

By the Committee on Banking and Insurance; and Senator Meek

311-2186-02

1                                   A bill to be entitled  
2           An act relating to the Florida Fair Lending  
3           Act; providing a short title; providing  
4           legislative findings; providing purposes;  
5           providing definitions; specifying certain  
6           prohibited acts and practices relating to  
7           creditors making home loans under certain  
8           circumstances; providing limitations and  
9           prohibiting certain activities or conditions  
10          relating to creditors making high-cost home  
11          loans; providing a right to reinstate a loan  
12          under certain circumstances; specifying grounds  
13          for reinstatement; proscribing certain fees,  
14          charges, or penalties under certain  
15          circumstances; prohibiting foreclosure  
16          proceedings under certain circumstances;  
17          providing for preservation and enforcement of  
18          certain claims and defenses by borrowers;  
19          providing for liability of assignees and other  
20          holders under certain circumstances;  
21          proscribing subterfuge; providing for civil and  
22          criminal enforcement; providing penalties;  
23          providing for damages, costs, and attorney's  
24          fees; specifying certain loan agreements as  
25          void and unenforceable under certain  
26          circumstances; protecting borrowers' remedies;  
27          providing exceptions for corrections and  
28          unintentional violations; providing criteria;  
29          specifying certain rights and remedies as  
30          cumulative; providing powers and duties of the  
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1 Department of Banking and Finance; providing  
2 severability; providing an effective date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

5  
6 Section 1. Short title; purposes.--

7 (1) This act may be cited as the "Florida Fair Lending  
8 Act."

9 (2)(a) The Legislature finds that abusive mortgage  
10 lending has become a problem in this state. One of the most  
11 common forms of abusive lending is the making of loans that  
12 are equity-based rather than income-based. The financing of  
13 points and fees in these loans provides immediate income to  
14 the originator and encourages creditors to repeatedly  
15 refinance home loans. As long as there is sufficient equity in  
16 the home, an abusive creditor benefits even if the borrower is  
17 unable to make the payments and is forced to refinance. The  
18 financing of high points and fees causes the loss of equity in  
19 each refinancing and often leads to foreclosure.

20 (b) Abusive lending has threatened the viability of  
21 many communities and caused decreases in home ownership. While  
22 the marketplace appears to operate effectively for  
23 conventional mortgages, too many homeowners find themselves  
24 victims of overreaching creditors who provide loans with  
25 unnecessarily high costs and terms that are unnecessary to  
26 secure repayment of the loan. The Legislature finds that as  
27 competition and self-regulation have not eliminated the  
28 abusive terms from home-secured loans, the consumer protection  
29 provisions of this act are necessary to encourage fair  
30 lending.

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1           Section 2. Definitions.--As used in this act, the  
2 term:

3           (1) "Benchmark rate" means the interest rate that the  
4 borrower can reduce by paying bona fide discount points. Such  
5 rate shall not exceed the weekly average yield of United  
6 States Treasury securities having a comparable length to  
7 maturity, plus 4 percentage points.

8           (2) "Bona fide discount points" means loan discount  
9 points which are:

10           (a) Knowingly paid by the borrower.

11           (b) Paid for the express purpose of lowering the  
12 benchmark rate.

13           (c) In fact reducing the interest rate or time-price  
14 differential applicable to the loan from an interest rate  
15 which does not exceed the benchmark rate.

16           (d) Recouped within the first 4 years after the  
17 scheduled loan payments.

18  
19 For purposes of assessing compliance with paragraph (d), loan  
20 discount points will be considered to be recouped within the  
21 first 4 years after the scheduled loan payments if the  
22 reduction in the interest rate that is achieved by the payment  
23 of the loan discount points reduces the interest charged on  
24 the scheduled payments such that the borrower's dollar amount  
25 of savings in interest over the first 4 years is equal to or  
26 exceeds the dollar amount of loan discount points paid by the  
27 borrower.

