

1 AN ACT concerning business.

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

4 Section 5. The Residential Mortgage License Act of 1987 is
5 amended by changing Section 5-8 as follows:

6 (205 ILCS 635/5-8)

7 Sec. 5-8. Prepayment penalties.

8 (a) No licensee may make, provide, or arrange a mortgage
9 loan with a prepayment penalty unless the licensee offers the
10 borrower a loan without a prepayment penalty, the offer is in
11 writing, and the borrower initials the offer to indicate that
12 the borrower has declined the offer. In addition, the licensee
13 must disclose the discount in rate received in consideration
14 for a mortgage loan with the prepayment penalty.

15 (b) If a borrower declines an offer required under
16 subsection (a) of this Section, the licensee may include,
17 except as prohibited by Section 30 of the High Risk Home Loan
18 Act, a prepayment penalty that extends no longer than three
19 years or the first change date or rate adjustment of a variable
20 rate mortgage, whichever comes earlier, provided that, if a
21 prepayment is made during the fixed rate period, the licensee
22 shall receive an amount that is no more than:

23 (1) 3% of the total loan amount if the prepayment is

1 made within the first 12-month period following the date
2 the loan was made;

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

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

10 (c) Notwithstanding any provision in this Section,
11 prepayment penalties are prohibited in connection with the sale
12 or destruction of a dwelling secured by a residential mortgage
13 loan.

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

17 (Source: P.A. 95-691, eff. 6-1-08.)

18 Section 10. The High Risk Home Loan Act is amended by
19 changing Sections 10, 30, 55, 80, and 145 and by adding
20 Sections 35, 35.5, 80.5, 80.6, and 90.5 as follows:

21 (815 ILCS 137/10)

22 Sec. 10. Definitions. As used in this Act:

23 "Approved credit counselor" means a credit counselor
24 approved by the Director of Financial Institutions.

1 "Bona fide discount points" means loan discount points that
2 are knowingly paid by the consumer for the purpose of reducing,
3 and that in fact result in a bona fide reduction of, the
4 interest rate or time price differential applicable to the
5 mortgage.

6 "Borrower" means a natural person who seeks or obtains a
7 high risk home loan.

8 "Commissioner" means the Commissioner of the Office of
9 Banks and Real Estate.

10 "Department" means the Department of Financial
11 Institutions.

12 "Director" means the Director of Financial Institutions.

13 "Good faith" means honesty in fact in the conduct or
14 transaction concerned.

15 "High risk home loan" means a consumer credit transaction,
16 other than a reverse mortgage, that is secured by the
17 consumer's principal dwelling if: ~~home equity loan in which~~ (i)
18 at the time of origination, the annual percentage rate exceeds
19 by more than 6 percentage points in the case of a first lien
20 mortgage, or by more than 8 percentage points in the case of a
21 junior mortgage, the average prime offer rate, as defined in
22 Section 129C(b)(2)(B) of the federal Truth in Lending Act, for
23 a comparable transaction as of the date on which the interest
24 rate for the transaction is set, ~~yield on U.S. Treasury~~
25 securities having comparable periods of maturity to the loan
26 maturity as of the fifteenth day of the month immediately

1 ~~preceding the month in which the application for the loan is~~
2 ~~received by the lender or (ii) the loan documents permit the~~
3 ~~creditor to charge or collect prepayment fees or penalties more~~
4 ~~than 36 months after the transaction closing or such fees~~
5 ~~exceed, in the aggregate, more than 2% of the amount prepaid,~~
6 ~~or (iii) the total points and fees payable in connection with~~
7 ~~the transaction, other than bona fide third-party charges not~~
8 ~~retained by the mortgage originator, creditor, or an affiliate~~
9 ~~of the mortgage originator or creditor, by the consumer at or~~
10 ~~before closing will exceed (1) the greater of 5% of the total~~
11 ~~loan amount in the case of a transaction for \$20,000 or more or~~
12 ~~(2) the lesser of 8% of the total loan amount or \$1,000 (or~~
13 ~~such other dollar amount as prescribed by federal regulation~~
14 ~~pursuant to the federal Dodd-Frank Act) in the case of a~~
15 ~~transaction for less than \$20,000, except that, with respect to~~
16 ~~all transactions, bona fide loan discount points may be~~
17 ~~excluded as provided for in Section 35 of this Act. or \$800.~~
18 ~~The \$800 figure shall be adjusted annually on January 1 by the~~
19 ~~annual percentage change in the Consumer Price Index for All~~
20 ~~Urban Consumers for all items published by the United States~~
21 ~~Department of Labor. "High risk home loan" does not include a~~
22 ~~loan that is made primarily for a business purpose unrelated to~~
23 ~~the residential real property securing the loan or to an~~
24 ~~open end credit plan subject to 12 CFR 226 (2000, no subsequent~~
25 ~~amendments or editions are included).~~

