

**CHAPTER 110**  
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**AN ACT** concerning the housing rights of certain persons with criminal records and supplementing chapter 8 of Title 46 of the Revised Statutes.

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

C.46:8-52 Short title.

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

C.46:8-53 Findings, declarations regarding housing to those with criminal records.

2. The Legislature finds and declares that:
  - a. Recent research indicates that New Jersey suffers from a tragically high 36-month recidivism rate of over 30 percent;
  - b. Housing instability appears to impact recidivism, considering that over one in 10 prisoners in the United States face homelessness upon release;
  - c. Research from other states indicates a substantial increase in the likelihood of a parolee’s arrest following each change in address, further supporting the conclusion that when ex-convicts are unable to find stable housing, recidivism becomes more likely and public safety is diminished;
  - d. Prior to the 1990s when popular guidance documents began advising landlords to conduct criminal background checks on prospective tenants, criminal background information was not widely-available and convenient to landlords for informing rental decisions, but many landlords were nonetheless able to maintain safe and healthy rental properties; and
  - e. It is, therefore, necessary and in the public interest for the Legislature to enact legislation for the purpose of establishing certain housing rights of persons with criminal records.

C.46:8-54 Definitions relative to housing to those with criminal records.

3. As used in this act:

“Applicant” means any person considered for, who requests to be considered for, or who requests to be considered for tenancy within a rental dwelling unit.

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

“Criminal record” means information about an individual collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests, detentions, indictments, criminal complaints, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, release or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

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

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

“Housing provider” means a landlord, an 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 rental dwelling unit.

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

“Rental dwelling unit” means a dwelling unit offered for rent by a housing provider for residential purposes, other than a dwelling unit in an owner-occupied premises of not more than four dwelling units.

C.46:8-55 Application process.

4. a. (1) A housing provider shall not require an applicant to complete any housing application that includes any inquiries regarding an applicant’s criminal record prior to the provision of a conditional offer, except that a housing provider may consider whether an applicant has ever been convicted of 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.

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

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

b. Prior to accepting any application fee, a housing provider shall disclose in writing to the applicant:

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

(2) A statement that the applicant, pursuant to subsection a. of this section, may provide evidence demonstrating inaccuracies within the applicant’s criminal record or evidence of rehabilitation or other mitigating factors.

c. A housing provider shall apply the standards established by this section to each applicant in a nondiscriminatory manner.

C.46:8-56 Housing provider’s consideration of applicant’s record.

5. 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; 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, sexual assault in violation of N.J.S.2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.2C:24-4, 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 sentence 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 sentence 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;

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

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

d. (1) The applicant may 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 that the housing provider relied upon in considering the applicant, including criminal records.

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

C.46:8-57 Director preparation of model documents.

6. a. The director shall prepare:

(1) a model disclosure statement as indicated in subsection b. of section 4 of this act which provides notice that a housing provider intends to review and consider a person's criminal record in determining eligibility for housing or in taking any other adverse housing action against that person. The statement shall also provide an explanation of the criminal records that may be considered and the manner in which they may be considered, in accordance with the provisions of section 5 of this act. The statement shall also notify the person of the right to dispute, within 10 days of receiving such statement, the relevance and accuracy of the criminal record and to offer evidence of any mitigating facts or

circumstances, including but not limited to the person's rehabilitation and good conduct since the criminal offense in question; and

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

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

C.46:8-58 Discriminatory advertisement by house provider, prohibited.

7. a. A housing provider shall not knowingly or purposefully publish, or cause 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.

b. A housing provider shall not print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or use any form of application for the rental, lease, or sublease of any real property or part or portion thereof or make any record or inquiry in connection with the prospective rental, lease, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any unlawful limitation, specification or discrimination as to criminal record, except as permitted by this act and 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.

c. Unless otherwise required by law, a housing provider shall not:

(1) distribute or disseminate 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 this act; or

(2) use an applicant's criminal record for a purpose that is not consistent with this act.

C.46:8-59 Immunity.

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

b. Nothing in subsection a. of this section shall be construed to affect in any way the immunity from liability conferred by law upon a landlord who rents an apartment to a person with a conviction for murder, aggravated sexual assault, kidnapping, arson, human

trafficking, sexual assault in violation of N.J.S.2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.2C:24-4, or any crime that resulted in lifetime registration in a state sex offender registry.

