

HOUSE No. 1584

The Commonwealth of Massachusetts

PRESENTED BY:

Dennis A. Rosa and Jennifer L. Flanagan

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 adoption of the accompanying bill:

An Act relative to landlord and tenant law.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-----------------------------|--------------------------------|
| <i>Dennis A. Rosa</i> | <i>4th Worcester</i> |
| <i>Jennifer L. Flanagan</i> | <i>Worcester and Middlesex</i> |
| <i>Josh S. Cutler</i> | <i>6th Plymouth</i> |

HOUSE No. 1584

By Representative Rosa of Leominster and Senator Flanagan, a joint petition (accompanied by bill, House, No. 1584) of Dennis A. Rosa, Jennifer L. Flanagan and Josh S. Cutler relative to the rights and responsibilities of landlords and tenants in eviction proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to landlord and tenant law.

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. Section 11 of chapter 186 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out the word “fourteen”, in line 2, and inserting
3 in place thereof the following figure:- 3.

4 SECTION 2. Section 15B of said chapter 186, as so appearing, is hereby amended by
5 striking out the words “and, (iv) the purchase and installation cost for a key and lock”, in lines 23
6 to 24, inclusive, and inserting in place thereof the following words:- (iv) the purchase and
7 installation cost for a key and lock; and (v) the cost to purchase a credit, a criminal or an eviction
8 report.

9 SECTION 3. Said section 15B of said chapter 186, as so appearing, is hereby further
10 amended by striking out the word “thirty”, in line 26, and inserting in place thereof the following
11 figure:- 10.

12 SECTION 4. Subsection (3) of said section 15B of said chapter 186, as so appearing, is
13 hereby further amended by striking out clause (a).

14 SECTION 5. Said section 15B of said chapter 186, as so appearing is hereby further
15 amended by striking out subsection (6) and inserting in place thereof the following subsection:-

16 (6) The lessor shall forfeit his right to retain any portion of the security deposit for any
17 reason, or, in any action by a tenant to recover a security deposit, to counterclaim for any damage
18 to the premises if he:

19 (a) fails to deposit and hold any security deposit in a separate, interest-bearing account in
20 a bank, located within the commonwealth under such terms as will place such deposit beyond the
21 claim of creditors of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and
22 as will provide for its transfer to a subsequent owner of said property

23 (b) fails to furnish to the tenant within thirty days after the termination of the occupancy
24 the itemized list of damages, if any;

25 (c) uses in any lease signed by the tenant any provision which conflicts with any
26 provision of this section and attempts to enforce such provision or attempts to obtain from the
27 tenant or prospective tenant a waiver of any provision of this section;

28 (d) fails to transfer such security deposit to his successor in interest or to otherwise
29 comply with the provisions of subsection (5) after he has succeeded to an interest in residential
30 real property;

31 (e) fails to return, after deducting actual or estimated damages in good faith, what is owed
32 to the tenant plus interest within thirty days after termination of the tenancy; or

33 (f) fails to send or give in person a receipt to the tenant within thirty days after such
34 deposit is received by the lessor which receipt shall indicate the name and location of the bank in
35 which the security deposit has been deposited and the amount and account number of said
36 deposit.

37 SECTION 6. Section 3 of chapter 239 of the General Laws, as so appearing, is hereby
38 amended by striking out paragraphs 3 and 4 and inserting in place thereof the following 2
39 paragraphs:-

40 The notice shall contain (1) the signature, full name, full business address and business
41 telephone number of the officer; (2) the name of the court and the docket number of the action;
42 (3) a statement that the officer will place any personal property remaining on the premises at the
43 time the execution is levied in storage at a storage facility, and the full name, full business
44 address, and business telephone number of the storage facility to be used; (4) a statement that the
45 storage facility's storage rates may be ascertained by contacting the commissioner of public
46 safety and the address and telephone number of such agency; (5) a statement that the storage
47 facility may sell at auction any property that is unclaimed after 6 months and may retain that
48 portion of the proceeds necessary to compensate him for any unpaid storage fees accrued as of
49 the date of the auction, except as provided in section 4; and (6) a statement that the defendant
50 should notify the storage facility in writing at the business address listed in the notice of any
51 change in the defendant's mailing address. The notice referred to in this section shall be served in
52 the same manner as the summary process summons and complaint and shall be filed in the court
53 that issued the execution. For the purposes of this section and section 4, the term "storage
54 facility" shall mean a shall mean a "self-storage facility" as defined in section 1 of chapter 105A,

55 located in the commonwealth and within a 20 mile radius of the land or tenements from which
56 the personal property is removed.

