

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 5911  
OFFERED BY MRS. BEATTY OF OHIO**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Fair Hiring in Bank-  
3 ing Act”.

**4 SEC. 2. FEDERAL DEPOSIT INSURANCE ACT.**

5       Section 19 of the Federal Deposit Insurance Act (12  
6 U.S.C. 1829) is amended—

7           (1) by inserting after subsection (b) the fol-  
8 lowing:

9       “(c) EXCEPTIONS.—

10           “(1) CERTAIN OLDER OFFENSES.—

11                   “(A) IN GENERAL.—With respect to an in-  
12 dividual, subsection (a) shall not apply to an of-  
13 fense if—

14                           “(i) it has been 7 years or more since  
15 the offense occurred; or

16                           “(ii) the individual was incarcerated  
17 with respect to the offense and it has been

1           5 years or more since the individual was  
2           released from incarceration.

3           “(B) OFFENSES COMMITTED BY INDIVID-  
4           UALS 21 OR YOUNGER.—For individuals who  
5           committed an offense when they were 21 years  
6           of age or younger, subsection (a) shall not  
7           apply to the offense if it has been more than 30  
8           months since the sentencing occurred.

9           “(C) LIMITATION.—This paragraph shall  
10          not apply to an offense described under sub-  
11          section (a)(2).

12          “(2) EXPUNGEMENT AND SEALING.—With re-  
13          spect to an individual, subsection (a) shall not apply  
14          to an offense if—

15                 “(A) there is an order of expungement,  
16                 sealing, or dismissal that has been issued in re-  
17                 gard to the conviction in connection with such  
18                 offense; and

19                 “(B) it is intended by the language in the  
20                 order itself, or in the legislative provisions  
21                 under which the order was issued, that the con-  
22                 viction shall be destroyed or sealed from the in-  
23                 dividual’s State or Federal record, even if ex-  
24                 ceptions allow the record to be considered for

1 certain character and fitness evaluation pur-  
2 poses.

3 “(3) DE MINIMIS EXEMPTION.—

4 “(A) IN GENERAL.—Subsection (a) shall  
5 not apply to such de minimis offenses as the  
6 Corporation determines, by rule.

7 “(B) CONFINEMENT CRITERIA.—In issuing  
8 rules under subparagraph (A), the Corporation  
9 shall include a requirement that the offense was  
10 punishable by a term of three years or less con-  
11 fined in a correctional facility, where such con-  
12 finement—

13 “(i) is calculated based on the time an  
14 individual spent incarcerated as a punish-  
15 ment or a sanction, not as pretrial deten-  
16 tion; and

17 “(ii) does not include probation or pa-  
18 role where an individual was restricted to  
19 a particular jurisdiction or was required to  
20 report occasionally to an individual or a  
21 specific location.

22 “(C) BAD CHECK CRITERIA.—In setting  
23 the criteria for de minimis offenses under sub-  
24 paragraph (A), if the Corporation establishes  
25 criteria with respect to insufficient funds

1 checks, the Corporation shall require that the  
2 aggregate total face value of all insufficient  
3 funds checks across all convictions or program  
4 entries related to insufficient funds checks is  
5 \$2,000 or less.

6 “(D) DESIGNATED LESSER OFFENSES.—  
7 Subsection (a) shall not apply to certain lesser  
8 offenses (including the use of a fake ID, shop-  
9 lifting, trespass, fare evasion, driving with an  
10 expired license or tag, and such other low-risk  
11 offenses as the Corporation may designate) if 1  
12 year or more has passed since the applicable  
13 conviction or program entry.”; and

14 (2) by adding at the end the following:

15 “(f) CONSENT APPLICATIONS.—

16 “(1) IN GENERAL.—The Corporation shall ac-  
17 cept consent applications from an individual and  
18 from an insured depository institution or depository  
19 institution holding company on behalf of an indi-  
20 vidual that are filed separately or contemporaneously  
21 with a regional office of the Corporation.