26 ~~"Home equity loan" means any loan secured by the borrower's~~

1 ~~primary residence where the proceeds are not used as purchase~~
2 ~~money for the residence.~~

3 "Lender" means a natural or artificial person who
4 transfers, deals in, offers, or makes a high risk home loan.

5 "Lender" includes, but is not limited to, creditors and brokers
6 who transfer, deal in, offer, or make high risk home loans.

7 "Lender" does not include purchasers, assignees, or subsequent
8 holders of high risk home loans.

9 "Office" means the Office of Banks and Real Estate.

10 "Points and fees" means all items considered ~~required~~ to be
11 ~~disclosed as~~ points and fees under 12 CFR 226.32 (2000, or as
12 initially amended pursuant to Section 1431 of the federal
13 Dodd-Frank Act with no subsequent amendments or editions
14 included, whichever is later); ~~the premium of any single~~
15 ~~premium credit life, credit disability, credit unemployment,~~
16 ~~or any other life or health insurance that is financed directly~~
17 ~~or indirectly into the loan; and compensation paid directly or~~
18 indirectly by a consumer or creditor to a mortgage broker from
19 any source, including a broker that originates a loan in its
20 own name in a table-funded transaction, not otherwise included
21 in 12 CFR 226.4; the maximum prepayment fees and penalties that
22 may be charged or collected under the terms of the credit
23 transaction; all prepayment fees or penalties that are incurred
24 by the consumer if the loan refinances a previous loan made or
25 currently held by the same creditor or an affiliate of the
26 creditor; and premiums or other charges payable at or before

1 closing or financed directly or indirectly into the loan for
2 any credit life, credit disability, credit unemployment,
3 credit property, other accident, loss of income, life, or
4 health insurance or payments directly or indirectly for any
5 debt cancellation or suspension agreement or contract, except
6 that insurance premiums or debt cancellation or suspension fees
7 calculated and paid in full on a monthly basis shall not be
8 considered financed by the creditor. "Points and fees" does not
9 include any insurance premium provided by an agency of the
10 federal government or an agency of a state; any insurance
11 premium paid by the consumer after closing; and any amount of a
12 premium, charge, or fee that is not in excess of the amount
13 payable under policies in effect at the time of origination
14 under Section 203(c)(2)(A) of the National Housing Act (12
15 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or
16 fee is required to be refundable on a pro-rated basis and the
17 refund is automatically issued upon notification of the
18 satisfaction of the underlying mortgage loan.

19 "Reasonable" means fair, proper, just, or prudent under the
20 circumstances.

21 "Servicer" means any entity chartered under the Illinois
22 Banking Act, the Savings Bank Act, the Illinois Credit Union
23 Act, or the Illinois Savings and Loan Act of 1985 and any
24 person or entity licensed under the Residential Mortgage
25 License Act of 1987, the Consumer Installment Loan Act, or the
26 Sales Finance Agency Act who is responsible for the collection

1 or remittance for, or has the right or obligation to collect or
2 remit for, any lender, note owner, or note holder or for a
3 licensee's own account, of payments, interest, principal, and
4 trust items (such as hazard insurance and taxes on a
5 residential mortgage loan) in accordance with the terms of the
6 residential mortgage loan, including loan payment follow-up,
7 delinquency loan follow-up, loan analysis, and any
8 notifications to the borrower that are necessary to enable the
9 borrower to keep the loan current and in good standing.

10 "Total loan amount" has the same meaning as that term is
11 given in 12 CFR 226.32 and shall be calculated in accordance
12 with the Federal Reserve Board's Official Staff Commentary to
13 that regulation.

