

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2559 (Ward)
Version: May 4, 2022
Hearing Date: June 21, 2022
Fiscal: No
Urgency: No
TSG

SUBJECT

Reusable tenant screening reports

DIGEST

This bill introduces the concept of reusable tenant screening reports into law, specifies what content must be included, and sets forth the conditions under which landlords may voluntarily elect to accept them in lieu of individual applications.

EXECUTIVE SUMMARY

The cumulative expense of rental housing application fees is an often overlooked barrier to obtaining housing. Justified – accurately or not – by the need to cover the cost of screening prospective tenants, many landlords charge each applicant a fee of around \$50 just to be considered for a vacancy. In a tight rental housing market where tenants may need to apply to many different openings before being accepted, these application fees quickly add up. As the starting point for one promising solution to this problem, this bill introduces the concept of a reusable tenant screening report, a document that tenants would pay for once and could then potentially utilize with multiple landlords to whom they submit an application. In this way, the bill seeks to lay the legal groundwork for the future use of reusable tenant screening reports, which could one day significantly reduce the transactional costs associated with seeking out rental housing.

The bill is author-sponsored. There is no known support. Opposition comes from a coalition of advocacy groups representing tenants and formerly incarcerated individuals who collectively contend that the bill will not promote acceptance of reusable tenant screening reports and will make it more difficult for people with a criminal history to secure housing. The bill passed off of the Assembly Floor by a vote of 54-8. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines “landlord” as an owner of residential rental property. (Civ. Code § 1950.6(g).)
- 2) Defines “applicant” as any entity or individual who makes a request to a landlord or their agent to rent a residential housing unit, or an entity or individual who agrees to act as a guarantor or cosignor on a rental agreement. (Civ. Code § 1950.6(i).)
- 3) Defines “application screening fee” as any nonrefundable payment charged by a landlord or their agent to an applicant in order to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property. (Civ. Code § 1950.6(h).)
- 4) Provides that a landlord or their agent may, but is not required to, accept and rely upon a consumer credit report presented by an applicant. (Civ. Code § 1950.6(a).)
- 5) Specifies that when a landlord or their agent receives a request to rent a residential property from an applicant, they may charge that applicant an application screening fee to cover the costs of obtaining information about the applicant which may include, but is not limited to, personal reference checks and consumer credit reports. (Civ. Code § 1950.6(a).)
- 6) Provides that rental application screening fees cannot be greater than the actual out-of-pocket costs of gathering information concerning the applicant including the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent in obtaining information on the applicant. Specifies that in no case can the amount of the application screening fee be greater than thirty dollars (\$30) per applicant which may be adjusted annually, beginning on January 1, 1998, to correspond to increases in the Consumer Price Index. (Civ. Code § 1950.6(b).)
- 7) Requires a landlord or their agent to provide an applicant with a receipt for the fee paid by the applicant, itemizing the out-of-pocket expenses and time spent to obtain and process the information about the applicant. (Civ. Code § 1950.6(d).)
- 8) Provides that, if a landlord or their agent does not perform a personal reference check or does not obtain a consumer credit report, they must return any amount of the screening fee that is not used for the purposes authorized by this section to the applicant. (Civ. Code § 1950.6(e).)

- 9) Provides that, if an application screening fee has been paid by the applicant, and the applicant so requests, then the landlord or their agent must provide a copy of the consumer credit report to the applicant. (Civ. Code § 1950.6(f).)
- 10) Defines a “consumer credit report” as any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer’s credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of determining eligibility for specified uses including hiring of a dwelling unit. (Civ. Code § 1785.3(c).)
- 11) Defines “criminal history information” under FEHA as any record that contains individually identifiable information and describes an individual’s criminal history or contacts with a law enforcement agency. Includes information describing an individual’s arrests; information that an individual has been charged; information that an individual has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, military, or prosecutorial agency; records from any jurisdiction; and records that are not prepared strictly for law enforcement purposes, such as investigative consumer reports. (2 C.C.R. § 12264.)
- 12) Defines “consumer report” as any written, oral, or other communication of any information by a consumer reporting agency, bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be used for personal, family or household purposes; employment; a legitimate business interest, or other specified purposes. (15 U.S.C. § 1681a(d).)

