

1 AMENDMENT TO HOUSE BILL 47

2 AMENDMENT NO. _____. Amend House Bill 47, AS AMENDED, by
3 replacing the title with the following:

4 "AN ACT concerning lending practices."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "Section 5. The Illinois Banking Act is amended by
8 changing Section 2 and adding Sections 6.2, 6.3, 6.4, 6.5,
9 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16,
10 6.17, and 6.18 as follows:

11 (205 ILCS 5/2) (from Ch. 17, par. 302)

12 Sec. 2. General definitions. In this Act, unless the
13 context otherwise requires, the following words and phrases
14 shall have the following meanings:

15 "Accommodation party" shall have the meaning ascribed to
16 that term in Section 3-419 of the Uniform Commercial Code.

17 "Action" in the sense of a judicial proceeding includes
18 recoupments, counterclaims, set-off, and any other proceeding
19 in which rights are determined.

20 "Affiliate facility" of a bank means a main banking
21 premises or branch of another commonly owned bank. The main

1 banking premises or any branch of a bank may be an "affiliate
2 facility" with respect to one or more other commonly owned
3 banks.

4 "Appropriate federal banking agency" means the Federal
5 Deposit Insurance Corporation, the Federal Reserve Bank of
6 Chicago, or the Federal Reserve Bank of St. Louis, as
7 determined by federal law.

8 "Bank" means any person doing a banking business whether
9 subject to the laws of this or any other jurisdiction.

10 A "banking house", "branch", "branch bank" or "branch
11 office" shall mean any place of business of a bank at which
12 deposits are received, checks paid, or loans made, but shall
13 not include any place at which only records thereof are made,
14 posted, or kept. A place of business at which deposits are
15 received, checks paid, or loans made shall not be deemed to
16 be a branch, branch bank, or branch office if the place of
17 business is adjacent to and connected with the main banking
18 premises, or if it is separated from the main banking
19 premises by not more than an alley; provided always that (i)
20 if the place of business is separated by an alley from the
21 main banking premises there is a connection between the two
22 by public or private way or by subterranean or overhead
23 passage, and (ii) if the place of business is in a building
24 not wholly occupied by the bank, the place of business shall
25 not be within any office or room in which any other business
26 or service of any kind or nature other than the business of
27 the bank is conducted or carried on. A place of business at
28 which deposits are received, checks paid, or loans made shall
29 not be deemed to be a branch, branch bank, or branch office
30 (i) of any bank if the place is a terminal established and
31 maintained in accordance with paragraph (17) of Section 5 of
32 this Act, or (ii) of a commonly owned bank by virtue of
33 transactions conducted at that place on behalf of the other
34 commonly owned bank under paragraph (23) of Section 5 of this

1 Act if the place is an affiliate facility with respect to the
2 other bank.

3 "Branch of an out-of-state bank" means a branch
4 established or maintained in Illinois by an out-of-state bank
5 as a result of a merger between an Illinois bank and the
6 out-of-state bank that occurs on or after May 31, 1997, or
7 any branch established by the out-of-state bank following the
8 merger.

9 "Call report fee" means the fee to be paid to the
10 Commissioner by each State bank pursuant to paragraph (a) of
11 subsection (3) of Section 48 of this Act.

12 "Capital" includes the aggregate of outstanding capital
13 stock and preferred stock.

14 "Cash flow reserve account" means the account within the
15 books and records of the Commissioner of Banks and Real
16 Estate used to record funds designated to maintain a
17 reasonable Bank and Trust Company Fund operating balance to
18 meet agency obligations on a timely basis.

19 "Charter" includes the original charter and all
20 amendments thereto and articles of merger or consolidation.

21 "Commissioner" means the Commissioner of Banks and Real
22 Estate or a person authorized by the Commissioner, the Office
23 of Banks and Real Estate Act, or this Act to act in the
24 Commissioner's stead.

25 "Commonly owned banks" means 2 or more banks that each
26 qualify as a bank subsidiary of the same bank holding company
27 pursuant to Section 18 of the Federal Deposit Insurance Act;
28 "commonly owned bank" refers to one of a group of commonly
29 owned banks but only with respect to one or more of the other
30 banks in the same group.

31 "Community" means a city, village, or incorporated town
32 in this State.

33 "Company" means a corporation, partnership, business
34 trust, association, or similar organization and, unless

1 specifically excluded, includes a "State bank" and a "bank".

2 "Consolidating bank" means a party to a consolidation.

3 "Consolidation" takes place when 2 or more banks, or a
4 trust company and a bank, are extinguished and by the same
5 process a new bank is created, taking over the assets and
6 assuming the liabilities of the banks or trust company
7 passing out of existence.

8 "Continuing bank" means a merging bank, the charter of
9 which becomes the charter of the resulting bank.

10 "Converting bank" means a State bank converting to become
11 a national bank, or a national bank converting to become a
12 State bank.

13 "Converting trust company" means a trust company
14 converting to become a State bank.

15 "Court" means a court of competent jurisdiction.

16 "Eligible depository institution" means an insured
17 savings association that is in default, an insured savings
18 association that is in danger of default, a State or national
19 bank that is in default or a State or national bank that is
20 in danger of default, as those terms are defined in this
21 Section, or a new bank as that term defined in Section 11(m)
22 of the Federal Deposit Insurance Act or a bridge bank as that
23 term is defined in Section 11(n) of the Federal Deposit
24 Insurance Act or a new federal savings association authorized
25 under Section 11(d)(2)(f) of the Federal Deposit Insurance
26 Act.

27 "Fiduciary" means trustee, agent, executor,
28 administrator, committee, guardian for a minor or for a
29 person under legal disability, receiver, trustee in
30 bankruptcy, assignee for creditors, or any holder of similar
31 position of trust.

32 "Financial institution" means a bank, savings and loan
33 association, credit union, or any licensee under the Consumer
34 Installment Loan Act or the Sales Finance Agency Act and, for

1 purposes of Section 48.3, any proprietary network, funds
2 transfer corporation, or other entity providing electronic
3 funds transfer services, or any corporate fiduciary, its
4 subsidiaries, affiliates, parent company, or contractual
5 service provider that is examined by the Commissioner.

6 "Foundation" means the Illinois Bank Examiners' Education
7 Foundation.

8 "General obligation" means a bond, note, debenture,
9 security, or other instrument evidencing an obligation of the
10 issuer that is supported by the full available resources of
11 the issuer, the principal and interest of which is payable in
12 whole or in part by taxation.

13 "Guarantee" means an undertaking or promise to answer for
14 payment of another's debt or performance of another's duty,
15 liability, or obligation whether "payment guaranteed" or
16 "collection guaranteed".

17 "High risk home loan" means a home equity loan in which:

18 (1) at the time of origination, the APR exceeds by
19 more than 6 percentage points in the case of a first lien
20 mortgage, or by more than 8 percentage points in the case
21 of a junior mortgage, the yield on U.S. Treasury
22 securities having comparable periods of maturity to the
23 loan maturity as of the 15th day of the month immediately
24 preceding the month in which the application for the loan
25 is received by the bank; or

26 (2) the total points and fees payable by the
27 consumer at or before closing will exceed the greater of
28 5% of the total loan amount or \$800.

29 The \$800 limitation shall be adjusted annually on January
30 1 by the annual percentage change in the Consumer Price
31 Index.

32 However, "high risk home loan" does not mean a loan that
33 is made primarily for a business purpose unrelated to the
34 residential real property securing the loan and to an

1 open-end credit plan subject to subchapter B or Section
2 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
3 are included.

4 "In danger of default" means a State or national bank, a
5 federally chartered insured savings association or an
6 Illinois state chartered insured savings association with
7 respect to which the Commissioner or the appropriate federal
8 banking agency has advised the Federal Deposit Insurance
9 Corporation that:

10 (1) in the opinion of the Commissioner or the
11 appropriate federal banking agency,

12 (A) the State or national bank or insured
13 savings association is not likely to be able to meet
14 the demands of the State or national bank's or
15 savings association's obligations in the normal
16 course of business; and

17 (B) there is no reasonable prospect that the
18 State or national bank or insured savings
19 association will be able to meet those demands or
20 pay those obligations without federal assistance; or

21 (2) in the opinion of the Commissioner or the
22 appropriate federal banking agency,

23 (A) the State or national bank or insured
24 savings association has incurred or is likely to
25 incur losses that will deplete all or substantially
26 all of its capital; and

27 (B) there is no reasonable prospect that the
28 capital of the State or national bank or insured
29 savings association will be replenished without
30 federal assistance.

31 "In default" means, with respect to a State or national
32 bank or an insured savings association, any adjudication or
33 other official determination by any court of competent
34 jurisdiction, the Commissioner, the appropriate federal

1 banking agency, or other public authority pursuant to which a
2 conservator, receiver, or other legal custodian is appointed
3 for a State or national bank or an insured savings
4 association.

5 "Insured savings association" means any federal savings
6 association chartered under Section 5 of the federal Home
7 Owners' Loan Act and any State savings association chartered
8 under the Illinois Savings and Loan Act of 1985 or a
9 predecessor Illinois statute, the deposits of which are
10 insured by the Federal Deposit Insurance Corporation. The
11 term also includes a savings bank organized or operating
12 under the Savings Bank Act.

13 "Insured savings association in recovery" means an
14 insured savings association that is not an eligible
15 depository institution and that does not meet the minimum
16 capital requirements applicable with respect to the insured
17 savings association.

18 "Issuer" means for purposes of Section 33 every person
19 who shall have issued or proposed to issue any security;
20 except that (1) with respect to certificates of deposit,
21 voting trust certificates, collateral-trust certificates, and
22 certificates of interest or shares in an unincorporated
23 investment trust not having a board of directors (or persons
24 performing similar functions), "issuer" means the person or
25 persons performing the acts and assuming the duties of
26 depositor or manager pursuant to the provisions of the trust,
27 agreement, or instrument under which the securities are
28 issued; (2) with respect to trusts other than those specified
29 in clause (1) above, where the trustee is a corporation
30 authorized to accept and execute trusts, "issuer" means the
31 entrusters, depositors, or creators of the trust and any
32 manager or committee charged with the general direction of
33 the affairs of the trust pursuant to the provisions of the
34 agreement or instrument creating the trust; and (3) with

1 respect to equipment trust certificates or like securities,
2 "issuer" means the person to whom the equipment or property
3 is or is to be leased or conditionally sold.

4 "Letter of credit" and "customer" shall have the meanings
5 ascribed to those terms in Section 5-102 of the Uniform
6 Commercial Code.

7 "Main banking premises" means the location that is
8 designated in a bank's charter as its main office.

9 "Maker or obligor" means for purposes of Section 33 the
10 issuer of a security, the promisor in a debenture or other
11 debt security, or the mortgagor or grantor of a trust deed or
12 similar conveyance of a security interest in real or personal
13 property.

14 "Merged bank" means a merging bank that is not the
15 continuing, resulting, or surviving bank in a consolidation
16 or merger.

17 "Merger" includes consolidation.

18 "Merging bank" means a party to a bank merger.

19 "Merging trust company" means a trust company party to a
20 merger with a State bank.

21 "Mid-tier bank holding company" means a corporation that
22 (a) owns 100% of the issued and outstanding shares of each
23 class of stock of a State bank, (b) has no other
24 subsidiaries, and (c) 100% of the issued and outstanding
25 shares of the corporation are owned by a parent bank holding
26 company.

27 "Municipality" means any municipality, political
28 subdivision, school district, taxing district, or agency.

29 "National bank" means a national banking association
30 located in this State and after May 31, 1997, means a
31 national banking association without regard to its location.

32 "Out-of-state bank" means a bank chartered under the laws
33 of a state other than Illinois, a territory of the United
34 States, or the District of Columbia.

1 "Parent bank holding company" means a corporation that is
2 a bank holding company as that term is defined in the
3 Illinois Bank Holding Company Act of 1957 and owns 100% of
4 the issued and outstanding shares of a mid-tier bank holding
5 company.

6 "Person" means an individual, corporation, partnership,
7 joint venture, trust, estate, or unincorporated association.

8 "Points and fees" means:

9 (1) all items required to be disclosed under 12 CFR
10 226.5 (2000), no subsequent dates or editions are
11 included;

12 (2) the premium of any single premium credit life,
13 credit disability, credit unemployment, or any other life
14 or health insurance that is financed directly or
15 indirectly into the loan; and

16 (3) all compensation paid directly or indirectly to
17 a mortgage broker, including a broker that originates a
18 loan in its own name in a tablefunded transaction.

19 "Public agency" means the State of Illinois, the various
20 counties, townships, cities, towns, villages, school
21 districts, educational service regions, special road
22 districts, public water supply districts, fire protection
23 districts, drainage districts, levee districts, sewer
24 districts, housing authorities, the Illinois Bank Examiners'
25 Education Foundation, the Chicago Park District, and all
26 other political corporations or subdivisions of the State of
27 Illinois, whether now or hereafter created, whether herein
28 specifically mentioned or not, and shall also include any
29 other state or any political corporation or subdivision of
30 another state.

31 "Public funds" or "public money" means current operating
32 funds, special funds, interest and sinking funds, and funds
33 of any kind or character belonging to, in the custody of, or
34 subject to the control or regulation of the United States or

1 a public agency. "Public funds" or "public money" shall
2 include funds held by any of the officers, agents, or
3 employees of the United States or of a public agency in the
4 course of their official duties and, with respect to public
5 money of the United States, shall include Postal Savings
6 funds.

7 "Published" means, unless the context requires otherwise,
8 the publishing of the notice or instrument referred to in
9 some newspaper of general circulation in the community in
10 which the bank is located at least once each week for 3
11 successive weeks. Publishing shall be accomplished by, and
12 at the expense of, the bank required to publish. Where
13 publishing is required, the bank shall submit to the
14 Commissioner that evidence of the publication as the
15 Commissioner shall deem appropriate.

16 "Recorded" means the filing or recording of the notice or
17 instrument referred to in the office of the Recorder of the
18 county wherein the bank is located.

19 "Resulting bank" means the bank resulting from a merger
20 or conversion.

21 "Securities" means stocks, bonds, debentures, notes, or
22 other similar obligations.

23 "Servicer" means any entity subject to this Act that is
24 responsible for the collection or remittance for, or the
25 right or obligation to collect or remit for, any lender,
26 noteowner, noteholder, or for the entity's own account, of
27 payments, interest, principal, and trust items such as hazard
28 insurance and taxes on a residential mortgage loan in
29 accordance with the terms of the residential mortgage loan;
30 and includes loan payment follow-up, delinquency loan
31 follow-up, loan analysis, and any notifications to the
32 borrower that are necessary to enable the borrower to keep
33 the loan current and in good standing.

34 "Stand-by letter of credit" means a letter of credit

1 under which drafts are payable upon the condition the
2 customer has defaulted in performance of a duty, liability,
3 or obligation.

4 "State bank" means any banking corporation that has a
5 banking charter issued by the Commissioner under this Act.

6 "State Banking Board" means the State Banking Board of
7 Illinois.

8 "Subsidiary" with respect to a specified company means a
9 company that is controlled by the specified company. For
10 purposes of paragraphs (8) and (12) of Section 5 of this Act,
11 "control" means the exercise of operational or managerial
12 control of a corporation by the bank, either alone or
13 together with other affiliates of the bank.

14 "Surplus" means the aggregate of (i) amounts paid in
15 excess of the par value of capital stock and preferred stock;
16 (ii) amounts contributed other than for capital stock and
17 preferred stock and allocated to the surplus account; and
18 (iii) amounts transferred from undivided profits.

19 "Tier 1 Capital" and "Tier 2 Capital" have the meanings
20 assigned to those terms in regulations promulgated for the
21 appropriate federal banking agency of a state bank, as those
22 regulations are now or hereafter amended.

23 "Total loan amount" means the same as the term used in
24 Section 226.32 of Title 12 of the Code of Federal
25 Regulations, and the same shall be calculated in accordance
26 with the Federal Reserve Board's Official Staff Commentary
27 thereto.

28 "Trust company" means a corporation incorporated in this
29 State for the purpose of accepting and executing trusts.

30 "Undivided profits" means undistributed earnings less
31 discretionary transfers to surplus.

32 "Unimpaired capital and unimpaired surplus", for the
33 purposes of paragraph (21) of Section 5 and Sections 32, 33,
34 34, 35.1, 35.2, and 47 of this Act means the sum of the state

1 bank's Tier 1 Capital and Tier 2 Capital plus such other
2 shareholder equity as may be included by regulation of the
3 Commissioner. Unimpaired capital and unimpaired surplus
4 shall be calculated on the basis of the date of the last
5 quarterly call report filed with the Commissioner preceding
6 the date of the transaction for which the calculation is
7 made, provided that: (i) when a material event occurs after
8 the date of the last quarterly call report filed with the
9 Commissioner that reduces or increases the bank's unimpaired
10 capital and unimpaired surplus by 10% or more, then the
11 unimpaired capital and unimpaired surplus shall be calculated
12 from the date of the material event for a transaction
13 conducted after the date of the material event; and (ii) if
14 the Commissioner determines for safety and soundness reasons
15 that a state bank should calculate unimpaired capital and
16 unimpaired surplus more frequently than provided by this
17 paragraph, the Commissioner may by written notice direct the
18 bank to calculate unimpaired capital and unimpaired surplus
19 at a more frequent interval. In the case of a state bank
20 newly chartered under Section 13 or a state bank resulting
21 from a merger, consolidation, or conversion under Sections 21
22 through 26 for which no preceding quarterly call report has
23 been filed with the Commissioner, unimpaired capital and
24 unimpaired surplus shall be calculated for the first calendar
25 quarter on the basis of the effective date of the charter,
26 merger, consolidation, or conversion.

