

SENATE, No. 2516

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 4, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Establishes guidelines for creditworthiness determinations concerning affordable housing programs.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT establishing creditworthiness analysis guidelines for
2 affordable housing and supplementing P.L.1945, c.169 (C.10:5-1
3 et seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares that:

9 a. The current shortage of affordable housing in this State has
10 forced many low and moderate income New Jersey residents to live
11 in market rate housing they cannot afford but must occupy rather
12 than face homelessness.

13 b. After paying rent, these struggling families and individuals
14 are frequently left with less money than needed to meet other basic
15 household obligations. Late or partial payments, as well as missed
16 payments made up in subsequent months, are often the result.

17 c. These undesirable but unavoidable decisions negatively
18 affect many households' credit reports and inevitably lead to lower-
19 credit scores for these New Jersey residents.

20 d. Access to housing with affordable rents would remedy a
21 major cause of the financial difficulties experienced by lower-
22 income persons, leave them with more income to meet their basic
23 expenses, and help them to restore their credit standing.

24 e. Those households fortunate enough to obtain tenant-based
25 housing subsidies, or access to cost-controlled housing units,
26 generally after years spent on waiting lists, are often rejected by
27 landlords based upon inadequate credit assessments.

28 f. These credit assessments overlook the totality of the
29 circumstances that confronted the particular family or individual in
30 question, fail to recognize that the credit issues are generated by the
31 very problem that affordable housing would resolve, disregard the
32 limited choices available to affected households, and discount their
33 best efforts to deal with those challenges.

34 g. Available reports, studies and data demonstrate that, because
35 of past and present discriminatory practices, and the persistence of
36 structural and intentional racism, unregulated and unlimited use of
37 tenant screening criteria, including those such as credit scores and
38 reports, and other forms of credit analysis, have disparately
39 impacted African-Americans, other people of color, the disabled,
40 and other protected classes, and have also been used as a pretext to
41 accomplish otherwise prohibited discrimination against members of
42 those classes.

43 h. It is in the interest of the public to ensure that low- and
44 moderate-income persons are not unfairly denied the opportunity to
45 obtain housing they can afford and desperately need.

46 i. It is also in the public interest to establish, in relation to
47 housing subsidy and affordable housing programs, fair and just
48 standards and guidelines for credit evaluation and the use of credit

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1 scores, credit reports, and related assessments of creditworthiness or
2 fitness to be a tenant.

3

4 2. For the purposes of P.L. , c. (C.) (pending before
5 the Legislature as this bill):

6 "Ability to pay rent" means:

7 a. for federal, State or local voucher holders, or applicants for
8 project-based deep subsidy units, that the gross monthly household
9 income of the affordable housing applicant is equal to or exceeds 2.5
10 times the share or portion of the total monthly rent that the tenant shall
11 be required to pay; multipliers based upon the total rent for the
12 dwelling unit, including both the tenant's share of the rent and the
13 subsidized portion of the rent, shall not be permitted; and

14 b. for all other dwelling units limited to occupancy by low or
15 moderate income households, that the gross monthly household
16 income of the affordable housing applicant is equal to or exceeds 2
17 times the amount of the monthly rent the household will be required to
18 pay; provided, however, that the required amount of income needed if
19 the applicant is certified as income eligible for a particular dwelling
20 unit pursuant to the applicable provisions of the Uniform Housing
21 Affordability Controls promulgated by the New Jersey Housing and
22 Mortgage Finance Agency shall be in accordance with those
23 provisions, or, in the case of an applicant with a disability, shall be the
24 amount required in order to provide a reasonable accommodation
25 pursuant to the "Law Against Discrimination," P.L.1945, c.169
26 (C.10:5-1 et seq.), the federal "Fair Housing Amendments Act of
27 1988," (42 U.S.C. s.3601 et seq.) or other applicable statute or
28 regulation.

29 "Affordable housing applicant" means a low or moderate income
30 household that possesses a State or federal tenant-based housing
31 subsidy; or a household that applies to lease any rental dwelling unit
32 that is restricted to occupancy by low or moderate income households
33 pursuant to any State or federal affordable housing or subsidy
34 program, including but not limited to the "Fair Housing Act,"
35 P.L.1985, c.222 (C.52:27D-301 et al.), and any low or moderate
36 income housing mandated pursuant to a court order or settlement.

