

By Senator Deutch

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1 A bill to be entitled

2 An act relating to subprime loans; amending s. 494.0078,
3 F.S.; revising terminology; amending s. 494.0079, F.S.;
4 creating, revising, and deleting definitions; amending s.
5 494.00791, F.S.; prohibiting specified terms in subprime
6 loan agreements; limiting prepayment penalties; limiting
7 balloon payments; requiring consideration of borrower's
8 ability to pay; providing factors to be considered;
9 providing requirements for variable rate loans; requiring
10 a certificate of completion for lender to make payments to
11 contractor under a home improvement contract; deleting
12 time limitation prohibiting certain refinancing; deleting
13 provisions relating to open-ended loans; revising
14 provisions relating to modification or deferral fees;
15 prohibiting certain mandatory arbitration clauses;
16 prohibiting fees for providing certain balance
17 information; requiring lenders to provide payoff balances
18 within a specified period upon request; prohibiting
19 certain lender financing of certain insurance and debt
20 cancellation agreements; prohibiting financing of certain
21 fees and charges; requiring a lender to disclose to the
22 borrower the terms and costs associated with a fixed rate
23 loan; prohibiting charging points and fees in certain
24 refinancing; amending s. 494.00792, F.S.; revising
25 required disclosures to borrowers; providing for a right
26 of rescission within a specified period; amending s.
27 494.00794, F.S.; revising provisions relating to lender
28 notices of default; amending s. 494.00796, F.S.; revising
29 provisions relating to corrections and unintentional

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30 violations; creating s. 494.00798, F.S.; providing
31 remedies for violations; providing severability; providing
32 an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Subsection (2) of section 494.0078, Florida
37 Statutes, is amended to read:

38 494.0078 Short title; purposes.--

39 (2) (a) The Legislature finds that abusive mortgage lending
40 has become a problem in this state even though most subprime
41 ~~high-cost~~ home loans do not involve abusive mortgage practices.
42 One of the most common forms of abusive lending is the making of
43 loans that are equity-based rather than income-based. The
44 financing of points and fees in these loans provides immediate
45 income to the originator and encourages borrowers ~~creditors~~ to
46 repeatedly refinance home loans. As long as there is sufficient
47 equity in the home, an abusive lender ~~creditor~~ benefits even if
48 the borrower is unable to make the payments and is forced to
49 refinance. The financing of high points and fees causes the loss
50 of equity in each refinancing and often leads to foreclosure.

51 (b) Abusive lending has threatened the viability of many
52 communities and caused decreases in home ownership. While the
53 marketplace appears to operate effectively for conventional
54 mortgages, too many homeowners find themselves victims of
55 overreaching lenders ~~creditors~~ who provide loans with
56 unnecessarily high costs and terms that are unnecessary to secure
57 repayment of the loan. The Legislature finds that as competition
58 and self-regulation have not eliminated the abusive terms from

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59 | home-secured loans, the consumer protection provisions of this
60 | act are necessary to encourage fair lending.

61 | Section 2. Section 494.0079, Florida Statutes, is amended
62 | to read:

63 | 494.0079 Definitions.--As used in this act:

64 | (1) "Affiliate" means any company that controls, is
65 | controlled by, or is in common control with another company, as
66 | set forth in 12 U.S.C. ss. 1841 et seq. and the regulations
67 | adopted thereunder.

68 | (2) "Annual percentage rate" means the annual percentage
69 | rate for the loan calculated according to the provisions of 15
70 | U.S.C. s. 1606 and the regulations adopted thereunder by the
71 | Federal Reserve Board.

72 | (3) "Bona fide loan discount points" means loan discount
73 | points actually paid by the borrower to the lender for the
74 | purpose of reducing and which, in fact, result in a bona fide
75 | reduction of the interest rate applicable to the loan by a
76 | minimum of 25 basis points per discount point.

77 | ~~(4)(3)~~ "Borrower" means any natural person obligated to
78 | repay a loan, including, but not limited to, a coborrower,
79 | cosignor, or guarantor.

80 | ~~(4) "Bridge loan" means a loan with a maturity of less than~~
81 | ~~18 months that only requires the payment of interest until such~~
82 | ~~time as the entire unpaid balance is due and payable.~~

83 | (5) "Commission" means the Financial Services Commission.

