SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 924 (Bradford)
Version: January 11, 2024
Hearing Date: April 2, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Tenancy: credit reporting: lower income households

DIGEST

This bill eliminates the sunset date from provisions of the Civil Code that requires a landlord of an assisted housing development, as defined, to offer tenants the option to have their rental payments history reported to nationwide consumer credit reporting agencies, as specified.

EXECUTIVE SUMMARY

Building and maintaining a good credit score is essential in today's economy. Credit scores are calculated by companies through mathematical formulas, called scoring models, utilizing an individual's credit information contained within a credit report. Credit scores are often utilized to gauge the credit worthiness of a consumer; for example, they are used by banks to determine if and under what conditions to provide an individual a loan, by credit card companies for a consumer to open a credit card account, and by landlords for determining whether to rent an apartment to a particular applicant. An individual's credit score thus affects what that individual can buy, their access to important financial tools and support, their ability to borrow money, what interest rates they may be able to obtain on loans, and their ability to find affordable housing. Despite the importance of maintaining a good credit score, many in California and throughout the United States have poor credit, or no credit score at all. These Californians tend to be younger, low-income, and persons of color. In order to increase the number of Californians with credit scores and the credit scores of low-income Californians, the Legislature passed SB 1157 (Bradford, Ch. 204, Stats. 2020), requiring assisted housing developments in California to offer the option of reporting the rental payments of its residents to consumer reporting agencies for inclusion in a resident's credit record. SB 1157 included a sunset date of July 1, 2025. This bill eliminates that sunset, thereby making the program permanent. This bill is sponsored by the author and supported by the City of Alameda. The Committee has received no opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Defines an "assisted housing development" as a multifamily rental housing development of five or more units that receives governmental assistance under specified federal laws and programs, such as under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. Section 1437(f)), and the Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. § 1715 l(d)(3) and (5)), and specified state laws and local programs, such as local housing trust funds, as referred to in paragraph (3) of subdivision (a) of Section 50843 of the Health and Safety Code. (Gov. Code § 65863.10(a)(3).)

2) Requires, beginning July 1, 2021, that any landlord of an assisted housing development offer a tenant obligated on the leases in the housing development the option of having their rental payments reported to at least one nationwide consumer reporting agency or other consumer reporting agency, as defined. (Civ. Code § 1954.06(a).)

3) Exempts a landlord of an assisted housing development that contains 15 or fewer dwelling units from these provisions, unless the landlord owns more than one assisted housing development, regardless of the number of units in each assisted housing development, and the landlord is one of the following: (a) a real estate investment trust, (b) a corporation, or (c) a limited liability company in which at least one member is a corporation. (Civ. Code § 1954.06(j).)

4) Requires that an offer of rent reporting be in writing and contain specified information, including a statement that the reporting is optional, identification of each consumer reporting agency to which the rental payment information will be reported, a statement that all of the tenant's rental payments will be reported, regardless of whether they are timely, late, or missed, the amount of any fee charged by the landlord for reporting, instructions on how to submit the written election of rent reporting, a statement that the tenant may opt into rent reporting at any time, a statement that the tenant may elect to stop reporting at any time, but that they will not be able to resume rent reporting for at least six months afterward, instructions on how to opt out, and a signature block for the tenant to use to request rent reporting. Requires the landlord to provide a self-addressed, stamped envelope for returning the election when they provide the offer of rent reporting (Civ. Code §§ 1954.06(c)-(d).)

5) Requires that, if a tenant elects to have their rent reported, their election be in writing. Prohibits a landlord from accepting an election to begin rent reporting at the time of the offer, but allows the tenant to elect rent reporting at any time and request a copy of their election from the landlord (Civ. Code §§ 1954.06(a)-(e).)

6) Requires the offer of rent reporting, for leases entered into on and after July 1, 2021, to be made at the time of the lease agreement and at least once annually thereafter, and, for leases outstanding as of July 1, 2021, made no later than October 1, 2021, and at least once annually thereafter. (Civ. Code § 1954.06(b).)

7) Authorizes a landlord to charge a fee to a tenant who elects to have the tenant's rental payments reported to a consumer reporting agency, in an amount not to exceed the lesser of either the actual cost to the landlord to provide the service, or $10 per month. (Civ. Code § 1954.06(f).)

