

Date of Hearing: May 3, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2559 (Ward) – As Amended April 26, 2022

**SUBJECT:** Reusable tenant screening reports

**SUMMARY:** This bill would establish criteria for the voluntary acceptance of reusable tenant screening reports (RTSRs) by landlords and specify the applicant information that must be included in RTSRs. Specifically, **this bill would:**

- 1) Provide that a landlord may accept an RTSR and may require an applicant to state that there has not been a material change to the information in the RTSR.
- 2) Specify that an RTSR shall include all of the following information regarding an applicant:
  - 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 RTSR.
  - 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 RTSR.
  - Verification of employment.
  - Last known address.
- 3) Prohibit a landlord that accepts RTSRs from charging an applicant that provides an RTSR either a fee for the landlord to access the report or an application screening fee.
- 4) Require a landlord who elects to accept RTSRs to provide an applicant with notice in a manner reasonably calculated to inform applicants that the landlord accepts RTSRs; and specify that the notice shall be provided, at minimum, by the following means:
  - A clear and conspicuous statement on each listing or advertisement for residential rental property on the internet.
  - A clear and conspicuous statement on each internet website maintained by the landlord.
  - A clear and conspicuous statement on each application for residential rental property.
  - A clear and conspicuous statement posted at each physical location where applicants may submit applications for residential rental property.
- 5) Define “reusable tenant screening report” to mean a consumer report that meets both of the following criteria:
  - Was prepared within the previous 30 days by a consumer reporting agency at the request and expense of an applicant.

- Is made directly available to a landlord at no charge for use in the rental application process or is provided through a third-party website that regularly engages in the business of providing an RTSR and is available to the landlord at no cost to access.
- 6) Specify that the provisions of the bill do not affect any other applicable law related to the consideration of criminal history information in housing, including those specified in regulations implementing the Fair Employment and Housing Act (FEHA).
  - 7) Provide that 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.
  - 8) Specify that the provisions of the bill do not require a landlord to accept an RTSR.
  - 9) Define “consumer report” to have the same meaning as defined in the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a).
  - 10) Define “consumer reporting agency” to mean 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.
  - 11) Define “landlord” to mean an owner of residential rental property or the owner’s agent; and define “applicant” and “application screening fee” in accordance with existing state law (Civ. Code Sec. 1950.6).

**EXISTING LAW:**

- 1) 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 Sec. 1950.6(a).)
- 2) Permits 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 Sec. 1950.6 (a).)
- 3) 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; and further 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 Sec. 1950.6(b).)
- 4) Requires 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 authorized purposes to the applicant. (Civ. Code Sec. 1950.6(e).)

- 5) Prohibits, pursuant to both federal and state law, the furnishing of consumer reports, and use and communication of information contained in consumer reports, by a consumer reporting agency or a user of that consumer report, except under limited, specified circumstances; and assigns penalties for improper use or disclosure of that information. (15 U.S.C. Sec. 1681, et seq.; Civ. Code Secs. 1785.10, et seq. and 1786.10, et seq.)
- 6) Prohibits, pursuant to federal law, a consumer reporting agency from making any consumer report containing civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period, and from including any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years. (15 U.S.C. Sec. 1681c(a)(2) and (5).)
- 7) Prohibits a consumer credit reporting agency from making any consumer credit report containing, among other things, suits and judgments that, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period; records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years; and any other adverse information that antedates the report by more than seven years. (Civ. Code Sec. 1785.13.)
- 8) Specifies that, while laws regulating investigative consumer reports allow the reporting of certain criminal history information up to seven years from the date of disposition, release, or parole, a court may consider shorter look-back periods in its determination of whether there is a feasible alternative practice apart from discriminating on the basis of criminal history; and further provides that look-back periods are intended to ensure that the criminal history information considered is relevant to the decision being made. (2 C.C.R. Sec. 12269(b).)
- 9) Requires persons who obtain investigative consumer reports or criminal history information from third parties to comply with the requirements of applicable federal and state law regarding such reports. (2 C.C.R. Sec. 12269(c).)
- 10) Defines “applicant” to mean 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 co-signor on a rental agreement. (Civ. Code Sec. 1950.6(i).)
- 11) Defines “application screening fee” to mean 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 Sec. 1950.6(h).)
- 12) Defines a “consumer credit report” to mean 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 Sec. 1785.3(c).)
- 13) Defines “criminal history information”, pursuant to FEHA, to mean any record that contains individually identifiable information and describes an individual’s criminal history or contacts with a law enforcement agency, including information describing an individual’s

