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SB-1396 Tenancy: credit reporting: lower income households: evaluation. (2021-2022)

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Date Published: 09/29/2022 02:00 PM

Senate Bill No. 1396

CHAPTER 670

An act to amend Section 1954.06 of the Civil Code, relating to tenancy.

[Approved by Governor September 28, 2022. Filed with Secretary of State September 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1396, Bradford. Tenancy: credit reporting: lower income households: evaluation.

Existing law, beginning July 1, 2021, and until July 1, 2025, requires a landlord of an assisted housing development, as defined, to offer tenants obligated on the lease of units in the development the option of having their rental payments reported to at least one consumer reporting agency. Existing law authorizes a landlord to charge a tenant that elects to have rent reported and prescribes requirements regarding how the offer of rent reporting is to be made.

This bill would require an independent evaluator, upon appropriation by the Legislature for this purpose, to be selected by the Department of Financial Protection and Innovation and to be responsible for conducting an evaluation on the impact of rental payment reporting in this state, as prescribed. The bill would require the evaluator to be chosen through a competitive process to be completed on or before March 1, 2024. The bill would require the evaluator to create a report based on the evaluation described above that contains certain information, including the estimated percentage of assisted housing developments in compliance with this provision and the number of participating tenants. The bill would require the annual report, on or before January 1, 2025, to be posted on the department's internet website and distributed to the appropriate policy committees of the Legislature for review.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1954.06 of the Civil Code is amended to read:

1954.06. (a) As specified in subdivision (b), and except as provided in subdivision (j), beginning July 1, 2021, any landlord of an assisted housing development shall offer the tenant or tenants obligated on the lease of each unit in that housing development the option of having the tenant's rental payment information reported to at least one nationwide consumer reporting agency that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(p)) or any other consumer reporting agency that meets the definition in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)) so long as the consumer reporting agency resells or otherwise furnishes rental payment information to a nationwide consumer reporting agency that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(p)). A tenant's election to have rent reported under this subdivision shall be in writing, as described in subdivision (c).

(b) For leases entered into on and after July 1, 2021, the offer of rent reporting shall be made at the time of the lease agreement and at least once annually thereafter. For leases outstanding as of July 1, 2021, the offer of rent reporting shall be made no later than October 1, 2021, and at least once annually thereafter.

(c) The offer of rent reporting shall include a written election of rent reporting that contains all of the following:

- (1) A statement that reporting of the tenant's rental payment information is optional.
- (2) Identification of each consumer reporting agency to which rental payment information will be reported.
- (3) A statement that all of the tenant's rental payments will be reported, regardless of whether the payments are timely, late, or missed.
- (4) The amount of any fee charged pursuant to subdivision (f).
- (5) Instructions on how to submit the written election of rent reporting to the landlord by mail.
- (6) A statement that the tenant may opt into rent reporting at any time following the initial offer by the landlord.
- (7) A statement that the tenant may elect to stop rent reporting at any time, but that they will not be able to resume rent reporting for at least six months after their election to opt out.
- (8) Instructions on how to opt out of reporting rental payment information.
- (9) A signature block that the tenant shall date and sign in order to accept the offer of rent reporting.

(d) When the offer of rent reporting is made, the landlord shall provide the tenant with a self-addressed, stamped envelope to return the written election of rent reporting.

(e) The written election to begin rent reporting shall not be accepted from the tenant at the time of the offer. A tenant may submit their completed written election of rent reporting at any time after they receive the offer of rent reporting from the landlord. A tenant may request and shall obtain additional copies of the written election of rent reporting form from the landlord at any time.

(f) If a tenant elects to have that tenant's rental payments reported to a consumer reporting agency under subdivision (a), the landlord may require that tenant to pay a fee not to exceed the lesser of the actual cost to the landlord to provide the service or ten dollars (\$10) per month. The payment or nonpayment of this fee by the tenant shall not be reported to a consumer reporting agency.

