SENATE RULES COMMITTEE SB 1157
Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 1157
Author: Bradford (D)
Amended: 5/29/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 5/22/20
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski
NO VOTE RECORDED: Borgeas, Jones

SUBJECT: Tenancy: credit reporting: lower income households

SOURCE: Credit Builders Alliance
Mission Asset Fund
Prosperity Now Fund

DIGEST: This bill requires, beginning July 1, 2021, any landlord of an assisted housing development to offer the tenant or tenants obligated on the lease of each unit in that assisted housing development the option of having the tenant's rental payments reported to a consumer reporting agency, as provided, and authorizes a landlord to require the tenant to pay a fee not to exceed the lesser of the actual cost to the landlord to provide the reporting service or $10 per month.

ANALYSIS: Existing law defines an "assisted housing development" as a multifamily rental housing development that receives governmental assistance under specified federal laws and programs, such as 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))

This bill:

1) Requires, beginning July 1, 2021, any landlord of an assisted housing development to offer the tenant or tenants obligated on the lease of each unit in

that housing development the option of having the tenant's rental payments reported to at least one nationwide consumer reporting agency or other consumer reporting agency, as defined. Requires the election by the tenant to be made in writing.

2) 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.

3) 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 equal to the actual cost to the landlord to provide the service or $10 per month, whichever is less.

4) 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.

5) 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.

Comments

1) *Lack of credit history as a self-perpetuating barrier to economic mobility*

   Low-income Californians are often unbanked or underbanked, meaning that they have few if any fixed or formal financial accounts. As a result, they may have little or no established credit history. 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. According to a Consumer Financial Protection Bureau report on the topic:

> As of 2010, 26 million consumers in the United States were credit invisible, representing about 11 percent of the adult population. An additional 19 million consumers, or 8.3 percent of the adult population, had credit records that were treated as unscorable by a commercially-available credit scoring model. […]
>
> There is a strong relationship between income and having a scored credit record. Almost 30 percent of consumers in low-income neighborhoods are credit invisible and an additional 15 percent have unscored records. […]
>
> Blacks and Hispanics are more likely than Whites or Asians to be credit invisible or to have unscored credit records. About 15 percent of Blacks and Hispanics are credit invisible (compared to 9 percent of Whites and Asians) and an additional 13 percent of Blacks and 12 percent of Hispanics have unscored records (compared to 7 percent of Whites). These differences are observed across all age groups, suggesting that these differences materialize early in the adult lives of these consumers and persist thereafter.[1]

[1] Brevoort, Grimm, and Kambara, *Data Point: Credit Invisibles* (May 2015) U.S. Consumer Financial Protection Bureau **https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf** (as of May 7, 2020) at p. 6.

2) *Reporting rental payments of tenants in assisted housing developments*

a) *Concept behind the proposal, similar pilots and their outcomes*

A little over 45 percent of Californians rent their housing—the second highest in the nation after New York and 10 percent higher than the national average.[2] Most Californians who make on-time rent payments fail to receive any benefit to their credit scores for making those on-time payments even though failure to pay one's rent has a negative impact on one's credit. This is because most landlords are not submitting their tenants' "full-file" (positive and negative) rental payment history to any of the major consumer reporting agencies (Equifax, Experian, or TransUnion; also referred to as credit bureaus). Several studies and pilot programs have shown that reporting the full rental history of low-income tenants to the major consumer reporting agencies will have a positive impact on most of those tenants' credit scorability and credit scores.

Credit Builders Alliance (CBA), one of the sponsors of this bill, and Citi Foundation conducted a pilot in collaboration with eight affordable housing providers nationwide, including one in California: the East Bay Asian Local Development Corporation. A total of 1,255 tenants opted to participate in the pilot. After two years, CBA analyzed the resulting impact on tenant credit and reached the following conclusions:

- All residents participating in the pilot who initially had no credit score had either a high nonprime or prime score with the inclusion of their rental payment history.
- A large majority (79 percent) of participants experienced an increase in credit score, with an average increase of 23 points.
- A small number of pilot participants (14 percent) experienced no change in their credit score after including the rental trade line, and an even smaller number (7 percent) experienced a decrease in credit score.[3]

General studies of the impact of rent payment reporting on credit conducted by the credit reporting agencies Experian, TransUnion, and RentTrack

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[2] Campbell, *Is it More Common to Rent or Own in Each State?* (Jan. 21, 2019) Move.org **https://www.move.org/states-with-highest-lowest-owner-occupied-homes/** (as of May 11, 2020).