arrests; information that an individual has been charged with or indicted for a felony, misdemeanor, or other criminal offense; 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, whether or not the contact with law enforcement led to a criminal conviction; as well as records from any jurisdiction and records that are not prepared strictly for law enforcement purposes, such as investigative consumer reports. (2 C.C.R. Sec. 12264.)

- 14) 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. Sec. 1681a(d).)

**FISCAL EFFECT:** None. This bill has been keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to mitigate the cumulative financial burden of rental housing application screening fees by establishing a voluntary mechanism allowing a single reusable screening report to be used in the application process for multiple rental applications within a 30-day period. This bill is author sponsored.

- 2) **Author’s statement:** According to the author:

Under existing law, property managers may charge up to \$53.33 per screening report. 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.

To address this ongoing problem, the states of Washington and Maryland have passed legislation that make reusable tenant screening reports permissible.

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.

- 3) **Application screening fees for rental housing:** Demand for rental property in California has reached unprecedented levels. As of 2021, 44% of the state’s population rented their homes, amounting to nearly 17 million people.<sup>1</sup> Among these renters, over half of households pay more than 30% of their total income in rent, and more than a quarter of renter households pay more than 50% of their income in rent.<sup>2</sup> Two-thirds of households with

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<sup>1</sup> Davalos M, Kimberlin S, & Mesquita A, “Issue Brief: California’s 17 Million Renters Face Housing Instability and Inequity Before and After COVID-19,” *California Budget & Policy Center*, Jan. 2021, p. 1.

<sup>2</sup> *Id.* at p. 2.

incomes below 200% of the federal poverty line rent their homes, compared to just under one third of those with incomes above 400% of the federal poverty line.<sup>3</sup> These cost-burdened and severely cost-burdened households, most of which are comprised of people of color, are at heightened risk of housing instability, leading to a more frequent need to locate and apply for housing due evictions, downsizing or relocating out of necessity, and, in some cases, bouts of homelessness.

On top of this, an insufficient supply of affordable housing in California means that even when those among this growing percentage of households are financially capable of seeking rental property, they are generally competing for a small number of available options within their price range. This means landlords generally receive more applications for each property, and can be more selective with respect to prospective renters. The result is an increased likelihood of an applicant being rejected when applying for rental property, and the need for those individuals to submit more applications in order to secure housing. A 2021 assessment performed by the online tenant screening and rent payment service *RentSpree* indicated that, among California's five largest cities, the average number of applications per rental property fluctuated between 1.5 and 3 from January 2019 to October 2020.<sup>4</sup> The risk of rejection, and the subsequent need to apply for alternative properties, is particularly high for applicants with a criminal or eviction history.

California law permits landlords to charge applicants an “application screening fee to cover the costs of obtaining information about the applicant [...including, but not limited to,] personal reference checks and consumer credit reports purchased by consumer credit reporting agencies [...].” (Civ. Code Sec. 1950.6(a).) Section 1950.6 of the Civil Code specifies that the amount of the application screening fee shall not be greater than the actual out-of-pocket costs of gathering information concerning the applicant, including, but not limited to, the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent by the landlord or [their] agent in obtaining information on the applicant, and requires that the landlord return to the applicant any amount of the screening fee that is not used for one of these authorized purposes. (Civ. Code Sec. 1950.6(b) and (e).)

That section further specifies that “in no case shall the amount of the application screening fee charged by the landlord or [their] agent be greater than thirty dollars (\$30) per applicant” but adds that the \$30 application screening fee “may be adjusted annually by the landlord or [their] agent commensurate with an increase in the Consumer Price Index, beginning on January 1, 1998.” (Civ. Code Sec. 1950.6(b).) With these inflation adjustments, this amounts to roughly \$53 per application as of the beginning of 2022. When an applicant must apply to multiple properties in order to secure housing, such screening fees can quickly add up to hundreds of dollars, severely burdening the already-strained finances of those most in need of housing, and most likely to need to apply to multiple properties.

