

17:16F-1 to 17:16F-11

LEGISLATIVE HISTORY CHECKLIST

HJSA 17:16F-1 to 17:16F-11 (Prohibit Discrimination in Mortgage Lending -- "Red-Lining")

LANS OF 1977 CHAPTER 1

Bill No. S1091

Sponsor(s) Merlino, Greenberg, Imperiale

Date Introduced February 9, 1976

Committee: Assembly Commerce, Banking & Insurance

Senate County & Municipal Government

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 6, 1976

Senate July 22, 1976

Date of approval January 12, 1977

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note ~~XXX~~ No

Veto message ~~XXX~~ No

Message on signing Yes ~~XX~~

Following were printed:

Reports ~~XXX~~ No

Hearings ~~XXX~~ No

Mentioned In:

974.901 N.J. Governor, 1974- (Byrne)
G52 State of N.J. annual report, the 4th annual message delivered to the State Legislature on January 10, 1978.
"Toward An Urban Growth Strategy"

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9/1/73

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974.901 N.J. Governor, 1974- (Byrne)
G52 Third annual message, January 11, 1977
p.9

974.901 N.J. Governor, 1974- (Byrne)
G52 Second annual message, January 13, 1976
p.18

APPROVED 1-12-77

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1091

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1976

By Senators MERLINO, GREENBERG and IMPERIALE

Referred to Committee on County and Municipal Government

AN ACT to prohibit discrimination in mortgage lending, and to require depository institutions to report certain information regarding mortgage loans to the Commissioner of Banking and to the public, and supplementing Title 17 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature hereby finds and declares that depository
2 institutions have sometimes failed to provide adequate home financ-
3 ing on a nondiscriminatory basis for all neighborhoods within the
4 communities from which these institutions receive deposits. **The*
5 *Legislature further finds that neighborhood discrimination on the*
6 *part of depository institutions results in the arbitrary denial of*
7 *loans to creditworthy persons; substantially reduces the avail-*
8 *ability of funds from the private sector for urban housing invest-*
9 *ments; accelerates the physical decline of the affected neighbor-*
10 *hoods; and undercuts publicly supported programs for the*
11 *preservation and revival of urban neighborhoods.** The **[pur-*
12 *pose]* *purposes** of this **[legislation is]* *act are** to prohibit
13 **[discrimination in]* the *[granting]* *arbitrary denial** of
14 mortgage loans **[because]* *on the basis of the location of** the
15 property to be mortgaged **[is located in a specific geographical*
16 *area,]* **; *to encourage an increase in the availability of mortgage*
17 *capital to neighborhoods to which such investment capital has*
18 *generally been denied;** and to provide the citizens and public
19 officials of the State of New Jersey with sufficient information to
20 enable them to determine which depository institutions are fulfill-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

21 ing their obligations to serve the housing needs of the communities
22 and neighborhoods in which they are located.

1 2. As used in this act:

2 a. "Depository institution" means any ***[**State chartered bank,
3 savings bank, savings and loan association, or credit union]**]** **bank-*
3A *ing institutions as defined in section 1 of the Banking Act of 1948,*
3B *P. L. 1948, c. 67 (C. 17:9A-1), any association as defined in the*
3C *Savings and Loan Act (1963), P. L. 1963, c. 144 (C. 17:12B-1 et*
3D *seq.), and any State or Federal credit union* * *but* **the pro-*
3E *visions of section 4 of* **this act shall not apply to any depository*
3F *institution which had total assets of \$10,000,000.00 or less as of the*
3G *last day of its last full fiscal year* *.

4 b. "Mortgage loan" means a loan which is secured by residential
5 real property or a home improvement loan.

