
Financial Institutions & Insurance Committee

HB 2622

Brief Description: Protecting consumers from unfair practices by establishing criteria for the dissemination of credit and court record information contained in a consumer's tenant screening report.

Sponsors: Representatives Orwall, Rolfes, Darneille, Pettigrew, Morrell, Hasegawa, Ormsby and Moeller.

Brief Summary of Bill

- Limits the types of information a consumer reporting agency can provide in a tenant screening report (screening report).
- Requires a prospective tenant receive a free copy of any screening report.
- Provides remedies.

Hearing Date: 1/19/10

Staff: Jon Hedegard (786-7127).

Background:

Consumer Reports.

A consumer report is a written, oral, or other communication of information by a consumer reporting agency (CRA) bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that 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 primarily for personal, family, or household purposes;
- employment purposes; or
- other authorized purposes.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The use of credit reports and consumer reports is regulated under the federal Fair Credit Reporting Act (Federal FCRA) and the state Fair Credit Reporting Act (State FCRA). Both the federal and state laws require that consumer reporting agencies establish procedures to ensure that the information is accurate and is provided only for appropriate purposes. State procedures include a requirement that prospective users identify themselves, certify the use of the purpose for which the information will be used, and certify that the information will not be used for other purposes. A CRA must take reasonable effort to verify the identity of a prospective user and the uses certified by the prospective user before providing a report.

It is unlawful to obtain information knowingly and under false pretenses. A person who violates the law is subject to a fine of \$5,000, up to a year in prison, or both. It is also unlawful to knowingly provide information to a person who is not authorized to receive the information. An officer or employee of a CRA who violates the law is subject to a fine of \$5,000, up to a year in prison, or both.

There are mechanisms in state and federal law to dispute the completeness and accuracy of information on a consumer report.

An adverse action by a residential landlord is any action based on a consumer report that is unfavorable to a rental applicant, including denial of an application, requiring a co-signer on a lease, requiring a larger deposit, or increasing the rent.

The Federal FCRA generally requires oral, written, or electronic notice of an adverse action. In certain situations, the notice must be written. The State FCRA allows for oral notice of an adverse action in the context of rental or leasing of residential real estate if the verbal notice does not impair the tenant's ability to obtain the consumer report without charge.

A credit reporting agency must furnish its reports to the consumer without charge if the consumer requests the report within 60 days of receipt of an adverse action based on the consumer report.

Violations of the State FCRA are violations of the Consumer Protection Act. A court:

- may award actual damages, the costs of the action, and reasonable attorneys' fees for a violation;
- must award actual damages, a penalty of \$1,000, the costs of the action, and reasonable attorneys' fees for a willful violation

State Residential Landlord-Tenant Act (RLTA).

Residential landlords may use a type of credit report to evaluate potential tenants. These reports may contain information from public sources, such as court records and criminal background checks, and from proprietary sources, such as a credit score and credit report. The RLTA also establishes requirements regarding tenant screening.

If a landlord uses a tenant screening service (service) to obtain the report, only the landlord's cost can be charged to the tenant. If the landlord obtains the background information, actual costs may be charged to the tenant. However, these costs may not be assessed against the tenant unless the landlord first notifies the tenant of:

- what tenant screening will mean; and

- the tenant's right to dispute the information received by the landlord about the tenant.

A landlord is not required to disclose information to the tenant that was obtained from the screening process if that disclosure is not required by the Federal FCRA. If a landlord violates the RTLA, an injured person may sue for \$100. The prevailing party may recover court costs and reasonable attorneys' fees.

Summary of Bill:

Over a dozen new definitions specific to residential tenant screening are added to the State FCRA.

Requirements on Prospective Landlords.

Before requesting a tenant screening report (screening report), a prospective landlord must receive information from the prospective tenant about how the prospective tenant agrees to be contracted. If the prospective landlord intends to use a service and charge fees, the prospective tenant must be notified that he or she can avoid the fees by comprehensive screening issued within the last 60 days. If the prospective tenant provides such a report, the landlord may not charge any screening costs. The prospective landlord still may seek or obtain background information but may not pass along the expense. A prospective landlord that takes an adverse action against a prospective tenant must provide written notice of the adverse action, including the reasons for the adverse action. A prospective tenant may sue a prospective landlord for a violation for actual damages, legal costs, and attorney's fees. If a prospective landlord willfully failed to comply with these requirements, the prospective tenant must be awarded \$1,000 for each willful violation.

Requirements on CRAs.

A CRA may not include certain information in a screening report. The prohibited information includes certain records and information where it is indicated that the prospective tenant:

- was evicted. There is an exception if the eviction was within the last seven years, the prospective tenant was not evicted as a result of a foreclosure sale, the prospective tenant was guilty of unlawful possession of the premises, and that court order was not vacated, expunged or sealed;
- was a victim of certain crimes;
- sought an order of protection related to certain crimes;
- asserted a claim or defense available to them as a victims of violence;
- sought any right or benefit available specifically for victims of violence.

A prospective tenant or tenant may sue a CRA for a violation of these requirements for actual damages, legal costs, and attorney's fees. A CRA that willfully fails to comply with these requirements is liable to the tenant in the amount of \$1,000 for each willful violation.

Requirements on Services.

Before requesting a screening report, a service must require the requester to provide the information from the prospective tenant about how the prospective tenant agrees to be contracted. If a service provides a screening report to a requester concerning a prospective tenant, the service must, within 48 hours, provide the prospective tenant with:

- an identical copy of the screening report's entire written contents; and

- a transcript or detailed written summary of any nonwritten contents of the screening report.

If a service has issued a screening report concerning a prospective tenant, the service must, for 60 days following the report:

- provide the prospective tenant with a revised screening report within 48 hours of making any update, correction, or other change; and
- provide a copy of the screening report or most recently revised screening report to any prospective landlord who has been authorized by the prospective tenant to receive the report within 48 hours of a request; and
- not accept any additional compensation for providing any reports to the prospective tenant if the service has accepted a fee for issuing the report to the prospective landlord.

A service must maintain reasonable procedures to ensure that it does not collect more than one fee for issuing screening reports concerning the same prospective tenant within 60 days. A service or prospective landlord must promptly refund any improperly collected fees. If a service or prospective landlord fails within one week to refund a fee, a rebuttable presumption arises that the violation was willful.

A prospective tenant's rights or the duties of a service as otherwise provided under the State FCRA or the RTLA are not limited.

The tenant screening provisions in the RTLA are repealed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.