



House of Representatives

General Assembly

File No. 229

January Session, 2021

Substitute House Bill No. 6495

House of Representatives, March 31, 2021

The Committee on Banking reported through REP. DOUCETTE of the 13th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING EQUITY AND FAIR LENDING.

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

1 Section 1. Section 36a-736 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2022*):

3 As used in sections 36a-735 to 36a-744, inclusive, unless the context
4 otherwise requires:

5 (1) "Applicant" means any person who applies for a home purchase
6 loan, home improvement loan or other mortgage loan as defined in
7 sections 36a-735 to 36a-744, inclusive, whether or not the loan is granted;

8 (2) "Federal Home Mortgage Disclosure Act" means the Home
9 Mortgage Disclosure Act of 1975 (12 USC Section 2801 et seq.), as
10 amended from time to time, and any regulations promulgated by the
11 Federal Reserve Board or the Bureau of Consumer Financial Protection
12 pursuant to that act, except, for purposes of sections 36a-735 to 36a-744,
13 inclusive, the supervisory agency shall be the commissioner;

14 (3) "Financial institution" means any Connecticut bank or
15 Connecticut credit union which makes home purchase loans or home
16 improvement loans or any for profit mortgage lending institution other
17 than a Connecticut bank or Connecticut credit union, [whose home
18 purchase loan originations equaled or exceeded ten per cent of its loan
19 origination volume, measured in dollars,] that originated twenty-five or
20 more closed-end mortgage loans or one hundred or more open-end
21 mortgage loans in the preceding two calendar [year] years, if such
22 mortgage lending institution is licensed under sections 36a-485 to 36a-
23 498a, inclusive;

24 (4) "Home improvement loan" has the same meaning as provided in
25 the federal Home Mortgage Disclosure Act;

26 (5) "Home purchase loan" has the same meaning as provided in the
27 federal Home Mortgage Disclosure Act; [and]

28 (6) "Home loan lender" means any person engaged in the business of
29 making home purchase loans, home improvement loans or mortgage
30 loans in this state; and

31 [(6)] (7) "Mortgage loan" means a loan which is secured by residential
32 real property.

33 Sec. 2. Section 36a-737 of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective January 1, 2022*):

35 (a) (1) No financial institution and no federal bank or federal credit
36 union shall discriminate, on a basis that is arbitrary or unsupported by
37 a reasonable analysis of the lending risks associated with the applicant
38 for a given loan or the condition of the property to secure it, in the
39 granting, withholding, extending, modifying, renewing or in the fixing
40 of the rates, terms, conditions or provisions of any home purchase loan,
41 home improvement loan or other mortgage loan on one-to-four-family
42 owner-occupied residential real property, solely because such property
43 is located in a low-income or moderate-income neighborhood or
44 geographical area, provided it shall not be a violation of this section if

45 the home purchase loan, home improvement loan or other mortgage
46 loan is made pursuant to a specific public or private program, the
47 purpose of which is to increase the availability of home purchase loans,
48 home improvement loans or other mortgage loans within a low-income
49 or moderate-income neighborhood or geographical area in which such
50 investment capital has generally been denied.

51 (2) No financial institution and no federal bank or credit union shall
52 discriminate against any person in violation of the federal Fair Housing
53 Act, 42 USC 301 et seq., as amended from time to time, the Equal Credit
54 Opportunity Act, 15 USC 1691 et seq., as amended from time to time,
55 sections 46a-64c to 46a-67, inclusive, section 46a-81e or 46a-81f or any
56 regulation adopted pursuant to such state or federal laws.

57 (3) No home loan lender shall (A) (i) fail or refuse to provide to any
58 person information regarding the availability of a home purchase loan,
59 home improvement loan or mortgage loan, or the application
60 requirements, procedures or standards for review and approval of any
61 such loan, or (ii) provide such person with information that is inaccurate
62 or different from the information provided to any other prospective
63 applicant on the basis of such person's race or national origin, or (B)
64 discourage any person from purchasing a dwelling, or refuse to issue to
65 any person a home purchase loan, home improvement loan or mortgage
66 loan for a dwelling, solely on the basis of such person's race or national
67 origin or on the basis of the race or national origin of any other person
68 residing in the geographic area in which the dwelling is situated. For
69 purposes of this subdivision, "dwelling" has the same meaning as
70 provided in section 46a-64b and "geographic area" means a
71 municipality, neighborhood, census tract or other geographic
72 subdivision, including, but not limited to, an apartment or
73 condominium complex.

