

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 Home Equity Assurance Act is amended by
5 changing Section 11 as follows:

6 (65 ILCS 95/11) (from Ch. 24, par. 1611)

7 Sec. 11. Guarantee Fund.

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

14 (b) The guarantee fund shall be raised by means of an
15 annual tax levied on all residential property within the
16 territory of the program having at least one, but not more than
17 6 dwelling units and classified by county ordinance as
18 residential. The rate of this tax may be changed from year to
19 year by majority vote of the governing commission but in no
20 case shall it exceed a rate of .12% of the equalized assessed
21 valuation of all property in the territory of the program
22 having at least one, but not more than 6 dwelling units and
23 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 10. The Residential Mortgage License Act of 1987 is
3 amended by changing Section 4-10 and by adding Sections 4-15,
4 4-16, 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, 5-15, 5-16,
5 and 5-17 as follows:

6 (205 ILCS 635/4-10) (from Ch. 17, par. 2324-10)

7 Sec. 4-10. Rules and Regulations of the Commissioner.

8 (a) In addition to such powers as may be prescribed by this
9 Act, the Commissioner is hereby authorized and empowered to
10 promulgate regulations consistent with the purposes of this
11 Act, including but not limited to:

12 (1) Such rules and regulations in connection with the
13 activities of licensees as may be necessary and appropriate
14 for the protection of consumers in this State;

15 (2) Such rules and regulations as may be necessary and
16 appropriate to define improper or fraudulent business
17 practices in connection with the activities of licensees in
18 making mortgage loans;

19 (3) Such rules and regulations as may define the terms
20 used in this Act and as may be necessary and appropriate to
21 interpret and implement the provisions of this Act; and

22 (4) Such rules and regulations as may be necessary for
23 the enforcement of this Act.

24 (b) The Commissioner is hereby authorized and empowered to

1 make such specific rulings, demands and findings as he or she
2 may deem necessary for the proper conduct of the mortgage
3 lending industry.

4 (c) A person or entity may make a written application to
5 the Department for a written interpretation of this Act. The
6 Department may then, in its sole discretion, choose to issue a
7 written interpretation. To be valid, a written interpretation
8 must be signed by the Secretary, or his or her designated
9 Director of Financial and Professional Regulation, and the
10 Department's General Counsel. A written interpretation expires
11 2 years after the date that it was issued.

12 (d) No provision in this Act that imposes liability or
13 establishes violations shall apply to any act taken by a person
14 or entity in conformity with a written interpretation of this
15 Act that is in effect at the time the act is taken,
16 notwithstanding whether the written interpretation is later
17 amended, rescinded, or determined by judicial or other
18 authority to be invalid for any reason.

19 (Source: P.A. 85-735.)

20 (205 ILCS 635/4-15 new)

21 Sec. 4-15. Enforcement and reporting provisions. The
22 Attorney General may enforce any violation of Section 5-6, 5-7,
23 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, or 5-15 of this Act as an
24 unlawful practice under the Consumer Fraud and Deceptive
25 Business Practices Act.

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 5-14, 5-15, and 5-16 of this Act shall have a private right of
6 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.

1 (205 ILCS 635/5-6 new)

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

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

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

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

20 (b) For all residential mortgage loans made by a licensee,
21 the borrower's income and financial resources must be verified
22 by tax returns, payroll receipts, bank records, or other
23 reasonably reliable methods, based upon the circumstances of
24 the proposed loan. Nothing in this Section shall be construed
25 to limit a licensee's ability to rely on criteria other than
26 the borrower's income and financial resources to establish the

1 borrower's reasonable ability to repay a residential mortgage
2 loan; however, such other criteria must be verified through
3 reasonably reliable methods and documentation. A statement by
4 the borrower to the licensee of the borrower's income and
5 resources is not sufficient to establish the existence of the
6 income or resources when verifying the reasonable ability to
7 pay. Stated income should be accepted only if there are
8 mitigating factors that clearly minimize the need for direct
9 verification of ability to repay.

