

SENATE THIRD READING  
SB 1157 (Bradford)  
As Amended July 28, 2020  
Majority vote

**SUMMARY:**

Requires any landlord of an assisted housing development, as defined, to offer each tenant obligated on a lease the option of having the tenant's rental payment information reported to at least one nationwide consumer reporting agency.

**Major Provisions**

- 1) Requires, beginning July 1, 2021, any landlord of an assisted housing development to offer the tenant obligated on the lease of each unit the option of having the tenant's rental payment information reported to at least one consumer reporting agency that meets specified criteria.
- 2) Requires that the offer of rent reporting include a written election of rent reporting that contains specified elements, including information about the terms of the reporting agreement, the rights of the tenant to opt in or out of reporting, and instructions for participation.
- 3) Prohibits the landlord from accepting the written election to begin rent reporting from the tenant at the time of the offer. Requires the landlord to provide the tenant with a self-addressed, stamped envelope with which to return the written election of rent reporting.
- 4) Authorizes, if a tenant elects to have rental payments reported to a consumer reporting agency, the landlord to require the tenant to pay a fee not to exceed the lesser of the actual cost to the landlord to provide the service or \$10 per month.
- 5) Prohibits the landlord from using a tenant's failure to pay the fee described in 4) as cause for termination of the tenancy. Prohibits the landlord from deducting any unpaid fee from the tenant's security deposit. Authorizes the landlord to stop reporting the tenant's rental payments if the fee remains unpaid for 30 days or more.
- 6) Authorizes a tenant who elects to have rent reported to subsequently file a written request with their landlord to stop that reporting and requires the landlord to comply. Prohibits a tenant who elects to stop reporting from electing rent reporting again for at least six months.
- 7) Exempts any landlord of an assisted housing development that contains 15 or fewer dwelling units from the requirements of this bill, unless that landlord owns more than one assisted housing development and is either a real estate investment trust, a corporation, or a limited liability company with at least one member corporation. Defines "landlord" as the owner of a residential real property containing five or more dwelling units.
- 8) Sunsets this bill as of July 1, 2025.

**COMMENTS:**

Having an established credit history is critical to accessing lines of credit and fully participating in mainstream financial services. Credit checks are frequently required for participating in

common transactions 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. Limited credit history can seriously impact the ability of consumers to withstand financial shocks and achieve financial stability. Unfortunately, establishing a credit history can be very difficult. Those with limited credit histories are considered either "credit invisible" or "unscorable". A report by the Consumer Financial Protection Bureau (CFPB) found that 11% of the adult population in the United States (U.S.) in 2010 was credit invisible, while an additional 8.3% had unscorable credit records. (Brevoort, Grimm, and Kambara, U.S. Consumer Financial Protection Bureau, *Data Point: Credit Invisibles* (May 2015), available at [https://files.consumerfinance.gov/f/201505\\_cfpb\\_data-point-credit-invisibles.pdf](https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf) (as of August 2, 2020).) The report also found that lack of credit history disproportionately impacted low-income communities and people of color.

Several organizations have done studies or pilot programs that look at the effect of reporting the full rental history of low-income tenants to the major consumer reporting agencies. The Credit Builders Alliance (CBA), one of the sponsors of this bill, and Citi Foundation conducted a pilot program in collaboration with eight affordable housing providers nationwide. After two years, CBA found that inclusion of rental payment history made all participating residents credit "visible," with a large majority (79%) of participants experiencing an increase in credit score and a small fraction (7%) experiencing a decrease in credit score. (Chenven and Schulte, Credit Builders Alliance and Citi Foundation, *The Power of Rent Reporting Pilot: A Credit Building Strategy* (2015), page 5, available at <https://creditbuildersalliance.org/wp-content/uploads/2019/06/CBA-Power-of-Rent-Reporting-Pilot-White-Paper.pdf> (as of August 2, 2020).) In light of this and other similar studies, 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.

To provide payment history to consumer reporting agencies, a landlord would either need to become a data furnisher for a National Consumer Reporting Agency (requiring a minimum of 100 to 200 active accounts per month) or utilize a third-party servicer or a subscription with a consumer reporting agency to report rental payment information. Currently, there are several third-party servicers that will report a tenant's rental payments to one or more of the major consumer reporting agencies for a fee.

To offset the administrative cost of reporting placed on the landlord, this bill would authorize a landlord to charge a fee, limited to \$10 per month, to a tenant who elects to have their rental payments reported. It is anticipated that landlords will be able to recoup all or nearly all the fees they may be charged by third-party servicers through the fee that they are authorized to charge the tenant. Should there be any minimal shortfall, it is important to note that landlords of assisted housing developments have received subsidies from the public.

