

HB3294



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3294

by Rep. Carol A. Sente

SYNOPSIS AS INTRODUCED:

815 ILCS 137/10

Amends the High Risk Home Loan Act. Provides that the term "points and fees" does not include fees paid to the United States Department of Veterans Affairs required by law, fees paid to the Federal Housing Administration required by law, and fees paid to the United States Department of Agriculture's Rural Development Loan Program required by law.

LRB098 06114 WGH 36155 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, (ii) the loan documents permit
11 the creditor to charge or collect prepayment fees or penalties
12 more than 36 months after the transaction closing or such fees
13 exceed, in the aggregate, more than 2% of the amount prepaid,
14 or (iii) the total points and fees payable in connection with
15 the transaction, other than bona fide third-party charges not
16 retained by the mortgage originator, creditor, or an affiliate
17 of the mortgage originator or creditor, will exceed (1) 5% of
18 the total loan amount in the case of a transaction for \$20,000
19 or more or (2) the lesser of 8% of the total loan amount or
20 \$1,000 (or such other dollar amount as prescribed by federal
21 regulation pursuant to the federal Dodd-Frank Act) in the case
22 of a transaction for less than \$20,000, except that, with
23 respect to all transactions, bona fide loan discount points may
24 be excluded as provided for in Section 35 of this Act. "High
25 risk home loan" does not include a loan that is made primarily
26 for a business purpose unrelated to the residential real

1 property securing the loan or a consumer credit transaction
2 made by a natural person who provides seller financing secured
3 by a principal residence no more than 3 times in a 12-month
4 period, provided such consumer credit transaction is not made
5 by a person that has constructed or acted as a contractor for
6 the construction of the residence in the ordinary course of
7 business of such person.

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

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

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

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

15 "Points and fees" means all items considered to be points
16 and fees under 12 CFR 226.32 (2000, or as initially amended
17 pursuant to Section 1431 of the federal Dodd-Frank Act with no
18 subsequent amendments or editions included, whichever is
19 later); compensation paid directly or indirectly by a consumer
20 or creditor to a mortgage broker from any source, including a
21 broker that originates a loan in its own name in a table-funded
22 transaction, not otherwise included in 12 CFR 226.4; the
23 maximum prepayment fees and penalties that may be charged or
24 collected under the terms of the credit transaction; all
25 prepayment fees or penalties that are incurred by the consumer
26 if the loan refinances a previous loan made or currently held

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

25 "Reasonable" means fair, proper, just, or prudent under the
26 circumstances.

1 "Servicer" means any entity chartered under the Illinois
2 Banking Act, the Savings Bank Act, the Illinois Credit Union
3 Act, or the Illinois Savings and Loan Act of 1985 and any
4 person or entity licensed under the Residential Mortgage
5 License Act of 1987, the Consumer Installment Loan Act, or the
6 Sales Finance Agency Act who is responsible for the collection
7 or remittance for, or has the right or obligation to collect or
8 remit for, any lender, note owner, or note holder or for a
9 licensee's own account, of payments, interest, principal, and
10 trust items (such as hazard insurance and taxes on a
11 residential mortgage loan) in accordance with the terms of the
12 residential mortgage loan, including loan payment follow-up,
13 delinquency loan follow-up, loan analysis, and any
14 notifications to the borrower that are necessary to enable the
15 borrower to keep the loan current and in good standing.

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

20 (Source: P.A. 97-849, eff. 1-1-13.)