



THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB 251 Consumer Protection - Maryland Consumer Reporting Act - Registration of Consumer Reporting Agencies and Regulations

Every day, Marylanders are rejected for a job, an apartment, a loan, or insurance because of inaccurate information on their consumer report. Instead of being judged on their own credit, criminal history, housing history, and employment, they are being unfairly judged using information about other people. This legislation would improve the accuracy of consumer reports so that Marylanders get a fair evaluation by lenders, landlords, and employers.

Inaccuracies in Consumer Reports

A consumer report contains information about an applicant's personal and financial characteristics, including their credit history, arrests and criminal convictions, evictions, and employment.

Errors in consumer reports are shockingly common. The Federal Trade Commission found that one in four consumers have a "potentially material error" in their consumer report that makes them look riskier than they actually are.¹

Errors on a consumer report can cost a consumer thousands of dollars in higher-priced credit, or worse yet, result in the denial of a job, insurance coverage, an apartment, a mortgage loan, or the ability to open a small business.

Some of the most common errors and inaccuracies in consumer reports include:

- reporting information about a different person, such as someone with a similar name but a different birthdate or Social Security number;
- including sealed or expunged criminal and bankruptcy records;
- including older records whose use are barred under federal law;
- reporting information in a misleading manner, such as reporting every court date for a single criminal charge;
- failing to provide the final outcome of an arrest, for example if the charges were dropped; and
- erroneously reporting the seriousness of an offense, such as reporting a misdemeanor as a felony.

¹ 2015 FTC Report to Congress under Section 319 of the FCRA.

Case Study: Inaccurate Criminal Records

In 2018, Marco Antonio Fernandez returned home after a yearlong deployment with the Navy in South Korea and searched for an apartment near his next posting at Fort Meade. Fernandez applied for an apartment at Serenity Place at Dorsey Ridge in Hanover, Maryland. The landlord requested a consumer report from tenant screening company RentGrow to verify his criminal history.

Fernandez, who had earned Top Secret clearance and had a clean record, should have had little to worry about when he underwent tenant screening. But RentGrow's algorithm rejected him for an apartment; it claimed he had a felony drug conviction and three misdemeanors for petty theft.

These reported convictions, however, belonged to an entirely different person: Marco Alberto Fernandez Santana, a Mexican drug trafficker on the terror watch list.

Marco Antonio Fernandez is one of thousands of people every year in Maryland who are mistakenly flagged by screening companies and whose lives are harmed as a result.

Errors Harm Marylanders

Inaccuracies on consumer reports can have devastating consequences for Marylanders struggling to find housing, employment, or access to credit, as these people are being judged erroneously based on wrong or outdated information.

We know that Marylanders are struggling with inaccuracies on their consumer reports. Over the past two years, 15,032 Marylanders have filed complaints with the Consumer Financial Protection Bureau about their consumer reports.² The most frequent source of complaints received by the Bureau – nearly 65% of complaints filed by Marylanders in the last two years – were about inaccurate information on a consumer report, a percentage that is increasing every year.

Moreover, complaints filed by Marylanders are growing at an alarming rate. From 2020 to 2021, Maryland complaints increased by over 60%. Overall, Marylanders have filed the 6th highest per capita number of consumer complaints in the nation.⁵

Burden is on the Consumer to Identify and Correct Inaccuracies

Under federal and state law, the onus is on the consumer to ensure that the information on their consumer report is accurate. However, consumers do not have a way to check consumer reports in advance of their use to ensure their accuracy.

² <https://www.consumerfinance.gov/data-research/consumer-complaints/>

Eight million times a year, consumers contact one of the big three credit reporting agencies to dispute information. But, as the National Consumer Law Center concludes, consumer reporting agencies “have little economic incentive to conduct proper disputes or improve their investigations.”³

The dispute system also fails consumers due to the time lag between the adverse action (e.g. being rejected for an apartment) and the report being corrected. Under federal law, consumer reporting agencies can take up to 30 days to investigate a dispute raised by a consumer.⁴ By the time that a consumer has contacted the reporting agency and the statutory period for data correction lapses, many landlords and employers will have secured a different applicant by then.

Furthermore, there is no process by which a consumer can get all consumer reports about them fixed in one shot. Instead, a consumer has to make a complaint to each individual company. There are 57 consumer reporting agencies that do business in Maryland. If a person applies to multiple apartments or jobs, it is likely that each landlord and employer uses a different screening company and that the consumer will have to undertake disputes with multiple companies in order to have their records corrected.

