

SENATE No. 2918

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, October 5, 2020.

The committee on Housing, to whom was referred the petition (accompanied by bill, Senate, No. 2831) (subject to Joint Rule 12) of Patricia D. Jehlen, Sal N. DiDomenico, Jason M. Lewis, James B. Eldridge and other members of the General Court for legislation to guarantee housing stability during the COVID-19 emergency and recovery,- reports the accompanying bill (Senate, No. 2918). (Representatives DeCoste of Norwell and Crocker of Barnstable dissenting).

For the committee,
Brendan P. Crighton

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An Act to guarantee housing stability during the COVID-19 emergency and recovery.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith ongoing stabilization of the housing market for renters and homeowners during the COVID-19 emergency and recovery, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

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 6 of chapter 62 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by adding the following subsection:-

3 (w)(1) A taxpayer engaged in the business of renting residential dwelling units in the
4 commonwealth shall be allowed a credit against the taxes imposed by this chapter to the extent
5 provided for in this subsection for rental losses during the state of emergency concerning the
6 novel coronavirus disease outbreak declared by the governor on March 10, 2020.

7 (2) Except as otherwise provided in this subsection the amount of credit shall be the
8 difference between the cumulative amount of rents owed on a monthly basis pursuant to the
9 rental agreement covering each occupied dwelling unit minus the tenant's rental obligation, for

10 those months occurring during the state of emergency concerning the novel coronavirus disease
11 outbreak declared by the governor on March 10, 2020.

12 (3) The secretary of housing and economic development, in consultation with the
13 commissioner of revenue, shall promulgate regulations for an application process for the credit
14 and shall receive applications for the credit. The application for the credit by the owner or
15 owners of the rental property shall include the amount of the credit requested, which shall be
16 based upon the cumulative monthly rent owed by tenants pursuant to the rental agreement
17 covering each occupied dwelling unit during each month of the state of emergency concerning
18 the novel coronavirus disease outbreak declared by the governor on March 10, 2020, and the
19 actual monthly rent collected during each respective month of the state of emergency, to be
20 allocated by the secretary. The application shall also include the tenant's name and mailing
21 address for each dwelling unit for which credit is sought. The applicant shall have the burden of
22 providing sufficient proof to the secretary for review and determination. The application shall
23 contain sufficient information to identify each such dwelling unit and the taxpayer or taxpayers
24 with respect to each such dwelling unit, and such other information as the secretary, in
25 consultation with the commissioner, shall prescribe. The secretary shall develop procedures for
26 verifying the tenant's rental obligation for the tax credit benefit period.

27 (4) While the application is pending, the applicant shall not issue a notice to quit or
28 commence a summary process action to recover possession of the dwelling unit for the non-
29 payment of rent, which is the subject of the application.

30 (5) Subject to the availability of credits, the amount of the credit available for each
31 dwelling unit shall be the actual difference between the monthly lease amounts for occupied

32 units minus the tenant's rental obligation and the actual amount of monthly rent collected, as
33 determined by the commissioner. Upon approval of the credit to an owner, the owner shall
34 release the occupants of the dwelling unit from any liability for the non-payment of rent that is
35 the subject of the credit.

36 (6) Owners shall not be eligible for credit: (i) if such owner has received property tax
37 relief, rental voucher assistance or any other federal, state or locally funded benefit intended to
38 pay, abate or compensate the owner for unpaid rent: (ii) if the owner has commenced a
39 proceeding to recover possession of the property for the non-payment of rent, which is the
40 subject of the application; or (iii) another owner, co-owner or applicant has applied for tax
41 credits for the unpaid rent of the same units.

42 (7) The secretary shall prioritize credit applications for dwelling units whose rent is at or
43 below the fair market rent as most recently calculated by the United States Department of
44 Housing and Urban Development for the area in which the dwelling unit is located.

45 (8) If the amount of the credit allowed under this subsection for any taxable year exceeds
46 the taxpayer's tax liability for that tax year the taxpayer may carry forward and apply in any
47 subsequent taxable year, the portion, as reduced from year to year of those credits, which exceed
48 the tax for the taxable year.

49 (9) This section shall apply to taxable years beginning on or after January 1, 2020.