74 (b) If a member of any reserve component of the armed forces of the
75 United States, as defined in section 27-103, or a member of the National
76 Guard, is called into active duty after submitting an application to a
77 financial institution, federal bank or federal credit union for a home

78 purchase loan, home improvement loan or other mortgage loan on one-
79 to-four-family owner-occupied residential real property and before the
80 financial institution, federal bank or federal credit union makes a
81 determination on the application, such financial institution, federal
82 bank or federal credit union shall maintain the application on file for
83 two years and two months after such member is called into active duty,
84 if the member submits, not later than thirty days after being called into
85 active duty, a written statement to the financial institution, federal bank
86 or federal credit union indicating that the member (1) has been called
87 into active duty, and (2) requests that the application be maintained on
88 file. If the applicant returns from active duty not later than two years
89 after submitting an application under this section and submits a written
90 statement to the financial institution, federal bank or federal credit
91 union not later than sixty days after being discharged from active duty
92 verifying that there has been no material change in the applicant's
93 income, assets, debts and employment, the financial institution, federal
94 bank or federal credit union shall finalize processing of the application
95 in accordance with the same terms and conditions that it made available
96 to the applicant at the time of application, provided the financial
97 institution, federal bank or federal credit union shall offer to the
98 applicant any different terms and conditions that the financial
99 institution, federal bank or federal credit union is offering to the public
100 at the time of the applicant's return from active duty.

101 Sec. 3. Section 36a-740 of the general statutes is repealed and the
102 following is substituted in lieu thereof (*Effective January 1, 2022*):

103 Any applicant or person who has been discriminated against as a
104 result of a violation of section 36a-737, as amended by this act, and the
105 regulations adopted pursuant to sections 36a-735 to 36a-744, inclusive,
106 may bring an action in a court of competent jurisdiction. Upon finding
107 that a financial institution is in violation of sections 36a-735 to 36a-744,
108 inclusive, the court may award damages, reasonable attorneys' fees and
109 court costs. No class action shall be permitted pursuant to the provisions
110 of this section. Any applicant or person alleging a violation under this
111 section shall do so in the [applicant's] applicant or person's own

112 individual complaint and each case resulting from such complaints shall
113 be heard on its own merits unless consolidation of such cases is agreed
114 to by each defendant affected thereby.

115 Sec. 4. Section 36a-741 of the general statutes is repealed and the
116 following is substituted in lieu thereof (*Effective January 1, 2022*):

117 (a) If the commissioner finds that a financial institution or home loan
118 lender is violating the provisions of sections 36a-735 to 36a-744,
119 inclusive, the commissioner shall order the institution to cease and
120 desist from such practices in accordance with section 36a-52.

121 (b) Whenever it appears to the commissioner that any financial
122 institution or home loan lender has violated, is violating or is about to
123 violate any provision of sections 36a-735 to 36a-744, inclusive, or any
124 regulation adopted under said sections, the commissioner may take
125 action against such financial institution in accordance with section 36a-
126 50.

127 Sec. 5. Section 36a-743 of the general statutes is repealed and the
128 following is substituted in lieu thereof (*Effective January 1, 2022*):

129 (a) The commissioner shall analyze the practices and actions of the
130 financial institutions in the home financing area in relationship to its
131 customers and to the housing needs and conditions of the state.

132 (b) Not later than July 1, 2022, the commissioner shall implement fair
133 lending examination procedures to assess the compliance of a financial
134 institution with the provisions of sections 36a-735 to 36a-744, inclusive,
135 the Fair Housing Act, 42 USC 301 et seq., as amended from time to time,
136 and the Equal Credit Opportunity Act, 15 USC 1691 et seq., as amended
137 from time to time, and any regulation adopted thereunder. Such
138 procedures shall, to the maximum extent possible, align with the
139 interagency fair lending examination procedures adopted by the
140 Consumer Financial Protection Bureau, the Federal Reserve Board, the
141 Federal Deposit Insurance Corporation, the National Credit Union
142 Administration and the Office of the Comptroller of the Currency. The

143 commissioner may conduct fair lending examinations of financial
144 institutions, as the commissioner deems appropriate.