27 (Source: P.A. 89-208, eff. 9-29-95; 89-364, eff. 8-18-95;
28 89-508, eff. 7-3-96; 89-534, eff. 1-1-97; 89-567, eff.
29 7-26-96; 89-626, eff. 8-9-96; 90-14, eff. 7-1-97; 90-301,
30 eff. 8-1-97.)

31 (205 ILCS 5/6.2 new)

32 Sec. 6.2. Ability to repay. A bank may not make a high
33 risk home loan if the bank does not believe at the time the

1 loan is consummated that the borrower or borrowers will be
2 able to make the scheduled payments to repay the obligation
3 based upon a consideration of their current and expected
4 income, current obligations, employment status, and other
5 financial resources (other than the borrower's equity in the
6 dwelling that secures repayment of the loan). A borrower
7 shall be presumed to be able to repay the loan if, at the
8 time the loan is consummated, or at the time of the first
9 rate adjustment in the case of a lower introductory interest
10 rate, the borrower's scheduled monthly payments on the loan
11 (including principal, interest, taxes, insurance, and
12 assessments), combined with the scheduled payments for all
13 other disclosed debts, do not exceed 50% of the borrower's
14 monthly gross income.

15 (205 ILCS 5/6.3 new)

16 Sec. 6.3. Verification of ability to pay loan. The bank
17 shall verify the borrower's ability to repay the loan in the
18 case of high risk home loans. The verification shall
19 require, at a minimum, that the bank:

20 (1) prepare a personal income and expense
21 statement, with information provided by the borrower, in
22 a form prescribed by the Commissioner;

23 (2) verify the borrower's income by means of tax
24 returns, pay stubs, accounting statements, or other
25 prudent means; and

26 (3) obtain a credit report regarding the borrower.

27 (205 ILCS 5/6.4 new)

28 Sec. 6.4. Fraudulent or deceptive practices. A bank may
29 not employ employ fraudulent or deceptive acts or practices
30 in the making of a high risk home loan, including deceptive
31 marketing and sales efforts.

1 (205 ILCS 5/6.5 new)

2 Sec. 6.5. Prepayment penalties. A bank may not make a
3 high risk home loan that calls for a prepayment penalty (i)
4 made after the expiration of the 36-month period following
5 the date the loan was made or (ii) that is more than 3% of
6 the total loan amount if the prepayment is made within the
7 first 12-month period following the date the loan was made,
8 or more than 2% of the total loan amount if the prepayment is
9 made within the second 12 month period after the date the
10 loan was made, or more than 1% of the total loan amount if
11 the prepayment is made within the third 12-month period
12 following the date the loan was made.

13 (205 ILCS 5/6.6 new)

14 Sec. 6.6. Pre-paid insurance products and warranties. A
15 bank may not make a high risk home loan that finances a
16 single premium credit life, credit disability, credit
17 unemployment, or any other life or health insurance, directly
18 or indirectly. Insurance previously calculated and paid on a
19 monthly basis shall not be considered to be financed by the
20 bank.

21 (205 ILCS 5/6.7 new)

22 Sec. 6.7. Refinancing prohibited in certain cases. A
23 bank may not refinance any high risk home loan where the
24 refinancing charges additional points and fees within a 12
25 month period after the refinanced loan was originated, unless
26 the refinancing results in a financial benefit to the
27 borrower.

28 (205 ILCS 5/6.8 new)

29 Sec. 6.8. Balloon payments. A bank may not make a high
30 risk home loan that contains a scheduled final payment that
31 is more than twice as large as the average of earlier

1 scheduled monthly payments unless the balloon payment becomes
 2 due and payable at least 15 years after the loan's
 3 origination. This prohibition does not apply when the
 4 payment schedule is adjusted to account for the seasonal or
 5 irregular income of the borrower or if the purpose of the
 6 loan is a "bridge" loan connected with the acquisition or
 7 construction of a dwelling intended to become the borrower's
 8 principal dwelling.

9 (205 ILCS 5/6.9 new)

10 Sec. 6.9. Financing of certain points and fees. A bank
 11 may not make a high risk home loan that finances points and
 12 fees in excess of 6% of the total loan amount.

13 (205 ILCS 5/6.10 new)

14 Sec. 6.10. Payments to contractors. A bank may not make a
 15 payment to a contractor under a home improvement contract
 16 other than:

17 (1) by instrument payable to the borrower or
 18 jointly to the borrower and the contractor; or

19 (2) at the election of the borrower, by a third
 20 party escrow agent in accordance with the terms
 21 established in a written agreement signed by the
 22 borrower, the bank, and the contractor before the date of
 23 payment.

24 (205 ILCS 5/6.11 new)

25 Sec. 6.11. Negative amortization. A bank may not make a
 26 high risk home loan, other than a loan secured only by a
 27 reverse mortgage, with terms under which the outstanding
 28 balance will increase at any time over the course of the loan
 29 because the regular periodic payments do not cover the full
 30 amount of the interest due, unless the negative amortization
 31 is the consequence of a temporary forbearance sought by the

1 borrower.

2 (205 ILCS 5/6.12 new)

3 Sec. 6.12. Negative equity. A bank may not make a high
4 risk home loan where the loan amount exceeds the equity of
5 the property securing the loan.

6 (205 ILCS 5/6.13 new)

7 Sec. 6.13. Counseling prior to perfecting foreclosure
8 proceedings.

9 (a) If a high risk home loan becomes delinquent by more
10 than 30 days, the servicer shall send a notice advising the
11 borrower that he or she may wish to seek consumer credit
12 counseling.

13 (b) The notice required in subsection (a) shall, at a
14 minimum, include the following language:

15 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
16 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
17 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
18 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
19 OBTAINED FROM THE ILLINOIS OFFICE OF BANKS AND REAL
20 ESTATE."

21 (c) If a bank or its agent is notified in writing by an
22 approved consumer credit counselor and the approved consumer
23 credit counselor advises the bank or its agent that the
24 borrower is seeking approved consumer credit counseling, then
25 the bank and its agent shall not institute legal action under
26 Part 15 of Article XV of the Code of Civil Procedure for 30
27 days from the date of that notice. Only one such 30-day
28 period of forbearance is allowed under this Section per
29 subject loan.

30 (d) If, within the 30-day period provided under
31 subsection (c), the bank or its agent, the approved consumer
32 credit counselor, and the borrower agree to a debt management

1 plan, then the bank and its agent shall not institute legal
2 action under Part 15 of Article XV of the Code of Civil
3 Procedure for so long as the debt management plan is complied
4 with by the borrower.

5 (1) The agreed debt management plan must be in
6 writing and signed by the bank or its agent, the approved
7 consumer credit counselor, and the borrower. A
8 modification of an approved debt management plan may not
9 be made without the mutual agreement of the bank or its
10 agent, the approved consumer credit counselor, and the
11 borrower.

12 (2) Upon written notice to the bank or its agent,
13 the borrower may change approved consumer credit
14 counselors.

15 (e) If the borrower fails to comply with the agreed debt
16 management plan, then nothing in this Section shall be
17 construed to impair the legal right of the bank or its agent
18 to enforce contracts or mortgage agreements.

19 (f) This Section applies only to high risk home loans.

20 (205 ILCS 5/6.14 new)

21 Sec. 6.14. Mortgage awareness program.

22 (a) The Mortgage Awareness Program is a counseling and
23 educational component that is provided by the Director of
24 the Department of Financial Institutions.

25 (b) The core curriculum of the Mortgage Awareness
26 Program shall include:

27 (1) explanation of the amount financed;

28 (2) explanation of the finance charge;

29 (3) explanation of the annual percentage rate;

30 (4) explanation of the total payments;

31 (5) explanation of the loan costs, including
32 broker's fees, finance charges, points, origination fees,
33 and all other charges and fees;

1 (6) explanation of the right of rescission;

2 (7) explanation of foreclosure procedures;

3 (8) explanation of the significant debt ratios,
4 including total debt to income, loan debt to income, and
5 loan debt to value of residence;

6 (9) explanation of adjustable rate mortgage;

7 (10) explanation of balloon payments;

8 (11) explanation of credit options;

9 (12) explanation of each item that appears on a
10 good faith estimate; and

11 (13) explanation of pre-payment penalties.

12 (c) Counseling session attendees must also complete a
13 personal income and expense statement, as well as a balance
14 sheet, on forms provided by the Commissioner.

15 (d) Prior to signing a certificate of completion,
16 counselors shall privately discuss with the attendee that
17 attendee's income and expense statement and balance sheet, as
18 well as the terms of any loan the attendee currently has or
19 may be contemplating and provide a third party review to
20 establish the affordability of the loan.

21 (e) Counseling session attendees must also be given a
22 brochure that contains information covered by the Mortgage
23 Awareness Program.

24 (f) A bank, prior to making a high risk home loan, shall
25 inform the borrower in writing of the right to participate in
26 the Mortgage Awareness Program.

27 (g) A bank may not offer less favorable loan terms to a
28 borrower due to a borrower participating in a Mortgage
29 Awareness Program.

30 (h) Except as prohibited elsewhere in this Act, the
31 borrower may waive participation in the program, provided
32 that the waiver occurs no less than 2 business days after the
33 day that the borrower receives the written notice required by
34 subsection (f) and that the waiver is in writing in a form

1 approved by the Commissioner.

2 (205 ILCS 5/6.15 new)

3 Sec. 6.15. Report of default and foreclosure rates on
4 conventional loans.

5 (a) On or before August 1 and February 1 of each year, a
6 bank that is a servicer of Illinois residential mortgage
7 loans shall report to the Commissioner the default and
8 foreclosure data of conventional loans for the 6-month
9 periods ending June 30 and December 31, respectively.

10 (b) A bank shall report for each loan in default or
11 foreclosure:

- 12 (1) name of borrowers;
- 13 (2) address of the property mortgaged;
- 14 (3) census tract of the property mortgaged;
- 15 (4) status of the loan (default or foreclosure);
- 16 (5) date the loan was consummated;
- 17 (6) name and license number of any licensee under
18 the Residential Mortgage License Act of 1987 who
19 originated the loan;
- 20 (7) name and address of any non-licensed or exempt
21 entity that originated the loan.

22 (205 ILCS 5/6.16 new)

23 Sec. 6.16. Commissioner's authority; unusually high
24 foreclosure rate on conventional loans. The Commissioner may
25 take any action permitted under Section 6.17 or any other
26 Section of this Act whenever the Commissioner determines
27 that, based upon a bank's report under Section 6.15, the
28 bank's foreclosure rate on conventional mortgage loans in a
29 particular area, as deemed by the Commissioner on a
30 case-by-case basis, is higher than a rate deemed appropriate
31 by the Commissioner in that particular area. The
32 Commissioner shall determine the appropriate rate for a

1 particular area by calculating the average of the default and
2 foreclosure rates on conventional mortgage loans in the same
3 area for the same period of time based on information filed
4 with the Commissioner pursuant to the Act. A bank's rate
5 that exceeds such average shall be considered unusually high.

6 (205 ILCS 5/6.17 new)

7 Sec. 6.17. Commissioner's action; unusually high
8 foreclosure rate on conventional loans.

9 (a) Whenever a bank's conventional loan default and
10 foreclosure rate for a particular 6-month period exceeds the
11 average calculated in Section 6.16, the Commissioner shall:

12 (1) conduct an examination of the bank;

13 (2) enter into a supervisory agreement with the
14 bank to lower its default and foreclosure rate on
15 conventional loans based on an analysis of its rate and
16 the results of the examination with a timetable for
17 achieving results;

18 (3) use a variety of remedies in a supervisory
19 agreement on a case-by-case basis to effect a lowering of
20 a default and foreclosure rate on conventional loans,
21 such as:

22 (A) requiring use of borrower balance sheet,
23 cash flow statement, and income and expense forms on
24 future loans;

25 (B) providing of a counseling video to
26 borrowers of future loans;

27 (C) mandating that all prospective borrowers
28 bring their loan applications to the Commissioner
29 for a third party review as described in Section
30 6.18;

31 (D) levying fines;

32 (E) using other regulatory means up to and
33 including issuance of a cease and desist order.

1 (b) When the loan analysis described in subsection (a)
2 of Section 6.15 and in Section 6.16 shows that a licensee
3 under the Residential Mortgage License Act of 1987 acting as
4 broker or originator is contributing to the high default and
5 foreclosure rate of the reporting bank, that broker or
6 originator shall also be subject to examination and
7 supervisory agreement as defined in subsection (a).

8 (205 ILCS 5/6.18 new)

9 Sec. 6.18. Third party review of high risk home loans.

10 (a) In the case of any high risk home loan, the borrower
11 shall be afforded the opportunity to seek independent review
12 of the loan terms in order to determine affordability of the
13 loan when and if the General Assembly appropriates adequate
14 funding to the Office of Banks and Real Estate specifically
15 for this program.

16 (b) The Commissioner shall establish a loan worksheet
17 and a system for review of loan terms to be performed by
18 staff of the Office of Banks and Real Estate.

19 (c) A borrower shall submit information requested on the
20 worksheet, including but not limited to information regarding
21 the borrower's financial status and budget and the terms of
22 the loan.

23 (d) The review of the worksheet shall provide the
24 borrower, at a minimum, with a projection of the amount of
25 each payment for the loan, taking into account balloon
26 payments and adjustable interest rates. The review shall also
27 inform the borrower of the amount of monthly payment the
28 borrower can afford within the borrower's budget.

29 (e) The results of the review shall be in the form of a
30 written report, with a signature of the borrower
31 acknowledging receipt of a copy of the report. A copy of the
32 written and signed report shall be submitted to the bank
33 prior to the closing of the loan, and shall become a part of

1 the permanent file for the loan.

2 (f) If, in the opinion of the reviewer of the high risk
3 home loan documentation, the loan does not make economic
4 sense to the borrower, the reviewer shall so note this in the
5 results of the review sent to the bank. This finding shall
6 enable the borrower to withdraw from the contemplated loan
7 with no financial penalty.

8 Section 10. The Illinois Savings and Loan Act of 1985 is
9 amended by adding Sections 1-10.39, 1-10.40, 1-10.41,
10 1-10.42, 5-17, 5-18, 5-19, 5-20, 5-21, 5-22, 5-23, 5-24,
11 5-25, 5-26, 5-27, 5-28, 5-29, 5-30, 5-31, 5-32, and 5-33 as
12 follows:

13 (205 ILCS 105/1-10.39 new)

14 Sec. 1-10.39. High risk home loan. "High risk home loan"
15 means a home equity loan in which:

16 (1) at the time of origination, the APR exceeds by
17 more than 6 percentage points in the case of a first lien
18 mortgage, or by more than 8 percentage points in the case
19 of a junior mortgage, the yield on U.S. Treasury
20 securities having comparable periods of maturity to the
21 loan maturity as of the 15th day of the month immediately
22 preceding the month in which the application for the loan
23 is received by the association; or

24 (2) the total points and fees payable by the
25 consumer at or before closing will exceed the greater of
26 5% of the total loan amount or \$800.

27 The \$800 limitation shall be adjusted annually on January
28 1 by the annual percentage change in the Consumer Price
29 Index.

30 However, "high risk home loan" does not mean a loan that
31 is made primarily for a business purpose unrelated to the
32 residential real property securing the loan and to an

1 open-end credit plan subject to subchapter B or Section
2 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
3 are included.

4 (205 ILCS 105/1-10.40 new)

5 Sec. 1-10.40. Points and fees. "Points and fees" means:

6 (1) all items required to be disclosed under 12 CFR
7 226.5 (2000), no subsequent dates or editions are
8 included;

9 (2) the premium of any single premium credit life,
10 credit disability, credit unemployment, or any other life
11 or health insurance that is financed directly or
12 indirectly into the loan; and

13 (3) all compensation paid directly or indirectly to
14 a mortgage broker, including a broker that originates a
15 loan in its own name in a tablefunded transaction.

16 (205 ILCS 105/1-10.41 new)

17 Sec. 1-10.41. Servicer. "Servicer" means any entity
18 subject to this Act that is responsible for the collection or
19 remittance for, or the right or obligation to collect or
20 remit for, any lender, noteowner, noteholder, or for the
21 entity's own account, of payments, interest, principal, and
22 trust items such as hazard insurance and taxes on a
23 residential mortgage loan in accordance with the terms of the
24 residential mortgage loan; and includes loan payment
25 follow-up, delinquency loan follow-up, loan analysis, and any
26 notifications to the borrower that are necessary to enable
27 the borrower to keep the loan current and in good standing.

28 (205 ILCS 105/1-10.42 new)

29 Sec. 1-10.42. Total loan amount. "Total loan amount"
30 means the same as the term used in Section 226.32 of Title 12
31 of the Code of Federal Regulations, and the same shall be

1 calculated in accordance with the Federal Reserve Board's
2 Official Staff Commentary thereto.

