



# House of Representatives

General Assembly

**File No. 176**

January Session, 2019

Substitute House Bill No. 5713

*House of Representatives, March 28, 2019*

The Committee on Housing reported through REP. MCGEE of the 5th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING CONSIDERATION OF CRIMINAL CONVICTIONS OF A PROSPECTIVE TENANT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-64b of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 As used in sections 46a-51 to 46a-99, inclusive, and section 2 of this  
4 act:

5 (1) "Conviction" means a judgment entered by a court upon a plea of  
6 guilty, a plea of nolo contendere or a finding of guilty by a jury or the  
7 court notwithstanding any pending appeal or habeas corpus  
8 proceeding arising from such judgment.

9 [(1)] (2) "Discriminatory housing practice" means any discriminatory  
10 practice specified in section 46a-64c, [or] section 46a-81e or section 2 of  
11 this act.

12 [(2)] (3) "Dwelling" means any building, structure, mobile

13 manufactured home park or portion thereof which is occupied as, or  
14 designed or intended for occupancy as, a residence by one or more  
15 families, and any vacant land which is offered for sale or lease for the  
16 construction or location thereon of any such building, structure,  
17 mobile manufactured home park or portion thereof.

18 [(3)] (4) "Fair Housing Act" means Title VIII of the Civil Rights Act  
19 of 1968, as amended, and known as the federal Fair Housing Act (42  
20 USC 3600-3620).

21 [(4)] (5) "Family" includes a single individual.

22 [(5)] (6) "Familial status" means one or more individuals who have  
23 not attained the age of eighteen years being domiciled with a parent or  
24 another person having legal custody of such individual or individuals;  
25 or the designee of such parent or other person having such custody  
26 with the written permission of such parent or other person; or any  
27 person who is pregnant or is in the process of securing legal custody of  
28 any individual who has not attained the age of eighteen years.

29 [(6)] (7) "Housing for older persons" means housing: (A) Provided  
30 under any state or federal program that the Secretary of the United  
31 States Department of Housing and Urban Development determines is  
32 specifically designed and operated to assist elderly persons as defined  
33 in the state or federal program; or (B) intended for, and solely occupied  
34 by, persons sixty-two years of age or older; or (C) intended and  
35 operated for occupancy by at least one person fifty-five years of age or  
36 older per unit in accordance with the standards set forth in the Fair  
37 Housing Act and regulations developed pursuant thereto by the  
38 Secretary of the United States Department of Housing and Urban  
39 Development.

40 (8) "Housing provider" means a landlord or owner, an agent of such  
41 landlord or owner, a realtor, property manager, housing authority, as  
42 created in section 8-40, public housing agency or other entity that  
43 provides housing opportunities to potential tenants.

44 (9) "Landlord" means the owner, lessor or sublessor of the dwelling  
45 unit, the building of which it is a part or the premises.

46 [(7)] (10) "Mobile manufactured home park" means a plot of land  
47 upon which two or more mobile manufactured homes occupied for  
48 residential purposes are located.

49 (11) "Owner" means one or more persons, jointly or severally, in  
50 whom is vested (A) all or part of the legal title to property, or (B) all or  
51 part of the beneficial ownership and a right to present use and  
52 enjoyment of the premises and includes a mortgagee in possession.

53 [(8)] (12) "Physical or mental disability" includes, but is not limited  
54 to, intellectual disability, as defined in section 1-1g, and physical  
55 disability, as defined in subdivision (15) of section 46a-51, and also  
56 includes, but is not limited to, persons who have a handicap as that  
57 term is defined in the Fair Housing Act.

58 [(9)] (13) "Residential-real-estate-related transaction" means (A) the  
59 making or purchasing of loans or providing other financial assistance  
60 for purchasing, constructing, improving, repairing or maintaining a  
61 dwelling, or secured by residential real estate; or (B) the selling,  
62 brokering or appraising of residential real property.

63 [(10)] (14) "To rent" includes to lease, to sublease, to let and to  
64 otherwise grant for a consideration the right to occupy premises not  
65 owned by the occupant.

