



Sarah M. Ohs
Vice President of Government Relations
sohs@cdiaonline.org
(703) 965-5286

Consumer Data Industry Association
1090 Vermont Ave., NW, Suite 200
Washington, D.C. 20005-4905

October 23, 2023

WWW.CDIAONLINE.ORG

Representative Kevin Coleman
Chairman
Economic Development and Small Business Subcommittee on Housing
Room 326, House Office Building
Lansing, MI 48933

Re: *HB 4878 Michigan Fair Chance Access to Housing Act*

Dear Chairman Coleman:

I write on behalf of the Consumer Data Industry Association (CDIA) to respectfully request that your committee oppose HB 4878, the Michigan Fair Chance Access to Housing Act, a bill to hide relevant criminal history from rental housing providers' community safety considerations.

CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk.

We believe this legislation has the potential to create safety risks to renter residents by hiding public records from housing providers, which relies on counterproductive "conditional offer" approaches that, research shows, harm rather than help minority and justice-involved applicants whom housing providers serve. Affordable housing is a scarce resource. Withholding publicly available criminal records from the housing providers who make risk decisions threatens the safety of rental residents in market-rate and affordable housing communities across Michigan.

Tenant screening reports provide a valuable tool to rental housing providers to assist them in fulfilling their responsibilities to deliver safe, clean, and well-maintained properties to their residents. Housing providers use public record data such as criminal history information and sex offender registration to assist them in delivering safe environments and to mitigate known risks that applicants may pose to existing residents and employees of the property.

HB 4878 proposes to forbid review of an applicant’s criminal history until after a conditional offer has been made. Unfortunately, studies show that minority rental applicants experience adverse results under these conditional offer schemes that limit landlords’ access to available, relevant applicant information. A rigorous comparative field study published this year by the Federal Reserve Bank of Minneapolis about a new Minneapolis ordinance restricting landlords’ ability to consider applicants’ criminal, credit, and eviction history concluded that the policy “worsened discrimination against Somali American and African American rental applicants.”¹

Similar findings have been made for “conditional offer” or “ban the box” schemes in the employment context – where minority employment applicants experienced fewer callbacks from employers who could not see their criminal history up front.² Based on this information, minority applicants, per this research, would get more callbacks and due consideration under current law than they would if HB 4878 becomes law.

HB 4878’s proposes to conceal a wide range of criminal history that helps predict recurrent, unsafe criminal behavior. Remarkably, as drafted, HB 4878 would conceal all felony convictions adjudicated more than a year old, except for Michigan arson and human trafficking convictions.

Thus, the bill would forbid consideration of a felony convict’s release from prison where their sentence had been adjudicated more than 12 months earlier. HB 4878 would have landlords turn a blind eye to the community safety risks posed by a subset of the most violent and destructive felons - those freshly released from jail or completing their sentence, whose offense was severe enough to have been adjudicated with a sentence of more than a year.

Rather than ignore felony crimes with 5 and 10-year sentences, as would be the case should HB 4878 pass, the best-in-class criminology research demonstrates that violent and

¹ Gorzig & Rho, *The Impact of Renter Protection Policies on Rental Housing Discrimination*, FED. RES. BANK. MINN., OPPY. & INCLUSIVE GROWTH INST. WORKING PAPER 61 (Sept. 21, 2022; rev’d., May 2023), available at: <https://www.minneapolisfed.org/research/institute-working-papers/the-impact-of-renter-protection-policies-on-rental-housing-discrimination>.

² “Our results support the concern that BTB policies encourage racial discrimination: the black-white gap in callbacks grew dramatically at companies that removed the box after the policy went into effect. Before BTB, white applicants to employers with the box received 7% more callbacks than similar black applicants, but BTB increased this gap to 43%.” Agan, Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, THE QUARTERLY JOURNAL OF ECONOMICS, Vol. 133, Iss. 1, 191–235 (Feb. 2018).

non-violent federal and state prisoners alike have a high likelihood of repeat criminal activity 8 and 9 years after their release.

