

**OFFICE OF POLICY AND LEGAL ANALYSIS**  
**Bill Analysis**

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 913 To Enact the Maine Data Collection Protection Act**

**Public Hearing Date:** February 22, 2022

**SUMMARY** The original bill creates the Maine Data Collection Protection Act, which prohibits data collectors from collecting and aggregating, selling or using specific types of public documents or information from those documents for the purpose of determining a consumer's eligibility for consumer credit, employment or residential housing.

The sponsor presented a rough draft of an amendment that replaces the bill. The amendment specifies that certain court records will be available to the public only at a courthouse and not online.

The limitations are intended to apply to just eviction (forcible entry and detainer, or FED) actions and small claims. The following records would not be available online;

- A. Complaints for FED based on a 30-day notice to quit or the expiration of a lease.
- B. Records of actions/cases that are resolved by agreement of the defendant.
- C. Records of actions/case that are dismissed or resolved in favor of the defendant.
- D. Records of actions/cases that are set aside or vacated.
- E. Records of default judgments, unless the court made a finding that the plaintiff has proven the alleged wrongdoing by the defendant.
- F. Records of actions/cases that older than 3 years.
- G. Records of judgments of eviction or consumer debt during the period of public health emergency declared by the Governor for COVID-19.
- H. Records of actions/cases in which the parties agree the records will not be available to the public.
- I. Records of actions/cases to which a court has for good cause limited access.

The proposed amendment also provides that personally identifying information of defendants in court cases in ¶A may be made available only at the courthouse and not online.

**TESTIMONY**

**Proponents**

- Representative Hasenfus, sponsor (PROPOSED AMENDMENT)
- Andrea Stark, National Consumer Law Center (written testimony)
- Katherine McGovern, Pine Tree Legal Assistance (written testimony)
- Frank D'Alessandro, Maine Equal Justice (written testimony)
- Whitney Parrish, Permanent Commission on the Status of Racial, Indigenous and Maine Tribal Populations (written testimony)
- Ben Martineau, Homeless Voices for Justice (written testimony read by Izzy Ostrowski)
- Cate Blanchard, Maine People's Alliance (written testimony only)

- Leo Delicata, Legal Services for the Elderly (written testimony only)
  - Our eviction laws are based on the belief that there is another place to go
  - Having an eviction on your record effectively creates a tenants blacklist
  - Courts are aware of this and, under the new rules, will not place the records online until the judgment is entered against the defendant
  - The Legislature should weigh in and make it clear that the records cannot be online until the conclusion of the case
  - It is important to find the right balance with the Courts and the Legislature, as well as tenants and landlords
  - None of these records should be posted online until due process has been afforded the defendants, even after the COVID-19 housing crunch has subsided
  - As a result of our daily contact with consumer advocates, we have seen many examples of the damages wrought by abuses from consumer reporting agencies and the harms of relying on eviction records and other public records to make decisions about rental housing applicants.
  - Today, to rent an apartment or a house, you almost always have to go through a tenant screening process. Tenant screening typically involves review of a rental housing applicant’s credit, criminal, and rental history.
  - According to a recent industry analysis, about 85% of landlords review eviction information.
  - Landlords often automatically reject applicants with a prior eviction record, regardless of the outcome, context, how long ago the case was filed, or whether the case was based on unlawful grounds.
  - Simply being named in an eviction case can therefore lock people out of housing, trapping them in “dangerous cycles of poverty and instability.”
  - Knowing the devastating effects of having an eviction record, tenants are incentivized to move out before an eviction case is even filed—even where they have strong defenses and did nothing wrong.
  - As the American Bar Association (ABA) highlights in the commentary accompanying its newly adopted Ten Guidelines for Residential Eviction Laws, this dynamic “undermines the fundamental legitimacy of the judicial forum.”
  - Even before the COVID-19 economic crisis, eviction rates were higher for Black and Latinx renters, as well as mothers and their children. One study found that in Maine, Black female renters were filed against for eviction at double the rate of white renters. As a result, these communities are disproportionately affected by landlords’ blanket policies that exclude applicants with eviction records.
  - In many states, housing court records are easily accessible online, making it hard for tenants to ever escape a past eviction case—even an eviction case that was dismissed or resolved in favor of the tenant.
  - Some landlords go directly to the court’s online database to see whether a prospective tenant was previously named in an eviction lawsuit. Many others purchase reports from specialized tenant screening companies, which often scrape information, including the name of the landlord, the name of the tenant, and the property address, from online court databases or buy that information from a third-party data broker.
  - Under the federal Fair Credit Reporting Act, tenant screening companies are only supposed to report eviction records for seven years, but in many places the records continue to be available online without any time limit.
  - Housing court records typically lack key details and can be difficult to interpret. Princeton’s Eviction Lab, which examined more than 3.6 million eviction court records from 12 states, found that, on average, 22% of eviction records contain “ambiguous