57 The officer shall select the storage facility identified in the notice described in the
58 preceding paragraph in a manner calculated to ensure that the defendant's personal property will
59 be stored within a reasonable distance of the premises at issue in the summary process action.
60 The officer shall not select pursuant to this section a storage facility whom the officer knows or
61 reasonably believes to be in violation of any provision of section 4.

62 SECTION 7. Said chapter 239 of the General Laws, as so appearing is hereby further
63 amended by striking out section 4 and inserting in place thereof the following section:-

64 Section 4. (a) If an officer, serving an execution issued on a judgment for the plaintiff for
65 possession of land or tenements, removes personal property, belonging to a person other than the
66 plaintiff, from the land or tenements, he shall forthwith cause it to be stored for the benefit of the
67 owners thereof. Such property shall be stored with the storage facility identified in the notice
68 provided to the defendant pursuant to section 3, except that the officer shall store the property
69 with a storage facility of the defendant's choosing if the defendant notifies the officer of his
70 choice in writing at or before the time of removal of the property. The officer shall file with the
71 court that issued the summary process judgment and provide to the defendant in hand, or if the
72 defendant is not present at the time of execution by receipted mail to the defendant's last and best
73 known address, a receipt containing a description of the goods removed or of the packages
74 containing them, as well as name and signature of the officer.

75 (b) Any storage facility who accepts property for storage pursuant to this section: (1)
76 shall file its current storage rates with the commissioner of public safety and shall not change
77 such rates more than once annually, unless the commissioner of public safety or his designee
78 gives prior written approval upon a showing of extraordinary circumstances; (2) shall not impose
79 charges for storage under this section in excess of the rates filed with and not rejected by the
80 commissioner of public safety at the time of service of the notice provided for in section 3; (3)
81 shall not impose charges for storage under this section in excess of the fair market rates for
82 storage facilities of similar quality in the warehouse's general locale; (4) shall not impose charges
83 other than those for the actual storage of goods pursuant to this section, including, but not limited
84 to, docking fees, warehouse labor fees, administrative fees, or other similar fees imposed in
85 addition to the storage rates listed with the commissioner of public safety; (5) shall not impose
86 minimum fees or otherwise charge storage fees for any period other than the period of actual
87 storage; (6) shall credit toward the defendant's costs of storage any amount paid by the plaintiff
88 or other third party in connection with the storage of the property in question; (7) shall send by
89 first class mail to the defendant's last and best known address monthly statements of the amount
90 of advances made and of liabilities incurred for which the warehouseman claims a lien or
91 security interest pursuant to this section; and (8) shall insure the defendant's property against fire
92 and theft in the amount of no less than \$10,000. A storage facility who accepts goods under this

93 section is liable for any loss or injury to the goods caused by his or her failure to exercise such
94 care in regard to them as a reasonably careful person would exercise under like circumstances
95 but unless otherwise agreed or provided in this section, the storage facility is not liable for
96 damages which could not have been avoided by the exercise of such care. No person shall be
97 required to release a storage facility from liability as a condition of release of any stored
98 property.

99 (c) The plaintiff in the summary process action shall pay the costs of removing the
100 property to the place of storage. The plaintiff shall be entitled to reimbursement by the defendant
101 for any costs and fees so advanced.

