



Rep. Daniel J. Burke

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LRB095 06755 MJR 35586 a

1 AMENDMENT TO HOUSE BILL 1478

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1478 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Residential Mortgage License Act of 1987 is  
5 amended by adding Sections 4-15, 4-16, 5-6, 5-7, 5-8, 5-9,  
6 5-10, 5-11, 5-12, 5-14, 5-15, 5-16, and 5-17 as follows:

7 (205 ILCS 635/4-15 new)

8 Sec. 4-15. Enforcement and reporting provisions.

9 (a) The Attorney General may enforce any violation of  
10 Section 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12, 5-14, or 5-15 of  
11 this Act as an unlawful practice under the Consumer Fraud and  
12 Deceptive Business Practices Act.

13 (b) The Department of Financial and Professional  
14 Regulation and the Department of Financial Institutions must  
15 report to the Attorney General all violations of this  
16 amendatory Act of which they become aware.

1 (205 ILCS 635/4-16 new)

2 Sec. 4-16. Private right of action. A borrower injured by a  
3 violation of the standards, duties, prohibitions, or  
4 requirements of Sections 5-6, 5-7, 5-8, 5-9, 5-10, 5-11, 5-12,  
5 5-13, 5-14, 5-15, and 5-16 of this Act shall have a private  
6 right of action.

7 (a) A licensee is not liable for a violation of this Act  
8 if:

9 (1) within 30 days of the loan closing and prior to  
10 receiving any notice from the borrower of the violation,  
11 the licensee has made appropriate restitution to the  
12 borrower and appropriate adjustments are made to the loan;  
13 or

14 (2) the violation was not intentional and resulted from  
15 a bona fide error in fact, notwithstanding the maintenance  
16 of procedures reasonably adopted to avoid such errors, and  
17 within 60 days of the discovery of the violation and prior  
18 to receiving any notice from the borrower of the violation,  
19 the borrower is notified of the violation, appropriate  
20 restitution is made to the borrower, and appropriate  
21 adjustments are made to the loan.

22 (b) The remedies and rights provided for in this Act are  
23 not exclusive, but cumulative, and all other applicable claims  
24 are specifically preserved.

1 (205 ILCS 635/5-6 new)

2 Sec. 5-6. Verification of borrower's ability to repay.

3 (a) No licensee may make, provide, or arrange for a  
4 residential mortgage loan without verifying the borrower's  
5 reasonable ability to pay the principal and interest on the  
6 loan, real estate taxes, homeowner's insurance, assessments,  
7 and mortgage insurance premiums, if applicable.

8 For residential mortgage loans in which the interest rate  
9 may vary, the reasonable ability to pay the principal and  
10 interest on the loan shall be determined based on a fully  
11 indexed rate, which rate shall be calculated by using the index  
12 rate prevailing at the time of origination of the loan plus the  
13 margin that will apply when calculating the adjustable rate  
14 under the terms of the loan, assuming a fully amortizing  
15 repayment schedule based on the term of the loan.

16 For loans that allow for negative amortization, the  
17 principal amount of the loan shall be calculated by including  
18 the maximum amount the principal balance may increase due to  
19 negative amortization under the terms of the loan.

20 (b) For all residential mortgage loans, the borrower's  
21 income and financial resources must be verified by tax returns,  
22 payroll receipts, bank records, or other similarly reliable  
23 documents. Nothing in this Section shall be construed to limit  
24 a licensee's ability to rely on criteria other than the  
25 borrower's income and financial resources to establish the  
26 borrower's reasonable ability to repay a residential mortgage

1 loan; however, such other criteria must be verified through  
2 reasonably reliable methods and documentation. A statement by  
3 the borrower to the licensee of the borrower's income and  
4 resources is not sufficient to establish the existence of the  
5 income or resources when verifying the reasonable ability to  
6 pay.

