

1 AMENDMENT TO SENATE BILL 1784

2 AMENDMENT NO. _____. Amend Senate Bill 1784, AS AMENDED,
3 with reference to page and line numbers of House Amendment
4 No. 1, on page 2, by replacing line 33 with the following:

5 "brokers who transfer, deal in, offer, or make high risk home
6 loans. "Lender" does not include purchasers, assignees, or
7 subsequent holders of high risk home loans."; and

8 on page 3, line 33, by changing "lender" to "creditor or
9 broker"; and

10 on page 4, line 2, by changing "lender" to "creditor or
11 broker"; and

12 on page 5, immediately below line 15, by inserting the
13 following:

14 "Section 30. Prepayment penalty. For any loan that is
15 subject to the provisions of this Act and is not subject to
16 the provisions of the Home Ownership and Equity Act of 1994,
17 no lender shall make a high risk home loan that includes a
18 penalty provision for payment made: (i) after the expiration
19 of the 36-month period following the date the loan was made;
20 or (ii) that is more than:

21 (1) 3% of the total loan amount if the prepayment

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

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

6 (3) 1% of the total loan amount if the prepayment
7 is made within the third 12-month period following the
8 date the loan was made."; and

9 on page 6, line 10, by changing "agreement" to "agent"; and

10 on page 13, line 20, by changing "requirement" to "right";
11 and

12 on page 13, by replacing lines 25 and 26 with the following:

13 "(h) Except as prohibited elsewhere in this Section, 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 notice required by
17 subsection (f) of this Section and that the waiver is in
18 writing in a form approved by the Commissioner and the
19 Director."; and

20 on page 13, line 31, after "Commissioner", by inserting "or
21 the Director"; and

22 on page 14, by replacing lines 28 and 29 with the following:

23 "Section 120. Review and analysis.

24 (a) The Commissioner or Director shall review and
25 analyze the"; and

26 on page 15, by replacing lines 4 through 7 with the
27 following:

28 "(3) In comparing the reported information of a
29 servicer."; and

30 on page 15, line 8, after "Commissioner", by inserting "or

1 the Director"; and

2 on page 16, line 7, by changing "Enforcement and remedies" to
3 "Remedies, enforcement, and limitations of liability"; and

4 on page 16, line 10, after "Any", by inserting "knowing"; and

5 on page 16, by replacing lines 15 through 24 with the
6 following:

7 "(d)(1) Any natural or artificial person who purchases
8 or otherwise is assigned or subsequently holds a high risk
9 home loan shall be subject to all affirmative claims and
10 defenses with respect to the loan that the borrower could
11 assert against the lender or broker of the loan, provided
12 that this item (d)(1) shall not apply if the purchaser,
13 assignee or holder demonstrates by a preponderance of the
14 evidence that it:

15 (A) has in place, at the time of the purchase,
16 assignment or transfer of the loans, policies that
17 expressly prohibit its purchase, acceptance of assignment
18 or holding of any high risk home loans;

19 (B) requires by contract that a seller, assignor or
20 transferor of high risk home loans to the purchaser,
21 assignee or transferee represents and warrants to the
22 purchaser, assignee or transferee that either (i) the
23 seller, assignor or transferor will not sell, assign or
24 transfer any high risk home loans to the purchaser,
25 assignee or transferee, or (ii) the seller, assignor or
26 transferor is a beneficiary of a representation and
27 warranty from a previous seller, assignor or transferor
28 to that effect; and

29 (C) exercises reasonable due diligence at the time
30 of the purchase, assignment or transfer of high risk home
31 loans, or within a reasonable period of time after the
32 purchase, assignment or transfer of such home loans,
33 which is intended by the purchaser, assignee or

1 transferee to prevent the purchaser, assignee or
2 transferee from purchasing or taking assignment or
3 otherwise holding any high risk home loans, provided that
4 this reasonable due diligence requirement may be met by
5 sampling and need not require loan-by-loan review.

6 (2) Limited to the amount required to reduce or
7 extinguish the borrower's liability under the high cost home
8 loan plus the amount required to recover costs, including
9 reasonable attorney fees, a borrower acting only in an
10 individual capacity may assert claims that the borrower could
11 assert against a lender of the home loan against a subsequent
12 holder or assignee of the home loan as follows:

13 (A) within 5 years of the closing date of a high
14 risk home loan, a violation of this Act in connection
15 with the loan as an original action; and

16 (B) at any time during the term of a high risk home
17 loan, after an action to collect on the home loan or to
18 foreclose on the collateral securing the home loan has
19 been initiated, or the debt arising from the home loan
20 has been accelerated, or the home loan has become 60 days
21 in default, any defense, claim, counterclaim or action to
22 enjoin foreclosure or preserve or obtain possession of
23 the home that secures the loan.

24 (e) In addition to the limitation of liability afforded
25 to subsequent purchasers, assignees, or holders under
26 subsection (d) of this Section, a lender and a subsequent
27 purchaser, assignee, or holder of the high risk home loan is
28 not liable for"; and

29 on page 17, by replacing line 27 with the following:
30 "of any provision of this Act, except as explicitly provided
31 in subsection (h) of Section 110."; and

32 on page 18, line 3, after "laws,", by inserting "except the
33 Interest Act, "; and

1 on page 18, by deleting lines 7 through 15; and

2 on page 65, by replacing lines 5 and 6 with the following:

3 (2) any person or entity that ~~either-(i)-has-a--physical~~
4 ~~presence-in-Illinois-or-(ii)~~ does not originate"; and

5 on page 85, line 29, by changing "subsection (d)" to "items
6 (1) and (1.5) of subsection (d)"; and

7 on page 91, by replacing line 29 with the following:

8 "Banking Act, Section 1-6a of the Illinois Savings and Loan
9 Act of 1985, or subsection (3) of Section 46 of the Illinois
10 Credit Union Act."; and

11 on page 92, line 29, after "bring an", by inserting
12 "individual"; and

13 on page 93, immediately below line 8, by inserting the
14 following:

15 "(c) An action to enjoin any person subject to this Act
16 from engaging in activity in violation of this Act may be
17 maintained in the name of the people of the State of Illinois
18 by the Attorney General or by the State's Attorney of the
19 county in which the action is brought. This remedy shall be
20 in addition to other remedies provided for any violation of
21 this Act."; and

22 on page 94, by replacing lines 2 and 3 with the following:

23 "Section 900. Severability. The provisions of this Act
24 are severable under Section 1.31 of the Statute on
25 Statutes."