28           (3) "Borrower" means any natural person obligated to  
29 repay the loan, including, but not limited to, a coborrower,  
30 cosigner, or guarantor.

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1           (4) "Creditor" means a person who extends consumer  
2 credit that is subject to a finance charge or is payable by  
3 written agreement in more than four installments, and to whom  
4 the obligation is payable at any time.

5           (5) "High-cost home loan" means a home loan the terms  
6 of which meet or exceed one or more of the thresholds defined  
7 in subsection (9).

8           (6) "Home loan" means a loan, including an open-ended  
9 credit plan, other than a reverse mortgage transaction, where  
10 the loan is secured by:

11           (a) A mortgage or deed of trust on real estate in this  
12 state upon which there is located or there is to be located a  
13 structure or structures designed principally for occupancy of  
14 from one to four families which is or will be occupied by a  
15 borrower as the borrower's principal dwelling; or

16           (b) A security interest on a manufactured home which  
17 is or will be occupied by a borrower as the borrower's  
18 principal dwelling,

19  
20 and where the loan refinances an existing home loan or is a  
21 subordinate lien following one or more existing loans, or  
22 where the property securing the mortgage was, prior to the new  
23 mortgage, owned free and clear by the borrower.

24           (7) "Points and fees" means:

25           (a)1. All items listed in 15 U.S.C. s. 1605(a)(1)  
26 through (4), except interest or the time-price differential;  
27 or

28           2. All items required to be disclosed under s.  
29 226.4(a) and (b) of Title 12 of the Code of Federal  
30 Regulations, as amended from time to time, except interest or  
31 the time-price differential.

1           (b) All compensation paid directly or indirectly to a  
2 mortgage broker, including a broker that originates a loan in  
3 its own name in a table-funded transaction.

4           (c) The cost of all premiums financed by the creditor,  
5 directly or indirectly, for any credit life, credit  
6 disability, credit unemployment, or credit property insurance,  
7 or any other life or health insurance, or any payments  
8 financed by the creditor directly or indirectly for any debt  
9 cancellation or suspension agreement or contract, except that  
10 insurance premiums calculated and paid on a monthly basis  
11 shall not be considered financed by the creditor.

12           (d) The maximum prepayment fees and penalties that may  
13 be charged or collected under the terms of the loan documents.

14           (e) All prepayment fees or penalties that are charged  
15 the borrower if the loan refinances a previous loan made by  
16 the same creditor or an affiliate of the creditor.

17           (f) For open-ended loans, the sum of the total fees  
18 charged at closing plus the maximum additional fees which can  
19 be charged pursuant to the loan documents during the term of  
20 the loan.

21           (8) "Rate" means the interest rate charged on the home  
22 loan based on an annual simple interest yield.

23           (9) "Threshold" means:

24           (a)1. "Rate threshold," which means:

25           a. For a first lien mortgage loan, the trigger rate  
26 equals or exceeds 7 percentage points more than the average  
27 yield of United States Treasury securities having a comparable  
28 length to maturity; or

29           b. For a subordinate mortgage lien or a mortgage  
30 secured solely by a security interest in a manufactured home,  
31 the trigger rate equals or exceeds 9 percentage points more

1 than the average yield of United States Treasury securities  
2 having a comparable length to maturity.

3 2. The trigger rate is calculated as follows:

4 a. For fixed-rate loans in which the interest rate  
5 will not vary during the term of the loan, the trigger rate is  
6 the rate as of the date of closing.

7 b. For loans in which the interest rate varies  
8 according to an index, the trigger rate is the sum of the  
9 index rate as of the date of loan closing plus the maximum  
10 margin permitted at any time under the loan agreement.

11 c. For all other loans in which the interest rate may  
12 vary at any time during the term of the loan, the trigger rate  
13 is the maximum rate that may be charged during the term of the  
14 loan.

