

775-121AX-32

Bill No. CS/HB 1471

Amendment No. ____ (for drafter's use only)

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Kendrick and Bense offered the following:

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Amendment (with title amendment)

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On page 2, line 16, through page 11, line 31,
remove: all of said lines,

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15

16

and insert:

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(7) "Lender" means any person who makes a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan.

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Section 3. Prohibited acts.--

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(1) PREPAYMENT PENALTIES.--

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(a) A high-cost home loan may not contain terms that require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

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(b) Notwithstanding paragraph (a), a lender making a high-cost home loan may include in the loan contract a prepayment fee or penalty, for up to the first 36 months after

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1 the date of consummation of the loan, if:

2 1. The borrower has also been offered a choice of
3 another product without a prepayment penalty.

4 2. The borrower has been given, at least 3 business
5 days prior to the loan consummation, a written disclosure of
6 the terms of the prepayment fee or penalty by the lender,
7 including the benefit the borrower will receive for accepting
8 the prepayment fee or penalty through either a reduced
9 interest rate on the loan or reduced points or fees.

10 (2) DEFAULT INTEREST RATE.--A high-cost home loan may
11 not provide for a higher interest rate after default on the
12 loan. However, this prohibition does not apply to interest
13 rate changes in a variable rate loan otherwise consistent with
14 the provisions of the loan documents, provided the change in
15 interest rate is not triggered by a default or the
16 acceleration of the interest rate.

17 (3) BALLOON PAYMENTS.--A high-cost home loan having a
18 term of less than 5 years may not contain terms under which
19 the aggregate amount of the regular periodic payments would
20 not fully amortize the outstanding principal balance.
21 However, this prohibition does not apply when the payment
22 schedule is adjusted to account for the seasonal or irregular
23 income of the borrower or if the loan is a bridge loan.

24 (4) NEGATIVE AMORTIZATION.--A high-cost home loan may
25 not contain terms under which the outstanding principal
26 balance will increase at any time over the course of the loan
27 because the regular periodic payments do not cover the full
28 amount of the interest due.

29 (5) PREPAID PAYMENTS.--A high-cost home loan may not
30 include terms under which more than two periodic payments
31 required under the loan are consolidated and paid in advance

1 from the loan proceeds provided to the borrower.

2 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT
3 ABILITY OF THE BORROWER.--A lender making a high-cost home
4 loan shall not engage in any pattern or practice of extending
5 high-cost home loans to borrowers based upon the borrowers'
6 collateral without regard to the borrowers' ability to repay
7 the loan, including the borrowers' current and expected
8 income, current obligations, and employment.

9 (7) PAYMENTS TO A HOME CONTRACTOR.--A lender shall not
10 make any payments to a contractor under a home improvement
11 contract from amounts of a high-cost home loan other than:

12 (a) In the form of an instrument that is payable to
13 the borrower or jointly to the borrower and the contractor; or

14 (b) At the election of the borrower by a third-party
15 escrow agent in accordance with terms established in a written
16 agreement signed by the borrower, the lender, and the
17 contractor prior to the date of payment.

18 (8) DUE-ON-DEMAND CLAUSE.--A creditor shall not
19 terminate a loan in advance of the original maturity date of
20 the loan and demand repayment of the entire outstanding
21 balance, except when:

22 (a) There is fraud or material misrepresentation by
23 the consumer in connection with the loan;

24 (b) The consumer fails to meet the repayment terms of
25 the agreement for any outstanding balance; or

26 (c) There is any action or inaction by the borrower
27 that adversely affects the lender's security for the loan or
28 any right of the creditor in such security.

29 (9) REFINANCING WITHIN A 1-YEAR PERIOD.--

30 (a) A lender, its affiliate, or an assignee shall not
31 refinance any high-cost home loan to the same borrower when

1 the refinancing does not have a reasonable benefit to the
2 borrower considering all of the circumstances, including, but
3 not limited to, the terms of both the new and refinanced
4 loans, the cost of the new loan, and the borrower's
5 circumstances.

6 (b) For purposes of paragraph (a), a presumption of
7 reasonable benefit to the borrower occurs when:

8 1. The borrower's monthly payment to pay a new
9 consolidated loan will be lower than the total of all monthly
10 obligations being financed, taking into consideration all
11 costs and fees;

12 2. There is a beneficial change for the borrower in
13 the duration of the loan;

14 3. The borrower receives a reasonable amount of cash
15 in excess of and in relation to the costs and fees as part of
16 the refinancing; or

17 4. There is a change from an adjustable rate loan to a
18 fixed rate loan, taking into account all costs and fees.

