

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

SB 267 (Eggman)  
Version: January 31, 2023  
Hearing Date: March 28, 2023  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

Credit history of persons receiving government rent subsidies

**DIGEST**

This bill prohibits a landlord, in instances involving a government rent subsidy, from using credit history as part of the rental housing application process unless the landlord offers the applicant the option to provide alternative evidence of financial responsibility and ability to pay.

**EXECUTIVE SUMMARY**

California confronts a well-documented homelessness crisis driven in large measure by a severe shortage of affordable housing. Government subsidized housing – in which tenants typically pay 30 percent of their income and the government covers the rest -- represents a potential pathway to stable housing for some low-income Californians, but even low-income tenants fortunate enough to make it off the wait lists frequently encounter another insurmountable barrier: having bad credit or no credit history at all. Based on the idea that credit history is a poor indicator of a person's ability to pay rent, especially when a government subsidy will be covering the majority of that payment, this bill would make it an unlawful housing practice for landlords to consider credit history when evaluating the rental application of a tenant when there is a government subsidy involved unless the landlord offers the applicant the option, at the applicant's discretion, of providing alternative evidence of financial responsibility and ability to pay in lieu of the credit history.

The bill is author-sponsored. Support comes from organizations dedicated to reducing poverty and homelessness, who contend that preventing tenants with poor credit from accessing subsidized housing unnecessarily aggravates homelessness. Opposition comes landlord associations, developers, and real estate interests, who maintain that credit history is an important, efficient, and relevant tenant screening tool even in the context of subsidized housing. If the bill passes out of this Committee, it will next be heard by the Senate Appropriations Committee.

### **PROPOSED CHANGES TO THE LAW**

- 1) Authorizes housing assistance payments, as part of the U.S. Housing Act of 1937, “[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing.” (42 U.S.C. § 1437f(a).)
- 2) Prohibits various specified forms of housing discrimination, as part of the California Fair Employment and Housing Act (FEHA), on the basis of protected categories including race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, whether actual or perceived. (Gov. Code § 12955(a)-(e), (h), (i), (k), and (l).)
- 3) Limits a landlord’s use of financial or income standards to assess the eligibility of a prospective tenant to that portion of the rent that is to be paid by the tenant, in instances where a government subsidy is involved. (Gov. Code § 12955(o).)

This bill:

- 1) Makes it unlawful, in instances where there is a government rent subsidy, for a housing provider to use a person’s credit history as part of the application process for a rental accommodation without offering the applicant the option, at the applicant’s discretion, of providing such alternative evidence of financial responsibility and ability to pay as the applicant may choose to submit. If the applicant elects to provide such alternative evidence of financial responsibility and ability to pay, the housing provider shall consider this alternative evidence in lieu of the person’s credit history when determining whether to offer the rental accommodation to the applicant.
- 2) Makes other technical, non-substantive changes.

### **COMMENTS**

1. Subsidized housing vouchers can be an effective tool for addressing homelessness

Evidence suggests that subsidized housing vouchers are among the most effective tools for addressing homelessness. A 2015 U.S. Department of Housing and Urban Development study concluded that, of several alternative methods for addressing family homelessness, subsidized housing vouchers are the most successful.<sup>1</sup> The study

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<sup>1</sup> Gubits et al, *Family Options Study: Short-Term Impacts of Housing and Services Interventions for Homeless Families* (July 2015) U.S. Department of Housing and Urban Development [https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudy\\_final.pdf](https://www.huduser.gov/portal/sites/default/files/pdf/FamilyOptionsStudy_final.pdf) (as of Feb. 28, 2023) at p. XXX.

tracked families for 18 months after the respective housing interventions. According to a synopsis of the study:

Compared to families in homeless shelters that received no extra help under the study, families given vouchers were:

- 56 percent less likely to experience another episode of homelessness;
- 55 percent less likely to report incidents of domestic violence; and
- 42 percent less likely to have their children placed in foster care or temporarily housed with other family members.

Families with vouchers also had 16 percent fewer absences from school or child care for their children.

The other forms of assistance tested, community-based rapid re-housing and project-based transitional housing, had few significant effects on homelessness and only scattered effects on other outcomes.<sup>2</sup>

These conclusions are consistent with other research that has shown housing vouchers to be an effective way to address homelessness and its consequences.<sup>3</sup>

## 2. Multiple factors currently limit the effectiveness of subsidized housing vouchers as a tool for combatting homelessness

Though subsidized housing vouchers show considerable promise as a tool for combatting homelessness, several factors currently conspire to limit their success.

