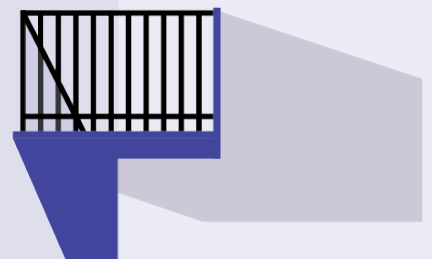
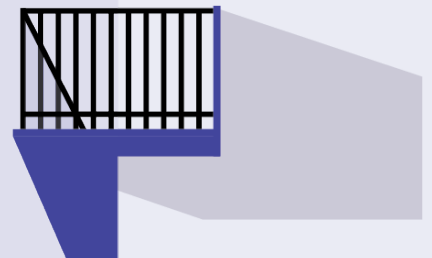
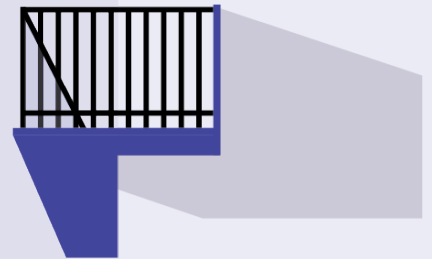
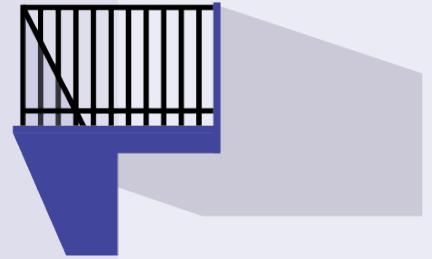


# Tenants Pay the Price

## The Trap of Portable Tenant Screening Reports

Mariah de Leon  
Natasha Duarte



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# I. Executive Summary

Rental application fees and tenant screening are significant barriers to housing that compound unaffordable rents, deepen housing discrimination, and make the housing search impossibly difficult for many people, especially low-income renters and renters of color. Some state and federal policymakers, including the White House and the US Department of Housing and Urban Development (HUD), have promoted portable tenant screening report (PTSR) legislation as a potential solution to mitigate the cost of rental application fees. The idea behind portable tenant screening reports, also known as reusable tenant screening reports, is that renters could pay a one-time fee to obtain a tenant screening report that they could then reuse throughout their housing search, avoiding paying separate application fees for each unit to which they apply. Six states have passed some type of PTSR legislation, and proposals have been considered in several other jurisdictions.

This issue brief analyzes existing PTSR laws and proposals, as well as the reusable tenant screening reports currently available for purchase, and concludes that they seem unlikely to make the housing search actually affordable or easier for renters. Worse, the laws enshrine commercial tenant screening reports — including discriminatory criteria such as credit, criminal, and eviction records — as compulsory barriers to housing, undermining more progressive tenant protections and advocacy efforts. Tenants need immediate relief from rental application fees, and policymakers should simply ban these extractive fees.

This issue brief offers the following critiques of portable tenant screening report legislation:

- **It is too easy for landlords to avoid accepting portable tenant screening reports and continue charging application fees.** Three out of six states do not require landlords to accept portable reports, so landlords simply choose not to. In Colorado, where landlords are required to waive application fees for tenants who provide these reports, landlords are adopting policies to avoid the law or dissuade applicants from trying to use portable screening reports.
- **Tenants have no guidance on how to obtain or use PTSRs, leaving them confused.** States fail to provide sufficient notice to tenants about their rights to provide a portable report. Even where tenants are aware of their state's law, they cannot figure out where to get a report that meets the law's requirements.

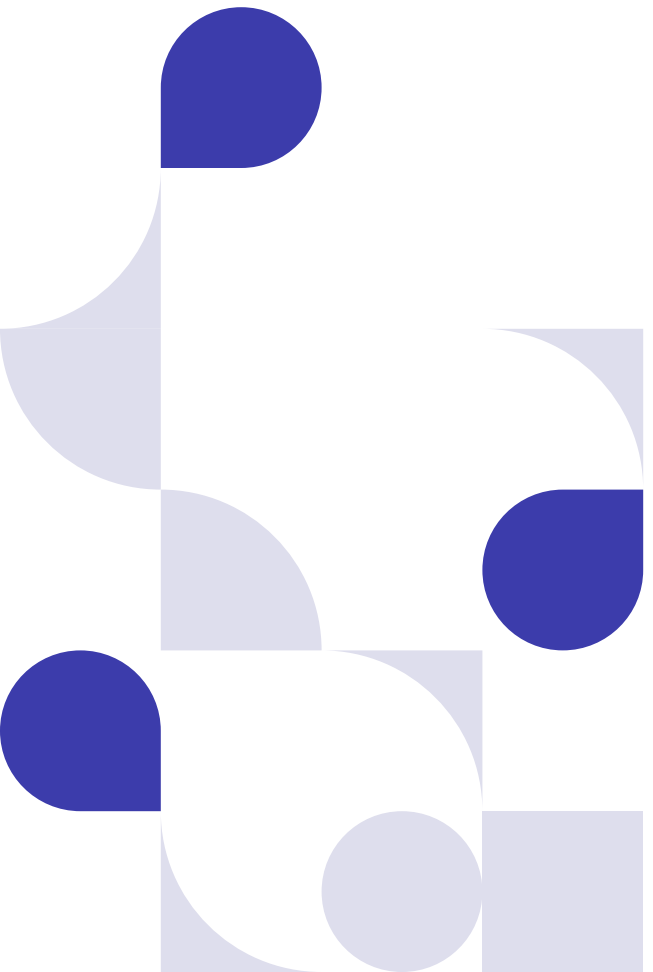
- **State laws place burdensome conditions on tenants seeking to use portable tenant screening reports.** These unnecessary hurdles make it too hard for tenants to use these reports, undermining the purported purpose of the laws.
- **The reusable reports available for purchase do not necessarily align with state laws.** The PTSR options on the market are very limited and not set up for the kind of portability lawmakers seem to intend. These services generally do not provide guidance on whether their products meet state PTSR law requirements.
- **Landlords remain in control of when and where tenants can purchase reusable reports.** The majority of services on the market do not allow tenants to purchase a reusable report unless a landlord sends them an invitation. Even once a tenant has purchased their report, these services limit how and when the reports can be reused.
- **Portable tenant screening reports do not eliminate the cost burden of searching for housing.** While these reports could cut costs for some tenants, marginalized renters who face longer housing searches would have to purchase multiple reports and could still end up spending hundreds or even thousands of dollars on application fees.
- **PTSR laws risk further entrenching the extractive tenant screening industry and its discriminatory and unreliable reports.** PTSR laws empower the tenant screening industry to continue charging tenants for a chance at housing and profit off of repackaging discriminatory information. PTSR laws that require reports to include criminal, eviction, and credit histories undermine pro-tenant reforms and federal guidance.

**We argue that tenant screening should be dismantled, not standardized.** Tenants need immediate relief from application fees, but we reject the notion that this relief should come at the cost of locking in discriminatory tenant screening practices. Our housing system needs to be transformed so that everyone has housing regardless of ability to pay, and tenant screening is obsolete. In the meantime, the requirements for accessing housing should be minimal. Efforts to meaningfully limit tenant screening should include prohibiting screening based on criminal, credit, and eviction records.

**We recommend that advocates and policymakers support complete prohibitions on all application fees, rather than prioritizing PTSR legislation.** Banning application fees is the most straightforward way to lower housing search costs without further entrenching tenant screening. Policymakers can learn from and improve upon application fee bans in Vermont and Massachusetts.

**We also provide recommendations for improving PTSR laws.** We don't recommend PTSR legislation, but more of these bills are likely to be introduced, and advocates may want to take the opportunity to make them stronger. Some of these recommendations include:

- Landlords should be required to waive application fees when applicants provide portable tenant screening reports.
- PTSR laws should do away with any onerous restrictions on tenants.
- PTSR laws should explicitly cap the cost of the reports.
- Policymakers and advocates should use PTSR laws as an opportunity to restrict tenant screening criteria rather than define portable tenant screening reports to include criminal, eviction, and credit histories.
- PTSR laws and products should give applicants much longer than 30 days to reuse them.
- PTSR laws should explicitly state that landlords and tenant screening companies must comply with any applicable state, local, or federal restrictions on the contents of tenant screening reports and on landlords' tenant screening criteria and practices.



## II. Introduction

Renters searching for a home typically must pay a non-refundable fee each time they apply for a unit.<sup>1</sup> These fees ostensibly cover (and likely exceed) landlords' tenant screening costs,<sup>2</sup> which usually include purchasing a report from a tenant screening company that includes information such as criminal, credit, and eviction records, and sometimes a risk score.<sup>3</sup> An application fee guarantees nothing to the applicant; it merely buys them the chance to qualify for the unit, subject to an opaque tenant screening process at the landlord's discretion.

- 
- 1 *See, e.g.*, Formerly Incarcerated, Convicted People and Families Movement, Comments submitted to the Federal Trade Comm'n Notice of Proposed Rulemaking, Trade Regulation Rule on Unfair or Deceptive Fees, 88 Fed. Reg. 77420, Feb. 7, 2024, <https://www.regulations.gov/comment/FTC-2023-0064-3260> [hereinafter "FICPFM, Unfair and Deceptive Fees Comment"]; Ariel Nelson et al., Nat'l Consumer Law Ctr., Too Damn High: How Junk Fees Add to Skyrocketing Rents 10–11, March 2023, <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf> [hereinafter "Too Damn High"]; Eric Dunn, *The Case Against Rental Application Fees*, 30 Geo. J. on Poverty L. & Pol'y 21, 28–29, Fall 2022, <https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2023/01/The-Case-Against-Rental-Application-Fees.pdf>; US Dep't of Housing & Urban Dev. Office of Pol'y Dev. & Research, Transparency in Rental Fees, July 2023, <https://www.huduser.gov/portal/sites/default/files/pdf/policy-and-practice-publication-2023-july.pdf> [hereinafter "HUD, Transparency in Rental Fees"]; White House, FACT SHEET: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters, July 19, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/> [hereinafter "White House rental junk fees fact sheet"].
  - 2 *See* White House Council of Economic Advisers, *The Price Isn't Right: How Junk Fees Cost Consumers and Undermine Competition*, Mar. 5, 2024, <https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/> (“[A]fter accounting for the cost of the background checks that [application fees] fund, the excess burden of these fees is about \$276 million annually.”).
  - 3 *See, e.g.*, Natasha Duarte & Mariah de Leon, Upturn, Comment in re the Fed. Trade Comm'n' and Consumer Financial Protection Bureau's joint request for Information on tenant screening [“tenant screening RFI”], FTC-2023-0024, at 8–14, May 30, 2023, <https://www.upturn.org/work/response-to-the-ftcs-request-for-information-on-tenant-screening/> [hereinafter “tenant screening RFI comments”].

Many people pay hundreds of dollars in application fees before finding a place to live, and most landlords charge a separate fee for each adult, so a family or group of roommates can easily spend hundreds applying to just one unit.<sup>4</sup> People report spending money on application fees that would otherwise go toward food and other necessities, or halting their housing search altogether — sometimes experiencing homelessness — because they cannot afford to keep paying fees with no guarantee of housing.<sup>5</sup>

Rental application fees are one of many “junk fees” that landlords charge to extract maximum profits from renters, on top of already deeply unaffordable rents.<sup>6</sup> These fees are symptomatic of a system that treats housing as a vehicle for corporate profit rather than a basic need and a human right.<sup>7</sup>

Rental application fees and tenant screening work together to compound housing insecurity and discrimination. Tenant screening companies encourage landlords to pass on the cost of their services to tenants and often design their systems so that tenants pay a fee directly to the screening company.<sup>8</sup> Application fees fund tenant screening products and practices that systematically disqualify people from housing due to criminal records, negative credit information, or previous eviction history.<sup>9</sup>

As the Department of Housing and Urban Development (HUD) recently confirmed, screening tenants based on criminal, credit, and eviction history is “particularly likely” to lead to housing discrimination since these records reflect disparities on the basis of race, ethnicity, disability, familial status, gender, and other protected classes.<sup>10</sup> People who face discriminatory tenant

4 See sources cited *supra* note 1.

5 FICPFM, Unfair and Deceptive Fees Comment, *supra* note 1.

6 See generally, e.g., Nelson et al., Too Damn High, *supra* note 1; White House rental junk fees fact sheet, *supra* note 1.

7 See, e.g., Sara Myklebust et al., Inst. for Pol’y Studies, Cashing in on Our Homes: Billionaire Landlords Profit as Millions Face Eviction, March 2021, <https://ips-dc.org/wp-content/uploads/2021/03/Cashing-in-on-Our-Homes-FINAL-revised.pdf>; Michelle Conlin, *Spiders, Sewage, and a Flurry of Fees — the Other Side of Renting a House from Wall Street*, Reuters, July 27, 2018, <https://www.reuters.com/investigates/special-report/usa-housing-invitation/>; Heather Vogell, *When Private Equity Becomes Your Landlord*, ProPublica, Feb. 7, 2022, <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>; Emma Rindlisbacher, *Landlords are Forcing Tenants to Pay Junk Fees*, Jacobin, May 14, 2024, <https://jacobin.com/2024/05/landlords-rental-junk-fees-housing>.

8 See, e.g., TransUnion SmartMove, <https://www.mysmartmove.com/>; Stephen Michael White, RentPrep, How Much Does Tenant Screening Cost? Average Pricing Guide, Dec. 19, 2023, <https://rentprep.com/blog/landlord-tips/how-much-does-tenant-screening-cost/> (“If you have a rental in a high-demand location, you shouldn’t have any problem having a tenant applicant pay for a \$35 background check and credit report.”).

9 See Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 8–30; Chi Chi Wu et al., Nat’l Consumer Law Ctr., Digital Denials: How Abuse, Bias, and Lack of Transparency in Tenant Screening Harm Renters 7–10, Sept. 2023, [https://www.nclc.org/wp-content/uploads/2023/09/202309\\_Report\\_Digital-Denials.pdf](https://www.nclc.org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf).

10 US Dep’t of Housing & Urban Dev. Office of Fair Housing & Equal Opportunity, Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing 15, Apr. 29, 2024, [https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO\\_Guidance\\_on\\_Screening\\_of\\_Applicants\\_for\\_Rental\\_Housing.pdf](https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO_Guidance_on_Screening_of_Applicants_for_Rental_Housing.pdf) [hereinafter “HUD tenant screening guidance”].



screening are likely to have longer housing searches and submit multiple applications, racking up more fees.<sup>11</sup> This cycle particularly harms low-income renters who often face long, difficult housing searches and can least afford these fees. People who cannot afford to pay hundreds of dollars in application fees may be pushed into lower-quality, temporary, or informal housing where they are more vulnerable to unsafe housing conditions and evictions.<sup>12</sup>

Recently, some state legislators have turned to the idea of “portable tenant screening reports” (PTSRs) — also called “reusable” tenant screening reports — in an attempt to address the burden of application fees. The idea behind a portable report is that renters could purchase a single tenant screening report that they could then reuse throughout their housing search, avoiding paying a separate application fee for each unit they apply to.<sup>13</sup>

Six states — Washington state,<sup>14</sup> Maryland,<sup>15</sup> California,<sup>16</sup> Colorado,<sup>17</sup> New York,<sup>18</sup> and Rhode Island<sup>19</sup> — have passed some type of PTSR legislation, and PTSR bills have been introduced in at least four other states.<sup>20</sup> Colorado,<sup>21</sup> New York,<sup>22</sup> and Rhode Island<sup>23</sup> prohibit landlords from charging application fees to tenants who provide them with portable screening reports, while Washington state,<sup>24</sup> Maryland,<sup>25</sup> and California<sup>26</sup> give landlords the option to either accept reusable reports or charge an application fee to obtain their own reports.

11 See, e.g., FICPFM, Unfair and Deceptive Fees Comment, *supra* note 1, at 3–7.

12 See, e.g., Dunn, *supra* note 1, at 33, 45–47.

13 See, e.g., Eric Dunn & Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State*, 9 Seattle J. Soc. Justice 319, 360–61, Nov. 2010, <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1086&context=sjsj>; HUD, Transparency in Rental Fees, *supra* note 1, at 2.

