

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

<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/1/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/1/2019</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>2/1/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>2/1/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/1/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/1/2019</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>2/7/2019</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/7/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>2/7/2019</i>

SENATE No. 824

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:

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.