



Senate

General Assembly

File No. 80

February Session, 2022

Substitute Senate Bill No. 183

Senate, March 22, 2022

The Committee on Banking reported through SEN. MILLER of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING 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 Section 36a-736 of the general statutes is repealed and the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, 2023*):

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] that makes home purchase loans or
16 home improvement loans or any for profit mortgage lending institution
17 other than a Connecticut bank or Connecticut credit union, [whose
18 home purchase loan originations equaled or exceeded ten per cent of its
19 loan origination volume, measured in dollars,] that originated twenty-
20 five or more closed-end mortgage loans or one hundred or more open-
21 end 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. Subsection (a) of section 36a-737 of the general statutes is
34 repealed and the following is substituted in lieu thereof (*Effective January*
35 *1, 2023*):

36 (a) (1) No financial institution and no federal bank or federal credit
37 union shall discriminate, on a basis that is arbitrary or unsupported by
38 a reasonable analysis of the lending risks associated with the applicant
39 for a given loan or the condition of the property to secure it, in the
40 granting, withholding, extending, modifying, renewing or in the fixing
41 of the rates, terms, conditions or provisions of any home purchase loan,
42 home improvement loan or other mortgage loan on one-to-four-family
43 owner-occupied residential real property, solely because such property
44 is located in a low-income or moderate-income neighborhood or

45 geographical area, provided it shall not be a violation of this section if
46 the home purchase loan, home improvement loan or other mortgage
47 loan is made pursuant to a specific public or private program, the
48 purpose of which is to increase the availability of home purchase loans,
49 home improvement loans or other mortgage loans within a low-income
50 or moderate-income neighborhood or geographical area in which such
51 investment capital has generally been denied.

52 (2) No financial institution and no federal bank or credit union shall
53 discriminate against any person in violation of the federal Fair Housing
54 Act, 42 USC 3601 et seq., as amended from time to time, the federal
55 Equal Credit Opportunity Act, 15 USC 1691 et seq., as amended from
56 time to time, sections 46a-64c to 46a-67, inclusive, section 46a-81e or 46a-
57 81f or any regulation adopted pursuant to such state or federal laws.

58 (3) No home loan lender shall (A) on the basis of a person's race,
59 creed, color, national origin, ancestry, sex, gender identity or expression,
60 marital status, age, lawful source of income, familial status or status as
61 a veteran (i) fail or refuse to provide to any person information
62 regarding the availability of a home purchase loan, home improvement
63 loan or mortgage loan, or the application requirements, procedures or
64 standards for review and approval of any such loan, or (ii) provide such
65 person with information that is inaccurate or different from the
66 information provided to any other prospective applicant, or (B)
67 discourage any person from purchasing a dwelling, or refuse to issue to
68 any person a home purchase loan, home improvement loan or mortgage
69 loan for a dwelling, solely on the basis of such person's race, creed, color,
70 national origin, ancestry, sex, gender identity or expression, marital
71 status, age, lawful source of income, familial status or status as a veteran
72 or on the basis of the race, creed, color, national origin, ancestry, sex,
73 gender identity or expression, marital status, age, lawful source of
74 income, familial status or status as a veteran of any other person
75 residing in the geographic area in which the dwelling is situated. For
76 purposes of this subdivision, "dwelling" has the same meaning as
77 provided in section 46a-64b and "geographic area" means a
78 municipality, neighborhood, census tract or other geographic

79 subdivision, including, but not limited to, an apartment or
80 condominium complex.

81 Sec. 3. Section 36a-740 of the general statutes is repealed and the
82 following is substituted in lieu thereof (*Effective January 1, 2023*):

83 Any applicant or other person who has been discriminated against as
84 a result of a violation of section 36a-737, as amended by this act, and the
85 regulations adopted pursuant to sections 36a-735 to 36a-744, inclusive,
86 may bring an action in a court of competent jurisdiction. Upon finding
87 that a financial institution is in violation of sections 36a-735 to 36a-744,
88 inclusive, the court may award damages, reasonable attorneys' fees and
89 court costs. No class action shall be permitted pursuant to the provisions
90 of this section. Any applicant or other person alleging a violation under
91 this section shall do so in the applicant's or other person's own
92 individual complaint and each case resulting from such complaints shall
93 be heard on its own merits unless consolidation of such cases is agreed
94 to by each defendant affected thereby.

95 Sec. 4. Section 36a-741 of the general statutes is repealed and the
96 following is substituted in lieu thereof (*Effective January 1, 2023*):

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

101 (b) Whenever it appears to the commissioner that any financial
102 institution or home loan lender has violated, is violating or is about to
103 violate any provision of sections 36a-735 to 36a-744, inclusive, or any
104 regulation adopted under said sections, the commissioner may take
105 action against such financial institution in accordance with section 36a-
106 50.

107 Sec. 5. Section 36a-743 of the general statutes is repealed and the
108 following is substituted in lieu thereof (*Effective January 1, 2023*):

109 (a) The commissioner shall analyze the practices and actions of the

110 financial institutions in the home financing area in relationship to its
111 customers and to the housing needs and conditions of the state.

