



Bill No. CS for SB 2262

Amendment No.      Barcode 121120

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

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

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

9           (7) "Lender" means any person who makes a high-cost  
10 home loan or acts as a mortgage broker or lender, finance  
11 company, or retail installment seller with respect to a  
12 high-cost home loan, but shall not include any entity  
13 chartered by the United States Congress when engaging in  
14 secondary market mortgage transactions as an assignee or  
15 otherwise.

16           Section 3. Prohibited acts.--

17           (1) PREPAYMENT PENALTIES.--

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

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

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

28           2. The borrower has been given, at least 3 business  
29 days prior to the loan consummation, a written disclosure of  
30 the terms of the prepayment fee or penalty by the lender,  
31 including the benefit the borrower will receive for accepting

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1 the prepayment fee or penalty through either a reduced  
2 interest rate on the loan or reduced points or fees.

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

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

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

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

26 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT  
27 ABILITY OF THE BORROWER.--A lender making a high-cost home  
28 loan shall not engage in any pattern or practice of extending  
29 high-cost home loans to borrowers based upon the borrowers'  
30 collateral without regard to the borrowers' ability to repay  
31 the loan, including the borrowers' current and expected

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1 income, current obligations, and employment.

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

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

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

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

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

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

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

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

23 (a) A lender, its affiliate, or an assignee shall not  
24 refinance any high-cost home loan to the same borrower when  
25 the refinancing does not have a reasonable benefit to the  
26 borrower considering all of the circumstances, including, but  
27 not limited to, the terms of both the new and refinanced  
28 loans, the cost of the new loan, and the borrower's  
29 circumstances.

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

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

5           2. There is a beneficial change for the borrower in  
6 the duration of the loan;

7           3. The borrower receives a reasonable amount of cash  
8 in excess of and in relation to the costs and fees as part of  
9 the refinancing; or

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

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

18          (10) OPEN-ENDED LOANS.--A lender shall not make any  
19 loan as an open-ended loan in order to evade the provisions of  
20 this act unless such open-ended loans meet the definition in  
21 12 C.F.R. s. 226.2(a)(20).

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

27          (12) PROHIBITED LOANS.--A high-cost home loan may not  
28 be made as a direct result of a potential or future lender or  
29 its representative offering or selling a high-cost home loan  
30 at the residence of a potential borrower without a prearranged  
31 appointment with the potential borrower or the expressed

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1 invitation of the potential borrower. This subsection does not  
2 apply to mail solicitations that may be received by the  
3 potential borrower.

4 Section 4. Required disclosures for high-cost home  
5 loans.--

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

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

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

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

22 You should also consider consulting a qualified  
23 independent credit counselor or other experienced financial  
24 advisor regarding the rates, fees, and provisions of this  
25 mortgage loan before you proceed.

26 You are not required to complete this agreement merely  
27 because you have received these disclosures or have signed a  
28 loan application.

29 Borrowing for the purpose of debt consolidation can be  
30 an appropriate financial management tool. However, if you  
31 continue to incur significant new credit card charges or other

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1 debts after this high-cost home loan is closed and then  
2 experience financial difficulties, you could lose your home  
3 and any equity you have in it if you do not meet your mortgage  
4 loan obligations.

5 Remember that property taxes and homeowners' insurance  
6 are your responsibility. Not all lenders provide escrow  
7 services for these payments. You should ask your lender about  
8 these services.

9 Also, your payments on existing debts contribute to  
10 your credit rating. You should not accept any advice to  
11 ignore your regular payments to your existing creditors.

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

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

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

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

25 Notice: This is a mortgage subject to the provisions of  
26 the Florida Fair Lending Act. Purchasers and assignees of this  
27 mortgage could be liable for all claims and defenses with  
28 respect to the mortgage which the borrower could assert  
29 against the creditor.

30 (2) Timing of disclosure.--

31 (a) The disclosure required by this subsection shall

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1 be given not less than 3 business days prior to the  
2 consummation of the high-cost home loan.

3 (b) New disclosures are required when, after  
4 disclosure is made, the lender making the high-cost home loan  
5 changes the terms of the extension of credit, including if  
6 such changes make the original disclosures inaccurate, unless  
7 new disclosures are provided that meet the requirements of  
8 this section.

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

11 1. The change is initiated by the borrower.

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

13 a. The lender provides the disclosures in writing to  
14 the borrower.