6 **c. "Applicant" means any person who files with a depository*
7 *institution a written request containing such information as re-*
8 *quired by the depository institution for a mortgage loan as defined*
9 *in this act.* **

1 3. No ***[**bank, savings bank, savings and loan association, or credit
2 union]**]** **depository institution* shall discriminate*, *on a basis*
3 *that is arbitrary or unsupported by a reasonable analysis of the*
4 *lending risks associated with the applicant for a given loan or the*
5 *condition of the property to secure it,* * in the granting, withholding,
6 extending, modifying or renewing, or in the fixing of the rates,
7 terms, conditions, or provisions of any **mortgage** loan ***[**secured
8 by]**]** **on** real property **located in the municipality in which a*
9 *depository institution has a home or branch office, or in any mu-*
10 *nicipality contiguous to such municipality, merely** because such
11 property is located in a specific **neighborhood or** geographical
12 area*; *provided, however, that it shall not be a violation of this*
13 *section if the mortgage loan is made pursuant to a specific public*
14 *or private program, the purpose of which is to increase the avail-*
15 *ability of mortgage loans within a specific neighborhood or geo-*
16 *graphical area* *.

1 4. Each depository institution which has a home office or branch
2 office located within a standard metropolitan statistical area, as
3 defined by the Commissioner of Banking consistent with the
4 definition used by the Federal Office of Management and Budget,
5 shall compile and make available to the public for inspection **and*
6 *copying** at the home office, and at least one branch office within
7 each standard metropolitan statistical area in which the depository
8 institution has an office, in accordance with regulations promulgated
9 by the Commissioner of Banking:

10 a. The number and total dollar amount of mortgage loans which
 11 were (1) originated, or (2) purchased, by that institution during
 12 each fiscal year, beginning with the last full fiscal year of that
 13 institution which immediately preceded the effective date of this
 14 act;

15 b. The number and dollar amount of each such loan by census
 16 tract, where readily available at a reasonable cost, as determined
 17 by the Commissioner of Banking, otherwise by ZIP code, for
 18 mortgage loans secured by property located within that standard
 19 metropolitan statistical area;

20 c. The number and dollar amount of all such mortgage loans
 21 secured by property located outside such standard metropolitan
 22 statistical area;

23 d. The number and dollar amount of loans which are insured
 24 under Title II of the National Housing Act or under Title V of the
 25 Housing Act of 1949 or which are guaranteed under Chapter 37 of
 26 Title 38, United States Code;

27 **e. The number and dollar amount of mortgage loans made pur-*
 28 *suant to the "New Jersey Mortgage Finance Agency Law," P. L.*
 29 *1970, c. 38 (C. 17:1B-4 et seq.);**

30 **[e.]* *f.** The number and dollar amount of loans made to
 31 mortgagors who did not, at the time of execution of the mortgage,
 32 intend to reside in the property securing the mortgage loan;

33 **[f.]* *g.** The number and dollar amount of home improve-
 34 ment loans;

35 **[g.]* *h.** The number and dollar amount of all applications
 36 for mortgage loans, by census tract or ZIP code as required by
 37 subsection b. of this section.

38 **The regulations promulgated by the Commissioner of Banking*
 39 *shall be consistent with the terms and provisions of, and regulations*
 40 *promulgated pursuant to the "Home Mortgage Disclosure Act of*
 41 *1975," Pub. L. 94-200, and compliance with the provisions of sec-*
 42 *tion 304 thereof shall constitute compliance with this section,*
 43 *except to the extent that additional data is required by subsections*
 44 *e. and h. of this section.**

1 5. A depository institution which maintains offices in more than
 2 one standard metropolitan statistical area shall make the informa-
 3 tion required by **[subsections b. and c. of]** section 4 of this act
 4 available at any such office only to the extent that such information
 5 relates to mortgage loans which were originated or purchased by
 6 an office of that depository institution located in the standard
 7 metropolitan statistical area in which the office making such infor-
 8 mation available is located.

1 6. Any information required to be compiled and made available
2 under this act shall be maintained and made available for a period
3 of 5 years after the close of the first year during which such
4 information is required to be maintained and made available.
5 A copy shall be filed ****[quarterly]**** ****annually**** with the Com-
6 missioner of Banking and the Director of the Division on Civil
7 Rights of the Department of Law and Public Safety.

