

SUBJECT: Authorizing HOAs to conduct criminal history checks on tenants

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 4 ayes — Oliveira, Shine, Villalba, Workman

2 nays — Collier, Romero

1 absent — Stickland

WITNESSES: For — None

Against — (*Registered, but did not testify*: David Kahne)

On — Juliana Gonzales, Austin Tenants' Council

BACKGROUND: The 84th Legislature in 2015 enacted HB 2489 by Leach, which added Property Code, sec. 209.016. The law prohibits a property owners' association from adopting or enforcing a provision in a dedicatory instrument that contains certain requirements. The dedicatory instrument may not require a lease or rental application or a tenant to be submitted to and approved for tenancy by the association. Nor may it require certain information to be submitted to the association regarding a lease or rental applicant or current tenant.

DIGEST: HB 3868 would allow a property owners' association, on approval by a majority vote of the owners, to adopt and enforce a requirement that an applicant for a long-term or short-term tenancy of subdivision property consent to a background and criminal history check. The check would be conducted by or on behalf of the association.

The bill would apply to a dedicatory instrument adopted before, on, or after the bill's effective date.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2017.

**SUPPORTERS
SAY:**

HB 3868 would restore the ability of homeowners' associations to conduct background and criminal history checks on tenants who lease property in a subdivision. Legislation enacted last session limited the ability of homeowners' associations to enforce lease restrictions for tenants with criminal records, including sex offenders. This has raised concerns about neighborhood safety. Homeowners should have the right to decide whether to require criminal background checks for individuals leasing property in their neighborhood.

**OPPONENTS
SAY:**

HB 3868 could interfere with the rights of homeowners to lease their homes to the tenants of their choice. Background checks could be used as a tool to refuse a lease to someone who had been convicted of even a minor criminal offense. In addition, homeowners' associations might not have a full understanding of the potential for criminal background checks to violate fair housing laws.