- information on how the case was resolved or falsely represent a tenant’s eviction history.”
- Eviction records also lack the type of personal identifying information, like Social Security Numbers and dates of birth, that are critical for accurately matching court records with the correct consumer.
  - The Big Three nationwide credit bureaus (Equifax, Experian, and TransUnion) have actually stopped reporting civil judgments on credit reports because they lack these identifiers.
  - Such problems with housing court records have not stopped tenant screening companies from reporting them, however.
  - The COVID-19 economic crisis makes it more critical than ever to prevent eviction records from being used as an automatic and potentially indefinite barrier to rental housing.
  - Although Maine has been one of the most successful states at disbursing rental assistance funds, as of December 2021, 15,000 Maine households—disproportionately households of color—were behind on rent. Those who are behind on rent are overwhelmingly low-income households who experienced job and income losses during the pandemic. These Mainers are at risk of ending up with an eviction record that will make it very difficult to find new housing.
  - By ensuring that only certain eviction records are accessible online, LD 913 would help ensure that Mainers can secure safe housing and have a fairer shake at recovering from the COVID-19 economic crisis.
  - Although the amendment also mentions small claims, eviction records should be the focus.
  - Pine Tree Legal Assistance supports LD 913 because it balances the need for court transparency and access to information with the need to protect Mainers from unfair tenant blacklisting by limiting the availability of information regarding some evictions
  - In this digital age, it is easy to acquire information about a person’s history
  - With the rollout of electronic court records in Bangor last year, obtaining and using a person’s history is only becoming easier in Maine.
  - The general public will be able to access statewide court records either over the internet or in-person at kiosks at all courthouses; While the public could always ask to look at local court files, the new system means that someone can walk into York District Court and see a Madawaska file
  - In Maine, nearly all court records are permanent which means a person’s court record is a part of their history that will follow them around without expiration
  - LD 913 will not prevent access to the information currently available at the courthouse, but it will prevent some types of evictions from being more widely disseminated through the electronic court records system
  - Landlords use prospective tenants’ court histories of evictions when deciding whether to accept a tenant. Currently, there are very few rules that limit the ways in which landlords can use this information to deny tenants admission to housing. This means prospective tenants can be denied for very old court records, court cases that the tenant won and no cause evictions in which the tenant’s only fault was being unable to find a place to move before the court date
  - We frequently hear from tenants who are denied housing because of these situations and also from tenants whose court history is misinterpreted by landlords and used as a reason for denial
  - We have seen a number of tenants defaulted recently because they could not appear at court because they had COVID or COVID symptoms and were not permitted to enter the courthouse

- We also see tenants who end up with eviction judgments against them even though they have moved out before the court date because the judge interprets their statement that they have moved to be an agreement to a judgment without an appreciation of the impact of an eviction judgment on a tenant’s future housing search
- These situations feel particularly unjust because defendants in court cases, no matter the type, are not choosing to be there. They are brought to court by the other side. They have no control over the court interaction appearing on their record
- When these tenants call us, we most often have to tell them that they have no legal remedy to fight the denials of their housing applications
- LD 913 would limit the information that is available and help ensure fewer tenants are denied admission to housing for unjust reasons
- In recognition of the devastating impact that the dissemination of eviction court records can have, the American Bar Association last week adopted a resolution urging all federal, state, local, territorial and tribal legislative, judicial and other governmental bodies to promulgate policies that implement its “Ten Guidelines for Residential Eviction Laws.” These guidelines include: “A court that hears eviction cases should automatically seal the names of defendants before a final judgment and in dismissed cases, and courts should have practical procedures for sealing or otherwise protecting the privacy of defendants where other good cause exists.”
- The ABA resolution notes that “Many landlords automatically decline rental housing to applicants with records of being sued for eviction – even if the cases were dismissed or otherwise resolved in favor of the tenant – and substantially all landlords treat such applicants less favorably. This incentivizes tenants to move out even before the eviction action is filed, even when the tenants have meritorious defenses – a dynamic that undermines the fundamental legitimacy of the judicial forum.”
- The current housing market is very difficult for low-income Mainers. We have heard from more tenants that are facing eviction because their buildings are being sold
- According to the intakes we have done since September of 2021 over a third of the eviction cases we have seen do not allege a reason and are either a 30-day notice to quit served upon a tenant at will without a stated reason or the result of an expiration of a lease term
- LD 913 would help low-income Mainers limit the information that is publicly available about them and the ways in which that information can harm them while also ensuring court proceedings are not happening behind closed doors
- Maine Equal Justice supports LD 913 because we must prevent tenant blacklists from coming to Maine. The benefits of moving court records online should not come at the expense of housing opportunities for low-income Mainers.
- Maine’s court records show when legal actions have been filed against Mainers for eviction or debt collection, but they are often misinterpreted. When it comes to evictions, the moment a case is filed, the tenant has a permanent eviction record. It does not matter if a tenancy lasted decades, ended amicably with a court agreement, or if the court ruled in favor of the tenant. An eviction record can burden a tenant’s housing search for life.
- All of these records will still be accessible by the public in person at the courthouse as they are now.
- Studies show that many landlords look at the existence of an eviction record as evidence of wrongdoing, regardless of the basis or legal outcome. This creates unfair barriers to housing, and the experience of other states shows us that the problem will grow quickly and exponentially when Maine’s court records become available online.
- Online court records can become a “free tenant screening tool” to landlords who deny applicants simply because their name appears on a court filing, without understanding the context or outcome of the case.