145 (c) Without limiting any other power of the commissioner or any
146 other action authorized by law, the commissioner may conduct an
147 investigation, in accordance with the provisions of section 36a-17, of any
148 financial institution if the commissioner (1) receives a complaint from
149 any person detailing discriminatory lending practices by the financial
150 institution, (2) finds a pattern of discriminatory lending practices in a
151 fair lending examination conducted pursuant to subsection (b) of this
152 section, or (3) finds, while conducting an assessment of the financial
153 institution pursuant to section 36a-32 or 36a-37a, as amended by this act,
154 that the financial institution is not satisfying its affirmative obligation to
155 meet the credit needs of its local communities, including low and
156 moderate-income neighborhoods under section 36a-30, as amended by
157 this act, or 36a-37.

158 Sec. 6. Section 36a-30 of the general statutes is repealed and the
159 following is substituted in lieu thereof (*Effective October 1, 2021*):

160 (a) As used in [sections 36a-30] this section and sections 36a-31 to 36a-
161 33, inclusive, unless the context otherwise requires:

162 (1) "Bank" means any bank or out-of-state bank that maintains in this
163 state a branch as defined in section 36a-410. "Bank" does not include
164 special purpose banks that do not perform commercial or retail banking
165 services in which credit is granted to the public in the ordinary course
166 of business, other than as an incident to their specialized operations,
167 including, but not limited to, banker's banks and banks that engage only
168 in one or more of the following activities: Providing cash management
169 controlled disbursement services or serving as correspondent banks,
170 trust companies or clearing agents.

171 (2) "Federal CRA" means (A) the federal Community Reinvestment
172 Act of 1977, 12 USC Section 2901 et seq., as from time to time amended,
173 and (B) the regulations implementing said act adopted by the federal
174 financial supervisory agencies as set forth in 12 CFR Part 25, 12 CFR Part

175 228, 12 CFR Part 345 and 12 CFR Part 563e, as from time to time
176 amended, and as applicable to the specific type of bank.

177 (3) "Federal financial supervisory agency" means the Office of the
178 Comptroller of the Currency, the Board of Governors of the Federal
179 Reserve System, the Federal Deposit Insurance Corporation, the Office
180 of Thrift Supervision and any successor to any of the foregoing agencies,
181 as applicable to the specific type of bank.

182 (b) The commissioner shall assess the record of each bank in
183 satisfying its continuing and affirmative obligations to help meet the
184 credit needs of its local communities, including low and moderate-
185 income neighborhoods, consistent with the safe and sound operation of
186 such banks, and shall provide for the consideration of such records in
187 connection with any application listed in subsection (c) of section 36a-
188 32.

189 (c) (1) Each bank shall, in accordance with the provisions of federal
190 CRA and without excluding low and moderate-income neighborhoods,
191 delineate the local community or communities that comprise its entire
192 community within this state or delineate one or more assessment areas,
193 as applicable, within which the commissioner shall evaluate the bank's
194 record of helping to meet the credit needs of its entire community in this
195 state. The commissioner shall review the delineation for compliance
196 with federal CRA and this subsection in connection with an examination
197 of the bank under section 36a-17.

198 (2) Each bank shall take all reasonable steps consistent with the safe
199 and sound operation of such bank to make residential loan products
200 available in and to advertise such products to its assessment areas,
201 including low and moderate-income neighborhoods and census tracts
202 where the population of racial minorities is greater than fifty per cent.
203 Such residential loan products shall be on terms no less favorable than
204 the residential loan products made available by the bank in census
205 tracks where the population of racial minorities is fifty per cent or less.

206 (d) Each bank shall collect and report loan information in accordance

207 with the applicable requirements of federal CRA. Each bank shall file
208 with the commissioner a copy of each CRA disclosure statement
209 prepared for such bank by a federal financial supervisory agency under
210 federal CRA within thirty business days after receiving the statement.

211 (e) Copies of the public section of the most recent community
212 reinvestment performance evaluation prepared by the commissioner
213 pursuant to subsection (b) of section 36a-32 shall be provided to the
214 public upon request. A bank may charge a reasonable fee not to exceed
215 the cost of copying and mailing, if applicable.