- The U.S. Department of Justice’s 2018 study concluded that the re-arrest rate for state prisoners was 83% over a nine-year study period.
- A 2019 U.S. Sentencing Commission report found a 39.8% re-arrest rate for nonviolent and a 64% re-arrest rate for violent federal prisoners over an eight-year period.³
- A 2021 study released by the federal Bureau of Justice Statistics substantiates the concern regarding violent offenders, finding that “[a]bout 1 in 3 (32%) prisoners released in 2012 after serving time for a violent offense were arrested for a violent offense within 5 years.⁴ “Violent offenses” were defined to include homicide, rape or sexual assault, robbery, assault, and other miscellaneous or unspecified violent offenses.⁵

These expert studies by the U.S. Department of Justice and U.S. Sentencing Commission support the case for criminal public record screening with lookback periods found in current law. Only with the ability to use the public record data, can rental housing providers carry out their duty to provide safe communities for residents.

Not using criminal record information in tenant screening presents concrete, material risks to residents. For example, in 2016, a Nebraska tenant’s minor child was kidnapped and raped by another resident who had been allowed to move into a rental community without first undergoing a background check.⁶ Another child was raped and murdered in 2017 by a resident in an apartment community who had a history of violent offenses but was allegedly permitted into the community without undergoing a background

³ M. Clarke, *Long-term Recidivism Studies Show High Arrest Rates*, Prison Legal News (May 3, 2019), available at: <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>

⁴ *Recidivism of Prisoners Released in 34 States in 2012: A 5-Year Follow-Up Period (2012-2017)*, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/rpr34s125yfup1217.pdf> p. 12.

⁵ *Id.* at 24.

⁶ *Cure v. Pedcor Mgmt. Corp.*, 265 F. Supp. 3d 984, 988–89 (D. Neb. 2016) (denying motion to dismiss because plaintiff alleged sufficient facts to argue that if the housing provider had conducted a background check, it would have discovered that the perpetrator had multiple convictions for assault and public indecency).

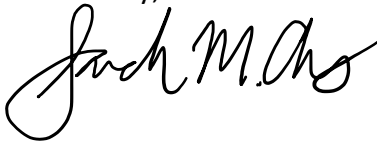
check.⁷ Last year, following the death of a renter at the hands of a property management employee, Miya's Law⁸ took effect in Florida to protect renter safety. The law requires Housing Providers to conduct thorough background checks of their employees through a consumer reporting agency.⁹

Tenant screening reports help housing providers do what they can to protect their residents with objective, relevant data. The use of criminal record information in tenant screening particularly protects underserved resident populations from violence and discrimination.

In addition, HB 4878 proposes to prevent a landlord from recouping its costs of conducting a background check where it takes adverse action against the individual. Unfortunately, renter applicant fraud frequency has increased, and fraud-causing technology has become more widespread. As a result, housing providers' costs of conducting an adequate background evaluation have increased. To preserve scarce affordable housing in Michigan, a rental housing provider should continue to be able to conduct an appropriate background evaluation with appropriate reimbursement by the applicant.

It is because of the concerns outlined above that we respectfully oppose HB 4878. Thank you for your consideration of our comments. I would be very happy to answer any further questions that the Committee might have.

Sincerely,



Sarah M. Ohs

Vice President of Government Relations

⁷ Cate Cauguiran, *Family of woman murdered in Schaumburg apartment files lawsuit*, ABC 7 News (Aug. 2, 2017), available at: <https://abc7chicago.com/tiffany-thrasher-rape-murder-schaumburg/2267952/>

⁸ Codified at Fla. Stat. § 83.515.

⁹ "Florida Renters Made Safer Under Miya's Law – Landlords Required to Background Check Workers," Jun. 30, 2022, A. Martinez, <https://www.forbes.com/sites/alonzomartinez/2022/06/30/florida-renters-made-safer-under-miyas-law--landlords-required-to-background-check-workers/?sh=1e499e5b626c>.