

1 AN ACT concerning 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 Abusive Home Loan Practices Act.

6 Section 5. Legislative purpose. It is the purpose of  
7 this Act to protect homeowners against abusive practices on  
8 high-cost home loans.

9 Section 10. Definitions. As used in this Act:

10 "Affiliate" means any company that controls, is  
11 controlled by, or is under common control with another  
12 company, as set forth in the Bank Holding Company Act of 1956  
13 (12 USC 1841 et seq.), as amended from time to time.

14 "Bona fide discount points means loan discount points  
15 that:

16 (1) are knowingly paid by the borrower for the  
17 express purpose of lowering the interest rate; and

18 (2) in fact reduce the interest rate or time-price  
19 differential if the reduction in the interest rate  
20 reduces the interest charged such that the borrower's  
21 dollar amount of savings in interest over the first 4  
22 years of the loan is equal to or exceeds the dollar  
23 amount of loan discount point paid by the borrower.

24 "Borrower" means any natural person obligated to repay a  
25 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 the  
29 obligation is payable at any time.

30 "High-cost home loan" means a loan that exceeds either of

1 the following thresholds:

2 (a) Rate threshold.

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

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

11 For the purpose of this definition, the trigger rate is  
12 calculated as follows:

13 (i) For fixed rate loans it is the rate as of the date  
14 of closing.

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

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

22 (b) Points and Fees Threshold.

23 (1) For loans in which the total loan amount is  
24 \$30,000 or more, the total points and fees on the loan  
25 paid by the borrower at or before closing exceed 3% of  
26 the total loan amount; except that up to 2 bona fide  
27 discount points paid on loans with interest rates not  
28 more than 4 percentage points above the weekly average  
29 yield on 5-year U.S. Treasury Securities shall not be  
30 included in the calculation of points and fees in  
31 determining whether a loan exceeds the points and fees  
32 threshold.

33 (2) For loans in which the total loan amount is  
34 less than \$30,000, the total points and fees on the loan

1 paid by the borrower at or before closing exceed the  
2 lesser of \$900 or 6% of the total loan amount; except  
3 that up to 2 bona fide discount points paid on loans with  
4 interest rates not more than 4 percentage points above  
5 the weekly average yield on 5-year U.S. Treasury  
6 Securities shall not be included in the calculation of  
7 points and fees in determining whether or not a loan  
8 exceeds the points and fees threshold.

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

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

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

24 "Points and fees" means:

25 (1) all items required to be disclosed under  
26 Section 226.4(a) and Section 226.4(b) of Title 12 of the  
27 Code of Federal Regulations, as amended from time to  
28 time, except interest or the time-price differential;

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

1           (3) all compensation paid directly or indirectly to  
2 a mortgage broker, including a broker that originates a  
3 home loan in its own name through an advance of funds and  
4 subsequently assigns the home loan to the person  
5 advancing the funds;

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

15           (5) the maximum prepayment fees or penalties that  
16 may be charged or collected under the terms of the loan  
17 documents.

18           For open-end loans the points and fees are calculated by  
19 adding the total fees charged at closing, plus the maximum  
20 additional fees that can be charged pursuant to the loan  
21 documents during the term of the loan.

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

1 to be disclosed under Section 226.4(a) and Section 226.4(b)  
2 of Title 12 of the Code of Federal Regulations, title  
3 insurance premiums, or fire insurance or flood insurance  
4 premiums (provided that the conditions in Section 226.4(d)(2)  
5 of Title 12 of the Code of Federal Regulations are met).

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

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

13 Section 15. Prohibited acts on all home loans.

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

23 (b) No creditor may charge a late payment fee in  
24 violation of the following provisions:

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

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

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

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

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

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

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

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

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

1 default or the acceleration of the indebtedness does not  
2 trigger the change in the interest rate.

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

8 Section 20. Prohibited acts on high-cost home loans.

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

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

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

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

24 (e) No creditor may make a high-cost home loan if the  
25 new loan refinances an existing home loan that is a special  
26 mortgage originated, subsidized, or guaranteed by or through  
27 a state, tribal, or local government or a non-profit  
28 organization if the loan either (1) bears non-standard  
29 payment terms beneficial to the borrower, including but not  
30 limited to payments that vary with income or are limited to a  
31 percentage of income or (2) where no payments are required  
32 under specified conditions, and where, as a result of the  
33 refinancing, the borrower will lose one or more of the

1 benefits of the mortgage.