8) Provides that, if a tenant fails to pay the fee required by the landlord for the rent reporting, the failure of payment cannot be cause for termination of the tenancy, the unpaid fee cannot be deducted from the tenant's security deposit, and that the landlord may stop reporting the tenant's rental payments if the fee remains unpaid for 30 days or more. Provides that the tenant cannot elect rent reporting again for a period of six months from the date on which the fee first became due. Provides that the payment or nonpayment of the fee cannot be reported to a consumer reporting agency. (Civ. Code §§ 1954.06(f) - (g).)

9) Authorizes a tenant who elects to have the tenant's rental payments reported to a consumer reporting agency to subsequently file a written request with the tenant's landlord to stop that reporting; however, a tenant that does so will not be allowed to elect rent reporting again for a period of at least six months from the date of the tenant's written request. (Civ. Code § 1954.06(h).)

10) Provides that a tenant who elects to have rent reported does not forfeit any rights under Sections 1941 to 1942, inclusive, of the Civil Code, and the deduction or withholding of rent as authorized by those sections will not constitute a late rental payment. A tenant invoking the right to deduct or withhold is required to notify the landlord of the deduction or withholding prior to the date rent is due. (Civ. Code § 1954.06(i).)

11) Repeals these provisions on July 1, 2025. (Civ. Code § 1954.06(l).)

This bill extends the applicability of Civil Code section 1954.06 indefinitely.

COMMENTS

1. Author's Statement

According to the author:

SB 924 will remove the July 1, 2025 sunset date of SB 1157 (Bradford, 2020) which requires any landlord of an assisted housing development to offer tenants the option of having their rental payments reported to a consumer reporting agency, effectively making this a permanent program. According to the Census' American Community Survey, just over 44% of Californians rent their housing. Yet, at the present time, although failure to pay one's rent has a negative impact on one's credit, most Californians who make on-time rent payments fail to receive any benefit to their credit scores for making those on-time payments. Several studies have investigated whether rent reporting to major credit bureaus yields positive outcomes for renters, and results are consistent: rent reporting helps individuals who lack credit scores establish those scores and helps individuals with nonprime credit improve their credit scores. This bill builds on the success of SB 1157 and continues to provide a tool for low-income renters in California to improve their credit scores.

2. The importance of helping people who are credit invisible to build their credit

Many Californians have credit scores: scores that attempt to predict an individual's credit behavior and risk based on past financial decisions and behaviors. These scores are calculated by companies through mathematical formulas, called scoring models, that utilize an individual's credit information contained within a credit report. Credit reports are compiled by consumer reporting agencies that collect and store financial information about individuals submitted to them by creditors, lenders, credit card companies, and other entities that handle financial transactions and credit.[1] The types of information provided in credit reports often includes basic information on active and previous credit card accounts, lines of credit, loans, mortgages, credit limits, foreclosures, bankruptcies, missed payments, and unpaid bills sent to collections. There are a few major, nationwide consumer reporting agencies, and other companies that calculate credit scores with proprietary scoring models from the credit reports available from consumer reporting agencies.

Building and maintaining good credit is essential in today's economy. This is because credit scores are often utilized to gauge the credit worthiness of an individual, such as in the context of obtaining a loan, buying high-priced items requiring monthly payments to pay off, opening a credit card account, borrowing money from a bank, purchasing a home, and renting an apartment. An individual's credit score thus affects what that individual can buy, their access to important financial tools and support, their ability to borrow money, what interest rates they may be able to obtain on loans, and their ability to find affordable housing.

[1] "What is a credit report?" Consumer Financial Protection Bureau (Jan. 29, 2024), available at https://www.consumerfinance.gov/ask-cfpb/what-is-a-credit-report-en-309/.

Despite the importance of maintaining a good credit score, many in California and throughout the United States have poor credit, or no credit score at all. Consumers without a credit record are often called "credit invisible," while others have incomplete or stale credit records such that their record is considered "unscorable."[2] These two groups of consumers often lack a credit score because of a lack of a complete credit record. The Consumer Financial Protection Bureau (CFPB) found that, as of 2010, about 26 million consumers in the United States were credit invisible, while an additional 8.3 million consumers had credit records that were considered "unscorable" by a commercially-available credit scoring model.[3] Large numbers of these credit invisible consumers and consumers without scorable credit records live in California. In fact, of the metropolitan areas with the largest number of credit invisible or unscorable consumers, the Los Angeles-Long Beach-Anaheim metropolitan area ranks second in the United States. It has 1.7 million credit invisible or unscorable consumers, representing 17.4% of total consumers in metropolitan area.[4] Four California metropolitan areas are in the top 20 metropolitan areas by number of credit invisible and unscorable consumers: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland-Hayward, Riverside-San Bernardino-Ontario, and San Diego-Carlsbad., with almost 3.3 million credit invisible or unscorable consumers in total.