50 SECTION 2. Chapter 63 of the General Laws, as so appearing, is hereby amended by
51 inserting after section 38HH the following section:-

52 Section 38II. (a) A taxpayer engaged in the business of renting residential dwelling units
53 in the commonwealth shall be allowed a credit against the taxes imposed by this chapter to the
54 extent provided for in this subsection for rental losses during the state of emergency concerning
55 the novel coronavirus disease outbreak declared by the governor on March 10, 2020.

56 (b) Except as otherwise provided in this subsection the amount of credit shall be the
57 difference between the cumulative amount of rents owed on a monthly basis pursuant to the
58 rental agreement covering each occupied dwelling unit minus the tenant's rental obligation, for
59 those months occurring during the state of emergency concerning the novel coronavirus disease
60 outbreak declared by the governor on March 10, 2020.

61 (c) The secretary of housing and economic development, in consultation with the
62 commissioner of revenue, shall promulgate regulations for an application process for the credit
63 and shall receive applications for the credit. The application for the credit by the owner or
64 owners of the rental property shall include the amount of the credit requested, which shall be
65 based upon the cumulative monthly rent owed by tenants pursuant to the rental agreement
66 covering each occupied dwelling unit during each month of the state of emergency concerning
67 the novel coronavirus disease outbreak declared by the governor on March 10, 2020, and the
68 actual monthly rent collected during each respective month of the state of emergency, to be
69 allocated by the secretary. The application shall also include the tenant's name and mailing
70 address for each dwelling unit for which credit is sought. The applicant shall have the burden of
71 providing sufficient proof to the secretary for review and determination. The application shall
72 contain sufficient information to identify each such dwelling unit and the taxpayer or taxpayers
73 with respect to each such dwelling unit, and such other information as the secretary, in

74 consultation with the commissioner, shall prescribe. The secretary shall develop procedures for
75 verifying the tenant's rental obligation for the tax credit benefit period.

76 (d) While the application is pending, the applicant shall not issue a notice to quit or
77 commence a summary process action to recover possession of the dwelling unit for the non-
78 payment of rent, which is the subject of the application.

79 (e) Subject to the availability of credits, the amount of the credit available for each
80 dwelling unit shall be the actual difference between the monthly lease amounts for occupied
81 units minus the tenant's rental obligation and the actual amount of monthly rent collected, as
82 determined by the commissioner. Upon approval of the credit to an owner, the owner shall
83 release the occupants of the dwelling unit from any liability for the non-payment of rent that is
84 the subject of the credit.

85 (f) Owners shall not be eligible for credit: (i) if such owner has received property tax
86 relief, rental voucher assistance or any other federal, state or locally funded benefit intended to
87 pay, abate or compensate the owner for unpaid rent: (ii) if the owner has commenced a
88 proceeding to recover possession of the property for the non-payment of rent, which is the
89 subject of the application; or (iii) another owner, co-owner or applicant has applied for tax
90 credits for the unpaid rent of the same units.

91 (g) The secretary shall prioritize credit applications for dwelling units whose rent is at or
92 below the fair market rent as most recently calculated by the United States Department of
93 Housing and Urban Development for the area in which the dwelling unit is located.

94 (h) If the amount of the credit allowed under this subsection for any taxable year exceeds
95 the taxpayer's tax liability for that tax year the taxpayer may carry forward and apply in any

96 subsequent taxable year, the portion, as reduced from year to year of those credits, which exceed
97 the tax for the taxable year.

98 (i) This section shall apply to taxable years beginning on or after January 1, 2020.

99 SECTION 3. Chapter 186 of the General Laws is hereby amended by adding the
100 following section:-

101 Section 31. (a) For the purposes of this section, the words “just cause” shall mean that:
102 (1) the tenant has failed to pay the rent; (2) the tenant has materially violated an obligation or
103 covenant of the tenancy or occupancy, except the obligation to surrender possession upon proper
104 notice, and has failed to cure such violation within 30 days after having received written notice
105 thereof from the owner; (3) the tenant is committing a nuisance in the unit, is permitting a
106 nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial
107 interference with the quiet enjoyment of other occupants; (4) the tenant is using or permitting the
108 unit to be used for any illegal purpose; or (5) the owner intends to make bona fide personal use
109 of the unit within 180 days, including use of the unit as the owner’s primary residence or the use
110 of the unit by a member of the owner’s family as a primary residence.