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<sup>3</sup> *Id.* at p. 4.

<sup>4</sup> Kenyon Ates, “Rental Application Trends in California’s Top 5 Cities,” *RentSpree*, Feb. 1, 2021, <https://www.rentspree.com/blog/rental-application-trends-in-california> [as of Apr. 30, 2022].

This bill seeks to codify a voluntary mechanism for landlords to accept a single screening report that can be used across multiple rental applications to reduce the cost burden of the rental housing application process.

- 4) **Reusable tenant screening reports:** As defined by this bill, RTSRs are consumer reports that are prepared by a consumer reporting agency at the request and expense of an applicant and are made directly available to a landlord at no charge for use in the rental application process, or are provided through a third-party website and available to the landlord at no cost to access. RTSRs as contemplated by the bill must include the applicant's criminal and eviction histories for the past seven years, verification of employment, and last known address. Functionally, these reports would allow multiple landlords to screen an applicant within a 30 day period without the need for an application screening fee, since the RTSR is generated at the expense of the applicant and can be accessed by each landlord at no cost. Accordingly, the bill would prohibit a landlord that accepts RTSRs from charging an applicant that provides an RTSR either a fee for the landlord to access the report, or an application screening fee.

The emergence of these reports both in concept and in practice is quite recent, but several companies already offer them, largely at rates lower than the maximum permissible screening fee for a single application in California. Zillow and MyScreeningReport.com, two leaders in this space, offer RTSRs to be used an unlimited number of times over the course of 30 days at prices around \$30-50, depending on the included information. Both Washington and Maryland have passed statutes to permit landlords to elect to accept RTSRs, in 2016 and 2021, respectively. (*See* Wash. Rev. Code Sec. 58.19.257; Md. Code Ann., Real Property Sec. 8-218.)

In concept, the use of these reports could save applicants seeking housing hundreds of dollars in screening fees, provided the cost of initially generating the report is reasonable; at present, while existing law caps permissible application screening fees, neither existing law nor this bill caps the cost of generating an RTSR. For those most in need, these hundreds of dollars in savings could make a critical difference in the household's ability to meet their basic needs. A coalition of legal aid and restorative justice organizations who oppose the bill unless amended nonetheless commend the bill's laudable intent:

AB 2559 [] seeks to address a critical issue for California renters. Unreasonable housing application fees create enormous barriers to housing and disproportionately impact low-income families of color throughout the state. 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. [...] [T]here is interest nationally in increasing the use of portable tenant screening reports and ideally creating a demand for them in the private tenant screening market.

- 5) **Bill in print appears to disincentivize acceptance of RTSRs:** This bill consists of four key provisions that, together, serve to codify the practice of using and accepting RTSRs: 1) the bill provides that a landlord may accept an RTSR and may require an applicant to state that there has not been a material change to the information in the RTSR; 2) the bill requires an RTSR to include the results of a criminal history check and an eviction history check spanning the preceding seven years, verification of employment, and the applicant's last known address; 3) the bill prohibits a landlord that accepts RTSRs from charging an

applicant that provides an RTSR either a fee for the landlord to access the report or an application screening fee; and, 4) the bill requires a landlord who elects to accept RTSRs to provide notice informing applicants that they accept RTSRs by, at a minimum, providing clear and conspicuous statements on each listing or advertisement for residential rental property, on each internet website maintained by the landlord, on each application for residential rental property, and at each physical location where applicants may submit applications.

Though the widespread acceptance and use of RTSRs is likely to alleviate some of the financial strain of securing rental housing, it is not clear whether this bill would in fact further the use and acceptance of RTSRs. In opposition to the bill unless amended, a coalition of legal aid and restorative justice organizations argues:

[T]he 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. Few landlords would voluntarily opt into using portable screening reports without a market incentive, especially with these new disclosure requirements.