3 (205 ILCS 105/5-17 new)

4 Sec. 5-17. Ability to repay. An association may not make
5 a high risk home loan if the association does not believe at
6 the time the loan is consummated that the borrower or
7 borrowers will be able to make the scheduled payments to
8 repay the obligation based upon a consideration of their
9 current and expected income, current obligations, employment
10 status, and other financial resources (other than the
11 borrower's equity in the dwelling that secures repayment of
12 the loan). A borrower shall be presumed to be able to repay
13 the loan if, at the time the loan is consummated, or at the
14 time of the first rate adjustment in the case of a lower
15 introductory interest rate, the borrower's scheduled monthly
16 payments on the loan (including principal, interest, taxes,
17 insurance, and assessments), combined with the scheduled
18 payments for all other disclosed debts, do not exceed 50% of
19 the borrower's monthly gross income.

20 (205 ILCS 105/5-18 new)

21 Sec. 5-18. Verification of ability to pay loan. The
22 association shall verify the borrower's ability to repay the
23 loan in the case of high risk home loans. The verification
24 shall require, at a minimum, that the association:

25 (1) prepare a personal income and expense
26 statement, with information provided by the borrower, in
27 a form prescribed by the Commissioner;

28 (2) verify the borrower's income by means of tax
29 returns, pay stubs, accounting statements, or other
30 prudent means; and

31 (3) obtain a credit report regarding the borrower.

1 (205 ILCS 105/5-19 new)

2 Sec. 5-19. Fraudulent or deceptive practices. An
3 association may not employ employ fraudulent or deceptive
4 acts or practices in the making of a high risk home loan,
5 including deceptive marketing and sales efforts.

6 (205 ILCS 105/5-20 new)

7 Sec. 5-20. Prepayment penalties. An association may not
8 make a high risk home loan that calls for a prepayment
9 penalty (i) made after the expiration of the 36-month period
10 following the date the loan was made or (ii) that is more
11 than 3% of the total loan amount if the prepayment is made
12 within the first 12-month period following the date the loan
13 was made, or more than 2% of the total loan amount if the
14 prepayment is made within the second 12 month period after
15 the date the loan was made, or more than 1% of the total loan
16 amount if the prepayment is made within the third 12-month
17 period following the date the loan was made.

18 (205 ILCS 105/5-21 new)

19 Sec. 5-21. Pre-paid insurance products and warranties.
20 An association may not make a high risk home loan that
21 finances a single premium credit life, credit disability,
22 credit unemployment, or any other life or health insurance,
23 directly or indirectly. Insurance previously calculated and
24 paid on a monthly basis shall not be considered to be
25 financed by the association.

26 (205 ILCS 105/5-22 new)

27 Sec. 5-22. Refinancing prohibited in certain cases. An
28 association may not refinance any high risk home loan where
29 the refinancing charges additional points and fees within a
30 12 month period after the refinanced loan was originated,
31 unless the refinancing results in a financial benefit to the

1 borrower.

2 (205 ILCS 105/5-23 new)

3 Sec. 5-23. Balloon payments. An association may not make
4 a high risk home loan that contains a scheduled final payment
5 that is more than twice as large as the average of earlier
6 scheduled monthly payments unless the balloon payment becomes
7 due and payable at least 15 years after the loan's
8 origination. This prohibition does not apply when the
9 payment schedule is adjusted to account for the seasonal or
10 irregular income of the borrower or if the purpose of the
11 loan is a "bridge" loan connected with the acquisition or
12 construction of a dwelling intended to become the borrower's
13 principal dwelling.

14 (205 ILCS 105/5-24 new)

15 Sec. 5-24. Financing of certain points and fees. An
16 association may not make a high risk home loan that finances
17 points and fees in excess of 6% of the total loan amount.

18 (205 ILCS 105/5-25 new)

19 Sec. 5-25. Payments to contractors. An association may
20 not make a payment to a contractor under a home improvement
21 contract other than:

22 (1) by instrument payable to the borrower or
23 jointly to the borrower and the contractor; or

24 (2) at the election of the borrower, by a third
25 party escrow agent in accordance with the terms
26 established in a written agreement signed by the
27 borrower, the association, and the contractor before the
28 date of payment.

29 (205 ILCS 105/5-26 new)

30 Sec. 5-26. Negative amortization. An association may not

1 make a high risk home loan, other than a loan secured only by
2 a reverse mortgage, with terms under which the outstanding
3 balance will increase at any time over the course of the loan
4 because the regular periodic payments do not cover the full
5 amount of the interest due, unless the negative amortization
6 is the consequence of a temporary forbearance sought by the
7 borrower.

8 (205 ILCS 105/5-27 new)

9 Sec. 5-27. Negative equity. An association may not make a
10 high risk home loan where the loan amount exceeds the equity
11 of the property securing the loan.

12 (205 ILCS 105/5-28 new)

13 Sec. 5-28. Counseling prior to perfecting foreclosure
14 proceedings.

15 (a) If a high risk home loan becomes delinquent by more
16 than 30 days, the servicer shall send a notice advising the
17 borrower that he or she may wish to seek consumer credit
18 counseling.

19 (b) The notice required in subsection (a) shall, at a
20 minimum, include the following language:

21 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
22 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
23 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
24 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
25 OBTAINED FROM THE ILLINOIS OFFICE OF BANKS AND REAL
26 ESTATE."

27 (c) If an association or its agent is notified in
28 writing by an approved consumer credit counselor and the
29 approved consumer credit counselor advises the association or
30 its agent that the borrower is seeking approved consumer
31 credit counseling, then the association and its agent shall
32 not institute legal action under Part 15 of Article XV of the

1 Code of Civil Procedure for 30 days from the date of that
2 notice. Only one such 30-day period of forbearance is
3 allowed under this Section per subject loan.

4 (d) If, within the 30-day period provided under
5 subsection (c), the association or its agent, the approved
6 consumer credit counselor, and the borrower agree to a debt
7 management plan, then the association and its agent shall not
8 institute legal action under Part 15 of Article XV of the
9 Code of Civil Procedure for so long as the debt management
10 plan is complied with by the borrower.

11 (1) The agreed debt management plan must be in
12 writing and signed by the association or its agent, the
13 approved consumer credit counselor, and the borrower. A
14 modification of an approved debt management plan may not
15 be made without the mutual agreement of the association
16 or its agent, the approved consumer credit counselor, and
17 the borrower.

18 (2) Upon written notice to the association or its
19 agent, the borrower may change approved consumer credit
20 counselors.

21 (e) If the borrower fails to comply with the agreed debt
22 management plan, then nothing in this Section shall be
23 construed to impair the legal right of the association or its
24 agent to enforce contracts or mortgage agreements.

25 (f) This Section applies only to high risk home loans.

26 (205 ILCS 105/5-29 new)

27 Sec. 5-29. Mortgage awareness program.

28 (a) The Mortgage Awareness Program is a counseling and
29 educational component that is provided by the Director of
30 the Department of Financial Institutions.

31 (b) The core curriculum of the Mortgage Awareness
32 Program shall include:

33 (1) explanation of the amount financed;

- 1 (2) explanation of the finance charge;
- 2 (3) explanation of the annual percentage rate;
- 3 (4) explanation of the total payments;
- 4 (5) explanation of the loan costs, including
5 broker's fees, finance charges, points, origination fees,
6 and all other charges and fees;
- 7 (6) explanation of the right of rescission;
- 8 (7) explanation of foreclosure procedures;
- 9 (8) explanation of the significant debt ratios,
10 including total debt to income, loan debt to income, and
11 loan debt to value of residence;
- 12 (9) explanation of adjustable rate mortgage;
- 13 (10) explanation of balloon payments;
- 14 (11) explanation of credit options;
- 15 (12) explanation of each item that appears on a
16 good faith estimate; and
- 17 (13) explanation of pre-payment penalties.
- 18 (c) Counseling session attendees must also complete a
19 personal income and expense statement, as well as a balance
20 sheet, on forms provided by the Commissioner.
- 21 (d) Prior to signing a certificate of completion,
22 counselors shall privately discuss with the attendee that
23 attendee's income and expense statement and balance sheet, as
24 well as the terms of any loan the attendee currently has or
25 may be contemplating and provide a third party review to
26 establish the affordability of the loan.
- 27 (e) Counseling session attendees must also be given a
28 brochure that contains information covered by the Mortgage
29 Awareness Program.
- 30 (f) An association, prior to making a high risk home
31 loan, shall inform the borrower in writing of the right to
32 participate in the Mortgage Awareness Program.
- 33 (g) An association may not offer less favorable loan
34 terms to a borrower due to a borrower participating in a

1 Mortgage Awareness Program.

2 (h) Except as prohibited elsewhere in this Act, the
3 borrower may waive participation in the program, provided
4 that the waiver occurs no less than 2 business days after the
5 day that the borrower receives the written notice required by
6 subsection (f) and that the waiver is in writing in a form
7 approved by the Commissioner.

8 (205 ILCS 105/5-30 new)

9 Sec. 5-30. Report of default and foreclosure rates on
10 conventional loans.

11 (a) On or before August 1 and February 1 of each year,
12 an association that is a servicer of Illinois residential
13 mortgage loans shall report to the Commissioner the default
14 and foreclosure data of conventional loans for the 6-month
15 periods ending June 30 and December 31, respectively.

16 (b) An association shall report for each loan in default
17 or foreclosure:

- 18 (1) name of borrowers;
- 19 (2) address of the property mortgaged;
- 20 (3) census tract of the property mortgaged;
- 21 (4) status of the loan (default or foreclosure);
- 22 (5) date the loan was consummated;
- 23 (6) name and license number of any licensee under
24 the Residential Mortgage License Act of 1987 who
25 originated the loan;
- 26 (7) name and address of any non-licensed or exempt
27 entity that originated the loan.

28 (205 ILCS 105/5-31 new)

29 Sec. 5-31. Commissioner's authority; unusually high
30 foreclosure rate on conventional loans. The Commissioner may
31 take any action permitted under Section 5-32 or any other
32 Section of this Act whenever the Commissioner determines

1 that, based upon an association's report under Section 5-30,
2 the association's foreclosure rate on conventional mortgage
3 loans in a particular area, as deemed by the Commissioner on
4 a case-by-case basis, is higher than a rate deemed
5 appropriate by the Commissioner in that particular area. The
6 Commissioner shall determine the appropriate rate for a
7 particular area by calculating the average of the default and
8 foreclosure rates on conventional mortgage loans in the same
9 area for the same period of time based on information filed
10 with the Commissioner pursuant to the Act. An association's
11 rate that exceeds such average shall be considered unusually
12 high.

13 (205 ILCS 105/5-32 new)

14 Sec. 5-32. Commissioner's action; unusually high
15 foreclosure rate on conventional loans.

16 (a) Whenever an association's conventional loan default
17 and foreclosure rate for a particular 6-month period exceeds
18 the average calculated in Section 5-31, the Commissioner
19 shall:

20 (1) conduct an examination of the association;

21 (2) enter into a supervisory agreement with the
22 association to lower its default and foreclosure rate on
23 conventional loans based on an analysis of its rate and
24 the results of the examination with a timetable for
25 achieving results;

26 (3) use a variety of remedies in a supervisory
27 agreement on a case-by-case basis to effect a lowering of
28 a default and foreclosure rate on conventional loans,
29 such as:

30 (A) requiring use of borrower balance sheet,
31 cash flow statement, and income and expense forms on
32 future loans;

33 (B) providing of a counseling video to

borrowers of future loans;

(C) mandating that all prospective borrowers bring their loan applications to the Commissioner for a third party review as described in Section 5-33;

(D) levying fines;

(E) using other regulatory means up to and including issuance of a cease and desist order.

(b) When the loan analysis described in subsection (a) of Section 5-30 and in Section 5-31 shows that a licensee under the Residential Mortgage License Act of 1987 acting as broker or originator is contributing to the high default and foreclosure rate of the reporting association, that broker or originator shall also be subject to examination and supervisory agreement as defined in subsection (a).

(205 ILCS 105/5-33 new)

Sec. 5-33. Third party review of high risk home loans.

(a) In the case of any high risk home loan, the borrower shall be afforded the opportunity to seek independent review of the loan terms in order to determine affordability of the loan when and if the General Assembly appropriates adequate funding to the Office of Banks and Real Estate specifically for this program.

(b) The Commissioner shall establish a loan worksheet and a system for review of loan terms to be performed by staff of the Office of Banks and Real Estate.

(c) A borrower shall submit information requested on the worksheet, including but not limited to information regarding the borrower's financial status and budget and the terms of the loan.

(d) The review of the worksheet shall provide the borrower, at a minimum, with a projection of the amount of each payment for the loan, taking into account balloon

1 payments and adjustable interest rates. The review shall also
2 inform the borrower of the amount of monthly payment the
3 borrower can afford within the borrower's budget.

4 (e) The results of the review shall be in the form of a
5 written report, with a signature of the borrower
6 acknowledging receipt of a copy of the report. A copy of the
7 written and signed report shall be submitted to the
8 association prior to the closing of the loan, and shall
9 become a part of the permanent file for the loan.

10 (f) If, in the opinion of the reviewer of the high risk
11 home loan documentation, the loan does not make economic
12 sense to the borrower, the reviewer shall so note this in the
13 results of the review sent to the association. This finding
14 shall enable the borrower to withdraw from the contemplated
15 loan with no financial penalty.

16 Section 15. The Savings Bank Act is amended by adding
17 Sections 1007.125, 1007.130, 1007,135, 1007.140, 6015, 6016,
18 6017, 6018, 6019, 6020, 6021, 6022, 6023, 6024, 6025, 6026,
19 6027, 6028, 6029, 6030, and 6031 as follows:

20 (205 ILCS 205/1007.125 new)

21 Sec. 1007.125. High risk home loan. "High risk home
22 loan" means a home equity loan in which:

23 (1) at the time of origination, the APR exceeds by
24 more than 6 percentage points in the case of a first lien
25 mortgage, or by more than 8 percentage points in the case
26 of a junior mortgage, the yield on U.S. Treasury
27 securities having comparable periods of maturity to the
28 loan maturity as of the 15th day of the month immediately
29 preceding the month in which the application for the loan
30 is received by the savings bank; or

31 (2) the total points and fees payable by the
32 consumer at or before closing will exceed the greater of

1 5% of the total loan amount or \$800.

2 The \$800 limitation shall be adjusted annually on January
3 1 by the annual percentage change in the Consumer Price
4 Index.

5 However, "high risk home loan" does not mean a loan that
6 is made primarily for a business purpose unrelated to the
7 residential real property securing the loan and to an
8 open-end credit plan subject to subchapter B or Section
9 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
10 are included.

11 (205 ILCS 205/1007.130 new)

12 Sec. 1007.130. Points and fees. "Points and fees" means:

13 (1) all items required to be disclosed under 12 CFR
14 226.5 (2000), no subsequent dates or editions are
15 included;

16 (2) the premium of any single premium credit life,
17 credit disability, credit unemployment, or any other life
18 or health insurance that is financed directly or
19 indirectly into the loan; and

20 (3) all compensation paid directly or indirectly to
21 a mortgage broker, including a broker that originates a
22 loan in its own name in a tablefunded transaction.

23 (205 ILCS 205/1007.135 new)

24 Sec. 1007.135. Servicer. "Servicer" means any entity
25 subject to this Act that is responsible for the collection or
26 remittance for, or the right or obligation to collect or
27 remit for, any lender, noteowner, noteholder, or for the
28 entity's own account, of payments, interest, principal, and
29 trust items such as hazard insurance and taxes on a
30 residential mortgage loan in accordance with the terms of the
31 residential mortgage loan; and includes loan payment
32 follow-up, delinquency loan follow-up, loan analysis, and any

1 notifications to the borrower that are necessary to enable
2 the borrower to keep the loan current and in good standing.

3 (205 ILCS 205/1007.140 new)

4 Sec. 1007.140. Total loan amount. "Total loan amount"
5 means the same as the term used in Section 226.32 of Title 12
6 of the Code of Federal Regulations, and the same shall be
7 calculated in accordance with the Federal Reserve Board's
8 Official Staff Commentary thereto.

9 (205 ILCS 205/6015 new)

10 Sec. 6015. Ability to repay. A savings bank may not make
11 a high risk home loan if the savings bank does not believe at
12 the time the loan is consummated that the borrower or
13 borrowers will be able to make the scheduled payments to
14 repay the obligation based upon a consideration of their
15 current and expected income, current obligations, employment
16 status, and other financial resources (other than the
17 borrower's equity in the dwelling that secures repayment of
18 the loan). A borrower shall be presumed to be able to repay
19 the loan if, at the time the loan is consummated, or at the
20 time of the first rate adjustment in the case of a lower
21 introductory interest rate, the borrower's scheduled monthly
22 payments on the loan (including principal, interest, taxes,
23 insurance, and assessments), combined with the scheduled
24 payments for all other disclosed debts, do not exceed 50% of
25 the borrower's monthly gross income.