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

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

25 Section 5. Liability of purchasers and assignees.--Any  
26 person who purchases or is otherwise assigned a high-cost home  
27 loan shall be subject to all claims and defenses with respect  
28 to that mortgage that the borrower could assert against the  
29 creditor of the mortgage, to the same extent and subject to  
30 the same limitations that a borrower of a high-cost home loan  
31 may assert against an assignee or purchaser pursuant to 15



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1 U.S.C. s. 1641.

2           Section 6. Powers and duties of the Department of  
3 Banking and Finance; investigations; examinations;  
4 injunctions; orders.--

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

7           (b) The department may adopt rules pursuant to  
8 sections 120.536(1) and 120.54, Florida Statutes, to implement  
9 this act. The department may adopt rules to allow electronic  
10 submission of any forms, documents, or fees required by this  
11 act.

12           (2)(a) The department may conduct an investigation of  
13 any person whenever the department has reason to believe, upon  
14 complaint or otherwise, that any violation of the act has  
15 occurred.

16           (b) Any person having reason to believe that a  
17 provision of this act has been violated may file a written  
18 complaint with the department setting forth the details of the  
19 alleged violation.

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

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

28           (b) In any injunctive proceeding, the court may, on  
29 due showing by the department, issue a subpoena or subpoena  
30 duces tecum requiring the attendance of any witness and  
31 requiring the production of any books, accounts, records, or

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1 other documents and materials that appear necessary to the  
2 expeditious resolution of the application for injunction.

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

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

18 (6) Any violation of this act shall also be deemed to  
19 be a violation of chapter 494, chapter 516, chapter 520,  
20 chapter 655, chapter 657, chapter 658, chapter 660, chapter  
21 663, chapter 665, or chapter 667, Florida Statutes. The  
22 department may adopt rules to enforce this subsection.

23 Section 7. General rule.--All city, county, or  
24 municipality of this state are prohibited from enacting and  
25 enforcing ordinances, resolutions, and rules regulating  
26 financial or lending activities, including ordinances,  
27 resolutions, and rules disqualifying persons from doing  
28 business with a city, county, or municipality based upon  
29 lending interest rates or imposing reporting requirements or  
30 any other obligations upon persons regarding financial  
31 services or lending practices of persons or entities, and any

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1 subsidiaries or affiliates thereof, who:

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

4 (2) Are subject to the jurisdiction of the Office of  
5 Thrift Supervision, the Office of the Comptroller of the  
6 Currency, the National Credit Union Administration, the  
7 Federal Deposit Insurance Corporation, the Federal Trade  
8 Commission, or the United States Department of Housing and  
9 Urban Development;

10 (3) Originate, purchase, sell, assign, secure, or  
11 service property interests or obligations created by financial  
12 transactions or loans made, executed, or originated by persons  
13 referred to in subsection (1) or subsection (2) to assist or  
14 facilitate such transactions;

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

17 (5) Are created by the Florida Housing Finance  
18 Corporation.

19  
20 Proof of noncompliance with this act can be used by a city,  
21 county, or municipality of this state to disqualify a vendor  
22 or contractor from doing business with a city, county, or  
23 municipality of this state.

24 Section 8. Severability.--The provisions of this act  
25 are severable, and if any phrase, clause, sentence, or  
26 provision is declared invalid or is preempted by federal law  
27 or regulation, the validity of the remainder of the act shall  
28 not be affected. If any provision of this act is declared to  
29 be inapplicable to any specific category, type, or kind of  
30 loan or points and fees, the provisions of this act shall  
31 nonetheless continue to apply with respect to all other loans

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1 and points and fees.

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

3

4

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

6 And the title is amended as follows:

7 Delete everything before the enacting clause

8

9 and insert:

10

A bill to be entitled

11

An act relating to the Florida Fair Lending

12

Act; providing a short title; providing

13

definitions; specifying prohibited acts

14

relating to high-cost home loans; specifying

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required disclosures for high-cost home loans;

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specifying liability of purchasers and

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assignees; providing administration and

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enforcement powers and duties of the Department

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of Banking and Finance; authorizing the

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department to conduct investigations and

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examinations; providing for complaints;

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authorizing the department to bring actions for

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injunctions; providing for issuance of

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subpoenas; authorizing the department to issue

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and serve cease and desist orders for certain

26

purposes; authorizing the department to impose

27

certain fines under certain circumstances;

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specifying effect; authorizing the department

29

to adopt rules; preempting regulation of

30

high-cost home loans to the state; providing

31

severability; providing an effective date.