14 Rev. Code Wash. § 59.18.030(4) and § 59.18.257.

15 Md. Code Ann., Real Prop. § 8–218.

16 Cal. Civ. Proc. Code § 1950.1.

17 Colo. Rev. Stat. § 38-12-902(2.5), § 38-12-903(1)(b), and § 38-12-904(1.5).

18 NY Real Prop. Law § 238-a(1)(b).

19 R.I. Gen. Laws § 34-18-59.

20 See *infra* sources cited and text accompanying notes 111–115.

21 Colo. Rev. Stat. § 38-12-904(1.5)

22 NY Real Prop. Law § 238-a(1)(b)

23 R.I. Gen. Laws § 34-18-59(b)(1).

24 Rev. Code Wash. § 59.18.257(1)(a)(iv);

25 Md. Code Ann., Real Prop. § 8–218(d).

26 Cal. Civ. Proc. Code § 1950.1(c).

The idea has also reached the federal government. Comments submitted by 15 state attorneys general to the Federal Trade Commission (FTC) suggested that portable tenant screening reports are a potential way to address rental application fees.<sup>27</sup> In 2023, the White House released a fact sheet on rental housing junk fees,<sup>28</sup> alongside a companion “research insights” publication from HUD.<sup>29</sup> Both documents pointed to PTSR legislation, among other state laws, as approaches for mitigating rental application fees.

Yet only a handful of companies currently provide reusable tenant screening reports, charging anywhere from about \$30 to \$60 per report, with varying limitations on how often or how easily tenants can reuse the reports.<sup>30</sup> It’s also not clear how well these offerings actually align with the provisions in PTSR laws, and tenants have had trouble figuring out how to obtain a legally sufficient portable report.

In this issue brief, we offer an analysis and critique of PTSR laws to help policymakers and housing advocates understand the limitations of these policies to combat rental application fees and exclusionary tenant screening practices. We find that existing PTSR laws and proposals have little, if any, potential to make the rental housing search actually affordable or easier. They place an unreasonable enforcement burden on tenants, who must navigate a confusing set of requirements and conditions placed on portable reports, as well as an equally confusing and limited array of such reports available for purchase. In the end, tenants are left with no guarantee that prospective landlords will accept their reusable reports and won’t try to charge them additional application fees.

Worse, PTSR legislation has enshrined exclusionary tenant screening criteria into law. At least four states require PTSRs to include a criminal background check, and Maryland requires a sweeping criminal records search that overtly conflicts with federal Fair Housing Act guidance.<sup>31</sup> At least three states explicitly require an “eviction history” check,<sup>32</sup> and five states require a credit report.<sup>33</sup> Conditioning housing on these criteria perpetuates racial and other forms of discrimination and locks people out of stable housing, regardless of their ability to pay rent.<sup>34</sup> These provisions undermine state and local tenant protections, federal fair housing guidance, and ongoing advocacy efforts aimed at limiting harmful tenant screening practices and banning rental junk fees.

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27 Public Comment from 15 State Attorneys General on the Adverse Impacts of Tenant Screening Reports and Algorithmic Determinations of Tenant “Worthiness” 5, in re tenant screening RFI, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0584>.

28 White House rental junk fees fact sheet, *supra* note 1.

29 HUD, Transparency in Rental Fees, *supra* note 1.

30 See *infra* text accompanying and sources cited in notes 65–81.

31 See *infra* text accompanying and sources cited in notes 102–106 and 174–176.

32 See *infra* text accompanying and sources cited in notes 107–110. The Colorado law requires PTSRs to include a “rental history,” which likely also refers to eviction records. Colo. Rev. Stat. § 38-12-902(2.5)(e)(I).

33 See *infra* note 101.

34 See, e.g., Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 16–30; Wu et al., Digital Denials, *supra* note 9, at 35–36, 42–43, 59–60; HUD tenant screening guidance, *supra* note 10, at 15–22.

Fundamentally, PTSR laws do not challenge rental application fees as a barrier to housing. They simply replace fees paid to landlords with fees paid directly to tenant screening companies, guaranteeing continued profits for the tenant screening industry off the backs of tenants. PTSR laws risk solidifying tenant screening companies' role in defining and mediating who gets to access housing. Voice of the Experienced, a grassroots organization founded and run by formerly incarcerated people, their families, and allies, wrote that “[t]he concept of portable background checks legitimizes the problem [of discriminatory tenant screening]. . . . Portable tenant screening merely streamlines the Jim Crow apartheid we currently face.”<sup>35</sup>

For these reasons, we recommend that policymakers and advocates support full, unqualified bans on all rental application fees wherever possible, rather than advocating for PTSR laws. Policymakers should also work to limit landlords' and tenant screening companies' power to screen out tenants and deem people unworthy of housing, rather than entrenching that power through portable tenant screening reports.

Ultimately, our housing system needs to be transformed so that everyone has housing regardless of ability to pay, and tenant screening is obsolete. In the meantime, the requirements for accessing housing should be minimal. If we accept the current reality that tenants must be able to pay rent, landlords can justifiably be limited to assessing proof of income, such as pay stubs or housing vouchers.

Part III of this issue brief provides an overview of tenant screening and rental application fees and explains how they work together to compound housing insecurity and discrimination. Part IV looks at the portable tenant screening products currently available to purchase, including how much they cost and how tenants can — or cannot — access or reuse them.

Then, Part V discusses the details of existing PTSR laws and proposed bills across the country. Part VI analyzes the actual and potential impacts of and problems with PTSR legislation. We find that PTSR legislation has very limited potential to make the housing search actually affordable or easier, legitimizes extractive junk fees, and entrenches harmful tenant screening reports and criteria that perpetuate housing discrimination and insecurity.

Part VII argues that housing advocates and policymakers should seek to minimize — and ultimately eliminate — the use of tenant screening reports, rather than standardizing them and solidifying their role as barriers to housing. We include examples of legislation and advocacy aimed at reducing the power of landlords and tenant screening companies to screen people out

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35 Bruce Reilly & Emily H. Posner, Voice of the Experienced, tenant screening RFI comments 9–10, <https://www.regulations.gov/comment/FTC-2023-0024-0615>.

of housing. Part VIII recommends that advocates and policymakers support full, unqualified prohibitions on charging tenants rental application or screening fees of any kind. This section also discusses existing fee bans in Vermont and Massachusetts and how states could improve upon these models to make them more effective.

Lastly, Part IX offers concrete suggestions for improving upon PTSR legislation. While we don't recommend PTSR legislation, we recognize that where these bills have strong support, advocates could use this legislation as a tool to introduce and win better tenant protections.

**Fundamentally, PTSR laws do not challenge rental application fees as a barrier to housing. They simply replace fees paid to landlords with fees paid directly to tenant screening companies, guaranteeing continued profits for the tenant screening industry off the backs of tenants.**

# III. Tenant screening and rental application fees work together to compound housing injustice.

## A. Tenant screening

Tenant screening is the process by which landlords determine whether to accept or reject potential tenants, or to accept them with conditions, such as a higher security deposit.<sup>36</sup> Landlords usually require applicants — often including all adult household members — to submit information such as government identification and proof of income. Landlords often purchase reports from tenant screening companies such as TransUnion,<sup>37</sup> TurboTenant,<sup>38</sup> and RentPrep.<sup>39</sup> These companies prepare reports by pulling information from publicly available sources and commercial databases and attempting to match it to applicants’ personal information.

Tenant screening reports typically include criminal records, credit reports (including credit scores), and rental history (including eviction records).<sup>40</sup> Reports may also include additional information such as the applicant’s rent-to-income ratio, employment history, and automated “income verification.”<sup>41</sup>

36 See Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 8–15; Wu et al., Digital Denials, *supra* note 9, at 7–10.

37 TransUnion Smartmove, <https://www.mysmartmove.com/>.

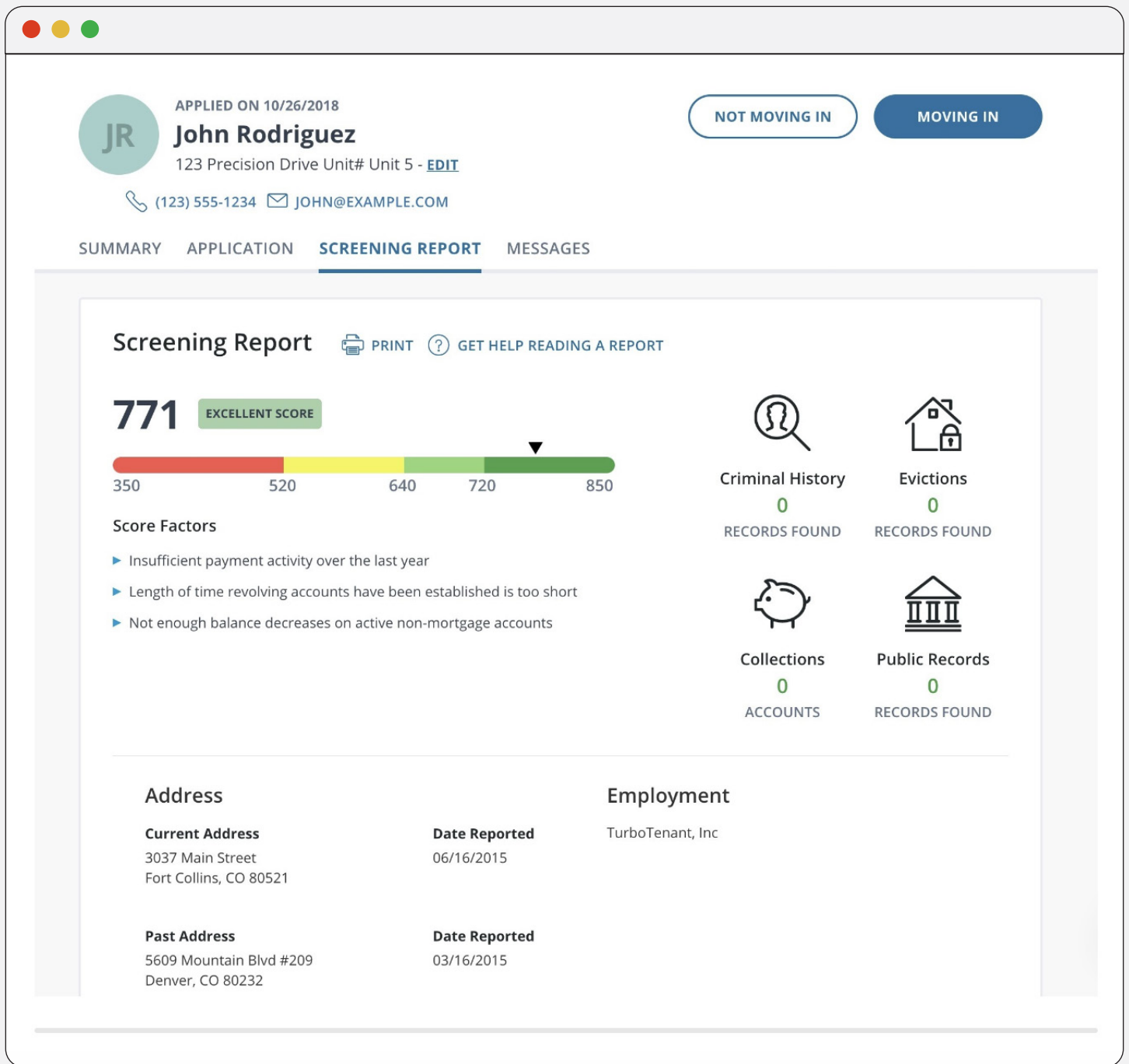
38 TurboTenant, Tenant Screening Services, <https://www.turbotenant.com/tenant-screening/>.

39 Rentprep, <https://rentprep.com/>.

40 See, e.g., Consumer Financial Protection Bureau, Tenant Background Checks Market 14–17, Nov. 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf) [hereinafter “CFPB tenant screening market report”].

41 See CFPB tenant screening market report, *supra* note 40, at 14–17; *Id.* at 16 n.55.

Figure 1. TurboTenant’s sample tenant screening report



**Figure 1. TurboTenant’s sample tenant screening report.** This figure shows a sample portion of TurboTenant’s tenant screening report which includes the applicant’s credit score, employment check, and results of a check for criminal history, evictions, accounts in collection, and other public records. The sample summary labels the applicant’s credit score as “excellent” and provides short explanations for the assessment.

As HUD guidance recently confirmed, screening tenants based on criminal, credit, and eviction history is “particularly likely” to lead to housing discrimination since these records reflect disparities on the basis of race, ethnicity, disability, familial status, gender, and other protected classes.<sup>42</sup> These records are notoriously inaccurate and misleading, and they do not reliably indicate whether someone can pay rent going forward or will otherwise uphold their lease agreement.<sup>43</sup>

Tenant screening reports automate discrimination by using criminal, credit, and eviction records as a basis for producing determinations about tenants’ worthiness for housing. Tenant screening companies often develop scores that claim to predict an applicant’s suitability as a tenant.<sup>44</sup> They also include other interpretations or opinions about an applicant’s eligibility. For example, they produce labels and summaries to characterize applicants’ criminal, eviction, and credit history, such as how many accounts they have in default or whether they have “property crimes” in their criminal records.<sup>45</sup> They sometimes indicate whether these records disqualify applicants from renting the unit in question.<sup>46</sup> And they sometimes purport to use software to “verify” whether an applicant’s stated income matches their bank account records.<sup>47</sup> While tenant screening companies disclose very little about how exactly they generate scores and other recommendations, publicly available materials suggest that credit and eviction history are significant factors.<sup>48</sup>

42 HUD tenant screening guidance, *supra* note 10, at 15.

43 See Wu et al., Digital Denials, *supra* note 9, at 23–28, 31–35, 36–38, 39–52, 56–57, 60–63; Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 20–22, 24–30.

44 See, e.g., *Louis v. Saferent Solutions*, 685 F.Supp.3d 19, 26–28 (D. Mass. 2023); Complaint at 5–11, *Louis v. Saferent Solutions*, 1:22-cv-10800 (D. Mass.), filed May 25, 2022, <https://www.cohenmilstein.com/wp-content/uploads/2023/07/Complaint-Louis-v-SafeRent-05252022.pdf>; Nat’l Consumer Law Ctr., SafeRent Solutions Accused of Illegally Discriminating Against Black and Hispanic Rental Applicants, May 25, 2022, <https://www.nclc.org/saferent-solution-accused-of-illegally-discriminating-against-black-and-hispanic-rental-applicants/>; CFPB tenant screening market report, *supra* note 40, at 17.

45 See, e.g., *infra* Figure 1; Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 12–13; *Id.* at Appendix A (TurboTenant sample report).

46 See, e.g., Complaint, *Conn. Fair Housing Ctr. v. CoreLogic Rental Property Solutions*, 3:18-cv-00705-VLB (D. Conn. 2018), [https://www.cohenmilstein.com/wp-content/uploads/2023/07/CoreLogic-Complaint-04242018\\_0.pdf](https://www.cohenmilstein.com/wp-content/uploads/2023/07/CoreLogic-Complaint-04242018_0.pdf); Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 13; *Id.* at Appendix D (National Tenant Network DecisionPoint sample report).

47 See CFPB tenant screening market report, *supra* note 40, at 16; *Id.* at 16 n.55; RealPage, Income Verification, <https://perma.cc/B9YW-X283>; Michael Goodwin, Plaid, How Instant Rental Verification Transforms Tenant Screening, Jan. 31, 2024, <https://perma.cc/VD2D-GLR6>.

48 See, e.g., *Louis v. Saferent*, 685 F.Supp.3d at 26–28; TransUnion SmartMove, Resident Score, <https://www.mysmartmove.com/tenant-screening-services/resident-score> (listing payment history, credit utilization, credit history, credit availability, and inquiries as the factors that make up TransUnion’s ResidentScore); SafeRent Solutions, Rental Scoring & Your Rental Application, <https://saferentsolutions.com/wp-content/uploads/2024/05/1-Rental-Scoring-and-your-Rental-Application-2.pdf> (explaining that the “SafeRent Solutions rental score results from a mathematical analysis of information found in your consumer credit report, application, and previous rental history,” and does not include or reflect criminal records).