1 7. Any person ****or applicant**** who has been ***[aggrieved]***
2 ***discriminated against*** as a result of a violation of ***section 3 of***
3 this act may bring an action ***in New Jersey*** in a court of competent
4 jurisdiction. Upon finding that a ***[bank, savings bank, savings and**
5 **loan association, or credit union]*** ***depository institution*** is in
6 violation of this act, the court may award actual damages, ***[and**
7 **may, in its discretion, award]*** ***reasonable*** attorneys' fees and
8 court costs.

1 8. The Commissioner of Banking shall have ***the*** power to make
2 such investigations ***into any matter pertaining to this act*** as he
3 shall deem necessary, including the power to hold hearings, issue
4 subpoenas to compel the attendance of witnesses and the production
5 of documents, papers, books, records, and other evidence before
6 him ***[in any matter pertaining to this act]***. In case of a failure
7 of any person to comply with any subpoena issued by the com-
7A missioner or to testify to any matter concerning which he may
8 be lawfully interrogated, the Superior Court, on application of the
9 commissioner, may issue an order requiring the attendance of such
10 person and the giving of testimony or production of evidence. Any
11 person failing to obey the court's order may be punished for
12 contempt.

1 9. If the commissioner finds that a depository institution is
2 violating the provisions of this act, he shall order the institution to
3 cease its unlawful practices. Such order shall be subject to review,
4 hearing and relief in the Superior Court by a proceeding in lieu
5 of prerogative writ.

1 10. A depository institution which continues to violate the provi-
2 sions of this act after having been ordered by the commissioner
3 to cease such practices shall be liable to a penalty of \$5,000.00 for
4 each offense to be recovered with costs by the State in any court of
5 competent jurisdiction in a civil action prosecuted by the Attorney
6 General. The penalty provided by this section shall be in addition
7 to and not in lieu of any other provision of law applicable upon a
8 depository institution's failure to comply with an order of the
9 commissioner.

1 11. The Commissioner of Banking is authorized and empowered
2 to promulgate such regulations as he may deem necessary, con-
3 sistent with sound banking practice, for the proper operation and
4 enforcement of this act.

1 12. This act shall take effect *~~immediately~~* **90 days after*
2 *enactment**.

STATEMENT

“Red-lining” is the informal practice by many lending institutions of withholding mortgage loans from neighborhoods that they deem somehow to be questionable investment risks. It usually reflects a banker’s judgment that a neighborhood may be in, or likely to, decline. Such a judgment, which is often based on the lender’s observations or predictions of racial or ethnic change in a community, results in the unavailability of mortgage money in these neighborhoods. The lack of investment in residential properties in these areas leads directly to their physical decline. This situation is particularly galling when the lending institution is a bank patronized by residents of the red-lined area.

This bill prohibits red-lining, defined in section 3 as discrimination in the making of “any loan secured by real property because such property is located in a specific geographical area.” It further requires banks to report, by census tract or ZIP code area, from where they have received applications for home mortgage loans and where they have actually made the loans in response.

ASSEMBLY COMMERCE, BANKING AND
INSURANCE COMMITTEE

STATEMENT TO
SENATE, No. 1091

—◆—
STATE OF NEW JERSEY
—◆—

DATED: SEPTEMBER 27, 1976

Redlining is the term usually applied to the practice of discriminating in granting a mortgage loan because of the geographical location of the mortgaged property. Those who oppose this practice charge that financial institutions accept deposits from residents in inner city areas and invest that money in mortgages in more affluent suburban areas. Some institutions will lend in inner city areas if such loans are F.H.A. insured, although F.H.A. standards are such that many older homes, although well constructed, do not qualify.

The effect of redlining is to accelerate the decline of urban neighborhoods by limiting or cutting off entirely funds which are needed to rehabilitate or to purchase homes in these areas. The term redlining is used to refer both to outright denial of mortgage money and varying the terms of the loan in a manner that clearly constitutes discrimination. The varying of terms may take the following forms:

1. *Excessive down payments*—Mortgage lenders sometimes require a significantly higher down payment for mortgage loans in areas which they consider undesirable. If the lender regularly requires smaller down payments in suburban areas, it is practicing redlining.

