



## 2003 ASSEMBLY BILL 991

March 11, 2004 - Introduced by Representative MORRIS. Referred to Committee on Financial Institutions.

1     **AN ACT** *to amend* chapter 428 (title), 428.101 (intro.), 428.101 (3), 428.102  
2           (intro.), 428.102 (2), 428.103 (1) (intro.) and 428.106; and *to create* subchapter  
3           I (title) of chapter 428 [precedes 428.101] and subchapter II of chapter 428  
4           [precedes 428.201] of the statutes; **relating to:** the regulation of certain  
5           consumer mortgage loans, granting rule-making authority, and providing a  
6           penalty.

---

### *Analysis by the Legislative Reference Bureau*

This bill creates a subchapter of the statutes regulating “high-cost home loans,” as defined in the bill. Significant provisions include the following:

#### **HIGH-COST HOME LOANS**

##### ***Scope and definitions***

This bill creates several prohibitions and requirements applicable to high-cost home loans. The bill generally defines “high-cost home loan” as a loan made by a lender, as defined under the bill, to a customer that has a principal amount not exceeding the lesser of \$300,000 or the maximum amount allowable in order to be eligible for purchase by the Federal National Mortgage Association, that is secured by a mortgage on, or an equivalent security interest in, residential real property, or a manufactured home, occupied or to be occupied by the customer as the customer’s principal dwelling, that is not an open-end credit plan or a reverse mortgage transaction, and that satisfies any of the following:

**ASSEMBLY BILL 991**

(1) The annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities, with these annual percentage rates subject to adjustments reflecting changes made by the Board of Governors of the Federal Reserve System.

(2) If the total loan amount is at least \$20,000, the total points and fees, other than certain excluded points and fees, payable by the customer at or before the loan closing exceed five percent of the total loan amount or, if the total loan amount is less than \$20,000, exceed the lesser of eight percent of the total loan amount or \$1,000.

(3) The customer may, under the terms of the loan, be required to pay prepayment fees or penalties more than 30 months after the date on which the loan is made or that exceed, in the aggregate, more than two percent of the amount prepaid.

The bill defines “lender” as a person who regularly makes or arranges high-cost home loans.

***Prohibitions and requirements on creditors***

The bill imposes all of the following prohibitions and requirements:

(1) With certain exceptions, no lender may make a high-cost home loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date.

(2) With certain exceptions, no lender may make a high-cost home loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments.

(3) With certain exceptions, no lender may make a high-cost home loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a high-cost home loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the customer’s default.

(5) No lender may make a high-cost home loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.

(6) No lender may charge a customer any fees 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.

(7) No lender may make a high-cost home loan without first receiving certification from a counselor approved by the Department of Financial Institutions (DFI) that the customer has received counseling on the advisability of the loan.

(8) No lender may make a high-cost home loan unless the lender reasonably believes at the time that the loan is consummated that the customer, co-signor, or guarantor under the loan will be able to make the scheduled payments to repay the loan. In making its determination, the lender must consider current or expected income, current obligations, employment status, and other financial resources, not including the customer’s equity in the dwelling pledged as security for the loan. The lender’s duty is presumed to be fulfilled if the customer’s total monthly debts do not exceed 50 percent of the customer’s monthly gross income.

**ASSEMBLY BILL 991**

(9) No lender may make a high-cost home loan that finances points and fees or any charges payable to persons other than the lender or, if the loan refinances an existing loan held by the lender, that finances prepayment fees or penalties payable by the customer.

(10) No lender may charge a customer points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender.

(11) No lender may pay proceeds of a high-cost home loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the customer or jointly to the customer and the person who is under contract or, with the consent of the customer, the payment is made through a third party in accordance with a written agreement signed by the customer, the lender, and the person under contract.

(12) No lender may, for the purpose of evading the provisions of the bill: structure a loan transaction as an open-end credit plan if the loan would have been a high-cost home loan had the loan been structured as a closed-end loan; divide a loan transaction into separate parts; or engage in any other acts of subterfuge.

(13) No lender may make a high-cost home loan to a customer that finances premiums for credit life, credit disability, or credit unemployment insurance or any other life or health insurance, except if the premium is required to be paid monthly.

(14) No lender may make a high-cost home loan to a customer that refinances an existing high-cost home loan, unless the new high-cost home loan provides a reasonable, tangible net benefit to the customer considering the circumstances.