C.46:8-60 Drug, alcohol test, drug abuse treatment information; requirement by housing provider, prohibited.

9. A housing provider shall not require 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.

C.46:8-61 Unlawful acts by housing provider.

10. A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act. If the division determines that a housing provider has engaged in one or more unlawful actions against a person with the intent of retaliating for the person's filing of an action against the housing provider pursuant to section 12 of this act, then each unlawful retaliatory action shall be enforced, pursuant to section 12 of this act, as a separate and distinct violation of this act.

C.46:8-62 Complaint data maintenance.

11. The division shall maintain data on the number of complaints filed pursuant to this act, demographic information on the complainants, the identity of the housing providers, the number of investigations conducted, and the disposition of every complaint and investigation. The division shall annually publish and post on the division's Internet website, information on substantiated complaints that have resulted in the issuance of a monetary penalty pursuant to section 12 of this act. The division shall not publish on the division's Internet website information regarding any complaint against a housing provider for which the housing provider is in good faith compliance with the requirements made by the director pursuant to subsection a. of section 12 of this act.

C.46:8-63 Complaints, actions sought against housing provider.

12. a. An action that alleges a violation of this act shall not be initiated by any person in court. The director, or an applicant or prospective applicant who believes that a housing provider has violated a provision of this act with respect to that applicant or prospective applicant, may file a complaint with the division. Upon the filing of a complaint by a person other than the director, the division shall make a good faith effort to notify the housing provider of the alleged violation and offer the housing provider the opportunity to mediate and address the complaint within 14 days of receiving the notice. The division shall not subject a housing provider to any penalty pursuant to subsection c. of this section if the complaint is addressed pursuant to the process identified in this subsection.

b. If the complaint is not resolved in accordance with subsection a. of this section, and the division determines following an investigation that the complaint is substantiated, the director shall issue a monetary penalty against the housing provider and may require the housing provider to take one or more of the actions authorized by subsection d. of this section.

(1) A housing provider may appeal a final decision by the director issued pursuant to this section to the Appellate Division of the Superior Court.

(2) A complainant may appeal, to the Appellate Division of the Superior Court, 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.

c. 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.

d. The director is authorized to require a housing provider to take one or more of the following actions upon a finding that the housing provider has violated a provision of this act:

(1) The director may require a housing provider to cease and desist from continuing to violate this act; to communicate in writing to the housing provider's employees and agents their obligations under this act; and to report to the director on the manner of compliance for a period not to exceed two years provided that the housing provider does not commit future violations of the act;

(2) If a housing provider has committed at least one other violation of this act within the preceding five-year period, the director may require the housing provider to make a good faith effort to remedy the violation with respect to the applicant when a remedy is possible, by issuing a conditional offer, if the violation has resulted in a failure to issue a conditional offer, or by providing the same or a similar rental dwelling unit to the applicant on the same terms as the prior conditional offer if the same or a similar rental dwelling unit is currently or will become available, if the violation has resulted in the withdrawal of a conditional offer. Notwithstanding any provision of the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.) to the contrary, if an appeal by a housing provider is successful, and the court overturns a final decision of the director that resulted in an order under this paragraph, then a determination that the housing provider did not violate the provisions of this act as evidenced by such successful appeal shall be grounds for the housing provider to evict the former applicant if that person resides in a rental dwelling unit owned by the housing provider as the result of the director's order, so long as the housing provider provides the applicant with at least 45 days' notice prior to the eviction;

(3) Unless housing is provided to the applicant pursuant to paragraph (2) of this subsection, the director may require that the applicant's rental application fee be returned; and

(4) The director may require that a portion of the sum owed by the housing provider pursuant to subsection c. of this section be paid to the applicant in an amount not to exceed \$1,000.

e. 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 (C.10:5-1 et seq.).

C.46:8-64 Rules, regulations.

13. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director shall adopt the rules and regulations necessary to effectuate the purposes of this act on or before the first day of the fifth month next following enactment.

14. This act shall take effect on the first day of the seventh month next following the date of enactment, but the division may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved June 18, 2021.