

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 definitions;
5 specifying prohibited acts relating to
6 high-cost home loans; specifying required
7 disclosures for high-cost home loans;
8 specifying liability of purchasers and
9 assignees; requiring lenders of high-cost home
10 loans to provide notice to borrowers prior to
11 taking foreclosure actions; allowing the
12 borrower to cure the default; providing
13 administration and enforcement powers and
14 duties of the Department of Banking and
15 Finance; authorizing the department to conduct
16 investigations and examinations; providing for
17 complaints; authorizing the department to bring
18 actions for injunctions; providing for issuance
19 of subpoenas; authorizing the department to
20 issue and serve cease and desist orders for
21 certain purposes; authorizing the department to
22 impose certain fines under certain
23 circumstances; specifying effect; authorizing
24 the department to adopt rules; providing that a
25 lender who violates this act forfeits the
26 interest in the high-cost home loan; providing
27 that certain unintentional good-faith errors
28 are not deemed violations of the act;
29 preempting regulation of high-cost home loans
30 to the state; providing severability; directing
31 the Department of Insurance to approve

1 specified enrollment forms; providing an
2 effective date.

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

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6 Section 1. Short title; purposes.--

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

9 (2)(a) The Legislature finds that abusive mortgage
10 lending has become a problem in this state even though most
11 high-cost home loans do not involve abusive mortgage
12 practices. One of the most common forms of abusive lending is
13 the making of loans that are equity-based rather than
14 income-based. The financing of points and fees in these loans
15 provides immediate income to the originator and encourages
16 creditors to repeatedly refinance home loans. As long as there
17 is sufficient equity in the home, an abusive creditor benefits
18 even if the borrower is unable to make the payments and is
19 forced to refinance. The financing of high points and fees
20 causes the loss of equity in each refinancing and often leads
21 to foreclosure.

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

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1 provisions of this act are necessary to encourage fair
2 lending.

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

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

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

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

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

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

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

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

30 Section 3. Prohibited acts.--

31 (1) PREPAYMENT PENALTIES.--

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

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

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

11 2. The borrower has been given, at least 3 business
12 days prior to the loan consummation, a written disclosure of
13 the terms of the prepayment fee or penalty by the lender,
14 including the benefit the borrower will receive for accepting
15 the prepayment fee or penalty through either a reduced
16 interest rate on the loan or reduced points or fees.

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

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

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

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

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

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

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

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

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

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

4 (a) A lender, its affiliate, or an assignee shall not
5 refinance any high-cost home loan to the same borrower within
6 the first 18 months of the loan when the refinancing does not
7 have a reasonable benefit to the borrower considering all of
8 the circumstances, including, but not limited to, the terms of
9 both the new and refinanced loans, the cost of the new loan,
10 and the borrower's circumstances.

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

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

21 (11) RECOMMENDATION OF DEFAULT.--A lender shall not
22 recommend or encourage default on an existing loan or other
23 debt prior to and in connection with the closing or planned
24 closing of a high-cost home loan that refinances all or any
25 portion of such existing loan or debt.

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

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

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

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

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

10 (c) A late payment fee may not be charged more than
11 once with respect to a single late payment. If a late payment
12 fee is deducted from a payment made on the loan and such
13 deduction causes a subsequent default on a subsequent payment,
14 no late payment fee may be imposed for such default. If a late
15 payment fee has been imposed once with respect to a particular
16 late payment, no such fee shall be imposed with respect to any
17 future payment which would have been timely and sufficient,
18 but for the previous default.

19 (14) MODIFICATION OR DEFERRAL FEES.--A lender may not
20 charge a borrower any fees or other charges to modify, renew,
21 extend, or amend a high-cost home loan or to defer any payment
22 due under the terms of a high-cost home loan on a minimum of
23 one modification, renewal, extension, or deferral per each 12
24 months of the length of the loan.

