AN ACT to:

(1) identify specific [[categories of]] practices related to lending activities that constitute discriminatory housing practices;
(2) clarify that [[individuals]] a person must not engage in discriminatory lending practices;
(3) [[authorize]] increase compensatory damages [[consistent with the federal Fair Housing Act]] for humiliation and embarrassment for all forms of discrimination;
(4) require the [[Commission on]] Office of Human Rights to provide the Executive and Council with an annual report on discriminatory lending practices in the County; [[and]]
(5) require the Office of Human Rights to educate the public about discriminatory lending practices; [[and]]
(6) establish procedures for the Office of Consumer [[Affairs]] Protection to [[identify and process a complaint based on]] assist potential victims of discriminatory, predatory, or abusive lending practices; and
(7) generally amend County law regarding discrimination in real estate.

By Amending
Montgomery County Code
Chapter 27, Commission on Human Rights
Division 2. Discrimination in Real Estate
Sections 27-5, 27-6, 27-8, and 27-12

Chapter 11, Consumer Protection
Sections 11-1-11-2

By Adding
Chapter 11, Consumer Protection
Section 11-6A
The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Findings and purpose.

Studies show that [[predatory]] discriminatory lending practices have increased in the last few years and that some lenders aggressively market high-cost home loans with exorbitant and unnecessary fees and engage in other unfair credit practices that strip families of the equity in their homes.

[[Predatory]] Discriminatory lending [[impairs]] practices impair the economic strength of County homeowners, families, and neighborhoods.

It is the intent of the County Council to prevent [[predatory]] discriminatory lending practices directed at households because of their race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age. Some indicators of [[predatory]] discriminatory lending practices include, but are not limited to:

(1) marketing or refinancing mortgages [[with no tangible net benefit to the borrower]] that a borrower cannot afford to repay based on income and credit levels;

(2) charging abusive prepayment penalties;

(3) financing excessive points and fees;

(4) steering [[borrowers]] a borrower to a more expensive mortgage[[s than what they would otherwise qualify for]] by any of the following activities: discouraging a person from a mortgage loan with more favorable terms; directing a person away from a housing or mortgage loan product, program, or service with more favorable terms; offering more limited mortgage loan opportunities or less favorable mortgage loan terms; or delaying a mortgage loan application or approval; and

(5) financing single premium credit insurance.
In the County, studies have shown that subprime mortgages are disproportionately offered to and entered into by minority homeowners, as documented by the Calvin Bradford and Associates study, "Overview of Home Lending in Montgomery County (1999-2000)". Although not all subprime loans are the product of predatory discriminatory lending practices, studies demonstrate that a substantial percentage of people with subprime loans could qualify for less expensive loans with more favorable terms. The purpose of this legislation is not to restrict the subprime lending market, but to identify and regulate mechanisms, policies, or terms that discriminate against protected classes of individuals.

Sec. 2. Sections 27-4, 27-5, 27-6, 27-8, and 27-12 are amended as follows:

(a) The executive director of the Commission heads the Office of Human Rights and must assist the Commission to implement this article.

*   *   *

(d) The Office of Human Rights must educate County residents about discriminatory lending practices through the use of literature, counseling, educational workshops, or public fora. The Office may work with the Commission for Women, the Office of Consumer Protection, and any other government or non-government agency or organization to identify and educate the public about discriminatory lending practices.

27-5. Duties generally.
(a) The Commission must:

*   *   *

(11) Provide to the County Executive and County Council:

(A) a quarterly written or oral report of Commission activities and recommendations within 30 days after each calendar quarter; [and]

(B) an annual written report summarizing Commission activities, goals, needs, and recommendations promptly after each calendar year[.]; and
by March 1 of each year, an annual written report, compiled by the
Office of Human Rights, for the preceding calendar year detailing the
number and type of housing discrimination complaints received
under this Section, including the age, gender, and race of the
complainant, the area where complainant resides, the decision of the
Commission, and the type and amount of the penalty imposed. This
report must also identify overall lending patterns in the County for
prime and subprime loans as compiled from Home Mortgage
Disclosure Act and Fair Housing Administration data. This report
must be separate from the Commission’s annual report.


The following words and phrases have the following meanings, unless the context indicates
otherwise:

[(a)] * * *
[(b)] * * *
[(c)] * * *
[(d)] * * *
[(e)] * * *
[(f)] * * *
[(g)] * * *
[(h)] * * *
[(i)] * * *
[(j)] * * *
[(k)] * * *
[(l)] * * *
[(m)] * * *
[(n)] * * *
[(o)] * * *
[(p)] * * *
Lending institution means any bank, insurance company, savings and loan association, or any other person or organization regularly engaged in the business of lending money or guaranteeing loans. Lending institution includes a department, agency, or instrument of the County or, to the extent allowed by law, a federal, State, or local government that lends money or guarantees loans.

Mortgage loan means the making of a loan or providing other financial assistance to purchase, refinance, construct, improve, repair, or maintain a dwelling that is secured by real property, or any other type of loan that is secured by a dwelling.

