



Rep. Joseph M. Lyons

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09500SB1674ham002

LRB095 04901 MJR 37316 a

1 AMENDMENT TO SENATE BILL 1674

2 AMENDMENT NO. _____. Amend Senate Bill 1674, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The State Finance Act is amended by adding
6 Section 5.675 and changing Section 8h as follows:

7 (30 ILCS 105/5.675 new)

8 Sec. 5.675. The Predatory Lending Database Program Fund.

9 (30 ILCS 105/8h)

10 Sec. 8h. Transfers to General Revenue Fund.

11 (a) Except as otherwise provided in this Section and
12 Section 8n of this Act, and ~~(c), (d), or (e)~~, notwithstanding
13 any other State law to the contrary, the Governor may, through
14 June 30, 2007, from time to time direct the State Treasurer and
15 Comptroller to transfer a specified sum from any fund held by

1 the State Treasurer to the General Revenue Fund in order to
2 help defray the State's operating costs for the fiscal year.
3 The total transfer under this Section from any fund in any
4 fiscal year shall not exceed the lesser of (i) 8% of the
5 revenues to be deposited into the fund during that fiscal year
6 or (ii) an amount that leaves a remaining fund balance of 25%
7 of the July 1 fund balance of that fiscal year. In fiscal year
8 2005 only, prior to calculating the July 1, 2004 final
9 balances, the Governor may calculate and direct the State
10 Treasurer with the Comptroller to transfer additional amounts
11 determined by applying the formula authorized in Public Act
12 93-839 to the funds balances on July 1, 2003. No transfer may
13 be made from a fund under this Section that would have the
14 effect of reducing the available balance in the fund to an
15 amount less than the amount remaining unexpended and unreserved
16 from the total appropriation from that fund estimated to be
17 expended for that fiscal year. This Section does not apply to
18 any funds that are restricted by federal law to a specific use,
19 to any funds in the Motor Fuel Tax Fund, the Intercity
20 Passenger Rail Fund, the Hospital Provider Fund, the Medicaid
21 Provider Relief Fund, the Teacher Health Insurance Security
22 Fund, the Reviewing Court Alternative Dispute Resolution Fund,
23 the Voters' Guide Fund, the Foreign Language Interpreter Fund,
24 the Lawyers' Assistance Program Fund, the Supreme Court Federal
25 Projects Fund, the Supreme Court Special State Projects Fund,
26 the Supplemental Low-Income Energy Assistance Fund, the Good

1 Samaritan Energy Trust Fund, the Low-Level Radioactive Waste
2 Facility Development and Operation Fund, the Horse Racing
3 Equity Trust Fund, or the Hospital Basic Services Preservation
4 Fund, or to any funds to which subsection (f) of Section 20-40
5 of the Nursing and Advanced Practice Nursing Act applies. No
6 transfers may be made under this Section from the Pet
7 Population Control Fund. Notwithstanding any other provision
8 of this Section, for fiscal year 2004, the total transfer under
9 this Section from the Road Fund or the State Construction
10 Account Fund shall not exceed the lesser of (i) 5% of the
11 revenues to be deposited into the fund during that fiscal year
12 or (ii) 25% of the beginning balance in the fund. For fiscal
13 year 2005 through fiscal year 2007, no amounts may be
14 transferred under this Section from the Road Fund, the State
15 Construction Account Fund, the Criminal Justice Information
16 Systems Trust Fund, the Wireless Service Emergency Fund, or the
17 Mandatory Arbitration Fund.

18 In determining the available balance in a fund, the
19 Governor may include receipts, transfers into the fund, and
20 other resources anticipated to be available in the fund in that
21 fiscal year.

22 The State Treasurer and Comptroller shall transfer the
23 amounts designated under this Section as soon as may be
24 practicable after receiving the direction to transfer from the
25 Governor.

26 (a-5) Transfers directed to be made under this Section on

1 or before February 28, 2006 that are still pending on May 19,
2 2006 (the effective date of Public Act 94-774) ~~this amendatory~~
3 ~~Act of the 94th General Assembly~~ shall be redirected as
4 provided in Section 8n of this Act.

5 (b) This Section does not apply to: (i) the Ticket For The
6 Cure Fund; (ii) any fund established under the Community Senior
7 Services and Resources Act; or (iii) on or after January 1,
8 2006 (the effective date of Public Act 94-511), the Child Labor
9 and Day and Temporary Labor Enforcement Fund.

10 (c) This Section does not apply to the Demutualization
11 Trust Fund established under the Uniform Disposition of
12 Unclaimed Property Act.

13 (d) This Section does not apply to moneys set aside in the
14 Illinois State Podiatric Disciplinary Fund for podiatric
15 scholarships and residency programs under the Podiatric
16 Scholarship and Residency Act.

17 (e) Subsection (a) does not apply to, and no transfer may
18 be made under this Section from, the Pension Stabilization
19 Fund.

20 (f) This Section does not apply to the Predatory Lending
21 Database Program Fund.

22 (Source: P.A. 93-32, eff. 6-20-03; 93-659, eff. 2-3-04; 93-674,
23 eff. 6-10-04; 93-714, eff. 7-12-04; 93-801, eff. 7-22-04;
24 93-839, eff. 7-30-04; 93-1054, eff. 11-18-04; 93-1067, eff.
25 1-15-05; 94-91, eff. 7-1-05; 94-120, eff. 7-6-05; 94-511, eff.
26 1-1-06; 94-535, eff. 8-10-05; 94-639, eff. 8-22-05; 94-645,

1 eff. 8-22-05; 94-648, eff. 1-1-06; 94-686, eff. 11-2-05;
2 94-691, eff. 11-2-05; 94-726, eff. 1-20-06; 94-773, eff.
3 5-18-06; 94-774, eff. 5-19-06; 94-804, eff. 5-26-06; 94-839,
4 eff. 6-6-06; revised 6-19-06.)

5 Section 10. The Home Equity Assurance Act is amended by
6 changing Section 11 as follows:

7 (65 ILCS 95/11) (from Ch. 24, par. 1611)

8 Sec. 11. Guarantee Fund.

9 (a) Each governing commission and program created by
10 referendum under the provisions of this Act shall maintain a
11 guarantee fund for the purposes of paying the costs of
12 administering the program and extending protection to members
13 pursuant to the limitations and procedures set forth in this
14 Act.

15 (b) The guarantee fund shall be raised by means of an
16 annual tax levied on all residential property within the
17 territory of the program having at least one, but not more than
18 6 dwelling units and classified by county ordinance as
19 residential. The rate of this tax may be changed from year to
20 year by majority vote of the governing commission but in no
21 case shall it exceed a rate of .12% of the equalized assessed
22 valuation of all property in the territory of the program
23 having at least one, but not more than 6 dwelling units and
24 classified by county ordinance as residential, or the maximum

1 tax rate approved by the voters of the territory at the
2 referendum which created the program or, in the case of a
3 merged program, the maximum tax rate approved by the voters at
4 the referendum authorizing the merger, whichever rate is lower.
5 The commissioners shall cause the amount to be raised by
6 taxation in each year to be certified to the county clerk in
7 the manner provided by law, and any tax so levied and certified
8 shall be collected and enforced in the same manner and by the
9 same officers as those taxes for the purposes of the county and
10 city within which the territory of the commission is located.
11 Any such tax, when collected, shall be paid over to the proper
12 officer of the commission who is authorized to receive and
13 receipt for such tax. The governing commission may issue tax
14 anticipation warrants against the taxes to be assessed for the
15 calendar year in which the program is created and for the first
16 full calendar year after the creation of the program.

17 (c) The moneys deposited in the guarantee fund shall, as
18 nearly as practicable, be fully and continuously invested or
19 reinvested by the governing commission in investment
20 obligations which shall be in such amounts, and shall mature at
21 such times, that the maturity or date of redemption at the
22 option of the holder of such investment obligations shall
23 coincide, as nearly as practicable, with the times at which
24 monies will be required for the purposes of the program. For
25 the purposes of this Section investment obligation shall mean
26 direct general municipal, state, or federal obligations which

1 at the time are legal investments under the laws of this State
2 and the payment of principal of and interest on which are
3 unconditionally guaranteed by the governing body issuing them.

4 (d) Except as permitted by this subsection and subsection
5 (d-5), the guarantee fund shall be used solely and exclusively
6 for the purpose of providing guarantees to members of the
7 particular Guaranteed Home Equity Program and for reasonable
8 salaries, expenses, bills, and fees incurred in administering
9 the program, and shall be used for no other purpose.

10 A governing commission, with no less than \$4,000,000 in its
11 guarantee fund, may, if authorized by referendum duly adopted
12 by a majority of the voters, establish a Low Interest Home
13 Improvement Loan Program in accordance with and subject to
14 procedures established by a financial institution, as defined
15 in the Illinois Banking Act. Whenever the question of creating
16 a Low Interest Home Improvement Loan Program is initiated by
17 resolution or ordinance of the corporate authorities of the
18 municipality or by a petition signed by not less than 10% of
19 the total number of registered voters of each precinct in the
20 territory, the registered voters of which are eligible to sign
21 the petition, it shall be the duty of the election authority
22 having jurisdiction over the municipality to submit the
23 question of creating the program to the electors of each
24 precinct within the territory at the regular election specified
25 in the resolution, ordinance, or petition initiating the
26 question. A petition initiating a question described in this

1 subsection shall be filed with the election authority having
2 jurisdiction over the municipality. The petition shall be filed
3 and objections to the petition shall be made in the manner
4 provided in the Election Code. A resolution, ordinance, or
5 petition initiating a question described in this subsection
6 shall specify the election at which the question is to be
7 submitted. The referendum on the question shall be held in
8 accordance with the Election Code. The question shall be in
9 substantially the following form:

10 "Shall the (name of the home equity program) implement
11 a Low Interest Home Improvement Loan Program with money
12 from the guarantee fund of the established guaranteed home
13 equity program?"

14 The votes must be recorded as "Yes" or "No".

15 Whenever a majority of the voters on the public question
16 approve the creation of the program as certified by the proper
17 election authorities, the commission shall establish the
18 program and administer the program with funds collected under
19 the Guaranteed Home Equity Program, subject to the following
20 conditions:

21 (1) At any given time, the cumulative total of all
22 loans and loan guarantees (if applicable) issued under this
23 program may not reduce the balance of the guarantee fund to
24 less than \$3,000,000.

25 (2) Only eligible applicants may apply for a loan.

26 (3) The loan must be used for the repair, maintenance,

1 remodeling, alteration, or improvement of a guaranteed
2 residence. This condition is not intended to exclude the
3 repair, maintenance, remodeling, alteration, or
4 improvement of a guaranteed residence's landscape. This
5 condition is intended to exclude the demolition of a
6 current residence. This condition is also intended to
7 exclude the construction of a new residence.

8 (4) An eligible applicant may not borrow more than the
9 amount of equity value in his or her residence.

10 (5) A commission must ensure that loans issued are
11 secured with collateral that is at least equal to the
12 amount of the loan or loan guarantee.

13 (6) A commission shall charge an interest rate which it
14 determines to be below the market rate of interest
15 generally available to the applicant.

16 (7) A commission may, by resolution, establish other
17 administrative rules and procedures as are necessary to
18 implement this program including, but not limited to, loan
19 dollar amounts and terms. A commission may also impose on
20 loan applicants a one-time application fee for the purpose
21 of defraying the costs of administering the program.