66 Sec. 2. (NEW) *(Effective October 1, 2019)* (a) Except as provided in  
67 subsections (b) and (c) of this section, it shall be a discriminatory  
68 practice in violation of this section:

69 (1) (A) To refuse to rent after the making of a bona fide offer, or to  
70 refuse to negotiate for the rental of, or otherwise make unavailable or  
71 deny a rental unit or deny occupancy in a rental unit to any person  
72 based on the applicant's criminal record, except for (i) conviction or  
73 release from confinement for the commission of a misdemeanor  
74 described in subparagraph (B) of this subdivision during the three

75 years immediately preceding the rental application, or (ii) conviction  
76 or release from confinement for the commission of a felony described  
77 in subparagraph (B) of this subdivision during the ten years  
78 immediately preceding the rental application.

79 (B) Within the three and ten-year periods specified in subparagraph  
80 (A) of this subdivision, housing providers may only consider criminal  
81 convictions that, if repeated, would adversely affect the health, safety  
82 or welfare of other tenants, including, but not limited to, (i) crimes of  
83 physical violence to persons or property; (ii) crimes involving the  
84 illegal manufacture, sale or distribution of a controlled substance, as  
85 defined in section 21a-240 of the general statutes; (iii) violations of  
86 subdivision (1) of subsection (a) of section 53-21 of the general statutes;  
87 and (iv) sexual offenses under sections 53a-65 to 53a-90b, inclusive, of  
88 the general statutes.

89 (C) In no case may records of arrest or a charge not followed by a  
90 conviction, or records of convictions that have been erased, be used as  
91 a basis to reject an applicant for housing.

92 (D) Prior to denying a rental application pursuant to this subsection,  
93 a housing provider shall provide written notice to the applicant that  
94 the application requires further review due to the applicant's criminal  
95 conviction. The housing provider shall provide the applicant an  
96 opportunity to present relevant mitigating information regarding the  
97 conviction and evidence that the applicant would be a good tenant.  
98 Such evidence may include the following factors:

99 (i) The nature and severity of the criminal offense;

100 (ii) The facts or circumstances surrounding the criminal conduct;

101 (iii) The age of the applicant at the time of the offense;

102 (iv) The length of time elapsed since the offense;

103 (v) Evidence the applicant has maintained a good tenant history  
104 before or after the offense;

105 (vi) Any information produced by the applicant, or produced on the  
106 applicant's behalf, in regard to the applicant's rehabilitation or good  
107 conduct since the offense; and

108 (vii) Any other evidence that the offense is unlikely to reoccur.

109 (E) If, after consideration of evidence relevant to the factors set forth  
110 in subparagraph (D) of this subdivision, the housing provider rejects  
111 an applicant for housing based on conviction of a crime, such rejection  
112 shall be in writing and specifically state the evidence presented and  
113 reasons for rejection. A copy of such rejection shall be sent by  
114 registered mail to the applicant at the address provided in the  
115 application for housing.

116 (F) No housing provider may request any consumer reporting  
117 agency to provide any criminal conviction information except as  
118 permitted by this section.

119 (2) To discriminate against any person in the terms, conditions or  
120 privileges of rental of a dwelling, or in the provision of services or  
121 facilities in connection therewith, because of such person's criminal  
122 conviction status.

123 (3) To make, print or publish, or cause to be made, printed or  
124 published any notice, statement or advertisement, with respect to the  
125 rental of a dwelling that indicates any preference, limitation or  
126 discrimination based on criminal conviction status, or an intention to  
127 make any such preference, limitation or discrimination.

128 (4) To represent to any person because of criminal conviction status  
129 that any dwelling is not available for inspection or rental when such  
130 dwelling is in fact so available.

131 (b) The provisions of this section shall not apply to a person who  
132 applies for public housing who has a conviction for manufacture or  
133 production of methamphetamine on the premises of federally assisted  
134 housing, or to a person subject to a lifetime registration requirement  
135 under a state sexual offender registration program pursuant to 24 CFR

136 960.204 and 24 CFR 982.553. Nothing in this section shall be construed  
137 to limit the applicability of 24 CFR 960.204 or 24 CFR 982.553 with  
138 regard to a public housing authority.