2 (f) No high-cost home loan may include terms under which  
3 more than 2 periodic payments required under the loan are  
4 consolidated and paid in advance from the loan proceeds  
5 provided to the borrower.

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

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

33 (i) No creditor may make a high-cost home loan without  
34 first receiving written certification from an independent



1 housing or credit counselor approved by the United States  
2 Department of Housing and Urban Development or the Illinois  
3 Housing Finance Agency that the borrower has received  
4 counseling on the advisability of the loan transaction.

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

9 (k) No creditor making a high-cost home loan shall pay  
10 proceeds of a high-cost home loan to a home improvement  
11 contractor other than (1) by an instrument payable solely to  
12 the borrower or borrowers, or (2) at the election of the  
13 borrower or borrowers, through a third-party escrow agent in  
14 accordance with terms established in a written agreement  
15 signed by the borrower and the contractor prior to the  
16 disbursement.

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

25 Section 25. Enforcement and remedies.

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

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

31 (1) actual damages sustained by the borrower as a  
32 result of the violation;

33 (2) statutory damages equal to the finance charges

1 agreed to in the home loan agreement, plus 10% of the  
2 amount financed for willful and knowing violations;

3 (3) punitive damages if the violation was malicious  
4 or reckless;

5 (4) reasonable costs and attorneys' fees; and

6 (5) if the court deems it appropriate, injunctive,  
7 declaratory, and other equitable relief in an action to  
8 enforce compliance.

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

17 (d) The rights of rescission granted under 15 U.S.C.  
18 1601, et seq., for violations of that law and all other  
19 remedies provided in this Act shall be available to a  
20 borrower by way of recoupment against a party foreclosing on  
21 a home loan or collecting on the loan at any time during the  
22 term of the loan.

23 (e) A borrower may also assert a violation of this Act  
24 as a defense, bar, or counter-claim to any default action,  
25 collection action, or judicial or non judicial foreclosure  
26 action in connection with a home loan.

27 (f) The remedies provided under this Act are cumulative.  
28 The protections and remedies provided under this Act are in  
29 addition to other protections and remedies that may be  
30 otherwise available under law. Nothing in this Act is  
31 intended to limit the rights of any injured person to recover  
32 damages or pursue any other legal or equitable action under  
33 any other applicable law or legal theory.

34 (g) Any person who purchases or is otherwise assigned a

1 home loan shall be subject to all affirmative claims and  
2 defenses with respect to the loan that the borrower could  
3 assert against the creditor or broker of the loan.

4 (h) A violation of this Section constitutes grounds for  
5 licensing actions and other enforcement procedures according  
6 to the administrative procedures provided by Illinois law.

7 Section 30. Corrections and unintentional violations. A  
8 creditor in a home loan who, when acting in good faith, fails  
9 to comply with the provisions of this Act, will not be deemed  
10 to have violated the Act if the creditor establishes that  
11 either:

12 (1) within 30 days of the loan closing and prior to  
13 receiving any notice from the borrower of the compliance  
14 failure, the creditor has made appropriate restitution to  
15 the borrower, and appropriate adjustments are made to the  
16 loan; or

17 (2) within 60 days of the loan closing and prior to  
18 receiving any notice from the borrower of the compliance  
19 failure, if the compliance failure was not intentional  
20 and resulted from a bona fide error notwithstanding the  
21 maintenance of procedures reasonably adapted to avoid  
22 such errors, the creditor has made appropriate  
23 restitution to the borrower and appropriate adjustments  
24 are made to the loan. Examples of a bona fide error  
25 include, but are not limited to, clerical, calculation,  
26 computer malfunction and programming, and printing  
27 errors. An error of legal judgment with respect to a  
28 person's obligations under this Act is not a bona fide  
29 error.

30 Section 35. Severability. The provisions of this Act  
31 shall be severable, and if any clause, sentence, paragraph,  
32 or part of this Act, or the application thereof to any person

1 or circumstance, shall for any reason be adjudged by a court  
2 of competent jurisdiction to be invalid, such judgment shall  
3 not affect, impair or invalidate the remainder of this Act  
4 nor the application of such clause, sentence, paragraph, or  
5 part to other persons or circumstances but shall be confined  
6 in its operation to the clause, sentence, paragraph, or part  
7 thereof and to the persons or circumstances directly involved  
8 in the controversy in which such judgment shall have been  
9 rendered. If any provision of this Act is declared to be  
10 inapplicable to any specific category, type, or kind of loan  
11 or points and fees, the provisions of this Act shall  
12 nonetheless continue to apply with respect to all other loans  
13 and points and fees.