ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[Second Reprint]
ASSEMBLY, No. 1919

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 5, 2021

The Assembly Housing Committee reports favorably Assembly Bill No. 1919 (2R), with committee amendments.

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 within owner-occupied premises of less than five 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 degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within the 6 years 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.

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 30 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 l0 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 it 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 allows a person claiming to be aggrieved to file a complaint or action with the Division on Civil Rights, who would issue a monetary penalty if the complaint is substantiated. The bill allows a housing provider or applicant to appeal a determination in court. The Division on Civil Rights would maintain data on the number of complaints filed, demographic information on the complaints, the identity of the associated housing providers, the number of investigations conducted, and the disposition of the complaints and investigations. The division would annually publish information online on complaints that have resulted in monetary penalties.

The bill would also direct the Division on Civil Rights to create a model disclosure statement to be used by a housing provider to notify a housing applicant whether the housing provider intends to consider criminal records.

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

COMMITTEE AMENDMENTS:

The committee amended the bill to revise the tiered look-back period in the bill to establish that, after the issuance of a conditional offer to a housing applicant, a housing provider would only be

authorized to consider criminal a record that resulted in a conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, any crime that resulted in lifetime registration in a state sex offender registry, or 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 6 years immediately preceding the issuance of the conditional offer;
- 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
- 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.

Additionally, these committee amendments would:

- shift enforcement responsibility under the bill from the Department of Community Affairs to the Division on Civil Rights in the Department of Law and Public Safety;
- adjust the "rental dwelling unit" definition so that the bill would not apply to units within owner-occupied premises of less than five dwelling units;
- remove a provision prohibiting housing providers from ever considering criminal convictions arising for conduct committed outside of the State that, if committed within the State, would not constitute an indictable offense;
- provide that 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;
- provide a housing applicant with 30 days after the housing provider's notice of a withdrawn offer, to request a copy of all information relied upon in considering the applicant, including criminal records;
- direct the Division on Civil Rights to create a model disclosure statement to notify a housing applicant whether the housing provider intends to consider criminal records;
- expressly prohibit a housing provider from expressing, directly, or indirectly, any unlawful limitation, specification or discrimination as to criminal record examination as a condition for the provision of housing;
- expressly prohibit a housing provider from disseminating an applicant's criminal record to any person who is not expected to use the criminal record for the purpose of evaluating the applicant;

- prohibit a housing provider from requiring an applicant to submit to a drug or alcohol test, or request the applicant's consent to obtain information from a drug abuse treatment facility;
- Establish a rebuttable presumption of unlawful retaliation if a housing provider or other person takes an adverse action against a person within 90 days of the person's exercise of the rights protected by the bill;
- provide that landlords subject to the provisions of the bill would be immune from liability in civil actions arising as a result of a decision to rent to individuals with a criminal records or who were otherwise convicted of criminal offenses, or as a result of a landlord's decision to not engage in a criminal background screening;
- direct the division to maintain complaint data, and annually publish information online on complaints that result in monetary penalties;
- authorize an applicant to file a complaint with the Division on Civil Rights to allege a violation of the bill, and authorize the Division on Civil Rights to issue a monetary penalty against a housing provider if the complaint is substantiated;
- Establish authority for a housing provider or applicant to appeal certain Division on Civil Rights determinations in court;
- establish $1,000 and $5,000 penalties for a first and second violation, if committed within the same five-year period, and a $10,000 penalty for any subsequent violations during the same seven-year period; and
- make technical changes to the bill.