7 (205 ILCS 635/5-7 new)

8 Sec. 5-7. Broker agency relationship.

9 (a) A mortgage broker shall be considered to have created  
10 an agency relationship with the borrower in all cases and shall  
11 comply with the following duties:

12 (1) mortgage brokers shall act in the borrower's best  
13 interest and in the utmost good faith toward borrowers, and  
14 shall not compromise a borrower's right or interest in  
15 favor of another's right or interest, including a right or  
16 interest of the mortgage broker. A mortgage broker shall  
17 not accept, give, or charge any undisclosed compensation or  
18 realize any undisclosed remuneration, either through  
19 direct or indirect means, that inures to the benefit of the  
20 mortgage broker on an expenditure made for the borrower;

21 (2) mortgage brokers shall carry out all lawful  
22 instructions given by borrowers;

23 (3) mortgage brokers shall disclose to borrowers all  
24 material facts of which the mortgage broker has knowledge  
25 which might reasonably affect the borrower's rights,

1 interests, or ability, or both, to receive the borrower's  
2 intended benefit from the residential mortgage loan, but  
3 not facts which are reasonably susceptible to the knowledge  
4 of the borrower;

5 (4) mortgage brokers shall use reasonable care in  
6 performing duties; and

7 (5) mortgage brokers shall account to a borrower for  
8 all the borrower's money and property received as agent.

9 (b) Nothing in this Section prohibits a mortgage broker  
10 from contracting for or collecting a fee for services rendered  
11 and which had been disclosed to the borrower in advance of the  
12 provision of those services.

13 (c) Nothing in this Section requires a mortgage broker to  
14 obtain a loan containing terms or conditions not available to  
15 the mortgage broker in the mortgage broker's usual course of  
16 business, or to obtain a loan for the borrower from a mortgage  
17 lender with whom the mortgage broker does not have a business  
18 relationship.

19 (205 ILCS 635/5-8 new)

20 Sec. 5-8. Prepayment penalties.

21 (a) No licensee may make, provide, or arrange a mortgage  
22 loan with a prepayment penalty unless the licensee offers the  
23 borrower a loan without a prepayment penalty, the offer is in  
24 writing, and the borrower initials the offer to indicate that  
25 the borrower has declined the offer. In addition, the licensee

1 must disclose the discount in rate received in consideration  
2 for a mortgage loan with the prepayment penalty.

3 (b) If a borrower declines an offer required under  
4 subsection (a) of this Section, the licensee may include a  
5 prepayment penalty that extends no longer than three years or  
6 the first change date or rate adjustment of a variable rate  
7 mortgage, whichever comes earlier, provided that, if a  
8 prepayment is made during the fixed rate period, the licensee  
9 shall receive an amount that is no more than:

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

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

16 (3) 1% of the total loan amount if the prepayment is  
17 made within the third 12- month period following the date  
18 the loan was made, if the fixed rate period extends 3  
19 years.

20 (c) Notwithstanding any provision in this Section,  
21 prepayment penalties are prohibited in connection with the sale  
22 or destruction of a dwelling secured by a residential mortgage  
23 loan.

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

1 (205 ILCS 635/5-9 new)

2 Sec. 5-9. Notice of change in loan terms.

3 (a) No licensee may fail to do either of the following:

4 (1) Provide timely notice to the borrower of any  
5 material change in the terms of the residential mortgage  
6 loan prior to the closing of the loan. For purposes of this  
7 Section, a "material change means" any of the following:

8 (A) A change in the type of loan being offered,  
9 such as a fixed or variable rate loan or a loan with a  
10 balloon payment.

11 (B) A change in the term of the loan, as reflected  
12 in the number of monthly payments due before a final  
13 payment is scheduled to be made.

14 (C) An increase in the interest rate of more than  
15 0.15%, or an equivalent increase in the amount of  
16 discount points charged.

17 (D) An increase in the regular monthly payment of  
18 principal and interest of more than 5%.

19 (E) A change regarding the requirement or amount of  
20 escrow of taxes or insurance.

21 (F) A change regarding the requirement or payment,  
22 or both, of private mortgage insurance.

23 (2) Timely inform the borrower if any fees payable by  
24 the borrower to the licensee increase by more than 10% or  
25 \$100, whichever is greater.

1       (b) The disclosures required by this Section shall be  
2 deemed timely if the licensee provides the borrower with the  
3 revised information not later than 3 days after learning of the  
4 change or 24 hours before the residential mortgage loan is  
5 closed, whichever is earlier. If the licensee discloses a  
6 material change more than the 3 days after learning of the  
7 change but still 24 hours before the residential mortgage loan  
8 is closed, it will not be liable for penalties or forfeitures  
9 if the licensee cures in time for the borrower to avoid any  
10 damage.

11       (c) If an increase in the total amount of the fee to be  
12 paid by the borrower to the lender or broker is not disclosed  
13 in accordance with this Section, the lender or broker, whoever  
14 received the increased fee, shall refund to the borrower the  
15 amount by which the fee was increased. If the fee is financed  
16 into the residential mortgage loan, the lender or broker shall  
17 also refund to the borrower the interest charged to finance the  
18 fee.