10 (205 ILCS 635/5-7 new)

11 Sec. 5-7. Broker agency relationship.

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

15 (1) A mortgage broker shall act in the borrower's best
16 interest and in good faith toward the borrower. A mortgage
17 broker shall not accept, give, or charge any undisclosed
18 compensation or realize any undisclosed remuneration,
19 either through direct or indirect means, that inures to the
20 benefit of the mortgage broker on an expenditure made for
21 the borrower;

22 (2) mortgage brokers shall carry out all lawful
23 instructions given by borrowers;

24 (3) mortgage brokers shall disclose to borrowers all
25 material facts of which the mortgage broker has knowledge

1 which might reasonably affect the borrower's rights,
2 interests, or ability to receive the borrower's intended
3 benefit from the residential mortgage loan, but not facts
4 which are reasonably susceptible to the knowledge of the
5 borrower;

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

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

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

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

20 (205 ILCS 635/5-8 new)

21 Sec. 5-8. Prepayment penalties.

22 (a) No licensee may make, provide, or arrange a mortgage
23 loan with a prepayment penalty unless the licensee offers the
24 borrower a loan without a prepayment penalty, the offer is in
25 writing, and the borrower initials the offer to indicate that

1 the borrower has declined the offer. In addition, the licensee
2 must disclose the discount in rate received in consideration
3 for a mortgage loan with the prepayment penalty.

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

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

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

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

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

25 (d) This Section applies to loans made, refinanced,
26 renewed, extended, or modified on or after the effective date

1 of this amendatory Act of the 95th General Assembly.

2 (205 ILCS 635/5-9 new)

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

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

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

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

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

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

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

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

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

24 (2) Timely inform the borrower if any fees payable by
25 the borrower to the licensee increase by more than 10% or

1 \$100, whichever is greater.

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

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

19 (d) Licensees limited to soliciting residential mortgage
20 loan applications as approved by the Director under Title 38,
21 Section 1050.2115(c)(1) of the Illinois Administrative Code
22 are not required to provide the disclosures under this Section
23 as long as the solicitor does not discuss the terms and
24 conditions with the potential borrower.

25 (205 ILCS 635/5-10 new)

1 Sec. 5-10. Comparable monthly payment quotes. When
2 comparing different loans, the licensee must not state or imply
3 that monthly loan payments, if they include amounts escrowed
4 for payment of property taxes and homeowner's insurance, are
5 comparable with monthly loan payments that do not include these
6 amounts.

7 (205 ILCS 635/5-11 new)

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

18 (205 ILCS 635/5-12 new)

19 Sec. 5-12. Disclosure of refinancing options. If the
20 subject of a future loan is discussed by a licensee making,
21 providing, or arranging a mortgage loan, the licensee shall
22 disclose the circumstances under which a new loan could be
23 considered. Such disclosure shall clearly state that it is not
24 a contract and that the licensee is not representing or

1 promising that a new loan could or would be made at any time in
2 the future.

3 (205 ILCS 635/5-14 new)

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

8 (205 ILCS 635/5-15 new)

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

16 (205 ILCS 635/5-16 new)

17 Sec. 5-16. Prohibition on encouraging default. A licensee
18 may not recommend or encourage default or the failure to make
19 timely payments on an existing residential mortgage loan or
20 other debt prior to and in connection with the closing or
21 planned closing of a residential mortgage loan that refinances
22 all or any portion of the existing loan or debt.

1 (205 ILCS 635/5-17 new)

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

7 Section 15. The Residential Real Property Disclosure Act is
8 amended by changing Sections 70, 72, and 74 and adding Sections
9 73 and 78 as follows:

10 (765 ILCS 77/70)

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

12 (a) As used in this Article:

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

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

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

20 "Closing agent" means an individual assigned by a title
21 insurance company or a broker or originator to ensure that the
22 execution of documents related to the closing of a real estate
23 sale or the refinancing of a real estate loan and the
24 disbursement of closing funds are in conformity with the

1 instructions of the entity financing the transaction.

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

13 "Counselor" means a counselor employed by a HUD-certified
14 housing counseling agency.

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

26 "Department" means the Department of Financial and

1 Professional Regulation.

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

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

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

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

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

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 the
24 course of the loan because the regular periodic payment does
25 not cover the full amount of interest due.

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

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

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

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

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

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

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

25 (a-5) A predatory lending database program shall be
26 established within Cook County. The program shall be

1 administered in accordance with this Article. The inception
2 date of the program shall be July 1, 2008. ~~Inception date. The~~
3 ~~Secretary of Financial and Professional Regulation shall~~
4 ~~declare in writing the date of inception of the pilot program.~~
5 ~~The inception date shall be no later than September 1, 2006,~~
6 ~~and shall be at least 30 days after the date the Secretary~~
7 ~~issues a declaration establishing that date. The Secretary's~~
8 ~~declaration shall be posted on the Department's website, and~~
9 ~~the Department shall communicate the declaration to affected~~
10 ~~licensees of the Department.~~ Until the inception date, none of
11 the duties, obligations, contingencies, or consequences of or
12 from the ~~pilot~~ program shall be imposed. The ~~pilot~~ program
13 shall apply to all mortgage applications that are governed by
14 this Article and that are made or taken on or after the
15 inception of the ~~pilot~~ program.

