

By Representatives Kendrick, Rubio, Bean, Alexander,
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1 A bill to be entitled
 2 An act relating to the Florida Fair Lending
 3 Act; providing a short title; providing
 4 definitions; specifying prohibited acts
 5 relating to high-cost home loans; specifying
 6 required disclosures for high-cost home loans;
 7 providing administration and enforcement powers
 8 and duties of the Department of Banking and
 9 Finance; authorizing the department to conduct
 10 investigations; providing for complaints;
 11 authorizing the department to bring actions for
 12 injunctions; providing for issuance of
 13 subpoenas; authorizing the department to issue
 14 and serve cease and desist orders for certain
 15 purposes; preempting regulation to the state;
 16 providing severability; providing an effective
 17 date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Short title.--This act shall be known as
 22 the "Florida Fair Lending Act."

23 Section 2. Definitions.--As used in this act:

24 (1) "Affiliate" means any company that controls, is
 25 controlled by, or is in common control with another company,
 26 as set forth in 12 U.S.C. s. 1841, et seq., and the
 27 regulations adopted thereunder.

28 (2) "Annual percentage rate" means the annual
 29 percentage rate for the loan calculated according to the
 30 provisions of 15 U.S.C. s. 1606 and the regulations adopted
 31 thereunder by the Federal Reserve Board.

1 (3) "Borrower" means any natural person obligated to
2 repay a loan, including, but not limited to, a coborrower,
3 cosignor, or guarantor.

4 (4) "Bridge loan" means a loan with a maturity of less
5 than 18 months that only requires the payment of interest
6 until such time as the entire unpaid balance is due and
7 payable.

8 (5) "High-cost home loan" means a home loan as defined
9 in 15 U.S.C. s. 1602(aa) and regulations adopted thereunder.

10 (6) "Home loan" means a loan or agreement to extend
11 credit made to a natural person, which loan is secured by a
12 deed to secure debt, security deed, mortgage, security
13 instrument, deed of trust, or other document representing a
14 security interest or lien upon any interest in one-to-four
15 family residential property or a manufactured home when
16 secured in conjunction with the real property on which the
17 manufactured home is located, which real property is located
18 in this state, regardless of where the loan is made, including
19 the renewal or refinancing of any such loan.

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

24 (8) "Residential property" means improved real
25 property used or occupied as the principal residence of a
26 natural person. Such term does not include rental property or
27 second homes or manufactured homes when not secured in
28 conjunction with the real property in which they are located.

29 Section 3. Prohibited acts.--

30 (1) PREPAYMENT PENALTIES.--

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

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

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

11 2. The borrower has been given, at least 3 business
12 days prior to the loan consummation, a written disclosure of
13 the terms of the prepayment fee or penalty by the lender,
14 including the benefit the borrower will receive for accepting
15 the prepayment fee or penalty through either a reduced
16 interest rate on the loan or reduced points or fees.

17 (2) DEFAULT INTEREST RATE.--A high-cost home loan may
18 not provide for a higher interest rate after default on the
19 loan. However, this prohibition does not apply to interest
20 rate changes in a variable rate loan otherwise consistent with
21 the provisions of the loan documents, provided the change in
22 interest rate is not triggered by a default or the
23 acceleration of the interest rate.

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

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1 (4) NEGATIVE AMORTIZATION.--A high-cost home loan may
2 not contain terms under which the outstanding principal
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.

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

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

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

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

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

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

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

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

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

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

7 (a) A lender, its affiliate, or an assignee shall not
8 refinance any high-cost home loan to the same borrower when
9 the refinancing does not have a reasonable benefit to the
10 borrower considering all of the circumstances, including, but
11 not limited to, the terms of both the new and refinanced
12 loans, the cost of the new loan, and the borrower's
13 circumstances.

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

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

20 2. There is a beneficial change for the borrower in
21 the duration of the loan;

22 3. The borrower receives a reasonable amount of cash
23 in excess of and in relation to the costs and fees as part of
24 the refinancing; or

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

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

3 (10) OPEN-ENDED LOANS.--A lender shall not make any
4 loan as an open-ended loan in order to evade the provisions of
5 this act unless such open-ended loans meet the definition in
6 12 C.F.R. s. 226.2(a)(20).

7 Section 4. Required disclosures for high-cost home
8 loans.--

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

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

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

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

25 You should also consider consulting a qualified
26 independent credit counselor or other experienced financial
27 advisor regarding the rates, fees, and provisions of this
28 mortgage loan before you proceed. A list of qualified
29 counselors is available by contacting the _____.

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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:

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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 that the borrower could assert against
5 the lender.

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 Section 5. Powers and duties of the Department of
26 Banking and Finance; investigations; injunctions; orders.--

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

29 (b) The department may adopt rules pursuant to ss.
30 120.536(1) and 120.54, Florida Statutes, to implement this
31 act. The department may adopt rules to allow electronic

1 submission of any forms, documents, or fees required by this
2 act.

3 (2)(a) The department may conduct an investigation of
4 any person whenever the department has reason to believe, upon
5 complaint or otherwise, that any violation of the act has
6 occurred.

7 (b) Any person having reason to believe that a
8 provision of this act has been violated may file a written
9 complaint with the department setting forth the details of the
10 alleged violation.

11 (3)(a) The department may bring action, through its
12 own counsel in the name and on behalf of the state, against
13 any person who has violated or is about to violate any
14 provision of this act, or any rule or order of the department
15 issued under the act, to enjoin the person from continuing in
16 or engaging in any act in furtherance of the violation.

17 (b) In any injunctive proceeding, the court may, on
18 due showing by the department, issue a subpoena or subpoena
19 duces tecum requiring the attendance of any witness and
20 requiring the production of any books, accounts, records, or
21 other documents and materials that appear necessary to the
22 expeditious resolution of the application for injunction.

23 (4) The department may issue and serve upon any person
24 an order to cease and desist and to take corrective action
25 whenever the department has reason to believe the person is
26 violating, has violated, or is about to violate any provision
27 of this act, any rule or order of the department issued under
28 this act, or any written agreement between the person and the
29 department. All procedural matters relating to issuance and
30 enforcement of cease and desist orders are governed by the
31 Administrative Procedure Act.