216 (f) Each bank shall maintain a public file in accordance with federal
217 CRA. Each bank shall place a copy of the public section of the bank's
218 most recent community reinvestment performance evaluation prepared
219 by the commissioner pursuant to subsection (b) of section 36a-32 in the
220 public file within thirty business days after its receipt from the
221 commissioner. The bank may also include in the public file any response
222 to such performance evaluation that the bank wishes to make. The bank
223 shall make a copy of the public section of such performance evaluation
224 available to the public for inspection upon request and at no cost at the
225 bank's main office and at each of its branches in this state. Any bank that
226 received a less than satisfactory rating during its most recent
227 examination under section 36a-32 shall include in its public file a
228 description of its current efforts to improve its performance in helping
229 to meet the credit needs of its entire community. The bank shall update
230 the description quarterly.

231 (g) The commissioner may assess a bank's record of helping to meet
232 the credit needs of its assessment areas under a strategic plan pursuant
233 to federal CRA, provided (1) the strategic plan is filed with the
234 commissioner concurrently with its submission by the bank to a federal
235 financial supervisory agency for approval under federal CRA, and (2)
236 the strategic plan is approved by the commissioner.

237 Sec. 7. Section 36a-37a of the general statutes is repealed and the
238 following is substituted in lieu thereof (*Effective October 1, 2021*):

239 (a) Each community credit union shall satisfy its continuing and
240 affirmative obligation to help meet the credit needs of its community,
241 including low-income and moderate-income neighborhoods, consistent
242 with the safe and sound operation of such community credit union.

243 (b) (1) Not later than six months following July 1, 2001, each
244 community credit union shall delineate one or more assessment areas
245 within which the commissioner shall evaluate the community credit
246 union's community reinvestment performance in this state and shall file
247 such delineations with the commissioner. An assessment area shall
248 consist only of whole geographies, and may not ~~[(1)] (A)~~ reflect illegal
249 discrimination, ~~[(2)] (B)~~ arbitrarily exclude low-income or moderate-
250 income geographies, or ~~[(3)] (C)~~ extend substantially beyond a
251 consolidated metropolitan statistical area boundary or beyond a state
252 boundary, unless the assessment area is located in a multistate
253 metropolitan statistical area. A community credit union may adjust the
254 boundaries of its assessment areas to include only the portion of a
255 political subdivision that it reasonably can be expected to serve. A
256 community credit union shall immediately file an amendment with the
257 commissioner reflecting an adjustment of the boundaries of an
258 assessment area.

259 (2) Each community credit union shall take all reasonable steps
260 consistent with the safe and sound operation of such credit union to
261 make residential loan products available in and to advertise such
262 products to its assessment areas, including low and moderate-income
263 neighborhoods and census tracts where the population of racial
264 minorities is greater than fifty per cent. Such residential loan products
265 shall be on terms no less favorable than the residential loan products
266 made available by the community credit union in census tracks where
267 the population of racial minorities is fifty per cent or less.

268 (c) The commissioner shall assess periodically the community
269 reinvestment performance of a community credit union consistent with
270 the safe and sound operation of the community credit union. The
271 commissioner shall assess the community reinvestment performance of

272 such community credit union based on: (1) The community credit
273 union's record of helping to meet the credit needs of its assessment area
274 or areas through qualified investments that benefit its assessment area
275 or areas or a broader state-wide or regional area that includes its
276 assessment area or areas; (2) the community credit union's record of
277 helping to meet the credit needs of its assessment area or areas, by
278 analyzing both the availability and effectiveness of its systems for
279 delivering retail credit union services and the extent and innovativeness
280 of its community development services; (3) loan-to-share ratio given the
281 community credit union's size and financial condition, credit needs of
282 the assessment area or areas, other lending-related activities,
283 considering seasonal variations, as used in 12 CFR 228.26; (4) percentage
284 of total loans and other lending-related activities within the assessment
285 area or areas; (5) record of lending and other lending-related activities
286 to borrowers of different income levels, and businesses and farms of
287 different sizes; (6) geographic distribution of loans; (7) action taken in
288 response to written complaints with respect to community reinvestment
289 performance; (8) efforts of the community credit union to work with
290 delinquent residential mortgage customers who are unemployed or
291 underemployed to facilitate a resolution of the delinquency; and (9)
292 written comments received by the commissioner.