Credit invisible and unscorable consumers tend to be young, low-income, and people of color. Over 10 million of the 26 million who are credit invisible are between the ages of 18 and 25, while about 17.4 million consumers aged 25 to 50 are either credit invisible or have unscorable credit records.[5] Low-income consumers are more likely to lack credit records or scores, as the CFPB found that almost 30 percent of consumers in low-income neighborhoods are credit invisible and 15 percent have unscored records.[6] It also found that African American and Latino consumers are more likely than Caucasian or Asian consumers to be credit invisible or lack scorable credit records.

Lacking a credit score and credit history can have dire consequences. It can prevent an individual from qualifying for loans, from being able to obtain reasonable terms on a loan they do receive, from being able to purchase large items, from qualifying for or being selected for an apartment, and even from being offered a job. Thus, a lack of a credit score can hold many families and individuals back from being able to access basic needs or financial tools that could help them improve their financial situation, start a business, and build wealth. In a sense, lacking a credit record and credit score can thus act as a sort of "catch-22," preventing consumers from being able to access the kinds of financial tools and credit that would help them build more credit history.

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[2] Kenneth P. Brevoort, Philipp Grimm, & Michelle Kambara, Data Point: Credit Invisibles (Consumer Financial Protection Bureau, Office of Research, May 2015) p. 4.
[3] *Id.*, at 6.
[4] Consumer Financial Protection Bureau, Who are the credit invisibles? How to help people with limited credit histories (Dec. 2016), Appendix A.
[5] Brevoort et al., 14.
[6] *Id.*, at 24.

3. Legislative attempts to help renters improve their credit when they make rental payments

In light of this conundrum and the numbers of consumers without credit records or scores, various attempts to provide alternative data for creating credit scores have been undertaken. Some have argued for including rental payments in credit histories, as rent is often a bill that many consumers regularly pay that is not typically reflected in credit reports. Proponents of this idea argue that meeting rent payments should count for a consumer's credit score, as an indicator of their credit worthiness. In many cases, regular payments of rent may be one of the few major financial transactions an individual has, which, if included in a consumer's credit record, would allow them to build their credit history and score when they otherwise would not be able to do so. Allowing such rent payments to be included in credit records may make even more sense considering that evictions and unpaid rent currently can be reflected on consumers' credit records and negatively affect their credit scores.

In 2019, SB 619 by Senator Hueso attempted to create a pilot program for tenants living in large, state-subsidized housing developments within defined "Promise Zones" to opt into having their rent payments reported to major credit reporting agencies. The bill was passed seven to zero by the Senate Judiciary Committee. However, the entire bill was subsequently gutted and amended to amend the Military and Veterans Code and therefore did not ultimately create such a pilot program. However, in 2020, SB 1157 (Bradford, Ch. 204, Stats. 2020) was enacted and created the program which this bill continues. SB 1157 passed out of the Senate Judiciary Committee on a vote of seven to zero. Under SB 1157, landlords of assisted housing developments, or certain multi-family housing developments that receive specified Federal, state, or local assistance, must provide tenants a written offer to have their rental payments reported to at least one of the major nationwide consumer reporting agencies annually. It allows tenants to accept the offer in writing at any time, except for immediately at the time of offer, and allows tenants to request that the landlord stop reporting their rental payments at any time. However, if a tenant stops rent reporting, they cannot elect to restart rent reporting for at least six months. SB 1157 thoughtfully included protections to ensure that a renter's exercising of their rights to withhold rent when a landlord has breached the warranty of habitability or deduct from rent the costs of repair when a landlord fails to repair the premises themselves does not negatively affect the renter's credit. It also included provisions allowing a landlord to charge a fee for rent reporting of either ten dollars a month or the actual cost of reporting the rent payments, whichever is lower.

