**A Position on Washington HB 2537 and SB 6291**

**“An Act Relating to Tenant Screening”**

**The Problem:** There have been reports of some consumers who have experienced delays in obtaining rental housing due to the costs associated with consumer reports obtained by property managers and landlords to qualify the consumer’s tenancy. The state of Washington’s Residential Landlord-Tenant Act (RLTA), which regulates the relationship between landlords and tenants, acknowledges that screening reports are an important part of this relationship. Further, the Washington State Legislature has “…found and declares comprehensive tenant screening reports are a necessary and fair solution for both applicants and landlords”[[1]](#footnote-1). Despite the importance of these documents to all parties, legislation now pending in the Washington state legislature (H.B. 2537)) would both lower accuracy and increase the potential for fraud in these documents, exposing both landlords and the prospective tenants to incorrect housing decisions.

Furthermore, the legislation may violate the Fair Credit Reporting Act (FCRA), the Federal law regulating such reports. The good intentions of this bill must be carefully evaluated alongside the actual risk associated with the concept of a 30-day portable consumer report. Consumer reports are designed to allow landlords and creditors of all types to have the very latest information for making informed lending and rental decisions. Having the most up to date information for consumer reports is critical to ensuring their accuracy. In December 2012, the Consumer Financial Protection Bureau (CFPB) reported to Congress that each of the national credit bureaus are updated with 1.3 billion new items of information per month.[[2]](#footnote-2) Those 1.3 billion changes to the contents of the files that occur daily pertain only to the section of the report regarding credit information. The comprehensive tenant screening reports that are the subject of this legislation also contain information from public record sources such as criminal and eviction records. These databases also are updated on a daily basis.

At the heart of the FCRA is the requirement that consumer reporting agencies use “reasonable procedures for maximum possible accuracy in producing consumer credit reports.”[[3]](#footnote-3) Considering that the system as a whole processes 3.9 billion updates per month (1.3 billion at each of the three national credit bureaus) for credit information alone, allowing a report that by acknowledgement of the actual bill language contains “largely the same information” [[4]](#footnote-4) does not constitute a sufficient attempt to meet the maximum possible accuracy requirement. It is especially problematic when just one minor change in a consumer’s file data can have a major impact on the rental decision.

Poor decisions made as a result of inaccurate or outdated information, even if outdated by only a single day, can cause a host of problems for everyone connected to the transaction. While the proposed legislation correctly states that the data is “largely the same,” that standard falls short of what is necessary to protect citizens of the United States under Federal law, and which the judicial process in the State of Washington will rule on.

Other sections of the FCRA--including those on permissible purpose, documenting end users of the consumer report, and the requirements for proper adverse action notifications and tracking--are areas that seem either to be in direct conflict with the provisions of the proposed legislation or of questionable enough compliance that the landlords and providers of the reports could be challenged in civil court for their use.

Should the proposal be enacted, consumers may be prevented from obtaining either housing that they deserve or that is not sustainable for their economic situation and could ultimately result in their eviction. Missing or incomplete data pose a myriad of financial and legal risks of injury to consumers and landlords. For example, missing criminal histories of tenants reduces the overall safety of a rental property, a threat that is increased when high risk tenants slip through the tenant screening process. Obtaining accurate criminal records is a complex process to be determined by the landlord’s own tolerance for balancing risks and costs. Further, consumer reporting agencies that provide the data will be subject to added risk when aged reports expose them for accuracy of outdated information.

**The Recommendation:** To better understand the scope of the issues this legislation attempts to address, NCRA encourages additional data collection and research regarding instances of consumers who experience multiple tenant screenings. If such an analysis was done, we believe that the legislature would find that very few consumers go through multiple screenings before they secure housing. Tales of repeated denials and extended homelessness due to the costs of these reports are much rarer than the risks associated with incorrect screening procedures. Notifying consumers about prequalifying for the rental property in question before submitting their application could solve much of this problem without added risks. Prequalification has proven useful in assisting consumers before entering the mortgage application process; its merits could assist in the rental context as well.

For the sake of all interested parties in rental transactions, the proposed legislation should not become law until it has been fully vetted for compliance with the FCRA. With so many provisions of this bill subject to interpretation by the courts regarding Federal compliance, legal challenges are inevitable should it pass in its current form. If the legislature moves forward with its consideration of the bill regardless of the potential pitfalls associated with it, we strongly believe that amendments must be added to protect and compensate those parties at risk for any losses caused by this bill. The State of Washington should provide limited tort reform and a surety bond to protect consumers, landlords and the consumer reporting agencies from undue risks associated with this proposed legislation.

If enacted, the cumulative effects of less secure rental communities, increased civil actions and legal challenges, and financial loses brought about by rental decisions made from these outdated reports should not be forced on the consumers, landlords and consumer reporting agencies required to use them.

1. State of Washington 63rd Legislature 2014 Regular Session, HB2537 Section 1, page 2 line 3. [↑](#footnote-ref-1)
2. <http://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf> Key Dimensions and Processes in the U.S. Credit Reporting System, December 2012, Page 5 [↑](#footnote-ref-2)
3. Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 [↑](#footnote-ref-3)
4. State of Washington 63rd Legislature 2014 Regular Session, HB2537 Section 1, page 1 Line 9 [↑](#footnote-ref-4)