22 “(2) SPONSORED APPLICATIONS FILED WITH  
23 REGIONAL OFFICES.—Consent applications filed at a  
24 regional office of the Corporation by an insured de-

1       pository institution or depository institution holding  
2       company on behalf of an individual—

3               “(A) shall be reviewed by such office;

4               “(B) may be approved or denied by such  
5       office, if such authority has been delegated to  
6       such office by the Corporation; and

7               “(C) may only be denied by such office if  
8       the general counsel of the Corporation (or a  
9       designee) certifies that the denial is consistent  
10      with this section.

11              “(3) INDIVIDUAL APPLICATIONS FILED WITH  
12      REGIONAL OFFICES.—Consent applications filed at a  
13      regional office by an individual—

14              “(A) shall be reviewed by such office; and

15              “(B) may be approved or denied by such  
16      office, if such authority has been delegated to  
17      such office by the Corporation, except with re-  
18      spect to—

19              “(i) cases involving an offense de-  
20      scribed under subsection (a)(2); and

21              “(ii) such other high-level security  
22      cases as may be designated by the Cor-  
23      poration.

24              “(4) NATIONAL OFFICE REVIEW.—The national  
25      office of the Corporation shall—

1           “(A) review any consent application with  
2           respect to which a regional office is not author-  
3           ized to approve or deny the application; and

4           “(B) review any consent application that is  
5           denied by a regional office, if the individual re-  
6           quests a review by the national office.

7           “(5) FORMS AND INSTRUCTIONS.—

8           “(A) AVAILABILITY.—The Corporation  
9           shall make all forms and instructions related to  
10          consent applications available to the public, in-  
11          cluding on the website of the Corporation.

12          “(B) CONTENTS.—The forms and instruc-  
13          tions described under subparagraph (A) shall  
14          provide a sample cover letter and a comprehen-  
15          sive list of items that may accompany the appli-  
16          cation, including clear guidance on evidence  
17          that may support a finding of rehabilitation.

18          “(6) CONSIDERATION OF CRIMINAL HISTORY.—

19          “(A) REGIONAL OFFICE CONSIDER-  
20          ATION.—In reviewing a consent application, a  
21          regional office shall—

22                  “(i) primarily rely on the criminal his-  
23                  tory record of the Federal Bureau of In-  
24                  vestigation; and

1                   “(ii) provide such record to the appli-  
2                   cant to review for accuracy.

3                   “(B) CERTIFIED COPIES.—The Corpora-  
4                   tion may not require an applicant to provide  
5                   certified copies of criminal history records un-  
6                   less the Corporation determines that there is a  
7                   clear and compelling justification to require ad-  
8                   ditional information to verify the accuracy of  
9                   the criminal history record of the Federal Bu-  
10                  reau of Investigation.

11                  “(7) CONSIDERATION OF REHABILITATION.—  
12                  Consistent with title VII of the Civil Rights Act of  
13                  1964 (42 U.S.C. 2000e et seq.), the Corporation  
14                  shall—

15                  “(A) conduct an individualized assessment  
16                  when evaluating consent applications that takes  
17                  into account evidence of rehabilitation, the ap-  
18                  plicant’s age at the time of the conviction or  
19                  program entry, the time that has elapsed since  
20                  conviction or program entry, and the relation-  
21                  ship of individual’s offense to the responsibil-  
22                  ities of the applicable position;

23                  “(B) consider the individual’s employment  
24                  history, letters of recommendation, certificates  
25                  documenting participation in substance abuse

1 programs, successful participating in job prepa-  
2 ration and educational programs, and other rel-  
3 evant mitigating evidence; and

4 “(C) consider any additional information  
5 the Corporation determines necessary for safety  
6 and soundness.

7 “(8) SCOPE OF EMPLOYMENT.—With respect to  
8 an approved consent application filed by an insured  
9 depository institution or depository institution hold-  
10 ing company on behalf of an individual, if the Cor-  
11 poration determines it appropriate, such approved  
12 consent application shall allow the individual to work  
13 for the same employer (without restrictions on the  
14 location) and across positions, except that the prior  
15 consent of the Corporation (which may require a  
16 new application) shall be required for any proposed  
17 significant changes in the individual’s security-re-  
18 lated duties or responsibilities, such as promotion to  
19 an officer or other positions that the employer deter-  
20 mines will require higher security screening creden-  
21 tials.