37 "Credit or other risk score or assessment" means a number or other
38 form of rating that is derived from an algorithm, computer application,
39 model, or other process that is based in whole or in part on credit
40 information, court records or similar data, and which purports to
41 characterize or categorize a person's creditworthiness, fitness to be a
42 tenant, or other position or status. The term includes but is not limited
43 to FICO or other credit scores, tenant scores, insurance scores or other
44 enumerations. The term also includes the use of generic events or
45 occurrences, such as a filing or discharge in bankruptcy, or being a
46 named party in a court proceeding, as justification for denying a
47 person credit or admission to an apartment or other rental dwelling.

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1 “Creditworthiness” means the determination of a landlord or
2 creditor, in accordance with section 4 or 5 of P.L. , c. (C.)
3 (pending before the Legislature as this bill), with regard to a
4 prospective tenant’s fitness to be a tenant or resident of a particular
5 housing complex or dwelling unit.

6 “Deep rental subsidy” means a State or federal tenant-based
7 housing subsidy, or State or federal project-based housing subsidy,
8 which limits the tenant’s share of the rental payment to a percentage of
9 the tenant’s income, and which can be adjusted to maintain that
10 percentage should the tenant’s income change.

11 “Low or moderate income household” means a household meeting
12 the applicable State or federal definition of such households for the
13 particular housing program or housing units in question.

14 “State or federal tenant-based housing subsidy” means a tenant-
15 based subsidy, enabled pursuant to a State or federal tenant-based
16 housing program available to low or moderate income households,
17 including but not limited to section 3 of P.L.2004, c.140 (C.52:27D-
18 287.3), commonly known as the State rental assistance program, or the
19 federal Housing Choice Voucher (Section 8) Program.

20

21 3. On or after the effective date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), a credit or other risk score or
23 assessment calculated or disseminated by any entity shall not be used
24 in any manner to evaluate the creditworthiness of an affordable
25 housing applicant. A creditworthiness evaluation of an affordable
26 housing applicant shall involve an individualized assessment
27 conducted in accordance with the applicable provisions of sections 4
28 or 5 of P.L. , c. (C.) (pending before the Legislature as this
29 bill).

30

31 4. a. A rental housing application submitted by an affordable
32 housing applicant with a tenant-based deep rental subsidy, or for a
33 dwelling unit with a project-based deep rental subsidy, shall not be
34 denied based on an assertion of lack of creditworthiness if the
35 applicant has the ability to pay rent.

36 b. Notwithstanding the provisions of subsection a. of this
37 section, an applicant so described may be rejected for lack of
38 creditworthiness if, within the previous three years, and while in
39 receipt of a tenant-based deep rental subsidy, or while residing in a
40 dwelling unit with a project-based deep rental subsidy, the applicant
41 failed on two or more occasions to pay the unsubsidized tenant
42 share of the monthly rent in accordance with the rental agreement;
43 provided, however, that, prior to making the decision to deny such
44 an applicant, the landlord shall conduct an individualized
45 assessment of the specific facts and circumstances surrounding the
46 failures to pay. The individualized assessment shall include, but
47 shall not be limited to, factors such as any disputes regarding the
48 amounts of rent due, the accuracy of the calculations determining

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1 the tenant's share of the rent, and other relevant factors as they may
2 be present. If the applicant had a bona fide reason for the failures to
3 pay and subsequently paid all outstanding amounts owed as the
4 tenant's share, then the applicant shall not be denied based on a lack
5 of creditworthiness.

6 c. Rent discharged in a bankruptcy proceeding shall not be
7 considered unpaid for the purposes of this section.

8
9 5. a. For all situations not covered by section 4 of P.L. , c.
10 () (pending before the Legislature as this bill), and unless
11 standards more favorable to the applicant are mandated by other
12 federal or State laws or regulations, a landlord proposing to
13 evaluate the creditworthiness of an affordable housing applicant
14 who has demonstrated an ability to pay rent, shall conduct an
15 individualized assessment of the applicant's income, employment,
16 and payment history. The individualized assessment shall include,
17 at a minimum, an evaluation of the following factors: employment
18 history and wage history, especially the amount of household
19 income in relation to the cost of living in the region; rent or
20 mortgage and utility payment history; health history, including any
21 health issues affecting other members of the applicant household;
22 the need for a reasonable accommodation in the case of a household
23 which includes a person with a disability; and the extent to which
24 the household developed a budget or payment plan that enabled it to
25 meet most of its expenses most of the time, keeping payments of
26 expenses as close to current as was reasonably possible, and
27 considering the occurrence of unanticipated problems, and
28 emergencies or other factors that significantly affected the
29 household's ability to adhere to any such budget.

