

**HOUSE . . . . . No. 3566**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael J. Moran***

*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 adoption of the accompanying bill:

An Act promoting housing opportunity and mobility through eviction sealing (HOMES).

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael J. Moran</i>	<i>18th Suffolk</i>	<i>1/16/2019</i>
<i>Councilor Lydia Edwards</i>	<i>District 1, City of Boston</i>	<i>1/16/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/22/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/22/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/22/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/24/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>1/25/2019</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>1/25/2019</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/25/2019</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>	<i>1/25/2019</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>1/28/2019</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>1/28/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>1/28/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/28/2019</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>1/29/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/29/2019</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>1/29/2019</i>

<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/30/2019</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>	<i>1/30/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>1/31/2019</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>1/31/2019</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>1/31/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/31/2019</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/31/2019</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>1/31/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>1/31/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>1/31/2019</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>	<i>2/1/2019</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>	<i>2/1/2019</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>2/1/2019</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/1/2019</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/1/2019</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/1/2019</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>2/1/2019</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>	<i>2/1/2019</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/1/2019</i>
<i>David Biele</i>	<i>4th Suffolk</i>	<i>2/1/2019</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/1/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>2/1/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/1/2019</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>2/1/2019</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>2/1/2019</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/21/2019</i>

**HOUSE . . . . . No. 3566**

By Mr. Moran of Boston, a petition (accompanied by bill, House, No. 3566) of Michael J. Moran and others relative to certain court records in eviction actions. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-First General Court  
(2019-2020)**

An Act promoting housing opportunity and mobility through eviction sealing (HOMES).

*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 is hereby amended by adding after  
2 Section 29 the following section:-

3 Section 30. (a) Definitions. As used in this Act:

4 (1) “Consumer” means an individual.

5 (2) “Consumer report” means any written, oral, or other communication of any  
6 information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit  
7 standing, credit capacity, character, general reputation, personal characteristics, or mode of living  
8 which is used or expected to be used or collected in whole or in part for the purpose of serving as  
9 a factor in establishing the consumer’s eligibility for rental housing or other purposes authorized  
10 under section 51 of chapter 93.

11 (3) A “consumer reporting agency” is any person which, for monetary fees, dues, or  
12 on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of

13 assembling or evaluating consumer credit information or other information on consumers for the  
14 purpose of furnishing consumer reports to third parties.

15 (4) "Court record" means all or any portion of court papers, documents, exhibits,  
16 orders, recordings, dockets, and other records that are made, entered, filed, and/or maintained by  
17 the Clerk in connection with a case or proceeding, including any whole or partial information  
18 content of court records stored in an electronic database or other electronic court record  
19 maintained by the Trial Court or any of its divisions.

20 (5) "Dissemination" or "disseminate" means to publish, produce, print, manufacture,  
21 copy, distribute, sell, lease, exhibit, broadcast, display, transmit, or otherwise share information  
22 in any format so as to make the information accessible to others.

23 (6) "Eviction action" means a summary process action under chapter 239 to recover  
24 possession of residential premises; a civil action under section 19 of 139 to obtain an order  
25 requiring a tenant or occupant to vacate residential premises; or any other civil action brought  
26 against a tenant or occupant of residential premises to obtain possession of or exclusive access to  
27 a dwelling.

28 (7) "Fault eviction" means an eviction action brought pursuant to section 4(a)(ii) of  
29 chapter 186A, under section 19 of chapter 139, or in which the notice to quit or complaint alleges  
30 a material violation of the terms of a residential tenancy or occupancy other than nonpayment of  
31 rent or failure to vacate following the termination of a tenancy. An action brought after  
32 termination of a tenancy for economic, business, or other reasons not constituting a violation of  
33 the terms of the tenancy shall not be deemed a fault eviction for purposes of this Act.