[3] Chenven and Schulte, *The Power of Rent Reporting Pilot: A Credit Building Strategy* (2015) Credit Builders Alliance and Citi Foundation **https://creditbuildersalliance.org/wp-content/uploads/2019/06/CBA-Power-of-Rent-Reporting-Pilot-White-Paper.pdf** (as of May 1, 2020) at p. 5.

showed similarly positive results,[4] though it should be noted that these companies have a financial incentive to encourage greater use of their services.

A study was commissioned by the U.S. Department of Housing and Urban Development that conducted a series of simulations using rental payment data from three public housing authorities (PHAs) in Seattle, Washington; Louisville, Kentucky; and Cook County, Illinois to assess the impact of reporting full rental history of residents in the PHAs on their credit scores.[5] The study did not actually report rent payments to credit agencies but simulated the reporting of rent payments. Key findings from the study include that the "addition of the full-file PHA rental payment data tended to dramatically reduce unscorability"[6] and the "addition of the full-file PHA rental payment data both raised and lowered credit scores, with more score increases than decreases."[7]

In light of the above described studies and pilot programs, this bill seeks to make California the first state in the nation to require landlords of assisted housing developments to offer tenants the option of having their rental payments reported to at least one of the major credit reporting agencies.

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[4] *See*, *Credit for Renting* (2014) Experian **http://www.experian.com/assets/rentbureau/white-papers/experian-rentbureau-credit-for-rent-analysis.pdf** (as of May 11, 2020) (analysis of data on 20,000 subsidized housing residents "demonstrates the impact of positive rent reporting on credit file thickness, risk segment migration and credit scores for subsidized housing residents" at p. 6); *TransUnion Analysis Finds Reporting of Rental Payments Could Benefit Renters in Just One Month* (June 19, 2014) TransUnion **https://newsroom.transunion.com/transunion-analysis-finds-reporting-of-rental-payments-could-benefit-renters-in-just-one-month** (as of May 11, 2020) ("reporting of rental payment information to the credit bureaus in a manner similar to other financial obligations could have a positive effect for the majority of subprime consumers' credit"); *RentTrack Study Shows Positive Impact of Rent Reporting* (Mar. 6, 2015) RentTrack **https://www.renttrack.com/blog/renttrack-six-month-review-rent-reporting-impact/** (as of May 11, 2020) ("Residents who reported rent went up an average of 9 points on the tri-bureau Vantage Score. For subprime consumers, or those with credit scores below 650, the average point increase was 29 points. 100% of residents without a score became score-able, with an average starting Vantage Score of 639.").

[5] Turner and Walker, *Potential Impacts of Credit Reporting on Public Housing Rental Payment Data* (Oct. 2019) Policy and Economic Research Council as commissioned by the U.S. Department of Housing and Urban Development **https://www.huduser.gov/portal/sites/default/files/pdf/Potential-Impacts-of-Credit-Reporting.pdf** (as of May 11, 2020).

[6] *Id.* at 8 (The study found that the "rate of unscorability fell from 49 percent to 7 percent in one model and fell from 11 percent to 0 percent in the other model with the addition of full-file rental payment data").

[7] *Id.* at 7 (The study found "[i]n one scoring model the score changes were nearly symmetric with 23 percent of tenants having score increases and 20 percent having score decreases. For the second model, 61 percent had credit score increases while only 22 percent had score decreases.")

b) *Credit agencies, third-party servicers, and fee for participation*

Unfortunately, tenants and landlords cannot report rental payments to the major consumer reporting agencies themselves; they must do so through a third-party servicer or via a subscription with a consumer reporting agency. There are several third-party servicers that will report a tenant's rental payments to one or more of the major consumer reporting agencies but most charge fees to do so: Rent Reporters (one-time enrollment fee of $94.95 and $9.95 monthly fee); Rental Kharma (initial setup fee of $25 and $6.95 monthly fee); LevelCredit ($6.95 monthly fee); Rock the Score (enrollment fee of $25 and $8.95 monthly fee); PayYourRent (fees vary depending on how rent is paid); CreditMyRent (setup fee between $25 and $145, depending on tier of service, and monthly $6.95 fee).[8] ClearNow does not charge a fee but requires a person's rent be debited from their checking or savings account and Zingo requires a person's financial accounts to be linked, which may not be feasible for those who are unbanked or underbanked.[9] Esusu allows landlords to report a tenant's rent and, according to one article, does not charge a fee, though it was hard to verify this from their website.[10] Many of these servicers require landlord participation for verification.

