

HB0705



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0705

Introduced 2/6/2009, by Rep. Keith Farnham - Emily McAsey

SYNOPSIS AS INTRODUCED:

765 ILCS 77/70

Amends the Residential Real Property Disclosure Act. Provides that a predatory lending database program shall be established within Cook, Kane, and Will counties (instead of Cook County). Provides that the inception date of the program as it applies to Kane and Will counties shall be July 1, 2010. Effective immediately.

LRB096 08469 AJO 18588 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Residential Real Property Disclosure Act is
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database program.

8 (a) As used in this Article:

9 "Adjustable rate mortgage" or "ARM" means a closed-end
10 mortgage transaction that allows adjustments of the loan
11 interest rate during the first 3 years of the loan term.

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

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

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

22 "Counseling" means in-person counseling provided by a
23 counselor employed by a HUD-certified counseling agency to all

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

10 "Counselor" means a counselor employed by a HUD-certified
11 housing counseling agency.

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

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

25 "Exempt person" means that term as it is defined in
26 subsections (d)(1) and (d)(1.5) of Section 1-4 of the

1 Residential Mortgage License Act of 1987.

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

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

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

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

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

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

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

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

26 "Points and fees" has the meaning ascribed to that term in

1 Section 10 of the High Risk Home Loan Act.

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

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

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

15 (a-5) A predatory lending database program shall be
16 established within Cook, Kane, and Will counties ~~County~~. The
17 program shall be administered in accordance with this Article.
18 The inception date of the program shall be July 1, 2008. The
19 inception date of the program as it applies to Kane and Will
20 counties shall be July 1, 2010. Until the inception date, none
21 of the duties, obligations, contingencies, or consequences of
22 or from the program shall be imposed. The program shall apply
23 to all mortgage applications that are governed by this Article
24 and that are made or taken on or after the inception of the
25 program.

26 (b) The database created under this program shall be

1 maintained and administered by the Department. The database
2 shall be designed to allow brokers, originators, counselors,
3 title insurance companies, and closing agents to submit
4 information to the database online. The database shall not be
5 designed to allow those entities to retrieve information from
6 the database, except as otherwise provided in this Article.
7 Information submitted by the broker or originator to the
8 Department may be used to populate the online form submitted by
9 a counselor, title insurance company, or closing agent.

10 (c) Within 10 days after taking a mortgage application, the
11 broker or originator for any mortgage on residential property
12 within the program area must submit to the predatory lending
13 database all of the information required under Section 72 and
14 any other information required by the Department by rule.
15 Within 7 days after receipt of the information, the Department
16 shall compare that information to the housing counseling
17 standards in Section 73 and issue to the borrower and the
18 broker or originator a determination of whether counseling is
19 recommended for the borrower. The borrower may not waive
20 counseling. If at any time after submitting the information
21 required under Section 72 the broker or originator (i) changes
22 the terms of the loan or (ii) issues a new commitment to the
23 borrower, then, within 5 days thereafter, the broker or
24 originator shall re-submit all of the information required
25 under Section 72 and, within 4 days after receipt of the
26 information re-submitted by the broker or originator, the

1 Department shall compare that information to the housing
2 counseling standards in Section 73 and shall issue to the
3 borrower and the broker or originator a new determination of
4 whether re-counseling is recommended for the borrower based on
5 the information re-submitted by the broker or originator. The
6 Department shall require re-counseling if the loan terms have
7 been modified to meet another counseling standard in Section
8 73, or if the broker has increased the interest rate by more
9 than 200 basis points.

10 (d) If the Department recommends counseling for the
11 borrower under subsection (c), then the Department shall notify
12 the borrower of all participating HUD-certified counseling
13 agencies located within the State and direct the borrower to
14 interview with a counselor associated with one of those
15 agencies. Within 10 days after receipt of the notice of
16 HUD-certified counseling agencies, the borrower shall select
17 one of those agencies and shall engage in an interview with a
18 counselor associated with that agency. Within 7 days after
19 interviewing the borrower, the counselor must submit to the
20 predatory lending database all of the information required
21 under Section 74 and any other information required by the
22 Department by rule. Reasonable and customary costs not to
23 exceed \$300 associated with counseling provided under the
24 program shall be paid by the broker or originator. The
25 Department shall annually calculate to the nearest dollar an
26 adjusted rate for inflation. A counselor shall not recommend or

1 suggest that a borrower contact any specific mortgage
2 origination company, financial institution, or entity that
3 deals in mortgage finance to obtain a loan, another quote, or
4 for any other reason related to the specific mortgage
5 transaction; however, a counselor may suggest that the borrower
6 seek an opinion or a quote from another mortgage origination
7 company, financial institution, or entity that deals in
8 mortgage finance. A counselor or housing counseling agency that
9 in good faith provides counseling shall not be liable to a
10 broker or originator or borrower for civil damages, except for
11 willful or wanton misconduct on the part of the counselor in
12 providing the counseling.

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

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

19 (2) the Department issues a determination that
20 HUD-certified counseling is recommended for the borrower
21 and the counselor submits all required information to the
22 database in accordance with subsection (d).

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

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

14 (h) All information provided to the predatory lending
15 database under the program is confidential and is not subject
16 to disclosure under the Freedom of Information Act, except as
17 otherwise provided in this Article. Information or documents
18 obtained by employees of the Department in the course of
19 maintaining and administering the predatory lending database
20 are deemed confidential. Employees are prohibited from making
21 disclosure of such confidential information or documents. Any
22 request for production of information from the predatory
23 lending database, whether by subpoena, notice, or any other
24 source, shall be referred to the Department of Financial and
25 Professional Regulation. Any borrower may authorize in writing
26 the release of database information. The Department may use the

1 information in the database without the consent of the
2 borrower: (i) for the purposes of administering and enforcing
3 the program; (ii) to provide relevant information to a
4 counselor providing counseling to a borrower under the program;
5 or (iii) to the appropriate law enforcement agency or the
6 applicable administrative agency if the database information
7 demonstrates criminal, fraudulent, or otherwise illegal
8 activity.

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

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

15 (k) During the existence of the program, the Department
16 shall submit semi-annual reports to the Governor and to the
17 General Assembly by May 1 and November 1 of each year detailing
18 its findings regarding the program. The report shall include at
19 least the following information for each reporting period:

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

21 (2) the number of borrowers receiving counseling;

22 (3) the number of loans closed;

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

25 (5) the number of loans requiring counseling where the
26 mortgage originator changed the loan terms subsequent to

1 counseling.

2 (Source: P.A. 94-280, eff. 1-1-06; 94-1029, eff. 7-14-06;
3 95-691, eff. 6-1-08; revised 11-6-08.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.