

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Real Property Disclosure Act is
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

9 "Adjustable rate mortgage" or "ARM" means a closed-end
10 mortgage transaction that allows adjustments of the loan
11 interest rate during the first 3 years of the loan term.

12 "Borrower" means a person seeking a mortgage loan.

13 "Broker" means a "broker" or "loan broker", as defined in
14 subsection (p) of Section 1-4 of the Residential Mortgage
15 License Act of 1987.

16 "Closing agent" means an individual assigned by a title
17 insurance company or a broker or originator to ensure that the
18 execution of documents related to the closing of a real estate
19 sale or the refinancing of a real estate loan and the
20 disbursement of closing funds are in conformity with the
21 instructions of the entity financing the transaction.

22 "Counseling" means in-person counseling provided by a
23 counselor employed by a HUD-certified counseling agency to all

1 borrowers, or documented telephone counseling where a hardship
2 would be imposed on one or more borrowers. A hardship shall
3 exist in instances in which the borrower is confined to his or
4 her home due to medical conditions, as verified in writing by a
5 physician, or the borrower resides 50 miles or more from the
6 nearest participating HUD-certified housing counseling agency.
7 In instances of telephone counseling, the borrower must supply
8 all necessary documents to the counselor at least 72 hours
9 prior to the scheduled telephone counseling session.

10 "Counselor" means a counselor employed by a HUD-certified
11 housing counseling agency.

12 "Credit score" means a credit risk score as defined by the
13 Fair Isaac Corporation, or its successor, and reported under
14 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
15 by one or more of the following credit reporting agencies or
16 their successors: Equifax, Inc., Experian Information
17 Solutions, Inc., and TransUnion LLC. If the borrower's credit
18 report contains credit scores from 2 reporting agencies, then
19 the broker or loan originator shall report the lower score. If
20 the borrower's credit report contains credit scores from 3
21 reporting agencies, then the broker or loan originator shall
22 report the middle score.

23 "Department" means the Department of Financial and
24 Professional Regulation.

25 "Exempt person" means that term as it is defined in
26 subsections (d)(1) and (d)(1.5) of Section 1-4 of the

1 Residential Mortgage License Act of 1987.

2 "First-time homebuyer" means a borrower who has not held an
3 ownership interest in residential property.

4 "HUD-certified counseling" or "counseling" means
5 counseling given to a borrower by a counselor employed by a
6 HUD-certified housing counseling agency.

7 "Interest only" means a closed-end loan that permits one or
8 more payments of interest without any reduction of the
9 principal balance of the loan, other than the first payment on
10 the loan.

11 "Lender" means that term as it is defined in subsection (g)
12 of Section 1-4 of the Residential Mortgage License Act of 1987.

13 "Licensee" means that term as it is defined in subsection
14 (e) of Section 1-4 of the Residential Mortgage License Act of
15 1987.

16 "Mortgage loan" means that term as it is defined in
17 subsection (f) of Section 1-4 of the Residential Mortgage
18 License Act of 1987.

19 "Negative amortization" means an amortization method under
20 which the outstanding balance may increase at any time over the
21 course of the loan because the regular periodic payment does
22 not cover the full amount of interest due.

23 "Originator" means a "loan originator" as defined in
24 subsection (hh) of Section 1-4 of the Residential Mortgage
25 License Act of 1987, except an exempt person.

26 "Points and fees" has the meaning ascribed to that term in

1 Section 10 of the High Risk Home Loan Act.

2 "Prepayment penalty" means a charge imposed by a lender
3 under a mortgage note or rider when the loan is paid before the
4 expiration of the term of the loan.

5 "Refinancing" means a loan secured by the borrower's or
6 borrowers' primary residence where the proceeds are not used as
7 purchase money for the residence.

8 "Title insurance company" means any domestic company
9 organized under the laws of this State for the purpose of
10 conducting the business of guaranteeing or insuring titles to
11 real estate and any title insurance company organized under the
12 laws of another State, the District of Columbia, or a foreign
13 government and authorized to transact the business of
14 guaranteeing or insuring titles to real estate in this State.

15 (a-5) A predatory lending database program shall be
16 established within Cook County. The program shall be
17 administered in accordance with this Article. The inception
18 date of the program shall be July 1, 2008. Until the inception
19 date, none of the duties, obligations, contingencies, or
20 consequences of or from the program shall be imposed. The
21 program shall apply to all mortgage applications that are
22 governed by this Article and that are made or taken on or after
23 the inception of the program.

24 (b) The database created under this program shall be
25 maintained and administered by the Department. The database
26 shall be designed to allow brokers, originators, counselors,

1 title insurance companies, and closing agents to submit
2 information to the database online. The database shall not be
3 designed to allow those entities to retrieve information from
4 the database, except as otherwise provided in this Article.
5 Information submitted by the broker or originator to the
6 Department may be used to populate the online form submitted by
7 a counselor, title insurance company, or closing agent.

