

**Amendment #585 to H5150****Housing Stability during the COVID-19 emergency and recovery**

Mr. Hendricks of New Bedford moves to amend the bill by adding to Section 3, following section 46, and after line 801 the following new section:

"SECTION 47. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Emergency Declaration,” the Governor’s March 10, 2020 emergency declaration designated as executive order number 591 and declaring a State of Emergency in the Commonwealth of Massachusetts on the basis of the spread of COVID-19.

"Eviction", an action, without limitation, by an owner or lessor or manager of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

"Housing accommodation", a building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

“Just cause”, one of the following: (1) the tenant has failed to pay the rent, subject to the procedures of Section (e) below; (2) the tenant has materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 30 days after having received written notice thereof from the owner; (3) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or permitting the unit to be used for any illegal purpose; or (5) the owner intends to make bona fide personal use of the unit within 180 days, including use of the unit as the owner’s primary residence or the use of the unit by a member of the owner’s family as a primary residence.

"Tenant", a person or group of persons who is entitled to occupy a housing accommodation pursuant to a lease or tenancy or a tenancy at will, or a former homeowner residing in a property that has been foreclosed on.

(b) Notwithstanding any general or special law to the contrary, Section 6 of chapter 62 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following subsection:-

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

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

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

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

(5) Subject to the availability of credits, the amount of the credit available for each dwelling unit shall be the actual difference between the monthly lease amounts for occupied units minus the tenant's rental obligation and

the actual amount of monthly rent collected, as determined by the commissioner. Upon approval of the credit to an owner, the owner shall release the occupants of the dwelling unit from any liability for the non-payment of rent that is the subject of the credit.

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

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

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

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

(c) Notwithstanding any general or special law to the contrary, Chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after section 38HH the following section:-

#### Section 38II.

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

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

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

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

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

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

(7) The secretary shall prioritize credit applications for dwelling units whose rent is at or below the fair market rent as most recently calculated by the United States Department of Housing and Urban Development for the

area in which the dwelling unit is located.

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

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

(d) Item 7004-9316 of section 2 of chapter 41 of the acts of 2019 is hereby amended by adding the following words:- ; provided further, that households with income of no more than 100 per cent of median income and at risk of becoming homeless due to a significant reduction of income or increased expenses due to the inability to pay rent for a residential dwelling unit caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the effects of the governor's March 10, 2020 emergency declaration shall be eligible for rental assistance pursuant to this item and that such assistance shall be remitted by voucher to the renter's landlord.

(e) Notwithstanding chapter 239 of the General Laws or any other general or special law to the contrary, this subsection shall govern all proceedings under chapter 239, brought at any time, where the plaintiff's complaint is based upon or includes any claim for rent or use and occupancy due and payable during the period from the issuance of the Emergency Declaration, March 10, 2020, until 12 months after the date the Emergency Declaration is rescinded, which shall be hereinafter defined for purposes of this section as "Probable COVID-19 Evictions".

(1) Notwithstanding chapters 186 or 239 or any general or special law to the contrary no landlord or owner of property may commence a Probable COVID-19 Eviction unless accompanied by an affidavit from the landlord described in subsection (2).

(2) No court shall accept a Probable COVID-19 Eviction complaint for filing unless accompanied by an affidavit from the landlord stating that i) it has submitted applications for all state and local assistance programs or any other rental assistance fund for which the landlord or tenant is eligible, including those which accept applications from landlords with tenant consent, and it has not received funds from those programs through no fault of the landlord; ii) it has fully cooperated with any tenant applications for rental assistance programs and tenant or landlord has not received funds from those programs through no fault of the landlord; iii) it has not applied for or received tax credits under subsections (b) or (c) with respect to the residential unit at issue in the case; and iv)

it has not applied for or been granted mortgage forbearance under subsection (g), or is not eligible to receive such forbearance.

(3) In any Probable COVID-19 Eviction, prior to any other court action, the matter shall be first scheduled with a Housing Specialist for a status conference, at which the Housing Specialist shall explore with the parties all options for resolving the matter by paying all or part of any arrearage allegedly owed by the tenant, including but not limited to accessing funds from the Eviction Diversion Initiative, the Housing Stability Fund, local rental assistance programs, or any other source. In order to provide time for the parties to explore informal resolution of the matter, no subsequent court event may be scheduled prior to two weeks following the date of the initial status conference, and the court may, upon motion or sua sponte, stay the matter for up to three additional months. During any stay period entered pursuant to this subsection, all litigation deadlines shall be tolled.

