

[Third Reprint]

ASSEMBLY, No. 1919

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

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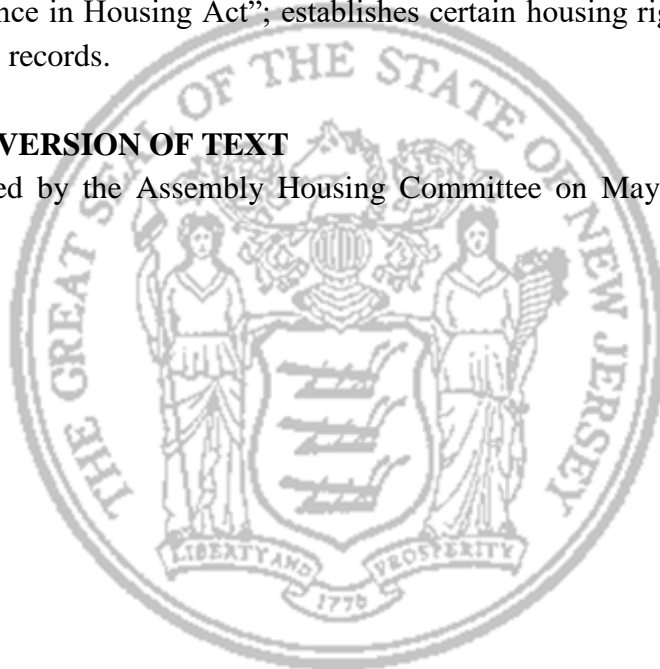
**Assemblywomen Carter, Timberlake, Assemblyman Spearman,
Assemblywoman Jasey, Assemblymen Zwicker, McClellan,
Assemblywomen Chaparro and Vainieri Huttie**

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 May 5, 2021, with amendments.



(Sponsorship Updated As Of: 5/17/2021)

1 AN ACT concerning the housing rights of ³certain³ persons with
 2 criminal records and supplementing ¹[P.L.1945, c.169 (C.10:5-1
 3 et seq.)] ³[P.L.1975, c.310 (C.46:8-43 et seq.)¹] chapter 8 of
 4 Title 46 of the Revised Statutes³.

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

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

11
 12 ³2. The Legislature finds and declares that:

13 a. Recent research indicates that New Jersey suffers from a
 14 tragically high 36-month recidivism rate of over 30 percent;

15 b. Housing instability appears to impact recidivism, considering
 16 that over one in 10 prisoners in the United States face homelessness
 17 upon release;

18 c. Research from other states indicates a substantial increase in the
 19 likelihood of a parolee’s arrest following each change in address,
 20 further supporting the conclusion that when ex-convicts are unable to
 21 find stable housing, recidivism becomes more likely and public safety
 22 is diminished;

23 d. Prior to the 1990s when popular guidance documents began
 24 advising landlords to conduct criminal background checks on
 25 prospective tenants, criminal background information was not widely-
 26 available and convenient to landlords for informing rental decisions,
 27 but many landlords were nonetheless able to maintain safe and healthy
 28 rental properties; and

29 e. It is, therefore, necessary and in the public interest for the
 30 Legislature to enact legislation for the purpose of establishing certain
 31 housing rights of persons with criminal records.³

32
 33 ³**[2.] 3.**³ As used in this act:

34 "Applicant" means any person considered for, who requests to be
 35 considered for, or who requests to be considered for tenancy within a
 36 rental dwelling unit.

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

41 “Criminal record” means information ³about an individual³
 42 collected by criminal justice agencies ³**[on individuals]**³ consisting of
 43 identifiable descriptions and notations of arrests, detentions,

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.

³Assembly AHO committee amendments adopted May 5, 2021.

1 indictments, ³criminal complaints,³ or other formal criminal charges,
2 and any disposition arising therefrom, including acquittal, sentencing,
3 correctional supervision, release or conviction, including, but not
4 limited to, any sentence arising from a verdict or plea of guilty or nolo
5 contendere, including a sentence of incarceration, a suspended
6 sentence, a sentence of probation, or a sentence of conditional
7 discharge.

8 ³“Director” means the Director of the Division on Civil Rights.

9 “Division” means the Division on Civil Rights in the Department
10 of Law and Public Safety.³

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

15 “Pending criminal accusation” means an existing accusation that
16 an individual has committed a crime, lodged by a law enforcement
17 agency through an indictment, information, complaint, or other formal
18 charge.