- Right now, the only way prospective landlords can access eviction records is going to the courthouse to look at the paper file or paying a tenant screening service that aggregates court records. There are many problems with this process, including misinterpretation and inaccuracies in using court information, but the problems will become far worse if eviction records are available online.
- Maine’s online court records will allow anyone to quickly search court records using only a person’s name. Clicking on an individual eviction record leads to the case information. Unlike in the paper file, which includes the eviction notice, the reason for eviction is not displayed online, so there is no way to distinguish between the different reasons for eviction. It leaves it up to the viewer to imagine or assume whether the person was evicted for damaging the apartment, owing rent, or with a 30 day no-cause notice because the landlord wanted to rent the apartment to their niece.
- The record uses legal jargon to explain what happened, which is challenging to understand, and the final outcome can be difficult to find and impossible to interpret.
- All the landlord’s actions are documented in the online court record, but the tenant’s defenses to the eviction are not.
- Court records simply do not tell a complete story of a tenancy. Someone may have been a long-term tenant who never missed a rent payment but faced eviction because a new owner wanted to sell the building.
- A landlord may have filed the eviction because the tenant could not move out within the 30 days’ notice, but then the case gets dismissed because the tenant moved out before the court date. Having one dismissed eviction case online can create the mistaken impression that the tenant was evicted by the court, and prospective landlords may deny that tenant just because their name appears in the court records.
- In other states, this has caused tenants to be rejected by landlords over and over, effectively barring them from the rental market and increasing their risk of homelessness.
- This is often referred to as a tenant blacklist when landlords apply a blanket policy to deny applicants with eviction records.
- Massachusetts provides an example for Maine of the consequences of publishing eviction records online without a plan to protect low-income citizens. In 2013, the Massachusetts Trial Court released access to its court records at MassCourts.org. In 2019, the Massachusetts Law Reform Institute conducted a study on how online eviction records were creating a new barrier to housing called Evicted for Life.
  - The barriers led to tenants’ repeated rejection by landlords unwilling to rent to them. This led to prolonged periods of homelessness, losing housing vouchers because of time limits, and being locked out of the rental market even if the tenant had never been accused of any wrongdoing.
  - The study’s key findings were that patterns of significant harm result from the unrestricted, online availability of eviction case record information:
    - Tenants are rejected for housing solely because eviction cases have been filed against them, no matter what the outcome was.
    - Landlords and property managers assume tenants with eviction records have done something wrong, even when they have not.
    - Tenants mistakenly believe that if they make an agreement with their landlord, they will not have an eviction record.
    - Tenants are denied housing based on mistaken identity because they have the same name as someone else whose record appears on the court’s website.
    - Dismissals and judgments against tenants are regarded equally by landlords, with no distinction made between two very different outcomes.
    - Errors in the court records make it difficult for tenants to find new housing.

- Tenants are denied housing based on old eviction cases that were put online, some from decades earlier.
  - Children are named on their parents' eviction complaints, leaving them with eviction records that will follow them into adulthood.
- Landlords use the threat of online eviction records to pressure tenants to move out or dissuade them from going to court to defend their cases.
- The State of Maine invests significant resources to help families facing eviction stay in their homes or find new housing. We should not, through online court records, make it much more difficult for those tenants to access new housing.
- LD 913 will help preserve the status quo when the Maine Courts move all court records online.
- Online court records will result in discriminatory barriers for Black Mainers and other tenants of color
- Black women are especially vulnerable to eviction for many reasons, including staggering pay disparities and wealth gaps. Racial discrimination often compounds other forms of discrimination—such as discrimination against families with children and domestic violence survivors—that disproportionately impact women.
- As a result, eviction and tenant blacklisting policies often exacerbate and reproduce conditions of economic insecurity for low-income women of color.
- Maine Housing data shows that 26% of Maine's homeless population is Black or African American even though only 1.4% of Maine's population is Black or African American.
- The barriers created by online eviction records will disparately harm Black Mainers and other tenants of color. Disparate impact discrimination occurs when protected classes suffer disparate outcomes from seemingly neutral policies, i.e., a landlord's policy to deny applicants with eviction records.
- Regardless of a landlord's intent, a policy of refusing to rent to tenants with eviction records disparately impacts non-white tenants, women head of household, and families with children. Such policies can shift low-income tenants into substandard housing in poor neighborhoods and perpetuate segregation, which works against our national fair housing laws that envision communities with truly integrated and balanced living patterns.
- This is an unacceptable discriminatory consequence of putting Maine's eviction court records online when we have the knowledge of this problem evidenced by countless studies nationwide.
- This is especially urgent at a time when Maine's communities of color have been profoundly and disparately harmed by the COVID-19 public health crisis.
- During the pandemic, many Black, Indigenous and people of color in Maine did not have the luxury of working from home. Many make up Maine's essential workforce—seafood processors, dairy workers, cleaning staff, health care workers, grocery workers, homecare workers, public servants, and more. Yet, these same essential workers face significant housing instability and housing barriers.
- Finding an affordable place to live has become extremely difficult in Maine, and the pandemic has only made it harder. Even before the pandemic, Maine's rental housing market has been among the least affordable in the nation, and our state has not done enough to protect people who are being priced out of their homes.
- According to the Center on Budget and Policy Priorities data from 2019, 2 in 10 Mainers with low incomes are either homeless or pay over half their income on rent.
- While rental costs have risen across the state, wages have not kept pace.
- It is no surprise with renters' tight budgets and high rent burdens that of the 5,000 households in Maine who face eviction each year, 73% of cases are for non-payment of rent and in 46% of those cases, tenants have only missed one month's rent or less.