111 (b) A city or town that adopts this section in the manner provided in section 4 of chapter
112 4 may require that any summary process action for a residential dwelling unit, except an owner-
113 occupied dwelling with 4 or fewer units in said city or town, is for just cause.

114 SECTION 4. Item 7004-9316 of section 2 of chapter 41 of the acts of 2019 is hereby
115 amended by adding the following words:- ; provided further, that households with a median
116 income of no more than 100 per cent of median income and are at risk of becoming homeless
117 due to a significant reduction of income or increased expenses due to the inability to pay rent for

118 a residential dwelling unit caused by the outbreak of the 2019 novel coronavirus, also known as
119 COVID-19, or the effects of the governor's March 10, 2020 emergency declaration shall be
120 eligible for rental assistance pursuant to this item and that such assistance shall be remitted by
121 voucher to the renter's landlord.

122 SECTION 5. Chapter 65 of the acts of 2020 is hereby amended by inserting after section
123 3 the following 2 sections:-

124 (a)SECTION 3A. Notwithstanding any general or special law to the contrary, no person
125 shall: (1) commence or attempt to commence a non-essential eviction or (2) charge or collect
126 rent or use and occupancy payments in excess of the agreed-upon amount as of March 10, 2020,
127 except that housing authorities and landlords with tenants whose rent payments are partially or
128 fully subsidized shall be exempt from clause (2). Any waiver of this section included in a lease
129 or other contract shall be against public policy and shall be void. This section shall not apply to
130 owner-occupied buildings composed of 4 or fewer rental units.

131 SECTION 3B. Notwithstanding any general or special law, rule, regulation or order to
132 the contrary, no court having jurisdiction of a summary process action or any other trial court
133 department shall make public or publish, in any manner, the name or other identifying
134 information, including, but not limited to, the person's address, of any person named as a party to
135 a summary process or civil action where the plaintiff seeks non-payment of rent from a period
136 beginning with the COVID-19 emergency and for 1 year after the termination of the state of
137 emergency; provided, further, that such information shall be impounded and shall remain
138 permanently unavailable for public inspection or publication, except to the parties to the action
139 or their attorney, or as ordered by the court for good cause shown.

140 SECTION 6. Section 5 of said chapter 65 is hereby amended by striking out subsection
141 (b) and inserting in place thereof the following subsection:-

142 (b) A creditor or mortgagee shall grant forbearance to a mortgagor of a mortgage loan for
143 a residential property as defined in section 35B of said chapter 244 if the mortgagor submits a
144 request to the mortgagor's servicer affirming that the mortgagor has experienced a financial
145 impact from COVID-19. The request may be made in any form, written or oral, and the
146 forbearance shall be granted regardless of the mortgagor's delinquency status. The forbearance
147 shall last 180 days, although at the mortgagor's request, the period of forbearance may begin in
148 an increment shorter than 180 days and then extended at the mortgagor's request. The
149 forbearance shall be extended for an additional 180 days at the mortgagor's request. Fees,
150 penalties or interest beyond the amounts scheduled and calculated as if the mortgagor made all
151 contractual payments on time and in full under the terms of the mortgage contract shall not
152 accrue during the period of forbearance granted under this subsection. A payment subject to the
153 forbearance, including any escrow payments required to be paid in the mortgage contract, shall
154 be added to the end of the term of the loan unless otherwise agreed to by the mortgagor and
155 mortgagee. Nothing in this subsection shall prohibit a mortgagor and mortgagee from entering
156 into an alternative payment agreement for the payments subject to the forbearance. The
157 mortgagee shall not furnish information to a consumer reporting agency related to mortgage
158 payments subject to forbearance pursuant to this act. Nothing in this act shall be interpreted to
159 reduce a mortgagor's rights under the federal Coronavirus Aid, Relief, and Economic Security
160 Act, as applied to federally backed mortgage loans.

