

ASSEMBLY RESOLUTION No. 80

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblyman WILLIAM W. SPEARMAN

District 5 (Camden and Gloucester)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblyman Calabrese

SYNOPSIS

Condemns US Department of Housing and Urban Development's proposed rule limiting applicability of Fair Housing Act's disparate impact standard.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ASSEMBLY RESOLUTION** condemning the United States
2 Department of Housing and Urban Development’s proposed rule
3 limiting the applicability of the disparate impact standard under
4 Title VIII of the Civil Rights Act of 1968.
5
6 **WHEREAS**, The United States Department of Housing and Urban
7 Development’s (HUD) 2019 proposed rule outlining
8 implementation of the Fair Housing Act’s disparate impact standard
9 creates a new standard that will exacerbate inequality in the housing
10 market and allow discrimination to flourish; and
11 **WHEREAS**, Disparate impact discrimination (also referred to as
12 “discriminatory effect” discrimination) occurs when policies and
13 practices have a discriminatory effect absent any intent to
14 discriminate; and
15 **WHEREAS**, Prior to enactment of Title VIII of the “Civil Rights Act of
16 1968,” also known as the Fair Housing Act, discrimination in
17 housing based on race was prevalent in communities across the
18 United States; and
19 **WHEREAS**, Civil unrest in the 1960s led to the establishment of the
20 National Advisory Commission on Civil Disorders, also known as
21 the Kerner Commission; and
22 **WHEREAS**, The Kerner Commission issued a report highlighting the
23 racism and discrimination that existed in the sale and rental of
24 housing and recommended that the U.S. Congress enact laws
25 prohibiting discrimination in the rental or sale of housing based
26 upon race and other protected characteristics; and
27 **WHEREAS**, The U.S. Congress enacted the Fair Housing Act in
28 response to the Kerner Commission report; and
29 **WHEREAS**, The Fair Housing Act, as currently enacted, prohibits
30 discrimination in the sale or rental of housing based on race, color,
31 religion, sex, handicap, familial status, or national origin; and
32 **WHEREAS**, Following enactment of the Fair Housing Act, federal
33 courts of appeals consistently held that the Fair Housing Act
34 applied to intentional discrimination and disparate impact
35 discrimination claims; and
36 **WHEREAS**, The U.S. Congress adopted amendments to the Fair
37 Housing Act in 1988 that created exemptions to disparate impact
38 claims, thus adopting the federal appeals courts findings related to
39 disparate impact liability under the Fair Housing Act; and
40 **WHEREAS**, Following inconsistent implementation of disparate impact
41 standards across U.S. federal courts of appeals, HUD promulgated a
42 final rule formalizing the disparate impact liability standard in
43 2013; and
44 **WHEREAS**, Consistent with HUD’s 2013 final rule formalizing
45 disparate impact liability, the U.S. Supreme Court held in 2015 that
46 disparate impact discrimination is prohibited under the Fair
47 Housing Act; and

1 **WHEREAS**, HUD’s 2019 proposed rule would create severe restrictions
2 for parties seeking to claim disparate impact and provide
3 unnecessary defenses against claims of disparate impact, including
4 for discriminatory effects that occur when defendants use
5 algorithms created by a recognized third party that intentionally
6 target characteristics linked to certain vulnerable populations; and
7 **WHEREAS**, Discrimination continues to occur in the sale and rental of
8 housing across the United States, with 28,843 reported complaints
9 of housing discrimination nationwide in 2017; and
10 **WHEREAS**, The Fair Housing Act was enacted to prevent continued
11 discrimination in the sale and rental of housing based on protected
12 characteristics, but HUD’s 2019 proposed rule will make disparate
13 impact liability unattainable and allow discrimination and
14 inequality to flourish; now, therefore,

15
16 **BE IT RESOLVED** *by the General Assembly of the State of New*
17 *Jersey:*

18
19 1. The General Assembly of the State of New Jersey condemns
20 the United States Department of Housing and Urban Development’s
21 2019 proposed rule implementing the disparate impact standard.

22
23 2. Copies of this resolution, as filed with the Secretary of State,
24 shall be transmitted by the clerk of the General Assembly to the
25 United States Secretary of Housing and Urban Development and
26 every member of the United States Congress elected from this State.

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28
29 STATEMENT

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31 This resolution condemns the U.S. Department of Housing and
32 Urban Development’s (HUD) 2019 proposed rule implementing the
33 disparate impact standard.

34 Discrimination in the sale and rental of housing was extensive in
35 the U.S. prior to the enactment of the Fair Housing Act. The U.S.
36 Congress enacted the Fair Housing Act and the 1988 amendments
37 in an effort to eliminate that discrimination. HUD and the federal
38 courts have consistently stated that the Fair Housing Act prohibits
39 disparate impact discrimination, which occurs when housing
40 policies have a discriminatory effect absent discriminatory intent.

41 Overt and disparate impact discrimination in the sale and rental
42 of housing continues to occur across the United States. While overt
43 discrimination may be more apparent, the effects of disparate
44 impact discrimination can lead to inequality that persists undetected
45 or unaddressed for generations. HUD’s 2019 proposed rule will
46 create new barriers to disparate impact claims and lead to increased
47 discrimination and inequality in the housing market. Moreover,
48 with access to housing linked to success in areas such as education

- 1 and financial stability, adoption of HUD's 2019 proposed rule will
- 2 create additional barriers to success for individuals already
- 3 marginalized in our society.