26 (205 ILCS 205/6016 new)

27 Sec. 6016. Verification of ability to pay loan. The
28 savings bank shall verify the borrower's ability to repay the
29 loan in the case of high risk home loans. The verification
30 shall require, at a minimum, that the savings bank:

31 (1) prepare a personal income and expense

1 statement, with information provided by the borrower, in
2 a form prescribed by the Commissioner;

3 (2) verify the borrower's income by means of tax
4 returns, pay stubs, accounting statements, or other
5 prudent means; and

6 (3) obtain a credit report regarding the borrower.

7 (205 ILCS 205/6017 new)

8 Sec. 6017. Fraudulent or deceptive practices. A savings
9 bank may not employ employ fraudulent or deceptive acts or
10 practices in the making of a high risk home loan, including
11 deceptive marketing and sales efforts.

12 (205 ILCS 205/6018 new)

13 Sec. 6018. Prepayment penalties. A savings bank may not
14 make a high risk home loan that calls for a prepayment
15 penalty (i) made after the expiration of the 36-month period
16 following the date the loan was made or (ii) that is more
17 than 3% of the total loan amount if the prepayment is made
18 within the first 12-month period following the date the loan
19 was made, or more than 2% of the total loan amount if the
20 prepayment is made within the second 12 month period after
21 the date the loan was made, or more than 1% of the total loan
22 amount if the prepayment is made within the third 12-month
23 period following the date the loan was made.

24 (205 ILCS 205/6019 new)

25 Sec. 6019. Pre-paid insurance products and warranties. A
26 savings bank may not make a high risk home loan that finances
27 a single premium credit life, credit disability, credit
28 unemployment, or any other life or health insurance, directly
29 or indirectly. Insurance previously calculated and paid on a
30 monthly basis shall not be considered to be financed by the
31 savings bank.

1 (205 ILCS 205/6020 new)

2 Sec. 6020. Refinancing prohibited in certain cases. A
3 savings bank may not refinance any high risk home loan where
4 the refinancing charges additional points and fees within a
5 12 month period after the refinanced loan was originated,
6 unless the refinancing results in a financial benefit to the
7 borrower.

8 (205 ILCS 205/6021 new)

9 Sec. 6021. Balloon payments. A savings bank may not make
10 a high risk home loan that contains a scheduled final payment
11 that is more than twice as large as the average of earlier
12 scheduled monthly payments unless the balloon payment becomes
13 due and payable at least 15 years after the loan's
14 origination. This prohibition does not apply when the
15 payment schedule is adjusted to account for the seasonal or
16 irregular income of the borrower or if the purpose of the
17 loan is a "bridge" loan connected with the acquisition or
18 construction of a dwelling intended to become the borrower's
19 principal dwelling.

20 (205 ILCS 205/6022 new)

21 Sec. 6022. Financing of certain points and fees. A
22 savings bank may not make a high risk home loan that finances
23 points and fees in excess of 6% of the total loan amount.

24 (205 ILCS 205/6023 new)

25 Sec. 6023. Payments to contractors. A savings bank may
26 not make a payment to a contractor under a home improvement
27 contract other than:

28 (1) by instrument payable to the borrower or
29 jointly to the borrower and the contractor; or

30 (2) at the election of the borrower, by a third
31 party escrow agent in accordance with the terms

1 established in a written agreement signed by the
2 borrower, the savings bank, and the contractor before the
3 date of payment.

4 (205 ILCS 205/6024 new)

5 Sec. 6024. Negative amortization. A savings bank may not
6 make a high risk home loan, other than a loan secured only by
7 a reverse mortgage, with terms under which the outstanding
8 balance will increase at any time over the course of the loan
9 because the regular periodic payments do not cover the full
10 amount of the interest due, unless the negative amortization
11 is the consequence of a temporary forbearance sought by the
12 borrower.

13 (205 ILCS 205/6025 new)

14 Sec. 6025. Negative equity. A savings bank may not make a
15 high risk home loan where the loan amount exceeds the equity
16 of the property securing the loan.

17 (205 ILCS 205/6026 new)

18 Sec. 6026. Counseling prior to perfecting foreclosure
19 proceedings.

20 (a) If a high risk home loan becomes delinquent by more
21 than 30 days, the servicer shall send a notice advising the
22 borrower that he or she may wish to seek consumer credit
23 counseling.

24 (b) The notice required in subsection (a) shall, at a
25 minimum, include the following language:

26 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
27 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
28 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
29 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
30 OBTAINED FROM THE ILLINOIS OFFICE OF BANKS AND REAL
31 ESTATE."

1 (c) If a savings bank or its agent is notified in
2 writing by an approved consumer credit counselor and the
3 approved consumer credit counselor advises the savings bank
4 or its agent that the borrower is seeking approved consumer
5 credit counseling, then the savings bank and its agent shall
6 not institute legal action under Part 15 of Article XV of the
7 Code of Civil Procedure for 30 days from the date of that
8 notice. Only one such 30-day period of forbearance is
9 allowed under this Section per subject loan.

10 (d) If, within the 30-day period provided under
11 subsection (c), the savings bank or its agent, the approved
12 consumer credit counselor, and the borrower agree to a debt
13 management plan, then the savings bank and its agent shall
14 not institute legal action under Part 15 of Article XV of the
15 Code of Civil Procedure for so long as the debt management
16 plan is complied with by the borrower.

17 (1) The agreed debt management plan must be in
18 writing and signed by the savings bank or its agent, the
19 approved consumer credit counselor, and the borrower. A
20 modification of an approved debt management plan may not
21 be made without the mutual agreement of the savings bank
22 or its agent, the approved consumer credit counselor, and
23 the borrower.

24 (2) Upon written notice to the savings bank or its
25 agent, the borrower may change approved consumer credit
26 counselors.

27 (e) If the borrower fails to comply with the agreed debt
28 management plan, then nothing in this Section shall be
29 construed to impair the legal right of the savings bank or
30 its agent to enforce contracts or mortgage agreements.

31 (f) This Section applies only to high risk home loans.

32 (205 ILCS 205/6027 new)

33 Sec. 6027. Mortgage awareness program.

1 (a) The Mortgage Awareness Program is a counseling and
2 educational component that is provided by the Director of
3 the Department of Financial Institutions.

4 (b) The core curriculum of the Mortgage Awareness
5 Program shall include:

6 (1) explanation of the amount financed;

7 (2) explanation of the finance charge;

8 (3) explanation of the annual percentage rate;

9 (4) explanation of the total payments;

10 (5) explanation of the loan costs, including
11 broker's fees, finance charges, points, origination fees,
12 and all other charges and fees;

13 (6) explanation of the right of rescission;

14 (7) explanation of foreclosure procedures;

15 (8) explanation of the significant debt ratios,
16 including total debt to income, loan debt to income, and
17 loan debt to value of residence;

18 (9) explanation of adjustable rate mortgage;

19 (10) explanation of balloon payments;

20 (11) explanation of credit options;

21 (12) explanation of each item that appears on a
22 good faith estimate; and

23 (13) explanation of pre-payment penalties.

24 (c) Counseling session attendees must also complete a
25 personal income and expense statement, as well as a balance
26 sheet, on forms provided by the Commissioner.

27 (d) Prior to signing a certificate of completion,
28 counselors shall privately discuss with the attendee that
29 attendee's income and expense statement and balance sheet, as
30 well as the terms of any loan the attendee currently has or
31 may be contemplating and provide a third party review to
32 establish the affordability of the loan.

33 (e) Counseling session attendees must also be given a
34 brochure that contains information covered by the Mortgage

1 Awareness Program.

2 (f) A savings bank, prior to making a high risk home
3 loan, shall inform the borrower in writing of the right to
4 participate in the Mortgage Awareness Program.

5 (g) A savings bank may not offer less favorable loan
6 terms to a borrower due to a borrower participating in a
7 Mortgage Awareness Program.

8 (h) Except as prohibited elsewhere in this Act, the
9 borrower may waive participation in the program, provided
10 that the waiver occurs no less than 2 business days after the
11 day that the borrower receives the written notice required by
12 subsection (f) and that the waiver is in writing in a form
13 approved by the Commissioner.

14 (205 ILCS 205/6028 new)

15 Sec. 6028. Report of default and foreclosure rates on
16 conventional loans.

17 (a) On or before August 1 and February 1 of each year, a
18 savings bank that is a servicer of Illinois residential
19 mortgage loans shall report to the Commissioner the default
20 and foreclosure data of conventional loans for the 6-month
21 periods ending June 30 and December 31, respectively.

22 (b) A savings bank shall report for each loan in default
23 or foreclosure:

- 24 (1) name of borrowers;
- 25 (2) address of the property mortgaged;
- 26 (3) census tract of the property mortgaged;
- 27 (4) status of the loan (default or foreclosure);
- 28 (5) date the loan was consummated;
- 29 (6) name and license number of any licensee under
30 the Residential Mortgage License Act of 1987 who
31 originated the loan;
- 32 (7) name and address of any non-licensed or exempt
33 entity that originated the loan.

1 (205 ILCS 205/6029 new)

2 Sec. 6029. Commissioner's authority; unusually high
3 foreclosure rate on conventional loans. The Commissioner may
4 take any action permitted under Section 6030 or any other
5 Section of this Act whenever the Commissioner determines
6 that, based upon a savings bank's report under Section 6028,
7 the savings bank's foreclosure rate on conventional mortgage
8 loans in a particular area, as deemed by the Commissioner on
9 a case-by-case basis, is higher than a rate deemed
10 appropriate by the Commissioner in that particular area. The
11 Commissioner shall determine the appropriate rate for a
12 particular area by calculating the average of the default and
13 foreclosure rates on conventional mortgage loans in the same
14 area for the same period of time based on information filed
15 with the Commissioner pursuant to the Act. A savings bank's
16 rate that exceeds such average shall be considered unusually
17 high.

18 (205 ILCS 205/6030 new)

19 Sec. 6030. Commissioner's action; unusually high
20 foreclosure rate on conventional loans.

21 (a) Whenever a savings bank's conventional loan default
22 and foreclosure rate for a particular 6-month period exceeds
23 the average calculated in Section 6029, the Commissioner
24 shall:

25 (1) conduct an examination of the savings bank;

26 (2) enter into a supervisory agreement with the
27 savings bank to lower its default and foreclosure rate on
28 conventional loans based on an analysis of its rate and
29 the results of the examination with a timetable for
30 achieving results;

31 (3) use a variety of remedies in a supervisory
32 agreement on a case-by-case basis to effect a lowering of
33 a default and foreclosure rate on conventional loans,

1 such as:

2 (A) requiring use of borrower balance sheet,
3 cash flow statement, and income and expense forms on
4 future loans;

5 (B) providing of a counseling video to
6 borrowers of future loans;

7 (C) mandating that all prospective borrowers
8 bring their loan applications to the Commissioner
9 for a third party review as described in Section
10 6031;

11 (D) levying fines;

12 (E) using other regulatory means up to and
13 including issuance of a cease and desist order.

14 (b) When the loan analysis described in subsection (a)
15 of Section 6028 and in Section 6029 shows that a licensee
16 under the Residential Mortgage License Act of 1987 acting as
17 broker or originator is contributing to the high default and
18 foreclosure rate of the reporting savings bank, that broker
19 or originator shall also be subject to examination and
20 supervisory agreement as defined in subsection (a).

21 (205 ILCS 205/6031 new)

22 Sec. 6031. Third party review of high risk home loans.

23 (a) In the case of any high risk home loan, the borrower
24 shall be afforded the opportunity to seek independent review
25 of the loan terms in order to determine affordability of the
26 loan when and if the General Assembly appropriates adequate
27 funding to the Office of Banks and Real Estate specifically
28 for this program.

29 (b) The Commissioner shall establish a loan worksheet
30 and a system for review of loan terms to be performed by
31 staff of the Office of Banks and Real Estate.

32 (c) A borrower shall submit information requested on the
33 worksheet, including but not limited to information regarding

1 the borrower's financial status and budget and the terms of
2 the loan.

3 (d) The review of the worksheet shall provide the
4 borrower, at a minimum, with a projection of the amount of
5 each payment for the loan, taking into account balloon
6 payments and adjustable interest rates. The review shall also
7 inform the borrower of the amount of monthly payment the
8 borrower can afford within the borrower's budget.

9 (e) The results of the review shall be in the form of a
10 written report, with a signature of the borrower
11 acknowledging receipt of a copy of the report. A copy of the
12 written and signed report shall be submitted to the savings
13 bank prior to the closing of the loan, and shall become a
14 part of the permanent file for the loan.

15 (f) If, in the opinion of the reviewer of the high risk
16 home loan documentation, the loan does not make economic
17 sense to the borrower, the reviewer shall so note this in the
18 results of the review sent to the savings bank. This finding
19 shall enable the borrower to withdraw from the contemplated
20 loan with no financial penalty.

21 Section 20. The Illinois Credit Union Act is amended by
22 changing Section 1.1 and adding Sections 66.1, 66.2, 66.3,
23 66.4, 66.5, 66.6, 66.7, 66.8, 66.9, 66.10, 66.11, 66.12,
24 66.13, 66.14, and 66.15 as follows;

25 (205 ILCS 305/1.1) (from Ch. 17, par. 4402)

26 Sec. 1.1. Definitions. Credit Union - The term "credit
27 union" means a cooperative, non-profit association,
28 incorporated under this Act, under the laws of the United
29 States of America or under the laws of another state, for the
30 purposes of encouraging thrift among its members, creating a
31 source of credit at a reasonable rate of interest, and
32 providing an opportunity for its members to use and control

1 their own money in order to improve their economic and social
2 conditions. The membership of a credit union shall consist of
3 a group or groups each having a common bond as set forth in
4 this Act.

5 Common Bond - The term "common bond" refers to groups of
6 people who meet one of the following qualifications:

7 (1) Persons belonging to a specific association, group
8 or organization, such as a church, labor union, club or
9 society and members of their immediate families which shall
10 include any relative by blood or marriage or foster and
11 adopted children.

12 (2) Persons who reside in a reasonably compact and well
13 defined neighborhood or community, and members of their
14 immediate families which shall include any relative by blood
15 or marriage or foster and adopted children.

16 (3) Persons who have a common employer or who are
17 members of an organized labor union or an organized
18 occupational or professional group within a defined
19 geographical area, and members of their immediate families
20 which shall include any relative by blood or marriage or
21 foster and adopted children.

22 Shares - The term "shares" or "share accounts" means any
23 form of shares issued by a credit union and established by a
24 member in accordance with standards specified by a credit
25 union, including but not limited to common shares, share
26 draft accounts, classes of shares, share certificates,
27 special purpose share accounts, shares issued in trust,
28 custodial accounts, and individual retirement accounts or
29 other plans established pursuant to Section 401(d) or (f) or
30 Section 408(a) of the Internal Revenue Code, as now or
31 hereafter amended, or similar provisions of any tax laws of
32 the United States that may hereafter exist.

33 Credit Union Organization - The term "credit union
34 organization" means any organization established to serve the

1 needs of credit unions, the business of which relates to the
2 daily operations of credit unions.

3 Department - The term "Department" means the Illinois
4 Department of Financial Institutions.

5 Director - The term "Director" means the Director of the
6 Illinois Department of Financial Institutions.

7 NCUA - The term "NCUA" means the National Credit Union
8 Administration, an agency of the United States Government
9 charged with the supervision of credit unions chartered under
10 the laws of the United States of America.

11 Central Credit Union - The term "central credit union"
12 means a credit union incorporated primarily to receive shares
13 from and make loans to credit unions and Directors, Officers,
14 committee members and employees of credit unions. A central
15 credit union may also accept as members persons who were
16 members of credit unions which were liquidated and persons
17 from occupational groups not otherwise served by another
18 credit union.

19 Corporate Credit Union - The term "corporate credit
20 union" means a credit union which is a cooperative,
21 non-profit association, the membership of which is limited
22 primarily to other credit unions.

23 Insolvent - "Insolvent" means the condition that results
24 when the total of all liabilities and shares exceeds net
25 assets of the credit union.

26 Danger of insolvency - The term "Danger of insolvency" as
27 used in Section 61 means when a credit union falls below a 2%
28 capital to asset ratio.

29 "Good faith" means honesty in fact in the conduct of a
30 transaction.

31 "High risk home loan" means a home equity loan in which:
32 (1) at the time of origination, the APR exceeds by
33 more than 6 percentage points in the case of a first lien
34 mortgage, or by more than 8 percentage points in the case

1 of a junior mortgage, the yield on U.S. Treasury
2 securities having comparable periods of maturity to the
3 loan maturity as of the 15th day of the month immediately
4 preceding the month in which the application for the loan
5 is received by the credit union; or

6 (2) the total points and fees payable by the
7 consumer at or before closing will exceed the greater of
8 5% of the total loan amount or \$800.

9 The \$800 limitation shall be adjusted annually on January
10 1 by the annual percentage change in the Consumer Price
11 Index.

12 However, "high risk home loan" does not mean a loan that
13 is made primarily for a business purpose unrelated to the
14 residential real property securing the loan and to an
15 open-end credit plan subject to subchapter B or Section
16 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
17 are included.

18 "Points and fees" means:

19 (1) all items required to be disclosed under 12 CFR
20 226.5 (2000), no subsequent dates or editions are
21 included;

22 (2) the premium of any single premium credit life,
23 credit disability, credit unemployment, or any other life
24 or health insurance that is financed directly or
25 indirectly into the loan; and

26 (3) all compensation paid directly or indirectly to
27 a mortgage broker, including a broker that originates a
28 loan in its own name in a tablefunded transaction.

