

HOUSE BILL NO. 4878

June 28, 2023, Introduced by Reps. Aiyash, Young, Hope, Hoskins, Brenda Carter, McKinney, O'Neal, Brabec, Pohutsky, Tsernoglou, Grant, Dievendorf, Edwards, Hood, Morgan, Rheingans, Wilson, Wegela, Andrews, Brixie and Farhat and referred to the Committee on Economic Development and Small Business.

An act to prohibit landlords from requiring certain disclosures from certain applicants for rental units or taking adverse actions against certain applicants based on certain disclosures; to provide exceptions; to require the promulgation of rules; to provide remedies; to prescribe civil sanctions; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "Michigan fair chance
2 access to housing act".

1 Sec. 3. As used in this act:

2 (a) "Adverse action" means any of the following:

3 (i) A refusal to engage in or negotiate a rental unit
4 transaction.

5 (ii) Denying a rental application.

6 (iii) Falsely representing that a rental unit is not available
7 for rent or lease.

8 (iv) Applying different terms or conditions to a rental unit
9 transaction.

10 (v) Making a rental unit unavailable.

11 (b) "Applicant" means an individual that submits a rental
12 application to rent or lease a rental unit.

13 (c) "Arrest record" means information that indicates that an
14 individual has been questioned, apprehended, taken into custody or
15 detention, held for investigation, arrested, charged, indicted, or
16 tried for any felony, misdemeanor, or other offense by a law
17 enforcement agency.

18 (d) "Background check report" means a report by a law
19 enforcement agency, court, consumer reporting agency, or tenant
20 screening agency regarding an applicant's criminal history.

21 (e) "Bona fide purchaser" means a person that in good faith
22 makes a purchase without notice of any outstanding rights of
23 others.

24 (f) "Conditional offer" means a written offer to rent or lease
25 a rental unit made by the landlord to an applicant that is
26 contingent on a subsequent inquiry into the applicant's criminal
27 record.

28 (g) "Criminal record" means information transmitted orally, in
29 writing, or by any other means, and obtained from any source,

1 including, but not limited to, the individual to whom the
2 information pertains, a government agency, or a background check
3 report, regarding any of the following:

4 (i) A conviction.

5 (ii) An arrest record.

6 (iii) A sealed, dismissed, or vacated conviction.

7 (iv) An expunged, voided, or invalidated conviction.

8 (v) A conviction rendered inoperative by judicial action or by
9 statute.

10 (vi) A determination or adjudication in the juvenile justice
11 system.

12 (vii) A matter considered in or processed through the juvenile
13 justice system.

14 (viii) Participation in or completion of a diversion program.

15 (ix) A deferral of a diversion program.

16 (h) "Department" means the department of attorney general.

17 (i) "Holding deposit" means a payment requested by a landlord
18 during the application for a rental unit to reserve a rental unit
19 for an applicant.

20 (j) "Landlord" means any of the following:

21 (i) The owner, lessor, or sublessor of a rental unit or the
22 property of which it is a part.

23 (ii) A person authorized to exercise any aspect of the
24 management of the premises, including a person that directly or
25 indirectly acts as a rental agent, or receives rent, other than as
26 a bona fide purchaser, and has no obligation to deliver the rent
27 payments to another person.

28 (k) "Law enforcement agency" means the police department of a
29 city, township, or village, the sheriff's department of a county,

1 the department, the department of state police, or any other
2 governmental law enforcement agency of this state.

3 (l) "Rental unit" means a structure or part of a structure used
4 as a home, residence, or sleeping unit by a single person or
5 household unit, or any grounds, or other facilities or area
6 promised for the use of a residential tenant. Rental unit includes,
7 but is not limited to, apartment units, boarding houses, rooming
8 houses, mobile home spaces, and single- and 2-family dwellings.

9 (m) "Unacceptable risk" means a level of risk, given costs and
10 benefits analysis, that is so severe as to impair adequate and
11 feasible operation of the landlord's rental property and cannot be
12 mitigated by other factors to an acceptable level.