For one thing, many landlords refuse even to consider tenants if the tenants have vouchers. This refusal was the target of SB 329 (Mitchell, Ch. 600, Stats. 2019), which expanded FEHA's definition of "source-of-income" to prohibit such discrimination. Unfortunately, it appears that many landlords have simply ignored that law,<sup>4</sup> though

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<sup>2</sup> Rice, *Major Study: Housing Vouchers Most Effective Tool to End Family Homelessness* (July 14, 2015) Center on Budget and Policy Priorities <https://www.cbpp.org/blog/major-study-housing-vouchers-most-effective-tool-to-end-family-homelessness> (as of Feb. 28, 2023).

<sup>3</sup> Fischer, *Research Shows Housing Vouchers Reduce Hardship and Provide Platform for Long-Term Gains Among Children* (Oct. 7, 2015) Center on Budget and Policy Priorities <https://www.cbpp.org/research/research-shows-housing-vouchers-reduce-hardship-and-provide-platform-for-long-term-gains> (as of Feb. 28, 2023).

<sup>4</sup> *California Civil Rights Department Finds Widespread Housing Discrimination Against Federal Housing Choice Vouchers* (Oct. 17, 2022) California Civil Rights Department <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/10/Fair-Housing-Testing-and-Housing-Choice-Voucher10.17.22PR.pdf> (as of Feb. 28, 2023).

that may begin to change now that California’s Civil Rights Department has begun more proactive enforcement.<sup>5</sup> A second problem that limits the ability of housing vouchers to address homelessness is that demand for housing assistance vouchers far exceeds the supply. The waiting lists for housing choice vouchers in many cities are notoriously long. In 2017, for example, the Los Angeles’ Public Housing Authority estimated that it would take 11 years from the time an Angeleno signed up for a housing choice voucher until the person actually received a voucher.<sup>6</sup> A third factor is the high cost of finding and applying for housing, both in terms of time and money.<sup>7</sup>

The last major factor undermining the effectiveness of housing vouchers as a tool for combatting homelessness is that many landlords insist upon checking an applicant’s credit history, regardless of whether most of the tenant’s rent will be paid by government subsidy or not. For some of the same reasons that they qualify for the housing subsidy in the first place, low-income households also frequently have bad credit or simply no credit history at all. As a result, although having a housing subsidy voucher greatly increases the likelihood that tenants will regularly pay the rent on time and in full, their credit histories prevent many voucher holders from ever getting their foot in the door in the first place.

It is this last factor that this bill is designed to address. As the author describes the impetus for the bill, “[f]eedback from social workers working with people experiencing homelessness indicated that they were not successfully finding people stable housing, even when they had vouchers, because of poor or no credit.” Upon further investigation, the author’s office found that “this is an issue across the state and the nation [...].”

### 3. The solution proposed by this bill

The author’s intent is to ensure that tenants who have a government rent subsidy are not prevented from accessing rental housing based on their credit history alone. To minimize the burden on landlords, while still giving tenants with a rent subsidy the opportunity to be evaluated in light of more than just their credit history, the bill allows landlords to request credit history from any applicant, but requires the landlord to accept alternative evidence of the applicant’s financial responsibility and ability to pay

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<sup>5</sup> CRD Files First Lawsuit to Enforce Protections for Housing Choice Voucher Holders (Jan. 4, 2023) California Civil Rights Department <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/2023.01.04-SOI-CRD-Press-Release.pdf> (as of Feb. 28, 2023).

<sup>6</sup> Wick, *The Waiting List For Section 8 Vouchers In L.A. Is 11 Years Long* (Apr. 4, 2017) LAist <https://laist.com/news/section-8-waiting-list> (as of Feb. 28, 2023).

<sup>7</sup> Galvez, “Getting Past ‘No’: Housing Choice Voucher Holders Experiences with Discrimination and Search Costs (May 2010) Poverty and Race Research Action Council <http://www.prrac.org/pdf/GettingPastNo.pdf>, pp. 10-15 (as of Feb. 28, 2023). Permission to cite on file with the Committee.

if an applicant with a government subsidy elects to provide such evidence in lieu of credit history.

Under this approach, the tenant with the housing subsidy is empowered to choose whether to submit alternative evidence of financial responsibility and ability to pay to the landlord. The tenant with the housing subsidy also gets to decide what alternative evidence to present, eliminating concerns that the process could lead to a fishing expedition through the applicant's financial records. The landlord's obligation would be to accept this evidence in lieu of credit history. In other words, so long as the applicant offers some alternative evidence of financial responsibility and ability to pay, the landlord could not reject that applicant for failure to provide a credit history. How the landlord chooses to evaluate this alternative evidence and what weight the landlord chooses to give that evidence would remain in the landlord's discretion, however. The idea is to give tenants with a housing subsidy the opportunity to have their applications to rent evaluated on the basis of something other than credit history.