19 “Rental dwelling unit” means a dwelling unit offered for rent by a
20 housing provider for residential purposes, other than a dwelling unit in
21 an owner-occupied premises of not more than ³**three** four³ dwelling
22 units.

23
24 ³**3.** ³4.³ a. (1) A housing provider shall not require an applicant
25 to complete any housing application that includes any inquiries
26 regarding an applicant’s criminal record prior to the provision of a
27 conditional offer ³, except that a housing provider may consider
28 whether an applicant has ever been convicted of drug-related criminal
29 activity for the manufacture or production of methamphetamine on the
30 premises of federally assisted housing, and whether the applicant is
31 subject to a lifetime registration requirement under a State sex offender
32 registration program³.

33 (2) A housing provider shall not make any oral or written inquiry
34 regarding an applicant’s criminal record prior to making a conditional
35 offer.

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

39 ³(3) An applicant may provide evidence to the housing provider
40 demonstrating inaccuracies within the applicant's criminal record or
41 evidence of rehabilitation or other mitigating factors.³

42 b. ³**Notwithstanding the provisions of subsection a. of this**
43 **section, if an applicant discloses any information regarding the**
44 **applicant’s criminal record, by voluntary oral or written disclosure,**
45 **prior to the conditional offer, the housing provider may make**
46 **inquiries regarding the applicant’s criminal record prior to making**
47 **the conditional offer.**

1 c. ³ Prior to accepting any application fee, a housing provider
2 shall disclose in writing to the applicant:

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

5 (2) A statement that the applicant ¹ ~~], pursuant to subsection a.~~
6 of this section, ¹ ³ pursuant to subsection a. of this section, ³ may
7 provide evidence demonstrating inaccuracies within the applicant's
8 criminal record or evidence of rehabilitation or other mitigating
9 factors.

10 ³ ~~[d.]~~ ³ ¹ ~~[After the issuance of a conditional offer to an~~
11 applicant, a housing provider may only consider a criminal record
12 in the applicant's history that:

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

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

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

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

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

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

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

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

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

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

37 f. (1) If a housing provider withdraws a conditional offer, the
38 housing provider shall provide the applicant with written
39 notification that includes, with specificity, the reason or reasons for
40 the withdrawal of the conditional offer and a notice that advises the
41 applicant of the applicant's right to file a complaint with the
42 ³ ~~[Attorney General]~~ division ³ pursuant to section 6 of this act.

43 (2) (a) The applicant may request, within 20 days after the
44 housing provider's notice of the withdrawal, that the housing
45 provider afford the applicant a copy of all information that the
46 housing provider relied upon in considering the applicant, including
47 criminal records.

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

g.]¹ ³[Nothing set forth in this act shall be construed to prohibit a housing provider from requiring an applicant to complete a housing application that includes any inquiries regarding an applicant's criminal record after]³ ¹[the] ³[a] conditional offer is provided or from making any oral or written inquiries regarding an applicant's criminal record after the conditional offer is provided. The provisions of this section shall not preclude a housing provider from]³ ¹[refusing to provide housing to an applicant] ³[rescinding a conditional offer]¹ based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, 'as' provided]³ ¹[that such refusal is consistent with other applicable laws, rules and regulations] ³[in P.L. , c. (C.) (pending before the Legislature as this bill) or any other relevant federal or State law]¹ c. A housing provider shall apply the standards established by this section to each applicant in a nondiscriminatory manner³.

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

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

(2) expunged convictions;

(3) convictions erased through executive pardon;

(4) vacated and otherwise legally nullified convictions;

(5) juvenile adjudications of delinquency; ²[and]²

(6) records that have been sealed ²; and

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

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

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

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

(3) is for an indictable offense of the third or fourth degree that was issued, or if the conviction resulted in a prison sentence that

1 concluded, within the five years immediately preceding the issuance of
2 the conditional offer; or

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

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

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

19 (3) The housing provider shall ²~~perform~~ not withdraw a
20 conditional offer unless the housing provider has conducted² an
21 individualized assessment of the application ². An individualized
22 assessment of an application shall be conducted² in light of the
23 following factors:

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

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

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

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

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

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

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

41 (2) A housing provider shall provide the information requested
42 under subparagraph (a) of this paragraph, free of charge, within 10
43 days after receipt of a timely request.¹³
44

45 ³5. a. A housing provider shall not, either before or after the
46 issuance of a conditional offer, evaluate an applicant based on any of
47 the following types of criminal records:

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

(2) expunged convictions;

(3) convictions erased through executive pardon;

(4) vacated and otherwise legally nullified convictions;

(5) juvenile adjudications of delinquency; and

(6) records that have been sealed.