13 Sec. 5. (1) After the receipt of an application for a rental
14 unit from an applicant and the payment of an application fee by
15 that applicant, a landlord may screen the applicant to determine
16 whether the applicant satisfies all the application criteria. For
17 purposes of this act, application criteria include, but are not
18 limited to, income eligibility, rental history check, credit score
19 check, pet restrictions qualification, or other application
20 criteria. Application criteria do not include the evaluation or
21 consideration of the applicant's criminal record.

22 (2) A landlord must issue a conditional offer if, after
23 screening the application, the landlord determines that the
24 applicant satisfies all the application criteria described under
25 subsection (1).

26 Sec. 7. (1) Except as otherwise provided in this act, a
27 federal law, or a state law, a landlord shall not, either before or
28 after the issuance of a conditional offer, evaluate a rental
29 application based on an applicant's criminal record.

1 (2) Except as otherwise required under federal or state law, a
2 landlord shall not print, circulate, post, mail, or otherwise cause
3 to be published a statement, advertisement, notice, or sign that
4 indicates that a rental application will be denied based solely or
5 in part on an individual's criminal record.

6 Sec. 9. (1) Except as otherwise provided in subsection (2), a
7 landlord shall not do any of the following before issuing a
8 conditional offer to an applicant:

9 (a) Require an applicant to complete a rental application that
10 includes an inquiry regarding the applicant's criminal record.

11 (b) Make an oral or written inquiry for an applicant's
12 criminal record.

13 (2) Subsection (1) does not apply to an inquiry regarding any
14 of the following:

15 (a) Criminal records that are required to be disclosed under a
16 federal law.

17 (b) Whether the applicant is an individual who is required to
18 register as a sex offender under the sex offenders registration
19 act, 1994 PA 295, MCL 28.721 to 28.730.

20 (3) Before accepting an application fee for a rental unit, a
21 landlord shall disclose both of the following in writing to the
22 applicant:

23 (a) Whether the landlord's rental application screening
24 process includes an evaluation or a consideration of the
25 applicant's criminal record.

26 (b) That if subdivision (a) applies, the applicant may be
27 required to provide documentary evidence of any of the following:

28 (i) Inaccuracies in the applicant's criminal record.

29 (ii) The applicant's rehabilitation.

1 (iii) Other mitigating factors.

2 (4) After the issuance of a conditional offer to an applicant,
3 a landlord may only consider a criminal record in the applicant's
4 history that includes any of the following:

5 (a) A conviction for arson or human trafficking under the
6 Michigan penal code, 1931 Act 328, MCL 750.1 to 750.568.

7 (b) Any other felony conviction not listed under subdivision
8 (a) that has been adjudicated within 365 days immediately preceding
9 the date the conditional offer was issued.

10 (5) A landlord may withdraw a conditional offer based solely
11 on an applicant's criminal record under subsection (4), if the
12 landlord determines that the withdrawal is necessary to fulfil a
13 substantial, legitimate, and nondiscriminatory interest. If a
14 landlord withdraws a conditional offer in accordance with this
15 subsection, the landlord shall, within 24 hours after withdrawing
16 the conditional offer, send a written document by mail or email to
17 the applicant that does both of the following:

18 (a) Informs the applicant of the withdrawal of the conditional
19 offer, including the reasons for the withdrawal.

20 (b) Informs the applicant that the applicant may appeal the
21 withdrawal of the conditional offer to the landlord.

22 (6) An applicant may appeal the landlord's decision to
23 withdraw a conditional offer within 14 days after receiving the
24 written document described under subsection (5). An appeal must be
25 in writing and signed and dated by the applicant. An applicant that
26 appeals the withdrawal of the conditional offer under this
27 subsection may provide documentary evidence of the factors listed
28 under subsection (3)(b). On receipt of the applicant's appeal, the
29 landlord shall perform an individualized assessment of the

1 applicant that considers all of the following factors:

2 (a) The nature and severity of the criminal offense.

