



Sen. Terry Link

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LRB096 07163 AJ0 24263 a

1 AMENDMENT TO SENATE BILL 1089

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1089 by replacing  
3 everything after the enacting clause with the following:

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

1 insurance company or a broker or originator to ensure that the  
2 execution of documents related to the closing of a real estate  
3 sale or the refinancing of a real estate loan and the  
4 disbursement of closing funds are in conformity with the  
5 instructions of the entity financing the transaction.

6 "Counseling" means in-person counseling provided by a  
7 counselor employed by a HUD-certified counseling agency to all  
8 borrowers, or documented telephone counseling where a hardship  
9 would be imposed on one or more borrowers. A hardship shall  
10 exist in instances in which the borrower is confined to his or  
11 her home due to medical conditions, as verified in writing by a  
12 physician, or the borrower resides 50 miles or more from the  
13 nearest participating HUD-certified housing counseling agency.  
14 In instances of telephone counseling, the borrower must supply  
15 all necessary documents to the counselor at least 72 hours  
16 prior to the scheduled telephone counseling session.

17 "Counselor" means a counselor employed by a HUD-certified  
18 housing counseling agency.

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

1 the borrower's credit report contains credit scores from 3  
2 reporting agencies, then the broker or loan originator shall  
3 report the middle score.

4 "Department" means the Department of Financial and  
5 Professional Regulation.

6 "Exempt person" means that term as it is defined in  
7 subsections (d)(1) and (d)(1.5) of Section 1-4 of the  
8 Residential Mortgage License Act of 1987.

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

11 "HUD-certified counseling" or "counseling" means  
12 counseling given to a borrower by a counselor employed by a  
13 HUD-certified housing counseling agency.

14 "Interest only" means a closed-end loan that permits one or  
15 more payments of interest without any reduction of the  
16 principal balance of the loan, other than the first payment on  
17 the loan.

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

20 "Licensee" means that term as it is defined in subsection  
21 (e) of Section 1-4 of the Residential Mortgage License Act of  
22 1987.

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

26 "Negative amortization" means an amortization method under

1 which the outstanding balance may increase at any time over the  
2 course of the loan because the regular periodic payment does  
3 not cover the full amount of interest due.

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

7 "Points and fees" has the meaning ascribed to that term in  
8 Section 10 of the High Risk Home Loan Act.

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

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

15 "Title insurance company" means any domestic company  
16 organized under the laws of this State for the purpose of  
17 conducting the business of guaranteeing or insuring titles to  
18 real estate and any title insurance company organized under the  
19 laws of another State, the District of Columbia, or a foreign  
20 government and authorized to transact the business of  
21 guaranteeing or insuring titles to real estate in this State.

22 (a-5) A predatory lending database program shall be  
23 established within Cook County. The program shall be  
24 administered in accordance with this Article. The inception  
25 date of the program shall be July 1, 2008. Until the inception  
26 date, none of the duties, obligations, contingencies, or

1 consequences of or from the program shall be imposed. The  
2 program shall apply to all mortgage applications that are  
3 governed by this Article and that are made or taken on or after  
4 the inception of the program.

5 (b) The database created under this program shall be  
6 maintained and administered by the Department. The database  
7 shall be designed to allow brokers, originators, counselors,  
8 title insurance companies, and closing agents to submit  
9 information to the database online. The database shall not be  
10 designed to allow those entities to retrieve information from  
11 the database, except as otherwise provided in this Article.  
12 Information submitted by the broker or originator to the  
13 Department may be used to populate the online form submitted by  
14 a counselor, title insurance company, or closing agent.

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

1 the terms of the loan or (ii) issues a new commitment to the  
2 borrower, then, within 5 days thereafter, the broker or  
3 originator shall re-submit all of the information required  
4 under Section 72 and, within 4 days after receipt of the  
5 information re-submitted by the broker or originator, the  
6 Department shall compare that information to the housing  
7 counseling standards in Section 73 and shall issue to the  
8 borrower and the broker or originator a new determination of  
9 whether re-counseling is recommended for the borrower based on  
10 the information re-submitted by the broker or originator. The  
11 Department shall require re-counseling if the loan terms have  
12 been modified to meet another counseling standard in Section  
13 73, or if the broker has increased the interest rate by more  
14 than 200 basis points.

15 (d) If the Department recommends counseling for the  
16 borrower under subsection (c), then the Department shall notify  
17 the borrower of all participating HUD-certified counseling  
18 agencies located within the State and direct the borrower to  
19 interview with a counselor associated with one of those  
20 agencies. Within 10 days after receipt of the notice of  
21 HUD-certified counseling agencies, the borrower shall select  
22 one of those agencies and shall engage in an interview with a  
23 counselor associated with that agency. Within 7 days after  
24 interviewing the borrower, the counselor must submit to the  
25 predatory lending database all of the information required  
26 under Section 74 and any other information required by the

1 Department by rule. Reasonable and customary costs not to  
2 exceed \$300 associated with counseling provided under the  
3 program shall be paid by the broker or originator. The  
4 Department shall annually calculate to the nearest dollar an  
5 adjusted rate for inflation. A counselor shall not recommend or  
6 suggest that a borrower contact any specific mortgage  
7 origination company, financial institution, or entity that  
8 deals in mortgage finance to obtain a loan, another quote, or  
9 for any other reason related to the specific mortgage  
10 transaction; however, a counselor may suggest that the borrower  
11 seek an opinion or a quote from another mortgage origination  
12 company, financial institution, or entity that deals in  
13 mortgage finance. A counselor or housing counseling agency that  
14 in good faith provides counseling shall not be liable to a  
15 broker or originator or borrower for civil damages, except for  
16 willful or wanton misconduct on the part of the counselor in  
17 providing the counseling.

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

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

24 (2) the Department issues a determination that  
25 HUD-certified counseling is recommended for the borrower  
26 and the counselor submits all required information to the

1 database in accordance with subsection (d).

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

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

22 (h) All information provided to the predatory lending  
23 database under the program is confidential and is not subject  
24 to disclosure under the Freedom of Information Act, except as  
25 otherwise provided in this Article. Information or documents  
26 obtained by employees of the Department in the course of



1 maintaining and administering the predatory lending database  
2 are deemed confidential. Employees are prohibited from making  
3 disclosure of such confidential information or documents. Any  
4 request for production of information from the predatory  
5 lending database, whether by subpoena, notice, or any other  
6 source, shall be referred to the Department of Financial and  
7 Professional Regulation. Any borrower may authorize in writing  
8 the release of database information. The Department may use the  
9 information in the database without the consent of the  
10 borrower: (i) for the purposes of administering and enforcing  
11 the program; (ii) to provide relevant information to a  
12 counselor providing counseling to a borrower under the program;  
13 or (iii) to the appropriate law enforcement agency or the  
14 applicable administrative agency if the database information  
15 demonstrates criminal, fraudulent, or otherwise illegal  
16 activity.

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

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

23 (k) During the existence of the program, the Department  
24 shall submit semi-annual reports to the Governor and to the  
25 General Assembly by May 1 and November 1 of each year detailing  
26 its findings regarding the program. The report shall include at

1 least the following information for each reporting period:

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

3 (2) the number of borrowers receiving counseling;

4 (3) the number of loans closed;

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

7 (5) the number of loans requiring counseling where the  
8 mortgage originator changed the loan terms subsequent to  
9 counseling.

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