

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

AB 2747 (Haney)
Version: May 13, 2024
Hearing Date: June 18, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Tenancy: credit reporting

DIGEST

This bill requires, on or after April 1, 2025, a landlord of residential real property with more than 15 dwelling units to offer tenants the option of having their full, on-time rent payments reported to at least one nationwide consumer reporting agency.

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. Moreover, while mortgage payments and other payments are reported to consumer reporting agencies, a tenant's rent payment history is not reported. AB 2747 creates a program through which landlords of residential real property of more than 15 dwelling units must offer tenants the option of having their full, on-time rental payments reported to at least one nationwide consumer reporting agency. AB 2747 allows landlords to charge a modest fee for this service. AB 2747 is author-sponsored and is supported by GLIDE, the University of California Student Association, and a few unions and other groups. It is opposed by a number of property and apartment associations, and a coalition of tenants' rights and social justice organizations.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Regulates, pursuant to federal law, how a consumer's credit information is obtained, how long it is kept, and how it is shared by credit reporting agencies. States a goal of promoting accuracy and fairness of credit reporting. (15 U.S.C. § 1681 et seq.)
- 2) Defines, for the purposes of federal law, "consumer reporting agency" as any person who regularly engages in the practice of assembling or evaluating consumer credit information or other consumer information for the purpose of furnishing consumer reports to third parties. Defines person for the purposes of this section to include any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. (15 U.S.C. §§ 1681a (b), (f).)
- 3) Requires, beginning July 1, 2021 and until January 1, 2025, that a landlord of an assisted housing development with more than 15 dwelling units 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 specified. (Civ. Code § 1954.06(a).)

This bill:

- 1) Requires a landlord of a dwelling unit of residential real property to offer the tenant or tenants on the lease the option of having their positive rental payment information reported to at least one nationwide consumer reporting agency that meets specified federal definitions.
- 2) Specifies that, for leases entered into on or after April 1, 2025, the offer of rent reporting must be made at the time of the lease agreement and at least once annually thereafter. Specifies that, for leases outstanding as of January 1, 2025, the offer of rent reporting must be made no later than April 1, 2025, and at least once annually thereafter.
- 3) Specifies that a landlord may offer the rent reporting by either first-class United States mail or by email. If the landlord makes the offer by mail, requires the landlord to provide the tenant with a self-addressed, stamped envelope for the tenant to return the written election of rent reporting.
- 4) Requires that the offer of rent reporting include a written election with:
 - a) A statement that reporting of the tenant's rental payment information is optional;

- b) Identification of each consumer reporting agency to which positive rental payment information will be reported;
 - c) The amount of any fee the landlord will charge for the service;
 - d) Instructions on how to submit the written election to the landlord by first-class United States mail or email;
 - e) A statement that the tenant may opt into rent reporting at any time following the initial offer, and that the tenant may elect to stop rent reporting at any time, but that they will not be able to resume rent reporting for at least six months after they opt out;
 - f) Instructions on how to opt out of rent reporting; and
 - g) A signature block that the tenant must date and sign to accept the offer.
- 5) Specifies that a tenant may submit their completed written election of rent reporting at any time after they receive the offer, and that a tenant may request and obtain additional copies of the written election form from the landlord at any time.
- 6) Specifies that a landlord may charge a tenant who elects to have their positive rent payments reported a fee for the service not to exceed the lesser of either \$10 a month or the actual cost to the landlord to provide the service. Specifies that, if the landlord does not incur any actual cost, the landlord may not charge any fee.
- 7) Specifies that a tenant's non-payment of the rent reporting fee may not be reported to a consumer reporting agency, and that the failure of a tenant to pay the fee shall not be a cause for termination of the tenancy. Specifies that a landlord may not deduct an unpaid rent reporting fee from the tenant's security deposit.
- 8) Specifies that, if the rent reporting fee remains unpaid by the tenant for 30 days or more, the landlord may stop reporting the tenant's rental payments, and the tenant shall be unable to elect rent reporting again for six months after the date the unpaid fee first became due.
- 9) Specifies that, if a tenant elects to stop rent reporting that they had previously elected to have reported, the tenant may not elect to restart rent reporting for a period of at least six months from the date of the request to stop rent reporting.
- 10) Specifies that the above provisions of this bill do not apply to a landlord of a residential rental building that contains 15 or fewer dwelling units, unless:
- a) The landlord owns more than one residential rental building, regardless of the number of units in each building; and
 - b) The landlord is a real estate investment trust, a corporation, or a limited liability company with at least one member who is a corporation.

