

HB4030



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4030

Introduced 1/8/2020, by Rep. Jonathan Carroll

SYNOPSIS AS INTRODUCED:

815 ILCS 137/10

Amends the High Risk Home Loan Act. Provides that "high risk home loan" does not include a loan for reverse mortgage financing of residential real estate, including under programs regulated by the Federal Housing Administration (FHA).

LRB101 16150 KTG 65517 b

A BILL FOR

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 High Risk Home Loan Act is amended by
5 changing Section 10 as follows:

6 (815 ILCS 137/10)

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

8 "Approved credit counselor" means a credit counselor
9 approved by the Director of Financial Institutions.

10 "Bona fide discount points" means loan discount points that
11 are knowingly paid by the consumer for the purpose of reducing,
12 and that in fact result in a bona fide reduction of, the
13 interest rate or time price differential applicable to the
14 mortgage.

15 "Borrower" means a natural person who seeks or obtains a
16 high risk home loan.

17 "Commissioner" means the Commissioner of the Office of
18 Banks and Real Estate.

19 "Department" means the Department of Financial
20 Institutions.

21 "Director" means the Director of Financial Institutions.

22 "Good faith" means honesty in fact in the conduct or
23 transaction concerned.

1 "High risk home loan" means a consumer credit transaction,
2 other than a reverse mortgage, that is secured by the
3 consumer's principal dwelling if: (i) at the time of
4 origination, the annual percentage rate exceeds by more than 6
5 percentage points in the case of a first lien mortgage, or by
6 more than 8 percentage points in the case of a junior mortgage,
7 the average prime offer rate, as defined in Section
8 129C(b)(2)(B) of the federal Truth in Lending Act, for a
9 comparable transaction as of the date on which the interest
10 rate for the transaction is set, or if the dwelling is personal
11 property, then as provided under 15 U.S.C. 1602(bb), as
12 amended, and any corresponding regulation, as amended, (ii) the
13 loan documents permit the creditor to charge or collect
14 prepayment fees or penalties more than 36 months after the
15 transaction closing or such fees exceed, in the aggregate, more
16 than 2% of the amount prepaid, or (iii) the total points and
17 fees payable in connection with the transaction, other than
18 bona fide third-party charges not retained by the mortgage
19 originator, creditor, or an affiliate of the mortgage
20 originator or creditor, will exceed (1) 5% of the total loan
21 amount in the case of a transaction for \$20,000 (or such other
22 dollar amount as prescribed by federal regulation pursuant to
23 the federal Dodd-Frank Act) or more or (2) the lesser of 8% of
24 the total loan amount or \$1,000 (or such other dollar amount as
25 prescribed by federal regulation pursuant to the federal
26 Dodd-Frank Act) in the case of a transaction for less than

1 \$20,000 (or such other dollar amount as prescribed by federal
2 regulation pursuant to the federal Dodd-Frank Act), except
3 that, with respect to all transactions, bona fide loan discount
4 points may be excluded as provided for in Section 35 of this
5 Act. "High risk home loan" does not include a loan for reverse
6 mortgage financing of residential real estate, including under
7 programs regulated by the Federal Housing Administration
8 (FHA), a loan that is made primarily for a business purpose
9 unrelated to the residential real property securing the loan,
10 or a consumer credit transaction made by a natural person who
11 provides seller financing secured by a principal residence no
12 more than 3 times in a 12-month period, provided such consumer
13 credit transaction is not made by a person that has constructed
14 or acted as a contractor for the construction of the residence
15 in the ordinary course of business of such person.

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

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

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

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

23 "Points and fees" means all items considered to be points
24 and fees under 12 CFR 226.32 (2000, or as initially amended
25 pursuant to Section 1431 of the federal Dodd-Frank Act with no
26 subsequent amendments or editions included, whichever is

1 later); compensation paid directly or indirectly by a consumer
2 or creditor to a mortgage broker from any source, including a
3 broker that originates a loan in its own name in a table-funded
4 transaction, not otherwise included in 12 CFR 226.4; the
5 maximum prepayment fees and penalties that may be charged or
6 collected under the terms of the credit transaction; all
7 prepayment fees or penalties that are incurred by the consumer
8 if the loan refinances a previous loan made or currently held
9 by the same creditor or an affiliate of the creditor; and
10 premiums or other charges payable at or before closing or
11 financed directly or indirectly into the loan for any credit
12 life, credit disability, credit unemployment, credit property,
13 other accident, loss of income, life, or health insurance or
14 payments directly or indirectly for any debt cancellation or
15 suspension agreement or contract, except that insurance
16 premiums or debt cancellation or suspension fees calculated and
17 paid in full on a monthly basis shall not be considered
18 financed by the creditor. "Points and fees" does not include
19 any insurance premium provided by an agency of the federal
20 government or an agency of a state; any insurance premium paid
21 by the consumer after closing; and any amount of a premium,
22 charge, or fee that is not in excess of the amount payable
23 under policies in effect at the time of origination under
24 Section 203(c)(2)(A) of the National Housing Act (12 U.S.C.
25 1709(c)(2)(A)), provided that the premium, charge, or fee is
26 required to be refundable on a pro-rated basis and the refund

1 is automatically issued upon notification of the satisfaction
2 of the underlying mortgage loan.

3 "Prepayment penalty" and "prepayment fees or penalties"
4 mean: (i) for a closed-end credit transaction, a charge imposed
5 for paying all or part of the transaction's principal before
6 the date on which the principal is due, other than a waived,
7 bona fide third-party charge that the creditor imposes if the
8 consumer prepays all of the transaction's principal sooner than
9 36 months after consummation and (ii) for an open-end credit
10 plan, a charge imposed by the creditor if the consumer
11 terminates the open-end credit plan prior to the end of its
12 term, other than a waived, bona fide third-party charge that
13 the creditor imposes if the consumer terminates the open-end
14 credit plan sooner than 36 months after account opening.

15 "Reasonable" means fair, proper, just, or prudent under the
16 circumstances.

17 "Servicer" means any entity chartered under the Illinois
18 Banking Act, the Savings Bank Act, the Illinois Credit Union
19 Act, or the Illinois Savings and Loan Act of 1985 and any
20 person or entity licensed under the Residential Mortgage
21 License Act of 1987, the Consumer Installment Loan Act, or the
22 Sales Finance Agency Act who is responsible for the collection
23 or remittance for, or has the right or obligation to collect or
24 remit for, any lender, note owner, or note holder or for a
25 licensee's own account, of payments, interest, principal, and
26 trust items (such as hazard insurance and taxes on a

1 residential mortgage loan) in accordance with the terms of the
2 residential mortgage loan, including loan payment follow-up,
3 delinquency loan follow-up, loan analysis, and any
4 notifications to the borrower that are necessary to enable the
5 borrower to keep the loan current and in good standing.

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

10 (Source: P.A. 99-150, eff. 7-28-15; 99-288, eff. 8-5-15;
11 99-642, eff. 7-28-16; 100-201, eff. 8-18-17.)