

August 11, 2020

Dear Conference Committee Members for the An Act Enabling Partnerships for Growth

Senator Rodrigues	Representative Michlewitz
Senator Lesser	Representative Ferrante
Senator O'Connor	Representative Wong

We continue to urge the Conference Committee to do everything you can to protect tenants during this pandemic and in the future from facing housing instability and are submitting this updated letter urging the Committee to pass Sections 87 and 88 in [S. 2874](#) (previously Senate Amendment 47 to S. 2842), with the attached corrections to avoid unintended consequences from last-minute changes made in S. 2874.

Under current law, eviction records are public from the time they are filed and stay public - regardless of whether the case is without merit or whether the case is dismissed. Court eviction records can be misleading and have errors and make it unfairly difficult for people to get a new apartment.

Sections 87 and 88 at their core are about housing stability and economic justice and would allow certain eviction records to be sealed. Section 87 protects children by preventing them from being named as defendants in eviction cases and is the same language passed by the House in H. 4887, Section 83.

Section 88:

- Gives tenants with no-fault evictions the legal right to petition the court to seal their record any time after the conclusion of the case.
- Provides tenants with non-payment evictions the ability to petition the court to seal within 14 days of paying off their judgment thus encouraging people to pay judgments.
- Requires accuracy from consumer reporting agencies by making it unlawful for a consumer reporting agency to report a sealed record or use it when scoring a tenant.
- Requires applications used to screen tenants for housing include a statement that tenants may answer “no records” if their record is sealed.

We urge the Conference Committee to keep all these important principles in the final draft of the Economic Recovery Bill and are thankful to lead sponsors Senator Boncore and Rep. Moran for their work to protect tenants against being unfairly branded with a record.

We also strongly urge three amendments to Section 88 that would make a technical correction, clarify the process, and make it consistent with the redrafted bill ([H. 4934](#)) reported favorably by the Judiciary Committee to House Ways and Means last, attached is sample language that would:

- Correct the apparent scrivener's error in Section 88 Section (b) to make it consistent with Section (d). Specifically, re-insert an omitted sentence clarifying that, like nonpayment evictions with satisfied judgments, no-fault evictions should be sealed upon filing of a valid petition to seal.
- Include dismissed cases, and other cases where parties win, among the cases that a party can petition to seal. Without this change, there is no mechanism for a tenant whose case is dismissed where there is no finding or who wins their nonpayment or fault eviction case, or a landlord who prevails in a suit against that tenant, to seal that case. Parties whose case is dismissed or who win would be in a worse position than parties who lose and later satisfy the judgment.
- Clarify Section 88 to make clear that there is a path for tenants facing a fault eviction to petition for sealing after three years have passed, so that they do not have an eviction record for life by including lines 42-52 in [H. 4934](#).
- Ensures that a new law does not remove the existing rights of parties in all housing cases to ask judges to impound highly sensitive information such as medical diagnosis or the identity of a victim of domestic violence or sexual assault.

Thank you for your work to provide necessary protections to prevent tenants from being unfairly branded with an eviction record and being unable to secure housing.

On Behalf of the Organizations Calling for Eviction Record Sealing Reform



Boston City Councilor
Lydia Edwards



Annette Duke
Massachusetts Law Reform Institute



Esme Carmello
Harvard Legal Aid Bureau

Redraft Amendment 47

**Promoting Housing Opportunity and Mobility through Eviction Sealing
(HOMES)**

Messrs. Boncore, Collins and Eldridge, Ms. Jehlen, Ms. Comerford, Ms. Chang-Diaz, Messrs. Crighton and Montigny, Ms. Rausch, Messrs. O'Connor and Cyr move to amend the bill by inserting after section 27 the following 2 sections:-

“SECTION 27A. Section 2 of chapter 239 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

The defendant named in a summary process summons and complaint shall not include a minor; provided, however, that if a minor is named, the name of the minor shall be expunged from any court record and electronic docket entry.

SECTION 27B. Said chapter 239 is hereby amended by adding the following section:-

Section 15. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:-

“Consumer report”, a written, oral or other communication of any information by a consumer reporting agency bearing on a person’s credit worthiness, credit standing or credit capacity that 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 person’s eligibility for rental housing or other purposes authorized under section 51 of chapter 93.

“Consumer reporting agency”, an individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity that, 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.

“Court”, the trial court of the commonwealth established pursuant to section 1 of chapter 211B and any departments or offices established within the trial court.

“Court record”, paper or electronic records or data in any communicable form compiled by, on file with or in the care custody or control of the court that concern a person and relate to the nature or disposition of an eviction action or a lessor action.