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

15 (815 ILCS 137/30)

16 Sec. 30. No prepayment ~~Prepayment~~ penalty. A high risk home
17 loan may not contain terms under which a consumer must pay a
18 prepayment penalty for paying all or part of the principal
19 before the date on which the principal is due. For purposes of
20 this Section, any method of computing a refund of unearned
21 scheduled interest is a prepayment penalty if it is less
22 favorable to the consumer than the actuarial method as that
23 term is defined by Section 933(d) of the federal Housing and
24 Community Development Act of 1992, 15 U.S.C. 1615(d). ~~For any~~
25 ~~loan that is subject to the provisions of this Act and is not~~

1 ~~subject to the provisions of the Home Ownership and Equity~~
2 ~~Protection Act of 1994, no lender shall make a high risk home~~
3 ~~loan that includes a penalty provision for payment made: (i)~~
4 ~~after the expiration of the 36 month period following the date~~
5 ~~the loan was made; or (ii) that is more than:~~

6 ~~(1) 3% of the total loan amount if the prepayment is~~
7 ~~made within the first 12 month period following the date~~
8 ~~the loan was made;~~

9 ~~(2) 2% of the total loan amount if the prepayment is~~
10 ~~made within the second 12 month period following the date~~
11 ~~the loan was made; or~~

12 ~~(3) 1% of the total loan amount if the prepayment is~~
13 ~~made within the third 12 month period following the date~~
14 ~~the loan was made.~~

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

16 (815 ILCS 137/35 new)

17 Sec. 35. Bona fide discount points. For the purposes of
18 determining whether the amount of points and fees meets the
19 definition of "high risk home loan" under this Act, either the
20 amounts described in paragraph (1) or (2) of this Section, but
21 not both, shall be excluded:

22 (1) Up to and including 2 bona fide discount points
23 payable by the consumer in connection with the mortgage,
24 but only if the interest rate from which the mortgage's
25 interest rate will be discounted does not exceed by more

1 than one percentage point:

2 (A) the average prime offer rate, as defined in
3 Section 129C of the federal Truth in Lending Act (15
4 U.S.C. 1639); or

5 (B) if secured by a personal property loan, the
6 average rate on a loan in connection with which
7 insurance is provided under Title I of the National
8 Housing Act (12 U.S.C. 1702 et seq.).

9 (2) Unless 2 bona fide discount points have been
10 excluded under paragraph (1), up to and including one bona
11 fide discount point payable by the consumer in connection
12 with the mortgage, but only if the interest rate from which
13 the mortgage's interest rate will be discounted does not
14 exceed by more than 2 percentage points:

15 (A) the average prime offer rate, as defined in
16 Section 129C of the federal Truth in Lending Act (15
17 U.S.C. 1639); or

18 (B) if secured by a personal property loan, the
19 average rate on a loan in connection with which
20 insurance is provided under Title I of the National
21 Housing Act (12 U.S.C. 1702 et seq.).

22 Paragraphs (1) and (2) shall not apply to discount points
23 used to purchase an interest rate reduction unless the amount
24 of the interest rate reduction purchased is reasonably
25 consistent with established industry norms and practices for
26 secondary mortgage market transactions.

1 (815 ILCS 137/35.5 new)

2 Sec. 35.5. No balloon payments. No high risk home loan may
3 contain a scheduled payment that is more than twice as large as
4 the average of earlier scheduled payments. This Section does
5 not apply when the payment schedule is adjusted to the seasonal
6 or irregular income of the consumer.

7 (815 ILCS 137/55)

8 Sec. 55. Financing of points and fees. No lender shall
9 transfer, deal in, offer, or make a high risk home loan that
10 finances, directly or indirectly, any points and fees. No
11 lender shall transfer, deal in, offer, or make a high risk home
12 loan that finances any prepayment fee or penalty payable by the
13 consumer in a refinancing transaction if the creditor or an
14 affiliate of the creditor is the noteholder of the note being
15 refinanced in excess of 6% of the total loan amount.

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

17 (815 ILCS 137/80)

18 Sec. 80. Late payment fee. A lender shall not transfer,
19 deal in, offer, or make a high risk home loan that provides for
20 a late payment fee, except under the following conditions:

21 (1) the late payment fee shall not be in excess of 4%
22 5% of the amount of the payment past due;

23 (2) the late payment fee shall only be assessed for a

1 payment past due for 15 days or more;

2 (3) the late payment fee shall not be imposed more than
3 once with respect to a single late payment;

4 (4) a late payment fee that the lender has collected
5 shall be reimbursed if the borrower presents proof of
6 having made a timely payment; and

7 (5) a lender shall treat each payment as posted on the
8 same business day as it was received by the lender,
9 servicer, or lender's agent or at the address provided to
10 the borrower by the lender, servicer, or lender's agent for
11 making payments.

