ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-677

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 15, 2017

To assist in the successful reintegration of those with a criminal history by removing barriers to securing adequate housing accommodations, to restrict a housing provider's inquiry into a housing applicant's pending criminal accusation or prior conviction until after a conditional offer of housing is made, to allow a housing provider to consider an applicant's pending criminal accusation or criminal conviction only if the conviction occurred during the last 7 years and only with respect to specific crimes, to ensure criminal record-screening policies achieve substantial, legitimate, non-discriminatory interests, to authorize the Office of Human Rights to adjudicate complaints filed under this act, to establish penalties, and to provide for immunity.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fair Criminal Record Screening for Housing Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Applicant" means any person considered for, who requests to be considered for, or who intends to request to be considered for tenancy within a housing accommodation.

(2) "Arrest" shall have the same meaning as provided in section 2(2) of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152; D.C. Official Code § 32-1341(2)).

(3) "Conditional offer" means an offer to rent or lease a rental unit to an applicant that is:

(A) Contingent on the housing provider's subsequent inquiry into the applicant's criminal record; or

(B) Contingent on any other eligibility criteria that the housing provider may utilize.

(4) "Conviction" means a verdict or plea of guilty or nolo contendere.

(5) "Housing accommodation" shall have the same meaning as provided in section 103(14) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(14)).

(6) "Housing provider" shall have the same meaning as provided in section 103(15) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(15)).

(7) "Inquiry" shall have the same meaning as provided in section 2(8) of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152; D.C. Official Code § 32-1341(8)).

(8) "Pending criminal accusation" shall mean "criminal accusation" as that term is defined in section 2(5) of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152; D.C. Official Code § 32-1341(5)).

(9) "Rental unit" shall have the same meaning as provided in section 103(33) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.03(33)).

Sec. 3. Inquiries into certain arrests, accusations, and convictions.

(a) A housing provider may not make an inquiry about or consider a previous arrest of the applicant if the arrest did not result in a conviction.

(b)(1) Before making a conditional offer, a housing provider may not make an inquiry about or require an applicant to disclose or reveal a pending criminal accusation or criminal conviction.

(2) Notwithstanding paragraph (1) of this subsection, a housing provider may have an applicant complete and sign all required paperwork authorizing the housing provider to perform an inquiry or any other check related to the eligibility criteria the housing provider may use in deciding whether to rent or lease to an applicant.

(c)(1) Before accepting an application fee, a housing provider must disclose, in writing, to the applicant:

(A) The eligibility criteria, including the financial, employment, criminal, and rental history criteria, used in deciding whether to rent or lease to the applicant; and

(B) A statement that the applicant may provide evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors.

(d) After making a conditional offer, a housing provider may only consider a pending criminal accusation or criminal conviction that has occurred within the past 7 years when the pending criminal accusation or criminal conviction is for one or more of the following crimes, whether committed in the District of Columbia or any other state, or the United States:

(1) Arson under section 820 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code § 22-301);

(2) Burning one's own property with intent to defraud or injure another under section 821 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code § 22-302);

(3) Malicious burning, destruction, or injury of another's property under section 848 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1327; D.C. Official Code § 22-303);

(4) Burglary under section 823 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code § 22-801);

(5) Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse under section 803 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-401);

(6) Assault with intent to commit mayhem or with dangerous weapon under section 804 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-402);

(7) Aggravated assault under section 806a of An Act To establish a code of law for the District of Columbia, effective August 20, 1994 (D.C. Law 10-151; D.C. Official Code § 22-404.01);

(8) Mayhem or maliciously disfiguring under section 807 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-406);

(9) Making, drawing, or uttering check, draft, or order with intent to defraud under An Act Regulating the issuance of checks, drafts, and orders for the payment of money within the District of Columbia, approved July 1, 1922 (42 Stat. 820; D.C. Official Code § 22-1510);

(10) Attempt to commit a crime under section 906 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1337; D.C. Official Code § 22-1803), if the attempt is to commit a crime listed in this subsection;

(11) Conspiracy to commit a crime under section 908A of An Act To establish a code of law for the District of Columbia, approved July 29, 1970 (84 Stat. 599; D.C. Official Code § 22-1805a), if the conspiracy is to commit a crime listed in this subsection;

(12) Trafficking in labor or commercial sex acts under section 103 of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1833);

(13) Sex trafficking of children under section 104 of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1834);

(14) Kidnapping under section 812 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-2001);

