

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 Sections 70, 72, and 76 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 or electronic face-to-face  
23 counseling provided by a counselor employed by a HUD-approved

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

11 "Counselor" means a counselor employed by a HUD-approved  
12 housing counseling agency.

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

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

26 "Exempt person or entity" means that term as it is defined

1 in subsections (d) (1), (d) (1.5), and (d) (1.8) of Section 1-4 of  
2 the Residential Mortgage License Act of 1987.

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

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

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

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

14 "Licensee" means that term as it is defined in subsection  
15 (e) of Section 1-4 of the Residential Mortgage License Act of  
16 1987.

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

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

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

1 "mortgage loan originator" as defined in subsection (jj) of  
2 Section 1-4 of the Residential Mortgage License Act of 1987,  
3 except an exempt person.

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

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

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

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

19 (a-5) A predatory lending database program shall be  
20 established within Cook County. The program shall be  
21 administered in accordance with this Article. The inception  
22 date of the program shall be July 1, 2008. A predatory lending  
23 database program shall be expanded to include Kane, Peoria, and  
24 Will counties. The inception date of the expansion of the  
25 program as it applies to Kane, Peoria, and Will counties shall  
26 be July 1, 2010. Until the inception date, none of the duties,

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

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

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

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

16 (d) If the Department recommends counseling for the  
17 borrower under subsection (c), then the Department shall notify  
18 the borrower of all participating HUD-approved counseling  
19 agencies located within the State and direct the borrower to  
20 interview with a counselor associated with one of those  
21 agencies. Within 10 business days after receipt of the notice  
22 of HUD-approved counseling agencies, it is the borrower's  
23 responsibility to select one of those agencies and shall engage  
24 in an interview with a counselor associated with that agency.  
25 The borrower must supply all necessary documents, as set forth  
26 by the counselor, at least 72 hours before the scheduled

1 interview. The selection must take place and the appointment  
2 for the interview must be set within 10 business days, although  
3 the interview may take place beyond the 10 business day period.  
4 Within 7 business days after interviewing the borrower, the  
5 counselor must submit to the predatory lending database all of  
6 the information required under Section 74 and any other  
7 information required by the Department by rule. Reasonable and  
8 customary costs not to exceed \$300 associated with counseling  
9 provided under the program shall be paid by the broker or  
10 originator and shall not be charged back to, or recovered from,  
11 the borrower. The Department shall annually calculate to the  
12 nearest dollar an adjusted rate for inflation. A counselor  
13 shall not recommend or suggest that a borrower contact any  
14 specific mortgage origination company, financial institution,  
15 or entity that deals in mortgage finance to obtain a loan,  
16 another quote, or for any other reason related to the specific  
17 mortgage transaction; however, a counselor may suggest that the  
18 borrower seek an opinion or a quote from another mortgage  
19 origination company, financial institution, or entity that  
20 deals in mortgage finance. A counselor or housing counseling  
21 agency that in good faith provides counseling shall not be  
22 liable to a broker or originator or borrower for civil damages,  
23 except for willful or wanton misconduct on the part of the  
24 counselor in providing the counseling.

25 (e) The broker or originator and the borrower may not take  
26 any legally binding action concerning the loan transaction

1 until the later of the following:

2 (1) the Department issues a determination not to  
3 recommend HUD-approved counseling for the borrower in  
4 accordance with subsection (c); or

5 (2) the Department issues a determination that  
6 HUD-approved counseling is recommended for the borrower  
7 and the counselor submits all required information to the  
8 database in accordance with subsection (d).

9 (f) Within 10 business days after closing, the title  
10 insurance company or closing agent must submit to the predatory  
11 lending database all of the information required under Section  
12 76 and any other information required by the Department by  
13 rule.