Some opponents of the bill raised concerns that the administrative cost of reporting was being placed solely on the landlord. In order to address these concerns, the author amended this bill to authorize a landlord to charge a fee to a tenant who elects to have the tenant's rental payments reported in an amount equal to the actual cost to the landlord to provide the service or $10 per month, whichever is less.

3) *Protections for tenant's rights in relation to the warranty of habitability*

Under California law, tenants are lawfully entitled to withhold rental payments from their landlords when the landlord has breached the warranty of habitability. (Civ. Code § 1940.1; *Green v. Superior Court of San Francisco* (1974) 10 Cal.3d 616.) Similarly, a California tenant that tires of waiting for a landlord to make certain repairs may, by following specified procedures, pay for or make the repair directly and lawfully deduct the cost of the repair from

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[8] O'Shea, *How to Report Your Rent to Credit Bureaus* (Jan. 28, 2020), Nerdwallet **https://www.nerdwallet.com/blog/finance/credit-report-rent-payments-incorporated/** (as of May 11, 2020).

[9] *Id*.

[10] *Id*.

the following month's rental payment. (Civ. Code § 1942.) If a landlord could report a tenant exercising these rights as late on the rent payment, the tenant would be forced to choose between their legal rights and their credit history. For this reason the bill specifies that a tenant who elects to have rent reported does not forfeit any rights under Sections 1941 to 1942 of the Civil Code, inclusive. The bill also specifies that a tenant who makes deductions from rent or otherwise withholds rent as authorized by those sections is not making a late rental payment. The bill is not intended to alter the landlord's obligation to maintain habitable premises in any way.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/29/20)

Credit Builders Alliance (co-source)
Mission Asset Fund (co-source)
Prosperity Now (co-source)
California Coalition for Rural Housing
Community Financial Resources
Housing and Economic Rights Advocates
MyPath
National Coalition of Asian Pacific American Community Development
New Economics for Women
Western Center on Law & Poverty

OPPOSITION: (Verified 5/29/20)

Affordable Housing Management Association-Pacific Southwest
Apartment Association, California Southern Cities
Apartment Association of Orange County
California Association of Realtors
East Bay Rental Housing Association

ARGUMENTS IN SUPPORT: The author writes, "Low-income individuals and people of color are more likely than others to be credit invisible or have damaged credit scores. As a result, they often pay more to borrow money and to obtain certain basic services whose cost is based on creditworthiness. However, many of these same individuals regularly pay their rent on time and in full. Housing costs are the single biggest component of most Californians' monthly budgets; responsibly paying those costs should reflect positively on a person's credit score, regardless of whether they rent or own. SB 1157 gives renters credit for paying their rent on time."

Credit Builders Alliance, one of the co-sponsors of the bill, writes, "[…] Rent reporting has high impact because it is place-based, simple, and scalable through housing providers. As a first-in-the nation bill that requires landlords who own or manage subsidized multi-family residential properties to offer their tenants the option of having their rent payments reported to a major credit bureau, SB 1157 could move the needle on helping Californians in an estimated 500,000 households establish or improve their credit scores."

Another sponsor of this bill, Mission Asset Fund, writes, "[…] SB 1157 is setting an unprecedented path for supporting the expansion of credit-building opportunities for California tenants, especially those in low-income households. Rent reporting to the major credit bureaus would offer low-income renters an opportunity to build credit as a financial asset without the need of taking on any additional debt."

ARGUMENTS IN OPPOSITION: The California Association of Realtors (CAR) writes in opposition stating that CAR will oppose SB 1157 until it is amended to exempt small rental housing property owners of "assisted housing developments" with 15 units or less.

The Affordable Housing Management Association-Pacific Southwest, the Apartment Association, California Southern Cities, the Apartment Association of Orange County, and the East Bay Rental Housing Association also write in opposition to this bill, citing several issues including: that the option of whether to report rent to a credit agency lies solely with the tenant; the bill creates an environment of unequal bargaining power, unconscionability and oppression; the landlord has to bear administrative costs and liability of reporting; there could be a negative impact for low-income tenants who don't live in assisted housing developments; this bill places additional financial strains on landlords who choose to participate in assisted housing development programs; and that landlords receive no net benefit for the remedy this bill requires them to provide.

Prepared by: Amanda Mattson / JUD. / (916) 651-4113
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****** END ******