

AN ACT concerning business.

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

Section 5. The Currency Exchange Act is amended by changing Section 3.1 as follows:

(205 ILCS 405/3.1) (from Ch. 17, par. 4805)

Sec. 3.1. Nothing in this Act shall prevent a currency exchange from rendering State or Federal income tax service; nor shall the rendering of such service be considered a violation of this Act if such service be rendered either by the proprietor, any of his employees, or a licensed, regulated tax service approved by the Internal Revenue Service. For the purpose of this Section, "tax service" does not mean to make or offer to make a refund anticipation loan as defined by the Tax Refund Anticipation Loan Reform ~~Disclosure~~ Act.

(Source: P.A. 97-315, eff. 1-1-12.)

Section 10. The Residential Mortgage License Act of 1987 is amended by changing Section 5-8 as follows:

(205 ILCS 635/5-8)

Sec. 5-8. Prepayment penalties.

(a) No licensee may make, provide, or arrange a mortgage

loan with a prepayment penalty unless the licensee offers the borrower a loan without a prepayment penalty, the offer is in writing, and the borrower initials the offer to indicate that the borrower has declined the offer. In addition, the licensee must disclose the discount in rate received in consideration for a mortgage loan with the prepayment penalty.

(b) If a borrower declines an offer required under subsection (a) of this Section, the licensee may include, except as prohibited by Section 30 of the High Risk Home Loan Act, a prepayment penalty that extends no longer than three years or the first change date or rate adjustment of a variable rate mortgage, whichever comes earlier, provided that, if a prepayment is made during the fixed rate period, the licensee shall receive an amount that is no more than:

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

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

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

(c) Notwithstanding any provision in this Section, prepayment penalties are prohibited in connection with the sale

or destruction of a dwelling secured by a residential mortgage loan.

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

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

Section 15. The High Risk Home Loan Act is amended by changing Sections 10, 30, 55, 80, and 145 and by adding Sections 35, 35.5, 80.5, 80.6, and 90.5 as follows:

(815 ILCS 137/10)

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

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

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

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

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

"Department" means the Department of Financial Institutions.

"Director" means the Director of Financial Institutions.

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

"High risk home loan" means a consumer credit transaction, other than a reverse mortgage, that is secured by the consumer's principal dwelling if: ~~home equity loan in which~~ (i) at the time of origination, the annual percentage rate exceeds by more than 6 percentage points in the case of a first lien mortgage, or by more than 8 percentage points in the case of a junior mortgage, the average prime offer rate, as defined in Section 129C(b)(2)(B) of the federal Truth in Lending Act, for a comparable transaction as of the date on which the interest rate for the transaction is set, ~~yield on U.S. Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the loan is received by the lender or~~ (ii) the loan documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees exceed, in the aggregate, more than 2% of the amount prepaid, or (iii) the total points and fees payable in connection with the transaction, other than bona fide third-party charges not retained by the mortgage originator, creditor, or an affiliate of the mortgage originator or creditor, ~~by the consumer at or before closing~~ will exceed (1) ~~the greater of~~ 5% of the total loan amount in the case of a transaction for \$20,000 or more or

(2) the lesser of 8% of the total loan amount or \$1,000 (or such other dollar amount as prescribed by federal regulation pursuant to the federal Dodd-Frank Act) in the case of a transaction for less than \$20,000, except that, with respect to all transactions, bona fide loan discount points may be excluded as provided for in Section 35 of this Act. ~~or \$800. The \$800 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor. "High risk home loan" does not include a loan that is made primarily for a business purpose unrelated to the residential real property securing the loan or a consumer credit transaction made by a natural person who provides seller financing secured by a principal residence no more than 3 times in a 12-month period, provided such consumer credit transaction is not made by a person that has constructed or acted as a contractor for the construction of the residence in the ordinary course of business of such person or to an open end credit plan subject to 12 CFR 226 (2000, no subsequent amendments or editions are included).~~

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

"Lender" means a natural or artificial person who transfers, deals in, offers, or makes a high risk home loan. "Lender" includes, but is not limited to, creditors and brokers

who transfer, deal in, offer, or make high risk home loans. "Lender" does not include purchasers, assignees, or subsequent holders of high risk home loans.