Indeed, while landlords may voluntarily elect to accept RTSRs, under the framework created by this bill, it is not clear whether or why many would. Landlords that choose to accept RTSRs would be subject to onerous and unclear notice requirements that are not imposed on landlords who choose not to accept RTSRs, exposing them to liability in the event they accept RTSRs but fail to comply with these requirements. The requirements necessitate clear and conspicuous statements on *all* of the indicated media (i.e. listings and advertisements, websites, applications, and physical locations for application submission) *only* if the landlord accepts RTSRs. These notice requirements could also potentially be interpreted as even broader than seemingly intended. For instance, the requirement that the landlord include a “clear and conspicuous statement on each internet website maintained by the landlord” does not specify only those websites relevant to their business, and thus could be construed to include the landlord’s personal social media profiles and other unrelated web content maintained by the landlord. The requirement that notice be provided via a “clear and conspicuous statement on each listing or advertisement for residential rental property on the internet” similarly fails to qualify that this only includes properties for which the landlord accepts RTSRs or even only those that the landlord actually manages, potentially creating confusion.

Additionally, the bill prohibits a landlord from charging an application screening fee if they elect to accept RTSRs, but applicant screening fees can be used both for the actual cost of obtaining the screening report and “the reasonable value of time spent by the landlord or [their] agent in obtaining information on the applicant” under existing law. While obtaining necessary information through a pre-generated RTSR would arguably be less time and labor-intensive than obtaining a screening report of their own accord, the lack of compensation for time spent accessing the report, along with the lack of other incentives for acceptance, would seem to make voluntary acceptance of RTSRs the less desirable option for a landlord, both financially and in terms of liability exposure.

The opposing coalition suggests resolving this issue by better incentivizing acceptance of RTSR by landlords:

Ideally, the bill would require landlords to accept portable screening reports. Short of that, a better construction would be to prohibit landlords from charging application fees unless they say they don't. That at least creates an incentive to comply with the disclosure requirement. If landlords don't make the disclosure, then they wouldn't be able to charge application fees.

This latter suggestion is consistent with Washington's statute permitting landlords to accept RTSRs, which allows a landlord to charge an applicant an application screening fee *only* if the landlord notifies the applicant in writing as to whether or not the landlord will accept an RTSR, in addition to prohibiting the charging of screening fees if the landlord accepts the RTSR. Since the author clearly intends for this bill to facilitate the use of RTSRs as a means of mitigating the obstructive costs of the application screening process, as the bill moves through the legislative process, the author may consider amending the bill to better incentivize the acceptance of RTSRs by landlords.

- 6) **Bill requires seven years of criminal and eviction history information:** AB 2559 would require an RTSR to include "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 RTSR, as well as "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 RTSR. Federal law pursuant to the Fair Credit Reporting Act prohibits a consumer reporting agency from making any consumer report containing "civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period" and "any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years." (15 U.S.C. Sec. 1681c(a)(2) and (5).) State law pursuant to the California Consumer Credit Reporting Agencies Act further prohibits a consumer credit reporting agency from making any consumer credit report containing, among other things, "suits and judgments that, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period," "records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years," and "any other adverse information that antedates the report by more than seven years." (Civ. Code Sec. 1785.13.)

This bill would require RTSRs to include the applicant's criminal history and eviction history for the preceding seven years, which is the maximum allowable look-back period under state and federal law. However, as the opposing coalition points out, several successful efforts have been mounted at the local level to limit the extent to which criminal history in particular can be considered in rental housing applicant screening. Even in state law, regulations implementing FEHA indicate that:

While laws regulating investigative consumer reports, such as [the California Consumer Credit Reporting Agencies Act] allow the reporting of certain criminal history information up to seven years from the date of disposition, release or parole, a court may consider shorter look-back periods in its determination of whether there is a feasible



alternative practice under [FEHA regulations requiring sufficient justification for the practice of using criminal history information to make discriminations between applicants]. A look-back period limits the inquiry to criminal activity that occurred during a certain amount of time prior to the present. Look-back periods are intended to ensure that the criminal history information considered is relevant to the decision being made. (2 C.C.R. Sec. 12269(b).)

