



House of Representatives

General Assembly

File No. 583

January Session, 2007

Substitute House Bill No. 7073

House of Representatives, April 25, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-498 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Except as provided in subsection (c) of this section, every
4 advance fee paid or given, directly or indirectly, to a mortgage lender
5 or first mortgage broker required to be licensed pursuant to sections
6 36a-485 to 36a-498a, inclusive, shall be refundable.

7 (b) No originator required to be registered pursuant to sections 36a-
8 485 to 36a-498a, inclusive, shall accept payment of any advance fee
9 except an advance fee on behalf of a licensee. Nothing in this
10 subsection shall be construed as prohibiting the licensee from paying
11 an originator all or part of an advance fee, provided such advance fee
12 paid is not refundable under this section.

13 (c) Subsection (a) of this section shall not apply if: (1) The person
14 providing the advance fee and the mortgage lender or first mortgage

15 broker agree in writing that the advance fee shall not be refundable, in
16 whole or in part; and (2) the written agreement complies in all respects
17 with the provisions of subsection (d) of this section.

18 (d) An agreement under subsection (c) of this section shall meet all
19 of the following requirements to be valid and enforceable: (1) The
20 agreement shall be dated, signed by both parties, and be executed
21 prior to the payment of any advance fee; (2) the agreement shall
22 expressly state the total advance fee required to be paid and any
23 amount of the advance fee that shall not be refundable; (3) the
24 agreement shall clearly and conspicuously state any conditions under
25 which the advance fee will be retained by the licensee; (4) the term
26 "nonrefundable" shall be used to describe each advance fee or portion
27 thereof to which the term is applicable, and shall appear in boldface
28 type in the agreement each time it is used; and (5) the form of the
29 agreement shall (A) be separate from any other forms, contracts, or
30 applications utilized by the licensee, (B) contain a heading in a size
31 equal to at least ten-point boldface type that shall title the form
32 "AGREEMENT CONCERNING NONREFUNDABILITY OF
33 ADVANCE FEE", (C) provide for a duplicate copy which shall be
34 given to the person paying the advance fee at the time of payment of
35 the advance fee, and (D) include such other specifications as the
36 commissioner may by regulation prescribe.

37 (e) An agreement under subsection (c) of this section that does not
38 meet the requirements of subsection (d) of this section shall be
39 voidable at the election of the person paying the advance fee.

40 (f) (1) No mortgage lender or first mortgage broker required to be
41 licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall enter
42 into an agreement with or otherwise require any person to pay the
43 mortgage lender or first mortgage broker for any fee, commission or
44 other valuable consideration lost as a result of such person failing to
45 consummate a first mortgage loan, provided the mortgage lender or
46 first mortgage broker may collect such fee, commission or
47 consideration as an advance fee subject to the requirements of this

48 section.

49 (2) No first mortgage broker required to be licensed pursuant to
50 sections 36a-485 to 36a-498a, inclusive, shall enter into an agreement
51 with or otherwise require any person to pay the first mortgage broker
52 any fee, commission or other valuable consideration for the
53 prepayment of the principal of a first mortgage loan by such person
54 before the date on which the principal is due.

55 (g) (1) For the purposes of this subsection:

56 (A) "Unfair or deceptive act or practice" means (i) the failure to
57 clearly and conspicuously state in the initial phase of the solicitation
58 that the solicitor is not affiliated with the lender or broker with which
59 the consumer initially applied, (ii) the failure to clearly and
60 conspicuously state in the initial phase of the solicitation that the
61 solicitation is based on personal information about the consumer that
62 was purchased, directly or indirectly, from a consumer reporting
63 agency without the knowledge or permission of the lender or broker
64 with which the consumer initially applied, (iii) the failure in the initial
65 solicitation to comply with the provisions of the federal Fair Credit
66 Reporting Act relating to prescreening solicitations that use consumer
67 reports, including the requirement to make a firm offer of credit to the
68 consumer, (iv) knowingly or negligently using information from a
69 mortgage trigger lead (I) to solicit consumers who have opted out of
70 prescreened offers of credit under the federal Fair Credit Reporting
71 Act, or (II) to place telephone calls to consumers who have placed their
72 contact information on a federal or state Do Not Call list, or (v) any
73 unfair or deceptive trade practice under the Unfair Trade Practices Act,
74 chapter 735a; and

75 (B) "Mortgage trigger lead" means a consumer report obtained
76 pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting
77 Act, 15 USC 1681b, where the issuance of the report is triggered by an
78 inquiry made with a consumer reporting agency in response to an
79 application for credit. "Mortgage trigger lead" does not include a
80 consumer report obtained by a lender that holds or services existing

81 indebtedness of the applicant who is the subject of the report.

82 (2) No mortgage lender or first mortgage broker shall engage in an
83 unfair or deceptive act or practice in soliciting an application for a first
84 mortgage loan when such solicitation is based, in whole or in part, on
85 information contained in a mortgage trigger lead. Any violation of this
86 subsection shall be deemed an unfair or deceptive trade practice under
87 subsection (a) of section 42-110b.

