



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0537

Introduced 2/4/2009, by Rep. Charles E. Jefferson - Keith Farnham - Fred Crespo

SYNOPSIS AS INTRODUCED:

205 ILCS 635/5-8

815 ILCS 137/30

815 ILCS 205/4.1a

from Ch. 17, par. 6406

Amends the Residential Mortgage License Act of 1987. Provides that no licensee may make, provide, or arrange a mortgage loan with a prepayment penalty (rather than permitting prepayment penalties under specified conditions). Provides that prepayment penalties are prohibited in connection with the sale or destruction of a dwelling secured by a residential mortgage loan. Amends the High Risk Home Loan Act to provide that for any loan that is subject to the provisions of the Act and is not subject to the provisions of the Home Ownership and Equity Protection Act of 1994, no lender shall make a high risk home loan that includes a penalty provision (rather than permitting prepayment penalties under specified conditions). Amends the Interest Act. Deletes a provision providing that notwithstanding specified provisions, the lender, in the case of any nonexempt residential mortgage loan, shall have the right to include a prepayment penalty that meets specified criteria.

LRB096 06068 MJR 16150 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning financial regulation.

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 prohibited.

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) (Blank). ~~If a borrower declines an offer required under~~
16 ~~subsection (a) of this Section, the licensee may include a~~
17 ~~prepayment penalty that extends no longer than three years or~~
18 ~~the first change date or rate adjustment of a variable rate~~
19 ~~mortgage, whichever comes earlier, provided that, if a~~
20 ~~prepayment is made during the fixed rate period, the licensee~~
21 ~~shall receive an amount that is no more than:~~

22 ~~(1) 3% of the total loan amount if the prepayment is~~
23 ~~made within the first 12-month period following the date~~

1 ~~the loan was made;~~

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

5 ~~(3) 1% of the total loan amount if the prepayment is~~
6 ~~made within the third 12-month period following the date~~
7 ~~the loan was made, if the fixed rate period extends 3~~
8 ~~years.~~

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

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

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

17 Section 10. The High Risk Home Loan Act is amended by
18 changing Section 30 as follows:

19 (815 ILCS 137/30)

20 Sec. 30. Prepayment penalty. For any loan that is subject
21 to the provisions of this Act and is not subject to the
22 provisions of the Home Ownership and Equity Protection Act of
23 1994, no lender shall make a high risk home loan that includes
24 a penalty provision ~~for payment made: (i) after the expiration~~

1 ~~of the 36-month period following the date the loan was made; or~~
2 ~~(ii) that is 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.~~

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

13 Section 15. The Interest Act is amended by changing Section
14 4.1a as follows:

15 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

16 Sec. 4.1a. Charges for and cost of the following items paid
17 or incurred by any lender in connection with any loan shall not
18 be deemed to be charges for or in connection with any loan of
19 money referred to in Section 6 of this Act, or charges by the
20 lender as a consideration for the loan referred to in this
21 Section:

22 (a) hazard, mortgage or life insurance premiums,
23 survey, credit report, title insurance, abstract and
24 attorneys' fees, recording charges, escrow and appraisal

1 fees, and similar charges.

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

8 (c) in the case of any loan made pursuant to the
9 provisions of the Emergency Home Purchase Assistance Act of
10 1974 (Section 313 of the National Housing Act, Chapter B of
11 Title 12 of the United States Code), in addition to the
12 matters referred to in paragraphs (a) and (b) of this
13 Section all charges required or allowed by the Government
14 National Mortgage Association, whether designated as
15 processing fees, commitment fees, loss reserve and
16 marketing fees, discounts, origination fees or otherwise
17 designated.

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

25 (e) if the agreement governing the loan so provides, a
26 charge not to exceed the rate permitted under Section 3-806

1 of the Uniform Commercial Code-Commercial Paper for any
2 check, draft or order for the payment of money submitted in
3 accordance with said agreement which is unpaid or not
4 honored by a bank or other depository institution.

5 (f) if the agreement governing the loan so provides,
6 for each loan installment in default for a period of not
7 less than 10 days, a charge in an amount not in excess of
8 5% of such loan installment. Only one delinquency charge
9 may be collected on any such loan installment regardless of
10 the period during which it remains in default. Payments
11 timely received by the lender under a written extension or
12 deferral agreement shall not be subject to any delinquency
13 charge.

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

24 ~~(1) 3% of the total loan amount if the prepayment is~~
25 ~~made within the first 12-month period following the date~~
26 ~~the loan was made;~~

1 ~~(2) 2% of the total loan amount if the prepayment is~~
2 ~~made within the second 12-month period following the date~~
3 ~~the loan was made; or~~

4 ~~(3) 1% of the total loan amount if the prepayment is~~
5 ~~made within the third 12-month period following the date~~
6 ~~the loan was made, if the fixed rate period extends 3~~
7 ~~years.~~

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

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

24 The percentage of the principal amount of the loan
25 represented by all of such charges shall first be computed,
26 which in the case of a loan with an interest rate in excess of

1 8% per annum secured by residential real estate, other than
2 loans described in paragraphs (e) and (f) of Section 4, shall
3 not exceed 3% of such principal amount. Said percentage shall
4 then be divided by the number of years and fractions thereof of
5 the period of the loan according to its stated maturity. The
6 percentage thus obtained shall then be added to the percentage
7 of the stated annual rate of interest.

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