34 (8) "No-fault eviction" means any eviction action in which the notice of termination  
35 does not include an allegation of nonpayment of rent or of violation of any material term of the  
36 tenancy by the tenant or occupant, other than a failure to vacate after the expiration of a lease or  
37 other termination of the tenancy. An action brought after termination of a tenancy for economic,  
38 business, or other reasons not constituting a violation of the terms of the tenancy shall be deemed  
39 a no-fault eviction for purposes of this Act.

40 (9) "Nonpayment eviction" means an eviction action brought pursuant to a notice to  
41 quit for nonpayment of rent, including an action brought pursuant to section 11 or 12 of chapter  
42 one hundred eighty-six, or under section 4(a)(1) of chapter one hundred eighty-six A.

43 (10) "Sealing" or "seal" shall mean the act of keeping some or all of the court record  
44 confidential and unavailable for public inspection, except as specifically provided for in section  
45 (c) of this Act.

46 (b) Scope. This Act shall apply to court records in eviction actions as well as any civil  
47 action brought against the owner, manager, or lessor of residential premises by the tenant or  
48 occupant of such premises relating to or arising out of such property, rental, tenancy, or  
49 occupancy for breach of warranty, for a breach of any material provision of the rental agreement,  
50 or for a violation of any other law. The Act shall apply to all court records regardless of the date  
51 on which they were made, entered, filed, or maintained, including but not limited to court  
52 records of cases entered or disposed of prior to the effective date of the Act.

53 (c) Sealing of court records.

54 (1) The court records in any eviction action or in any other civil action covered by this  
55 section shall be deemed sealed immediately or upon filing, whichever is sooner, and shall not be

56 available for public inspection except as provided in this section. Sealed court records shall  
57 remain open at all reasonable times for inspection, on equal terms and conditions established by  
58 the Trial Court, by the parties to the litigation and their attorneys. A party may authorize a  
59 designee to access a sealed court record on the party's behalf for the sole purpose of providing  
60 assistance to the party; provided, however, that such access shall be subject to agreement by the  
61 authorized designee to the confidentiality and use provisions of section (d) herein.

62 (2) Upon filing of an action covered by this section, the clerk of the court shall send to  
63 the parties:

64 (i) notice of the filing of the action

65 (ii) a statement that the court records in the case are sealed and shall not be disclosed to  
66 third parties except as provided in this section;

67 (iii) instructions for accessing the court records in the case;

68 (iv) a sample form authorization for third party access to the records; and

69 (v) a list of local bar associations and other nonprofit resources available to assist the  
70 parties in the matter.

71 (3) A sealed court record in an eviction or other civil action covered by this section shall  
72 be made available for inspection by the public thirty (30) days following the occurrence of any of  
73 the following:

74 (i) entry of final judgment, after summary judgment or a trial on the merits, for  
75 possession or damages in favor the plaintiff in a fault or nonpayment eviction action; or

76 (ii) entry of final judgment, after summary judgment or a trial on the merits, for damages  
77 or injunctive or declaratory relief in favor of the plaintiff in a civil action to enforce the rights of  
78 a tenant or occupant of residential premises after summary judgment or a trial on the merits; or

79 (iii) the filing of the receipt required by section 4(a) of chapter two hundred thirty-nine by  
80 an officer levying on an execution for possession in favor of the plaintiff in a fault or  
81 nonpayment eviction action following entry of judgment by agreement.

82 Such records shall remain available for public inspection for 3 years, unless a shorter  
83 period is designated by court order upon good cause shown or by agreement of the parties. The  
84 names of minor children shall remain sealed at all times. With respect to sealed court records  
85 created prior to the effective date of the Act, the Trial Court shall have 180 days to identify those  
86 records that should be made available for inspection by the public under subsections (i)-(iii) of  
87 this paragraph. All court records existing at the time of, or predating, the effective date of this  
88 Act shall remain sealed until such time as the Trial Court has identified the records to be made  
89 publicly available.