84 | (6) "Fully indexed rate" equals the index rate prevailing
85 | at the time a residential mortgage loan is originated plus the
86 | margin that will apply after the expiration of an introductory
87 | interest rate.

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88 ~~(7) "High-cost home loan" means a home loan as defined in~~
89 ~~15 U.S.C. s. 1602(aa) and regulations adopted thereunder.~~

90 (7) "Home loan" means a loan, including an open-end credit
91 plan, other than a reverse mortgage transaction, in which:

92 (a) The debt is incurred primarily for personal, family, or
93 household purposes; and

94 (b) The loan is secured by either a security interest on a
95 manufactured home or a mortgage deed of trust on real estate in
96 this state upon which there is located or there is to be located
97 a structure or structures:

98 1. Designed principally for occupancy by one to four
99 families; and

100 2. That is or will be occupied by a borrower as the
101 borrower's principal dwelling.

102 (8) "Lender" means any person who makes a subprime high-
103 ~~cost~~ home loan or acts as a mortgage broker or lender, finance
104 company, or retail installment seller with respect to a subprime
105 ~~high-cost~~ home loan, but shall not include any entity chartered
106 by the United States Congress when engaging in secondary market
107 mortgage transactions as an assignee or otherwise.

108 (9)-(6) "Office" means the Office of Financial Regulation of
109 the commission.

110 (10) "Open-end credit plan" means credit extended by a
111 lender under a plan in which the lender reasonably contemplates
112 repeated transactions, may charge interest or otherwise impose a
113 finance charge from time to time on an outstanding unpaid
114 balance, and the amount of credit that may be extended to the
115 obligor during the term of the plan, up to any credit limit set

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116 by the lender, is generally made available to the extent that any
117 outstanding balance is repaid.

118 (11) "Points and fees" means:

119 (a) All items required to be disclosed under 12 C.F.R. s.
120 226.4(a) and (b), as amended, except interest or the time-price
121 differential.

122 (b) All charges for items listed under 12 C.F.R. s.
123 226.4(c) (7), as amended, but only if the lender receives direct
124 or indirect compensation in connection with the charge or the
125 charge is paid to an affiliate of the lender; otherwise, the
126 charges are not included within the meaning of the term "points
127 and fees."

128 (c) All compensation paid directly or indirectly to a
129 mortgage broker, including a broker that originates a loan in its
130 own name in a table-funded transaction. A bona fide sale of a
131 loan in the secondary mortgage market shall not be considered a
132 table-funded transaction, and a table-funded transaction shall
133 not be considered a secondary market transaction.

134 (d) The cost of all premiums financed by the lender,
135 directly or indirectly for any credit life, credit disability,
136 credit unemployment, or credit property insurance, or any other
137 life or health insurance, or any payments financed by the lender
138 directly or indirectly for any debt cancellation or suspension
139 agreement or contract, except that insurance premiums calculated
140 and paid on a monthly basis shall not be considered financed by
141 the lender.

142 (e) The maximum prepayment fees and penalties that may be
143 charged or collected under the terms of the loan documents.

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144 (f) For open-end loans, the term includes those points and
145 fees described in paragraphs (a), (b), and (c) that are charged
146 at loan closing, plus the minimum additional fees the borrower
147 would be required to pay to draw down an amount equal to the
148 total amount, and the maximum prepayment fees and penalties that
149 may be charged or collected under the terms of the loan
150 documents.

151 (12) "Subprime loan" means:

152 (a) For an adjustable rate loan secured by a first lien on
153 a dwelling that can increase in interest rate but not decrease in
154 interest rate below the fully indexed rate at the time of
155 origination, a loan for which the annual percentage rate (APR) is
156 greater than 3 percentage points above the weekly average yield
157 on United States Treasury securities having comparable periods of
158 maturity as of the 15th day of the month immediately preceding
159 the loan closing.

160 (b) For all other loans secured by a first lien on a
161 dwelling, a loan for which the APR is greater than 5 percentage
162 points above the weekly average yield on United States Treasury
163 securities having comparable periods of maturity as of the 15th
164 day of the month immediately preceding the loan closing.

