SENATE DOCKET, NO. 1274 FILED ON: 1/20/2011

SENATE . . . . . No. 865

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to establish a foreclosure mediation program ..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	☐ *[District]* ☐
Carolyn C. Dykema	*8th Middlesex*
Elizabeth A. Malia	*11th Suffolk*
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Chris Walsh	*6th Middlesex*
Benjamin Swan	*11th Hampden*

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 865) of Karen E. Spilka, Carolyn C. Dykema, Elizabeth A. Malia, Sal N. DiDomenico and other members of the General Court for legislation to establish a foreclosure mediation program. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1805* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to establish a foreclosure mediation program ..

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

SECTION 1. Chapter 244 of the General Laws, as appearing in the 2008 Official Edition, are hereby amended by inserting after section 35A the following new section:-

Section 35B. (a) As used in this section, the following terms shall have the following meanings:

(1) "Mortgagor" means the owner-occupant of residential real property consisting of a dwelling house with accommodations for 4 or less separate households located in the commonwealth who is also the borrower under a mortgage encumbering such residential real property, which is the primary residence of such owner-occupant;

(2) "Residential real property" means a one-to-four family dwelling occupied as a residence by a mortgagor;

(3) "Mortgagee" means the original lender or servicer under a mortgage, or its successors or assigns, who is the holder of any mortgage on residential real property securing a loan made primarily for personal, family or household purposes that is the subject of a foreclosure action;

(b) Any mortgagor of residential real property located in the commonwealth consisting of a dwelling house with accommodations for 4 or less separate households and

17 occupied in whole or in part by the mortgagor, shall have the option to enter into mediation
18 proceedings with the mortgagee if the mortgagor defaults on a required payment as provided in
19 such a residential mortgage or note secured by such residential real property. The option to enter
20 into a mediation program prior to foreclosure proceedings shall be granted once during any 5
21 year period.

22 (c) A Foreclosure Mediation Program

23 (1) The attorney general shall administer a Foreclosure Mediation
24 Program and shall establish policies and procedures to implement this section.

25 (2) The attorney general, subject to appropriation, shall ensure that all
26 judicial districts in the commonwealth have access to a foreclosure mediation program, approved
27 or provided by the attorney general. The attorney general, subject to appropriation, shall expand
28 existing mediation services provided by the attorney general or shall expand current approved
29 community mediation programs in the commonwealth to provide mediation services to all
30 judicial districts.

31 (3) Subject to appropriation, the attorney general shall create a
32 program to train mediators in the Foreclosure Mediation Program in all necessary aspects of
33 foreclosure law.

34 (d) Notice Provision and Requests for Mediation

35 When a mortgagor defaults on a mortgage payment and the mortgagee notifies the
36 mortgagor of his 90 day right to cure a default of a required payment under Section 35A, the
37 mortgagee shall give notice to the mortgagor of the Foreclosure Mediation Program by attaching
38 to the 90 day right to cure a default notice that is served on the mortgagor: (1) A copy of the
39 notice of the availability of foreclosure mediation, in such form as the chief justice for
40 administration and management prescribes, and (2) a foreclosure mediation request form, in such
41 form as the chief justice for administration and management prescribes.

42 (i) Except as provided in subdivision (ii) of this subsection,
43 a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request
44 form to the court not more than 15 days after receipt of the notice. Upon receipt of the
45 foreclosure mediation request form, the court shall notify each party that a foreclosure mediation
46 request form has been submitted by the mortgagor.

47 (ii) The court may grant a mortgagor permission to submit
48 a foreclosure mediation request form and file an appearance in court after the 15 day period
49 established in subdivision (i) of this subsection, for good cause shown, except that no foreclosure
50 mediation request form may be submitted and no appearance may be filed more than 30 days
51 after receipt of the notice.

52 (iii) If the court determines that the notice requirement of
53 this section has not been met, the court may, upon its own motion or upon the written motion of
54 the mortgagor, issue an order that no judgment may enter for 15 days during which period the
55 mortgagor may submit a foreclosure mediation request form to the court.

56 (iv) If the court grants the mortgagor permission to submit
57 a foreclosure mediation request form with the court after the 15 day period according to this
58 subsection, the 90 day right to cure a default period under section 35A shall be extended if
59 necessary.