(15) No lender may recommend that a customer default, or encourage a customer to default, on a loan before and in connection with the closing or planned closing of a high-cost home loan.

***Remedies***

The bill permits a customer, or a cosigner or guarantor under a high-cost home loan, to bring an action to enforce any requirement or prohibition under the subchapter created in the bill regulating high-cost home loans. The bill also specifies that the subchapter may be enforced by class action. An action must be commenced during the term of the high-cost home loan or within six years after the cause of action accrues, whichever is later. The bill further specifies that the remedies section must be liberally construed to the end that any aggrieved party is put in at least as good a position as if the person committing the violation had fully complied with this subchapter.

Under the bill, any act that violates the subchapter confers no rights or obligations enforceable by action. In addition, with certain exceptions, a person who violates the subchapter created in the bill is liable to the customer, cosigner, or guarantor in an amount equal to the total of the following:

(1) Twice the amount of interest paid under the applicable high-cost home loan, plus an amount equal to the total of all interest remaining under the loan.

(2) The actual damages, including any incidental and consequential damages, sustained by the aggrieved party as a result of the violation.

**ASSEMBLY BILL 991**

Furthermore, if an aggrieved party prevails in such an action, he or she must recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in connection with the prosecution of the action, together with a reasonable amount for attorney fees.

***Administration and criminal penalty***

The bill permits DFI to promulgate rules to administer the subchapter created in the bill. In addition, the bill requires DFI, upon the request of any person, to review any act, practice, procedure, or form that has been submitted to it in writing to determine whether the act, practice, procedure, or form is consistent with this subchapter. The bill permits DFI to perform investigations and to bring administrative enforcement proceedings to enforce the subchapter created in the bill. The bill also permits the Department of Justice to bring an action to enforce the subchapter.

***Affirmative defenses***

The bill also provides that a lender is not liable in any action if any of the following applies:

(1) Within 30 days after making the applicable high-cost home loan and before receiving any notice from the customer of the violation on which the action is based, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.

(2) The violation on which the action is based was unintentional and took place notwithstanding reasonable procedures adopted by the lender to avoid the violations and, within 60 days after making the applicable high-cost home loan and before receiving any notice from the customer of the violation, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** Chapter 428 (title) of the statutes is amended to read:

2                                 **CHAPTER 428**

3                                     **FIRST LIEN REAL ESTATE AND**

4                                     **HIGH-COST HOME LOANS**

5           **SECTION 2.** Subchapter I (title) of chapter 428 [precedes 428.101] of the statutes  
6 is created to read:

7                                 **CHAPTER 428**

## ASSEMBLY BILL 991

## SUBCHAPTER I

## FIRST LIEN REAL ESTATE LOANS

1  
2  
3       **SECTION 3.** 428.101 (intro.) of the statutes is amended to read:

4       **428.101 Applicability.** (intro.) This ~~chapter~~ subchapter applies to:

5       **SECTION 4.** 428.101 (3) of the statutes is amended to read:

6       428.101 (3) Loans made on or after November 1, 1981, by a creditor to a  
7 customer and which are secured by a first lien real estate mortgage or equivalent  
8 security interest if the amount financed is \$25,000 or less and if the loan is not subject  
9 to subch. II.

10       **SECTION 5.** 428.102 (intro.) of the statutes is amended to read:

11       **428.102 Definitions.** (intro.) In this ~~chapter~~ subchapter:

12       **SECTION 6.** 428.102 (2) of the statutes is amended to read:

13       428.102 (2) "Creditor" means a person who regularly engages in, arranges for  
14 or procures from 3rd persons, loans within the scope of this ~~chapter~~ subchapter.

15       **SECTION 7.** 428.103 (1) (intro.) of the statutes is amended to read:

16       428.103 (1) (intro.) The following limitations shall apply to all loans subject to  
17 this ~~chapter~~ subchapter:

18       **SECTION 8.** 428.106 of the statutes is amended to read:

19       **428.106 Remedies. (1)** Violations of this ~~chapter~~ subchapter may be enforced  
20 by a customer subject to this section and ss. 425.308 to 425.311.

21       **(2)** With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a  
22 matter of law finds that any aspect of the transaction, any conduct directed against  
23 the customer, by the creditor, or any result of the transaction is unconscionable, the  
24 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~  
25 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to

**ASSEMBLY BILL 991****SECTION 8**

1 enforce the unconscionable aspect of the transaction or so limit the application of any  
2 unconscionable aspect or conduct to avoid any unconscionable result.

