

1 AN ACT concerning high-cost home loans.

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

4 Section 1. Short title. This Act may be cited as the
5 High-cost Home Loan Abuse Prevention Act.

6 Section 5. Definitions. As used in this Act:

7 "Affiliate" means any company that controls, is
8 controlled by, or is under common control with another
9 company, as set forth in the Bank Holding Company Act of 1956
10 (12 U.S.C. 1841 et seq.), as amended from time to time.

11 "Bona fide discount points" means loan discount points
12 that:

13 (1) are knowingly paid by the borrower for the
14 express purpose of lowering the interest rate;

15 (2) in fact reduce the interest rate or time-price
16 differential; and

17 (3) with respect to which the reduction is recouped
18 within the first 4 years of the scheduled loan payment;
19 that is, the reduction in the interest rate reduces the
20 interest charged such that the borrower's dollar amount
21 of savings in interest over the first 4 years of the loan
22 is equal to or exceeds the dollar amount of loan discount
23 points paid by the borrower.

24 "Borrower" means any natural person obligated to repay
25 the loan, including a co-borrower, co-signer, or guarantor.

26 "Creditor" means a person who extends consumer credit
27 that is subject to a finance charge or that is payable by
28 written agreement in more than 4 installments, and to whom
29 the obligation is payable at any time.

30 "High-cost home loan" means a loan that exceeds any one
31 of the following thresholds:

1 (1) Rate threshold:

2 (A) For a first lien mortgage, the trigger
3 rate equals or exceeds 6 percentage points above the
4 weekly average yield on 5-year U.S. Treasury
5 securities.

6 (B) For a subordinate mortgage lien or a
7 mortgage secured solely by a security interest in a
8 manufactured home, the trigger rate equals or
9 exceeds 8 percentage points above the weekly average
10 yield on 5-year U.S. Treasury securities.

11 (C) The trigger rate is calculated as follows:

12 (i) for fixed rate loans it is the rate
13 as of the date of closing;

14 (ii) for loans in which the interest rate
15 varies based on an index, the trigger rate is
16 the sum of the index rate at the date of
17 closing plus the maximum margin permitted at
18 any time under the loan agreement.

19 (iii) For other loans in which the rate
20 may vary at any time during the term of the
21 loan, the trigger rate is the maximum rate that
22 may be charged during the term of the loan.

23 (2) Points and fees threshold:

24 (A) For loans in which the total loan amount
25 is \$30,000 or more, the total points and fees on the
26 loan paid by the borrower at or before closing
27 exceed 3% of the total loan amount.

28 (B) For loans in which the total loan amount
29 is less than \$30,000, the total points and fees on
30 the loan paid by the borrower at or before closing,
31 exceed the lesser of \$900 or 6% of the total loan
32 amount.

33 (C) However up to 2 bona fide discount points
34 paid on loans with interest rates not more than 4

1 percentage points above the weekly average yield on
2 5-year U.S. Treasury securities shall not be
3 included in the calculation of points and fees in
4 determining whether or not a loan exceeds the points
5 and fees threshold.

6 "Home loan" means a loan, including an open-end credit
7 plan, other than a reverse mortgage transaction, where the
8 total loan amount does not exceed the conforming loan size
9 limit for a single-family dwelling as established from time
10 to time by the Federal National Mortgage Association and
11 where the lien is secured by:

12 (1) a mortgage or deed of trust on real estate in
13 this State upon which is or will be located a structure
14 or structures designed principally for occupancy of from
15 one to 4 families that is or will be occupied by a
16 borrower as the borrower's principal dwelling; or

17 (2) a security interest on a manufactured home that
18 is or will be occupied by a borrower as the borrower's
19 principal dwelling.

20 "Points and fees" means:

21 (1) all items required to be disclosed under
22 Section 226.4 (a) and Section 226.4(b) of Title 12 of the
23 Code of Federal Regulations, as amended from time to
24 time, except interest or the time price differential;

25 (2) all charges for items listed under Section
26 226.4(c)(7) of Title 12 of the Code of Federal
27 Regulations, as amended from time to time, but only if
28 the creditor receives direct or indirect compensation in
29 connection with the charge or the charge is paid to an
30 affiliate of the creditor;

31 (3) all compensation paid directly or indirectly to
32 a mortgage broker, including a broker that originates a
33 home loan in its own name through an advance of funds and
34 subsequently assigns the home loan to the person

1 advancing the funds;

2 (4) the cost of all premiums financed by the
3 creditor, directly or indirectly for any credit life,
4 credit disability, credit unemployment, credit property,
5 or other credit life or health insurance or any payments
6 financed by the creditor directly or indirectly for any
7 debt cancellation or suspension agreement or contract,
8 except insurance premiums calculated and paid on a
9 monthly basis shall not be considered financed by the
10 creditor; and

11 (5) the maximum prepayment fees or penalties that
12 may be charged or collected under the terms of the loan
13 documents.