88 Sec. 2. Section 36a-521 of the general statutes is repealed and the
89 following is substituted in lieu thereof (*Effective October 1, 2007*):

90 (a) No person engaged in the secondary mortgage loan business in
91 this state as a mortgage lender, or a secondary mortgage broker,
92 including any licensee under sections 36a-510 to 36a-524, inclusive, and
93 any person who is exempt from licensing under section 36a-512, may
94 (1) charge, impose or cause to be paid, directly or indirectly, in
95 connection with any secondary mortgage loan transaction, prepaid
96 finance charges that exceed in the aggregate eight per cent of the
97 principal amount of the loan, or (2) include in the loan agreement
98 under which prepaid finance charges have been assessed any
99 provision which permits the mortgage lender to demand payment of
100 the entire loan balance prior to the scheduled maturity, except that
101 such loan agreement may contain a provision which permits the
102 mortgage lender to demand payment of the entire loan balance if any
103 scheduled installment is in default for more than sixty days or if any
104 condition of default set forth in the mortgage note exists. For the
105 purposes of this section, "prepaid finance charge" has the meaning
106 given to that term in section 36a-746a.

107 (b) Any mortgage lender who fails to comply with the provisions of
108 this section shall be liable to the borrower in an amount equal to the
109 sum of: (1) The amount by which the total of all prepaid finance
110 charges exceeds eight per cent of the principal amount of the loan; (2)
111 eight per cent of the principal amount of the loan or two thousand five
112 hundred dollars, whichever is less; and (3) the costs incurred by the
113 borrower in bringing an action under this section, including reasonable

114 attorney's fees, as determined by the court, provided no such mortgage
115 lender shall be liable for more than the amount specified in this
116 subsection in a secondary mortgage loan transaction involving more
117 than one borrower.

118 (c) Except as provided in subsection (e) of this section, every
119 advance fee paid or given, directly or indirectly, to a mortgage lender
120 or secondary mortgage broker required to be licensed pursuant to
121 sections 36a-510 to 36a-524, inclusive, shall be refundable.

122 (d) No originator required to be registered pursuant to sections 36a-
123 510 to 36a-524, inclusive, shall accept payment of any advance fee
124 except an advance fee on behalf of a licensee. Nothing in this
125 subsection shall be construed as prohibiting the licensee from paying
126 an originator all or part of an advance fee, provided such advance fee
127 paid is not refundable under this section.

128 (e) Subsection (c) of this section shall not apply if: (1) The person
129 providing the advance fee and the licensee agree, in writing, that the
130 advance fee shall not be refundable, in whole or in part; and (2) the
131 written agreement complies in all respects with the provisions of
132 subsection (f) of this section.

133 (f) An agreement under subsection (e) of this section shall meet all
134 of the following requirements to be valid and enforceable: (1) The
135 agreement shall be dated, signed by both parties, and be executed
136 prior to the payment of any advance fee; (2) the agreement shall
137 expressly state the total advance fee required to be paid and any
138 amount of the advance fee that shall not be refundable; (3) the
139 agreement shall clearly and conspicuously state any conditions under
140 which the advance fee will be retained by the licensee; (4) the term
141 "nonrefundable" shall be used to describe each advance fee or portion
142 thereof to which the term is applicable and shall appear in boldface
143 type in the agreement each time it is used; and (5) the form of the
144 agreement shall (A) be separate from any other forms, contracts or
145 applications utilized by the licensee, (B) contain a heading printed in a
146 size equal to at least ten-point boldface type that shall title the form

147 "AGREEMENT CONCERNING NONREFUNDABILITY OF
148 ADVANCE FEE", (C) provide for a duplicate copy, which shall be
149 given to the person paying the advance fee at the time of payment of
150 the advance fee, and (D) include such other specifications as the
151 commissioner may by regulation prescribe.

152 (g) An agreement under subsection (e) of this section that does not
153 meet the requirements of subsection (f) of this section shall be voidable
154 at the election of the person paying the advance fee.

155 (h) (1) No mortgage lender or secondary mortgage broker required
156 to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall
157 enter into an agreement with or otherwise require any person to pay
158 the mortgage lender or secondary mortgage broker for any fee,
159 commission or other valuable consideration lost as a result of such
160 person failing to consummate a secondary mortgage loan, provided
161 the mortgage lender or secondary mortgage broker may collect such
162 fee, commission or consideration as an advance fee subject to the
163 requirements of this section.

164 (2) No secondary mortgage broker required to be licensed pursuant
165 to sections 36a-510 to 36a-524, inclusive, shall enter into an agreement
166 with or otherwise require any person to pay the secondary mortgage
167 broker any fee, commission or other valuable consideration for the
168 prepayment of the principal of a secondary mortgage loan by such
169 person before the date on which the principal is due.