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

"Points and fees" means all items considered ~~required~~ to be ~~disclosed as~~ points and fees under 12 CFR 226.32 (2000, or as initially amended pursuant to Section 1431 of the federal Dodd-Frank Act with no subsequent amendments or editions included, whichever is later); ~~the premium of any single premium credit life, credit disability, credit unemployment, or any other life or health insurance that is financed directly or indirectly into the loan; and compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source,~~ including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in 12 CFR 226.4; the maximum prepayment fees and penalties that may be charged or collected under the terms of the credit transaction; all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and premiums or other charges payable at or before closing or financed directly or indirectly into the loan for any credit life, credit disability, credit unemployment, credit property, other accident, loss of income, life, or health insurance or payments directly or indirectly for any debt cancellation or suspension agreement or contract, except

that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor. "Points and fees" does not include any insurance premium provided by an agency of the federal government or an agency of a state; any insurance premium paid by the consumer after closing; and any amount of a premium, charge, or fee that is not in excess of the amount payable under policies in effect at the time of origination under Section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan.

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

"Servicer" means any entity chartered under the Illinois Banking Act, the Savings Bank Act, the Illinois Credit Union Act, or the Illinois Savings and Loan Act of 1985 and any person or entity licensed under the Residential Mortgage License Act of 1987, the Consumer Installment Loan Act, or the Sales Finance Agency Act who is responsible for the collection or remittance for, or has the right or obligation to collect or remit for, any lender, note owner, or note holder or for a licensee's own account, of payments, interest, principal, and trust items (such as hazard insurance and taxes on a residential mortgage loan) in accordance with the terms of the

residential mortgage loan, including loan payment follow-up, delinquency loan follow-up, loan analysis, and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing.

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

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

(815 ILCS 137/30)

Sec. 30. No prepayment ~~Prepayment~~ penalty. A high risk home loan may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due. For purposes of this Section, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method as that term is defined by Section 933(d) of the federal Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). ~~For any loan that is subject to the provisions of this 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 for payment made: (i) after the expiration of the 36-month period following the date the loan was made; or (ii) that is more than:~~

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

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

~~(3) 1% of the total loan amount if the prepayment is made within the third 12-month period following the date the loan was made.~~

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

(815 ILCS 137/35 new)

Sec. 35. Bona fide discount points. For the purposes of determining whether the amount of points and fees meets the definition of "high risk home loan" under this Act, either the amounts described in paragraph (1) or (2) of this Section, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than one percentage point:

(A) the average prime offer rate, as defined in Section 129C of the federal Truth in Lending Act (15 U.S.C. 1639); or

(B) if secured by a personal property loan, the

average rate on a loan in connection with which insurance is provided under Title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including one bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points:

(A) the average prime offer rate, as defined in Section 129C of the federal Truth in Lending Act (15 U.S.C. 1639); or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under Title I of the National Housing Act (12 U.S.C. 1702 et seq.).

Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(815 ILCS 137/35.5 new)

Sec. 35.5. No balloon payments. No high risk home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This Section does

not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(815 ILCS 137/55)

Sec. 55. Financing of points and fees. No lender shall transfer, deal in, offer, or make a high risk home loan that finances, directly or indirectly, any points and fees. No lender shall transfer, deal in, offer, or make a high risk home loan that finances any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced in excess of 6% of the total loan amount.

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

(815 ILCS 137/80)

Sec. 80. Late payment fee. A lender shall not transfer, deal in, offer, or make a high risk home loan that provides for a late payment fee, except under the following conditions:

(1) the late payment fee shall not be in excess of 4% ~~5%~~ of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for 15 days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment;

(4) a late payment fee that the lender has collected shall be reimbursed if the borrower presents proof of

having made a timely payment; and

(5) a lender shall treat each payment as posted on the same business day as it was received by the lender, servicer, or lender's agent or at the address provided to the borrower by the lender, servicer, or lender's agent for making payments.

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

(815 ILCS 137/80.5 new)

Sec. 80.5. Coordination with subsequent late fees. If a payment is otherwise a full payment for the applicable period, is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on the payment.

(815 ILCS 137/80.6 new)

Sec. 80.6. Failure to make installment payment. If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the

default is cured.

(815 ILCS 137/90.5 new)

Sec. 90.5. Modification and deferral fees prohibited. A lender, successor in interest, assignee, or any agent of any of the foregoing may not charge a consumer any fee to modify, renew, extend, or amend a high risk home loan or to defer any payment due under the terms of the loan.

(815 ILCS 137/145)

Sec. 145. Subterfuge prohibited. No lender, with the intent to avoid the application or provisions of this Act, shall (i) divide a loan transaction into separate parts, ~~or~~ (ii) structure a loan transaction as an open-end credit plan or another form of loan, or (iii) perform any other subterfuge.