14 (6) For open-end loans the points and fees are
15 calculated by adding the total fees charged at closing,
16 plus the maximum additional fees that can be charged
17 pursuant to the loan documents during the term of the
18 loan.

19 (7) The term "points and fees" does not include any
20 of the following: taxes, filing fees, recording, and
21 other charges and fees paid or to be paid to public
22 officials for determining the existence of, or for
23 perfecting, releasing, or satisfying a security interest;
24 or charges paid to a person other than the creditor, an
25 affiliate of the creditor, a mortgage broker, or an
26 affiliate of a mortgage broker, as follows: fees for
27 flood certification; fees for pest infestation and flood
28 determinations; appraisal fees; fees for inspections
29 performed prior to loan closing; credit report fees;
30 survey fees; attorneys' fees (if the borrower has the
31 right to select the attorney from an approved list or
32 otherwise); notary fees; escrow charges that are not
33 required to be disclosed under Sections 226.4(a) and
34 226.4(b) of Title 12 of the Code of Federal Regulations;

1 title insurance premiums; or fire insurance or flood
2 insurance premiums (provided that the conditions in
3 Section 226.4(d) (2) of Title 12 of the Code of Federal
4 Regulations are met).

5 "Rate" means the interest rate charged on the home loan,
6 based on an annual simple interest yield.

7 "Total loan amount" means the principal of the loan minus
8 those points and fees that are included in the principal
9 amount of the loan. For open-end loans, the total loan amount
10 shall be calculated using the total line of credit allowed
11 under the home loan.

12 Section 10. Prohibited acts on all home loans.

13 (a) No creditor making a home loan may finance, directly
14 or indirectly, any credit life, credit disability, credit
15 property, or credit unemployment insurance policy, or any
16 other life or health insurance premiums, or any payments for
17 any debt cancellation or suspension agreement or contract.
18 Insurance premiums not included in the home loan principal
19 and calculated and paid on a monthly basis shall not be
20 considered financed by the creditor for purposes of this
21 subsection.

22 (b) No creditor may charge a late payment fee in
23 violation of any of the following rules:

24 (1) The late payment fee may not be in excess of 4%
25 of the amount of the payment past due;

26 (2) The fee may only be assessed for a payment past
27 due for 15 days or more;

28 (3) The fee may not be charged more than once with
29 respect to a single late payment. If a late payment
30 charge is deducted from a payment on the loan, and such
31 deduction causes a subsequent default on a subsequent
32 payment, no late payment charge may be imposed for such
33 default. If a late payment charge has been once imposed

1 with respect to a particular late payment, no such charge
2 shall be imposed with respect to any future payment that
3 would have been timely and sufficient, but for the
4 previous default.

5 (4) No fee may be charged unless the creditor
6 notifies the borrower within 45 days following the date
7 the payment was due that a late payment charge has been
8 imposed for a particular late payment. No late payment
9 charge may be collected if the borrower informs the
10 creditor that non-payment of an installment is in dispute
11 and presents proof of payment within 45 days of receipt
12 of the creditor's notice of the late charge.

13 (c) No creditor may charge a fee for informing or
14 transmitting to any person the balance due to pay off a home
15 loan or to provide a release upon repayment. Payoff balances
16 shall be provided within a reasonable time, but in any event
17 not more than 7 business days after the request.

18 (d) No creditor may make a high-cost home loan if the
19 home loan pays off all or part of an existing home loan and
20 the borrower does not receive a reasonable and tangible net
21 benefit from the new home loan considering all the
22 circumstances, including the terms of both the new home loan
23 or loans and the refinanced debt, the cost of the new home
24 loan or loans, and the borrower's circumstances.

25 (e) No creditor shall recommend or encourage default on
26 an existing loan or other debt prior to or in connection with
27 the closing or planned closing of a home loan that refinances
28 all or any portion of such existing loan or debt.

29 (f) No high-cost home loan may contain a provision that
30 increases the interest rate after default. This provision
31 does not apply to interest rate charges in a variable rate
32 loan when the increase is otherwise consistent with the
33 provisions of the loan documents, provided that the event of
34 default or the acceleration of the indebtedness does not

1 trigger the change in the interest rate.

