

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; deleting
10 time limitation prohibiting certain refinancing; deleting
11 provisions relating to open-ended loans; revising
12 provisions relating to modification or deferral fees;
13 prohibiting certain mandatory arbitration clauses;
14 prohibiting fees for providing certain balance
15 information; requiring lenders to provide payoff balances
16 within a specified period upon request; prohibiting
17 certain lender financing of certain insurance and debt
18 cancellation agreements; prohibiting financing of certain
19 fees and charges; prohibiting charging points and fees in
20 certain refinancing; requiring certain disclosures before
21 closing an adjustable rate loan concerning the fixed rate
22 loans available to the borrower; amending s. 494.00792,
23 F.S.; revising required disclosures to borrowers;
24 providing for a right of rescission within a specified
25 period; amending s. 494.00793, F.S.; revising provisions
26 relating to applicability of remedies; 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
 30 violations; creating s. 494.00798, F.S.; providing for
 31 civil remedies for violations; creating s. 494.00799,
 32 F.S.; prohibiting intentional violations of specified
 33 provisions; providing penalties; providing severability;
 34 providing an effective date.

35

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

37

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

40 494.0078 Short title; purposes.--

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

53 (b) Abusive lending has threatened the viability of many
 54 communities and caused decreases in home ownership. While the
 55 marketplace appears to operate effectively for conventional
 56 mortgages, too many homeowners find themselves victims of

HB 979

2008

57 | overreaching lenders ~~creditors~~ who provide loans with
 58 | unnecessarily high costs and terms that are unnecessary to
 59 | secure repayment of the loan. The Legislature finds that as
 60 | competition and self-regulation have not eliminated the abusive
 61 | terms from home-secured loans, the consumer protection
 62 | provisions of this act are necessary to encourage fair lending.

63 | Section 2. Section 494.0079, Florida Statutes, is amended
 64 | to read:

65 | 494.0079 Definitions.--As used in this act:

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

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

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

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

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

85 (5) "Commission" means the Financial Services Commission.

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

90 ~~(7) "High-cost home loan" means a home loan as defined in~~
 91 ~~15 U.S.C. s. 1602(aa) and regulations adopted thereunder.~~

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

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

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

100 1. Designed principally for occupancy by one to four
 101 families; and

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

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

110 (9) ~~(6)~~ "Office" means the Office of Financial Regulation
 111 of the commission.

HB 979

2008

112 (10) "Open-end credit plan" means credit extended by a
113 lender under a plan in which:

114 (a) The lender reasonably contemplates repeated
115 transactions;

116 (b) The lender may charge interest or otherwise impose a
117 finance charge from time to time on an outstanding unpaid
118 balance; and

119 (c) The amount of credit that may be extended to the
120 obligor during the term of the plan, up to any credit limit set
121 by the lender, is generally made available to the extent that
122 any outstanding balance is repaid.

123 (11) "Points and fees" means:

124 (a) All items required to be disclosed under 12 C.F.R. ss.
125 226.4(a) and (b), as amended, except interest or the time-price
126 differential.

127 (b) All charges for items listed under 12 C.F.R. s.
128 226.4(c)(7), as amended, but only if the lender receives direct
129 or indirect compensation in connection with the charge or the
130 charge is paid to an affiliate of the lender; otherwise, the
131 charges are not included within the meaning of the term "points
132 and fees."

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

139 (d) The maximum prepayment fees and penalties that may be
140 charged or collected under the terms of the loan documents.

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

148 (12) "Subprime loan" means:

149 (a) For an adjustable rate loan secured by a first lien on
150 a dwelling that can increase in interest rate but not decrease
151 in interest rate below the fully indexed rate at the time of
152 origination, a loan for which the annual percentage rate (APR)
153 is greater than 2 percentage points above the weekly average
154 yield on 5-year United States Treasury securities as of the 15th
155 day of the month immediately preceding the loan closing.

156 (b) For all other loans secured by a first lien on a
157 dwelling, a loan for which the APR is greater than 3 percentage
158 points above the weekly average yield on 5-year United States
159 Treasury securities as of the 15th day of the month immediately
160 preceding the loan closing.

161 (c) For loans secured by a subordinate lien on a dwelling
162 or a mortgage secured solely by a security interest in a
163 manufactured home, a loan for which the APR is greater than 5
164 percentage points above the weekly average yield on 5-year
165 United States Treasury securities as of the 15th day of the
166 month immediately preceding the loan closing.

