

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy AN ACT ENABLING CERTAIN CITIES AND TOWNS TO CONTROL RENTS AND EVICTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, to alleviate the severe shortage of rental housing in certain areas of the commonwealth, which shortage has caused a serious emergency detrimental to the public peace, health, safety and convenience, therefore this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health, 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:

SECTION 1. Declaration of Emergency. The general court finds and declares that a serious public emergency exists with respect to the housing of a substantial number of the citizens in certain areas of the commonwealth but especially in the cities of the commonwealth regardless of population and towns with a population of fifty thousand or over, which emergency has been created by housing demolition, deterioration of a substantial portion of the existing housing stock, insufficient new housing construction, increased costs of construction and finance, inflation and the effects of the Vietnam war, and which has resulted in a substantial and increasing shortage of rental housing accommodations for families of low and moderate income and abnormally high rents; that unless residential rents and eviction of tenants are regulated and controlled, such emergency and the further inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of the aforementioned communities and in other communities adjacent to them; that such emergency should be met by the commonwealth immediately and with due regard for the rights and responsibilities of its local communities.

SECTION 2. This act shall take effect in any city and in any town with a population of fifty thousand or over, on the thirtieth day following acceptance of its provisions. A city or town which has accepted this act may, in like manner, revoke its acceptance.

SECTION 3. Definitions. The following words or phrases as used in this act shall have the following meanings:

(a) "Rental units", any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boardinghouse units, and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

(b) "Controlled rental units", all rental units except:

(1) rental units in hotels, motels, inns, tourist homes and rooming or boarding houses which are rented primarily to transient guests for a period of less than fourteen consecutive days;

(2) rental units the construction of which was completed on or after January one, nineteen hundred and sixty-nine, or which are housing units created by conversion from a nonhousing to a housing use on or after said date;

(3) rental units which a governmental unit, agency, or authority either:

(i) owns or operates; or

(ii) regulates the rents, other than units regulated (a) under the provisions of this act, or (b) under the provisions of chapter seven hundred and ninety-seven of the acts of nineteen hundred and sixty-nine and any act in amendment thereof or in addition thereto, or (c) under the provisions of any other general or special law authorizing municipal control of rental levels for all or certain rental units within a municipality; or

(iii) finances or subsidizes, if the imposition or rent control would result in the cancellation or withdrawal, by law, of such financing or subsidy;

- (4) rental units in cooperatives;
- (5) rental units in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes; or nursing home or rest home or charitable home for the aged, not organized or operated for profit;
- (6) the rental unit or units in an owner-occupied two-family or three-family house;
- (7) that a municipality accepting the provisions of this act may exempt those rental units for which the rent charges exceeds limits specified by said municipality; provided that in no event shall more than twenty-five per cent of the total rental units in said municipality be exempted under this subsection.

(c) "Rent", the consideration, including any bonus, benefits, or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units.

(d) "Services", repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

SECTION 4. State Assistance and Review. (a) The department of community affairs shall establish a bureau of rental housing to assist municipalities which accept this act to carry out local rent control in a manner to best effectuate the provisions of the act and with due regard for the rights and responsibilities of the accepting municipality.

(b) The bureau of rental housing shall carry out studies and analyses, collect and publish data and information and render other assistance to municipalities which have accepted the provisions of this act or which propose to do so.

(c) Said bureau may advise a municipality which has accepted the provisions of this act that the local execution of rent control does not conform to the intent of this act.

SECTION 5. Local Rent Board or Administration. (a) At the time of acceptance of this act the city or town shall also determine in like manner whether the act will be administered by a rent control board or by a rent control administrator. Upon acceptance of this act and prior to its effective date, the mayor of a city, or the city manager in a city having a manager form of government, or the board of selectmen in a town shall appoint rent control administrator or a rent control board to serve at the pleasure of the appointing authority.

(b) Members of rent boards shall receive no compensation for their services, but shall be reimbursed by their city or town for necessary expenses incurred in the performance of their duties.

