

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

11 Representative(s) Kendrick offered the following:

13 **Amendment (with title amendment)**

14 On page 2, line 17, through page 11, line 31,  
15 remove: all of said lines,

17 and insert:

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

22 Section 3. Prohibited acts.--

23 (1) PREPAYMENT PENALTIES.--

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

28 (b) Notwithstanding paragraph (a), a lender making a  
29 high-cost home loan may include in the loan contract a  
30 prepayment fee or penalty, for up to the first 36 months after  
31 the date of consummation of the loan, if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 borrower considering all of the circumstances, including, but  
2 not limited to, the terms of both the new and refinanced  
3 loans, the cost of the new loan, and the borrower's  
4 circumstances.

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

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

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

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

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

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

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

28 (11) RECOMMENDATION OF DEFAULT.--No creditor shall  
29 recommend or encourage default on an existing loan or other  
30 debt prior to and in connection with the closing or planned  
31 closing of a high-cost home loan that refinances all or any

1 portion of such existing loan or debt.

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

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

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

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

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

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

28 You should also consider consulting a qualified  
29 independent credit counselor or other experienced financial  
30 advisor regarding the rates, fees, and provisions of this  
31 mortgage loan before you proceed.

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

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

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

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

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

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

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

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

31           Notice: This is a mortgage subject to the provisions of

1 the Florida Fair Lending Act. Purchasers and assignees of this  
2 mortgage could be liable for all claims and defenses with  
3 respect to the mortgage which the borrower could assert  
4 against the creditor.

5 (2) Timing of disclosure.--

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

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

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

17 1. The change is initiated by the borrower.

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

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

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

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

31 Section 5. Liability of purchasers and assignees.--Any

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

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

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

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

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

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

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

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



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1 issued under the act, to enjoin the person from continuing in  
2 or engaging in any act in furtherance of the violation.

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

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

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

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

29 Section 7. General rule.--All political subdivisions  
30 of this state are prohibited from enacting and enforcing  
31 ordinances, resolutions, and rules regulating financial or

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

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

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

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

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

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

25  
26 Proof of noncompliance with this act can be used by a city,  
27 county, or municipality of this state to disqualify a vendor  
28 or contractor from doing business with a city, county, or  
29 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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