

Government of the District of Columbia
Office of the Chief Financial Officer



Fitzroy Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee
Chief Financial Officer

DATE: June 7, 2022

SUBJECT: REVISED Fiscal Impact Statement – Eviction Record Sealing Authority
and Fairness in Renting Amendment Act of 2022

REFERENCE: Bill 24-96, as enacted March 28, 2022

This Fiscal Impact Statement has been updated from the November 30, 2021 version to correct the bill number¹ and incorporate amendments passed at first and second reading. The bill was enacted and became Law 24-115, effective May 18, 2022.

Conclusion

Currently, funds are not sufficient to implement amendatory sections 510(a)(10), f(4) and (h) of the bill's section 3(b) and these sections were included subject to appropriations. However, the fiscal year 2023 through fiscal year 2026 budget and financial plan² includes funding for the portion of the bill with a cost and a repeal of the bill's subject to appropriations provision effective at the start of fiscal year 2023. The bill costs \$447,000 in fiscal year 2023 and a total of \$1.8 million through fiscal year 2026.

Background

The bill makes a number of changes to eviction procedures, including the processes of notifying tenants, of filing a claim in court, and of sealing case records. The bill also imposes new requirements

¹ Previously issued on draft legislation of Bill 24-119.

² Fiscal Year 2023 Local Budget Act of 2022, passed at second reading May 24, 2022 and Fiscal Year 2023 Budget Support Act of 2022, passed at first reading May 10, 2022

on housing providers when receiving rental applications and for conducting screenings of prospective tenants.

The bill prohibits housing providers from filing to evict a tenant for non-payment of rent if the amount owed is less than \$600. Providers must have a current license for rental housing³ and a valid registration⁴ with the Rental Accommodations Division (unless exempt) in order to file a complaint seeking to evict a tenant and must at the time of filing provide documentation of such license. The bill requires, if the tenant cannot be served with the eviction notice, that the notice be posted on the rental premises and that a date and time-stamped photo of such notice be submitted to the court with the eviction filing. Tenant notices must be provided in a language other than English and Spanish if the housing provider is aware the tenant speaks another language. Housing providers must provide a tenant with an eviction notice at least 30 days prior to filing a complaint in court. The notice must include specific language, to include the amount of rent due, a reference to an attached ledger of all charges and payments in the period of delinquency, a statement that the tenant has the right to remain in the unit if the total balance of unpaid rent is paid, and a statement that only a court may order an eviction and that tenants have a right to defend themselves in court. The notification must also reference the availability of free legal assistance at the Office of the Tenant Advocate and the Landlord Tenant Legal Assistance Network along with contact phone numbers. Housing providers must serve a summons on a tenant (or if the tenant cannot be found, by delivering it to the resident of the housing unit or posting on the unit) at least 30 days prior to an initial hearing on an eviction case. Failure to comply with the notice or summons provisions or proof of the required business license will prevent the D.C. Superior Court from ordering repossession of the rental unit.

The bill requires the Superior Court to seal the eviction case record within 30 days if the housing provider does not win a judgment allowing repossession of the unit, and within 3 years if the court ruled in favor of the housing provider's repossession. A tenant may also petition for any case to be sealed in which one of the following applies:

- The amount of rent owed was \$600 or less;
- the unit was rented under any District or federally-based housing subsidy;
- the housing provider filed the eviction case as retaliation, coercion or threat against any right granted or protected by the Rental Housing Act⁵ or the Human Rights Act⁶;
- the housing provider failed to timely abate a violation of Department of Consumer and Regulatory Affairs rules regarding residential building codes in relation to the tenant's rental unit;
- the eviction was filed due to a tenant's actions which were a defense against intra-family violence, domestic violence, dating violence, sexual assault, or stalking;
- the parties entered into a settlement agreement that did not result in the housing provider recovering possession of the unit; or
- for other reasons the court deems worthy of relief.

³ Pursuant to D.C. Official Code § 47-2828(c)(1).

⁴ Pursuant to D.C. Official Code § 42-3502.05

⁵ Per Section 502 of the Rental Housing Act of 1985, (D.C. Law 6-10; D.C. Official Code § 42-3501.01)

⁶ Per Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61)

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Sealed records may only be re-opened upon the request of the tenant or upon order of the court showing a compelling need. The bill allows the court to provide sealed records for scholarly, educational, journalistic, or governmental purposes, provided personally identifiable information is removed (unless court-approved under specific conditions, including a data-sharing agreement).

Prospective tenants who know that a housing provider has taken an adverse decision regarding a rental unit application based on a sealed eviction court record may file a civil action against such housing provider. Such adverse action is defined as denial of a housing application or rental on terms inferior to advertised or terms previously offered in writing.