293 (d) (1) Upon the completion of the assessment required under
294 subsection (c) of this section, the commissioner shall prepare a written
295 evaluation of the community credit union's community reinvestment
296 performance.

297 (2) The performance evaluation shall (A) state the commissioner's
298 assessment of the community reinvestment performance of the
299 community credit union, (B) set forth and discuss the facts supporting
300 such assessment, and (C) contain the community credit union's rating
301 and a statement describing the basis for the rating. The rating shall be
302 one of the following: (i) Outstanding record of meeting community
303 credit needs; (ii) satisfactory record of meeting community credit needs;
304 (iii) needs to improve record of meeting community credit needs; or (iv)
305 substantial noncompliance in meeting community credit needs. The

306 commissioner shall furnish a copy of the performance evaluation to the
307 community credit union upon its completion.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2022</i>	36a-736
Sec. 2	<i>January 1, 2022</i>	36a-737
Sec. 3	<i>January 1, 2022</i>	36a-740
Sec. 4	<i>January 1, 2022</i>	36a-741
Sec. 5	<i>January 1, 2022</i>	36a-743
Sec. 6	<i>October 1, 2021</i>	36a-30
Sec. 7	<i>October 1, 2021</i>	36a-37a

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Banking Dept.	BF - Cost	Up to \$75,000	None
Banking Dept.	BF - Potential Cost	None	See Below

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill requires the Department of Banking (DOB) to implement fair lending examination procedures which will result in a cost of up to \$75,000 for specialized software and training necessary to perform the examinations. The bill also allows the Department of Banking to conduct fair lending examinations as the commissioner deems necessary. To the extent that this could result in additional examinations, there may be a potential cost for staffing in FY 23.

The estimate of a one-time cost in FY 22 of \$65,000 - \$75,000 for the DOB software related expense is based on the cost to the Department of Revenue Services for a similar expenditure, as information was not available for the DOB specific software.

As the language regarding fair lending examinations is permissive, any future staffing cost would be based on the number of examinations performed. It is anticipated that due to the complexity of the fair lending examinations they would be performed by a Principal Financial

Examiner.¹ The salary range for a Principal Financial Examiner is \$90,203 - \$115,434. Based on the starting salary and fringe benefit rate charged to the Banking Fund², the Principal Financial Examiner position has an annualized cost of approximately \$176,400 to the Banking Fund and a one-time cost of \$5,000 for equipment and training. The department anticipates that one Principal Financial Examiner will perform approximately 6 examinations per year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

*Sources: Comptroller of the Currency Fair Lending Handbook
Core-CT Financial Accounting System
Department of Banking*

¹ The agency currently has 15 Principal Financial Examiner positions.

² The fringe benefit costs for employees funded out of other appropriated funds are budgeted within the fringe benefit account of those funds, rather than the fringe benefit accounts within the Office of the State Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes for other appropriated fund employees is 95.57% of payroll in FY 22 and FY 23.

OLR Bill Analysis**sHB 6495*****AN ACT CONCERNING EQUITY AND FAIR LENDING.*****SUMMARY**

This bill prohibits certain financial institutions from discriminating against any person in violation of certain federal and state laws, including discrimination by sexual orientation. It also:

1. requires Connecticut banks and community credit unions to take all reasonable steps to make and advertise residential loan products to minority communities to the same extent they do so to other communities; and
2. allows the banking commissioner to assess financial institutions' compliance with fair lending examination procedures the bill establishes (due to federal preemption, the commissioner can generally only examine state-chartered banks and credit unions (see COMMENT)).

Lastly, the bill:

1. makes any entity that originates more than a certain number of home loans a "financial institution," rather than only those that originate more than 10% of their total loan dollar-value;
2. incorporates "home loan lenders" into the state's Home Mortgage Disclosure Act (HMDA), which prohibits mortgage discrimination and requires certain loan related disclosures; and
3. allows anyone who has been discriminated against by these institutions to sue for damages, rather than only certain applicants as under current law.

EFFECTIVE DATE: January 1, 2022, except the residential loan product provision is effective October 1, 2021.

§ 2 — DISCRIMINATION PROHIBITED ON FINANCIAL INSTITUTIONS

The bill prohibits “financial institutions” (see §§ 1-4 below), federal banks, or credit unions from discriminating against any person in violation of the federal Fair Housing Act (FHA), the federal Equal Credit Opportunity Act (ECOA), or state human rights and opportunities discriminatory housing and credit laws.