15 (b) "Total points and fees threshold," which means,  
16 excluding up to two bona fide discount points:

17 1. For loans in which the total loan amount is \$30,000  
18 or more, the total points and fees on the loan, paid by the  
19 borrower at or before closing, exceed 3 percent of the total  
20 loan amount; or

21 2. For loans in which the total loan amount is less  
22 than \$30,000, the total points and fees on the loan, paid by  
23 the borrower at or before closing, exceed the lesser of \$900  
24 or 6 percent of the total loan amount.

25 (10) "Total loan amount" means the principal of the  
26 loan minus those points and fees as defined in subsection (7)  
27 which are included in the principal amount of the loan. For  
28 open-ended loans, the total loan amount shall be calculated  
29 using the total line of credit allowed under the home loan.

30 Section 3. Prohibited acts and practices for home  
31 loans.--

1           (1) INSURANCE AND DEBT CANCELLATION AGREEMENTS.--No  
2 creditor making a home loan shall finance, directly or  
3 indirectly, any credit life, credit disability, credit  
4 unemployment, or credit property insurance, or any other life  
5 or health insurance, or any payments directly or indirectly  
6 for any debt cancellation or suspension agreement or contract,  
7 except that insurance premiums or debt cancellation or  
8 suspension fees calculated and paid on a monthly basis shall  
9 not be considered financed by the creditor.

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

15           (3) LATE PAYMENT FEES.--No creditor may charge a late  
16 payment fee except as provided in this subsection:

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

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

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

30           (d) A late payment fee may not be charged unless the  
31 creditor notifies the borrower within 45 days following the

1 date the payment was due that a late payment fee has been  
2 imposed for a particular late payment. No late payment fee may  
3 be collected from any borrower if the borrower informs the  
4 creditor that nonpayment of an installment is in dispute and  
5 presents proof of payment within 45 days after receipt of the  
6 creditor's notice of the late payment fee.

7 (4) FEE FOR BALANCE.--No creditor may charge a fee for  
8 informing or transmitting to any person the balance due to pay  
9 off a home loan or to provide a release upon prepayment.

10 Payoff balances shall be provided within a reasonable time but  
11 in any event no more than 7 business days after the request.

12 (5) A home loan may not be made as a direct result of  
13 a potential or future creditor, or its representative,  
14 offering or selling a home loan at the residence of a  
15 potential borrower without a prearranged appointment or the  
16 expressed invitation of the potential borrower.

17 Section 4. Limitations and prohibited acts and  
18 practices for high-cost home loans.--A high-cost home loan  
19 shall be subject to the following additional limitations and  
20 prohibited acts and practices:

21 (1) FINANCING OF FEES OR CHARGES.--No creditor making  
22 a high-cost home loan shall directly or indirectly finance any  
23 points or fees that exceed 3 percent of the total amount of  
24 the loan.

25 (2) BALLOON PAYMENT.--No high-cost home loan may  
26 contain a scheduled payment that is more than twice as large  
27 as the average of earlier scheduled payments. This provision  
28 does not apply when the payment schedule is adjusted to the  
29 seasonal or irregular income of the borrower.

30 (3) NEGATIVE AMORTIZATION.--No high-cost home loan may  
31 include payment terms under which the outstanding principal



1 balance will increase at any time over the course of the loan  
2 because the regular periodic payments do not cover the full  
3 amount of interest due. This prohibition does not apply to a  
4 bridge loan. As used in this subsection, the term "bridge  
5 loan" means a loan having a maturity of less than 18 months  
6 which requires only payments of interest until the time at  
7 which the entire unpaid balance is due and payable.

8 (4) INCREASED INTEREST RATE.--No high-cost home loan  
9 may contain a provision that increases the interest rate after  
10 default. This provision does not apply to interest rate  
11 changes in a variable rate loan otherwise consistent with the  
12 provisions of the loan documents, provided the change in the  
13 interest rate is not triggered by the event of default or the  
14 acceleration of the indebtedness.

15 (5) ADVANCE PAYMENTS.--No high-cost home loan may  
16 include terms under which more than two periodic payments  
17 required under the loan are consolidated and paid in advance  
18 from the loan proceeds provided to the borrower.