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

Section 20. The Tax Refund Anticipation Loan Disclosure Act is amended by changing Sections 1, 5, 10, and 15 and by adding Sections 25, 30, 35, and 40 as follows:

(815 ILCS 177/1)

Sec. 1. Short title. This Act may be cited as the Tax Refund Anticipation Loan Reform ~~Disclosure~~ Act.

(Source: P.A. 92-664, eff. 1-1-03.)

(815 ILCS 177/5)

Sec. 5. Definitions. The following definitions apply in this Act:

"Consumer" means any natural person who, singly or jointly with another consumer, is solicited for, applies for, or receives the proceeds of a refund anticipation loan or refund anticipation check.

"Creditor" means any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.

"Facilitator" means a person who individually or in conjunction or cooperation with another person: (i) solicits the execution of ~~makes a refund anticipation loan,~~ processes, receives, or accepts ~~for delivery~~ an application or agreement for a refund anticipation loan or refund anticipation check; (ii) services or collects upon, ~~issues a check in payment of~~ refund anticipation loan or refund anticipation check; ~~proceeds,~~ or (iii) in any other manner facilitates ~~acts to allow~~ the making of a refund anticipation loan or refund anticipation check. If there is no third party facilitator because a creditor directly solicits the execution of, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check, that creditor shall be considered a facilitator. "Facilitator" does not include a bank, savings bank, savings and loan association, or credit union, ~~or licensee under the Consumer Installment Loan Act~~ operating under the laws of the United States or this State

and does not include any person who acts solely as an intermediary and does not deal with the public in the making of the refund anticipation loan.

"Person" means an individual, a firm, a partnership, an association, a corporation, or another entity. "Person" does not, however, mean a bank, savings bank, savings and loan association, or credit union operating under the laws of the United States or this State.

"Refund anticipation check" means a check, stored value card, or other payment mechanism: (i) representing the proceeds of the consumer's tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the consumer's tax refund or tax credits; and (iii) for which the consumer has paid a fee or other consideration for such payment mechanism.

~~"Borrower" means a person who receives the proceeds of a refund anticipation loan.~~

"Refund anticipation loan" means a loan that is secured by or that the creditor arranges ~~arranged~~ to be repaid directly from the proceeds of the consumer's ~~a borrower's~~ income tax refund or tax credits ~~refunds~~. "Refund anticipation loan" also includes any sale, assignment, or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer's tax refund.

"Refund anticipation loan fee" means the charges, fees, or

other consideration charged or imposed directly or indirectly by the creditor ~~facilitator~~ for the making of or in connection with a refund anticipation loan. This term includes any charge, fee, or other consideration for a deposit account, if the deposit account is used for receipt of the consumer's tax refund to repay the amount owed on the loan. ~~A "refund anticipation loan fee" does not include charges, fees, or other consideration charged or imposed in the ordinary course of business by a facilitator for services that do not result in the making of a loan, including fees for tax return preparation and fees for electronic filing of tax returns.~~

"Refund anticipation loan interest rate" means the interest rate for a refund anticipation loan calculated as follows: the total amount of refund anticipation loan fees divided by the loan amount (minus any loan fees), then divided by the number of days in the loan term, then multiplied by 365 and expressed as a percentage. The total amount of the refund anticipation loan fee used in this calculation shall include all refund anticipation loan fees as defined in this Section. If a deposit account is established or maintained in whole or in part for the purpose of receiving the consumer's tax refund to repay the amount owed on a refund anticipation loan: (i) the maturity of the loan for the purpose of determining the refund anticipation loan interest rate shall be assumed to be the estimated date when the tax refund will be deposited in the deposit account; and (ii) any fee charged to the consumer for

such deposit account shall be considered a loan fee and shall be included in the calculation of the refund anticipation loan interest rate. If no deposit account is established or maintained for the repayment of the loan, the maturity of the loan shall be assumed to be the estimated date when the tax refund is received by the creditor.

(Source: P.A. 92-664, eff. 1-1-03.)

