

By the Committee on Banking and Insurance; and Senator Clary

311-2185-02

1 A bill to be entitled
2 An act relating to consumer protection;
3 creating the "Florida Fair Lending Act";
4 defining terms; prohibiting specified acts by
5 lenders with respect to high-cost home loans;
6 requiring notice and disclosures to borrowers;
7 preempting regulation of high-cost home loans
8 to the state; prescribing duties of the
9 Department of Banking and Finance with respect
10 to enforcement of the act; providing
11 severability; providing an effective date.

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

15 Section 1. Short title.--This act may be cited as the
16 "Florida Fair Lending Act."

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

19 (1) "Affiliate" means any company that controls, is
20 controlled by, or is in common control with another company,
21 as set forth in 12 U.S.C. s. 1841, et seq., as from time to
22 time amended, and the regulations adopted thereunder.

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

27 (3) "Borrower" means any natural person obligated to
28 repay a loan, including a coborrower, cosignor, or guarantor.

29 (4) "Bridge loan" means a loan with a maturity of less
30 than 18 months which only requires the payment of interest

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1 until such time as the entire unpaid balance is due and
2 payable.

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

5 (6) "High-cost home loan" means a home loan as defined
6 in 15 U.S.C. s. 1602(aa) as from time to time amended and
7 regulations adopted thereunder and which is secured by
8 residential property in this state.

9 (7) "Home loan" means a loan or agreement to extend
10 credit made to a natural person which loan is secured by a
11 deed to secure debt, security deed, mortgage, security
12 instrument, deed of trust, or other document representing a
13 security interest or lien upon any interest in a residential
14 property for one to four families or a manufactured home when
15 secured in conjunction with the real property on which the
16 manufactured home is located, which is located in this state,
17 regardless of where made, including the renewal or refinancing
18 of any such loan.

19 (8) "Lender" means any person who makes a high-cost
20 home loan or acts as a mortgage broker or lender finance
21 company, or retail installment seller with respect to a
22 high-cost home loan.

23 (9) "Make a high-cost home loan" means that a lender
24 or mortgage broker, finance company, or retail installment
25 seller that is the obligee to whom the obligation is initially
26 payable on the face of the note or contract regularly extends
27 consumer credit for mortgage loans which is subject to a
28 finance charge.

29 (10) "Residential property" means improved real
30 property used or occupied as the principal residence of a
31 natural person. Such term does not include rental property or

1 a second home or manufactured home when not secured in
2 conjunction with the real property on which it is located.

3 Section 3. Prohibited acts.--

4 (1) PREPAYMENT PENALTIES.--

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

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

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

15 2. The borrower has been given, at least 3 business
16 days before the loan consummation, a written disclosure of the
17 terms of the prepayment fee or penalty by the lender,
18 including the benefit the borrower will receive for accepting
19 the prepayment fee or penalty through either a reduced
20 interest rate on the loan or reduced points or fees.

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

28 (3) BALLOON PAYMENTS.--A high-cost home loan having a
29 term of fewer than 5 years may not contain terms under which
30 the aggregate amount of the regular periodic payments would
31 not fully amortize the outstanding principal balance. However,

1 this subsection does not apply when the payment schedule is
2 adjusted to account for the seasonal or irregular income of
3 the borrower or if the purpose of the high-cost home loan is a
4 bridge loan.

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

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

14 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT
15 ABILITY OF THE BORROWER.--A lender is prohibited from a
16 pattern or practice of extending high-cost home loans to
17 borrowers based upon the borrower's collateral without regard
18 to the borrowers' ability to repay the loan, including the
19 borrowers' current and expected income, current obligations,
20 and employment.

21 (7) PAYMENTS TO A HOME CONTRACTOR.--A lender may not
22 make any payments to a contractor under a home improvement
23 contract from amounts of a high-cost home loan other than:

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

26 (b) At the election of the borrower, by a third-party
27 escrow agent in accordance with terms established in a written
28 agreement signed by the borrower, the lender, and the
29 contractor before the date of payment.

30 (8) DUE-ON-DEMAND CLAUSE.--A creditor may not
31 terminate a loan in advance of the original maturity date of

1 the loan and demand repayment of the entire outstanding
2 balance, except when:
3 (a) There is fraud or material misrepresentation by
4 the consumer in connection with the loan;
5 (b) The consumer fails to meet the repayment terms of
6 the agreement for any outstanding balance; or
7 (c) There is any action or inaction by the borrower
8 which adversely affects the lender's security for the loan or
9 any right of the creditor in such security.
10 (9) REFINANCING WITHIN A 1-YEAR PERIOD.--
11 (a) A lender, its affiliate, or an assignee may not
12 refinance any high-cost home loan to the same borrower when
13 the refinancing does not have a reasonable benefit to the
14 borrower considering all of the circumstances, including, but
15 not limited to, the terms of both the new and refinanced
16 loans, the cost of the new loan, and the borrower's
17 circumstances.
18 (b) For purposes of paragraph (a), a presumption of
19 reasonable benefit to the borrower occurs when:
20 1. The borrower's monthly payment to pay a new
21 consolidated loan will be lower than the total of all monthly
22 obligations being financed, taking into consideration all
23 costs and fees;
24 2. There is a beneficial change for the borrower in
25 the duration of the loan;
26 3. The borrower receives a reasonable amount of cash
27 in excess of and in relation to the costs and fees as part of
28 the refinancing; or
29 4. There is a change from an adjustable rate loan to a
30 fixed rate loan, taking into account all costs and fees.
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1 (c) A lender or assignee may not engage in acts or
2 practices to evade this requirement, including a pattern or
3 practice of arranging for the refinancing of the lender's or
4 assignee's own loans by affiliated or unaffiliated lenders or
5 modifying a loan agreement, whether or not the existing loan
6 is satisfied and replaced by the new loan, and charging a fee.