19 (6) ARBITRATION CLAUSE.--No high-cost home loan may be  
20 subject to an arbitration clause that limits in any way the  
21 right of the borrower to seek relief through the judicial  
22 process for any claims and defenses the borrower may have  
23 against the creditor, broker, or other party involved in the  
24 loan transaction.

25 (7) LENDING WITHOUT HOMEOWNERSHIP COUNSELING.--A  
26 creditor may not make a high-cost home loan without first  
27 receiving certification from an independent counselor approved  
28 by the regulatory agency that has jurisdiction over the  
29 creditor that the borrower has received counseling on the  
30 advisability of the loan transaction.

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1           (8) LENDING WITHOUT DUE REGARD TO REPAYMENT  
2 ABILITY.--A creditor may not make a high-cost home loan  
3 without due regard to repayment ability. If a creditor makes a  
4 loan for which the debt-to-income ratio is less than 50  
5 percent (with debt including monthly payments, including  
6 payments for taxes and insurance, whether paid through the  
7 mortgage or not, plus other required homeowner's payments such  
8 as condominium or homeowner's fees, plus any other long-term  
9 obligations), and the borrower will have sufficient residual  
10 income to meet basic needs, as determined by the  
11 residual-income guidelines established with regard to Veterans  
12 Administration loans and found in 38 C.F.R. s. 36.4337(e) and  
13 VA Form 26-6393, the creditor shall benefit from a rebuttable  
14 presumption that the creditor made the loan with due regard to  
15 repayment ability.

16           (9) HOME IMPROVEMENT CONTRACTS.--A creditor may not  
17 pay a contractor under a home improvement contract from the  
18 proceeds of a high-cost home loan unless the instrument is  
19 payable to the borrower or jointly to the borrower and the  
20 contractor or, at the election of the borrower, through a  
21 third-party escrow agent in accordance with terms established  
22 in a written agreement signed by the borrower, the creditor,  
23 and the contractor prior to the disbursement.

24           (10) MODIFICATION OR DEFERRAL FEES.--A creditor may  
25 not charge a borrower any fees or other charges to modify,  
26 renew, extend, or amend a high-cost home loan or to defer any  
27 payment due under the terms of a high-cost home loan on a  
28 minimum of one modification, renewal, extension, or deferral  
29 per each 12 months of the length of the loan.

30           (11) FLIPPING.--No creditor may engage in flipping a  
31 high-cost home loan. The term "flipping" means making a home

1 loan to a borrower that refinances an existing home loan when  
2 the new loan does not have reasonable, tangible, net benefits  
3 to the borrower considering all of the circumstances,  
4 including, but not limited to, the terms of both the new and  
5 refinanced loans, the cost of the new loan, and the borrower's  
6 circumstances. In addition, the following home loan  
7 refinancing conditions shall be presumed to be flipping:

8 (a) The primary tangible benefit to the borrower is an  
9 interest rate lower than any interest rate on debts satisfied  
10 or refinanced in connection with the home loan and it will  
11 take more than 4 years for the borrower to recoup the costs of  
12 the points and fees and other closing costs through savings  
13 resulting from the lower interest rate.

14 (b) The new loan refinances an existing home loan that  
15 is a special mortgage which is originated, subsidized, or  
16 guaranteed by or through a state, tribal, or local government,  
17 or nonprofit organization, which bears a below-market interest  
18 rate at the time the loan was originated or has nonstandard  
19 payment terms beneficial to the borrower, such as payments  
20 that vary with income or are limited to a percentage of  
21 income, or where no payments are required under specified  
22 conditions and where, as a result of the refinancing, the  
23 borrower will lose one or more of the benefits of the special  
24 mortgage.

25 (12) REQUIRED NOTICE TO PURCHASERS AND  
26 ASSIGNEES.--Each high-cost home loan shall contain the  
27 following notice:

28 Notice: This is a mortgage subject to the provisions of  
29 the Florida Fair Lending Act. Purchasers and assignees of this  
30 mortgage could be liable for all claims and defenses with

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1 respect to the mortgage which the borrower could assert  
2 against the creditor.

