

Legislative Analysis



MICHIGAN FAIR CHANCE ACCESS TO HOUSING ACT

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House Bill 4878 as introduced
Sponsor: Rep. Abraham Aiyash
Committee: Economic Development and Small Business
Housing Subcommittee
Complete to 10-4-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4878 would create the Michigan Fair Chance Access to Housing Act to generally prohibit a *landlord* from using an individual's *criminal record* when evaluating the individual's rental application at any stage in the application process, except as provided by the act or under federal or state law.

Landlord would mean the owner, lessor, or sublessor of a residential rental unit or the property of which the rental unit is a part, or a person authorized to exercise any aspect of the management of the premises.

Criminal record would mean information obtained from any source regarding the following:

- An individual's conviction or arrest record.
- A conviction that has been sealed, dismissed, vacated, expunged, voided, or invalidated.
- A conviction that has rendered inoperative by judicial action or statute.
- A determination, adjudication, or other matter considered in or processed through the juvenile justice system.
- An individual's participation in, completion of, or deferral of a diversion program.

Landlords would be prohibited from interfering with, restraining, or denying the exercise of or attempt to exercise a right under the act. A landlord that complies with the act would be immune from liability in a civil action that arises out of the landlord's failure to conduct a background check or the landlord's decision to rent or lease to an individual with a criminal record or who was otherwise convicted of a criminal offense.

Application screening

Landlords would be generally prohibited from inquiring about an applicant's criminal record or requiring an applicant to complete an application that includes an inquiry regarding their criminal record before issuing a conditional offer. This provision would not apply to inquiries regarding criminal records that are required to be disclosed under federal law or regarding whether the applicant is required to register as a sex offender under the Sex Offenders Registration Act.

A landlord could only evaluate or consider an applicant's criminal record during the screening process after disclosing as much to the applicant and before accepting any application fees. The landlord would also have to provide a statement that the applicant could be required to

provide documentary evidence of any inaccuracies in their criminal record, their rehabilitation, and other mitigating factors.

If a landlord determines that an individual has paid any applicable application fees and satisfied all application criteria, such as income eligibility, rental history, and credit score, they would be required to issue a written conditional offer to the applicant, which could be contingent on a subsequent inquiry into the applicant's criminal record. Application criteria, however, could *not* include the evaluation or consideration of the applicant's criminal record, and landlords would be prohibited from indicating that an application will be denied based solely or partially on an individual's criminal record, except as provided under federal or state law.¹

Withdrawal of conditional offer

A landlord could only consider an applicant's criminal record after issuing a conditional offer to the applicant if the record includes a conviction for arson, human trafficking, or any other felony that has been adjudicated within one year of the date that the offer was issued. The landlord could only withdraw the offer based on an applicant's criminal record if it would be necessary to fulfill a substantial, legitimate, and nondiscriminatory interest. The landlord would then have to notify the applicant by mail or email within 24 hours to inform the applicant of the reasons for the withdrawal and that the applicant can appeal the withdrawal.

An applicant could provide a written, signed, and dated appeal of the withdrawal of their conditional offer within 14 days of receiving the notice. Upon receiving the appeal, the landlord would have to perform an individualized assessment of the applicant that considers the following factors:

- The nature and severity of the criminal offense.
- The age of the applicant at the time of the criminal offense and the time that has elapsed since the offense.
- Any information provided by the applicant or on their behalf regarding the applicant's rehabilitation and good conduct since the offense occurred.
- The degree to which a repeated offense would negatively impact the safety of the landlord's tenants and rental property.
- Whether the criminal offense occurred on or was connected to a rental property rented by the applicant.
- Whether the criminal offense directly and specifically had a negative impact on the safety of other individuals or property.
- Whether the criminal offense creates a reasonable and justifiable fear for the safety of other individuals or property.

After reviewing the appeal, the landlord would have to either grant the appeal or take any of the following *adverse actions* against the applicant:

- Refuse to engage in or negotiate a rental unit transaction.
- Deny a rental application.
- Falsely represent that a rental unit is unavailable.
- Apply different terms or conditions to a rental unit transaction.
- Make a rental unit unavailable.

¹ The federal Fair Housing Act allows landlords to take adverse action against an individual because they have been convicted of certain drug-related offenses.

A landlord could delay an adverse action for up to seven days in good faith to reconsider whether the applicant is an unacceptable risk.² If a landlord takes an adverse action, they would have to return any application fee or holding deposit paid by the applicant and notify the applicant by certified mail and email, if provided, of the reasons for the adverse action and how to file a complaint with the Michigan Department of the Attorney General (AG). Landlords would be required to refund and notify the applicant within 24 hours. An applicant could request a copy of all documents used during the landlord's determination within 14 days of receiving the notice, and the landlord would have to provide the information requested free of charge within ten days of receiving that request.