30 b. Notwithstanding any provision of subsection a. of this
31 section to the contrary, for the purposes of evaluating the
32 creditworthiness of an affordable housing applicant, there shall be a
33 rebuttable presumption that an applicant household is creditworthy
34 if: (1) the applicant household has demonstrated an ability to pay
35 rent; (2) a member or members of the household has a history of
36 regular employment or has been in receipt of another source of
37 regular income; and (3) despite a household income that has been,
38 for a period of time, below the self-sufficiency level as that term is
39 defined under section 3 of P.L.1992, c.43 (C.34:15D-3) or was
40 otherwise inadequate to meet its basic needs, the household made a
41 good faith effort to meet its regular rent or mortgage obligations
42 and other household expenses, and was able to do so most of the
43 time.

44 c. Notwithstanding any provision of subsection a. of this section
45 to the contrary, an affordable housing applicant who has completed
46 a credit counseling or debt management course certified by the
47 Department of Community Affairs shall be presumed creditworthy,
48 provided that the applicant household has demonstrated an ability to

1 pay the rent. A presumption of creditworthiness based upon the
2 provisions of this subsection shall only be available on one occasion
3 to any affordable housing applicant.
4

5 6. If a landlord denies a rental housing application from an
6 affordable housing applicant, approves an application with
7 conditions that exceed reasonable conditions routinely imposed
8 upon a prospective tenant, or takes any other adverse action on an
9 affordable housing applicant's rental housing application, the
10 landlord shall provide a written notice of the adverse action to the
11 applicant that states the reasons for the adverse action. The adverse
12 action notice shall disclose any screening information about the
13 affordable housing applicant accessed by the landlord, and shall
14 append any screening report about the applicant that was accessed by
15 the landlord. The adverse action notice shall be provided in a
16 substantially similar format as set forth in this section, unless an
17 alternative format is established pursuant to rules and regulations of
18 the Attorney General. The adverse action notice shall include specific
19 written findings as to each of the factors that landlords are required to
20 consider as part of the individualized assessment. An adverse action
21 notice that does not include a specific finding as to each factor or that
22 does not consider the facts and circumstances relevant to the particular
23 affordable housing applicant shall be deemed presumptively invalid
24 and shall not constitute a lawful basis upon which to take adverse
25 action against an applicant. All written notices required herein,
26 including but not limited to the adverse action notice, shall be printed
27 in both the English and Spanish languages and given to the affordable
28 housing applicants. In any county in which the Language Access Plan
29 of the Department of Community of Affairs indicates that five percent
30 or more of the residents' primary language is any language other than
31 English or Spanish, all written notices in that county shall also be
32 printed in that additional language.
33

34 ADVERSE ACTION NOTICE
35

36 Name

37 Address

38 City/State/Zip Code
39

40 This notice is to inform you that your application has been:

41
42 Rejected

43 Approved, subject to the following conditions:
44 _____
45

46 Adverse action on your application was based, in part, on the
47 following:

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1Information contained in a consumer report (The prospective
2 landlord shall include the name, address, and phone number of the
3 consumer reporting agency that furnished the consumer report that
4 contributed to the adverse action.)

5 Information received from previous rental history or reference

6 Information received in a criminal record

7 Information received in a court filing or other court record

8 Information received from an employment verification

9 Other

10 The following is (are) the name(s), address(es), and phone
11 number(s) of each of the consumer reporting agencies, or other
12 agencies or entities, that furnished the reports or information
13 referred to above:

14 _____
15

16 Your application was not accepted, or was approved with the
17 additional conditions described above, for the following reasons
18 (include specific facts and circumstances relevant to the particular
19 applicant in relation to each of the enumerated factors that the
20 owner/landlord is required to consider as part of an individualized
21 assessment, as well as any other stated screening criteria):

