

ASSEMBLY, No. 669

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 15 (Hunterdon and Mercer)

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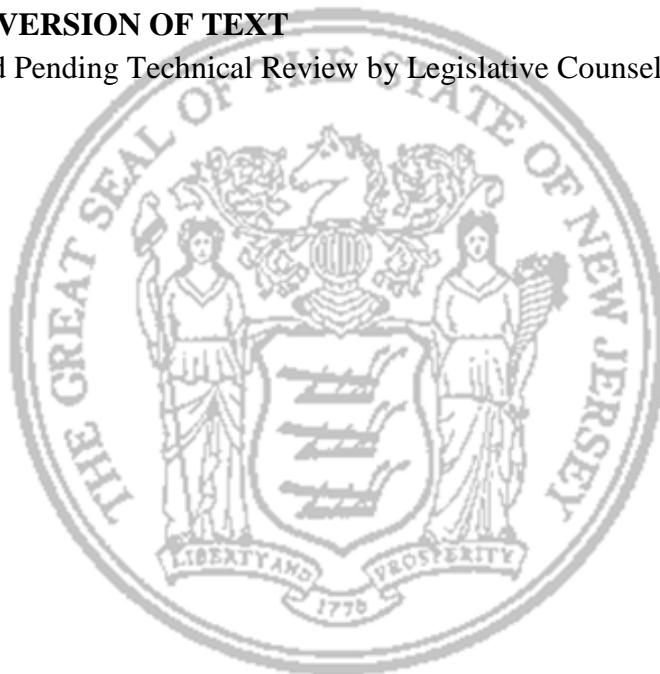
Assemblywoman Jasey, Assemblyman Atkins and Assemblywoman McKnight

SYNOPSIS

Establishes guidelines for creditworthiness determinations concerning affordable housing programs.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/20/2023)

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

1 standards and guidelines for credit evaluation and the use of credit
2 scores, credit reports, and related assessments of creditworthiness or
3 fitness to be a tenant.

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

7 “Ability to pay rent” means:

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

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

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

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

1 named party in a court proceeding, as justification for denying a
2 person credit or admission to an apartment or other rental dwelling.

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

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

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

16 “State or federal tenant-based housing subsidy” means a tenant-
17 based subsidy, enabled pursuant to a State or federal tenant-based
18 housing program available to low or moderate income households,
19 including but not limited to section 3 of P.L.2004, c.140 (C.52:27D-
20 287.3), commonly known as the State rental assistance program, or the
21 federal Housing Choice Voucher (Section 8) Program.

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

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

38 b. Notwithstanding the provisions of subsection a. of this
39 section, an applicant so described may be rejected for lack of
40 creditworthiness if, within the previous three years, and while in
41 receipt of a tenant-based deep rental subsidy, or while residing in a
42 dwelling unit with a project-based deep rental subsidy, the applicant
43 failed on two or more occasions to pay the unsubsidized tenant
44 share of the monthly rent in accordance with the rental agreement;
45 provided, however, that, prior to making the decision to deny such
46 an applicant, the landlord shall conduct an individualized
47 assessment of the specific facts and circumstances surrounding the

1 failures to pay. The individualized assessment shall include, but
2 shall not be limited to, factors such as any disputes regarding the
3 amounts of rent due, the accuracy of the calculations determining
4 the tenant's share of the rent, and other relevant factors as they may
5 be present. If the applicant had a bona fide reason for the failures to
6 pay and subsequently paid all outstanding amounts owed as the
7 tenant's share, then the applicant shall not be denied based on a lack
8 of creditworthiness.

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

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

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

1 c. Notwithstanding any provision of subsection a. of this
2 section to the contrary, an affordable housing applicant who has
3 completed a credit counseling or debt management course certified
4 by the Department of Community Affairs shall be presumed
5 creditworthy, provided that the applicant household has
6 demonstrated an ability to pay the rent. A presumption of
7 creditworthiness based upon the provisions of this subsection shall
8 only be available on one occasion to any affordable housing
9 applicant.

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

39
40 ADVERSE ACTION NOTICE

41
42 Name

43 Address

44 City/State/Zip Code

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

2

3 Rejected

4 Approved, subject to the following conditions:

5

6

7 Adverse action on your application was based, in part, on the
8 following:

9Information contained in a consumer report (The prospective
10 landlord shall include the name, address, and phone number of the
11 consumer reporting agency that furnished the consumer report that
12 contributed to the adverse action.)

13 Information received from previous rental history or reference

14 Information received in a criminal record

15 Information received in a court filing or other court record

16 Information received from an employment verification

17 Other

18 The following is (are) the name(s), address(es), and phone
19 number(s) of each of the consumer reporting agencies, or other
20 agencies or entities, that furnished the reports or information
21 referred to above:

22

23

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

30

31

32 Dated this day of,(year)

33 Agent/Owner Signature"

34

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

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

42 b. the number of denials of applications for housing rendered on
43 the basis of creditworthiness reasons;

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

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

1 e. the information required under subsections a. through d.
2 disaggregated by the race of the applicant, the ethnicity of the
3 applicant, the sex of the applicant, and whether the applicant had a
4 disability.

5
6 8. a. In addition to the types of discrimination set forth in
7 subsections g., h., i., j., l., and m. of section 11 of P.L.1945, c.169
8 (C.10:5-12), it shall constitute unlawful discrimination for a
9 landlord to use a credit or other risk score or assessment, calculated
10 or disseminated by any entity in any manner, to evaluate the
11 creditworthiness of an affordable housing applicant in a way that
12 violates the provisions of P.L. , c. (C.) (pending before the
13 Legislature as this bill).

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

20 c. Following the receipt of a complaint the Director of the
21 Division on Civil Rights in the Department of Law and Public
22 Safety shall be authorized to prohibit the landlord from renting out
23 the housing unit that the claimant applied for, pending the
24 investigation of the claim.

25
26 9. The Attorney General, in accordance with the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in
28 consultation with the Commissioner of Community Affairs, shall
29 adopt rules and regulations to effectuate P.L. , c. (C.) (pending
30 before the Legislature as this bill) on or before the effective date of
31 P.L. , c. (C.) (pending before the Legislature as this bill). The
32 rules and regulations adopted by the Attorney General may restrict the
33 application of the provisions of P.L. , c. (C.) (pending before
34 the Legislature as this bill), if necessary to comply with federal law.

35
36 10. This act shall take effect on the first day of the third month
37 next following enactment.

38
39
40 STATEMENT

41
42 This bill would supplement the "Law Against Discrimination,"
43 P.L.1945, c.169 (C.10:5-1 et seq.), to establish guidelines for
44 determining the creditworthiness of applicants seeking to rent
45 affordable housing units. The critical shortage of affordable
46 housing in New Jersey has forced many low- and moderate-income
47 households to reside in market-rate housing they cannot afford but

1 must occupy to avoid homelessness. These struggling families and
2 individuals are frequently left with less money than needed to meet
3 other basic household obligations. Late or partial payments, as well
4 as missed payments made up in subsequent months, are often the
5 result. These undesirable but unavoidable decisions negatively
6 affect the households' credit reports and inevitably lead to lower-
7 credit scores. As a result, many in the State are coping with
8 damaged credit.

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

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

46 Additionally, the bill would require that, for the purposes of
47 evaluating the creditworthiness of an affordable housing applicant,

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

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

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

- 41 (1) the number of applications for housing reviewed over the
42 preceding 12-month reporting period;
- 43 (2) the number of denials of applications for housing rendered on
44 the basis of creditworthiness reasons;
- 45 (3) the number of denials to which the applicant filed a complaint
46 in Superior Court;

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

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

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

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