



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1942

Introduced 2/20/2015, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

815 ILCS 137/10

Amends the High Risk Home Loan Act. Provides that the term "high risk home loan" includes certain loans that exceed an amount established by federal regulation. Defines the terms "prepayment penalty" and "prepayment fees or penalties". Effective immediately.

LRB099 10017 JLS 30237 b

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 (Text of Section before P.A. 97-849 takes effect)

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

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

11 "Borrower" means a natural person who seeks or obtains a
12 high risk home loan.

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

15 "Department" means the Department of Financial
16 Institutions.

17 "Director" means the Director of Financial Institutions.

18 "Good faith" means honesty in fact in the conduct or
19 transaction concerned.

20 "High risk home loan" means a home equity loan in which (i)
21 at the time of origination, the annual percentage rate exceeds
22 by more than 6 percentage points in the case of a first lien
23 mortgage, or by more than 8 percentage points in the case of a

1 junior mortgage, the yield on U.S. Treasury securities having
2 comparable periods of maturity to the loan maturity as of the
3 fifteenth day of the month immediately preceding the month in
4 which the application for the loan is received by the lender or
5 (ii) the total points and fees payable by the consumer at or
6 before closing will exceed the greater of 5% of the total loan
7 amount or \$800. The \$800 figure shall be adjusted annually on
8 January 1 by the annual percentage change in the Consumer Price
9 Index for All Urban Consumers for all items published by the
10 United States Department of Labor. "High risk home loan" does
11 not include a loan that is made primarily for a business
12 purpose unrelated to the residential real property securing the
13 loan or to an open-end credit plan subject to 12 CFR 226 (2000,
14 no subsequent amendments or editions are included).

15 "Home equity loan" means any loan secured by the borrower's
16 primary residence where the proceeds are not used as purchase
17 money for the residence.

18 "Lender" means a natural or artificial person who
19 transfers, deals in, offers, or makes a high risk home loan.
20 "Lender" includes, but is not limited to, creditors and brokers
21 who transfer, deal in, offer, or make high risk home loans.
22 "Lender" does not include purchasers, assignees, or subsequent
23 holders of high risk home loans.

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

25 "Points and fees" means all items required to be disclosed
26 as points and fees under 12 CFR 226.32 (2000, no subsequent

1 amendments or editions included); the premium of any single
2 premium credit life, credit disability, credit unemployment,
3 or any other life or health insurance that is financed directly
4 or indirectly into the loan; and compensation paid directly or
5 indirectly to a mortgage broker, including a broker that
6 originates a loan in its own name in a table-funded
7 transaction, not otherwise included in 12 CFR 226.4.

8 "Reasonable" means fair, proper, just, or prudent under the
9 circumstances.

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

25 "Total loan amount" has the same meaning as that term is
26 given in 12 CFR 226.32 and shall be calculated in accordance

1 with the Federal Reserve Board's Official Staff Commentary to
2 that regulation.

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

4 (Text of Section after P.A. 97-849 takes effect)

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

6 "Approved credit counselor" means a credit counselor
7 approved by the Director of Financial Institutions.

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

13 "Borrower" means a natural person who seeks or obtains a
14 high risk home loan.

15 "Commissioner" means the Commissioner of the Office of
16 Banks and Real Estate.

17 "Department" means the Department of Financial
18 Institutions.

19 "Director" means the Director of Financial Institutions.

20 "Good faith" means honesty in fact in the conduct or
21 transaction concerned.

22 "High risk home loan" means a consumer credit transaction,
23 other than a reverse mortgage, that is secured by the
24 consumer's principal dwelling if: (i) at the time of
25 origination, the annual percentage rate exceeds by more than 6

1 percentage points in the case of a first lien mortgage, or by
2 more than 8 percentage points in the case of a junior mortgage,
3 the average prime offer rate, as defined in Section
4 129C(b)(2)(B) of the federal Truth in Lending Act, for a
5 comparable transaction as of the date on which the interest
6 rate for the transaction is set, (ii) the loan documents permit
7 the creditor to charge or collect prepayment fees or penalties
8 more than 36 months after the transaction closing or such fees
9 exceed, in the aggregate, more than 2% of the amount prepaid,
10 or (iii) the total points and fees payable in connection with
11 the transaction, other than bona fide third-party charges not
12 retained by the mortgage originator, creditor, or an affiliate
13 of the mortgage originator or creditor, will exceed (1) 5% of
14 the total loan amount in the case of a transaction for \$20,000
15 (or such other dollar amount as prescribed by federal
16 regulation pursuant to the federal Dodd-Frank Act) or more or
17 (2) the lesser of 8% of the total loan amount or \$1,000 (or
18 such other dollar amount as prescribed by federal regulation
19 pursuant to the federal Dodd-Frank Act) in the case of a
20 transaction for less than \$20,000 (or such other dollar amount
21 as prescribed by federal regulation pursuant to the federal
22 Dodd-Frank Act), except that, with respect to all transactions,
23 bona fide loan discount points may be excluded as provided for
24 in Section 35 of this Act. "High risk home loan" does not
25 include a loan that is made primarily for a business purpose
26 unrelated to the residential real property securing the loan or

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

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

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

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

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

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

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

20 "Prepayment penalty" and "prepayment fees or penalties"
21 mean: (i) for a closed-end credit transaction, a charge imposed
22 for paying all or part of the transaction's principal before
23 the date on which the principal is due, other than a waived,
24 bona fide third-party charge that the creditor imposes if the
25 consumer prepays all of the transactions's principal sooner
26 than 36 months after consummation and (ii) for an open-end

1 credit plan, a charge imposed by the creditor if the consumer
2 terminates the open-end credit plan prior to the end of its
3 term, other than a waived, bona fide third-party charge that
4 the creditor imposes if the consumer terminates the open-end
5 credit plan sooner than 36 months after account opening.

6 "Reasonable" means fair, proper, just, or prudent under the
7 circumstances.

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

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

1 (Source: P.A. 97-849, see Section 10 of P.A. 97-1159 for
2 effective date of P.A. 97-849.)

3 Section 95. No acceleration or delay. Where this Act makes
4 changes in a statute that is represented in this Act by text
5 that is not yet or no longer in effect (for example, a Section
6 represented by multiple versions), the use of that text does
7 not accelerate or delay the taking effect of (i) the changes
8 made by this Act or (ii) provisions derived from any other
9 Public Act.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.