(c) Either the rent control board, hereinafter called the board, or the rent control administrator, hereinafter called the administrator, as the case may be, shall be responsible for carrying out the provisions of this act, and shall hire, with the approval of the appointing official or officials, such personnel as are needed, shall promulgate such policies, rules and regulations as will further the provisions of this act, and shall recommend to the city or town for adoption such ordinances and by-laws as may be necessary to carry out the purposes of this act.

(d) The board or the administrator may make such studies and investigations, conduct such hearings, and obtain such information as is deemed necessary in promulgating any regulation, rule or order under this act, or in administering and enforcing this act and regulations and orders promulgated hereunder. For the foregoing purposes, a person may be summoned to attend and testify and to produce books and papers in like manner as he may be summoned to attend as a witness before a court. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled rental unit may be required to furnish under oath any information required by the board or administrator, and to produce records and other documents and make reports. Such persons shall have the right to be represented by counsel, and a transcript shall be taken of all testimony and such person shall have the right to examine said transcript at reasonable times and places. Section ten of chapter two hundred and thirty-three of the General Laws shall apply, and for the purposes of this act a justice of the district court shall have the same power as a justice of the supreme judicial or superior court to implement the provisions of said section.

(e) The board or the administrator shall have the power to issue orders and promulgate regulations to effectuate the purposes of this act.

SECTION 6. Maximum Rent. (a) The maximum rent of a controlled rental unit shall be the rent charged the occupant for the month six months prior to the acceptance of this act by a municipality; provided that the rent board or the administrator of any municipality, wherein the rents are subject to regulation by any general or special law, may establish as a maximum rent the maximum rent, if any, established for rental units within such municipality by such general or special law. If the rental unit was unoccupied at that time but was occupied at any time prior to acceptance of this act, the maximum rent shall be the rent charged therefore for the month closest to six months prior to the effective date of the act. If the maximum rent is not otherwise established, it shall be established by the board or the administrator. Any maximum rent may be subsequently adjusted under the provisions of section seven.

(b) The board or the administrator shall require registration of all controlled rental units on forms authorized or to be provided by said board or administrator.

SECTION 7. Maximum Rent Adjustment. (a) The board or the administrator shall make such individual or general adjustments, either upward or downward, of the maximum rent established by section six for any controlled rental unit or any class of controlled rental units as may be necessary to assure that rents for controlled rental units are established at levels which yield to landlords a fair net operating income for such units. For the purposes of this section, the word "class" shall include all the controlled rental units within a municipality or any categories of such rental units based on size, age, construction, rent, geographic area or other common characteristics, providing the board or the administrator has by regulation defined any such categories.

(b) The following factors, among other relevant factors, which the board or the administrator by regulation may define, shall be considered in determining whether a controlled rental unit yields a fair net operating income:

- (1) increases or decreases in property taxes;
- (2) unavoidable increases or any decreases in operating and maintenance expenses;
- (3) capital improvement of the housing unit as distinguished from ordinary repair, replacement and maintenance;
- (4) increases or decreases in living space, services, furniture, furnishings or equipment;
- (5) substantial deterioration of the housing units other than as a result of ordinary wear and tear; and
- (6) failure to perform ordinary repair, replacement and maintenance.

(c) For the purpose of adjusting rents under the provisions of this section, the board or the administrator may promulgate a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.

(d) The board or the administrator may refuse to grant a rent increase under this section, if it determines that the affected rental unit does not comply with the state sanitary code and any applicable municipal codes, ordinances or by-laws, and if it determines that such lack of compliance is due to the failure of the landlord to provide normal and adequate repair and maintenance. The board or the administrator may refuse to grant a rent decrease under this section, if it determines that a tenant is more than sixty days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of section eight A of chapter two hundred and thirty-nine of the General Laws.

(e) The board or the administrator may remove maximum rental levels, established under this section and section six, for any class of controlled rental units if in its judgment the need for continuing such maximum rental levels no longer exists because of sufficient construction of new rental units the rental levels for which are comparable to the rental levels of the class of controlled rental units for which maximum rental levels are to be discontinued or because the demand for rental units has been otherwise met. Any maximum rental level removed under this paragraph shall be reimposed or adjusted and reimposed upon a finding by the rent board or administrator that a substantial shortage of rental units exists in such city or town and that the reimposition of rent control is necessary in the public interest. Any action under this paragraph shall be subject to the hearing and notice requirements of paragraph (b) of section eight.

