Testimony for Eviction Sealing Hearing May 9, 2023

RE: **An Act promoting housing opportunity and mobility through eviction sealing (HOMES) 193 S.956 H.1690**

Prepared for
The Joint Committee on the Judiciary
General Court
Care Of michael.musto@mahouse.gov
May 8, 2023

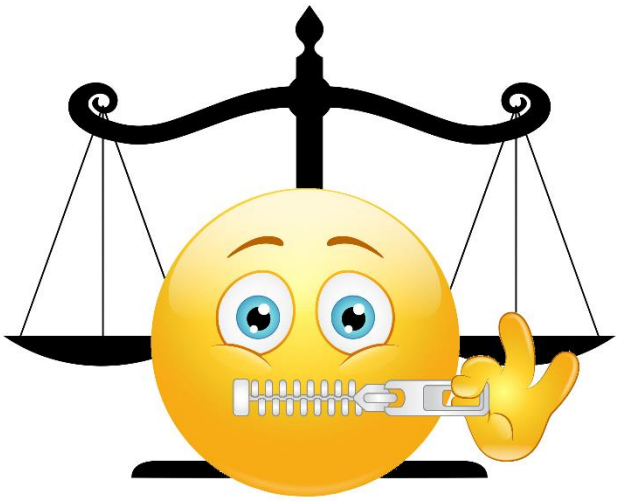

Figure 1. Image license derivative of 123rf and cc0.

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Funded by
The (as of May 1) 2,399 members of MassLandlords, Inc.
a 501(c)6 nonprofit trade association whose mission is
to create better rental housing in Massachusetts.

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"An Act promoting housing opportunity and mobility through eviction sealing (HOMES)" 193rd Session S.956 and its companion H.1690, informally known as "eviction sealing," ought not pass. Eviction sealing

adds extraordinary complexity to court procedure for limited renter benefit. It would create a precedent for court licensing of journalists, setting up a slippery slope antithetical to a healthy democracy. It would remove landlords' ability to evaluate housing history on a rental application, especially small housing providers, who are least able to tolerate a repeat eviction. The whole idea should be scrapped and replaced with anti-discrimination protections like we already have for criminal records. Landlords would support the creation of additional protected classes to address the perceived inequity. A sample of that alternative bill (not yet filed) is enclosed.

Legislative History

Eviction sealing was first proposed in the 191st legislative session as "An Act promoting housing opportunity and mobility through eviction sealing" (H. 1347 and S.824). It was proposed again, with modifications, in the 192nd under the same title (H.1808 and H.4505). It is proposed again in the 193rd session as S.956 H.1690 but with entirely different wording. Each version has the same fundamental flaws.

What is the problem we're trying to solve?

Court records in a democracy are public by default absent extraordinary needs (e.g., a need to protect witnesses, survivors of domestic violence, state secrets, national security, etc.). Renters may end up in court and with a record for a variety of circumstances, not all of which indicate they have failed morally. This record should not impede their application to new housing, but sometimes it does. We agree that there is something here to fix.

Example One: Code complaints could be misunderstood by tenant screeners

For example, a renter may find themselves renting from a slumlord: they may be unable to get the landlord's attention to make repairs. Under General Law Chapter 239 Section 8a, a renter may lawfully and rightly withhold rent to get the landlord's attention. When the landlord files an eviction for nonpayment, the renter can defend against the eviction by citing code violations. The court then enforces the code, the withheld rent is paid, and the eviction ends. The court record makes it clear that the renter won.

This renter may subsequently try to move to new housing. A landlord reviewing their application for this new housing ought to see the renter's name in the court record. If they are knowledgeable and prepared (e.g., a Certified Massachusetts Landlord™), they will clearly see the court record shows the renter won the case. They may also ask the renter and try to contact the landlord to hear both sides of the story. If they are not knowledgeable or prepared, they may incorrectly deny housing on the basis of a prior eviction. This would be a misunderstanding of the court record, and also lazy.

There is a narrative that renters win in court, that lazy slumlords are to blame for their being there, and that the only solution is to hide the court records. It sometimes is the case that this is all true, but in the big picture it is so rare as to make the narrative falsely misleading. MassLandlords members agree that a renter should not be denied housing because they asserted their rights to safe and sanitary housing. We

do not issue such denials, and we are willing to work with renter advocates to make sure no landlord does.

Example Two: Simple poverty should not hold someone back

Another more common example is simple poverty: a renter signs up for a rental agreement, finds the cost of housing in Massachusetts insupportably high, and misses a rent payment. After good faith efforts on both sides to work out a move-out, the renter and the landlord find themselves stuck without a single other option. The landlord files for nonpayment eviction.

If the courts do their job, then the renter who was previously evicted for nonpayment will now be applying for new housing with both inadequate income and a recent eviction. There should be no moral assessment on that renter's poverty: life is hard for many through no fault of their own. So the eviction should not unduly burden the renter in trying again elsewhere.

As with rent withholding above, poverty creates a set of housing barriers that make it hard to pass an application. While it is sometimes the case that a renter is evicted *only* because they are poor, it is misleading to create a narrative that this is a common occurrence. Evictions usually indicate a serious compounding problem either with the landlord or the renter, as discussed below.

Example Three: The safety net has been more responsive to court records

By far the most common example of eviction in recent years has been failure of the rental assistance safety net: a renter in need and a landlord jointly fill out an application for rental assistance. The regional administering agency (RAA) fails to receive or process their documentation, either due to technical or staff issues. The RAAs are known to more quickly triage cases in court than out of court, so the landlord and renter, still in good communication, agree that the landlord should file for eviction. "This should shake the tree," they say. And it works. Rental assistance appears and the case is dismissed.

Again, MassLandlords members agree that a renter should not be denied housing because they and their landlord tried to make the safety net respond to their need by filing in court.

