  
172 court determines that the matter was of a good faith dispute between the owner and tenants.

173 (b) Notwithstanding any general or special law to the contrary, any owner who  
174 demonstrates that such owner's conduct constituted a good faith effort to comply with sections  
175 23 to 29, inclusive shall not be liable for multiple damages or for attorney's fees.

176 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2010  
177 Official Edition, is hereby amended by striking out, in line 14, the words, "eighty-three A" and  
178 inserting in place thereof the following words:- 83A, or a tenant, co-tenant or a member of the  
179 household taking action under section 3 of chapter 209A or section 3 of chapter 258E, seeking  
180 relief under sections 23 to 29, inclusive of chapter 186, reporting to any police officer or law  
181 enforcement professional an incident of domestic violence, rape, sexual assault or stalking, as  
182 defined in said section 23 of said chapter 186, against a tenant, co-tenant or member of the  
183 household, or reporting to any police officer or law enforcement professional a violation of an  
184 order issued under said section 3 of said chapter 209A or said section 3 of said chapter 258E or  
185 any act of abuse as defined in section 1 of said chapter 209A or any act of harassment as defined  
186 in chapter 258E directed against the tenant, co-tenant or member of the household.