139 (c) The provisions of this section shall not apply to (1) the rental of a  
140 room or rooms in a single-family dwelling unit if the owner actually  
141 maintains and occupies part of such unit as his or her residence, or (2)  
142 a unit in a dwelling containing not more than four units if the owner  
143 actually maintains and occupies one of such other units as his or her  
144 residence.

145 (d) Nothing in this section limits the applicability of any reasonable  
146 state statute or municipal ordinance restricting the maximum number  
147 of persons permitted to occupy a dwelling.

148 (e) Any person aggrieved by a violation of this section may file a  
149 complaint not later than one hundred eighty days after the alleged act  
150 of discrimination, pursuant to section 46a-82 of the general statutes.

151 (f) Notwithstanding any other provision of chapter 814c of the  
152 general statutes, complaints alleging a violation of this section shall be  
153 investigated not later than one hundred days after filing and a final  
154 administrative disposition shall be made not later than one year after  
155 filing unless it is impracticable to do so. If the Commission on Human  
156 Rights and Opportunities is unable to complete its investigation or  
157 make a final administrative determination within such time frames, it  
158 shall notify the complainant and the respondent in writing of the  
159 reasons for not doing so.

160 Sec. 3. Subdivision (1) of subsection (a) of section 47a-23c of the  
161 general statutes is repealed and the following is substituted in lieu  
162 thereof (*Effective October 1, 2019*):

163 (a) (1) Except as provided in subdivision (2) of this subsection, this  
164 section applies to any tenant who resides in a building or complex  
165 consisting of five or more separate dwelling units or who resides in a  
166 mobile manufactured home park and who is either: (A) Sixty-two

167 years of age or older, or whose spouse, sibling, parent or grandparent  
168 is sixty-two years of age or older and permanently resides with that  
169 tenant, or (B) a person with a physical or mental disability, as defined  
170 in subdivision [(8)] (12) of section 46a-64b, as amended by this act, or  
171 whose spouse, sibling, child, parent or grandparent is a person with a  
172 physical or mental disability who permanently resides with that  
173 tenant, but only if such disability can be expected to result in death or  
174 to last for a continuous period of at least twelve months.

175 Sec. 4. Section 8-45a of the general statutes is repealed and the  
176 following is substituted in lieu thereof (*Effective October 1, 2019*):

177 A housing authority, as defined in subsection (b) of section 8-39, in  
178 determining eligibility for the rental of public housing units may  
179 establish criteria and consider relevant information concerning (1) an  
180 applicant's or any proposed occupant's history of criminal activity,  
181 during the time periods established under subsection (a) of section 2 of  
182 this act, involving: (A) Crimes of physical violence to persons or  
183 property, (B) crimes involving the illegal manufacture, sale,  
184 distribution or use of, or possession with intent to manufacture, sell,  
185 use or distribute, a controlled substance, as defined in section 21a-240,  
186 or (C) other criminal acts which would adversely affect the health,  
187 safety or welfare of other tenants, (2) an applicant's or any proposed  
188 occupant's abuse, or pattern of abuse, of alcohol when the housing  
189 authority has reasonable cause to believe that such applicant's or  
190 proposed occupant's abuse, or pattern of abuse, of alcohol may  
191 interfere with the health, safety or right to peaceful enjoyment of the  
192 premises by other residents, and (3) an applicant or any proposed  
193 occupant who is subject to a lifetime registration requirement under  
194 section 54-252 on account of being convicted or found not guilty by  
195 reason of mental disease or defect of a sexually violent offense. In  
196 evaluating any such information, the housing authority shall give  
197 consideration to the time, nature and extent of the applicant's or  
198 proposed occupant's conduct and to factors which might indicate a  
199 reasonable probability of favorable future conduct such as evidence of  
200 rehabilitation and evidence of the willingness of the applicant, the

201 applicant's family or the proposed occupant to participate in social  
202 service or other appropriate counseling programs and the availability  
203 of such programs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	46a-64b
Sec. 2	<i>October 1, 2019</i>	New section
Sec. 3	<i>October 1, 2019</i>	47a-23c(a)(1)
Sec. 4	<i>October 1, 2019</i>	8-45a

**Statement of Legislative Commissioners:**

In Section 1(8), a reference to section 47a-1 was deleted for accuracy and in Section 2(a), a reference to Subsec. (c) was added for accuracy.