3 (3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer  
4 shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a)  
5 and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a  
6 preponderance of the evidence that the violation was not intentional and resulted  
7 from a bona fide error notwithstanding the maintenance of procedures reasonably  
8 adapted to avoid such error.

9 (4) Any action brought by a customer to enforce rights under sub. (1) shall be  
10 commenced within one year after the date of the last violation of this ~~chapter~~  
11 subchapter, 2 years after consummation of the agreement or one year after the last  
12 payment, whichever is later. But in no event shall an action be commenced more  
13 than 6 years after the date of the last violation.

14 (5) The administrator specified in s. 426.103, solely through the department  
15 of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~  
16 subchapter and to recover the damages and penalties provided for this ~~chapter~~  
17 subchapter. In such action the administrator may obtain an order restraining by  
18 temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This  
19 subsection shall not be construed to incorporate or grant to the administrator with  
20 respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

21 **SECTION 9.** Subchapter II of chapter 428 [precedes 428.201] of the statutes is  
22 created to read:

**CHAPTER 428****SUBCHAPTER II****HIGH-COST HOME LOANS**

23  
24  
25

**ASSEMBLY BILL 991**

1           **428.201 Definitions.** In this subchapter:

2           **(1)** “Affiliate” means a person that controls, is controlled by, or is under common  
3 control with another person.

4           **(2)** “Bona fide loan discount points” means amounts paid by a customer for the  
5 purpose of reducing, and which do reduce, the interest rate or time-price differential  
6 applicable to a high-cost home loan in an amount and manner that is reasonably  
7 consistent with established industry norms and practices for secondary mortgage  
8 market transactions.

9           **(3)** “Customer” means an individual who seeks or acquires a high-cost home  
10 loan for personal, family, or household purposes.

11           **(4)** “Department” means the department of financial institutions.

12           **(5)** (a) Except as provided in par. (c), “high-cost home loan” means a loan that  
13 is made to a customer and that satisfies all of the following conditions:

14           1. The principal amount of the loan does not exceed the lesser of the maximum  
15 amount allowable in order to be eligible for purchase by the Federal National  
16 Mortgage Association or \$300,000.

17           2. The loan is secured by a security interest in a manufactured home, as defined  
18 in s. 101.91 (2), which is or will be occupied by the customer as the customer’s  
19 principal dwelling or is secured by a mortgage or deed of trust on real estate upon  
20 which there is or will be located a structure designed principally for occupancy of  
21 from 1 to 4 families which is or will be occupied by the customer as the customer’s  
22 principal dwelling.

23           3. The loan satisfies par. (b).

24           (b) A loan is a high-cost home loan only if at least one of the following applies  
25 to the loan:

**ASSEMBLY BILL 991****SECTION 9**

1           1. The annual percentage rate of the loan exceeds the annual percentage rate  
2 specified under 15 USC 1602 (aa) (1) (A), as adjusted under 15 USC 1602 (aa) (2).

3           2. Except as otherwise provided in this subdivision, the total points and fees  
4 payable by the customer at or before the loan closing under the loan exceed 5 percent  
5 of the total loan amount if the total loan amount is \$20,000 or more, or the lesser of  
6 8 percent of the total loan amount or \$1,000 if the total loan amount is less than  
7 \$20,000. For purposes of this subdivision, the following amounts shall be excluded  
8 from the calculation of the total points and fees payable by the customer, as  
9 applicable:

10           a. The total amount of bona fide loan discount points, up to 2, that are payable  
11 by the customer in connection with the loan transaction, but only if the interest rate  
12 from which the loan's interest rate will be discounted does not exceed by more than  
13 1 percent the required net yield for a 90-day standard mandatory delivery  
14 commitment for a reasonably comparable loan from the Federal National Mortgage  
15 Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

16           b. The total amount of bona fide loan discount point, up to one, payable by the  
17 customer in connection with the loan transaction, but only if the interest rate from  
18 which the loan's interest rate will be discounted does not exceed by more than 2  
19 percent the required net yield for a 90-day standard mandatory delivery  
20 commitment for a reasonably comparable loan from the Federal National Mortgage  
21 Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

22           c. Prepayment fees and penalties which may be charged or collected under the  
23 terms of the loan, up to 1 percent of the amount prepaid, provided that the loan does  
24 not permit the lender to charge or collect any prepayment fees or penalties more than  
25 30 months after the loan closing; or



**ASSEMBLY BILL 991**

1           3. The customer may be required, under the terms of the loan, to pay  
2       prepayment fees or penalties more than 30 months after the date on which the loan  
3       is made.