19       (205 ILCS 635/5-10 new)

20       Sec. 5-10. Comparable monthly payment quotes. When  
21 comparing different loans, the licensee must not state or imply  
22 that monthly loan payments, if they include amounts escrowed  
23 for payment of property taxes and homeowner's insurance, are  
24 comparable with monthly loan payments that do not include these  
25 amounts.



1 (205 ILCS 635/5-11 new)

2 Sec. 5-11. Requirement to provide borrower with a copy of  
3 all appraisals. Lenders must provide to the borrower a complete  
4 copy of any appraisal, including any appraisal generated using  
5 the Automated Valuation Model, obtained by the lender for use  
6 in underwriting the residential mortgage loan within 3 business  
7 days of receipt by the licensee, but in no event less than 24  
8 hours prior to the day of closing. The appraisal may be sent  
9 via first class mail, commercial carrier, by facsimile or by  
10 e-mail, if the borrower has supplied an email address.

11 (205 ILCS 635/5-12 new)

12 Sec. 5-12. Disclosure of refinancing options. If the  
13 subject of a future loan is discussed by a licensee making,  
14 providing, or arranging a mortgage loan, the licensee shall  
15 disclose the circumstances under which a new loan could be  
16 considered. Such disclosure shall clearly state that it is not  
17 a contract and that the licensee is not representing or  
18 promising that a new loan could or would be made at any time in  
19 the future.

20 (205 ILCS 635/5-14 new)

21 Sec. 5-14. Prohibition on equity stripping and loan  
22 flipping. No licensee may engage in equity stripping or loan  
23 flipping, as those terms are defined in the Illinois Fairness

1 in Lending Act.

2 (205 ILCS 635/5-15 new)

3 Sec. 5-15. Prohibition on financing certain insurance  
4 premiums. No licensee may make, provide, or arrange for a  
5 residential mortgage loan that finances, directly or  
6 indirectly, any credit life, credit disability, or credit  
7 unemployment insurance; however, insurance premiums calculated  
8 and paid on a monthly basis shall not be considered to be  
9 financed by the lender.

10 (205 ILCS 635/5-16 new)

11 Sec. 5-16. Prohibition on encouraging default. A licensee  
12 may not recommend or encourage default or the failure to make  
13 timely payments on an existing residential mortgage loan or  
14 other debt prior to and in connection with the closing or  
15 planned closing of a residential mortgage loan that refinances  
16 all or any portion of the existing loan or debt.

17 (205 ILCS 635/5-17 new)

18 Sec. 5-17. Severability. If any provision of this Act or  
19 its application to any person or circumstance is held invalid,  
20 the invalidity of that provision or application does not affect  
21 other provisions or applications of this Act that can be given  
22 effect without the invalid provision or application.

1           Section 10. The Interest Act is amended by changing Section  
2           4.1a as follows:

3           (815 ILCS 205/4.1a) (from Ch. 17, par. 6406)

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

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

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

20           (c) in the case of any loan made pursuant to the  
21           provisions of the Emergency Home Purchase Assistance Act of  
22           1974 (Section 313 of the National Housing Act, Chapter B of  
23           Title 12 of the United States Code), in addition to the  
24           matters referred to in paragraphs (a) and (b) of this  
25           Section all charges required or allowed by the Government

1 National Mortgage Association, whether designated as  
2 processing fees, commitment fees, loss reserve and  
3 marketing fees, discounts, origination fees or otherwise  
4 designated.

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

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

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

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

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

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

17            (3) 1% of the total loan amount if the prepayment is  
18 made within the third 12- month period following the date  
19 the loan was made, if the fixed rate period extends 3  
20 years.

21        This subsection applies to loans made, refinanced,  
22 renewed, extended, or modified on or after the effective date  
23 of this amendatory Act of the 95th General Assembly.

24        Where there is a charge in addition to the stated rate of  
25 interest payable directly or indirectly by the borrower and  
26 imposed directly or indirectly by the lender as a consideration

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

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

21 ~~The borrower in the case of nonexempt loan shall have the~~  
22 ~~right to prepay the loan in whole or in part at any time, but,~~  
23 ~~except as may otherwise be provided by Section 4, the lender~~  
24 ~~may require payment of not more than 6 months' advance interest~~  
25 ~~on that part of the aggregate amount of all prepayments on a~~  
26 ~~loan in one year, which exceeds 20% of the original principal~~

1 ~~amount of the loan.~~

2 (Source: P.A. 87-496.)".