22 _____
23

24 Dated this day of,(year)

25 Agent/Owner Signature"
26

27 7. Each landlord that denies, or takes any adverse action against,
28 any affordable housing applicant for creditworthiness reasons shall be
29 required to submit to the Attorney General, on an annual basis, a report
30 that contains the following information for the preceding 12-month
31 reporting period:

32 a. the number of applications for affordable housing reviewed
33 over the preceding 12-month reporting period;

34 b. the number of denials of applications for housing rendered on
35 the basis of creditworthiness reasons;

36 c. the number of denials to which the affordable housing
37 applicant filed a complaint in Superior Court;

38 d. the number of denials that were overturned or found unlawful
39 in Superior Court; and

40 e. the information required under subsections a. through d.
41 disaggregated by the race of the applicant, the ethnicity of the
42 applicant, the sex of the applicant, and whether the applicant had a
43 disability.
44

45 8. a. In addition to the types of discrimination set forth in
46 subsections g., h., i., j., l., and m. of section 11 of P.L.1945, c.169
47 (C.10:5-12), it shall constitute unlawful discrimination for a
48 landlord to use a credit or other risk score or assessment, calculated

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1 or disseminated by any entity in any manner, to evaluate the
2 creditworthiness of an affordable housing applicant in a way that
3 violates the provisions of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5 b. A person claiming to be aggrieved pursuant to P.L. , c.
6 (C.) (pending before the Legislature as this bill) may file a
7 complaint or action with the Division on Civil Rights in the
8 Department of Law and Public Safety, or in the Superior Court of
9 New Jersey, alleging a violation of the "Law Against
10 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

11 c. Following the receipt of a complaint the Director of the
12 Division on Civil Rights in the Department of Law and Public
13 Safety shall be authorized to prohibit the landlord from renting out
14 the housing unit that the claimant applied for, pending the
15 investigation of the claim.

16

17 9. The Attorney General, in accordance with the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in
19 consultation with the Commissioner of Community Affairs, shall
20 adopt rules and regulations to effectuate P.L. , c. (C.) (pending
21 before the Legislature as this bill) on or before the effective date of
22 P.L. , c. (C.) (pending before the Legislature as this bill). The
23 rules and regulations adopted by the Attorney General may restrict the
24 application of the provisions of P.L. , c. (C.) (pending before
25 the Legislature as this bill), if necessary to comply with federal law.

26

27 10. This act shall take effect on the first day of the third month
28 next following enactment.

29

30

31

STATEMENT

32

33 This bill would supplement the "Law Against Discrimination,"
34 P.L.1945, c.169 (C.10:5-1 et seq.), to establish guidelines for
35 determining the creditworthiness of applicants seeking to rent
36 affordable housing units. The critical shortage of affordable
37 housing in New Jersey has forced many low- and moderate-income
38 households to reside in market-rate housing they cannot afford but
39 must occupy to avoid homelessness. These struggling families and
40 individuals are frequently left with less money than needed to meet
41 other basic household obligations. Late or partial payments, as well
42 as missed payments made up in subsequent months, are often the
43 result. These undesirable but unavoidable decisions negatively
44 affect the households' credit reports and inevitably lead to lower-
45 credit scores. As a result, many in the State are coping with
46 damaged credit.

47

48 Except in the specific circumstances provided in the bill, the bill
would prohibit landlords from considering credit scores and other

1 risk scores or assessments when determining the creditworthiness of
2 a rental housing applicant who is the holder of a State or federal
3 tenant-based housing subsidy. The bill provides that the
4 consideration of negative credit history for such rental housing
5 applicants would only be permitted if the tenant has, within the
6 previous three years and while in receipt of a rental subsidy, failed
7 on two or more occasions to pay the unsubsidized tenant share of
8 the monthly rent in accordance with a rental agreement. Prior to
9 making the decision to deny such an applicant, the bill would
10 require the landlord to conduct an individualized assessment of the
11 specific facts and circumstances surrounding the failures to pay.
12 After a review of the circumstances, the holder of the State or
13 federal tenant-based housing subsidy would still be deemed
14 creditworthy if the tenant has a bona fide reason for late rental
15 payments.

