



# Adopted in House Comm. on May 20, 2008

09500SB1879ham001

LRB095 15221 MJR 51055 a

1 AMENDMENT TO SENATE BILL 1879

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1879 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 changing Section 15-1510 and by adding Sections 15-1504.5 and  
6 15-1505.5 as follows:

7 (735 ILCS 5/15-1504.5 new)

8 Sec. 15-1504.5. Homeowner notice to be attached to summons.  
9 For all residential foreclosure actions filed, the plaintiff  
10 must attach a Homeowner Notice to the summons. The Homeowner  
11 Notice must be in at least 12 point type and in English and  
12 Spanish. The Spanish translation shall be prepared by the  
13 Attorney General and posted on the Attorney General's website.  
14 A notice that includes the Attorney General's Spanish  
15 translation in substantially similar form shall be deemed to  
16 comply with the Spanish notice requirement in this Section. The

1 Notice must be in substantially the following form:

2 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

3 **1. POSSESSION:** The lawful occupants of a home have the  
4 right to live in the home until a judge enters an order for  
5 possession.

6 **2. OWNERSHIP:** You continue to own your home until the  
7 court rules otherwise.

8 **3. REINSTATEMENT:** As the homeowner you have the right  
9 to bring the mortgage current within 90 days after you  
10 receive the summons.

11 **4. REDEMPTION:** As the homeowner you have the right to  
12 sell your home, refinance, or pay off the loan during the  
13 redemption period.

14 **5. SURPLUS:** As the homeowner you have the right to  
15 petition the court for any excess money that results from a  
16 foreclosure sale of your home.

17 **6. WORKOUT OPTIONS:** The mortgage company does not want  
18 to foreclose on your home if there is any way to avoid it.  
19 Call your mortgage company [insert name of the homeowner's  
20 current mortgage servicer in bold and 14 point type] or its  
21 attorneys to find out the alternatives to foreclosure.

22 **7. PAYOFF AMOUNT:** You have the right to obtain a  
23 written statement of the amount necessary to pay off your  
24 loan. Your mortgage company (identified above) must

1 provide you this statement within 10 business days of  
2 receiving your request, provided that your request is in  
3 writing and includes your name, the address of the  
4 property, and the mortgage account or loan number. Your  
5 first payoff statement will be free.

6 **8. GET ADVICE:** This information is not exhaustive and  
7 does not replace the advice of a professional. You may have  
8 other options. Get professional advice from a lawyer or  
9 certified housing counselor about your rights and options  
10 to avoid foreclosure.

11 **9. LAWYER:** If you do not have a lawyer, you may be able  
12 to find assistance by contacting the Illinois State Bar  
13 Association or a legal aid organization that provides free  
14 legal assistance.

15 **10. PROCEED WITH CAUTION:** You may be contacted by  
16 people offering to help you avoid foreclosure. Before  
17 entering into any transaction with persons offering to help  
18 you, please contact a lawyer, government official, or  
19 housing counselor for advice.

20 (735 ILCS 5/15-1505.5 new)

21 Sec. 15-1505.5. Payoff demands.

22 (a) In a foreclosure action subject to this Article, on the  
23 written demand of a mortgagor or the mortgagor's authorized  
24 agent (which shall include the mortgagor's name, the mortgaged  
25 property's address, and the mortgage account or loan number), a

1 mortgagee or the mortgagee's authorized agent shall prepare and  
2 deliver an accurate statement of the total outstanding balance  
3 of the mortgagor's obligation that would be required to satisfy  
4 the obligation in full as of the date of preparation ("payoff  
5 demand statement") to the mortgagor or the mortgagor's  
6 authorized agent who has requested it within 10 business days  
7 after receipt of the demand. For purposes of this Section, a  
8 payoff demand statement is accurate if prepared in good faith  
9 based on the records of the mortgagee or the mortgagee's agent.

10 (b) The payoff demand statement shall include the  
11 following:

12 (1) The information necessary to calculate the payoff  
13 amount on a per diem basis for the lesser of a period of 30  
14 days or until the date scheduled for judicial sale;

15 (2) Estimated charges (stated as such) that the  
16 mortgagee reasonably believes may be incurred within 30  
17 days from the date of preparation of the payoff demand  
18 statement; and

19 (3) The loan number for the obligation to be paid, the  
20 address of the mortgagee, the telephone number of the  
21 mortgagee and, if a banking organization or corporation,  
22 the name of the department, if applicable, and its  
23 telephone number and facsimile phone number.

