

**HOUSE . . . . . No. 1242**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the Year Two Thousand Nine**  
\_\_\_\_\_

An Act to prevent homelessness by removing barriers to subsidized housing..

*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 121B of the General Laws is hereby amended by inserting after  
2 section 32F the following new section:-

3 Section 32G. (a) For the purpose of this section, “assisted units in affordable housing  
4 developments” shall include those rental housing units under the oversight of the Massachusetts  
5 Housing Finance Agency and/or the United States Department of Housing and Urban  
6 Development, targeted to persons of extremely low, very low, and low-incomes, where subsidy  
7 is provided to insure that such tenants do not pay more than forty percent of income for rent.

8 (b)(1) No applicant for federal or state public housing, for federally or state-funded rental  
9 assistance, or for assisted units in affordable housing developments operated in the  
10 Commonwealth shall be disqualified due to lack of credit history or based on his or her utility  
11 payment history; however, if the applicant will be required to pay for utilities, the housing  
12 authority, public housing agency, or owner of the affordable housing development may require  
13 that the applicant demonstrate an ability to establish utility services.

14           (2) In considering an application for federal or state public housing, for federally or state-  
15 funded rental assistance, or for assisted units in affordable housing developments in the  
16 Commonwealth, a housing authority, public housing agency, or owner or manager of an  
17 affordable housing development may only consider an applicant's credit history in order to  
18 determine an applicant's ability to pay rent and only when sufficient rental history is not  
19 available. A negative credit history shall not be used to deny an applicant who otherwise has had  
20 a positive history of payment of rent. Moreover, where an applicant has a questionable or  
21 negative history of non-payment of rent, or bad credit where there is no rental history, such as  
22 may otherwise lead to disqualification, the housing authority, public housing agency, or owner of  
23 an affordable housing development shall consider mitigating circumstances, including but not  
24 limited to: (i) the availability of vendor payments under section 26 of chapter 18 of the General  
25 Laws, or representative payee, electronic fund transfer, or other reliable third-party written  
26 payment arrangements; (ii) evidence that payment or poor credit problems were the result of a  
27 disability or medical hardship and are unlikely to recur in housing where rent is based on  
28 income; (iii) evidence that payment or poor credit problems were the result of an excessive rent  
29 or shelter cost burden and are unlikely to recur in housing where rent is based on income; or (iv)  
30 evidence that payment or poor credit were the result of other circumstances that no longer exist  
31 (for example, debt incurred by an individual who will no longer be a part of the household) and  
32 there is reason to believe that the applicant will now pay the rent promptly and in full.

33           (3) If an applicant owes a debt to a housing authority, public housing agency, or owner of  
34 an affordable housing development such that the application would otherwise be denied or the  
35 applicant would otherwise be denied the ability to apply, and such debt is not unduly excessive,  
36 the applicant shall be given the opportunity to enter into a repayment plan which is reasonable in

37 relationship to the applicant's income and circumstances and so long as the applicant is honoring  
38 such payment plan, the application shall processed without regard to such debt. If the debt is not  
39 satisfied prior to placement or issuance of subsidy, but the housing authority, public housing  
40 agency, or owner or manager of the affordable housing development finds that the applicant is  
41 otherwise qualified and the debt is owed to the entity to which the application has been made, the  
42 applicant shall be admitted conditioned on the entry into acceptable payment arrangements  
43 which may operate as an additional condition of the tenancy or subsidy. The department of  
44 housing and community development, in consultation with other departments involved in the  
45 Commonwealth's continuum of care process, shall establish regulations as to what would  
46 constitute an unduly excessive debt or reasonable repayment arrangements.

47 (c) Housing authorities and public housing agencies or their subcontractors who are  
48 administering federal or state public housing or rental assistance programs, and owners or  
49 managers of affordable housing developments shall offer electronic fund transfer arrangements  
50 to tenants and participants in such programs as a means of ensuring direct and timely payment of  
51 rent and satisfaction of debts. Such arrangements shall be available to tenants and participants at  
52 no cost and on a voluntary basis. Similar arrangements shall also be offered to otherwise  
53 qualified applicants who owe debts to housing authorities or public housing agencies or  
54 affordable housing developments that otherwise would be a barrier to acceptance into such  
55 public housing, rental assistance, or affordable housing programs provided that the applicants  
56 enters into a repayment arrangement which is reasonable in light of the income and  
57 circumstances of the applicant. Late payment penalties under section 32 of chapter 121B of the  
58 General Laws and costs under section 11 of chapter 186 of the General Laws, if applicable, shall

59 be waived by the Commonwealth for any tenants or participants participating in such  
60 arrangements.