22 (d-5) A governing commission, with no less than \$4,000,000
23 in its guarantee fund, may, if authorized by referendum duly
24 adopted by a majority of the voters, establish a Foreclosure
25 Prevention Loan Fund to provide low interest emergency loans to
26 eligible applicants that may be forced into foreclosure

1 proceedings.

2 Whenever the question of creating a Foreclosure Prevention
3 Loan Fund is initiated by resolution or ordinance of the
4 corporate authorities of the municipality or by a petition
5 signed by not less than 10% of the total number of registered
6 voters of each precinct in the territory, the registered voters
7 of which are eligible to sign the petition, it shall be the
8 duty of the election authority having jurisdiction over the
9 municipality to submit the question of creating the program to
10 the electors of each precinct within the territory at the
11 regular election specified in the resolution, ordinance, or
12 petition initiating the question. A petition initiating a
13 question described in this subsection shall be filed with the
14 election authority having jurisdiction over the municipality.
15 The petition shall be filed and objections to the petition
16 shall be made in the manner provided in the Election Code. A
17 resolution, ordinance, or petition initiating a question
18 described in this subsection shall specify the election at
19 which the question is to be submitted. The referendum on the
20 question shall be held in accordance with the Election Code.
21 The question shall be in substantially the following form:

22 "Shall the (name of the home equity program) implement a
23 Foreclosure Prevention Loan Fund with money from the guarantee
24 fund of the established guaranteed home equity program?"

25 The votes must be recorded as "Yes" or "No".

26 Whenever a majority of the voters on the public question

1 approve the creation of a Foreclosure Prevention Loan Fund as
2 certified by the proper election authorities, the commission
3 shall establish the program and administer the program with
4 funds collected under the Guaranteed Home Equity Program,
5 subject to the following conditions:

6 (1) At any given time, the cumulative total of all
7 loans and loan guarantees (if applicable) issued under this
8 program may not exceed \$3,000,000.

9 (2) Only eligible applicants may apply for a loan. The
10 Commission may establish, by resolution, additional
11 criteria for eligibility.

12 (3) The loan must be used to assist with preventing
13 foreclosure proceedings.

14 (4) An eligible applicant may not borrow more than the
15 amount of equity value in his or her residence.

16 (5) A commission must ensure that loans issued are
17 secured as a second lien on the property.

18 (6) A commission shall charge an interest rate which it
19 determines to be below the market rate of interest
20 generally available to the applicant.

21 (7) A commission may, by resolution, establish other
22 administrative rules and procedures as are necessary to
23 implement this program including, but not limited to,
24 eligibility requirements for eligible applicants, loan
25 dollar amounts, and loan terms.

26 (8) A commission may also impose on loan applicants a

1 one-time application fee for the purpose of defraying the
2 costs of administering the program.

3 (e) The guarantee fund shall be maintained, invested, and
4 expended exclusively by the governing commission of the program
5 for whose purposes it was created. Under no circumstance shall
6 the guarantee fund be used by any person or persons,
7 governmental body, or public or private agency or concern other
8 than the governing commission of the program for whose purposes
9 it was created. Under no circumstances shall the guarantee fund
10 be commingled with other funds or investments.

11 (e-1) No commissioner or family member of a commissioner,
12 or employee or family member of an employee, may receive any
13 financial benefit, either directly or indirectly, from the
14 guarantee fund. Nothing in this subsection (e-1) shall be
15 construed to prohibit payment of expenses to a commissioner in
16 accordance with Section 4 or payment of salaries or expenses to
17 an employee in accordance with this Section.

18 As used in this subsection (e-1), "family member" means a
19 spouse, child, stepchild, parent, brother, or sister of a
20 commissioner or a child, stepchild, parent, brother, or sister
21 of a commissioner's spouse.

22 (f) An independent audit of the guarantee fund and the
23 management of the program shall be conducted annually and made
24 available to the public through any office of the governing
25 commission or a public facility such as a local public library
26 located within the territory of the program.

1 (Source: P.A. 91-492, eff. 1-1-00.)

2 Section 15. The Illinois Banking Act is amended by changing
3 Section 48 as follows:

4 (205 ILCS 5/48) (from Ch. 17, par. 359)

5 Sec. 48. Commissioner's powers; duties. The Commissioner
6 shall have the powers and authority, and is charged with the
7 duties and responsibilities designated in this Act, and a State
8 bank shall not be subject to any other visitorial power other
9 than as authorized by this Act, except those vested in the
10 courts, or upon prior consultation with the Commissioner, a
11 foreign bank regulator with an appropriate supervisory
12 interest in the parent or affiliate of a state bank. In the
13 performance of the Commissioner's duties:

14 (1) The Commissioner shall call for statements from all
15 State banks as provided in Section 47 at least one time during
16 each calendar quarter.

17 (2) (a) The Commissioner, as often as the Commissioner
18 shall deem necessary or proper, and no less frequently than 18
19 months following the preceding examination, shall appoint a
20 suitable person or persons to make an examination of the
21 affairs of every State bank, except that for every eligible
22 State bank, as defined by regulation, the Commissioner in lieu
23 of the examination may accept on an alternating basis the
24 examination made by the eligible State bank's appropriate

1 federal banking agency pursuant to Section 111 of the Federal
2 Deposit Insurance Corporation Improvement Act of 1991,
3 provided the appropriate federal banking agency has made such
4 an examination. A person so appointed shall not be a
5 stockholder or officer or employee of any bank which that
6 person may be directed to examine, and shall have powers to
7 make a thorough examination into all the affairs of the bank
8 and in so doing to examine any of the officers or agents or
9 employees thereof on oath and shall make a full and detailed
10 report of the condition of the bank to the Commissioner. In
11 making the examination the examiners shall include an
12 examination of the affairs of all the affiliates of the bank,
13 as defined in subsection (b) of Section 35.2 of this Act, or
14 subsidiaries of the bank as shall be necessary to disclose
15 fully the conditions of the subsidiaries or affiliates, the
16 relations between the bank and the subsidiaries or affiliates
17 and the effect of those relations upon the affairs of the bank,
18 and in connection therewith shall have power to examine any of
19 the officers, directors, agents, or employees of the
20 subsidiaries or affiliates on oath. After May 31, 1997, the
21 Commissioner may enter into cooperative agreements with state
22 regulatory authorities of other states to provide for
23 examination of State bank branches in those states, and the
24 Commissioner may accept reports of examinations of State bank
25 branches from those state regulatory authorities. These
26 cooperative agreements may set forth the manner in which the

1 other state regulatory authorities may be compensated for
2 examinations prepared for and submitted to the Commissioner.

3 (b) After May 31, 1997, the Commissioner is authorized to
4 examine, as often as the Commissioner shall deem necessary or
5 proper, branches of out-of-state banks. The Commissioner may
6 establish and may assess fees to be paid to the Commissioner
7 for examinations under this subsection (b). The fees shall be
8 borne by the out-of-state bank, unless the fees are borne by
9 the state regulatory authority that chartered the out-of-state
10 bank, as determined by a cooperative agreement between the
11 Commissioner and the state regulatory authority that chartered
12 the out-of-state bank.

13 (2.5) Whenever any State bank, any subsidiary or affiliate
14 of a State bank, or after May 31, 1997, any branch of an
15 out-of-state bank causes to be performed, by contract or
16 otherwise, any bank services for itself, whether on or off its
17 premises:

18 (a) that performance shall be subject to examination by
19 the Commissioner to the same extent as if services were
20 being performed by the bank or, after May 31, 1997, branch
21 of the out-of-state bank itself on its own premises; and

22 (b) the bank or, after May 31, 1997, branch of the
23 out-of-state bank shall notify the Commissioner of the
24 existence of a service relationship. The notification
25 shall be submitted with the first statement of condition
26 (as required by Section 47 of this Act) due after the

1 making of the service contract or the performance of the
2 service, whichever occurs first. The Commissioner shall be
3 notified of each subsequent contract in the same manner.

4 For purposes of this subsection (2.5), the term "bank
5 services" means services such as sorting and posting of checks
6 and deposits, computation and posting of interest and other
7 credits and charges, preparation and mailing of checks,
8 statements, notices, and similar items, or any other clerical,
9 bookkeeping, accounting, statistical, or similar functions
10 performed for a State bank, including but not limited to
11 electronic data processing related to those bank services.

12 (3) The expense of administering this Act, including the
13 expense of the examinations of State banks as provided in this
14 Act, shall to the extent of the amounts resulting from the fees
15 provided for in paragraphs (a), (a-2), and (b) of this
16 subsection (3) be assessed against and borne by the State
17 banks:

18 (a) Each bank shall pay to the Commissioner a Call
19 Report Fee which shall be paid in quarterly installments
20 equal to one-fourth of the sum of the annual fixed fee of
21 \$800, plus a variable fee based on the assets shown on the
22 quarterly statement of condition delivered to the
23 Commissioner in accordance with Section 47 for the
24 preceding quarter according to the following schedule: 16¢
25 per \$1,000 of the first \$5,000,000 of total assets, 15¢ per
26 \$1,000 of the next \$20,000,000 of total assets, 13¢ per

1 \$1,000 of the next \$75,000,000 of total assets, 9¢ per
2 \$1,000 of the next \$400,000,000 of total assets, 7¢ per
3 \$1,000 of the next \$500,000,000 of total assets, and 5¢ per
4 \$1,000 of all assets in excess of \$1,000,000,000, of the
5 State bank. The Call Report Fee shall be calculated by the
6 Commissioner and billed to the banks for remittance at the
7 time of the quarterly statements of condition provided for
8 in Section 47. The Commissioner may require payment of the
9 fees provided in this Section by an electronic transfer of
10 funds or an automatic debit of an account of each of the
11 State banks. In case more than one examination of any bank
12 is deemed by the Commissioner to be necessary in any
13 examination frequency cycle specified in subsection 2(a)
14 of this Section, and is performed at his direction, the
15 Commissioner may assess a reasonable additional fee to
16 recover the cost of the additional examination; provided,
17 however, that an examination conducted at the request of
18 the State Treasurer pursuant to the Uniform Disposition of
19 Unclaimed Property Act shall not be deemed to be an
20 additional examination under this Section. In lieu of the
21 method and amounts set forth in this paragraph (a) for the
22 calculation of the Call Report Fee, the Commissioner may
23 specify by rule that the Call Report Fees provided by this
24 Section may be assessed semiannually or some other period
25 and may provide in the rule the formula to be used for
26 calculating and assessing the periodic Call Report Fees to

1 be paid by State banks.

2 (a-1) If in the opinion of the Commissioner an
3 emergency exists or appears likely, the Commissioner may
4 assign an examiner or examiners to monitor the affairs of a
5 State bank with whatever frequency he deems appropriate,
6 including but not limited to a daily basis. The reasonable
7 and necessary expenses of the Commissioner during the
8 period of the monitoring shall be borne by the subject
9 bank. The Commissioner shall furnish the State bank a
10 statement of time and expenses if requested to do so within
11 30 days of the conclusion of the monitoring period.