Complaints and investigations

An applicant could file a mailed, electronic, or in-person complaint with the AG for a violation of the act. The complaint would have to include a detailed description of the circumstances surrounding the alleged violation and the names and contact information of both the applicant and the landlord.

If the AG receives a complaint, it could investigate the allegations by sending the copy of the complaint to the landlord, requesting the landlord to respond and provide relevant documents, and conducting a hearing. Landlords would have to respond to any requests within seven days.

After the investigation, the AG would be able to file a petition for appropriate temporary relief against the landlord, such as an order or decree in the relevant district court that restrains the landlord from denying the individual's application, pending a final determination. The district court could then grant the relief as it considers just and proper, but the relief or order could not extend beyond 14 days without the landlord's consent unless the court finds reasonable cause to believe that the landlord violated the act. If the parties reach a satisfactory resolution and enter into a conciliation agreement after the conclusion of the investigation, then the AG would have to dismiss the complaint.

If the AG holds a hearing in response to an alleged violation and determines that the landlord *did not* violate the act, it would have to state its findings and conclusions and then issue a final order dismissing the complaint. If the AG determines that the landlord *did* violate the act, it would have to state its findings and conclusions and issue a final order that does one or more of the following:

- Requires the landlord to cease and desist from violating the act.
- Imposes civil fines for the violation.
- Requires the landlord to pay the applicant for damages caused by the violation, including reasonable attorney fees.
- Requires the landlord to pay some or all of the applicant's costs for maintaining the action, if determined to be appropriate.
- Imposes any other relief considered to be appropriate.

Copies of all final orders would have to be provided to the applicant, the landlord, and the court.

² Unacceptable risk would mean a level of risk, given a costs and benefits analysis, that would impair adequate and feasible operation of the landlord's rental property and that cannot be mitigated by other factors to an acceptable level.

Final AG decisions could be appealed by the applicant or the landlord in the appropriate circuit court within 30 days of receiving the final order. The circuit court's final judgement would be subject to review by appeal in the same manner and form as other appeals from that court. If an appeal is not filed by the deadline, the AG could obtain a decree for the enforcement of the final order from the appropriate circuit court.

The AG would have to retain all complaints and responses filed under the act for at least three years.

A court record that is submitted to or obtained by the AG would be confidential, unless disclosure of that record is required under the Freedom of Information Act (FOIA).

Administration and implementation

The Department of the Attorney General would be authorized to promulgate rules to implement the act in accordance with the Administrative Procedures Act.

Within 90 days of the act taking effect, the AG would have to create a form containing a summary of applicants' rights under the act and a list of legal resources available to an applicant who alleges a violation. Copies of the form would have to be available in the department's office and in an easily accessible place on its website.

No more than 30 days after the form is created, it would have to be attached as an addendum to any lease agreement provided to a tenant in Michigan, attached to a rental application to be signed and initialed by the applicant, and posted by all landlords in a common area on the rental property that is generally accessible to all occupants of the property, such as a hallway, stairway, laundry or recreational room, mail room, playground, community center, or garage.

The act would be severable, meaning that if any portion of the act or its application to any person or circumstance is found to be invalid by a court, any remaining portions or applications that can take effect would not be affected.

BACKGROUND:

Legislation prohibiting inquiries about an individual's criminal record, known as "ban-the-box" laws, commonly regulate the information an employer can request from a prospective employee. Several local governments have also passed ban-the-box ordinances that specifically pertain to housing, including Ann Arbor,³ Detroit,⁴ and Kalamazoo.⁵

In 2021, New Jersey enacted the Fair Chance in Housing Act, which prohibits landlords from inquiring about an applicant's criminal history in most instances.⁶ The New Jersey law contains provisions similar to House Bill 4878.

³ https://library.municode.com/mi/ann_arbor/ordinances/code_of_ordinances?nodeId=1077898.

⁴ https://library.municode.com/mi/detroit/codes/code_of_ordinances?nodeId=CICOCH21--43_CH22HO_ARTVIIIIFACHACREHO.

⁵ <https://ecode360.com/36972244>.

⁶ <https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/fcha/>. The act applies to rental properties with at least five units.

FISCAL IMPACT:

The Department of the Attorney General would be responsible for administering and enforcing the Michigan Fair Chance Access to Housing Act. The AG may require additional personnel to administer, investigate, and enforce the provisions of the bill. The AG was not able to provide an estimate of whether additional attorneys, investigators, or support staff would be necessary. If existing AG staff were insufficient to comply with the bill, additional state costs of approximately \$100,000 annually for any additional support staff FTE position and \$200,000 annually for any additional attorney FTE position may be required.

The bill also would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of violations that occur under the bill and, subsequently, the number of civil fines imposed by the department. Revenue collected from payment of civil fines would be used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System. Because there is no practical way to determine the number of violations that would occur under provisions of the bill, an estimate of the amount of additional revenue for the state and for libraries cannot be made. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.