

[First Reprint]

ASSEMBLY, No. 1919

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

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District 31 (Hudson)

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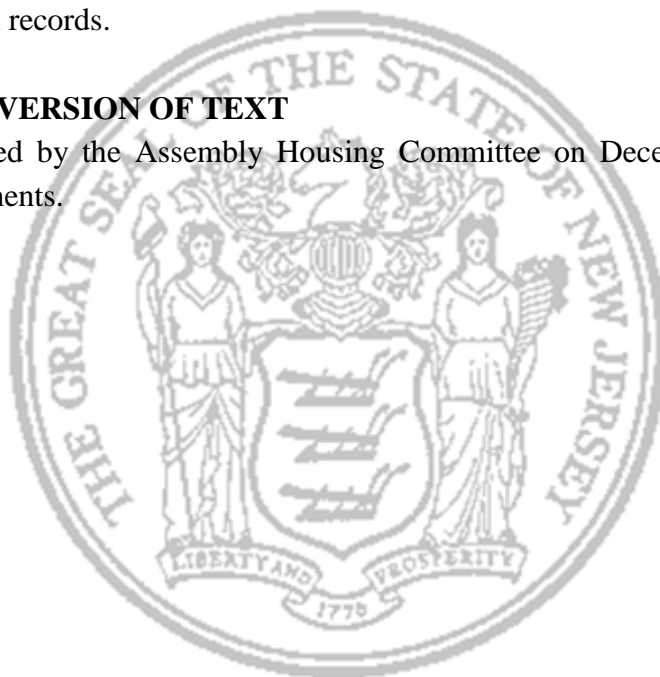
**Assemblywomen Carter, Timberlake, Assemblyman Spearman and
Assemblywoman Jasey**

SYNOPSIS

“Fair Chance in Housing Act”; establishes certain housing rights of persons with criminal records.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing Committee on December 7, 2020, with amendments.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning the housing rights of persons with criminal
 2 records and supplementing ¹**[P.L.1945, c.169 (C.10:5-1 et**
 3 **seq.)]** P.L.1975, c.310 (C.46:8-43 et seq.)¹.
 4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*
 7

8 1. This act shall be known and may be cited as the “Fair Chance
 9 in Housing Act.”
 10

11 2. As used in this act:

12 "Applicant" means any person considered for, who requests to be
 13 considered for, or who requests to be considered for tenancy within
 14 a rental dwelling unit.

15 “Conditional offer” means an offer to rent or lease a rental
 16 dwelling unit to an applicant that is contingent on a subsequent
 17 inquiry into the applicant’s criminal record, or any other eligibility
 18 criteria that the housing provider may lawfully utilize.

19 “Criminal record” means information collected by criminal
 20 justice agencies on individuals consisting of identifiable
 21 descriptions and notations of arrests, detentions, indictments, or
 22 other formal criminal charges, and any disposition arising
 23 therefrom, including acquittal, sentencing, correctional supervision,
 24 release or conviction, including, but not limited to, any sentence
 25 arising from a verdict or plea of guilty or nolo contendere, including
 26 a sentence of incarceration, a suspended sentence, a sentence of
 27 probation, or a sentence of conditional discharge.

28 “Housing provider” means a landlord, an owner, lessor,
 29 sublessor, assignee, or their agent, or any other person receiving or
 30 entitled to receive rents or benefits for the use or occupancy of any
 31 rental dwelling unit.

32 “Pending criminal accusation” means an existing accusation that
 33 an individual has committed a crime, lodged by a law enforcement
 34 agency through an indictment, information, complaint, or other
 35 formal charge.

36 “Rental dwelling unit” means a dwelling unit offered for rent by
 37 a housing provider for residential purposes, other than a dwelling
 38 unit in an owner-occupied premises of not more than three dwelling
 39 units.
 40

41 3. a. (1) A housing provider shall not require an applicant to
 42 complete any housing application that includes any inquiries
 43 regarding an applicant’s criminal record prior to the provision of a
 44 conditional offer.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
 not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted December 7, 2020.

1 (2) A housing provider shall not make any oral or written
2 inquiry regarding an applicant's criminal record prior to making a
3 conditional offer.

4 ¹[(3) An applicant may provide evidence to the housing
5 provider demonstrating inaccuracies within the applicant's criminal
6 record or evidence of rehabilitation or other mitigating factors.]¹

7 b. Notwithstanding the provisions of subsection a. of this
8 section, if an applicant discloses any information regarding the
9 applicant's criminal record, by voluntary oral or written disclosure,
10 prior to the conditional offer, the housing provider may make
11 inquiries regarding the applicant's criminal record prior to making
12 the conditional offer.

