



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB0278

Introduced 2/3/2005, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

815 ILCS 120/2  
815 ILCS 137/10

from Ch. 17, par. 852

Amends the Illinois Fairness in Lending Act. Provides that "equity stripping" and "loan flipping" shall only include loans that qualify as high risk home loans. Amends the High Risk Home Loan Act. Provides that "points and fees" does not include: (i) fees paid to the Veterans Administration required by law; (ii) fees paid to the Federal Housing Administration required by law; (iii) fees paid for private mortgage insurance; or (iv) all fees paid to a mortgage broker by a lender if the loan is less than \$50,000, or 50% of fees paid to a mortgage broker by a lender if the loan is between \$50,000 and \$100,000.

LRB094 06374 RXD 36455 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 Illinois Fairness in Lending Act is amended  
5 by changing Section 2 as follows:

6 (815 ILCS 120/2) (from Ch. 17, par. 852)

7 Sec. 2. As used in this Act:

8 (a) "Financial Institution" means any bank, credit union,  
9 insurance company, mortgage banking company, savings bank,  
10 savings and loan association, or other residential mortgage  
11 lender which operates or has a place of business in this State.

12 (b) "Person" means any natural person.

13 (c) "Varying the terms of a loan" includes, but is not  
14 limited to the following practices:

15 (1) Requiring a greater than average down payment than  
16 is usual for the particular type of a loan involved.

17 (2) Requiring a shorter period of amortization than is  
18 usual for the particular type of loan involved.

19 (3) Charging a higher interest rate than is usual for  
20 the particular type of loan involved.

21 (4) An underappraisal of real estate or other item of  
22 property offered as security.

23 (d) "Equity stripping" means to assist a person in  
24 obtaining a loan secured by the person's principal residence  
25 for the primary purpose of receiving fees related to the  
26 financing when (i) the loan decreased the person's equity in  
27 the principal residence and (ii) at the time the loan is made,  
28 the financial institution does not reasonably believe that the  
29 person will be able to make the scheduled payments to repay the  
30 loan. "Equity stripping" shall only include loans that qualify  
31 as "high risk home loans" as defined in the High Risk Home Loan  
32 Act. "Equity stripping" does not include reverse mortgages as

1 defined in Section 5a of the Illinois Banking Act, Section 1-6a  
2 of the Illinois Savings and Loan Act of 1985, or subsection (3)  
3 of Section 46 of the Illinois Credit Union Act.

4 (e) "Loan flipping" means to assist a person in refinancing  
5 a loan secured by the person's principal residence for the  
6 primary purpose of receiving fees related to the refinancing  
7 when (i) the refinancing of the loan results in no tangible  
8 benefit to the person and (ii) at the time the loan is made,  
9 the financial institution does not reasonably believe that the  
10 refinancing of the loan will result in a tangible benefit to  
11 the person. "Loan flipping" shall only include loans that  
12 qualify as "high risk home loans" as defined in the High Risk  
13 Home Loan Act.

14 (f) "Principal residence" means a person's primary  
15 residence that is a dwelling consisting of 4 or fewer family  
16 units or that is in a dwelling consisting of condominium or  
17 cooperative units.

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

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

21 (815 ILCS 137/10)

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

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

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

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

29 "Department" means the Department of Financial  
30 Institutions.

31 "Director" means the Director of Financial Institutions.

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

34 "High risk home loan" means a home equity loan in which (i)

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

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

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

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

28 "Points and fees" means all items required to be disclosed  
29 as points and fees under 12 CFR 226.32 (2000, no subsequent  
30 amendments or editions included); the premium of any single  
31 premium credit life, credit disability, credit unemployment,  
32 or any other life or health insurance that is financed directly  
33 or indirectly into the loan; and compensation paid directly or  
34 indirectly to a mortgage broker, including a broker that  
35 originates a loan in its own name in a table-funded  
36 transaction, not otherwise included in 12 CFR 226.4. "Points

1 and fees" does not include: (i) fees paid to the Veterans  
2 Administration required by law; (ii) fees paid to the Federal  
3 Housing Administration required by law; (iii) fees paid for  
4 private mortgage insurance; or (iv) all fees paid to a mortgage  
5 broker by a lender if the loan is less than \$50,000, or 50% of  
6 fees paid to a mortgage broker by a lender if the loan is  
7 between \$50,000 and \$100,000.

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  
27 with the Federal Reserve Board's Official Staff Commentary to  
28 that regulation.

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