

By the Council for Competitive Commerce and
Representatives Kendrick, Rubio, Bean, Alexander, Flanagan,
Betancourt, Stansel, Detert and Seiler

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 and examinations; providing for
11 complaints; authorizing the department to bring
12 actions for injunctions; providing for issuance
13 of subpoenas; authorizing the department to
14 issue and serve cease and desist orders for
15 certain purposes; authorizing the department to
16 impose certain fines under certain
17 circumstances; specifying effect; authorizing
18 the department to adopt rules; preempting
19 regulation of high-cost home loans to the
20 state; providing severability; providing an
21 effective date.

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

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

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

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

- 1 (2) "Annual percentage rate" means the annual
2 percentage rate for the loan calculated according to the
3 provisions of 15 U.S.C. s. 1606 and the regulations adopted
4 thereunder by the Federal Reserve Board.
- 5 (3) "Borrower" means any natural person obligated to
6 repay a loan, including, but not limited to, a coborrower,
7 cosignor, or guarantor.
- 8 (4) "Bridge loan" means a loan with a maturity of less
9 than 18 months that only requires the payment of interest
10 until such time as the entire unpaid balance is due and
11 payable.
- 12 (5) "Department" means the Department of Banking and
13 Finance.
- 14 (6) "High-cost home loan" means a home loan as defined
15 in 15 U.S.C. s. 1602(aa) and regulations adopted thereunder
16 and which is secured by residential property in this state.
- 17 (7) "Home loan" means a loan or agreement to extend
18 credit made to a natural person, which loan is secured by a
19 deed to secure debt, security deed, mortgage, security
20 instrument, deed of trust, or other document representing a
21 security interest or lien upon any interest in one-to-four
22 family residential property or a manufactured home when
23 secured in conjunction with the real property on which the
24 manufactured home is located, which real property is located
25 in this state, regardless of where the loan is made, including
26 the renewal or refinancing of any such loan.
- 27 (8) "Lender" means any person who makes a high-cost
28 home loan or acts as a mortgage broker or lender, finance
29 company, or retail installment seller with respect to a
30 high-cost home loan.
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1 (9) "Residential property" means improved real
2 property used or occupied as the principal residence of a
3 natural person. Such term does not include rental property or
4 second homes or manufactured homes when not secured in
5 conjunction with the real property in which they are located.

6 Section 3. Prohibited acts.--

7 (1) PREPAYMENT PENALTIES.--

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

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

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

18 2. The borrower has been given, at least 3 business
19 days prior to the loan consummation, a written disclosure of
20 the terms of the prepayment fee or penalty by the lender,
21 including the benefit the borrower will receive for accepting
22 the prepayment fee or penalty through either a reduced
23 interest rate on the loan or reduced points or fees.

24 (2) DEFAULT INTEREST RATE.--A high-cost home loan may
25 not provide for a higher interest rate after default on the
26 loan. However, this prohibition does not apply to interest
27 rate changes in a variable rate loan otherwise consistent with
28 the provisions of the loan documents, provided the change in
29 interest rate is not triggered by a default or the
30 acceleration of the interest rate.

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

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

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

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

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

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

29 (b) At the election of the borrower by a third-party
30 escrow agent in accordance with terms established in a written
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1 agreement signed by the borrower, the lender, and the
2 contractor prior to the date of payment.
3 (8) DUE-ON-DEMAND CLAUSE.--A creditor shall not
4 terminate a loan in advance of the original maturity date of
5 the loan and demand repayment of the entire outstanding
6 balance, except when:
7 (a) There is fraud or material misrepresentation by
8 the consumer in connection with the loan;
9 (b) The consumer fails to meet the repayment terms of
10 the agreement for any outstanding balance; or
11 (c) There is any action or inaction by the borrower
12 that adversely affects the lender's security for the loan or
13 any right of the creditor in such security.
14 (9) REFINANCING WITHIN A 1-YEAR PERIOD.--
15 (a) A lender, its affiliate, or an assignee shall not
16 refinance any high-cost home loan to the same borrower when
17 the refinancing does not have a reasonable benefit to the
18 borrower considering all of the circumstances, including, but
19 not limited to, the terms of both the new and refinanced
20 loans, the cost of the new loan, and the borrower's
21 circumstances.
22 (b) For purposes of paragraph (a), a presumption of
23 reasonable benefit to the borrower occurs when:
24 1. The borrower's monthly payment to pay a new
25 consolidated loan will be lower than the total of all monthly
26 obligations being financed, taking into consideration all
27 costs and fees;
28 2. There is a beneficial change for the borrower in
29 the duration of the loan;
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1 3. The borrower receives a reasonable amount of cash
2 in excess of and in relation to the costs and fees as part of
3 the refinancing; or

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

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

12 (10) OPEN-ENDED LOANS.--A lender shall not make any
13 loan as an open-ended loan in order to evade the provisions of
14 this act unless such open-ended loans meet the definition in
15 12 C.F.R. s. 226.2(a)(20).

