SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2516

STATE OF NEW JERSEY

DATED: MARCH 11, 2021

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 2516.

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

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

Regarding other applicants for affordable rental housing who do not hold State or federal tenant-based housing subsidies, the bill would only permit the landlord to assess the applicant's creditworthiness if the landlord also conducts an individualized assessment of the applicant's income, employment, payment, and credit history. The individualized assessment would include, at a minimum, an evaluation of the following factors: employment history and wage history,

especially the amount of household income in relation to the cost of living in the region; rent or mortgage and utility payment history; health history, including any health issues affecting other members of the applicant household; the need for a reasonable accommodation in the case of a household which includes a person with a disability; and the extent to which the household attempted and was able to develop a budget or payment plan that enabled it to meet most of its expenses most of the time, keeping payments of expenses as close to current as was reasonably possible, and considering the occurrence of unanticipated problems, and emergencies or other factors that significantly affected the household's ability to adhere to any such budget.

Additionally, the bill would require that, for the purposes of evaluating the creditworthiness of an affordable housing applicant, there would be a rebuttable presumption that the applicant household is creditworthy if (1) the applicant household has demonstrated an ability to pay rent, as defined in the bill, (2) a member of the household has a history of regular employment or has been in receipt of another source of regular income, and (3) despite a household income that in the past was, for a period of time, below the self-sufficiency level or was otherwise inadequate to meet its basic needs, the household made a good faith effort to meet its regular rent or mortgage obligations and other household expenses, and was able to do so most of the time. An affordable housing applicant who has completed a credit counseling or debt management course certified by the Department of Community Affairs would also be presumed creditworthy, provided that the applicant household has demonstrated an ability to pay rent.

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

is any language other than English or Spanish, all written notices in that county would also be printed in that additional language.

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

(1) the number of applications for housing reviewed over the preceding 12-month reporting period;

(2) the number of denials of applications for housing rendered on the basis of creditworthiness reasons;

(3) the number of denials to which the applicant filed a complaint in Superior Court;

(4) the number of denials that were overturned or found unlawful in Superior Court; and

(5) a disaggregation of the information provided based on the race of the applicant, the ethnicity of the applicant, the sex of the applicant, and whether the applicant had a disability.

The bill allows a person claiming to be aggrieved pursuant to the provisions of the bill to file a complaint or action with the Division on Civil Rights in the Department of Law and Public Safety, or in the Superior Court of New Jersey, alleging a violation of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). Following the receipt of a complaint the Director of the Division on Civil Rights would be authorized by the bill to prohibit the landlord from renting out the housing unit that the claimant applied for, pending the investigation of the claim.

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