Because this bill would impose certain administrative and cost burdens on landlords of assisted housing developments, the author consented to amend this bill to exclude landlords of developments that contain 15 or fewer units, unless that landlord owns more than one assisted housing development *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. This bill applies only to landlords of developments with five or more units (i.e., multi-family residential properties) to avoid placing an onerous burden on small-scale landlords, with an additional amendment

clarifying that corporate landlords owning multiple developments are required to offer the reporting described in this bill regardless the number of units in the developments.

The full-file (positive and negative) rental payment reporting described in this bill will result in the reporting of on-time as well as late and missed rental payments, meaning that opting in to this program could result in the lowering of a tenant's credit score. It is not uncommon for low-income individuals living in assisted housing developments to struggle with inconsistent income, putting them at higher risk for late or missing rental payments, especially during the COVID-19 pandemic. Important to note is that only payments more than 30-days late would be reported as missing to the credit bureaus. (U.S. Department of Housing and Urban Development Office of Policy Development and Research, *Potential Impacts of Credit Reporting Public Housing Rental Payment Data* (Oct. 2019), available at <https://www.huduser.gov/portal/sites/default/files/pdf/Potential-Impacts-of-Credit-Reporting.pdf> (as of August 2, 2020).)

Due to the risk of tenants harming their credit by opting into rental payment reporting, it is imperative that tenants understand the risks and give *full, knowing consent* to participating in this bill's rental payment reporting program. To this end, the author amended this bill to require these landlords to provide their tenants with specific information in the written notice of the offer to participate, including the terms of the agreement, the rights of the tenant to opt in or out of reporting, and instructions for participation. The intention is to inform the tenant about their rights and responsibilities and the potential to gain negative credit history, and to make the election to participate in reporting as clear as possible. These requirements also protect the landlord if a litigious tenant claims not to have understood what they were signing.

Another series of amendments avoid the possibility of tenants feeling pressure to opt-in to the program at the time of lease signing by separating the reporting opt-in process from the process of securing housing and by allowing tenants time to review the offer. This bill specifically prohibits landlords from accepting the tenant's written opt-in at the time the offer is made. Further, when making the offer, the landlord must provide the tenant with a self-addressed, stamped envelope to return the written election of rent reporting at any time via mail.

It is important that the fee associated with this program not impose additional burdens on tenants. The author amended this bill to clarify that the payment or non-payment of the fee is not to be reported as part of this program and to ensure that non-payment of the fee is not grounds for eviction or deduction from the security deposit. Further, failure to pay the fee is equivalent to opting out of reporting and ends the landlord's obligation to report the tenant's rental payments.

This bill addresses concerns about the right of tenants to withhold or deduct repair costs from rental payments when the landlord fails to make necessary repairs to maintain the habitability of the building by prohibiting the landlord from reporting these payments as late or missing.

Because of these uncertainties around free and knowing consent to participation in rent reporting and the overall impact of this program on the credit histories of tenants, this bill rightly includes a *sunset date* of July 1, 2025.

The National Housing Law Project, while neither in support or opposition of this bill, states concerns with SB 1157, which the recent amendments discussed above have sought to address:

There have only been a handful of pilot projects to connect rent payments to credit reporting and many of those have only reported on-time rent payments and have not reported any adverse information about a tenant. The National Housing Law Project has significant concerns about instituting this program in California without adequate understanding of its implications and without addressing the real world ways in which this kind of reporting may hurt the most vulnerable renters in the state.

#### **According to the Author:**

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.

#### **Arguments in Support:**

Credit Builders Alliance, co-sponsor of SB 1157, writes in support of this bill:

Rent reporting has high impact because it is place-based, simple, and scalable through housing providers. As a first-in-the nation bill..., SB 1157 could move the needle on helping Californians in an estimated 500,000 households establish or improve their credit scores.

#### **Arguments in Opposition:**

In opposition to this bill, the Apartment Association of Orange County, East Bay Rental Housing Association, the Apartment Association, California Southern Cities, and the Affordable Housing Management Association (PSW & NCH) write:

What SB 1157 proposes is also offensive to public policy, as the one required to provide remedy for an ill in this case assisted housing development landlords, generally receive no net benefit from the remedy they are required to provide. Most "assisted housing development" landlords provide an essential and in this climate, an invaluable function. To place any burden or constraint on their ability to provide such a service, by enacting a proposal that would require greater economic resources on their part would not be prove to be prudent.

#### **FISCAL COMMENTS:**

None

#### **VOTES:**

##### **SENATE FLOOR: 29-4-7**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

**NO:** Borgeas, Moorlach, Morrell, Nielsen

**ABS, ABST OR NV:** Bates, Chang, Dahle, Hurtado, Jones, Melendez, Wilk

##### **ASM JUDICIARY: 9-1-1**

**YES:** Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Limón, Reyes

**NO:** Obernolte

**ABS, ABST OR NV:** Gallagher

**UPDATED:**

VERSION: July 28, 2020

CONSULTANT: Emily Wonder & Jith Meganathan / JUD. / (916) 319-2334      FN: 0003179