

By Mr. Aguiar of Swansea, petition of Antone S. Aguiar, Jr., for legislation to prohibit the arbitrary denial of residential mortgage loans on the basis of the location of the property to be mortgaged and to encourage the establishment of review boards. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT TO PROHIBIT THE ARBITRARY DENIAL OF RESIDENTIAL MORTGAGE LOANS ON THE BASIS OF THE LOCATION OF THE PROPERTY TO BE MORTGAGED AND TO ENCOURAGE THE ESTABLISHMENT OF REVIEW BOARDS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The purposes of this Act are to prohibit the
2 arbitrary denial of residential mortgage loans on the basis of the
3 location of the property to be mortgaged; to encourage an increase
4 in the availability of mortgage capital to neighborhoods to which
5 such investment capital may have been denied; to encourage the
6 establishment of an informal dispute mechanism to review
7 residential mortgage denials and to provide for civil action by an
8 individual who is damaged by a violation of this Act.

1 SECTION 2. Chapter 167 of the General Laws is hereby
2 amended by adding the following section: —

3 *Section 69.* Cities and towns shall encourage the formation of a
4 dispute mechanism, hereinafter called a Mortgage Review Board,
5 to review denied residential mortgage loans of participating
6 mortgagees.

7 Such board shall be voluntary and consist of an equal number of
8 mortgages and community representatives.

9 The Mortgage Review Board shall meet at least twice each
10 month to review each residential mortgage denial that an applicant
11 believes was denied on the basis of the location of the property.
12 Any applicant whose residential mortgage loan is denied by a
13 participating mortgagee shall be instructed, in writing, by said

14 mortgagee of his right to appeal the denial to the Mortgage Review
15 Board.

16 Said board shall review such submitted mortgage applications,
17 make recommendations and advise the applicants, in writing,
18 within ninety days of such appeal, and if such board fails to act
19 within said ninety days, the applicant will be considered to have
20 exhausted his administrative remedies; — provided, however, that
21 in order to be applicable to section 63 of chapter 183 of the General
22 Laws said board must be approved by the Commissioner of Banks
23 and provided further that the decision of the board must be
24 approved by the Commissioner of Banks and provided further that
25 the decision of the Board shall not be binding on the participating
26 mortgagee or the applicant.

1 SECTION 3. Chapter 183 of the General Laws is hereby
2 amended by adding after section 62, inserted by chapter 104 of the
3 acts of 1974, the following section: —

4 *Section 63.* No mortgagee doing business in the Com-
5 monwealth shall discriminate, on a basis that is arbitrary or
6 unsupported by a reasonable analysis of the lending risks
7 associated with a residential mortgage transaction, in the granting,
8 withholding, extending, modifying or renewing, or in the fixing of
9 the rates, terms, conditions, or provisions of any residential
10 mortgage loan or in any written application therefor on residential
11 real property of four or fewer separate households occupied or to
12 be occupied in whole or in part by the applicant, that is within the
13 reasonable service area of such mortgagee, merely because such
14 property is located in a specific neighborhood or geographical
15 area; provided, however, that it shall not be a violation of this
16 section if the residential mortgage loan is made pursuant to a
17 specific public or private program, the purpose of which is to
18 increase the availability of mortgage loans within a specific
19 neighborhood or geographical area. Nor shall any mortgagee
20 doing business in the Commonwealth use lending or underwriting
21 standards, policies, systems or practices, that discriminate in
22 practice or that discriminate in effect, on a basis that is arbitrary or
23 unsupported by a reasonable analysis of the lending risks
24 associated with a residential mortgage transaction. The preceding
25 sentence shall not preclude a mortgagee from

- 26 (a) requiring reasonable and uniformly applied application fees,
27 (b) utilizing income standards which are reasonable in relation
28 to the amount of the loan requested and which shall be disclosed to
29 each prospective applicant, or
30 (c) uniformly refusing to accept applications because of a lack of
31 lendable funds.

32 Nor shall any mortgagee make any oral or written statement, in
33 advertising or otherwise, to applicants or prospective applicants
34 that would discourage in an arbitrary manner or in a manner that is
35 unsupported by a reasonable analysis of the lending risks
36 associated with a residential mortgage transaction, a reasonable
37 person from making or pursuing an application.

38 The mortgagee shall inform each applicant in writing of the
39 specific reasons for any adverse action on the application for such a
40 mortgage loan or for an extension, modification, or renewal of
41 such loan. If the reason for any adverse action taken by a
42 mortgagee is based in whole or in part on the location or condition
43 of the collateral property, the mortgagee shall inform the applicant
44 in writing of the estimated market value of the subject property on
45 which it relied and the lending standards which it used in taking
46 such adverse action. A mortgagee shall not be liable to any seller or
47 agent of the seller of such property on account of the disclosure of
48 the market value of such property estimated according to a
49 reasonable appraisal rendered to the lender as part of the
50 application process.

51 For the purposes of this section, adverse action shall mean
52 refusal either to grant financing at the terms and for the amount
53 requested or to make a counter offer acceptable to the applicant.

54 Nothing contained in this section shall preclude a mortgagee
55 from considering sound underwriting practices and the credit-
56 worthiness of the applicant in the contemplation of any such loan.
57 Such practices shall include the following:

- 58 a) The willingness and the financial ability of the borrower to
59 repay the loan.
60 b) The market value of any real estate proposed as security for
61 any loan.
62 c) Diversification of the mortgagee's investment portfolio.
63 d) To exercise the judgment and care under the circumstances

64 then prevailing, which men of prudence, discretion and intelligence
65 exercise in the management of their affairs.

66 Any person claiming to have been aggrieved as a result of a
67 violation of this section may bring a civil action in the district
68 court, or housing court where applicable, of the county in which
69 the particular mortgagee involved is located, provided however
70 that if a mortgage review board is established (pursuant to section
71 70 of Chapter 167) in the city, town or area in which the real
72 property is located and said mortgagee is a participating
73 mortgagee a person must exhaust all his administrative remedies
74 through the board before bringing action before the court; and
75 provided further that said action shall be filed within one year of
76 the alleged violation.

77 Upon a finding that a mortgagee has committed a violation of
78 this section, the court may award actual damages or punitive
79 damages in the amount of twenty-five hundred dollars, whichever
80 is greater, and may in its discretion award court costs and
81 attorney's fees.

82 If the court finds as a fact that any person claiming to have been
83 aggrieved by this section has intentionally misrepresented a
84 material fact in the mortgage application or if the court finds as a
85 fact that the suit is frivolous the court may award actual damages
86 or punitive damages in the amount of twenty-five hundred dollars,
87 whichever is greater, to the mortgagee, and may in its discretion
88 award court costs and attorney's fees.

1 SECTION 4. No rules, regulations or other orders shall be
2 promulgated under the provisions of this act except those
3 regulations which the commissioner of banks is hereby authorized
4 to promulgate relating to approval of the Mortgage Review
5 Boards referred to in Section 2 of the act.