4. Is credit history a meaningful indicator of rent payment reliability?

It is largely undisputed that the use of credit history as a tool for screening tenants acts as a barrier to obtaining rental housing for people who have bad credit or no credit history at all. That is the point, after all. At a time when there is a drastic shortage of affordable rental housing available, however, making it more difficult for people with bad or no credit to obtain stable housing only further marginalizes them financially.

Given this dynamic, two key policy questions presented by this bill are: do the benefits of allowing landlords to screen tenants based on credit history outweigh its costs? If so, does that conclusion still hold true in situations where much of the tenant's rent payment will be subsidized by the government?

The author of this bill contends that, for several reasons, credit history is not indicative of the likelihood that people will pay their rent and there is some research that supports this view.

As an initial matter, credit history is exactly what it says it is: history. It is an indication of the tenant's ability to pay in the past, which may or may not hold true in the present. Other, more current financial documentation – current paycheck stubs or bank balances, for instance – may provide a better picture of current ability to pay. The relevance of former ability to pay to current ability to pay is especially tenuous if the tenant has just obtained a government housing subsidy, since that is likely to dramatically and sustainably improve the tenant's financial situation.

Next, the author points out that credit history information, as reflected in credit scores and the credit reports available commercially from entities like Experian, Equifax, and

TransUnion, can sometimes be erroneous.<sup>8</sup> Identify theft, misidentification of a debtor, or typographical mistakes can cause a person's credit report and score to reflect inaccurately on the person's actual history of payment. There is a statutorily-mandated system through which consumers can challenge erroneous information in their credit reports (Civ. Code § 1789.15), but to make such a challenge, the consumer has to know about the error in the first place and work through the necessary bureaucratic process to get it fixed. For people already confronting housing instability, this may be a lot to expect.

Finally, there is anecdotal evidence that, in some cases at least, bad consumer credit history may actually indicate that the person prioritizes paying the rent. Unlike most other consumer financial transactions, rent payments are not usually reported as part of people's credit history. So, while complete and on time payments of other bills will boost a person's credit score, reliably paying the rent typically does not. In households where "the rent eats first," as the saying goes, tenants may deliberately choose not to pay other bills in order to ensure the rent gets paid. In such cases, the resulting bad credit history is a direct result of a deliberate choice to pay the rent first.<sup>9</sup>

##### 5. Arguments in support of the bill

According to the author:

Housing continues to be one of the top issues that Californians face. Shelter is fundamental, and when it becomes unstable or undependable, receiving a housing voucher after waiting four to five years on a wait list can seem like a panacea. However, with a 60-day time limit, those with poor credit are unlikely to find housing – creating a cycle of instability that can keep families in at-risk situations. Currently, credit scores are used by property owners to determine if someone might be a good tenant. However, research shows that credit scores can be sensitive, imperfect algorithms that make mistakes. In fact, studies have shown that credit scores are often low because families have prioritized paying their rent over other bills. When families receive housing vouchers, risk of nonpayment is greatly diminished. Still, poor credit scores, which are meant to be a measure of financial risk, are one of the top reasons individuals with housing vouchers are denied housing over other applicants. This bill provides a more accurate tool to

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<sup>8</sup> See, eg., Gill. *More Than a Third of Volunteers in a Consumer Reports Study Found Errors in Their Credit Reports* (Jun. 11, 2021) Consumer Reports <https://www.consumerreports.org/credit-scores-reports/consumers-found-errors-in-their-credit-reports-a6996937910/> (as of Mar. 21, 2023).

<sup>9</sup> Galvez, "Getting Past 'No': Housing Choice Voucher Holders Experiences with Discrimination and Search Costs" (May 2010) Poverty and Race Research Action Council <http://www.prrac.org/pdf/GettingPastNo.pdf>, p. 2 (as of Mar. 21, 2023). Permission to cite on file with the Committee.

help evaluate if a tenant will be able to pay their portion of the rent and allows them to be judged more fairly on their current circumstances.

In support of the bill, the County Behavioral Health Directors Association of California writes:

[...] The rental market is difficult for all renters but especially for subsidized renters, a majority of whom are people of color. Today, the use of credit scores as an indicator of financial stability unnecessarily prevents many low-income people from obtaining stable housing. Clients of county behavioral health services often report experiencing housing discrimination related to mental health and substance use disorder issues. The use of credit scores adds yet another unnecessary barrier to housing stability, particularly when the government guarantees rent payments through vouchers. [...]