22 “(9) COORDINATION WITH THE NCUA.—In car-  
23 rying out this section, the Corporation shall consult  
24 and coordinate with the National Credit Union Ad-



1       ministration as needed to promote consistent imple-  
2       mentation where appropriate.

3       “(g) DEFINITIONS.—In this section:

4               “(1) CONSENT APPLICATION.—The term ‘con-  
5       sent application’ means an application filed with  
6       Corporation by an individual (or by an insured de-  
7       pository institution or depository institution holding  
8       company on behalf of an individual) seeking the  
9       written consent of the Corporation under subsection  
10      (a)(1).

11              “(2) CRIMINAL OFFENSE INVOLVING DISHON-  
12      ESTY.—The term ‘criminal offense involving dishon-  
13      esty’—

14                      “(A) means an offense under which an in-  
15      dividual, directly or indirectly—

16                              “(i) cheats or defrauds; or

17                              “(ii) wrongfully takes property belong-  
18      ing to another in violation of a criminal  
19      statute;

20                      “(B) includes an offense that Federal,  
21      State, or local law defines as dishonest, or for  
22      which dishonesty is an element of the offense;  
23      and

24                      “(C) does not include—

1 “(i) a misdemeanor criminal offense  
2 committed more than one year before the  
3 date on which an individual files a consent  
4 application, excluding any period of incar-  
5 ceration; or

6 “(ii) an offense involving the posses-  
7 sion of controlled substances.

8 “(3) PRETRIAL DIVERSION OR SIMILAR PRO-  
9 GRAM.—The term ‘pretrial diversion or similar pro-  
10 gram’ means a program characterized by a suspen-  
11 sion or eventual dismissal or reversal of charges or  
12 criminal prosecution upon agreement by the accused  
13 to restitution, drug or alcohol rehabilitation, anger  
14 management, or community service.”.

15 **SEC. 3. FEDERAL CREDIT UNION ACT.**

16 Section 205(d) of the Federal Credit Union Act (12  
17 U.S.C. 1785(d)) is amended by adding at the end the fol-  
18 lowing:

19 “(4) EXCEPTIONS.—

20 “(A) CERTAIN OLDER OFFENSES.—

21 “(i) IN GENERAL.—With respect to an  
22 individual, paragraph (1) shall not apply to  
23 an offense if—

24 “(I) it has been 7 years or more  
25 since the offense occurred; or

1                   “(II) the individual was incarcerated  
2                   ated with respect to the offense and it  
3                   has been 5 years or more since the in-  
4                   dividual was released from incarceration.  
5                   ation.

6                   “(ii) OFFENSES COMMITTED BY INDI-  
7                   VIDUALS 21 OR YOUNGER.—For individuals  
8                   who committed an offense when they were  
9                   21 years of age or younger, paragraph (1)  
10                  shall not apply to the offense if it has been  
11                  more than 30 months since the sentencing  
12                  occurred.

13                  “(iii) LIMITATION.—This subpara-  
14                  graph shall not apply to an offense de-  
15                  scribed under paragraph (1)(B).

16                  “(B) EXPUNGEMENT AND SEALING.—With  
17                  respect to an individual, paragraph (1) shall not  
18                  apply to an offense if—

19                         “(i) there is an order of expungement,  
20                         sealing, or dismissal that has been issued  
21                         in regard to the conviction in connection  
22                         with such offense; and

23                         “(ii) it is intended by the language in  
24                         the order itself, or in the legislative provi-  
25                         sions under which the order was issued,

1           that the conviction shall be destroyed or  
2           sealed from the individual's State or Fed-  
3           eral record, even if exceptions allow the  
4           record to be considered for certain char-  
5           acter and fitness evaluation purposes.

6           “(C) DE MINIMIS EXEMPTION.—

7                   “(i) IN GENERAL.—Paragraph (1)  
8           shall not apply to such de minimis offenses  
9           as the Board determines, by rule.

10                   “(ii) CONFINEMENT CRITERIA.—In  
11           issuing rules under clause (i), the Board  
12           shall include a requirement that the of-  
13           fense was punishable by a term of three  
14           years or less confined in a correctional fa-  
15           cility, where such confinement—

16                   “(I) is calculated based on the  
17           time an individual spent incarcerated  
18           as a punishment or a sanction, not as  
19           pretrial detention; and

20                   “(II) does not include probation  
21           or parole where an individual was re-  
22           stricted to a particular jurisdiction or  
23           was required to report occasionally to  
24           an individual or a specific location.

