A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Kenyan R. McDuffie introduced the following bill, which was referred to the Committee on ____________________.

To assist in the successful integration of those with a criminal history by removing barriers to securing adequate housing accommodations, to prohibit the consideration of a housing applicant’s arrest record during the application process, to restrict a housing provider’s inquiry into a housing applicant’s prior convictions until after a conditional offer of housing, to establish penalties, and to give authority for enforcement to the Office of Human Rights.

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, who requests to be considered, or who intends in good faith 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)

(3) “Conditional offer” means an offer that is conditional solely on (A) The results of the housing provider’s subsequent inquiring into or gathering information about the applicant’s criminal record, or...
(B) Some other housing provider-based contingent expressly communicated to the applicant at the time of the offer.

(4) "Conviction" shall have the same meaning as provided in section 2(4) 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) "Criminal accusation" shall have the same meaning as provided 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)

(6) "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)

(7) "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)

(8) "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)

(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)

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

(a) A housing provider of a housing accommodation may not make an inquiry about or require an applicant to disclose or reveal
(1) An arrest, or

(2) A criminal accusation made against the applicant, which

(A) Is not then pending against the applicant, or

(B) Did not result in a conviction

(b) A housing provider of a housing accommodation may not make an inquiry about or require an applicant to disclose or reveal a criminal conviction until after making a conditional offer of housing

(c) The prohibitions of this act shall not apply

(1) To rental units in housing accommodations containing living quarters occupied or intended to be occupied by no more than three families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence

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

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

(d) Following the extension of a conditional offer of housing, a housing provider may only withdraw the conditional offer to an applicant or take adverse action against an applicant to achieve a substantial, legitimate, nondiscriminatory interest. The housing provider’s determination of such an interest must be reasonable in light of the following factors:

(1) The nature of the criminal offense;

(2) The severity of the criminal offense; and

(3) The age of the applicant at the time of occurrence of the criminal offense;
(4) The time which has elapsed since the occurrence of the criminal offense; and
(5) Any information produced by the applicant, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense.

(e) If a conditional offer was terminated or an adverse action was taken against the applicant, the applicant may request, within 30 days after termination or adverse action, that the housing provider afford the applicant, free of charge, within 30 days after the receipt of request

(1) A copy of any and all records on which the housing provider relied in considering the applicant, including criminal records, and

(2) A notice that advises the applicant of his or her opportunity to file an administrative complaint with the Office of Human Rights

Sec. 4. 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, 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) The administrative remedies referenced in subsection (a) of this section are exclusive.

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. 5. Penalties.

If the Commission on Human Rights finds that a violation of this act has occurred, the commission shall impose the following penalties, of which half shall be awarded to the complainant
(1) For housing providers that supply 3 to 10 rental units in the relevant housing accommodation, a fine of up to $1,000,

(2) For housing providers that supply 11 to 19 rental units in the relevant housing accommodation, a fine of up to $2,500,

(3) For housing providers that supply 20 or more rental units in the relevant housing accommodation, a fine of up to $5,000

Sec. 6. Reporting requirements.

(a) The Office of Human Rights shall maintain data on the number of complaints filed pursuant to this act, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation

(b) Data maintained by the Office of Human Rights pursuant to subsection (a) section shall be submitted to the Council annually, beginning one year from the effective date of this act

(c) Eighteen months after the effective date of this act, the Office of the District of Columbia Auditor (“ODCA”) shall provide the Council with a report, using information that ODCA may request from relevant government agencies, nonprofit organizations, and housing providers that are willing to voluntarily provide data, on the rental to applicants with criminal backgrounds by housing providers and the impact of this act on housing providers.

Sec. 7. 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. 8. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 9. 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.