COMMENTS

1. Author's statement

According to the author:

Many renters spend a majority of their income on rent and prioritize their rent payments over all other expenses each month – but their on-time rent payments are never reflected on their credit scores, even when their missed rent payments are. This is an unfair practice that is further pushing millions of renters into cycles of debt and poor financial health. AB 2747 ensures that renters will benefit from paying their rent on time by requiring landlords to give tenants the option to opt into positive rent reporting to a credit bureau agency, which will give renters a chance to see a direct financial benefit from choosing to rent and provide them a much needed path to building equity.

2. The importance of helping people who are credit invisible 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, 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) has 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 areas.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 unscorable 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 cruel 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.

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 is one of the largest regular 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 a consumer's credit score.

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.

A year later, SB 1157 (Bradford, Ch. 204, Stats. 2020) was enacted. 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 positive 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 the offer is made, 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 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. SB 1157 only pertained to positive rental payments; that is, landlords would only report when tenants paid their rent on time, not when they missed rental payments. SB 1157 included a sunset provision that repeal its provisions on July 1, 2025. This Legislative session, another bill, SB 924 (Bradford, 2024) proposes to eliminate that sunset and extend SB 1157's program permanently.

4. The impact of rent reporting programs

Data on the impact of rent reporting programs demonstrates that the program is generally a net benefit to the 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 Additionally, Esusu, one third party vendor that assists in providing rent payment

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).

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

5. AB 2747 requires all landlords in California to offer positive rent reporting to their tenants

AB 2747 proposes to create a program for positive rent reporting for tenants across the state. It specifies that any landlord of a dwelling unit of residential real property must offer the tenants on their leases the option of having their positive rent payment information reported to at least one nationwide consumer reporting agency. AB 2747 specifies that this offer shall be made no later than April 1, 2025 for outstanding leases, and at the time of the lease agreement for all leases entered into on or after April 1, 2025. An offer of positive rent reporting must thereafter be made at least once annually. AB 2747's provisions apply to all landlords of residential real property in the state that contains more than 15 dwelling units, unless the landlord owns more than one residential rental building regardless of the amount of units, and the landlord is a real estate investment trust, a corporation, or a limited liability company in which at least one member is a corporation.

AB 2747 specifies a process by which landlords must offer positive rent reporting, and by which tenants may accept the offer. A landlord may make the offer by first-class United States mail, or by email. The tenant may accept the offer at any time, and may also opt out at any time after electing to have their rent payments reported. However, if a tenant opts out, AB 2747 specifies that they will not be able to resume rent reporting for at least six months after they opt out. The offer must contain a written election of rent reporting that contains: a statement that reporting the tenant's rent payments is optional, identification of each consumer reporting agency to which positive rental payment information will be reported; the amount of any fee charged for the rent reporting; instructions on how to submit the election by first-class United States mail or email; a statement that the tenant may opt out at any time; a statement that the tenant may elect to stop rent reporting at any time, but that if they do, they will not be able to resume doing so for at least six months; instructions on how to opt out; and a signature block that the tenant must sign and date to accept rent reporting. The landlord must provide a self-addressed, stamped envelope for returning the election by mail, if the offer of reporting is made by mail.

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/> .

AB 2747 permits a landlord to charge a fee of the tenant for reporting their rent payment information. However, this fee may not exceed the lesser of 10 dollars a month, or the actual cost to provide the service. If the landlord incurs no actual cost to provide the program, the landlord may not charge any fees. If the tenant fails to pay the fee, that non-payment may not be reported to a consumer reporting agency, and the failure to pay may not be a cause for the termination of the tenant's tenancy. A landlord also may not deduct the unpaid fee from the tenant's security deposit. However, if the fee remains unpaid for 30 days or more, the landlord is permitted to cease reporting the tenant's rent payments.

Through this thorough regime, AB 2747 creates a program for landlords to report a tenant's positive rent payments, with adequate protections in place both for the tenant and for the costs a landlord may incur to run such a program. Moreover, the program is optional, such that tenants who wish for positive rent payments to be reported can have them reported, while others who do not wish so do will not have their rent payments reported. Tenants will be made aware at the time of the offer of the main contours of the program, and of the fee, if any, that they would need to pay to participate.

It should be noted, as mentioned previously, that rent reporting is currently offered to some tenants in California through the program created by SB 1157. However, the two programs differ in some important respects. While the program created by SB 1157 only applies to landlords of assisted housing developments, AB 2747 applies to all landlords of residential real property (both are limited to developments containing more than 15 units). Moreover, while SB 1157's program is for the reporting of all rent payment information, including missed payments, AB 2747 only allows reporting of positive rent payments – that is, when tenants make their rent payments. In the structure, design, and protections of the program, both programs are otherwise substantially similar.