(15) Murder in the first degree under section 798 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2101);

(16) Murder in the first degree under section 799 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2102);

(17) Murder in the second degree under section 800 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2103);

(18) Manslaughter as penalized under section 802 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2105);

(19) Murder of law enforcement officer under section 802a of An Act To establish a code of law for the District of Columbia, effective May 23, 1995 (D.C. Law 10-256; D.C. Official Code § 22-2106);

(20) Solicitation of murder or other crime of violence as penalized under section 802b of An Act To establish a code of law for the District of Columbia, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-2107);

(21) Abducting, enticing, or harboring a child for the purpose of prostitution; harboring such child under section 813 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-2704);

(22) Robbery under section 810 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-2801);

(23) Attempt to commit robbery under section 811 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-2802);

(24) First degree sexual abuse under section 201 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002);

(25) Second degree sexual abuse under section 202 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3003);

(26) First degree child sexual abuse under section 207 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3008);

(27) Second degree child sexual abuse under section 208 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3009);

(28) First degree sexual abuse of a minor under section 208a of the Anti-Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-3009.01);

(29) Second degree sexual abuse of a minor under section 208b of the Anti-Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-3009.02);

(30) First degree sexual abuse of a ward, patient, client, or prisoner under section 212 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3013);

(31) Second degree sexual abuse of a ward, patient, client, or prisoner under section 213 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3014);

(32) First degree sexual abuse of a patient or client under section 214 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3015);

(33) Second degree sexual abuse of a patient or client under section 215 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3016);

(34) Acts of terrorism under section 103 of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153);

(35) Manufacture or possession of a weapon of mass destruction under section 104 of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154);

(36) Use, dissemination, or detonation of a weapon of mass destruction under section 105 of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155);

(37) Fraud under section 121 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3221);

(38) Credit card fraud under section 123 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3223);

(39) Insurance fraud in the first degree under section 125b of the District of Columbia Theft and White Collar Crimes Act of 1982, effective April 27, 1999 (D.C. Law 12-273; D.C. Official Code § 22-3225.02);

(40) Insurance fraud in the second degree under section 125c of the District of Columbia Theft and White Collar Crimes Act of 1982, effective April 27, 1999 (D.C. Law 12-273; D.C. Official Code § 22-3225.03);

(41) Forgery under section 141 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3241);

(42) Prohibited acts A under section 401 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.01), excluding subsection (d)(1) of this section;

(43) Prohibited acts B under section 402 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.02);

(44) Prohibited acts C under section 403 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.03);

(45) Prohibited acts D under section 411 of the District of Columbia Uniform Controlled Substances Act of 1981, effective June 13, 1990 (D.C. Law 8-138; D.C. Official Code § 48-904.03a);

(46) Distribution to minors under section 406 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.06);

(47) Enlistment of minors to distribute under section 407 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.07); and

(48) Attempt or conspiracy to commit a crime under section 409 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 2001 (D.C. Law 4-29; D.C. Official Code § 48-904.09), if the attempt or conspiracy is to commit a crime listed in this subsection.

(e)(1) A housing provider may withdraw a conditional offer based on an applicant's pending criminal accusation or a criminal conviction that has occurred within the past 7 years under subsection (d) of this section only if the housing provider determines, on balance, that the withdrawal achieves a substantial, legitimate, nondiscriminatory interest.

(2) The housing provider's determination of such an interest must be reasonable 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.

(f)(1) 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 a notice that advises the applicant of the applicant's right to file an administrative complaint with the Office of Human Rights.

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

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

(g) Nothing in this section shall be construed to allow a housing provider to make an inquiry about or require an applicant to disclose or reveal a pending criminal accusation or criminal conviction of an individual under 18 years of age who will reside in the rental unit.

Sec. 4. Exclusions.

This act shall not apply:

(1) To a housing provider that owns and occupies a housing accommodation that includes 3 or fewer rental units;

(2) Where a federal law or regulation or District law requires the consideration of an applicant's criminal history for the purposes of obtaining a housing accommodation; or

(3) Where a federal law or regulation or District law otherwise allows for denial of an applicant due to certain criminal convictions.

Sec. 5. Filing a complaint with the Office of Human Rights; exclusive remedy.

(a) A person claiming to be aggrieved by a violation of this act may file an administrative complaint with the Office of Human Rights within one year after the unlawful discriminatory act, or discovery thereof, in accordance with the procedures set forth in Title III of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 2-1403.01 *et seq.*)

(b) A person claiming to be aggrieved by a violation of this act shall have no private cause of action in any court based on a violation of this act.