3 (13) SEVENTY-TWO-HOUR DISCLOSURE.--For a high-cost  
4 home loan, the creditor must deliver all contracts,  
5 agreements, disclosures, and other documents and instruments  
6 of lending required for executing the loan to the borrower no  
7 less than 72 hours before the closing, signing, or agreement  
8 to any terms of that loan.

9 (14) CALL PROVISION.--No high-cost home loan may  
10 contain a provision that permits the creditor, in its sole  
11 discretion, to call or accelerate the indebtedness. This  
12 provision does not prohibit acceleration of the loan in good  
13 faith due to the borrower's failure to abide by the terms of  
14 the loan.

15 Section 5. Right to cure.--

16 (1) RIGHT TO REINSTATE.--If a creditor asserts that  
17 grounds for acceleration exist and requires the payment in  
18 full of all sums secured by the security instrument, the  
19 borrower, or anyone authorized to act on the borrower's  
20 behalf, shall have the right at any time, up to the time title  
21 is transferred by means of foreclosure, by judicial proceeding  
22 and sale or otherwise, to cure the default and reinstate the  
23 home loan by tendering the amount or performance as specified  
24 in this section. Cure of default as provided in this section  
25 shall reinstate the borrower to the same position as if the  
26 default had not occurred and shall nullify, as of the date of  
27 the cure, any acceleration of any obligation under the  
28 security instrument or note arising from the default.

29 (2) GROUNDS FOR REINSTATEMENT.--Before any action  
30 filed to foreclose upon the home or other action is taken to  
31 seize or transfer ownership of the home, a notice of the right

1 to cure the default must be delivered to the borrower  
2 informing the borrower:

3 (a) Of the nature of default claimed on the home loan  
4 and of the borrower's right to cure the default by paying the  
5 sum of money required to cure the default. If the amount  
6 necessary to cure the default will change during the 30-day  
7 period after the effective date of the notice due to the  
8 application of a daily interest rate or the addition of late  
9 payment fees, as allowed by this act, the notice shall give  
10 sufficient information to enable the borrower to calculate the  
11 amount at any point during the 30-day period.

12 (b) Of the date by which the borrower shall cure the  
13 default to avoid acceleration and initiation of foreclosure or  
14 other action to seize the home, which date shall not be less  
15 than 30 days after the date the notice is effective, and the  
16 name and address and telephone number of a person to whom the  
17 payment or tender shall be made.

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

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

29 (3) FEES.--To cure a default under this section, a  
30 borrower shall not be required to pay any charge, fee, or  
31 penalty attributable to the exercise of the right to cure a

1 default as provided for in this section, other than the fees  
2 specifically allowed by this section. The borrower shall not  
3 be liable for any attorney's fees relating to the borrower's  
4 default that are incurred by the creditor prior to or during  
5 the 30-day period set forth in paragraph (2)(b), nor for any  
6 such fees in excess of \$100 which are incurred by the creditor  
7 after the expiration of the 30-day period, but prior to the  
8 time the creditor files a foreclosure action or takes other  
9 action to seize or transfer ownership of the home. After the  
10 creditor files a foreclosure action or takes other action to  
11 seize or transfer ownership of the home, the borrower shall  
12 only be liable for attorney's fees that are reasonable and  
13 actually incurred by the creditor, based on a reasonable  
14 hourly rate and a reasonable number of hours.

15 (4) ENFORCEMENT OF SECURITY INSTRUMENT.--If a default  
16 is cured prior to the initiation of any action to foreclose or  
17 to seize the home, the creditor shall not institute the  
18 foreclosure proceeding or other action for that default. If a  
19 default is cured after the initiation of any action to  
20 foreclose, the creditor shall take such steps as are necessary  
21 to terminate the foreclosure proceeding or other action. Any  
22 creditor making a home loan who has the legal right to  
23 foreclose must use the judicial foreclosure procedures of the  
24 state wherein the property securing the loan is located. The  
25 borrower shall have the right to assert in a judicial  
26 foreclosure proceeding or other action the nonexistence of a  
27 default and any other claim or defense to acceleration and  
28 foreclosure, including any based on violations of this act,  
29 though no such claim or defense shall be deemed a compulsory  
30 counterclaim.

