



Sen. Sara Feigenholtz

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LRB103 37488 JRC 70356 a

1 AMENDMENT TO SENATE BILL 3551

2 AMENDMENT NO. _____. Amend Senate Bill 3551 on page 20,
3 by replacing line 12 with the following:

4 "is amended by changing Sections 70, 72, and 73 as follows:

5 (765 ILCS 77/70)

6 Sec. 70. Predatory lending database program.

7 (a) As used in this Article:

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

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

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

15 "Closing agent" means an individual assigned by a title
16 insurance company or a broker or originator to ensure that the
17 execution of documents related to the closing of a real estate

1 sale or the refinancing of a real estate loan and the
2 disbursement of closing funds are in conformity with the
3 instructions of the entity financing the transaction.

4 "Counseling" means in-person counseling provided by a
5 counselor employed by a HUD-approved counseling agency to all
6 borrowers, or documented telephone counseling where a hardship
7 would be imposed on one or more borrowers. A hardship shall
8 exist in instances in which the borrower is confined to his or
9 her home due to medical conditions, as verified in writing by a
10 physician, or the borrower resides 50 miles or more from the
11 nearest participating HUD-approved housing counseling agency.

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

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

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

1 "Exempt person or entity" means that term as it is defined
2 in subsection ~~subsections (d) (1), (d) (1.5), and (d) (1.8)~~ of
3 Section 1-4 of the Residential Mortgage License Act of 1987.

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

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

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

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

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

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

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

26 "Originator" means a "mortgage loan originator" as defined

1 in subsection (jj) of Section 1-4 of the Residential Mortgage
2 License Act of 1987, except an exempt person.

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

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

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

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

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

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

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

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

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

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

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

26 (e) The broker or originator and the borrower may not take

1 any legally binding action concerning the loan transaction
2 until the later of the following:

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

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

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

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

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

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

1 program; or (iii) to the appropriate law enforcement agency or
2 the applicable administrative agency if the database
3 information demonstrates criminal, fraudulent, or otherwise
4 illegal activity.

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

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

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

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

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

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

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

19 (Source: P.A. 99-660, eff. 7-28-16; 100-509, eff. 9-15-17.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law."