AN ACT concerning business.

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

Section 5. 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 10. 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 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 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
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.
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.

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.

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% 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, (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 15. 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 99. Effective date. This Act takes effect January 1, 2013.