(815 ILCS 177/10)

Sec. 10. Disclosure requirements. At the time a consumer borrower applies for a refund anticipation loan or check, a facilitator shall disclose to the consumer borrower on a document that is separate from the ~~loan~~ application:

(1) the fee for the refund anticipation loan or refund anticipation check ~~fee schedule~~;

(1.5) for refund anticipation loans, disclosure of the refund anticipation loan interest rate. The refund anticipation loan interest rate shall be calculated as set forth in Section 5 ~~the Annual Percentage Rate utilizing a 10-day time period~~;

(2) the estimated fee for preparing and electronically filing a tax return;

(2.5) for refund anticipation loans, the total cost to the consumer borrower for utilizing a refund anticipation loan;

(3) for refund anticipation loans, the estimated date

that the loan proceeds will be paid to the consumer
~~borrower~~ if the loan is approved;

(4) for refund anticipation loans, that the consumer
~~borrower~~ is responsible for repayment of the loan and
related fees in the event the tax refund is not paid or not
paid in full; and

(5) for refund anticipation loans, the availability of
electronic filing for the income tax return of the consumer
~~borrower~~ and the average time announced by the federal
Internal Revenue Service within which the consumer
~~borrower~~ can expect to receive a refund if the consumer's
~~borrower's~~ return is filed electronically and the consumer
~~borrower~~ does not obtain a refund anticipation loan.

(Source: P.A. 92-664, eff. 1-1-03; 93-287, eff. 1-1-04.)

(815 ILCS 177/15)

Sec. 15. Posting of fee schedule and disclosures. ~~Penalty.~~

(a) A facilitator shall display a schedule showing the
current fees for refund anticipation loans, if refund
anticipation loans are offered, or refund anticipation checks,
if refund anticipation checks are offered, facilitated at the
office.

(b) A facilitator who offers refund anticipation loans
shall display on each fee schedule examples of the refund
anticipation loan interest rates for refund anticipation loans
of at least 5 different amounts, such as \$300, \$500, \$1,000,

\$1,500, \$2,000, and \$5,000. The refund anticipation loan interest rate shall be calculated as set forth in Section 5 of this Act.

(c) A facilitator who offers refund anticipation loans shall also prominently display on each fee schedule: (i) a legend, centered, in bold, capital letters, and in one-inch letters stating: "NOTICE CONCERNING REFUND ANTICIPATION LOANS" and (ii) the following verbatim statement: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT PAYING ANY EXTRA FEES AND TAKING OUT A LOAN. You can have your tax return filed electronically and your refund direct deposited into your own financial institution account without obtaining a loan or paying fees for an extra product."

(d) The postings required by this Section shall be made in no less than 28-point type on a document measuring no less than 16 inches by 20 inches. The postings required by this Section shall be displayed in a prominent location at each office where the facilitator is facilitating refund anticipation loans.

(e) A facilitator may not facilitate a refund anticipation loan or refund anticipation check unless (i) the disclosures required by this Section are displayed and (ii) the fee actually charged for the refund anticipation loan or refund

anticipation check is the same as the fee displayed on the schedule.

~~Any person who violates this Act is guilty of a petty offense and shall be fined \$500 for each offense. In addition, a facilitator who violates this Act shall be liable to any aggrieved borrower in an amount equal to 3 times the refund anticipation loan fee, plus a reasonable attorney's fee, in a civil action brought in the circuit court by the aggrieved borrower or by the Attorney General on behalf of the aggrieved borrower.~~

(Source: P.A. 92-664, eff. 1-1-03.)

(815 ILCS 177/25 new)

Sec. 25. Prohibited activities. No person, including any officer, agent, employee, or representative, shall:

(a) Charge or impose any fee, charge, or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or financial institution that provides the loan or check. This prohibition does not include any charge or fee imposed by the facilitator to all of its customers, such as fees for tax return preparation, if the same fee in the same amount is charged to the customers who do not receive refund anticipation loans, refund anticipation checks, or any other tax related financial product.

(b) Fail to comply with any provision of this Act.

(c) Directly or indirectly arrange for any third party to charge any interest, fee, or charge related to a refund anticipation loan or refund anticipation check, other than the refund anticipation loan or refund anticipation check fee imposed by the creditor, including but not limited to: (i) charges for insurance; (ii) attorneys fees or other collection costs; or (iii) check cashing.

(d) Include any of the following provisions in any document provided or signed in connection with a refund anticipation loan or refund anticipation check, including the loan application or agreement:

(i) A hold harmless clause;

(ii) A waiver of the right to a jury trial, if applicable, in any action brought by or against the consumer;

(iii) Any assignment of wages or of other compensation for services;

(iv) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract, or to seek any remedies pursuant to Section 35 of this Act;

(v) A waiver of any provision of this Act. Any such waiver shall be deemed null, void, and of no effect;

(vi) A waiver of the right to injunctive, declaratory, or other equitable relief; or

(vii) A provision requiring that any aspect of a resolution of a dispute between the parties to the

agreement be kept confidential. This provision shall not affect the right of the parties to agree that certain specified information is a trade secret or otherwise confidential, or to later agree, after the dispute arises, to keep a resolution confidential.