2 (g) No home loan may contain a provision that permits
3 the creditor, in its sole discretion, to accelerate the
4 indebtedness. This provision does not prohibit acceleration
5 of the loan in good faith due to the borrower's failure to
6 abide by the material terms of the loan.

7 Section 15. Prohibited acts on high-cost home loans.

8 (a) No creditor making a high-cost home loan may
9 directly or indirectly finance more than 3% of the total loan
10 amount in points or fees.

11 (b) No prepayment fees or penalties may be included in
12 the loan documents for a high-cost home loan.

13 (c) No high-cost home loan may contain a scheduled
14 payment that is more than twice as large as the average of
15 earlier scheduled payments. This provision does not apply
16 when the payment schedule is adjusted to the seasonal or
17 irregular income of the borrower.

18 (d) No high-cost home loan may include payment terms
19 under which the outstanding principal balance will increase
20 at any time over the course of the loan because the regular
21 periodic payments do not cover the full amount of the
22 interest due.

23 (e) No creditor may make a high-cost home loan if the
24 new loan refinances an existing home loan that is a special
25 mortgage originated, subsidized, or guaranteed by or through
26 a state, tribal, or local government, or non-profit
27 organization, which either bears non-standard payment terms
28 beneficial to the borrower, such as payments which vary with
29 income or are limited to a percentage of income, or where no
30 payments are required under specified conditions, and where,
31 as a result of the refinancing, the borrower will lose one or
32 more of the benefits of the mortgage.

33 (f) No high-cost home loan may include terms under which

1 more than 2 periodic payments required under the loan are
2 consolidated and paid in advance from the loan proceeds
3 provided to the borrower.

4 (g) No high-cost home loan may contain a provision that
5 allows a party to require a borrower, whether he or she is
6 acting individually or on behalf of others similarly
7 situated, to assert any claim or defense in a forum that is
8 less convenient, more costly, or more dilatory for the
9 resolution of a dispute than a judicial forum established in
10 this State where the borrower may otherwise properly bring
11 the claim or defense or limits in any way any claim or
12 defense the borrower may have.

13 (h) No creditor may make a high-cost home loan without
14 due regard to repayment ability. Such a determination by the
15 creditor must be based upon a consideration of the borrower's
16 current and expected income, current obligations, employment
17 status, and other financial resources (other than the
18 borrower's equity in the home). A borrower shall be presumed
19 to be able to make the scheduled payments if, at the time the
20 loan is made, or at the time of the first rate adjustment in
21 the case of a lower introductory interest rate, the
22 borrower's scheduled monthly payments on the loan (including
23 principal, interest, taxes, insurance, and assessments)
24 combined with the scheduled payments for all other debt, do
25 not exceed 50% of the borrower's documented and verified
26 monthly gross income, provided that the borrower has
27 sufficient residual income, as defined in the guidelines
28 established in 38 C.F.R. 36.4337(e) and VA form 26-6393, to
29 pay essential monthly expenses after paying the scheduled
30 monthly payments and any additional debt.

31 (i) No creditor may make a high-cost home loan without
32 first receiving written certification from an independent
33 housing or credit counselor approved by the United States
34 Department of Housing and Urban Development or the Illinois

1 Housing Financing Agency, that the borrower has received
2 counseling on the advisability of the loan transaction.

3 (j) No creditor may charge a borrower any fees or other
4 charges to modify, renew, extend, or amend a high-cost home
5 loan or to defer any payment due under the terms of a
6 high-cost home loan.

7 (k) No creditor making a high-cost home loan shall pay
8 proceeds of a high-cost home loan to a home improvement
9 contractor other than:

10 (1) by an instrument payable solely the borrower or
11 borrowers; or

12 (2) at the election of the borrower or borrowers,
13 through a third-party escrow agent in accordance with
14 terms established in a written agreement signed by the
15 borrower and the contractor prior to the disbursement.

16 (l) No creditor making a high-cost home loan may steer a
17 borrower into a loan with higher costs than the lowest cost
18 category of loans for which the borrower could qualify with
19 that creditor or any of its affiliates. No broker arranging a
20 high-cost home loan may steer a borrower into a loan with
21 higher costs than the lowest cost array of loans available to
22 that borrower from the creditors with whom the broker
23 regularly does business.

24 Section 20. Enforcement and remedies.

25 (a) A violation of this Act subjects the violator to the
26 civil penalties set forth in this subsection.

27 (1) Any violation of this Act constitutes a
28 violation of the Consumer Fraud and Deceptive Business
29 Practices Act.

