

# SENATE . . . . . No. 586

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## 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 adoption 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>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>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</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>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Patricia D. Jehlen</i>	

# SENATE . . . . . No. 586

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 586) of Cynthia S. Creem, Ruth B. Balser, Carlos Henriquez, Linda Dorcena Forry and other members of the General Court for legislation relative to housing rights for victims of domestic violence. Housing.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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

2   Official Edition is hereby amended by adding the following section;-

3                   Section 23. (a) For the purposes of this section the following words shall have

4   the following meanings:-

5                   “Actual and imminent threat”, a physical danger that is real, would occur

6   within an 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

8   occupancy for the premises with a tenant and who occupies the premises.

9                   "Domestic violence", the same meaning as “abuse” in section 1 of chapter

10   209A.

“Housing subsidy provider”, a local housing authority, agency, or other entity providing or administering a federal or state rental subsidy within the Commonwealth in accordance with applicable law.

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

“Owner”, the same meaning as “owner” as set forth at 105 C.M.R. 410.020.

“Qualified third party”, a police officer or law enforcement professional including but not limited to a district attorney, a victim witness advocate from a district attorney’s office, probation or parole officer; an employee of Victims Services Unit of the Department of Criminal Justice Information Services; an Application Assistant certified by the Secretary of State for the Address Confidentiality Project pursuant to section 2 of Chapter 9A of the General Laws; a licensed medical care provider; an employee of the Department of Children and Families or the Department of Transitional Assistance who is charged with providing direct service to clients, or is a manager, or is designated as a domestic violence or abuse advocate; a member of the clergy; a licensed social worker; a licensed mental health professional; a sexual assault counselor as defined in section 20J of chapter 233; or a domestic violence victims’ counselor as defined in section 20K of said chapter 233 .

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

vacated the premises without notice; or (b) either the effective date of the tenant or co-tenant's notice to vacate or the actual date that the tenant or co-tenant has vacated after providing such notice, whichever is later, if the tenant or co-tenant has not yet vacated the premises.

"Rape", as set forth in sections 22, 22A, 23, 24 or 24B of chapter 265 of the General Laws or sections 2, 3 or 17 of chapter 272 of the General Laws.

"Sexual assault", as set forth in sections 13B, 13F, 13H or 13K of chapter 265 of the General Laws or section 35A of chapter 272 of the General Laws.

"Stalking", as set forth in sections 43 or 43A chapter 265 of the General Laws.

"Tenant", a person who has entered into a lease or rental agreement with the owner (whether oral or written) or that of a tenant at sufferance who holds over after termination of tenancy or expiration of a lease.

"Tenant screening service provider", a business that for a fee collects, maintains, and disseminates to owners data on applicants for housing.

(b) (1) A tenant or co-tenant may terminate a rental agreement or tenancy and quit the premises upon written notification to the owner that a member of the household is a victim of domestic violence, rape, sexual assault or stalking, provided such written notification occurs within three months of the most recent acts or events or circumstances that gave rise to the domestic violence, rape, sexual assault or stalking; or provided a member of the tenant's household has an ongoing risk of domestic violence, rape, sexual assault or stalking due to such violence in the past. An owner shall have the right to request proof of the status as a victim of

domestic violence rape, sexual assault or stalking including the name of the perpetrator, if known, as provided in subsection (c).

(2) A tenant or co-tenant who terminates a rental agreement or tenancy pursuant to this subsection shall quit the premises within three months of the written notification to the owner, along with any household member who is not or was not the perpetrator of the domestic violence, rape, sexual assault or stalking. If the tenant or co-tenant fails to quit the premises within three months, the notice to terminate the rental agreement or tenancy is void.

(3) A tenant or co-tenant protected under this subsection shall be discharged from liability for rent or use and occupancy for the longer of any period following thirty days or one full rental period after the quitting date to the extent that a rental agreement and applicable law may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall receive a full and specific statement of the basis for retaining any of the security deposit together with any refund due in compliance with section 15B of chapter one hundred and eighty-six of the General Laws.

(4) Any other tenant or co-tenant who is a party to the rental agreement shall not be released from such tenant's or co-tenant's obligations under the rental agreement or other obligations under Chapter 186. If the tenant or co-tenant vacates but leaves belongings and does not indicate that they can be treated as abandoned, responsibility for such belongings and for use and occupancy until such belongings are disposed of shall be determined in accordance with applicable law. If the tenant or co-tenant vacates but there are remaining

persons in the premises other than another tenant or co-tenant, nothing in this provision shall affect the owner's rights and obligations with regard to such other persons. A landlord who in good faith initiates an action against remaining tenant, co-tenant, or household member, or a housing subsidy provider who terminates or denies a rental subsidy to a remaining co-tenant or household member, or takes any other action pursuant to this chapter, shall not be subject to a claim of retaliation or any other claim pursuant to this chapter.

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

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

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

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

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

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

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

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

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

(4) Nothing in this subsection shall be construed to limit any otherwise available authority of an owner to evict a tenant, or of a housing subsidy provider to deny or terminate rental assistance, for any violation of a lease or any other subsidy requirements not premised on the act or acts of violence in question against the tenant, co-tenant or a member of the tenant's household, provided that the owner or provider does not subject an individual who is or has been a victim of domestic violence, rape, sexual assault or stalking to a more demanding standard than other tenants in determining whether to evict or to deny or terminate assistance.