For Landlords, All Past Evictions are Highly Relevant on a Rental Application

Eviction filings affect roughly 4% of renter households in any given year. (1.1 million renter households per the 2010 Census, compared with 40,000 filings per the Trial Court Dashboard.) Eviction filings are not common.

Evictions take up to 300 days to complete. During this time, a renter may not be paying rent. If the property is held by an LLC, the landlord must hire an attorney at their expense. A substantial amount of time and effort is involved in taking a renter to court. The graph clearly shows that when rental assistance was available upstream of an eviction filing during 2021, eviction filings fell by half. With all due respect to our public servants in the court, it's fair to say that landlords would rather avoid court if possible.

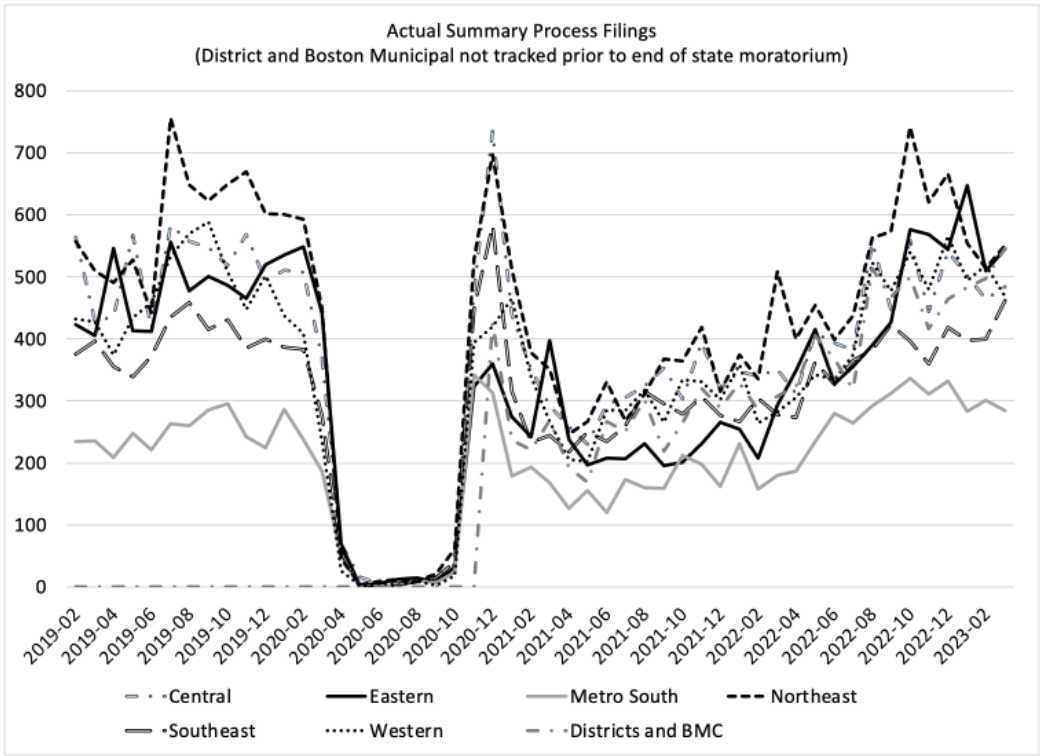

Figure 2. A chart of all eviction filings statewide per month by court since January 2019. MassLandlords research.

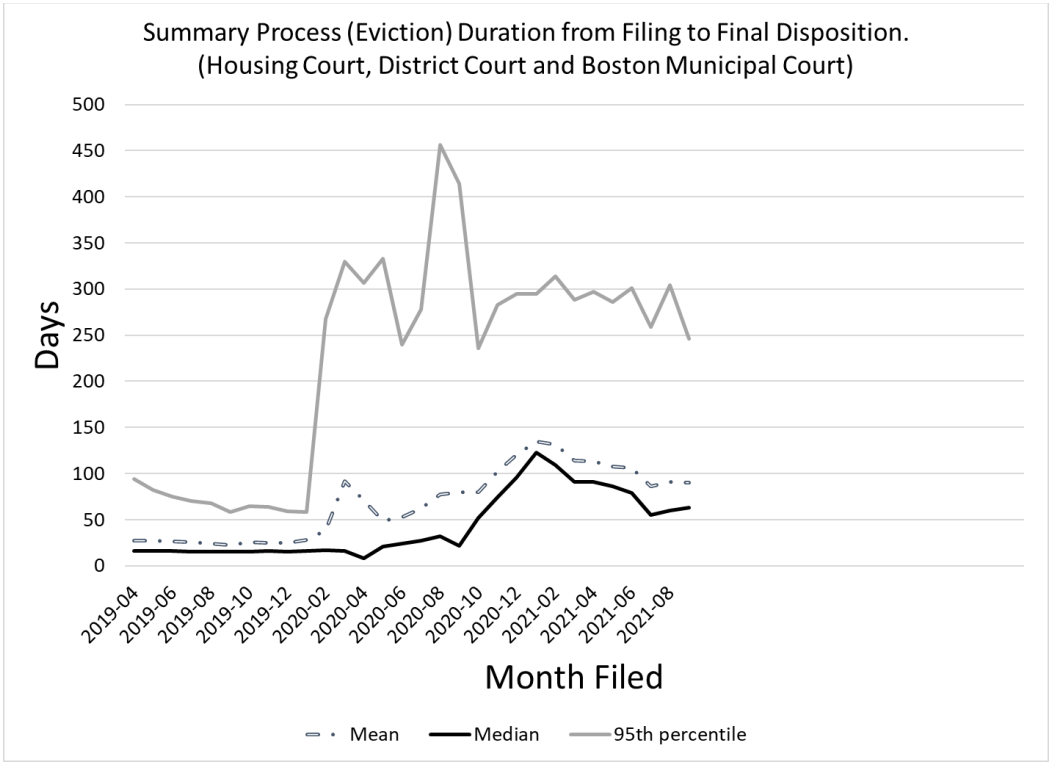

Figure 3. Graph of court time since April 2019. Mean = average time, median = half of all cases resolve longer than this. 95th percentile = 95% of cases are resolved by this time. MassLandlords Research Team

Filing for eviction is uncertain to produce a good result. The renter could have counterclaims, there could be a security deposit violation, the notice to quit could have been defective. It is extremely costly and time-consuming.[1]

> *Between 5% and 30% of eviction filings result in what's called a "levy of execution," or a forced move-out. This means two-thirds of the time at least, a renter wins or leaves on their own terms.*

Most landlords should rationally prefer a "cash for keys" settlement to going to court. In Massachusetts, it is entirely lawful and right that a renter and a landlord can agree to payment plans, move-outs, roommates or any other change in situation without the courts. The Massachusetts Office of Public Collaboration, for instance, offers facilitative mediation programs for free to landlords and renters (thank you for funding this).