This bill:

- 1) Defines “reusable tenant screening report” as a consumer report that satisfies all of the following criteria:
 - a) it was prepared within the previous 30 days by a consumer reporting agency at the request and expense of an applicant;
 - b) it is made directly available to a landlord for use in the rental application process or is provided through a third-party website that regularly engages in the business of providing a reusable tenant screening report and complies with all state and federal laws pertaining to use and disclosure of information contained in a consumer report by a consumer reporting agency; and
 - c) it is available to the landlord at no cost to access or use.
- 2) Requires a reusable tenant screening report to include all of the following information regarding an applicant:

- a) the results of a criminal history check for the seven years preceding the date on which the consumer reporting agency received the request for the reusable screening report;
 - b) the results of an eviction history check for the seven years preceding the date on which the consumer reporting agency received the request for the reusable screening report;
 - c) verification of employment; and
 - d) the applicant's last known address.
- 3) Provides that a landlord may elect to accept reusable tenant screening reports and may require an applicant to state that there has not been a material change to the information in the reusable screening report.
 - 4) Requires a landlord who elects to accept reusable tenant screening reports to provide an applicant with notice in a manner reasonably calculated to inform applicants that the landlord accepts reusable tenant screening reports. Notice must be provided, at a minimum through the following:
 - a) a clear and conspicuous statement on each listing or advertisement for residential rental property on the internet;
 - b) a clear and conspicuous statement on each internet website maintained by the landlord;
 - c) a clear and conspicuous statement on each application; and
 - d) a clear and conspicuous statement posted at each physical location where applicants may submit applications for residential rental property.
 - 5) Provides that, despite existing law allowing a landlord to charge an applicant screening fee under specified conditions, if an applicant provides a reusable tenant screening report to a landlord that accepts reusable tenant screening reports, the landlord must not charge the applicant either a fee for the landlord to access the report or an application screening fee.
 - 6) Declares that this bill does not affect any other applicable law related to the consideration of criminal history information in housing.
 - 7) Provides that an ordinance, resolution, regulation, administrative action, initiative, or other policy adopted by a city, county, or city and county that conflicts with this section shall apply if it provides greater protections to applicants.
 - 8) Clarifies that this bill does not require a landlord to accept reusable tenant screening reports.

COMMENTS

1. Background on the high cost of securing rental housing

California is in the midst of a housing affordability crisis and a related epidemic of homelessness. An often overlooked barrier to rehousing is the cost of securing a rental home in the first place. There are the common and obvious big ticket items like first and last month's rent as well as a security deposit. But searching for a new place to live uses up other resources as well: gas or public transit money to visit each potential rental; time taken off of work; childcare; and myriad small charges like stamps, envelopes, access to a printer, and making copies of application documents. There is also the opportunity cost of the time and energy that the prospective tenant has to pour into the endeavor.

On top of this, there are application fees. There do not appear to be any studies on what percentage of California landlords charge a fee to apply for a rental, but it is a common practice, particularly in the case of apartment complexes where the application process tends to be more regimented and management companies place a premium on cost recovery.

These application fees add up. Although California law currently caps those fees at just over \$50, that limitation on rental application fees only applies to each individual landlord. (Civ. Code § 1950.6(b).) When tenants must apply to multiple locations in order to secure housing, the fees can quickly add up into the hundreds of dollars. The dynamic is especially punishing in a tight rental market, of course. The author points out that the dynamic is also particularly punitive for would-be tenants who are struggling to obtain housing, since they will usually have to submit a larger volume of applications in their quest to find a place that will accept them. In other words, the ones paying the greatest amount in application fees will often be those least able to afford it.

2. Enter the reusable tenant screening report

Against this backdrop, this bill introduces the concept of reusable tenant screening reports into California law. As the name implies, reusable tenant screening reports are documents containing key information about the tenant that a tenant can order from a credit reporting agency. The tenant can then submit the document to each prospective landlord or give the landlord the means with which to access it.

The general concept is not totally new. Washington State and Maryland already have laws on the books facilitating and regulating the use of reusable tenant screening reports. (*See* Wash. Rev. Code Section 58.19.257; Md. Code Ann., Real Property Section 8-218.) It also appears that a few companies in the tenant screening business have begun to embrace the idea. For example, the website Zillow offers an online product through which tenants pay a one-time \$29 fee for a screening report which they can then use to

apply to an unlimited number of participating rentals for 30 days. Accessing the report is free for landlords.¹ Similarly, the online company MyScreeningReport.Com sells tenants a report valid for 30 days for between \$31.95 and \$49.95, depending on the level of detail included.² Absent state laws defining what constitutes a reusable tenant screening report and requiring or incentivizing landlord's acceptance of them, however, the adoption of reusable tenant screening reports is unlikely to take off in California on its own.

3. Potential unintended consequences

While the concept of a reusable tenant screening report shows tremendous promise for reducing the transactional costs of finding a new place to live, the specific legal framework that this bill proposes probably would not result in their widespread adoption. In fact, in some ways, enactment of the bill in print might inadvertently discourage the acceptance of reusable tenant screening reports.