29 "Total loan amount" means the same as the term used in
30 Section 226.32 of Title 12 of the Code of Federal
31 Regulations, and the same shall be calculated in accordance
32 with the Federal Reserve Board's Official Staff Commentary
33 thereto.

34 (Source: P.A. 90-665, eff. 7-30-98.)

1 (205 ILCS 305/66.1 new)

2 Sec. 66.1. Good faith requirements.

3 (a) Any disclosure or action required in connection with
4 a high risk home loan must be made in good faith.

5 (b) A credit union may not accept a fee or charge for a
6 high risk home loan application unless the credit union is
7 able to demonstrate to the Director that, if its high risk
8 home loan requirements are met, there is a reasonable
9 likelihood that a loan commitment will be issued for the loan
10 for the amount, term, rate, charges, and other conditions set
11 forth in the loan application and the applicable disclosures
12 and documents required and that the loan has a reasonable
13 likelihood of being repaid by the applicant.

14 (c) A credit union that has accepted an application for
15 a high risk home loan must make a good faith effort to
16 process the application within the time specified in the loan
17 application.

18 (205 ILCS 305/66.2 new)

19 Sec. 66.2. Ability to repay. A credit union may not make
20 a high risk home loan if the credit union does not believe at
21 the time the loan is consummated that the borrower or
22 borrowers will be able to make the scheduled payments to
23 repay the obligation based upon a consideration of their
24 current and expected income, current obligations, employment
25 status, and other financial resources (other than the
26 borrower's equity in the dwelling that secures repayment of
27 the loan). A borrower shall be presumed to be able to repay
28 the loan if, at the time the loan is consummated, or at the
29 time of the first rate adjustment in the case of a lower
30 introductory interest rate, the borrower's scheduled monthly
31 payments on the loan (including principal, interest, taxes,
32 insurance, and assessments), combined with the scheduled
33 payments for all other disclosed debts, do not exceed 50% of

1 the borrower's monthly gross income.

2 (205 ILCS 305/66.3 new)

3 Sec. 66.3. Verification of ability to pay loan. The
4 credit union shall verify the borrower's ability to repay the
5 loan in the case of high risk home loans. The verification
6 shall require, at a minimum, that the credit union:

7 (1) prepare a personal income and expense
8 statement, with information provided by the borrower, in
9 a form prescribed by the Director;

10 (2) verify the borrower's income by means of tax
11 returns, pay stubs, accounting statements, or other
12 prudent means; and

13 (3) obtain a credit report regarding the borrower.

14 (205 ILCS 305/66.4 new)

15 Sec. 66.4. Fraudulent or deceptive practices. A credit
16 union may not employ employ fraudulent or deceptive acts or
17 practices in the making of a high risk home loan, including
18 deceptive marketing and sales efforts.

19 (205 ILCS 305/66.5 new)

20 Sec. 66.5. Prepayment penalties. A credit union may not
21 make a high risk home loan that calls for a prepayment
22 penalty (i) made after the expiration of the 36-month period
23 following the date the loan was made or (ii) that is more
24 than 3% of the total loan amount if the prepayment is made
25 within the first 12-month period following the date the loan
26 was made, or more than 2% of the total loan amount if the
27 prepayment is made within the second 12 month period after
28 the date the loan was made, or more than 1% of the total loan
29 amount if the prepayment is made within the third 12-month
30 period following the date the loan was made.

1 (205 ILCS 305/66.6 new)

2 Sec. 66.6. Pre-paid insurance products and warranties. A
3 credit union may not make a high risk home loan that finances
4 a single premium credit life, credit disability, credit
5 unemployment, or any other life or health insurance, directly
6 or indirectly. Insurance previously calculated and paid on a
7 monthly basis shall not be considered to be financed by the
8 credit union.

9 (205 ILCS 305/66.7 new)

10 Sec. 66.7. Refinancing prohibited in certain cases. A
11 credit union may not refinance any high risk home loan where
12 the refinancing charges additional points and fees within a
13 12 month period after the refinanced loan was originated,
14 unless the refinancing results in a financial benefit to the
15 borrower.

16 (205 ILCS 305/66.8 new)

17 Sec. 66.8. Balloon payments. A credit union may not make
18 a high risk home loan that contains a scheduled final payment
19 that is more than twice as large as the average of earlier
20 scheduled monthly payments unless the balloon payment becomes
21 due and payable at least 15 years after the loan's
22 origination. This prohibition does not apply when the
23 payment schedule is adjusted to account for the seasonal or
24 irregular income of the borrower or if the purpose of the
25 loan is a "bridge" loan connected with the acquisition or
26 construction of a dwelling intended to become the borrower's
27 principal dwelling.

28 (205 ILCS 305/66.9 new)

29 Sec. 66.9. Financing of certain points and fees. A
30 credit union may not make a high risk home loan that finances
31 points and fees in excess of 6% of the total loan amount.

1 (205 ILCS 305/66.10 new)

2 Sec. 66.10. Payments to contractors. A credit union may
3 not make a payment to a contractor under a home improvement
4 contract other than:

5 (1) by instrument payable to the borrower or
6 jointly to the borrower and the contractor; or

7 (2) at the election of the borrower, by a third
8 party escrow agent in accordance with the terms
9 established in a written agreement signed by the
10 borrower, the credit union, and the contractor before the
11 date of payment.

12 (205 ILCS 305/66.11 new)

13 Sec. 66.11. Negative amortization. A credit union may
14 not make a high risk home loan, other than a loan secured
15 only by a reverse mortgage, with terms under which the
16 outstanding balance will increase at any time over the course
17 of the loan because the regular periodic payments do not
18 cover the full amount of the interest due, unless the
19 negative amortization is the consequence of a temporary
20 forbearance sought by the borrower.

21 (205 ILCS 305/66.12 new)

22 Sec. 66.12. Negative equity. A credit union may not make
23 a high risk home loan where the loan amount exceeds the
24 equity of the property securing the loan.

25 (205 ILCS 305/66.13 new)

26 Sec. 66.13. Counseling prior to perfecting foreclosure
27 proceedings.

28 (a) If a high risk home loan becomes delinquent by more
29 than 30 days, the credit union shall send a notice advising
30 the borrower that he or she may wish to seek consumer credit
31 counseling.

1 (b) The notice required in subsection (a) shall, at a
2 minimum, include the following language:

3 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
4 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
5 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
6 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
7 OBTAINED FROM THE DEPARTMENT OF FINANCIAL INSTITUTIONS."

8 (c) If a credit union or its agent is notified in
9 writing by an approved consumer credit counselor and the
10 approved consumer credit counselor advises the credit union
11 or its agent that the borrower is seeking approved consumer
12 credit counseling, then the credit union and its agent shall
13 not institute legal action under Part 15 of Article XV of the
14 Code of Civil Procedure for 30 days from the date of that
15 notice. Only one such 30-day period of forbearance is
16 allowed under this Section per subject loan.

17 (d) If, within the 30-day period provided under
18 subsection (c), the credit union or its agent, the approved
19 consumer credit counselor, and the borrower agree to a debt
20 management plan, then the credit union and its agent shall
21 not institute legal action under Part 15 of Article XV of the
22 Code of Civil Procedure for so long as the debt management
23 plan is complied with by the borrower.

24 (1) The agreed debt management plan must be in
25 writing and signed by the credit union or its agent, the
26 approved consumer credit counselor, and the borrower. A
27 modification of an approved debt management plan may not
28 be made without the mutual agreement of the credit union
29 or its agent, the approved consumer credit counselor, and
30 the borrower.

31 (2) Upon written notice to the credit union or its
32 agent, the borrower may change approved consumer credit
33 counselors.

34 (e) If the borrower fails to comply with the agreed debt

1 management plan, then nothing in this Section shall be
2 construed to impair the legal right of the credit union or
3 its agent to enforce contracts or mortgage agreements.

4 (f) This Section applies only to high risk home loans.

5 (205 ILCS 305/66.14 new)

6 Sec. 66.14. Mortgage awareness program.

7 (a) The Mortgage Awareness Program is a counseling and
8 educational program that is provided by the Director.

9 (b) The core curriculum of the Mortgage Awareness
10 Program shall include:

11 (1) explanation of the amount financed;

12 (2) explanation of the finance charge;

13 (3) explanation of the annual percentage rate;

14 (4) explanation of the total payments;

15 (5) explanation of the loan costs, including
16 broker's fees, finance charges, points, origination fees,
17 and all other charges and fees;

18 (6) explanation of the right of rescission;

19 (7) explanation of foreclosure procedures;

20 (8) explanation of the significant debt ratios,
21 including total debt to income, loan debt to income, and
22 loan debt to value of residence;

23 (9) explanation of adjustable rate mortgage;

24 (10) explanation of balloon payments;

25 (11) explanation of credit options;

26 (12) explanation of each item that appears on a
27 good faith estimate; and

28 (13) explanation of pre-payment penalties.

29 (c) Counseling session attendees must also complete a
30 personal income and expense statement, as well as a balance
31 sheet, on forms provided by the Commissioner.

32 (d) Prior to signing a certificate of completion,
33 counselors shall privately discuss with the attendee that

1 attendee's income and expense statement and balance sheet, as
2 well as the terms of any loan the attendee currently has or
3 may be contemplating and provide a third party review to
4 establish the affordability of the loan.

5 (e) Counseling session attendees must also be given a
6 brochure that contains information covered by the Mortgage
7 Awareness Program.

8 (f) A credit union, prior to making a high risk home
9 loan, shall inform the borrower in writing of the right to
10 participate in the Mortgage Awareness Program.

11 (g) A credit union may not offer less favorable loan
12 terms to a borrower due to a borrower participating in a
13 Mortgage Awareness Program.

14 (h) Except as prohibited elsewhere in this Act, the
15 borrower may waive participation in the program, provided
16 that the waiver occurs no less than 2 business days after the
17 day that the borrower receives the written notice required by
18 subsection (f) and that the waiver is in writing in a form
19 approved by the Director.

20 (205 ILCS 305/66.15 new)

21 Sec. 66.15. Third party review of high risk home loans.

22 (a) In the case of any high risk home loan, the borrower
23 shall be afforded the opportunity to seek independent review
24 of the loan terms in order to determine affordability of the
25 loan when and if the General Assembly appropriates adequate
26 funding to the Department of Financial Institutions
27 specifically for this program.

28 (b) The Director shall establish a loan worksheet and a
29 system for review of loan terms to be performed by staff of
30 the Department.

31 (c) A borrower shall submit information requested on the
32 worksheet, including but not limited to information regarding
33 the borrower's financial status and budget and the terms of

1 the loan.

2 (d) The review of the worksheet shall provide the
3 borrower, at a minimum, with a projection of the amount of
4 each payment for the loan, taking into account balloon
5 payments and adjustable interest rates. The review shall also
6 inform the borrower of the amount of monthly payment the
7 borrower can afford within the borrower's budget.

8 (e) The results of the review shall be in the form of a
9 written report, with a signature of the borrower
10 acknowledging receipt of a copy of the report. A copy of the
11 written and signed report shall be submitted to the credit
12 union prior to the closing of the loan, and shall become a
13 part of the permanent file for the loan.

14 (f) If, in the opinion of the reviewer of the high risk
15 home loan documentation, the loan does not make economic
16 sense to the borrower, the reviewer shall so note this in the
17 results of the review sent to the credit union. This finding
18 shall enable the borrower to withdraw from the contemplated
19 loan with no financial penalty.

20 Section 25. The Residential Mortgage License Act of 1987
21 is amended by changing Section 1-4 and adding Sections 5-2,
22 5-3, 5-4, 5-5, 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-13,
23 5-14, 5-15, 5-16, 5-17, and 5-18 as follows:

24 (205 ILCS 635/1-4) (from Ch. 17, par. 2321-4)
25 Sec. 1-4. Definitions.

26 (a) "Residential real property" or "residential real
27 estate" shall mean real property located in this State
28 improved by a one-to-four family dwelling used or occupied,
29 wholly or partly, as the home or residence of one or more
30 persons and may refer, subject to regulations of the
31 Commissioner, to unimproved real property upon which those
32 kinds dwellings are to be constructed.

1 (b) "Making a residential mortgage loan" or "funding a
2 residential mortgage loan" shall mean for compensation or
3 gain, either directly or indirectly, advancing funds or
4 making a commitment to advance funds to a loan applicant for
5 a residential mortgage loan.

6 (c) "Soliciting, processing, placing, or negotiating a
7 residential mortgage loan" shall mean for compensation or
8 gain, either directly or indirectly, accepting or offering to
9 accept an application for a residential mortgage loan,
10 assisting or offering to assist in the processing of an
11 application for a residential mortgage loan on behalf of a
12 borrower, or negotiating or offering to negotiate the terms
13 or conditions of a residential mortgage loan with a lender on
14 behalf of a borrower including, but not limited to, the
15 submission of credit packages for the approval of lenders,
16 the preparation of residential mortgage loan closing
17 documents, including a closing in the name of a broker.

18 (d) "Exempt entity" shall mean the following:

19 (1) (i) Any banking organization or foreign banking
20 corporation licensed by the Illinois Commissioner of
21 Banks and Real Estate or the United States Comptroller of
22 the Currency to transact business in this State; (ii) any
23 national bank, federally chartered savings and loan
24 association, federal savings bank, federal credit union;
25 (iii) any pension trust, bank trust, or bank trust
26 company; (iv) any savings and loan association, savings
27 bank, or credit union organized under the laws of this or
28 any other state; (v) any Illinois Consumer Installment
29 Loan Act licensee; (vi) any insurance company authorized
30 to transact business in this State; (vii) any entity
31 engaged solely in commercial mortgage lending; (viii) any
32 service corporation of a savings and loan association or
33 savings bank organized under the laws of this State or
34 the service corporation of a federally chartered savings

1 and loan association or savings bank having its principal
2 place of business in this State, other than a service
3 corporation licensed or entitled to reciprocity under the
4 Real Estate License Act of 2000; or (ix) any first tier
5 subsidiary of a bank, the charter of which is issued
6 under the Illinois Banking Act by the Illinois
7 Commissioner of Banks and Real Estate, or the first tier
8 subsidiary of a bank chartered by the United States
9 Comptroller of the Currency and that has its principal
10 place of business in this State, provided that the first
11 tier subsidiary is regularly examined by the Illinois
12 Commissioner of Banks and Real Estate or the Comptroller
13 of the Currency, or a consumer compliance examination is
14 regularly conducted by the Federal Reserve Board.

15 (2) Any person or entity that either (i) has a
16 physical presence in Illinois or (ii) does not originate
17 mortgage loans in the ordinary course of business making
18 or acquiring residential mortgage loans with his or her
19 or its own funds for his or her or its own investment
20 without intent to make, acquire, or resell more than 10
21 residential mortgage loans in any one calendar year.

22 (3) Any person employed by a licensee to assist in
23 the performance of the activities regulated by this Act
24 who is compensated in any manner by only one licensee.

25 (4) Any person licensed pursuant to the Real Estate
26 License Act of 2000, who engages only in the taking of
27 applications and credit and appraisal information to
28 forward to a licensee or an exempt entity under this Act
29 and who is compensated by either a licensee or an exempt
30 entity under this Act, but is not compensated by either
31 the buyer (applicant) or the seller.

32 (5) Any individual, corporation, partnership, or
33 other entity that originates, services, or brokers
34 residential mortgage loans, as these activities are

1 defined in this Act, and who or which receives no
2 compensation for those activities, subject to the
3 Commissioner's regulations with regard to the nature and
4 amount of compensation.

5 (6) A person who prepares supporting documentation
6 for a residential mortgage loan application taken by a
7 licensee and performs ministerial functions pursuant to
8 specific instructions of the licensee who neither
9 requires nor permits the preparer to exercise his or her
10 discretion or judgment; provided that this activity is
11 engaged in pursuant to a binding, written agreement
12 between the licensee and the preparer that:

13 (A) holds the licensee fully accountable for
14 the preparer's action; and

15 (B) otherwise meets the requirements of this
16 Section and this Act, does not undermine the
17 purposes of this Act, and is approved by the
18 Commissioner.

19 (e) "Licensee" or "residential mortgage licensee" shall
20 mean a person, partnership, association, corporation, or any
21 other entity who or which is licensed pursuant to this Act to
22 engage in the activities regulated by this Act.

23 (f) "Mortgage loan" "residential mortgage loan" or "home
24 mortgage loan" shall mean a loan to or for the benefit of any
25 natural person made primarily for personal, family, or
26 household use, primarily secured by either a mortgage on
27 residential real property or certificates of stock or other
28 evidence of ownership interests in and proprietary leases
29 from, corporations, partnerships, or limited liability
30 companies formed for the purpose of cooperative ownership of
31 residential real property, all located in Illinois.

32 (g) "Lender" shall mean any person, partnership,
33 association, corporation, or any other entity who either
34 lends or invests money in residential mortgage loans.