Tenant screening companies play an outsized role in determining who has access to secure housing. Their marketing and the design of their reports and scores are aimed at encouraging landlords to follow their recommendations.<sup>49</sup> Tenant screening companies often work with corporate landlords to help them determine their screening criteria.<sup>50</sup> And research has shown that landlords tend to rely on the recommendations and conclusions in tenant screening reports when making their rental decisions.<sup>51</sup>

## B. Rental application fees

Landlords usually charge a non-refundable fee for each adult applicant. A report from Zillow<sup>52</sup> estimated that the “typical” application fee was between \$40 and \$59 per person,<sup>53</sup> and a survey conducted by the National Consumer Law Center reported that “[a]pplication fees can range from \$25 to as high as \$350.”<sup>54</sup>

The Zillow report found that Black and Latine renters tend to submit more applications and pay more per application than white renters.<sup>55</sup> These costs are likely compounded for low-income renters, voucher recipients, and renters with adverse criminal, rental, or credit history because they are disproportionately Black and Latine and may face multiple kinds of discrimination.<sup>56</sup>

Many renters pay multiple application fees before finding a home,<sup>57</sup> costing them hundreds or even thousands of dollars in exchange for nothing. Landlords commonly assert two justifications for charging application fees. One justification is to ensure that rental applicants are “serious.” As National Housing Law Project’s Eric Dunn wrote, “[t]he validity of this concern is suspect;

49 See Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 13–15, 30–32.

50 See Appeal from the US District Court for D. Conn. at 9–12, 42–47, Conn. Fair Housing Ctr. et al. v. CoreLogic Rental Property Solutions, No. 23-1118 (2d Cir.), Nov. 17, 2023, <https://www.nhlp.org/wp-content/uploads/Arroyo-Opening-Brief.pdf>; Joint Appendix, Vol. 4, at 261, JA 826, CoreLogic, No. 23-1118, May 21, 2024, <https://www.nhlp.org/wp-content/uploads/Appx-4.pdf>.

51 Wonyoung So, Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports, 33 Housing Pol’y Debate 1484, 1484, 1498–1500 (2023) <https://www.tandfonline.com/doi/full/10.1080/10511482.2022.2113815>; Wu et al., Digital Denials, *supra* note 9, at 12–13.

52 Manny Garcia, Renters: Results from the Zillow Consumer Housing Trends Report 2022, Zillow, Jul. 27, 2022, <https://www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/>.

53 See sources cited *supra* note 1.

54 Nelson et al., Too Damn High, *supra* note 1, at 10.

55 Garcia, *supra* note 52.

56 Fannie Mae, Housing Choice Voucher Program Explained, 2022, <https://multifamily.fanniemae.com/media/15531/display>; Rebecca Vallas, Sharon Dietrich & Beth Avery, Ctr. for American Progress, A Criminal Record Shouldn’t Be a Life Sentence to Poverty, May 28, 2021, <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2/>; Nick Graetz et al., Eviction Lab, Who is Evicted in America, Oct. 2023, <https://evictionlab.org/who-is-evicted-in-america/>; Wu et al., Digital Denials, *supra* note 9, at 59–60.

57 Dunn, *supra* note 1, at 23.



searching for rental housing is often a laborious and time consuming activity for renters, and there is little incentive to apply at properties in which a person is not sincerely interested.”<sup>58</sup> The other justification for charging application fees is to cover the costs of tenant screening. Yet landlords typically do not disclose their tenant screening costs or explain what the application fees are actually going toward.

Tenant screening companies drive application fees by encouraging landlords to pass on the cost of the tenant screening service to rental applicants.<sup>59</sup> These costs might include purchasing a one-time tenant screening report or subscribing to a tenant screening service (the likelier option for larger landlords). Some companies design their services to collect a fee directly from applicants, rather than having the landlord collect it.<sup>60</sup>

Application fee data and tenants’ experiences suggest that at least some landlords likely use application fees as a source of profit. Many application fees likely exceed the actual costs of tenant screening,<sup>61</sup> and the White House Council of Economic Advisers estimates that after accounting for the actual cost of background checks, the “excess burden” of application fees amounts to \$276 million annually.<sup>62</sup> Renters report that landlords have refused to disclose their screening criteria or qualifications before accepting application fees, and have collected fees from applicants whom they know will not pass their background checks.<sup>63</sup> Renters also report that landlords sometimes collect application fees and never conduct a screening.<sup>64</sup>

58 *Id.* at 34.

59 *See, e.g.*, TransUnion SmartMove, <https://www.mysmartmove.com/>; Nomadic Real Estate, <https://www.nomadicrealestate.com/application-process/> (“Nomadic Real Estate requires every tenant to submit an online application through RentSafe. RentSafe charges a **non-refundable** \$45 application fee per tenant.”); Dennis Hurst, tenant screening RFI comment, May 13, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0353> (noting that the commenter charges a \$30 application fee to cover a \$29.95 screening report).

60 *See, e.g.*, Nomadic Real Estate, *supra* note 59.

61 In 2024, the maximum application fee landlords were allowed to charge in DC, adjusted according to the Consumer Price Index for All Urban Consumers published by the US Bureau of Labor Statistics, was \$52. *See* Office of the Atty Gen. for the District of Columbia, Atty Gen. Schwalb Issues Consumer Alert on Rental Fees & Protections for DC Renters, Jan. 19, 2024, <https://oag.dc.gov/release/attorney-general-schwalb-issues-consumer-alert-1>. A Google search conducted on June 29, 2024, revealed that many landlords in DC charge exactly \$52 per applicant, suggesting that they are maximizing what they charge within the bounds of the law. Several commenters indicated to the Federal Trade Commission that landlords typically charged an application fee that was higher than the cost of a tenant screening report, while insisting that landlords do not make money from application fees. *See* John J., tenant screening RFI comments, May 15, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0406>; Brian Hughes, tenant screening RFI comments, <https://www.regulations.gov/comment/FTC-2023-0024-0106>; Demetria Kalfas-Gordon, HIVE RE Group & Prop. Mgmt, tenant screening RFI comments, at 2, <https://www.regulations.gov/comment/FTC-2023-0024-0116>.

62 White House Council of Economic Advisers, *supra* note 2.

63 *See, e.g.*, FICPFM, Unfair and Deceptive Fees Comment, *supra* note 1, at 6–7, 9–11.

64 *Id.* at 9.

## IV. What are “portable tenant screening reports” and how do they work?

A few companies offer tenants the option to purchase a single tenant screening report that can be reused for multiple rental units. Often called a portable or reusable tenant screening report, these reports include the same information as a traditional tenant screening report and can typically be used multiple times within a 30-day period.

We were able to find information on products from ApplyConnect,<sup>65</sup> MyScreeningReport,<sup>66</sup> RentSpree,<sup>67</sup> Zillow,<sup>68</sup> and Avail,<sup>69</sup> most of which offer reports that can be purchased for a single fee paid directly from the tenant to the screening company, with a price tag ranging from \$31.95 to \$64.99.

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65 ApplyConnect, <https://www.applyconnect.com/tenant-screening-background-check/>.

66 MyScreeningReport, Applicants, <https://www.myscreeningreport.com/services/applicants/>.

67 RentSpree, [Tenant Screening] Applicants can Apply to Multiple Listings with the Reusable Screening Package, Feb. 2024, <https://support.rentspree.com/en/reusable-screening-package>.

68 Zillow, Online Rental Applications Frequently Asked Questions, <https://www.zillow.com/z/rental-manager/rental-applications-faq/> [hereinafter “Zillow FAQ”].

69 Avail, Video Demo: How to Share a Rental Application with Other Landlords, <https://support.avail.co/hc/en-us/articles/1260804031590-Video-Demo-How-to-Share-a-Rental-Application-with-Other-Landlords>; Avail, Share Applications with Other Landlords, <https://support.avail.co/hc/en-us/articles/115004087294-Share-Applications-with-Other-Landlords>.

**Figure 2. RentSpree’s reusable add-on option**

**Special offer! Get 30 Days of Applications for \$15**

Submit up to 5 applications per day for 30 days.  
Save time by reusing this application and save money on fees!

**Yes**  
Give me 30 days of additional applications for \$15

**No**  
I'll pay the full fee for my future applications

**Figure 2. RentSpree’s reusable add-on option.** This figure shows that when housing applicants purchase a tenant screening report from RentSpree, they have the option to pay \$15 on top of the price of the tenant screening report to be able to reuse the report up to five times a day for 30 days. At the time of publication, a RentSpree tenant screening report with the \$15 reusable add-on would cost \$54.99.

- ApplyConnect offers a report that can only be used three times within 30 days for \$39.95.<sup>70</sup>
- MyScreeningReport offers reusable reports for 30 days from \$31.95 to \$49.95 depending on the contents of the report.<sup>71</sup>
- RentSpree sells reports for \$39.99 to \$49.99 and charges an additional \$15 on top of the cost of a report for the option to reuse the report up to five times per day for 30 days.<sup>72</sup>
- Zillow offers a reusable service that allows applicants to apply to participating landlords on the Zillow platform within 30 days for \$35.<sup>73</sup>
- Avail charges \$30 each for a criminal background check, eviction report, or credit report, or \$55 for a bundle of all three.<sup>74</sup>

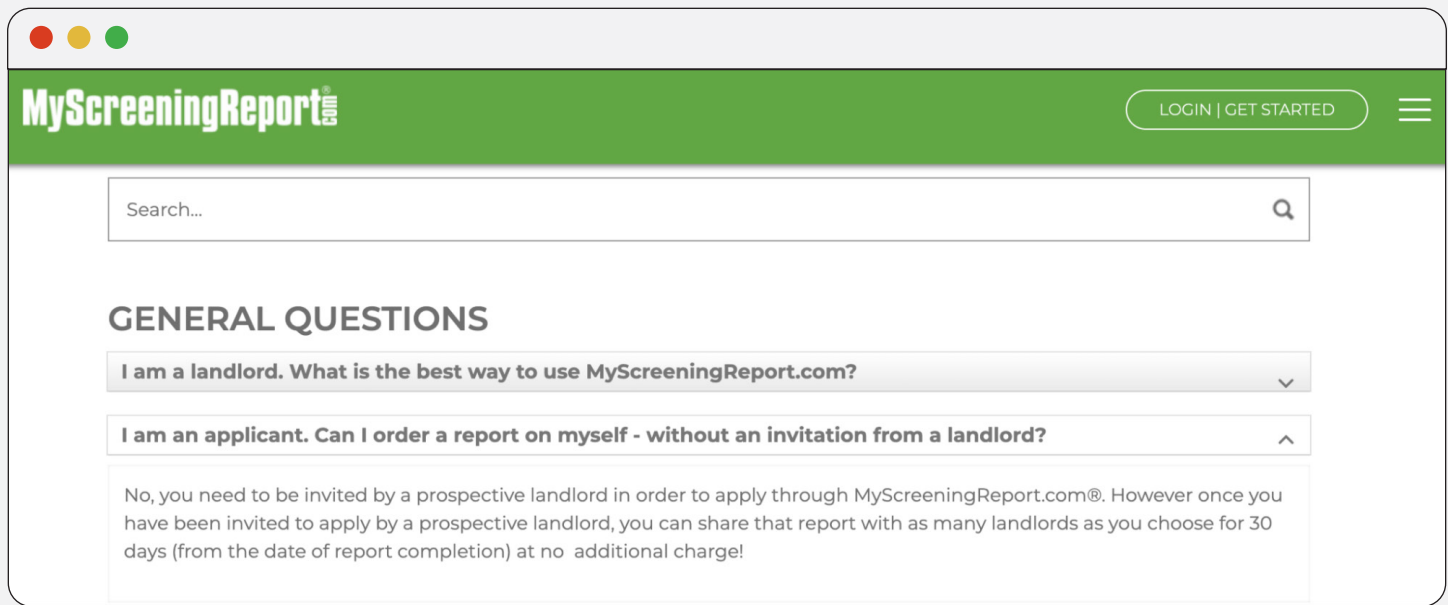
<sup>70</sup> ApplyConnect, ApplyConnect Pricing, <https://www.applyconnect.com/tenant-background-check-pricing/>.

<sup>71</sup> MyScreeningReport, Services, <https://www.myscreeningreport.com/services/>.

<sup>72</sup> RentSpree, *supra* note 67; RentSpree, Pricing Information, <https://www.rentspree.com/pricing>.

<sup>73</sup> Zillow FAQ, *supra* note 68.

<sup>74</sup> Avail, Tenant Applications and Screening for Landlords, <https://support.avail.co/hc/en-us/articles/360011697153-Tenant-Applications-and-Screening-for-Landlords>.

**Figure 3. MyScreeningReport’s landlord invitation requirement**

**Figure 3. MyScreeningReport’s landlord invitation requirement.** This figure shows an excerpt from MyScreeningReport’s Frequently Asked Questions page, which states that rental housing applicants cannot purchase a tenant screening report without an invitation from a prospective landlord.

In theory, applicants can save money by purchasing a single report to be shared with multiple landlords over 30 days rather than paying an application fee for every unit to which a renter applies in the same period. In reality, however, purchasing one of these reports does not guarantee that the tenant will actually be able to reuse it during their housing search.

Companies that sell so-called reusable reports typically require a landlord to invite an applicant to purchase a report, and the services are not always clear about how to reuse reports. MyScreeningReport<sup>75</sup> and ApplyConnect<sup>76</sup> both require a landlord to invite an applicant to purchase an initial report, but the services do not indicate whether subsequent landlord invitations are required for an applicant to reuse their report. On Zillow, applicants purchase a

75 MyScreeningReport, Frequently Asked Questions, <https://web.archive.org/web/20240531214522/https://www.myscreeningreport.com/help-center/faq/>.

76 ApplyConnect, Register Account, <https://members.applyconnect.com/register/>; ApplyConnect, ApplyConnect Frequently Asked Questions, <https://www.applyconnect.com/applyconnect-faq/>.

reusable report after receiving an invitation from a landlord or clicking the “apply now” button on listings where the landlord has opted into Zillow’s tenant screening.<sup>77</sup> The report is only reusable with other “participating landlords” who have opted in — though a tenant would have to read Zillow’s FAQ page to be aware of this requirement.<sup>78</sup>

RentSpree and Avail provide somewhat more explanation about how their services work. RentSpree provides a form for applicants to fill out with prospective landlords’ contact information, and then RentSpree contacts the landlord and prompts them to invite the applicant to submit their application.<sup>79</sup> Avail appears to allow renters to independently create a renter profile; purchase “a credit check, background check, and eviction report” (from TransUnion) to be added to their profile; and send their tenant profile to landlords by entering the landlord’s name and email address into Avail’s system.<sup>80</sup> Of the available services, none clearly indicate that a renter can purchase a report before receiving an invitation from a landlord.

Tenant screening companies that sell reusable reports do not give tenants control over the information or criteria that will be included in the report, but some companies offer a range of options to landlords. MyScreeningReport, for example, sells multiple different reusable reports that include different types of information at different price points,<sup>81</sup> but because landlords have to invite tenants to purchase a report, the landlord decides which report the tenant must purchase. As the following sections will discuss, state PTSR laws also dictate the types of information that must be included in a report.

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77 Zillow FAQ, *supra* note 68; Zillow, Tenant Screening and Rental Manager, <https://www.zillow.com/z/rental-manager/tenant-screening/>.

78 Zillow FAQ, *supra* note 68.

79 RentSpree, Intro to Adding the Reusable Screening Package to Your Screening, <https://support.rentspree.com/en/reusing-your-screening-package> (“Fill out the Request to Apply form with agent or landlord details. We’ll contact them on your behalf and let them know they should send you an application link.”).

80 Avail, Renter Profile, <https://www.avail.co/tenants/renter-profile>.

81 MyScreeningReport, Services, <https://www.myscreeningreport.com/services/>.

Figure 4. RentSpree’s reusable tenant screening report process

3. Fill out the Request to Apply form with agent or landlord details. We’ll contact them on your behalf and let them know they should send you an application link.