170 (i) (1) For the purposes of this subsection:

171 (A) "Unfair or deceptive act or practice" means (i) the failure to
172 clearly and conspicuously state in the initial phase of the solicitation
173 that the solicitor is not affiliated with the lender or broker with which
174 the consumer initially applied, (ii) the failure to clearly and
175 conspicuously state in the initial phase of the solicitation that the
176 solicitation is based on personal information about the consumer that
177 was purchased, directly or indirectly, from a consumer reporting
178 agency without the knowledge or permission of the lender or broker

179 with which the consumer initially applied, (iii) the failure in the initial
 180 solicitation to comply with the provisions of the federal Fair Credit
 181 Reporting Act relating to prescreening solicitations that use consumer
 182 reports, including the requirement to make a firm offer of credit to the
 183 consumer, (iv) knowingly or negligently using information from a
 184 mortgage trigger lead (I) to solicit consumers who have opted out of
 185 prescreened offers of credit under the federal Fair Credit Reporting
 186 Act, or (II) to place telephone calls to consumers who have placed their
 187 contact information on a federal or state Do Not Call list, or (v) any
 188 unfair or deceptive trade practice under the Unfair Trade Practices Act,
 189 chapter 735a; and

190 (B) "Mortgage trigger lead" means a consumer report obtained
 191 pursuant to Section 604(c)(1)(B) of the federal Fair Credit Reporting
 192 Act, 15 USC 1681b, where the issuance of the report is triggered by an
 193 inquiry made with a consumer reporting agency in response to an
 194 application for credit. "Mortgage trigger lead" does not include a
 195 consumer report obtained by a lender that holds or services existing
 196 indebtedness of the applicant who is the subject of the report.

197 (2) No mortgage lender or secondary mortgage broker shall engage
 198 in any unfair or deceptive act or practice in soliciting an application for
 199 a secondary mortgage loan when such solicitation is based, in whole or
 200 in part, on information contained in a mortgage trigger lead. Any
 201 violation of this subsection shall be deemed an unfair or deceptive
 202 trade practice under subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2007	36a-498
Sec. 2	October 1, 2007	36a-521

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes minor changes and adds definitions of terms. There is no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7073*****AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.*****SUMMARY:**

This bill prohibits lenders and brokers of first and second mortgages from engaging in any unfair or deceptive act or practice, as defined in the bill, when soliciting a mortgage secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. It makes a violation of its provisions an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA).

EFFECTIVE DATE: October 1, 2007

MORTGAGE TRIGGER LEAD

The bill defines a “mortgage trigger lead” as a consumer report that is (1) obtained in accordance with the provisions of the federal Fair Credit Reporting Act (FCRA) governing the issuance of consumer reports when the transaction is not initiated by the consumer and (2) issued as a result of an inquiry with a consumer reporting agency (CRA) in connection with a consumer’s credit application. The bill excludes from the definition, a consumer report obtained by a lender that holds or services the applicant’s existing debt.

UNFAIR OR DECEPTIVE ACTS OR PRACTICES

The bill defines “unfair or deceptive act or practice” as (1) failing to clearly and conspicuously state in the initial phase of the solicitation that (a) the solicitor is not affiliated with the lender or broker with which the consumer initially applied and (b) the solicitation is based on information about the consumer purchased from a CRA without

the initial lender or broker's permission or knowledge; (2) failing to comply with FCRA's provisions on pre-screened offers of credit; (3) knowingly or negligently using information from a mortgage trigger lead to solicit consumers who have, in accordance with FCRA, opted-out of receiving pre-screened offers of credit or who are on the federal or state "Do Not Call" list; or (4) any unfair or deceptive trade practice under CUTPA.

BACKGROUND

CUTPA

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Fair Credit Reporting Act

FCRA promotes the accuracy, fairness, and privacy of information in the files of CRAs. It allows CRAs to issue "consumer reports" in a number of circumstances, but contains special provisions for situations where the consumer does not initiate the transaction (i.e., for unsolicited pre-screened offers). Among other things, FCRA prohibits an agency from furnishing a consumer report in connection with any credit or insurance transaction not initiated by the consumer unless:

1. the consumer authorizes it or
2. the transaction consists of a "firm offer" of credit or insurance, the CRA gives consumers an opportunity to be excluded from such pre-screened lists that the agency provides without the

consumer's consent, and the consumer has not exercised his right to be excluded.

The law also places disclosure duties on people who use the reports to solicit consumers. They must accompany each written solicitation with a clear and conspicuous statement that:

1. information in the consumer's credit report was used;
2. the consumer received the offer of credit or insurance because he satisfied the criteria for creditworthiness or insurability under which he was selected;
3. if applicable, the credit or insurance offer may be denied if, after the consumer responds, he does not meet the selection or other applicable criteria or does not furnish any required collateral; and
4. the consumer has a right to prohibit information in his file at the agency from being used in any transaction not initiated by him and can exercise this right by writing to a specific address or calling a toll-free number.

The law does not address how the disclosures should be made for telephone solicitations.

Legislative History

The House referred the bill (File 90) to the Judiciary Committee, which favorably reported a substitute tying the bill to CUTPA and eliminating a provision making the bill applicable to home equity loans.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/06/2007)

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (04/10/2007)