When a landlord and a renter end up in court, something has gone very wrong. One side (landlord or renter) may have lacked the conflict resolution skills or problem-solving skills to successfully avoid court. Or else, as we saw during the pandemic, being in court sometimes results in rental assistance being awarded faster and more fully than otherwise, because the safety net is full of holes.

When a renter appears in a court record, that fact is highly relevant to a landlord's understanding of that applicant's history.

Landlords want access to court histories to review, ask questions, and make decisions on a case-by-case basis.

Our members consistently rate "oppose eviction sealing" as a top policy priority, even above getting more heat pumps to fight climate change.

[1] https://masslandlords.net/policy/eviction-data

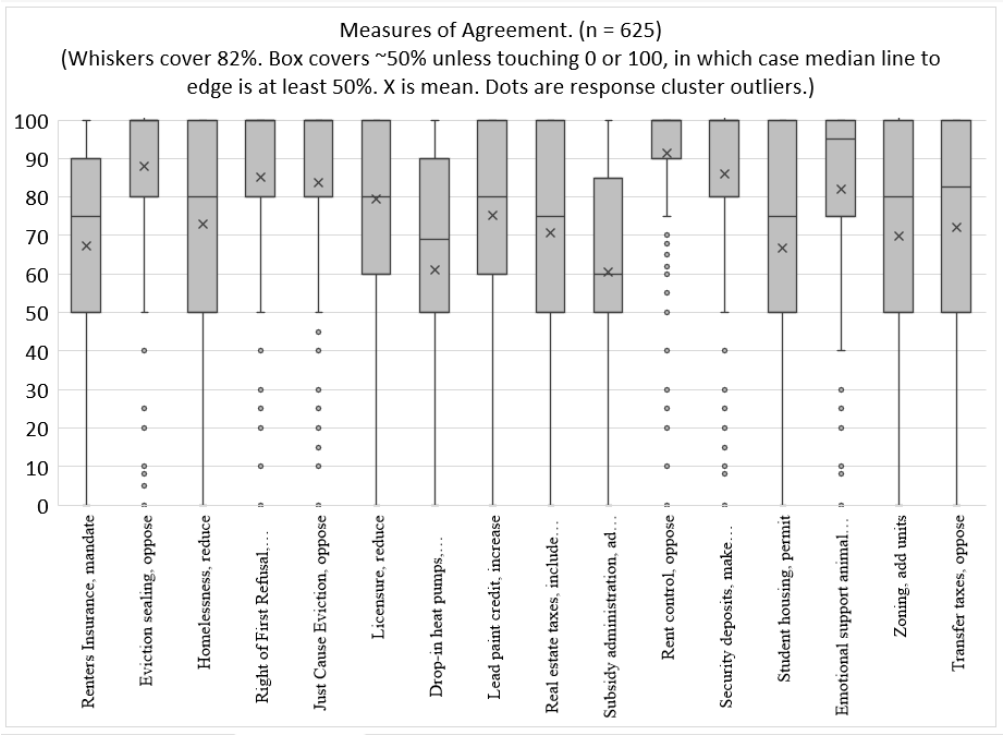

Figure 4. MassLandlords members consistently rank "Oppose eviction sealing" a top policy priority, more important than fixing security deposits and almost as strongly opposed as rent control. The high, small solid bar for "Eviction sealing, oppose"(2nd from right) shows that 50% of members rate this issue an 80 or higher in importance.