1           “(iii) BAD CHECK CRITERIA.—In set-  
2           ting the criteria for de minimis offenses  
3           under clause (i), if the Board establishes  
4           criteria with respect to insufficient funds  
5           checks, the Board shall require that the  
6           aggregate total face value of all insufficient  
7           funds checks across all convictions or pro-  
8           gram entries related to insufficient funds  
9           checks is \$2,000 or less.

10           “(iv) DESIGNATED LESSER OF-  
11           FENSES.—Paragraph (1) shall not apply to  
12           certain lesser offenses (including the use of  
13           a fake ID, shoplifting, trespass, fare eva-  
14           sion, driving with an expired license or tag,  
15           and such other low-risk offenses as the  
16           Board may designate) if 1 year or more  
17           has passed since the applicable conviction  
18           or program entry.

19           “(5) CONSENT APPLICATIONS.—

20           “(A) IN GENERAL.—The Board shall ac-  
21           cept consent applications from an individual  
22           and from an insured credit union on behalf of  
23           an individual that are filed separately or con-  
24           temporaneously with a regional office of the  
25           Board.

1           “(B) SPONSORED APPLICATIONS FILED  
2 WITH REGIONAL OFFICES.—Consent applica-  
3 tions filed at a regional office of the Board by  
4 an insured credit union on behalf of an indi-  
5 vidual—

6           “(i) shall be reviewed by such office;

7           “(ii) may be approved or denied by  
8 such office, if such authority has been dele-  
9 gated to such office by the Board; and

10           “(iii) may only be denied by such of-  
11 fice if the general counsel of the Board (or  
12 a designee) certifies that the denial is con-  
13 sistent with this section.

14           “(C) INDIVIDUAL APPLICATIONS FILED  
15 WITH REGIONAL OFFICES.—Consent applica-  
16 tions filed at a regional office by an indi-  
17 vidual—

18           “(i) shall be reviewed by such office;

19           and

20           “(ii) may be approved or denied by  
21 such office, if such authority has been dele-  
22 gated to such office by the Board, except  
23 with respect to—

1                   “(I) cases involving an offense  
2                   described under paragraph (1)(B);  
3                   and

4                   “(II) such other high-level secu-  
5                   rity cases as may be designated by the  
6                   Board.

7                   “(D) NATIONAL OFFICE REVIEW.—The  
8                   national office of the Board shall—

9                   “(i) review any consent application  
10                  with respect to which a regional office is  
11                  not authorized to approve or deny the ap-  
12                  plication; and

13                  “(ii) review any consent application  
14                  that is denied by a regional office, if the  
15                  individual requests a review by the national  
16                  office.

17                  “(E) FORMS AND INSTRUCTIONS.—

18                  “(i) AVAILABILITY.—The Board shall  
19                  make all forms and instructions related to  
20                  consent applications available to the public,  
21                  including on the website of the Board.

22                  “(ii) CONTENTS.—The forms and in-  
23                  structions described under clause (i) shall  
24                  provide a sample cover letter and a com-  
25                  prehensive list of items that may accom-

1           pany the application, including clear guid-  
2           ance on evidence that may support a find-  
3           ing of rehabilitation.

4           “(F) CONSIDERATION OF CRIMINAL HIS-  
5           TORY.—

6           “(i) REGIONAL OFFICE CONSIDER-  
7           ATION.—In reviewing a consent applica-  
8           tion, a regional office shall—

9           “(I) primarily rely on the crimi-  
10          nal history record of the Federal Bu-  
11          reau of Investigation; and

12          “(II) provide such record to the  
13          applicant to review for accuracy.

14          “(ii) CERTIFIED COPIES.—The Board  
15          may not require an applicant to provide  
16          certified copies of criminal history records  
17          unless the Board determines that there is  
18          a clear and compelling justification to re-  
19          quire additional information to verify the  
20          accuracy of the criminal history record of  
21          the Federal Bureau of Investigation.