- The pandemic has just exposed housing insecurity in Maine and pushed it to a crisis point, showing us how vulnerable our state is to a wave of evictions: the number of Maine households that have fallen behind on rent and face eviction has risen to at least 20,000.
- All this means that when tenants receive an eviction notice, for whatever reason, most cannot simply move to another apartment and must use their best effort to remain housed in place for as long as possible.
- Eviction causes financial losses to families who often lose their possessions and lose their jobs when they are forced from their homes and communities.
- It also causes enormous personal trauma with significant repercussions to economic and personal well-being.
- Eviction also increases suicide and anxiety. For children, it results in emotional and educational decline.
- Mainers' health, wellbeing, and economic stability all start at home. Landlords are the gatekeepers of housing and get to decide where families live, where they work, and where children go to school.
- To promote housing stability and opportunity, Maine must protect tenants from the unfair stigma that comes with eviction records. The only eviction records that have a bearing on whether an applicant will be a good tenant are eviction cases in which a landlord alleged and proved that a tenant did something wrong, and those are the cases that LD 913 will allow landlords to see online.
- Discrimination in housing based on race was legal in this country as late as the 1960s and there have been many documented examples of illegal discrimination since. One can easily see the effects of this in the shape of cities and towns across the country today.
- Here in Maine, only 30% of Black residents are homeowners as compared with 72% of the population as a whole.
- That means 70% of Black Mainers rent while only 28% of all Maine households rent. This disparity in homeownership for Black residents is far higher in Maine than it is in the nation as a whole.
- The goal of LD 913 is to protect tenants from the mass-use of court records as a tenant screening tool.
- If landlords begin accessing eviction court records online and using them to effectively place prospective tenants on a blacklist - even tenants who made no mistakes or broke any rules - then Maine will see more unhoused individuals and families of all races and ethnicities.
- Not going through the court eviction process saved my housing record and allowed me to secure the housing I needed faster than I would have had I gone through the court eviction process. It made it so that I didn't have to stay in homelessness for more than 5 months. But no one should have to make the decision I did when I got that eviction notice—the choice between homelessness now to avoid having an eviction on my record, or homelessness later from having an eviction on my record.
- Court evictions already have a grave influence on an individual's opportunity for housing.
- Housing is a human right, and this bill will help protect that human right in the state of Maine.
- One of the most basic needs we all have is a safe, decent, affordable place to call home. Involvement in a court case shouldn't prevent that.
- The moment an eviction is filed, the tenant has a permanent eviction record. It doesn't matter if the tenancy lasted a decade, if rent was being withheld to force the landlord to make repairs or the court ruled in favor of the tenant.

- The latest data show there were on average, 11.24 households evicted each day in 2016 in Maine. Those court records should not automatically blacklist people from being able to rent another home.
- When a family faces eviction, it is in all of our interest for them to be able to find another home quickly, safely and affordably.
- Studies show evictions lead to dislocation, children having to change schools, high levels of stress, job loss and mental health tolls.
- According to the Eviction Lab, “The evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it.”
- LD 913 helps prevent one unfair barrier to housing and protects our data privacy.
- The intent of the Sponsor’s proposed amendment is to prevent the loss of future housing rental opportunities for some individuals who have been evicted or have lost a small claims court case.
- The amendment rightly anticipates the present and future implementation of an electronic filing system for Maine courts and foresees how this development will allow easy online access to most court records.
- It also appreciates the challenges that this may create for defendants of eviction or small claim court cases whose behavior demonstrates a lesser need for the public to have instant access to a record of that behavior.
- It is undeniable that being the subject of an eviction or small claims action creates certain barriers that must be overcome when looking for another place to live.
- In preparing this testimony we reviewed the Maine Rules of Electronic Court Systems (RECS) promulgated by the Maine Supreme Court in August of 2020. It has a section that includes specific limitations on remote access of records involving evictions, small claims and foreclosure cases.
- The proposed amendment will affect this section and we anticipated that this Committee would compare them to determine the merits of the proposed changes.
- The language of the RECS is straightforward. The pertinent section, Rule 4 (C) says the following:
  - “ (C) Limitations on Accessibility of Civil Court Records in Forcible Entry and Detainer (FED), Small Claims, and Foreclosure Cases Accessible by the Public only at a Courthouse. Before the entry of a judgment, court records in forcible entry and detainer (FED), small claims, and foreclosure cases are accessible by the public only at a courthouse. Court records in FED, small claims, and foreclosure cases are accessible by the public remotely only if and after a judgment has been entered against a defendant.”
- We believe that a fair reading of RECS Rule 4(C) means that before the court makes a final decision that can be appealed i.e., a judgment, a court record is accessible to a member of the public only at the courthouse. That continues the current practice in all Maine courts.
- After the court makes a judgment, the court record continues to be accessible to a member of the public at the courthouse but is also made accessible remotely by electronic means i.e., online.
- Of course, at this point in time only one or two Maine courthouses are able to offer electronic court records, so courthouse access remains the default choice for most people.
- The proposed amendment does not follow the REC Rule 4(C) formula which allows additional electronic access to court records based on the existence or non-existence of a judgment. Instead, it lists all the types of cases whose court records are accessible only at the courthouse.
- Presumably, cases not described are subject to the RECS rule and can be accessed at the courthouse and remotely by electronic means after a judgement occurs.