(4) In any Probable COVID-19 Eviction, it shall be a complete defense to the complaint that the failure to pay such rent or use and occupancy resulted from a loss of income or any other change in economic circumstances caused in any way, directly or indirectly, by the conditions and/or events described in the Emergency Declaration. Any unpaid rent and/or use and occupancy determined to be subject to the defense described in this section shall not be counted as part of “the amount due to the landlord” in determining any judgment for possession entered after trial pursuant to the fifth paragraph of Section 8A of Chapter 239, or recovered in any summary process proceeding under Chapter 239.

(5) Any notice to quit or notice terminating tenancy issued on the basis of rent due and payable during the period from the issuance of the Emergency Declaration, March 10, 2020, until 12 months after the date the Emergency Declaration is rescinded shall provide the tenant with notice of the defense to possession established at subsection (4), as well as the ability to access rental assistance funds from the Eviction Diversion Initiative and Housing Stability Fund to cure the arrearage. The secretary of housing and economic development shall develop a form notice to quit as well as emergency regulations and guidance as necessary to implement this subsection.

(6) It shall create a rebuttable presumption that the tenant in a Probable COVID-19 Eviction was unable to pay such rent or use and occupancy payments because of lost income or any other change in economic circumstances caused in any way, directly or indirectly, by the conditions and/or events described in the Emergency Declaration if the tenant submits to the Court an Affidavit Asserting COVID-19 Non-Payment in accordance with this section. The Trial Court Department shall prepare a blank form Affidavit to include with the order of notice of

the status conference described above at subsection (3), which shall also include an explanation which states that the tenant may have a complete defense to a non-payment eviction as described herein.

(7) A tenant may establish the rebuttable presumption set out at subsection (6) if the Affidavit includes any testimony that the tenant i) has submitted a declaration of being a “covered person” for purposes of the federal eviction moratorium, “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19,” 85 Fed. Reg. 55292; ii) was approved for Unemployment Insurance (UI) or Pandemic Unemployment Assistance (PUA) at any point between March 10, 2020 and December 31, 2020; iii) has been approved to receive funding under any state or local rental assistance program, including, but not limited to, Residential Assistance for Families in Transition (RAFT) and Emergency Rental and Mortgage Assistance (ERMA) requiring proof of a COVID-19 related financial hardship, or received such funding at any point after March 10, 2020; or iv) otherwise reasonably controverts any part of the landlord affidavit required by subsection (2), including, but not limited to, by establishing the existence of pending rental assistance applications or lack of cooperation by the landlord in obtaining such rental assistance.

(8) In any Probable COVID-19 Eviction, no court may issue an order for interim payment of rent and/or use and occupancy due and payable during the period from the issuance of the Emergency Declaration, March 10, 2020, until 12 months after the date the Emergency Declaration is rescinded without conducting a hearing and explicitly finding that the tenant is not likely to establish the defense set out at subsection (2).

(9) Notwithstanding any general or special law to the contrary, the housing court department of the trial court shall have exclusive original jurisdiction of all claims for rent or mortgage payments due and payable during the period running from March 10, 2020 until 12 months after the COVID-19 emergency declaration has been lifted.

(f) Notwithstanding any general or special law, rule, regulation or order to the contrary, no court having jurisdiction of a summary process action or any other trial court department shall make public or publish, in any manner, the name or other identifying information, including, but not limited to, the person’s address, of any person named as a party to a summary process or civil action where the plaintiff seeks non-payment of rent from a period beginning with the COVID-19 emergency and for 12 months after the termination of the state of emergency; provided, further, that such information shall be impounded and shall remain permanently unavailable for public inspection or publication, except to the parties to the action or their attorney, or as ordered by the court for good cause shown.