## Request to apply

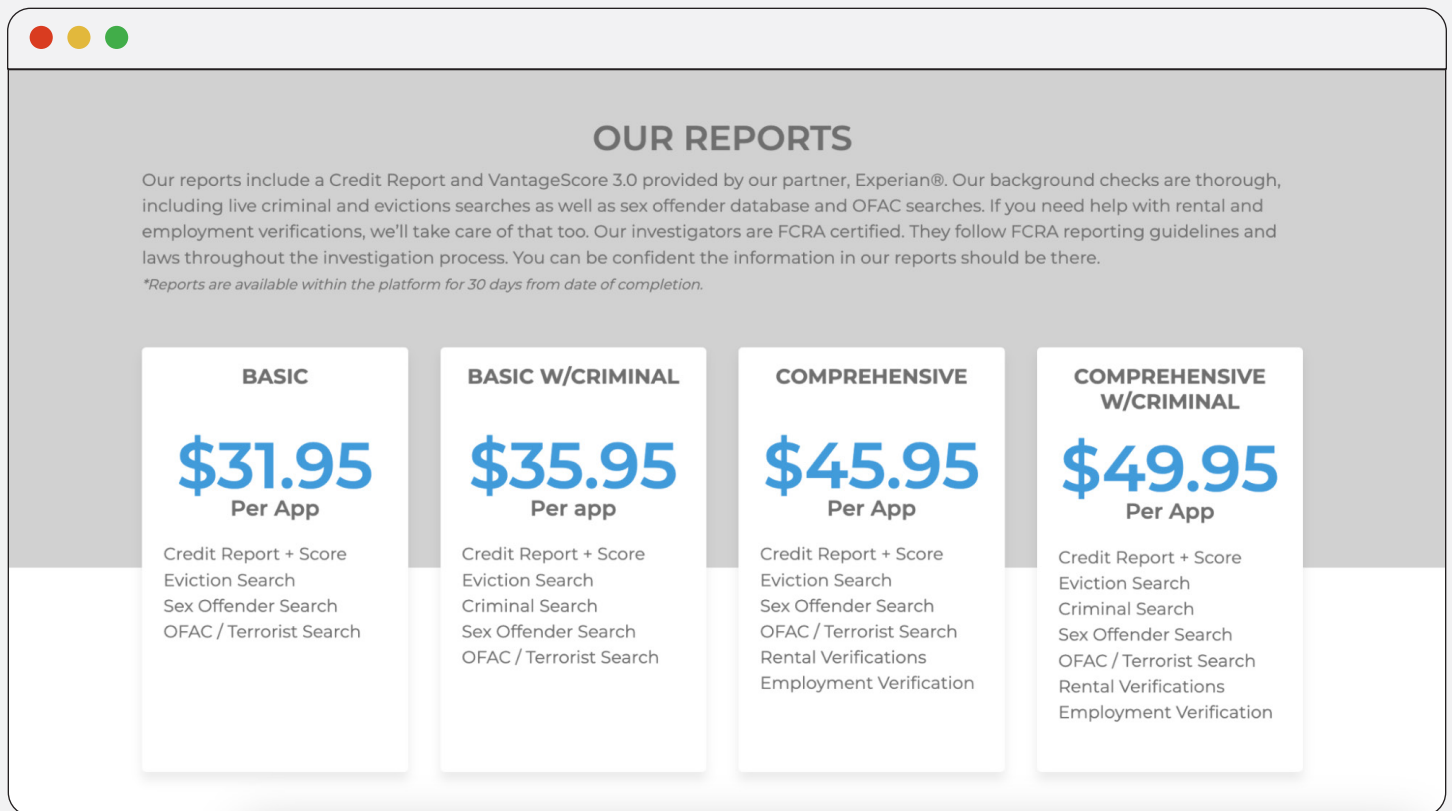
Reuse your application to apply to any property or share it with an agent for pre-screening.

Fill out this form and we’ll contact the agent or landlord. They’ll email you an application link. Then you can reuse your application to apply, for free.

Agent or landlord email \*

Agent or landlord phone number

**Figure 4. RentSpree’s reusable tenant screening report process.** This figure shows RentSpree’s instructions for re-using a tenant screening report with a subsequent landlord. RentSpree instructs applicants to submit a prospective landlord or agent’s email address and other contact information into a form. RentSpree indicates that it will contact the landlord or agent, who will then email the applicant a link to submit their report directly to the landlord. `

**Figure 5. Prices of MyScreeningReport background checks**

**Figure 5. Prices of MyScreeningReport background checks.** This figure shows the different options for reports offered by MyScreeningReport, ranging in price from \$31.95 to \$49.95. The basic report includes a credit report and score, eviction search, sex offender registry search, and terrorist search. The most expensive and “comprehensive” report also includes a criminal record search, rental verifications, and employment verification. This image also includes language from MyScreeningReport claiming that their “investigators” are Fair Credit Reporting Act (FCRA) certified and follow FCRA guidelines.

Voice of the Experienced, a grassroots organization founded and run by formerly incarcerated people, their families, and allies, wrote that “[t]he concept of portable background checks legitimizes the problem [of discriminatory tenant screening]... Portable tenant screening merely streamlines the Jim Crow apartheid we currently face.”



## V. PTSR laws and proposals

As of July 2024, at least six states have passed laws related to portable or reusable tenant screening reports. Half of these states — Colorado,<sup>82</sup> New York,<sup>83</sup> and Rhode Island<sup>84</sup> — require landlords to waive application fees for applicants that provide a legally sufficient reusable report. Maryland<sup>85</sup> and Washington state<sup>86</sup> require landlords to notify prospective tenants about whether they accept reusable tenant screening reports. In those states, landlords that indicate that they accept reusable reports cannot charge an application fee to any applicant who provides a reusable report that meets the law’s requirements. However, landlords that indicate that they do not accept PTSRs are free to charge application fees to all applicants. California does not require landlords to waive application fees if provided with a PTSR nor does it require landlords to give any notice.<sup>87</sup>

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82 Colo. Rev. Stat. § 38-12-904(1.5)(a)(c).

83 NY Real Prop. Law § 238-a(1)(b).

84 R.I. Gen. Laws § 34-18-59(b)(1).

85 Md. Code Ann., Real Prop. § 8-218(c).

86 Rev. Code Wash. § 59.18.257(1)(a)(iv).

87 Cal. Civ. Proc. Code § 1950.1.



Washington state,<sup>88</sup> Maryland,<sup>89</sup> California,<sup>90</sup> and Colorado<sup>91</sup> have laws that explicitly refer to and define portable or reusable tenant screening reports. These laws require — or allow landlords to require, in the case of Colorado<sup>92</sup> — that reusable reports be provided directly to landlords by the tenant screening company, meaning that applicants cannot simply provide their own copy of a tenant screening report to the landlord.<sup>93</sup> They also include other conditions for tenants attempting to use these reports. In Maryland,<sup>94</sup> California,<sup>95</sup> and Colorado,<sup>96</sup> landlords can require applicants to provide a statement — or “to certify,” in Maryland — that there has been no material change to the information in the report in the past 30 days.

New York and Rhode Island’s laws do not use the terms portable or reusable tenant screening report, but they prohibit landlords from charging rental application fees to tenants who provide their own copy of a background check. New York requires landlords to waive application fees if applicants provide a “copy of a background check or credit check” conducted within the past 30 days.<sup>97</sup> Rhode Island only allows landlords to charge applicants for the cost of procuring a “credit report” or an “official state criminal background check”<sup>98</sup> issued within the past 90 days, and prohibits landlords from charging a fee if applicants provide these reports themselves.<sup>99</sup> For purposes of this issue brief, we refer to all of the reports described in these laws as portable tenant screening reports, PTSRs, or reusable reports, interchangeably.

All of the state laws include requirements for what information must be included in the reusable reports, with varying levels of detail.<sup>100</sup> Five states — all but California — require credit reports to

88 Rev. Code Wash. § 59.18.030(4).

89 Md. Code Ann., Real Prop. § 8–218(a).

90 Cal. Civ. Proc. Code § 1950.1(e)(6).

91 Colo. Rev. Stat. § 38-12-902(2.5).

92 Colo. Rev. Stat. § 38-12-904(1.5)(b)(II).

93 Rev. Code Wash. § 59.18.030(4); Md. Code Ann., Real Prop. § 8–218(a); Cal. Civ. Proc. Code § 1950.1(e)(6)(B).

94 Md. Code Ann., Real Prop. § 8–218(e).

95 Cal. Civ. Proc. Code § 1950.1(c).

96 Colo. Rev. Stat. § 38-12-904(1.5)(b)(IV).

97 NY Real Prop. Law § 238-a(1)(b).

98 Rhode Island Attorney General, Get a Background Check, <https://riag.ri.gov/i-want/get-background-check> (“State background checks are performed using a person’s name and date of birth and will only reflect Rhode Island records. A state background check will not indicate if a person has an out-of-state or federal criminal offense.”).

99 R.I. Gen. Laws § 34-18-59.

100 See Appendix A for a more detailed overview of the requirements set forth by each state.

be included.<sup>101</sup> Colorado,<sup>102</sup> Rhode Island,<sup>103</sup> Maryland,<sup>104</sup> and Washington state<sup>105</sup> require criminal background checks; New York<sup>106</sup> requires a “background check” but does not explicitly define what that means. Washington state,<sup>107</sup> Maryland,<sup>108</sup> and California<sup>109</sup> require PTSRs to include eviction history, and Colorado requires rental history,<sup>110</sup> which is likely intended to include eviction records.

In addition to the six states that already have some form of PTSR law on the books, legislators have introduced bills in at least seven other states.<sup>111</sup> At the time of writing, the law in Illinois has passed through the state legislature and is awaiting the governor’s signature. That law would require landlords to waive application fees if provided with a reusable report, but only if the report contains “all of the criteria consistently being used by the landlord in the screening of prospective tenants.”<sup>112</sup> Of the other proposed laws, only two — Virginia and Hawai’i — would have required landlords to accept PTSRs.<sup>113</sup> At least five of the proposed laws would require eviction history to be included in a portable screening report,<sup>114</sup> and at least two would have required a criminal history check.<sup>115</sup>

101 R.I. Gen. Laws § 34-18-59(b); Rev. Code Wash. § 59.18.030(4)(a); Md. Code Ann., Real Prop. § 8–218(b)(1); Colo. Rev. Stat. § 38-12-902(2.5)(e)(I); NY Real Prop. Law § 238-a(1)(b).

102 Colo. Rev. Stat. § 38-12-902(2.5)(e)(II).

103 R.I. Gen. Laws § 34-18-59(b).

104 Md. Code Ann., Real Prop. § 8–218(b)(2)(i).

105 Rev. Code Wash. § 59.18.030(4)(b).

106 NY Real Prop. Law § 238-a(1)(b).

107 Rev. Code Wash. § 59.18.030(4)(c).

108 Md. Code Ann., Real Prop. § 8–218(b)(2)(ii).

109 Cal. Civ. Proc. Code § 1950.1(a)(5).

110 Colo. Rev. Stat. § 38-12-902(2.5)(e)(I).

111 Penn. Gen. Assemb., SB859, Reg. Sess. 2023 <https://www.legis.state.pa.us/CFDOCS/billInfo/billInfo.cfm?syar=2023&Ind=0&body=S&type=B&bn=859>; Va. Gen. Assemb., HB804, Reg. Sess. 2022, <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+HB804>; Ill. Gen. Assemb., HB4926, Reg. Sess. 2023-2024 <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4926&GAID=17&DocTypeID=HB&SessionID=112&GA=103>; Utah Leg., HB0381, Gen. Sess. 2020, <https://le.utah.gov/~2020/bills/static/HB0381.html>; Mich. Leg., SB883, Reg. Sess. 2024, <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2024-SB-0883>; Tenn. Gen. Assem., SB1893, Reg. Sess. 2023, <https://legiscan.com/TN/text/SB1893/id/2899909/Tennessee-2023-SB1893-Draft.pdf>; HI Leg., SB2127, Reg. Sess. 2024, [https://www.capitol.hawaii.gov/session/measure\\_indiv.aspx?billtype=SB&billnumber=2127](https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=2127).

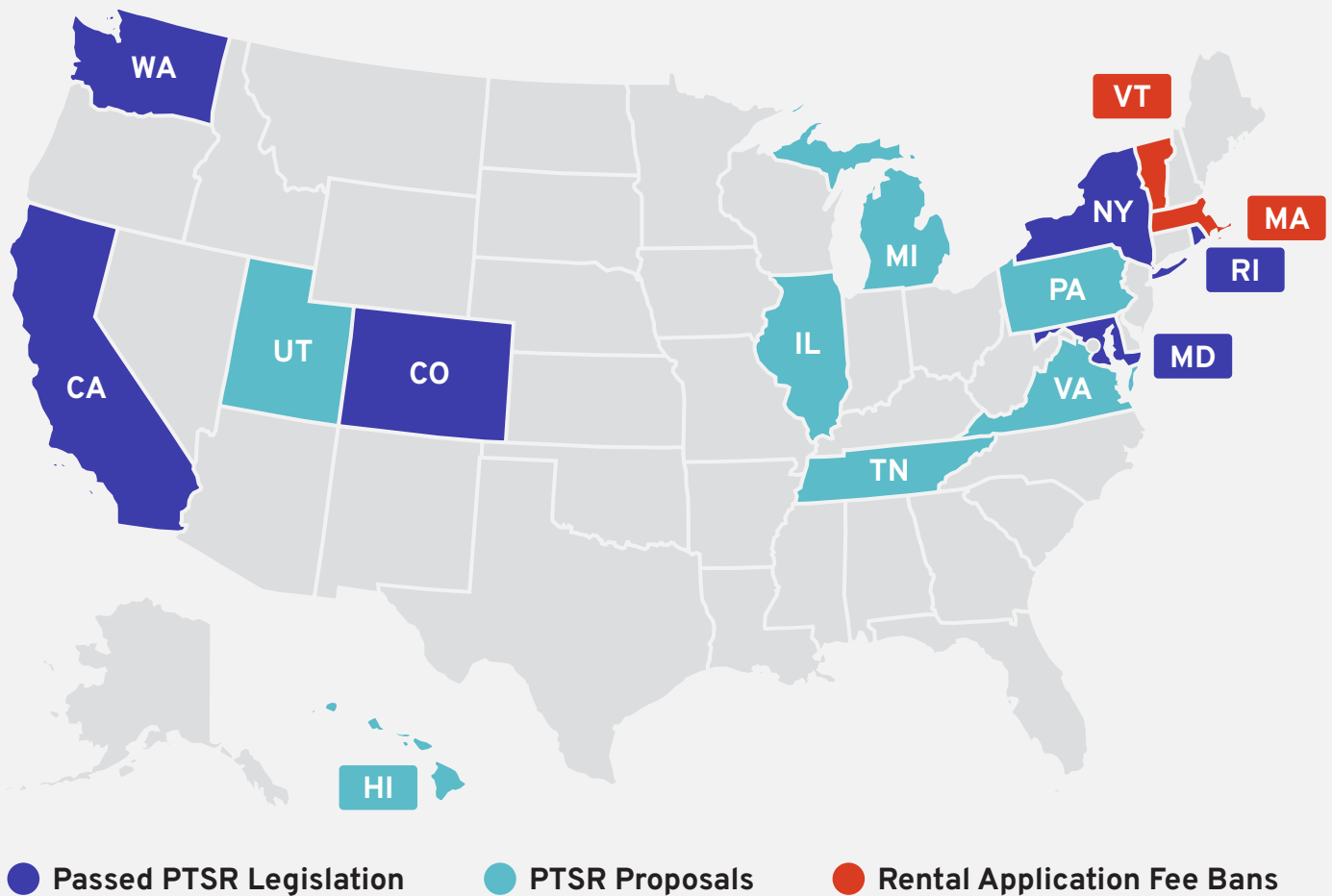
112 HB4926, *supra* note 111, at Sec. 25(b)(1).

113 HB804, *supra* note 111, at § 55.1-1203(C); SB2127, *supra* note 111.

114 HB0381, *supra* note 111, at § 57-22-2(1)(c); HB804, *supra* note 111, at § 55.1-1203(C)(i) (requiring “eviction judgments”); SB859, *supra* note 111, at § 106(d)(5); HB3062, *supra* note 111, at § 17(c)(5); SB1893, *supra* note 111, at § 66-38-104.

115 HB0381, *supra* note 111, at § 57-22-2(1)(b); SB1893, *supra* note 111, at 66-38-104.

**Map 1. Map of legislative landscape for PTSR legislation and rental application fee bans.**



*Map 1. Map of legislative landscape for PTSR legislation and rental application fee bans. This map shows the states where PTSR legislation has been proposed and where such legislation has passed. The two states that have passed bans on rental application fees are also highlighted. At the time of publication, the Illinois bill has been passed by the legislature and sent to the governor's desk but has not been signed into law.*

Clearly, portable tenant screening reports have caught the attention of policymakers across several states. However, as the next section will explore, the bills being introduced and passed so far offer weak, if any, protections in exchange for further entrenching criminal, credit, and eviction history as compulsory screening criteria.

# VI. Analyzing the promises and pitfalls of portable tenant screening reports

Tenants urgently need relief from rental application fees, but PTSR laws in their current form do not appear to effectively provide that relief. The PTSR laws on the books require very little of landlords and nothing of tenant screening companies, while placing a massive enforcement burden on tenants. They also help legitimize a harmful tenant screening system by enshrining commercial tenant screening reports and criteria into law rather than directly challenging tenant screening as a barrier to housing.

In this section, we analyze how PTSR laws are operating in practice, their potential to save tenants money, and their implications for tenant screening and housing discrimination. We offer seven critiques of PTSR laws.

## A. It is too easy for landlords to avoid accepting reusable reports and continue charging application fees.

Three of the six states with PTSR laws do not require landlords to accept reusable reports;<sup>116</sup> therefore, many landlords simply choose not to. According to the National Housing Law Project, landlords have largely ignored portable screening products, and efforts to promote them have had little to no impact.<sup>117</sup> The city of Olympia, Washington, for example, has noted that the state's

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116 See *supra* text accompanying and sources cited in notes 82–87.

