



Sen. Jacqueline Y. Collins

Filed: 2/28/2006

09400SB2619sam001

LRB094 18934 LCT 56760 a

1 AMENDMENT TO SENATE BILL 2619

2 AMENDMENT NO. _____. Amend Senate Bill 2619 by replacing
3 everything after the enacting clause with the following:

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:

23 (1) directs or attempts to direct a borrower, because

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

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

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

18 Section 15. Notice; limiting liability.

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

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

1 Section 20. Enforcement.

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

12 (1) require that lender to file on such terms as he or
13 she prescribes a statement or report in writing under oath
14 or otherwise, as to all information as he or she may
15 consider necessary;

16 (2) examine under oath any person in connection with
17 the conduct;

18 (3) examine any record, book, document, account, or
19 paper as he or she may consider necessary; and

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

25 (b) To accomplish the objectives and to carry out the
26 duties prescribed by this Act, the Attorney General, in
27 addition to other powers conferred upon him or her by this Act,
28 may issue subpoenas to any person, administer an oath or
29 affirmation to any person, conduct hearings in aid of any
30 investigation or inquiry, prescribe such forms and promulgate
31 such rules and regulations as may be necessary, which rules and
32 regulations shall have the force of law.

33 (c) Service by the Attorney General of any notice requiring
34 a person to file a statement or report, or of a subpoena upon

1 any person, shall be made:

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

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

9 (d) If any person fails or refuses to file any statement or
10 report, or obey any subpoena issued by the Attorney General,
11 the Attorney General may file a complaint in the circuit court
12 for the:

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

16 (2) vacating, annulling, or suspending of the
17 corporate charter of a corporation created by or under the
18 laws of this State or the revoking or suspending of the
19 certificate of authority to do business in this State of a
20 foreign corporation or the revoking or suspending of any
21 other licenses, permits, or certificates issued pursuant
22 to law to such person that are used to further the
23 allegedly unlawful practice; and

24 (3) granting of such other relief as may be required,
25 until the person files the statement or report, or obeys
26 the subpoena.

27 (e) In the administration of this Act, the Attorney General
28 may accept an Assurance of Voluntary Compliance with respect to
29 any method, act, or practice deemed to be in violation of this
30 Act from any lender who has engaged in, is engaging in, or was
31 about to engage in such method, act, or practice. Evidence of a
32 violation of an Assurance of Voluntary Compliance shall be
33 prima facie evidence of a violation of this Act in any
34 subsequent proceeding brought by the Attorney General against

1 the alleged violator.

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

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

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

24 (c) In addition to any other civil penalty provided in this
25 Section, if a lender is found by the court to have engaged in
26 any method, act, or practice declared unlawful under this Act,
27 and the violation was committed against a person 65 years of
28 age or older, the court may impose an additional civil penalty
29 not to exceed \$10,000 for each violation.

30 A civil penalty imposed under this subsection (c) shall be
31 paid to the State Treasurer who shall deposit the money in the
32 State treasury in a special fund designated the Elderly Victim
33 Fund. The Treasurer shall deposit such moneys into the Fund

1 monthly. All of the moneys deposited into the Fund shall be
2 appropriated to the Department on Aging for grants to senior
3 centers in Illinois.

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

7 (1) Whether the defendant's conduct was in willful
8 disregard of the rights of the person 65 years of age or
9 older.

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

13 (3) Whether the person 65 years of age or older was
14 substantially more vulnerable to the defendant's conduct
15 because of age, poor health, infirmity, impaired
16 understanding, restricted mobility, or disability, than
17 other persons.

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

19 (d) This Section applies if: (i) a court orders a party to
20 make payments to the Attorney General and the payments are to
21 be used for the operations of the Office of the Attorney
22 General; or (ii) a party agrees, in an Assurance of Voluntary
23 Compliance under this Act, to make payments to the Attorney
24 General for the operations of the Office of the Attorney
25 General.

26 (e) Moneys paid under any of the conditions described in
27 subsection (d) of this Section shall be deposited into the
28 Attorney General Court Ordered and Voluntary Compliance
29 Payment Projects Fund, which is created as a special fund in
30 the State treasury. Moneys in the Fund shall be used, subject
31 to appropriation, for the performance of any function
32 pertaining to the exercise of the duties of the Attorney
33 General, including but not limited to enforcement of any law of
34 this State and conducting public education programs; however,

1 any moneys in the Fund that are required by the court or by an
2 agreement to be used for a particular purpose shall be used for
3 that purpose.

4 Section 30. Receiver powers. When a receiver is appointed
5 by the court pursuant to this Act, he or she shall have the
6 power to sue for, collect, receive, and take into his or her
7 possession all the goods and chattels, rights and credits,
8 moneys and effects, lands and tenements, books, records,
9 documents, papers, choses in action, bills, notes, and
10 property of every description, derived by means of any practice
11 declared to be illegal and prohibited by this Act, including
12 property with which such property has been commingled if it
13 cannot be identified in kind because of such commingling, and
14 to sell, convey, and assign the same and hold and dispose of
15 the proceeds thereof under the direction of the court. Any
16 person who has suffered damages as a result of the use or
17 employment of any unlawful practices and submits proof to the
18 satisfaction of the court that he or she has in fact been
19 damaged may participate with general creditors in the
20 distribution of the assets to the extent he has sustained
21 out-of-pocket losses. In the case of a partnership or business
22 entity, the receiver shall settle the estate and distribute the
23 assets under the direction of the court. The court shall have
24 jurisdiction of all questions arising in such proceedings and
25 may make such orders and judgments therein as may be required.

26 Section 35. Termination of receivership. Subject to an
27 order of the court terminating the business affairs of any
28 lender after receivership proceedings held pursuant to this
29 Act, the provisions of this Act shall not bar any claim against
30 any person who has acquired any moneys or property, real or
31 personal, by means of any practice herein declared to be
32 unlawful.

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

4 Section 45. Action for actual damages.

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

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

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

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

24 (e) Any action for damages under this Section shall be
25 forever barred unless commenced within 3 years after the cause
26 of action accrued; provided that, whenever any action is
27 brought by the Attorney General for a violation of this Act,
28 the running of the foregoing statute of limitations, with
29 respect to every private right of action for damages which is
30 based in whole or in part on any matter complained of in said
31 action by the Attorney General, shall be suspended during the
32 pendency thereof, and for one year thereafter.

1 Section 50. Waiver. Any waiver or modification of the
2 rights, provisions, or remedies of this Act shall be void and
3 unenforceable.

4 Section 55. Additional remedies. The relief provided in
5 this Act is in addition to remedies otherwise available against
6 the same conduct under the common law or other statutes of this
7 State.

8 Section 60. Construction. This Act shall be liberally
9 construed to effect the purposes thereof.".