12 (a-2) On and after January 1, 1990, the reasonable and
13 necessary expenses of the Commissioner during examination
14 of the performance of electronic data processing services
15 under subsection (2.5) shall be borne by the banks for
16 which the services are provided. An amount, based upon a
17 fee structure prescribed by the Commissioner, shall be paid
18 by the banks or, after May 31, 1997, branches of
19 out-of-state banks receiving the electronic data
20 processing services along with the Call Report Fee assessed
21 under paragraph (a) of this subsection (3).

22 (a-3) After May 31, 1997, the reasonable and necessary
23 expenses of the Commissioner during examination of the
24 performance of electronic data processing services under
25 subsection (2.5) at or on behalf of branches of
26 out-of-state banks shall be borne by the out-of-state

1 banks, unless those expenses are borne by the state
2 regulatory authorities that chartered the out-of-state
3 banks, as determined by cooperative agreements between the
4 Commissioner and the state regulatory authorities that
5 chartered the out-of-state banks.

6 (b) "Fiscal year" for purposes of this Section 48 is
7 defined as a period beginning July 1 of any year and ending
8 June 30 of the next year. The Commissioner shall receive
9 for each fiscal year, commencing with the fiscal year
10 ending June 30, 1987, a contingent fee equal to the lesser
11 of the aggregate of the fees paid by all State banks under
12 paragraph (a) of subsection (3) for that year, or the
13 amount, if any, whereby the aggregate of the administration
14 expenses, as defined in paragraph (c), for that fiscal year
15 exceeds the sum of the aggregate of the fees payable by all
16 State banks for that year under paragraph (a) of subsection
17 (3), plus any amounts transferred into the Bank and Trust
18 Company Fund from the State Pensions Fund for that year,
19 plus all other amounts collected by the Commissioner for
20 that year under any other provision of this Act, plus the
21 aggregate of all fees collected for that year by the
22 Commissioner under the Corporate Fiduciary Act, excluding
23 the receivership fees provided for in Section 5-10 of the
24 Corporate Fiduciary Act, and the Foreign Banking Office
25 Act. The aggregate amount of the contingent fee thus
26 arrived at for any fiscal year shall be apportioned

1 amongst, assessed upon, and paid by the State banks and
2 foreign banking corporations, respectively, in the same
3 proportion that the fee of each under paragraph (a) of
4 subsection (3), respectively, for that year bears to the
5 aggregate for that year of the fees collected under
6 paragraph (a) of subsection (3). The aggregate amount of
7 the contingent fee, and the portion thereof to be assessed
8 upon each State bank and foreign banking corporation,
9 respectively, shall be determined by the Commissioner and
10 shall be paid by each, respectively, within 120 days of the
11 close of the period for which the contingent fee is
12 computed and is payable, and the Commissioner shall give 20
13 days advance notice of the amount of the contingent fee
14 payable by the State bank and of the date fixed by the
15 Commissioner for payment of the fee.

16 (c) The "administration expenses" for any fiscal year
17 shall mean the ordinary and contingent expenses for that
18 year incident to making the examinations provided for by,
19 and for otherwise administering, this Act, the Corporate
20 Fiduciary Act, excluding the expenses paid from the
21 Corporate Fiduciary Receivership account in the Bank and
22 Trust Company Fund, the Foreign Banking Office Act, the
23 Electronic Fund Transfer Act, and the Illinois Bank
24 Examiners' Education Foundation Act, including all
25 salaries and other compensation paid for personal services
26 rendered for the State by officers or employees of the

1 State, including the Commissioner and the Deputy
2 Commissioners, all expenditures for telephone and
3 telegraph charges, postage and postal charges, office
4 stationery, supplies and services, and office furniture
5 and equipment, including typewriters and copying and
6 duplicating machines and filing equipment, surety bond
7 premiums, and travel expenses of those officers and
8 employees, employees, expenditures or charges for the
9 acquisition, enlargement or improvement of, or for the use
10 of, any office space, building, or structure, or
11 expenditures for the maintenance thereof or for furnishing
12 heat, light, or power with respect thereto, all to the
13 extent that those expenditures are directly incidental to
14 such examinations or administration. The Commissioner
15 shall not be required by paragraphs (c) or (d-1) of this
16 subsection (3) to maintain in any fiscal year's budget
17 appropriated reserves for accrued vacation and accrued
18 sick leave that is required to be paid to employees of the
19 Commissioner upon termination of their service with the
20 Commissioner in an amount that is more than is reasonably
21 anticipated to be necessary for any anticipated turnover in
22 employees, whether due to normal attrition or due to
23 layoffs, terminations, or resignations.

24 (d) The aggregate of all fees collected by the
25 Commissioner under this Act, the Corporate Fiduciary Act,
26 or the Foreign Banking Office Act on and after July 1,

1 1979, shall be paid promptly after receipt of the same,
2 accompanied by a detailed statement thereof, into the State
3 treasury and shall be set apart in a special fund to be
4 known as the "Bank and Trust Company Fund", except as
5 provided in paragraph (c) of subsection (11) of this
6 Section. All earnings received from investments of funds in
7 the Bank and Trust Company Fund shall be deposited in the
8 Bank and Trust Company Fund and may be used for the same
9 purposes as fees deposited in that Fund. The amount from
10 time to time deposited into the Bank and Trust Company Fund
11 shall be used: (i) to offset the ordinary administrative
12 expenses of the Commissioner of Banks and Real Estate as
13 defined in this Section or (ii) as a credit against fees
14 under paragraph (d-1) of this subsection. Nothing in this
15 amendatory Act of 1979 shall prevent continuing the
16 practice of paying expenses involving salaries,
17 retirement, social security, and State-paid insurance
18 premiums of State officers by appropriations from the
19 General Revenue Fund. However, the General Revenue Fund
20 shall be reimbursed for those payments made on and after
21 July 1, 1979, by an annual transfer of funds from the Bank
22 and Trust Company Fund. Moneys in the Bank and Trust
23 Company Fund may be transferred to the Professions Indirect
24 Cost Fund, as authorized under Section 2105-300 of the
25 Department of Professional Regulation Law of the Civil
26 Administrative Code of Illinois.

1 (d-1) Adequate funds shall be available in the Bank and
2 Trust Company Fund to permit the timely payment of
3 administration expenses. In each fiscal year the total
4 administration expenses shall be deducted from the total
5 fees collected by the Commissioner and the remainder
6 transferred into the Cash Flow Reserve Account, unless the
7 balance of the Cash Flow Reserve Account prior to the
8 transfer equals or exceeds one-fourth of the total initial
9 appropriations from the Bank and Trust Company Fund for the
10 subsequent year, in which case the remainder shall be
11 credited to State banks and foreign banking corporations
12 and applied against their fees for the subsequent year. For
13 the fiscal year beginning July 1, 2007, the Commissioner
14 must adopt rules to adjust regulatory fee rates to those in
15 effect prior to the escalation in rates published in 38
16 Ill. Adm. Code 375 unless an audit by the Auditor General
17 of banking regulatory oversight activities requires a
18 different rate to be set. Any adjustments made pursuant to
19 an Auditor General's audit must be set forth in the form of
20 a notice to each affected entity 45 days prior to making
21 those adjustments. The notice must contain an explanation
22 that includes a description of the audit results pertaining
23 to the banking industry and a description of each reason
24 why adjustments to the regulatory fee rates are required.
25 The amount credited to each State bank and foreign banking
26 corporation shall be in the same proportion as the Call

1 Report Fees paid by each for the year bear to the total
2 Call Report Fees collected for the year. If, after a
3 transfer to the Cash Flow Reserve Account is made or if no
4 remainder is available for transfer, the balance of the
5 Cash Flow Reserve Account is less than one-fourth of the
6 total initial appropriations for the subsequent year and
7 the amount transferred is less than 5% of the total Call
8 Report Fees for the year, additional amounts needed to make
9 the transfer equal to 5% of the total Call Report Fees for
10 the year shall be apportioned amongst, assessed upon, and
11 paid by the State banks and foreign banking corporations in
12 the same proportion that the Call Report Fees of each,
13 respectively, for the year bear to the total Call Report
14 Fees collected for the year. The additional amounts
15 assessed shall be transferred into the Cash Flow Reserve
16 Account. For purposes of this paragraph (d-1), the
17 calculation of the fees collected by the Commissioner shall
18 exclude the receivership fees provided for in Section 5-10
19 of the Corporate Fiduciary Act.

20 (e) The Commissioner may upon request certify to any
21 public record in his keeping and shall have authority to
22 levy a reasonable charge for issuing certifications of any
23 public record in his keeping.

24 (f) In addition to fees authorized elsewhere in this
25 Act, the Commissioner may, in connection with a review,
26 approval, or provision of a service, levy a reasonable

1 charge to recover the cost of the review, approval, or
2 service.

3 (4) Nothing contained in this Act shall be construed to
4 limit the obligation relative to examinations and reports of
5 any State bank, deposits in which are to any extent insured by
6 the United States or any agency thereof, nor to limit in any
7 way the powers of the Commissioner with reference to
8 examinations and reports of that bank.

9 (5) The nature and condition of the assets in or investment
10 of any bonus, pension, or profit sharing plan for officers or
11 employees of every State bank or, after May 31, 1997, branch of
12 an out-of-state bank shall be deemed to be included in the
13 affairs of that State bank or branch of an out-of-state bank
14 subject to examination by the Commissioner under the provisions
15 of subsection (2) of this Section, and if the Commissioner
16 shall find from an examination that the condition of or
17 operation of the investments or assets of the plan is unlawful,
18 fraudulent, or unsafe, or that any trustee has abused his
19 trust, the Commissioner shall, if the situation so found by the
20 Commissioner shall not be corrected to his satisfaction within
21 60 days after the Commissioner has given notice to the board of
22 directors of the State bank or out-of-state bank of his
23 findings, report the facts to the Attorney General who shall
24 thereupon institute proceedings against the State bank or
25 out-of-state bank, the board of directors thereof, or the
26 trustees under such plan as the nature of the case may require.

1 (6) The Commissioner shall have the power:

2 (a) To promulgate reasonable rules for the purpose of
3 administering the provisions of this Act.

4 (a-5) To impose conditions on any approval issued by
5 the Commissioner if he determines that the conditions are
6 necessary or appropriate. These conditions shall be
7 imposed in writing and shall continue in effect for the
8 period prescribed by the Commissioner.

9 (b) To issue orders against any person, if the
10 Commissioner has reasonable cause to believe that an unsafe
11 or unsound banking practice has occurred, is occurring, or
12 is about to occur, if any person has violated, is
13 violating, or is about to violate any law, rule, or written
14 agreement with the Commissioner, or for the purpose of
15 administering the provisions of this Act and any rule
16 promulgated in accordance with this Act.

17 (b-1) To enter into agreements with a bank establishing
18 a program to correct the condition of the bank or its
19 practices.

20 (c) To appoint hearing officers to execute any of the
21 powers granted to the Commissioner under this Section for
22 the purpose of administering this Act and any rule
23 promulgated in accordance with this Act and otherwise to
24 authorize, in writing, an officer or employee of the Office
25 of Banks and Real Estate to exercise his powers under this
26 Act.

1 (d) To subpoena witnesses, to compel their attendance,
2 to administer an oath, to examine any person under oath,
3 and to require the production of any relevant books,
4 papers, accounts, and documents in the course of and
5 pursuant to any investigation being conducted, or any
6 action being taken, by the Commissioner in respect of any
7 matter relating to the duties imposed upon, or the powers
8 vested in, the Commissioner under the provisions of this
9 Act or any rule promulgated in accordance with this Act.