**HSG**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Human Rights & Opportunities, Com.	GF - Cost	48,503	70,060
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Cost	19,978	28,858

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill prohibits discrimination in rental housing on the basis of an individual's criminal record, and authorizes aggrieved individuals to file a complaint with the Commission on Human Rights and Opportunities (CHRO).

It is anticipated that the provisions of the bill will increase complaints filed with CHRO, requiring the addition of one Staff Attorney 1 at a cost of \$48,503 in FY 20 (partial year) and \$70,060 in FY 21 (full year), and associated fringe benefits of \$19,978 and \$28,858, respectively.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.19% of payroll in FY 20 and FY 21.

**OLR Bill Analysis**

**sHB 5713**

***AN ACT CONCERNING CONSIDERATION OF CRIMINAL CONVICTIONS OF A PROSPECTIVE TENANT.***

This bill generally prohibits discrimination in rental housing on the basis of an individual's criminal record. It does so by prohibiting housing providers (e.g., landlords, property owners, and housing authorities) from:

1. refusing to rent to a prospective tenant because of his or her criminal history, except for those convicted of certain crimes as described below;
2. discriminating in the terms, conditions, or services of a rental because of a tenant's criminal history;
3. making, printing, or publishing, or causing this to be done, a notice, statement, or advertisement concerning a rental that indicates any preference, limitation, or discrimination based on criminal history or an intention to make such a preference, limitation, or discrimination on that basis; or
4. falsely representing a unit as unavailable for inspection or rental to a prospective tenant because of his or her criminal history.

The bill authorizes aggrieved individuals to report alleged violations to the Commission on Human Rights and Opportunities (CHRO).

Under the bill, the prohibition against refusing to rent to a prospective tenant on the basis of criminal history does not extend to those convicted of, or released from confinement for, committing certain misdemeanors or felonies in the preceding three and 10 years,

respectively. Specifically, housing providers may, during the three or 10-year look-back periods, consider criminal convictions that would adversely affect the health, safety, or welfare of other tenants if the applicant were to commit them again. The bill specifies the procedure housing providers must follow in denying an applicant on this basis. It creates an exception for public housing authorities (PHAs) that must, under federal law, reject applicants with certain criminal histories from public housing.

Under current law, PHAs may deny admission to individuals with specific types of criminal records (although they must consider certain mitigating factors). The bill limits their ability to do so to the three and 10-year look-back periods described above.

Lastly, the bill makes a technical change.

EFFECTIVE DATE: October 1, 2019

## **HOUSING PROVIDERS**

The bill's prohibitions on rental housing discrimination apply to landlords and rental property owners or their agents, realtors, and property managers, PHAs, and other entities that provide housing opportunities to potential tenants (i.e., housing providers). But they do not apply to rentals of (1) rooms in single-family, owner-occupied dwellings or (2) units in multi-family dwellings that contain up to four units if one unit is owner-occupied.

## **REFUSING TO RENT BASED ON CRIMINAL HISTORY**

### ***Discriminatory Practice***

Under the bill, housing providers may not, on the basis of an applicant's criminal record, (1) refuse to rent a unit after a person makes a bona fide offer, (2) refuse to negotiate for the rental, or (3) otherwise make unavailable or deny a rental unit or deny occupancy in the unit, except as described below.

### ***Exception for Specified Criminal Convictions***

The exception is for applicants who were convicted of, or released

from confinement for, committing certain (1) misdemeanors during the three years immediately preceding the rental application or (2) felonies during the preceding 10 years. Housing providers may only consider convictions for crimes that would adversely affect the health, safety, or welfare of other tenants if the prospective tenant were to commit them again. These include crimes involving physical violence to persons or property; illegal manufacture, sale, or distribution of drugs; injury or risk of injury to, or impairing the morals of, children; and sexual offenses.

Under the bill, a “conviction” is a judgment a court enters upon a guilty or nolo contendere plea or a finding of guilt by a jury regardless of any pending appeal or habeas corpus proceeding arising from such judgment.

#### ***Excluded Arrest or Conviction Records***

The bill prohibits housing providers from basing an applicant’s rejection on expunged convictions or records of arrest or charges that did not result in a conviction. It also bars housing providers from asking consumer reporting agencies to provide criminal records other than those the bill permits them to consider.