(g) If a tenant fails to pay any fee required by the landlord pursuant to subdivision (f), all of the following shall apply:

- (1) The failure to pay the fee shall not be cause for termination of the tenancy, whether pursuant to Section 1161 of the Code of Civil Procedure or otherwise.
- (2) The landlord shall not deduct the unpaid fee from the tenant's security deposit.
- (3) If the fee remains unpaid for 30 days or more, the landlord may stop reporting the tenant's rental payments and the tenant shall be unable to elect rent reporting again for a period of six months from the date on which the fee first became due.

(h) A tenant who elects to have rent reported as described in subdivision (a) may subsequently file a written request with their landlord to stop that reporting with which the landlord shall comply. A tenant who elects to stop reporting shall 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 to stop reporting.

(i) A tenant who elects to have rent reported does not forfeit any rights under Sections 1941 to 1942, inclusive. If a tenant makes deductions from rent or otherwise withholds rent as authorized by those sections, the deductions or withholding of rent shall not constitute a late rental payment. A tenant invoking the right to repair and deduct or withhold rent under those sections shall notify their landlord of the deduction or withholding prior to the date rent is due. This subdivision shall not be construed to relieve a housing provider of the obligation to maintain habitable premises.

(j) This section shall not apply to any landlord of an assisted housing development that contains 15 or fewer dwelling units, unless both of the following apply:

- (1) The landlord owns more than one assisted housing development, regardless of the number of units in each assisted housing development.
- (2) The landlord is one of the following:
 - (A) A real estate investment trust, as defined in Section 856 of Title 26 of the United States Code.

(B) A corporation.

(C) A limited liability company in which at least one member is a corporation.

(k) For purposes of this section, the following definitions shall apply:

(1) "Assisted housing development" has the same meaning as defined in Section 65863.10 of the Government Code.

(2) "Landlord" means an owner of residential real property containing five or more dwelling units.

(l) An independent evaluator, upon appropriation by the Legislature for this purpose, shall be selected by the Department of Financial Protection and Innovation and shall be responsible for conducting an evaluation of the impact of rental payment reporting in this state pursuant to this section.

(1) The evaluator shall be selected through a competitive process to be completed on or before March 1, 2024.

(2) The evaluator shall conduct the evaluation of the impact of rental payment reporting in this state pursuant to this section from July 1, 2021, through June 30, 2024, or a later date chosen by the evaluator with the approval of the Department of Financial Protection and Innovation.

(3) Based on the evaluation described in paragraph (2), the evaluator shall create a report that includes, but is not limited to, information about all of the following:

(A) The estimated percentage of assisted housing developments in compliance with this section.

(B) Any significant barriers to compliance with this section experienced by assisted housing developments.

(C) The estimated number of participating tenants.

(D) Any significant barriers to participation experienced by tenants.

(E) The estimated impact of participation on the credit scores of participating tenants living in assisted housing developments.

(F) Recommendations, if any, for changes to the rental payment reporting process established by this section that could positively impact tenants of assisted housing developments.

(4) In complying with this subdivision, the Department of Financial Protection and Innovation and the evaluator may employ statistical probability methods and other sampling methods to provide estimates.

(5) If the information required in paragraph (3) cannot be obtained due to an absence of data or other methodological constraints, the Department of Financial Protection and Innovation shall notify the Legislature by January 1, 2024. This notification shall describe in detail the actions taken to attempt to obtain the information, why the required information was unable to be obtained, and recommendations for statutory changes that could produce data to satisfy the requirements enumerated in paragraph (3).

(6) On or before January 1, 2025, the annual report required pursuant to paragraph (3) shall be posted on the internet website of the Department of Financial Protection and Innovation and distributed to the appropriate policy committees of the Legislature for review.

(m) This section shall remain in effect only until July 1, 2025, and as of that date is repealed, unless a later enacted statute that is enacted before July 1, 2025, deletes or extends that date.