

HOUSE No. 04108

The committee on Housing, reports, on House, No. 386, a Bill relative to housing rights for victims of domestic violence (House, No. 4108). May 21, 2012. Kevin G. Honan, for the committee.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 Official Edition is
- 2 hereby amended by adding the following section;-
- 3 Section 23. (a) For the purposes of this section the following words shall have the following
- 4 meanings:-
- 5 “Actual and imminent threat”, a physical danger that is real, would occur within an immediate
- 6 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 occupancy for the
- 8 premises with a tenant and who occupies the premises.
- 9 "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 or
11 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 authorized
14 occupant of the premises. In the case of an application for housing, such term shall include a
15 proposed household member who would be living with the tenant or co-tenant in the premises.

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

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

28 “Quitting date”, the date of a tenant’s or co-tenant’s surrender of his or her interest in the
29 premises. Such date shall be determined as: (a) the date notice is given to the owner of the intent
30 to abandon the premises and not to return, if the tenant or co-tenant already vacated the premises
31 without notice; or (b) either the effective date of the tenant or co-tenant’s notice to vacate or the

32 actual date that the tenant or co-tenant has vacated after providing such notice, whichever is
33 later, if the tenant or co-tenant has not yet vacated the premises.

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

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

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

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

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

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

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

58 (3) A tenant or co-tenant protected under this subsection shall be discharged from liability for
59 rent or use and occupancy for the longer of any period following thirty days or one full rental
60 period after the quitting date to the extent that a rental agreement and applicable law may
61 otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be
62 entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall
63 receive a full and specific statement of the basis for retaining any of the security deposit together
64 with any refund due in compliance with section 15B of chapter one hundred and eighty-six of the
65 General Laws within thirty (30) days of the conclusion of the tenancy and the delivery of full
66 possession of the leased premises by all occupants to the landlord

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

76 tenant, or household member, or a housing subsidy provider who terminates or denies a rental
77 subsidy to a remaining co-tenant or household member, or takes any other action pursuant to this
78 chapter, shall not be subject to a claim of retaliation or any other claim pursuant to this chapter.

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

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

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

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

95 (d) An owner or housing subsidy provider who obtains written proof of status as a victim of
96 domestic violence, rape, sexual assault or stalking shall keep the documentation confidential and
97 shall not provide or allow access to it in any way to any other persons or agencies except with

98 the written authorization of the victim or to the extent required by court order or applicable
99 regulations or governmental audit requirements.

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

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

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

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

120 (5) Nothing in this subsection shall be construed to limit the authority of an owner to terminate
121 the tenancy of any tenant, or of a housing subsidy provider to deny or terminate rental assistance,
122 if the owner or provider can demonstrate an actual and imminent threat to other tenants or those
123 employed at or providing service to the property, if that tenant's tenancy is not terminated, or if
124 such assistance is not denied or terminated.

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

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

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

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

139 In such cases as described in clauses (e)(7)(i)-(iii) above, the owner or housing subsidy provider
140 may request documentation of the domestic violence, rape, sexual assault or stalking, and may

141 ask for alternative forms of verification to establish suitability for tenancy which would not put
142 the applicant or a member of the applicant's household at risk.

143 (8) (4) Neither a tenant screening service provider, an owner nor a housing subsidy provider may
144 include information in a written or oral report to a prospective owner or housing subsidy
145 provider indicating that the subject of the report is a victim of domestic violence, rape, sexual
146 assault or stalking, or that the subject of the report has terminated a rental agreement under
147 subsection (b) except as may otherwise be required by law, by court order, by regulatory
148 authority, or by governmental audit requirements. Nothing in this provision, however, shall bar
149 an applicant from authorizing such a disclosure to overcome negative history, to confirm status
150 as may be necessary to establish a priority or preference for housing, or to correct inaccurate
151 information in a report.

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

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

163 domestic violence, rape, sexual assault or stalking, or history of such status, except as provided
164 in subsections (d) and (e).

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

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

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

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

185 stalking. In such cases, the owner may change the locks and deny a key to the alleged
186 perpetrator.

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

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

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

206 (6) If the locks are changed pursuant to this section, the tenant shall not voluntarily give the new
207 key to the perpetrator. An owner who refuses to provide a key to any person based on the belief
208 that such person is the perpetrator of alleged domestic violence , shall not be liable for such
209 refusal.

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

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

222 (9) Notwithstanding the preceding paragraphs, if a court has issued an order under said chapter
223 209A of the General Laws or any other provision of law, ordering a tenant, co-tenant or member
224 of the tenant household to vacate the dwelling unit, the owner shall not interfere with the order
225 and upon a request to change the locks as described in this section, shall comply with the request

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

229 (11) An owner complying with this section or with the requirements of an order under chapter
230 209A of the General Laws or other order, shall be relieved of any liability to the vacated tenant,
231 co-tenant or member of the tenant's household, or to any other third party on account of the
232 owner's good faith compliance with the court order or the owner's good faith changing of the
233 locks as provided in this section and not affording a key to the alleged perpetrator. Damages
234 shall not be imposed if the court determines that the matter was one of a good faith dispute
235 between the owner and tenants. (b) Notwithstanding any provisions to the contrary, any owner
236 who demonstrates that their conduct was in good faith, in attempting to comply with the
237 mandates of this Act shall not be liable to any multiple damages or attorney's fees.

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