- We believe that a fair reading of this list indicates that only those eviction actions resulting in a judgment against the tenant based on the grounds for a 7-day notice to quit or for a breach of a lease or other “for cause” reasons will be eligible for an additional electronic means to remotely review court records.
- The proposed amendment is consistent with prior public policy decisions that respect the principle of due process of law while allowing landlords to take more immediate action to protect their property or other people adversely affected by a tenant’s behavior.
- It allows more convenient access to information about tenants who have judgments against them resulting from those behaviors so that landlords will be able to consider it even if the tenant has not disclosed it on a rental application. The proposed amendment does not do the same for judgments that does not involve so called “wrongful behavior” but at the same time it leaves in place the current opportunity for courthouse review of court records.
- Like evictions based on 30-day notices requiring no reason for terminating a tenancy, it balances the need to immediately affect a landlord’s property rights with the need to terminate a tenancy with due regard to the tenant’s need to find another home.
- We believe that the proposed amendment provides a balanced approach that makes more public policy sense than the RECS rule. The latter certainly provides a bright line but in our opinion, it does not sufficiently reflect the existence of Legislation that demonstrates a more nuanced public policy approach in the area of housing.
- We are also mindful that the extensive use by the public of social media platforms has revealed the benefits and clear dangers that this form of communication presents.
- As the Maine Supreme Court acknowledges in one of the guiding principles of its RECS rule, “When digital information or data are made accessible by the public remotely, neither the Maine Judicial Branch nor any other entity or person has the practical ability to control its dissemination or use.”
- We also recognize that reality and believe that the more conservative approach offered in the proposed amendment is a better response to that risk.
- We have one another brief comment concerning the Sponsor’s Amendment. Section 2 titled Personally Identifying Information says:
  - “Names, addresses, and personally identifying information of defendants in court cases described in subsection (1)(A) will be accessible by the public only at a courthouse and shall not be made accessible by the public remotely on dockets or any other court records that are accessible by the public remotely.”
- Unfortunately, “personally identifying information” is not defined except to say “in court cases described in subsection (1) (A). It may be useful to review the description of Nonpublic Data, Documents, and Information in Section 4 ( E ) of the Maine Electronic System Rules for a more extensive listing and perhaps add those by reference or with “including but not limited to” language.

### **Opponents**

- Representative Arata (written testimony)
  - Daniel Bernier (written testimony)
  - Melody Weeks (written testimony only)
  - Donna Hodges, Central Maine Apartment Owners Association (written testimony only)
  - Ken and Deb Lavoie (written testimony only)
- I was a member of the Commission to Increase Housing Opportunities in Maine, along with Speaker Fecteau and Senators Pouliot and Hickman. One of the strategies the commission developed was to get more regular people involved in the housing business

- by encouraging the development of up to four-unit properties. These small multifamily homes are more likely to be owner-occupied and owner-managed, with the pride of ownership that makes good neighborhoods.
- However, property management isn't an easy business. I'm often asked why anybody would want to be in this business. I'm sure you have heard the horror stories of tenants who trash their apartments and terrorize their neighbors. In fact, three landlords were murdered just last year.
  - You've also probably heard of so-called "professional tenants", who get into an apartment and refuse to pay. They take advantage of the judicial system by delaying eviction until after living in an apartment for free for a substantial amount of time. All of these things can bankrupt a landlord.
  - This is why new landlords are counseled about how important an eviction records check is when screening potential tenants.
  - However, LD 913 will make it difficult to do this, resulting in bad experiences for new landlords so fewer people choose to become housing providers.
  - In order to increase the supply of good quality housing, thereby lowering market rent, we need more people to choose to become housing providers, not fewer. More information about eviction history should be available, not less.
  - This would allow a conversation to take place between the tenant applicant and landlord so they can make a good decision.
  - Also, as the housing supply increases, more landlords will be willing to fill their vacancies with those who have an eviction or other issues. In order to do this, we need to increase housing supply and not scare away potential landlords.
  - LD 913 would decrease housing supply.
  - Landlords have the legal right to ask a tenant to leave
  - We settle lots of cases after the action is filed
  - We never used to need a writ of possession, but now need it in probably 80% of the cases
  - I agreed that C and D have some merit – don't hold against a tenant if the case has settled or been withdrawn
  - For too long the pendulum has swung too far to the left leaving landlords without the means in which to access equal rights/responsibilities to our tenants.
  - While we sympathize immensely with the current financial and employment situation in our state, we ask you to consider the business side of this proposal on the behalf of a landlord. The mortgage, the water district, the sewer district, the electric company, heating providers, safety and welfare provisions for each season is required of each responsible landlord. This does not even touch the need for constant repair and updating of units, heating systems and fire/sprinkler systems.
  - Please consider the unequal cost and effectiveness of such legislation on ALL people affected.
  - Without landlords and apartments where would people live?
  - Try asking the bank to forgo a payment or two like you are asking individual landlords to do.
  - For better or worse, we are doing our very best to protect and care for our tenants while simply paying the "bills" of doing business. Please consider our position both practically and judiciously.
  - We have summarized concerns and ideas below:
    - A. No wrongdoing: When a landlord gives a proper notice for no reason or a reason with "no fault" (i.e. landlord needs a family member to move into that unit or selling the building) and the tenant fails to move after that date- THEN, they get served with eviction notice FOR failure to move after a proper notice. This is a long process with specific time frames.