1 (h) "Ultimate equitable owner" shall mean a person who,
2 directly or indirectly, owns or controls an ownership
3 interest in a corporation, foreign corporation, alien
4 business organization, trust, or any other form of business
5 organization regardless of whether the person owns or
6 controls the ownership interest through one or more persons
7 or one or more proxies, powers of attorney, nominees,
8 corporations, associations, partnerships, trusts, joint stock
9 companies, or other entities or devices, or any combination
10 thereof.

11 (i) "Residential mortgage financing transaction" shall
12 mean the negotiation, acquisition, sale, or arrangement for
13 or the offer to negotiate, acquire, sell, or arrange for, a
14 residential mortgage loan or residential mortgage loan
15 commitment.

16 (j) "Personal residence address" shall mean a street
17 address and shall not include a post office box number.

18 (k) "Residential mortgage loan commitment" shall mean a
19 contract for residential mortgage loan financing.

20 (l) "Party to a residential mortgage financing
21 transaction" shall mean a borrower, lender, or loan broker in
22 a residential mortgage financing transaction.

23 (m) "Payments" shall mean payment of all or any of the
24 following: principal, interest and escrow reserves for taxes,
25 insurance and other related reserves, and reimbursement for
26 lender advances.

27 (n) "Commissioner" shall mean the Commissioner of Banks
28 and Real Estate or a person authorized by the Commissioner,
29 the Office of Banks and Real Estate Act, or this Act to act
30 in the Commissioner's stead.

31 (o) "Loan brokering", "brokering", or "brokerage
32 service" shall mean the act of helping to obtain from another
33 entity, for a borrower, a loan secured by residential real
34 estate situated in Illinois or assisting a borrower in

1 obtaining a loan secured by residential real estate situated
2 in Illinois in return for consideration to be paid by either
3 the borrower or the lender including, but not limited to,
4 contracting for the delivery of residential mortgage loans to
5 a third party lender and soliciting, processing, placing, or
6 negotiating residential mortgage loans.

7 (p) "Loan broker" or "broker" shall mean a person,
8 partnership, association, corporation, or limited liability
9 company, other than those persons, partnerships,
10 associations, corporations, or limited liability companies
11 exempted from licensing pursuant to Section 1-4, subsection
12 (d), of this Act, who performs the activities described in
13 subsections (c) and (o) of this Section.

14 (q) "Servicing" shall mean the collection or remittance
15 for or the right or obligation to collect or remit for any
16 lender, noteowner, noteholder, or for a licensee's own
17 account, of payments, interests, principal, and trust items
18 such as hazard insurance and taxes on a residential mortgage
19 loan in accordance with the terms of the residential mortgage
20 loan; and includes loan payment follow-up, delinquency loan
21 follow-up, loan analysis and any notifications to the
22 borrower that are necessary to enable the borrower to keep
23 the loan current and in good standing.

24 (r) "Full service office" shall mean office and staff in
25 Illinois reasonably adequate to handle efficiently
26 communications, questions, and other matters relating to any
27 application for, or an existing home mortgage secured by
28 residential real estate situated in Illinois with respect to
29 which the licensee is brokering, funding originating,
30 purchasing, or servicing. The management and operation of
31 each full service office must include observance of good
32 business practices such as adequate, organized, and accurate
33 books and records; ample phone lines, hours of business,
34 staff training and supervision, and provision for a mechanism

1 to resolve consumer inquiries, complaints, and problems. The
2 Commissioner shall issue regulations with regard to these
3 requirements and shall include an evaluation of compliance
4 with this Section in his or her periodic examination of each
5 licensee.

6 (s) "Purchasing" shall mean the purchase of conventional
7 or government-insured mortgage loans secured by residential
8 real estate situated in Illinois from either the lender or
9 from the secondary market.

10 (t) "Borrower" shall mean the person or persons who seek
11 the services of a loan broker, originator, or lender.

12 (u) "Originating" shall mean the issuing of commitments
13 for and funding of residential mortgage loans.

14 (v) "Loan brokerage agreement" shall mean a written
15 agreement in which a broker or loan broker agrees to do
16 either of the following:

17 (1) obtain a residential mortgage loan for the
18 borrower or assist the borrower in obtaining a
19 residential mortgage loan; or

20 (2) consider making a residential mortgage loan to
21 the borrower.

22 (w) "Advertisement" shall mean the attempt by
23 publication, dissemination, or circulation to induce,
24 directly or indirectly, any person to enter into a
25 residential mortgage loan agreement or residential mortgage
26 loan brokerage agreement relative to a mortgage secured by
27 residential real estate situated in Illinois.

28 (x) "Residential Mortgage Board" shall mean the
29 Residential Mortgage Board created in Section 1-5 of this
30 Act.

31 (y) "Government-insured mortgage loan" shall mean any
32 mortgage loan made on the security of residential real estate
33 insured by the Department of Housing and Urban Development or
34 Farmers Home Loan Administration, or guaranteed by the

1 Veterans Administration.

2 (z) "Annual audit" shall mean a certified audit of the
3 licensee's books and records and systems of internal control
4 performed by a certified public accountant in accordance with
5 generally accepted accounting principles and generally
6 accepted auditing standards.

7 (aa) "Financial institution" shall mean a savings and
8 loan association, savings bank, credit union, or a bank
9 organized under the laws of Illinois or a savings and loan
10 association, savings bank, credit union or a bank organized
11 under the laws of the United States and headquartered in
12 Illinois.

13 (bb) "Escrow agent" shall mean a third party, individual
14 or entity charged with the fiduciary obligation for holding
15 escrow funds on a residential mortgage loan pending final
16 payout of those funds in accordance with the terms of the
17 residential mortgage loan.

18 (cc) "Net worth" shall have the meaning ascribed thereto
19 in Section 3-5 of this Act.

20 (dd) "Affiliate" shall mean:

21 (1) any entity that directly controls or is
22 controlled by the licensee and any other company that is
23 directly affecting activities regulated by this Act that
24 is controlled by the company that controls the licensee;

25 (2) any entity:

26 (A) that is controlled, directly or
27 indirectly, by a trust or otherwise, by or for the
28 benefit of shareholders who beneficially or
29 otherwise control, directly or indirectly, by trust
30 or otherwise, the licensee or any company that
31 controls the licensee; or

32 (B) a majority of the directors or trustees of
33 which constitute a majority of the persons holding
34 any such office with the licensee or any company

1 that controls the licensee;

2 (3) any company, including a real estate investment
3 trust, that is sponsored and advised on a contractual
4 basis by the licensee or any subsidiary or affiliate of
5 the licensee.

6 The Commissioner may define by rule and regulation any
7 terms used in this Act for the efficient and clear
8 administration of this Act.

9 (ee) "First tier subsidiary" shall be defined by
10 regulation incorporating the comparable definitions used by
11 the Office of the Comptroller of the Currency and the
12 Illinois Commissioner of Banks and Real Estate.

13 (ff) "Gross delinquency rate" means the quotient
14 determined by dividing (1) the sum of (i) the number of
15 government-insured residential mortgage loans funded or
16 purchased by a licensee in the preceding calendar year that
17 are delinquent and (ii) the number of conventional
18 residential mortgage loans funded or purchased by the
19 licensee in the preceding calendar year that are delinquent
20 by (2) the sum of (i) the number of government-insured
21 residential mortgage loans funded or purchased by the
22 licensee in the preceding calendar year and (ii) the number
23 of conventional residential mortgage loans funded or
24 purchased by the licensee in the preceding calendar year.

25 (gg) "Delinquency rate factor" means the factor set by
26 rule of the Commissioner that is multiplied by the average
27 gross delinquency rate of licensees, determined annually for
28 the immediately preceding calendar year, for the purpose of
29 determining which licensees shall be examined by the
30 Commissioner pursuant to subsection (b) of Section 4-8 of
31 this Act.

32 (hh) "High risk home loan" means a home equity loan in
33 which:

34 (1) at the time of origination, the APR exceeds by

1 more than 6 percentage points in the case of a first lien
2 mortgage, or by more than 8 percentage points in the case
3 of a junior mortgage, the yield on U.S. Treasury
4 securities having comparable periods of maturity to the
5 loan maturity as of the 15th day of the month immediately
6 preceding the month in which the application for the loan
7 is received by the licensee; or

8 (2) the total points and fees payable by the
9 consumer at or before closing will exceed the greater of
10 5% of the total loan amount or \$800.

11 The \$800 limitation shall be adjusted annually on January
12 1 by the annual percentage change in the Consumer Price
13 Index.

14 However, "high risk home loan" does not mean a loan that
15 is made primarily for a business purpose unrelated to the
16 residential real property securing the loan and to an
17 open-end credit plan subject to subchapter B or Section
18 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
19 are included.

20 (ii) "Points and fees" means:

21 (1) all items required to be disclosed under 12 CFR
22 226.5 (2000), no subsequent dates or editions are
23 included;

24 (2) the premium of any single premium credit life,
25 credit disability, credit unemployment, or any other life
26 or health insurance that is financed directly or
27 indirectly into the loan; and

28 (3) all compensation paid directly or indirectly to
29 a mortgage broker, including a broker that originates a
30 loan in its own name in a tablefunded transaction.

31 (jj) "Servicer" means any entity subject to this Act
32 that is responsible for the collection or remittance for, or
33 the right or obligation to collect or remit for, any lender,
34 noteowner, noteholder, or for the entity's own account, of

1 payments, interest, principal, and trust items such as hazard
2 insurance and taxes on a residential mortgage loan in
3 accordance with the terms of the residential mortgage loan;
4 and includes loan payment follow-up, delinquency loan
5 follow-up, loan analysis, and any notifications to the
6 borrower that are necessary to enable the borrower to keep
7 the loan current and in good standing.

8 (kk) "Total loan amount" means the same as the term used
9 in Section 226.32 of Title 12 of the Code of Federal
10 Regulations, and the same shall be calculated in accordance
11 with the Federal Reserve Board's Official Staff Commentary
12 thereto.

13 (Source: P.A. 90-772, eff. 1-1-99; 91-245, eff. 12-31-99.)

14 (205 ILCS 635/5-2 new)

15 Sec. 5-2. Ability to repay. A licensee may not make a
16 high risk home loan if the licensee does not believe at the
17 time the loan is consummated that the borrower or borrowers
18 will be able to make the scheduled payments to repay the
19 obligation based upon a consideration of their current and
20 expected income, current obligations, employment status, and
21 other financial resources (other than the borrower's equity
22 in the dwelling that secures repayment of the loan). A
23 borrower shall be presumed to be able to repay the loan if,
24 at the time the loan is consummated, or at the time of the
25 first rate adjustment in the case of a lower introductory
26 interest rate, the borrower's scheduled monthly payments on
27 the loan (including principal, interest, taxes, insurance,
28 and assessments), combined with the scheduled payments for
29 all other disclosed debts, do not exceed 50% of the
30 borrower's monthly gross income.

31 (205 ILCS 635/5-3 new)

32 Sec. 5-3. Verification of ability to pay loan. The

1 licensee shall verify the borrower's ability to repay the
2 loan in the case of high risk home loans. The verification
3 shall require, at a minimum, that the licensee:

4 (1) prepare a personal income and expense
5 statement, with information provided by the borrower, in
6 a form prescribed by the Commissioner;

7 (2) verify the borrower's income by means of tax
8 returns, pay stubs, accounting statements, or other
9 prudent means; and

10 (3) obtain a credit report regarding the borrower.

11 (205 ILCS 635/5-4 new)

12 Sec. 5-4. Fraudulent or deceptive practices. A licensee
13 may not employ employ fraudulent or deceptive acts or
14 practices in the making of a high risk home loan, including
15 deceptive marketing and sales efforts.

16 (205 ILCS 635/5-5 new)

17 Sec. 5-5. Prepayment penalties. A licensee may not make a
18 high risk home loan that calls for a prepayment penalty (i)
19 made after the expiration of the 36-month period following
20 the date the loan was made or (ii) that is more than 3% of
21 the total loan amount if the prepayment is made within the
22 first 12-month period following the date the loan was made,
23 or more than 2% of the total loan amount if the prepayment is
24 made within the second 12 month period after the date the
25 loan was made, or more than 1% of the total loan amount if
26 the prepayment is made within the third 12-month period
27 following the date the loan was made.

28 (205 ILCS 635/5-6 new)

29 Sec. 5-6. Pre-paid insurance products and warranties. A
30 licensee may not make a high risk home loan that finances a
31 single premium credit life, credit disability, credit

1 unemployment, or any other life or health insurance, directly
2 or indirectly. Insurance previously calculated and paid on a
3 monthly basis shall not be considered to be financed by the
4 licensee.

5 (205 ILCS 635/5-7 new)

6 Sec. 5-7. Refinancing prohibited in certain cases. A
7 licensee may not refinance any high risk home loan where the
8 refinancing charges additional points and fees within a 12
9 month period after the refinanced loan was originated, unless
10 the refinancing results in a financial benefit to the
11 borrower.

12 (205 ILCS 635/5-8 new)

13 Sec. 5-8. Balloon payments. A licensee may not make a
14 high risk home loan that contains a scheduled final payment
15 that is more than twice as large as the average of earlier
16 scheduled monthly payments unless the balloon payment becomes
17 due and payable at least 15 years after the loan's
18 origination. This prohibition does not apply when the
19 payment schedule is adjusted to account for the seasonal or
20 irregular income of the borrower or if the purpose of the
21 loan is a "bridge" loan connected with the acquisition or
22 construction of a dwelling intended to become the borrower's
23 principal dwelling.

24 (205 ILCS 635/5-9 new)

25 Sec. 5-9. Financing of certain points and fees. A
26 licensee may not make a high risk home loan that finances
27 points and fees in excess of 6% of the total loan amount.

28 (205 ILCS 635/5-10 new)

29 Sec. 5-10. Payments to contractors. A licensee may not
30 make a payment to a contractor under a home improvement

1 contract other than:

2 (1) by instrument payable to the borrower or
3 jointly to the borrower and the contractor; or

4 (2) at the election of the borrower, by a third
5 party escrow agent in accordance with the terms
6 established in a written agreement signed by the
7 borrower, the licensee, and the contractor before the
8 date of payment.

9 (205 ILCS 635/5-11 new)

10 Sec. 5-11. Negative amortization. A licensee may not make
11 a high risk home loan, other than a loan secured only by a
12 reverse mortgage, with terms under which the outstanding
13 balance will increase at any time over the course of the loan
14 because the regular periodic payments do not cover the full
15 amount of the interest due, unless the negative amortization
16 is the consequence of a temporary forbearance sought by the
17 borrower.

18 (205 ILCS 635/5-12 new)

19 Sec. 5-12. Negative equity. A licensee may not make a
20 high risk home loan where the loan amount exceeds the equity
21 of the property securing the loan.

22 (205 ILCS 635/5-13 new)

23 Sec. 5-13. Counseling prior to perfecting foreclosure
24 proceedings.

25 (a) If a high risk home loan becomes delinquent by more
26 than 30 days, the servicer shall send a notice advising the
27 borrower that he or she may wish to seek consumer credit
28 counseling.

29 (b) The notice required in subsection (a) shall, at a
30 minimum, include the following language:

31 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY

1 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
2 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
3 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
4 OBTAINED FROM THE ILLINOIS OFFICE OF BANKS AND REAL
5 ESTATE."

6 (c) If a licensee or its agent is notified in writing by
7 an approved consumer credit counselor and the approved
8 consumer credit counselor advises the licensee or its agent
9 that the borrower is seeking approved consumer credit
10 counseling, then the licensee and its agent shall not
11 institute legal action under Part 15 of Article XV of the
12 Code of Civil Procedure for 30 days from the date of that
13 notice. Only one such 30-day period of forbearance is
14 allowed under this Section per subject loan.

15 (d) If, within the 30-day period provided under
16 subsection (c), the licensee or its agent, the approved
17 consumer credit counselor, and the borrower agree to a debt
18 management plan, then the licensee and its agent shall not
19 institute legal action under Part 15 of Article XV of the
20 Code of Civil Procedure for so long as the debt management
21 plan is complied with by the borrower.

22 (1) The agreed debt management plan must be in
23 writing and signed by the licensee or its agent, the
24 approved consumer credit counselor, and the borrower. A
25 modification of an approved debt management plan may not
26 be made without the mutual agreement of the licensee or
27 its agent, the approved consumer credit counselor, and
28 the borrower.

29 (2) Upon written notice to the licensee or its
30 agent, the borrower may change approved consumer credit
31 counselors.

32 (e) If the borrower fails to comply with the agreed debt
33 management plan, then nothing in this Section shall be
34 construed to impair the legal right of the licensee or its

1 agent to enforce contracts or mortgage agreements.

2 (f) This Section applies only to high risk home loans.

3 (205 ILCS 635/5-14 new)

4 Sec. 5-14. Mortgage awareness program.

5 (a) The Mortgage Awareness Program is a counseling and
6 educational component that is provided by the Director of
7 the Department of Financial Institutions.