In the wake of the COVID-19 pandemic during which hundreds of thousands of tenants faced eviction proceedings prior to relief through eviction moratoriums, there has also been a significant push to limit the use of eviction records from during the pandemic in the consideration of tenant fitness.

With respect to the impact this bill may have on the use of criminal and eviction history in consideration of applicants, the opposing coalition argues:

[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 individual’s qualifications for tenancy. The bill risks codifying harmful and discriminatory look back periods into law. It could also preempt local laws that are more protective such as Richmond’s Fair Chance Ordinance, which prohibits housing providers from screening for most criminal history, except for certain convictions no more than two years old.

The bill in print does provide that “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.” It is not clear, however, whether this provision would allow an RTSR to include fewer than seven years of criminal or eviction history if the RTSR is generated for application in a jurisdiction in which such local ordinances limit look-back periods, or whether the landlord would simply be precluded from “considering” that information, which will nonetheless be provided in the report. This issue is further complicated by the fact that the RTSR is considered to be *provided* by the applicant, rather than *requested* by the landlord either from the applicant or from the consumer reporting agency. This means any provision of law that prohibits a landlord from requesting that amount of criminal or eviction history information may not protect an applicant using an RTSR from “volunteering” that information. The latter interpretation would have implications for the privacy of individuals, likely primarily those of lower socio-economic status and people of color, who would elect to provide RTSRs, as they would be forced to choose between revealing personal information beyond what is required of other applicants, potentially exposing themselves to discrimination in the process, in order to utilize a more affordable option for housing application.

Because an RTSR is by definition intended to be usable across multiple applications and even across multiple jurisdictions, there is an inherent tension between the portability of these reports and their flexibility in conforming to local limitations on reporting of criminal and eviction history. Still, most applicants applying to multiple perspective rental properties within a 30-day period would be doing so within a given locality. Accordingly, should the Committee choose to pass this bill out, the author may wish to consider requiring an RTSR to

include the results of *up to* seven years of criminal and eviction history checks preceding the request for the report, in accordance with applicable local, state, and federal laws, in order to avoid requiring those utilizing RTSRs to reveal personal information beyond what is necessary for a conventional application screening report.

7) **Amendments to address outstanding issues in the bill:**

***Amendment 1:*** The bill in print provides that “a landlord may accept *a* reusable tenant screening *report* and may require an applicant to state that there has not been a material change to the information in the reusable tenant screening report.” However, the following subdivision refers to a “landlord *who elects to accept* reusable tenant screening *reports*.” The bill in print also specifies that the bill “does not require a landlord to accept *a* reusable tenant screening *report*.” While these provisions were seemingly intended to emphasize the voluntary nature of the framework, the inconsistent use of plural and singular forms in reference to the reports create confusion as to whether a landlord who generally accepts RTSRs can exercise discretion as to which applicants they will permit to provide them, i.e. accept reusable tenant screening *reports*, but reject a particular reusable tenant screening *report*. This interpretation would create a significant avenue for housing discrimination and may further limit the utility of these reports, since those most in need of them may be filtered out at the discretion of the landlord. To resolve this ambiguity and clarify that a landlord must accept all compliant RTSRs should they elect to accept RTSRs, the author should amend the bill as follows:

Amendment:

On page 2, line 14, strike “accept a” and insert: “***elect to accept***”.

On page 2, line 14, strike “report” and insert: “***reports***”.

On page 4, line 1, after the word “accept”, strike “a”.

On page 4, line 2, strike “report” and insert: “***reports***”.

***Amendment 2:*** The bill in print defines “reusable tenant screening report” as a consumer report that meets both of the following criteria: 1) was prepared within the previous 30 days by a consumer reporting agency at the request and expense of an applicant; and, 2) is made directly available to a landlord at no charge 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 is available to the landlord at no cost to access.