61 (d) Housing authorities and public housing agencies who administer state or federal  
62 public housing or rental assistance programs and owners or managers of affordable housing  
63 developments shall permit tenants or participants in such programs to designate, at the inception  
64 of their tenancy or subsidy, or at any point thereafter, a third party who shall receive a copy of  
65 any notice provided to the tenant or participant by the housing authority, housing subsidy  
66 provider, or owner of an affordable housing development, including any notice reflecting an  
67 intention to terminate the tenant's tenancy or participation in a subsidy program. Such third  
68 parties may include a friend, family member, a caseworker, or such other person at the tenant  
69 may designate. Such designation may include authorization for release of information. Both the  
70 designation for third party notice and any authorization for release of information may be  
71 revoked by the tenant or participant at any time. In any case in which such designation and  
72 release of information is in effect, and an adverse action with respect to the tenancy or  
73 participation is under consideration, the parties shall, upon the request of the tenant or the third  
74 party, confer regarding any steps that might be taken to preserve the tenancy or subsidy.

75 SECTION 2. Section 3 of chapter 23B of the General Laws is hereby amended by adding  
76 to Subsection (v) the following new paragraph:-

77 Such qualified allocation plan shall give preference for assisted units in affordable rental  
78 housing to certain applicants who are homeless or at imminent risk of homelessness. Such  
79 preference shall apply to, but need not be limited to, victims of domestic violence, dating  
80 violence, or stalking who have been displaced or are at imminent risk of harm or displacement as

81 a result of such violence, persons with medical emergencies or conditions who cannot be  
82 accommodated in their existing housing or for whom lack of suitable housing is a significant  
83 impediment to treatment or recovery, those who have been displaced by or are facing  
84 displacement by court-ordered eviction without fault or for nonpayment of rent where the  
85 tenant's rent and shelter cost burden exceeds fifty percent of adjusted income and where the  
86 nonpayment stems from changes in circumstances which were beyond the tenant's ability to  
87 prevent or control, such as departure of a household member, job loss or reduction of income, or  
88 illness or high medical costs. For the purpose of this section, the term 'homeless' shall include  
89 those in emergency shelter, those living on the street, in cars, or in places not suitable for human  
90 habitation, those in transitional housing, and those who are receiving temporary rental subsidies.  
91 For purposes of this paragraph, assisted units in affordable rental housing shall include any  
92 federally or state assisted public housing units, units receiving tenant-based or project-based  
93 Section 8 assistance, or other state or federal rental assistance targeted to persons of extremely  
94 low, very low, or low-income, and intended to insure that tenants do not pay more than forty  
95 percent of income for rent. Any such plan and preferences shall be consistent with any  
96 applicable federal or state requirements for the program, as well as with local consolidated and  
97 continuum of care plans, to the extent applicable. The department of housing and community  
98 development, in consultation with other departments involved in the Commonwealth's  
99 continuum of care process, shall establish regulations regarding this provision.

100 SECTION 3. Section 32 of chapter 121B of the General Laws, as appearing in the 2006  
101 Official Edition, is hereby amended by inserting after "(3)" in line 137 the following:-

102 to persons who are homeless or facing imminent homelessness, as provided in subsection  
103 (v) of section 3 of chapter 23 B of the General Laws; and (4)

104 SECTION 4. Said section 32 of chapter 121B is hereby further amended by inserting,  
105 after the word “regulations” in line 137 the following new sentence:-

106 Such preferences shall also be applied to federally assisted public housing except to the  
107 extent inconsistent with federal law.

108 SECTION 5. Said section 32 of chapter 121B is hereby further amended by adding after  
109 the words “the following” in line 268 the following new words: -

110 provided that only conduct that occurred within a reasonable period of time prior to  
111 admission shall be disqualifying.

