

AN ACT concerning business.

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

Section 5. The High Risk Home Loan Act is amended by changing Section 10 as follows:

(815 ILCS 137/10)

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

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

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

"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 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 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 total points and fees payable by the consumer at or before closing will exceed the greater of 5% of the total loan amount 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 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 required to be disclosed as points and fees under 12 CFR 226.32 (2000, no subsequent

amendments or editions included); 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 to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in 12 CFR 226.4.

"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.)

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

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: (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, (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, will exceed (1) 5% of the total loan amount in the case of a transaction for \$20,000 (or such other dollar amount as prescribed by federal regulation pursuant to the federal Dodd-Frank Act) 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 (or such other dollar amount as prescribed by federal regulation pursuant to the federal Dodd-Frank Act), except that, with respect to all transactions, bona fide loan discount points may be excluded as provided for in Section 35 of this Act. "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.

"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 to be 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); 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.

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

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

"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.

Public Act 099-0288

SB1942 Enrolled

LRB099 10017 JLS 30237 b

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

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

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