

SENATE, No. 539

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator RONALD L. RICE

District 28 (Essex)

Senator BRIAN P. STACK

District 33 (Hudson)

Co-Sponsored by:

Senators Turner, Cruz-Perez and Cryan

SYNOPSIS

Establishes confidentiality of landlord-tenant court records; addresses adverse actions on rental applications.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/11/2021)

1 AN ACT concerning the confidentiality of court records of landlord-
2 tenant actions, adverse actions on rental applications, and
3 supplementing Title 2A of the New Jersey Statutes.
4

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

8 1. The Legislature finds and declares that:

9 a. New Jersey remains in the grip of a critical shortage of
10 decent, affordable rental housing, a situation first formally
11 acknowledged more than 40 years ago and which prevails today.
12 The New Jersey Legislature and the courts have on many occasions
13 recognized the severity of this crisis, especially for households of
14 lower-income, and have taken action to protect tenants from
15 unnecessary, unjust, and debilitating treatment or hardship.

16 b. New Jersey's rental housing shortage makes it difficult for
17 people to find and retain decent, safe, and affordable rental units.
18 Landlords and private tenant rating agencies, have developed a
19 system for disseminating tenant screening reports which exhibit
20 screening criteria, such as credit history and criminal history, to
21 assist landlords in evaluating prospective tenants. Unfortunately,
22 such screening tools are often used pretextually, or are arbitrarily
23 formulated and applied without reference to common, agreed upon
24 sets of standards.

25 c. One such screening mechanism involves the collection of
26 court filing data. Landlord-tenant court actions are among the most
27 commonly filed civil cases in the State of New Jersey, and often
28 involve situations in which the tenants in question have valid legal
29 or equitable defenses. Additionally, a large number of such cases
30 are dismissed or settled on terms favorable to the tenants involved.

31 d. At present, all landlord-tenant court filing records are
32 available to the public. These court records are routinely mined by
33 tenant rating agencies, which then sell tenant-specific reports
34 incorporating them to interested landlords. In most instances the
35 data provided is limited to the single fact that a filing occurred,
36 without reference to, or investigation of, the facts and
37 circumstances surrounding the inception and resolution of the
38 litigation.

39 e. The mere filing of a court proceeding by or against a tenant,
40 without regard to, or interest in, the ultimate results of the
41 proceeding, has in many cases been used by prospective landlords
42 and tenant screening agencies as the sole or primary reason for
43 denying an application for a residential tenancy, or the preparation
44 of a report which views the tenant unfavorably. The result is that
45 otherwise worthy applicants are being denied access to critically-
46 needed housing, often severely limiting their housing options and
47 subjecting them to possible homelessness. This can occur even if
48 the actions which triggered the case filing were based upon

1 long-recognized common law or statutory remedies, such as rent
2 withholding in the case of serious, even life-threatening deficiencies
3 in the living conditions of the rented dwelling.

4 f. As a result, tenants who assert and rely upon valid legal
5 defenses or established legal rights, or who otherwise prevail
6 through litigation, settlement or dismissal, can nevertheless find
7 their ability to move to and obtain another rental unit seriously
8 compromised. This “blacklisting” of prospective tenants based
9 solely upon bare-bones court filing data can cause serious difficulty
10 for individuals and families applying for rental housing, and in
11 some circumstances can result in homelessness. The use of court-
12 filing screening also has a serious “chilling effect” on tenants’
13 assertion and exercise of their statutory and common law rights.
14 This result is contrary to public policy the intent of the courts, the
15 Legislature, and the administrative bodies which established these
16 rights.

17 g. It is, therefore, in the public interest of the State of New
18 Jersey to protect tenants from unjust, unfair, or discriminatory
19 screening practices by limiting access to filing information in court
20 actions involving landlord-tenant matters for a reasonable period of
21 time, and permanently denying access to such information with
22 regard to matters in which the tenants prevailed or achieved a
23 favorable settlement, or which have been affected by the passage of
24 time.

25
26 2. a. The court record of a landlord-tenant action shall remain
27 confidential and unavailable to the public for the first 60 days after
28 and including the date the action was filed.

29 b. The court record of a landlord-tenant action shall remain
30 confidential and unavailable to the public indefinitely unless the
31 action results in a judgment for possession.

32 c. The court record of a landlord-tenant action that results in an
33 unconditional judgment for possession shall become public the later
34 of the 61st day after the date the action was filed or within 45 days
35 after the date the matter is completely resolved, however, if the
36 matter is appealed by either party, the court record shall remain
37 confidential and unavailable to the public until the conclusion of the
38 appeal, and only be made available to the public if the landlord
39 prevails.