State and federal law both extensively regulate the circumstances under which consumer reporting agencies may use and disclose information contained in a consumer report including information bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, pursuant to the California Consumer Credit Reporting Agencies Act (Civ. Code Sec. 1785.1, et seq.), the Investigative Consumer Reporting Agencies Act (Civ. Code Sec. 1786, et seq.), and the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681, et seq.), respectively. These laws, among other things, limit the purposes for which consumer reports can be furnished and particular information in a consumer report can be disclosed, as well as the permissible uses of the information by the consumer reporting agency themselves. Recipients of consumer

reports other than the consumer must also attest to intended compliance with certain limitations on their use and further disclosure of that information.

The language in the bill in print seems to distinguish between the consumer reporting agency that prepares the RTSR and can provide that report directly to the landlord, and a third-party website that regularly engages in the business of providing an RTSR, which may host the RTSR and furnish it to the landlord. However, while some of these third-party services may qualify under the definition of consumer reporting agency under the bill, others likely do not. Accordingly, third-party services that furnish RTSRs may not be subject to existing regulations on use and disclosure of consumer information by consumer credit reporting agencies. This means the information contained in the RTSR, including criminal history information, eviction history information, employment information, and address history, could be used for any purpose permissible under general data privacy laws (e.g. the California Consumer Protection Act). In those circumstances, there would be nothing to prevent such a third-party from using the applicant's information to, e.g., target advertisements for particular products or services to the applicant, or from selling the information to a data brokerage.

To ensure that the information maintained in the RTSR is subject to the same protections whether the RTSR is being hosted by the consumer reporting agency themselves or a third-party service, the author should adopt the following amendment to require such a third-party service to comply with existing state and federal laws regulating the use and disclosure of consumer report information by consumer reporting agencies:

Amendment:

On page 3, line 24, strike “both”, and insert: “*all*”.

On page 3, line 27, strike “at no charge”.

On page 3, line 30, strike “is”, and insert: “*complies with all state and federal laws pertaining to the use and disclosure of information contained in a consumer report by a consumer reporting agency.*”

(C) *Is*”.

On page 3, line 31, after the word “access”, insert: “*or use*”.

With these amendments, this bill would provide a clearer, more privacy protective framework to codify the practices of providing and accepting RTSRs in order to mitigate some of the financial burden associated with the process of securing rental housing.

- 8) **Double-referral:** This bill was double-referred to the Assembly Judiciary Committee where it was heard on March 29, 2022 and passed out 8-0.
- 9) **Related legislation:** AB 2203 (L. Rivas) would prohibit a property owner from requiring a consumer credit report as part of the application process for rental housing if the housing unit or applicant receives a government rent subsidy.

AB 2383 (Jones-Sawyer) would regulate how criminal record information can be used when evaluating prospective tenants for rental housing accommodations

AB 2527 (Quirk-Silva) would prohibit landlords from relying on consumer credit reports in deciding whether to rent to prospective tenants, and from inquiring as to the contents of applicant credit reports, except as specified.

SB 1335 (Eggman) would prohibit a property owner from using a person's credit history as part of the history as part of the application process for a rental accommodation without offering the applicant the option to provide alternative evidence of financial responsibility if the housing unit or applicant receives a government rent subsidy.

10) **Prior legislation:** AB 1241 (Jones-Sawyer, 2021) was substantially similar to AB 2383, above, and would have made changes to when and how a landlord may inquire about a prospective tenant's criminal record. AB 1241 died in the Assembly Committee on Housing and Community Development.

SB 1157 (Bradford, Ch. 204, Stats. 2020) 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.

SB 329 (Mitchell, Ch. 600, Stats. 2019) prohibits landlords from discriminating against tenants and applicants who receive housing assistance paid directly to their landlord, including tenants whose housing is subsidized by federal Section 8 vouchers.

AB 396 (Jones-Sawyer, 2015) would have given an applicant 14 days to respond to explain the inaccuracy of an item or items within the applicant's criminal record or evidence of rehabilitation or other mitigating factors. AB 396 was held on the Suspense File in the Assembly Committee on Appropriations.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

California Association of Realtors (unless amended; previous version of bill)

Inner City Law Center (unless amended)

Just Cities (unless amended)

Legal Services for Prisoners with Children (unless amended)

National Housing Law Project (unless amended)

Root & Rebound (unless amended)

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