24 (c) A mortgagee or mortgagee's agent who willfully fails to  
25 prepare and deliver an accurate payoff demand statement within  
26 10 business days after receipt of a written demand is liable to

1 the mortgagor for actual damages sustained for failure to  
2 deliver the statement. The mortgagee or mortgagee's agent is  
3 liable to the mortgagor for \$500 if no actual damages are  
4 sustained. For purposes of this subsection, "willfully" means a  
5 failure to comply with this Section without just cause or  
6 excuse or mitigating circumstances.

7 (d) The mortgagor must petition the judge within the  
8 foreclosure action for the award of any damages pursuant to  
9 this Section, which award shall be determined by the judge.

10 (e) Unless the payoff demand statement provides otherwise,  
11 the statement is deemed to apply only to the unpaid balance of  
12 the single obligation that is named in the demand and that is  
13 secured by the mortgage or deed of trust identified in the  
14 payoff demand statement.

15 (f) The demand for and preparation and delivery of a payoff  
16 demand statement pursuant to this Section does not change any  
17 date or time period that is prescribed in the note or that is  
18 otherwise provided by law. Failure to comply with any provision  
19 of this Section does not change any of the rights of the  
20 parties as set forth in the note, mortgage, or applicable law.

21 (g) The mortgagee or mortgagee's agent shall furnish the  
22 first payoff demand statement at no cost to the mortgagor.

23 (h) For the purposes of this Section, unless the context  
24 otherwise requires, "deliver" or "delivery" means depositing  
25 or causing to be deposited into the United States mail an  
26 envelope with postage prepaid that contains a copy of the

1 documents to be delivered and that is addressed to the person  
2 whose name and address are provided in the payoff demand.  
3 "Delivery" may also include transmitting those documents by  
4 telephone facsimile to the person or electronically if the  
5 payoff demand specifically requests and authorizes that the  
6 documents be transmitted in electronic form.

7 (i) The mortgagee or mortgagee's agent is not required to  
8 comply with the payoff demand statement procedure set forth in  
9 this Section when responding to a notice of intent to redeem  
10 issued under Section 15-1603(e).

11 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

12 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~  
13 ~~Agreement.~~

14 (a) The court may award reasonable attorney's fees and  
15 costs to the defendant who prevails in a motion, an affirmative  
16 defense or counterclaim, or in the foreclosure action. A  
17 defendant who exercises the defendant's right of reinstatement  
18 or redemption shall not be considered a prevailing party for  
19 purposes of this Section. Nothing in this subsection shall  
20 abrogate contractual terms in the mortgage or other written  
21 agreement between the mortgagor and the mortgagee or rights as  
22 otherwise provided in this Article which allow the mortgagee to  
23 recover attorney's fees and costs under subsection (b).

24 (b) Attorneys' fees and other costs incurred in connection  
25 with the preparation, filing or prosecution of the foreclosure

1 suit shall be recoverable in a foreclosure only to the extent  
2 specifically set forth in the mortgage or other written  
3 agreement between the mortgagor and the mortgagee or as  
4 otherwise provided in this Article.

5 (Source: P.A. 86-974.)

6 Section 10. The Illinois Human Rights Act is amended by  
7 changing Section 10-104 as follows:

8 (775 ILCS 5/10-104)

9 Sec. 10-104. Circuit Court Actions by the Illinois Attorney  
10 General.

11 (A) Standing, venue, limitations on actions, preliminary  
12 investigations, notice, and Assurance of Voluntary Compliance.

13 (1) Whenever the Illinois Attorney General has  
14 reasonable cause to believe that any person or group of  
15 persons is engaged in a pattern and practice of  
16 discrimination prohibited by this Act, the Illinois  
17 Attorney General may commence a civil action in the name of  
18 the People of the State, as *parens patriae* on behalf of  
19 persons within the State to enforce the provisions of this  
20 Act in any appropriate circuit court. Venue for this civil  
21 action shall be determined under Section 8-111(B)(6). Such  
22 actions shall be commenced no later than 2 years after the  
23 occurrence or the termination of an alleged civil rights  
24 violation or the breach of a conciliation agreement or

1 Assurance of Voluntary Compliance entered into under this  
2 Act, whichever occurs last, to obtain relief with respect  
3 to the alleged civil rights violation or breach.