FHA and ECOA

Under the FHA, it is unlawful for banks, lenders, and others involved in residential real estate transactions to discriminate based on race, color, religion, sex, nationality, disability, or family status (42 U.S.C. 3601 et seq). The ECOA prohibits discriminatory credit practices, including in lending credit secured by real estate, based on race, color, religion, national origin, sex, marital status, age, or public assistance (15 U.S.C. 1691 et seq.).

State Housing and Credit Discrimination Laws

The bill also prohibits these entities from engaging in discriminatory housing and credit practices as defined by existing state law. By law, anyone aggrieved by an alleged discriminatory housing or credit practice may file a complaint with the Commission on Human Rights and Opportunities (CHRO). CHRO investigates and enforces anti-discrimination laws in these and other areas and may also bring a complaint itself if it has reason to believe that a discriminatory practice has occurred (CGS § 46a-82).

Discriminatory Housing Practices. Among other things, discriminatory housing practices include discrimination in a home’s sale or rental, or in real estate transaction terms and conditions, based on race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, familial status, status as a veteran, or sexual orientation or civil union status (CGS §§

46a-64c & -81e).

Discriminatory Credit Practices. A discriminatory credit practices is any discrimination in credit secured by residential real estate, among other things. This includes discriminating in the availability of real estate secured credit based on substantially similar categories as listed above (CGS §§ 46a-65, - 66 & -81f).

§ 5 — FAIR LENDING EXAMINATION PROCEDURES FOR FINANCIAL INSTITUTIONS

The bill requires the banking commissioner, by July 1, 2022, to implement fair lending examination procedures to assess the compliance of a financial institution with the bill's provisions, including the provisions requiring FHA and ECOA compliance.

To the extent possible, these procedures must align with the interagency fair lending examination procedures adopted by the Consumer Financial Protection Bureau, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency.

The commissioner may conduct fair lending examinations of financial institutions as he deems appropriate.

Without limiting any of the commissioner's existing power or any other legally authorized action, the bill authorizes the commissioner to investigate any financial institution if he:

1. receives a complaint detailing discriminatory lending practices;
2. finds a pattern of discriminatory lending practices in a fair lending examination conducted under the procedures described above; or
3. finds, while conducting Community Reinvestment Act (CRA, see BACKGROUND) or community credit union examinations, that the financial institution is not satisfying its affirmative obligation to meet its local community's credit needs, including low- and

moderate-income neighborhoods.

These investigations are done under his existing examination authority.

§§ 6 & 7 — REQUIREMENTS FOR BANK AND CREDIT UNIONS

The bill requires banks, out-of-state banks, and community credit unions (i.e., state-chartered credit unions with at least \$10 million in assets that limit membership to a specific community, neighborhood, or rural district) to take all reasonable steps consistent with safe and sound operation to make residential loan products available in, and to advertise products to, their assessment areas, including low- and moderate-income neighborhoods and census tracts where more than half the population are racial minorities. These loans must be on terms no less favorable than the residential loan products available in census tracts with a racial minority population of 50% or less. Although the bill's applicability includes banks and out-of-state banks, in practice federal preemption may limit these provisions to Connecticut banks (see COMMENT).

An "assessment area" is an area defined by a financial institution that it serves, and generally must be comprised of whole census tracts without arbitrarily excluding or discriminating against certain areas. These areas may include low- and moderate-income communities.

§§ 1-4 — HOME MORTGAGE DISCLOSURE ACT (HMDA)

Under current law, an entity qualifies as a "financial institution" if more than 10% of its loan business by dollar-volume from the past year is from home origination loans. The bill changes this threshold from a percentage of business to one based on the number of loans made. It does this by making any for-profit licensed mortgage lender, correspondent lender, or broker that originated at least 25 closed-end mortgage loans or 100 open-end mortgage loans in the preceding two years a financial institution. (Generally, a closed-end mortgage is for a set amount that is paid off in installments; an open-end mortgage is one that can be increased or paid back throughout the loan's term.)

By law, “financial institutions” also include Connecticut banks and credit unions that make home purchase loans or home improvement loans.