165 (c) For loans secured by a subordinate lien on a dwelling
166 or a mortgage secured solely by a security interest in a
167 manufactured home, a loan for which the APR is greater than 7
168 percentage points above the weekly average yield on United States
169 Treasury securities having comparable periods of maturity as of
170 the 15th day of the month immediately preceding the loan closing.

171 (d)1. For all loans in which the total loan amount is
172 \$30,000 or more, the total points and fees on the loan, excluding

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173 up to two bona fide discount points, paid by the borrower at or
174 before the closing, exceed three 3 percent of the total loan
175 amount; or

176 2. For all loans in which the total loan amount is less
177 than \$30,000, the total points and fees on the loan, excluding up
178 to two bona fide discount points, paid by the borrower at or
179 before closing, exceed the lesser of \$900 or 6 percent of the
180 total loan amount.

181 (13) "Table-funded transaction" means a loan transaction
182 closed by a mortgage broker in the mortgage broker's own name
183 with funds advanced by a person other than the mortgage broker in
184 which the loan is assigned contemporaneously or within one
185 business day of the funding of the loan to the person that
186 advanced the funds.

187 Section 3. Section 494.00791, Florida Statutes, is amended
188 to read:

189 494.00791 Prohibited acts.--

190 (1) PREPAYMENT PENALTIES.--

191 ~~(a)~~ A subprime ~~high-cost~~ home loan may not contain terms
192 that require a borrower to pay a prepayment penalty for paying
193 all or part of the loan principal before the date on which the
194 payment is due.

195 ~~(b) Notwithstanding paragraph (a), a lender making a high-~~
196 ~~cost home loan may include in the loan contract a prepayment fee~~
197 ~~or penalty, for up to the first 36 months after the date of~~
198 ~~consummation of the loan, if:~~

199 ~~1. The borrower has also been offered a choice of another~~
200 ~~product without a prepayment penalty.~~

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201 2. ~~The borrower has been given, at least 3 business days~~
202 ~~prior to the loan consummation, a written disclosure of the terms~~
203 ~~of the prepayment fee or penalty by the lender, including the~~
204 ~~benefit the borrower will receive for accepting the prepayment~~
205 ~~fee or penalty through either a reduced interest rate on the loan~~
206 ~~or reduced points or fees.~~

207 (2) DEFAULT INTEREST RATE.--A subprime ~~high-cost~~ home loan
208 may not provide for a higher interest rate after default on the
209 loan. However, this prohibition does not apply to interest rate
210 changes in a variable rate loan otherwise consistent with the
211 provisions of the loan documents, provided the change in interest
212 rate is not triggered by a default or the acceleration of the
213 interest rate.

214 (3) BALLOON PAYMENTS.--No subprime home loan may contain a
215 scheduled payment that is more than twice as large as the average
216 of earlier scheduled payments. This subsection does not apply
217 when the payment schedule is adjusted to the seasonal or
218 irregular income of the borrower A ~~high-cost~~ home loan having a
219 term of less than 10 years may not contain terms under which the
220 aggregate amount of the regular periodic payments would not fully
221 amortize the outstanding principal balance. However, this
222 prohibition does not apply when the payment schedule is adjusted
223 to account for the seasonal or irregular income of the borrower
224 or if the loan is a bridge loan.

225 (4) NEGATIVE AMORTIZATION.--A subprime ~~high-cost~~ home loan
226 may not contain terms under which the outstanding principal
227 balance will increase at any time over the course of the loan
228 because the regular periodic payments do not cover the full
229 amount of the interest due.

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230 (5) PREPAID PAYMENTS.--A subprime ~~high-cost~~ home loan may
231 not include terms under which more than two periodic payments
232 required under the loan are consolidated and paid in advance from
233 the loan proceeds provided to the borrower.

234 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT ABILITY
235 OF THE BORROWER.--

236 (a) A lender may not make a subprime home loan unless the
237 lender verifies the borrower's reasonable ability to pay the
238 scheduled payments of the following, as applicable:

- 239 1. Principal.
- 240 2. Interest.
- 241 3. Real estate taxes.
- 242 4. Homeowner's insurance.
- 243 5. Assessments.
- 244 6. Mortgage insurance premiums.

