

SENATE No. 1846

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Tucker

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 bill:

An Act to Criminalize Mortgage Fraud.

PETITION OF:

NAME:

Susan C. Tucker

DISTRICT/ADDRESS:

Second Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO CRIMINALIZE MORTGAGE FRAUD.

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.** Chapter 266 is amended by inserting after Section 35 the following new
2 section:

3 **SECTION 35A.** Residential Mortgage Fraud

4 Any person who intentionally:

5 (1) Makes or causes to be made any material statement that is false or any statement
6 that contains a material omission, knowing the same to be false or to contain a material omission,
7 during or in connection with the mortgage lending process, with the intention that said statement
8 be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

9 (2) Uses or facilitates the use of any material statement that is false or any statement
10 that contains a material omission, knowing the same to be false or to contain a material omission,
11 during or in connection with the mortgage lending process, with the intention that said statement
12 be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

13 (3) Receives any proceeds or any other funds in connection with a residential
14 mortgage closing knowing said proceeds or funds to have resulted from a violation of
15 paragraph (1) or (2) of this section;

16 (4) Files or causes to be filed with the official registrar of deeds of any county of this
17 commonwealth any document that contains a material statement that is false or a material
18 omission, knowing such document to contain a material statement that is false or a material
19 omission;

20 (5) coerces or induces a real estate appraiser to inflate the value of real property used
21 as collateral for a residential mortgage loan;

22 (6) represents or implies that a real estate appraiser will not be selected to conduct an
23 appraisal of the real property or selected for future appraisal work unless the appraiser agrees in
24 advance to a value, range of values, or a minimum value for the real property;

25 (7) represents or implies that a real estate appraiser will not be paid for an appraisal
26 unless
27 the appraiser agrees in advance to a value, range of values, or a minimum value for the real
28 estate;

29 (8) conspires to violate any of the provisions of paragraphs (1) through (7) of this
30 subsection shall be punished by imprisonment in the state prison for not more than five years or
31 by imprisonment in the house of correction for not more than two and one-half years or by a fine
32 of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of
33 any other person, or by both such fine and imprisonment. Any person who engages in a pattern

34 of residential mortgage fraud shall be punished by imprisonment in the state prison for not more
35 than fifteen years or by a fine of not more than \$50,000 in the case of a natural person or not
36 more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

37 As used in this section:

38 (a) "Funds" shall include but not be limited to a commission, fee, yield spread premium,
39 or compensation in any form.

40 (b) "Material omission" means the omission or concealment of a material fact necessary
41 in order to make the statement made, in the light of the circumstances under which it is made, not
42 misleading.

43 (c) "Mortgage lending process" means the process through which a person seeks or
44 obtains a residential mortgage loan including, but not limited to, solicitation, application, or
45 origination, negotiation of terms, third-party provider services, underwriting, signing and
46 closing, and funding of the loan. Documents involved in the mortgage lending process include,
47 but are not limited to, uniform residential loan applications or other loan applications; appraisal
48 reports; HUD-1 settlement statements; supporting personal documentation for loan applications
49 such as W-2 forms, verifications of income and employment, bank statements, tax returns, and
50 payroll stubs; and any required disclosures;

51 (d) "Pattern of residential mortgage fraud" means the violation of paragraph (1), (2), (3),
52 or (4) of this section in connection with three or more residential properties;

53 (e) "Person" means a natural person, corporation, company, limited liability company,
54 partnership, real estate trust, association, or any other entity;

55 (f) “Residential mortgage loan” means a loan or agreement to extend credit made to a
56 person, which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust,
57 or other document representing a security interest or lien upon any interest in an owner occupied
58 one-to-four family residential property located in Massachusetts, including the renewal or
59 refinancing of any such loan.

60 Any violation of this section may be prosecuted and punished in the county in which the
61 residential property for which a mortgage loan is being sought is located, or in any county in
62 which any act was performed in furtherance of the violation, or in any county in which any
63 person alleged to have violated this section had control or possession of any proceeds of or other
64 funds received as a result of the violation, or in any county in which a closing on the mortgage
65 loan occurred, or in any county in which a document containing a deliberate misstatement,
66 misrepresentation, or omission is filed with the official registrar of deeds.

67 **SECTION 2.** Section 33 of Chapter 266 is amended by:

- 68 a. Striking the words “obtains credit from” and inserting in their place the
69 words “obtains credit for himself or for any other person from”; and
- 70 b. Inserting after the words “banking institution” the words “or any mortgage
71 lender as defined in Section 1 of Chapter 255E”; and
- 72 c. Inserting the following phrase after the word “larceny”: “, and, if the
73 value of the benefit described in clause (1) or dollar amount of credit
74 obtained exceeds two hundred and fifty dollars, shall be punished as if he
75 had stolen property of a value exceeding two hundred and fifty dollars as
76 provided in Section 30(1)”

77 so that the statute as amended reads as follows:

78 Chapter 266, Section 33. Larceny; false pretences relating to contracts, banking
79 transactions or credit

80 (1) Whoever, with intent to defraud, obtains by a false pretence the making, acceptance or
81 endorsement of a bill of exchange or promissory note, the release or substitution of collateral or
82 other security, an extension of time for the payment of an obligation, or the release or alteration
83 of the obligation of a written contract, or (2) whoever, with intent to defraud, by a false statement
84 in writing respecting the financial condition, or means or ability to pay, of himself or of any
85 other person, obtains for himself or for any other person credit from any bank or trust company
86 or any banking institution or any mortgage lender as defined in Section 1 of Chapter 255E or any
87 retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty
88 of larceny , and, if the value of the benefit described in clause (1) or dollar amount of credit
89 obtained exceeds two hundred and fifty dollars, shall be punished as if he had stolen property of
90 a value exceeding two hundred and fifty dollars as provided in Section 30(1).

91 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with
92 property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.
93 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year
94 or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause
95 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be
96 punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more
97 than \$25,000 and imprisonment in the house of correction for not more than 2 years.

98 **SECTION 3.** Section 34 of Chapter 266 is amended by:

- 99 a. Striking out the words “the preceding section” and inserting in
100 their place the words “Section 33”; and
- 101 b. Inserting the following phrase after the word “larceny”: “, and, if
102 the dollar amount of the credit or value of the benefit parted with
103 exceeds two hundred and fifty dollars, shall be punished as if he
104 had stolen property of a value exceeding two hundred and fifty
105 dollars as provided in Section 30(1)”

106 so that the statute as amended reads as follows:

107 Chapter 266: Section 34. Larceny; inducement to part with property

108 Whoever, with intent to defraud and by a false pretence, induces another to part with
109 property of any kind or with any of the benefits described in Section 33 shall be guilty of
110 larceny, and, if the dollar amount of the credit or value of the benefit parted with exceeds two
111 hundred and fifty dollars, shall be punished as if he had stolen property of a value exceeding two
112 hundred and fifty dollars as provided in Section 30(1).