4           4. The customer may be required, under the terms of the loan, to pay  
5       prepayment fees or penalties which exceed, in the aggregate, more than 2 percent  
6       of the amount prepaid.

7           (c) "High-cost home loan" does not include an open-end credit plan or a reverse  
8       mortgage transaction.

9           **(6)** "Lender" means a person who regularly makes or arranges high-cost home  
10       loans.

11          **(7)** "Obligor" means a customer, cosigner, or guarantor under a high-cost home  
12       loan.

13          **(8)** (a) Except as provided in par. (b), "points and fees" means all of the  
14       following:

15           1. All items included in the definition of "finance charge" under 12 CFR 226.4  
16       (a).

17           2. All items described in 12 CFR 226.4 (b) (1) to (10).

18           3. All compensation paid directly by the customer to a mortgage broker.

19           4. All prepayment fees and penalties that may be charged or collected under  
20       the terms of the high-cost home loan.

21          (b) "Points and fees" does not include any of the following:

22           1. Interest and time-price differential.

23           2. All items described in 12 CFR 226.4 (c) to (e), except items described in 12  
24       CFR 226.32 (b) (1) (iii).

**ASSEMBLY BILL 991****SECTION 9**

1           3. Fees for tax payment services and fees for flood certification, if paid to a  
2 person other than the creditor or an affiliate of the creditor.

3           4. Attorney fees, except fees described in 12 CFR 226.4 (a) (ii).

4           **(9)** “Total loan amount” means the loan principal, less points and fees.

5           **428.202 Prohibitions on and requirements of lenders. (1) CALL**  
6 PROVISION. No lender may make a high-cost home loan to a customer that permits  
7 the lender or an assignee of the loan to demand payment of the outstanding balance  
8 before the original maturity date, except that a covered loan may permit a lender or  
9 assignee to so demand as a result of any of the following:

10           (a) The customer’s failure to make payments required under the loan.

11           (b) A provision in the loan documents permitting the lender or assignee to make  
12 such a demand after the sale of real property that is pledged as security for the loan.

13           (c) Any other provision of the loan documents that is unrelated to the payment  
14 schedule.

15           **(2) BALLOON PAYMENT.** Except as otherwise provided in this subsection, no  
16 lender may make a high-cost home loan to a customer that requires, or that permits  
17 the lender or an assignee of the loan to require, a payment that is more than twice  
18 as large as the average of all earlier scheduled payments. This subsection does not  
19 apply to a loan under which the payment schedule is adjusted to account for seasonal  
20 or irregular income of the customer.

21           **(3) NEGATIVE AMORTIZATION.** No lender may make a high-cost home loan to a  
22 customer with a payment schedule that causes the principal balance to increase.

23           **(4) INCREASED INTEREST RATE.** No lender may make a high-cost home loan to a  
24 customer that imposes or permits the lender or an assignee of the loan to impose an  
25 increase in the interest rate as a result of the customer’s default.

**ASSEMBLY BILL 991**

1           **(5) ADVANCE PAYMENTS.** No lender may make a high-cost home loan to a  
2 customer that includes a payment schedule that consolidates more than 2 scheduled  
3 payments and pays them in advance out of the proceeds of the loan.

4           **(6) MODIFICATION OR DEFERRAL FEES.** No lender may charge a customer any fees  
5 to modify, renew, extend, or amend a high-cost home loan or to defer any payment  
6 due under the terms of a high-cost home loan.

7           **(7) COUNSELOR APPROVAL.** No lender may make a high-cost home loan without  
8 first receiving certification from a counselor approved by the department that the  
9 customer has received counseling on the advisability of the loan.

10           **(8) REPAYMENT ABILITY.** No lender may make a high-cost home loan unless the  
11 lender reasonably believes at the time that the loan is consummated that an obligor,  
12 or multiple obligors collectively, will be able to make the scheduled payments to  
13 repay the loan. In making its determination under this subsection, a lender shall  
14 consider each obligor's current and expected income, current obligations,  
15 employment status, and other financial resources, other than the customer's equity  
16 in the dwelling that is pledged as security for the loan. An obligor shall be considered  
17 to be able to make the scheduled payments to repay the loan under this subsection  
18 if, at the time that the loan is consummated, the obligor's total monthly debts,  
19 including amounts that will be owed under the loan, do not exceed 50 percent of the  
20 obligor's monthly gross income as verified by the credit application, the obligor's  
21 financial statement, a credit report, financial information provided to the lender by  
22 or on behalf of the obligor, or any other reasonable means. This subsection does not  
23 require a lender to consider an obligor to be unable to make the scheduled payments  
24 to repay the loan solely because, at the time that the loan is consummated, the

**ASSEMBLY BILL 991**

1 obligor's total monthly debts, including amounts that will be owed under the loan,  
2 exceed 50 percent of the obligor's monthly gross income.

