

Enrolled Senate Bill 291

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Office of the Governor)

CHAPTER

AN ACT

Relating to housing; amending ORS 90.295, 90.303 and 90.304.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 90.295 is amended to read:

90.295. (1)(a) A landlord may require payment of an applicant screening charge solely to cover the costs of obtaining information about an applicant as the landlord processes the application for a rental agreement. This activity is known as screening[,] and includes but is not limited to checking references and obtaining a consumer credit report or tenant screening report. The landlord must provide the applicant with a receipt for any applicant screening charge.

(b) A landlord may only require an applicant to pay a single applicant screening charge within any 60-day period, regardless of the number of rental units owned or managed by the landlord for which the applicant has applied to rent.

(2) The amount of any applicant screening charge must not be greater than the landlord's average actual cost of screening applicants **or the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.** Actual costs may include the cost of using a tenant screening company or a consumer credit reporting agency[, *and may include*] **and** the reasonable value of any time spent by the landlord or the landlord's agents in otherwise obtaining information on applicants. [*In any case, the applicant screening charge must not be greater than the customary amount charged by tenant screening companies or consumer credit reporting agencies for a comparable level of screening.*]

(3) A landlord may not require payment of an applicant screening charge unless prior to accepting the payment the landlord:

(a) Adopts written screening or admission criteria;

(b) Gives written notice to the applicant of:

(A) The amount of the applicant screening charge;

(B) The landlord's screening or admission criteria;

(C) The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references; [*and*]

(D) The applicant's rights to dispute the accuracy of any information provided to the landlord by a screening company or credit reporting agency;

(E) A right to appeal a negative determination, if any right to appeal exists;

(F) Any nondiscrimination policy as required by federal, state or local law plus any non-discrimination policy of the landlord, including that a landlord may not discriminate against an applicant because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of the applicant;

(G) The amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement; and

(H) Whether the landlord requires tenants to obtain and maintain renter's liability insurance and, if so, the amount of insurance required; and

(c) Gives actual notice to the applicant of an estimate, made to the best of the landlord's ability at that time, of the approximate number of rental units of the type, and in the area, sought by the applicant that are, or within a reasonable future time will be, available to rent from that landlord. The estimate shall include the approximate number of applications previously accepted and remaining under consideration for those units. A good faith error by a landlord in making an estimate under this paragraph does not provide grounds for a claim under subsection [(8)(b)] **(6)(b)** of this section[;].

[(d) Gives written notice to the applicant of the amount of rent the landlord will charge and the deposits the landlord will require, subject to change in the rent or deposits by agreement of the landlord and the tenant before entering into a rental agreement; and]

[(e) Gives written notice to the applicant whether the landlord requires tenants to obtain and maintain renter's liability insurance and, if so, the amount of insurance required.]

[(4) Regardless of whether a landlord requires payment of an applicant screening charge, if a landlord denies an application for a rental agreement by an applicant and that denial is based in whole or in part on a tenant screening company or consumer credit reporting agency report on that applicant, the landlord shall give the applicant actual notice of that fact at the same time that the landlord notifies the applicant of the denial. Unless written notice of the name and address of the screening company or credit reporting agency has previously been given, the landlord shall promptly give written notice to the applicant of the name and address of the company or agency that provided the report upon which the denial is based.]

[(5) Except as provided in subsection (4) of this section, a landlord need not disclose the results of an applicant screening or report to an applicant, with respect to information that is not required to be disclosed under the federal Fair Credit Reporting Act. A landlord may give to an applicant a copy of that applicant's consumer report, as defined in the Fair Credit Reporting Act.]

[(6)] **(4)** Unless the applicant agrees otherwise in writing, a landlord may not require payment of an applicant screening charge when the landlord knows or should know that no rental units are available at that time or will be available within a reasonable future time.

[(7)] **(5)** A landlord that requires an applicant screening charge must refund the applicant screening charge to the applicant within a reasonable time if the landlord:

- (a) Fills the vacant dwelling unit before screening the applicant; or
- (b) Does not screen the applicant for any reason.

[(8)(a)] **(6)(a)** An applicant may not recover an applicant screening charge from the landlord if the [tenant] **applicant** refuses an offer from the landlord to rent the dwelling unit.

(b) The applicant may recover from the landlord twice the amount of any applicant screening charge paid, plus \$150, if:

(A) The landlord fails to comply with this section with respect to the applicant's screening or screening charge; or

(B) The landlord does not conduct a screening of the applicant for any reason and fails to refund an applicant screening charge to the applicant within a reasonable time.