245 (b) For loans in which the interest rate may vary, the
246 reasonable ability to pay must be determined based on a fully
247 indexed rate and repayment schedule that achieves full
248 amortization over the life of the loan. For all home loans, the
249 borrower's income and financial resources must be verified by tax
250 returns, payroll receipts, bank records, or other similarly
251 reliable documents. Nothing in this subsection limits a lender's
252 ability to rely on criteria other than the borrower's income and
253 financial resources to establish the borrower's reasonable
254 ability to repay the residential mortgage loan, provided that the
255 other criteria are verified through reasonably reliable methods
256 and documentation. A statement by the borrower to the lender of
257 the borrower's income and resources is not sufficient to
258 establish the existence of the income or resources when verifying

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259 | ~~the reasonable ability to pay. A lender making a high-cost home~~
260 | ~~loan shall not engage in any pattern or practice of extending~~
261 | ~~high-cost home loans to borrowers based upon the borrowers'~~
262 | ~~collateral without regard to the borrowers' ability to repay the~~
263 | ~~loan, including the borrowers' current and expected income,~~
264 | ~~current obligations, and employment.~~

265 | (7) PAYMENTS TO A HOME CONTRACTOR.--A lender shall not make
266 | any payments to a contractor under a home improvement contract
267 | from amounts of a subprime high-cost home loan unless the lender
268 | is presented with a signed and dated completion certificate
269 | showing that the home improvements have been completed and other
270 | than:

271 | (a) ~~In The form of an instrument that~~ is payable to the
272 | borrower or jointly to the borrower and the contractor; or

273 | (b) At the election of the borrower, through ~~by~~ a third-
274 | party escrow agent in accordance with terms established in a
275 | written agreement signed by the borrower, the lender, and the
276 | contractor prior to the date of payment.

277 | (8) DUE-ON-DEMAND CLAUSE.--A subprime high-cost home loan
278 | may not contain a provision that permits the lender, in its sole
279 | discretion, to call or accelerate the indebtedness. This
280 | subsection provision ~~provision~~ does not prohibit acceleration of the loan
281 | due to the borrower's failure to abide by the terms of the loan,
282 | or due to fraud or material misrepresentation by the consumer in
283 | connection with the loan.

284 | (9) ~~FLIPPING REFINANCING WITHIN AN 18-MONTH PERIOD.--~~

285 | (a) A lender, its affiliate, or an assignee shall not
286 | refinance any subprime high-cost home loan to the same borrower
287 | ~~within the first 18 months of the loan~~ when the refinancing does

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288 not have a reasonable benefit to the borrower considering all of
289 the circumstances, including, but not limited to, the terms of
290 both the new and refinanced loans, the cost of the new loan, and
291 the borrower's circumstances.

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

298 ~~(10) OPEN-ENDED LOANS.--A lender shall not make any loan as~~
299 ~~an open-ended loan in order to evade the provisions of this act~~
300 ~~unless such open-ended loans meet the definition in 12 C.F.R. s.~~
301 ~~226.2(a)(20).~~

302 (10)~~(11)~~ RECOMMENDATION OF DEFAULT.--A lender shall not
303 recommend or encourage default on an existing loan or other debt
304 prior to and in connection with the closing or planned closing of
305 a subprime ~~high-cost~~ home loan that refinances all or any portion
306 of such existing loan or debt.

307 (11)~~(12)~~ PROHIBITED DOOR-TO-DOOR LOANS.--A subprime ~~high-~~
308 ~~cost~~ home loan may not be made as a direct result of a potential
309 or future lender or its representative offering or selling a
310 subprime ~~high-cost~~ home loan at the residence of a potential
311 borrower without a prearranged appointment with the potential
312 borrower or the expressed invitation of the potential borrower.
313 This subsection does not apply to mail solicitations that may be
314 received by the potential borrower.

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315 (12)~~(13)~~ LATE PAYMENT FEES.--A lender may not charge a late
316 payment fee for a subprime ~~high-cost~~ home loan except as provided
317 in this subsection:

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

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

322 (c) A late payment fee may not be charged more than once
323 with respect to a single late payment. If a late payment fee is
324 deducted from a payment made on the loan and such deduction
325 causes a subsequent default on a subsequent payment, no late
326 payment fee may be imposed for such default. If a late payment
327 fee has been imposed once with respect to a particular late
328 payment, no such fee shall be imposed with respect to any future
329 payment which would have been timely and sufficient, but for the
330 previous default.