4. The impact of SB 1157's pilot program and rent reporting to credit reporting agencies

In 2022, the Legislature passed SB 1396 (Bradford, Ch. 670, Stats. 2022) to require that the Department of Financial Protection and Innovation select an independent evaluator to evaluate the impact of rent reporting under SB 1157, upon appropriation from the

Legislature. However, this evaluation has yet to be done because no funds have been appropriated by the Legislature for that purpose.

Data on the impact of rent reporting does nonetheless exist that demonstrates that the program is generally a net benefit to renters who utilize it. A 2014 report by Experian, one of the three major consumer reporting agencies, found that reporting positive rent payments for 20,000 residents in subsidized housing resulted in 100 percent of credit invisible residents (eleven percent of the population) gaining a credit record and becoming scorable, with 23 percent of those with thin credit records obtaining more complete, "thick file" credit records that help obtain better credit and terms for credit.[7] The report further found that 75 percent of residents in the survey experienced a credit score increase, the majority of which experienced a score increase of 11 points or more. The writers of the report noted that:

> Positive rent reporting presents an opportunity for subsidized housing property managers and owners to play a key role in helping their residents build credit history. The ability for many of these consumers to become scorable, build a more robust credit file and potentially migrate to a better risk segment simply by paying their rent on time each month is powerful and represents an opportunity for positive change that should not be overlooked. Subsidized housing residents who pay their rent on time should not be credit-disadvantaged simply because they rent instead of own the place they call home.[8]

Other reports have found similar results. In a 2015 study, Citi Foundation, Experian RentBureau, and the Credit Builders Alliance began a pilot project in which eight affordable housing providers throughout the United States (including a provider in the Bay Area) provided rent payment reporting on behalf of 1,255 low-income renters.[9] The study found that all participants who had no credit score at the beginning of the pilot obtained a credit score with the inclusion of rental payment history in their credit record, with 79 percent of participants experiencing an increase in their credit score of an average of 23 points. 14 percent experienced no increase in their credit score, and only seven percent experienced a decrease in their credit score.[10] A 2019 study by the U.S. Department of Housing and Urban Development similarly found that the inclusion of full-file rental payment histories dramatically reduced unscorability, increased credit scores more than it decreased them, and ultimately resulted in a noticeable increase in the share of surveyed consumers who were scorable with credit scores of about 620.[11]

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[7] Experian Rent Bureau, Credit for Renting: The Impact of Positive Rent Reporting on Subsidized Housing Residents, Experian Information Solutions, Inc. (2014) p. 7.
[8] *Id*.
[9] Sarah Chenven and Carolyn Schulte, The Power of Rent Reporting Pilot: A Credit Building Strategy, Credit Builders Alliance (2015).
[10] *Id*., at 5.
[11] Michael Turner & Patrick Walker, Potential Impacts of Credit Reporting Public Housing Rental Payment Data, (U.S. Dept. of Housing and Urban Dev. 2019).

Additionally, Esusu, one third party vendor that assists in providing rent payment information to consumer reporting agencies, reported that its analysis of a dataset of 23,972 rental units found that participating in rent reporting created 3,000 new credit scores, resulted in an average credit score increase of 140 points, created 531 million dollars in capital access and 313 million dollars in mortgage loans, and resulted in a variety of other benefits.[12]

While reports on the implementation and impact of SB 1157 are limited, one study from the U.S. Housing and Urban Development Department's Office of Policy Development and Research attempted to do so through interviews with eight assisted housing development owners and managers. The report made several findings, including that knowledge of the law and implementation strategies varied among landlords, that resident participation was estimated to range between four to 15 percent, that the COVID-19 pandemic impacted the program and communicating its benefits to residents, and that the majority of landlords interviewed covered the enrollment fees on behalf of their residents.[13] It also reported that one landlord reported an average increase of 39 points in tenants' credit score, while another reported that 44 residents established new credit history and 44 percent improved their scores. The report also made a variety of policy recommendations, including: to implement an education campaign targeting low-income renters; incorporate rent reporting into financial literacy and economic empowerment programs; utilize standardized forms to clarify reporting; contact information; and legal rights; and to fund dedicated staff to help enroll residents. However, it should be noted that this report did not interview a large enough number of housing developments to constitute a complete survey or representative sample of all housing developments and residents covered by SB 1157.

Considering these reports and data, it is clear that rent reporting presents an opportunity to low-income and middle-income for establishing and increasing credit scores.