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

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

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

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

(4) is for an indictable offense of the fourth degree that was issued, or if the conviction resulted in a prison sentence that concluded, within one year immediately preceding the issuance of the conditional offer.

c. (1) A housing provider may withdraw a conditional offer based on an applicant's criminal record only if the housing provider determines, by preponderance of the evidence, that the withdrawal is necessary to fulfill a substantial, legitimate, and nondiscriminatory interest.

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

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

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

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

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

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

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

4 (f) whether the criminal offense occurred on or was connected to
5 property that was rented or leased by the applicant.

6 d. (1) the applicant may request, within 30 days after the housing
7 provider's notice of the withdrawal, that the housing provider afford
8 the applicant a copy of all information that the housing provider relied
9 upon in considering the applicant, including criminal records.

10 (2) a housing provider shall provide the information requested
11 under paragraph (1) of this subsection, free of charge, within 10 days
12 after receipt of a timely request.³

13
14 ³6. a. The director shall prepare:

15 (1) a model disclosure statement as indicated in subsection b. of
16 section 4 of this act which provides notice that a housing provider
17 intends to review and consider a person's criminal record in
18 determining eligibility for housing or in taking any other adverse
19 housing action against that person. The statement shall also provide an
20 explanation of the criminal records that may be considered and the
21 manner in which they may be considered, in accordance with the
22 provisions of section 5 of this act. The statement shall also notify the
23 person of the right to dispute, within 10 days of receiving such
24 statement, the relevance and accuracy of the criminal record and to
25 offer evidence of any mitigating facts or circumstances, including but
26 not limited to the person's rehabilitation and good conduct since the
27 criminal offense in question; and

28 (2) a model notice that provides notice that a housing provider has
29 withdrawn a conditional offer or taken an adverse housing action
30 based on a person's criminal record, provides space for the housing
31 provider to identify with specificity the reason or reasons for
32 withdrawing the conditional offer or taking the adverse housing action.
33 The notification form shall also notify the person of the right to request
34 from the housing provider a copy of all information upon which the
35 housing provider relied in reaching its decision, including criminal
36 records, and of the right to file a complaint with the division, as well as
37 the applicable statute of limitations, and shall include such other
38 additional information as the director deems appropriate.

39 b. The model documents prepared pursuant to this section shall be
40 made available on the division's Internet website, at no cost, and shall
41 be in English, Spanish, and in any other language the director deems
42 appropriate.³

43
44 ¹4. Unless otherwise permitted or required by law, a] ³5.] 7.³
45 a. ¹A housing provider shall not knowingly or purposefully publish,
46 or cause to be published, any housing advertisement that explicitly
47 provides that the housing provider will not consider any applicant who

1 has been arrested or convicted of one or more crimes or offenses ¹,
2 except for drug-related criminal activity for the manufacture or
3 production of methamphetamine on the premises of federally assisted
4 housing, and whether the applicant is subject to a lifetime registration
5 requirement under a State sex offender registration program.

6 b. ³A housing provider shall not print, publish, circulate, issue,
7 display, post, or mail, or cause to be printed, published, circulated,
8 issued, displayed, posted or mailed any statement, advertisement,
9 publication or sign, or use any form of application for the rental,
10 lease, or sublease of any real property or part or portion thereof or
11 make any record or inquiry in connection with the prospective
12 rental, lease, or sublease of any real property or part or portion
13 thereof which expresses, directly or indirectly, any unlawful
14 limitation, specification or discrimination as to criminal record,
15 except as permitted by this act and for drug-related criminal activity
16 for the manufacture or production of methamphetamine on the
17 premises of federally assisted housing, and whether the applicant is
18 subject to a lifetime registration requirement under a State sex
19 offender registration program.

