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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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