SENATE DOCKET, NO. FILED ON: 1/12/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Ms. 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 passage of the accompanying bill:

An Act relative to housing rights for victims of domestic violence.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Ms. Creem | First Middlesex and Norfolk |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02574 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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 2006 Official Edition, is hereby amended by adding after section 22 the following new section;-

Section 23. 1. For the purposes of this section the following words shall have the following meanings:
"domestic violence" shall have the same meaning as “abuse” as set forth in section 1 of chapter 209A
“occupant” a person living or sleeping in a dwelling provided that an occupant temporarily absent from the dwelling for safety reasons, shall be considered an occupant.
“owner” shall have the same meaning as “owner” as set forth at 105 C.M.R. 410.036
“rape” shall mean the commission of any act as set forth in section 22, 22A, 23, 24 or 24B of chapter 265 or sections 2, 3 or 17 of chapter 272.
“sexual assault” shall mean the commission of any act as set forth in sections 13B, 13F, 13H of chapter 265 or section 35A of chapter 272.
“stalking” shall mean the commission of any act as set forth in section 43 of chapter 265.
“qualified third party” shall mean a police officer, licensed medical care provider, an employee of a court of the state acting in the course of his or her duties, member of the clergy, attorney, social worker, licensed mental health professional or other licensed counselor, or advocate working at an agency that assists victims of domestic violence, rape, sexual assault, or stalking.

“Quitting date” shall mean the date upon which the tenant or occupant actually vacates the unit and removes all her or his belongings and/or vacates the unit and notifies the owner that she or he is abandoning the unit.
2.(a ) If a tenant or occupant notifies the owner in writing that he or she or a member of her or his household is a victim of domestic violence, rape, sexual assault or stalking, and any one of the following applies, then subsection (3) of this subsection applies:
i. The tenant or occupant or a member of her or his household has a valid order for protection under chapter 209A;
ii. The tenant  or occupant or a member of her or his household  has notified a law enforcement officer of an act or acts of domestic violence, rape, sexual assault or stalking; or
iii. The tenant or occupant or member of her or his household has consulted with a qualified third party and reported the domestic violence, rape, sexual assault or stalking to the qualified third party.
(b) When a copy of the order for protection, police report, or verification of consultation with or report to a qualified third party as provided by herein, is made available to the owner, the tenant or occupant may terminate the rental agreement as provided in section 3 and quit the premises.  However, the request to terminate the rental agreement must occur within six months of the most recent acts, events, or circumstances that gave rise to the protective order, report to a law enforcement officer, or consultation with or report to a qualified third party.
            Verification of consultation with or reporting to a qualified third party may consist of a signed statement of the qualified third party or a form routinely provided by the qualified third party for completion by clients. This form must be in substantially the following form:

. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

[Name of organization, agency, clinic, professional service provider]
I am or a member of my household is a victim of:
. . . domestic violence as provided by Massachusetts General Laws section 1 of chapter 209A.
. . . rape as provided by M.G.L. section 22, 22A, 23, 24 or 24B of chapter 265 or section 2, 3 or 17 of chapter 272.
. . .  sexual assault as provided by M.G.L. section 13B, 13F, or 13H of chapter 265 or section 35A of chapter 272.
. . . stalking as provided by M.G.L. section 43 of chapter 265.

. . . . . . . . . . .

Signature

The incident(s) that I rely on in support of this declaration occurred on the following date(s): . . . . . . . . ..
I state under penalty of perjury under the laws of the state of Massachusetts that the foregoing is true and correct. Dated at. . . . . . .(city). ., Massachusetts, this . . . day of . . . ., 20. ... . . . . . . . . .

Signature

I verify that theindividual whose signature appears aboveinformed me of his or her status as a victim of domestic violence, rape, sexual assault or stalking or of said status of a member of his/her household on this . . . day of . . . ., 20. ... . . . . . . . . . . .

Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

3. A tenant or occupant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the month of the quitting date, and is entitled to a  refund of any prepaid rent for any period following the month of the quitting date, and shall receive a full and specific statement of the basis for retaining any of security deposit together with any refund due in compliance with G.L. c. 186 section 15B. Other tenants who are parties to the rental agreement are not released from their obligations under the rental agreement or other obligations under this chapter.
4. (a) An owner may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant or occupant's or applicant's or a member of his or her household’s status as a victim of domestic violence,  rape,  sexual assault or stalking, or based upon actions or failure to act that resulted from domestic violence, rape, sexual assault or stalking directed at the tenant’s or a member of his or her household. .   An owner shall not terminate a tenancy of a tenant who has provided temporary shelter to a victim of domestic violence, rape, sexual assault or stalking based upon alleged unauthorized occupants.  An owner may not refuse to enter into a rental agreement based on the tenant or applicant having terminated or having a history of having terminated a rental agreement under subsection 2 of this section nor shall an owner cause to be made any written or oral inquiry or record concerning an applicant’s status as a victim of domestic violence, rape, sexual assault or stalking or history of such status provided that if an applicant seeks a priority or preference from a housing provider based upon the applicant’s status as a victim of domestic violence, rape, sexual assault, or stalking , or, if an occupant seeks assistance from a housing provider based upon the preceding status, the provider may request documentation of the domestic violence, rape, sexual assault, or stalking..
(b)  An owner who refuses to enter into a rental agreement or who terminates a tenancy or refuses to enter into a new tenancy or who makes inquiry into an applicant’s status as a victim of domestic violence, rape, sexual assault or stalking or history of such status  in violation of this section shall be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The tenant or applicant may also recover court costs and reasonable attorneys' fees incurred in association with actions resulting from this section..
( c ) This section does not prohibit adverse housing decisions based upon other lawful factors within the owner's knowledge.
5. In any new action brought for possession of premises occupied for dwelling purposes involving domestic violence, rape, sexual assault, or stalking, the court, consistent with its existing equitable authority, shall have the authority to craft an equitable solution which protects the legitimate concerns of all parties.
6.(a) Neither a tenant screening service provider nor an owner may include information in a written or oral report to an owner  pertaining to domestic violence, rape, sexual assault or stalking; pertaining to the fact that the subject of the report is a victim of domestic violence, rape, sexual assault or stalking; or that the subject of the report has terminated a rental agreement under subsection 2 of this section.
(b) A tenant screening service provider or an owner who violates this section shall be liable in a civil action for damages sustained by the subject of the report. The subject of the report may recover court costs and reasonable attorneys' fees incurred as a result of violations of this section.
7. (a)  An owner shall, upon the request of a tenant or occupant of a residential dwelling unit, change the exterior locks of the dwelling unit in which the tenant or occupant lives if one or more of the tenants or occupants reasonably believes that one of the tenants or occupants or a member of the tenant or occupant’s household is under a credible imminent 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.  However, no owner is required to request such evidence and can change the locks as requested upon receipt of the written request of the tenant or occupant alone.
            If the threat of domestic violence, rape, sexual assault or stalking is from a person who is also a tenant or occupant of the leased dwelling unit,  notice to the owner requesting a change of exterior locks shall be accompanied by evidence to support a claim of domestic violence, rape, sexual assault, or stalking  including but not limited to orders pursuant to G.L.c. 209A,  police reports, or court records indicating which tenant or occupant is posing the threat of domestic violence, rape, sexual assault, or stalking.  The tenant or occupant requesting a change of exterior locks shall not be required to obtain written notice from or give notice to the person posing a threat regardless of which tenant is the lessee or head of household under a written lease or tenancy at will.
            Notwithstanding the preceding two paragraphs, where a court of the Commonwealth has issued an order pursuant to G.L. c. 209A or any other provision of law, vacating a tenant or occupant from the dwelling unit, the owner shall do nothing to interfere with this order and upon a request to change the exterior locks as described in this section, shall comply with this request.
            An owner complying with this section or with the requirements of a G.L. c. 209A or other order, shall be relieved of any liability to the vacated tenant or occupant or to any other third party on account of the owner’s good faith compliance with the court order and/or the owner’s good faith changing the exterior locks as provided in this section.
(b)  An owner who has received notice of a request for change of exterior locks as provided in paragraph a. above, shall, within 48 hours, change the exterior locks or give the tenant or occupant the permission to change the exterior locks.  If the owner changes the exterior locks, the owner shall give a key to the new exterior locks to the tenant or occupant requesting the exterior lock change as soon as possible or not more than 48 hours of the exterior locks being changed.
( c)  An owner may charge a fee for the expense of changing the exterior locks.  That fee must not exceed the reasonable price customarily charged for changing an exterior lock in that community.
(d)  If an owner fails to change the exterior locks within 48 hours after being provided with the notice described in paragraph a. above, along with evidence if required by paragraph a. above, the tenant or occupant may change the exterior locks without the owner’s permission.  Where the lease or tenancy agreement requires that the owner retain a key to the leased residential premises, where the tenant or occupant changes the exterior locks, the tenant or occupant shall make a good faith effort to give a key to the new exterior locks to the owner within 48 hours of the exterior locks being changed.    In the case where a tenant or occupant changes the exterior locks without the owner’s permission, the tenant or occupant shall do so in a workmanlike manner with exterior locks of similar or better quality than the original exterior locks.
(e) Any owner who takes action to prevent the tenant or occupant who has complied with paragraph a, above from changing his or her exterior locks or any owner who changes the exterior locks and does not make a good faith effort to provide a key to the tenant or occupant as provided in paragraph b above, shall be liable for actual and consequential damages or three months’ rent, whichever is greater, and the costs of the action including a reasonable attorney’s fee, all of which may be applied in setoff or recoupment against any claim for rent owed or owing for use and occupancy.  The superior and district courts shall have jurisdiction in equity to restrain violations of this section.  The provisions of section 18 of chapter 186 and section 2A of chapter 239 shall apply to any act taken as a reprisal against any person for requesting the exterior locks be changed in accordance with this section and/or for proceeding against violations of this section.   Any 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.
8.  No owner shall refuse to sell or negotiate for sale or lease or otherwise to deny or withhold from any person or group of persons accommodations or land because of the person or group or persons status as a victims of domestic violence, rape, sexual assault or stalking or history of such status.