2. *Underappraisal*—A related method of redlining is underappraisal, which is another means of requiring exorbitant down payments. A lender appraises the home at a lower figure than the selling price, requiring the buyer to make up the difference to the seller in cash.

3. *High interest rates*—Charging an interest rate greater than that required for collateral of comparable value and security.

4. *Exaggerated property requirements*—Varying property requirements, such as (a) refusing to lend on properties older than a prescribed number of years; (b) refusing to lend because of the

property's age, regardless of its condition; and (c) by applying more rigid appraisal standards than those applied to comparable properties in other areas.

5. *Reducing the length of time a borrower has to pay off the mortgage.*

This bill prohibits depository institutions in the State from discriminating in the granting of mortgage loans because such property is located in a specific neighborhood or geographical area.

The bill also contains reporting requirements similar to Federal law, although it differs from the Federal legislation in that (1) it requires quarterly reports, as opposed to yearly reports, (2) it requires reporting of applications for mortgage loans, as well as loans already made, and (3) it requires the number and dollar amount of loans made through the New Jersey Mortgage Finance Agency.

The bill requires that the statistical material be made available by institutions for inspection and copying, and retained for a period of 5 years. In addition to quarterly reports filed with the Department of Banking, reports would also be required to be filed with the Division of Civil Rights.

The bill provides that any individual who has been discriminated against as a result of a violation of the section of the act which prohibits discrimination may bring an action against the depository institution for actual damages.

The Commissioner of Banking would be given the authority to investigate discriminatory practices and to fine the institution for violation of the provisions of the act.

This bill is designed to (1) make redlining illegal, (2) provide a mechanism by which depository institutions' lending practices can be monitored by the public and by the Department of Banking, and (3) provide various penalties for violation of the act.

Other states, including Illinois and California, have passed legislation or issued regulations which would require institutions to report their mortgage loans. This legislation, however, prohibits discrimination in the granting of mortgage loans on the basis of the geographical location of the property to be mortgaged; at present, this is not illegal in New Jersey. Further, the Commissioner of Banking does not have any explicit statutory authority to promulgate regulations prohibiting the practice.

The committee has amended this legislation to clarify the definition of "applicant"; the amendment provides that an applicant is one who applies in writing for a mortgage loan.

The committee has also eliminated from the scope of the legislation those institutions which have assets under \$10,000,000.00; this would primarily affect a number of State-chartered savings and loan associations with relatively small assets. This legislation has also been amended to provide for annual rather than quarterly reports by institutions; this will make the State legislation consonant with Federal law.

Finally, the committee has amended the legislation to provide that any "person or applicant" who has been discriminated against may bring suit for violation of section 3 of the act. It was the intention of the original legislation to allow for class action suits in the event that individuals other than applicants were discriminated against by institutions; this language confirms this purpose.

The committee believes this legislation is essential to preserve the fabric of the State's urban areas, and to promote optimum utilization of the housing which exists there.

REFERENCE USE ONLY

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1091

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 24, 1976

Senate Bill No. 1091 requires every statutorily designated depository institution in the State to provide adequate home financing on a non-discriminatory basis to all areas situated "within the communities from which these institutions receive deposits."

In the accomplishment of the aforesaid objective, the bill:

(1) Requires every depository institution, as defined in section 2 of the bill, with a home or branch office within a standard metropolitan statistical area (SMSA), to compile and provide for public inspection, at the home office and at least one branch office within each SMSA in which the institution has an office, such information on mortgage loans, including home improvement loans, as is set forth in section 4 of the bill and, in the case of an institution having an office in more than one SMSA, an office of that institution in each SMSA to provide information pursuant to sections 4 and 5 of the bill; the Commissioner of Banking shall promulgate appropriate regulations therefor;

(2) Requires that any information required to be compiled shall be maintained and available for a period of 5 years beyond the year for which such information is compiled and that quarterly copies of such information shall be filed with the Commissioner of Banking and the Director of the Division on Civil Rights of the Department of Law and Public Safety (section 6);