90 (4) A party who believes that court records in a case have been improperly classified and  
91 made available or unavailable for public inspection under this section may petition the court to  
92 seal or unseal such records. Court records subject to a motion to seal for improper classification  
93 under this section shall be shielded from public inspection until such motion is adjudicated. In  
94 the event of a clerical error, the clerk shall correct the error forthwith without hearing and  
95 without the necessity of appearance of any party or counsel.

96 (5) Upon motion and for good cause shown, or as otherwise authorized by this section,  
97 court records sealed under this section may at the discretion of the court upon a balancing of the

98 interests of the litigants and the public in nondisclosure of the information with the interests of  
99 the requesting party, be made available for scholarly, educational, journalistic, or governmental  
100 purposes only, provided, however, that identifying information of parties shall remain sealed  
101 unless the court determines that release of such information is appropriate under this paragraph  
102 and necessary to fulfill the purpose of the request. Nothing in this paragraph shall be deemed to  
103 permit the release of personal identifying information for commercial purposes.

104 (d) Publication and use of court records.

105 (1) A consumer reporting agency shall not disclose the existence of, or information  
106 regarding, an eviction action or other civil action sealed or made confidential under this section  
107 or use such action as a factor to determine any score or recommendation to be included in a  
108 consumer report regarding any person named in such case. A consumer reporting agency may  
109 include in a consumer report information found in publicly available court records, provided,  
110 however, that (i) the consumer's full name, date of birth, social security number, and both basis  
111 and outcome of any eviction action reported are included in the report, (ii) the consumer is  
112 permitted to include a 100-word statement about any court record included in any way in the  
113 report, and (iii) such information must be removed from the report or from the calculation of any  
114 score or recommendation therein within 7 days of the sealing or impoundment of the court  
115 record from which it is derived. Nothing in this paragraph shall be deemed to waive the rights or  
116 remedies of any consumer under any other law or regulation. Any credit reporting agency that  
117 commits an act in violation of this section shall be liable to the affected consumer for actual and  
118 consequential damages or for \$2000 for each violation, whichever is greater, and the costs of the  
119 action, including a reasonable attorney's fee.

120           (2)     A third party authorized to access sealed court records on a party's behalf under  
121 paragraph (c)(1) shall maintain the confidentiality of the records except insofar as is necessary to  
122 assist the party and shall not disclose such records or the information contained therein to a  
123 consumer reporting agency.

124           (3)     It shall be unlawful to ask an applicant for housing, shelter, credit, or employment  
125 about such applicant's tenancy-related litigation history, including receipt of any notice to quit,  
126 except as specified in this paragraph. It shall be permissible to ask whether an applicant has, in  
127 the previous three years, been subject to (A) entry of final judgment for possession or damages in  
128 favor of the plaintiff in a fault or nonpayment eviction action after summary judgment or a trial  
129 on the merits, or (B) levy of an execution for possession in favor of the plaintiff in a fault or  
130 nonpayment eviction action following entry of judgment by agreement, so long as such inquiry is  
131 accompanied simultaneously in writing in clear and readable text by the following statement:  
132 "An applicant with a sealed record in a housing case may answer 'no record.'" Notwithstanding  
133 this paragraph, it shall be permissible for a government agency or instrumentality or not-for-  
134 profit entity offering emergency public or subsidized housing or shelter to request that an  
135 applicant or the applicant's designee provide information about a sealed eviction court record  
136 solely for the purpose of assessing whether the applicant meets the statutory or regulatory criteria  
137 for eligibility for such emergency housing program. It shall further be permissible for a  
138 government or not-for-profit housing stabilization program, such as a program offering  
139 emergency funding or other services to promote tenancy preservation, to request that an  
140 applicant or the applicant's designee provide information about a sealed court record solely for  
141 the purpose of providing stabilization services to a tenant or occupant of residential housing.  
142 Information so obtained shall not be disseminated except as permitted by this Act. Any violation

143 or failure to comply with this subsection shall constitute an unfair or deceptive practice in  
144 violation of chapter 93A. Any person who commits an act in violation of this section shall also  
145 be liable to the affected tenant or occupant for actual and consequential damages or \$500 for  
146 each violation, whichever is greater, and the costs of the action, including a reasonable attorney's  
147 fee.