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

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

(7) Neither an owner or housing subsidy provider shall inquire or cause a written or oral inquiry or record to be made concerning the status of an applicant or a member of the applicant's household as a victim of domestic violence, rape, sexual assault or



139 stalking or history of such status, unless an applicant: (i) seeks a priority or preference  
140 from an owner or housing subsidy provider based upon such status;

141 (ii) asks that the owner or housing subsidy provider not  
142 contact certain past references or make certain inquiries that would normally be made regarding  
143 past history based on such status and the safety risk that may be created by such contact for the  
144 applicant or a member of the applicant's household; or

145 (iii) claims that there are mitigating circumstances  
146 regarding negative past history which are related to such status.

147 In such cases as described in clauses (e)(7)(i)-(iii) above, the owner or housing subsidy  
148 provider may request documentation of the domestic violence, rape, sexual assault or stalking,  
149 and may ask for alternative forms of verification to establish suitability for tenancy which would  
150 not put the applicant or a member of the applicant's household at risk.

151 (8) (4) Neither a tenant screening service provider, an owner nor a  
152 housing subsidy provider may include information in a written or oral report to a prospective  
153 owner or housing subsidy provider indicating that the subject of the report is a victim of  
154 domestic violence, rape, sexual assault or stalking, or that the subject of the report has terminated  
155 a rental agreement under subsection (b) except as may otherwise be required by law, by court  
156 order, by regulatory authority, or by governmental audit requirements. Nothing in this provision,  
157 however, shall bar an applicant from authorizing such a disclosure to overcome negative history,  
158 to confirm status as may be necessary to establish a priority or preference for housing, or to  
159 correct inaccurate information in a report.

(f) (1) A tenant or co-tenant who is or has been a victim of domestic violence, rape, sexual assault or stalking may bring a civil action against an owner for violation of subsection (e) above or assert a defense based on a violation of subsection (e) above in a civil action filed by an owner. There shall be a rebuttable presumption that domestic violence, rape, sexual assault or stalking that occurred more than six months before the commencement of the action or defense brought under this section is not subject to the protections provided by subsection (e) above.

(2) An applicant who is or has been a victim of domestic violence, rape, sexual assault or stalking may bring a civil action against a subsidy provider for violation of subsection (e) above where there exists no pre-existing statutory remedy. Such action must be brought no later than 90 days after the subsidy provider has denied or terminated the subsidy or made an inquiry into the status of an applicant or the status of a member of the applicant's household as a victim of domestic violence, rape, sexual assault or stalking, or history of such status, except as provided in subsections (d) and (e).

(3) Nothing in this section shall interfere with any rights or remedies, not proscribed herein and available to an owner or housing subsidy provider under existing law, to make appropriate inquiries from applicants, enforce the rental agreement, exercise appropriate discretion regarding the housing subsidy, protect other persons lawfully on the premises or protect the premises from physical damage, including but not limited to rights for appropriate injunctive relief.

(4) The subject of a report issued in violation of section (e) (8) above may bring a civil action for damages sustained, costs and reasonable attorney's fees against the tenant screening service provider, owner or housing subsidy provider who issued the report

(g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the tenant's or co-tenant's household, change the locks of the individual dwelling unit in which the tenant, co-tenant, or member of the tenant household lives if the tenant, co-tenant, or member of the household reasonably believes that he or she or a member of the household is under an imminent or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises. The owner shall have the right to request, in good faith, evidence to support a claim of domestic violence, rape, sexual assault or stalking.

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

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

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

(5) If an owner fails to change the locks under this section within two business days, the tenant, co-tenant or member of the tenant household may change the locks without the owner's permission. If the rental agreement requires that the owner retain a key to the leased residential premises and where the tenant, co-tenant or member of the household changes the locks, the tenant, co-tenant or member of the household shall make a good faith effort to provide a key to the new locks to the owner within two business days of the locks being changed. If a tenant, co-tenant or member of the household changes the locks without the owner's permission, the tenant, co-tenant or member of the household shall do so in a workmanlike manner with locks of similar or better quality than the original locks. An owner may replace a lock installed by the tenant, co-tenant, or member of the tenant household or seek reimbursement for additional costs if the owner believes that the locks were not of proper quality or were not installed properly.

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

(7) An owner who takes action to prevent the tenant, co-tenant or member of the tenant household who has complied with paragraph (1) from changing the locks, or any owner who changes the locks and does not make a good faith effort to provide a key to the tenant, co-tenant or member of the household requesting the lock change as provided in paragraph (3), shall be liable for actual and consequential damages or three months' rent,

whichever is greater, and the costs of the action including reasonable attorneys' fees, all of which may be applied in setoff or recoupment against any claim for rent owed or owing for use and occupancy. Damages shall not be imposed if the court determines that the owner acted in good faith.

(8) The superior court, housing court, district court and Boston municipal court shall have jurisdiction in equity to restrain violations of this section. Section 18 of this chapter and section 2A of chapter 239 shall apply to an act taken in reprisal against a person for requesting the locks be changed in accordance with this subsection.

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

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

(11) An owner complying with this section or with the requirements of an order under chapter 209A of the General Laws or other order, shall be relieved of any liability to the vacated tenant, co-tenant or member of the tenant's household, or to any other third party on account of the owner's good faith compliance with the court order or the owner's

good faith changing of the locks as provided in this section. Damages shall not be imposed if the court determines that the matter was one of a good faith dispute

SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008 Official Edition is hereby amended by inserting after the words, “eighty-three A”, in line 14, the following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or seeking relief under section 23 of chapter 186, or reporting to any police officer or law enforcement professional any incident of domestic violence, rape, sexual assault or stalking against the tenant, co-tenant or member of the household, or reporting to any police officer or law enforcement professional the violation of an order issued under said section 3 of said chapter 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the General Laws directed against the tenant, co-tenant or member of the household.