16 (b) ~~A predatory lending database pilot program is~~
17 ~~established within the pilot program area, effective upon the~~
18 ~~inception date established by the Secretary of the Department.~~
19 ~~The pilot program shall be in effect and operational for a~~
20 ~~total of 4 years and shall be administered in accordance with~~
21 ~~Article 3 of this Act.~~ The database created under this program
22 shall be maintained and administered by the Department. The
23 database shall be designed to allow brokers, originators,
24 ~~credit~~ counselors, title insurance companies, and closing
25 agents to submit information to the database online. The
26 database shall not be designed to allow those entities to

1 retrieve information from the database, except as otherwise
2 provided in this Article. Information submitted by the broker
3 or originator to the Department may be used to populate the
4 online form submitted by a ~~credit~~ counselor, title insurance
5 company, or closing agent.

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

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

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

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

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

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

18 (2) the Department issues a determination that
19 HUD-certified ~~credit~~ counseling is recommended for the
20 borrower and the ~~credit~~ counselor submits all required
21 information to the database in accordance with subsection
22 (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 ~~pilot~~ program area, a certificate of service must be
9 simultaneously recorded that affirms that a copy of the lis
10 pendens was filed with the Department. If the certificate of
11 service is not recorded, then the lis pendens pertaining to the
12 residential mortgage foreclosure in question is not recordable
13 and is of no 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 ~~pilot~~ program; (ii) to provide relevant information to a
4 ~~credit~~ counselor providing ~~credit~~ counseling to a borrower
5 under the ~~pilot~~ program; or (iii) to the appropriate law
6 enforcement agency or the applicable administrative agency if
7 the database information demonstrates criminal, fraudulent, or
8 otherwise illegal 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 ~~Not later than one year after the Department designates the~~
3 ~~pilot program area and annually thereafter during the existence~~
4 ~~of the pilot program, the Department shall report to the~~
5 ~~Governor and to the General Assembly concerning its~~
6 ~~administration and the effectiveness of the pilot program.~~

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

8 (765 ILCS 77/72)

9 Sec. 72. Originator; required information. As part of the
10 predatory lending database ~~pilot~~ program, the broker or
11 originator must submit all of the following information for
12 inclusion in the predatory lending database for each loan for
13 which the originator takes an application:

14 (1) The borrower's name, address, social security
15 number or taxpayer identification number, date of birth,
16 and income and expense information contained in the
17 mortgage application.

18 (2) The address, permanent index number, and a
19 description of the collateral and information about the
20 loan or loans being applied for and the loan terms,
21 including the amount of the loan, the rate and whether the
22 rate is fixed or adjustable, amortization or loan period
23 terms, and any other material terms.

24 (3) The borrower's credit score at the time of
25 application.

1 (4) Information about the originator and the company
2 the originator works for, including the originator's
3 license number and address, fees being charged, whether the
4 fees are being charged as points up front, the yield spread
5 premium payable outside closing, and other charges made or
6 remuneration required by the broker or originator or its
7 affiliates or the broker's or originator's employer or its
8 affiliates for the mortgage loans.

9 (5) Information about affiliated or third party
10 service providers, including the names and addresses of
11 appraisers, title insurance companies, closing agents,
12 attorneys, and realtors who are involved with the
13 transaction and the broker or originator and any moneys
14 received from the broker or originator in connection with
15 the transaction.

16 (6) All information indicated on the Good Faith
17 Estimate and Truth in Lending statement disclosures given
18 to the borrower by the broker or originator.

19 (7) Annual real estate taxes for the property, together
20 with any assessments payable in connection with the
21 property to be secured by the collateral and the proposed
22 monthly principal and interest charge of all loans to be
23 taken by the borrower and secured by the property of the
24 borrower.

25 (8) Information concerning how the broker or
26 originator obtained the client and the name of its referral

1 source, if any.

2 (9) Information concerning the notices provided by the
3 broker or originator to the borrower as required by law and
4 the date those notices were given.