14 (g) The title insurance company or closing agent shall  
15 attach to the mortgage a certificate of compliance with the  
16 requirements of this Article, as generated by the database. If  
17 the transaction is exempt, the title insurance company or  
18 closing agent shall attach to the mortgage a certificate of  
19 exemption, as generated by the database. Each certificate of  
20 compliance or certificate of exemption must contain, at a  
21 minimum, one of the borrower's names on the mortgage loan and  
22 the property index number for the subject property. If the  
23 title insurance company or closing agent fails to attach the  
24 certificate of compliance or exemption, whichever is required,  
25 then the mortgage is not recordable. In addition, if any lis  
26 pendens for a residential mortgage foreclosure is recorded on



1 the property within the program area, a certificate of service  
2 must be simultaneously recorded that affirms that a copy of the  
3 lis pendens was filed with the Department. A lis pendens filed  
4 after July 1, 2016 shall be filed with the Department  
5 electronically. If the certificate of service is not recorded,  
6 then the lis pendens pertaining to the residential mortgage  
7 foreclosure in question is not recordable and is of no force  
8 and effect.

9 (h) All information provided to the predatory lending  
10 database under the program is confidential and is not subject  
11 to disclosure under the Freedom of Information Act, except as  
12 otherwise provided in this Article. Information or documents  
13 obtained by employees of the Department in the course of  
14 maintaining and administering the predatory lending database  
15 are deemed confidential. Employees are prohibited from making  
16 disclosure of such confidential information or documents. Any  
17 request for production of information from the predatory  
18 lending database, whether by subpoena, notice, or any other  
19 source, shall be referred to the Department of Financial and  
20 Professional Regulation. Any borrower may authorize in writing  
21 the release of database information. The Department may use the  
22 information in the database without the consent of the  
23 borrower: (i) for the purposes of administering and enforcing  
24 the program; (ii) to provide relevant information to a  
25 counselor providing counseling to a borrower under the program;  
26 or (iii) to the appropriate law enforcement agency or the

1 applicable administrative agency if the database information  
2 demonstrates criminal, fraudulent, or otherwise illegal  
3 activity.

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

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

10 (j-1) A violation of any provision of this Article by a  
11 mortgage banking licensee or licensed mortgage loan originator  
12 shall constitute a violation of the Residential Mortgage  
13 License Act of 1987.

14 (j-2) A violation of any provision of this Article by a  
15 title insurance company, title agent, or escrow agent shall  
16 constitute a violation of the Title Insurance Act.

17 (j-3) A violation of any provision of this Article by a  
18 housing counselor shall be referred to the Department of  
19 Housing and Urban Development.

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

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

- 1 (2) the number of borrowers receiving counseling;
- 2 (3) the number of loans closed;
- 3 (4) the number of loans requiring counseling for each
- 4 of the standards set forth in Section 73;
- 5 (5) the number of loans requiring counseling where the
- 6 mortgage originator changed the loan terms subsequent to
- 7 counseling;
- 8 (6) the number of licensed mortgage brokers and loan
- 9 originators entering information into the database;
- 10 (7) the number of investigations based on information
- 11 obtained from the database, including the number of
- 12 licensees fined, the number of licenses suspended, and the
- 13 number of licenses revoked;
- 14 (8) a summary of the types of non-traditional mortgage
- 15 products being offered; and
- 16 (9) a summary of how the Department is actively
- 17 utilizing the program to combat mortgage fraud.

18 (Source: P.A. 98-1081, eff. 1-1-15; 99-660, eff. 7-28-16.)

19 (765 ILCS 77/72)

20 Sec. 72. Originator; required information. As part of the  
21 predatory lending database program, the broker or originator  
22 must submit all of the following information for inclusion in  
23 the predatory lending database for each loan for which the  
24 originator takes an application:

- 25 (1) The borrower's name, address, social security

1 number or taxpayer identification number, date of birth,  
2 and income and expense information, including total  
3 monthly consumer debt, contained in the mortgage  
4 application.

5 (2) The address, ~~permanent index number,~~ and a  
6 description of the collateral and information about the  
7 loan or loans being applied for and the loan terms,  
8 including the amount of the loan, the rate and whether the  
9 rate is fixed or adjustable, amortization or loan period  
10 terms, and any other material terms.

11 (3) The borrower's credit score at the time of  
12 application.

13 (4) Information about the originator and the company  
14 the originator works for, including the originator's  
15 license number and address, fees being charged, whether the  
16 fees are being charged as points up front, the yield spread  
17 premium payable outside closing, and other charges made or  
18 remuneration required by the broker or originator or its  
19 affiliates or the broker's or originator's employer or its  
20 affiliates for the mortgage loans.