25 Section 4. Required disclosures for high-cost home
26 loans.--

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

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

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

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

12 You should also consider consulting a qualified
13 independent credit counselor or other experienced financial
14 advisor regarding the rates, fees, and provisions of this
15 mortgage loan before you proceed. You should contact the
16 United States Department of Housing and Urban Development for
17 a list of credit counselors available in your area.

18 You are not required to complete this agreement merely
19 because you have received these disclosures or have signed a
20 loan application.

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

28 Remember that property taxes and homeowners' insurance
29 are your responsibility. Not all lenders provide escrow
30 services for these payments. You should ask your lender about
31 these services.

1 Also, your payments on existing debts contribute to
2 your credit rating. You should not accept any advice to
3 ignore your regular payments to your existing creditors.

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

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

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

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

17 Notice: This is a mortgage subject to the provisions of
18 the Florida Fair Lending Act. Purchasers and assignees of this
19 mortgage could be liable for all claims and defenses with
20 respect to the mortgage which the borrower could assert
21 against the creditor.

22 (2) Timing of disclosure.--

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

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

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

3 1. The change is initiated by the borrower.

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

5 a. The lender provides the disclosures in writing to
6 the borrower.

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

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

17 Section 5. Liability of purchasers and assignees.--Any
18 person who purchases or is otherwise assigned a high-cost home
19 loan shall be subject to all claims and defenses with respect
20 to that mortgage that the borrower could assert against the
21 creditor of the mortgage, to the same extent and subject to
22 the same limitations that a borrower of a high-cost home loan
23 may assert against an assignee or purchaser pursuant to 15
24 U.S.C. s. 1641.

25 Section 6. Right to cure high-cost home loans.--

26 (1) RIGHT TO REINSTATE.--For a high-cost home loan, if
27 a lender asserts that grounds for acceleration exist and
28 requires the payment in full of all sums secured by the
29 security instrument, the borrower, or anyone authorized to act
30 on the borrower's behalf, shall have the right, during the
31 45-day period set forth in subsection (2), to cure the default

1 and reinstate the home loan by tendering the amount or
2 performance as specified in this section. However, once a
3 lender has provided two such notices as required by this
4 section, for two separate incidents, a lender is not
5 thereafter required to provide the notice required by this
6 section, and the borrower is not entitled by this section to
7 cure the default, for a third or subsequent incident for which
8 the lender asserts that grounds exist for acceleration of the
9 loan and repayment in full. Cure of default as provided in
10 this section shall reinstate the borrower to the same position
11 as if the default had not occurred and shall nullify, as of
12 the date of the cure, any acceleration of any obligation under
13 the security instrument or note arising from the default.

14 (2) GROUNDS FOR REINSTATEMENT.--Before any action
15 filed to foreclose upon the home or other action is taken to
16 seize or transfer ownership of the home, a notice of the right
17 to cure the default must be delivered to the borrower at the
18 address of the property upon which any security exists for the
19 home loan by postage prepaid certified United States mail,
20 return receipt requested, which notice is effective upon
21 deposit in the United States mail, and shall inform the
22 borrower:

23 (a) Of the nature of default claimed on the home loan
24 and of the borrower's right to cure the default by paying the
25 sum of money required to cure the default. If the amount
26 necessary to cure the default will change during the 45-day
27 period after the effective date of the notice due to the
28 application of a daily interest rate or the addition of late
29 payment fees, as allowed by this act, the notice shall give
30 sufficient information to enable the borrower to calculate the
31 amount at any point during the 45-day period.

1 (b) Of the date by which the borrower shall cure the
2 default to avoid acceleration and initiation of foreclosure or
3 other action to seize the home, which date shall not be less
4 than 45 days after the date the notice is effective, and the
5 name and address and telephone number of a person to whom the
6 payment or tender shall be made.

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

12 (d) Of the name and address of the creditor and the
13 telephone number of a representative of the creditor whom the
14 borrower may contact if the borrower disagrees with the
15 creditor's assertion that a default has occurred or the
16 correctness of the creditor's calculation of the amount
17 required to cure the default.

