
OLR Bill Analysis

sSB 183

AN ACT CONCERNING FAIR LENDING.

SUMMARY

This bill prohibits certain financial institutions from discriminating against anyone in violation of certain federal and state laws, including discrimination by sexual orientation.

The bill also:

1. requires the banking commissioner to assess Connecticut banks' and community credit unions' record of making and advertising residential loan products to minority communities (§§ 6 & 7);
2. allows the banking commissioner to assess financial institutions' compliance with the fair lending examination procedures the bill establishes (§ 5) (federal preemption generally limits the commissioner's examination authority to state-chartered banks and credit unions (see COMMENT));
3. 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 the dollar-value of their total loans (§ 1);
4. incorporates "home loan lenders" into the state's Home Mortgage Disclosure Act (HMDA), which prohibits mortgage discrimination and requires certain loan-related disclosures (§§ 1 - 4); and
5. allows anyone who has been discriminated against by these institutions to sue for damages, rather than only applicants who were discriminated against, as under current law (§ 3).

It also makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2023

§§ 1 & 2 — HOME LOAN LENDERS

The bill prohibits home loan lenders from taking any of the following actions based on the person's race, national origin, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, age, lawful source of income, familial status, or veteran status:

1. failing or refusing to provide anyone information about a home loan's availability, application requirements, procedures, or review and approval standards;
2. giving someone inaccurate information or information that is different than that given to other prospective applicants; or
3. discouraging anyone from buying a dwelling, or refusing to issue someone a home loan, including due to the characteristics (i.e., the attributes listed above) of the residents in the dwelling's geographic area (i.e., 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 park or any vacant land offered for sale or lease for constructing any of these types of residences (CGS § 46a-64b).

§§ 6 & 7 — REQUIRED ASSESSMENT FOR BANKS AND CREDIT UNIONS

The bill requires the commissioner to assess banks', out-of-state banks', and community credit unions' record of making residential loan products available in, and advertising them to, their assessment areas, including low- and moderate-income neighborhoods and census tracts where more than half the population are racial minorities, consistent with safe and sound banking operations. He must do so sometime on or after January 1, 2024.

Under the bill, the terms of loan products made available in these

assessment areas may not be based on the assessment area's racial composition.

Although the bill has broad applicability to all banks, in practice federal preemption may make these provisions not applicable to federally chartered banks (see COMMENT).

By law, a community credit union is a state-chartered credit union with at least \$10 million in assets that limit membership to a specific community, neighborhood, or rural district. 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.

§ 5 — FAIR LENDING EXAMINATION PROCEDURES FOR FINANCIAL INSTITUTIONS

The bill requires the banking commissioner, by July 1, 2024, 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.

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.).

To the extent possible, these procedures must be consistent 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.

The bill expands the commissioner's authority by allowing him to investigate any financial institution if he:

1. receives a complaint of 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.

§ 2 — DISCRIMINATION BY FINANCIAL INSTITUTIONS PROHIBITED

The bill prohibits "financial institutions" (e.g., state banks or credit unions; 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.

State Housing and Credit Discrimination Laws

The bill also prohibits these entities that are involved in residential real estate transactions 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 practice 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).

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

Under current law, an entity qualifies as a “financial institution,” and is subject to the HMDA, if more than 10% of its loan business by dollar-volume for the past year is from home origination loans. The bill changes this threshold from a percentage of business by dollar-volume to one based on the number of loans made. It does this by designating 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 dollar amount that is paid off in installments; an open-end mortgage is one that can be increased or paid down 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, to certain HMDA provisions. A “home loan lender” is a person making home purchase, home improvement, 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 he requests, and cannot access, if the federal HMDA requires the disclosure (e.g., race, ethnicity, and sex of loan applicants and geographic location of the property). 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 suing in Hartford Superior Court (CGS §§ 36a-741 & -52). The bill also applies this provision to home loan lenders.

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 assessment 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).

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 16 Nay 1 (03/08/2022)