10 (e) To conduct hearings.

11 (7) Whenever, in the opinion of the Commissioner, any
12 director, officer, employee, or agent of a State bank or any
13 subsidiary or bank holding company of the bank or, after May
14 31, 1997, of any branch of an out-of-state bank or any
15 subsidiary or bank holding company of the bank shall have
16 violated any law, rule, or order relating to that bank or any
17 subsidiary or bank holding company of the bank, shall have
18 obstructed or impeded any examination or investigation by the
19 Commissioner, shall have engaged in an unsafe or unsound
20 practice in conducting the business of that bank or any
21 subsidiary or bank holding company of the bank, or shall have
22 violated any law or engaged or participated in any unsafe or
23 unsound practice in connection with any financial institution
24 or other business entity such that the character and fitness of
25 the director, officer, employee, or agent does not assure
26 reasonable promise of safe and sound operation of the State

1 bank, the Commissioner may issue an order of removal. If, in
2 the opinion of the Commissioner, any former director, officer,
3 employee, or agent of a State bank or any subsidiary or bank
4 holding company of the bank, prior to the termination of his or
5 her service with that bank or any subsidiary or bank holding
6 company of the bank, violated any law, rule, or order relating
7 to that State bank or any subsidiary or bank holding company of
8 the bank, obstructed or impeded any examination or
9 investigation by the Commissioner, engaged in an unsafe or
10 unsound practice in conducting the business of that bank or any
11 subsidiary or bank holding company of the bank, or violated any
12 law or engaged or participated in any unsafe or unsound
13 practice in connection with any financial institution or other
14 business entity such that the character and fitness of the
15 director, officer, employee, or agent would not have assured
16 reasonable promise of safe and sound operation of the State
17 bank, the Commissioner may issue an order prohibiting that
18 person from further service with a bank or any subsidiary or
19 bank holding company of the bank as a director, officer,
20 employee, or agent. An order issued pursuant to this subsection
21 shall be served upon the director, officer, employee, or agent.
22 A copy of the order shall be sent to each director of the bank
23 affected by registered mail. The person affected by the action
24 may request a hearing before the State Banking Board within 10
25 days after receipt of the order. The hearing shall be held by
26 the Board within 30 days after the request has been received by

1 the Board. The Board shall make a determination approving,
2 modifying, or disapproving the order of the Commissioner as its
3 final administrative decision. If a hearing is held by the
4 Board, the Board shall make its determination within 60 days
5 from the conclusion of the hearing. Any person affected by a
6 decision of the Board under this subsection (7) of Section 48
7 of this Act may have the decision reviewed only under and in
8 accordance with the Administrative Review Law and the rules
9 adopted pursuant thereto. A copy of the order shall also be
10 served upon the bank of which he is a director, officer,
11 employee, or agent, whereupon he shall cease to be a director,
12 officer, employee, or agent of that bank. The Commissioner may
13 institute a civil action against the director, officer, or
14 agent of the State bank or, after May 31, 1997, of the branch
15 of the out-of-state bank against whom any order provided for by
16 this subsection (7) of this Section 48 has been issued, and
17 against the State bank or, after May 31, 1997, out-of-state
18 bank, to enforce compliance with or to enjoin any violation of
19 the terms of the order. Any person who has been the subject of
20 an order of removal or an order of prohibition issued by the
21 Commissioner under this subsection or Section 5-6 of the
22 Corporate Fiduciary Act may not thereafter serve as director,
23 officer, employee, or agent of any State bank or of any branch
24 of any out-of-state bank, or of any corporate fiduciary, as
25 defined in Section 1-5.05 of the Corporate Fiduciary Act, or of
26 any other entity that is subject to licensure or regulation by

1 the Commissioner or the Office of Banks and Real Estate unless
2 the Commissioner has granted prior approval in writing.

3 For purposes of this paragraph (7), "bank holding company"
4 has the meaning prescribed in Section 2 of the Illinois Bank
5 Holding Company Act of 1957.

6 (8) The Commissioner may impose civil penalties of up to
7 \$10,000 against any person for each violation of any provision
8 of this Act, any rule promulgated in accordance with this Act,
9 any order of the Commissioner, or any other action which in the
10 Commissioner's discretion is an unsafe or unsound banking
11 practice.

12 (9) The Commissioner may impose civil penalties of up to
13 \$100 against any person for the first failure to comply with
14 reporting requirements set forth in the report of examination
15 of the bank and up to \$200 for the second and subsequent
16 failures to comply with those reporting requirements.

17 (10) All final administrative decisions of the
18 Commissioner hereunder shall be subject to judicial review
19 pursuant to the provisions of the Administrative Review Law.
20 For matters involving administrative review, venue shall be in
21 either Sangamon County or Cook County.

22 (11) The endowment fund for the Illinois Bank Examiners'
23 Education Foundation shall be administered as follows:

24 (a) (Blank).

25 (b) The Foundation is empowered to receive voluntary
26 contributions, gifts, grants, bequests, and donations on

1 behalf of the Illinois Bank Examiners' Education
2 Foundation from national banks and other persons for the
3 purpose of funding the endowment of the Illinois Bank
4 Examiners' Education Foundation.

5 (c) The aggregate of all special educational fees
6 collected by the Commissioner and property received by the
7 Commissioner on behalf of the Illinois Bank Examiners'
8 Education Foundation under this subsection (11) on or after
9 June 30, 1986, shall be either (i) promptly paid after
10 receipt of the same, accompanied by a detailed statement
11 thereof, into the State Treasury and shall be set apart in
12 a special fund to be known as "The Illinois Bank Examiners'
13 Education Fund" to be invested by either the Treasurer of
14 the State of Illinois in the Public Treasurers' Investment
15 Pool or in any other investment he is authorized to make or
16 by the Illinois State Board of Investment as the board of
17 trustees of the Illinois Bank Examiners' Education
18 Foundation may direct or (ii) deposited into an account
19 maintained in a commercial bank or corporate fiduciary in
20 the name of the Illinois Bank Examiners' Education
21 Foundation pursuant to the order and direction of the Board
22 of Trustees of the Illinois Bank Examiners' Education
23 Foundation.

24 (12) (Blank).

25 (Source: P.A. 94-91, eff. 7-1-05.)

1 Section 20. The Illinois Savings and Loan Act of 1985 is
2 amended by changing Sections 7-3 and 7-19.1 as follows:

3 (205 ILCS 105/7-3) (from Ch. 17, par. 3307-3)

4 Sec. 7-3. Personnel, records, files, actions and duties,
5 etc. (a) The Commissioner shall appoint, subject to applicable
6 provisions of the Personnel Code, a supervisor, such examiners,
7 employees, experts and special assistants as may be necessary
8 to carry out effectively this Act. The Commissioner shall
9 require each supervisor, examiner, expert and special
10 assistant employed or appointed by him to give bond, with
11 security to be approved by the Commissioner, not less in any
12 case than \$15,000, conditioned for the faithful discharge of
13 his duties. The premium on such bond shall be paid by the
14 Commissioner from funds appropriated for that purpose. The
15 bond, along with verification of payment of the premium on such
16 bond, shall be filed in the office of the Secretary of State.

17 (b) The Commissioner shall have the following duties and
18 powers:

19 (1) To exercise the rights, powers and duties set forth in
20 this Act or in any other related Act;

21 (2) To establish such regulations as may be reasonable or
22 necessary to accomplish the purposes of this Act;

23 (3) To direct and supervise all the administrative and
24 technical activities of this office and create an Advisory
25 Committee which upon request will make recommendations to him;

1 (4) To make an annual report regarding the work of his
2 office as he may consider desirable to the Governor, or as the
3 Governor may request;

4 (5) To cause a suit to be filed in his name to enforce any
5 law of this State that applies to an association, subsidiary of
6 an association, or holding company operating under this Act and
7 shall include the enforcement of any obligation of the
8 officers, directors or employees of any association;

9 (6) To prescribe a uniform manner in which the books and
10 records of every association are to be maintained; and

11 (7) To establish reasonable and rationally based fee
12 structures for each association and holding company operating
13 under this Act and for their service corporations and
14 subsidiaries, which fees shall include but not be limited to
15 annual fees, application fees, regular and special examination
16 fees, and such other fees as the Commissioner establishes and
17 demonstrates to be directly resultant from his
18 responsibilities under this Act and as are directly
19 attributable to individual entities operating under this Act.
20 For the fiscal year beginning July 1, 2007, the Commissioner
21 must adopt rules to adjust regulatory fee rates to those in
22 effect prior to the escalation in rates published in 38 Ill.
23 Adm. Code 375 unless an audit by the Auditor General of banking
24 regulatory oversight activities requires a different rate to be
25 set. Any adjustments made pursuant to an Auditor General's
26 audit must be set forth in the form of a notice to each

1 affected entity 45 days prior to making those adjustments. The
2 notice must contain an explanation that includes a description
3 of the audit results pertaining to the banking industry and a
4 description of each reason why adjustments to the regulatory
5 fee rates are required.

6 (Source: P.A. 85-313.)

7 (205 ILCS 105/7-19.1) (from Ch. 17, par. 3307-19.1)

8 Sec. 7-19.1. Savings and Residential Finance Regulatory
9 Fund.

10 (a) The aggregate of all fees collected by the Commissioner
11 under this Act shall be paid promptly after receipt of the
12 same, accompanied by a detailed statement thereof, into the
13 State treasury and shall be set apart in the Savings and
14 Residential Finance Regulatory Fund, a special fund hereby
15 created in the State treasury. The amounts deposited into the
16 Fund shall be used for the ordinary and contingent expenses of
17 the Commissioner, in administering the Illinois Savings and
18 Loan Act of 1985 and the Savings Bank Act ~~Office of Banks and~~
19 ~~Real Estate~~. Nothing in this Act shall prevent continuing the
20 practice of paying expenses involving salaries, retirement,
21 social security, and State-paid insurance of State officers by
22 appropriation from the General Revenue Fund.

23 (b) Except as otherwise provided in subsection (b-5),
24 moneys in the Savings and Residential Finance Regulatory Fund
25 may not be appropriated, assigned, or transferred to another

1 State fund. The moneys in the Fund shall be for the sole
2 benefit of the institutions assessed.

3 (b-5) Moneys in the Savings and Residential Finance
4 Regulatory Fund may be transferred to the Professions Indirect
5 Cost Fund, as authorized under Section 2105-300 of the
6 Department of Professional Regulation Law of the Civil
7 Administrative Code of Illinois.

8 (c) All earnings received from investments of funds in the
9 Savings and Residential Finance Regulatory Fund shall be
10 deposited into the Savings and Residential Finance Regulatory
11 Fund and may be used for the same purposes as fees deposited
12 into that Fund.

13 (d) When the amount remaining in the Savings and
14 Residential Finance Regulatory Fund at the end of a fiscal year
15 exceeds 25% of the total actual administrative and operational
16 expenses incurred under the Illinois Savings and Loan Act of
17 1985 and the Savings Bank Act for that fiscal year, the excess
18 must be credited to the appropriate institutions and entities
19 and applied against their regulatory fees for the subsequent
20 fiscal year. The amount credited to the institution or entity
21 must be in the same proportion that the fees paid by the
22 institution or entity for the fiscal year in which the excess
23 is produced bears to the aggregate of the fees collected by the
24 Commissioner under the Illinois Savings and Loan Act of 1985
25 and the Savings Bank Act of 1987 for the same fiscal year. For
26 the purpose of this Section, "fiscal year" means the period

1 beginning July 1 of any year and ending June 30 of the next
2 calendar year.