20 c. ³Unless otherwise required by law, a housing provider shall not:
21 (1) distribute or disseminate an applicant's criminal record to any
22 person who is not expected to use the criminal record for the purpose
23 of evaluating the applicant in a manner consistent with ³[P.L. , c.
24 (C.) (pending before the Legislature as this bill)] this act³ ; or
25 (2) use an applicant's criminal record for a purpose that is not
26 consistent with ³[P.L. , c. (C.) (pending before the Legislature
27 as this bill)]¹ this act³.
28

29 ¹5. This act shall not apply:

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

33 b. If a federal law or regulation otherwise allows for the denial
34 of an applicant due to certain criminal convictions.¹
35

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

43 b. Notwithstanding the provisions of subsection a. of this
44 section, immunity from liability shall not be conferred upon a
45 landlord who, knowingly or unknowingly, rents an apartment to a
46 person with a conviction for murder, aggravated sexual assault,

1 kidnapping, arson, human trafficking, or any crime that resulted in
2 lifetime registration in a state sex offender registry.¹³

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

8 b.] ³[7.¹ Any housing provider who violates this act shall be
9 liable for a civil penalty in an amount not to exceed ¹[\$1,000]
10 \$100¹ for the first violation, ¹[\$5,000] \$500¹ for the second
11 violation, and ¹[\$10,000] \$1,000¹ for each subsequent violation
12 collectible by the Attorney General in a summary proceeding
13 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
14 c.274 (C.2A:58-10 et seq.).]³

15
16 ³8. To encourage residential landlords to provide housing
17 opportunities to formerly incarcerated individuals, landlords subject to
18 the provisions of this act shall be immune from liability in any civil
19 action arising as a result of the landlord's decision to rent to
20 individuals with a criminal record or who were otherwise convicted of
21 a criminal offense, or as a result of a landlord's decision to not engage
22 in a criminal background screening.³

23
24 ³9. A housing provider shall not require an applicant to submit to a
25 drug or alcohol test, or request the applicant's consent to obtain
26 information from a drug abuse treatment facility.³

27
28 ³10. A person shall not interfere with, restrain, or deny the
29 exercise of, or the attempt to exercise, any right protected under this
30 act. It shall be a rebuttable presumption of unlawful retaliation if a
31 housing provider or any other person takes an adverse action against a
32 person within 90 days of the person's exercise of the rights protected
33 by this act. This rebuttable presumption shall be sufficient to establish
34 unlawful retaliation, unless the housing provider or other person is
35 able to demonstrate that the action would have been taken in the
36 absence of such protected activity.³

37
38 ³11. The division shall maintain data on the number of complaints
39 filed pursuant to this act, demographic information on the
40 complainants, the identity of the housing providers, the number of
41 investigations conducted, and the disposition of every complaint and
42 investigation. The division shall annually publish and post on the
43 division's Internet website, information on substantiated complaints
44 that have resulted in the issuance of a monetary penalty pursuant to
45 section 12 of this act.³

³12. a. An action that alleges a violation of this act shall not be initiated by an applicant in court. If an applicant believes that a housing provider has violated a provision of this act with respect to the applicant, that applicant may file a complaint with the division. If the division determines that the complaint is substantiated, the director shall issue a monetary penalty against the housing provider. A housing provider may appeal a penalty issued pursuant to this section in a court of competent jurisdiction. A complainant may appeal, in a court of competent jurisdiction, a finding by the director following an investigation that the complaint is not substantiated, but the complainant may not appeal a decision by the director not to investigate a complaint.

b. A housing provider who violates a provision of this act shall be liable for the following applicable penalties:

(1) an amount not to exceed \$1,000 if the housing provider has not committed any prior violation within the five-year period ending on the date of the filing of the charge;

(2) an amount not to exceed \$5,000 if the housing provider has committed one other violation within the five-year period ending on the date of the filing of the charge; and

(3) an amount not to exceed \$10,000 if the housing provider has committed two or more other violations within the seven-year period ending on the date of the filing of the charge.

c. Nothing herein contained shall bar, exclude or otherwise affect any right or action which may exist independently of any right or action created herein, including but not limited to any right or action under P.L.1945, c.169 (N.J.S.A. 10:5-1 et seq.).³

¹[7.] ³[8.1] ^{13.}³ In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the ¹[Attorney General] ³[Commissioner of Community Affairs¹ may] director shall³ adopt the rules and regulations necessary to effectuate the purposes of this act³ on or before the first day of the fifth month next following enactment³.

¹[8.] ³[9.1] ^{14.}³ This act shall take effect on the first day of the seventh month next following the date of enactment, but the ¹[Attorney General] ³[Commissioner of Community Affairs¹] divison³ may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.