SENATE DOCKET, NO. 526 FILED ON: 1/14/2019

SENATE . . . . . No. 824

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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:	
Joseph A. Boncore	*First Suffolk and Middlesex*	
Boston City Councilor, Lydia Edwards	*1 City Hall Square, Suite 550, Boston, MA 02201*	*1/15/2019*
Michael D. Brady	*Second Plymouth and Bristol*	*1/16/2019*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/18/2019*
Mike Connolly	*26th Middlesex*	*1/18/2019*
Jack Patrick Lewis	*7th Middlesex*	*1/22/2019*
Jason M. Lewis	*Fifth Middlesex*	*1/23/2019*
Nick Collins	*First Suffolk*	*1/23/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*1/24/2019*
Maria Duaime Robinson	*6th Middlesex*	*1/28/2019*
Tram T. Nguyen	*18th Essex*	*1/28/2019*
William N. Brownsberger	*Second Suffolk and Middlesex*	*1/29/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/31/2019*
Daniel J. Hunt	*13th Suffolk*	*1/31/2019*
Sonia Chang-Diaz	*Second Suffolk*	*1/31/2019*
Patricia D. Jehlen	*Second Middlesex*	*1/31/2019*
Michelle L. Ciccolo	*15th Middlesex*	*1/31/2019*

Nika C. Elugardo	*15th Suffolk*	*2/1/2019*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/1/2019*
Eric P. Lesser	*First Hampden and Hampshire*	*2/1/2019*
Sean Garballey	*23rd Middlesex*	*2/1/2019*
Brendan P. Crighton	*Third Essex*	*2/1/2019*
Edward J. Kennedy	*First Middlesex*	*2/1/2019*
Michael J. Barrett	*Third Middlesex*	*2/1/2019*
Harriette L. Chandler	*First Worcester*	*2/1/2019*
Bud L. Williams	*11th Hampden*	*2/1/2019*
Adam G. Hinds	*Berkshire, Hampshire, Franklin and Hampden*	*2/7/2019*
Julian Cyr	*Cape and Islands*	*2/7/2019*
Cindy F. Friedman	*Fourth Middlesex*	*2/7/2019*
James K. Hawkins	*2nd Bristol*	*3/5/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*8/19/2019*

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By Mr. Boncore, a petition (accompanied by bill, Senate, No. 824) of Joseph A. Boncore, Boston City Councilor, Lydia Edwards , Michael D. Brady, Sal N. DiDomenico and other members of the General Court for legislation to promote housing opportunity and mobility through eviction sealing (HOMES). 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:

SECTION 1. Chapter 186 of the General Laws is hereby amended by adding after Section 29 the following section:-

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

(1) "Consumer" means an individual.

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

(3) A “consumer reporting agency” is any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

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

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

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

(7) "Fault eviction" means an eviction action brought pursuant to section 4(a)(ii) of chapter 186A, under section 19 of chapter 139, or in which the notice to quit or complaint alleges a material violation of the terms of a residential tenancy or occupancy other than nonpayment of rent or failure to vacate following the termination of a tenancy. An action brought after

termination of a tenancy for economic, business, or other reasons not constituting a violation of the terms of the tenancy shall not be deemed a fault eviction for purposes of this Act.

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

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

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

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

(c) Sealing of court records.

(1) The court records in any eviction action or in any other civil action covered by this section shall be deemed sealed immediately or upon filing, whichever is sooner, and shall not be available for public inspection except as provided in this section. Sealed court records shall remain open at all reasonable times for inspection, on equal terms and conditions established by the Trial Court, by the parties to the litigation and their attorneys. A party may authorize a designee to access a sealed court record on the party's behalf for the sole purpose of providing assistance to the party; provided, however, that such access shall be subject to agreement by the authorized designee to the confidentiality and use provisions of section (d) herein.

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

(i) notice of the filing of the action

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

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

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

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

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

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

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

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

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

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

(5) Upon motion and for good cause shown, or as otherwise authorized by this section, court records sealed under this section may at the discretion of the court upon a balancing of the interests of the litigants and the public in nondisclosure of the information with the interests of the requesting party, be made available for scholarly, educational, journalistic, or governmental purposes only, provided, however, that identifying information of parties shall remain sealed unless the court determines that release of such information is appropriate under this paragraph and necessary to fulfill the purpose of the request. Nothing in this paragraph shall be deemed to permit the release of personal identifying information for commercial purposes.

(d) Publication and use of court records.

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

consequential damages or for $2000 for each violation, whichever is greater, and the costs of the action, including a reasonable attorney's fee.

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

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

the purpose of providing stabilization services to a tenant or occupant of residential housing. Information so obtained shall not be disseminated except as permitted by this Act. Any violation or failure to comply with this subsection shall constitute an unfair or deceptive practice in violation of chapter 93A. Any person who commits an act in violation of this section shall also be liable to the affected tenant or occupant for actual and consequential damages or $500 for each violation, whichever is greater, and the costs of the action, including a reasonable attorney's fee.

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

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

(f) Duty to record satisfaction of judgment. A party who obtains a judgment that is reflected in a court record available for inspection by the public shall, within 14 days of satisfaction of the judgment, file with the court in which the judgment was entered a notice satisfaction of the judgment. A party that has satisfied a judgment may, upon noncompliance with this section by the other party, seek equitable relief to correct the court record, and shall be entitled to costs and a reasonable attorney's fee. Upon the filing of a notice of satisfaction of

judgment, or court action deeming the judgment satisfied, the clerk of court shall seal the court records pertaining to the case.

(g) Data collection.

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

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

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

In any action against a tenant or tenant at sufferance under this chapter, it shall be unlawful to name as a defendant in the action either a minor or any person living at the premises who has not entered into a tenancy agreement with the plaintiff or its predecessor-in-interest and is not responsible for payment of rent to the plaintiff. The name of any person named as a party to an action under this chapter when that person was a minor shall be impounded and shall remain permanently unavailable for public inspection except as ordered by the court for good cause shown.

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

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