STATE OF NEW YORK

5407

2019-2020 Regular Sessions

IN SENATE

April 30, 2019

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to licensing tenant screening bureaus

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The real property law is amended by adding a new section 238-a to read as follows:

§ 238-a. Tenant screening bureaus; licensing. 1. Definitions. For purposes of this section the following terms shall have the following meanings: (a) "File" when used in connection with information about any tenant or prospective tenant means all of the information about the tenant or prospective tenant that is recorded and retained by a tenant screening bureau, regardless of how the information is stored.

(b) "Residential proceeding" means a judicial or administrative proceeding that is related to residential tenancy, rent or eviction, regardless of the forum in which such proceeding is initiated and regardless of whether such proceeding is initiated by a landlord or a tenant.

(c) "Tenant screening bureau" means a person that, for a fee, regularly engages in the business of assembling or evaluating information about individuals for the purpose of furnishing tenant screening reports to third parties where such reports are used or are intended to be used in connection with the rental of residential real property located in the state. Such term shall not include a person who obtains a tenant screening report and provides such report or information contained in such report to a subsidiary or affiliate of such person.

(d) "Tenant screening report" means any written, oral or other communication that purports to contain information about a residential proceeding involving tenant or prospective tenant who is the subject of the report and that is used or expected to be used in whole or in part

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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for the purpose of serving as a factor in determining a tenant's or a prospective tenant's suitability for housing.

2. License required. No person shall act as a tenant screening bureau without first having obtained a license in accordance with this section.

3. License term; fees. (a) A license pursuant to this section shall be valid for two years unless sooner suspended or revoked.

(b) The fee for a license or a renewal thereof is seventy-five dollars.

4. Application. (a) A person applying for a license or a renewal thereof under this section shall file an application in such form and detail as the secretary of state shall prescribe and shall pay the fee required by this section.

(b) The secretary of state shall require each person applying for a license under this section to provide the following information:

(i) the name, address, telephone number and e-mail address of the applicant;

(ii) if the applicant is a nonresident of the state, the name, address, telephone number and e-mail address of a registered agent in the state upon whom process or other notification may be served or a designation of the secretary of state for such purpose; and

(iii) any other information the secretary of state deems relevant.

5. Required and prohibited practices. (a) For each residential proceeding that it refers to, a tenant screening report shall include all of the following information:

(i) the names of all petitioners in the residential proceeding;

(ii) the names of all respondents in the residential proceeding;

(iii) the name and address of the forum where the residential proceeding was filed;

(iv) the claims alleged in the petition;

(v) in the case of a holdover proceeding, the specific claim or allegation made by the petitioner as grounds for the proceeding;

(vi) whether the rent for the unit that was the subject of the residential proceeding was regulated by law, as alleged in the petition;

(vii) whether the respondent filed an answer in the residential proceeding and, if so, the nature of any defenses asserted in such answer;

(viii) the outcome, if any, of the residential proceeding, such as whether the proceeding was settled, discontinued, dismissed or withdrawn or resulted in a possessory judgment for landlord or tenant or in a money judgment for landlord or tenant;

(ix) if a rent claim made in the residential proceeding was reduced or abated, either by agreement of the parties or by court order, the amount of such reduction or abatement;

(x) the date when information about the residential proceeding will be permanently removed from the file of the subject of such proceeding; and

(xi) the most current status of the residential proceeding.

(b) No tenant screening bureau may furnish a tenant screening report containing any information about a residential proceeding if:

(i) such proceeding is the subject of an expungement order issued by any court of competent jurisdiction;

(ii) such report does not contain all of the information about such residential proceeding required by paragraph (a) of this subdivision; or

(iii) if such report contains information that the tenant screenings bureau know or should know is inaccurate.

6. Powers and duties of the secretary of state. (a) The secretary of state shall promulgate such rules as are necessary to implement and enforce this section.

(b) The secretary of state has the power to enforce this section, to investigate any violation thereof, and to investigate the business, business practices and business methods of any tenant screening bureau if the secretary of state determines that such investigation is warranted. A tenant screening bureau that receives a request for information from the secretary of state shall supply the requested information promptly in a manner provided by rule.

(c) The secretary of state may compel the attendance of witnesses and the production of documents.

(d) The secretary of state may seek to enjoin a violation of this section and may suspend the issuance of any tenant screening report in order to enforce this section.

7. Civil penalties. (a) A person who, after notice and a hearing, is found to have furnished another with a tenant screening report that violates this section is subject to a civil penalty of five hundred dollars for each such tenant screening report furnished.

(b) A person who, after notice and a hearing, is found to have acted as a tenant screening bureau without a license in violation of subdivision two of this section is subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars.

(c) If a person is found to have committed repeated, multiple or persistent violations of any provisions of this section, such person may be responsible for all or part of the cost of the department of state's investigation.

(d) Each penalty or cost specified in this section is in addition to any other applicable penalty or cost specified in this section or in any other law.

8. Private right of action. (a) A tenant or prospective tenant who has been injured by a violation of this section, except a violation of the requirement to obtain a license pursuant to subdivision two of this section, may institute in such tenant's or prospective tenant's own name (i) an action to enjoin such unlawful act or practice, (ii) an action to recover the greater of such person's actual damages or five hundred dollars or (iii) both such actions.

(b) In an action for damages under this subdivision, a court may award punitive damages if such court finds that the defendant willfully violated this section.

(c) In any action under this subdivision, a court shall award reasonable attorney's fees and costs to a prevailing plaintiff.

(d) The issuance of a tenant screening report that the tenant screening bureau knew or should have known contained inaccurate information or otherwise violated this section constitutes an injury for purposes of this subdivision. This paragraph does not limit the types of other injuries that are legally cognizable under this subdivision.

(e) A tenant or prospective tenant who institutes an action pursuant to this section shall provide notice of such action to the secretary of state. The attorney general may intervene in any such action on behalf of the state.

(f) In any action brought by a resident, former resident or prospective resident of the city involving the reporting of a residential proceeding, a party who is found during the course of such action to have violated subchapter III of chapter 41 of title 15 of the United State code or article twenty-five of the general business law shall file

a copy of such finding with the commissioner within sixty days of such finding.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.