SECTION 2. ORS 90.303 is amended to read:

90.303. (1) When evaluating an applicant, a landlord may not consider [an] **a previous** action to recover possession pursuant to ORS 105.105 to 105.168 if the action:

(a) Was dismissed or resulted in a general judgment for the applicant before the applicant submits the application.

(b) Resulted in a general judgment against the applicant that was entered five or more years before the applicant submits the application.

(2) When evaluating the applicant, a landlord may [not] consider a previous arrest of the applicant [if the arrest did not result in a conviction. This subsection does not apply] **only** if the arrest [has] resulted in charges for criminal [behavior] **conduct** as described in subsection (3) of this section [that have not been dismissed at the time the applicant submits the application.] **and:**

(a) **The applicant was convicted of the charges; or**

(b) **The charges are pending and the applicant is not presently participating in a diversion, conditional discharge or deferral of judgment program on the charges.**

(3) When evaluating the applicant, the landlord may [not] consider criminal [conviction and charging history unless the conviction or pending charge is] **convictions or pending charges only** for conduct that **is presently illegal in this state and is:**

(a) A drug-related crime, but not including convictions based solely on the use or possession of marijuana;

(b) A person crime;

(c) A sex offense;

(d) A crime involving financial fraud, including identity theft and forgery; or

(e) Any other crime if the conduct for which the applicant was convicted or charged is of a nature that would adversely affect:

(A) Property of the landlord or a tenant; or

(B) The health, safety or right to peaceful enjoyment of the premises of residents, the landlord or the landlord's agent.

(4) When evaluating an applicant, a landlord may not consider the possession of a medical marijuana card or status as a medical marijuana patient.

SECTION 3. ORS 90.304 is amended to read:

90.304. (1) If a landlord [requires an applicant to pay an applicant screening charge and the application is denied, or if an applicant makes a written request following the landlord's denial of an application,] **denies an application after the landlord's application of screening or admissions criteria, within 14 days of the denial** the landlord must [promptly] provide the applicant with a written statement of one or more reasons for the denial.

(2) The landlord's statement of reasons for denial required by subsection (1) of this section may consist of a form with one or more reasons checked off. The reasons may include, but are not limited to, the following:

(a) Rental information, including:

(A) Negative or insufficient reports from references or other sources.

(B) An unacceptable or insufficient rental history, such as the lack of a reference from a prior landlord.

(C) A prior action for possession under ORS 105.105 to 105.168 that resulted in a general judgment for the plaintiff or an action for possession that has not yet resulted in dismissal or general judgment.

(D) Inability to verify information regarding a rental history.

(b) Criminal records, including:

(A) An unacceptable criminal history.

(B) Inability to verify information regarding criminal history.

(c) Financial information, including:

(A) Insufficient income.

(B) Negative information provided by a consumer credit reporting agency.

(C) Inability to verify information regarding credit history.

(d) Failure to meet other written screening or admission criteria.

(e) The dwelling unit has already been rented.

(3) The statement of reasons for denial must include:

(a) The name and address of any tenant screening companies or consumer credit reporting agencies that provided a report upon which the denial is based, if not previously disclosed to the applicant;

(b) Any supplemental evidence provided by the applicant that the landlord considered and an explanation of the reasons that the supplemental evidence did not adequately compensate for the factors that informed the landlord's decision to reject the application; and

(c) A right of the applicant to appeal the determination, if any right to appeal exists.

(4) Except as provided in subsection (3)(a) of this section, a landlord need not disclose the results of an applicant screening or report to an applicant, with respect to information that is not required to be disclosed under the federal Fair Credit Reporting Act. A landlord may give to an applicant a copy of that applicant's consumer report, as defined in the Fair Credit Reporting Act.

(5) Before denying an application for housing on the basis of criminal history, a landlord must:

(a) Provide an opportunity for the applicant to submit supplemental evidence to explain, justify or negate the relevance of potentially negative information.

(b) Conduct an individualized assessment of the applicant, including any supplemental evidence, taking into consideration:

(A) The nature and severity of the incidents that would lead to a denial;

(B) The number and type of incidents;

(C) The time that has elapsed since the date the incidents occurred; and

(D) The age of the individual at the time the incidents occurred.

[(3)] (6) If a landlord fails to comply with this section, the applicant may recover from the landlord \$100.

Passed by Senate April 1, 2021

Received by Governor:

Repassed by Senate June 25, 2021

.....M.,....., 2021

Approved:

.....
Lori L. Brocker, Secretary of Senate

.....M.,....., 2021

.....
Peter Courtney, President of Senate

.....
Kate Brown, Governor

Passed by House June 24, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Tina Kotek, Speaker of House

.....
Shemia Fagan, Secretary of State