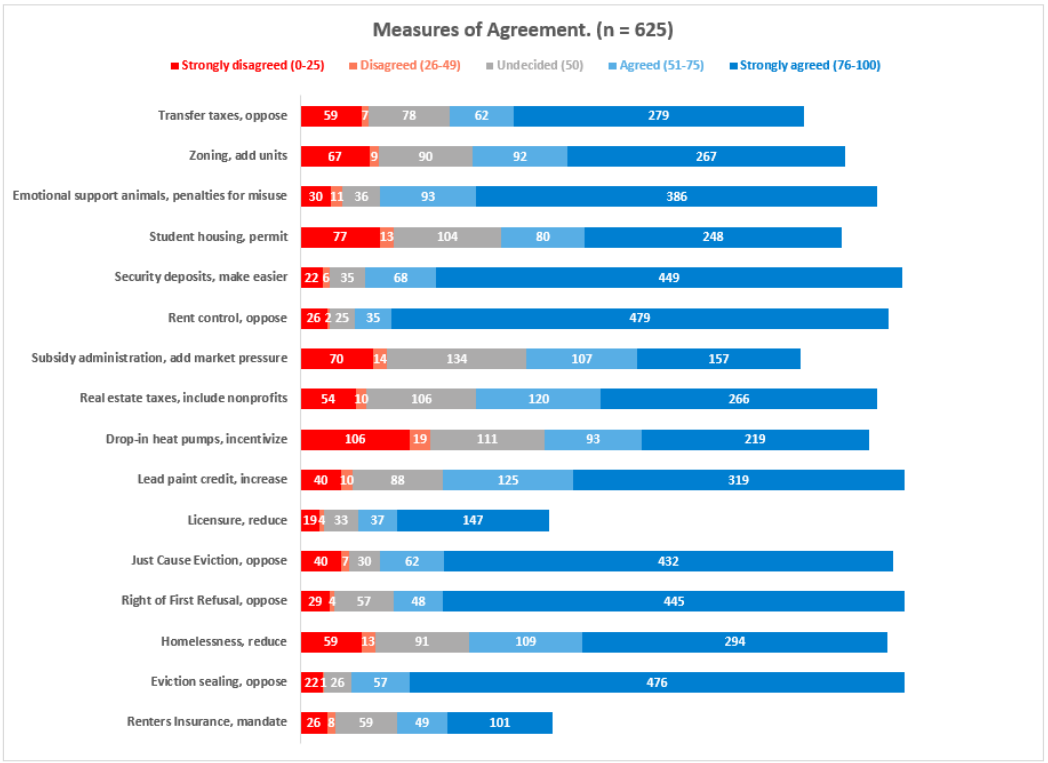

Figure 5. An alternate view of the same data in the prior graph. "Eviction sealing, oppose" is second from the bottom.

What Would This Bill Do?

In a nutshell, the bill would establish timeframes during which eviction cases would be open to the public, after which they could be sealed.

A full section-by-section interpretation of bill text is available online[2] and is attached as Appendix A.

The bill impacts the day-to-day operations of the housing court, renters, journalists, debt collectors, landlords and credit reporting agencies.

Impact on the Courts

The courts would be given three new types of matters to consider:

- Petitions on sealing;
- Application of sealed records to debt collection; and
- Application of sealed records to public safety, education, research, journalism and all other uses.

Petitions on Sealing

The bill would require courts to receive petitions for sealing, to notify all parties to the original action, to hold a hearing, and to decide the case on the merits (Paragraphs B, C, D, E and J).

If every renter who had ever been named rationally took advantage of their right to seal their prior eviction, and if every landlord is still sore over the eviction (common), then court volume would double from approximately 30,000 summary process hearings per year to include an additional 30,000 contested eviction sealing hearings per year, once the law has been in effect for a while. This would average approximately 60,000 additional pieces of mail per year, in addition to other administrative overhead.

A large number of summary process cases are accessible to the public already, meaning the courts could also experience an enormous influx of sealing petitions. Eviction filings have been steady over the past 10 years, with the exception of the eviction moratorium and pandemic rental assistance response, at roughly 30,000 to 40,000 filings per year. If every renter rationally petitioned to have their prior filing sealed, approximately 300,000 petitions could be filed for prior year's cases the day the bill passed into law.

In addition to raw petitions, the bill requires the courts to determine whether a case has been filed against a party subsequent to the original case. Paragraph C reads, "no eviction action for nonpayment

[2] https://masslandlords.net/policy/eviction-sealing/an-act-promoting-housing-opportunity-and-mobility-through-eviction-sealing-homes-193-s-956-h-1690/

or lessor action has been brought against the petitioner within the Commonwealth in the 4 years preceding the request." This puts the courts in the position of conducting a tenant screening like a landlord. The court records do not have proof of identity; there are a lot of "John Smiths" in the world. How, without conducting a full background check, is the court supposed to enforce this?

Applications to Debt Collection

Paragraph F grants implied authority to the court to review debt collection practices. This would in practice require the holder of a sealed debt to file for a court opinion somehow on whether their proposed disclosure is "necessary or appropriate." Alternatively, the Trial Court would have to issue regulations in the manner of an executive office stipulating what it considers "necessary or appropriate" in communicating sealed debts. Supervision of debt collection is not the purpose of the court, except where a specific debt collection practice is alleged to be unlawful, a situation handled elsewhere in the law.

Applications to Public Safety, Education, Research, Journalism and all other uses

Paragraph E grants the court power to decide whether sealed records can be made available for academic and journalistic uses. Under this bill, MassLandlords, Eviction Lab and others on both sides of the housing policy debate would have to obtain court permission for use of data collected prior to those cases having been sealed. Supervising research is not the purpose of the court.

Eviction data is a matter of the utmost importance in crafting housing policy. MassLandlords, Inc., has self-funded a data team who have scrupulously read every single docket since Jan. 1, 2019, twice: first when the case is filed to track emerging trends, and again 18 months later to understand outcomes.

We have used our data[3] to present at the National Fair Housing and Civil Rights Conference twice, to draft public records litigation against the Department of Housing and Community Development for failing to process rental assistance applications in a timely matter, and to give this data to all comers subject to our permissive requirements of citation and equal sharing. Our data has been used by the Metropolitan Area Planning Council, Brown University and others.

Impact on Renters

Renters broadly (not the 4% each year who incur a record, but the 96% who don't) could be sharply penalized as others move into their community and only afterwards reveal themselves to be non-contributing neighbors. Noise, smoking, nonpayment and a host of other behavioral issues normally screened out in many communities will over time become unknowable to landlords.

Consider an Eviction for Smoking

On Nov. 17, 2021, in the case 21SP1694 (Central Division, Housing Court), a for-cause smoking case was dismissed by the court for failure to meet evidentiary standards and for alleged ambiguity of drafting in the rental agreement.

[3] https://masslandlords.net/policy/eviction-data/

The lessor pursued a no-fault case against the renters in parallel. The no-fault case prevailed, and that house was rendered smoke free.

If eviction sealing were to be passed, the smokers who broke the lease could easily seal their cause case for having won (Paragraph E, or else Paragraph B modified by the expansive definition of "no fault"). This bill would mask a real problem.

Consider an Application from a Marginal Renter

Any time a marginal rental application is presented, landlords must look for mitigating circumstances to try to qualify the household. If eviction records become unreliable, then renters with no prior history will be bucketed into the same "unknowable" category as renters with a prior history that is sealed.

Overall, the impact will be to drive landlords toward high income limits and higher credit score. This will make it harder for most renters to qualify for rental housing, but as the housing crisis shows, there is seemingly no end in sight of higher income applicants to fill units. This bill would worsen the housing crisis.