5. <u>This bill removes the sunset on the law enacted by SB 1157</u>

When SB 1157 was passed in 2021, it included a provision that sunset its provisions on July 1st, 2025. Thus, the requirement that assisted housing developments provide residents the option to request their rent payments be reported to nationwide consumer

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[12] Esusu, Rent Reporting Legislation Leads to 3,000 New Credit Scores Established in California (Aug. 23, 2023) https://esusurent.com/press/rent-reporting-legislation-leads-to-3000-new-credit-scores-established-in-california/ .

[13] Brad Pollock, Zach McRae, & Elizabeth Rudd, Understanding the Implementation of Rent Reporting Programs for Residents of Affordable Housing in California, U.S. Housing & Urban Development, Office of Policy Development and Research (June 28 2022), available at https://www.huduser.gov/portal/pdredge/pdr-edge-trending-062822.html#:~:text=In%202020%2C%20the%20California%20State,reported%20to%20major%20credit%20bureaus.

reporting agencies will expire in July of 2025. This bill would make the program permanent by simply repealing the sunset provision in the statute. The bill does not expand the requirements on landlords under the program as established by SB 1157, or change the program in any other way. If signed into law, this bill will continue the program as established by SB 1157, continuing to provide residents of assisted housing developments the opportunity to have their rent payments reported to a national consumer reporting agency so that they can build their credit history, improve their credit scores, and gain greater access to the credit and financial tools that are so essential in today's economy.

6. Arguments in support

In support of this bill, the City of Alameda writes:

> Having an established credit history is vital to accessing many consumer services and obtaining loans. Credit checks are frequently required for things like renting an apartment, buying a house, obtaining basic utility services or a cell phone, getting a credit card, and borrowing money from a bank. Some employers even check an applicant's consumer credit record as part of the hiring process.
>
> Some people are fortunate to be able to begin establishing a credit history early in their lives through things like convincing someone with good credit to co-sign on a loan or simply getting added to a parent's credit card account. For those who do not have these options, establishing a credit history can be enormously challenging because enrolling in services or obtaining loans that would establish a credit history often requires having a credit history. This catch-22 shuts many low-income individuals out of the formal economy, forcing them to make inflated deposits to obtain things like housing or utility services, steering them away from keeping money in interest-bearing accounts and driving them into the hands of financial services with hefty fees and high interest rates, like pay-day lenders and check-cashing companies. Statistics show that a lack of credit impacts a large segment of our population and disproportionately affects those with low income and communities of color.
>
> Current law, which sunsets on January 1, 2025, requires landlords of subsidized housing developments to offer their tenants the option to have their rental payments reported to at least one consumer credit reporting agency. Current law allows for the landlord to charge a tenant that elects to have this information reported to a credit reporting agency $10 per month or the actual cost to the landlord to provide this service.
>
> SB 924 will remove the sunset in current law, making permanent the ability for renters living in subsidized housing to have the option to build their credit

through the reporting of their monthly rent payments to a consumer credit reporting agency.

SUPPORT

City of Alameda

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 485 (Davies, 2023) would have required that a landlord who charges an application screening fee and uses a credit reporting service to provide the applicant a copy of the consumer credit report within 24 hours of a request for the copy of the report from the applicant. The bill died in the Assembly Judiciary Committee.

SB 1324 (Durazo, 2022) would have required landlords to adhere to the conduct standards of the Rosenthal Fair Debt Collection Practices Act when demanding payment of delinquent rent, and would have specified that landlords do not need to list a debt collector license number when trying to collect from their tenants. The bill was held in the Senate Appropriations Committee.

SB 1396 (Bradford, Ch. 670, Stats. 2022) required an independent evaluator, upon appropriation by the Legislature, to be selected by the Department of Financial Protection and Innovation to conduct an annual evaluation on the impact of rental payment reporting under SB 1157, as prescribed, and publish the report on the Department's website and distribute to appropriate Legislative policy committees.

SB 1157 (Bradford, Ch. 204, Stats. 2020) required, until July 1, 2025, that a landlord of an assisted housing development, as defined, offer tenants the option of having their rental payments reported to at least one consumer reporting agency, as specified.

SB 619 (Hueso, 2019) would have created, prior to substantive amendments, a pilot program for tenants living in large, state-subsidized housing developments located within Promise Zones to opt into having their rent payments reported to major credit reporting agencies.

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