B. Resolution: the tenant may agree to move but they still required the landlord to go through the eviction process: cost, time, neighbor disruption, etc. instead of trying to work it out to negotiate a different move out schedule rather than forcing the landlord to exhaust all legal remedies.

E. Judgment by default: If proper legal notice (VERY specific laws around dates and alternate service etc.) is given and the tenant fails to show AND then they choose not to appeal the decision (i.e. If they couldn't make it to court due to emergency) the record of eviction that a tenant chose not to move/communicate with the landlord, rather than make the landlord pursue the legal process, should be available for public view. Failure to communicate with one another should not be rewarded. Landlords and tenants should both be held accountable to the contract and housing laws.

G. COVID: In essence this would mean that no eviction record can be distributed for public access for the last couple years because courts were closed for failure to pay evictions. Actions were already taken to ease the burdens on renters (and landlords) in the form of rental relief dollars that may have resulted in evictions. However, evictions because of damages, destruction, disruption to others, failure to move after proper notice, etc. continued.

H. By agreement: This type of bill will further create a divide between landlords and tenants who are trying to work through concerns or circumstances. A bill like this will reduce the likelihood that a landlord who "just wants their unit back" will mediate/agree.

- This bill tries to offer a solution after a problem has been created rather than proactively addressing what leads to evictions. Should there be a housing case management hotline? Are there funds available for people to move or savings matching programs? Is there a mediation service for landlords/tenants that opens up the communication before the legal route feels like the only recourse?
- Our largest concern is the silencing of freedom of access to information that specifically targets the area of evictions.
- Evictions must follow strict standards including dates, times, proper service and even font size in notices! Once those standards have been met and a landlord secures a unit back into their possession the consequences of that due process on a landlord are, to name a few, cost, disruption of existing tenants, public ostracization of the rental address and its' management.
- To the tenant, they also have a public record that required a landlord to go every step of the way to get to that day in court.
- We urge you to oppose this bill and instead focus on the core issue: what can be done to minimize the occurrence of evictions?
- The decision whether to rent to any particular prospect or not is a daunting one. We live and work in a semi-rural area that is more economically depressed than average, and a large number of prospects looking for an apartment do not have first month's rent and security deposit saved by the time they begin their housing search.
- Coupled with the onerous, expensive and lengthy prospect of a possible eviction, finding a low risk suitable prospect can be downright frightening, requiring a unique mix of art, science, and the old-fashioned ability of "judgment of character".
- One of the few tools we have at our disposal is "information". Specifically, information about the past. There is a saying that "History doesn't always repeat, but it almost always rhymes."
- Along these lines, tenants will usually continue to behave the way they've behaved in the past. Their moral / ethical character is often cemented by the time they are on their own. Hence knowing everything we can about a person is the only tool at our disposal for

