SENATE DOCKET, NO. FILED ON: 7/30/2012

SENATE . . . . . No. 2402

The Commonwealth of Massachusetts

PRESENTED BY:

Ways and Means (S)

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 housing rights for victims of domestic violence, rape, sexual assault and stalking.

PETITION OF:

NAME:	DISTRICT/ADDRESS:

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The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to housing rights for victims of domestic violence, rape, sexual assault and stalking.

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

SECTION 1. Chapter 186 of the General Laws is hereby amended by adding the following 7 sections:-

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

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

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

(i) attempting to cause or causing physical harm;

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

(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.