Lastly, SB 1157 includes the aforementioned sunset date, and will expire next year absent an act of the Legislature. If AB 2747 is enacted, it will require qualified landlords to offer positive rent reporting to their tenants beginning April 2025. If the development is an assisted housing development, and SB 1157's program is extended by SB 924 or another act of the Legislature, the landlord would need to offer both rent reporting under SB 1157's program and positive rent reporting under this bill. However, if SB 1157 is not extended, it will expire before AB 2747's program for positive rent reporting takes effect.

6. Arguments in support

According to the California School Employees Association, which is in support of AB 2747:

As California's housing affordability crisis increasingly pushes homeownership out of reach for low-income workers, it is vital that we protect renters and make

it easier for them to build positive credit histories. AB 2747 will do just that, helping millions of Californians raise their scores and secure the financial equity they need to achieve their goals.

In 2020, the Legislature passed Senate Bill 1157 (Bradford), which allowed Californians living in subsidized housing to opt into rent reporting. While the law sunsets in 2025, the success of the policy is clear – on average renters in subsidized housing that opted into rent reporting have seen a 140 increase in their credit scores.

Credit scores are crucial to securing financial equity – whether that is through homeownership or a car loan. Banks often use credit scores to determine if a person can qualify for a mortgage and what the terms of their loan would be. Not reporting a tenant’s rent payment to a credit bureau is making it harder for millions of people to eventually become homeowners.

To ensure rent reporting follows the standard practice, AB 2747 will require landlords to annually offer tenants the option to opt-in to rent payment reporting. This bill will help California renters raise their scores and receive credit for payments they already make each month – just as homeowners making mortgage payments do.

7. Arguments in opposition

According to the Southern California Rental Housing Association, which opposes AB 2747:

[AB 2747] would require that a rental property provider report a tenant’s positive rental payment information to at least one consumer credit reporting agency, unless the tenant opts out. California statute already requires that rental property owners provide their tenants of an assisted housing development the option for credit reporting to tenants and there is another bill, Senate Bill 924, which would remove the sunset date on that statute. Since a system has already been established, that is preferable over having to recreate from scratch the entire administrative process.

Furthermore, most rental housing providers in California cannot just provide rental payment data to one of the credit bureaus. To do so would require completion of a complicated application and approval process, which most rental property owners in California would not be able to undertake particularly when more than 80% of rental property owners in California are independent, “mom and pop” owners.

Accordingly, in lieu of a direct reporting relationship with the credit bureaus, rental housing providers may, instead, work through a third party reporting entity such as Rent Bureau, a subsidiary of Experian. However, in order to enable rental payment reporting through these third-party providers, a rental housing provider would need to license a property management software product such as AppFolio or Yardi that are capable of interfacing with the third-party to facilitate rent payment reporting. These property management software systems are generally very expensive, generally costing thousands of dollars per year, and are not geared towards the smaller owner who owns fewer than 50 rental units.

In effect, this proposed AB 2747 would be problematic for the majority of rental housing providers in California, and would be both an administrative and financial burden by requiring the implementation of complicated property management software that is costly to license, and would also require a costly subscription to a third-party rent payment reporting service such as Rent Bureau.

SUPPORT

California School Employees Association, AFL-CIO
Service Employees International Union, Local 1000
University of California Student Association

OPPOSITION

Alliance of Californians for Community Empowerment
California Rental Housing Association
California Rural Legal Assistance Foundation
Centro Legal de la Raza
Disability Rights of California
Leadership Counsel for Justice and Accountability
Movement Legal
PICO California
Public Advocates
Western Center on Law and Poverty

RELATED LEGISLATION

Pending Legislation:

SB 924 (Bradford, 2024) eliminates the repeal date for the rent payment reporting program created for assisted housing developments by SB 1157 of 2020. Also allows landlords to offer and accept elections for rent reporting by email, and eliminates the

independent evaluator provisions of SB 1396. SB 924 is currently in the Assembly Judiciary Committee.

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 1396 (Bradford, Ch. 670, Stats. 2022) required an independent evaluator, upon appropriation of 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 to publish the report on the Department's website and distribute to appropriate Legislative policy committees.

SB 1157 (Bradford, Ch. 204, Stats. 2020) requires, until July 1, 2025, that a landlord of an assisted housing development of more than 15 dwelling units, 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.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 13)

Assembly Judiciary Committee (Ayes 9, Noes 2)