- mitigating the unreasonable risk of handing over a set of keys and hoping for the best. Hence, limiting ANY information is an unreasonable hindrance to our work.
- All arrests and even summonses are posted in the paper for the public to see, yet we're to believe that the landlord tenant relationship warrants a different tact? I say not and offer this perspective.
    - A. No wrongdoing alleged. The majority of our "no reason 30 day" evictions over the past 12 years were begun because a 7 day "for cause" eviction would be onerous (damage done by the tenant, or disturbance of other tenants are allegations requiring witnesses, concrete proof, etc.) Hence, there's almost always been wrongdoing, it just wasn't disclosed in order to facilitate a more efficient resolution.
    - B. Resolution by agreement of defendant. Most evictions we've either witnessed or experienced are for cause, and the case is fairly straightforward, hence the agreement is expected in most cases. What many don't know is what happens after the agreement? In our experience, it's very rare that an eviction for nonpayment results in a timely move out, regardless of agreement. 3 of 4 of our evictions resulted in a move out sometime between the expiration of the 7 days given in FED court and posting of writ of possession. A smaller percentage required us to post the writ, and the rest did move out before expiration of the FED 7-day notice.
    - F. Older than 3 years. The "older than 3 years" clause would suggest that the behavior or financial condition is likely to change after a certain period of time. This is sometimes true, but certainly isn't in the majority of cases. Human tendencies, habits and character are as subject to the laws of nature as nature itself. A person who would allow themselves to end up in court over an FED (assuming nonpayment or other obvious fault), is not likely to have rid themselves of the qualities that tripped them up just because 3 years have passed. Additionally, it dictates unreasonably what a property owner's comfort level should be. Am I comfortable renting to a person who had an eviction 2 years ago? 5? Ever? I believe that should be up to the property owner's discretion, not the State's. We are much more likely to have information to help us in this discernment. (i.e. we know the family, another landlord has spoken for or against them, etc.)
    - G. COVID-19 public health emergency. I witnessed dozens of unscrupulous people simply "hunkering down" and stopping rent payments because of a misinterpretation of the eviction freeze. One of our associates had a tenant that told them, "Sorry, don't know what to tell you, the Guv says we don't have to pay rent." I don't mean to imply that this represents the majority, but I can promise you it was at least a very substantial minority. We were fortunate not to have a single late rent of 22 apartments during the entire pandemic, but most of our associates had stories like the above example to tell.
    - Further, the implication is that if a landlord knew a prospective tenant had trouble paying their rent during COVID, they'd eliminate them from consideration. I can attest that only the most hard hearted of us would go that way. We would certainly take it into consideration, but all else being equal or positive, I certainly wouldn't eliminate a good prospect for this reason. But, and I can't stress this enough, that should be my choice.
    - H. By agreement of the parties. A high percentage of "agreements" fall through shortly after. As landlords we actually ceased allowing agreements, simply because, in our experience, agreements were largely used to "buy time" when a tenant is facing a final eviction date. In our experience, beginning in 2009, not a single agreement we made in court was honored out of the more than 15 we made in our first five years in business.

### Neither for nor against

- Julie Finn, Judicial Branch (written testimony)
  - As you know, the Judicial Branch is in the process of transitioning from a paper-based file system to an electronic “efiling” system.
  - The first courts to adopt the electronic system are in Bangor and in the statewide business and consumer docket. Other parts of the state will come online one-by-one as we move forward with implementation of the Odyssey project.
  - Recognizing that access to electronic files is very different from access to paper files housed in courthouses, the Judicial Branch engaged in a lengthy public process that involved multiple public hearings and acceptance of testimony from interested parties.
  - After reviewing this material and balancing the competing interests of public transparency and personal privacy, the Supreme Judicial Court issued the Rules of Electronic Courts Systems, which we call “RECS.”
  - These rules establish three layers of access for nonparties:
    - (1) no public access to certain case types or file materials;
    - (2) public access of materials only at a courthouse; and
    - (3) remote public access from any device with internet connectivity.
  - The RECS rules are linked in my testimony if you would like to review them in full.
  - With respect to evictions, small claims, and foreclosure cases, the RECS rules draw a bright line between pre-judgment and post-judgment case materials. In these three case types, the files are viewable only at a courthouse up until the time a judgment is issued.
  - After judgment, the file information may be viewed remotely. This decision was made, in part, to create an easily understandable rule, the administration of which would not be overly complicated.
  - In reviewing the amendment to LD 913, the same analysis applies. If the statute requires multiple levels of scrutiny and includes different treatment of similar outcomes, the result for the Judicial Branch will be more complex, and more expensive, in terms of programming and implementation.
  - There are several specific questions that we would like to raise regarding this legislation:
    - The phrase “no wrongdoing alleged” in subsection (1)(A) is undefined and vague. It would be helpful if a definition included the same language that describes different grounds for eviction in 14 MRS §§ 6001, 6002.
    - Subsection (1)(E) and subsection (1)(H) may require a judge to make certain findings or staff to review the file to ascertain whether statutory provisions have been met.
    - Has subsection (1)(G) regarding the COVID-19 health emergency been mooted by recent events? If not, it will be difficult to extract pandemic-related cases from other cases during the same time period.
    - Subsection (1)(G) mentions consumer debt cases. However, this case type is not referred to in other parts of the proposed amendment.
    - Subsection (2) discusses “personally identifying information.” The amendment would allow names, addresses and personally identifying information other than names to be provided at a courthouse. The Judicial Branch does not release such information.
  - The RECS rules allow the release of names only and only after judgment if the judgment finds against the defendant.
  - The Judicial Branch defers to this committee and the full Legislature with respect to important policy decisions regarding online availability or unavailability of file materials in certain case types.

**POTENTIAL ISSUES OR TECHNICAL PROBLEMS:**

- The proposed amendment is a rough draft and needs fine-tuning to clarify and carry out the sponsor's intent
- Should it apply to just evictions?
- A collection action for consumer debt can no longer be brought under the small claims process. (32 MRSA §11020, sub-§2)
- What type of "government action or investigation" would include court records without a court action being filed?

**INFORMATION REQUESTED**

- The [Rules of Electronic Court System](#)

Include these definitions:

(2) "Accessible by the public" means that a court record is open to inspection by any member of the public and may be reproduced as permitted by these rules. Under these rules, some court records may be accessible by the public only at a courthouse, and other court records may be accessible by the public both remotely and at a courthouse. "Accessible by the public" does not mean that the court will search for records when the requester does not have information sufficient to identify the specific court records sought.