167 (d) For all loans in which the total loan amount is
 168 \$30,000 or more, the total points and fees on the loan,
 169 excluding up to 2 bona fide discount points, paid by the
 170 borrower at or before the closing exceed 3 percent of the total
 171 loan amount; and for all loans in which the total loan amount is
 172 less than \$30,000, the total points and fees on the loan,
 173 excluding up to 2 bona fide discount points, paid by the
 174 borrower at or before closing exceed the lesser of \$900 or 6
 175 percent of the total loan amount.

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

182 Section 3. Section 494.00791, Florida Statutes, is amended
 183 to read:

184 494.00791 Prohibited acts.--

185 (1) PREPAYMENT PENALTIES.--

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

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

HB 979

2008

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

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

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

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

220 (4) NEGATIVE AMORTIZATION.--A subprime high cost home loan
221 may not contain terms under which the outstanding principal

222 balance will increase at any time over the course of the loan
 223 because the regular periodic payments do not cover the full
 224 amount of the interest due.

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

229 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT ABILITY
 230 OF THE BORROWER.--

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

- 234 1. Principal.
- 235 2. Interest.
- 236 3. Real estate taxes.
- 237 4. Homeowner's insurance.
- 238 5. Assessments.
- 239 6. Mortgage insurance premiums.

240 (b) For loans in which the interest rate may vary, the
 241 reasonable ability to pay must be determined based on a fully
 242 indexed rate and repayment schedule that achieves full
 243 amortization over the life of the loan. For all home loans, the
 244 borrower's income and financial resources must be verified by
 245 tax returns, payroll receipts, bank records, or other similarly
 246 reliable documents. Nothing in this subsection limits a lender's
 247 ability to rely on criteria other than the borrower's income and
 248 financial resources to establish the borrower's reasonable
 249 ability to repay the residential mortgage loan, provided that

250 the other criteria are verified through reasonably reliable
 251 methods and documentation. A statement by the borrower to the
 252 lender of the borrower's income and resources is not sufficient
 253 to establish the existence of the income or resources when
 254 verifying the reasonable ability to pay. ~~A lender making a high-~~
 255 ~~cost home loan shall not engage in any pattern or practice of~~
 256 ~~extending high cost home loans to borrowers based upon the~~
 257 ~~borrowers' collateral without regard to the borrowers' ability~~
 258 ~~to repay the loan, including the borrowers' current and expected~~
 259 ~~income, current obligations, and employment.~~

260 (7) PAYMENTS TO A HOME CONTRACTOR.--A lender shall not
 261 make any payments to a contractor under a home improvement
 262 contract from amounts of a subprime ~~high-cost~~ home loan ~~other~~
 263 ~~than:~~

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

266 (b) At the election of the borrower, through ~~by~~ a third-
 267 party escrow agent in accordance with terms established in a
 268 written agreement signed by the borrower, the lender, and the
 269 contractor prior to the date of payment.

270 (8) DUE-ON-DEMAND CLAUSE.--A subprime ~~high-cost~~ home loan
 271 may not contain a provision that permits the lender, in its sole
 272 discretion, to call or accelerate the indebtedness. This
 273 subsection ~~provision~~ does not prohibit acceleration of the loan
 274 due to the borrower's failure to abide by the terms of the loan,
 275 or due to fraud or material misrepresentation by the consumer in
 276 connection with the loan.

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

278 (a) A lender, its affiliate, or an assignee shall not
 279 refinance any subprime ~~high-cost~~ home loan to the same borrower
 280 ~~within the first 18 months of the loan~~ when the refinancing does
 281 not have a reasonable benefit to the borrower considering all of
 282 the circumstances, including, but not limited to, the terms of
 283 both the new and refinanced loans, the cost of the new loan, and
 284 the borrower's circumstances.

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

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

295 (10)~~(11)~~ RECOMMENDATION OF DEFAULT.--A lender shall not
 296 recommend or encourage default on an existing loan or other debt
 297 prior to and in connection with the closing or planned closing
 298 of a subprime ~~high-cost~~ home loan that refinances all or any
 299 portion of such existing loan or debt.

300 (11)~~(12)~~ PROHIBITED DOOR-TO-DOOR LOANS.--A subprime ~~high-~~
 301 ~~cost~~ home loan may not be made as a direct result of a potential
 302 or future lender or its representative offering or selling a
 303 subprime ~~high-cost~~ home loan at the residence of a potential
 304 borrower without a prearranged appointment with the potential
 305 borrower or the expressed invitation of the potential borrower.