112 (b) Not later than July 1, 2024, the commissioner shall implement fair
113 lending examination procedures to assess the compliance of a financial
114 institution with the provisions of sections 36a-735 to 36a-744, inclusive,
115 the Fair Housing Act, 42 USC 3601 et seq., as amended from time to time,
116 and the Equal Credit Opportunity Act, 15 USC 1691 et seq., as amended
117 from time to time, and any regulation adopted thereunder. Such
118 procedures shall, to the maximum extent possible, be consistent with the
119 interagency fair lending examination procedures adopted by the
120 Consumer Financial Protection Bureau, the Federal Reserve Board, the
121 Federal Deposit Insurance Corporation, the National Credit Union
122 Administration and the Office of the Comptroller of the Currency. The
123 commissioner may conduct fair lending examinations of financial
124 institutions, as the commissioner deems appropriate.

125 (c) Without limiting any other power of the commissioner or any
126 other action authorized by law, the commissioner may conduct an
127 investigation, in accordance with the provisions of section 36a-17, of any
128 financial institution if the commissioner (1) receives a complaint from
129 any person of discriminatory lending practices by the financial
130 institution, (2) finds a pattern of discriminatory lending practices in a
131 fair lending examination conducted pursuant to subsection (b) of this
132 section, or (3) finds, while conducting an assessment of the financial
133 institution pursuant to section 36a-32 or 36a-37a, as amended by this act,
134 that the financial institution is not satisfying its affirmative obligation to
135 meet the credit needs of its local communities, including low and
136 moderate-income neighborhoods pursuant to section 36a-30, as
137 amended by this act, or 36a-37.

138 Sec. 6. Section 36a-30 of the general statutes is repealed and the
139 following is substituted in lieu thereof (*Effective January 1, 2023*):

140 (a) As used in [sections 36a-30] this section and sections 36a-31 to 36a-
141 33, inclusive, unless the context otherwise requires:

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

151 (2) "Federal CRA" means (A) the federal Community Reinvestment
152 Act of 1977, 12 USC Section 2901 et seq., as from time to time amended,
153 and (B) the regulations implementing said act adopted by the federal
154 financial supervisory agencies as set forth in 12 CFR Part 25, 12 CFR Part
155 228, 12 CFR Part 345 and 12 CFR Part 563e, as from time to time
156 amended, and as applicable to the specific type of bank.

157 (3) "Federal financial supervisory agency" means the Office of the
158 Comptroller of the Currency, the Board of Governors of the Federal
159 Reserve System, the Federal Deposit Insurance Corporation, the Office
160 of Thrift Supervision and any successor to any of the foregoing agencies,
161 as applicable to the specific type of bank.

162 (b) The commissioner shall assess the record of each bank in
163 satisfying its continuing and affirmative obligations to help meet the
164 credit needs of its local communities, including low and moderate-
165 income neighborhoods, consistent with the safe and sound operation of
166 such banks, and shall provide for the consideration of such records in
167 connection with any application listed in subsection (c) of section 36a-
168 32.

169 (c) Each bank shall, in accordance with the provisions of federal CRA
170 and without excluding low and moderate-income neighborhoods,
171 delineate the local community or communities that comprise its entire
172 community within this state or delineate one or more assessment areas,
173 as applicable, within which the commissioner shall evaluate the bank's
174 record of helping to meet the credit needs of its entire community in this

175 state. The commissioner shall review the delineation for compliance
176 with federal CRA and this subsection in connection with an examination
177 of the bank under section 36a-17.

178 (d) Each bank shall collect and report loan information in accordance
179 with the applicable requirements of federal CRA. Each bank shall file
180 with the commissioner a copy of each CRA disclosure statement
181 prepared for such bank by a federal financial supervisory agency under
182 federal CRA within thirty business days after receiving the statement.

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

188 (f) Each bank shall maintain a public file in accordance with federal
189 CRA. Each bank shall place a copy of the public section of the bank's
190 most recent community reinvestment performance evaluation prepared
191 by the commissioner pursuant to subsection (b) of section 36a-32 in the
192 public file within thirty business days after its receipt from the
193 commissioner. The bank may also include in the public file any response
194 to such performance evaluation that the bank wishes to make. The bank
195 shall make a copy of the public section of such performance evaluation
196 available to the public for inspection upon request and at no cost at the
197 bank's main office and at each of its branches in this state. Any bank that
198 received a less than satisfactory rating during its most recent
199 examination under section 36a-32 shall include in its public file a
200 description of its current efforts to improve its performance in helping
201 to meet the credit needs of its entire community. The bank shall update
202 the description quarterly.

203 (g) The commissioner (1) may assess a bank's record of helping to
204 meet the credit needs of its assessment areas under a strategic plan
205 pursuant to federal CRA, provided [(1)] (A) the strategic plan is filed
206 with the commissioner concurrently with its submission by the bank to
207 a federal financial supervisory agency for approval under federal CRA,

208 and [(2)] (B) the strategic plan is approved by the commissioner, and (2)
209 on and after January 1, 2024, shall assess each bank's record of making
210 residential loan products available in, and advertising such products to,
211 its assessment areas, including low and moderate-income
212 neighborhoods and census tracts where the population of racial
213 minorities is greater than fifty per cent, in a manner that is consistent
214 with the safe and sound operation of such bank. The terms of a
215 residential loan product made available by a bank in any of its
216 assessment areas shall not be based on the racial composition of the
217 assessment area.