5 (10) Information concerning whether a sale and
6 leaseback is contemplated and the names of the lessor and
7 lessee, seller, and purchaser.

8 (11) Any and all financing by the borrower for the
9 subject property within 12 months prior to the date of
10 application.

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

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

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

16 (15) Whether the loan may result in negative
17 amortization.

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

20 (17) Whether the loan includes a prepayment penalty,
21 and, if so, the terms of the penalty.

22 (18) Whether the loan is an ARM.

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

24 (765 ILCS 77/73 new)

25 Sec. 73. Standards for counseling. A borrower or borrowers

1 subject to this Article shall be recommended for counseling if,
2 after reviewing the information in the predatory lending
3 database submitted under Section 72, the Department finds the
4 borrower or borrowers are all first-time homebuyers or
5 refinancing a primary residence and the loan is a mortgage that
6 includes one or more of the following:

7 (1) the loan permits interest only payments;

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

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

11 (4) the loan includes a prepayment penalty; or

12 (5) the loan is an ARM.

13 (765 ILCS 77/74)

14 Sec. 74. Counselor ~~Credit counselor~~; required information.

15 As part of the predatory lending database ~~pilot~~ program, a
16 ~~credit~~ counselor must submit all of the following information
17 for inclusion in the predatory lending database:

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

21 (2) Any information from the borrower that confirms or
22 contradicts the information called for under item (1) of
23 this Section.

24 (3) The name ~~and address~~ of the ~~credit~~ counselor and
25 address of the HUD-certified housing counseling agency that

1 employs the counselor.

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

6 (5) A list of the disclosures furnished to the
7 borrower, as seen and reviewed by the ~~credit~~ counselor, and
8 a comparison of that list to all disclosures required by
9 law.

10 (6) Whether the borrower provided tax returns to the
11 broker or originator or to the ~~credit~~ counselor, and, if
12 so, who prepared the tax returns.

13 ~~(7) The date the loan commitment expires and whether a~~
14 ~~written commitment has been given, together with the~~
15 ~~proposed date of closing.~~

16 (7) ~~(8)~~ A statement of the recommendations of the
17 ~~credit~~ counselor that indicates the counselor's response
18 to each of the following statements:

19 (A) The loan should not be approved due to indicia
20 of fraud.

21 (B) The loan should be approved; no material
22 problems noted.

23 (C) The borrower cannot afford the loan.

24 (D) The borrower does not understand the
25 transaction.

26 (E) The borrower does not understand the costs

1 associated with the transaction.

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

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

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

7 (I) There are discrepancies between the borrower's
8 verbal understanding and the originator's completed
9 form.

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

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

14 (L) The information that the borrower provided the
15 originator has been amended by the originator.

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

17 (765 ILCS 77/78 new)

18 Sec. 78. Exemption. Borrowers applying for reverse
19 mortgage financing of residential real estate including under
20 programs regulated by the Federal Housing Authority (FHA) that
21 require HUD-certified counseling are exempt from the program
22 and may submit a HUD counseling certificate to comply with the
23 program.

24 Section 20. The Mortgage Rescue Fraud Act is amended by

1 changing Section 5 as follows:

2 (765 ILCS 940/5)

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

4 "Distressed property" means residential real property
5 consisting of one to 6 family dwelling units that is in
6 foreclosure or at risk of loss due to nonpayment of taxes, or
7 whose owner is more than 90 days delinquent on any loan that is
8 secured by the property.

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

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

16 (2) obtain any forbearance from any beneficiary or
17 mortgagee, or relief with respect to a tax sale of the
18 property;

19 (3) assist the owner to exercise any right of
20 reinstatement or right of redemption;

21 (4) obtain any extension of the period within which the
22 owner may reinstate the owner's rights with respect to the
23 property;

24 (5) obtain any waiver of an acceleration clause
25 contained in any promissory note or contract secured by a

1 mortgage on a distressed property or contained in the
2 mortgage;

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

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

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

11 A "distressed property consultant" does not include any of
12 the following:

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

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

23 (3) banks, savings banks, savings and loan
24 associations, credit unions, and insurance companies
25 organized, chartered, or holding a certificate of
26 authority to do business under the laws of this State or

1 any other state or under the laws of the United States;

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

3 (5) a Department of Housing and Urban Development
4 approved mortgagee and any subsidiary or affiliate of these
5 persons or entities, and any agent or employee of these
6 persons or entities, while engaged in the business of these
7 persons or entities;