40 d. The court record of a landlord-tenant action shall remain
41 confidential and unavailable to the public, although a judgment for
42 possession has been entered, if the judgment is subject to conditions
43 that, if met by the tenant, may result in the judgment being vacated
44 and the matter dismissed. However, if the court finds, after notice
45 to the tenant and an opportunity to be heard, that the conditions
46 have not been met, the court record shall be made available to the
47 public at the conclusion of an appeal or an opportunity to appeal the
48 judgment.

1 e. The court record of a landlord-tenant action shall remain
2 confidential and unavailable to the public, although a judgment for
3 possession has been entered, if the tenant files a timely order to
4 show cause seeking to vacate the judgment prior to being physically
5 locked out of the housing unit. The court record shall remain
6 confidential and unavailable to the public until the order to show
7 cause is resolved, and shall remain confidential and unavailable to
8 the public if the tenant prevails.

9 f. The court records of any cause of action brought by a tenant
10 asserting a legal right against a landlord shall remain confidential
11 and unavailable to the public indefinitely, regardless of whether the
12 tenant prevails, unless the tenant voluntarily consents to making the
13 court record available to the public.

14
15 3. As used in this act:

16 “Court record” means any record containing information
17 regarding a past or current landlord-tenant action, and any record of
18 the filing of a landlord-tenant action, including but not limited to:

19 a. any information maintained by a court in any form in
20 connection with a case or judicial proceeding, including but not
21 limited to pleadings, motions, briefs and their respective
22 attachments, evidentiary exhibits, indices, calendars, and dockets;

23 b. any order, judgment, opinion, or decree related to a judicial
24 proceeding;

25 c. any official transcript or recording of a public judicial
26 proceeding, in any form;

27 d. any information in a computerized case management system
28 created or prepared by the court in connection with a case or
29 judicial proceeding; and

30 e. any record made or maintained by a judicial officer.

31 “Landlord-tenant action” means any action brought by or against
32 a landlord or tenant in the Special Civil part of the New Jersey
33 Superior Court.

34
35 4. a. Any New Jersey public entity that maintains a written or
36 automated record or file of court records of landlord-tenant actions
37 shall take appropriate actions to ensure that court records of all
38 landlord-tenant actions that did not result in a judgment for
39 possession are kept confidential and unavailable to the public.

40 b. A tenant involved in a landlord-tenant action that resulted in
41 a judgment of possession may apply to the Administrative Office of
42 the Courts and request that the court records of any action resulting
43 in a judgment of possession more than three years prior thereto be
44 purged.

45 c. The Supreme Court of New Jersey may adopt rules, and the
46 Administrative Director of the Courts may issue directives and
47 guidelines, to implement the purposes of this act.

1 5. When evaluating a prospective tenant, a landlord shall not
2 consider:

3 a. a landlord-tenant action brought by or against a tenant which
4 did not result in a judgment for possession, or which did result in a
5 judgment for possession but was then dismissed or reversed; or

6 b. a judgment for possession that was entered and executed
7 against the prospective or existing tenant three or more years prior
8 to the tenant's application for tenancy.

9
10 6. If a landlord rejects an application from a prospective tenant,
11 approves an application with conditions that exceed reasonable
12 conditions routinely imposed upon a prospective tenant, or takes
13 any other adverse action on a rental application, the landlord shall
14 provide a written notice of the adverse action to the prospective
15 tenant that states the reasons for the adverse action. The adverse
16 action notice shall disclose any screening information about the
17 prospective tenant accessed by the landlord, and shall append any
18 screening report about the prospective tenant that was accessed by
19 the landlord. The adverse action notice shall be provided in a
20 substantially similar format as set forth in this section.

21
22 ADVERSE ACTION NOTICE

23
24 Name
25 Address
26 City/State/Zip Code

27
28 This notice is to inform you that your application has been:

29
30 Rejected

31 Approved, subject to the following conditions:

32 _____
33
34 Adverse action on your application was based, in part, on the
35 following:

36
37 Information contained in a consumer report (The prospective
38 landlord must include the name, address, and phone number of the
39 consumer reporting agency that furnished the consumer report that
40 contributed to the adverse action.)