In further support of the bill, Housing California writes:

[...] As housing subsidies make housing affordable, other financial concerns may not persist. Additionally, while some property managers help tenants build credit history by reporting their rental payment history to credit bureaus, credit reports typically do not include rental payments, and often show only negative history of rental payments. For these reasons, requiring landlords to accept alternative evidence in lieu of a credit report may provide a more meaningful picture of a prospective tenant's ability to pay compared to a credit report. SB 267 would help mitigate a potential barrier to housing, and in turn remove a significant obstacle to efforts to end our affordable housing and homelessness crisis. [...]

## 6. Arguments in opposition to the bill

In opposition to the bill, a coalition of eight organizations led by the California Apartment Association writes:

[...] SB 267 allows a tenant/applicant to produce undefined "alternative evidence" to demonstrate their ability to pay. It sets up a legal trap for rental property owners who will certainly face claims that the alternative evidence was credible and that the property owner should have relied on this alternative evidence as proof of the tenant's ability to meet their obligations under the lease even if the rental property owner has no way to verify the

information. One of the only objective ways to understand tenant/applicants' ability to pay their portion of the rent and to understand their past actions at rental property is for the rental property owner to utilize a credit report and an eviction report. [...]

In most all government programs, the government does not pay all the tenant's rent or other tenant bills and household expenses. Some government programs provide a limited amount of funding to cover a month or two of rent. If the tenant has to pay any portion of the rent as well as utilities and other household bills, the rental property owner must have some objective way of evaluating the tenant's ability and willingness to pay their financial obligations, including their portion of the rent. By removing the existing objective criteria, SB 267 will make the application process much more challenging for tenant/applicants who receive a government subsidy. Without a way to verify the accuracy of financial information, the landlord has no way to know what risk exists for taking on the applicant. [...]

#### **SUPPORT**

The Arc and United Cerebral Palsy California Collaboration  
California Coalition for Rural Housing  
California-Hawaii State Conference of the NAACP  
County Behavioral Health Directors Association  
Housing California  
Justice in Aging  
National Association of Social Workers, California Chapter  
Western Center on Law & Poverty

#### **OPPOSITION**

Apartment Association of Greater Los Angeles  
Apartment Association of Orange County  
Berkeley Property Owners Association  
Building Owners and Managers Association of California  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Business Properties Association  
California Chamber of Commerce  
California Rental Housing Association  
Commercial Real Estate Development Association  
East Bay Rental Housing Association  
Institute of Real Estate Management



NAIOP of California  
NorCal Rental Property Association  
North Valley Property Owners Association  
Santa Barbara Rental Property Association  
Small Property Owners of San Francisco Institute  
Southern California Rental Housing Association  
Western Manufactured Housing Communities Association

### **RELATED LEGISLATION**

Pending Legislation: AB 1097 (L. Rivas, 2023) was identical to this bill but was gutted and amended recently to address other matters.

Prior Legislation:

SB 1335 (Eggman, 2022) was identical to this bill. SB 1335 died in the Assembly Housing and Community Development Committee.

AB 2203 (Rivas, 2022) would have prohibited requiring a consumer credit report, as defined, as part of the application process for a rental housing accommodation in instances where there is a government rent subsidy. AB 2203 died on the Assembly Floor.

AB 2527 (Quirk-Silva, 2022) would have prohibited landlords from using consumer credit reports or asking the tenant about the contents of a consumer credit report or the information contained therein during the rental application process. AB 2527 died in the Assembly Housing and Community Development Committee.

SB 222 (Hill, Ch. 601, Stats 2019) defined a Veterans Affairs Supportive Housing (VASH) voucher as a source of income for purposes of FEHA, thereby prohibiting landlords from discriminating against a tenant on the basis that the tenant pays part or all of the rent using a VASH voucher.

SB 329 (Mitchell, Ch. 600, Stats. 2019) expanded the definition of “source of income,” a category that California’s Fair Employment and Housing Act (FEHA) protects against discrimination, thus prohibiting landlords from discriminating against tenants who rely upon housing assistance paid directly to landlords, such as a Section 8 voucher, to help them pay the rent.

SB 1098 (Burton, Ch. 590, Stats. 1999) prohibited discrimination under FEHA on the basis of the failure to exclude a government rent subsidy from that portion of the rent to be paid by the tenant in assessing the tenant’s eligibility for rental housing.

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