#### ***Procedure for Denying a Rental Application on the Basis of Applicant’s Criminal Record***

Under the bill, before denying a rental application based on the applicant’s criminal record, the housing provider must (1) notify the applicant in writing that his or her application warrants additional review because of his or her criminal history and (2) allow the applicant an opportunity to provide related mitigating information about the conviction and evidence that he or she would be a good tenant.

The evidence may include the following factors:

1. nature and severity of the crime,
2. facts and circumstances surrounding the crime,

3. length of time since the offense,
4. applicant's good tenant history before or after the offense,
5. applicant's rehabilitation or good conduct since the offense, and
6. anything showing the applicant is unlikely to commit the crime again.

If, after considering the evidence related to these factors, the housing provider rejects an applicant on the basis of his or her criminal record, the provider must provide the rejection in writing. The rejection must specifically state the evidence presented and the reasons for rejection and be sent to the applicant by registered mail, to the address provided in the rental application.

### **CHRO COMPLAINTS**

The bill authorizes anyone aggrieved by a violation of the bill's prohibition on housing discrimination to, within 180 days of the alleged discriminatory act, file a complaint with CHRO pursuant to the existing statutory procedure for doing so (see BACKGROUND).

CHRO must investigate complaint allegations within 100 days of receipt and, unless it is impractical to do so, issue a final disposition within one year. If CHRO cannot complete either within the time limits, it must provide written notification to the complainant and respondent and explain why.

The bill does not, however, make conforming changes to the statutes to allow CHRO to grant relief.

### **PUBLIC HOUSING AUTHORITIES**

#### ***Consideration of Applicant Criminal Records in State-Assisted Public Housing***

Under current law, PHAs may reject a prospective tenant for state-funded public housing if he or she has a criminal record involving (1) physical violence to people or property; (2) the sale, distribution, use, or possession of illegal drugs; or (3) acts that would adversely affect

the health, safety, or welfare of other tenants. Under the bill, PHAs may still reject a prospective tenant because of the aforementioned crimes, but only if they occurred during the specified three and 10-year look-back periods.

The bill's look-back limitations do not restrict a PHAs consideration of other factors. Unchanged by the bill, state-subsidized PHAs may also reject a prospective tenant because he or she (1) abuses alcohol in a manner that gives it reasonable cause to believe the behavior may threaten other tenants' health, safety, or right to peaceful enjoyment of their premises; or (2) is subject to lifetime registration as a sex offender due to a sexually violent offense.

By law, PHAs must also consider the time, nature, and extent of the conduct and any factors indicating future improvement, such as evidence of rehabilitation or willingness to attend counseling.

#### ***Discrimination Protections not Applicable for Those Convicted of Certain Crimes Cited in Federal Law***

The bill's discrimination protections do not apply to individuals applying for public housing who have been convicted of (1) manufacturing methamphetamine on federally assisted housing premises or (2) a crime that subjects them to lifetime registration on a state sex offender registry. The bill further specifies that these provisions do not limit the application of the federal laws prohibiting such individuals from public housing. It is unclear whether these provisions apply to applicants for state- or federally assisted public housing.

#### **STATE AND LOCAL RESTRICTIONS ON MAXIMUM OCCUPANCY**

The bill provides that its provisions do not limit the applicability of any reasonable state statute or municipal ordinance restricting the maximum number of persons allowed to occupy a dwelling.

#### **BACKGROUND**

##### ***Discriminatory Housing Practices***

Existing law prohibits discrimination in housing because of race,

religion, sex, national origin, disability, familial or marital status, age, sexual orientation, gender identity or expression, lawful source of income or veteran status. It extends to discrimination in the rental and sale of public and private housing, in housing related terms, conditions, services, loans, mortgages, and in verbal or written statements or advertisements. Individuals who believe they have been discriminated against may file a complaint with CHRO within 180 days of the alleged incident.

***Related Bill***

SB 54, reported favorably by the Housing Committee, requires the Department of Housing to establish a limited period pertaining to landlords' review of prospective tenants' criminal records.

**COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute

Yea 11    Nay 3    (03/07/2019)