8 (c) Within 10 days after taking a mortgage application, the
9 broker or originator for any mortgage on residential property
10 within the program area must submit to the predatory lending
11 database all of the information required under Section 72 and
12 any other information required by the Department by rule.
13 Within 7 days after receipt of the information, the Department
14 shall compare that information to the housing counseling
15 standards in Section 73 and issue to the borrower and the
16 broker or originator a determination of whether counseling is
17 recommended for the borrower. The borrower may not waive
18 counseling. If at any time after submitting the information
19 required under Section 72 the broker or originator (i) changes
20 the terms of the loan or (ii) issues a new commitment to the
21 borrower, then, within 5 days thereafter, the broker or
22 originator shall re-submit all of the information required
23 under Section 72 and, within 4 days after receipt of the
24 information re-submitted by the broker or originator, the
25 Department shall compare that information to the housing
26 counseling standards in Section 73 and shall issue to the

1 borrower and the broker or originator a new determination of
2 whether re-counseling is recommended for the borrower based on
3 the information re-submitted by the broker or originator. The
4 Department shall require re-counseling if the loan terms have
5 been modified to meet another counseling standard in Section
6 73, or if the broker has increased the interest rate by more
7 than 200 basis points.

8 (d) If the Department recommends counseling for the
9 borrower under subsection (c), then the Department shall notify
10 the borrower of all participating HUD-certified counseling
11 agencies located within the State and direct the borrower to
12 interview with a counselor associated with one of those
13 agencies. Within 10 days after receipt of the notice of
14 HUD-certified counseling agencies, the borrower shall select
15 one of those agencies and shall engage in an interview with a
16 counselor associated with that agency. Within 7 days after
17 interviewing the borrower, the counselor must submit to the
18 predatory lending database all of the information required
19 under Section 74 and any other information required by the
20 Department by rule. Reasonable and customary costs not to
21 exceed \$300 associated with counseling provided under the
22 program shall be paid by the broker or originator. The
23 Department shall annually calculate to the nearest dollar an
24 adjusted rate for inflation. A counselor shall not recommend or
25 suggest that a borrower contact any specific mortgage
26 origination company, financial institution, or entity that

1 deals in mortgage finance to obtain a loan, another quote, or
2 for any other reason related to the specific mortgage
3 transaction; however, a counselor may suggest that the borrower
4 seek an opinion or a quote from another mortgage origination
5 company, financial institution, or entity that deals in
6 mortgage finance. A counselor or housing counseling agency that
7 in good faith provides counseling shall not be liable to a
8 broker or originator or borrower for civil damages, except for
9 willful or wanton misconduct on the part of the counselor in
10 providing the counseling.

11 (e) The broker or originator and the borrower may not take
12 any legally binding action concerning the loan transaction
13 until the later of the following:

14 (1) the Department issues a determination not to
15 recommend HUD-certified counseling for the borrower in
16 accordance with subsection (c); or

17 (2) the Department issues a determination that
18 HUD-certified counseling is recommended for the borrower
19 and the counselor submits all required information to the
20 database in accordance with subsection (d).

21 (f) Within 10 days after closing, the title insurance
22 company or closing agent must submit to the predatory lending
23 database all of the information required under Section 76 and
24 any other information required by the Department by rule.

25 (g) The title insurance company or closing agent shall
26 attach to the mortgage a certificate of compliance with the

1 requirements of this Article or a certificate of exemption, as
2 generated by the database. If the title insurance company or
3 closing agent fails to attach either the certificate of
4 compliance or the certificate of exemption, then the mortgage
5 is not recordable. The failure to attach the appropriate
6 certificate shall not affect the enforceability of the lien of
7 mortgage. In addition, if any lis pendens for a residential
8 mortgage foreclosure is recorded on the property within the
9 program area, a certificate of service must be simultaneously
10 recorded that affirms that a copy of the lis pendens was filed
11 with the Department. If the certificate of service is not
12 recorded, then the lis pendens pertaining to the residential
13 mortgage foreclosure in question is not recordable and is of no
14 force and effect.

15 (h) All information provided to the predatory lending
16 database under the program is confidential and is not subject
17 to disclosure under the Freedom of Information Act, except as
18 otherwise provided in this Article. Information or documents
19 obtained by employees of the Department in the course of
20 maintaining and administering the predatory lending database
21 are deemed confidential. Employees are prohibited from making
22 disclosure of such confidential information or documents. Any
23 request for production of information from the predatory
24 lending database, whether by subpoena, notice, or any other
25 source, shall be referred to the Department of Financial and
26 Professional Regulation. Any borrower may authorize in writing

1 the release of database information. The Department may use the
2 information in the database without the consent of the
3 borrower: (i) for the purposes of administering and enforcing
4 the program; (ii) to provide relevant information to a
5 counselor providing counseling to a borrower under the program;
6 or (iii) to the appropriate law enforcement agency or the
7 applicable administrative agency if the database information
8 demonstrates criminal, fraudulent, or otherwise illegal
9 activity.

10 (i) Nothing in this Article is intended to prevent a
11 borrower from making his or her own decision as to whether to
12 proceed with a transaction.

13 (j) Any person who violates any provision of this Article
14 commits an unlawful practice within the meaning of the Consumer
15 Fraud and Deceptive Business Practices Act.

16 (k) During the existence of the program, the Department
17 shall submit semi-annual reports to the Governor and to the
18 General Assembly by May 1 and November 1 of each year detailing
19 its findings regarding the program. The report shall include at
20 least the following information for each reporting period:

21 (1) the number of loans registered with the program;

22 (2) the number of borrowers receiving counseling;

23 (3) the number of loans closed;

24 (4) the number of loans requiring counseling for each
25 of the standards set forth in Section 73;

26 (5) the number of loans requiring counseling where the

1 mortgage originator changed the loan terms subsequent to
2 counseling.

3 (Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06;
4 95-691, eff. 6-1-08; revised 11-6-08.)