As the law stands now, landlords are perfectly free to accept reusable tenant screening reports if they wish. Were this bill to be enacted in its present form, that would no longer be true. Pursuant to the bill in print, even if landlords wanted to accept reusable tenant screening reports, they would have to comply with a series of notice requirements in order to do so. Thus, a landlord who might be perfectly willing to accept reusable tenant screening reports now might actually be dissuaded from doing so if this bill became law because of the additional bureaucratic steps that would then be involved.

At the same time, the bill can be criticized on the basis of the content it says a reusable tenant screening report must contain. In particular, the bill requires every reusable tenant screening report to include the prospective tenant's criminal history for the prior seven years. A coalition of tenant and reentry advocacy groups objects to the bill on this basis. The coalition argues that such a lengthy lookback period is in tension with efforts to ensure that formerly incarcerated individuals have a genuine opportunity to secure housing. The bill may even be in conflict with recently promulgated fair housing regulations on the subject. (2 C.C.R. § 12264 *et seq.*) The coalition writes:

[T]he bill undermines the important work that state and local advocates are doing to increase housing opportunities for justice-involved families. The definition of "reusable tenant screening report" includes extremely long look-back periods for both criminal and eviction history, outside of the standard practice for many landlords and certainly longer than reasonable to determine an

¹ See *Online Rental Applications FAQ*. Zillow <https://www.zillow.com/z/rental-manager/rental-applications-faq/> (as of June 4, 2022).

² See *MyScreeningReport.com Services*. MyScreeningReport.com <https://www.myscreeningreport.com/services/> (as of June 4, 2022).

individual's qualifications for tenancy. The bill risks codifying harmful and discriminatory look back periods into law.

In spite of these concerns, the author believes it is important to push forward on the concept of reusable tenant screening reports. As already stated, the policy concept shows great potential for reducing the transactional costs of finding new housing generally, and lowering the barrier to re-housing for formerly homeless individuals in particular.

4. Proposed amendments

While unlikely to remove opposition from the bill, amendments could address some of the concerns raised. The revised approach still introduces the key concept of a reusable tenant screening report into California law, but it does so in a more generalized way and without imposing any additional burdens on landlords that elect to accept reusable tenant screening reports. This approach should enable landlords, credit reporting agencies, and tenant organizers to begin to prepare for the more widespread adoption of reusable tenant screening reports in the future, while leaving room and flexibility for further development of optimal content and procedures.

In summary, the proposed amendments would:

- make eviction history information available in a reusable screening report in a format and for a period of time consistent with applicable law;
- eliminate criminal history information from the reusable screening report; and
- eliminate the requirement that landlords provide notice in multiple places in order to be able to accept reusable tenant screening reports.

A mock-up of the amendments in context is attached to this analysis.

5. Arguments in support of the bill

According to the author:

In the current rental market, renters often have to apply to multiple rental properties before their application is accepted. If a renter applies to several properties, the various background screening report fees can quickly add up to several hundred dollars. AB 2559 sets a standard for reusable screening reports to be used during the rental application process. By using a reusable screening report, renters only have to pay one time for the report that can be used many times over 30 days, thereby saving the renter many hundreds of dollars, and will allow landlords to expeditiously review verified applicant information.

6. Arguments in opposition to the bill

In opposition to the bill, California Rural Legal Assistance Foundation, ECHO Housing, Fair Housing Napa Valley, Inner City Law Center, Law Foundation of Silicon Valley, Legal Aid Society of San Diego, National Housing Law Project, and Western Center on Law and Poverty collectively write:

The undersigned social justice organizations share the author's mission to eliminate tenant screening fees and shift consumer power into the hands of rental housing applicants. We are worried, however, that AB 2559, as written, runs a risk of doing more harm than good. [...] First, the bill does not require or incentivize landlords to accept portable screening reports. In fact, the bill may discourage landlords from using portable screening reports because it requires only landlords that accept portable screening reports to disclose that they do and then prohibits only those landlords from charging application fees. [...] Second, the bill undermines the important work that state and local advocates are doing to increase housing opportunities for justice-involved families.

In further opposition to the bill, Just Cities, Legal Services for Prisoners with Children, and Root and Rebound collectively repeat the concerns from the excerpt, above, and add:

[T]he bill contradicts recently-enacted fair housing regulations pursuant to California's state fair housing laws. Article 24 of the regulations governs the consideration of criminal history information in housing and the type of criminal history that may be considered in housing admissions decisions. The regulations note that while some consumer credit reports contain information up to seven years from the date of disposition, shorter lookback periods may be required in order to comply with fair housing laws. Codifying a seven year look back period in AB 2559 will undermine the regulations because in most cases, landlords would have access to, via portable tenant screening reports, more information than they are allowed to consider in admissions decisions. A much better practice is to not require the usage of criminal background checks at all in tenant screening reports thereby letting landlords decide which information is relevant to their practices and in their particular local jurisdictions.

