

[Second 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)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Co-Sponsored by:

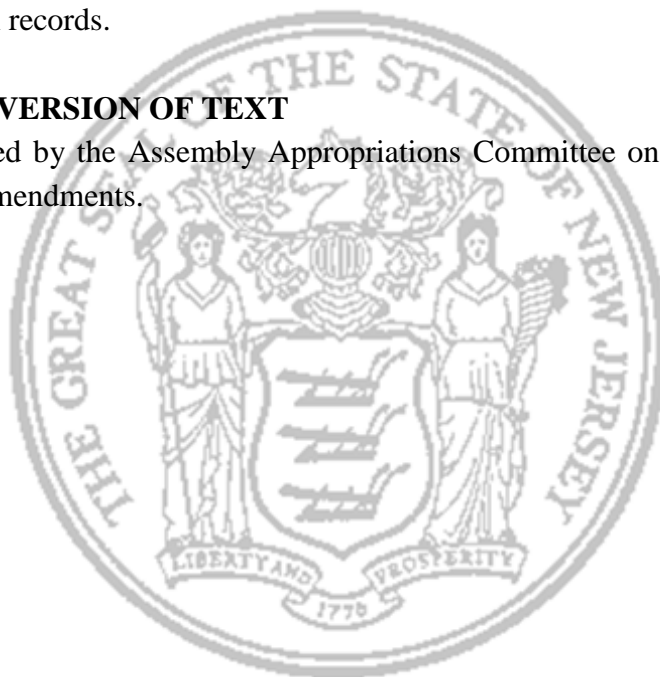
**Assemblywomen Carter, Timberlake, Assemblyman Spearman,
Assemblywoman Jasey and Assemblyman Zwicker**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 14, 2020, with amendments.



(Sponsorship Updated As Of: 5/5/2021)

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.

²Assembly AAP committee amendments adopted December 14, 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[(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 rescinding 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. , c. (C.) (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 of
 32 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; ²and²

39 (6) records that have been sealed ²; and

40 (7) records from a different state concerning actions that, if
 41 committed in the State, would be decriminalized or legalized, or both,
 42 pursuant to P.L. , c. (C.) (pending before the Legislature as
 43 A1897/4269 (ACS) / S2535 of 2020) or P.L. , c. (C.) (pending
 44 before the Legislature as A21 / S21 of 2020)² .

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

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

4 (2) is for an indictable offense of the first or second degree that
5 was issued, or if the conviction resulted in a prison sentence that
6 sentence concluded, within the 10 years immediately preceding the
7 issuance of the conditional offer;

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

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

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

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

28 (3) The housing provider shall ²~~perform~~ not withdraw a
29 conditional offer unless the housing provider has conducted² an
30 individualized assessment of the application ². An individualized
31 assessment of an application shall be conducted² in light of the
32 following factors:

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

34 (b) The age of the applicant at the time of the occurrence of the
35 criminal offense;

36 (c) The time which has elapsed since the occurrence of the
37 criminal offense;

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

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

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

46 d. (1) The applicant may request, within 20 days after the housing
47 provider's notice of the withdrawal, that the housing provider afford

1 the applicant a copy of all information that the housing provider relied
2 upon in considering the applicant, including criminal records.

3 (2) A housing provider shall provide the information requested
4 under subparagraph (a) of this paragraph, free of charge, within 10
5 days after receipt of a timely request.¹
6

7 ¹**4. Unless otherwise permitted or required by law, a** 5. a. A¹
8 housing provider shall not knowingly or purposefully publish, or
9 cause to be published, any housing advertisement that explicitly
10 provides that the housing provider will not consider any applicant
11 who has been arrested or convicted of one or more crimes or
12 offenses ¹, except for drug-related criminal activity for the
13 manufacture or production of methamphetamine on the premises of
14 federally assisted housing, and whether the applicant is subject to a
15 lifetime registration requirement under a State sex offender
16 registration program.

17 b. Unless otherwise required by law, a housing provider shall
18 not:

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

23 (2) use an applicant's criminal record for a purpose that is not
24 consistent with P.L. c. , (C.) (pending before the Legislature
25 as this bill)¹.
26

27 ¹**5. This act shall not apply:**

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

31 b. If a federal law or regulation otherwise allows for the denial
32 of an applicant due to certain criminal convictions.¹
33

34 ¹6. a. To encourage residential landlords to provide housing
35 opportunities to formerly incarcerated individuals, landlords subject
36 to the provisions of this act shall be immune from liability in any
37 civil action arising as a result of the landlord's decision to rent to
38 individuals with a criminal record or who were otherwise convicted
39 of a criminal offense, or as a result of a landlord's decision to not
40 engage in criminal background screening.

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

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

5 b.] 7.¹ Any housing provider who violates this act shall be liable
6 for a civil penalty in an amount not to exceed ¹**[\$1,000]** \$100¹ for
7 the first violation, ¹**[\$5,000]** \$500¹ for the second violation, and
8 ¹**[\$10,000]** \$1,000¹ for each subsequent violation collectible by the
9 Attorney General in a summary proceeding pursuant to the "Penalty
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
11

12 ¹**[7.]** 8.¹ In accordance with the "Administrative Procedure
13 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the ¹**[Attorney**
14 **General]** Commissioner of Community Affairs¹ may adopt the rules
15 and regulations necessary to effectuate the purposes of this act.
16

17 ¹**[8.]** 9.¹ This act shall take effect on the first day of the seventh
18 month next following the date of enactment, but the ¹**[Attorney**
19 **General]** Commissioner of Community Affairs¹ may take any
20 anticipatory administrative action in advance as shall be necessary
21 for the implementation of this act.