HB 979

2008

306 This subsection does not apply to mail solicitations that may be
307 received by the potential borrower.

308 ~~(12)-(13)~~ LATE PAYMENT FEES.--A lender may not charge a
309 late payment fee for a subprime ~~high-cost~~ home loan except as
310 provided in this subsection:

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

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

315 (c) A late payment fee may not be charged more than once
316 with respect to a single late payment. If a late payment fee is
317 deducted from a payment made on the loan and such deduction
318 causes a subsequent default on a subsequent payment, no late
319 payment fee may be imposed for such default. If a late payment
320 fee has been imposed once with respect to a particular late
321 payment, no such fee shall be imposed with respect to any future
322 payment which would have been timely and sufficient, but for the
323 previous default.

324 ~~(13)-(14)~~ MODIFICATION OR DEFERRAL FEES.--A lender may not
325 charge a borrower any fees or other charges to modify, renew,
326 extend, or amend a subprime ~~high-cost~~ home loan or to defer any
327 payment due under the terms of a subprime ~~high-cost~~ home loan ~~on~~
328 ~~a minimum of one modification, renewal, extension, or deferral~~
329 ~~per each 12 months of the length of the loan.~~

330 (14) MANDATORY ARBITRATION CLAUSE.--No subprime home loan
331 may be subject to a mandatory arbitration clause that limits in
332 any way the right of the borrower to seek relief through the
333 judicial process for any and all claims and defenses the

HB 979

2008

334 borrower may have against the lender, broker, or other party
 335 involved in the loan transaction.

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

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

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

- 352 (a) Any points and fees; or
- 353 (b) Any other charges payable to third parties.

354 (18) NO BENEFIT FROM REFINANCING EXISTING SUBPRIME HOME
 355 LOAN WITH A NEW HIGH-COST HOME LOAN.--A lender may not charge a
 356 borrower points and fees in connection with a subprime home loan
 357 if the proceeds of the subprime home loan are used to refinance
 358 an existing subprime home loan held by the same lender as note
 359 holder.

360 (19) NOTICE OF FIXED RATE LOAN.--Before making an
 361 adjustable rate loan, a lender must disclose to the borrower the

362 terms and costs associated with a fixed rate loan from the same
 363 lender at the lowest annual percentage rate for which the
 364 borrower qualifies.

365 Section 4. Section 494.00792, Florida Statutes, is amended
 366 to read:

367 494.00792 Required disclosures for subprime ~~high-cost~~ home
 368 loans.--

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

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

377
 378 NOTICE TO BORROWER
 379

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

385 Mortgage loan rates and closing costs and fees vary based
 386 on many factors, including your particular credit and financial
 387 circumstances, your employment history, the loan-to-value
 388 requested, and the type of property that will secure your loan.
 389 The loan rate and fees could also vary based upon which lender

HB 979

2008

390 or broker you select. As a borrower, you should shop around and
391 compare loan rates and fees.

392 You should also consider consulting a qualified independent
393 credit counselor or other experienced financial adviser
394 regarding the rates, fees, and provisions of this mortgage loan
395 before you proceed. You should contact the United States
396 Department of Housing and Urban Development for a list of credit
397 counselors available in your area.

398 You are not required to complete this agreement merely
399 because you have received these disclosures or have signed a
400 loan application.

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

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

411 Also, your payments on existing debts contribute to your
412 credit rating. You should not accept any advice to ignore your
413 regular payments to your existing creditors.

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

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

418 2. In the case of any other credit transaction, the annual
 419 percentage rate, the amount of the regular monthly payment ~~and~~
 420 ~~the amount of any balloon payment permitted under this section,~~
 421 a statement that the interest rate and monthly payment may
 422 increase, and the amount of the maximum monthly payment based
 423 upon the maximum interest rate allowed pursuant to law.

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

426 Notice: This is a mortgage subject to the provisions of the
 427 Florida Fair Lending Act. Purchasers and assignees of this
 428 mortgage could be liable for all claims and defenses with
 429 respect to the mortgage which the borrower could assert against
 430 the lender ~~creditor~~.

431 (2) TIMING OF DISCLOSURE.--

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

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

440 (c) In addition to any other right to rescission, the
 441 borrower has the right to rescind the subprime home loan until
 442 midnight of the 3rd business day after consummation, delivery of
 443 the rescission notice, or delivery of all material disclosures,
 444 whichever occurs last. The lender shall provide appropriate
 445 forms for the borrower to exercise his or her right to

446 rescission using the notice and forms required by 15 U.S.C. s.
 447 1635(a) and implementing regulations.

