

Bill No. CS for SB 2262

Amendment No. Barcode 214814

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Meek, Holzendorf, Clary and Rossin moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Short title; purposes.--

(1) This act shall be known as the "Florida Fair Lending Act."

(2)(a) The Legislature finds that abusive mortgage lending has become a problem in this state even though most high-cost home loans do not involve abusive mortgage practices. One of the most common forms of abusive lending is the making of loans that are equity-based rather than income-based. The financing of points and fees in these loans provides immediate income to the originator and encourages creditors to repeatedly refinance home loans. As long as there is sufficient equity in the home, an abusive creditor benefits even if the borrower is unable to make the payments and is forced to refinance. The financing of high points and fees

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1 causes the loss of equity in each refinancing and often leads
2 to foreclosure.

3 (b) Abusive lending has threatened the viability of
4 many communities and caused decreases in home ownership. While
5 the marketplace appears to operate effectively for
6 conventional mortgages, too many homeowners find themselves
7 victims of overreaching creditors who provide loans with
8 unnecessarily high costs and terms that are unnecessary to
9 secure repayment of the loan. The Legislature finds that as
10 competition and self-regulation have not eliminated the
11 abusive terms from home-secured loans, the consumer protection
12 provisions of this act are necessary to encourage fair
13 lending.

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

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

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

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

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

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

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

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

10 Section 3. Prohibited acts.--

11 (1) PREPAYMENT PENALTIES.--

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

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

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

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

28 (2) DEFAULT INTEREST RATE.--A high-cost home loan may
29 not provide for a higher interest rate after default on the
30 loan. However, this prohibition does not apply to interest
31 rate changes in a variable rate loan otherwise consistent with

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1 the provisions of the loan documents, provided the change in
2 interest rate is not triggered by a default or the
3 acceleration of the interest rate.

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

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

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

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

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

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

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

5 (8) DUE-ON-DEMAND CLAUSE.--A high-cost home loan may
6 not contain a provision that permits the lender, in its sole
7 discretion, to call or accelerate the indebtedness. This
8 provision does not prohibit acceleration of the loan due to
9 the borrower's failure to abide by the terms of the loan, or
10 due to fraud or material misrepresentation by the consumer in
11 connection with the loan.

12 (9) REFINANCING WITHIN AN 18-MONTH PERIOD.--

13 (a) A lender, its affiliate, or an assignee shall not
14 refinance any high-cost home loan to the same borrower within
15 the first 18 months of the loan when the refinancing does not
16 have a reasonable benefit to the borrower considering all of
17 the circumstances, including, but not limited to, the terms of
18 both the new and refinanced loans, the cost of the new loan,
19 and the borrower's circumstances.

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

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

30 (11) RECOMMENDATION OF DEFAULT.--A lender shall not
31 recommend or encourage default on an existing loan or other

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1 debt prior to and in connection with the closing or planned
2 closing of a high-cost home loan that refinances all or any
3 portion of such existing loan or debt.

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

12 (13) LATE PAYMENT FEES.--A lender may not charge a
13 late payment fee for a high-cost home loan except as provided
14 in this subsection:

15 (a) A late payment fee may not be in excess of 5
16 percent of the amount of the payment past due.

17 (b) A late payment fee may only be assessed for a
18 payment past due for 15 days or more.

19 (c) A late payment fee may not be charged more than
20 once with respect to a single late payment. If a late payment
21 fee is deducted from a payment made on the loan and such
22 deduction causes a subsequent default on a subsequent payment,
23 no late payment fee may be imposed for such default. If a late
24 payment fee has been imposed once with respect to a particular
25 late payment, no such fee shall be imposed with respect to any
26 future payment which would have been timely and sufficient,
27 but for the previous default.

28 (14) MODIFICATION OR DEFERRAL FEES.--A lender may not
29 charge a borrower any fees or other charges to modify, renew,
30 extend, or amend a high-cost home loan or to defer any payment
31 due under the terms of a high-cost home loan on a minimum of

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1 one modification, renewal, extension, or deferral per each 12
2 months of the length of the loan.

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

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

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

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

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

21 You should also consider consulting a qualified
22 independent credit counselor or other experienced financial
23 advisor regarding the rates, fees, and provisions of this
24 mortgage loan before you proceed. You should contact the
25 United States Department of Housing and Urban Development for
26 a list of credit counselors available in your area.

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

30 Borrowing for the purpose of debt consolidation can be
31 an appropriate financial management tool. However, if you

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1 continue to incur significant new credit card charges or other
2 debts after this high-cost home loan is closed and then
3 experience financial difficulties, you could lose your home
4 and any equity you have in it if you do not meet your mortgage
5 loan obligations.

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

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

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

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

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

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

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

31 (2) Timing of disclosure.--

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

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

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

12 1. The change is initiated by the borrower.

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

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

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

19 (d) A creditor must disclose to any high-cost home
20 loan borrower the rights of the borrower to rescind the
21 high-cost home loan within 3 business days pursuant to 15
22 U.S.C. s. 1635(a) and shall provide appropriate forms for the
23 borrower to exercise his or her right to rescission. The
24 notice, forms, and provisions thereof must be in accordance
25 with the requirements of 15 U.S.C. s. 1635(a).

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

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1 and of the borrower's right to cure the default by paying the
2 sum of money required to cure the default. If the amount
3 necessary to cure the default will change during the 45-day
4 period after the effective date of the notice due to the
5 application of a daily interest rate or the addition of late
6 payment fees, as allowed by this act, the notice shall give
7 sufficient information to enable the borrower to calculate the
8 amount at any point during the 45-day period.