30 (2) Any person found by a preponderance of evidence
31 to have violated this Act shall be liable to the borrower
32 for the following:

33 (A) actual damages sustained by the borrower

1 as a result of the violation;

2 (B) statutory damages equal to the finance
3 charges agreed to in the home loan agreement, plus
4 10% of the amount financed for willful and knowing
5 violations;

6 (C) punitive damages when the violation was
7 malicious or reckless; and

8 (D) reasonable costs and attorney's fees.

9 In addition, the court may, as the court deems
10 appropriate, grant injunctive, declaratory, and other
11 equitable relief in an action to enforce compliance with this
12 Act.

13 (3) The intentional violation of this Act renders
14 the home loan agreement void, and the creditor shall have
15 no rights to collect, receive, or retain any principal,
16 interest, or other charges whatsoever with respect to the
17 loan, and the borrower may recover any payments made
18 under the agreement. Loan terms that violate this Act's
19 protections are unenforceable, and the court may issue
20 orders to reform any terms to bring the loan into
21 compliance.

22 (4) The rights of rescission granted under 15
23 U.S.C. 1601 et seq. for violations of that law and all
24 other remedies provided in this Act shall be available to
25 a borrower by way of recoupment against a party
26 foreclosing on the home loan or collecting on the loan at
27 any time during the term of the loan.

28 (5) A borrower may also assert a violation of this
29 Act as a defense, bar, or counterclaim to any default
30 action, collection action, or judicial or nonjudicial
31 foreclosure action in connection with a home loan.

32 (6) The remedies provided under this Act are
33 cumulative. The protections and remedies provided under
34 this Act are in addition to other protections and

1 remedies that may be otherwise available under law.
2 Nothing in this Act is intended to limit the rights of
3 any injured person to recover damages or pursue any other
4 legal or equitable action under any other applicable law
5 or legal theory.

6 (7) Any person who purchases or is otherwise
7 assigned a home loan shall be subject to all affirmative
8 claims and defenses with respect to the loan that the
9 borrower could assert against the creditor or broker of
10 the loan.

11 (8) The violation of this Act shall constitute
12 grounds for licensing actions and other enforcement
13 procedures according to the administrative procedures
14 under Illinois law.

15 (b) A creditor in a home loan who, when acting in good
16 faith, fails to comply with the provisions of this Act shall
17 not be deemed to have violated this Act if the creditor
18 establishes that either:

19 (1) within 30 days after the loan closing and prior
20 to receiving any notice from the borrower of the
21 compliance failure, the creditor has made appropriate
22 restitution to the borrower and appropriate adjustments
23 are made to the loan; or

24 (2) within 60 days after the loan closing and prior
25 to receiving any notice from the borrower of the
26 compliance failure, and that the compliance failure was
27 not intentional and resulted from a bona fide error
28 notwithstanding the maintenance of procedures reasonably
29 adapted to avoid such errors, the creditor has made
30 appropriate restitution to the borrower, and appropriate
31 adjustments are made to the loan. Examples of a bona fide
32 error include clerical, calculation, computer malfunction
33 programming, and printing errors. An error of legal
34 judgment with respect to a person's obligations under

1 this Act is not a bona fide error.

2 Section 95. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 97. The Consumer Fraud and Deceptive Business
5 Practices Act is amended by changing Section 2Z as follows:

6 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

7 Sec. 2Z. Violations of other Acts. Any person who
8 knowingly violates the Automotive Repair Act, the Home Repair
9 and Remodeling Act, High-cost Home Loan Abuse Prevention Act,
10 the Dance Studio Act, the Physical Fitness Services Act, the
11 Hearing Instrument Consumer Protection Act, the Illinois
12 Union Label Act, the Job Referral and Job Listing Services
13 Consumer Protection Act, the Travel Promotion Consumer
14 Protection Act, the Credit Services Organizations Act, the
15 Automatic Telephone Dialers Act, the Pay-Per-Call Services
16 Consumer Protection Act, the Telephone Solicitations Act, the
17 Illinois Funeral or Burial Funds Act, the Cemetery Care Act,
18 the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
19 Act, subsection (a) or (b) of Section 3-10 of the Cigarette
20 Tax Act, subsection (a) or (b) of Section 3-10 of the
21 Cigarette Use Tax Act, the Electronic Mail Act, or paragraph
22 (6) of subsection (k) of Section 6-305 of the Illinois
23 Vehicle Code commits an unlawful practice within the meaning
24 of this Act.

25 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
26 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.
27 1-1-02.)