19 (c) A lender or assignee shall not engage in acts or
20 practices to evade this requirement, including a pattern or
21 practice of arranging for the refinancing of the lender's or
22 assignee's own loans by affiliated or unaffiliated lenders or
23 modifying a loan agreement, whether or not the existing loan
24 is satisfied and replaced by the new loan, and charging a fee.

25 (10) OPEN-ENDED LOANS.--A lender shall not make any
26 loan as an open-ended loan in order to evade the provisions of
27 this act unless such open-ended loans meet the definition in
28 12 C.F.R. s. 226.2(a)(20).

29 (11) RECOMMENDATION OF DEFAULT.--No creditor shall
30 recommend or encourage default on an existing loan or other
31 debt prior to and in connection with the closing or planned

1 closing of a high-cost home loan that refinances all or any
2 portion of such existing loan or debt.

3 (12) PROHIBITED LOANS.--A high-cost home loan may not
4 be made as a direct result of a potential or future lender or
5 its representative offering or selling a high-cost home loan
6 at the residence of a potential borrower without a prearranged
7 appointment with the potential borrower or the expressed
8 invitation of the potential borrower. This subsection does not
9 apply to mail solicitations that may be received by the
10 potential borrower.

11 Section 4. Required disclosures for high-cost home
12 loans.--

13 (1) In addition to other disclosures required by law
14 and in conspicuous type:

15 (a) NOTICE TO BORROWER.--A lender making a high-cost
16 home loan shall provide a notice to a borrower in
17 substantially the following form:

18 If you obtain this high-cost home loan, the lender will
19 have a mortgage on your home. You could lose your home and
20 any money you have put into it if you do not meet your
21 obligations under the loan.

22 Mortgage loan rates and closing costs and fees vary
23 based on many factors, including your particular credit and
24 financial circumstances, your employment history, the
25 loan-to-value requested, and the type of property that will
26 secure your loan. The loan rate and fees could also vary
27 based upon which lender or broker you select. As a borrower,
28 you should shop around and compare loan rates and fees.

29 You should also consider consulting a qualified
30 independent credit counselor or other experienced financial
31 advisor regarding the rates, fees, and provisions of this

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1 mortgage loan before you proceed.

2 You are not required to complete this agreement merely
3 because you have received these disclosures or have signed a
4 loan application.

5 Borrowing for the purpose of debt consolidation can be
6 an appropriate financial management tool. However, if you
7 continue to incur significant new credit card charges or other
8 debts after this high-cost home loan is closed and then
9 experience financial difficulties, you could lose your home
10 and any equity you have in it if you do not meet your mortgage
11 loan obligations.

12 Remember that property taxes and homeowners' insurance
13 are your responsibility. Not all lenders provide escrow
14 services for these payments. You should ask your lender about
15 these services.

16 Also, your payments on existing debts contribute to
17 your credit rating. You should not accept any advice to
18 ignore your regular payments to your existing creditors.

19 (b) ANNUAL PERCENTAGE RATE.--A lender making a
20 high-cost home loan shall disclose:

21 1. In the case of a fixed mortgage, the annual
22 percentage rate and the amount of the regular monthly payment.

23 2. In the case of any other credit transaction, the
24 annual percentage rate, the amount of the regular monthly
25 payment and the amount of any balloon payment permitted under
26 this section, a statement that the interest rate and monthly
27 payment may increase, and the amount of the maximum monthly
28 payment based upon the maximum interest rate allowed pursuant
29 to law.

30 (c) NOTICE TO PURCHASERS AND ASSIGNEES.--All high-cost
31 home loans shall contain the following notice:

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1 Notice: This is a mortgage subject to the provisions of
2 the Florida Fair Lending Act. Purchasers and assignees of this
3 mortgage could be liable for all claims and defenses with
4 respect to the mortgage which the borrower could assert
5 against the creditor.

6 (2) Timing of disclosure.--

7 (a) The disclosure required by this subsection shall
8 be given not less than 3 business days prior to the
9 consummation of the high-cost home loan.

10 (b) New disclosures are required when, after
11 disclosure is made, the lender making the high-cost home loan
12 changes the terms of the extension of credit, including if
13 such changes make the original disclosures inaccurate, unless
14 new disclosures are provided that meet the requirements of
15 this section.

16 (c) A lender may provide new disclosures pursuant to
17 paragraph (b) by telephone, if:

18 1. The change is initiated by the borrower.

19 2. At the consummation of the high-cost home loan:

20 a. The lender provides the disclosures in writing to
21 the borrower.

22 b. The lender and the borrower certify in writing that
23 the new disclosures were provided by telephone no later than 3
24 days prior to the consummation of the high-cost home loan.