SECTION 8. Rent Adjustment Hearings. (a) The board or the administrator shall consider an adjustment of rent for an individual controlled rental unit upon receipt of a petition for adjustment filed by the landlord or tenant of such unit or upon its own initiative. The board or the administrator shall notify the landlord, if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such petition and of the right of either party to request a hearing. If a hearing is requested by either party, or if the action is undertaken on the initiative of the board or the administrator the hearing shall be conducted before the administrator or at least one member of the board prior to the decision by the board or the administrator to grant or refuse a rental adjustment. Notice of the time and place of the hearing shall be furnished to the landlord and tenant. The board or the administrator may consolidate petitions relating to controlled rental units in the same building, and all such petitions may be considered in a single hearing.

(b) On its own initiative, the board or the administrator may make a general adjustment, by percentage, of the rental levels for any class of controlled rental units within a municipality. Prior to making such adjustment, a public hearing shall be held before the administrator or before at least a majority of the board. Notice that an adjustment is under consideration, a description of the class of rental units which would be affected by the adjustment, and the time and place of said public hearing shall be published three times in at least one newspaper having a general circulation within the city or town.

(c) Notwithstanding any other provision of this section, the board or the administrator may, without holding a hearing, refuse to adjust a rent level for an individual rental unit if a hearing has been held with regard to the rental level of such unit within twelve months.

(d) Hearings required by paragraph (a) shall be conducted in accordance with the provisions of section eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of said section eleven shall not apply to such hearings.

SECTION 9. Evictions. (a) No person shall bring any action to recover possession of a controlled rental unit unless:

- (1) the tenant has failed to pay the rent to which the landlord is entitled;
- (2) the tenant has violated an obligation or covenant of his tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord;
- (3) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the controlled rental unit, or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the same or any adjacent accommodation;
- (4) the tenant is convicted of using or permitting a controlled rental unit to be used for any illegal purpose;
- (5) the tenant, who had a written lease or rental agreement which terminated on or after this act has taken effect in a city or town, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with or violative of any provisions of this act;
- (6) the tenant has refused the landlord reasonable access to the unit for the purpose of making necessary repairs or improvements required by the laws of the United States, the commonwealth, or any political subdivision thereof, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee;
- (7) the person holding at the end of a lease term is a subtenant not approved by the landlord;
- (8) the landlord seeks to recover possession in good faith for use and occupancy of himself, or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law;
- (9) the landlord seeks to recover possession to demolish or otherwise remove the unit from housing uses; and
- (10) the landlord seeks to recover possession for any other just cause, provided that his purpose is not in conflict with the provisions and purposes of this act.

(b) A landlord seeking to recover possession of a controlled rental unit shall apply to the board or the administrator for a certificate of eviction. Upon receipt of such an application, the board or the administrator

shall send a copy of the application to the tenant of the controlled rental unit together with a notification of all rights and procedures available under this section. If the board or the administrator finds that the facts attested to in the landlord's petition are valid and in compliance with paragraph (a), the certificate of eviction shall be issued.

(c) A landlord who seeks to recover possession of a controlled rental unit without obtaining such certificate of eviction shall be deemed to have violated this act, and the board or the administrator may initiate a criminal prosecution for such violation.

(d) Notwithstanding the provisions of this section the United States, the commonwealth, or any agency or political subdivision thereof, may maintain an action or proceeding to recover possession of any rental unit operated by it if such action or proceeding is authorized by the statute or regulation under which such units are administered.

(e) The provisions of this section shall be construed as additional restrictions on the right to recover possession of a controlled rental unit. No provision of this section shall entitle any person to recover possession of such a unit.