117 Eric Dunn, Marie Claire Tran Leung & Sarah Brandon, National Housing Law Project Housing Justice Network, tenant screening RFI comments 12, May 30, 2023, <https://www.nhlp.org/wp-content/uploads/CFPB-FTC-tenant-screening-comments.pdf>.

PTSR law has had virtually no impact because it does not require landlords to accept reusable screening reports.<sup>118</sup> In states with notice requirements, such as Washington and Maryland, rental properties just indicate on their websites — often in fine print at the bottom of the webpage — that they do not accept reusable reports.<sup>119</sup> Landlords often express skepticism over the integrity of information in PTSRs, suggesting that applicants could tamper with them,<sup>120</sup> even though most PTSR laws and products require reports to be sent directly from the screening company to the landlord.<sup>121</sup> Even so, landlords’ skepticism persists and unless laws require landlords to waive application fees when applicants provide portable reports, landlords are unlikely to do so.

In Colorado, where landlords are required to waive application fees for applicants who provide reusable reports, there is a provision that exempts landlords from this requirement if they do “not accept more than one application fee at a time for a dwelling unit” and “refund the total amount of the application fee to each prospective tenant within twenty calendar days” of communicating a denial.<sup>122</sup> Several property management companies are taking advantage of this exemption by claiming that their application process meets these requirements.<sup>123</sup> In New York, brokers initially

118 City of Olympia, tenant screening RFI comments 1, May 30, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0593>.

119 See, e.g., Maple Leaf Plaza Apartments, Requirements to Be Approved Through Icon Real Estate Services (within the City of Seattle), <https://www.mapleleafplaza.com/tenant-screening-criteria> (“We do not accept comprehensive reusable tenant screening reports as defined by and pursuant to RCW 59.18.”); AvalonBay Bellevue, <https://www.avaloncommunities.com/washington/bellevue-apartments/avalon-bellevue/> (“Washington State - We require our own screening and do not accept comprehensive reusable tenant screening reports.”); Mays Chapel Village Apartments, <https://www.mayschapelapts.com/contact/> (stating that the landlord “does not accept from prospective tenants Reusable Tenant Screening Reports as defined by Maryland Code, Real Property Section 8-812”); Riverside Apartments, <https://www.riversideaptsmd.com/> (“Maryland Management does not accept from prospective tenants Reusable Tenant Screening reports as defined by Maryland Code, Real Property Section 8-218.”); AvalonBay Communities, Terms and Conditions at 2, 2021, <https://resource.avalonbay.com/resource/get?type=online-application&propId=MD023&filename=MD-Terms-and-Conditions-12-2021.pdf> (“AvalonBay does NOT accept Reusable Tenant Screening Reports.”).

120 Joseph Pimentel, *Prospective Renters Could Save Money with New Reusable Tenant Screening Report*, Spectrum News, Nov. 2, 2022, <https://spectrumnews1.com/ca/la-west/housing/2022/11/01/prospective-renters-could-save-money-with-new-reusable-tenant-screening-bill> (quoting a director of a California apartment association who claimed that he didn’t “know of any landlord willing to accept a screening report handed to them by an applicant” based on the belief that “so many of the documents [they] get these days are fraudulent, and proper screening techniques dictate [they] obtain these reports [themselves]”); Marc Cunningham, Colorado Landlords Must Now Accept Tenant-Provided Background Reports: SB23-1099, Grace Property Management, Jul. 24, 2023, <https://www.rentgrace.com/blog/colorado-landlords-must-now-accept-tenant-provided-background-reports-sb23-1099> (noting that when the Colorado law was passed, landlords had concerns about the authenticity of PTSRs accepted directly from tenants); John J., tenant screening RFI comments, *supra* note 61; Brian Hughes, tenant screening RFI comments, *supra* note 61. But see Amy Howse, tenant screening RFI comments, May 12, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0341>.

121 See *supra* text accompanying and sources cited in notes 75–80.

122 Colo. Rev. Stat. § 38-12-904(1.5)(f).

123 See Willits Seven, <https://www.willitsseven.com/> (citing the Colorado exemption and stating that “Because the landlord’s application process meets these requirements, the landlord is exempt from having to accept PTSRs and therefore does not accept or consider PTSRs as part of the application process.”); One 10 Harris Apartments, <https://www.one10harris.com/>; Level Up Property Management LLC, <https://www.leveluprent.com/rent> (same).

tried to avoid compliance by arguing that the law<sup>124</sup> did not apply to them since it was written to apply to a “landlord, lessor, sub-lessor or grantor.”<sup>125</sup> The New York Department of State later issued guidance clarifying that the law applies to brokers.<sup>126</sup>

Some landlords in Colorado seem to be adopting policies to discourage tenants from providing a portable screening report. For example, one landlord’s written policy says that applicants who want to use a PTSR must inform the landlord, fill out the landlord’s application, and pay a holding fee that will be refunded once the landlord receives the report.<sup>127</sup> While the landlord is waiting to receive the report, its policy says it will continue screening applicants and can make a housing offer to someone else before receiving the previous applicant’s report.<sup>128</sup> A policy like this places tenants trying to use portable reports at a distinct disadvantage and forces them to still pay multiple up-front fees.

The Colorado law provides that landlords in violation of the law are liable to aggrieved tenants for \$2,500 plus court costs and attorney fees,<sup>129</sup> but also provides that landlords can “correct or cure” a violation within seven days and only have to pay the tenant \$50.<sup>130</sup> However, the law doesn’t clarify what it means to correct or cure a violation. When tenants are improperly screened or turned away because their portable report is rejected, they often lose out on the housing opportunity. It’s not clear that “curing” violations under this law would actually involve remedying this loss of a housing opportunity.

Depending on how they’re drafted, PTSR laws do have some potential to dissuade landlords from charging application fees altogether. At least one management company has chosen to avoid the Colorado law by not charging an application fee in Colorado at all, though the company still

124 NY Real Prop. Law § 238-a(1)(b).

125 Josefa Velasquez, *Real Estate Brokers Blow Beyond New \$20 Tenant Fee Cap*, The City, Aug. 15, 2019, <https://www.thecity.nyc/2019/08/15/real-estate-brokers-blow-beyond-new-20-tenant-fee-cap/> (quoting a memo from the Real Estate Board of New York stating its belief that “real estate brokers [were] still entitled to collect reasonable application fees”).

126 New York Department of State, *Guidance for Real Estate Professionals Concerning the Statewide Housing Security & Tenant Protection Act of 2019 and the Housing Stability and Tenant Protection Act of 2019*, Jan. 31, 2020, <https://www.citylandnyc.org/wp-content/uploads/sites/14/2020/02/DOS-Guidance-Tenant-Protection-Act-Rev.1.31.20.pdf>.

127 3727 Red Canon Pl, Building Overview, <https://web.archive.org/web/20240528005417/https://www.zillow.com/b/3727-red-canon-pl-colorado-springs-co-BYr6DR/> (“We will accept a portable Screening Report if the screening report meets all the following requirements. 1. The applicant is still required to apply through our regular process and pay a holding fee (if applicable) until we can obtain the screening report directly from the agency. Your holding fee will be refunded once we receive the screening report directly from the agency. 2. Until we have received the Portable Screening Report directly from the agency we will continue to screen applicants until the property has been rented.”).

128 *Id.*

129 Colo. Rev. Stat. § 38-12-905(1).

130 Colo. Rev. Stat. § 38-12-905(3).



charges a fee to applicants in other parts of the country.<sup>131</sup> Tenants could benefit from landlords refusing to charge application fees en masse to avoid complying with PTSR laws, but it's unclear whether more than one landlord has made this decision, or whether it will be permanent.

## **B. Tenants have no guidance on how to obtain or use portable tenant screening reports, leaving them confused.**

States provide insufficient notice and clarity about tenants' ability to use portable screening reports. California, New York, and Rhode Island don't seem to require landlords to provide any notice to tenants that they have the option to provide a reusable report and potentially avoid application fees. At least one New York housing advocate pointed to a lack of education around the law, indicating that both tenants and landlords were not aware it was in place.<sup>132</sup> Based on our research — including outreach to housing advocates in states with PTSR laws — there is little evidence that applicants are actually using portable reports in practice.

Where tenants do know about their rights to use a PTSR, there is no guidance about where to get one or how to use it. In Colorado, tenants have tried to research where and how they can obtain a report that meets their state laws' requirements, but they remain confused.<sup>133</sup> They face a choice between just paying the application fees landlords are asking for in order to move forward with their housing search, or risk losing money on a report that they're not sure will be accepted. One commenter reported that they purchased a PTSR and a landlord they applied to refused to accept it.<sup>134</sup> Applicants' top priority is to find housing, and given the lack of clarity, it's easy to see why applicants might want to avoid the confusion of using PTSRs altogether.

131 FirstKey Homes, <https://www.firstkeyhomes.com/resident-selection-criteria> (“FirstKey Homes, the landlord does not charge CO applicants an application fee and is exempt from 38-12-902(2.5), Colorado Revised Statutes.”).

132 Jennifer Ludden, *Rental Application Fees Add Up Fast in a Tight Market. But Limiting Them is Tough*, WBUR, Jan. 13, 2023, <https://www.wbur.org/npr/1148426491/rental-application-fees-housing-affordable-market-states-laws>.

133 See *infra* Figures 6 and 7; Andrew Kenney, *Colorado Renters Can Save Money by Getting Their Own Background Checks, But Nobody Seems to Know How to Do It*, CPR News, Jun. 24, 2024, <https://www.cpr.org/2024/06/24/how-colorado-renters-can-save-money-in-background-checks/>.

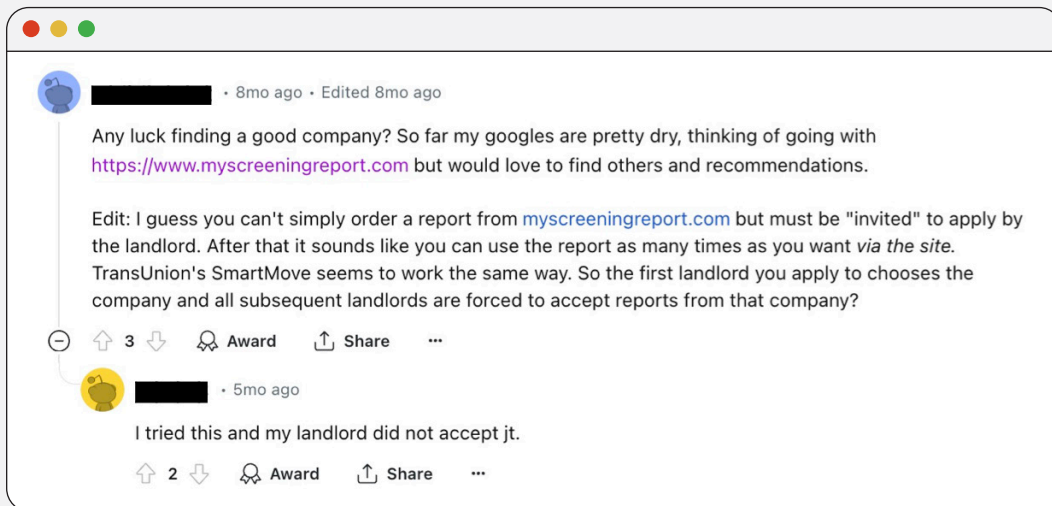
134 See *infra* Figure 7.

**Figure 6. Tenants in Colorado are unable to find out where to get portable tenant screening reports.**



*Figure 6. Tenants in Colorado are unable to find out where to get portable tenant screening reports. This figure shows a Reddit comment thread by tenants in Colorado who are aware of Colorado's PTSR law but cannot figure out how to actually get reusable reports.*

**Figure 7. Tenants in Colorado are unable to find portable tenant screening reports that they can use.**



*Figure 7. Tenants in Colorado are unable to find portable tenant screening reports that they can use. This figure shows a Reddit thread by tenants in Colorado who found a PTSR service but were unable to or confused about how to use it. One user did not initially realize that they would need a landlord invitation while another went through the process of getting a portable report only to find that a landlord did not accept it.*



## C. State laws place burdensome conditions on tenants seeking to use portable tenant screening reports.

States have placed a maze of unnecessary conditions on using portable screening reports. For example, Colorado’s law says that landlords “may require” reports to be:

[m]ade directly available to the landlord by the consumer reporting agency . . . or provided through a third-party website that regularly engages in the business of providing consumer reports and complies with all state and federal laws pertaining to use and disclosure of information contained in a consumer report by a consumer reporting agency.<sup>135</sup>

It’s not clear whether or how applicants are able to make these assessments.

Colorado is also one of three states that require applicants to provide a statement affirming that there has been no material change to the information in their report.<sup>136</sup> None of these laws explains what such a statement would look like or how to go about providing it. Colorado<sup>137</sup> and Maryland<sup>138</sup> list examples of information that applicants must attest has not changed, including the applicant’s name, address, bankruptcy status, criminal history, or eviction history. It’s not clear how applicants would determine that nothing in their reports has materially changed without requesting a whole new report from the screening company. It seems particularly unnecessary for PTSR laws to limit the reuse of a report to 30 days *in addition* to requiring an attestation that nothing in the report has changed. Maryland allows landlords to “reject an applicant for tenancy if a prospective tenant made a material change to a reusable tenant screening report.”<sup>139</sup> These provisions put tenants further at the mercy of tenant screening companies, which are notorious for reporting inaccurate and misleading information.<sup>140</sup> These extra hoops make it harder for tenants to use portable screening reports and could become easy excuses for landlords to get out of honoring them.

135 Colo. Rev. Stat. § 38-12-904(1.5)(b)(II).

136 Colo. Rev. Stat. § 38-12-904(1.5)(b)(IV); Md. Code Ann., Real Prop. § 8–218(e); Cal. Civ. Proc. Code §1950.1(c).

137 Colo. Rev. Stat. § 38-12-904(1.5)(b)(II).

138 Md. Code Ann., Real Prop. § 8–218(e).

139 Md. Code Ann., Real Prop. § 8–218(f).

140 See *supra* note 43; *infra* note 187.

## D. The reusable reports available for purchase do not necessarily align with state laws.

Tenants bear the burden of trying to find a reusable tenant screening report that satisfies their state’s legal requirements. However, the PTSR options on the market are very limited and not set up for the kind of portability lawmakers seem to intend. These services generally do not provide guidance on whether their products meet state PTSR law requirements. MyScreeningReport’s service offers multiple types of reusable reports, but it’s difficult to ascertain which ones, if any, comply with state PTSR laws. For example, Maryland requires PTSRs to include incredibly broad criminal and eviction history reports, including “all federal, state, and local charges against and convictions of the prospective tenant over the previous 7 years” and “[a] comprehensive eviction history for all state and local jurisdictions for the previous 7 years . . . [f]or each jurisdiction indicated as a prior residence of the prospective tenant, regardless of whether the residence is reported by the prospective tenant or by a consumer reporting agency preparing a consumer report.”<sup>141</sup> MyScreeningReport describes the elements in its various products as “criminal search” and “eviction search,” which does not allow a prospective tenant or landlord to ascertain whether these “searches” include everything Maryland requires.<sup>142</sup>

Tenants in New York and Rhode Island may be able to avoid some of the challenges of navigating the PTSR offerings on the market. Those states’ laws simply prohibit landlords from charging application fees if applicants provide a credit and/or criminal background check.<sup>143</sup> They don’t require a particularly defined portable tenant screening report, and they omit the extra conditions that states such as Colorado impose. Still, these laws largely rely on tenants to know their rights and try to convince landlords to accept their reports.

## E. Landlords remain in control of when and where tenants can purchase reports.

The majority of PTSR services require the landlord to initiate the transaction — they do not allow tenants to purchase a report before receiving an invitation from a landlord.<sup>144</sup> Although some state PTSR laws define a portable or reusable tenant screening report as one that is created “at

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141 Md. Code Ann., Real Prop. § 8–218(b)(2).

142 See *supra* Figure 5.

143 NY Real Prop. Law § 238-a(1)(b); R.I. Gen. Laws § 34-18-59.

144 One potential exception is Avail, which says that it allows tenants to create a “renter profile,” add credit and background checks from TransUnion, and send invitations to landlords to view their information. Avail, Renter Profile, <https://www.avail.co/tenants/renter-profile>.

the request”<sup>145</sup> or “at the direction”<sup>146</sup> of a prospective tenant, they do not explicitly compel tenant screening companies to do anything, including providing a report at a tenant’s request in the absence of a landlord’s invitation. Even after a tenant has purchased a report, they still do not have control over how and when they reuse it, and the services are not always clear about how to reuse reports.