331 (13)~~(14)~~ MODIFICATION OR DEFERRAL FEES.--A lender may not
332 charge a borrower any fees or other charges to modify, renew,
333 extend, or amend a subprime ~~high-cost~~ home loan or to defer any
334 payment due under the terms of a subprime ~~high-cost~~ home loan ~~on~~
335 ~~a minimum of one modification, renewal, extension, or deferral~~
336 ~~per each 12 months of the length of the loan.~~

337 (14) MANDATORY ARBITRATION CLAUSE.--No subprime home loan
338 may be subject to a mandatory arbitration clause that limits in
339 any way the right of the borrower to seek relief through the
340 judicial process for any and all claims and defenses the borrower
341 may have against the lender, broker, or other party involved in
342 the loan transaction.

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343 (15) BALANCES; FEES; TIME.--No lender may charge a fee for
344 informing or transmitting to any person the balance due to pay
345 off a home loan or to provide a release upon prepayment. Payoff
346 balances shall be provided within a reasonable time, but in any
347 event no more than 7 business days after the request.

348 (16) INSURANCE AND DEBT CANCELLATION AGREEMENTS.--No lender
349 making a subprime home loan shall finance, directly or
350 indirectly, any credit life, credit disability, credit
351 unemployment, or credit property insurance, or any other life or
352 health insurance, or any payments directly or indirectly for any
353 debt cancellation or suspension agreement or contract, except
354 that insurance premiums or debt cancellation or suspension fees
355 calculated and paid on a monthly basis shall not be considered
356 financed by the lender.

357 (17) FINANCING FEES AND CHARGES.--In making a subprime home
358 loan, a lender may not directly or indirectly finance:

359 (a) Any points and fees; or

360 (b) Any other charges payable to third parties.

361 (18) NOTICE OF FIXED RATE LOAN.--Before the closing, a
362 lender must disclose to the borrower the terms and costs
363 associated with a fixed rate loan from the same lender at the
364 lowest annual percentage rate for which the borrower qualifies.

365 (19) NO BENEFIT FROM REFINANCING EXISTING SUBPRIME HOME
366 LOAN WITH A NEW SUBPRIME HOME LOAN.--A lender may not charge a
367 borrower points and fees in connection with a subprime home loan
368 if the proceeds of the subprime home loan are used to refinance
369 an existing subprime home loan held by the same lender as note
370 holder.

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371 Section 4. Section 494.00792, Florida Statutes, is amended
372 to read:

373 494.00792 Required disclosures for subprime ~~high-cost~~ home
374 loans.--

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

377 (a) Notice to borrower.--A lender making a subprime ~~high-~~
378 ~~cost~~ home loan shall provide the following written a notice in at
379 least 12-point boldfaced type to a borrower acknowledged in
380 writing and signed by the borrower, not later than the time the
381 notice provided in 12 C.F.R. s. 226.31(c) is required in
382 ~~substantially the following form:~~

383
384 NOTICE TO BORROWER
385

386 If you accept ~~obtain~~ this subprime ~~high-cost~~ home loan, the
387 lender will have a mortgage on your home. You could lose your
388 home and any money you have put into it if you do not meet your
389 obligations under the loan. You should be aware that you might be
390 able to obtain a loan at a lower cost.

391 Mortgage loan rates and closing costs and fees vary based on
392 many factors, including your particular credit and financial
393 circumstances, your employment history, the loan-to-value
394 requested, and the type of property that will secure your loan.
395 The loan rate and fees could also vary based upon which lender or
396 broker you select. As a borrower, you should shop around and
397 compare loan rates and fees.

398 You should also consider consulting a qualified independent
399 credit counselor or other experienced financial adviser regarding

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400 the rates, fees, and provisions of this mortgage loan before you
401 proceed. You should contact the United States Department of
402 Housing and Urban Development for a list of credit counselors
403 available in your area.

404 You are not required to complete this agreement merely
405 because you have received these disclosures or have signed a loan
406 application.

407 Borrowing for the purpose of debt consolidation can be an
408 appropriate financial management tool. However, if you continue
409 to incur significant new credit card charges or other debts after
410 this subprime ~~high-cost~~ home loan is closed and then experience
411 financial difficulties, you could lose your home and any equity
412 you have in it if you do not meet your mortgage loan obligations.

