



Sen. Martin A. Sandoval

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LRB094 04547 RCE 58089 a

1 AMENDMENT TO SENATE BILL 895

2 AMENDMENT NO. _____. Amend Senate Bill 895 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 pilot program.

8 (a) As used in this Article:

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

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

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

19 "Department" means the Department of Financial and
20 Professional Regulation.

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

24 "Lender" means that term as it is defined in subsection (g)

1 of Section 1-4 of the Residential Mortgage License Act.

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

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

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

11 "Pilot program area" means all areas within Cook County
12 designated as such by the Department due to the high rate of
13 foreclosure on residential home mortgages that is primarily the
14 result of predatory lending practices. The Department shall
15 designate the pilot program area within 30 days after the
16 effective date of this amendatory Act of the 94th General
17 Assembly.

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

25 (a-5) Inception date. The Secretary of Financial and
26 Professional Regulation shall declare in writing the date of
27 inception of the pilot program. The inception date shall be at
28 least 30 days after the date the Secretary issues a declaration
29 establishing that date. The Secretary's declaration shall be
30 posted on the Department's website, and the Department shall
31 communicate the declaration to affected licensees of the
32 Department. Until the inception date, none of the duties,
33 obligations, contingencies, or consequences of or from the
34 pilot program shall be imposed. The pilot program shall apply

1 to all mortgage applications made or taken on or after the
2 inception of the pilot program.

3 (b) A predatory lending database pilot program is
4 established within the pilot program area, effective upon the
5 inception date established by the Secretary of the Department.

6 The pilot program shall be in effect and operational ~~continue~~
7 for a total of 4 years ~~after its creation~~ and shall be
8 administered in accordance with Article 3 of this Act. The
9 database created under this program shall be maintained and
10 administered by the Department. The database shall be designed
11 to allow brokers, originators, credit counselors, title
12 insurance companies, and closing agents to submit information
13 to the database online. The database shall not be designed to
14 allow those entities to retrieve information from the database,
15 except as otherwise provided in this Article. Information
16 submitted by the broker or originator to the Department may be
17 used to populate the online form submitted by a credit
18 counselor, title insurance company, or closing agent.

19 (c) Within 10 days after taking a mortgage application, the
20 broker or originator for any mortgage on residential property
21 within the pilot program area must submit to the predatory
22 lending database all of the information required under Section
23 72 and any other information required by the Department by
24 rule. Within 7 days after receipt of the information, the
25 Department shall compare that information to credit counseling
26 standards developed by the Department by rule and issue to the
27 borrower and the broker or originator a determination of
28 whether credit counseling is recommended for the borrower. The
29 borrower may not waive credit counseling. If at any time after
30 submitting the information required under Section 72 the broker
31 or originator (i) changes the terms of the loan or (ii) issues
32 a new commitment to the borrower, then, within 5 days
33 thereafter, the broker or originator shall re-submit all of the
34 information required under Section 72 and, within 4 days after

1 receipt of the information re-submitted by the broker or
2 originator, the Department shall compare that information to
3 credit counseling standards developed by the Department by rule
4 and shall issue to the borrower and the broker or originator a
5 new determination of whether credit counseling is recommended
6 for the borrower based on the information re-submitted by the
7 broker or originator.

8 (d) If the Department recommends credit counseling for the
9 borrower under subsection (c), then the Department shall notify
10 the borrower of all HUD-certified counseling agencies located
11 within the State and direct the borrower to interview with a
12 counselor associated with one of those agencies. Within 10 days
13 after receipt of the notice of HUD-certified counseling
14 agencies, the borrower shall select one of those agencies and
15 shall engage in an interview with a counselor associated with
16 that agency. Within 7 days after interviewing the borrower, the
17 credit counselor must submit to the predatory lending database
18 all of the information required under Section 74 and any other
19 information required by the Department by rule. Any costs
20 associated with credit counseling provided under the pilot
21 program shall be paid by the broker or originator.

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

25 (1) the Department issues a determination not to
26 recommend credit counseling for the borrower in accordance
27 with subsection (c); or

28 (2) the Department issues a determination that credit
29 counseling is recommended for the borrower and the credit
30 counselor submits all required information to the database
31 in accordance with subsection (d).

32 (f) Within 10 days after closing, the title insurance
33 company or closing agent must submit to the predatory lending
34 database all of the information required under Section 76 and

1 any other information required by the Department by rule.

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

16 (h) All information provided to the predatory lending
17 database under the program is confidential and is not subject
18 to disclosure under the Freedom of Information Act, except as
19 otherwise provided in this Article. Any borrower may authorize
20 in writing the release of database information. The Department
21 may use the information in the database without the consent of
22 the borrower: (i) for the purposes of administering and
23 enforcing the pilot program; (ii) to provide relevant
24 information to a credit counselor providing credit counseling
25 to a borrower under the pilot program; or (iii) to the
26 appropriate law enforcement agency or the applicable
27 administrative agency if the database information demonstrates
28 criminal, fraudulent, or otherwise illegal activity.

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

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

1 (k) Not later than one year after the Department designates
2 the pilot program area and annually thereafter during the
3 existence of the pilot program, the Department shall report to
4 the Governor and to the General Assembly concerning its
5 administration and the effectiveness of the pilot program.

6 (Source: P.A. 94-280, eff. 1-1-06.)

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".