Even where state laws require landlords to accept reusable reports, they don’t specify that landlords must send tenants an invitation to submit a report from the tenant’s chosen provider. What if the landlord and tenant don’t agree on which service to use or on whether a particular product satisfies the legal requirements? Tenants are left with no certainty that they will actually be able to successfully reuse the report they’ve paid for to complete their housing search.

Some advocates have suggested that PTSRs could allow tenants to review their tenant screening report before beginning their housing search, giving tenants a chance to catch inaccurate, misleading, or unlawful information on their reports, dispute the information, and possibly get it corrected or removed before applying for housing.<sup>147</sup> However, PTSRs do not offer this advantage in practice since most services don’t allow tenants to purchase their report without an invitation from a landlord.<sup>148</sup> Portable screening reports can make it easier for tenants to know which company is providing their report and to see the report after they purchase it. In this sense, tenants might be somewhat better positioned to file disputes or lawsuits over the contents of their reports. However, consumer disputes are seldom of practical value to denied rental applicants.<sup>149</sup>

As currently enacted, it is difficult to see how PTSR laws will make the housing search any easier for tenants.

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145 Colo. Rev. Stat. § 38-12-902(2.5).

146 Rev. Code Wash. § 59.18.030(4).

147 See, e.g., Dunn & Grabchuk, *supra* note 13, at 360. Dunn and Grabchuk envisioned a law “compelling screening services to compile and disclose tenant-screening reports at the request of a consumer.” *Id.*

148 This restriction is of dubious legality, since the Consumer Financial Protection Bureau has clarified that consumer reporting agencies must disclose these reports upon request. See Consumer Financial Protection Bureau, Advisory Opinion, Fair Credit Reporting; File Disclosure, 89 Fed. Reg. 4167, 4169–70, Jan. 2024, <https://www.govinfo.gov/content/pkg/FR-2024-01-23/pdf/2024-00786.pdf> (“[S]ection 609(a)(1) of the [Fair Credit Reporting Act] requires that a consumer reporting agency clearly and accurately disclose to a consumer all information in the consumer’s file at the time of the request, including, among other things, all information the consumer reporting agency provided or might provide to a user . . .”).

149 See, e.g., Consumer Financial Protection Bureau, Consumer Financial Protection Circular 2022-07, Reasonable Investigation of Consumer Reporting Disputes, Nov. 10, 2022, <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/> (addressing “[s]hoddy [i]nvestigation [p]ractices by [c]onsumer [r]eporting [c]ompanies”); Wu et al., Digital Denials, *supra* note 9, at 23–27.

## F. Portable tenant screening reports do not eliminate the cost burden of searching for housing.

The entire premise of portable tenant screening reports is that they can help address burdensome rental application fees and lower housing search costs for tenants. Yet even if tenants are able to reliably access and use these reports — which is currently not the case — it is unclear how much money tenants can actually save. In 2022, Zillow reported that the “typical (median)” renter submitted two rental applications with fees ranging from \$40 to \$59,<sup>150</sup> though advocates have reported seeing fees as high as \$350.<sup>151</sup>

At least five vendors currently offer reusable reports at varying price points ranging from \$31.95 to \$64.99. In states with more expansive requirements for what must be included in a PTSR, applicants may have to pay more than the minimum price. For example, applicants from Maryland, Washington state, and Colorado would have to pay extra for a report from MyScreeningReport to include a criminal background check, as required by state law.<sup>152</sup> Table 1 lists the PTSR products on the market, including prices, time limits, and whether a landlord invitation is required.

A “typical” renter, as described in the Zillow study, submits two applications for a total cost of \$80 to \$118.<sup>153</sup> If that renter bought a reusable report for between \$31.95 and \$64.99, their potential savings could range from about \$15 to \$86. In New York, where the law caps application fees at \$20, though, a renter could actually spend more money on a reusable report than on two application fees.<sup>154</sup> Of course, many renters submit more than two applications in their housing searches. Zillow’s report indicated that Black and Latine renters were more likely than white renters to submit at least five applications and pay at least \$50 per application.<sup>155</sup> One housing advocate in Washington, DC shared that it’s not unusual for housing voucher recipients to submit eight to 12 applications over the course of their housing search. These renters would certainly see significant savings if they submitted all of their applications within the same 30-day period and only purchased one portable report.

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150 Garcia, *supra* note 52.

151 Nelson et al., Too Damn High, *supra* note 1, at 10.

152 MyScreeningReport, *supra* note 81; *supra* Figure 5. (A screening report that includes a criminal background check is \$35.95 compared to \$31.95 for the basic report offered.)

153 Garcia, *supra* note 52.

154 NY Real Prop. Law § 238-a(1)(b).

155 Garcia, *supra* note 52.

**Table 1. Portable Tenant Screening Report Options.**

Vendor	Price(s)	Time allowance	Landlord invitation required?
ApplyConnect	\$39.95	Up to 3 times within 30 days	Yes
MyScreeningReport	\$31.95 - \$49.95	30 days	Yes
RentSpree	\$54.99 - \$64.99	Up to 5 times per day within 30 days	Yes
Zillow	\$35	30 days	No*
Avail	\$30 for either a criminal background check, eviction report, or credit report OR \$55 for a bundle of all three	30 days	No

**Table 1. Portable Tenant Screening Report Options.** This table shows the portable tenant screening services on the market with corresponding prices, time allowances, and whether a landlord invitation is required to generate a report.

\*Zillow does not necessarily require a landlord invitation to obtain a portable report, but landlords can choose to send a private invite link to interested applicants or applicants can send their reports to landlords who have opted in to receive them on the platform.

Yet the renters who most need relief from rental application fees are also likely to need more than 30 days to secure housing. Voucher recipients and other low-income renters, as well as people with criminal records, eviction records, and/or negative credit history often face protracted housing searches and have to pay multiple application fees due to discrimination and exclusionary tenant screening.<sup>156</sup> Housing Choice Voucher recipients have at least 60 days to find housing, which could amount to \$64 to \$130 in PTSR costs.<sup>157</sup> But this timeframe could be longer at the discretion of the housing agency, and many applicants need much longer than 60 days to find housing due to factors such as source-of-income discrimination.<sup>158</sup>

156 See, e.g., Unlock NYC et al., *An Illusion of Choice: How Source of Income Discrimination and Voucher Policies Perpetuate Housing Inequality*, 2022, <https://weunlock.nyc/reports/illusion-of-choice/>; FICPFM, *Unfair and Deceptive Fees Comment*, *supra* note 1; Wu et al., *Digital Denials*, *supra* note 9; Equal Rights Ctr., D.C. Civil Rights Group Settles Tenant Screening Discrimination Case Against Rental Property Management Company, July 2, 2024, <https://equalrightscenter.org/press-release-air-settlement/>.

157 24 CFR § 982.303(a).

158 24 CFR § 982.303(b); District of Columbia Housing Auth., *Admin. Plan, Housing Choice Voucher Program 5.II.E*, Apr. 12, 2023, [https://www.dchousing.org/wordpress/wp-content/uploads/2023/05/Admin-Plan\\_04122023-1.pdf](https://www.dchousing.org/wordpress/wp-content/uploads/2023/05/Admin-Plan_04122023-1.pdf) (indicating that for vouchers provided by the DC Housing Authority, the initial voucher term is 180 days).

One person with a Housing Choice Voucher in California reported spending four months searching for housing.<sup>159</sup> With a reusable report, she would have spent \$128 to \$260 for four reports. Assuming this person would have submitted more than five applications, as the Zillow study suggests some renters do, the cost of four portable reports could be less than paying a fee per application. Yet spending hundreds of dollars on applications is still not accessible for low-income renters, including voucher holders. One housing advocate in Washington, DC shared that they have multiple clients who spend more than a year searching for housing. In a comment to the FTC, one person with a criminal record reported spending hundreds of dollars on housing applications across two years.<sup>160</sup> A two-year housing search could cost up to \$767 to \$1,560 in fees for portable reports that only last 30 days. People with criminal records are more likely to struggle finding a job or be limited to low-paying positions. Coupled with other economic stressors, people with criminal records are more likely to have reduced incomes and cannot afford the hundreds required to purchase multiple PTSRs.<sup>161</sup> Notably, Rhode Island gives applicants 90 days to use their official state criminal background checks and credit reports. One landlord who responded to the FTC's request for information on tenant screening suggested that tenants should be able to use portable reports for six months to a year.<sup>162</sup>

PTSR laws seem to assume — but do not require — that the tenant screening industry will provide a product that meets the laws' requirements for a reasonable fee, comparable to the cost of submitting one traditional rental application. Nothing in the existing laws prevents companies from charging exorbitant fees for reusable reports or putting limitations on their use that will require renters to buy more than one.

Some jurisdictions limit how much a landlord can charge for an application fee, and it's unclear whether these fee caps will apply to PTSRs, since the tenant would be paying the screening company rather than the landlord. So far, PTSR laws have been silent on this point.

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159 Corina Knoll, *A Homeless Student Received Aid for an Apartment. Then Came the Hard Part*, NY Times, Feb. 17, 2023, <https://www.nytimes.com/2023/02/17/us/housing-voucher-search-los-angeles.html>.

160 FICPFM, *Unfair and Deceptive Fees Comment*, *supra* note 1, at 6.

161 Terry-Ann Craigie et al., Brennan Center for Justice, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Sep. 15, 2020, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>; National Employment Law Project, *Resource Guide: Criminal Legal System + Work*, Dec. 2022, <https://www.nelp.org/app/uploads/2022/12/Resource-Guide-Criminal-Legal-System-Work-December-2022.pdf>.

162 Anonymous, *tenant screening RFI comment*, May 18, 2023, <https://www.regulations.gov/comment/FTC-2023-0024-0430>.



Today, tenant screening companies can market portable screening reports to charge tenants more, not less, during their housing search. Companies are encouraging landlords and tenants to choose their products for portability with no guarantee that tenants will actually be able to reuse their reports and avoid paying landlords' application fees. Potential savings are also irrelevant if a landlord is not required to accept or use the report provided. Ultimately, reusable reports may cost less than traditional application fees., but for marginalized tenants who face extended housing searches, the cost of these reports can still be a significant burden.

## G. PTSR laws risk further entrenching the extractive tenant screening industry and its discriminatory and unreliable reports.

By requiring reusable reports to include criminal, credit, and/or eviction records, PTSR legislation threatens to lock in housing discrimination. As HUD guidance recently confirmed, screening tenants based on criminal, credit, and eviction history is “particularly likely” to lead to housing discrimination.<sup>163</sup> These records reflect the impacts of policies and practices, such as redlining,<sup>164</sup> that have excluded or marginalized people on the basis of race,<sup>165</sup> ethnicity, disability,<sup>166</sup> familial

163 HUD tenant screening guidance, *supra* note 10, at 15.

164 The distribution of credit scores by neighborhood, in particular, demonstrates how credit-based tenant screening acts as a form of digital redlining. An Urban Institute survey of financial health in 60 major cities found that, of the 60 cities, 38 had “differences in median credit scores of 100 points or more between predominantly white and nonwhite areas. Nationally, the difference in median credit scores is nearly 80 points. . . . Predominantly nonwhite areas in more than 50 of the 60 cities ha[d] below-prime median credit scores[,]” while “predominantly white areas in only 4 of the 60 cities ha[d] below-prime median credit scores.” Caroline Ratcliffe & Steven Brown, Urban Institute, Credit Scores Perpetuate Racial Disparities, Even in America’s Most Prosperous Cities, Nov. 20, 2017, <https://www.urban.org/urban-wire/credit-scores-perpetuate-racial-disparities-even-americas-most-prosperous-cities>.

165 See, e.g., Chi Chi Wu, Reparations, Race, and Reputation in Credit: Rethinking the Relationship Between Credit Scores and Reports with Black Communities, Aug. 7, 2020, [https://medium.com/@cwwu\\_84767/reparations-race-and-reputation-in-credit-rethinking-the-relationship-between-credit-scores-and-852f70149877](https://medium.com/@cwwu_84767/reparations-race-and-reputation-in-credit-rethinking-the-relationship-between-credit-scores-and-852f70149877); *Louis v. SafeRent*, 685 F.Supp. 3d at 26–28; Jennifer Brown, UnidosUS, Unscoreable: How the Credit Reporting Agencies Exclude Latinos, Younger Consumers, Low-Income Consumers, and Immigrants, submitted to the U.S. House Committee on Financial Services, Feb. 26, 2019, <https://www.congress.gov/116/meeting/house/108945/witnesses/HHRG-116-BA00-Wstate-BrownJ-20190226.pdf>; Eric Sirota, Shriver Center on Poverty Law, Smokescreen: Unfair Tenant Screening Practices Perpetuate Housing Discrimination, May 10, 2023, <https://www.povertylaw.org/article/unfair-tenant-screening-practices/>; Kim Johnson, Nat’l Low Income Housing Coalition, Housing Access for People with Criminal Records, 2021 Advocates’ Guide 6–28, 2021, [https://nlihc.org/sites/default/files/AG-2021/06-07\\_Housing-Access-Criminal-Records.pdf](https://nlihc.org/sites/default/files/AG-2021/06-07_Housing-Access-Criminal-Records.pdf); Peter Hepburn, Renee Louis & Matthew Desmond, Eviction Lab, Racial & Gender Disparities Among Evicted Americans, Dec. 16, 2020, <https://evictionlab.org/demographics-of-eviction/>.

166 See, e.g., Nanette Goodman & Michael Morris, National Disability Institute, Access to Credit for Adults with Disabilities, June 2018, <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2018/12/access-credit-brief.pdf>; Elliot Oberholtzer, Prison Policy Initiative, Police, Courts, Jails, and Prisons All Fail Disabled People, Aug. 23, 2017, <https://www.prisonpolicy.org/blog/2017/08/23/disability/>; Alisha Jarwala & Sejal Singh, *When Disability is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 Harvard Civ. Rights-Civ. Liberties L. Rev. 875, 2019, <https://harvardcrcl.org/wp-content/uploads/sites/10/2019/07/54.2-Jarwala-Singh.pdf>.



status, gender,<sup>167</sup> and other protected classes. These records also do not reflect tenants' current ability to pay rent or otherwise uphold their lease agreements, and they have not been shown to be reliable predictors of tenancy outcomes.<sup>168</sup>

PTSR laws with broad background check requirements can undermine tenant protections aimed at limiting discriminatory tenant screening criteria. In many cities and states — including several states with PTSR laws — policymakers have recognized the harmful impacts of screening out tenants based on criminal, credit, and eviction records, and have pursued and passed legislation to limit how landlords can use this information. For example, New York prohibits tenant screening based on eviction court records,<sup>169</sup> and many jurisdictions extensively limit the types of criminal records landlords can consider.<sup>170</sup> Seattle has attempted to minimize the use of criminal background checks for housing,<sup>171</sup> but Washington state's PTSR law requires reports to include a criminal background check.<sup>172</sup> If state lawmakers aren't careful, they could enact PTSR laws that preempt more tenant-friendly local ordinances, or at least make them harder to enforce.

167 See, e.g., Geng Li, Gender-Related Differences in Credit Use and Credit Scores, FEDS Notes, June 22, 2018, <https://www.federalreserve.gov/econres/notes/feds-notes/gender-related-differences-in-credit-use-and-credit-scores-20180622.html>; Alexi Jones, Prison Policy Initiative, Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System, Mar. 2, 2021, <https://www.prisonpolicy.org/blog/2021/03/02/lgbtq/>; Hepburn, Louis & Desmond, *supra* note 165 (finding that Black and Latine women face higher eviction rates than men).

168 See, e.g., HUD tenant screening guidance, *supra* note 10, at 15–22; Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 21–22 (citing Chi Chi Wu & Ariel Nelson, Nat'l Consumer Law Ctr., Mission Creep: A Primer on Use of Credit Reports & Scores for Non-Credit Purposes 7, Aug. 2022, [https://www.nclc.org/wp-content/uploads/2022/08/Mission\\_Creep\\_rpt.pdf](https://www.nclc.org/wp-content/uploads/2022/08/Mission_Creep_rpt.pdf); Matthew Desmond, *The Rent Eats First, Even During a Pandemic*, N.Y. Times, Aug. 29, 2020, <https://www.nytimes.com/2020/08/29/opinion/sunday/coronavirus-evictions-superspreader.html>); *Louis v. SafeRent*, 685 F.Supp.3d, at 26–28; Calvin Johnson, Tenant Screening with Criminal Background Checks: Predictions and Perceptions are Not Causality, Department of Housing and Urban Development Office of Policy Development & Research, May 17, 2022, <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-051722.html>; Duarte & de Leon, tenant screening RFI comments, *supra* note 3, at 27–30 (discussing why eviction records are not a reliable basis for understanding or predicting tenant behavior or outcomes).

