

By Senator Margolis

35-399-07

See HB

1 A bill to be entitled

2 An act relating to residential mortgage fraud;

3 creating s. 817.545, F.S.; providing a short

4 title; providing legislative findings and

5 declarations; providing definitions; specifying

6 criteria for committing the offense of

7 residential mortgage fraud; providing an

8 exception; providing for venue of the committed

9 offense; providing penalties; authorizing

10 certain investigative agencies to investigate

11 and prosecute cases of residential mortgage

12 fraud; providing for civil forfeiture of

13 property under certain circumstances;

14 reenacting s. 895.02(1)(a), F.S., relating to

15 the definition of "racketeering activity," for

16 purposes of incorporating the creation of s.

17 817.545, F.S., in a reference to ch. 817, F.S.;

18 providing an effective date.

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

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22 Section 1. Section 817.545, Florida Statutes, is

23 created to read:

24 817.545 Residential mortgage fraud.--

25 (1) This section may be cited as the "Florida

26 Residential Mortgage Fraud Act."

27 (2) The Legislature finds and declares that fraud

28 involving residential mortgages is at an all-time high in the

29 United States and in this state. Mortgage lending institutions

30 and borrowers have suffered hundreds of millions of dollars in

31 losses due to residential mortgage fraud. Fraudulently

1 inflated property values in neighborhoods have resulted in
2 substantial increases in property taxes and have threatened
3 the viability of many communities. The Legislature therefore
4 concludes that for the protection of the general public, and
5 particularly for the protection of borrowers, homeowners,
6 lending institutions, and the integrity of the mortgage
7 lending process, residential mortgage fraud should be made
8 unlawful and subject to the provisions of chapter 895.

9 (3) For purposes of this section:

10 (a) "Mortgage lending process" means the process
11 through which a person seeks or obtains a residential mortgage
12 loan, including, but not limited to, solicitation,
13 application, or origination, negotiation of terms, third-party
14 provider services, underwriting, signing and closing, and
15 funding of the loan. Documents involved in the mortgage
16 lending process include, but are not limited to, uniform
17 residential loan applications or other loan applications;
18 appraisal reports; HUD-1 settlement statements; supporting
19 personal documentation for loan applications such as W-2
20 forms, verifications of income and employment, bank
21 statements, tax returns, and payroll stubs; and any required
22 disclosures.

23 (b) "Person" means a natural person, corporation,
24 company, limited liability company, partnership, trustee,
25 association, or any other entity.

26 (c) "Residential mortgage fraud" means one or more
27 misstatements, misrepresentations, or omissions made during a
28 mortgage lending process that involves residential property.

29 (d) "Residential mortgage loan" means a loan or
30 agreement to extend credit made to a person, which loan is
31 secured by a deed to secure debt, security deed, mortgage,

1 security interest, deed of trust, or other document
2 representing a security interest or lien upon any interest in
3 one-family to four-family residential property located in this
4 state, including the renewal or refinancing of any such loan.

5 (4) A person commits the offense of residential
6 mortgage fraud if, with the intent to defraud, the person:

7 (a) Knowingly makes any deliberate misstatement,
8 misrepresentation, or omission during the mortgage lending
9 process with the intention that the misstatement,
10 misrepresentation, or omission will be relied on by a mortgage
11 lender, borrower, or any other party to the mortgage lending
12 process;

13 (b) Knowingly uses or facilitates the use of any
14 deliberate misstatement, misrepresentation, or omission,
15 knowing the misstatement, misrepresentation, or omission
16 contains a misstatement, misrepresentation, or omission,
17 during the mortgage lending process with the intention that
18 the misstatement, misrepresentation, or omission will be
19 relied on by a mortgage lender, borrower, or any other party
20 to the mortgage lending process;

21 (c) Receives any proceeds or any other funds in
22 connection with a residential mortgage closing that the person
23 knew resulted from a violation of paragraph (a) or paragraph
24 (b);

25 (d) Conspires to violate any of the provisions of
26 paragraph (a), paragraph (b), or paragraph (c); or

27 (e) Files or causes to be filed with the clerk of the
28 circuit court for any county of this state any document the
29 person knows to contain a deliberate misstatement,
30 misrepresentation, or omission.

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1 An offense of residential mortgage fraud shall not be
2 predicated solely upon information lawfully disclosed under
3 federal disclosure laws, regulations, and interpretations
4 related to the mortgage lending process.

5 (5) For the purpose of venue under this section, any
6 violation of this section shall be considered to have been
7 committed:

8 (a) In the county in which the residential property
9 for which a mortgage loan is being sought is located;

10 (b) In any county in which any act was performed in
11 furtherance of the violation;

12 (c) In any county in which any person alleged to have
13 violated this section had control or possession of any
14 proceeds of the violation;

15 (d) If a closing occurred, in any county in which the
16 closing occurred; or

17 (e) In any county in which a document containing a
18 deliberate misstatement, misrepresentation, or omission is
19 filed with the clerk of the circuit court for such county.

20 (6)(a) Any person who violates this section commits a
21 felony of the third degree, punishable as provided in s.
22 775.082, s. 775.083, or s. 775.084.

23 (b) Any person who engages in a pattern of residential
24 mortgage fraud or a conspiracy or endeavor to engage or
25 participate in a pattern of residential mortgage fraud in
26 violation of this section commits a felony of the second
27 degree, punishable as provided in s. 775.082, s. 775.083, or
28 s. 775.084. For purposes of this paragraph, the term "pattern
29 of residential mortgage fraud" means one or more
30 misstatements, misrepresentations, or omissions made during
31 the mortgage lending process which involve two or more

1 residential properties and which have the same or similar
2 intents, results, accomplices, victims, or methods of
3 commission or otherwise are interrelated by distinguishing
4 characteristics.