4 (2) Prior to initiating a civil action, the Attorney  
5 General shall conduct a preliminary investigation to  
6 determine whether there is reasonable cause to believe that  
7 any person or group of persons is engaged in a pattern and  
8 practice of discrimination declared unlawful by this Act  
9 and whether the dispute can be resolved without litigation.  
10 In conducting this investigation, the Attorney General  
11 may:

12 (a) require the individual or entity to file a  
13 statement or report in writing under oath or otherwise,  
14 as to all information the Attorney General may consider  
15 necessary;

16 (b) examine under oath any person alleged to have  
17 participated in or with knowledge of the alleged  
18 pattern and practice violation; or

19 (c) issue subpoenas or conduct hearings in aid of  
20 any investigation.

21 (3) Service by the Attorney General of any notice  
22 requiring a person to file a statement or report, or of a  
23 subpoena upon any person, shall be made:

24 (a) personally by delivery of a duly executed copy  
25 thereof to the person to be served or, if a person is  
26 not a natural person, in the manner provided in the



1 Code of Civil Procedure when a complaint is filed; or

2 (b) by mailing by certified mail a duly executed  
3 copy thereof to the person to be served at his or her  
4 last known abode or principal place of business within  
5 this State.

6 (4) In lieu of a civil action, the individual or entity  
7 alleged to have engaged in a pattern or practice of  
8 discrimination deemed violative of this Act may enter into  
9 an Assurance of Voluntary Compliance with respect to the  
10 alleged pattern or practice violation.

11 (5) The Illinois Attorney General may commence a civil  
12 action under this subsection (A) whether or not a charge  
13 has been filed under Sections 7A-102 or 7B-102 and without  
14 regard to the status of any charge, however, if the  
15 Department or local agency has obtained a conciliation or  
16 settlement agreement or if the parties have entered into an  
17 Assurance of Voluntary Compliance no action may be filed  
18 under this subsection (A) with respect to the alleged civil  
19 rights violation practice that forms the basis for the  
20 complaint except for the purpose of enforcing the terms of  
21 the conciliation or settlement agreement or the terms of  
22 the Assurance of Voluntary Compliance.

23 (6) If any person fails or refuses to file any  
24 statement or report, or obey any subpoena, issued pursuant  
25 to subdivision (A) (2) of this Section, the Attorney General  
26 will be deemed to have met the requirement of conducting a

1 preliminary investigation and may proceed to initiate a  
2 civil action pursuant to subdivision (A)(1) of this  
3 Section.

4 (B) Relief which may be granted.

5 (1) In any civil action brought pursuant to subsection  
6 (A) of this Section, the Attorney General may obtain as a  
7 remedy, equitable relief (including any permanent or  
8 preliminary injunction, temporary restraining order, or  
9 other order, including an order enjoining the defendant  
10 from engaging in such civil rights violation or ordering  
11 any action as may be appropriate). In addition, the  
12 Attorney General may request and the Court may impose a  
13 civil penalty to vindicate the public interest:

14 (a) for violations of Article 3 and Article 4 in an  
15 amount not exceeding \$25,000 per violation, and in the  
16 case of violations of all other Articles in an amount  
17 not exceeding \$10,000 if the defendant has not been  
18 adjudged to have committed any prior civil rights  
19 violations under the provision of the Act that is the  
20 basis of the complaint;

21 (b) for violations of Article 3 and Article 4 in an  
22 amount not exceeding \$50,000 per violation, and in the  
23 case of violations of all other Articles in an amount  
24 not exceeding \$25,000 if the defendant has been  
25 adjudged to have committed one other civil rights  
26 violation under the provision of the Act within 5 years

1 of the occurrence of the civil rights violation that is  
2 the basis of the complaint; and

3 (c) for violations of Article 3 and Article 4 in an  
4 amount not exceeding \$75,000 per violation, and in the  
5 case of violations of all other Articles in an amount  
6 not exceeding \$50,000 if the defendant has been  
7 adjudged to have committed 2 or more civil rights  
8 violations under the provision of the Act within 5  
9 years of the occurrence of the civil rights violation  
10 that is the basis of the complaint.

