SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 250

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 16, 2020

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 250.

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 on appeal; (4) vacated and otherwise legally nullified convictions; (5) juvenile adjudications of delinquency; (6) records that have been sealed; or (7) criminal convictions arising for conduct committed outside of the State that, if committed within the State, would not constitute an indictable offense.

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 that was issued within, or a prison sentence that concluded within, the last three years; and

(2) consists of a non-expungable criminal conviction.

The bill allows a housing provider to withdraw a conditional offer based on an applicant's criminal record only if the housing provider determines, by clear and convincing evidence, that the withdrawal is necessary, because the applicant's criminal conduct renders the applicant unfit for the housing arrangement. The bill requires the housing provider's determination of unfitness for housing must be reasonable in light of the following:

(1) The nature and severity of the offense;

(2) The age of the applicant at the time of the offense;

(3) The time elapsed since the offense;

(4) Any information produced regarding rehabilitation and good conduct since the occurrence of the offense;

(5) The degree to which the offense, if it reoccurred, would negatively impact the safety of other tenants or property;

(6) Whether the offense occurred on or was connected to property that was rented or leased by the applicant;

(7) Whether the offense arose from an applicant's status as a survivor of domestic violence, sexual assault, stalking or dating violence;

(8) Whether the offense arose from an applicant's mental illness or other disability; and

(9) If the applicant was under the influence of alcohol or illegal drugs at the time of the offense, whether the applicant is in recovery, or has recovered and rehabilitated, from the associated addiction. Evidence of recovery and rehabilitation would include, at a minimum: (a) compliance with the terms and conditions of parole or probation; (b) educational attainment or vocational or professional training, or employment since conviction; (c) completion of, or active participation in, rehabilitative treatment; and (d) letters of recommendation from community organizations, counselors, case managers, teachers, faith leaders, community leaders, parole officers, and probation officers.

If a housing provider withdraws a conditional offer, the bill requires the housing provider to provide the applicant, free of charge, with written notification that includes (1) an explanation of what was concluded on each of the factors considered pursuant to subsection f. of this section; (2) the reason for the withdrawal; (3) a copy of the criminal records and other information that the housing provider relied on to inform the decision; (4) a notice in English and Spanish that advises the applicant of the right to file a complaint with the Attorney General; and (5) a written offer, provided in Spanish, to provide the applicant with the explanations required pursuant to items (1) and (2) above in Spanish, if that is the applicant's primary language.

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.

Except as otherwise required by law, the bill prohibits a housing provider from (1) distributing or 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 in a manner consistent with the bill; or (2) using an applicant's criminal record for a purpose that is not consistent with the bill.

The bill would not apply if a federal law or regulation requires the housing provider to consider an applicant's criminal records for the purposes of leasing a residential dwelling unit, or if a federal law regulation otherwise allows for the denial of an applicant due to certain criminal convictions.

The bill prohibits 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. The bill provides that it would constitute a rebuttable presumption of unlawful retaliation if a housing provider or any other person takes an adverse action against a person within 90 days of the person's exercise of the rights protected in the bill. This rebuttable presumption would be sufficient to establish unlawful retaliation, unless the housing provider or other person is able to demonstrate that the action would have been taken in the absence of such protected activity.

The bill allows a person claiming to be aggrieved to file a complaint or action with the Division on Civil Rights or in the Superior Court of New Jersey alleging a violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). The bill would make any housing provider in violation of its provisions liable for a civil penalty in an amount not to exceed $1,000 for the first violation, $5,000 for the second violation, and $10,000 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 require the Division on Civil Rights to maintain data on the number of complaints filed pursuant to this bill, demographic information on the complaints, the identity of the housing providers, the number of investigations conducted, and the disposition of every complaint and investigation, which would be published and posted online annually.

The bill would require the Attorney General to adopt the rules and regulations necessary to effectuate the purposes of the bill on or before the first day of the fifth month next following enactment.

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

COMMITTEE AMENDMENTS:

The committee amendments would:

- add a findings and declarations section to the bill;
- clarify the exceptions to the bill's prohibition on a landlord's review of a tenant's criminal records;
- remove a provision from the bill that would have allowed a housing provider to make inquiries regarding an applicant's criminal record prior to a conditional offer if the applicant first voluntarily discloses information regarding their criminal record;
- specify the types of criminal records that a landlord may not review either before or after the issuance of a conditional offer;
- reduce the post-conditional offer review period from 10 years to three years;
- restrict a post-conditional offer review from concerning pending criminal accusations;
- revise both the factors that a housing provider would be required to consider before withdrawing a conditional offer, and the conditions on which the withdrawal may be made;
- revise the requirements for the notification with which a housing provider would provide an applicant upon the withdrawal of a conditional offer;
- remove a requirement for the housing provider to provide the applicant with all information relied upon in withdrawing a conditional offer following a request for this information from the applicant;
- limit the circumstances in which a housing provider may use or disseminate an applicant's criminal records;
- prohibit a housing provider from requiring an applicant to submit to a drug or alcohol test, or requesting the applicant's consent to obtain information from a drug abuse treatment facility;
- provide parameters for what may be considered unlawful retaliation in response to an applicant's exercise of a right protected under the bill;
- require the Division on Civil Rights to maintain certain information on complaints filed under the bill; and
- direct the Attorney General to adopt rules and regulations to effectuate the purposes of the bill on or before the first day of the fifth month next following enactment of the bill.