**SECTION 2.** Section 2A of chapter 239 of the General laws, as appearing in the 2006 Official Edition is hereby amended by inserting in line 14, after the words, “eighty-three A” the following :
, or the tenant or a member of her or his household’s taking any action pursuant to section 3 of chapter 209A or taking any action pursuant to section 23 of chapter 186, or reporting to any law enforcement official or court official any incident of domestic violence, rape, sexual assault or stalking against the tenant or occupant or member of her or his household, or reporting to any law enforcement official or court official the violation of any order issued pursuant to section 3 of chapter 209A or 23 of chapter 186, or any act of abuse as set forth in section 8 of chapter 209A directed against him or her
 **SECTION 3.** Section 3 of chapter 258C of the General laws, as appearing in the 2006 Official Edition is hereby amended by adding, at the end, the following new section:
(G) Victim Compensation: In order to protect the health and safety of victims as defined in Section 1 of Chapter 258C, expenses incurred by the victim for changing locks to a residential dwelling unit shall be compensable in accordance with this chapter; provided however that when claiming compensation for such expenses the claimant must demonstrate an out - of - pocket loss or a legal liability for payment of said expenses.  No expenses for lock changes shall be paid for the expenses or the portion of expenses which are reimbursable by an insurance policy which covers these costs.
 **SECTION 4.**  This act takes effect immediately upon becoming law and applies to all tenancies existing at the time this act becomes law in addition to all tenancies coming into effect thereafter.