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1           Section 6. Preservation and enforcement of claims and  
2 defenses; administrative penalties.--

3           (1) CLAIMS AGAINST SELLERS.--Notwithstanding any other  
4 provision of law, if a home loan has been made, arranged, or  
5 assigned by a person selling a manufactured home or home  
6 improvements to the dwelling of a borrower, the borrower may  
7 assert all affirmative claims and any defenses that the  
8 borrower may have against the seller or home improvement  
9 contractor against the creditor or any assignee, holder, or  
10 servicer in any capacity if the claims and defenses relate  
11 exclusively to the loan transaction.

12           (2) ADMINISTRATIVE PENALTIES.--

13           (a) The Department of Banking and Finance may, after  
14 appropriate notice and opportunity for hearing, levy  
15 administrative penalties against a person who violates this  
16 act, in the amount of not more than \$2,500 for each violation.  
17 Any hearing must be held in accordance with chapter 120,  
18 Florida Statutes, the Administrative Procedure Act, and the  
19 Department of Banking and Finance shall have all the powers  
20 granted under that act.

21           (b) Any person who willfully and knowingly violates  
22 any provision of this act is liable for a civil penalty of not  
23 more than \$25,000 for each violation, which penalty must be  
24 assessed and recovered in a civil action brought in the name  
25 of the people of the State of Florida by the Department of  
26 Banking and Finance or the Attorney General in any court of  
27 competent jurisdiction.

28           (3) LIABILITY OF ASSIGNEES IN FORECLOSURE  
29 ACTION.--Notwithstanding any other provision of law, a  
30 borrower in default more than 60 days or in foreclosure may  
31 assert a violation of this act by way of offset:

1           (a) As an original action;  
2           (b) As a defense or counterclaim to an action to  
3 collect amounts owed; or  
4           (c) To obtain possession of the home secured by the  
5 home loan.  
6           (4) SUBTERFUGE.--Any person who in bad faith attempts  
7 to avoid the application of this act by:  
8           (a) Dividing any loan transaction into separate parts  
9 for such purpose; or  
10           (b) Any other such subterfuge with the intent of  
11 evading the provisions of this act  
12  
13 commits a violation of this act.  
14           Section 7. Enforcement.--  
15           (1) CIVIL.--  
16           (a) A borrower may be granted injunctive, declaratory,  
17 and such other equitable relief as the court deems appropriate  
18 in an action to enforce compliance with this act.  
19           (b) Any intentional violation of this act or any rule  
20 adopted under this act renders the home loan agreement void,  
21 and the creditor shall have no right to collect, receive, or  
22 retain any principal, interest, or other charges whatsoever  
23 with respect to the loan and the borrower may recover any  
24 payments made under the agreement.  
25           (c) The remedies provided in this section are not  
26 intended to be the exclusive remedies available to a borrower,  
27 nor must the borrower exhaust any administrative remedies  
28 provided under this act or any other applicable law before  
29 proceeding under this section.  
30           (2) CRIMINAL.--Any person who knowingly violates this  
31 act commits a misdemeanor of the first degree, punishable as



1 provided in section 775.082 or section 775.083, Florida  
2 Statutes.