413 Remember that property taxes and homeowners' insurance are
414 your responsibility. Not all lenders provide escrow services for
415 these payments. You should ask your lender about these services.

416 Also, your payments on existing debts contribute to your
417 credit rating. You should not accept any advice to ignore your
418 regular payments to your existing creditors.

419 (b) Annual percentage rate.--A lender making a subprime
420 ~~high-cost~~ home loan shall disclose:

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

423 2. In the case of any other credit transaction, the annual
424 percentage rate, the amount of the regular monthly payment ~~and~~
425 ~~the amount of any balloon payment permitted under this section,~~ a
426 statement that the interest rate and monthly payment may
427 increase, and the amount of the maximum monthly payment based
428 upon the maximum interest rate allowed pursuant to law.

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429 (c) Notice to purchasers and assignees.--All subprime high-
430 ~~cost~~ home loans shall contain the following notice:

431 Notice: This is a mortgage subject to the provisions of the
432 Florida Fair Lending Act. Purchasers and assignees of this
433 mortgage could be liable for all claims and defenses with respect
434 to the mortgage which the borrower could assert against the
435 lender ~~creditor~~.

436 (2) TIMING OF DISCLOSURE.--

437 (a) The disclosure required by this subsection shall be
438 given not less than 3 business days prior to the consummation of
439 the subprime high- ~~cost~~ home loan.

440 (b) New disclosures are required when, after disclosure is
441 made, the lender making the subprime high- ~~cost~~ home loan changes
442 the terms of the extension of credit, including if such changes
443 make the original disclosures inaccurate, unless new disclosures
444 are provided that meet the requirements of this section.

445 (c) In addition to any other right to rescission, the
446 borrower has the right to rescind the subprime home loan until
447 midnight of the 3rd business day after consummation, delivery of
448 the rescission notice, or delivery of all material disclosures,
449 whichever occurs last. The lender shall provide appropriate forms
450 for the borrower to exercise his or her right to rescission using
451 the notice and forms required by 15 U.S.C. s. 1635(a) and
452 implementing regulations.

453 ~~(c) A lender may provide new disclosures pursuant to~~
454 ~~paragraph (b) by telephone, if:~~

455 1. ~~The change is initiated by the borrower.~~

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

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457 ~~a. The lender provides the disclosures in writing to the~~
458 ~~borrower.~~

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

462 ~~(d) A creditor must disclose to any high-cost home loan~~
463 ~~borrower the rights of the borrower to rescind the high-cost home~~
464 ~~loan within 3 business days pursuant to 15 U.S.C. s. 1635(a) and~~
465 ~~shall provide appropriate forms for the borrower to exercise his~~
466 ~~or her right to rescission. The notice, forms, and provisions~~
467 ~~thereof must be in accordance with the requirements of 15 U.S.C.~~
468 ~~s. 1635(a).~~

469 Section 5. Subsection (1), paragraphs (c) and (d) of
470 subsection (2), and subsection (3) of section 494.00794, Florida
471 Statutes, are amended to read:

472 494.00794 Right to cure subprime ~~high-cost~~ home loans.--

473 (1) RIGHT TO REINSTATE.--For a subprime ~~high-cost~~ home
474 loan, if a lender asserts that grounds for acceleration exist and
475 requires the payment in full of all sums secured by the security
476 instrument, the borrower, or anyone authorized to act on the
477 borrower's behalf, shall have the right, during the 45-day period
478 set forth in subsection (2), to cure the default and reinstate
479 the home loan by tendering the amount or performance as specified
480 in this section. ~~However, once a lender has provided two such~~
481 ~~notices as required by this section, for two separate incidents,~~
482 ~~a lender is not thereafter required to provide the notice~~
483 ~~required by this section, and the borrower is not entitled by~~
484 ~~this section to cure the default, for a third or subsequent~~
485 ~~incident for which the lender asserts that grounds exist for~~

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486 ~~acceleration of the loan and repayment in full.~~ Cure of default
487 as provided in this section shall reinstate the borrower to the
488 same position as if the default had not occurred and shall
489 nullify, as of the date of the cure, any acceleration of any
490 obligation under the security instrument or note arising from the
491 default.