(g) Notwithstanding any general or special law or rule or regulation to the contrary,

(1) a creditor, mortgagee or person having estate in the land mortgaged, a person authorized by a power of sale pursuant to section 14 of said chapter 244 or right of entry or the attorney duly authorized by a writing under seal or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person shall not, for the purposes of foreclosure of a residential property as defined in section 35B of said chapter 244 that is not vacant or abandoned: (i) cause notice of a foreclosure sale to be published pursuant to said section 14 of said chapter 244; (ii) exercise a power of sale; (iii) exercise a right of entry; (iv) initiate a judicial or non-judicial foreclosure process; or (v) file a complaint to determine the military status of a mortgagor under the federal Service members Civil Relief Act, 50 USC sections 3901 to 4043, inclusive, on the basis of mortgage payments due and payable from the Emergency Declaration until 12 months after the Emergency Declaration is rescinded, or the end of any forbearance period granted pursuant to Section 5(b) of Chapter 65 of the Acts of 2020. Any foreclosure actions taken in violation of this statute shall be against public policy and void.

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



(3) A creditor or mortgagee shall grant forbearance to a mortgage loan for residential property owned by a nonprofit entity or an affiliate or agent of the non-profit entity or a mortgagor, including affiliates and agents, that owns 15 or fewer residential apartments, if the mortgagor submits a request to the mortgagor's servicer affirming that the mortgagor has experienced a financial impact from the COVID-19 emergency. The forbearance shall last 180 days; provided, that at the mortgagor's request, the period of forbearance may begin in an increment shorter than 180 days and then extended at the mortgagor's request, may be extended an additional 180 days at the mortgagor's request, and shall be offered on the same terms and conditions in subsection (2).

(4) A mortgagor who has requested and received mortgage forbearance under this section or under Section 5(b) of Chapter 65 of the Acts of 2020, as amended by this statute, shall for each month of the mortgage forbearance period, waive and forever hold tenants harmless from the obligation to pay that month's rent for each rental unit located on the property that is secured by the mortgage and which is occupied by a household who resided lawfully in the unit as of March 10, 2020, except if the mortgagor demonstrates by clear and convincing evidence that the tenant's failure to pay rent did not result from a loss of income or other change in economic circumstances caused directly or indirectly by the COVID-19 emergency.

(h) Notwithstanding any general or special law to the contrary, the commissioner of banks and the attorney general may develop and promulgate regulations and standardized forms for the written documentation required in subsection (g); provided, however, that the absence of such forms shall not render this section inoperable.

(i) Violations of this Section shall constitute unfair or deceptive acts or practices for the purposes of Section 2 of chapter 93A of the General Laws and shall be enforceable by the attorney general as well as by aggrieved tenants, homeowners or other occupants in the same manner and to the same extent as other violations of said chapter 93A. All the remedies of said chapter 93A shall be available for violations of any section of this act.

(j) Subsection (g) shall expire 12 months after the COVID-19 emergency declaration has been lifted.

Notwithstanding any general or special law to the contrary, a creditor or mortgagee shall not be required to grant a forbearance to a mortgagor of a mortgage loan for a residential property under subsection (g) if the mortgagor's request for such forbearance is made after the expiration date herein.

(k) Notwithstanding any general or special law to the contrary, there shall be established and set upon the books a COVID-19 Housing Stability and Recovery Fund to be administered by the department of housing and

community development, to provide assistance to owners of residential units who were unable to pay housing and housing-related costs for reasons related to the COVID-19 emergency.

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

(2) Amounts credited to the fund may be used, without further appropriation to provide grants or loans to landlords of residential dwelling units if: (i) the landlord owns no more than 15 residential dwelling units; and (ii) the landlord is able to demonstrate financial hardship due to the deprivation of rental income during the novel coronavirus state of emergency declared by the governor. Priority for such funds shall be given to owner-occupant landlords, elderly landlords on fixed incomes, and non-profit landlords.

(3) An Oversight and Advisory Board shall be comprised of members of the Legislature's coronavirus working groups, who will select no fewer than 8 people from communities hardest hit by the COVID-19 pandemic, assessed by the rate of COVID-19 cases in municipalities and neighborhoods and informed by the fact that there are disparities in COVID-19 infection rates by race, ethnicity, and income. The Oversight and Advisory Board shall monitor and evaluate the use of funds to ensure they are equitably distributed, with priority given to low- and middle-income renters and homeowners affected by the COVID-19 crisis, and shall make recommendations regarding the administration of the fund. The Oversight and Advisory Board shall pursue all federal, state, and other funds available to assist renters and homeowners.

(l) If any provision or provisions of this chapter is or are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the commonwealth, the remaining parts of said chapter shall not be affected thereby.

**Additional co-sponsor(s) added to Amendment #585 to H5150**  
**Housing Stability during the COVID-19 emergency and recovery**

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