Issues with Compliance and Enforcement

In spite of federal and state laws that are supposed to protect consumers, there are a multitude of documented compliance issues in recent years. Consumer reporting agencies have been repeatedly sanctioned by regulators, sued by aggrieved consumers, and reprimanded by district and appellate courts. The Federal Trade Commission (FTC) and many State Attorneys General have also investigated and sued major consumer reporting agencies and data furnishers for failing to maintain the accuracy of consumer reports.

Some of the examples of recent settlements include:

- \$4.25 million settlement by the FTC with AppFolio for including records in tenant screening reports that belonged to individuals with a different name or birthdate, records with inaccurate dates and dispositions, and multiple entries for the same criminal or eviction action, among other errors.
- \$3 million settlement by the FTC against RealPage for using overly broad criteria to match applicants to criminal records and the inclusion of mismatched criminal records on tenant screening reports.
- A settlement reached by the Attorneys General for 31 states, including Maryland, with Experian, Equifax, and TransUnion for their noncompliance with federal law. The settlement required the companies to increase monitoring of data furnishers, require

³ “Automated Injustice: How a mechanized dispute system frustrates consumers seeking to fix errors in their credit reports,” National Consumer Law Center, 2009.

⁴ In April 2020, the Consumer Financial Protection Bureau granted a temporary suspension of the 30 day standard. Now, consumer reporting agencies merely have to demonstrate a “good faith effort” to address inaccurate information on a consumer’s report, so disputes may take even longer to be resolved. https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf

additional information from furnishers of certain types of data, and provide greater protections for consumers who dispute information.

Negative Impacts on Tenants Finding Housing

Inaccuracies on consumer reports are especially problematic in housing. Nine out of ten landlords rely on tenant screening reports to make decisions about who to rent to.⁵

People of color are most likely to be denied housing based on an inaccurate consumer report. Since a majority of Black and Latino residents rent their homes,⁶ they are most exposed to tenant screening. Inaccurate information is especially likely to happen if an applicant has a common name or is Latino like Marco Antonio Fernandez, as more than 12 million Latinos nationwide share just 26 surnames.⁷

Tenant screening reports are generated automatically in seconds by computer algorithms and are never reviewed by a human being before they are provided to a landlord. Many landlords then do not review the underlying records in a consumer report and instead merely rely upon the thumbs-up or thumbs-down assessment provided in the report. This means that inaccurate and mismatched information is not caught on a consumer report prior to the rejection of the applicant.

Given the increasingly transient nature of the labor market because of the pandemic, many Marylanders will be seeking to rent new housing and may face an even harder time securing housing because of inaccuracies on their consumer report.

What This Bill Does

In spite of the consumer protections under federal law, the “Big 3” settlement, and federal agency actions, the consumer reporting industry is still not playing by the rules. The Consumer Financial Protection Bureau has found that consumer reporting companies and furnishers continue to violate basic protections because they lack incentives and under-invest in accuracy.⁸

Maryland has previously enacted legislation and adopted regulations to regulate consumer reporting agencies, but additional action is needed to protect consumers.

This bill:

- Directs the Commissioner of Financial Regulation in the Maryland Department of Labor to promulgate regulations regarding accuracy of information on consumer reports, including:

⁵ “How Automated Background Checks Freeze Out Renters.” New York Times, 2020.

⁶ “More U.S. households are renting than at any point in 50 years.” Pew Research Center, 2017.

⁷ “Hispanic Surnames Rise in Popularity.” US Census Bureau, 2017.

⁸ CFPB Supervisory Highlights Consumer Reporting Special Edition, Issue 14, Winter 2017.

- Creating standards for achieving “maximum possible accuracy” for matching information from public records to a consumer, as required by the Fair Credit Reporting Act.
 - The standards must include the full name and either the Social Security Number, date of birth, or address of the consumer, as required under the 2015 Equifax, Experian, and TransUnion settlement with the Maryland Attorney General and as affirmed by the Consumer Financial Protection Bureau’s November 2021 advisory opinion.⁹
- Developing a system for excluding duplicate, outdated, sealed, and expunged records.
- Developing procedures for tracking consumer complaints about inaccurate information and for addressing the causes of these inaccuracies.
- Gives the Commissioner the ability to refuse to renew, suspend, or revoke the registration of a consumer reporting agency for violations of the Maryland Consumer Reporting Act.

⁹ https://files.consumerfinance.gov/f/documents/cfpb_name-only-matching_advisory-opinion_2021-11.pdf