

SB1879



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1879

Introduced 1/10/2008, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

New Act

Creates the Mortgage Steering Act. Prohibits mortgage loan steering or other specified fee and loan practices, based upon (i) the borrower's credit history, (ii) the borrower's capacity to repay the loan, and (iii) the property on which the loan is secured, because of that borrower's race, gender, age, disability, or national origin. Provides that the Attorney General shall enforce the Act and grants the Attorney General the additional listed enforcement powers. Provides for injunctive relief, restitution, and civil penalties for violations of the Act. Provides that a person who suffers actual damages as a result of a violation of the Act by a lender may bring an action against that lender and may be awarded actual economic damages or any other relief that the court deems proper. Provides that any waiver or modification of the rights, provisions, or remedies of the Act shall be void and unenforceable.

LRB095 15221 MJR 41202 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Mortgage Steering Act.

6 Section 5. Definitions. As used in this Act:

7 "Mortgage loan" means that term as it is defined in
8 subsection (f) of Section 1-4 of the Residential Mortgage
9 License Act of 1987.

10 "Borrower" means a person seeking a mortgage loan.

11 "Lender" means a natural or artificial person who
12 transfers, deals in, offers, brokers, or makes a residential
13 loan. "Lender" includes, but is not limited to, banks, savings
14 banks, savings and loan associations, credit unions, and
15 insurance companies organized, chartered, or holding a
16 certificate of authority to do business under the laws of this
17 State or any other state or under the laws of the United
18 States, or licensees under the Consumer Installment Loan Act or
19 the Residential Mortgage License Act of 1987.

20 Section 10. Steering.

21 (a) A lender shall not engage in steering.

22 (b) A lender engages in steering when the lender:

1 (1) directs or attempts to direct a borrower, because
2 of that borrower's race, gender, disability, or national
3 origin, from applying for a mortgage loan where the
4 interest rates or fees are excessively higher than the
5 borrower could have at the time received from the lender
6 based on (A) the borrower's credit history, (B) the
7 borrower's capacity to repay the loan, and (C) the property
8 on which the loan is secured; or

9 (2) originates and closes a residential loan where the
10 interest rates or fees are excessively higher than the
11 borrower could have at the time received from the lender
12 based on (A) the borrower's credit history, (B) the
13 borrower's capacity to repay the loan, and (C) the property
14 on which the loan is secured, because of that borrower's
15 race, gender, age, disability, or national origin.

16 (c) Any lender who engages in steering violates this Act
17 and commits an unlawful practice within the meaning of this
18 Act.

19 Section 15. Notice; limiting liability. If a borrower could
20 receive a significantly more favorable interest rate or fees
21 based on (A) the borrower's credit history, (B) the borrower's
22 capacity to repay the loan, and (C) the property on which the
23 loan is secured, but the lender does not offer such a product,
24 the lender shall not be liable if it presents the following
25 notice to the borrower for the borrower's signature at the time

1 the interest rate and fees are given to the borrower:

2 "You may, based on (A) your credit history, (B) your
3 capacity to repay the loan, and (C) the property on which
4 the loan is secured, be eligible for a more favorable
5 interest rate or fees which we, the lender, do not offer.
6 This notice shall immunize the lender from liability under
7 the Mortgage Steering Act."

8 Section 20. Enforcement.

9 (a) When it appears to the Attorney General that a lender
10 has engaged in, is engaging in, or is about to engage in any
11 practice declared to be unlawful by this Act; when the Attorney
12 General receives a written complaint from a consumer or
13 borrower of the commission of a practice declared to be
14 unlawful under this Act; or when he or she believes it to be in
15 the public interest that an investigation should be made to
16 ascertain whether a lender in fact has engaged in, is engaging
17 in or is about to engage in, any practice declared to be
18 unlawful by this Act, the Attorney General may:

19 (1) require that lender to file on such terms as he or
20 she prescribes a statement or report in writing under oath
21 or otherwise, as to all information as he or she may
22 consider necessary;

23 (2) examine under oath any person in connection with
24 the conduct;

25 (3) examine any record, book, document, account, or

1 paper as he or she may consider necessary; and

2 (4) pursuant to an order of the circuit court, impound
3 any record, book, document, account, or paper that is
4 produced in accordance with this Act, and retain it in his
5 or her possession until the completion of all proceedings
6 in connection with which it is produced.

