

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1919

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2020

The Assembly Housing Committee reports favorably and with committee amendments Assembly Bill No. 1919.

As amended, this bill establishes the “Fair Chance in Housing Act,” and provides certain housing rights of persons with criminal records.

This bill would restrict a housing provider from requiring a housing applicant to complete any housing application that includes any inquiries regarding the applicant’s criminal records prior to the provision of a conditional offer. The bill does not apply to dwelling units that consist of owner-occupied premises of not more than three dwelling units, and defines a “housing provider” as a landlord, owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any residential dwelling unit. The bill defines a conditional offer as an offer to rent or lease a dwelling unit to an applicant that is contingent on a subsequent inquiry into the applicant’s criminal records, or any other eligibility criteria that may be lawfully utilized.

Prior to accepting any application fee, the bill requires a housing provider to disclose, in writing, whether or not the eligibility criteria includes the review and consideration of criminal history, and supply the applicant with a statement that the applicant may provide evidence demonstrating inaccuracies within a criminal record or evidence of rehabilitation or other mitigating factors.

The bill prohibits a housing provider, either before or after the issuance of a conditional offer, from evaluating an applicant based on: (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; or (6) records that have been sealed.

After the issuance of a conditional offer, the bill only would allow a housing provider to consider a criminal record in an 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 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 concluded, within the five years immediately preceding the issuance of the conditional offer; or

(4) is for a disorderly person's offense 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.

The bill allows a housing provider to withdraw a conditional offer based on an applicant's criminal record only if the housing provider determines, on balance, that the withdrawal achieves a substantial, legitimate, nondiscriminatory interest.

Additionally, the bill prohibits the withdrawal of a conditional offer unless the housing provider conducts an individualized assessment of the application in light of the following factors:

- (1) The nature and severity of the criminal offense;
- (2) The age of the applicant at the time of the criminal offense;
- (3) The time elapsed since the offense;
- (4) Any information produced in regard to the applicant's rehabilitation and good conduct since the time of the offense;
- (5) The degree to which the criminal offense, if it reoccurred, would negatively impact the safety of other tenants or property; and
- (6) Whether the offense occurred on or was connected to property leased by the applicant.

If a housing provider withdraws a conditional offer, the bill requires the housing provider to provide the applicant with written notification that includes the reason for the withdrawal.

The bill allows the applicant to request, within 20 days after the housing provider's notice of the withdrawal, that the housing provider afford the applicant a copy of all information relied on in considering the applicant, including criminal records. The bill requires the housing provider to provide this information free of charge, within 10 days after receipt of a timely request.

The bill would not prohibit the housing provider from inquiring into the applicant's criminal record prior to making the conditional offer, if the applicant first discloses any information regarding the applicant's criminal records, by voluntary oral or written disclosure.

The bill would not prohibit a housing provider from requiring an applicant to complete a housing application that inquires into the applicant's criminal records after the conditional offer is provided or from making other inquiries into those records at that time. The bill would not preclude a housing provider from rescinding a conditional offer based upon the applicant's criminal records, unless the criminal

records or relevant portions thereof have been expunged or erased through executive pardon.

The bill prohibits a housing provider from knowingly or purposefully publishing, or causing to be published, any housing advertisement that explicitly provides that the housing provider will not consider any applicant who has been arrested or convicted of one or more crimes or offenses, except for drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.

In order to encourage residential landlords to provide housing opportunities to formerly incarcerated individuals, the bill would provide landlords subject to its provisions with immunity from liability in civil actions arising as a result of decisions to rent to individuals with criminal records, or as a result of a decision to not engage in criminal background screening. Immunity from liability, however, would not be conferred upon a landlord who, knowingly or unknowingly, rents an apartment to a person with 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.

The bill would make any housing provider in violation of its provisions liable for a civil penalty in an amount not to exceed \$100 for the first violation, \$500 for the second violation, and \$1,000 for each subsequent violation collectible by the Attorney General in a summary proceeding pursuant to the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

The bill would take effect on the first day of the seventh month next following the date of enactment.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amendments would:

- clarify the exceptions to the bill’s prohibition on a landlord’s review of a tenant’s criminal records;
- specify the types of criminal records that a landlord may not review either before or after the issuance of a conditional offer, and what may be reviewed only after provision of the conditional offer;
- require an individualized assessment of an applicant’s conduct prior to the withdrawal of a conditional offer based on a criminal record;
- provide landlords with a degree of immunity from liability for renting to persons with criminal records;

- change the penalties for violations from \$1,000, \$5,000, and \$10,000 for a first, second and third violation to \$100, \$500, and \$1,000 respectively;
- provide the Department of Community Affairs instead of the Division on Civil Rights with administrative responsibilities under the bill; and
- make technical changes to the bill.