Florida Senate - 2007

 ${\bf By}$ the Committee on Banking and Insurance; and Senators Margolis and Bullard

597-2042-07 1 A bill to be entitled 2 An act relating to real property fraud; 3 creating s. 817.545, F.S.; providing a short 4 title; providing legislative findings and 5 declarations; specifying criteria for б committing the offense of real property fraud; 7 providing that such offense is a third-degree 8 felony; providing for venue with respect to the committed offense; providing penalties; 9 10 providing an effective date. 11 12 Be It Enacted by the Legislature of the State of Florida: 13 Section 1. Section 817.545, Florida Statutes, is 14 created to read: 15 16 817.545 Real property fraud.--17 (1) This section may be cited as the "Florida Real 18 Property Fraud Act." (2) The Legislature finds and declares that fraud 19 involving real property is at an all-time high in the United 2.0 21 States and in this state. Mortgage lending institutions and borrowers have suffered hundreds of millions of dollars in 22 23 losses due to real property fraud. The Legislature therefore concludes that for the protection of the public, and 2.4 particularly for the protection of borrowers, homeowners, 25 lending institutions, and the integrity of the mortgage 26 27 lending process, real property fraud should be made unlawful 2.8 and subject to the provisions of chapter 895. (3) A person commits the offense of real property 29 30 fraud if, with the intent to defraud, the person knowingly: 31

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1 (a) Makes any material misstatement, 2 misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, 3 4 misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other party to the real property 5 6 transaction process; however, a material omission does not 7 occur when such omission is made as part of a lending program 8 in which income, assets, or employment determination are not factors for qualification for the loan program. 9 10 (b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission, knowing the 11 12 misstatement, misrepresentation, or omission contains a 13 misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that the material 14 misstatement, misrepresentation, or omission will be relied on 15 by a mortgage lender, borrower, or any other party to the real 16 17 property transaction process; however, a material omission 18 does not occur when such omission is made as part of a lending program in which income, assets, or employment determination 19 are not factors for qualification for the loan program. 2.0 21 (c) Receives any proceeds or any other funds in 2.2 connection with a real property transaction that the person 23 knew resulted from a violation of paragraph (a) or paragraph 2.4 (b). 25 (d) Files or causes to be filed with the clerk of the circuit court for any county of this state a document 26 27 materially relating to a real property transaction which 2.8 contains a material misstatement, misrepresentation, or 29 omission. 30 (4) An offense of real property fraud shall not be predicated solely upon information lawfully disclosed under 31

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federal disclosure laws, regulations, or interpretations related to the mortgage lending process. (5) For the purpose of venue under this section, any violation of this section shall be considered to have been committed: (a) In the county in which the real property is located; or (b) In any county in which a material act was performed in furtherance of the violation. (6) Any person who violates subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Section 2. This act shall take effect October 1, 2007.

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1		STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR
2 3		<u>Senate Bill 352 and Senate Bill 240</u>
4	The obill	committee substitute provides the following changes to the
5	 Broadens the types of fraudulent real estate transacti that would be addressed by the bill by establishing 	
6		that would be addressed by the bill by establishing criminal penalties for offenses that constitute "real property fraud" rather than "residential mortgage fraud."
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8	2.	2. Provides that certain offenses constitute real property fraud, a felony of the third degree, and provides
9		exceptions for material omissions relating to loans that
10	3	3. Provides than an offense of real property fraud cannot be predicted solely on information lawfully disclosed under laws and regulations related to the mortgage lending process.
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13 14	4.	Narrows venue by providing that any real property fraud violation is considered to have been committed in the county in which the real estate property is located or in
15		any county in which a material act was performed in furtherance of the violation.
16	5.	5. Deletes the provision of the bill related to civil forfeitures.
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18	6.	Deletes the provision of the bill that provided a second degree felony penalty for a person who engages in a
19	pattern of mortgage fraud of a conspiracy to engage in pattern of mortgage fraud.	
20	7.	Provides technical and clarifying changes.
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