(3) "Accessible by the public only at a courthouse" means that a court record may be inspected by any member of the public only at a public access computer. Juvenile case records that are accessible by the public only at a courthouse cannot be copied electronically nor may hard copies be provided by the court clerk. All other court records that are accessible by the public only at a courthouse cannot be copied electronically, but hard copies may be provided by the court clerk. A fee may be charged for copies.

(4) "Accessible by the public remotely" means that a court record may be inspected or reproduced by any member of the public through an internet-based case management system accessible through a standard browser. Court records that are accessible by the public remotely are also accessible by the public at a courthouse.

(17) "Court record"

(a) "Court record" means any file, document, information, or data received or maintained by a court in electronic form in connection with a specific case or proceeding, including:

- (i) Pleadings, motions, briefs and their respective attachments, correspondence, and documentary evidentiary exhibits submitted with court filings;
- (ii) Orders, judgments, opinions, and decrees;
- (iii) Registries of actions, calendars, docket sheets, and other information created or prepared by court clerks that is related to a case or proceeding; and
- (iv) Juvenile case records as defined in the Maine Juvenile Code.

(b) "Court record" does not include the following materials, even if they exist in connection with a specific case or proceeding:

- (i) Information gathered, maintained, or stored by a governmental agency or other entity to which any employee of the Maine Judicial Branch has access but that is not part of a court record or file or is part of the court record but is prohibited from release by law;
- (ii) Notes, memoranda, and drafts thereof, and any other material prepared or collected by a justice, judge, or magistrate or other court staff at the direction of a judicial officer and used for a judicial settlement conference, in recording the judicial officer's notes of a proceeding, or in researching or preparing orders, judgments, opinions, or decrees;

- (iii) Internal draft working documents, reports, or data analysis prepared for or by a justice, judge, magistrate, other court staff, bail commissioner, or justice of the peace related to court practices, schedules, work assignments, and procedures;
- (iv) Legal work product, including drafts, and other records or reports of any attorney, law clerk, or other person employed by or representing the Maine Judicial Branch that are produced in the regular course of business or during representation of the Maine Judicial Branch;
- (v) Records of consultative, advisory, or deliberative discussions pertaining to the rendering of decisions or the management of cases;
- (vi) Discovery materials served through the EFS;
- (vii) Exhibits submitted at or in preparation for trial or hearing;
- (viii) Juror information; and
- (ix) Any other documents or information not expressly defined as court records, including administrative records or reports maintained by the Maine Judicial Branch.

(29) “Personally identifying information” means information that can be used to distinguish, detect, discover, or trace an individual, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

#### **RULE 4. CIVIL CASES**

**(C) Limitations on Accessibility of Civil Court Records in Forcible Entry and Detainer (FED), Small Claims, and Foreclosure Cases Accessible by the Public only at a Courthouse.** Before the entry of a judgment, court records in forcible entry and detainer (FED), small claims, and foreclosure cases are accessible by the public only at a courthouse. Court records in FED, small claims, and foreclosure cases are accessible by the public remotely only if and after a judgment has been entered against a defendant.

**(E) Nonpublic Data, Documents, and Information.** The data, documents, and information listed below, when filed in civil cases, are nonpublic, except as otherwise provided by law or court order.

- (1) Full names of minors;
- (2) Personally identifying information, including:
  - (a) Residence addresses;
  - (b) Telephone numbers;
  - (c) Personal, business, or school email addresses and other electronic addresses;
  - (d) Financial account numbers or statements, such as those that identify loans, bank accounts, mortgages, investment accounts, credit card numbers, personal identification numbers, or similar numerical identifiers;
  - (e) Driver’s license numbers;
  - (f) Other personal identification numbers, such as Social Security and employer identification numbers, passport numbers, and state identification numbers;
  - (g) DNA-identifying data or information; and
  - (h) Dates of birth.
- (3) Disability accommodation requests;
- (4) Names, addresses, and personally identifying information of parties protected under a protection order, restraining order, or injunction, and of alleged victims of sexual offenses, domestic violence, or stalking;

- (5) Images of minors and of persons of any age subject to guardianship, conservatorship, or mental health commitment proceedings;
- (6) Images depicting nudity or of a sexual nature, including sexual acts, sexual contact, or sexual touching;
- (7) Immigration and visa documents and any related work authorizations;
- (8) Indigency affidavits and any attachments;
- (9) Exhibits, affidavits, and other materials that are filed that contain otherwise confidential information as set out in these rules;
- (10) Personal financial documents, including financial statements, tax documents including W-2s, paystubs, bank statements, account statements, and payment histories;
- (11) Personal health information and medical records, including HIV/AIDS testing information and results, all mental health evaluations and records, forensic evaluations, substance use evaluations and treatment records, psychological records, and intelligence test documents and results;
- (12) School and education records, including discipline and scholastic achievement information and data;
- (13) Birth certificates and death certificates;
- (14) Trade secrets;
- (15) Requests for appointment of a guardian ad litem, orders appointing guardians ad litem, and guardian ad litem reports;
- (16) Reports of sexual assault kits;
- (17) Juror information, except as allowed in Rule 8; and
- (18) Any other information or court record to which public access is prohibited by law.

**FISCAL IMPACT:**

Not yet determined