SUPPORT

None known

OPPOSITION

California Rural Legal Assistance Foundation
ECHO Housing
Fair Housing Napa Valley
Inner City Law Center
Just Cities
Law Foundation of Silicon Valley
Legal Aid Society of San Diego
Legal Services for Prisoners with Children
National Housing Law Project
Root and Rebound
Western Center on Law and Poverty

RELATED LEGISLATION

Pending Legislation: SB 1335 (Eggman, 2022) prohibits a landlord from using a person's credit history as part of the application process for a rental accommodation in instances involving a government rent subsidy unless the landlord offers the applicant the option to provide alternative evidence of financial responsibility and ability to pay. SB 1335 is currently pending consideration before the Assembly Housing and Community Development Committee.

Prior Legislation:

AB 2203 (L. Rivas, 2022) would have prohibited a property owner from requiring a consumer credit report as part of the application process for rental housing in which the housing unit or the applicant receives a government rent subsidy. AB 2203 is on the Assembly inactive file.

AB 2527 (Quirk-Silva, 2022) would have prohibited landlords from relying on a consumer credit report in deciding whether to rent to a prospective tenant, as well as from asking applicants to answer questions about the contents of their credit reports. AB 2527 was never set for a hearing in the Assembly Housing and Community Development Committee.

PRIOR VOTES:

Assembly Floor (Ayes 54, Noes 8)
Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)
Assembly Judiciary Committee (Ayes 8, Noes 0)

Amended Mock-up for 2021-2022 AB-2559 (Ward (A))

Mock-up based on Version Number 96 - Amended Assembly 5/4/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1950.1 is added to the Civil Code, to read:

1950.1. (a) A reusable tenant screening report shall include all of the following information regarding an applicant:

(1) ~~Name. The results of a criminal history check for the seven years preceding the date on which the consumer reporting agency received the request for the reusable tenant screening report.~~

(2) ~~Contact information. The results of an eviction history check for the seven years preceding the date on which the consumer reporting agency received the request for the reusable tenant screening report.~~

(3) Verification of employment.

(4) Last known address.

(5) Results of an eviction history check in a manner and for a period of time consistent with applicable law related to the consideration of eviction history in housing.

(b) A reusable tenant screening report shall also prominently state the date through which the information contained in the report is current.

~~(c)~~ A landlord may elect to accept reusable tenant screening reports and may require an applicant to state that there has not been a material change to the information in the reusable tenant screening report.

~~(c) A landlord who elects to accept reusable tenant screening reports shall provide an applicant with notice in a manner reasonably calculated to inform applicants that the landlord accepts such reports. That notice shall be provided, at minimum, by the following means:~~

~~(1) A clear and conspicuous statement on each listing or advertisement for residential rental property on the internet.~~

~~(2) A clear and conspicuous statement on each internet website maintained by the landlord.~~

~~(3) A clear and conspicuous statement on each application for residential rental property.~~

~~(4) A clear and conspicuous statement posted at each physical location where applicants may submit applications for residential rental property.~~

(d) Notwithstanding Section 1950.6, if an applicant provides a reusable tenant screening report to a landlord that accepts reusable tenant screening reports, the landlord shall not charge the applicant either of the following:

(1) A fee for the landlord to access the report.

(2) An application screening fee.

(e) As used in this section:

(1) "Applicant" has the same meaning as defined in Section 1950.6.

(2) "Application screening fee" has the same meaning as defined in Section 1950.6.

(3) "Consumer report" has the same meaning as defined in Section 1681a of Title 15 of the United States Code.

(4) "Consumer reporting agency" means a person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(5) "Landlord" means an owner of residential rental property or the owner's agent.

(6) "Reusable tenant screening report" means a consumer report that meets all of the following criteria:

(A) Was prepared within the previous 30 days by a consumer reporting agency at the request and expense of an applicant.

(B) Is made directly available to a landlord for use in the rental application process or is provided through a third-party website that regularly engages in the business of providing a reusable tenant screening report and complies with all state and federal laws pertaining to use and disclosure of information contained in a consumer report by a consumer reporting agency.

(C) Is available to the landlord at no cost to access or use.

(f) This section does not affect any other applicable law related to the consideration of criminal history information in housing, including, but not limited to, Article 24 (commencing with Section 12264) of Subchapter 7 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations and local ordinances governing the information that landlords may review and consider when determining to whom they will rent.

(g) If an ordinance, resolution, regulation, administrative action, initiative, or other policy adopted by a city, county, or city and county conflicts with this section, the policy that provides greater protections to applicants shall apply.

(h) This section does not require a landlord to accept reusable tenant screening reports.