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

14 (7) licensees of the Residential Mortgage License Act
15 of 1987;

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

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

20 "Distressed property purchaser" means any person who
21 acquires any interest in fee in a distressed property or a
22 beneficial interest in a trust holding title to a distressed
23 property while allowing the owner to possess, occupy, or retain
24 any present or future interest in fee in the property, or any
25 person who participates in a joint venture or joint enterprise
26 involving a distressed property conveyance. "Distressed

1 property purchaser" does not mean any person who acquires
2 distressed property at a short sale or any person acting in
3 participation with any person who acquires distressed property
4 at a short sale, if that person does not promise to convey an
5 interest in fee back to the owner or does not give the owner an
6 option to purchase the property at a later date.

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

18 "Person" means any individual, partnership, corporation,
19 limited liability company, association, or other group or
20 entity, however organized.

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

22 (1) debt, budget, or financial counseling of any type;

23 (2) receiving money for the purpose of distributing it
24 to creditors in payment or partial payment of any
25 obligation secured by a lien on a distressed property;

26 (3) contacting creditors on behalf of an owner of a

1 residence that is distressed property;

2 (4) arranging or attempting to arrange for an extension
3 of the period within which the owner of a distressed
4 property may cure the owner's default and reinstate his or
5 her obligation;

6 (5) arranging or attempting to arrange for any delay or
7 postponement of the time of sale of the distressed
8 property;

9 (6) advising the filing of any document or assisting in
10 any manner in the preparation of any document for filing
11 with any court; or

12 (7) giving any advice, explanation, or instruction to
13 an owner of a distressed property that in any manner
14 relates to the cure of a default or forfeiture or to the
15 postponement or avoidance of sale of the distressed
16 property.

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

18 Section 25. The Interest Act is amended by changing Section
19 4.1a as follows:

20 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

21 Sec. 4.1a. Charges for and cost of the following items paid
22 or incurred by any lender in connection with any loan shall not
23 be deemed to be charges for or in connection with any loan of
24 money referred to in Section 6 of this Act, or charges by the

1 lender as a consideration for the loan referred to in this
2 Section:

3 (a) hazard, mortgage or life insurance premiums,
4 survey, credit report, title insurance, abstract and
5 attorneys' fees, recording charges, escrow and appraisal
6 fees, and similar charges.

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

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

23 (d) in the case of a single payment loan, made for a
24 period of 6 months or less, a regulated financial
25 institution or licensed lender may contract for and receive
26 a maximum charge of \$15 in lieu of interest. Such charge

1 may be collected when the loan is made, but only one such
2 charge may be contracted for, received, or collected for
3 any such loan, including any extension or renewal thereof.

4 (e) if the agreement governing the loan so provides, a
5 charge not to exceed the rate permitted under Section 3-806
6 of the Uniform Commercial Code-Commercial Paper for any
7 check, draft or order for the payment of money submitted in
8 accordance with said agreement which is unpaid or not
9 honored by a bank or other depository institution.

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

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

1 securing the loan, the lender shall receive an amount that is
2 no more than:

3 (1) 3% of the total loan amount if the prepayment is
4 made within the first 12-month period following the date
5 the loan was made;

6 (2) 2% of the total loan amount if the prepayment is
7 made within the second 12-month period following the date
8 the loan was made; or

9 (3) 1% of the total loan amount if the prepayment is
10 made within the third 12-month period following the date
11 the loan was made, if the fixed rate period extends 3
12 years.

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

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

1 optional amortization of the principal of the loan, the rate of
2 interest shall be calculated in the following manner:

3 The percentage of the principal amount of the loan
4 represented by all of such charges shall first be computed,
5 which in the case of a loan with an interest rate in excess of
6 8% per annum secured by residential real estate, other than
7 loans described in paragraphs (e) and (f) of Section 4, shall
8 not exceed 3% of such principal amount. Said percentage shall
9 then be divided by the number of years and fractions thereof of
10 the period of the loan according to its stated maturity. The
11 percentage thus obtained shall then be added to the percentage
12 of the stated annual rate of interest.

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

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

21 Section 970. Severability. If any provision of this
22 amendatory Act of the 95th General Assembly or its application
23 to any person or circumstance is held invalid, the invalidity
24 of that provision or application does not affect other
25 provisions or applications of this amendatory Act that can be

1 given effect without the invalid provision or application.