3 (Source: P.A. 94-91, eff. 7-1-05.)

4 Section 25. The Savings Bank Act is amended by changing
5 Section 9002 as follows:

6 (205 ILCS 205/9002) (from Ch. 17, par. 7309-2)

7 Sec. 9002. Powers of Commissioner. The Commissioner shall
8 have the following powers and duties:

9 (1) To exercise the rights, powers, and duties set forth in
10 this Act or in any related Act.

11 (2) To establish regulations as may be reasonable or
12 necessary to accomplish the purposes of this Act.

13 (3) To make an annual report regarding the work of his
14 office under this Act as he may consider desirable to the
15 Governor, or as the Governor may request.

16 (4) To cause a suit to be filed in his name to enforce any
17 law of this State that applies to savings banks, their service
18 corporations, subsidiaries, affiliates, or holding companies
19 operating under this Act, including the enforcement of any
20 obligation of the officers, directors, agents, or employees of
21 any savings bank.

22 (5) To prescribe a uniform manner in which the books and
23 records of every savings bank are to be maintained.

24 (6) To establish a reasonable fee structure for savings

1 banks and holding companies operating under this Act and for
2 their service corporations and subsidiaries. The fees shall
3 include, but not be limited to, annual fees, application fees,
4 regular and special examination fees, and other fees as the
5 Commissioner establishes and demonstrates to be directly
6 resultant from the Commissioner's responsibilities under this
7 Act and as are directly attributable to individual entities
8 operating under this Act. The aggregate of all fees collected
9 by the Commissioner on and after the effective date of this Act
10 shall be paid promptly after receipt of the same, accompanied
11 by a detailed statement thereof, into the Savings and
12 Residential Finance Regulatory Fund. The amounts deposited
13 into the Fund shall be used for the ordinary and contingent
14 expenses of the Office of Banks and Real Estate. For the fiscal
15 year beginning July 1, 2007, the Commissioner must adopt rules
16 to adjust regulatory fee rates to those in effect prior to the
17 escalation in rates published in 38 Ill. Adm. Code 375 unless
18 an audit by the Auditor General of banking regulatory oversight
19 activities requires a different rate to be set. Any adjustments
20 made pursuant to an Auditor General's audit must be set forth
21 in the form of a notice to each affected entity 45 days prior
22 to making those adjustments. The notice must contain an
23 explanation that includes a description of the audit results
24 pertaining to the banking industry and a description of each
25 reason why adjustments to the regulatory fee rates are
26 required. Nothing in this Act shall prevent continuing the

1 practice of paying expenses involving salaries, retirement,
2 social security, and State-paid insurance of State officers by
3 appropriation from the General Revenue Fund.

4 (Source: P.A. 89-508, eff. 7-3-96.)

5 Section 30. The Illinois Credit Union Act is amended by
6 changing Section 12 as follows:

7 (205 ILCS 305/12) (from Ch. 17, par. 4413)

8 Sec. 12. Regulatory fees.

9 (1) A credit union regulated by the Department pursuant to
10 a regulatory fee schedule shall pay a regulatory fee to the
11 Department based upon the credit union's ~~its~~ total assets as
12 shown by its Year-end Call Report at the following rates or at
13 a lesser rate established in a manner proportionately
14 consistent with the following rates and that would fund the
15 actual administrative and operational expenses of the Credit
16 Union Section pursuant to subsection (5):

TOTAL ASSETS	REGULATORY FEE
\$25,000 or less	\$100
Over \$25,000 and not over	
\$100,000	\$100 plus \$4 per
	\$1,000 of assets in excess of
	\$25,000
Over \$100,000 and not over	
\$200,000	\$400 plus \$3 per

1 per \$1,000 of assets in
 2 excess of \$100,000,000
 3 \$93,750 ~~\$140,625~~ plus \$0.05
 Over \$500,000,000 ~~\$0.075~~
 4 per \$1,000 of assets in
 5 excess of \$500,000,000

6 (2) The Director shall review the regulatory fee schedule
 7 ~~in subsection (1)~~ and the projected earnings on those fees on
 8 an annual basis and adjust the fee schedule on an annual basis.
 9 The fee schedule may be increased by no more than 5% annually
 10 if necessary to defray the actual ~~estimated~~ administrative and
 11 operational expenses of the Credit Union Section ~~Department~~ as
 12 defined in subsection (5). However, the fee schedule shall not
 13 be increased if the amount remaining in the Credit Union Fund
 14 at the end of the calendar year is equal to or greater than 25%
 15 of the actual administrative and operational expenses for the
 16 preceding year. The regulatory fee for the next calendar year
 17 shall be calculated by the Director based on the credit union's
 18 total assets as of December 31 of the preceding year. The
 19 Director shall provide credit unions with written notice of any
 20 adjustment made in the regulatory fee schedule.

21 (3) Not later than March 1 of each calendar year, a credit
 22 union shall pay to the Department a regulatory fee for that
 23 calendar year in accordance with the regulatory fee schedule in
 24 subsection (1), on the basis of assets as of the Year-end Call
 25 Report of the preceding year. The total annual regulatory fee

1 shall not be less than \$100 or more than \$125,000 ~~\$187,500~~,
2 provided that the regulatory fee cap of \$125,000 ~~\$187,500~~ shall
3 be adjusted to incorporate the same percentage increase as the
4 Director makes in the regulatory fee schedule from time to time
5 under subsection (2). No regulatory fee shall be collected from
6 a credit union until it has been in operation for one year.

7 (4) The aggregate of all fees collected by the Department
8 under this Act shall be paid promptly after they are received,
9 accompanied by a detailed statement thereof, into the State
10 Treasury and shall be set apart in the Credit Union Fund, a
11 special fund hereby created in the State treasury. The amount
12 from time to time deposited in the Credit Union Fund and shall
13 be used to offset the actual ~~ordinary~~ administrative and
14 operational expenses of the Credit Union Section ~~Department~~
15 under this Act. All earnings received from investments of funds
16 in the Credit Union Fund shall be deposited into the Credit
17 Union Fund and may be used for the same purposes as fees
18 deposited into that Fund. Moneys in the Credit Union Fund may
19 be transferred to the Professions Indirect Cost Fund, as
20 authorized under Section 2105-300 of the Department of
21 Professional Regulation Law of the Civil Administrative Code of
22 Illinois.

23 (5) The actual administrative and operational expenses of
24 the Credit Union Section for any calendar year shall mean the
25 ordinary and contingent expenses for that year incidental to
26 making the examinations provided for by, and for administering,

1 this Act, including all salaries and other compensation paid
2 for personal services rendered for the State by officers or
3 employees of the State to enforce this Act; all expenditures
4 for telephone and telegraph charges, postage and postal
5 charges, office supplies and services, furniture and
6 equipment, office space and maintenance thereof, travel
7 expenses and other necessary expenses; all to the extent that
8 such expenditures are directly incidental to such examination
9 or administration.

10 (6) When the balance in the Credit Union Fund at the end of
11 a calendar year exceeds 25% ~~aggregate of all fees collected by~~
12 ~~the Department under this Act and all earnings thereon for any~~
13 ~~calendar year exceeds 150%~~ of the total actual administrative
14 and operational expenses under this Act for that year, such
15 excess shall be credited to credit unions and applied against
16 their regulatory fees for the subsequent year. The amount
17 credited to a credit union shall be in the same proportion as
18 the fee paid by such credit union for the calendar year in
19 which the excess is produced bears to the aggregate of the fees
20 collected by the Department under this Act for the same year.

21 (7) Examination fees for the year 2000 statutory
22 examinations paid pursuant to the examination fee schedule in
23 effect at that time shall be credited toward the regulatory fee
24 to be assessed the credit union in calendar year 2001.

25 (8) Nothing in this Act shall prohibit the General Assembly
26 from appropriating funds to the Department from the General

1 Revenue Fund for the purpose of administering this Act.

2 (Source: P.A. 93-32, eff. 7-1-03; 93-652, eff. 1-8-04; 94-91,
3 eff. 7-1-05.)

4 Section 35. The Residential Mortgage License Act of 1987 is
5 amended by changing Section 2-6 and by adding Sections 4-15,
6 4-16, 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, 5-15, 5-16,
7 5-17, and 7-2 as follows:

8 (205 ILCS 635/2-6) (from Ch. 17, par. 2322-6)

9 Sec. 2-6. License issuance and renewal; fee.

10 (a) Beginning July 1, 2003, licenses shall be renewed every
11 year on the anniversary of the date of issuance of the original
12 license. Properly completed renewal application forms and
13 filing fees must be received by the Commissioner 60 days prior
14 to the renewal date.

15 (b) It shall be the responsibility of each licensee to
16 accomplish renewal of its license; failure of the licensee to
17 receive renewal forms absent a request sent by certified mail
18 for such forms will not waive said responsibility. Failure by a
19 licensee to submit a properly completed renewal application
20 form and fees in a timely fashion, absent a written extension
21 from the Commissioner, will result in the assessment of
22 additional fees, as follows:

23 (1) A fee of \$750 will be assessed to the licensee 30
24 days after the proper renewal date and \$1,500 each month

1 thereafter, until the license is either renewed or expires
2 pursuant to Section 2-6, subsections (c) and (d), of this
3 Act.

4 (2) Such fee will be assessed without prior notice to
5 the licensee, but will be assessed only in cases wherein
6 the Commissioner has in his or her possession documentation
7 of the licensee's continuing activity for which the
8 unrenewed license was issued.

9 (c) A license which is not renewed by the date required in
10 this Section shall automatically become inactive. No activity
11 regulated by this Act shall be conducted by the licensee when a
12 license becomes inactive. The Commissioner may require the
13 licensee to provide a plan for the disposition of any
14 residential mortgage loans not closed or funded when the
15 license becomes inactive. The Commissioner may allow a licensee
16 with an inactive license to conduct activities regulated by
17 this Act for the sole purpose of assisting borrowers in the
18 closing or funding of loans for which the loan application was
19 taken from a borrower while the license was active. An inactive
20 license may be reactivated by the Commissioner upon payment of
21 the renewal fee, and payment of a reactivation fee equal to the
22 renewal fee.

23 (d) A license which is not renewed within one year of
24 becoming inactive shall expire.

25 (e) A licensee ceasing an activity or activities regulated
26 by this Act and desiring to no longer be licensed shall so

1 inform the Commissioner in writing and, at the same time,
2 convey the license and all other symbols or indicia of
3 licensure. The licensee shall include a plan for the withdrawal
4 from regulated business, including a timetable for the
5 disposition of the business. Upon receipt of such written
6 notice, the Commissioner shall issue a certified statement
7 canceling the license.

8 (f) Each entity licensed under this Act shall pay, in
9 addition to the license fees imposed under the Residential
10 Mortgage License Act of 1987, an additional annual fee of \$300.
11 The additional annual fee shall be deposited into the Predatory
12 Lending Database Program Fund.

13 (Source: P.A. 93-32, eff. 7-1-03; 93-561, eff. 1-1-04; 93-1018,
14 eff. 1-1-05.)