9 (b) Of the date by which the borrower shall cure the
10 default to avoid acceleration and initiation of foreclosure or
11 other action to seize the home, which date shall not be less
12 than 45 days after the date the notice is effective, and the
13 name and address and telephone number of a person to whom the
14 payment or tender shall be made.

15 (c) That if the borrower does not cure the default by
16 the date specified, the creditor may take steps to terminate
17 the borrower's ownership of the property by requiring payment
18 in full of the home loan and commencing a foreclosure
19 proceeding or other action to seize the home.

20 (d) Of the name and address of the creditor and the
21 telephone number of a representative of the creditor whom the
22 borrower may contact if the borrower disagrees with the
23 creditor's assertion that a default has occurred or the
24 correctness of the creditor's calculation of the amount
25 required to cure the default.

26 (3) FEES.--To cure a default under this section, a
27 borrower shall not be required to pay any charge, fee, or
28 penalty attributable to the exercise of the right to cure a
29 default as provided for in this section, other than the fees
30 specifically allowed by this act. The borrower shall not be
31 liable for any attorney's fees or costs relating to the

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1 borrower's default that are incurred by the creditor prior to
2 or during the 45-day period set forth in paragraph (2)(b).

3 Section 7. Powers and duties of the Department of
4 Banking and Finance; investigations; examinations;
5 injunctions; orders.--

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

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

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

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

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

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

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

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1 requiring the production of any books, accounts, records, or
2 other documents and materials that appear necessary to the
3 expeditious resolution of the application for injunction.

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

13 (5) Whenever the department finds a person in
14 violation of this act, it may enter an order imposing a fine
15 in an amount not exceeding \$5,000 for each count or separate
16 offense, provided that the aggregate fine for all violations
17 of this act that could have been asserted at the time of the
18 order imposing the fine shall not exceed \$1 million.

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

24 Section 8. Enforcement.--

25 (1) Any person or the agent, officer, or other
26 representative of any person violating the provisions of this
27 act shall forfeit the entire interest charged in the high-cost
28 home loan or contracted to be charged or received, and only
29 the principal sum of such high-cost home loan can be enforced
30 in any court in this state, either at law or in equity.

31 (2) A creditor in a home loan who, when acting in good

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1 faith, fails to comply with the provisions of this act shall
2 not be deemed to have violated this act if the creditor
3 establishes that within 60 days after receiving any notice
4 from the borrower of the compliance failure, which compliance
5 failure was not intentional and resulted from a bona fide
6 error notwithstanding the maintenance of procedures reasonably
7 adapted to avoid such errors, the borrower has been notified
8 of the compliance failure, appropriate restitution has been
9 made to the borrower, and appropriate adjustments are made to
10 the loan. Bona fide errors shall include, but not be limited
11 to, clerical, calculation, computer malfunction and
12 programming, and printing errors. An error of legal judgment
13 with respect to a person's obligations under this section is
14 not a bona fide error.

15 (3) The remedies provided in this section are
16 cumulative.

17 Section 9. General rule.--All counties and
18 municipalities of this state are prohibited from enacting and
19 enforcing ordinances, resolutions, and rules regulating
20 financial or lending activities, including ordinances,
21 resolutions, and rules disqualifying persons from doing
22 business with a city, county, or municipality based upon
23 lending interest rates or imposing reporting requirements or
24 any other obligations upon persons regarding financial
25 services or lending practices of persons or entities, and any
26 subsidiaries or affiliates thereof, who:

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

29 (2) Are subject to the jurisdiction of the Office of
30 Thrift Supervision, the Office of the Comptroller of the
31 Currency, the National Credit Union Administration, the

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1 Federal Deposit Insurance Corporation, the Federal Trade
2 Commission, or the United States Department of Housing and
3 Urban Development;

4 (3) Originate, purchase, sell, assign, secure, or
5 service property interests or obligations created by financial
6 transactions or loans made, executed, or originated by persons
7 referred to in subsection (1) or subsection (2) to assist or
8 facilitate such transactions;

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

11 (5) Are created by the Florida Housing Finance
12 Corporation.

13
14 Proof of noncompliance with this act can be used by a city,
15 county, or municipality of this state to disqualify a vendor
16 or contractor from doing business with a city, county, or
17 municipality of this state.

18 Section 10. Severability.--The provisions of this act
19 are severable, and if any phrase, clause, sentence, or
20 provision is declared invalid or is preempted by federal law
21 or regulation, the validity of the remainder of the act shall
22 not be affected. If any provision of this act is declared to
23 be inapplicable to any specific category, type, or kind of
24 loan or points and fees, the provisions of this act shall
25 nonetheless continue to apply with respect to all other loans
26 and points and fees.

27 Section 11. This act shall take effect October 2,
28 2002.

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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 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to the Florida Fair Lending

8 Act; providing a short title; providing

9 legislative findings; providing definitions;

10 specifying prohibited acts relating to

11 high-cost home loans; specifying required

12 disclosures for high-cost home loans;

13 specifying liability of purchasers and

14 assignees; requiring lenders of high-cost home

15 loans to provide notice to borrowers prior to

16 taking foreclosure actions; allowing the

17 borrower to cure the default; providing

18 administration and enforcement powers and

19 duties of the Department of Banking and

20 Finance; authorizing the department to conduct

21 investigations and examinations; providing for

22 complaints; authorizing the department to bring

23 actions for injunctions; providing for issuance

24 of subpoenas; authorizing the department to

25 issue and serve cease and desist orders for

26 certain purposes; authorizing the department to

27 impose certain fines under certain

28 circumstances; specifying effect; authorizing

29 the department to adopt rules; providing that a

30 lender who violates this act forfeits the

31 interest in the high-cost home loan; providing

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that certain unintentional good-faith errors
are not deemed violations of th act; preempting
regulation of high-cost home loans to the
state; providing severability; providing an
effective date.