60 (e) Notwithstanding any general or special law to the contrary, no judgment
61 ordering a foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose
62 a mortgage on residential real property unless: (1) Notice to the mortgagor has been given by the
63 mortgagee in accordance with this section and the time for submitting a foreclosure mediation
64 request form has expired and no foreclosure mediation request form has been submitted, or if
65 such notice has not been given, the time for submitting a foreclosure mediation request form
66 pursuant to subsection (d)(1)(iii) of this section has expired and no foreclosure mediation request
67 form has been submitted, or (2) the mediation period set forth in this section has expired or has
68 otherwise terminated, whichever is earlier.

69 (f) None of the mortgagor's or mortgagee's rights in the foreclosure action shall
70 be waived by the mortgagor's submission of a foreclosure mediation request form to the court.

71 (g) Foreclosure Mediation Program Requirements

72 The attorney general, subject to appropriation, shall ensure that each judicial district has
73 the services of a foreclosure mediation program in actions to foreclose mortgages on residential
74 real property. Such foreclosure mediation shall (i) address all issues of foreclosure, including,
75 but not limited to, reinstatement of the mortgage, assignment of sale date, restructure, change in
76 terms of payment or other modification of the mortgage debt, and (ii) be conducted by
77 foreclosure mediators who (A) provide mediation services for the attorney general or are
78 mediators for current approved community mediation programs in the commonwealth, (B) are
79 trained in mediation and all relevant aspects of the foreclosure law, as determined by the attorney
80 general according to this section,

81 (C) have knowledge of the community-based resources that are available in the judicial
82 district in which they serve, and (D) have knowledge of the mortgage assistance programs. Such
83 mediators may refer mortgagors who participate in the foreclosure mediation program to
84 community-based resources and to the mortgage assistance programs, when appropriate.

85 (h) The Mediation Period

86 (1) The mediation period under the foreclosure mediation program
87 established in this section shall commence when the court sends notice to each party that a
88 foreclosure mediation request form has been submitted by a mortgagor to the court, which notice
89 shall be sent not later than 3 business days after the court receives a completed foreclosure
90 mediation request form. The mediation period shall conclude not more than 50 days after receipt
91 of notice from the court, except that the court may, in its discretion, for good cause shown,
92 extend by not more than 10 days, or shorten, the mediation period on its own motion or upon
93 motion of any party.

94 (2) The court shall be responsible for referring foreclosure mediation
95 requests to the attorney general's Foreclosure Mediation Program, not later than 3 business days
96 after the court receives a completed foreclosure mediation form.

97 (3) The first mediation session shall be held not later than 5 business
98 days after the court sends notice to all parties that a foreclosure mediation request form has been
99 submitted to the court. The mortgagor and mortgagee shall appear in person at each mediation
100 session and shall have authority to agree to a proposed settlement, except that if the mortgagee is
101 represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent
102 the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a
103 proposed settlement and the mortgagee is available during the mediation session by telephone or
104 electronic means.

105 (4) Not later than 5 days after the conclusion of the first mediation
106 session, the mediator shall determine whether the parties will benefit from further mediation. The
107 mediator shall file with the court a report setting forth such determination and mail a copy of
108 such report to each party. If the mediator reports to the court that the parties will not benefit from
109 further mediation, the mediation period shall terminate automatically. If the mediator reports to
110 the court after the first mediation session that the parties may benefit from further mediation, the
111 mediation period shall continue.

112 (5) If the mediator has submitted a report to the court that the parties
113 may benefit from further mediation pursuant to this section, not more than 5 days after the
114 conclusion of the mediation, but no later than the termination of the mediation period set forth in
115 subsection (1) of this section, the mediator shall file a report with the court describing the
116 proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to
117 the mediation. The filing of the report shall terminate the mediation period automatically. If
118 certain issues have not been resolved pursuant to the mediation, the mediator may refer the
119 mortgagor to any appropriate community-based services that are available in the judicial district,
120 but any such referral shall not result in an extension of the mediation process.

121 (6) The attorney general shall establish policies and procedures to
122 implement this section. Such policies and procedures shall, at a minimum, provide that the

123 mediator shall advise the mortgagor at the first mediation session that: (i) Such mediation does
124 not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with
125 applicable rules of the court; and (ii) foreclosure by entry or action or foreclosure by sale may
126 cause the mortgagor to lose the residential real property to foreclosure.

127 (7) In no event shall any determination issued by a mediator under
128 this program form the basis of an appeal of any foreclosure judgment.

129 (8) At any time during the mediation period, the mediator may refer
130 the mortgagor to the mortgage assistance programs, except that any such referral shall not
131 prevent a mortgagee from proceeding to judgment when the conditions specified in this section
132 have been satisfied.

133 (i) Nothing in this section shall require a mortgagee to
134 modify a mortgage or change the terms of payment of a mortgage.