3 (b) The age of the applicant at the time of the occurrence of
4 the criminal offense.

5 (c) The time that has elapsed since the occurrence of the
6 criminal offense.

7 (d) Any information provided by the applicant or on the
8 applicant's behalf about the applicant's rehabilitation and good
9 conduct since the occurrence of the criminal offense.

10 (e) The degree to which the criminal offense, if it recurs,
11 would negatively impact the safety of the landlord's tenants and
12 rental property.

13 (f) Whether the criminal offense occurred on or was connected
14 to a rental property that was rented or leased by the applicant.

15 (g) Whether the criminal offense has a direct and specific
16 negative impact on the safety of other individuals or property or
17 creates a reasonable and justifiable fear for the safety of other
18 individuals or property.

19 (7) After reviewing the applicant's appeal, a landlord shall
20 either grant the appeal or take adverse action against the
21 applicant. Notwithstanding this subsection, a landlord may delay
22 any adverse action for a reasonable period and in good faith to
23 reconsider whether the applicant is an unacceptable risk. For
24 purposes of this subsection, a reasonable period must not exceed 7
25 days.

26 Sec. 11. (1) A landlord that takes adverse action against an
27 applicant after complying with section 9(6) shall, within 24 hours
28 after taking the adverse action, return any application fee or
29 holding deposit collected from the applicant and send a written

1 notice to the applicant by certified mail and, if provided by the
2 applicant, email that does all of the following:

3 (a) Informs the applicant of the adverse action.

4 (b) States the reasons for the adverse action.

5 (c) Instructs the applicant on how to file a complaint with
6 the department.

7 (2) Within 14 days after receiving the written notice of an
8 adverse action under subsection (1), an applicant may request, in
9 writing, a copy of all the documents that the landlord relied on to
10 take the adverse action. A landlord that receives a timely written
11 request from an applicant under this subsection shall provide the
12 information requested, free of charge, within 10 days after
13 receiving the timely request. A landlord shall apply the standards
14 established under this section to each applicant in a
15 nondiscriminatory manner.

16 Sec. 13. (1) A landlord that complies with this act is immune
17 from liability in a civil action arising out of any of the
18 following:

19 (a) The landlord's decision to rent or lease to an individual
20 with a criminal record or who was otherwise convicted of a criminal
21 offense.

22 (b) The landlord's failure to conduct a criminal background
23 check.

24 (2) A landlord shall not interfere with, restrain, or deny the
25 exercise of or an attempt to exercise a right under this act.

26 Sec. 15. (1) An applicant may file a complaint with the
27 department for a violation of this act. The complaint may be
28 submitted in person, by mail, or electronically and must include
29 all of the following information:

1 (a) The name, address, and telephone number, or name and email
2 address of the applicant.

3 (b) The name, address, and telephone number, or name and email
4 address of the landlord.

5 (c) A detailed description of the circumstances surrounding
6 the alleged violation of this act.

7 (2) On receipt of an applicant's complaint, the department
8 shall investigate the allegations in the complaint. The department
9 may do any of the following:

10 (a) Send a copy of the complaint to the landlord and request
11 the landlord to file a response to the complaint.

12 (b) Request that the landlord produce books, papers, records,
13 or documents that are relevant to an alleged violation of this act.

14 (c) Conduct a hearing.

15 (3) If the department requests the landlord to file a
16 response, the response must be filed within 7 days after the
17 receipt of the department's request.

18 (4) The department may, after the investigation of the
19 complaint, file a petition in the district court in which the
20 rental property is located, seeking appropriate temporary relief
21 against the landlord pending final determination of the matter.
22 Temporary relief sought under this subsection includes, but is not
23 limited to, an order or decree restraining the landlord from
24 denying the applicant's application for a rental unit.