13 c. Prior to accepting any application fee, a housing provider
14 shall disclose in writing to the applicant:

15 (1) Whether the eligibility criteria of the housing provider
16 include the review and consideration of criminal history; and

17 (2) A statement that the applicant ¹[(3), pursuant to subsection a.
18 of this section,]¹ may provide evidence demonstrating inaccuracies
19 within the applicant's criminal record or evidence of rehabilitation
20 or other mitigating factors.

21 d. ¹[(4) After the issuance of a conditional offer to an applicant, a
22 housing provider may only consider a criminal record in the
23 applicant's history that:

24 (1) has occurred within the 10 years immediately preceding the
25 issuance of the conditional offer; and

26 (2) consists of a pending criminal accusation or a criminal
27 conviction that, pursuant to subsection b. of N.J.S.2C:52-2, is not
28 eligible for expungement.

29 e. (1) A housing provider may withdraw a conditional offer
30 based on an applicant's criminal record only if the housing provider
31 determines, on balance, that the withdrawal achieves a substantial,
32 legitimate, nondiscriminatory interest.

33 (2) The housing provider's determination of a nondiscriminatory
34 interest shall be reasonable in light of the following factors:

35 (a) The nature and severity of the criminal offense;

36 (b) The age of the applicant at the time of the occurrence of the
37 criminal offense;

38 (c) The time which has elapsed since the occurrence of the
39 criminal offense;

40 (d) Any information produced by the applicant, or produced on
41 the applicant's behalf, in regard to the applicant's rehabilitation and
42 good conduct since the occurrence of the criminal offense;

43 (e) The degree to which the criminal offense, if it reoccurred,
44 would negatively impact the safety of the housing provider's other
45 tenants or property; and

46 (f) Whether the criminal offense occurred on or was connected
47 to property that was rented or leased by the applicant.

1 f. (1) If a housing provider withdraws a conditional offer, the
2 housing provider shall provide the applicant with written
3 notification that includes, with specificity, the reason or reasons for
4 the withdrawal of the conditional offer and a notice that advises the
5 applicant of the applicant's right to file a complaint with the
6 Attorney General pursuant to section 6 of this act.

7 (2) (a) The applicant may request, within 20 days after the
8 housing provider's notice of the withdrawal, that the housing
9 provider afford the applicant a copy of all information that the
10 housing provider relied upon in considering the applicant, including
11 criminal records.

12 (b) A housing provider shall provide the information requested
13 under subparagraph (a) of this paragraph, free of charge, within 10
14 days after receipt of a timely request.

15 g. ¹ Nothing set forth in this act shall be construed to prohibit a
16 housing provider from requiring an applicant to complete a housing
17 application that includes any inquiries regarding an applicant's
18 criminal record after ¹the ¹a conditional offer is provided or from
19 making any oral or written inquiries regarding an applicant's
20 criminal record after the conditional offer is provided. The
21 provisions of this section shall not preclude a housing provider from
22 ¹refusing to provide housing to an applicant ¹rescinding a
23 conditional offer¹ based upon the applicant's criminal record,
24 unless the criminal record or relevant portion thereof has been
25 expunged or erased through executive pardon, ¹as¹ provided ¹that
26 such refusal is consistent with other applicable laws, rules and
27 regulations ¹in P.L. ¹, c. (C. ¹) (pending before the Legislature
28 as this bill) or any other relevant federal or State law¹.

29
30 ¹4. a. A housing provider shall not, either before or after the
31 issuance of a conditional offer, evaluate an applicant based on any
32 of the following types of criminal records:

33 (1) arrests or charges that have not resulted in a criminal
34 conviction;

35 (2) expunged convictions;

36 (3) convictions erased through executive pardon;

37 (4) vacated and otherwise legally nullified convictions;

38 (5) juvenile adjudications of delinquency; and

39 (6) records that have been sealed.

40 b. After the issuance of a conditional offer to an applicant, a
41 housing provider may only consider a criminal record in the
42 applicant's history that:

43 (1) resulted in a conviction for murder, aggravated sexual
44 assault, kidnapping, arson, human trafficking, or any crime that
45 resulted in lifetime registration in a state sex offender registry;

46 (2) is for an indictable offense of the first or second degree that
47 was issued, or if the conviction resulted in a prison sentence that

1 sentence concluded, within the 10 years immediately preceding the
2 issuance of the conditional offer;

3 (3) is for an indictable offense of the third or fourth degree that
4 was issued, or if the conviction resulted in a prison sentence that
5 concluded, within the five years immediately preceding the issuance
6 of the conditional offer; or

7 (4) is for a disorderly person's offense that was issued, or if the
8 conviction resulted in a prison sentence that concluded, within one
9 year immediately preceding the issuance of the conditional offer.

10 c. (1) A housing provider may withdraw a conditional offer
11 based on an applicant's criminal record only if the housing provider
12 determines through reliable evidence that the criminal conduct in
13 question indicates a demonstrable risk to resident safety or property
14 and that, on balance, the withdrawal achieves a substantial,
15 legitimate, and nondiscriminatory interest.