218 Sec. 7. Section 36a-37a of the general statutes is repealed and the
219 following is substituted in lieu thereof (*Effective January 1, 2023*):

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

224 (b) (1) Not later than six months following July 1, 2001, each
225 community credit union shall delineate one or more assessment areas
226 within which the commissioner shall evaluate the community credit
227 union's community reinvestment performance in this state and shall file
228 such delineations with the commissioner. An assessment area shall
229 consist only of whole geographies, and may not [(1)] (A) reflect illegal
230 discrimination, [(2)] (B) arbitrarily exclude low-income or moderate-
231 income geographies, or [(3)] (C) extend substantially beyond a
232 consolidated metropolitan statistical area boundary or beyond a state
233 boundary, unless the assessment area is located in a multistate
234 metropolitan statistical area. A community credit union may adjust the
235 boundaries of its assessment areas to include only the portion of a
236 political subdivision that it reasonably can be expected to serve. A
237 community credit union shall immediately file an amendment with the
238 commissioner reflecting an adjustment of the boundaries of an
239 assessment area.

240 (2) On and after January 1, 2024, the commissioner shall assess each

241 community credit union's record of making residential loan products
242 available in, and advertising such products to, its assessment areas,
243 including low and moderate-income neighborhoods and census tracts
244 where the population of racial minorities is greater than fifty per cent,
245 in a manner that is consistent with the safe and sound operation of such
246 credit union. The terms of a residential loan product made available by
247 a community credit union in any of its assessment areas shall not be
248 based on the racial composition of the assessment area.

249 (c) The commissioner shall assess periodically the community
250 reinvestment performance of a community credit union consistent with
251 the safe and sound operation of the community credit union. The
252 commissioner shall assess the community reinvestment performance of
253 such community credit union based on: (1) The community credit
254 union's record of helping to meet the credit needs of its assessment area
255 or areas through qualified investments that benefit its assessment area
256 or areas or a broader state-wide or regional area that includes its
257 assessment area or areas; (2) the community credit union's record of
258 helping to meet the credit needs of its assessment area or areas, by
259 analyzing both the availability and effectiveness of its systems for
260 delivering retail credit union services and the extent and innovativeness
261 of its community development services; (3) loan-to-share ratio given the
262 community credit union's size and financial condition, credit needs of
263 the assessment area or areas, other lending-related activities,
264 considering seasonal variations, as used in 12 CFR 228.26; (4) percentage
265 of total loans and other lending-related activities within the assessment
266 area or areas; (5) record of lending and other lending-related activities
267 to borrowers of different income levels, and businesses and farms of
268 different sizes; (6) geographic distribution of loans; (7) action taken in
269 response to written complaints with respect to community reinvestment
270 performance; (8) efforts of the community credit union to work with
271 delinquent residential mortgage customers who are unemployed or
272 underemployed to facilitate a resolution of the delinquency; and (9)
273 written comments received by the commissioner.

274 (d) (1) Upon the completion of the assessment required under

275 subsection (c) of this section, the commissioner shall prepare a written
276 evaluation of the community credit union’s community reinvestment
277 performance.

278 (2) The performance evaluation shall (A) state the commissioner's
279 assessment of the community reinvestment performance of the
280 community credit union, (B) set forth and discuss the facts supporting
281 such assessment, and (C) contain the community credit union’s rating
282 and a statement describing the basis for the rating. The rating shall be
283 one of the following: (i) Outstanding record of meeting community
284 credit needs; (ii) satisfactory record of meeting community credit needs;
285 (iii) needs to improve record of meeting community credit needs; or (iv)
286 substantial noncompliance in meeting community credit needs. The
287 commissioner shall furnish a copy of the performance evaluation to the
288 community credit union upon its completion.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2023	36a-736
Sec. 2	January 1, 2023	36a-737(a)
Sec. 3	January 1, 2023	36a-740
Sec. 4	January 1, 2023	36a-741
Sec. 5	January 1, 2023	36a-743
Sec. 6	January 1, 2023	36a-30
Sec. 7	January 1, 2023	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 23 \$	FY 24 \$
Banking Dept.	BF - Cost	None	Up to \$75,000
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 not later than July 1, 2024 which will result in a cost of up to \$75,000 in FY 24 for specialized software and training necessary to perform the examinations. The bill also allows the DOB to conduct fair lending examinations as the commissioner deems necessary. To the extent that this could result in additional examinations, there may also be a potential cost for staffing in FY 24.

The estimate of a one-time cost in FY 24 of \$65,000 - \$75,000 for the specialized software is based on the cost to the Department of Revenue Services for a similar product, as information was not available for the DOB specific software.

As 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 \$180,160 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 six examinations per year.

The Out Years

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

*Sources: Core-CT Financial Accounting System
Department of Banking*

¹ The agency currently has 14 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 99.73% of payroll in FY 23.

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)