8 (b) The core curriculum of the Mortgage Awareness
9 Program shall include:

10 (1) explanation of the amount financed;

11 (2) explanation of the finance charge;

12 (3) explanation of the annual percentage rate;

13 (4) explanation of the total payments;

14 (5) explanation of the loan costs, including
15 broker's fees, finance charges, points, origination fees,
16 and all other charges and fees;

17 (6) explanation of the right of rescission;

18 (7) explanation of foreclosure procedures;

19 (8) explanation of the significant debt ratios,
20 including total debt to income, loan debt to income, and
21 loan debt to value of residence;

22 (9) explanation of adjustable rate mortgage;

23 (10) explanation of balloon payments;

24 (11) explanation of credit options;

25 (12) explanation of each item that appears on a
26 good faith estimate; and

27 (13) explanation of pre-payment penalties.

28 (c) Counseling session attendees must also complete a
29 personal income and expense statement, as well as a balance
30 sheet, on forms provided by the Commissioner.

31 (d) Prior to signing a certificate of completion,
32 counselors shall privately discuss with the attendee that
33 attendee's income and expense statement and balance sheet, as

1 well as the terms of any loan the attendee currently has or
2 may be contemplating and provide a third party review to
3 establish the affordability of the loan.

4 (e) Counseling session attendees must also be given a
5 brochure that contains information covered by the Mortgage
6 Awareness Program.

7 (f) A licensee, prior to making a high risk home loan,
8 shall inform the borrower in writing of the right to
9 participate in the Mortgage Awareness Program.

10 (g) A licensee may not offer less favorable loan terms
11 to a borrower due to a borrower participating in a Mortgage
12 Awareness Program.

13 (h) Except as prohibited elsewhere in this Act, the
14 borrower may waive participation in the program, provided
15 that the waiver occurs no less than 2 business days after the
16 day that the borrower receives the written notice required by
17 subsection (f) and that the waiver is in writing in a form
18 approved by the Commissioner.

19 (205 ILCS 635/5-15 new)

20 Sec. 5-15. Report of default and foreclosure rates on
21 conventional loans.

22 (a) On or before August 1 and February 1 of each year, a
23 licensee that is a servicer of Illinois residential mortgage
24 loans shall report to the Commissioner the default and
25 foreclosure data of conventional loans for the 6-month
26 periods ending June 30 and December 31, respectively.

27 (b) A licensee shall report for each loan in default or
28 foreclosure:

- 29 (1) name of borrowers;
- 30 (2) address of the property mortgaged;
- 31 (3) census tract of the property mortgaged;
- 32 (4) status of the loan (default or foreclosure);
- 33 (5) date the loan was consummated;

1 (6) name and license number of any licensee under
2 this Act who originated the loan;

3 (7) name and address of any non-licensed or exempt
4 entity that originated the loan.

5 (205 ILCS 635/5-16 new)

6 Sec. 5-16. Commissioner's authority; unusually high
7 foreclosure rate on conventional loans. The Commissioner may
8 take any action permitted under Section 5-17 or any other
9 Section of this Act whenever the Commissioner determines
10 that, based upon a licensee's report under Section 5-15, the
11 licensee's foreclosure rate on conventional mortgage loans in
12 a particular area, as deemed by the Commissioner on a
13 case-by-case basis, is higher than a rate deemed appropriate
14 by the Commissioner in that particular area. The
15 Commissioner shall determine the appropriate rate for a
16 particular area by calculating the average of the default and
17 foreclosure rates on conventional mortgage loans in the same
18 area for the same period of time based on information filed
19 with the Commissioner pursuant to the Act. A licensee's rate
20 that exceeds such average shall be considered unusually high.

21 (205 ILCS 635/5-17 new)

22 Sec. 5-17. Commissioner's action; unusually high
23 foreclosure rate on conventional loans.

24 (a) Whenever a licensee's conventional loan default and
25 foreclosure rate for a particular 6-month period exceeds the
26 average calculated in Section 5-16, the Commissioner shall:

- 27 (1) conduct an examination of the licensee;
28 (2) enter into a supervisory agreement with the
29 licensee to lower its default and foreclosure rate on
30 conventional loans based on an analysis of its rate and
31 the results of the examination with a timetable for
32 achieving results;

1 (3) use a variety of remedies in a supervisory
2 agreement on a case-by-case basis to effect a lowering of
3 a default and foreclosure rate on conventional loans,
4 such as:

5 (A) requiring use of borrower balance sheet,
6 cash flow statement, and income and expense forms on
7 future loans;

8 (B) providing of a counseling video to
9 borrowers of future loans;

10 (C) mandating that all prospective borrowers
11 bring their loan applications to the Commissioner
12 for a third party review as described in Section
13 5-18;

14 (D) levying fines;

15 (E) using other regulatory means up to and
16 including issuance of a cease and desist order.

17 (b) When the loan analysis described in subsection (a)
18 of Section 5-15 and in Section 5-16 shows that another
19 licensee under this Act acting as broker or originator is
20 contributing to the high default and foreclosure rate of the
21 reporting licensee, that broker or originator shall also be
22 subject to examination and supervisory agreement as defined
23 in subsection (a).

24 (205 ILCS 635/5-18 new)

25 Sec. 5-18. Third party review of high risk home loans.

26 (a) In the case of any high risk home loan, the borrower
27 shall be afforded the opportunity to seek independent review
28 of the loan terms in order to determine affordability of the
29 loan when and if the General Assembly appropriates adequate
30 funding to the Office of Banks and Real Estate specifically
31 for this program.

32 (b) The Commissioner shall establish a loan worksheet
33 and a system for review of loan terms to be performed by

1 staff of the Office of Banks and Real Estate.

2 (c) A borrower shall submit information requested on the
3 worksheet, including but not limited to information regarding
4 the borrower's financial status and budget and the terms of
5 the loan.

6 (d) The review of the worksheet shall provide the
7 borrower, at a minimum, with a projection of the amount of
8 each payment for the loan, taking into account balloon
9 payments and adjustable interest rates. The review shall also
10 inform the borrower of the amount of monthly payment the
11 borrower can afford within the borrower's budget.

12 (e) The results of the review shall be in the form of a
13 written report, with a signature of the borrower
14 acknowledging receipt of a copy of the report. A copy of the
15 written and signed report shall be submitted to the licensee
16 prior to the closing of the loan, and shall become a part of
17 the permanent file for the loan.

18 (f) If, in the opinion of the reviewer of the high risk
19 home loan documentation, the loan does not make economic
20 sense to the borrower, the reviewer shall so note this in the
21 results of the review sent to the licensee. This finding
22 shall enable the borrower to withdraw from the contemplated
23 loan with no financial penalty.

24 Section 30. The Sales Finance Agency Act is amended by
25 changing Section 2 and adding Sections 16.6, 16.7, 16.8,
26 16.9, 16.10, 16.11, 16.12, 16.13, 16.14, 16.15, 16.16, 16.17,
27 16.18, 16.19, and 16.20 as follows:

28 (205 ILCS 660/2) (from Ch. 17, par. 5202)

29 Sec. 2. Definitions. In this Act, unless the context
30 otherwise requires:

31 "Sales finance agency" means a person, irrespective of
32 his or her state of domicile or place of business, engaged in

1 this State, in whole or in part, in the business of
2 purchasing, or making loans secured by, retail installment
3 contracts, retail charge agreements or the outstanding
4 balances under such contracts or agreements entered into in
5 this State.

6 "Holder" of a retail installment contract or a retail
7 charge agreement means the retail seller of the goods or
8 services under the contract or charge agreement, or if the
9 outstanding balances thereunder are purchased by or
10 transferred as security to a sales finance agency or other
11 assignee, the sales finance agency or other assignee.

12 "Person" means an individual, corporation, partnership,
13 limited liability company, joint venture, or any other form
14 of business association.

15 "Department" means the Department of Financial
16 Institutions.

17 "Director" means the Director of Financial Institutions.

18 "Motor Vehicle Retail Installment Sales Act" and "Retail
19 Installment Sales Act" refer to the Acts having those titles
20 enacted by the 75th General Assembly.

21 "Retail installment contract" and "retail charge
22 agreement" have the meanings ascribed to them in the Motor
23 Vehicle Retail Installment Sales Act and the Retail
24 Installment Sales Act.

25 "Special purpose vehicle" means an entity that, in
26 connection with a securitization, private placement, or
27 similar type of investment transaction, is administered by a
28 State or national bank under a management agreement for the
29 purpose of purchasing, making loans against, or in pools of,
30 receivables, general intangibles, and other financial assets
31 including retail installment contracts, retail charge
32 agreements, or the outstanding balances or any portion of the
33 outstanding balances under those contracts or agreements.

34 "Net Worth" means total assets minus total liabilities.

1 "Good faith" means honesty in fact in the conduct of a
2 transaction.

3 "High risk home loan" means a home equity loan in which:

4 (1) at the time of origination, the APR exceeds by
5 more than 6 percentage points in the case of a first lien
6 mortgage, or by more than 8 percentage points in the case
7 of a junior mortgage, the yield on U.S. Treasury
8 securities having comparable periods of maturity to the
9 loan maturity as of the 15th day of the month immediately
10 preceding the month in which the application for the loan
11 is received by the lender; or

12 (2) the total points and fees payable by the
13 consumer at or before closing will exceed the greater of
14 5% of the total loan amount or \$800.

15 The \$800 limitation shall be adjusted annually on January
16 1 by the annual percentage change in the Consumer Price
17 Index.

18 However, "high risk home loan" does not mean a loan that
19 is made primarily for a business purpose unrelated to the
20 residential real property securing the loan and to an
21 open-end credit plan subject to subchapter B or Section
22 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
23 are included.

24 "Points and fees" means:

25 (1) all items required to be disclosed under 12 CFR
26 226.5 (2000), no subsequent dates or editions are
27 included;

28 (2) the premium of any single premium credit life,
29 credit disability, credit unemployment, or any other life
30 or health insurance that is financed directly or
31 indirectly into the loan; and

32 (3) all compensation paid directly or indirectly to
33 a mortgage broker, including a broker that originates a
34 loan in its own name in a tablefunded transaction.

1 "Total loan amount" means the same as the term used in
2 Section 226.32 of Title 12 of the Code of Federal
3 Regulations, and the same shall be calculated in accordance
4 with the Federal Reserve Board's Official Staff Commentary
5 thereto.

6 (Source: P.A. 89-400, eff. 8-20-95; 90-437, eff. 1-1-98.)

7 (205 ILCS 660/16.6 new)

8 Sec. 16.6. Good faith requirements.

9 (a) Any disclosure or action required in connection with
10 a high risk home loan must be made in good faith.

11 (b) A lender may not accept a fee or charge for a high
12 risk home loan application unless the lender is able to
13 demonstrate to the Director that, if its high risk home loan
14 requirements are met, there is a reasonable likelihood that a
15 loan commitment will be issued for the loan for the amount,
16 term, rate, charges, and other conditions set forth n the
17 loan application and the applicable disclosures and documents
18 required and that the loan has a reasonable likelihood of
19 being repaid by the applicant.

20 (c) A lender that has accepted an application for a high
21 risk home loan must make a good faith effort to process the
22 application within the time specified in the loan
23 application.

24 (205 ILCS 660/16.7 new)

25 Sec. 16.7. Ability to repay. A lender may not make a
26 high risk home loan if the lender does not believe at the
27 time the loan is consummated that the borrower or borrowers
28 will be able to make the scheduled payments to repay the
29 obligation based upon a consideration of their current and
30 expected income, current obligations, employment status, and
31 other financial resources (other than the borrower's equity
32 in the dwelling that secures repayment of the loan). A

1 borrower shall be presumed to be able to repay the loan if,
2 at the time the loan is consummated, or at the time of the
3 first rate adjustment in the case of a lower introductory
4 interest rate, the borrower's scheduled monthly payments on
5 the loan (including principal, interest, taxes, insurance,
6 and assessments), combined with the scheduled payments for
7 all other disclosed debts, do not exceed 50% of the
8 borrower's monthly gross income.

9 (205 ILCS 660/16.8 new)

10 Sec. 16.8. Verification of ability to pay loan. The
11 lender shall verify the borrower's ability to repay the loan
12 in the case of high risk home loans. The verification shall
13 require, at a minimum, that the lender:

14 (1) prepare a personal income and expense
15 statement, with information provided by the borrower, in
16 a form prescribed by the Director;

17 (2) verify the borrower's income by means of tax
18 returns, pay stubs, accounting statements, or other
19 prudent means; and

20 (3) obtain a credit report regarding the borrower.

21 (205 ILCS 660/16.9 new)

22 Sec. 16.9. Fraudulent or deceptive practices. A lender
23 may not employ employ fraudulent or deceptive acts or
24 practices in the making of a high risk home loan, including
25 deceptive marketing and sales efforts.

26 (205 ILCS 660/16.10 new)

27 Sec. 16.10. Prepayment penalties. A lender may not make
28 a high risk home loan that calls for a prepayment penalty (i)
29 made after the expiration of the 36-month period following
30 the date the loan was made or (ii) that is more than 3% of
31 the total loan amount if the prepayment is made within the

1 first 12-month period following the date the loan was made,
2 or more than 2% of the total loan amount if the prepayment is
3 made within the second 12 month period after the date the
4 loan was made, or more than 1% of the total loan amount if
5 the prepayment is made within the third 12-month period
6 following the date the loan was made.

7 (205 ILCS 660/16.11 new)

8 Sec. 16.11. Pre-paid insurance products and warranties.
9 A lender may not make a high risk home loan that finances a
10 single premium credit life, credit disability, credit
11 unemployment, or any other life or health insurance, directly
12 or indirectly. Insurance previously calculated and paid on a
13 monthly basis shall not be considered to be financed by the
14 lender.

15 (205 ILCS 660/16.12 new)

16 Sec. 16.12. Refinancing prohibited in certain cases. A
17 lender may not refinance any high risk home loan where the
18 refinancing charges additional points and fees within a 12
19 month period after the refinanced loan was originated, unless
20 the refinancing results in a financial benefit to the
21 borrower.

22 (205 ILCS 660/16.13 new)

23 Sec. 16.13. Balloon payments. A lender may not make a
24 high risk home loan that contains a scheduled final payment
25 that is more than twice as large as the average of earlier
26 scheduled monthly payments unless the balloon payment becomes
27 due and payable at least 15 years after the loan's
28 origination. This prohibition does not apply when the
29 payment schedule is adjusted to account for the seasonal or
30 irregular income of the borrower or if the purpose of the
31 loan is a "bridge" loan connected with the acquisition or

1 construction of a dwelling intended to become the borrower's
2 principal dwelling.

3 (205 ILCS 660/16.14 new)

4 Sec. 16.14. Financing of certain points and fees. A
5 lender may not make a high risk home loan that finances
6 points and fees in excess of 6% of the total loan amount.

7 (205 ILCS 660/16.15 new)

8 Sec. 16.15. Payments to contractors. A lender may not
9 make a payment to a contractor under a home improvement
10 contract other than:

11 (1) by instrument payable to the borrower or
12 jointly to the borrower and the contractor; or

13 (2) at the election of the borrower, by a third
14 party escrow agent in accordance with the terms
15 established in a written agreement signed by the
16 borrower, the lender, and the contractor before the date
17 of payment.

18 (205 ILCS 660/16.16 new)

19 Sec. 16.16. Negative amortization. A lender may not make
20 a high risk home loan, other than a loan secured only by a
21 reverse mortgage, with terms under which the outstanding
22 balance will increase at any time over the course of the loan
23 because the regular periodic payments do not cover the full
24 amount of the interest due, unless the negative amortization
25 is the consequence of a temporary forbearance sought by the
26 borrower.

27 (205 ILCS 660/16.17 new)

28 Sec. 16.17. Negative equity. A lender may not make a
29 high risk home loan where the loan amount exceeds the equity
30 of the property securing the loan.

1 (205 ILCS 660/16.18 new)

2 Sec. 16.18. Counseling prior to perfecting foreclosure
3 proceedings.

4 (a) If a high risk home loan becomes delinquent by more
5 than 30 days, the lender shall send a notice advising the
6 borrower that he or she may wish to seek consumer credit
7 counseling.

8 (b) The notice required in subsection (a) shall, at a
9 minimum, include the following language:

10 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
11 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
12 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
13 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
14 OBTAINED FROM THE DEPARTMENT OF FINANCIAL INSTITUTIONS."

15 (c) If a lender or its agent is notified in writing by
16 an approved consumer credit counselor and the approved
17 consumer credit counselor advises the lender or its agent
18 that the borrower is seeking approved consumer credit
19 counseling, then the lender and its agent shall not institute
20 legal action under Part 15 of Article XV of the Code of Civil
21 Procedure for 30 days from the date of that notice. Only one
22 such 30-day period of forbearance is allowed under this
23 Section per subject loan.

24 (d) If, within the 30-day period provided under
25 subsection (c), the lender or its agent, the approved
26 consumer credit counselor, and the borrower agree to a debt
27 management plan, then the lender and its agent shall not
28 institute legal action under Part 15 of Article XV of the
29 Code of Civil Procedure for so long as the debt management
30 plan is complied with by the borrower.

31 (1) The agreed debt management plan must be in
32 writing and signed by the lender or its agent, the
33 approved consumer credit counselor, and the borrower. A
34 modification of an approved debt management plan may not

1 be made without the mutual agreement of the lender or its
2 agent, the approved consumer credit counselor, and the
3 borrower.

4 (2) Upon written notice to the lender or its agent,
5 the borrower may change approved consumer credit
6 counselors.

