

## Committee Substitute for Senate Bill No. 2262

An act relating to the Florida Fair Lending Act; providing a short title; providing legislative findings; providing definitions; specifying prohibited acts relating to high-cost home loans; specifying required disclosures for high-cost home loans; specifying liability of purchasers and assignees; requiring lenders of high-cost home loans to provide notice to borrowers prior to taking foreclosure actions; allowing the borrower to cure the default; providing administration and enforcement powers and duties of the Department of Banking and Finance; authorizing the department to conduct investigations and examinations; providing for complaints; authorizing the department to bring actions for injunctions; providing for issuance of subpoenas; authorizing the department to issue and serve cease and desist orders for certain purposes; authorizing the department to impose certain fines under certain circumstances; specifying effect; authorizing the department to adopt rules; providing that a lender who violates this act forfeits the interest in the high-cost home loan; providing that certain unintentional good-faith errors are not deemed violations of the act; preempting regulation of high-cost home loans to the state; providing severability; directing the Department of Insurance to approve specified enrollment forms; providing an effective date.

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

Section 1. Short title; purposes.—

(1) This act shall be known as the “Florida Fair Lending Act.”

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

(b) Abusive lending has threatened the viability of many communities and caused decreases in home ownership. While the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching creditors who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loan. The Legislature finds that as competition and self-regulation have not eliminated the abusive terms from home-secured loans, the consumer protection provisions of this act are necessary to encourage fair lending.

Section 2. Definitions.—As used in this act:

(1) “Affiliate” means any company that controls, is controlled by, or is in common control with another company, as set forth in 12 U.S.C. s. 1841, et seq., and the regulations adopted thereunder.

(2) “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of 15 U.S.C. s. 1606 and the regulations adopted thereunder by the Federal Reserve Board.

(3) “Borrower” means any natural person obligated to repay a loan, including, but not limited to, a coborrower, cosignor, or guarantor.

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

(5) “Department” means the Department of Banking and Finance.

(6) “High-cost home loan” means a home loan as defined in 15 U.S.C. s. 1602(aa) and regulations adopted thereunder.

(7) “Lender” means any person who makes a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan, but shall not include any entity chartered by the United States Congress when engaging in secondary market mortgage transactions as an assignee or otherwise.

Section 3. Prohibited acts.—

(1) PREPAYMENT PENALTIES.—

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

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

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

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

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

(3) BALLOON PAYMENTS.—A high-cost home loan having a term of less than 10 years may not contain terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. However, this prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the borrower or if the loan is a bridge loan.

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

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

(6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT ABILITY OF THE BORROWER.—A lender making a high-cost home loan shall not engage in any pattern or practice of extending high-cost home loans to borrowers based upon the borrowers' collateral without regard to the borrowers' ability to repay the loan, including the borrowers' current and expected income, current obligations, and employment.

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

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

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

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

(9) REFINANCING WITHIN AN 18-MONTH PERIOD.—

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

(b) A lender or assignee shall not engage in acts or practices to evade this requirement, including a pattern or practice of arranging for the refinancing

of the lender's or assignee's own loans by affiliated or unaffiliated lenders or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee.

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

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

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

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

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

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

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

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

#### Section 4. Required disclosures for high-cost home loans.—

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

(a) NOTICE TO BORROWER.—A lender making a high-cost home loan shall provide a notice to a borrower in substantially the following form:

If you obtain this high-cost home loan, the lender will have a mortgage on your home. You could lose your home and any money you have put into it if you do not meet your obligations under the loan.

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

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

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

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

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

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

(b) ANNUAL PERCENTAGE RATE.—A lender making a high-cost home loan shall disclose:

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

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

(c) NOTICE TO PURCHASERS AND ASSIGNEES.—All high-cost home loans shall contain the following notice:

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

(2) Timing of disclosure.—

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

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

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

1. The change is initiated by the borrower.

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

a. The lender provides the disclosures in writing to the borrower.

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

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

Section 5. Liability of purchasers and assignees.—Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all claims and defenses with respect to that mortgage that the borrower could assert against the creditor of the mortgage, to the same extent and subject to the same limitations that a borrower of a high-cost home loan may assert against an assignee or purchaser pursuant to 15 U.S.C. s. 1641.