25 (d) A creditor must disclose to any high-cost home
26 loan borrower the rights of the borrower to rescind the
27 high-cost home loan pursuant to 15 U.S.C. s. 1635(a) and shall
28 provide appropriate forms for the borrower to exercise his or
29 her right to rescission. The notice, forms, and provisions
30 thereof must be in accordance with the requirements of 15
31 U.S.C. s. 1635(a).

1 Section 5. Liability of purchasers and assignees.--Any
 2 person who purchases or is otherwise assigned a high-cost home
 3 loan shall be subject to all claims and defenses with respect
 4 to that mortgage that the borrower could assert against the
 5 creditor of the mortgage, to the same extent and subject to
 6 the same limitations that a borrower of a high-cost home loan
 7 may assert against an assignee or purchaser pursuant to 15
 8 U.S.C. s. 1641.

9 Section 6. Powers and duties of the Department of
 10 Banking and Finance; investigations; examinations;
 11 injunctions; orders.--

12 (1)(a) The department shall be responsible for the
 13 administration and enforcement of this act.

14 (b) The department may adopt rules pursuant to ss.
 15 120.536(1) and 120.54, Florida Statutes, to implement this
 16 act. The department may adopt rules to allow electronic
 17 submission of any forms, documents, or fees required by this
 18 act.

19 (2)(a) The department may conduct an investigation of
 20 any person whenever the department has reason to believe, upon
 21 complaint or otherwise, that any violation of the act has
 22 occurred.

23 (b) Any person having reason to believe that a
 24 provision of this act has been violated may file a written
 25 complaint with the department setting forth the details of the
 26 alleged violation.

27 (c) The department may conduct examinations of any
 28 person to determine compliance with this act.

29 (3)(a) The department may bring action, through its
 30 own counsel in the name and on behalf of the state, against
 31 any person who has violated or is about to violate any

1 provision of this act, or any rule or order of the department
2 issued under the act, to enjoin the person from continuing in
3 or engaging in any act in furtherance of the violation.

4 (b) In any injunctive proceeding, the court may, on
5 due showing by the department, issue a subpoena or subpoena
6 duces tecum requiring the attendance of any witness and
7 requiring the production of any books, accounts, records, or
8 other documents and materials that appear necessary to the
9 expeditious resolution of the application for injunction.

10 (4) The department may issue and serve upon any person
11 an order to cease and desist and to take corrective action
12 whenever the department has reason to believe the person is
13 violating, has violated, or is about to violate any provision
14 of this act, any rule or order of the department issued under
15 this act, or any written agreement between the person and the
16 department. All procedural matters relating to issuance and
17 enforcement of cease and desist orders are governed by the
18 Administrative Procedure Act.

19 (5) Whenever the department finds a person in
20 violation of this act, it may enter an order imposing a fine
21 in an amount not exceeding \$5,000 for each count or separate
22 offense, provided that the aggregate fine for all violations
23 of this act that could have been asserted at the time of the
24 order imposing the fine shall not exceed \$250,000.

25 (6) Any violation of this act shall also be deemed to
26 be a violation of chapter 494, chapter 516, chapter 520,
27 chapter 655, chapter 657, chapter 658, chapter 660, chapter
28 663, chapter 665, or chapter 667, Florida Statutes. The
29 department may adopt rules to enforce this subsection.

30 Section 7. General rule.--All city, county, or
31 municipality of this state are prohibited from enacting and

1 enforcing ordinances, resolutions, and rules regulating
 2 financial or lending activities, including ordinances,
 3 resolutions, and rules disqualifying persons from doing
 4 business with a city, county, or municipality based upon
 5 lending interest rates or imposing reporting requirements or
 6 any other obligations upon persons regarding financial
 7 services or lending practices of persons or entities, and any
 8 subsidiaries or affiliates thereof, who:

9 (1) Are subject to the jurisdiction of the department,
 10 including for activities subject to this chapter;

11 (2) Are subject to the jurisdiction of the Office of
 12 Thrift Supervision, the Office of the Comptroller of the
 13 Currency, the National Credit Union Administration, the
 14 Federal Deposit Insurance Corporation, the Federal Trade
 15 Commission, or the United States Department of Housing and
 16 Urban Development;

17 (3) Originate, purchase, sell, assign, secure, or
 18 service property interests or obligations created by financial
 19 transactions or loans made, executed, or originated by persons
 20 referred to in subsection (1) or subsection (2) to assist or
 21 facilitate such transactions;

22 (4) Are chartered by the United States Congress to
 23 engage in secondary market mortgage transactions; or

24 (5) Are created by the Florida Housing Finance
 25 Corporation.

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 27 Proof of noncompliance with this act can be used by a city,
 28 county, or municipality of this state to disqualify a vendor
 29 or contractor from doing business with a city, county, or
 30 municipality of this state.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, line 6, after the semicolon,

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5 insert:

6 specifying liability of purchasers and

7 assignees;

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