A “home purchase loan” is a closed-end mortgage or an open-end line of credit used at least in part to buy a residential home. A “home improvement loan” is one of these mortgages or lines of credit used to repair, rehabilitate, remodel, or improve a residential home or the property it is on (12 C.F.R. 1003.2(d) & (o)).

Existing HMDA Provisions Applicable to Financial Institutions or Home Loan Lenders

The bill subjects financial institutions and also incorporates “home loan lenders” into certain HMDA provisions. A “home loan lender” is a person making home purchase loans, home improvement loans, or mortgage loans (“home loans”) in Connecticut.

Discrimination Prohibition. Under the HMDA, financial institutions are generally prohibited from arbitrarily discriminating against applicants for home loans for properties in low- or moderate-income areas. These institutions cannot discriminate in home loan rates, terms, conditions, or provisions in ways that are not supported by reasonable risk analysis or the property condition. But the law allows public or private programs to make home loans intended to increase the availability of home loan lending in low- and moderate-income areas in which investment capital has generally been denied (CGS § 36a-737).

Disclosure Requirements. The HMDA requires financial institutions to (1) comply with all applicable federal HMDA requirements and (2) report on the federal HMDA loan application and register the reason for denying any loan. The federal HMDA generally requires financial institutions to report loan-level information about mortgages.

Financial institutions must also give the commissioner any information requested if the federal HMDA requires that it be disclosed (e.g., race, ethnicity, and sex of loan applicants and geographic location

of the property) that he cannot access. Financial institutions failing to do so may be fined \$100 per day (CGS §§ 36a-738 & -739).

Subject to Lawsuit. Current law allows applicants facing discrimination by financial institutions under the state HMDA and its regulations to sue for damages, reasonable attorneys' fees, and court costs (CGS § 36a-740). The bill expands this provision to allow anyone who has been discriminated against, not just loan applicants, to bring suit.

Commissioner Enforcement and Confidentiality. By law, the commissioner may (1) order financial institutions to cease and desist from discriminating against people under the HMDA and (2) take other enforcement action, including by bringing suit in Hartford Superior Court (CGS §§ 36a-741 & -52). The bill also applies this provision to home loan lenders (see below).

The law also exempts financial institutions from disclosing individual depositors or mortgagors except to an appropriate state agency (CGS § 36a-742).

§§ 1 & 2 — HOME LOAN LENDERS

The bill prohibits home loan lenders from:

1. failing or refusing to provide any person information about a home loan's availability, application requirements, procedures, or review and approval standards;
2. providing inaccurate information or information that is different than that provided to other prospective applicants on the basis of race or national original; or
3. discouraging anyone from buying a dwelling, or refusing to issue a person a home loan, solely because of a person's race or national origin or the race or national original of people residing in the potential home's geographic area (i.e., the municipality, neighborhood, census tract, or other geographic subdivision,

including an apartment or condominium complex, where the home is located).

By law, a dwelling is any residential building, structure, or mobile home or any vacant land offered for sale or lease for the construction of one of these residences (CGS § 46a-64b).

COMMENT

Federal Preemption

With certain exceptions, federal law prohibits state regulatory officials from exercising visitorial powers over nationally chartered banks, including conducting examinations, inspecting, or requiring banks to produce books or records, or prosecuting enforcement actions (12 U.S.C. 484 & 12 C.F.R. 7.4000(a)). As a result, it is unclear if (1) the banking commissioner may examine nationally chartered banks for compliance with the bill's provisions as described in § 5, or (2) these banks are subject to the bill's new Community Reinvestment Act provisions described in § 6.

BACKGROUND

Community Reinvestment Act (CRA)

The Connecticut CRA, among other things, requires the banking commissioner to assess each bank's record of meeting its local communities' credit needs, including low- and moderate-income neighborhoods. The banking department gives each bank a score reflecting their community lending efforts. Banks receiving lower assessment scores may be prohibited from certain activities (e.g., opening new branches or merging with other banks). In practice, the law applies to all state-chartered banks, as well as out-of-state banks with a Connecticut branch. Banks that generally do not grant credit to the public during normal business are exempt (CGS § 36a-30).

Nationally chartered banks are examined for federal CRA compliance by the Office of the Comptroller of the Currency or another federal regulator.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 11 Nay 7 (03/17/2021)