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

11 (11) RECOMMENDATION OF DEFAULT.--A creditor may not
12 recommend or encourage default on an existing loan or other
13 debt prior to and in connection with the closing or planned
14 closing of a high-cost home loan that refinances all or any
15 portion of the existing loan or debt.

16 (12) RESTRICTIONS ON SELLING LOANS AT BORROWER'S
17 RESIDENCE.--A high-cost home loan may not be made as a direct
18 result of a potential or future lender, or its representative,
19 offering or selling a high-cost home loan at the residence of
20 a potential borrower without a prearranged appointment or the
21 expressed invitation of the potential borrower. This
22 subsection does not apply to mail solicitations that may be
23 received by the potential borrower.

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

26 (1) DISCLOSURES.--In addition to other disclosures
27 required by law and in conspicuous type:

28 (a) Notice to borrower.--A lender making a high-cost
29 home loan must provide a notice to a borrower in substantially
30 the following form:

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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 any
3 money you have put into it if you do not meet your obligations
4 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 based
10 upon which lender or broker you select. As a borrower, you
11 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.

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

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

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

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

4 (b) Annual percentage rate.--The lender must disclose:

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

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

14 (c) Notice to purchasers and assignees.--Each
15 high-cost home loan must contain the following notice:

16 Notice: This is a mortgage subject to the provisions of
17 the Florida Fair Lending Act.

18 (2) TIME OF THE DISCLOSURE.--

19 (a) The disclosure required by this subsection must be
20 given not less than 3 business days before the consummation of
21 the high-cost home loan.

22 (b) After disclosure is made a creditor may not change
23 the terms of the extension of credit if such changes make the
24 disclosures inaccurate unless new disclosures are provided
25 which meet the requirements of this section.

26 (c) A lender may provide new disclosures pursuant to
27 paragraph (b) by telephone if:

28 1. The change is initiated by the borrower; and
29 2. At the consummation of the high-cost home
30 loan: the lender provides the disclosures in writing to the
31 borrower and the lender and the borrower certify in writing

1 that the new disclosures were provided by telephone no later
2 than 3 days before the consummation of the high-cost home
3 loan.

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

7 (1)(a) The Department of Banking and Finance is
8 responsible for the administration and enforcement of this
9 act.

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

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

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

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

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

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1 (b) In any injunctive proceeding, the court may, on
2 due showing by the department, issue a subpoena or subpoena
3 duces tecum requiring the attendance of any witness and
4 requiring the production of any books, accounts, records, or
5 other documents and materials that appear necessary to the
6 expeditious resolution of the application for injunction.

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

16 (5) If the department finds a person to be in
17 violation of this act, it may enter an order imposing a fine
18 in an amount not exceeding \$5,000 for each count or separate
19 offense; however, the aggregate fine for all violations of the
20 act which could have been asserted at the time of the order
21 imposing the fine may not exceed \$250,000.

22 (6) Any violation of this act is also a violation of
23 chapter 494, chapter 516, chapter 520, or chapters 665-667,
24 Florida Statutes, or a combination thereof. The department may
25 adopt rules to enforce this subsection.

26 Section 6. General rule.--All political subdivisions
27 of this state, including home-rule municipalities, are
28 prohibited from enacting and enforcing ordinances,
29 resolutions, and rules pertaining to the financial or lending
30 activities of persons who:

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1 (1) Are subject to the jurisdiction of the Department
2 of Banking and Finance, including for activities subject to
3 this chapter;

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

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

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16 The requirements of this section apply to all ordinances,
17 resolutions, and rules pertaining to financial lending
18 activities, including ordinances, resolutions, or rules
19 disqualifying persons from doing business with a political
20 subdivision based on the lending interest rates or imposing
21 reporting requirements or any other obligations upon persons
22 regarding financial services or lending practices. This
23 subsection does not prohibit a requirement of compliance with
24 the terms of this act as a condition of doing business with a
25 county, municipality, or other political subdivision of the
26 state.

27 Section 7. If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 invalidity does not affect other provisions or applications of
30 the act which can be given effect without the invalid

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1 provision or application, and to this end the provisions of
2 this act are severable.

3 Section 8. This act shall take effect October 2, 2002.
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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 2380

8 The committee substitute makes the following changes:

- 9 - Prohibits high-cost mortgage loans from having a
10 due-on-demand clause under which the lender can
11 terminate a loan in advance of the maturity date and
12 demand repayment of the entire loan, except in specified
13 circumstances;
- 14 - Prohibits a lender from refinancing a high-cost home to
15 the same borrower unless there is a reasonable benefit
16 to the borrower;
- 17 - Prohibits open-ended loans that do not meet federal
18 requirements;
- 19 - Prohibits a lender from recommending default on an
20 existing loan in order to refinance the loan;
- 21 - Prohibits lenders making or selling high-cost loans
22 door-to-door without a prearranged appointment or
23 express invitation;
- 24 - Deletes the provision of the required notice that
25 purchasers and assignees of the mortgage could be liable
26 for all claims and defenses which the borrower could
27 assert against the lender;
- 28 - Authorizes the Department of Banking and Finance to
29 conduct examinations to determine compliance with this
30 act;
- 31 - Authorizes the department to impose a fine for a
violation of the act;
- Revises the preemption provisions to allow a local
government to require compliance with this act as a
condition of doing business with the local government;
- Changes the effective date to October 2, 2002, rather
than upon becoming law.