HOUSE DOCKET, NO. 921 FILED ON: 1/19/2011

HOUSE . . . . . No. 386

The Commonwealth of Massachusetts

PRESENTED BY:

Ellen Story and 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:
Ellen Story	*3rd Hampshire*
Cynthia S. Creem	
Aaron Michlewitz	*3rd Suffolk*
John D. Keenan	*7th Essex*
Benjamin Swan	*11th Hampden*
John P. Fresolo	*16th Worcester*
James J. O'Day	*14th Worcester*
Jennifer E. Benson	*37th Middlesex*
Gloria L. Fox	*7th Suffolk*
Timothy J. Toomey, Jr.	*26th Middlesex*
David B. Sullivan	*6th Bristol*
Susan C. Fargo	
Alice K. Wolf	*25th Middlesex*
Frank I. Smizik	*15th Norfolk*
Kay Khan	*11th Middlesex*
Ruth B. Balser	*12th Middlesex*
Elizabeth A. Malia	*11th Suffolk*
Linda Dorcena Forry	*12th Suffolk*

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HOUSE . . . . . No. 386

By Representative Story of Amherst and Senator Creem, a joint petition (accompanied by bill, House, No. 386) of Ellen Story, Cynthia Creem and others relative to housing rights for victims of domestic violence. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2274* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Chapter 186 of the General Laws, as appearing in the 2008 Official Edition is hereby amended by adding the following section;-

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

“Actual and imminent threat”, a physical danger that is real, would occur within an immediate time frame and could result in death or serious bodily harm.

“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 same meaning as “abuse” in section 1 of chapter 209A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67 (4) Any other tenant or co-tenant who is a party to the rental agreement shall not be
68 released from such tenant's or co-tenant's obligations under the rental agreement or other
69 obligations under Chapter 186. If the tenant or co-tenant vacates but leaves belongings and does
70 not indicate that they can be treated as abandoned, responsibility for such belongings and for use
71 and occupancy until such belongings are disposed of shall be determined in accordance with
72 applicable law. If the tenant or co-tenant vacates but there are remaining persons in the premises
73 other than another tenant or co-tenant, nothing in this provision shall affect the owner's rights

74 and obligations with regard to such other persons. A landlord who in good faith initiates an
75 action against remaining tenant, co-tenant, or household member, or a housing subsidy provider
76 who terminates or denies a rental subsidy to a remaining co-tenant or household member, or
77 takes any other action pursuant to this chapter, shall not be subject to a claim of retaliation or any
78 other claim pursuant to this chapter.

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

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

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

89 (3) a written verification from any other qualified third party to whom the tenant, co-
90 tenant or member of her or his household reported the domestic violence, rape, sexual assault, or
91 stalking; provided the verification shall include the name of the organization, agency, clinic or
92 professional service provider and include the date of the domestic violence, rape, sexual assault,
93 or stalking, and the name of the perpetrator if known; and that any adult victim who has the
94 capacity to do so shall provide a statement, under the penalty of perjury, that the incident
95 described in the verification is true and correct.

96 (d) 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 the documentation confidential
98 and shall not provide or allow access to it in any way to any other persons or agencies except
99 with the written authorization of the victim or to the extent required by court order or applicable
100 regulations or governmental audit requirements.

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

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

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

114 (4) Nothing in this subsection shall be construed to limit any otherwise available
115 authority of an owner to evict a tenant, or of a housing subsidy provider to deny or terminate
116 rental assistance, for any violation of a lease or any other subsidy requirements not premised on
117 the act or acts of violence in question against the tenant, co-tenant or a member of the tenant's

118 household, provided that the owner or provider does not subject an individual who is or has been
119 a victim of domestic violence, rape, sexual assault or stalking to a more demanding standard than
120 other tenants in determining whether to evict or to deny or terminate assistance.

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

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

131 (7) Neither an owner or housing subsidy provider shall inquire or cause a written or oral
132 inquiry or record to be made concerning the status of an applicant or a member of the applicant's
133 household as a victim of domestic violence, rape, sexual assault or stalking or history of such
134 status, unless an applicant: (i) seeks a priority or preference from an owner or housing subsidy
135 provider based upon such status;

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

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

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

146 (8) (4) Neither a tenant screening service provider, an owner nor a housing subsidy
147 provider may include information in a written or oral report to a prospective owner or housing
148 subsidy provider indicating that the subject of the report is a victim of domestic violence, rape,
149 sexual assault or stalking, or that the subject of the report has terminated a rental agreement
150 under subsection (b) except as may otherwise be required by law, by court order, by regulatory
151 authority, or by governmental audit requirements. Nothing in this provision, however, shall bar
152 an applicant from authorizing such a disclosure to overcome negative history, to confirm status
153 as may be necessary to establish a priority or preference for housing, or to correct inaccurate
154 information in a report.