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

13 (815 ILCS 137/80.5 new)

14 Sec. 80.5. Coordination with subsequent late fees. If a
15 payment is otherwise a full payment for the applicable period,
16 is paid on its due date or within an applicable grace period,
17 and the only delinquency or insufficiency of payment is
18 attributable to any late fee or delinquency charge assessed on
19 any earlier payment, no late fee or delinquency charge may be
20 imposed on the payment.

21 (815 ILCS 137/80.6 new)

22 Sec. 80.6. Failure to make installment payment. If, in the
23 case of a loan agreement the terms of which provide that any
24 payment shall first be applied to any past principal balance,

1 the consumer fails to make an installment payment and the
2 consumer subsequently resumes making installment payments but
3 has not paid all past due installments, the creditor may impose
4 a separate late payment charge or fee for any principal due
5 (without deduction due to late fees or related fees) until the
6 default is cured.

7 (815 ILCS 137/90.5 new)

8 Sec. 90.5. Modification and deferral fees prohibited. A
9 lender, successor in interest, assignee, or any agent of any of
10 the foregoing may not charge a consumer any fee to modify,
11 renew, extend, or amend a high risk home loan or to defer any
12 payment due under the terms of the loan.

13 (815 ILCS 137/145)

14 Sec. 145. Subterfuge prohibited. No lender, with the intent
15 to avoid the application or provisions of this Act, shall (i)
16 divide a loan transaction into separate parts, ~~or~~ (ii)
17 structure a loan transaction as an open-end credit plan or
18 another form of loan, or (iii) perform any other subterfuge.

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

20 Section 15. The Interest Act is amended by changing Section
21 4.1a as follows:

22 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

1 Sec. 4.1a. Charges for and cost of the following items paid
2 or incurred by any lender in connection with any loan shall not
3 be deemed to be charges for or in connection with any loan of
4 money referred to in Section 6 of this Act, or charges by the
5 lender as a consideration for the loan referred to in this
6 Section:

7 (a) hazard, mortgage or life insurance premiums,
8 survey, credit report, title insurance, abstract and
9 attorneys' fees, recording charges, escrow and appraisal
10 fees, and similar charges.

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

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

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

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

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

23 Notwithstanding items (k) and (l) of subsection (1) of
24 Section 4 of this Act, the lender, in the case of any nonexempt
25 residential mortgage loan, as defined in Section 1-4 of the
26 Residential Mortgage License Act of 1987, other than a high

1 risk home loan as defined in Section 10 of the High Risk Home
2 Loan Act, shall have the right to include a prepayment penalty
3 that extends no longer than the fixed rate period of a variable
4 rate mortgage provided that, if a prepayment is made during the
5 fixed rate period and not in connection with the sale or
6 destruction of the dwelling securing the loan, the lender shall
7 receive an amount that is no more than:

8 (1) 3% of the total loan amount if the prepayment is
9 made within the first 12-month period following the date
10 the loan was made;

11 (2) 2% of the total loan amount if the prepayment is
12 made within the second 12-month period following the date
13 the loan was made; or

14 (3) 1% of the total loan amount if the prepayment is
15 made within the third 12-month period following the date
16 the loan was made, if the fixed rate period extends 3
17 years.

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

21 Where there is a charge in addition to the stated rate of
22 interest payable directly or indirectly by the borrower and
23 imposed directly or indirectly by the lender as a consideration
24 for the loan, or for or in connection with the loan of money,
25 whether paid or payable by the borrower, the seller, or any
26 other person on behalf of the borrower to the lender or to a

1 third party, or for or in connection with the loan of money,
2 other than as hereinabove in this Section provided, whether
3 denominated "points," "service charge," "discount,"
4 "commission," or otherwise, and without regard to declining
5 balances of principal which would result from any required or
6 optional amortization of the principal of the loan, the rate of
7 interest shall be calculated in the following manner:

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

18 (Source: P.A. 95-691, eff. 6-1-08.)

19 Section 99. Effective date. This Act takes effect January
20 1, 2013.