41 Information received from previous rental history or reference

42 Information received in a criminal record

43 Information received in a court filing or other court record

44 Information received from an employment verification

45 Other

1 The following is (are) the name(s), address(es), and phone
2 number(s) of each of the consumer reporting agencies, or other
3 agencies or entities, that furnished the reports or information
4 referred to above:

5 _____

6
7 Your application was not accepted, or was approved with the
8 additional conditions described above, for the following reasons:

9 _____

10

11 Dated this day of,(year)

12 Agent/Owner Signature"

13

14 7. Any person who violates section 5 or 6 of this act shall, in
15 addition to any other penalty provided by law, be liable for a
16 penalty of not less than \$1,000 for the first offense, and not less
17 than \$5,000 for the second and each subsequent offense, plus
18 reasonable attorney fees. This penalty shall be exclusive of, and in
19 addition to, any moneys or property ordered to be paid or restored
20 to any person in interest.

21

22 8. This act shall take effect immediately and shall apply
23 retroactively to court records of all landlord-tenant actions.

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26

STATEMENT

27

28 This bill would preserve the confidentiality of the court records
29 of landlord-tenant actions under certain circumstances. The bill
30 defines the term "court records" expansively to include any record
31 containing information regarding a past or current landlord-tenant
32 action, and any record of the filing of a landlord-tenant action. The
33 bill defines the term "landlord-tenant action" as any action brought
34 by or against a landlord or tenant in the Special Civil part of the
35 New Jersey Superior Court.

36 The bill specifically provides that the court record of a landlord-
37 tenant action will remain confidential and unavailable to the public
38 for the first 60 days after and including the date the action is filed.
39 Under the bill, the court record of a landlord-tenant action will
40 remain confidential and unavailable to the public indefinitely unless
41 the action results in a judgment for possession.

42 The bill provides that if a landlord-tenant action results in an
43 unconditional judgment for possession, the court record of the
44 action will become public on the later of the 61st day after the date
45 the action was filed or within 45 days after the date the matter is
46 completely resolved. However, if the matter is appealed by either
47 party, the court record remains confidential and unavailable to the

1 public until the conclusion of the appeal, and will only be made
2 available to the public if the landlord prevails.

3 The bill also provides that the court record of a landlord-tenant
4 action will remain confidential and unavailable to the public
5 although a judgment for possession has been entered, if the
6 judgment is subject to conditions that, if met by the tenant, may
7 result in the judgment being vacated and the matter dismissed.
8 However, if the court finds, after notice to the tenant and an
9 opportunity to be heard, that the conditions have not been met, the
10 court record shall be made available to the public at the conclusion
11 of an appeal or an opportunity to appeal the judgment.

12 Under the bill, the court record of a landlord-tenant action will
13 remain confidential and unavailable to the public after entry of a
14 judgment for possession if the tenant files a timely order to show
15 cause seeking to vacate the judgment prior to being physically
16 locked out of the housing unit. In this circumstance, the court
17 record will remain confidential and unavailable to the public until
18 the order to show cause is resolved, and will remain confidential
19 and unavailable to the public if the tenant prevails.

20 The bill provides that the court record of any cause of action
21 brought by a tenant asserting a legal right against a landlord will
22 remain confidential and unavailable to the public indefinitely,
23 regardless of whether the tenant prevails, unless the tenant
24 voluntarily consents to making the court record available to the
25 public.

26 The bill also addresses the use of court records by landlords
27 when evaluating prospective tenants. The bill prohibits a landlord,
28 when evaluating a prospective tenant, from considering a landlord-
29 tenant action brought by or against a tenant that did not result in a
30 judgment for possession, or which did result in a judgment for
31 possession but was then dismissed or reversed. The bill also
32 prohibits landlords from considering a judgment for possession that
33 was entered and executed against a prospective or existing tenant
34 three or more years prior to the tenant's application for tenancy.

35 Additionally, the bill would require a landlord who takes an
36 adverse action on a rental application to provide written notice of
37 the adverse action to the prospective tenant, stating the reasons for
38 the adverse action. The adverse action notice must disclose any
39 screening information about the prospective tenant accessed by the
40 landlord, and must append any screening report about the
41 prospective tenant that was accessed by the landlord.

42 The bill would authorize imposition of a penalty on a landlord
43 who violates the bill's provisions concerning the improper
44 screening of tenants. Specifically, the bill provides that in addition
45 to any other penalty provided by law, a landlord will be liable for a
46 penalty of not less than \$1,000 for a first offense, and not less than

S539 CODEY, RICE

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1 \$5,000 for a second and each subsequent offense, plus reasonable
2 attorney fees. This penalty would be exclusive of, and in addition
3 to, any moneys or property ordered to be paid or restored to any
4 person in interest.