16 Regarding other applicants for affordable rental housing who do
17 not hold State or federal tenant-based housing subsidies, the bill
18 would only permit the landlord to assess the applicant's
19 creditworthiness if the landlord also conducts an individualized
20 assessment of the applicant's income, employment, payment, and
21 credit history. The individualized assessment would include, at a
22 minimum, an evaluation of the following factors: employment
23 history and wage history, especially the amount of household
24 income in relation to the cost of living in the region; rent or
25 mortgage and utility payment history; health history, including any
26 health issues affecting other members of the applicant household;
27 the need for a reasonable accommodation in the case of a household
28 which includes a person with a disability; and the extent to which
29 the household attempted and was able to develop a budget or
30 payment plan that enabled it to meet most of its expenses most of
31 the time, keeping payments of expenses as close to current as was
32 reasonably possible, and considering the occurrence of
33 unanticipated problems, and emergencies or other factors that
34 significantly affected the household's ability to adhere to any such
35 budget.

36 Additionally, the bill would require that, for the purposes of
37 evaluating the creditworthiness of an affordable housing applicant,
38 there would be a rebuttable presumption that the applicant
39 household is creditworthy if (1) the applicant household has
40 demonstrated an ability to pay rent, as defined in the bill, (2) a
41 member of the household has a history of regular employment or
42 has been in receipt of another source of regular income, and (3)
43 despite a household income that in the past was, for a period of
44 time, below the self-sufficiency level or was otherwise inadequate
45 to meet its basic needs, the household made a good faith effort to
46 meet its regular rent or mortgage obligations and other household
47 expenses, and was able to do so most of the time. An affordable
48 housing applicant who has completed a credit counseling or debt

1 management course certified by the Department of Community
2 Affairs would also be presumed creditworthy, provided that the
3 applicant household has demonstrated an ability to pay rent.

4 The bill further directs that, if a landlord denies a rental housing
5 application from an affordable housing applicant, approves an
6 application with conditions that exceed reasonable conditions
7 routinely imposed upon a prospective tenant, or takes any other
8 adverse action, then the landlord would be required to provide a
9 written notice of the adverse action to the applicant. The adverse
10 action notice would disclose any screening information about the
11 applicant accessed by the landlord, and append any screening report
12 that the landlord accessed. The adverse action notice would include
13 the findings as to each of the factors that are required for consideration
14 in the individualized assessment. An adverse action notice that does
15 not include a specific finding as to each factor or that does not
16 consider the facts and circumstances relevant to the particular
17 applicant would be deemed presumptively invalid and would not be
18 considered to constitute a lawful basis upon which to take adverse
19 action against an applicant. The bill requires the notices to be printed
20 in both the English and Spanish languages and given to the applicants.
21 In any county in which the Language Access Plan of the Department
22 of Community of Affairs indicates that five percent or more of the
23 residents' primary language is any language other than English or
24 Spanish, all written notices in that county would also be printed in that
25 additional language.

26 The bill requires each landlord that denies, or takes any adverse
27 action against, any applicant for creditworthiness reasons to submit to
28 the Attorney General, on an annual basis, a report that contains the
29 following information for the preceding 12-month reporting period:

- 30 (1) the number of applications for housing reviewed over the
31 preceding 12-month reporting period;
32 (2) the number of denials of applications for housing rendered on
33 the basis of creditworthiness reasons;
34 (3) the number of denials to which the applicant filed a complaint
35 in Superior Court;
36 (4) the number of denials that were overturned or found unlawful
37 in Superior Court; and
38 (5) a disaggregation of the information provided based on the race
39 of the applicant, the ethnicity of the applicant, the sex of the applicant,
40 and whether the applicant had a disability.

41 The bill allows a person claiming to be aggrieved pursuant to the
42 provisions of the bill to file a complaint or action with the Division
43 on Civil Rights in the Department of Law and Public Safety, or in
44 the Superior Court of New Jersey, alleging a violation of the "Law
45 Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).
46 Following the receipt of a complaint the Director of the Division on
47 Civil Rights would be authorized by the bill to prohibit the landlord

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1 from renting out the housing unit that the claimant applied for,
2 pending the investigation of the claim.

3 The bill directs the Attorney General, and in consultation with the
4 Commissioner of Community Affairs, to adopt rules and regulations to
5 effectuate the bill on or before the first day of the third month next
6 following enactment of the bill, which would coincide with the
7 effective date of the bill.