“Eviction action”, (i) a summary process action under this chapter to recover possession of residential premises; (ii) a civil action under section 19 of chapter 139 to obtain an order requiring a tenant or occupant to vacate residential premises; (iii) a civil action brought pursuant to sections 11, 12 or 13 of chapter 186 or subsection (a) of section 4 of chapter 186A; or (iv) any other civil action brought against a tenant or occupant of residential premises to obtain possession of or exclusive access to the residential premises.

"Lessor action", 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, breach of any material provision of the rental agreement or violation of any other law.

"No-fault eviction", any eviction action in which the notice to quit, notice of termination or complaint does not include an allegation of nonpayment of rent or of a violation of any material term of the tenancy by the tenant or occupant; provided, however, that a "no-fault eviction" shall include an action brought after termination of a tenancy for economic, business or other reasons not constituting a violation of the terms of the tenancy.

(a) Any person having a court record of a fault eviction or lessor action on file in a court may, on a form furnished by the Trial Court and signed under the penalties of perjury, petition the court to seal the court record. The petition shall be filed in the same court as the action sought to be sealed. If an action was active in more than one court during its pendency, then a petition may be filed in each such court. Notice need not be given to parties to the original action. The court shall comply with the petitioner's request provided that the record of the action which the petitioner seeks to seal concluded, including exhaustion of all rights of appeal, not less than 3 years before the request and no eviction action or lessor action has been brought against the petitioner within the Commonwealth in the 3 years preceding the request. The court may, in its discretion, process such petitions administratively without a hearing.

(b) Any person having a court record of a no-fault eviction on file in a court may petition the court to seal the court record at any time after the conclusion of the action, including the exhaustion of all rights of appeal. The petition shall be on a form furnished by the trial court of the commonwealth, signed under the penalties of perjury and filed in the same court as the action sought to be sealed. If an action was active in more than 1 court during its pendency, then a petition may be filed in each such court. Notice need not be given to parties to the original action. The court shall comply with the petitioner's request provided that the record only pertains to a no-fault eviction and the action has concluded with all rights of appeal exhausted. The court may, in its discretion, process such petitions administratively without a hearing.

(c) 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 and 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) Nothing in this section shall prohibit the dissemination of information regarding a money judgment as necessary for the sole purpose of collection.

(e) A consumer reporting agency shall not disclose the existence of or information regarding a court record of a no-fault eviction action sealed under this section or use information contained in a sealed court record as a factor to determine any score or recommendation to be included in a consumer report unless the court record was available for inspection with the court within 30 days of the report date. A consumer

reporting agency may include in a consumer report information found in publicly-available court records; provided, however, that the consumer report shall include a person's full name, whether an eviction action was a fault eviction, a no-fault eviction or a lessor action and the outcome of any eviction action if such information is contained in the publicly-available court record. Information contained in a sealed court record shall be removed from the consumer report or from the calculation of any score or recommendation to be included in a consumer report within 30 days of the sealing of the court record from which it is derived. Any credit reporting agency that violates this subsection shall be liable in tort, in a court of competent jurisdiction, to the person who is the subject of the consumer report for damages or for \$100 per day of such violation, whichever is greater, and the costs of the action, including reasonable attorney's fees. Nothing in this subsection shall be deemed to waive the rights or remedies of any person under any other law or regulation.

(f) An application used to screen applicants for housing or credit that seeks information concerning prior eviction actions of the applicant shall include the following statement: "An applicant for housing or credit with a sealed record on file with the court in a no-fault eviction action may answer 'no record' to an inquiry relative to that sealed court record."

(g) A party whose case is dismissed or who prevails in an eviction action or a lessor action may petition the court to seal the court record pertaining to that action. A party who obtains a judgment in an eviction action or a lessor action shall, not more than 14 days after satisfaction of the judgment, file with the court in which the judgment was entered a notice of satisfaction of the judgment. A party that has satisfied a judgment may, upon noncompliance with this subsection by the other party, seek equitable relief to correct the court record and shall be entitled to costs and reasonable attorney's fees. Upon the filing of a notice of satisfaction of judgment or court judgment deeming the judgment satisfied in an eviction action or lessor action, a party may petition the court to seal the court record pertaining to that action. The petition shall be on a form furnished by the trial court of the commonwealth, signed under the penalties of perjury and filed in the same court as the action sought to be sealed. If an action was active in more than 1 court during its pendency, a petition may be filed in each such court. Notice need not be given to parties to the original action. The court shall comply with the petitioner's request and seal the court record if the judgment has been satisfied and the action has concluded with all rights of appeal exhausted. The court may process such petitions administratively without a hearing.

(h) Nothing in this section shall limit the right of a party in any eviction action or lessor action to seek impoundment of any court records under any other law or court rule.