161 SECTION 7. Said section 5 of said chapter 65 is hereby further amended by adding the
162 following 2 subsections:-

163 (d) Notwithstanding any general or special law, rule, regulation or order to the contrary, a
164 creditor or mortgagee shall grant forbearance to a mortgage loan for residential property owned
165 by a nonprofit entity or an affiliate or agent of the non-profit entity or a mortgagor, including
166 affiliates and agents, that owns 15 or fewer residential apartments, if the mortgagor submits a
167 request to the mortgagor's servicer affirming that the mortgagor has experienced a financial
168 impact from the COVID-19 emergency. The forbearance shall last 180 days; provided, that at the
169 mortgagor's request, the period of forbearance may begin in an increment shorter than 180 days
170 and then extended at the mortgagor's request, may be extended an additional 180 days at the
171 mortgagor's request, and shall be offered on the same terms and conditions in subsection (b).

172 (e) A mortgagor who has requested and received mortgage forbearance under subsection
173 (b) or (d) shall for each month of the mortgage forbearance period, waive and forever hold
174 tenants harmless from the obligation to pay that month's rent for each rental unit located on the
175 property that is secured by the mortgage and which is occupied by a household who resided
176 lawfully in the unit as of March 10, 2020, except if the mortgagor demonstrates by clear and
177 convincing evidence that the tenant's failure to pay rent did not result from a loss of income or
178 other change in economic circumstances caused directly or indirectly by the COVID-19
179 emergency.

180 SECTION 8. Said chapter 65 is hereby further amended by striking out sections 6 to 8,
181 inclusive, and inserting in place thereof the following 7 sections:-

182 SECTION 5A. The commissioner of banks and the attorney general may develop and
183 promulgate regulations and standardized forms for the written documentation required in section
184 5; provided, however, that the absence of such forms shall not render this act inoperable.

185 SECTION 5B. Notwithstanding any general or special law to the contrary, the housing
186 court department of the trial court shall have exclusive original jurisdiction of all claims for rent
187 or mortgage payments due and payable during the period running from March 10, 2020 until 1
188 year after the COVID-19 emergency declaration has been lifted.

189 SECTION 5C. Violations of this act shall constitute unfair or deceptive acts or practices
190 for the purposes of section 2 of chapter 93A of the General Laws and shall be enforceable by the
191 attorney general as well as by aggrieved tenants, homeowners or other occupants in the same
192 manner and to the same extent as other violations of said chapter 93A. All the remedies of said
193 chapter 93A shall be available for violations of any section of this act.

194 SECTION 6. Section 4 shall expire 120 days after the effective date of this act or 45
195 days after the COVID-19 emergency declaration has been lifted, whichever is sooner; provided,
196 however, that the governor may postpone such expiration in increments of not more than 90
197 days; provided further, that the governor shall not postpone such expiration to later than 45 days
198 after the COVID-19 emergency declaration has been lifted.

199 SECTION 6A. Section 3 and section 3A shall expire 1 year after the COVID-19
200 emergency declaration has been lifted; provided, that any deadline or time period for action that
201 is tolled under subsection (c) of said section 3 shall begin to run upon the expiration of said
202 section 3.

203 SECTION 7. Subsection (a) of section 5 shall expire 1 year after the COVID-19
204 emergency declaration has been lifted.

205 SECTION 8. Notwithstanding any general or special law to the contrary, a creditor or
206 mortgagee shall not be required to grant a forbearance to a mortgagor of a mortgage loan for a

207 residential property under subsection (b) or (d) of section 5 if the mortgagor's request for such
208 forbearance is made after the expiration date in section 7.

209 SECTION 9. (a) There shall be established and set upon the books a COVID-19 Housing
210 Stability and Recovery Fund to be administered by the department of housing and community
211 development, to provide assistance to owners of residential units who were unable to pay
212 housing and housing-related costs for reasons related to the COVID-19 emergency.

213 (b) The Fund shall consist of public and private sources such as revenue from
214 appropriations or other monies authorized by the general court and specifically designated to be
215 credited to the fund, funds from the federal government, and all other sources. Amounts credited
216 to the Fund shall not be subject to further appropriation and any money remaining in the fund at
217 the end of a fiscal year shall not revert to the General Fund.