Impact on Landlords

The bill would have a profound impact on tenant screening operations. It is so discouraging that the mere mention of the hearing encouraged one small landlord close to retirement to sell out and move away. This is the opposite of where we should be heading.

> "Hi Doug, I just read the latest emails about eviction sealing. I have gotten so tired that I have decided to sell and move to Virginia in the next few years."
>
> -Wednesday May 3, 5:14 pm, MassLandlords member's text to Doug Quattrochi

Small landlords typically do not have the capacity for an eviction, either in terms of money, time or financial reserves. This is in part why small landlords file at evictions at half to one-third the rate of larger corporations[4]. We wait as long as possible to try public mediation, cash-for-keys or any other dispute resolution procedure.

In the words of small landlord Christine Scott, "It is ... important to know if they have a court record of being evicted for no-cause because they may have caused a negative living situation for other tenants.

[4] Gomory, Henry. "The Social and Institutional Contexts Underlying Landlords' Eviction Practices," June 2022. https://academic.oup.com/sf/article-abstract/100/4/1774/6301048?login=false

In the absence of police reports, and avoiding a "he said, she said situation," it is important to know this information before renting to them for everyone's benefit, both the landlord and other existing tenants."

Small landlords, especially Certified Massachusetts Landlords™, give renters a chance even if they appear in the court record. Erin Zamarro, cML Level One, says, "In 2018, I helped an owner rent an apartment to a tenant with a judgement against him for nonpayment of rent, whose record also indicated that he made restitution to the owner. The owner chose the tenant because she felt his record of paying the judgement was a good indicator of his ability to fulfill his side of a housing contract (lease). That tenant is still in the same apartment five plus years later."

Mid-size landlords also value eviction records. Jessica Berard of South Shore Apartments writes, "I currently own and manage 70 units. I have successfully used eviction records for qualifying ... tenants every time I receive a new tenant application for a vacant apartment. ... If I can't search online to see if someone has been evicted once or numerous times for lease violations or non-payment, how can I ensure I am going to be putting a new resident in an apartment building who is going to be an asset to that community and not a detriment?"

Mayer Thayer of Winton Corp writes, "If we do not have access to eviction records it makes our job as a landlord much harder to do. If we accept a tenant that has a history of being evicted who turns out to be very disrespectful to the other tenants in the building and to the property, it may take us months to get the tenant evicted. In the meantime, other tenants who are following the lease clauses and being respectful to their neighbors may be very negatively impacted."

Dave Cruise of Kdlk Holdings (in business) and CMA RE Holdings (closed permanently) writes, "past eviction filing is the most important determinant of future eviction."

There are many situations in which even a long-ago eviction sheds important light on why a renter is moving now and how they approach a landlord-renter relationship.

Unintended Consequences Not Already Mentioned

A Cottage Industry for Eviction Sealing

We have seen several times in the past where a policy framework had the unintended consequence of creating a cottage industry taking money in exchange for access to coveted situations:

- During rent control, renters posted signs advertising cash rewards equal to an entire month's rent for notice of available rent-controlled units.
- Meaningless emotional support animal certificates are commonly available online for $100 to allow pets in no-pets apartments[5].

[5] https://www.esaregistration.org/shop/

- The tenant opportunity to purchase act (TOPA), also known as “right of first refusal,” in Washington D.C. created a brokerage for landlords to purchase these rights.

Figure 6. An attorney in Washington D.C. made their car into the TOPA Mobile to transact. We can easily foresee “SealMyEviction.com,” which is already anonymously registered. (It wasn’t us!) https://www.nbcwashington.com/

It is entirely to be expected that someone will set up a business offering to seal prior evictions in exchange for a large fee. Considering the economics (how much a confidence trickster can gain by duping an unsuspecting landlord, how much court process is involved in sealing a record), it seems likely that renters ought to be willing to pay approximately one months’ rent to have a prior eviction sealed. This will amount to sale of snake oil, though, because as we have mentioned: if landlords cannot rely on court records, screening will turn to credit score, income and other metrics harder to fake.

Credit Reporting Agencies Will Preemptively Drop Records

The bill requires the landlord to receive notice of a renter’s request to seal their record. The bill does not, however, notify any consumer reporting agencies that previously obtained the court record. This means that a CRA could easily fall in violation of this bill without realizing it.

Notifying all possible CRAs would require a solution that is not contemplated in the bill. One idea would be to order the Trial Courts to publish a list of sealed cases by date sealed and docket number. Then all CRAs could review the registry to update their databases accordingly. This is not in the bill.

Absent coordinated publication of newly sealed cases, if a consumer reporting agency wanted to comply with the law, they would have to either:

1. Continuously monitor all eviction cases to find which ones have disappeared and are presumed sealed; or
2. Conservatively treat all cases as sealed as soon as they could be.

This will likely have the unintended consequence of CRAs removing data from their databases that is not sealed:

- No-fault cases and common nuisance cases will never be added to a consumer report, since they would have to come off again in an uncertain matter of months;
- All non-payment cases will be deleted after four years; and
- All remaining cases will be deleted after seven years.

Clear Alternatives to Eviction Sealing

Like Arrests and Convictions

The public has known since 2016 how to solve the issue of prior records on a rental application. The Department of Housing and Urban Development issued extensive administrative guidance under the Fair Housing Act. In a nutshell, arrests and convictions may not be used as outright disqualifiers, but if on a case-by-case basis a record is relevant to the application for rental housing, it may be considered[6]. Case-by-case consideration is an easy thing for landlords to contemplate because we already do this as part of tenant screening.

