

**SENATE, No. 934**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED JANUARY 31, 2022

**Sponsored by:**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Co-Sponsored by:**

**Senator Burgess**

**SYNOPSIS**

Establishes guidelines for creditworthiness determinations concerning affordable housing programs.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/30/2023)**

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  
48 standards and guidelines for credit evaluation and the use of credit

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.

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

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 (C. ) (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:

1 .....Information 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

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.

#### 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 Except in the specific circumstances provided in the bill, the bill  
48 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

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.