HOUSE . . . . . No. 4625

By Mr. Buglione of Methuen, petition of Nicholas J. Buglione and another relative to the control of rents and evictions in certain cities and towns. Local Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-One.

AN ACT RELATIVE TO THE CONTROL OF RENTS AND EVICTIONS IN CERTAIN CITIES AND TOWNS.

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. Paragraph *(b)* of section 3 of chapter 842 of the acts of 1970 is hereby amended by striking out clause (4) and inserting in place thereof the following clause: –

(4) rental units in cooperatives and condominiums;

SECTION 2. Said paragraph *(b)* of said section 3 of said chapter 842 is hereby further amended by adding the following clause: –

8. Those rental units which become vacant at any time after June first, nineteen hundred and seventy-one.

SECTION 3. Paragraph *(d)* of said section 3 of said chapter 842 is hereby amended by adding the following sentence: –

Said benefits, privileges, services or facilities shall be confined solely to the physical structure.

SECTION 4. Paragraph *(a)* of section 5 of said chapter 842 is hereby amended by adding the following sentence: – In case of a board, equal representatives of landlords and tenants shall be required and the landlord representatives shall be named from nominees provided by an established real estate trade association.

SECTION 5. Said section 5 of said chapter 842 is hereby amended by striking out paragraph *(d)* and inserting in place thereof the following paragraph: –

(d) The board or the administrator may from public sources 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 after requesting information from a party to a proceeding and after due notice and a reasonable time allowed if said person wilfully refuses to provide such information said 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 upon request any information requested 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.

SECTION 6. Said chapter 842 is hereby further amended by striking out section 6 and inserting in place thereof the following section: –

Section 6. Maximum Rent. (a) The maximum rent of a controlled rental unit shall be the rent charged the occupant for the month in which this act is accepted 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 the month of acceptance of this 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 for which a petition for an upward adjustment of the maximum rent has been filed under section seven.

SECTION 7. Section 7 of said chapter 842 is hereby amended by striking out paragraphs *(a)* to *(d)*, inclusive, and inserting in place thereof the following paragraphs: –

(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; provided, however, in no case shall such adjusted maximum rent be established at a rate lower than that rent charged at the date of the original acceptance of this act.

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 including a normal management fee not to exceed seven per cent of gross income;

(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) wilfull 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 in order to facilitate class increases for similar types of rental units.

(d) The board or the administrator may refuse to grant a rent increase under this section, if it has been judicially determined that the affected rental unit does not comply with the state sanitary code and any applicable municipal codes, ordinances or by-laws, and has been judicially determined that such noncompliance has not been cured. 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.

SECTION 8. Said chapter 842 is hereby further amended by striking out section 8 and inserting in place thereof the following section: –

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 or landlord and tenant jointly. 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, provided such request is in writing, 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 six 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.

(e) The board or the administrator shall seek to resolve any rental dispute by arbitration between the parties prior to any hearing.

SECTION 9. Section 9 of said chapter 842 is hereby amended by striking out paragraph *(b)* and inserting in place thereof the following paragraph: –

(b) A landlord seeking to recover possession of a controlled rental unit except in the case of non-payment of rent 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 and failure to act upon said application within seven days shall be deemed to be approval of said application and landlord may proceed with eviction action.

SECTION 10. Section 11 of said chapter 842 is hereby amended by striking out paragraphs (a) and (b) and inserting in place thereof the following two paragraphs: –

(a) Any person who wilfully 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 twenty-five dollars or not more than the actual excess that 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 fails to bring an action under this section within thirty days from the date of the occurrence of the violation, any further action shall be barred and no person may bring any action hereunder thereafter.

SECTION 11. Said chapter 842 is hereby further amended by striking out sections 12 and 13 and inserting in place thereof the following two sections: –

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 one hundred dollars; provided, however, that in the case of a second or subsequent offense, such person shall be punished by a fine of not more than two hundred dollars.

Section 13. Termination. This act and all powers delegated herein shall terminate on April the first, nineteen hundred and seventy-three; 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.