112 SECTION 6. Said section 32 of chapter 121B is hereby further amended in the eleventh  
113 paragraph by striking out subsection (e) and inserting in place thereof the following: -

114 (e) The applicant or any household member who will be assuming part of the rent  
115 obligations has a history of non-payment of rent and such non-payment, if repeated by a tenant in  
116 public housing, would cause monetary loss; provided, however, that if the failure to pay rent was  
117 related to a shelter cost burden exceeding fifty percent of adjusted income or resulted from a  
118 change in circumstances which was beyond the tenant’s ability to prevent or control, such as  
119 departure of a household member, job loss or reduction of income, or illness or high medical  
120 costs, or if due to safeguards that can be put in place it is likely that future rent will be paid in  
121 full and on time, such persons will not be denied on this basis.

122 SECTION 7. Said section 32 of chapter 121B is hereby further amended by adding at the  
123 end of the twelfth paragraph the following new sentence: -

124 In all cases, housing authorities shall also insure that no victim of domestic violence,  
125 dating violence, stalking, or sexual assault, or other victim or witness to violent or hate crime is  
126 denied admission to or priority for its housing programs because of that status, and that screening  
127 is done in a manner which protects such victims from safety risks (including the danger of  
128 reprisal by the perpetrator of violence or of the perpetrator being able to determine the victim's  
129 location).

130 SECTION 8. Section 44 of chapter 121B of the General Laws, as appearing in the 2006  
131 Official Edition, is hereby amended by striking out the first paragraph and inserting in place  
132 thereof the following: -

133 The requirements with respect to rentals and tenant selection for low-rent housing  
134 projects shall apply to units leased by a housing authority under the rental assistance program,  
135 including but not limited to any preference for certain persons who are homeless or facing  
136 imminent homelessness, as provided in subsection (v) of section 3 of chapter 23 B of the General  
137 Laws. These same preference requirements shall apply in the case of any project financially  
138 assisted by the federal government to the extent not inconsistent with federal law. A housing  
139 authority shall release and assign its rights under any lease to the tenant then occupying a  
140 dwelling unit or such other housing units subject to regulations promulgated by the department  
141 of community affairs not inconsistent with the standards required for dwelling units under the  
142 rental assistance program provided the tenant so requests and provided the tenant demonstrates  
143 financial ability to pay the full rent called for under the lease. Payments to the owner of a  
144 dwelling unit or said other housing unit leased under the rental assistance program shall be made  
145 in the manner determined by the housing authority and agreed to by said owner. Amounts paid  
146 on behalf of tenant families under the rental assistance program shall not be considered in

147 determining the amount of welfare or other public assistance payments to which they may be  
148 entitled.

149 SECTION 9. Section 7 of chapter 708 of the Acts of 1966, as amended, is hereby  
150 stricken and the following is substituted:-

151 Prior to making a loan commitment under this act, the MHFA shall approve a tenant  
152 selection plan submitted by the applicant for such a loan. The MHFA may issue directives from  
153 time to time governing the terms of such tenant selection plans, consistent with regulations  
154 issued by the department of housing and community development under subsection (v) of section  
155 3 of chapter 23B of the General Laws and section 32 of chapter 121B of the General Laws. Such  
156 plans shall include criteria for tenant selection which establish income limits for eligible tenants  
157 which may vary with the size and circumstances of the persons or family and the funding  
158 sources. Tenant selection plans shall provide that as between applicants equally in need and  
159 eligible for occupancy of the unit, preference shall be given to persons displaced by public action  
160 or natural disaster and to other persons who are homeless or facing imminent homelessness  
161 pursuant to such regulations as are issued by the department of housing and community  
162 development. Tenant selection plans shall also provide with respects to apartment units  
163 designated for rent at the adjusted rental that the housing authority in the city or town in which  
164 the project is located, or such other agency as the department of housing and community  
165 development may from time to time designate, shall have the rights to designate tenants, who are  
166 otherwise eligible, for such units as they become available, either in the initial renting of the  
167 projects or as vacancies thereafter occur.