(e) Take or arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund to secure payment of a refund anticipation loan.

(f) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee, including soliciting the execution of, processing, receiving, or accepting an application or agreement for a refund anticipation loan or refund anticipation check that contains a provision permitting the creditor to repay, by offset or other means, an outstanding or delinquent refund anticipation loan for that creditor or any creditor from the proceeds of the consumer's tax refund.

(g) Facilitate any loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer's State tax refund from the Illinois State treasury.

(815 ILCS 177/30 new)

Sec. 30. Rate limits for non-bank refund anticipation

loans.

(a) No person shall make or facilitate a refund anticipation loan for which the refund anticipation loan interest rate is greater than 36% per annum. The refund anticipation loan interest rate shall be calculated as set forth in Section 5. Any refund anticipation loan for which the refund anticipation loan interest rate exceeds 36% per annum shall be void ab initio.

(b) This Section does not apply to persons facilitating for or doing business as a bank, savings bank, savings and loan association, or credit union chartered under the laws of the United States or this State.

(815 ILCS 177/35 new)

Sec. 35. Applicability to certain entities. No obligation or prohibition imposed upon a creditor, a person, or a facilitator by this Act shall apply to a bank, savings bank, savings and loan association, or credit union operating under the laws of the United States or this State.

(815 ILCS 177/40 new)

Sec. 40. Violation. A violation of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

Section 25. The Interest Act is amended by changing Section

4.1a as follows:

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

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

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

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

(c) in the case of any loan made pursuant to the provisions of the Emergency Home Purchase Assistance Act of 1974 (Section 313 of the National Housing Act, Chapter B of Title 12 of the United States Code), in addition to the matters referred to in paragraphs (a) and (b) of this Section all charges required or allowed by the Government National Mortgage Association, whether designated as

processing fees, commitment fees, loss reserve and marketing fees, discounts, origination fees or otherwise designated.

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

(e) if the agreement governing the loan so provides, a charge not to exceed the rate permitted under Section 3-806 of the Uniform Commercial Code-Commercial Paper for any check, draft or order for the payment of money submitted in accordance with said agreement which is unpaid or not honored by a bank or other depository institution.

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

Notwithstanding items (k) and (l) of subsection (1) of

Section 4 of this Act, the lender, in the case of any nonexempt residential mortgage loan, as defined in Section 1-4 of the Residential Mortgage License Act of 1987, other than a high risk home loan as defined in Section 10 of the High Risk Home Loan Act, shall have the right to include a prepayment penalty that extends no longer than the fixed rate period of a variable rate mortgage provided that, if a prepayment is made during the fixed rate period and not in connection with the sale or destruction of the dwelling securing the loan, the lender shall receive an amount that is no more than:

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

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

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

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

Where there is a charge in addition to the stated rate of interest payable directly or indirectly by the borrower and imposed directly or indirectly by the lender as a consideration

for the loan, or for or in connection with the loan of money, whether paid or payable by the borrower, the seller, or any other person on behalf of the borrower to the lender or to a third party, or for or in connection with the loan of money, other than as hereinabove in this Section provided, whether denominated "points," "service charge," "discount," "commission," or otherwise, and without regard to declining balances of principal which would result from any required or optional amortization of the principal of the loan, the rate of interest shall be calculated in the following manner:

The percentage of the principal amount of the loan represented by all of such charges shall first be computed, which in the case of a loan with an interest rate in excess of 8% per annum secured by residential real estate, other than loans described in paragraphs (e) and (f) of Section 4, shall not exceed 3% of such principal amount. Said percentage shall then be divided by the number of years and fractions thereof of the period of the loan according to its stated maturity. The percentage thus obtained shall then be added to the percentage of the stated annual rate of interest.

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

Section 30. The Consumer Fraud and Deceptive Business Practices Act is amended by adding Section 2NNN as follows:

(815 ILCS 505/2NNN new)

Sec. 2NNN. Violations of the Tax Refund Anticipation Loan Reform Act. Any person who violates the Tax Refund Anticipation Loan Reform Act commits an unlawful practice within the meaning of this Act.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect on January 1, 2013.