

SENATE No. 00586

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to housing rights for victims of domestic violence.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------------|--------------------------------------|
| <i>Cynthia S. Creem</i> | <i>First Middlesex and Norfolk</i> |
| <i>Ruth B. Balser</i> | <i>12th Middlesex</i> |
| <i>Carlos Henriquez</i> | <i>5th Suffolk</i> |
| <i>Linda Dorcena Forry</i> | <i>12th Suffolk</i> |
| <i>Gloria L. Fox</i> | <i>7th Suffolk</i> |
| <i>Susan C. Fargo</i> | <i>Third Middlesex</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex, Suffolk, and Essex</i> |
| <i>Jennifer E. Benson</i> | <i>37th Middlesex</i> |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |

SENATE No. 00586

By Ms. Creem, petition (accompanied by bill, Senate, No. 586) of Fox, Forry, Henriquez and other members of the General Court for legislation relative to housing rights for victims of domestic violence [Joint Committee on Housing].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
2 Edition 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
11 providing or administering a federal or state rental subsidy within the Commonwealth in
12 accordance with 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
19 not limited to a district attorney, a victim witness advocate from a district attorney’s office,
20 probation or parole officer; an employee of Victims Services Unit of the Department of
21 Criminal Justice Information Services; an Application Assistant certified by the Secretary of
22 State for the Address Confidentiality Project pursuant to section 2 of Chapter 9A of the General
23 Laws; a licensed medical care provider; an employee of the Department of Children and
24 Families or the Department of Transitional Assistance who is charged with providing direct
25 service to clients, or is a manager, or is designated as a domestic violence or abuse advocate; a
26 member of the clergy; a licensed social worker; a licensed mental health professional; a sexual
27 assault counselor as defined in section 20J of chapter 233; or a domestic violence victims’
28 counselor as defined in section 20K of said chapter 233 .

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

32 premises without notice; or (b) either the effective date of the tenant or co-tenant's notice to
33 vacate or the actual date that the tenant or co-tenant has vacated after providing such notice,
34 whichever is 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 the
46 premises upon written notification to the owner that a member of the household is a victim of
47 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
55 pursuant to this subsection shall quit the premises within three months of the written notification
56 to the owner, along with any household member who is not or was not the perpetrator of the
57 domestic violence, rape, sexual assault or stalking. If the tenant or co-tenant fails to quit the
58 premises 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
60 from liability for rent or use and occupancy for the longer of any period following thirty days or
61 one full rental period after the quitting date to the extent that a rental agreement and applicable
62 law may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall
63 be 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.

67 (4) Any other tenant or co-tenant who is a party to the rental agreement shall
68 not be released from such tenant's or co-tenant's obligations under the rental agreement or other
69 obligations under Chapter 186. If the tenant or co-tenant vacates but leaves belongings and does
70 not indicate that they can be treated as abandoned, responsibility for such belongings and for use
71 and occupancy until such belongings are disposed of shall be determined in accordance with
72 applicable law. If the tenant or co-tenant vacates but there are remaining persons in the premises
73 other than another tenant or co-tenant, nothing in this provision shall affect the owner's rights

74 and obligations with regard to such other persons. A landlord who in good faith initiates an
75 action against remaining tenant, co-tenant, or household member, or a housing subsidy provider
76 who terminates or denies a rental subsidy to a remaining co-tenant or household member, or
77 takes any other action pursuant to this chapter, shall not be subject to a claim of retaliation or any
78 other claim pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

122 (5) Nothing in this subsection shall be construed to limit the authority of an
123 owner to terminate the tenancy of any tenant, or of a housing subsidy provider to deny or
124 terminate rental assistance, if the owner or provider can demonstrate an actual and imminent
125 threat to other tenants or those employed at or providing service to the property, if that tenant's
126 tenancy is not terminated, or if such assistance is not denied or terminated. Any eviction or
127 termination of assistance as provided in this paragraph should be utilized only when there are no
128 other actions that could be taken to reduce or eliminate the threat.

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

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

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

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

141 (iii) claims that there are mitigating circumstances regarding
142 negative past 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 provider
144 may request documentation of the domestic violence, rape, sexual assault or stalking, and may
145 ask for alternative forms of verification to establish suitability for tenancy which would not put
146 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,
163 sexual assault or stalking may bring a civil action against a subsidy provider for violation of
164 subsection (e) above where there exists no pre-existing statutory remedy. Such action must be
165 brought no later than 90 days after the subsidy provider has denied or terminated the subsidy or
166 made an inquiry into the status of an applicant or the status of a member of the applicant's
167 household as a victim of domestic violence, rape, sexual assault or stalking, or history of such
168 status, except as 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
176 bring a civil action for damages sustained, costs and reasonable attorney's fees against the tenant
177 screening service provider, owner or housing subsidy provider who issued the report

178 (g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the
179 tenant's or co-tenant's household, change the locks of the individual dwelling unit in which the
180 tenant, co-tenant, or member of the tenant household lives if the tenant, co-tenant, or member of
181 the household reasonably believes that he or she or a member of the household is under an

182 imminent or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises.
183 The owner shall have the right to request, in good faith, evidence to support a claim of domestic
184 violence, rape, sexual assault or stalking.

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

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

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

200 (5) If an owner fails to change the locks under this section within two
201 business days, the tenant, co-tenant or member of the tenant household may change the locks
202 without the owner's permission. If the rental agreement requires that the owner retain a key to
203 the leased residential premises and where the tenant, co-tenant or member of the household

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

212 (6) If the locks are changed pursuant to this section, the tenant shall not
213 voluntarily give the new key to the perpetrator.

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

223 (8) The superior court, housing court, district court and Boston municipal
224 court shall have jurisdiction in equity to restrain violations of this section. Section 18 of this

225 chapter and section 2A of chapter 239 shall apply to an act taken in reprisal against a person for
226 requesting the locks be changed in accordance with this subsection.

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

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

235 (11) An owner complying with this section or with the requirements of an
236 order under chapter 209A of the General Laws or other order, shall be relieved of any liability to
237 the vacated tenant, co-tenant or member of the tenant's household, or to any other third party on
238 account of the owner's good faith compliance with the court order or the owner's good faith
239 changing of the locks as provided in this section. Damages shall not be imposed if the court
240 determines that the matter was one of a good faith dispute

241 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008
242 Official Edition is hereby amended by inserting after the words, "eighty-three A", in line 14, the
243 following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant
244 household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or
245 seeking relief under section 23 of chapter 186, or reporting to any police officer or law
246 enforcement professional any incident of domestic violence, rape, sexual assault or stalking

247 against the tenant, co-tenant or member of the household, or reporting to any police officer or
248 law enforcement professional the violation of an order issued under said section 3 of said chapter
249 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in
250 section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the
251 General Laws directed against the tenant, co-tenant or member of the household.