16 (2) If a housing provider withdraws a conditional offer, the
17 housing provider shall provide the applicant with written
18 notification that includes, with specificity, the reason or reasons for
19 the withdrawal of the conditional offer and an opportunity to appeal
20 the denial by providing evidence to the housing provider
21 demonstrating inaccuracies within the applicant's criminal record or
22 evidence of rehabilitation or other mitigating factors.

23 (3) The housing provider shall perform an individualized
24 assessment of the application in light of the following factors:

25 (a) The nature and severity of the criminal offense;

26 (b) The age of the applicant at the time of the occurrence of the
27 criminal offense;

28 (c) The time which has elapsed since the occurrence of the
29 criminal offense;

30 (d) Any information produced by the applicant, or produced on
31 the applicant's behalf, in regard to the applicant's rehabilitation and
32 good conduct since the occurrence of the criminal offense;

33 (e) The degree to which the criminal offense, if it reoccurred,
34 would negatively impact the safety of the housing provider's other
35 tenants or property; and

36 (f) Whether the criminal offense occurred on or was connected to
37 property that was rented or leased by the applicant.

38 d. (1) The applicant may request, within 20 days after the
39 housing provider's notice of the withdrawal, that the housing
40 provider afford the applicant a copy of all information that the
41 housing provider relied upon in considering the applicant, including
42 criminal records.

43 (2) A housing provider shall provide the information requested
44 under subparagraph (a) of this paragraph, free of charge, within 10
45 days after receipt of a timely request.¹

46
47 ¹[4. Unless otherwise permitted or required by law, a] 5. a. A¹
48 housing provider shall not knowingly or purposefully publish, or

1 cause to be published, any housing advertisement that explicitly
2 provides that the housing provider will not consider any applicant
3 who has been arrested or convicted of one or more crimes or
4 offenses ¹, except for drug-related criminal activity for the
5 manufacture or production of methamphetamine on the premises of
6 federally assisted housing, and whether the applicant is subject to a
7 lifetime registration requirement under a State sex offender
8 registration program.

9 b. Unless otherwise required by law, a housing provider shall
10 not:

11 (1) distribute or disseminate an applicant's criminal record to
12 any person who is not expected to use the criminal record for the
13 purpose of evaluating the applicant in a manner consistent with
14 P.L. c. , (C.) (pending before the Legislature as this bill); or

15 (2) use an applicant's criminal record for a purpose that is not
16 consistent with P.L. c. , (C.) (pending before the Legislature
17 as this bill)¹.

18
19 ¹**5.** This act shall not apply:

20 a. If a federal law or regulation requires the housing provider
21 to consider an applicant's criminal records for residential leasing
22 purposes; or

23 b. If a federal law or regulation otherwise allows for the denial
24 of an applicant due to certain criminal convictions.¹

25
26 ¹**6.** a. To encourage residential landlords to provide housing
27 opportunities to formerly incarcerated individuals, landlords subject
28 to the provisions of this act shall be immune from liability in any
29 civil action arising as a result of the landlord's decision to rent to
30 individuals with a criminal record or who were otherwise convicted
31 of a criminal offense, or as a result of a landlord's decision to not
32 engage in criminal background screening.

33 b. Notwithstanding the provisions of subsection a. of this
34 section, immunity from liability shall not be conferred upon a
35 landlord who, knowingly or unknowingly, rents an apartment to a
36 person with a conviction for murder, aggravated sexual assault,
37 kidnapping, arson, human trafficking, or any crime that resulted in
38 lifetime registration in a state sex offender registry.¹

39
40 ¹**6.** a. A person claiming to be aggrieved pursuant to this act
41 may file a complaint or action with the Division on Civil Rights or
42 in the Superior Court of New Jersey alleging a violation of the
43 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

44 **b.] 7.**¹ Any housing provider who violates this act shall be liable
45 for a civil penalty in an amount not to exceed ¹**[\$1,000] \$100**¹ for
46 the first violation, ¹**[\$5,000] \$500**¹ for the second violation, and
47 ¹**[\$10,000] \$1,000**¹ for each subsequent violation collectible by the

1 Attorney General in a summary proceeding pursuant to the "Penalty
2 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

3

4 ¹~~["7.]~~ 8.¹ In accordance with the "Administrative Procedure
5 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the ¹~~["Attorney~~
6 ~~General"]~~ Commissioner of Community Affairs¹ may adopt the rules
7 and regulations necessary to effectuate the purposes of this act.

8

9 ¹~~["8.]~~ 9.¹ This act shall take effect on the first day of the seventh
10 month next following the date of enactment, but the ¹~~["Attorney~~
11 ~~General"]~~ Commissioner of Community Affairs¹ may take any
12 anticipatory administrative action in advance as shall be necessary
13 for the implementation of this act.