5 (c) Each residential property transaction involving a
6 violation of this section constitutes a separate offense and
7 shall not be combined with any other offense.

8 (7) An investigative agency as defined in s. 895.02
9 may conduct the criminal investigation and prosecution of all
10 cases of residential mortgage fraud under this section.

11 (8) All real and personal property of every kind used
12 or intended for use in the course of, derived from, or
13 realized through a violation of this section is subject to
14 civil forfeiture to the state, as provided in s. 895.05. An
15 investigative agency as defined in s. 895.02 may commence
16 forfeiture proceedings under this section pursuant to s.
17 895.05.

18 Section 2. To incorporate the provisions of section
19 817.545, Florida Statutes, as created by this act, paragraph
20 (a) of subsection (1) of section 895.02, Florida Statutes, is
21 reenacted to read:

22 895.02 Definitions.--As used in ss. 895.01-895.08, the
23 term:

24 (1) "Racketeering activity" means to commit, to
25 attempt to commit, to conspire to commit, or to solicit,
26 coerce, or intimidate another person to commit:

27 (a) Any crime that is chargeable by indictment or
28 information under the following provisions of the Florida
29 Statutes:

30 1. Section 210.18, relating to evasion of payment of
31 cigarette taxes.

- 1 2. Section 403.727(3)(b), relating to environmental
- 2 control.
- 3 3. Section 409.920 or s. 409.9201, relating to
- 4 Medicaid fraud.
- 5 4. Section 414.39, relating to public assistance
- 6 fraud.
- 7 5. Section 440.105 or s. 440.106, relating to workers'
- 8 compensation.
- 9 6. Section 443.071(4), relating to creation of a
- 10 fictitious employer scheme to commit unemployment compensation
- 11 fraud.
- 12 7. Section 465.0161, relating to distribution of
- 13 medicinal drugs without a permit as an Internet pharmacy.
- 14 8. Sections 499.0051, 499.0052, 499.00535, 499.00545,
- 15 and 499.0691, relating to crimes involving contraband and
- 16 adulterated drugs.
- 17 9. Part IV of chapter 501, relating to telemarketing.
- 18 10. Chapter 517, relating to sale of securities and
- 19 investor protection.
- 20 11. Section 550.235, s. 550.3551, or s. 550.3605,
- 21 relating to dogracing and horseracing.
- 22 12. Chapter 550, relating to jai alai frontons.
- 23 13. Section 551.109, relating to slot machine gaming.
- 24 14. Chapter 552, relating to the manufacture,
- 25 distribution, and use of explosives.
- 26 15. Chapter 560, relating to money transmitters, if
- 27 the violation is punishable as a felony.
- 28 16. Chapter 562, relating to beverage law enforcement.
- 29 17. Section 624.401, relating to transacting insurance
- 30 without a certificate of authority, s. 624.437(4)(c)1.,
- 31 relating to operating an unauthorized multiple-employer

1 welfare arrangement, or s. 626.902(1)(b), relating to
2 representing or aiding an unauthorized insurer.
3 18. Section 655.50, relating to reports of currency
4 transactions, when such violation is punishable as a felony.
5 19. Chapter 687, relating to interest and usurious
6 practices.
7 20. Section 721.08, s. 721.09, or s. 721.13, relating
8 to real estate timeshare plans.
9 21. Chapter 782, relating to homicide.
10 22. Chapter 784, relating to assault and battery.
11 23. Chapter 787, relating to kidnapping or human
12 trafficking.
13 24. Chapter 790, relating to weapons and firearms.
14 25. Section 796.03, s. 796.035, s. 796.04, s. 796.045,
15 s. 796.05, or s. 796.07, relating to prostitution and sex
16 trafficking.
17 26. Chapter 806, relating to arson.
18 27. Section 810.02(2)(c), relating to specified
19 burglary of a dwelling or structure.
20 28. Chapter 812, relating to theft, robbery, and
21 related crimes.
22 29. Chapter 815, relating to computer-related crimes.
23 30. Chapter 817, relating to fraudulent practices,
24 false pretenses, fraud generally, and credit card crimes.
25 31. Chapter 825, relating to abuse, neglect, or
26 exploitation of an elderly person or disabled adult.
27 32. Section 827.071, relating to commercial sexual
28 exploitation of children.
29 33. Chapter 831, relating to forgery and
30 counterfeiting.
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- 1 34. Chapter 832, relating to issuance of worthless
2 checks and drafts.
- 3 35. Section 836.05, relating to extortion.
- 4 36. Chapter 837, relating to perjury.
- 5 37. Chapter 838, relating to bribery and misuse of
6 public office.
- 7 38. Chapter 843, relating to obstruction of justice.
- 8 39. Section 847.011, s. 847.012, s. 847.013, s.
9 847.06, or s. 847.07, relating to obscene literature and
10 profanity.
- 11 40. Section 849.09, s. 849.14, s. 849.15, s. 849.23,
12 or s. 849.25, relating to gambling.
- 13 41. Chapter 874, relating to criminal street gangs.
- 14 42. Chapter 893, relating to drug abuse prevention and
15 control.
- 16 43. Chapter 896, relating to offenses related to
17 financial transactions.
- 18 44. Sections 914.22 and 914.23, relating to tampering
19 with a witness, victim, or informant, and retaliation against
20 a witness, victim, or informant.
- 21 45. Sections 918.12 and 918.13, relating to tampering
22 with jurors and evidence.
- 23 Section 3. This act shall take effect October 1, 2007.
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