18 (3) FEES.--To cure a default under this section, a
19 borrower shall not be required to pay any charge, fee, or
20 penalty attributable to the exercise of the right to cure a
21 default as provided for in this section, other than the fees
22 specifically allowed by this act. The borrower shall not be
23 liable for any attorney's fees or costs relating to the
24 borrower's default that are incurred by the creditor prior to
25 or during the 45-day period set forth in paragraph (2)(b).

26 Section 7. Powers and duties of the Department of
27 Banking and Finance; investigations; examinations;
28 injunctions; orders.--

29 (1)(a) The department shall be responsible for the
30 administration and enforcement of this 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 the 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 (c) The department may conduct examinations of any
15 person to determine compliance with this act.

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

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

28 (4) The department may issue and serve upon any person
29 an order to cease and desist and to take corrective action
30 whenever the department has reason to believe the person is
31 violating, has violated, or is about to violate any provision

1 of this act, any rule or order of the department issued under
2 this act, or any written agreement between the person and the
3 department. All procedural matters relating to issuance and
4 enforcement of cease and desist orders are governed by the
5 Administrative Procedure Act.

6 (5) Whenever the department finds a person in
7 violation of this act, it may enter an order imposing a fine
8 in an amount not exceeding \$5,000 for each count or separate
9 offense, provided that the aggregate fine for all violations
10 of this act that could have been asserted at the time of the
11 order imposing the fine shall not exceed \$500,000.

12 (6) Any violation of this act shall also be deemed to
13 be a violation of chapter 494, chapter 516, chapter 520,
14 chapter 655, chapter 657, chapter 658, chapter 660, chapter
15 663, chapter 665, or chapter 667, Florida Statutes. The
16 department may adopt rules to enforce this subsection.

17 Section 8. Enforcement.--

18 (1) Any person or the agent, officer, or other
19 representative of any person committing a material violation
20 of the provisions of this act shall forfeit the entire
21 interest charged in the high-cost home loan or contracted to
22 be charged or received, and only the principal sum of such
23 high-cost home loan can be enforced in any court in this
24 state, either at law or in equity.

25 (2) A creditor in a home loan who, when acting in good
26 faith, fails to comply with the provisions of this act shall
27 not be deemed to have violated this act if the creditor
28 establishes that within 60 days after receiving any notice
29 from the borrower of the compliance failure, which compliance
30 failure was not intentional and resulted from a bona fide
31 error notwithstanding the maintenance of procedures reasonably

1 adapted to avoid such errors, the borrower has been notified
2 of the compliance failure, appropriate restitution has been
3 made to the borrower, and appropriate adjustments are made to
4 the loan. Bona fide errors shall include, but not be limited
5 to, clerical, calculation, computer malfunction and
6 programming, and printing errors. An error of legal judgment
7 with respect to a person's obligations under this section is
8 not a bona fide error.

9 (3) The remedies provided in this section are
10 cumulative.

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

21 (1) Are subject to the jurisdiction of the department,
22 including for activities subject to this chapter, except
23 entities licensed under section 537.004, Florida Statutes;

24 (2) Are subject to the jurisdiction of the Office of
25 Thrift Supervision, the Office of the Comptroller of the
26 Currency, the National Credit Union Administration, the
27 Federal Deposit Insurance Corporation, the Federal Trade
28 Commission, or the United States Department of Housing and
29 Urban Development;

30 (3) Originate, purchase, sell, assign, secure, or
31 service property interests or obligations created by financial

1 transactions or loans made, executed, or originated by persons
2 referred to in subsection (1) or subsection (2) to assist or
3 facilitate such transactions;

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

6 (5) Are created by the Florida Housing Finance
7 Corporation.

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9 Proof of noncompliance with this act can be used by a city,
10 county, or municipality of this state to disqualify a vendor
11 or contractor from doing business with a city, county, or
12 municipality of this state.

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

22 Section 11. Effective October 1, 2002, all credit
23 insurance enrollment forms must be approved by the Department
24 of Insurance pursuant to the provisions of sections 627.410 or
25 627.682, Florida Statutes.

26 Section 12. This act shall take effect October 2,
27 2002.

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