25 (5) The district court may grant temporary relief or a
26 restraining order as it considers just and proper. The relief or
27 order must not extend beyond 14 days except with the consent of the
28 landlord, or after hearing upon notice to the landlord and a
29 finding by the court that there is reasonable cause to believe that

1 the landlord violated this act.

2 (6) Notwithstanding subsection (4), if before or after the
3 conclusion of the investigation of the complaint the parties reach
4 a resolution that is satisfactory to the department and enter into
5 a conciliation agreement, the department shall dismiss the
6 applicant's complaint.

7 Sec. 17. (1) If, after a hearing, the department determines
8 that the landlord did not violate this act, the department shall
9 state its findings of fact and conclusions of law and issue a final
10 order dismissing the applicant's complaint.

11 (2) If, after a hearing, the department determines that the
12 landlord violated this act, the department shall state its findings
13 of fact and conclusions of law and may issue a final order that
14 does 1 or more of the following:

15 (a) Requires the landlord to cease and desist from violating
16 this act.

17 (b) Imposes civil fines for a violation of this act.

18 (c) Requires the landlord to pay the applicant for damages for
19 any injury or loss caused by a violation of this act, including
20 reasonable attorney fees.

21 (d) Requires the landlord to pay all or a portion of the
22 applicant's costs for maintaining the action before the department,
23 if the department determines that the award is appropriate.

24 (e) Imposes other relief the department considers appropriate.

25 (3) The department shall send a copy of the final order issued
26 under this section to the applicant, landlord, and court.

27 Sec. 19. (1) An applicant and a landlord have a right of
28 appeal from a final decision of the department issued under this
29 act. An appeal must be initiated before the circuit court for the

1 county in which the alleged violation occurred, where the landlord
2 resides, or where the landlord has a principal place of business.
3 An appeal initiated under this subsection is de novo.

4 (2) An appeal must be filed within 30 days after receipt of
5 the final order issued by the department.

6 (3) If an appeal is not filed within the 30-day period
7 required under subsection (2), the department may obtain a decree
8 for the enforcement of its final order from the circuit court that
9 has jurisdiction of the appeal.

10 (4) The final judgment of the circuit court on the appeal is
11 subject to review by appeal in the same manner and form as other
12 appeals from that court.

13 Sec. 21. (1) A record submitted to or obtained by the
14 department that contains the criminal record of an applicant is
15 confidential unless disclosure is required under the freedom of
16 information act, 1976 PA 442, MCL 15.231 to 15.246.

17 (2) The department shall retain a complaint and response filed
18 under this act for at least 3 years.

19 Sec. 23. (1) Not more than 90 days after the effective date of
20 this act, the department shall create a form that contains all of
21 the following information:

22 (a) A summary of an applicant's rights under this act.

23 (b) A list of legal resources that are available to an
24 applicant who alleges that a landlord violated this act.

25 (2) The department shall have copies of the form available in
26 its office and make the form easily accessible on its website.

27 (3) Beginning 30 days after the department creates the form
28 required under subsection (1), all of the following apply:

29 (a) The form must be attached as an addendum to a lease

1 agreement provided to a tenant in this state.

2 (b) The form must be attached to a rental application and must
3 be signed or initialed by the applicant.

4 (c) A landlord shall post the form in a common area on the
5 rental property. As used in this subdivision, "common area" means a
6 portion of a rental property that is generally accessible to all
7 occupants of the rental property. Common area includes, but is not
8 limited to, a hallway, stairway, laundry and recreational room,
9 mailbox room, playground, community center, or garage.

10 Sec. 25. The department may promulgate rules in accordance
11 with the administrative procedures act of 1969, 1969 PA 306, MCL
12 24.201 to 24.328, to implement this act.

13 Sec. 27. If any portion of this act or the application of this
14 act to any person or circumstance is found to be invalid by a
15 court, the invalidity does not affect the remaining portions or
16 applications of this act that can be given effect without the
17 invalid portion or application, if those remaining portions are not
18 determined by the court to be inoperable. To this end, this act is
19 declared to be severable.