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

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

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

452 ~~a. The lender provides the disclosures in writing to the~~
 453 ~~borrower.~~

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

457 ~~(d) A creditor must disclose to any high cost home loan~~
 458 ~~borrower the rights of the borrower to rescind the high cost~~
 459 ~~home loan within 3 business days pursuant to 15 U.S.C. s.~~
 460 ~~1635(a) and shall provide appropriate forms for the borrower to~~
 461 ~~exercise his or her right to rescission. The notice, forms, and~~
 462 ~~provisions thereof must be in accordance with the requirements~~
 463 ~~of 15 U.S.C. s. 1635(a).~~

464 Section 5. Section 494.00793, Florida Statutes, is amended
 465 to read:

466 494.00793 Liability ~~of purchasers and~~
 467 assignees.--Notwithstanding any provision of any other law, the
 468 remedies provided by this act apply to the lender; any director,
 469 officer, employee, or controlling stockholder of, or agent for,
 470 a lender who personally participated in the making or approving
 471 of a subprime home loan; and any other persons to whom this act
 472 applies and who violated the requirements of this act. Any
 473 person who purchases or is otherwise assigned a subprime high-

474 ~~est~~ home loan shall be subject to all claims and defenses with
 475 respect to that loan ~~mortgage~~ that the borrower could assert
 476 against the original lender ~~creditor~~ of the loan ~~mortgage~~, to
 477 ~~the same extent and subject to the same limitations that a~~
 478 ~~borrower of a high-cost home loan may assert against an assignee~~
 479 ~~or purchaser pursuant to 15 U.S.C. s. 1641.~~

480 Section 6. Subsection (1), paragraphs (c) and (d) of
 481 subsection (2), and subsection (3) of section 494.00794, Florida
 482 Statutes, are amended to read:

483 494.00794 Right to cure subprime ~~high-cost~~ home loans.--

484 (1) RIGHT TO REINSTATE.--For a subprime ~~high-cost~~ home
 485 loan, if a lender asserts that grounds for acceleration exist
 486 and requires the payment in full of all sums secured by the
 487 security instrument, the borrower, or anyone authorized to act
 488 on the borrower's behalf, shall have the right, during the 45-
 489 day period set forth in subsection (2), to cure the default and
 490 reinstate the home loan by tendering the amount or performance
 491 as specified in this section. ~~However, once a lender has~~
 492 ~~provided two such notices as required by this section, for two~~
 493 ~~separate incidents, a lender is not thereafter required to~~
 494 ~~provide the notice required by this section, and the borrower is~~
 495 ~~not entitled by this section to cure the default, for a third or~~
 496 ~~subsequent incident for which the lender asserts that grounds~~
 497 ~~exist for acceleration of the loan and repayment in full. Cure~~
 498 of default as provided in this section shall reinstate the
 499 borrower to the same position as if the default had not occurred
 500 and shall nullify, as of the date of the cure, any acceleration

HB 979

2008

501 of any obligation under the security instrument or note arising
502 from the default.

503 (2) GROUNDS FOR REINSTATEMENT.--Before any action filed to
504 foreclose upon the home or other action is taken to seize or
505 transfer ownership of the home, a notice of the right to cure
506 the default must be delivered to the borrower at the address of
507 the property upon which any security exists for the home loan by
508 postage prepaid certified United States mail, return receipt
509 requested, which notice is effective upon deposit in the United
510 States mail, and shall inform the borrower:

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

516 (d) Of the name and address of the lender ~~creditor~~ and the
517 telephone number of a representative of the lender ~~creditor~~ whom
518 the borrower may contact if the borrower disagrees with the
519 lender's ~~creditor's~~ assertion that a default has occurred or the
520 correctness of the lender's ~~creditor's~~ calculation of the amount
521 required to cure the default.

522 (3) FEES.--To cure a default under this section, a
523 borrower shall not be required to pay any charge, fee, or
524 penalty attributable to the exercise of the right to cure a
525 default as provided for in this section, other than the fees
526 specifically allowed by this act. The borrower shall not be
527 liable for any attorney's fees or costs relating to the
528 borrower's default that are incurred by the lender ~~creditor~~

529 prior to or during the 45-day period set forth in paragraph
 530 (2) (b) .