7 (b) To accomplish the objectives and to carry out the
8 duties prescribed by this Act, the Attorney General, in
9 addition to other powers conferred upon him or her by this Act,
10 may issue subpoenas to any person, administer an oath or
11 affirmation to any person, conduct hearings in aid of any
12 investigation or inquiry, prescribe such forms and promulgate
13 such rules and regulations as may be necessary, which rules and
14 regulations shall have the force of law.

15 (c) Service by the Attorney General of any notice requiring
16 a person to file a statement or report, or of a subpoena upon
17 any person, shall be made:

18 (1) personally by delivery of a duly executed copy
19 thereof to the person to be served, or if a person is not a
20 natural person, in the manner provided in the Code of Civil
21 Procedure when a complaint is filed; or

22 (2) by mailing by certified mail a duly executed copy
23 thereof to the person to be served at his or her last known
24 abode or principal place of business within this State.

25 (d) If any person fails or refuses to file any statement or
26 report, or obey any subpoena issued by the Attorney General,

1 the Attorney General may file a complaint in the circuit court
2 for the:

3 (1) granting of injunctive relief, restraining the
4 sale or advertisement of any mortgage by such persons, or
5 the conduct of any trade or commerce that is involved;

6 (2) vacating, annulling, or suspending of the
7 corporate charter of a corporation created by or under the
8 laws of this State or the revoking or suspending of the
9 certificate of authority to do business in this State of a
10 foreign corporation or the revoking or suspending of any
11 other licenses, permits, or certificates issued pursuant
12 to law to such person that are used to further the
13 allegedly unlawful practice; and

14 (3) granting of such other relief as may be required,
15 until the person files the statement or report, or obeys
16 the subpoena.

17 (e) In the administration of this Act, the Attorney General
18 may accept an Assurance of Voluntary Compliance with respect to
19 any method, act, or practice deemed to be in violation of this
20 Act from any lender who has engaged in, is engaging in, or was
21 about to engage in such method, act, or practice. Evidence of a
22 violation of an Assurance of Voluntary Compliance shall be
23 prima facie evidence of a violation of this Act in any
24 subsequent proceeding brought by the Attorney General against
25 the alleged violator.

1 Section 25. Injunctive relief; restitution; and civil
2 penalties.

3 (a) Whenever the Attorney General has reason to believe
4 that any lender is using, has used, or is about to use any
5 method, act, or practice declared by this Act to be unlawful,
6 and that proceedings would be in the public interest, he or she
7 may bring an action in the name of the People of the State of
8 Illinois against such lender to restrain by preliminary or
9 permanent injunction the use of such method, act, or practice.
10 The court, in its discretion, may exercise all powers
11 necessary, including but not limited to: injunction;
12 revocation, forfeiture or suspension of any license, charter,
13 franchise, certificate, or other evidence of authority of any
14 person to do business in this State; appointment of a receiver;
15 dissolution of a domestic corporation or association or
16 suspension or termination of the right of a foreign corporation
17 or association to do business in this State; and restitution.

18 (b) In addition to the remedies provided herein, the
19 Attorney General may request and the court may impose a civil
20 penalty in a sum not to exceed \$50,000 against any lender found
21 by the court to have engaged in any method, act, or practice
22 declared unlawful under this Act.

23 (c) In addition to any other civil penalty provided in this
24 Section, if a lender is found by the court to have engaged in
25 any method, act, or practice declared unlawful under this Act,
26 and the violation was committed against a person 65 years of

1 age or older, the court may impose an additional civil penalty
2 not to exceed \$10,000 for each violation.

3 A civil penalty imposed under this subsection (c) shall be
4 paid to the State Treasurer who shall deposit the money in the
5 State treasury in a special fund designated the Elderly Victim
6 Fund. The Treasurer shall deposit such moneys into the Fund
7 monthly. All of the moneys deposited into the Fund shall be
8 appropriated to the Department on Aging for grants to senior
9 centers in Illinois.

10 In determining whether to impose a civil penalty under this
11 subsection (c) and the amount of any penalty, the court shall
12 consider the following:

13 (1) Whether the defendant's conduct was in willful
14 disregard of the rights of the person 65 years of age or
15 older.

16 (2) Whether the defendant knew or should have known
17 that the defendant's conduct was directed to a person 65
18 years of age or older.

19 (3) Whether the person 65 years of age or older was
20 substantially more vulnerable to the defendant's conduct
21 because of age, poor health, infirmity, impaired
22 understanding, restricted mobility, or disability, than
23 other persons.