Section 6. Right to cure high-cost home loans.—

(1) RIGHT TO REINSTATE.—For a high-cost home loan, if a lender asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower, or anyone authorized to act on the borrower's behalf, shall have the right, during the 45-day period set forth in subsection (2), to cure the default and reinstate the home loan by tendering the amount or performance as specified in this section. However, once a lender has provided two such notices as required by this section, for two separate incidents, a lender is not thereafter required to provide the notice required by this section, and the borrower is not entitled by this section to cure the default, for a third or subsequent incident for which the lender asserts that grounds exist for acceleration of the loan and repayment in full. Cure of default as provided in this section shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

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

(a) Of the nature of default claimed on the home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 45-day period after the effective date of the notice due to the application of a daily interest rate or the addition of late payment fees, as allowed by this act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 45-day period.

(b) Of the date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home, which date shall not be less than 45 days after the date the notice is effective, and the name and address and telephone number of a person to whom the payment or tender shall be made.

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

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

(3) FEES.—To cure a default under this section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this act. The borrower shall not be liable for any attorney's fees or costs relating to the borrower's default that are incurred by the creditor prior to or during the 45-day period set forth in paragraph (2)(b).

Section 7. Powers and duties of the Department of Banking and Finance; investigations; examinations; injunctions; orders.—

(1)(a) The department shall be responsible for the administration and enforcement of this act.

(b) The department may adopt rules pursuant to sections 120.536(1) and 120.54, Florida Statutes, to implement this act. The department may adopt rules to allow electronic submission of any forms, documents, or fees required by this act.

(2)(a) The department may conduct an investigation of any person whenever the department has reason to believe, upon complaint or otherwise, that any violation of the act has occurred.

(b) Any person having reason to believe that a provision of this act has been violated may file a written complaint with the department setting forth the details of the alleged violation.

(c) The department may conduct examinations of any person to determine compliance with this act.

(3)(a) The department may bring action, through its own counsel in the name and on behalf of the state, against any person who has violated or is about to violate any provision of this act, or any rule or order of the department issued under the act, to enjoin the person from continuing in or engaging in any act in furtherance of the violation.

(b) In any injunctive proceeding, the court may, on due showing by the department, issue a subpoena or subpoena duces tecum requiring the attendance of any witness and requiring the production of any books, accounts, records, or other documents and materials that appear necessary to the expeditious resolution of the application for injunction.

(4) The department may issue and serve upon any person an order to cease and desist and to take corrective action whenever the department has reason to believe the person is violating, has violated, or is about to violate any provision of this act, any rule or order of the department issued under this act, or any written agreement between the person and the department. All procedural matters relating to issuance and enforcement of cease and desist orders are governed by the Administrative Procedure Act.

(5) Whenever the department finds a person in violation of this act, it may enter an order imposing a fine in an amount not exceeding \$5,000 for each count or separate offense, provided that the aggregate fine for all violations of this act that could have been asserted at the time of the order imposing the fine shall not exceed \$500,000.

(6) Any violation of this act shall also be deemed to be a violation of chapter 494, chapter 516, chapter 520, chapter 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter 665, or chapter 667, Florida Statutes. The department may adopt rules to enforce this subsection.

#### Section 8. Enforcement.—

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

(2) A creditor in a home loan who, when acting in good faith, fails to comply with the provisions of this act shall not be deemed to have violated this act if the creditor establishes that within 60 days after receiving any



notice from the borrower of the compliance failure, which compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the borrower has been notified of the compliance failure, appropriate restitution has been made to the borrower, and appropriate adjustments are made to the loan. Bona fide errors shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

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

Section 9. General rule.—All counties and municipalities of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial or lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the department, including for activities subject to this chapter, except entities licensed under section 537.004, Florida Statutes;

(2) Are subject to the jurisdiction of the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(3) Originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subsection (1) or subsection (2) to assist or facilitate such transactions;

(4) Are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(5) Are created by the Florida Housing Finance Corporation.

Proof of noncompliance with this act can be used by a city, county, or municipality of this state to disqualify a vendor or contractor from doing business with a city, county, or municipality of this state.

Section 10. Severability.—The provisions of this act are severable, and if any phrase, clause, sentence, or provision is declared invalid or is preempted by federal law or regulation, the validity of the remainder of the act shall not be affected. If any provision of this act is declared to be inapplicable to any specific category, type, or kind of loan or points and fees, the provisions of this act shall nonetheless continue to apply with respect to all other loans and points and fees.

Section 11. Effective October 1, 2002, all credit insurance enrollment forms must be approved by the Department of Insurance pursuant to the provisions of sections 627.410 or 627.682, Florida Statutes.

Section 12. This act shall take effect October 2, 2002.

Approved by the Governor April 22, 2002.

Filed in Office Secretary of State April 22, 2002.