3 **(9) FINANCING OF FEES OR CHARGES.** In making a high-cost home loan, no lender  
4 may directly or indirectly finance any of the following:

5 (a) Prepayment fees or penalties payable by the customer, if the loan refinances  
6 an existing loan held by the lender or an affiliate of the lender.

7 (b) Points and fees.

8 (c) Any charges payable to persons other than the lender.

9 **(10) POINTS AND FEES IN REFINANCING TRANSACTIONS.** No lender may charge a  
10 customer points and fees in connection with a high-cost home loan if the proceeds  
11 of the high-cost home loan are used to refinance an existing high-cost home loan  
12 held by the same lender.

13 **(11) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS.** No lender under a  
14 high-cost home loan made to a customer may pay proceeds of the loan to a person  
15 who is under contract to complete a remodeling or other home improvement project  
16 with regard to an existing building affixed to real estate, unless the payment is made  
17 by an instrument that is payable to the customer or jointly to the customer and the  
18 person who is under contract or, with the consent of the customer, the payment is  
19 made through a 3rd party in accordance with a written agreement that is signed by  
20 the customer, the lender, and the person under contract before the payment is made.

21 **(12) EVASION.** (a) No lender may structure a loan transaction as an open-end  
22 credit plan for the purpose of evading the provisions of this section if the loan would  
23 have been a high-cost home loan had the loan been structured as a closed-end loan.

24 (b) No lender may divide a loan transaction into separate parts for the purpose  
25 of evading the provisions of this section.

**ASSEMBLY BILL 991**

1 (c) No lender may engage in any other acts of subterfuge for the purpose of  
2 evading the provisions of this section.

3 **(13) INSURANCE.** No lender may make a high-cost home loan to a customer that  
4 finances premiums for credit life, credit disability, or credit unemployment  
5 insurance or any other life or health insurance, except if the premium is required to  
6 be paid monthly.

7 **(14) FLIPPING.** No lender may make a high-cost home loan that refinances an  
8 existing high-cost home loan, unless the new high-cost home loan provides a  
9 reasonable, tangible net benefit to the customer considering all of the circumstances.

10 **(15) RECOMMENDATION OF DEFAULT.** No lender may recommend that a customer  
11 default, or encourage a customer to default, on a loan before and in connection with  
12 the closing or planned closing of a high-cost home loan.

13 **428.203 Remedies. (1) CAUSE OF ACTION.** Except as provided in sub. (5), an  
14 obligor under a high-cost home loan, may bring an action to enforce any requirement  
15 or prohibition under this subchapter. Except as provided in sub. (5), any requirement  
16 or prohibition under this subchapter is enforceable by class action under s. 803.08.

17 **(2) REMEDIES.** (a) Except as provided in s. 428.205, a person who violates this  
18 subchapter is liable to the person who commences an action under sub. (1) in an  
19 amount equal to the total of the following:

20 1. Twice the amount of interest paid under the applicable high-cost home loan,  
21 plus an amount equal to the total of all interest remaining under the loan.

22 2. The actual damages, including any incidental and consequential damages,  
23 sustained by the person commencing the action as a result of the violation.

24 (b) If a person prevails in an action under sub. (1), the person shall recover the  
25 aggregate amount of costs and expenses determined by the court to have been

**ASSEMBLY BILL 991****SECTION 9**

1 reasonably incurred on the person's behalf in connection with the prosecution of the  
2 action, together with a reasonable amount for attorney fees. The award of attorney  
3 fees shall be in an amount sufficient to compensate the attorneys representing the  
4 person. In determining the amount of the award, the court may consider any of the  
5 following:

6 1. The time and labor required, the novelty and difficulty of the questions  
7 involved, and the skill requisite properly to conduct the cause.

8 2. The customary charges of the bar for similar services.

9 3. The amount involved in the controversy and the benefits resulting to the  
10 client or clients from the services.

11 4. The contingency or the certainty of the compensation.