15 (205 ILCS 635/4-15 new)

16 Sec. 4-15. Enforcement and reporting provisions.

17 (a) The Attorney General may enforce any violation of
18 Section 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, or 5-15 of
19 this Act as an unlawful practice under the Consumer Fraud and
20 Deceptive Business Practices Act.

21 (b) The Department of Financial and Professional
22 Regulation and the Department of Financial Institutions must
23 report to the Attorney General all violations of this
24 amendatory Act of which they become aware.

1 (205 ILCS 635/4-16 new)

2 Sec. 4-16. Private right of action. A borrower injured by a
3 violation of the standards, duties, prohibitions, or
4 requirements of Sections 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12,
5 5-13, 5-14, 5-15, and 5-16 of this Act shall have a private
6 right of action.

7 (a) A licensee is not liable for a violation of this Act
8 if:

9 (1) within 30 days of the loan closing and prior to
10 receiving any notice from the borrower of the violation,
11 the licensee has made appropriate restitution to the
12 borrower and appropriate adjustments are made to the loan;
13 or

14 (2) the violation was not intentional and resulted from
15 a bona fide error in fact, notwithstanding the maintenance
16 of procedures reasonably adopted to avoid such errors, and
17 within 60 days of the discovery of the violation and prior
18 to receiving any notice from the borrower of the violation,
19 the borrower is notified of the violation, appropriate
20 restitution is made to the borrower, and appropriate
21 adjustments are made to the loan.

22 (b) The remedies and rights provided for in this Act are
23 not exclusive, but cumulative, and all other applicable claims
24 are specifically preserved.

25 (205 ILCS 635/5-6 new)

1 Sec. 5-6. Verification of borrower's ability to repay.

2 (a) No licensee may make, provide, or arrange for a
3 residential mortgage loan without verifying the borrower's
4 reasonable ability to pay the principal and interest on the
5 loan, real estate taxes, homeowner's insurance, assessments,
6 and mortgage insurance premiums, if applicable.

7 For residential mortgage loans in which the interest rate
8 may vary, the reasonable ability to pay the principal and
9 interest on the loan shall be determined based on a fully
10 indexed rate, which rate shall be calculated by using the index
11 rate prevailing at the time of origination of the loan plus the
12 margin that will apply when calculating the adjustable rate
13 under the terms of the loan, assuming a fully amortizing
14 repayment schedule based on the term of the loan.

15 For loans that allow for negative amortization, the
16 principal amount of the loan shall be calculated by including
17 the maximum amount the principal balance may increase due to
18 negative amortization under the terms of the loan.

19 (b) For all residential mortgage loans made by a licensee,
20 the borrower's income and financial resources must be verified
21 by tax returns, payroll receipts, bank records, or other
22 similarly reliable documents. Nothing in this Section shall be
23 construed to limit a licensee's ability to rely on criteria
24 other than the borrower's income and financial resources to
25 establish the borrower's reasonable ability to repay a
26 residential mortgage loan; however, such other criteria must be

1 verified through reasonably reliable methods and
2 documentation. A statement by the borrower to the licensee of
3 the borrower's income and resources is not sufficient to
4 establish the existence of the income or resources when
5 verifying the reasonable ability to pay.

6 (205 ILCS 635/5-7 new)

7 Sec. 5-7. Broker agency relationship.

8 (a) A mortgage broker shall be considered to have created
9 an agency relationship with the borrower in all cases and shall
10 comply with the following duties:

11 (1) mortgage brokers shall act in the borrower's best
12 interest and in the utmost good faith toward borrowers, and
13 shall not compromise a borrower's right or interest in
14 favor of another's right or interest, including a right or
15 interest of the mortgage broker. A mortgage broker shall
16 not accept, give, or charge any undisclosed compensation or
17 realize any undisclosed remuneration, either through
18 direct or indirect means, that inures to the benefit of the
19 mortgage broker on an expenditure made for the borrower;

20 (2) mortgage brokers shall carry out all lawful
21 instructions given by borrowers;

22 (3) mortgage brokers shall disclose to borrowers all
23 material facts of which the mortgage broker has knowledge
24 which might reasonably affect the borrower's rights,
25 interests, or ability, or both, to receive the borrower's

1 intended benefit from the residential mortgage loan, but
2 not facts which are reasonably susceptible to the knowledge
3 of the borrower;

4 (4) mortgage brokers shall use reasonable care in
5 performing duties; and

6 (5) mortgage brokers shall account to a borrower for
7 all the borrower's money and property received as agent.

8 (b) Nothing in this Section prohibits a mortgage broker
9 from contracting for or collecting a fee for services rendered
10 and which had been disclosed to the borrower in advance of the
11 provision of those services.

12 (c) Nothing in this Section requires a mortgage broker to
13 obtain a loan containing terms or conditions not available to
14 the mortgage broker in the mortgage broker's usual course of
15 business, or to obtain a loan for the borrower from a mortgage
16 lender with whom the mortgage broker does not have a business
17 relationship.

18 (205 ILCS 635/5-8 new)

19 Sec. 5-8. Prepayment penalties.

20 (a) No licensee may make, provide, or arrange a mortgage
21 loan with a prepayment penalty unless the licensee offers the
22 borrower a loan without a prepayment penalty, the offer is in
23 writing, and the borrower initials the offer to indicate that
24 the borrower has declined the offer. In addition, the licensee
25 must disclose the discount in rate received in consideration

1 for a mortgage loan with the prepayment penalty.

2 (b) If a borrower declines an offer required under
3 subsection (a) of this Section, the licensee may include a
4 prepayment penalty that extends no longer than three years or
5 the first change date or rate adjustment of a variable rate
6 mortgage, whichever comes earlier, provided that, if a
7 prepayment is made during the fixed rate period, the licensee
8 shall receive an amount that is no more than:

9 (1) 3% of the total loan amount if the prepayment is
10 made within the first 12 month period following the date
11 the loan was made;

12 (2) 2% of the total loan amount if the prepayment is
13 made within the second 12-month period following the date
14 the loan was made; or

15 (3) 1% of the total loan amount if the prepayment is
16 made within the third 12- month period following the date
17 the loan was made, if the fixed rate period extends 3
18 years.

19 (c) Notwithstanding any provision in this Section,
20 prepayment penalties are prohibited in connection with the sale
21 or destruction of a dwelling secured by a residential mortgage
22 loan.

23 (d) This Section applies to loans made, refinanced,
24 renewed, extended, or modified on or after the effective date
25 of this amendatory Act of the 95th General Assembly.

1 (205 ILCS 635/5-9 new)

2 Sec. 5-9. Notice of change in loan terms.

3 (a) No licensee may fail to do either of the following:

4 (1) Provide timely notice to the borrower of any
5 material change in the terms of the residential mortgage
6 loan prior to the closing of the loan. For purposes of this
7 Section, a "material change means" any of the following:

8 (A) A change in the type of loan being offered,
9 such as a fixed or variable rate loan or a loan with a
10 balloon payment.

11 (B) A change in the term of the loan, as reflected
12 in the number of monthly payments due before a final
13 payment is scheduled to be made.

14 (C) An increase in the interest rate of more than
15 0.15%, or an equivalent increase in the amount of
16 discount points charged.

17 (D) An increase in the regular monthly payment of
18 principal and interest of more than 5%.

19 (E) A change regarding the requirement or amount of
20 escrow of taxes or insurance.

21 (F) A change regarding the requirement or payment,
22 or both, of private mortgage insurance.

23 (2) Timely inform the borrower if any fees payable by
24 the borrower to the licensee increase by more than 10% or
25 \$100, whichever is greater.

26 (b) The disclosures required by this Section shall be

1 deemed timely if the licensee provides the borrower with the
2 revised information not later than 3 days after learning of the
3 change or 24 hours before the residential mortgage loan is
4 closed, whichever is earlier. If the licensee discloses a
5 material change more than the 3 days after learning of the
6 change but still 24 hours before the residential mortgage loan
7 is closed, it will not be liable for penalties or forfeitures
8 if the licensee cures in time for the borrower to avoid any
9 damage.

10 (c) If an increase in the total amount of the fee to be
11 paid by the borrower to the broker is not disclosed in
12 accordance with this Section, the broker shall refund to the
13 borrower the amount by which the fee was increased. If the fee
14 is financed into the residential mortgage loan, the broker
15 shall also refund to the borrower the interest charged to
16 finance the fee.

17 (205 ILCS 635/5-10 new)

18 Sec. 5-10. Comparable monthly payment quotes. When
19 comparing different loans, the licensee must not state or imply
20 that monthly loan payments, if they include amounts escrowed
21 for payment of property taxes and homeowner's insurance, are
22 comparable with monthly loan payments that do not include these
23 amounts.

24 (205 ILCS 635/5-11 new)

1 Sec. 5-11. Requirement to provide borrower with a copy of
2 all appraisals. Licensees must provide to the borrower a
3 complete copy of any appraisal, including any appraisal
4 generated using the Automated Valuation Model, obtained by the
5 lender for use in underwriting the residential mortgage loan
6 within 3 business days of receipt by the licensee, but in no
7 event less than 24 hours prior to the day of closing. The
8 appraisal may be sent via first class mail, commercial carrier,
9 by facsimile or by e-mail, if the borrower has supplied an
10 email address.

11 (205 ILCS 635/5-12 new)

12 Sec. 5-12. Disclosure of refinancing options. If the
13 subject of a future loan is discussed by a licensee making,
14 providing, or arranging a mortgage loan, the licensee shall
15 disclose the circumstances under which a new loan could be
16 considered. Such disclosure shall clearly state that it is not
17 a contract and that the licensee is not representing or
18 promising that a new loan could or would be made at any time in
19 the future.

20 (205 ILCS 635/5-14 new)

21 Sec. 5-14. Prohibition on equity stripping and loan
22 flipping. No licensee may engage in equity stripping or loan
23 flipping, as those terms are defined in the Illinois Fairness
24 in Lending Act.

1 (205 ILCS 635/5-15 new)

2 Sec. 5-15. Prohibition on financing certain insurance
3 premiums. No licensee may make, provide, or arrange for a
4 residential mortgage loan that finances, directly or
5 indirectly, any credit life, credit disability, or credit
6 unemployment insurance; however, insurance premiums calculated
7 and paid on a monthly basis shall not be considered to be
8 financed by the lender.

9 (205 ILCS 635/5-16 new)

10 Sec. 5-16. Prohibition on encouraging default. A licensee
11 may not recommend or encourage default or the failure to make
12 timely payments on an existing residential mortgage loan or
13 other debt prior to and in connection with the closing or
14 planned closing of a residential mortgage loan that refinances
15 all or any portion of the existing loan or debt.

16 (205 ILCS 635/5-17 new)

17 Sec. 5-17. Severability. If any provision of this Act or
18 its application to any person or circumstance is held invalid,
19 the invalidity of that provision or application does not affect
20 other provisions or applications of this Act that can be given
21 effect without the invalid provision or application.