531 Section 7. Section 494.00796, Florida Statutes, is amended
 532 to read:

533 494.00796 Corrections and unintentional violations
 534 Enforcement. --

535 ~~(1) Any person or the agent, officer, or other~~
 536 ~~representative of any person committing a material violation of~~
 537 ~~the provisions of this act shall forfeit the entire interest~~
 538 ~~charged in the high-cost home loan or contracted to be charged~~
 539 ~~or received, and only the principal sum of such high-cost home~~
 540 ~~loan can be enforced in any court in this state, either at law~~
 541 ~~or in equity.~~

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

546 (1) Within 30 days after the loan closing, and prior to
 547 receiving any notice from the borrower of the compliance
 548 failure, the lender has made appropriate restitution to the
 549 borrower, and appropriate adjustments are made to the loan; or

550 (2) Within 60 days after the loan closing and prior to
 551 receiving any notice from the borrower of the compliance
 552 failure, and the compliance failure was not intentional and
 553 resulted from a bona fide error notwithstanding the maintenance
 554 of procedures reasonably adapted to avoid such errors, the
 555 borrower is notified of the compliance failure, appropriate
 556 restitution is made to the borrower, and appropriate adjustments

557 ~~are made to the loan. within 60 days after receiving any notice~~
558 ~~from the borrower of the compliance failure, which compliance~~
559 ~~failure was not intentional and resulted from a bona fide error~~
560 ~~notwithstanding the maintenance of procedures reasonably adapted~~
561 ~~to avoid such errors, the borrower has been notified of the~~
562 ~~compliance failure, appropriate restitution has been made to the~~
563 ~~borrower, and appropriate adjustments are made to the loan. Bona~~
564 ~~fide errors shall include, but not be limited to, clerical,~~
565 ~~calculation, computer malfunction and programming, and printing~~
566 ~~errors. An error of legal judgment with respect to a person's~~
567 ~~obligations under this section is not a bona fide error.~~

568 ~~(3) The remedies provided in this section are cumulative.~~
569 Section 8. Section 494.00798, Florida Statutes, is created
570 to read:

571 494.00798 Civil remedies.--

572 (1) Any violation of this act constitutes a violation of
573 the Florida Deceptive and Unfair Trade Practices Act and all
574 remedies under that act are available for an action under that
575 act.

576 (2) Any person found to have violated this act shall be
577 liable to the borrower for the following:

578 (a) Actual, incidental, and consequential damages.

579 (b) Statutory damages equal to the finance charges agreed
580 to in the home loan agreement plus 10 percent of the amount
581 financed.

582 (c) Punitive damages when the violation was malicious or
583 reckless.

584 (d) Costs and reasonable attorney's fees.

HB 979

2008

585 (3) A borrower may be granted injunctive, declaratory, and
586 such other equitable relief as the court deems appropriate in an
587 action to enforce compliance with this act.

588 (4) The intentional violation of the act renders the
589 subprime home loan agreement void, and the lender shall have no
590 right to collect, receive, or retain any principal, interest, or
591 other charges whatsoever with respect to the loan, and the
592 borrower may recover any payments made under the agreement.

593 (5) The right of rescission granted under 15 U.S.C. ss.
594 1601 et seq. for violation of that law and all remedies provided
595 in this section shall be available to a borrower by way of
596 recoupment against a party foreclosing on the home loan or
597 collecting on the loan at any time during the term of the loan.

598 (6) The remedies provided in this section are not intended
599 to be the exclusive remedies available to a borrower, nor must
600 the borrower exhaust any administrative remedies provided under
601 this act or any other applicable law before proceeding under
602 this section.

603 (7) The remedies provided in this section are cumulative
604 and do not restrict any other right or remedy otherwise
605 available to the borrower.

606 Section 9. Section 494.00799, Florida Statutes, is created
607 to read:

608 494.00799 Criminal violations.--A person, including any
609 member, officer, or director of the lender, who intentionally
610 violates any provision of this act commits a felony of the third
611 degree, punishable as provided in s. 775.082, s. 775.083, or s.
612 775.084.

HB 979

2008

613 Section 10. If any provision of this act or its
614 application to any person or circumstance is held invalid, the
615 invalidity does not affect other provisions or applications of
616 the act which can be given effect without the invalid provision
617 or application, and to this end the provisions of this act are
618 declared severable.

619 Section 11. This act shall take effect October 1, 2008.