11 (2) A civil penalty imposed under subdivision (B) (1) of  
12 this Section shall be deposited into the Attorney General  
13 Court Ordered and Voluntary Compliance Payment Projects  
14 Fund, which is a special fund in the State Treasury. Moneys  
15 in the Fund shall be used, subject to appropriation, for  
16 the performance of any function pertaining to the exercise  
17 of the duties of the Attorney General including but not  
18 limited to enforcement of any law of this State and  
19 conducting public education programs; however, any moneys  
20 in the Fund that are required by the court or by an  
21 agreement to be used for a particular purpose shall be used  
22 for that purpose.

23 (3) Aggrieved parties seeking actual damages must  
24 follow the procedure set out in Sections 7A-102 or 7B-102  
25 for filing a charge.

26 (4) Notwithstanding any other rulemaking authority

1       that may exist, neither the Governor nor any agency or  
2       agency head under the jurisdiction of the Governor has any  
3       authority to make or promulgate rules to implement or  
4       enforce the provisions of this amendatory Act of the 95th  
5       General Assembly. If, however, the Governor believes that  
6       rules are necessary to implement or enforce the provisions  
7       of this amendatory Act of the 95th General Assembly, the  
8       Governor may suggest rules to the General Assembly by  
9       filing them with the Clerk of the House and the Secretary  
10       of the Senate and by requesting that the General Assembly  
11       authorize such rulemaking by law, enact those suggested  
12       rules into law, or take any other appropriate action in the  
13       General Assembly's discretion. Nothing contained in this  
14       amendatory Act of the 95th General Assembly shall be  
15       interpreted to grant rulemaking authority under any other  
16       Illinois statute where such authority is not otherwise  
17       explicitly given. For the purposes of this amendatory Act  
18       of the 95th General Assembly, "rules" is given the meaning  
19       contained in Section 1-70 of the Illinois Administrative  
20       Procedure Act, and "agency" and "agency head" are given the  
21       meanings contained in Sections 1-20 and 1-25 of the  
22       Illinois Administrative Procedure Act to the extent that  
23       such definitions apply to agencies or agency heads under  
24       the jurisdiction of the Governor.

25       (Source: P.A. 93-1017, eff. 8-24-04.)

1           Section 15. The Illinois Fairness in Lending Act is amended  
2 by changing Section 3 as follows:

3           (815 ILCS 120/3) (from Ch. 17, par. 853)

4           Sec. 3. No financial institution, in connection with or in  
5 contemplation of any loan to any person, may:

6           (a) Deny or vary the terms of a loan on the basis that a  
7 specific parcel of real estate offered as security is located  
8 in a specific geographical area.

9           (b) Deny or vary the terms of a loan without having  
10 considered all of the regular and dependable income of each  
11 person who would be liable for repayment of the loan.

12           (c) Deny or vary the terms of a loan on the sole basis of  
13 the childbearing capacity of an applicant or an applicant's  
14 spouse.

15           (c-5) Deny or vary the terms of a loan on the basis of the  
16 borrower's race, gender, disability, or national origin.

17           (d) Utilize lending standards that have no economic basis  
18 and which are discriminatory in effect.

19           (e) Engage in equity stripping or loan flipping.

20           (f) Notwithstanding any other rulemaking authority that  
21 may exist, neither the Governor nor any agency or agency head  
22 under the jurisdiction of the Governor has any authority to  
23 make or promulgate rules to implement or enforce the provisions  
24 of this amendatory Act of the 95th General Assembly. If,  
25 however, the Governor believes that rules are necessary to

1 implement or enforce the provisions of this amendatory Act of  
2 the 95th General Assembly, the Governor may suggest rules to  
3 the General Assembly by filing them with the Clerk of the House  
4 and the Secretary of the Senate and by requesting that the  
5 General Assembly authorize such rulemaking by law, enact those  
6 suggested rules into law, or take any other appropriate action  
7 in the General Assembly's discretion. Nothing contained in this  
8 amendatory Act of the 95th General Assembly shall be  
9 interpreted to grant rulemaking authority under any other  
10 Illinois statute where such authority is not otherwise  
11 explicitly given. For the purposes of this amendatory Act of  
12 the 95th General Assembly, "rules" is given the meaning  
13 contained in Section 1-70 of the Illinois Administrative  
14 Procedure Act, and "agency" and "agency head" are given the  
15 meanings contained in Sections 1-20 and 1-25 of the Illinois  
16 Administrative Procedure Act to the extent that such  
17 definitions apply to agencies or agency heads under the  
18 jurisdiction of the Governor.

19 (Source: P.A. 93-561, eff. 1-1-04.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law, except Section 5 takes effect January 1, 2009."