22          “(G) CONSIDERATION OF REHABILITA-  
23          TION.—Consistent with title VII of the Civil  
24          Rights Act of 1964 (42 U.S.C. 2000e et seq.),  
25          the Board shall—



1           “(i) conduct an individualized assess-  
2           ment when evaluating consent applications  
3           that takes into account evidence of reha-  
4           bilitation, the applicant’s age at the time  
5           of the conviction or program entry, the  
6           time that has elapsed since conviction or  
7           program entry, and the relationship of in-  
8           dividual’s offense to the responsibilities of  
9           the applicable position;

10           “(ii) consider the individual’s employ-  
11           ment history, letters of recommendation,  
12           certificates documenting participation in  
13           substance abuse programs, successful par-  
14           ticipating in job preparation and edu-  
15           cational programs, and other relevant miti-  
16           gating evidence; and

17           “(iii) consider any additional informa-  
18           tion the Board determines necessary for  
19           safety and soundness.

20           “(H) SCOPE OF EMPLOYMENT.—With re-  
21           spect to an approved consent application filed  
22           by an insured credit union on behalf of an indi-  
23           vidual, if the Board determines it appropriate,  
24           such approved consent application shall allow  
25           the individual to work for the same employer

1 (without restrictions on the location) and across  
2 positions, except that the prior consent of the  
3 Board (which may require a new application)  
4 shall be required for any proposed significant  
5 changes in the individual's security-related du-  
6 ties or responsibilities, such as promotion to an  
7 officer or other positions that the employer de-  
8 termines will require higher security screening  
9 credentials.

10 “(I) COORDINATION WITH FDIC.—In car-  
11 rying out this subsection, the Board shall con-  
12 sult and coordinate with the Federal Deposit  
13 Insurance Corporation as needed to promote  
14 consistent implementation where appropriate.

15 “(6) DEFINITIONS.—In this subsection:

16 “(A) CONSENT APPLICATION.—The term  
17 ‘consent application’ means an application filed  
18 with Board by an individual (or by an insured  
19 credit union on behalf of an individual) seeking  
20 the written consent of the Board under para-  
21 graph (1)(A).

22 “(B) CRIMINAL OFFENSE INVOLVING DIS-  
23 HONESTY.—The term ‘criminal offense involv-  
24 ing dishonesty’—

1 “(i) means an offense under which an  
2 individual, directly or indirectly—

3 “(I) cheats or defrauds; or

4 “(II) wrongfully takes property  
5 belonging to another in violation of a  
6 criminal statute;

7 “(ii) includes an offense that Federal,  
8 State, or local law defines as dishonest, or  
9 for which dishonesty is an element of the  
10 offense; and

11 “(iii) does not include—

12 “(I) a misdemeanor criminal of-  
13 fense committed more than one year  
14 before the date on which an individual  
15 files a consent application, excluding  
16 any period of incarceration; or

17 “(II) an offense involving the  
18 possession of controlled substances.

19 “(C) PRETRIAL DIVERSION OR SIMILAR  
20 PROGRAM.—The term ‘pretrial diversion or  
21 similar program’ means a program character-  
22 ized by a suspension or eventual dismissal or  
23 reversal of charges or criminal prosecution upon  
24 agreement by the accused to restitution, drug

1 or alcohol rehabilitation, anger management, or  
2 community service.”.

3 **SEC. 4. REVIEW AND REPORT TO CONGRESS.**

4 Not later than the end of the 2-year period beginning  
5 on the date of enactment of this Act, the Federal Deposit  
6 Insurance Corporation and the National Credit Union Ad-  
7 ministration shall—

8 (1) review the rules issued to carry out this Act  
9 and the amendments made by this Act on—

10 (A) the application of section 19 of the  
11 Federal Deposit Insurance Act (12 U.S.C.  
12 1829) and section 205(d) of the Federal Credit  
13 Union Act (12 U.S.C. 1785(d));

14 (B) the number of applications for consent  
15 applications under such sections; and

16 (C) the rates of approval and denial for  
17 consent applications under such sections;

18 (2) make the results of the review required  
19 under paragraph (1) available to the public; and

20 (3) issue a report to Congress containing any  
21 legislative or regulatory recommendations for ex-  
22 panding employment opportunities for those with a  
23 previous minor criminal offense.