169 NY Real Prop. Law § 227–f.

170 See, e.g., Collateral Consequences Resource Center, New Fair Chance Employment and Housing Laws in 2021, July 14, 2021, <https://ccresourcecenter.org/2021/07/14/new-fair-chance-employment-and-housing-laws-in-2021/>; Seattle Muni. Code § 14.09; Berkeley Muni. Code § 13.106; D.C. Code § 42–3541.

171 Seattle Muni. Code § 14.09. See also Seattle Office of Civil Rights, Fair Chance Housing Ordinance, SMC 14.09 Frequently Asked Questions, June 6, 2023, <https://www.seattle.gov/documents/Departments/CivilRights/Enforcement/Fair%20Housing%20Posters/FairChanceHousing/Fair-Chance-Housing-FAQ-June-6-2023.pdf>.

172 Rev. Code Wash. § 59.18.030(4)–(5).

Colorado’s PTSR law attempts to incorporate at least some pre-existing tenant screening restrictions. However, the resulting provisions are confusing, and it’s unclear how, if at all, they will apply to tenant screening companies in the creation of their portable reports.<sup>173</sup>

Overly broad background check requirements in PTSR laws also likely conflict with federal Fair Housing Act guidance. Maryland requires reusable reports to include an incredibly broad criminal background report, including “all . . . charges against . . . the prospective tenant over the previous 7 years.”<sup>174</sup> Yet HUD guidance on criminal background checks indicates that screening out tenants based on arrests that did not lead to convictions is likely to violate the Fair Housing Act.<sup>175</sup> HUD is currently proposing a rule that would make it “presumptively unreasonable” for HUD-assisted housing providers to screen for criminal records that are more than three years old.<sup>176</sup>

173 Colorado’s PTSR law, Colo. Rev. Stat. § 38-12-902(2.5)(e)(I), states that PTSRs must include “[a] rental and credit history report . . . that complies with section 38-12-904(1)(a)” of the Colorado Revised Statutes. Section 38-12-904(1)(a) prohibits landlords from considering rental or credit history that is more than seven years old, which is already the standard for consumer reports under federal law, 5 U.S.C. §1681c. However, 904(1)(a) also says that landlords conducting credit and rental history screening must comply with another provision, Section 38-12-904(1)(c). 904(1)(c) prohibits landlords from using a “credit score, adverse credit event, or lack of credit score” to screen tenants who have housing subsidies, unless required by federal law. It’s not clear what it means for a PTSR to “comply” with these provisions, which were written to limit the actions of landlords and not PTSR providers. However, an optimistic interpretation could be that PTSRs must not include a credit report (or at least a credit score and adverse credit history) for applicants using housing subsidies. Colorado’s PTSR law also states that the criminal background check included in a PTSR must comply with section 38-12-904(1)(b). That section prohibits landlords from screening tenants based on arrest records “from any time” or convictions that are more than five years old, with the exception of certain enumerated convictions. This seems to suggest that PTSRs may not include arrest records or convictions more than five years old. These potential restrictions on the contents of PTSRs appear better than the overly broad requirements in other states; however, as discussed earlier, it will still be difficult or impossible for landlords and tenants to ascertain whether PTSRs available for purchase actually comply with these requirements.

174 Md. Code Ann., Real Prop. § 8–218(b)(2)(i).

175 US Dep’t of Housing & Urban Dev., Office of Gen. Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions 5–6, Apr. 4, 2016, [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF) [hereinafter “HUD criminal records screening guidance”]. The HUD guidance discusses “arrests not resulting in conviction” and “convictions.” It does not specifically address “charges.” However, by using this dichotomy, the guidance suggests that all non-convictions “do not constitute proof of past unlawful conduct,” and that screening out tenants because of charges cannot be justified under the Fair Housing Act if it results in a disparate impact (which it likely would). *Id.*

176 US Dep’t of Housing & Urban Dev., Proposed Rule on Reducing Barriers to HUD-Assisted Housing, 89 Fed. Reg. 25332, 25345, Apr. 10, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-04-10/pdf/2024-06218.pdf>.

PTSR laws also potentially conflict with recent HUD guidance on the application of the Fair Housing Act to tenant screening.<sup>177</sup> The guidance warns against relying on overly broad criminal, credit, and eviction history screening. It emphasizes the importance of only using “relevant” screening criteria, and states that

[r]ecords without a negative outcome are not relevant. For example, the record of an eviction proceeding has no relevance if the tenant prevailed. If a court record does not provide enough information to determine who prevailed, it should be disregarded unless additional information about the disposition is obtained.<sup>178</sup>

The guidance also says that tenant screening should consider “all types of relevant information . . . For example, less common sources of income (e.g., SSDI) or other financial resources.”<sup>179</sup> PTSR laws generally do not include requirements for the contents of reports to ensure that information is relevant and accurate, such as requiring court records to have updated dispositions, excluding eviction filings without final outcomes, or requiring reports to include income from public assistance and other sources.

A news report from Colorado demonstrates how PTSR laws may require background checks that sweep more broadly than what landlords typically require or tenant screening companies typically provide.<sup>180</sup> Tenant screening company representatives said that Colorado’s criminal background check and employment verification requirements for PTSRs were more extensive than most tenant screening reports: “[T]here’s no screening company that I’ve ever heard of that has all of this already built out[.]”<sup>181</sup> These broad requirements likely mean that tenants will have to pay for the most expensive option that screening companies such as MyScreeningReport provide, further undermining the laws’ stated purpose of lowering fees for housing applicants.

Instead of directly protecting tenants from having to pay to apply for housing, PTSR laws empower the tenant screening industry with a new way to charge tenants. Companies can and do market portable reports to tenants even when landlords have no obligation to accept them, possibly leading tenants to pay even more during their housing search.<sup>182</sup>

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177 HUD tenant screening guidance, *supra* note 10.

178 *Id.* at 11.

179 *Id.*

180 Kenney, *supra* note 133.

181 *Id.*

182 *See, e.g.*, RentSpree, What Renters Need to Know About Reusable Rental Applications, Feb. 20, 2024, <https://www.rentspree.com/blog/reusable-applications-for-renters>.

Tenant screening companies have proven that they cannot be trusted to protect tenants' interests or rights. As multiple lawsuits have demonstrated, major tenant screening providers have produced rental scores and recommendations based on discriminatory criteria.<sup>183</sup> For example, CoreLogic produced a report that facilitated the rejection of a potential tenant due to an outdated and irrelevant arrest record,<sup>184</sup> even though HUD has said that screening out tenants based on arrest records likely violates the Fair Housing Act.<sup>185</sup> And SafeRent allegedly assigned low tenant screening scores disproportionately to Black and Latine rental applicants, in part because it relied on credit history without taking into account whether applicants had a voucher that would cover their rent.<sup>186</sup> Tenant screening companies also routinely produce inaccurate reports and fail to respond to tenants' requests to investigate and correct inaccurate information.<sup>187</sup> Yet these unscrupulous companies market their products by claiming to help landlords comply with the law.<sup>188</sup>

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183 See, e.g., Equal Rights Ctr, *supra* note 156; Equal Rights Ctr, Equal Rights Center Sues District Housing Provider for Unlawful, Overly Broad Tenant Screening Criteria, April 25, 2024, <https://equalrightscenter.org/press-release-vesta-2024/>; Order denying defendant's motion to dismiss, Byrd et al. v. JWB Property Mgmt, 3:23-cv-00266-WWB-JBT (M.D. Fla. 2024) (denying a motion to dismiss a Fair Housing Act disparate impact claim against a landlord for automatically denying admission to anyone with a record of an eviction filing within five years preceding their rental application).

184 See *generally* Complaint, CoreLogic, *supra* note 46; Appeal, CoreLogic, *supra* note 50.

185 HUD criminal records screening guidance, *supra* note 175, at 5–6.

186 *Louis v. Saferent*, 685 F.Supp.3d at 26–28; Complaint, *Louis v. Saferent*, *supra* note 44.

187 See, e.g., Fed. Trade Comm'n, Tenant Background Report Provider Settles FTC Allegations that it Failed to Follow Accuracy Requirements for Screening Reports, Dec. 8, 2020, <https://www.ftc.gov/news-events/news/press-releases/2020/12/tenant-background-report-provider-settles-ftc-allegations-it-failed-follow-accuracy-requirements>; Consumer Financial Protection Bureau, CFPB and FTC Take Actions Against TransUnion for Illegal Rental Background Check and Credit Reporting Practices, Oct. 12, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-take-actions-against-transunion-illegal-rental-background-check-and-credit-reporting-practices/>; Tenant screening market report, *supra* note 40, at 26–43.

188 See, e.g., TurboTenant, Tenant Screening FAQs, <https://www.turbotenant.com/tenant-screening/> (describing their tenant screening reports as “fully compliant with fair housing laws, as well as federal and state laws”).

## **VII. Tenant screening systems should be dismantled, not standardized.**

Application fees purportedly exist to cover the cost of tenant screening. But tenant screening does not benefit tenants and is incompatible with a right to housing. It empowers landlords to judge people's worthiness for housing based on records produced by punitive, extractive, and discriminatory systems.

Lawmakers who want to protect tenants should seek to meaningfully limit — and ultimately dismantle — tenant screening, rather than further entrenching it. Our housing system needs to be transformed so that everyone has housing, and their ability to pay rent is irrelevant. In the meantime, the requirements for accessing housing should be minimal. If we accept the current reality that tenants must be able to pay rent, then it is justifiable to limit landlords to assessing proof of income, such as pay stubs or housing vouchers, when considering applicants.

Tenants, advocates, and lawmakers have tried or succeeded to meaningfully limit tenant screening by:

- **Prohibiting or significantly curtailing the use of criminal records to screen tenants:** Seattle,<sup>189</sup> Berkeley,<sup>190</sup> Oakland,<sup>191</sup> and Ann Arbor<sup>192</sup> have laws prohibiting the use of criminal history to screen tenants.
- **Preventing eviction records from being used to screen tenants:** The New York Housing Stability and Tenant Protection Act makes it illegal to deny a rental application based on an applicant’s past involvement in a landlord-tenant dispute.<sup>193</sup> The law establishes a presumption that a person is in violation if they request landlord-tenant court history from a tenant screening company or examine landlord-tenant court records and subsequently deny the applicant.<sup>194</sup> The law also prohibits the court system from selling eviction records to any third party.<sup>195</sup> California seals eviction records at the point of filing and keeps them permanently sealed unless the landlord prevails within 60 days.<sup>196</sup>
- **Advocating for prohibitions on credit history screening for rental housing:** In 2021, the Seattle Renters’ Commission sent a letter to the mayor and city council advocating for a prohibition on credit checks for rental housing.<sup>197</sup> California Assembly Member Sharon Quirk-Silva (D-67) introduced a bill in 2022 to ban credit checks for rental housing.<sup>198</sup> In its 2024 guidance on application of the Fair Housing Act to tenant screening, HUD acknowledged it was “unaware of any studies showing that credit reports and scores accurately predict a successful tenancy” and advised landlords against relying on them due to the racial and other disparities they reflect.<sup>199</sup>

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189 Seattle Muni. Code § 14.09. A 2023 Ninth Circuit holding invalidated the part of the law that prohibits landlords from “inquir[ing] about” criminal history, *Yim v. City of Seattle*, 63 F.4th 783 (9th Cir. 2023), but the rest of the law still stands. See Seattle Office for Civil Rights, Criminal History Protections, June 2023 Update: Fair Chance Housing Ordinance, June 6, 2023, <https://www.seattle.gov/civilrights/housing-rights/criminal-history-protections>.

190 Berkeley Muni. Code § 13.106.040.

191 Oakland Code of Ordinances § 8.25.

192 Ann Arbor Code of Ordinances Title IX Chapter 122.

193 NY Real Prop. Law § 227–f.

194 *Id.*

195 NY Jud. Laws §212(x).

196 Cal. Civ. Proc. Code § 1161.2.

197 Letter from Seattle Renters’ Commission to Seattle City Council recommending passage of an ordinance to remove credit checks from rental applications, Feb. 4, 2021, [https://www.seattle.gov/documents/Departments/Neighborhoods/Shared/SeattleRentersCommission/SRC\\_Letter\\_Credit-Check.pdf](https://www.seattle.gov/documents/Departments/Neighborhoods/Shared/SeattleRentersCommission/SRC_Letter_Credit-Check.pdf).

198 AB2527, California Leg., 2021-22 Reg. Sess., [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2527](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2527).

199 HUD tenant screening guidance, *supra* note 10, at 17.

Rather than empowering tenant screening companies, policymakers should empower tenants by strengthening their rights and supporting their efforts to organize. For example, the Homes Guarantee briefing book outlines a National Tenant Bill of Rights that includes universal rent control and a national right to lease renewal.<sup>200</sup> Tenant unions around the country have demanded rent control, community control over housing, and an end to eviction and displacement.<sup>201</sup> Policymakers must engage with these demands and work toward a future where housing is treated as a basic necessity and a right instead of a commodity for investors such as private equity firms.

Our critique of PTSR laws is not a critique of all incremental harm reduction measures. We recognize that the cost of housing is an emergency and that tenants need immediate relief as well as long-term transformative change. Yet we reject the idea that short-term relief should come at the cost of locking in the tenant screening industry's power over the long term.

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200 People's Action, Briefing Book, A National Homes Guarantee, Sept. 5, 2019, <https://homesguarantee.com/wp-content/uploads/Homes-Guarantee--Briefing-Book.pdf>. See also Nat'l Housing Law Project, Nat'l Low Income Housing Coalition & Tenant Union Federation, National Tenants Bill of Rights, 2024, <https://nlihc.org/national-tenants-bill-rights>.

201 See, e.g., LA Tenants Union, Tenant Handbook Volume II, at 56–57, 2019, [https://latenantsunion.org/wp-content/uploads/2019/09/LATU\\_HB\\_English\\_Volume\\_II.pdf](https://latenantsunion.org/wp-content/uploads/2019/09/LATU_HB_English_Volume_II.pdf); Autonomous Tenants Union, <https://www.autonomoustenantsunion.org/about>.



## VIII. All rental application fees should be banned.

Policymakers who want to mitigate the burden of rental application fees should take the straightforward path and ban them outright with no exceptions. Application fee bans have more potential than PTSR laws to actually lower housing search costs, without further entrenching discriminatory tenant screening criteria. Bans also do not require any additional steps from tenants or landlords to comply and could make it easier for tenants to know when their rights are being violated. Vermont<sup>202</sup> and Massachusetts,<sup>203</sup> as well as the United Kingdom,<sup>204</sup> have already passed legislation prohibiting landlords from collecting application fees. HUD has also recommended that landlords eliminate rental application fees.<sup>205</sup>

Blanket rental application fee bans acknowledge these fees for what they are: costs invented by the real estate and background check industries to profit from tenants while providing no benefits to the tenants themselves.<sup>206</sup> As the Formerly Incarcerated, Convicted People and Families Movement told the FTC, “[W]e do not actually receive anything of value in exchange for rental application fees. Rather, we pay for an undisclosed, and likely incalculable, ‘chance’ at housing at the behest of wide landlord discretion and proprietary screening algorithms.”<sup>207</sup> Prohibiting rental application fees delegitimizes the idea that tenants should have to pay to search for housing or for tenant screening services. Shifting the financial burden of tenant screening measures to landlords would force landlords to evaluate whether the service they’re paying for is worth it.

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202 9 Vt Stat. Ann. § 4456a.

203 Mass. Gen. Laws Chapter 186 § 15B.

204 Tenant Fees Act 2019 c.4., <https://bills.parliament.uk/bills/2242>. However, this law does permit holding deposits, which, while refundable, are also up-front costs that can be barriers to accessing housing.

205 Marcia L. Fudge, Secretary, Dep’t Of Housing & Urban Dev., Junk Fees Memo, Mar. 7, 2023, [https://www.hud.gov/sites/dfiles/PA/documents/Junk\\_Fees\\_Memo\\_SOHUD\\_signed.pdf](https://www.hud.gov/sites/dfiles/PA/documents/Junk_Fees_Memo_SOHUD_signed.pdf).