102 (d) Upon receipt of personal property under this section, a storage facility shall forthwith,
103 but no later than 7 days after the removal of the property from the land or tenements at issue in
104 the summary process action, issue a receipt that complies with the requirements of section 7-202
105 of chapter 106. Such receipt shall contain as additional terms: (1) a statement that the storage
106 facility may sell any property unclaimed after six months and retain that portion of the proceeds
107 necessary to compensate the storage facility for lawful storage fees actually accrued as of the
108 date of the auction, except as provided in this section; (2) a list of the storage facility's storage
109 rates and a statement that such rates may be verified by contacting the commissioner of public
110 safety, as well as the address and telephone number of such agency; (3) a conspicuous statement
111 that the defendant should notify the the storage facility in writing at the business address listed in
112 the notice of any change in the defendant's mailing address; (4) a description of the applicable
113 procedures for reclaiming the stored property, including, but not limited to, a statement that the
114 defendant is entitled to reclaim items of personal or sentimental value but limited auction value
115 once during the period of storage without payment of any fee and that the defendant shall be
116 entitled to purchase individual items at any auction held to enforce the storage facility's lien
117 created under this section and an identification of the publication in which any such auction will
118 be advertised pursuant to subsection (f) of section 7-210 of said chapter 106. A duplicate copy of
119 the warehouse receipt shall be kept on file at the place of storage and the original shall be served
120 by receipted mail or hand delivery to the defendant at his last and best known address. The
121 storage facility shall keep separate the goods covered by each receipt so as to permit at all times
122 identification and delivery of those goods. A storage facility who fails to comply with the
123 requirements of this subsection shall be liable for damages caused by the omission to a person
124 injured thereby.

125 (e) Any storage facility who accepts personal property pursuant to this section shall have
126 a lien thereon for charges for storage, insofar as such charges are imposed in accordance with
127 this section. The lien shall not be enforced by sale or disposal of the property until it has been
128 kept in storage for at least 6 months. Thereafter, the storage facility may enforce the lien in the
129 manner provided for in subsection (2) of section 7-210 of chapter 106, except as otherwise
130 provided in this section. The defendant shall be entitled to postpone the sale or disposal of his
131 property for 3 months upon payment of one half of all storage fees incurred plus costs reasonably

132 incurred in preparation for their sale pursuant to law. The storage facility may satisfy its lien
133 from the proceeds of any sale or disposition under this section but must hold the balance for
134 delivery on the demand of any person to whom it would have been bound to deliver the goods. A
135 storage facility's failure to comply with any of the requirements of this section shall result in the
136 forfeiture of the lien.

137 (f) The defendant may access his stored property once, without charge or payment of
138 storage fees, either to inspect the property or to remove items having primarily personal or
139 sentimental value, or both. Items having primarily personal or sentimental value, shall include
140 but not be limited to photographs, passports, documents, funeral urns, and the like. All personal
141 property stored under this section may be reclaimed at any time upon payment of all storage fees
142 lawfully owed by the defendant. If the property is sold at auction, the defendant shall be entitled
143 to purchase the property in bloc or in parcels, regardless of the terms of the public sale. The
144 failure of any third party to pay monies owed by him to the storage facility shall not affect the
145 rights of the property owner to reclaim property under this subsection.

146 (g) A storage facility who violates this section shall pay a civil penalty of not more than
147 \$5,000, in an amount to be determined by the commissioner of public safety after notice and an
148 opportunity for an adjudicatory hearing under chapter 30A. The commissioner or his or her
149 designee may at any time conduct an inspection of a storage facility storing goods under this
150 section for the purpose of assessing compliance with applicable health and safety codes and the
151 requirements of this section. The commissioner may reject the rates filed by a storage facility for
152 storage pursuant to this section if the commissioner determines that such rates are not
153 commercially reasonable or otherwise violate this section. The failure of the commissioner to
154 reject a storage facility's rates shall not create a presumption that such rates are commercially
155 reasonable for purposes of liability under chapter 93A or this section.

156 (h) Notwithstanding any civil penalty imposed pursuant to subsection (g), the defendant
157 may petition the court in which the summary process action was heard for damages or injunctive
158 relief in connection with any violation of this section. A violation of this section shall also be a
159 violation of section 2 of chapter 93A.