

1 A bill to be entitled
 2 An act relating to lending practices; amending s.
 3 494.00795, F.S.; providing an exception to enforcement of
 4 the Florida Fair Lending Act; amending s. 494.00796, F.S.;
 5 providing for private actions for violations of the
 6 Florida Fair Lending Act; providing for awards of damages,
 7 court costs, and attorney's fees; amending s. 697.08,
 8 F.S.; providing for private actions for violations of
 9 prohibitions on equity skimming; providing for awards of
 10 damages, court costs, and attorney's fees; providing an
 11 effective date.

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

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 15 Section 1. Paragraph (a) of subsection (1) of section
 16 494.00795, Florida Statutes, is amended to read:

17 494.00795 Powers and duties of the commission and office;
 18 investigations; examinations; injunctions; orders.--

19 (1) (a) With the exception of individual remedies as
 20 provided in s. 494.00796, the commission and office are
 21 responsible for the administration and enforcement of this act.

22 Section 2. Section 494.00796, Florida Statutes, is amended
 23 to read:

24 494.00796 Enforcement.--

25 ~~(1) Any person or the agent, officer, or other~~
 26 ~~representative of any person committing a material violation of~~
 27 ~~the provisions of this act shall forfeit the entire interest~~
 28 ~~charged in the high cost home loan or contracted to be charged~~

29 ~~er received, and only the principal sum of such high cost home~~
 30 ~~loan can be enforced in any court in this state, either at law~~
 31 ~~or in equity.~~

32 (1)~~(2)~~ A creditor in a home loan who, when acting in good
 33 faith, fails to comply with the provisions of this act shall not
 34 be deemed to have violated this act if the creditor establishes
 35 that within 60 days after receiving any notice from the borrower
 36 of the compliance failure, which compliance failure was not
 37 intentional and resulted from a bona fide error notwithstanding
 38 the maintenance of procedures reasonably adapted to avoid such
 39 errors, the borrower has been notified of the compliance
 40 failure, appropriate restitution has been made to the borrower,
 41 and appropriate adjustments are made to the loan. Bona fide
 42 errors shall include, but not be limited to, clerical,
 43 calculation, computer malfunction and programming, and printing
 44 errors. An error of legal judgment with respect to a person's
 45 obligations under this section is not a bona fide error.

46 (2) Without regard to any other remedy or relief to which
 47 a person is entitled, anyone aggrieved by a violation this act
 48 may bring an action for recovery of treble damages, plus
 49 attorney's fees and court costs as provided in subsection (3),
 50 against any person or the agent, officer, or other
 51 representative of any person who has knowingly violated this
 52 act. However, only actual damages, plus attorney's fees and
 53 court costs, are recoverable under this section against a person
 54 or the agent, officer, or other representative of any person who
 55 has violated this act without actual knowledge.

56 (3) (a) In any civil litigation resulting from a violation
 57 of this act, the prevailing party, after judgment in the trial
 58 court and exhaustion of all appeals, if any, may receive his or
 59 her reasonable attorney's fees and court costs from the
 60 nonprevailing party.

61 (b) The attorney for the prevailing party shall submit a
 62 sworn affidavit of his or her time spent on the case and his or
 63 her costs incurred for all the motions, hearings, and appeals to
 64 the trial judge who presided over the civil case.

65 (c) The trial judge may award the prevailing party the sum
 66 of reasonable costs incurred in the action plus a reasonable
 67 legal fee for the hours actually spent on the case as sworn to
 68 in an affidavit.

69 (d) Any award of attorney's fees or court costs shall
 70 become a part of the judgment and subject to execution as the
 71 law allows.

72 ~~(3) The remedies provided in this section are cumulative.~~

73 Section 3. Section 697.08, Florida Statutes, is amended to
 74 read:

75 697.08 Equity skimming.--

76 (1) It is unlawful for any person, with intent to defraud
 77 the owner of real property, to engage in equity skimming, which
 78 is, to:

79 (a) Purchase, within a 3-year period, two or more single-
 80 family dwellings, two-family dwellings, three-family dwellings,
 81 or four-family dwellings, or a combination thereof, that are
 82 subject to a loan that is in default at the time of purchase or

83 within 1 year after the time of purchase, which loan is secured
 84 by a mortgage or deed of trust;

85 (b) Fail to make payments under the mortgage or deed of
 86 trust as the payments become due, regardless of whether the
 87 purchaser is obligated on the loan; and

88 (c) Apply, or authorize the application of, rents from
 89 such dwellings for the person's own use.

90 (2) A violation of subsection (1) constitutes a felony of
 91 the third degree, punishable as provided in s. 775.082, s.
 92 775.083, or s. 775.084.

93 (3) Without regard to any other remedy or relief to which
 94 a person is entitled, anyone aggrieved by a violation of
 95 subsection (1) may bring an action for recovery of treble
 96 damages, plus attorney's fees and court costs as provided in
 97 subsection (4), against a person who has violated subsection
 98 (1).

99 (4) (a) In any civil litigation resulting from a violation
 100 of subsection (1), the prevailing party, after judgment in the
 101 trial court and exhaustion of all appeals, if any, may receive
 102 his or her reasonable attorney's fees and court costs from the
 103 nonprevailing party.

104 (b) The attorney for the prevailing party shall submit a
 105 sworn affidavit of his or her time spent on the case and his or
 106 her costs incurred for all the motions, hearings, and appeals to
 107 the trial judge who presided over the civil case.

108 (c) The trial judge may award the prevailing party the sum
 109 of reasonable costs incurred in the action plus a reasonable

HB 381

2008

110 | legal fee for the hours actually spent on the case as sworn to
111 | in an affidavit.

112 | (d) Any award of attorney's fees or court costs shall
113 | become a part of the judgment and subject to execution as the
114 | law allows.

115 | Section 4. This act shall take effect July 1, 2008.