7 (e) If the borrower fails to comply with the agreed debt
8 management plan, then nothing in this Section shall be
9 construed to impair the legal right of the lender or its
10 agent to enforce contracts or mortgage agreements.

11 (f) This Section applies only to high risk home loans.

12 (205 ILCS 660/16.19 new)

13 Sec. 16.19. Mortgage awareness program.

14 (a) The Mortgage Awareness Program is a counseling and
15 educational program that is provided by the Director.

16 (b) The core curriculum of the Mortgage Awareness
17 Program shall include:

18 (1) explanation of the amount financed;

19 (2) explanation of the finance charge;

20 (3) explanation of the annual percentage rate;

21 (4) explanation of the total payments;

22 (5) explanation of the loan costs, including
23 broker's fees, finance charges, points, origination fees,
24 and all other charges and fees;

25 (6) explanation of the right of rescission;

26 (7) explanation of foreclosure procedures;

27 (8) explanation of the significant debt ratios,
28 including total debt to income, loan debt to income, and
29 loan debt to value of residence;

30 (9) explanation of adjustable rate mortgage;

31 (10) explanation of balloon payments;

32 (11) explanation of credit options;

33 (12) explanation of each item that appears on a

1 good faith estimate; and

2 (13) explanation of pre-payment penalties.

3 (c) Counseling session attendees must also complete a
4 personal income and expense statement, as well as a balance
5 sheet, on forms provided by the Commissioner.

6 (d) Prior to signing a certificate of completion,
7 counselors shall privately discuss with the attendee that
8 attendee's income and expense statement and balance sheet, as
9 well as the terms of any loan the attendee currently has or
10 may be contemplating and provide a third party review to
11 establish the affordability of the loan.

12 (e) Counseling session attendees must also be given a
13 brochure that contains information covered by the Mortgage
14 Awareness Program.

15 (f) A lender, prior to making a high risk home loan,
16 shall inform the borrower in writing of the right to
17 participate in the Mortgage Awareness Program.

18 (g) A lender may not offer less favorable loan terms to
19 a borrower due to a borrower participating in a Mortgage
20 Awareness Program.

21 (h) Except as prohibited elsewhere in this Act, the
22 borrower may waive participation in the program, provided
23 that the waiver occurs no less than 2 business days after the
24 day that the borrower receives the written notice required by
25 subsection (f) and that the waiver is in writing in a form
26 approved by the Director.

27 (205 ILCS 660/16.20 new)

28 Sec. 16.20. Third party review of high risk home loans.

29 (a) In the case of any high risk home loan, the borrower
30 shall be afforded the opportunity to seek independent review
31 of the loan terms in order to determine affordability of the
32 loan when and if the General Assembly appropriates adequate
33 funding to the Department of Financial Institutions

1 specifically for this program.

2 (b) The Director shall establish a loan worksheet and a
3 system for review of loan terms to be performed by staff of
4 the Department.

5 (c) A borrower shall submit information requested on the
6 worksheet, including but not limited to information regarding
7 the borrower's financial status and budget and the terms of
8 the loan.

9 (d) The review of the worksheet shall provide the
10 borrower, at a minimum, with a projection of the amount of
11 each payment for the loan, taking into account balloon
12 payments and adjustable interest rates. The review shall also
13 inform the borrower of the amount of monthly payment the
14 borrower can afford within the borrower's budget.

15 (e) The results of the review shall be in the form of a
16 written report, with a signature of the borrower
17 acknowledging receipt of a copy of the report. A copy of the
18 written and signed report shall be submitted to the lender
19 prior to the closing of the loan, and shall become a part of
20 the permanent file for the loan.

21 (f) If, in the opinion of the reviewer of the high risk
22 home loan documentation, the loan does not make economic
23 sense to the borrower, the reviewer shall so note this in the
24 results of the review sent to the lender. This finding shall
25 enable the borrower to withdraw from the contemplated loan
26 with no financial penalty.

27 Section 35. The Consumer Installment Loan Act is amended
28 by adding Sections 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7,
29 17.8, 17.9, 17.10, 17.11, 17.12, 17.13, 17.14, 17.15, 17.16,
30 17.17, 17.18, and 17.19 as follows;

31 (205 ILCS 670/17.1 new)

32 Sec. 17.1. Good faith. "Good faith" means honesty in

1 fact in the conduct of a transaction.

2 (205 ILCS 670/17.2 new)

3 Sec. 17.2. High risk home loan. "High risk home loan"

4 means a home equity loan in which:

5 (1) at the time of origination, the APR exceeds by
6 more than 6 percentage points in the case of a first lien
7 mortgage, or by more than 8 percentage points in the case
8 of a junior mortgage, the yield on U.S. Treasury
9 securities having comparable periods of maturity to the
10 loan maturity as of the 15th day of the month immediately
11 preceding the month in which the application for the loan
12 is received by the lender; or

13 (2) the total points and fees payable by the
14 consumer at or before closing will exceed the greater of
15 5% of the total loan amount or \$800.

16 The \$800 limitation shall be adjusted annually on January
17 1 by the annual percentage change in the Consumer Price
18 Index.

19 However, "high risk home loan" does not mean a loan that
20 is made primarily for a business purpose unrelated to the
21 residential real property securing the loan and to an
22 open-end credit plan subject to subchapter B or Section
23 226.32 of 12 CFR 226 (2000), no subsequent dates or editions
24 are included.

25 (205 ILCS 670/17.3 new)

26 Sec. 17.3. Points and fees. "Points and fees" means:

27 (1) all items required to be disclosed under 12 CFR
28 226.5 (2000), no subsequent dates or editions are
29 included;

30 (2) the premium of any single premium credit life,
31 credit disability, credit unemployment, or any other life
32 or health insurance that is financed directly or

1 indirectly into the loan; and

2 (3) all compensation paid directly or indirectly to
3 a mortgage broker, including a broker that originates a
4 loan in its own name in a tablefunded transaction.

5 (205 ILCS 670/17.4 new)

6 Sec. 17.4. Total loan amount. "Total loan amount" means
7 the same as the term used in Section 226.32 of Title 12 of
8 the Code of Federal Regulations, and the same shall be
9 calculated in accordance with the Federal Reserve Board's
10 Official Staff Commentary thereto.

11 (205 ILCS 670/17.5 new)

12 Sec. 17.5. Good faith requirements.

13 (a) Any disclosure or action required in connection with
14 a high risk home loan must be made in good faith.

15 (b) A lender may not accept a fee or charge for a high
16 risk home loan application unless the lender is able to
17 demonstrate to the Director that, if its high risk home loan
18 requirements are met, there is a reasonable likelihood that a
19 loan commitment will be issued for the loan for the amount,
20 term, rate, charges, and other conditions set forth n the
21 loan application and the applicable disclosures and documents
22 required and that the loan has a reasonable likelihood of
23 being repaid by the applicant.

24 (c) A lender that has accepted an application for a high
25 risk home loan must make a good faith effort to process the
26 application within the time specified in the loan
27 application.

28 (205 ILCS 670/17.6 new)

29 Sec. 17.6. Ability to repay. A lender may not make a
30 high risk home loan if the lender does not believe at the
31 time the loan is consummated that the borrower or borrowers

1 will be able to make the scheduled payments to repay the
 2 obligation based upon a consideration of their current and
 3 expected income, current obligations, employment status, and
 4 other financial resources (other than the borrower's equity
 5 in the dwelling that secures repayment of the loan). A
 6 borrower shall be presumed to be able to repay the loan if,
 7 at the time the loan is consummated, or at the time of the
 8 first rate adjustment in the case of a lower introductory
 9 interest rate, the borrower's scheduled monthly payments on
 10 the loan (including principal, interest, taxes, insurance,
 11 and assessments), combined with the scheduled payments for
 12 all other disclosed debts, do not exceed 50% of the
 13 borrower's monthly gross income.

14 (205 ILCS 670/17.7 new)

15 Sec. 17.7. Verification of ability to pay loan. The
 16 lender shall verify the borrower's ability to repay the loan
 17 in the case of high risk home loans. The verification shall
 18 require, at a minimum, that the lender:

19 (1) prepare a personal income and expense
 20 statement, with information provided by the borrower, in
 21 a form prescribed by the Director;

22 (2) verify the borrower's income by means of tax
 23 returns, pay stubs, accounting statements, or other
 24 prudent means; and

25 (3) obtain a credit report regarding the borrower.

26 (205 ILCS 670/17.8 new)

27 Sec. 17.8. Fraudulent or deceptive practices. A lender
 28 may not employ employ fraudulent or deceptive acts or
 29 practices in the making of a high risk home loan, including
 30 deceptive marketing and sales efforts.

31 (205 ILCS 670/17.9 new)

1 Sec. 17.9. Prepayment penalties. A lender may not make a
2 high risk home loan that calls for a prepayment penalty (i)
3 made after the expiration of the 36-month period following
4 the date the loan was made or (ii) that is more than 3% of
5 the total loan amount if the prepayment is made within the
6 first 12-month period following the date the loan was made,
7 or more than 2% of the total loan amount if the prepayment is
8 made within the second 12 month period after the date the
9 loan was made, or more than 1% of the total loan amount if
10 the prepayment is made within the third 12-month period
11 following the date the loan was made.

12 (205 ILCS 670/17.10 new)

13 Sec. 17.10. Pre-paid insurance products and warranties.
14 A lender may not make a high risk home loan that finances a
15 single premium credit life, credit disability, credit
16 unemployment, or any other life or health insurance, directly
17 or indirectly. Insurance previously calculated and paid on a
18 monthly basis shall not be considered to be financed by the
19 lender.

20 (205 ILCS 670/17.11 new)

21 Sec. 17.11. Refinancing prohibited in certain cases. A
22 lender may not refinance any high risk home loan where the
23 refinancing charges additional points and fees within a 12
24 month period after the refinanced loan was originated, unless
25 the refinancing results in a financial benefit to the
26 borrower.

27 (205 ILCS 670/17.12 new)

28 Sec. 17.12. Balloon payments. A lender may not make a
29 high risk home loan that contains a scheduled final payment
30 that is more than twice as large as the average of earlier
31 scheduled monthly payments unless the balloon payment becomes

1 due and payable at least 15 years after the loan's
2 origination. This prohibition does not apply when the
3 payment schedule is adjusted to account for the seasonal or
4 irregular income of the borrower or if the purpose of the
5 loan is a "bridge" loan connected with the acquisition or
6 construction of a dwelling intended to become the borrower's
7 principal dwelling.

8 (205 ILCS 670/17.13 new)

9 Sec. 17.13. Financing of certain points and fees. A
10 lender may not make a high risk home loan that finances
11 points and fees in excess of 6% of the total loan amount.

12 (205 ILCS 670/17.14 new)

13 Sec. 17.14. Payments to contractors. A lender may not
14 make a payment to a contractor under a home improvement
15 contract other than:

16 (1) by instrument payable to the borrower or
17 jointly to the borrower and the contractor; or

18 (2) at the election of the borrower, by a third
19 party escrow agent in accordance with the terms
20 established in a written agreement signed by the
21 borrower, the lender, and the contractor before the date
22 of payment.

23 (205 ILCS 670/17.15 new)

24 Sec. 17.15. Negative amortization. A lender may not make
25 a high risk home loan, other than a loan secured only by a
26 reverse mortgage, with terms under which the outstanding
27 balance will increase at any time over the course of the loan
28 because the regular periodic payments do not cover the full
29 amount of the interest due, unless the negative amortization
30 is the consequence of a temporary forbearance sought by the
31 borrower.

1 (205 ILCS 670/17.16 new)

2 Sec. 17.16. Negative equity. A lender may not make a
3 high risk home loan where the loan amount exceeds the equity
4 of the property securing the loan.

5 (205 ILCS 670/17.17 new)

6 Sec. 17.17. Counseling prior to perfecting foreclosure
7 proceedings.

8 (a) If a high risk home loan becomes delinquent by more
9 than 30 days, the lender shall send a notice advising the
10 borrower that he or she may wish to seek consumer credit
11 counseling.

12 (b) The notice required in subsection (a) shall, at a
13 minimum, include the following language:

14 "YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY
15 BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR
16 BEST INTEREST TO SEEK APPROVED CONSUMER CREDIT
17 COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE
18 OBTAINED FROM THE DEPARTMENT OF FINANCIAL INSTITUTIONS."

19 (c) If a lender or its agent is notified in writing by
20 an approved consumer credit counselor and the approved
21 consumer credit counselor advises the lender or its agent
22 that the borrower is seeking approved consumer credit
23 counseling, then the lender and its agent shall not institute
24 legal action under Part 15 of Article XV of the Code of Civil
25 Procedure for 30 days from the date of that notice. Only one
26 such 30-day period of forbearance is allowed under this
27 Section per subject loan.

28 (d) If, within the 30-day period provided under
29 subsection (c), the lender or its agent, the approved
30 consumer credit counselor, and the borrower agree to a debt
31 management plan, then the lender and its agent shall not
32 institute legal action under Part 15 of Article XV of the
33 Code of Civil Procedure for so long as the debt management

1 plan is complied with by the borrower.

2 (1) The agreed debt management plan must be in
3 writing and signed by the lender or its agent, the
4 approved consumer credit counselor, and the borrower. A
5 modification of an approved debt management plan may not
6 be made without the mutual agreement of the lender or its
7 agent, the approved consumer credit counselor, and the
8 borrower.

9 (2) Upon written notice to the lender or its agent,
10 the borrower may change approved consumer credit
11 counselors.

12 (e) If the borrower fails to comply with the agreed debt
13 management plan, then nothing in this Section shall be
14 construed to impair the legal right of the lender or its
15 agent to enforce contracts or mortgage agreements.

16 (f) This Section applies only to high risk home loans.

17 (205 ILCS 670/17.18 new)

18 Sec. 17.18. Mortgage awareness program.

19 (a) The Mortgage Awareness Program is a counseling and
20 educational program that is provided by the Director.

21 (b) The core curriculum of the Mortgage Awareness
22 Program shall include:

23 (1) explanation of the amount financed;

24 (2) explanation of the finance charge;

25 (3) explanation of the annual percentage rate;

26 (4) explanation of the total payments;

27 (5) explanation of the loan costs, including
28 broker's fees, finance charges, points, origination fees,
29 and all other charges and fees;

30 (6) explanation of the right of rescission;

31 (7) explanation of foreclosure procedures;

32 (8) explanation of the significant debt ratios,
33 including total debt to income, loan debt to income, and

1 loan debt to value of residence;

2 (9) explanation of adjustable rate mortgage;

3 (10) explanation of balloon payments;

4 (11) explanation of credit options;

5 (12) explanation of each item that appears on a
6 good faith estimate; and

7 (13) explanation of pre-payment penalties.

8 (c) Counseling session attendees must also complete a
9 personal income and expense statement, as well as a balance
10 sheet, on forms provided by the Commissioner.

11 (d) Prior to signing a certificate of completion,
12 counselors shall privately discuss with the attendee that
13 attendee's income and expense statement and balance sheet, as
14 well as the terms of any loan the attendee currently has or
15 may be contemplating and provide a third party review to
16 establish the affordability of the loan.

17 (e) Counseling session attendees must also be given a
18 brochure that contains information covered by the Mortgage
19 Awareness Program.

20 (f) A lender, prior to making a high risk home loan,
21 shall inform the borrower in writing of the right to
22 participate in the Mortgage Awareness Program.

23 (g) A lender may not offer less favorable loan terms to
24 a borrower due to a borrower participating in a Mortgage
25 Awareness Program.

26 (h) Except as prohibited elsewhere in this Act, the
27 borrower may waive participation in the program, provided
28 that the waiver occurs no less than 2 business days after the
29 day that the borrower receives the written notice required by
30 subsection (f) and that the waiver is in writing in a form
31 approved by the Director.

32 (205 ILCS 670/17.19 new)

33 Sec. 17.19. Third party review of high risk home loans.

1 (a) In the case of any high risk home loan, the borrower
2 shall be afforded the opportunity to seek independent review
3 of the loan terms in order to determine affordability of the
4 loan when and if the General Assembly appropriates adequate
5 funding to the Department of Financial Institutions
6 specifically for this program.

7 (b) The Director shall establish a loan worksheet and a
8 system for review of loan terms to be performed by staff of
9 the Department.

10 (c) A borrower shall submit information requested on the
11 worksheet, including but not limited to information regarding
12 the borrower's financial status and budget and the terms of
13 the loan.

14 (d) The review of the worksheet shall provide the
15 borrower, at a minimum, with a projection of the amount of
16 each payment for the loan, taking into account balloon
17 payments and adjustable interest rates. The review shall also
18 inform the borrower of the amount of monthly payment the
19 borrower can afford within the borrower's budget.

20 (e) The results of the review shall be in the form of a
21 written report, with a signature of the borrower
22 acknowledging receipt of a copy of the report. A copy of the
23 written and signed report shall be submitted to the lender
24 prior to the closing of the loan, and shall become a part of
25 the permanent file for the loan.

26 (f) If, in the opinion of the reviewer of the high risk
27 home loan documentation, the loan does not make economic
28 sense to the borrower, the reviewer shall so note this in the
29 results of the review sent to the lender. This finding shall
30 enable the borrower to withdraw from the contemplated loan
31 with no financial penalty.

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