218 (c) Amounts credited to the fund may be used, without further appropriation to provide
219 grants or loans to landlords of residential dwelling units if: (i) the landlord owns no more than 15
220 residential dwelling units; and (ii) the landlord is able to demonstrate financial hardship due to
221 the deprivation of rental income during the novel coronavirus state of emergency declared by the
222 governor.

223 SECTION 10. (a) There shall be a special legislative commission established pursuant to
224 section 2A of chapter 4 of the General Laws to study and investigate the effects of COVID-19 on
225 housing.

226 (b) The commission shall consist of the following 33 members: the house and senate
227 chairs of the joint committee on housing, who will serve as co-chairs; the chief justice of the
228 housing court or a designee; the chief of the civil rights division of the attorney general's office

229 or a designee; the executive director of the Massachusetts Housing Partnership Fund or a
230 designee; the executive director of Community Economic Development Assistance Corporation
231 or a designee; the executive director of Massachusetts Housing Finance Agency or a designee;
232 the executive director of Citizens' Housing and Planning Association, Inc. or a designee; the
233 executive director of City Life/Vida Urbana or a designee; the executive director of Small
234 Property Owners Association, Inc. or a designee; the executive director of the Mass Alliance of
235 HUD Tenants or a designee; the executive director of Massachusetts Immigrant and Refugee
236 Advocacy Coalition, Inc. or a designee; the executive director of Massachusetts Association of
237 Community Development Corporations or a designee; the executive director of Preservation of
238 Affordable Housing, Inc. or a designee; the executive director of the Joint Center for Housing
239 Studies of Harvard University or a designee; the executive director of the Massachusetts Institute
240 of Technology Center for Real Estate or a designee; the executive director of the Massachusetts
241 Institute of Technology Abdul Latif Jameel Poverty Action Lab or a designee; the executive
242 director of Pine Street Inn, Inc. or a designee; a designee from the Housing Prescription as
243 Health Care Program at Boston Medical Center; 2 directors of local housing authorities to be
244 appointed by the chair, 1 of whom shall be from western Massachusetts and 1 of whom shall be
245 from a gateway municipality; and 12 members to be appointed by the governor, 1 of whom shall
246 be appointed from a list of nominees provided by the Shriver Center on Poverty Law's Racial
247 Justice Institute, 1 of whom shall be appointed from a list of nominees provided by Charles
248 Hamilton Houston Institute for Race and Justice, 1 of whom shall be appointed from a list of
249 nominees provided by the Boston branch of the NAACP, 1 of whom shall be appointed from a
250 list of nominees provided by the Urban League, 1 of whom shall be appointed from a list of
251 nominees from the ACLU Racial Justice Program, 1 of whom shall be an expert in medical and

252 behavioral health appointed from a list of nominees from the Dimock Health Center, 2 of whom
253 shall be representatives of large affordable housing developers, 2 of whom shall be
254 representatives of small financial institutions and 2 of whom shall be representatives of large
255 financial institutions; provided, that the representatives of financial institutions shall include
256 women and people of color in such proportion as these groups exist in the commonwealth's
257 population as periodically determined by the state secretary as the commonwealth's chief census
258 officer.

259 (c) The commission shall investigate and report on the effects of the COVID-19
260 pandemic on housing, including but not limited to: (i) the cost and supply of housing; (ii)
261 housing distress to families, seniors, undocumented immigrants and financially vulnerable
262 populations; (iii) the financial impact on small property owners; (iv) the risks of speculation by
263 large financial institutions and venture capital; (v) the impact on financing of housing
264 maintenance and operations; (vi) the impact on employment in the housing maintenance and
265 operations sectors; (vii) the disparate impact of the COVID-19 pandemic on black, indigenous
266 and people of color in the area of housing stability; and (viii) the health effects of COVID-19-
267 related housing instability.

268 (d) Not later than 3 months after the effective date of this act, the commission shall file a
269 report of its findings and recommendations with the clerks of the house of representatives and
270 the senate.

271 SECTION 11. Section 4 is hereby repealed.

272 SECTION 12. Section 11 shall take effect 90 days after termination of the governor's
273 March 10, 2020 declaration of a state of emergency.