



## 97TH GENERAL ASSEMBLY

### State of Illinois

#### 2011 and 2012

#### SB3522

Introduced 2/8/2012, by Sen. Jacqueline Y. Collins

#### SYNOPSIS AS INTRODUCED:

205 ILCS 635/5-8  
815 ILCS 137/10  
815 ILCS 137/30  
815 ILCS 137/35 new  
815 ILCS 137/35.5 new  
815 ILCS 137/55  
815 ILCS 137/80  
815 ILCS 137/80.5 new  
815 ILCS 137/80.6 new  
815 ILCS 137/90.5 new  
815 ILCS 137/145  
815 ILCS 205/4.1a

from Ch. 17, par. 6406

Amends the Residential Mortgage License Act of 1987, the High Risk Home Loan Act, and the Interest Act. Limits the imposition of prepayment penalties in connection with high risk home loans. Limits the size of balloon payments in connection with high risk home loans. Limits the imposition of late fees. Effective January 1, 2013.

LRB097 19115 JLS 64356 b

HOUSING  
AFFORDABILITY  
IMPACT NOTE ACT  
MAY APPLY

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

6 (205 ILCS 635/5-8)

7 Sec. 5-8. Prepayment penalties.

8 (a) No licensee may make, provide, or arrange a mortgage  
9 loan with a prepayment penalty unless the licensee offers the  
10 borrower a loan without a prepayment penalty, the offer is in  
11 writing, and the borrower initials the offer to indicate that  
12 the borrower has declined the offer. In addition, the licensee  
13 must disclose the discount in rate received in consideration  
14 for a mortgage loan with the prepayment penalty.

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

23 (1) 3% of the total loan amount if the prepayment is

1 made within the first 12-month period following the date  
2 the loan was made;

3 (2) 2% of the total loan amount if the prepayment is  
4 made within the second 12-month period following the date  
5 the loan was made; or

6 (3) 1% of the total loan amount if the prepayment is  
7 made within the third 12-month period following the date  
8 the loan was made, if the fixed rate period extends 3  
9 years.

10 (c) Notwithstanding any provision in this Section,  
11 prepayment penalties are prohibited in connection with the sale  
12 or destruction of a dwelling secured by a residential mortgage  
13 loan.

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

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

18 Section 10. The High Risk Home Loan Act is amended by  
19 changing Sections 10, 30, 55, 80, and 145 and by adding  
20 Sections 35, 35.5, 80.5, 80.6, and 90.5 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.

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

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

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

10       "Department" means the Department of Financial  
11       Institutions.

12       "Director" means the Director of Financial Institutions.

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

15       "High risk home loan" means a consumer credit transaction,  
16       other than a reverse mortgage, that is secured by the  
17       consumer's principal dwelling if: ~~home equity loan in which~~ (i)  
18       at the time of origination, the annual percentage rate exceeds  
19       by more than 6 percentage points in the case of a first lien  
20       mortgage, or by more than 8 percentage points in the case of a  
21       junior mortgage, the yield on U.S. Treasury securities having  
22       comparable periods of maturity to the loan maturity as of the  
23       fifteenth day of the month immediately preceding the month in  
24       which the application for the loan is received by the lender,  
25       ~~or~~ (ii) the loan documents permit the creditor to charge or  
26       collect prepayment fees or penalties more than 36 months after

1 the transaction closing or such fees exceed, in the aggregate,  
2 more than 2% of the amount prepaid, or (iii) the total points  
3 and fees payable in connection with the transaction by the  
4 consumer at or before closing will exceed the greater of 5% of  
5 the total loan amount or \$800, except that bona fide loan  
6 discount points may be excluded as provided for in Section 35  
7 of this Act. 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. For purposes of this  
11 definition, the annual percentage rate of interest shall be  
12 determined based on the following rate: (i) in the case of a  
13 fixed rate transaction in which the annual percentage rate will  
14 not vary during the term of the loan, the interest rate in  
15 effect on the date of consummation of the transaction; (ii) in  
16 the case of a transaction in which the rate of interest varies  
17 solely in accordance with an index, the interest rate  
18 determined by adding the index rate in effect on the date of  
19 consummation of the transaction to the maximum margin permitted  
20 at any time during the loan agreement; and (iii) in the case of  
21 any other transaction in which the rate may vary at any time  
22 during the term of the loan for any reason, the interest  
23 charged on the transaction at the maximum rate that may charged  
24 during the term of the loan. "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 ~~to an open end credit plan subject to 12 CFR 226 (2000, no~~  
2 ~~subsequent amendments or editions are included).~~

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

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

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

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

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

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

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

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

25 "Servicer" means any entity chartered under the Illinois  
26 Banking Act, the Savings Bank Act, the Illinois Credit Union

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

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

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

19 (815 ILCS 137/30)

20 Sec. 30. No prepayment ~~Prepayment~~ penalty. A high risk home  
21 loan may not contain terms under which a consumer must pay a  
22 prepayment penalty for paying all or part of the principal  
23 before the date on which the principal is due. For purposes of  
24 this Section, any method of computing a refund of unearned  
25 scheduled interest is a prepayment penalty if it is less