Protected Class Status

MassLandlords has already drafted legislation to replace the contents of the HOMES Act with a simple anti-discrimination framework:

> An Act Relative to the Eviction Sealing Alternative of Protected Class Status.
>
> Chapter 151B Section 4 is hereby amended by inserting in paragraph 10, after each occurrence of the word "is," the phrase "or has been".
>
> Chapter 151B Section 4 is hereby amended by inserting after Paragraph 10 the following:
>
> 10A. For any person furnishing credit, services or rental accommodations to discriminate against any applicant who appears in any court record on the basis of that court record, unless on a case by case basis that record demonstrates or subsequent investigation discovers adverse information making that record directly relevant to the decision to credit, serve or rent.
>
> 10B. For any person furnishing credit, services or rental accommodations to discriminate against any applicant who appeared in any court record when, at time of filing, they were a minor.
>
> 10C. For any person furnishing credit, services or rental accommodations to inquire of an applicant about their court records prior to receiving their application, provided however that such persons may disclose and publish their court record acceptance criteria in accordance with this Chapter, and may use such criteria in evaluating the application.
>
> Chapter 66 is hereby amended by inserting after Section 21 the following:

[6] https://masslandlords.net/hud-bans-convictions-not-just-arrests-automatic-disqualifier-rental-applications/

> Section 22. Documents pertaining to rental assistance. In order to ensure the just, efficient and discrimination-free administration of housing services, a document made by the Department of Housing and Community Development or its agent, whether a Regional Administering Agency or other person or entity, pertaining to rental assistance in any form described under Chapter 151B Section 4, shall be considered a public record under this chapter to the extent it identifies the lessor, owner, manager or other recipient of funds, the precise address at which housing services were rendered, and the amount and dates of such assistance, provided however that the names of renters, tenants, subtenants, and other occupants of the premises at time of such assistance shall not be public records.

This language would not only protect good renters but would also sustain incentives against bad renters. It would not significantly burden landlords or others engaged in tenant screening. It would not create an additional burden on the courts. It would leverage already robust enforcement mechanisms in courts and at the Massachusetts Commission Against Discrimination. And it would make additional data available, namely, applications for rental assistance, so that renters hitting a rough patch can easily be differentiated from renters seeking to abuse the courts and due process.

Upstream Rental Assistance

At least one good thing came out of the pandemic response: we saw how to cut eviction filings in half. We made rental assistance available without going to court (without even issuing a notice to quit). Also, we made a total of 18 months of emergency assistance available, and denominated this assistance in actual months rather than a dollar cap. These changes should become permanent policy in Massachusetts, and to the extent need is greater than funding, a lottery should be implemented. This would ultimately be less discriminatory and more fair than finely parsing income limits or essays on hardship.

Conclusion

Eviction sealing is an exasperating mess of complexity that ought not pass. Each session it undergoes a complete rewrite, and yet because it is fundamentally the wrong idea, each iteration brings it no closer to landlord support or renter protection. This session's HOMES Act brings it into sharp conflict with the reality of what the Trial Court does and where its capable but too-few team members should be focused. It would offer weak tea protection for good renters in court through no fault of their own. It would send shockwaves through the debt collection and consumer reporting industries. It would unduly burden journalistic and academic inquiry into this really pressing social problem. And landlords would support the clear alternative that is already in place for criminal records. Please, S.956 and H.1690 ought not pass.

Appendix A

The subsequent pages show a break-down of the law and our commentary section by section.

Due to print pagination, this material is better viewed online on desktop or mobile devices at:

https://masslandlords.net/policy/eviction-sealing/an-act-promoting-housing-opportunity-and-mobility-through-eviction-sealing-homes-193-s-956-h-1690/

"SECTION 135A. Chapter 239 of the General Laws is hereby amended by adding the following section:-

Chapter 239 is "Summary process (eviction) for possession of land."

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

A "consumer report" is defined as anything used for evaluating a rental application. This definition parallels that of G.L. Chapter 93 Section 50, which defines consumer credit reports as information used to evaluate creditworthiness. That law (Section 51) exempts rental property owners from the requirement to obtain a written release before screening for housing history. This bill seems to intend to override that, but fails to edit that section.

establishing the person's eligibility for rental housing or other purposes authorized under section 51 of chapter 93.

"Consumer reporting agency", 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.

A "consumer reporting agency" would include your screening company. This expands the definition of "Consumer reporting agency" in G.L. Chapter 93 Section 50 by including different types of entities, but otherwise is the same.

"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.

Records could be sealed in any court with jurisdiction over summary process.

"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.

Every document the courts produce in connection with a summary process case filed by a landlord or a small claims case filed by a renter would be covered. Small claims cases filed by landlords are not covered (possible drafting error: see "lessor action").

"Eviction action", a summary process action under this chapter to recover possession of residential premises.

All evictions are covered.

"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.

A category of cases is defined as civil suits brought by a renter or occupant against their landlord. This wording would by implication extend rights to trespassers and unauthorized occupants to bring suit against an owner, manager or lessor. Possible drafting error: The way "lessor action" is used elsewhere in this bill, it implies a landlord suing a renter. This would be a serious drafting error, as "lessor action" is here defined as something brought by a renter against a landlord.

"No-fault eviction" any eviction action in

This broad language defines a whole class of cases one would normally not consider an eviction to be a no-fault eviction. We know from other law that

which the notice to quit, notice of termination or complaint does not include an allegation of nonpayment of rent or of 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.

tenancies are terminated by the issuance of a notice to quit. This bill says that after a notice is served, any other case brought by a lessor will also be treated as a no-fault eviction case.