(3) Authorizes (a) any aggrieved person to bring action in a court of competent jurisdiction and, (b) such court to award, at its discretion, court costs, attorneys' fees and actual damages to an aggrieved party upon a court finding that the defendant institution is in violation of the bill's provisions; (4) Empowers the commissioner to make any necessary investigations for the purpose of assuring compliance with this act, and to compel the appearance of witnesses and production of any necessary documents or materials (section 8, as amended);

(5) Authorizes the commissioner to order a depository institution to cease any practice in violation of the provisions of this bill (section 9);

(6) Subjects any depository institution to a mandatory penalty of \$5,000.00, if such institution is found by a court of competent jurisdiction, to be in continuing violation of the provisions of this bill, after being ordered to cease unlawful practices by the Commissioner of Banking; suit shall be filed and prosecuted by the Attorney General, and such penalties shall be in addition to any other penalties to which the institution might be liable for failure to comply with an order of the commissioner; and

(7) Empowers the Commissioner of Banking to promulgate, consistent with sound banking practices, appropriate regulations for the implementation of the "act" (Senate Bill No. 1091).

The sponsor's statement describes the problem which the bill seeks to rectify, and summarizes the purposes of the bill.

The Senate committee amendments, which have been approved by the sponsor, include:

(1) A clearer identification of the problems generated by red-lining practices and the general objectives of Senate Bill No. 1091 (section 1);

(2) A change in the definition of depository institutions so as to encompass certain federally chartered institutions (section 2);

(3) A clearer definition of what constitutes discriminatory practices, and of the obligations of depository institutions pursuant to Senate Bill No. 1091 (section 3);

(4) A provision that an increase in availability of mortgage money to a geographical area pursuant to any public or private program shall not be considered a violation of Senate Bill No. 1091;

(5) Several changes in section 4 so as to require:

(a) All statistical data to be compiled and retained for public inspection pursuant to section 4 be available for reproduction;

(b) Separate data be kept on mortgage loans made by the New Jersey Mortgage Finance Agency;

(c) All regulations promulgated by the State Commissioner of Banking be, insofar as practicable, consistent with the Federal Home Mortgage Disclosure Act of 1975.

(6) Some clarifying language which has been inserted in sections 7 and 8 of Senate Bill No. 1091.

(7) A change in the effective date of Senate Bill No. 1091.

The main objectives of the committee amendments are to provide greater clarity and specificity and thereby assure greater accountability pursuant to the principal objectives of the bill. The amendments also

seek to further minimize any possible conflicts between the reporting provisions of this bill and those to be required pursuant to the Federal Home Mortgage Disclosure Act of 1975 (P. L. 94-200), after which Senate Bill No. 1091 is patterned. It should further be noted that section 306(b) of said act exempts from Federal regulations any State chartered depository institution which is subject to a State law substantially similar in provisions to the Federal act.

FOR IMMEDIATE RELEASE

BOB COMSTOCK

Governor Brendan Byrne signed into law today S-1091, the anti-redlining bill, sponsored by Senator Merlino (D-Mercer).

The new law prohibits lending institutions from arbitrarily refusing to grant mortgages on properties within specific neighborhoods. It pre-empts the reporting requirements of the Federal Loan Disclosure Act and requires lending institutions to report, not only the location of properties for which mortgages are approved, but also information about the volume of mortgage applications received.

It provides for class action law suits brought on behalf of an entire neighborhood against a lending institution which grants few or no mortgages in the neighborhood. It provides for a penalty of up to \$5,000 per violation to be levied by the Banking Commissioner.

"This is the strongest anti-redlining law in the country," said Byrne. "It will not force any bank to make bad loans. It allows for legitimate denials based on sound business judgement. No bank that is not in fact redlining need have any cause for concern.

"But it will not allow whole neighborhoods to be declared off limits for mortgage loans, causing hardship for those who want to establish their homes there."

Merlino called the new law "a weapon needed to encourage urban banks to invest in their own neighborhoods instead of sending their money out into the suburbs."

Community Affairs Commissioner Patricia Q. Sheehan said the new law will aid in the state's efforts to foster neighborhood preservation. "No one program is enough by itself," she said. "There must be a variety of ways to encourage participation in programs to revitalize our urban neighborhoods."

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