3 (3) CORRECTIONS AND UNINTENTIONAL VIOLATIONS.--A  
4 creditor in a home loan who, when acting in good faith, fails  
5 to comply with the provisions of this act shall not be deemed  
6 to have violated this act if the creditor establishes that:

7 (a) Within 30 days after the loan closing, and prior  
8 to receiving any notice from the borrower of the compliance  
9 failure, the creditor has made appropriate restitution to the  
10 borrower and appropriate adjustments are made to the loan; or

11 (b) Within 60 days after the loan closing and prior to  
12 receiving any notice from the borrower of the compliance  
13 failure, which compliance failure was not intentional and  
14 resulted from a bona fide error notwithstanding the  
15 maintenance of procedures reasonably adapted to avoid such  
16 errors, the borrower has been notified of the compliance  
17 failure, appropriate restitution has been made to the  
18 borrower, and appropriate adjustments are made to the loan.

19 Bona fide errors shall include, but not be limited to,  
20 clerical, calculation, computer malfunction and programming,  
21 and printing errors. An error of legal judgment with respect  
22 to a person's obligations under this section is not a bona  
23 fide error.

24 (4) CUMULATIVE.--The remedies provided in this section  
25 are cumulative.

26 Section 8. Powers and duties of the Department of  
27 Banking and Finance; investigations; injunctions; orders.--

28 (1)(a) The Department of Banking and Finance is  
29 responsible for the administration and enforcement of this  
30 act.

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1           (b) The department may adopt rules pursuant to  
2 sections 120.536(1) and 120.54, Florida Statutes, to implement  
3 this act. The department may adopt rules to allow electronic  
4 submission of any forms, documents, or fees required by this  
5 act.

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

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

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

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

26           (4) The department may issue and serve upon any person  
27 an order to cease and desist and to take corrective action  
28 whenever the department has reason to believe that the person  
29 is violating, has violated, or is about to violate any  
30 provision of this act, any rule or order of the department  
31 issued under this act, or any written agreement between the

1 person and the department. All procedural matters relating to  
2 issuance and enforcement of cease and desist orders are  
3 governed by chapter 120, Florida Statutes, the Administrative  
4 Procedure Act.

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

14       Section 10. This act shall take effect October 2,  
15 2002.

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 2262

4 The committee substitute:

- 5 - Deletes certain legislative findings related to abusive  
6 mortgage lending;
- 7 - Lowers the interest rate threshold for defining a  
8 "high-cost" loan;
- 9 - Deletes the threshold for defining a high-cost loan  
10 based on the amount of prepayment penalty;
- 11 - Deletes the limitation on prepayment penalties for  
12 high-cost loans;
- 13 - Increases the allowable late payment fee for all home  
14 loans from 4% to 5% of the amount past due;
- 15 - Applies the prohibition against a creditor calling or  
16 accelerating the indebtedness to high-cost home loans,  
17 rather than all home loans;
- 18 - Allows a creditor to finance points or fees not  
19 exceeding 3% of the total loan amount for a high-cost  
20 loan;
- 21 - Deletes the requirement that a creditor be presented  
22 with a signed and dated completion certificate showing  
23 that home improvements have been completed, as a  
24 condition of paying a contractor under a home  
25 improvement contract;
- 26 - Permits a creditor for a high cost loan to charge a  
27 modification or deferral fee under certain conditions;
- 28 - Requires high-cost home loans to contain a notice that  
29 the mortgage is subject to this act and that purchasers  
30 and assignees of the mortgage could be liable for all  
31 claims the borrower could assert against the lender;
- For high-cost home loans, requires the lender to deliver  
all documents and disclosures at least 72 hours before  
the closing;
- Deletes the provision that would have required a  
creditor to accept any partial payment to cure a  
default;
- Authorizes the Department of Banking and Finance to  
impose penalties against a person who violates the act  
and authorizes the department or the Attorney General to  
bring a civil action on behalf of the state against a  
person who willfully and knowingly violates the act;
- Deletes the civil remedy provisions that allowed the  
borrower to recover actual damages, statutory damages,  
punitive damages, and attorney's fees and costs and,

1           instead, provides that a borrower may be granted  
2           injunctive, declaratory and such other equitable relief  
3           as the court deems appropriate;  
4           -       Authorizes the Department of Banking and Finance to  
5                   administer and enforce the provisions of this act.  
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