Sec. 6. Penalties.

(a) If the Office of Human Rights determines that there is probable cause to believe that a violation of this act has occurred, the Office of Human Rights shall certify the complaint to the Commission on Human Rights, who may impose the following penalties, of which half shall be awarded to the complainant and half shall be awarded to the District of Columbia and deposited into the General Fund of the District of Columbia:

(1) For a housing provider that supplies one to 10 rental units in the District of Columbia, a fine of up to $1,000;

(2) For a housing provider that supplies 11 to 20 rental units in the District of Columbia, a fine of up to $2,500; or

(3) For a housing provider that supplies 21 or more rental units in the District of Columbia, a fine of up to $5,000.

(b) The fines set forth in subsection (a) of this section may be doubled for any housing provider that:

(1) Violates this act more than twice within a calendar year; or

(2) Fails to implement a corrective action ordered by the Commission on Human Rights within 90 days after the corrective action is ordered.

(c) For any violation that occurs within 6 months after the date this act applies, the Commission on Human Rights shall issue warnings and orders to correct.

Sec. 7. Reporting requirements.

Beginning December 31, 2018, and on an annual basis thereafter, the Office of Human Rights shall submit a report to the Council of the District of Columbia that includes:

(1) The number of complaints filed pursuant to this act during the reporting period;

(2) The number of investigations that the Office of Human Rights has conducted during the reporting period and the disposition of every complaint and investigation;

(3) The business characteristics of the housing providers against whom complaints were filed during the reporting period, including:

(A) The number of rental properties that the housing provider owns; and

(B) The number of rental units in each housing accommodation that the housing provider owns.

Sec. 8. Public education requirements.

(a) Within 120 days after the date this act applies, the Office of Human Rights shall develop a public education curriculum based on the requirements of this act.

(b) Within 45 days after the public education curriculum is developed under subsection (a) of this section, the Office of Human Rights shall begin training housing providers and residents, particularly those with criminal records.

(c)(1) The Office of Human Rights shall develop model language for the following:

(A) Notices of eligibility criteria for applicants;

(B) Requests for information about a pending criminal accusation or criminal conviction; and

(C) Notices of withdrawals of conditional offers.

(2) The model language developed under paragraph (1) of this subsection shall be posted on the Office of Human Rights' website.

Sec. 9. Immunity.

A housing provider shall have immunity from any claims related to actual or constructive knowledge of an applicant's pending criminal accusation or criminal conviction obtained as a result of an inquiry under this act; provided, that the applicant became a tenant or occupant of the housing provider's housing accommodation.

Sec. 10. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

Sec. 11. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 12. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 13. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 15, 2017

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B21-706**

[X] ITEM ON CONSENT CALENDAR
[X] ACTION & DATE — **ADOPTED FIRST READING, 12/06/2016**
[X] VOICE VOTE
RECORDED VOTE ON REQUEST — **APPROVED**
ABSENT
[ ] ROLL CALL VOTE – Result ( )

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Evans	X				Silverman	X			
Alexander	X				Grosso	X				Todd	X			
Allen	X				May	X				White	X			
Bonds	X				McDuffie	X								
Cheh	X				Nadeau	X								

X – Indicate Vote AB – Absent NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council — 1-18-17 Date

[ ] ITEM ON CONSENT CALENDAR
[X] ACTION & DATE — **ADOPTED FINAL READING, 12/20/2016**
[X] VOICE VOTE
RECORDED VOTE ON REQUEST — **APPROVED**
ABSENT
[ ]ROLL CALL VOTE – Result ( )

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Evans	X				Silverman				X
Alexander	X				Grosso				X	Todd	X			
Allen	X				May	X				White	X			
Bonds	X				McDuffie	X								
Cheh	X				Nadeau	X								

X – Indicate Vote AB – Absent NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council — 1-18-17 Date

[ ] ITEM ON CONSENT CALENDAR
[ ] ACTION & DATE
[ ] VOICE VOTE
RECORDED VOTE ON REQUEST
ABSENT
[ ]ROLL CALL VOTE – Result ( )

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Evans					Silverman				
Alexander					Grosso					Todd				
Allen					May					White				
Bonds					McDuffie									
Cheh					Nadeau									

X – Indicate Vote AB – Absent NV – Present, Not Voting

CERTIFICATION RECORD

Secretary to the Council — Date