492 (2) GROUNDS FOR REINSTATEMENT.--Before any action filed to
493 foreclose upon the home or other action is taken to seize or
494 transfer ownership of the home, a notice of the right to cure the
495 default must be delivered to the borrower at the address of the
496 property upon which any security exists for the home loan by
497 postage prepaid certified United States mail, return receipt
498 requested, which notice is effective upon deposit in the United
499 States mail, and shall inform the borrower:

500 (c) That if the borrower does not cure the default by the
501 date specified, the lender ~~creditor~~ may take steps to terminate
502 the borrower's ownership of the property by requiring payment in
503 full of the home loan and commencing a foreclosure proceeding or
504 other action to seize the home.

505 (d) Of the name and address of the lender ~~creditor~~ and the
506 telephone number of a representative of the lender ~~creditor~~ whom
507 the borrower may contact if the borrower disagrees with the
508 lender's ~~creditor's~~ assertion that a default has occurred or the
509 correctness of the lender's ~~creditor's~~ calculation of the amount
510 required to cure the default.

511 (3) FEES.--To cure a default under this section, a borrower
512 shall not be required to pay any charge, fee, or penalty
513 attributable to the exercise of the right to cure a default as
514 provided for in this section, other than the fees specifically

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515 allowed by this act. The borrower shall not be liable for any
516 attorney's fees or costs relating to the borrower's default that
517 are incurred by the lender ~~creditor~~ prior to or during the 45-day
518 period set forth in paragraph (2)(b).

519 Section 6. Section 494.00796, Florida Statutes, is amended
520 to read:

521 494.00796 Corrections and unintentional violations
522 Enforcement.--

523 ~~(1) Any person or the agent, officer, or other~~
524 ~~representative of any person committing a material violation of~~
525 ~~the provisions of this act shall forfeit the entire interest~~
526 ~~charged in the high-cost home loan or contracted to be charged or~~
527 ~~received, and only the principal sum of such high-cost home loan~~
528 ~~can be enforced in any court in this state, either at law or in~~
529 ~~equity.~~

530 ~~(2) A lender ~~creditor~~ in a subprime home loan who, when~~
531 ~~acting in good faith, fails to comply with the provisions of this~~
532 ~~act shall not be deemed to have violated this act if the lender~~
533 ~~creditor establishes that:~~

534 (1) Within 30 days after the loan closing, and prior to
535 receiving any notice from the borrower of the compliance failure,
536 the lender has made appropriate restitution to the borrower, and
537 appropriate adjustments are made to the loan; or

538 (2) Within 60 days after the loan closing and prior to
539 receiving any notice from the borrower of the compliance failure,
540 and the compliance failure was not intentional and resulted from
541 a bona fide error notwithstanding the maintenance of procedures
542 reasonably adapted to avoid such errors, the borrower is notified
543 of the compliance failure, appropriate restitution is made to the

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544 borrower, and appropriate adjustments are made to the loan.
545 ~~within 60 days after receiving any notice from the borrower of~~
546 ~~the compliance failure, which compliance failure was not~~
547 ~~intentional and resulted from a bona fide error notwithstanding~~
548 ~~the maintenance of procedures reasonably adapted to avoid such~~
549 ~~errors, the borrower has been notified of the compliance failure,~~
550 ~~appropriate restitution has been made to the borrower, and~~
551 ~~appropriate adjustments are made to the loan.~~ Bona fide errors
552 shall include, but not be limited to, clerical, calculation,
553 computer malfunction and programming, and printing errors. An
554 error of legal judgment with respect to a person's obligations
555 under this section is not a bona fide error.

556 ~~(3) The remedies provided in this section are cumulative.~~
557 Section 7. Section 494.00789, Florida Statutes, is created
558 to read:

559 494.00789 Remedies.--Any violation of this act constitutes
560 a violation of the Florida Deceptive and Unfair Trade Practices
561 Act. All remedies under that act are available for an action
562 under that act.

563 Section 8. If any provision of this act or its application
564 to any person or circumstance is held invalid, the invalidity
565 does not affect other provisions or applications of the act which
566 can be given effect without the invalid provision or application,
567 and to this end the provisions of this act are severable.

568 Section 9. This act shall take effect October 1, 2008.