16 (11) RECOMMENDATION OF DEFAULT.--No creditor shall
17 recommend or encourage default on an existing loan or other
18 debt prior to and in connection with the closing or planned
19 closing of a high-cost home loan that refinances all or any
20 portion of such existing loan or debt.

21 (12) PROHIBITED LOANS.--A high-cost home loan may not
22 be made as a direct result of a potential or future lender or
23 its representative offering or selling a high-cost home loan
24 at the residence of a potential borrower without a prearranged
25 appointment with the potential borrower or the expressed
26 invitation of the potential borrower. This subsection does not
27 apply to mail solicitations that may be received by the
28 potential borrower.

29 Section 4. Required disclosures for high-cost home
30 loans.--

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

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

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

10 Mortgage loan rates and closing costs and fees vary
11 based on many factors, including your particular credit and
12 financial circumstances, your employment history, the
13 loan-to-value requested, and the type of property that will
14 secure your loan. The loan rate and fees could also vary
15 based upon which lender or broker you select. As a borrower,
16 you should shop around and compare loan rates and fees.

17 You should also consider consulting a qualified
18 independent credit counselor or other experienced financial
19 advisor regarding the rates, fees, and provisions of this
20 mortgage loan before you proceed.

21 You are not required to complete this agreement merely
22 because you have received these disclosures or have signed a
23 loan application.

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

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1 Remember that property taxes and homeowners' insurance
2 are your responsibility. Not all lenders provide escrow
3 services for these payments. You should ask your lender about
4 these services.

5 Also, your payments on existing debts contribute to
6 your credit rating. You should not accept any advice to
7 ignore your regular payments to your existing creditors.

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

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

12 2. In the case of any other credit transaction, the
13 annual percentage rate, the amount of the regular monthly
14 payment and the amount of any balloon payment permitted under
15 this section, a statement that the interest rate and monthly
16 payment may increase, and the amount of the maximum monthly
17 payment based upon the maximum interest rate allowed pursuant
18 to law.

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

21 Notice: This is a mortgage subject to the provisions of
22 the Florida Fair Lending Act.

23 (2) Timing of disclosure.--

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

27 (b) New disclosures are required when, after
28 disclosure is made, the lender making the high-cost home loan
29 changes the terms of the extension of credit, including if
30 such changes make the original disclosures inaccurate, unless
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1 new disclosures are provided that meet the requirements of
2 this section.

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

5 1. The change is initiated by the borrower.

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

7 a. The lender provides the disclosures in writing to
8 the borrower.

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

12 Section 5. Powers and duties of the Department of
13 Banking and Finance; investigations; examinations;
14 injunctions; orders.--

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

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

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

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

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

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

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

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

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

28 (6) Any violation of this act shall also be deemed to
29 be a violation of chapter 494, chapter 516, chapter 520,
30 chapter 655, chapter 657, chapter 658, chapter 660, chapter
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1 663, chapter 665, or chapter 667, Florida Statutes. The
2 department may adopt rules to enforce this subsection.

3 Section 6. General rule.--All political subdivisions
4 of this state, including home rule municipalities, are
5 prohibited from enacting and enforcing ordinances,
6 resolutions, and rules pertaining to the financial or lending
7 activities of persons 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; or

16 (3) Originate, purchase, sell, assign, securitize, 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.

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22 The requirements of this section apply to all ordinances,
23 resolutions, and rules pertaining to financial lending
24 activities, including ordinances, resolutions, and rules
25 disqualifying persons from doing business with a political
26 subdivision based upon lending interest rates or imposing
27 reporting requirements or any other obligations upon persons
28 regarding financial services or lending practices. Nothing in
29 this section shall prohibit a requirement of compliance with
30 the terms of this act as a condition of doing business with a
31 city, county, or municipality of this state.

1 Section 7. Severability.--The provisions of this act
2 are severable, and if any phrase, clause, sentence, or
3 provision is declared invalid or is preempted by federal law
4 or regulation, the validity of the remainder of the act shall
5 not be affected. If any provision of this act is declared to
6 be inapplicable to any specific category, type, or kind of
7 loan or points and fees, the provisions of this act shall
8 nonetheless continue to apply with respect to all other loans
9 and points and fees.

10 Section 8. This act shall take effect October 2, 2002.

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