SECTION 10. Judicial Review. (a) Any person who is aggrieved by any action, regulation or order of the board or the administrator may file a complaint against the board or the administrator in a district court within the territorial jurisdiction of which is located the controlled rental unit affected by such action, regulation or order, and thereupon an order of notice shall be issued by such court and served on the board or the administrator. Such district court shall have exclusive original jurisdiction over such proceedings and shall be authorized to take such action with respect thereto as is provided in the case of the superior court under the provisions of chapter twohundredandthirty-one A of the General Laws, except that section three of said chapter two hundred and thirty-one A shall not apply. All orders, judgments and decrees of such district court may be appealed as is provided in the case of a civil action in such district court.

(b) The district court within the territorial jurisdiction of which is located the controlled rental unit affected shall have exclusive original jurisdiction over actions arising out of the provisions of section eleven.

SECTION 11. Civil Remedies. (a) Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this act or any regulation or order hereunder promulgated, shall be liable as hereinafter provided to the person from whom such payment is demanded, accepted, received or retained, or to the municipality for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of one hundred dollars, or not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could be lawfully demanded, accepted, received or retained, whichever is the greater; provided that if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.

(b) If the person from whom such payment is demanded, accepted, received or retained in violation of the provisions of this act or any rule or regulation hereunder promulgated fails to bring an action under this section within thirty days from the date of the occurrence of the violation, the board or the administrator may either settle the claim arising out of the violation or bring such action. Settlement by the board or the administrator shall thereafter bar any other person from bringing action for the violation or violations with regard to which a settlement has been reached. If the board or the administrator settles said claim, it shall be entitled to retain the costs it incurred in the settlement thereof, and the person against whom the violation was committed shall be entitled to the remainder. If the board or the administrator brings action under the provisions of this section, it shall be entitled to receive attorneys fees and costs under the provisions of paragraph (a) and the person against whom the violation was committed shall be awarded liquidated damages under said paragraph (a).

(c) A judgment for damages or on the merits in any action under this section shall be a bar to any recovery under this section in any other action against the same defendant on account of any violation with

respect to the same person prior to the institution of the action in which such judgment was rendered. Action to recover liquidated damages under the provisions of this section shall not be brought later than one year after the date of the violation. A single action for damages under the provisions of this section may include all violations of the provisions of this section committed by the same defendant against the same person.

SECTION 12. Criminal Penalties. (a) It shall be unlawful for any person to demand, accept, receive or retain any rent for the use of occupancy of any controlled rental unit in excess of the maximum rent prescribed therefor under the provisions of this act or any order or regulation hereunder promulgated, or otherwise to do or omit to do any action in violation of the provisions of this act or any order or regulation hereunder promulgated.

(b) It shall be unlawful for any person to demand, accept, receive or retain any payment which exceeds the maximum lawful rent for one month as a finder's fee or service charge for the opportunity to examine or lease any controlled rental unit, and no finder's fee or service charge shall be lawful unless the person from whom the payment is demanded, accepted, received or retained actually rents or leases the controlled rental unit with regard to which payment of said fee of said charge has been demanded, accepted, received or retained.

(c) Whoever willfully violates any provision of this act or any rule or regulation hereunder promulgated, or whoever knowingly makes any false statement in any testimony before the rent board or administrator or whoever knowingly supplies the rent board or administrator with any false information shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than ninety days or both; provided, however, that in the case of a second or subsequent offense, such person shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than one year, or both.

SECTION 13. Termination. This act and all powers delegated herein shall terminate on April the first, nineteen hundred and seventy-five; provided that the provisions of this act shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any right, liability or offense arising under the provisions of this act.

SECTION 14. Severability. If any provisions of this act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

House of Representatives, August 23, 1970.

Preamble adopted, *Donal B. Barth*, Speaker.

In Senate, August 23, 1970.

Preamble adopted, *Maurice A. Donahue*, President.

House of Representatives, August 24, 1970.

Bill passed to be enacted, *Donal B. Barth*, Speaker.

In Senate, August 24, 1970.

Bill passed to be enacted, *Maurice A. Donahue*, President.

August 31, 1970.

Approved,

at 9 o'clock and 45 minutes, A. M.

Francis W. Longant
Acting Governor.

City of Cambridge