(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 exhaustion of all rights of appeal. The

As soon as a no-fault eviction is over, it may be sealed. This is a great example of how "splitting the difference" on eviction sealing helps no one. This bill is in its third round of edits (fifth year) and still no closer to helping either side. Earlier versions of this bill sealed no-fault cases upon filing. This was clearly wrong, so now we would seal no-fault cases only after conclusion. This is still wrong: Renters may be in court with a no-fault eviction that is really not their fault (a landlord who has not tried "cash for

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 shall 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. If no objection is filed by a party within seven (7) days of filing the petition, such court may, in its discretion, process such petitions administratively without a hearing.

keys"). Such a renter should be finding a new place to live. While the case is ongoing, the case remains public. Now every apartment to which the renter applies is going to see the eviction. It's possible in some places the renter will be unfairly denied, making this a very weak renter protection. The root cause of allegedly improper landlord screening practices still has not been addressed. On the other hand, a renter may be in court as part of a broader story of serious disagreement with the landlord. Now as soon as the case is concluded, this story is unknowable. Even if the renter loses, their case may be sealed leaving them free to repeat the same bad behavior on their next unsuspecting landlord. This wording fails to address concerns of renters and landlords both. We are on the wrong path with eviction sealing.

(c) Any person having a court record in an eviction action for non-payment of rent 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 shall 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 4 years before the

A nonpayment eviction may be sealed if all of the following conditions are met:

- The case ended four years ago or more;
- Since then, there have been no evictions and the renter has not sued any landlord;
- The renter swears that they had an economic hardship, and still have an economic hardship that prevents them from paying off the judgment.

This is another example of a weak tenant protection that will make it impossible for landlords to screen. A renter with a nonpayment case they wish to have sealed must show two contradictory things: first, that they have been rich enough to avoid housing court over the past four years, and second, that they are poor enough to be excused for not paying the prior judgment. This combination ensures that only lawyers will win, as both renter and landlord argue over whether the case should be sealed. A landlord with a nonpayment case will also lose. A judgment for money is good for 20 years. Debt collection agencies may monitor the news in combination with court records to identify when a judgment may become collectible (e.g., renter wins a state Lottery promotion), and may purchase this judgment from a landlord. Under this bill, that will never happen. Nonpayment cases disappear while the judgment remains in effect. It's now up to each individual

request and no eviction action for nonpayment or lessor action has been brought against the petitioner within the Commonwealth in the 4 years preceding the request; and (b) the petitioner certifies on the petition that the non-payment of rent was due to an economic hardship and such economic hardship has rendered them unable to satisfy the judgment. If no objection is filed by a party, the court may, in its discretion, process such petitions administratively without a hearing. If an objection is filed by a party, within seven (7) days of filing the petition, the Court shall conduct a hearing to determine the petitioner's compliance with the foregoing conditions and may require the petitioner to complete

landlord to monitor their renters for 20 years to determine if a judgment has become collectible.

a Financial Statement on a form furnished by the Trial Court.

(d) Any person having a court record of a fault eviction 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 shall 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

A for-cause eviction may be sealed if all of the following conditions are met:

- The for-cause case ended more than 7 years ago;
- No other for-cause case has been brought against the renter since.

For a small landlord who cannot afford even a single eviction, this is no reassurance, especially where the for-cause case was a nightmare scenario that dragged on for multiple years. Also, this wording is a good example of how a law can create a perverse incentive. If a landlord wanted to make sure that a renter's for-cause eviction were never sealed, all they would have to do is file another for-cause eviction against them every seven years. They don't have to win, they just have to file, and the prior record becomes unsealable. Does this really help renters defend against bad landlord behavior? No.

seal concluded, including exhaustion of all rights of appeal, not less than 7 years before the request and no eviction action for fault or lessor action has been brought against the petitioner within the Commonwealth in the 7 years preceding the request. If no objection is filed by a party, within seven (7) days of filing the petition, the court may, in its discretion, process such petitions administratively without a hearing.

(e) Any person having a court judgment against them in a civil action commenced pursuant to General Laws c. 139 Section 19 on file in a court may, on a form furnished by the Trial

This is catch-all language that applies to all evictions being sealed. The court will make an eviction sealing request form. In each court that heard the case, the form has to be used to seal the case in that court.

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 shall be given to parties to the original action.

In each case, the bill requires the landlord to receive notice of a renter’s request to seal their record. The bill does not, however, notify any consumer reporting agencies that previously obtained the court record. Notifying all possible CRAs would require a solution neither required nor even contemplated in the bill. The Trial Courts could publish a list of sealed cases by date sealed and docket number. Then all CRAs could review the registry to update their databases accordingly. This is not in the bill. Absent coordinated publication of newly sealed cases, if a consumer reporting agency wanted to comply with the law, they would have to either:

- Continuously monitor all eviction cases to find which ones have disappeared and are presumed sealed; or
- Conservatively treat all cases as sealed as soon as they could be.

This will likely have the unintended consequence of CRAs removing data from their databases that is not sealed:

- No no-fault cases or common nuisance cases will be added to a consumer report, since they would have to come off again in an uncertain matter of months;
- All non-payment cases will be deleted after four years;
- All remaining cases will be deleted after seven years.

> The court shall schedule a hearing to determine: (a) whether such action which the petitioner seeks to seal concluded, including exhaustion of all rights of appeal, not less than 7 years before the request and no

Any judgment in an eviction for common nuisance can be sealed after 7 years, or immediately if the plaintiff does not win. “Common nuisance” means prostitution, alcohol, illegal casinos, drugs, explosives, other crime, violence against public housing authority staff. Note the contrast with for-cause evictions: in a for-cause eviction brought under other law, the case remains open for 7 years regardless of who wins. In common nuisance cases, these cases can be sealed immediately if case cannot be proved.

eviction action for fault, or action pursuant to General Laws c. 139 Section 19, has been brought against the petitioner within the Commonwealth in the 7 years preceding the request, and such petitioner has not been convicted of any criminal offense reference in Chapter 139, Section 19 during such 7 year period; and (b) whether the sealing of such record is the interest of justice and public safety.

Notwithstanding any provision to the contrary, where the plaintiff did not obtain a judgment in its favor, the defendant may petition to seal the court record at any time after the conclusion of the action, including exhaustion of all rights of appeal.

