

**SUBJECT:** Making certain pandemic-related eviction information confidential

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 5 ayes — C. Turner, Crockett, Ordaz Perez, Patterson, S. Thompson

2 nays — Hefner, Lambert

2 absent — Cain, Shine

**WITNESSES:** For — Christina Rosales, Texas Housers; Nate Walker, Texas Rio Grande Legal Aid; Sandy Rollins, Texas Tenants Union; Vickie Clark;  
(*Registered, but did not testify*: Jamaal Smith, City of Houston, Office of the Mayor; Amanda List, Texas Appleseed; Molly Weiner, United Ways of Texas)

Against — David Mintz, Texas Apartment Association; (*Registered, but did not testify*: Eric Ellman, Consumer Data Industry Association; Royce Poinsett, RealPage Inc.; J.D. Hale, Texas Association of Builders; Carol Sims, Texas Civil Justice League)

On — David Slayton, Office of Court Administration

**DIGEST:** CSHB 1647 would require courts to make defendant information confidential in certain cases of eviction due to the effects of the COVID-19 pandemic.

**Applicability.** The bill would apply only to eviction cases brought for non-payment of rent:

- during a state of disaster declared by the governor related to the COVID-19 pandemic;
- before the 180th day after that state of disaster was terminated; or
- against a defendant who filed with the court a statement that the defendant's nonpayment of rent was due to financial hardship caused by the pandemic.

The bill's provisions would not apply to an eviction case based on actions of a tenant that created an imminent threat to the health and safety of the landlord, a member of the landlord's or tenant's household, other tenants, or neighbors.

**Court orders of confidentiality.** CSHB 1647 would require a court to enter an order making eviction case information pertaining to a defendant confidential if:

- the judgment was or had been entered in favor of the defendant;
- the eviction case was or had been dismissed without any relief granted to the plaintiff;
- the defendant was or had been a tenant not otherwise in default and the case had been brought by a landlord's successor in interest following foreclosure; or
- at least three years had elapsed from the date of the final judgment in the case.

The court would have to enter the order either concurrently with a final judgment or dismissal in an eviction case or on petition of a defendant after a final judgment or dismissal.

A court also could enter an order making defendant information confidential if the court found that such an order would be in the interest of justice and that interest was not outweighed by the public's interest in knowing the information.

If a court entered an order under the bill, all courts or court clerks would have to delete or redact all index references to the defendant's name that related to the eviction case information from public record. Except to the extent permitted by federal law, credit reporting agencies and persons who regularly collected and disseminated or sold eviction case information would be prohibited from disclosing the existence of the case or using the case information as a factor in determining a score or recommendation in a tenant screening report regarding the defendant.

A person who knowingly violated the prohibition would be liable to an injured party for actual damages, exemplary damages of \$1000 regardless of actual damages being awarded, and reasonable attorney's fees and court costs.

**Limitations on eviction case information.** For COVID-19 pandemic-related eviction cases in which a confidentiality order was not entered, a county clerk would have to allow access to case information only to a party to the action, including a party's attorney, or to any person if a final, non-appealable judgment in the case was entered for the plaintiff.

Except to the extent permitted by federal law, a credit reporting agency, a person who regularly collected and disseminated eviction case information, or a person who sold such information, could only use case information if access was granted under the bill.

The bill could not be construed to prohibit a court from issuing an order barring access to eviction case information if parties to the case so stipulated.

The bill would take effect January 1, 2022, and the Texas Supreme Court would be required to adopt rules necessary to implement the bill's provisions by that date.

**SUPPORTERS  
SAY:**

CSHB 1647 would help to ensure that eviction filings related to the COVID-19 pandemic would not continue to negatively impact Texans and their families for years to come by limiting access to and use of eviction case information.

Millions of Texans have lost jobs due to the COVID-19 pandemic through no fault of their own, exacerbating the existing risk of eviction that disproportionately affects many vulnerable populations and newly placing many workers and families at risk of eviction. CSHB 1647 would help to mitigate the increased inequity produced by pandemic-related eviction filings and would lessen the burden imposed on the state's resources by

housing instability.

Even when an eviction case is dismissed or eviction does not ultimately occur, the record of an eviction filing can make it difficult for defendants to find stable, quality housing in the future. Eviction case information is gathered and sold to landlords by third party vendors, often using automated systems that rapidly obtain and report filing data that may not be accurate. While landlords are required to tell prospective tenants that they have been denied due to a screening report, they are not required to provide a copy of the report, so those seeking to rent may be unable to review the report for accuracy. In addition, people denied the opportunity to rent based on a screening report are unlikely to have the means to pursue legal action against a screening company.

By making pandemic-related eviction filings confidential, CSHB 1647 would protect tenants' basic consumer rights without depriving landlords of important indicators of renter risk, such as criminal history and credit score. The bill also would not diminish landlords' willingness to settle in an eviction case, since they would still have an interest in shortening the onerous process of an eviction case whenever possible.

CSHB 1647 would provide statutory reinforcement to the goals and methods of the Texas Eviction Diversion program. Tenants should not be penalized for circumstances outside of their control because their landlord opted not to participate in the Eviction Diversion Program, especially when an eviction case is dismissed or decided in their favor. If records of criminal charges can be expunged when a defendant is not convicted, the same should apply to victims of pandemic-related evictions filings when they are not required to evict.

**CRITICS  
SAY:**

CSHB 1647 would deprive property owners of the full scope of information needed to determine whether a prospective tenant was likely to be able to meet their rental obligations. Many eviction cases are dismissed by landlords who are able to come to an arrangement with the potential evictee, not necessarily because there was no reasonable cause for eviction, so the record of an eviction filing is still relevant as a

potential indicator of risk for future landlords. Making dismissed eviction filings confidential also could have unintended consequences, such as disincentivizing the settling of eviction cases by landlords. In addition, tenants already have the right to legally challenge false eviction filing data in court.

CSHB 1647 also is unnecessary because the increased risk of eviction due to the COVID-19 pandemic is already being addressed by the Texas Eviction Diversion Program, through which landlords may voluntarily agree to make eviction case information confidential.