22 (205 ILCS 635/7-2 new)

1 Sec. 7-2. Continuing education required; course review.
2 Before the end of fiscal year 2009, the Department of Financial
3 and Professional Regulation shall adopt rules as to the
4 required yearly continuing education of loan originators who
5 are required to register under Section 7-1 of this Act. All
6 continuing education courses and the providers of continuing
7 education courses shall be approved by the Secretary pursuant
8 to this Section. Continuing education courses and the providers
9 of continuing education courses shall be subject to a review by
10 a panel appointed by the Secretary. The panel shall consist of
11 no less than 5 persons appointed by the Secretary. Two of the
12 members of the panel shall be representatives of major trade
13 associations representing the mortgage industry. The Secretary
14 shall consider the recommendations of the panel prior to
15 approving or disapproving continuing education courses or the
16 providers of continuing education courses.

17 Section 45. The Residential Real Property Disclosure Act is
18 amended by changing Sections 70, 72, and 74 and adding Sections
19 73, 78, and 80 as follows:

20 (765 ILCS 77/70)

21 Sec. 70. Predatory lending database ~~pilot~~ program.

22 (a) As used in this Article:

23 "Adjustable rate mortgage" or "ARM" means a closed end
24 mortgage transaction that allows adjustments of the loan

1 interest rate during the first 5 years of the loan term.

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

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

6 "Closing agent" means an individual assigned by a title
7 insurance company or a broker or originator to ensure that the
8 execution of documents related to the closing of a real estate
9 sale or the refinancing of a real estate loan and the
10 disbursement of closing funds are in conformity with the
11 instructions of the entity financing the transaction.

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

23 "Counselor" means a counselor employed by a HUD-certified
24 housing counseling agency.

25 "Credit score" means a credit risk score as defined by the
26 Fair Isaac Corporation, or its successor, and reported under

1 such names as "BEACON", "EMPIRICA", and "FAIR ISAAC RISK SCORE"
2 by one or more of the following credit reporting agencies or
3 their successors: Equifax, Inc., Experian Information
4 Solutions, Inc., and TransUnion LLC.

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

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

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

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

15 "Interest only" means a loan that permits one or more
16 payments of interest without any reduction of the principal
17 balance of 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.

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

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

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

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

22 "Stated income" means an income figure provided by the
23 borrower and not verified by tax returns, payroll receipts,
24 bank records, or other similarly reliable documents. A
25 statement made by the borrower to the licensee of the
26 borrower's income and resources is not sufficient to establish

1 the existence of the income or resources.

2 "Title insurance company" means any domestic company
3 organized under the laws of this State for the purpose of
4 conducting the business of guaranteeing or insuring titles to
5 real estate and any title insurance company organized under the
6 laws of another State, the District of Columbia, or a foreign
7 government and authorized to transact the business of
8 guaranteeing or insuring titles to real estate in this State.

9 (a-5) A predatory lending database program is established
10 within Cook County. The program shall be administered in
11 accordance with this Article. The inception date of the program
12 shall be: (1) November 1, 2007 in the first assessment district
13 established under clause (i) of subsection (b) of Section 9-220
14 of the Property Tax Code; (2) May 1, 2008 in the second
15 assessment district established under clause (ii) of
16 subsection (b) of Section 9-220 of the Property Tax Code; (3)
17 November 1, 2008 in the third assessment district established
18 under clause (iii) of subsection (b) of Section 9-220 of the
19 Property Tax Code. Inception date. The Secretary of Financial
20 and Professional Regulation shall declare in writing the date
21 of inception of the pilot program. The inception date shall be
22 no later than September 1, 2006, and shall be at least 30 days
23 after the date the Secretary issues a declaration establishing
24 that date. The Secretary's declaration shall be posted on the
25 Department's website, and the Department shall communicate the
26 declaration to affected licensees of the Department. Until the

1 inception date, none of the duties, obligations,
2 contingencies, or consequences of or from the ~~pilot~~ program
3 shall be imposed. The ~~pilot~~ program shall apply to all mortgage
4 applications that are governed by this Article and that are
5 made or taken on or after the inception of the ~~pilot~~ program.

6 (b) ~~A predatory lending database pilot program is~~
7 ~~established within the pilot program area, effective upon the~~
8 ~~inception date established by the Secretary of the Department.~~
9 ~~The pilot program shall be in effect and operational for a~~
10 ~~total of 4 years and shall be administered in accordance with~~
11 ~~Article 3 of this Act.~~ The database created under this program
12 shall be maintained and administered by the Department. The
13 database shall be designed to allow brokers, originators,
14 ~~credit~~ counselors, title insurance companies, and closing
15 agents to submit information to the database online. The
16 database shall not be designed to allow those entities to
17 retrieve information from the database, except as otherwise
18 provided in this Article. Information submitted by the broker
19 or originator to the Department may be used to populate the
20 online form submitted by a ~~credit~~ counselor, title insurance
21 company, or closing agent.

22 (c) Within 10 days after taking a mortgage application, the
23 broker or originator for any mortgage on residential property
24 within the ~~pilot~~ program area must submit to the predatory
25 lending database all of the information required under Section
26 72 and any other information required by the Department by

1 rule. Within 7 days after receipt of the information, the
2 Department shall compare that information to the housing credit
3 counseling standards in Section 73 ~~developed by the Department~~
4 ~~by rule~~ and issue to the borrower and the broker or originator
5 a determination of whether ~~credit~~ counseling is recommended for
6 the borrower. The borrower may not waive ~~credit~~ counseling. If
7 at any time after submitting the information required under
8 Section 72 the broker or originator (i) changes the terms of
9 the loan or (ii) issues a new commitment to the borrower, then,
10 within 5 days thereafter, the broker or originator shall
11 re-submit all of the information required under Section 72 and,
12 within 4 days after receipt of the information re-submitted by
13 the broker or originator, the Department shall compare that
14 information to the housing credit counseling standards in
15 Section 73 ~~developed by the Department by rule~~ and shall issue
16 to the borrower and the broker or originator a new
17 determination of whether re-counseling ~~credit counseling~~ is
18 recommended for the borrower based on the information
19 re-submitted by the broker or originator.

20 (d) If the Department recommends ~~credit~~ counseling for the
21 borrower under subsection (c), then the Department shall notify
22 the borrower of all participating HUD-certified counseling
23 agencies located within the State and direct the borrower to
24 interview with a counselor associated with one of those
25 agencies. Within 10 days after receipt of the notice of
26 HUD-certified counseling agencies, the borrower shall select

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

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 HUD-certified ~~credit~~ counseling for the borrower

1 in accordance with subsection (c); or

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

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

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

24 (h) All information provided to the predatory lending
25 database under the program is confidential and is not subject
26 to disclosure under the Freedom of Information Act, except as

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

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

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

25 (k) During the existence of the program, the Department
26 shall submit semi-annual reports to the Governor and to the

1 General Assembly by May 1 and November 1 of each year detailing
2 its findings regarding the program. The report shall include at
3 least the following information for each reporting period:

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

5 (2) the number of borrowers receiving counseling;

6 (3) the number of loans closed;

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

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

12 ~~Not later than one year after the Department designates the~~
13 ~~pilot program area and annually thereafter during the existence~~
14 ~~of the pilot program, the Department shall report to the~~
15 ~~Governor and to the General Assembly concerning its~~
16 ~~administration and the effectiveness of the pilot program.~~

17 (Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06.)

18 (765 ILCS 77/72)

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

24 (1) The borrower's name, address, social security
25 number or taxpayer identification number, date of birth,

1 and income and expense information contained in the
2 mortgage application.

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

9 (3) The borrower's credit score at the time of
10 application.

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

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

26 (6) All information indicated on the Good Faith

1 Estimate and Truth in Lending statement disclosures given
2 to the borrower by the broker or originator.

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

9 (8) Information concerning how the broker or
10 originator obtained the client and the name of its referral
11 source, if any.

12 (9) Information concerning the notices provided by the
13 broker or originator to the borrower as required by law and
14 the date those notices were given.

15 (10) Information concerning whether a sale and
16 leaseback is contemplated and the names of the lessor and
17 lessee, seller, and purchaser.

18 (11) Any and all financing by the borrower for the
19 subject property within 12 months prior to the date of
20 application.

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

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

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

26 (15) Whether the loan may result in negative

1 amortization.

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

4 (17) Whether the loan relies on stated income.

5 (18) Whether the loan includes a prepayment penalty,
6 and, if so, the terms of the penalty.

7 (19) Whether the loan is an ARM.

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

9 (765 ILCS 77/73 new)

10 Sec. 73. Standards for counseling. A borrower or borrowers
11 subject to this Article shall be recommended for counseling if,
12 after reviewing the information in the predatory lending
13 database submitted under Section 72, the Department finds the
14 borrower or borrowers are all first-time homebuyers or
15 refinancing a primary residence and the loan is a mortgage that
16 includes one or more of the following:

17 (1) the loan permits interest only payments;

18 (2) the loan may result in negative amortization;

19 (3) the total points and fees payable by the borrower
20 at or before closing will exceed 5%;

21 (4) the loan relies on stated income;

22 (5) the loan includes a prepayment penalty; or

23 (6) the loan is an ARM.

24 (765 ILCS 77/74)

1 Sec. 74. Counselor ~~Credit counselor~~; required information.
2 As part of the predatory lending database ~~pilot~~ program, a
3 ~~credit~~ counselor must submit all of the following information
4 for inclusion in the predatory lending database:

5 (1) The information called for in items (1), (6), (9),
6 (11), (12), (13), (14), (15), (16), (17), (18), and (19) of
7 Section 72.

8 (2) Any information from the borrower that confirms or
9 contradicts the information called for under item (1) of
10 this Section.

11 (3) The name ~~and address~~ of the ~~credit~~ counselor and
12 address of the HUD-certified housing counseling agency that
13 employs the counselor.

14 (4) Information pertaining to the borrower's monthly
15 expenses that assists the ~~credit~~ counselor in determining
16 whether the borrower can afford the loans or loans for
17 which the borrower is applying.

18 (5) A list of the disclosures furnished to the
19 borrower, as seen and reviewed by the ~~credit~~ counselor, and
20 a comparison of that list to all disclosures required by
21 law.

22 (6) Whether the borrower provided tax returns to the
23 broker or originator or to the ~~credit~~ counselor, and, if
24 so, who prepared the tax returns.

25 (7) The date the loan commitment expires and whether a
26 written commitment has been given, together with the

1 proposed date of closing.

2 (8) A statement of the recommendations of the ~~credit~~
3 counselor that indicates the counselor's response to each
4 of the following statements:

5 (A) The loan should not be approved due to indicia
6 of fraud.

7 (B) The loan should be approved; no material
8 problems noted.

9 (C) The borrower cannot afford the loan.

10 (D) The borrower does not understand the
11 transaction.

12 (E) The borrower does not understand the costs
13 associated with the transaction.

14 (F) The borrower's monthly income and expenses
15 have been reviewed and disclosed.

16 (G) The rate of the loan is above market rate.

17 (H) The borrower should seek a competitive bid from
18 another broker or originator.

19 (I) There are discrepancies between the borrower's
20 verbal understanding and the originator's completed
21 form.

22 (J) The borrower is precipitously close to not
23 being able to afford the loan.

24 (K) The borrower understands the true cost of debt
25 consolidation and the need for credit card discipline.

26 (L) The information that the borrower provided the

1 originator has been amended by the originator.

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

3 (765 ILCS 77/78 new)

4 Sec. 78. Exemption. Borrowers applying for reverse
5 mortgage financing of residential real estate including under
6 programs regulated by the Federal Housing Authority (FHA) that
7 require HUD-certified counseling are exempt from the program
8 and may submit a HUD counseling certificate to comply with the
9 program.