In addition to prohibiting denials of rental unit applications based on sealed eviction case records, the bill requires housing providers do the following in their prospective tenant screening and application process:

- disclose the amount and purpose of each mandatory and voluntary fee and deposit that is charged to tenants and prospective tenants;
- disclose the types of information that will be accessed to conduct a tenant screening;
- disclose the criteria that will result in denial of the application;
- provide the name and contact information of any the credit or consumer reporting agency used in the screening process along with a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action;
- provide the approximate quantity of rental units that will be available for rent over a specified period, by bedroom size and monthly rent;
- provide the number of days after receipt of a prospective tenant's application that the housing provider will respond with an approval or denial decision;
- charge an application fee of no more than the greater of \$50 (to be increased annually from 2024 based on inflation);
- refund an application fee if an applicant is not screened within 14 days;
- refrain from denying an application or taking other adverse action based solely on the applicant's credit score;
- (subject to appropriations) inform applicants of their right to file a complaint regarding the bill's required application provisions with the Office of Human Rights (OHR);
- provide denied or otherwise adversely-resolved applicants with a letter specifying the specific grounds for the action, a copy of any third-party information relied upon, a statement informing the applicant of their right to dispute any inaccurate information, and (subject to appropriations) notice of the right to file a complaint regarding the bill's tenant screening provisions with OHR.

Housing providers receiving evidence of inaccurate information must respond to applicants within 30 days, in writing, but are not prevented from leasing available units to other prospective tenants in this timeframe. Subject to appropriations, housing unit applicants may bring violations of the bill's housing provider screening and application requirements to OHR. Complaints validated by OHR and upheld by the Commission on Human Rights will result in penalties on the housing provider, ranging from \$1,000 to \$5,000 depending on the number of units owned by the housing provider. The Commission shall issue warnings and orders to correct in lieu of penalties for the first six months of the law's effective date, while penalties shall double for housing providers found violating the law

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more than twice in one calendar year. Collected fines will be split between the complainant and the District's General Fund. If complainants do not file with OHR, they may take a civil action against the housing provider.

The bill amends the Human Rights Act to add a "sealed eviction record" to a list of protections for which discrimination in real property transactions is unlawful⁷. The bill amends source of income protections to add District payments to the source of income definition, to be consistent with the Rental Housing Source of Income Amendment Act of 2020⁸. The bill further clarifies these existing protections as they relate to source of income by specifying that discriminatory actions in cases of prospective tenants seeking to rent with the assistance of a subsidy voucher include (a) considering prior nonpayment or late payment of rent or any credit issue if that occurred prior to the receipt of the voucher; (b) considering the income level, credit score or lack of credit score; (c) charging certain fees and deposits; and (d) offering an available unit to someone of a nonprotected class who submitted their rental application after the rejected applicant. The bill specifies that unlawful discriminatory practices include requiring a person to disclose a sealed eviction record.

Financial Plan Impact

Currently, funds are not sufficient to implement amendatory sections 510(a)(10), f(4) and (h) of the bill's section 3(b) and these sections were included subject to appropriations. However, the fiscal year 2023 through fiscal year 2026 budget and financial plan⁹ includes funding for the portion of the bill with a cost and a repeal of the bill's subject to appropriations provision effective at the start of fiscal year 2023. The bill costs \$447,000 in fiscal year 2023 and a total of \$1.8 million through fiscal year 2026.

The bill places new requirements on the D.C. Superior Court, which is federally-funded but also does not expect any negative impacts to the bill. The bill does not change practices at the Rental Accommodations Division of the Department of Housing and Community Development. Expanding District human rights protections to include a sealed eviction record is not expected to have a negative impact on OHR, since the bill's record-sealing provisions should prevent most discriminatory actions by preventing housing providers from having this information in their screening process. However, OHR is expected to receive complaints regarding housing unit applications, including application charges, refunds, notice provisions, and denials. To investigate these complaints and bring them before the Commission, OHR will require three FTEs working in enforcement. In addition, OHR will require part-time public relations personnel to provide education and outreach on the new law. Additional nonpersonal services costs, such as office space and equipment, associated with the new employees will total about \$45,000 annually.

⁷ By amending D.C. Official Code § 2-1402.21

⁸ D.C. Law 23-213, Effective from Mar 16, 2021

⁹ Fiscal Year 2023 Local Budget Act of 2022, passed at second reading May 24, 2022 and Fiscal Year 2023 Budget Support Act of 2022, passed at first reading May 10, 2022

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Fiscal Impact of Eviction Record Sealing Authority and Fairness in Renting Act of 2022					
Fiscal Year 2023– Fiscal Year 2026					
(\$ thousands)					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Enforcement Personnel – Salary and Fringe	\$341	\$348	\$355	\$362	\$1,406
Public Relations Personnel – Salary and Fringe	\$61	\$62	\$63	\$64	\$250
NPS Costs	\$45	\$46	\$47	\$48	\$186
TOTAL	\$447	\$456	\$465	\$474	\$1,842