148 (4) The housing, district, and superior courts shall have jurisdiction in equity to  
149 enforce this section. Nothing in this section prohibits the dissemination of information regarding  
150 a money judgment as necessary for the sole purpose of collection.

151 (e) Notice of tenant screening report. If a prospective landlord or lessor requests from a  
152 consumer reporting agency a consumer report that includes or is in whole or in part based on  
153 information contained in any court record covered by this section, or would include such  
154 information if it were available, including but not limited to a consumer report marketed or  
155 typically used for tenant screening, the consumer reporting agency shall provide a copy of the  
156 report to the consumer.

157 (f) Duty to record satisfaction of judgment. A party who obtains a judgment that is  
158 reflected in a court record available for inspection by the public shall, within 14 days of  
159 satisfaction of the judgment, file with the court in which the judgment was entered a notice  
160 satisfaction of the judgment. A party that has satisfied a judgment may, upon noncompliance  
161 with this section by the other party, seek equitable relief to correct the court record, and shall be  
162 entitled to costs and a reasonable attorney's fee. Upon the filing of a notice of satisfaction of  
163 judgment, or court action deeming the judgment satisfied, the clerk of court shall seal the court  
164 records pertaining to the case.

165 (g) Data collection.

166 (1) The clerk of the court or their designee shall maintain a record in the aggregate of  
167 the number of fault, nonpayment, and no-fault eviction actions; a count of the final dispositions  
168 of such eviction actions; the number of default judgments entered by type of eviction action; the  
169 number of executions issued by party by type of eviction action; the total number of cases  
170 transferred to the Housing Court; and other information as it determines. The Court shall make  
171 available to the public and report semi-annually such aggregate information, by zip code, in such  
172 a manner as to protect the identity of the parties and to promote the goals of this Act.

173 (2) A municipality may require the owner or lessor of a dwelling unit to provide to  
174 such municipality a copy of any notice to quit or notice of nonrenewal of a lease served on the  
175 tenant or occupant of such dwelling unit for purposes of data collection and analysis and to  
176 enable such municipality to direct housing stabilization or dispute resolution resources to the  
177 involved parties. It shall be unlawful for the municipality to provide any notice received under  
178 this section to a credit reporting agency or other person or entity seeking to use such information  
179 for the purpose of screening tenants or occupants for housing, employment, or credit. In  
180 accordance with the remedial goals of this Act, information so collected shall not be subject to  
181 mandatory disclosure under section 10 of chapter 66 or otherwise.

182 SECTION 2. Section 2 of chapter 239 of the General Laws, as appearing in the 2016  
183 Official Edition, is hereby amended by inserting, after line 19, the following new paragraph:-

184 In any action against a tenant or tenant at sufferance under this chapter, it shall be  
185 unlawful to name as a defendant in the action either a minor or any person living at the premises  
186 who has not entered into a tenancy agreement with the plaintiff or its predecessor-in-interest and

187 is not responsible for payment of rent to the plaintiff. The name of any person named as a party  
188 to an action under this chapter when that person was a minor shall be impounded and shall  
189 remain permanently unavailable for public inspection except as ordered by the court for good  
190 cause shown.

191 SECTION 3. Section 19 of chapter 139 of the General Laws, as appearing in the 2016  
192 Official Edition, is hereby amended by inserting, after the word “defense” in line 43 the  
193 following new sentence:

194 It shall be unlawful to name as a defendant in any such action either a minor child or any  
195 person who has not entered into a tenancy agreement with the plaintiff or its predecessor-in-  
196 interest and is not responsible for payment of rent to the plaintiff. The name of any person  
197 named as a party to an action under this chapter when that person was a minor shall be  
198 impounded and shall remain permanently unavailable for public inspection except as ordered by  
199 the court for good cause shown.