(e) 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 public safety, scholarly, educational, journalistic or governmental purposes only, provided, however, that the personal identifying information of the parties involved in the action, shall remain sealed unless the court determines that release of such information is appropriate under this subsection and

This bill would seek to license journalists, but only journalists who are not engaged in “commercial purposes” like selling newspapers. If NECN or another “commercial” news outlets wanted to write a follow-up story four years from now about, for example, Stoneham Police Officer Detective Sgt. Robert Kennedy, they could not if Detective Sgt. Kennedy had sealed his cases. There is explicitly no permission to use a sealed record for commercial reporting. This language is highly problematic and antithetical to a free society.

necessary to fulfill the purpose of the request. Nothing in this subsection shall be deemed to permit the release of personal identifying information for commercial purposes.

(f) Nothing in this section shall prohibit the dissemination of information contained in a record sealed pursuant to this section as the court deems necessary or appropriate: (i) for the collection of a money judgment; (ii) to pursue a criminal investigation; (iii) to pursue a criminal prosecution; or (iv) where information in the sealed record was entered into evidence in a criminal prosecution that resulted in a criminal charge.

This section would interpose serious barriers in debt collection operations. A judgment lasts for 20 years, but a nonpayment case will be sealed after four years. Each debt collection operation in the subsequent 16 years would have to obtain explicit court approval. Disclosing a judgment to others for “collection of a money judgment” is only possible if “the court deems necessary or appropriate.”

(g) Nothing in this section shall prohibit a person or their representative from petitioning the court to obtain access to sealed eviction records in which the person is a party.

You can ask the court to unseal your own record for you. Possible drafting error: The bill does not say the court must do it, only that you may ask.

(h) A consumer reporting agency shall not disclose the existence of, or information regarding, an eviction record 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 not more than 30

A drafting error here suggests CRAs have 30 days to notice a case has been sealed and remove it from their reports. There is no provision to notify CRAs.

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,

Possible drafting error: non-payment has been omitted as a possible case descriptor.

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

Poor drafting here omits the word "within". CRAs have 30 days to notice a record is sealed.

removed from the consumer report or from the calculation of any score or recommendation to be included in a consumer report not more than 30 days of the sealing of the court record from which it is derived.

Any consumer reporting agency that violates this subsection shall be liable to the person who is the subject of the consumer report in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure and, the costs of the action, including reasonable attorney's fees.

The enforcement mechanism here requires a renter to have suffered actual damage, to make a complaint against the CRA via the Attorney General (see below), and to prevail. This reduces the entire eviction sealing exercise to a very time-consuming discrimination process, with the same enforcement-dependent outcomes, but with much greater complexity and use of court staff time.

> The attorney general shall enforce the provisions of this paragraph and remedies provided hereunder shall not be exclusive. Nothing in this subsection shall be deemed to waive the rights or remedies of any person under any other law or regulation.

Because only the attorney general has enforcement power, this gives fewer venues for a complaint (the courts do not have jurisdiction to hear complaints, nor does the Massachusetts Commission Against Discrimination).

> (i) 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 pursuant to section 15 of chapter 239 of the General Laws may answer 'no record' to

Poor drafting probably meant the quote to end. Basically, a disclaimer would have to be put on a rental application encouraging renters to seal records and then state "no record" in response to a question about prior litigation.

an inquiry relative to that sealed court record.

No party shall be liable for any violation of the foregoing provision unless such party has first been issued a written warning from the Attorney General's office and has failed to address the violation within ninety (90) days of such notice.

This language seems to exempt every single owner from the rental application language until the AG communicates with them specifically. This likely signals poor drafting.

The petition provided by the Court for the sealing of records as provided herein and any order granting such petition shall contain the following notice: "An applicant for housing or credit with a sealed record

This wording would have to appear on the court form to request a record be sealed.

on file with the court pursuant to section 15 of chapter 239 of the General Laws may answer 'no record' to an inquiry relative to that sealed court record."

(j) A party who obtains a judgment or enters into an agreement in an eviction action solely for nonpayment of rent, shall, not more than 14 days after satisfaction of the judgment or agreement, file with the court in which the judgment or agreement was entered a notice of satisfaction of the judgment or agreement.

If a renter pays off the amount a court said they owed, the landlord must tell the courts they have paid. This is good! The language also covers mediated agreements, which is nonsensical. Most mediated agreements have no discernible "win/lose" status for either the renter or the landlord, because they are designed to keep both in business together indefinitely. If a renter and a landlord live happily forever after until one or the other dies, must the surviving party file a satisfaction of mediated agreement? What about if a renter decides to move out after many years of post-mediation stability? This seems poorly conceived.

A party that has satisfied such a

If a landlord fails to report a judgment as satisfied, a renter can ask the court to report their judgment as satisfied.

judgment or agreement may, upon noncompliance with this subsection by the other party, file a petition for the judgment or agreement to be deemed satisfied, with notice to the parties to such action. The court shall comply with the petitioner's request provided that the record only pertains to an action for nonpayment of rent and the judgment or agreement has been satisfied. If no objection is filed by a party within seven (7) days of filing the petition, such court may, in its discretion, process such petitions administratively without a hearing.

Upon the filing of a notice of satisfaction of judgment or an

In addition to all the other ways a case can be sealed, if a judgment is satisfied, then the case can be sealed regardless of the timelines above.

agreement, or court judgment deeming the judgment or agreement satisfied, a party may petition the court to seal the court record pertaining to that action.

The same court procedure for sealing applies to satisfied judgments.

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 shall be given to parties to the original action. Such court shall comply with the petitioner's request and seal the court record if the judgment or agreement has been satisfied and the action has

concluded with all rights of appeal exhausted with no objection filed by a party within seven (7) days of filing the petition. The court may process such petitions administratively without a hearing.”; and

SECTION XX. Section 52 of chapter 93 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended, in subsection (a), by inserting at the end thereof the following clause:- (7) eviction records sealed pursuant to section 15 of chapter 239. SECTION XX. Subsection (h) of section 15 of Chapter 239 shall take effect upon passage.

This bill would require all other consumer reports to defer to this section on eviction records.