1 favorable to the consumer than the actuarial method as that  
2 term is defined by Section 933(d) of the federal Housing and  
3 Community Development Act of 1992, 15 U.S.C. 1615(d). ~~For any~~  
4 ~~loan that is subject to the provisions of this Act and is not~~  
5 ~~subject to the provisions of the Home Ownership and Equity~~  
6 ~~Protection Act of 1994, no lender shall make a high risk home~~  
7 ~~loan that includes a penalty provision for payment made: (i)~~  
8 ~~after the expiration of the 36 month period following the date~~  
9 ~~the loan was made; or (ii) that is more than:~~

10 ~~(1) 3% of the total loan amount if the prepayment is~~  
11 ~~made within the first 12 month period following the date~~  
12 ~~the loan was made;~~

13 ~~(2) 2% of the total loan amount if the prepayment is~~  
14 ~~made within the second 12 month period following the date~~  
15 ~~the loan was made; or~~

16 ~~(3) 1% of the total loan amount if the prepayment is~~  
17 ~~made within the third 12 month period following the date~~  
18 ~~the loan was made.~~

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

20 (815 ILCS 137/35 new)

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

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

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

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

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

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

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

26           Paragraphs (1) and (2) shall not apply to discount points

1 used to purchase an interest rate reduction unless the amount  
2 of the interest rate reduction purchased is reasonably  
3 consistent with established industry norms and practices for  
4 secondary mortgage market transactions.

5 (815 ILCS 137/35.5 new)

6 Sec. 35.5. No balloon payments. No high risk home loan may  
7 contain a scheduled payment that is more than twice as large as  
8 the average of earlier scheduled payments. This Section does  
9 not apply when the payment schedule is adjusted to the seasonal  
10 or irregular income of the consumer.

11 (815 ILCS 137/55)

12 Sec. 55. Financing of points and fees. No lender shall  
13 transfer, deal in, offer, or make a high risk home loan that  
14 finances points and fees in excess of 6% of the total loan  
15 amount. No lender shall transfer, deal in, offer, or make a  
16 high risk home loan that finances any points and fees if the  
17 creditor or an affiliate of the creditor is the noteholder of  
18 the note being financed. No lender shall transfer, deal in,  
19 offer, or make a high risk home loan that finances any  
20 prepayment fee or penalty payable by the consumer in a  
21 refinancing transaction.

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

23 (815 ILCS 137/80)

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

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

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

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

10           (4) a late payment fee that the lender has collected  
11 shall be reimbursed if the borrower presents proof of  
12 having made a timely payment; and

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

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

19 (815 ILCS 137/80.5 new)

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

1 imposed on the payment.

2 (815 ILCS 137/80.6 new)

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

12 (815 ILCS 137/90.5 new)

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

18 (815 ILCS 137/145)

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

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

2 Section 15. The Interest Act is amended by changing Section  
3 4.1a as follows:

4 (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

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

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

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

21 (c) in the case of any loan made pursuant to the  
22 provisions of the Emergency Home Purchase Assistance Act of  
23 1974 (Section 313 of the National Housing Act, Chapter B of  
24 Title 12 of the United States Code), in addition to the

1 matters referred to in paragraphs (a) and (b) of this  
2 Section all charges required or allowed by the Government  
3 National Mortgage Association, whether designated as  
4 processing fees, commitment fees, loss reserve and  
5 marketing fees, discounts, origination fees or otherwise  
6 designated.

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

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

20 (f) if the agreement governing the loan so provides,  
21 for each loan installment in default for a period of not  
22 less than 10 days, a charge in an amount not in excess of  
23 5% of such loan installment. Only one delinquency charge  
24 may be collected on any such loan installment regardless of  
25 the period during which it remains in default. Payments  
26 timely received by the lender under a written extension or

1           deferral agreement shall not be subject to any delinquency  
2           charge.

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

14                 (1) 3% of the total loan amount if the prepayment is  
15                 made within the first 12-month period following the date  
16                 the loan was made;

17                 (2) 2% of the total loan amount if the prepayment is  
18                 made within the second 12-month period following the date  
19                 the loan was made; or

20                 (3) 1% of the total loan amount if the prepayment is  
21                 made within the third 12-month period following the date  
22                 the loan was made, if the fixed rate period extends 3  
23                 years.

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



1           Where there is a charge in addition to the stated rate of  
2 interest payable directly or indirectly by the borrower and  
3 imposed directly or indirectly by the lender as a consideration  
4 for the loan, or for or in connection with the loan of money,  
5 whether paid or payable by the borrower, the seller, or any  
6 other person on behalf of the borrower to the lender or to a  
7 third party, or for or in connection with the loan of money,  
8 other than as hereinabove in this Section provided, whether  
9 denominated "points," "service charge," "discount,"  
10 "commission," or otherwise, and without regard to declining  
11 balances of principal which would result from any required or  
12 optional amortization of the principal of the loan, the rate of  
13 interest shall be calculated in the following manner:

14           The percentage of the principal amount of the loan  
15 represented by all of such charges shall first be computed,  
16 which in the case of a loan with an interest rate in excess of  
17 8% per annum secured by residential real estate, other than  
18 loans described in paragraphs (e) and (f) of Section 4, shall  
19 not exceed 3% of such principal amount. Said percentage shall  
20 then be divided by the number of years and fractions thereof of  
21 the period of the loan according to its stated maturity. The  
22 percentage thus obtained shall then be added to the percentage  
23 of the stated annual rate of interest.

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

25           Section 99. Effective date. This Act takes effect January  
26 1, 2013.