Person means an individual; a legal entity; or a department agency, or instrument of the County, or to the extent allowed by law, of federal, State, or local government. A lending institution, including any bank, insurance company, savings and loan association, or any other organization regularly engaged in the business of lending money, brokering money, or guaranteeing loans, is a person.

(a) *Damages and other relief for complainant.* After finding a violation of this Article, the case review board may order the payment of damages (other than punitive damages) and any other relief that the law and the facts warrant, such as:

(1) compensation for:

(A) reasonable attorney's fees;

(B) property damage;

(C) personal injury;

(D) unreimbursed travel or other reasonable expenses;

(E) damages [up to $5,000] [[up to]] not exceeding $500,000 for humiliation and embarrassment, based on the nature of the humiliation and embarrassment, including its severity, duration, frequency, and breadth of observation by others; [and]

(F) financial losses resulting from the discriminatory act; and

[(F)] [(G)] interest on any damages from the date of the discriminatory act, as provided in subsection (c)];

(2) equitable relief to prevent the discrimination and otherwise effectuate the purposes of this Chapter;

(3) consequential damages, such as lost wages from employment discrimination or higher housing costs from housing discrimination, for up to 2 years after the discrimination, not exceeding the actual difference in expenses or benefits that the complainant realized while seeking to mitigate the consequences of the discrimination (such as income from alternate employment or unemployment compensation following employment discrimination); and

(4) any other relief that furthers the purposes of this Article or is necessary to eliminate the effects of any discrimination prohibited under this Article.

*  *  *


(a) A person must not, because of race, color, religious creed, ancestry, natural origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age:
(1) refuse, or refuse to negotiate, to sell, broker, appraise, lease, sublease, rent, assign, or otherwise transfer the title, leasehold, or other interest in any housing;

(2) represent that housing is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when it is available;

(3) otherwise deny or withhold any housing from any person;

(4) include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment, or other transfer of any housing, any clause, condition, or restriction discriminating against any person in the use or occupancy of that housing; or

(5) discriminate in the furnishing of any facilities, repairs, improvements, or services, or in the terms, conditions, privileges, or tenure of occupancy of any person.

(b) A [[lending institution or a]] person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age, discriminate in:

(1) lending or brokering money;

(2) guaranteeing, servicing, or purchasing loans;

(3) accepting a deed of trust or mortgage;

(4) making available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of any housing;

(5) fixing the rates, terms, conditions, or provisions of any financial assistance; or

(6) extending any other service in connection with housing finance.

(c) [[A]] Without limiting the general application of Subsection (b), a person must not, because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age[, discriminate in a loan for a dwelling by]]:

(1) Engage in steering, which means:

(A) restricting or attempting to restrict a person's choices because of factors other than a person's income [[and]] or credit level in
connection with seeking, negotiating, buying, or renting a dwelling, including seeking a mortgage loan for a dwelling; (B) discouraging a person from a particular mortgage loan with more favorable terms if the person may qualify for that particular mortgage loan; (C) directing a person away from a housing or mortgage loan product, program, or service with more favorable terms if the person may qualify for that particular product, program, or service; or (D) offering a mortgage loan that is not available to the person otherwise.

(2) [originating a predatory mortgage loan, as determined by evaluating one or more of the following factors: if the loan product is suitable for the borrower based on income and credit levels; if the loan product includes the financing of single premium credit insurance, excessive points, fees, prepayment penalties or a mandatory arbitration clause; or if the mortgage does not provide a tangible net benefit to the borrower; or] Make available a mortgage loan which:

(A) includes the financing of single premium credit life insurance;
(B) provides for excessive upfront points, excessive fees, or excessive prepayment penalties; or
(C) provides compensation paid directly or indirectly to a mortgage broker or person from any source; or

(3) engaging in any practice described in this Section by adopting, applying, or using a policy or practice that operates to discriminate without a compelling business justification and without establishing that there is no less discriminatory way to advance the business justification with a less discriminatory effect.

(c) A person must not:
(A) publish or circulate, or cause to be published or circulated, any housing notice, statement, listing, or advertisement;
(B) announce a policy, or use any form of application for the purchase, lease, rental, or financing of any housing; or
(C) make any record or formal business inquiry in connection with the prospective purchase, lease, rental, or financing of any housing; indicating that race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age could influence or affect any act describe in subsections (a), [and] (b), and (c).

(2) This subsection does not prohibit:

(A) use of a logo or other means of advertising that housing is suitable or adapted to use by persons with a disability; or
(B) keeping records or making reports required by federal, State, or County law.

[(d)] (e) A person must not:

(1) assist in, compel, or coerce any discriminatory practice under this subdivision,

(2) obstruct or prevent enforcement or compliance with this subdivision, or

(3) attempt directly or indirectly to commit any discriminatory practice under this subdivision.