10 (765 ILCS 77/80 new)

11 Sec. 80. Predatory Lending Database Program Fund. The
12 Predatory Lending Database Program Fund is created as a special
13 fund in the State treasury. Subject to appropriation, moneys in
14 the Fund shall be used by the Department to make grants to
15 assist with implementation and development for participating
16 HUD-certified housing counseling agencies providing counseling
17 to borrowers under the program.

18 Section 50. The Mortgage Rescue Fraud Act is amended by
19 changing Section 5 as follows:

20 (765 ILCS 940/5)

21 Sec. 5. Definitions. As used in this Act:

22 "Distressed property" means residential real property

1 consisting of one to 6 family dwelling units that is in
2 foreclosure or at risk of loss due to nonpayment of taxes, or
3 whose owner is more than 90 days delinquent on any loan that is
4 secured by the property.

5 "Distressed property consultant" means any person who,
6 directly or indirectly, for compensation from the owner, makes
7 any solicitation, representation, or offer to perform or who,
8 for compensation from the owner, performs any service that the
9 person represents will in any manner do any of the following:

10 (1) stop or postpone the foreclosure sale or the loss
11 of the home due to nonpayment of taxes;

12 (2) obtain any forbearance from any beneficiary or
13 mortgagee, or relief with respect to a tax sale of the
14 property;

15 (3) assist the owner to exercise any right of
16 reinstatement or right of redemption;

17 (4) obtain any extension of the period within which the
18 owner may reinstate the owner's rights with respect to the
19 property;

20 (5) obtain any waiver of an acceleration clause
21 contained in any promissory note or contract secured by a
22 mortgage on a distressed property or contained in the
23 mortgage;

24 (6) assist the owner in foreclosure, loan default, or
25 post-tax sale redemption period to obtain a loan or advance
26 of funds;

1 (7) avoid or ameliorate the impairment of the owner's
2 credit resulting from the recording of a notice of default
3 or the conduct of a foreclosure sale or tax sale; or

4 (8) save the owner's residence from foreclosure or loss
5 of home due to nonpayment of taxes.

6 A "distressed property consultant" does not include any of
7 the following:

8 (1) a person or the person's authorized agent acting
9 under the express authority or written approval of the
10 Department of Housing and Urban Development;

11 (2) a person who holds or is owed an obligation secured
12 by a lien on any distressed property, or a person acting
13 under the express authorization or written approval of such
14 person, when the person performs services in connection
15 with the obligation or lien, if the obligation or lien did
16 not arise as the result of or as part of a proposed
17 distressed property conveyance;

18 (3) banks, savings banks, savings and loan
19 associations, credit unions, and insurance companies
20 organized, chartered, or holding a certificate of
21 authority to do business under the laws of this State or
22 any other state or under the laws of the United States;

23 (4) licensed attorneys engaged in the practice of law;

24 (5) a Department of Housing and Urban Development
25 approved mortgagee and any subsidiary or affiliate of these
26 persons or entities, and any agent or employee of these

1 persons or entities, while engaged in the business of these
2 persons or entities;

3 (6) a 501(c)(3) nonprofit agency or organization,
4 doing business for no less than 5 years, that offers
5 counseling or advice to an owner of a distressed property,
6 if they do not contract for services with for-profit
7 lenders or distressed property purchasers, or any person
8 who structures or plans such a transaction;

9 (7) licensees of the Residential Mortgage License Act
10 of 1987;

11 (8) licensees of the Consumer Installment Loan Act who
12 are authorized to make loans secured by real property; or

13 (9) licensees of the Real Estate License Act of 2000
14 when providing licensed activities.

15 "Distressed property purchaser" means any person who
16 acquires any interest in fee in a distressed property or a
17 beneficial interest in a trust holding title to a distressed
18 property while allowing the owner to possess, occupy, or retain
19 any present or future interest in fee in the property, or any
20 person who participates in a joint venture or joint enterprise
21 involving a distressed property conveyance. "Distressed
22 property purchaser" does not mean any person who acquires
23 distressed property at a short sale or any person acting in
24 participation with any person who acquires distressed property
25 at a short sale, if that person does not promise to convey an
26 interest in fee back to the owner or does not give the owner an

1 option to purchase the property at a later date.

2 "Distressed property conveyance" means a transaction in
3 which an owner of a distressed property transfers an interest
4 in fee in the distressed property or in which the holder of all
5 or some part of the beneficial interest in a trust holding
6 title to a distressed property transfers that interest; the
7 acquirer of the property allows the owner of the distressed
8 property to occupy the property; and the acquirer of the
9 property or a person acting in participation with the acquirer
10 of the property conveys or promises to convey an interest in
11 fee back to the owner or gives the owner an option to purchase
12 the property at a later date.

13 "Person" means any individual, partnership, corporation,
14 limited liability company, association, or other group or
15 entity, however organized.

16 "Service" means, without limitation, any of the following:

- 17 (1) debt, budget, or financial counseling of any type;
18 (2) receiving money for the purpose of distributing it
19 to creditors in payment or partial payment of any
20 obligation secured by a lien on a distressed property;
21 (3) contacting creditors on behalf of an owner of a
22 residence that is distressed property;
23 (4) arranging or attempting to arrange for an extension
24 of the period within which the owner of a distressed
25 property may cure the owner's default and reinstate his or
26 her obligation;

1 (5) arranging or attempting to arrange for any delay or
2 postponement of the time of sale of the distressed
3 property;

4 (6) advising the filing of any document or assisting in
5 any manner in the preparation of any document for filing
6 with any court; or

7 (7) giving any advice, explanation, or instruction to
8 an owner of a distressed property that in any manner
9 relates to the cure of a default or forfeiture or to the
10 postponement or avoidance of sale of the distressed
11 property.

12 (Source: P.A. 94-822, eff. 1-1-07.)

13 Section 55. The Interest Act is amended by changing Section
14 4.1a as follows:

15 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

16 Sec. 4.1a. Charges for and cost of the following items paid
17 or incurred by any lender in connection with any loan shall not
18 be deemed to be charges for or in connection with any loan of
19 money referred to in Section 6 of this Act, or charges by the
20 lender as a consideration for the loan referred to in this
21 Section:

22 (a) hazard, mortgage or life insurance premiums,
23 survey, credit report, title insurance, abstract and
24 attorneys' fees, recording charges, escrow and appraisal

1 fees, and similar charges.

2 (b) in the case of construction loans, in addition to
3 the matters referred to in clause (a) above, the actual
4 cost incurred by the lender for services for making
5 physical inspections, processing payouts, examining and
6 reviewing contractors' and subcontractors' sworn
7 statements and waivers of lien and the like.

8 (c) in the case of any loan made pursuant to the
9 provisions of the Emergency Home Purchase Assistance Act of
10 1974 (Section 313 of the National Housing Act, Chapter B of
11 Title 12 of the United States Code), in addition to the
12 matters referred to in paragraphs (a) and (b) of this
13 Section all charges required or allowed by the Government
14 National Mortgage Association, whether designated as
15 processing fees, commitment fees, loss reserve and
16 marketing fees, discounts, origination fees or otherwise
17 designated.

18 (d) in the case of a single payment loan, made for a
19 period of 6 months or less, a regulated financial
20 institution or licensed lender may contract for and receive
21 a maximum charge of \$15 in lieu of interest. Such charge
22 may be collected when the loan is made, but only one such
23 charge may be contracted for, received, or collected for
24 any such loan, including any extension or renewal thereof.

25 (e) if the agreement governing the loan so provides, a
26 charge not to exceed the rate permitted under Section 3-806

1 of the Uniform Commercial Code-Commercial Paper for any
2 check, draft or order for the payment of money submitted in
3 accordance with said agreement which is unpaid or not
4 honored by a bank or other depository institution.

5 (f) if the agreement governing the loan so provides,
6 for each loan installment in default for a period of not
7 less than 10 days, a charge in an amount not in excess of
8 5% of such loan installment. Only one delinquency charge
9 may be collected on any such loan installment regardless of
10 the period during which it remains in default. Payments
11 timely received by the lender under a written extension or
12 deferral agreement shall not be subject to any delinquency
13 charge.

14 Notwithstanding items (k) and (l) of subsection (1) of
15 Section 4 of this Act, the lender, in the case of any nonexempt
16 residential mortgage loan, as defined in Section 1-4 of the
17 Residential Mortgage License Act of 1987, shall have the right
18 to include a prepayment penalty that extends no longer than the
19 fixed rate period of a variable rate mortgage provided that, if
20 a prepayment is made during the fixed rate period and not in
21 connection with the sale or destruction of the dwelling
22 securing the loan, the lender shall receive an amount that is
23 no more than:

24 (1) 3% of the total loan amount if the prepayment is
25 made within the first 12 month period following the date
26 the loan was made;

1 (2) 2% of the total loan amount if the prepayment is
2 made within the second 12-month period following the date
3 the loan was made; or

4 (3) 1% of the total loan amount if the prepayment is
5 made within the third 12- month period following the date
6 the loan was made, if the fixed rate period extends 3
7 years.

8 This Section applies to loans made, refinanced, renewed,
9 extended, or modified on or after the effective date of this
10 amendatory Act of the 95th General Assembly.

11 Where there is a charge in addition to the stated rate of
12 interest payable directly or indirectly by the borrower and
13 imposed directly or indirectly by the lender as a consideration
14 for the loan, or for or in connection with the loan of money,
15 whether paid or payable by the borrower, the seller, or any
16 other person on behalf of the borrower to the lender or to a
17 third party, or for or in connection with the loan of money,
18 other than as hereinabove in this Section provided, whether
19 denominated "points," "service charge," "discount,"
20 "commission," or otherwise, and without regard to declining
21 balances of principal which would result from any required or
22 optional amortization of the principal of the loan, the rate of
23 interest shall be calculated in the following manner:

24 The percentage of the principal amount of the loan
25 represented by all of such charges shall first be computed,
26 which in the case of a loan with an interest rate in excess of

1 8% per annum secured by residential real estate, other than
2 loans described in paragraphs (e) and (f) of Section 4, shall
3 not exceed 3% of such principal amount. Said percentage shall
4 then be divided by the number of years and fractions thereof of
5 the period of the loan according to its stated maturity. The
6 percentage thus obtained shall then be added to the percentage
7 of the stated annual rate of interest.

8 ~~The borrower in the case of nonexempt loan shall have the~~
9 ~~right to prepay the loan in whole or in part at any time, but,~~
10 ~~except as may otherwise be provided by Section 4, the lender~~
11 ~~may require payment of not more than 6 months' advance interest~~
12 ~~on that part of the aggregate amount of all prepayments on a~~
13 ~~loan in one year, which exceeds 20% of the original principal~~
14 ~~amount of the loan.~~

15 (Source: P.A. 87-496.)

16 (205 ILCS 635/2-2 rep.)

17 Section 60. The Residential Mortgage License Act of 1987 is
18 amended by repealing Section 2-2.

19 Section 970. Severability. If any provision of this
20 amendatory Act of the 95th General Assembly or its application
21 to any person or circumstance is held invalid, the invalidity
22 of that provision or application does not affect other
23 provisions or applications of this amendatory Act that can be
24 given effect without the invalid provision or application.

1 Section 999. Effective date. This Act takes effect upon
2 becoming law.".