21 (5) (Blank). ~~Information about affiliated or third~~  
22 ~~party service providers, including the names and addresses~~  
23 ~~of appraisers, title insurance companies, closing agents,~~  
24 ~~attorneys, and realtors who are involved with the~~  
25 ~~transaction and the broker or originator and any moneys~~  
26 ~~received from the broker or originator in connection with~~

1 ~~the transaction.~~

2 (6) All information indicated in connection with the  
3 TILA-RESPA Integrated Loan Estimate Disclosure or on the  
4 Good Faith Estimate and Truth in Lending statement  
5 disclosures given to the borrower by the broker or  
6 originator.

7 (7) Annual real estate taxes for the property, together  
8 with any assessments payable in connection with the  
9 property to be secured by the collateral and the proposed  
10 monthly principal and interest charge of all loans to be  
11 taken by the borrower and secured by the property of the  
12 borrower.

13 (8) Information concerning how the broker or  
14 originator obtained the client and the name of its referral  
15 source, if any.

16 (9) Information concerning the notices provided by the  
17 broker or originator to the borrower as required by law and  
18 the date those notices were given.

19 (10) Information concerning whether a sale and  
20 leaseback is contemplated and the names of the lessor and  
21 lessee, seller, and purchaser.

22 (11) Any and all financing by the borrower for the  
23 subject property within 12 months prior to the date of  
24 application.

25 (12) Loan information, including interest rate, term,  
26 purchase price, down payment, and closing costs.

1           (13) Whether the buyer is a first-time homebuyer or  
2 refinancing a primary residence.

3           (14) Whether the loan permits interest only payments.

4           (15) Whether the loan may result in negative  
5 amortization.

6           (16) Whether the total points and fees payable by the  
7 borrowers at or before closing will exceed 5%.

8           (17) Whether the loan includes a prepayment penalty,  
9 and, if so, the terms of the penalty.

10          (18) Whether the loan is an ARM.

11          All information entered into the predatory lending  
12 database must be true and correct to the best of the  
13 originator's knowledge. The originator shall, prior to  
14 closing, correct, update, or amend the data as necessary. If  
15 any corrections become necessary after the file has been  
16 accessed by the closing agent or housing counselor, a new file  
17 must be entered.

18          (Source: P.A. 97-891, eff. 1-1-13; 98-1081, eff. 1-1-15.)

19          (765 ILCS 77/76)

20          Sec. 76. Title insurance company or closing agent; required  
21 information. As part of the predatory lending database program,  
22 a title insurance company or closing agent must submit all of  
23 the following information for inclusion in the predatory  
24 lending database:

25                 (1) The borrower's name, address, social security

1 number or taxpayer identification number, date of birth,  
2 and income and expense information contained in the  
3 mortgage application.

4 (2) The address, permanent index number, and a  
5 description of the collateral and information about the  
6 loan or loans being applied for and the loan terms,  
7 including the amount of the loan, the rate and whether the  
8 rate is fixed or adjustable, amortization or loan period  
9 terms, and any other material terms.

10 (3) Annual real estate taxes for the property, together  
11 with any assessments payable in connection with the  
12 property to be secured by the collateral and the proposed  
13 monthly principal and interest charge of all loans to be  
14 taken by the borrower and secured by the property of the  
15 borrower as well as any required escrows and the amounts  
16 paid monthly for those escrows.

17 (4) All itemizations and descriptions set forth in or  
18 in connection with the TILA-RESPA Integrated Closing  
19 Disclosure or RESPA settlement statement, including items  
20 to be disbursed, payable outside closing "POC" items noted  
21 on the statement, and a list of payees and the amounts of  
22 their checks.

23 (5) The name and license number of the title insurance  
24 company or closing agent together with the name of the  
25 agent actually conducting the closing.

26 (6) The names and addresses of all originators,

1           brokers, appraisers, sales persons, attorneys, and  
2           surveyors that are present at the closing.

3           (7) The date of closing, a detailed list of all notices  
4           provided to the borrower at closing and the date of those  
5           notices, and all information indicated on or in connection  
6           with the TILA-RESPA Integrated Loan Estimate Disclosure or  
7           ~~on~~ the Truth in Lending statement and Good Faith Estimate  
8           disclosures.

9           (Source: P.A. 98-1081, eff. 1-1-15.)

10           Section 99. Effective date. This Act takes effect upon  
11           becoming law.