206 See Dunn, *supra* note 1, at 35.

207 FICPFM, unfair and deceptive fees comment, *supra* note 1, at 8.

Even with bans, illegal application fees persist in Vermont and Massachusetts due to gaps in the laws and their enforcement. For example, the Massachusetts law does not explicitly state that rental application fees are prohibited; instead, it lists specific instances in which landlords *can* collect fees.<sup>208</sup> Any other costs — including application fees — are technically prohibited, but the law is too vague.<sup>209</sup> Some other states, including Rhode Island, limit landlords to charging for the “actual cost” of a background check.<sup>210</sup> These laws functionally uphold application fees and are far too permissive to count as bans. In Vermont, there is disagreement about whether landlords can charge for the actual costs of background and credit checks since the statute does not define what an application fee is.<sup>211</sup> Both Vermont Legal Aid and a member of the Vermont state legislature maintain that the law’s intent was to prohibit all fees, including actual costs of background screening.<sup>212</sup> Legislation should explicitly ban all application fees and any other fees<sup>213</sup> charged before a lease is signed, including the actual costs of tenant screening reports, background checks, and/or credit reports.

Rental application fee bans also need to explicitly apply to any party attempting to charge an application fee. In Massachusetts, the law only applies to a “lessor,” and local experts have reported that brokers and realtors can still get away with charging application fees.<sup>214</sup>

The Massachusetts and Vermont bans are also undermined by enforcement problems. While Vermont’s law does explicitly prohibit landlords from charging application fees, landlords in the state continue to charge these fees. Part of the issue is that applicants may not know about the prohibition, which means landlords are less likely to be held accountable.<sup>215</sup> This can in part be addressed by requiring landlords to clearly notify applicants of the prohibition, either on the rental listing and/or on the application. Legislation could also require tenant screening companies to notify tenants that landlords are not allowed to charge them application fees or fees for background checks.

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208 Mass. Gen. Laws Chapter 186 § 15B(1)(b).

209 Simón Rios, *For Many Renters, Apartment Application Fees Add Up. Some are Illegal*, WBUR, Nov. 27, 2023, <https://www.wbur.org/news/2023/11/27/renters-application-fees-illegal-landlords>.

210 R.I. Gen. Laws § 34-18-59(b)(2).

211 Tik Root, *‘I want my money back’: Rental Application Fees Rampant Despite Vermont’s Prohibition*, VT Digger, Nov. 1, 2022, <https://vtdigger.org/2022/11/01/i-want-my-money-back-rental-application-fees-rampant-despite-vermonts-prohibition/>.

212 *Id.*

213 See Nelson et al., *Too Damn High*, *supra* note 1, at 11–29.

214 Ludden, *supra* note 132.

215 Root, *supra* note 211.

The Massachusetts attorney general is also not doing any proactive enforcement and lacks an effective system to receive complaints from applicants about rental application fees.<sup>216</sup> The Vermont Attorney General's Office claimed to be investigating illegal application fees in 2022, but there has reportedly been no evidence of broad enforcement.<sup>217</sup> Enforcement is often left up to tenants, but in a tight rental market, tenants likely do not have the time or resources to challenge illegal fees while trying to get housing.<sup>218</sup> Challenging illegal rental application fees would also not be worth the resources for tenants if the main remedy is just recovering the cost of the application fee. Enforcement left up to tenants is effectively no enforcement at all.

Policymakers should include stronger, more proactive enforcement mechanisms and simple tools that make it easier for applicants to report landlords for charging illegal application fees. For example, the Massachusetts Attorney General's Office said that it cannot determine how many complaints it receives specifically about rental application fees because it only tracks the broader category of landlord-tenant disputes.<sup>219</sup> This could be solved by adding a complaint category specifically for rental application fees under landlord-tenant disputes.

State agencies could more proactively enforce bans by regularly monitoring rental listings and contacting properties to test whether they charge application fees. Laws should provide funding for agencies to do this testing or to fund testing programs at nonprofit organizations, which often already carry out this type of testing for compliance with other housing laws. Legislation also should ensure that tenants can file civil actions in court as well as complaints with the relevant state or local agency. In addition to paying significant fines, statutory damages, and attorney's fees, landlords with multiple units should be required to provide housing as a remedy, as in Philadelphia's Renter's Access Act, which requires violators to offer their next available unit to the injured tenant.<sup>220</sup>

Vermont has at least one potentially useful enforcement avenue that could be replicated elsewhere. There, all consumer protection complaints sent to the attorney general are also forwarded to the entity being complained about, which has had some effect in stopping landlords from charging application fees as well as notifying those who may be unaware of the prohibition.<sup>221</sup> Policymakers can look to the laws in Vermont and Massachusetts as starting points in drafting even stronger prohibitions.

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216 Rios, *supra* note 209.

217 Root, *supra* note 211.

218 *Id.*

219 Rios, *supra* note 209.

220 Phil. Code § 9-810(5).

221 Root, *supra* note 211.

## IX. PTSR laws are disappointing but could be improved.

PTSR laws should not be prioritized over stronger approaches like application fee bans. However, in jurisdictions where PTSR laws have been introduced, advocates and lawmakers may want to try to make them better. The following changes could help increase the chances that PTSR laws actually make the housing search less expensive.

- **Landlords should be prohibited from charging application fees to tenants who provide them with reusable reports.** As discussed above, landlords will simply refuse to accept reusable reports if they don't have to. The only exemptions should be for landlords that adopt policies that are better for tenants than PTSRs, such as not charging application fees at all. Landlords must not be able to disadvantage tenants using PTSRs by placing additional burdens on them, such as charging a "holding fee" from tenants wishing to use these reports.
- **Landlords should be required to clearly state at the top of their listings that they are required to accept portable screening reports and prohibited from charging additional fees.** The burden must not be on tenants to learn that reusable reports are an option or to educate landlords about the law.
- **PTSR laws should allow tenants to provide their own reports directly to landlords.** Many of the existing laws and proposals require reusable reports to be sent directly to landlords by tenant screening companies. Yet few portable products like this exist, and most of them require the tenant to get an invitation from the landlord, making it unclear how the tenant should actually go about using the report to apply to multiple units. Placing restrictions on tenants' use of portable screening reports is counterproductive to the stated goal of making the housing search less expensive. Tenants in states with PTSR laws cannot figure out where they can get a report that actually meets the law's standards, even after doing extensive research.
- **PTSR laws should do away with other onerous restrictions,** such as requiring tenants to provide a certification that the information in their report hasn't changed in the past 30 days.

- **PTSR laws should explicitly cap the cost of reports.** Lawmakers should not be encouraging tenants to purchase portable screening reports without limiting the amount a tenant screening company can charge for a report. In jurisdictions that already have caps on application fees, those same limitations — or stricter ones — should apply to the fees tenant screening companies charge.
- **Policymakers and advocates should use PTSR laws as an opportunity to restrict tenant screening criteria.** Laws that define PTSRs to include eviction records, credit histories, and criminal records are regressive. Instead, laws should seek to restrict or eliminate the use of these records, as described above.
- **Tenants should be able to reuse portable screening reports for much longer than 30 days.** Thirty days is far too short for marginalized tenants who need housing the most yet struggle to get through the application process because landlords discriminate against them based on their race, disability, source of income, criminal records, or other factors. Rhode Island’s law allows tenants to use reports prepared within 90 days of the application date,<sup>222</sup> which is more generous, but still not enough time for many low-income tenants and others who face discriminatory rejections. For voucher recipients, portable reports should last for the duration that their voucher is valid.
- **PTSR laws should explicitly state that landlords and tenant screening companies must comply with any applicable state, local, or federal restrictions on the contents of tenant screening reports and on landlords’ tenant screening criteria and practices.** Many jurisdictions, as well as federal guidance, restrict the types of criminal, credit, and eviction records that landlords can consider when screening tenants. PTSR laws should leave no ambiguity that these restrictions still apply and that landlords may not require applicants to provide PTSRs that include any prohibited criteria or records. The language of PTSR laws should not contradict existing tenant screening restrictions, unless it is to provide stronger protections to tenants. For example, in Seattle, tenants who want to take advantage of Washington state’s reusable reports law may have to forgo some of the protections in Seattle’s fair criminal record screening law.<sup>223</sup> California’s PTSR law attempts to preserve more protective local laws by including the following provision:

If an ordinance, resolution, regulation, administrative action, initiative, or other policy adopted by a city, county, or city and county conflicts with this section, the policy that provides greater protections to applicants shall apply.<sup>224</sup>

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222 R.I. Gen. Laws § 34-18-59(b)(1).

223 *See supra* text accompanying and sources cited in notes 171-172.

224 Cal. Civ. Proc. Code § 1950.1(g).

- **PTSR laws should include authority, funding, and mandates for strong, proactive enforcement.** Tenant screening laws — especially laws that aren't unqualified bans — are difficult to enforce because landlords have great incentives to violate them and can easily do so without getting caught. Tenants cannot be expected to take on this enforcement burden given the overwhelming power differential between landlords and tenants and the lack of meaningful remedies available to tenants for challenging fees. Private rights of action must be coupled with strong authority, funding, and mandates for relevant state agencies to proactively enforce the law on tenants' behalf. It's not enough to wait for complaints. Agencies also must continuously monitor landlords' compliance by conducting, or providing funding for organizations to conduct, regular audits of landlords' application policies — for example, reviewing housing ads and contacting landlords to find out whether they accept or place unlawful conditions on reusable reports. This kind of testing is common practice in the enforcement of other laws, such as fair housing requirements. Landlords should face significant fines for violations. PTSR laws should provide for housing as a remedy for tenants who want it, looking to Philadelphia's Renters' Access Act as an example. Under that law, if a landlord with five or more units unlawfully screens out a tenant, the landlord must offer the tenant the next available unit.<sup>225</sup> However, monetary remedies must still be made available to tenants, especially those who do not want to rent from a landlord that previously violated their rights.

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225 Phila. Code § 9–810(5).

# X. Conclusion

Tenants need immediate relief from rental application fees, which are exploitative and unnecessary barriers to housing. PTSR laws seem unlikely to bring meaningful relief from these fees. While PTSRs could theoretically save some tenants money compared to traditional application fees, these benefits remain theoretical because legally sufficient PTSRs are currently too hard and confusing for tenants to access and too many conditions are placed on their use. With PTSRs, the housing search will still be far too expensive for low-income tenants and others who face housing discrimination. In addition to legitimizing application fees, existing PTSR laws and proposals further entrench discriminatory tenant screening practices and a tenant screening industry that profits by squeezing increasingly high junk fees from tenants. While this issue brief has offered some suggestions for improving upon PTSR legislation, we believe advocates and policymakers should prioritize full, unqualified bans on application fees. More broadly, policymakers must focus on engaging with tenants' demands to make housing a right rather than a vehicle for corporate investment and profit.



# Appendix A

Appendix A is a table of all PTSR legislation passed or introduced at the time of publication.

## Passed Legislation

<u>Washington</u>		
<b>Status (Year)</b>	Passed (2016)	<b>Portable tenant screening reports must include:</b>
<b>Requirement to accept?</b>	No	1. A consumer credit report prepared by a consumer reporting agency within the past 30 days
<b>Requirement to notify?</b>	Yes	2. The prospective tenant's criminal history
		3. The prospective tenant's eviction history
		4. An employment verification
		5. The prospective tenant's address and rental history
<u>New York*</u>		
<b>Status (Year)</b>	Passed (2019)	<b>Portable tenant screening reports must include:</b>
<b>Requirement to accept?</b>	Yes	1. A copy of a background check or credit check conducted within the past 30 days
<b>Requirement to notify?</b>	No	
<u>Maryland</u>		
<b>Status (Year)</b>	Passed (2021)	<b>Portable tenant screening reports must include:</b>
<b>Requirement to accept?</b>	No	1. A consumer credit report
<b>Requirement to notify?</b>	Yes	2. For each jurisdiction indicated as a prior residence of the prospective tenant, regardless of whether the residence is reported by the prospective tenant or by a consumer reporting agency preparing a consumer report: (i) a comprehensive criminal history records check; check for all federal, state, and local charges against and convictions of the prospective tenant over the previous 7 years; and (ii) a comprehensive eviction history for all state and local jurisdictions for the previous 7 years
		3. Verification of employment and income
		4. Current address and rental history

## California

<b>Status (Year)</b>	Passed (2022)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"><li>1. Name</li><li>2. Contact information</li><li>3. Verification of employment</li><li>4. Last known address</li><li>5. Results of an eviction history check in a manner and for a period of time consistent with applicable law related to the consideration of eviction history in housing</li></ol>
<b>Requirement to accept?</b>	No	
<b>Requirement to notify?</b>	No	

## Colorado

<b>Status (Year)</b>	Passed (2023)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"><li>1. Name</li><li>2. Contact information</li><li>3. Verification of employment and income</li><li>4. Last known address</li><li>5. For each jurisdiction indicated in the consumer report as a prior residence of the prospective tenant, regardless of whether the residence is reported by the prospective tenant or by the consumer reporting agency preparing the consumer report: (i) a rental and credit history report for the prospective tenant that complies with section 38-12-904 (1)(a) concerning a landlord's consideration of a prospective tenant's rental history; and (ii) a criminal history record check for all federal, state, and local convictions of the prospective tenant that complies with section 38-12-904 (1)(b) concerning a landlord's consideration of a prospective tenant's arrest records.</li></ol>
<b>Requirement to accept?</b>	Yes	
<b>Requirement to notify?</b>	Yes	

## Rhode Island\*

<b>Status (Year)</b>	Passed (2023)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"><li>1. An official state criminal background check or credit report issued within 90 days of the application for a rental unit</li></ol>
<b>Requirement to accept?</b>	Yes	
<b>Requirement to notify?</b>	No	

## Illinois

<b>Status (Year)</b>	Passed, awaiting governor's signature (2024)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"><li>1. Name</li><li>2. Contact information</li><li>3. Verification of employment and source of income</li><li>4. Last known address</li><li>5. Results of an eviction history check in a manner and for a period of time consistent with applicable law related to the consideration of eviction history in housing</li></ol>
<b>Requirement to accept?</b>	Yes	
<b>Requirement to notify?</b>	No	

## Introduced Legislation

### Utah

<b>Status (Year)</b>	Introduced (2020)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"> <li>1. A consumer report prepared by a consumer reporting agency within the past 60 days</li> <li>2. The prospective renter's criminal history</li> <li>3. The prospective renter's eviction history</li> <li>4. Employment verification of the prospective renter</li> <li>5. The prospective renter's address and rental history</li> </ol>
<b>Requirement to accept?</b>	No	
<b>Requirement to notify?</b>	Yes	

### Virginia

<b>Status (Year)</b>	Introduced (2022)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"> <li>1. The applicant's history of eviction judgments as reported on the statewide online case information system maintained by the Office of the Executive Secretary of the Supreme Court</li> <li>2. Verification of the applicant's income</li> <li>3. The applicant's address and rental history, including the name of any former landlord for the past three years</li> <li>4. The results of a national sex offender registry search</li> </ol>
<b>Requirement to accept?</b>	Yes	
<b>Requirement to notify?</b>	Yes	

### Pennsylvania

<b>Status (Year)</b>	Introduced (2023)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"> <li>1. Name</li> <li>2. Contact information</li> <li>3. Verification of employment</li> <li>4. Last known address</li> <li>5. Results of an eviction history check in a manner and for a period of time consistent with applicable law related to the consideration of eviction history in housing</li> </ol>
<b>Requirement to accept?</b>	No	
<b>Requirement to notify?</b>	No	

### Hawai'i

<b>Status (Year)</b>	Introduced (2024)	<b>Portable tenant screening reports must include:</b> <ol style="list-style-type: none"> <li>1. A copy of the applicant's criminal background check or credit report received within 30 days from another landlord or that landlord's agent that has not been falsely altered</li> </ol>
<b>Requirement to accept?</b>	Yes	
<b>Requirement to notify?</b>	No	

## Michigan

**Status (Year)** Introduced (2024)

**Requirement to accept?** No

**Requirement to notify?** Yes

### Portable tenant screening reports must include:

1. A consumer report that was prepared within the previous 45 days by a consumer reporting agency at the request and expense of a prospective tenant.

## Tennessee

**Status (Year)** Introduced (2024)

**Requirement to accept?** No

**Requirement to notify?** Yes

### Portable tenant screening reports must include:

1. Credit Report
2. For each jurisdiction indicated as a prior residence of the prospective tenant, regardless of whether the residence is reported by the prospective tenant or by a consumer reporting agency preparing a consumer report: (i) a comprehensive criminal history record check for all local, state, and federal charges against and convictions of the prospective tenant for the previous 7 years; and (ii) a comprehensive eviction history for the previous 7 years
3. Verification of employment and income
4. The prospective tenant's current address and rental history

*\*New York and Rhode Island laws do not explicitly refer to portable or reusable tenant screening reports. Instead, both states require landlords to waive rental application fees if provided with criminal background checks or credit reports.*

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