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

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

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

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

177 (g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the
178 tenant's or co-tenant's household, change the locks of the individual dwelling unit in which the
179 tenant, co-tenant, or member of the tenant household lives if the tenant, co-tenant, or member of
180 the household reasonably believes that he or she or a member of the household is under an
181 imminent or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises.

182 The owner shall have the right to request, in good faith, evidence to support a claim of domestic
183 violence, rape, sexual assault or stalking.

184 (2) If the threat of domestic violence, rape, sexual assault or stalking is posed by a person
185 who is a tenant, co-tenant, or member of the tenant household, notice to the owner requesting a
186 change of locks shall be accompanied by: (i) a copy of a protective order issued under chapter
187 209A or chapter 258E of the General Laws; or, (ii) a court record indicating which tenant, co-
188 tenant or member of the household is posing the threat of domestic violence, rape, sexual assault
189 or stalking.

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

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

198 (5) If an owner fails to change the locks under this section within two business days, the
199 tenant, co-tenant or member of the tenant household may change the locks without the owner's
200 permission. If the rental agreement requires that the owner retain a key to the leased residential
201 premises and where the tenant, co-tenant or member of the household changes the locks, the
202 tenant, co-tenant or member of the household shall make a good faith effort to provide a key to
203 the new locks to the owner within two business days of the locks being changed. If a tenant, co-

204 tenant or member of the household changes the locks without the owner's permission, the tenant,
205 co-tenant or member of the household shall do so in a workmanlike manner with locks of
206 similar or better quality than the original locks. An owner may replace a lock installed by the
207 tenant, co-tenant, or member of the tenant household or seek reimbursement for additional costs
208 if the owner believes that the locks were not of proper quality or were not installed properly.

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

211 (7) An owner who takes action to prevent the tenant, co-tenant or member of the tenant
212 household who has complied with paragraph (1) from changing the locks, or any owner who
213 changes the locks and does not make a good faith effort to provide a key to the tenant, co-tenant
214 or member of the household requesting the lock change as provided in paragraph (3), shall be
215 liable for actual and consequential damages or three months' rent, whichever is greater, and the
216 costs of the action including reasonable attorneys' fees, all of which may be applied in setoff or
217 recoupment against any claim for rent owed or owing for use and occupancy. Damages shall
218 not be imposed if the court determines that the owner acted in good faith.

219 (8) The superior court, housing court, district court and Boston municipal court shall have
220 jurisdiction in equity to restrain violations of this section. Section 18 of this chapter and section
221 2A of chapter 239 shall apply to an act taken in reprisal against a person for requesting the locks
222 be changed in accordance with this subsection.

223 (9) Notwithstanding the preceding paragraphs, if a court has issued an order under said
224 chapter 209A of the General Laws or any other provision of law, vacating a tenant, co-tenant or
225 member of the tenant household from the dwelling unit, the owner shall not interfere with the

226 order and upon a request to change the locks as described in this section, shall comply with the
227 request

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

231 (11) An owner complying with this section or with the requirements of an order under
232 chapter 209A of the General Laws or other order, shall be relieved of any liability to the vacated
233 tenant, co-tenant or member of the tenant's household, or to any other third party on account of
234 the owner's good faith compliance with the court order or the owner's good faith changing of the
235 locks as provided in this section. Damages shall not be imposed if the court determines that the
236 matter was one of a good faith dispute

237 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008
238 Official Edition is hereby amended by inserting after the words, "eighty-three A", in line 14, the
239 following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant
240 household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or
241 seeking relief under section 23 of chapter 186, or reporting to any police officer or law
242 enforcement professional any incident of domestic violence, rape, sexual assault or stalking
243 against the tenant, co-tenant or member of the household, or reporting to any police officer or
244 law enforcement professional the violation of an order issued under said section 3 of said chapter
245 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in
246 section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the
247 General Laws directed against the tenant, co-tenant or member of the household.