24 (4) Any other factors the court deems appropriate.

25 (d) This Section applies if: (i) a court orders a party to
26 make payments to the Attorney General and the payments are to

1 be used for the operations of the Office of the Attorney
2 General; or (ii) a party agrees, in an Assurance of Voluntary
3 Compliance under this Act, to make payments to the Attorney
4 General for the operations of the Office of the Attorney
5 General.

6 (e) Moneys paid under any of the conditions described in
7 subsection (d) of this Section shall be deposited into the
8 Attorney General Court Ordered and Voluntary Compliance
9 Payment Projects Fund, which is created as a special fund in
10 the State treasury. Moneys in the Fund shall be used, subject
11 to appropriation, for the performance of any function
12 pertaining to the exercise of the duties of the Attorney
13 General, including but not limited to enforcement of any law of
14 this State and conducting public education programs; however,
15 any moneys in the Fund that are required by the court or by an
16 agreement to be used for a particular purpose shall be used for
17 that purpose.

18 Section 30. Receiver powers. When a receiver is appointed
19 by the court pursuant to this Act, he or she shall have the
20 power to sue for, collect, receive, and take into his or her
21 possession all the goods and chattels, rights and credits,
22 moneys and effects, lands and tenements, books, records,
23 documents, papers, choses in action, bills, notes, and
24 property of every description, derived by means of any practice
25 declared to be illegal and prohibited by this Act, including

1 property with which such property has been commingled if it
2 cannot be identified in kind because of such commingling, and
3 to sell, convey, and assign the same and hold and dispose of
4 the proceeds thereof under the direction of the court. Any
5 person who has suffered damages as a result of the use or
6 employment of any unlawful practices and submits proof to the
7 satisfaction of the court that he or she has in fact been
8 damaged may participate with general creditors in the
9 distribution of the assets to the extent he has sustained
10 out-of-pocket losses. In the case of a partnership or business
11 entity, the receiver shall settle the estate and distribute the
12 assets under the direction of the court. The court shall have
13 jurisdiction of all questions arising in such proceedings and
14 may make such orders and judgments therein as may be required.

15 Section 35. Termination of receivership. Subject to an
16 order of the court terminating the business affairs of any
17 lender after receivership proceedings held pursuant to this
18 Act, the provisions of this Act shall not bar any claim against
19 any person who has acquired any moneys or property, real or
20 personal, by means of any practice herein declared to be
21 unlawful.

22 Section 40. Cost recovery. In any action brought under the
23 provisions of this Act, the Attorney General is entitled to
24 recover costs for the use of this State.

1 Section 45. Action for actual damages.

2 (a) Any person who suffers actual damage as a result of a
3 violation of this Act committed by a lender may bring an action
4 against such lender. The court, in its discretion, may award
5 actual economic damages or any other relief which the court
6 deems proper.

7 (b) Such action may be commenced in the county in which the
8 lender against whom it is brought has its principal place of
9 business, or is doing business, or in the county where the
10 transaction or any substantial portion thereof occurred.

11 (c) In any action brought by a person under this Act, the
12 court may grant injunctive relief where appropriate and may
13 award, in addition to the relief provided in this Act,
14 reasonable attorney's fees and costs to the prevailing
15 plaintiff.

16 (d) Upon commencement of any action brought under this
17 Section, the plaintiff shall mail a copy of the complaint or
18 other initial pleading to the Attorney General and, upon entry
19 of any judgment or order in the action, shall mail a copy of
20 such judgment or order to the Attorney General.

21 (e) Any action for damages under this Section shall be
22 forever barred unless commenced within 3 years after the cause
23 of action accrued; provided that, whenever any action is
24 brought by the Attorney General for a violation of this Act,
25 the running of the foregoing statute of limitations, with

1 respect to every private right of action for damages which is
2 based in whole or in part on any matter complained of in said
3 action by the Attorney General, shall be suspended during the
4 pendency thereof, and for one year thereafter.

5 Section 50. Waiver. Any waiver or modification of the
6 rights, provisions, or remedies of this Act shall be void and
7 unenforceable.

8 Section 55. Additional remedies. The relief provided in
9 this Act is in addition to remedies otherwise available against
10 the same conduct under the common law or other statutes of this
11 State.

12 Section 60. Construction. This Act shall be liberally
13 construed to effect the purposes thereof.