

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 specifying liability of purchasers and
8 assignees; providing administration and
9 enforcement powers and duties of the Department
10 of Banking and Finance; authorizing the
11 department to conduct investigations and
12 examinations; providing for complaints;
13 authorizing the department to bring actions for
14 injunctions; providing for issuance of
15 subpoenas; authorizing the department to issue
16 and serve cease and desist orders for certain
17 purposes; authorizing the department to impose
18 certain fines under certain circumstances;
19 specifying effect; authorizing the department
20 to adopt rules; preempting regulation of
21 high-cost home loans to the state; providing
22 severability; providing an effective date.

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

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

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

29 (1) "Affiliate" means any company that controls, is
30 controlled by, or is in common control with another company,

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1 as set forth in 12 U.S.C. s. 1841, et seq., and the
2 regulations adopted thereunder.

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

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

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

14 (5) "Department" means the Department of Banking and
15 Finance.

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

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, but shall not include any entity
22 chartered by the United States Congress to engage in secondary
23 mortgage transactions or the Florida Housing Corporation.

24 Section 3. Prohibited acts.--

25 (1) PREPAYMENT PENALTIES.--

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

30 (b) Notwithstanding paragraph (a), a lender making a
31 high-cost home loan may include in the loan contract a

1 prepayment fee or penalty, for up to the first 36 months after
2 the date of consummation of the loan, if:

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

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

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

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

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

30 (5) PREPAID PAYMENTS.--A high-cost home loan may not
31 include terms under which more than two periodic payments

1 required under the loan are consolidated and paid in advance
2 from the loan proceeds provided to the borrower.

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

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

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

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

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

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

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

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

30 (9) REFINANCING WITHIN A 1-YEAR PERIOD.--
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1 (a) A lender, its affiliate, or an assignee shall not
2 refinance any high-cost home loan to the same borrower when
3 the refinancing does not have a reasonable benefit to the
4 borrower considering all of the circumstances, including, but
5 not limited to, the terms of both the new and refinanced
6 loans, the cost of the new loan, and the borrower's
7 circumstances.

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

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

14 2. There is a beneficial change for the borrower in
15 the duration of the loan;

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

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

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

27 (10) OPEN-ENDED LOANS.--A lender shall not make any
28 loan as an open-ended loan in order to evade the provisions of
29 this act unless such open-ended loans meet the definition in
30 12 C.F.R. s. 226.2(a)(20).

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

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

14 Section 4. Required disclosures for high-cost home
15 loans.--

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

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

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

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

1 You should also consider consulting a qualified
2 independent credit counselor or other experienced financial
3 advisor regarding the rates, fees, and provisions of this
4 mortgage loan before you proceed.

5 You are not required to complete this agreement merely
6 because you have received these disclosures or have signed a
7 loan application.

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

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

19 Also, your payments on existing debts contribute to
20 your credit rating. You should not accept any advice to
21 ignore your regular payments to your existing creditors.

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

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

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

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

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

10 (2) Timing of disclosure.--

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

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

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

22 1. The change is initiated by the borrower.

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

24 a. The lender provides the disclosures in writing to
25 the borrower.

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

29 (d) A creditor must disclose to any high-cost home
30 loan borrower the rights of the borrower to rescind the
31 high-cost home loan pursuant to 15 U.S.C. s. 1635(a) and shall

1 provide appropriate forms for the borrower to exercise his or
2 her right to rescission. The notice, forms, and provisions
3 thereof must be in accordance with the requirements of 15
4 U.S.C. s. 1635(a).

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

13 Section 6. Powers and duties of the Department of
14 Banking and Finance; investigations; examinations;
15 injunctions; orders.--

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

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

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

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

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

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

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

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

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

30 (6) Any violation of this act shall also be deemed to
31 be a violation of chapter 494, chapter 516, chapter 520,

1 chapter 655, chapter 657, chapter 658, chapter 660, chapter
2 663, chapter 665, or chapter 667, Florida Statutes. The
3 department may adopt rules to enforce this subsection.

4 Section 7. General rule.--All city, county, or
5 municipality of this state are prohibited from enacting and
6 enforcing ordinances, resolutions, and rules regulating
7 financial or lending activities, including ordinances,
8 resolutions, and rules disqualifying persons from doing
9 business with a city, county, or municipality based upon
10 lending interest rates or imposing reporting requirements or
11 any other obligations upon persons regarding financial
12 services or lending practices of persons or entities, and any
13 subsidiaries or affiliates thereof, who:

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

16 (2) Are subject to the jurisdiction of the Office of
17 Thrift Supervision, the Office of the Comptroller of the
18 Currency, the National Credit Union Administration, the
19 Federal Deposit Insurance Corporation, the Federal Trade
20 Commission, or the United States Department of Housing and
21 Urban Development;

22 (3) Originate, purchase, sell, assign, secure, or
23 service property interests or obligations created by financial
24 transactions or loans made, executed, or originated by persons
25 referred to in subsection (1) or subsection (2) to assist or
26 facilitate such transactions;

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

29 (5) Are created by the Florida Housing Finance
30 Corporation.

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1 Proof of noncompliance with this act can be used by a city,
2 county, or municipality of this state to disqualify a vendor
3 or contractor from doing business with a city, county, or
4 municipality of this state.

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

14 Section 9. This act shall take effect October 2, 2002.
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