[(e)] (f) A person must not:

(1) directly or indirectly induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, sex, color, religious creed, ancestry, national origin, disability, source of income, sexual orientation, age, the presence of children, or family responsibilities.

(2) promote, induce, influence, or attempt to promote, induce, or influence by the use of postal cards, letters, circulars, telephone, visitation, or any other
means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing having the effect of inciting neighborhood unrest or community tension in any street, block, neighborhood, or any other area by referring to the race, sex, color, religious creed, ancestry, national origin, disability, presence of children, family responsibilities, source of income, sexual orientation, or age of actual or anticipated neighbors, tenants, or other prospective buyers or occupants of any housing.

(3) make or cause another person to make a statement or in any other manner attempt to incite neighborhood unrest or community tension in any street, block, neighborhood, or any other area to obtain a listing of any housing for sale, rental, assignment, transfer, or other disposition by referring to the race, sex, color, religious creed, ancestry, national origin, disability, presence of children, family responsibilities, source of income, sexual orientation, or age of actual or anticipated neighbors, tenants, or other prospective buyers or occupants of any housing where the statement is false or materially misleading or where there is insufficient basis to judge its truth or falsity to warrant making the statement.

(4) make any representation to any prospective purchaser or lessee that any housing in a particular block, neighborhood, or area may undergo, is undergoing, or has undergone a change with respect to racial, color, religious, nationality, presence of children, family responsibilities, source of income, disability, sex, sexual orientation, age, or ethnic composition.

(5) place a sign or other display either purporting to offer for sale, lease, assignment, transfer, or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition.

(6) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, national origin,
disability, presence of children, family responsibilities, source of income, sexual orientation, or age in the area will or may result in:
(A) lower property values;
(B) increased criminal or antisocial behavior in the area; or
(C) a decline in quality of the schools serving the area.

(7) induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, sex, color, religious creed, ancestry, sexual orientation, presence of children, family responsibilities, source of income, or national origin in the area will or may result in a change in the racial, color, religious, age, nationality, or ethnic composition of the block, neighborhood, or area where the property is located.

[(f)] [(g)] A person must not retaliate against a person for:

(1) lawfully opposing any discriminatory practice under this subdivision, or
(2) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this subdivision.

[(g)] [(h)] A person, must not because of race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, or age deny any other person:

(1) access to or membership or participation in any multiple-listing service, real estate brokers’ organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing in the County, or
(2) discriminate against any person in the terms or conditions of the access, membership, or participation in any multiple-listing service, real estate brokers’ organization, or other service, organization, or facility relating to the business of buying, selling, or renting housing.

[(h)] [(i)] A person must not discriminate against a person with a disability in the sale or rental of housing such as by:

(1) refusing to allow a person with a disability to make reasonable modifications to existing premises that the person does or would occupy, despite the
person's willingness and ability to pay for the modifications, and reasonably restore any interior modification upon vacating, if the modifications are necessary to provide full enjoyment of the premises; or
(2) refusing to make reasonable accommodations necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

Sec. 3. Sections 11-1 and 11-2 are amended as follows and Section 11-6A is added as follows:

11-1. Definitions.

In this Chapter, the following words and phrases have the following meanings:

* * *

Predatory or abusive lending practice: Any representation or marketing practice that is intended to misrepresent terms or mislead a consumer about the value of financing or buying real estate, consumer goods, or consumer services.

Real estate: Leaseholds and all other tangible interests in residential real property, dwellings, buildings or other structures situate on residential real property, including condominium units.


The [[Department]] Office has the following duties, powers, and authority:

* * *

(n) To undertake activities and establish procedures to identify, and assist consumers with respect to, any discriminatory, predatory, or abusive lending practice.

* * *

11-6A, Discriminatory, predatory, or abusive lending practices.

A consumer who is concerned about a potentially discriminatory, predatory, or abusive lending practice in the County may file a written request for assistance with the Office of Consumer Protection.

(a) Within 20 business days after receiving a written request with all supporting documentation, the Office must review the request.

(b) Upon reviewing the request, the Office must either:

(i) advise the consumer to file a complaint with the Office if a potential violation of Chapter 11 or Chapter 27 exists;
(ii) assist the consumer in filing a complaint with the appropriate government office or agency that has jurisdiction; or

(iii) provide the consumer with information, education, counseling, or a referral to an appropriate outside agency, group, or organization.

(c) The Office, in assisting a consumer with filing a complaint, may consult with any appropriate federal, state, county, or quasi-governmental office or agency. If the Office assists a consumer in filing a complaint with another agency, the Office must contact the appropriate agency within 45 business days after the referral to determine the status of the complaint, and must forward this information to the consumer.

(d) The Office, in conducting activities to identify and educate consumers about discriminatory, predatory, or abusive lending practices, may work with non-government organizations.

Approved:

[Signature]

Thomas E. Perez, President, County Council

Date

Approved:

[Signature]

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

[Signature]

Linda M. Lauer, Clerk of the Council

Date