12 5. The amount of the costs and expenses reasonably advanced by the attorney  
13 in the prosecution of the action.

14 (c) Except as provided in s. 428.205, in addition to the remedies provided under  
15 pars. (a) and (b), the following remedies are available in any action under sub. (1):

16 1. Injunctive relief.

17 2. Declaratory relief.

18 3. Punitive damages under s. 895.85.

19 **(3) UNENFORCEABLE PROVISIONS, ETC.** Any act that violates this subchapter  
20 confers no rights or obligations enforceable by action.

21 **(4) STATUTE OF LIMITATIONS.** An action under sub. (1) shall be commenced at any  
22 time during the term of the high-cost home loan or within 6 years after the cause of  
23 action accrues, whichever is later.

24 **(5) RULE OF CONSTRUCTION.** This section shall be liberally construed to the end  
25 that any aggrieved party is put in at least as good a position as if the person

**ASSEMBLY BILL 991**

1 committing the violation had fully complied with this subchapter. The remedies  
2 provided under this section are in addition to any other remedies provided by law.

3 **428.204 Administration and civil penalty. (1) RULES.** The department  
4 shall administer this subchapter. The department may promulgate rules for the  
5 administration of this subchapter. The rules shall include a method pursuant to  
6 which the department certifies counselors for purposes of s. 428.202 (7).

7 **(2) REVIEW OF ACT, PRACTICE, PROCEDURE, OR FORM.** Upon the request of any  
8 person, the department shall review any act, practice, procedure, or form that has  
9 been submitted to the department in writing to determine whether the act, practice,  
10 procedure, or form is consistent with this subchapter.

11 **(3) INVESTIGATIONS.** (a) At any time that the department has reason to believe  
12 that a person has engaged in or is about to engage in an act that violates this  
13 subchapter, the department may investigate. In performing an investigation under  
14 this paragraph, the department may administer oaths or affirmations, subpoena  
15 witnesses, compel their attendance, adduce evidence, and require the production of  
16 any matter, including the existence, description, nature, custody, condition, and  
17 location of any books, documents, or other tangible things, and the identity and  
18 location of persons having knowledge of relevant facts, or any other matter  
19 reasonably calculated to lead to the discovery of admissible evidence. The  
20 department may access and examine such books, documents, or other tangible  
21 things. In any civil action brought on behalf of the department based on evidence  
22 obtained in such an investigation, the department may recover the costs of  
23 performing the investigation if the department prevails in the action.

**ASSEMBLY BILL 991**

1 (b) If 5 or more persons file a verified complaint with the department alleging  
2 that a person has violated this subchapter, the department shall immediately  
3 commence an investigation pursuant to par. (a).

4 (c) If the records of a person who is subject to an investigation pursuant to par.  
5 (a) are located outside of this state, the person at the person's option shall either  
6 make them available to the department at a convenient location within this state or  
7 pay the reasonable and necessary expenses for the department to examine them at  
8 the place where they are located. The department may designate representatives,  
9 including comparable officials of the state in which the records are located, to inspect  
10 them on the department's behalf.

11 (d) At the request of the department and upon reasonable notice to all affected  
12 persons, the department of justice may apply to any court of record for an order  
13 compelling compliance if a person fails to obey a subpoena or to give testimony  
14 pursuant to par. (a).

15 **(4) ENFORCEMENT AND CIVIL PENALTY.** (a) The department may serve a notice  
16 of a hearing that complies with s. 227.44 (1) and (2) on a person if the department  
17 reasonably suspects that the person has violated this subchapter. The department  
18 may receive complaints alleging violations of this subchapter. A hearing conducted  
19 pursuant to a notice under this paragraph shall be conducted in the manner specified  
20 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. If the  
21 person fails to appear at the hearing or if upon the record made at the hearing the  
22 department finds that a violation has been established, the department may issue  
23 and serve on the person an order to cease and desist from the violation or practice.  
24 Subject to s. 428.205, the order may require the person to correct the conditions  
25 resulting from the violation or practice and to forfeit not more than \$5,000 per



**ASSEMBLY BILL 991**

1 violation. The order is effective upon service on the person and may be appealed  
2 under s. 220.035.

3 (b) Subject to s. 428.205, the department of justice may bring an action to  
4 enforce this subchapter and, in any such action, any person who is found to have  
5 violated this subchapter may be required to forfeit not more than \$5,000 per  
6 violation. The department of justice, at the request of the department, may bring an  
7 action to enforce an order issued under par. (a).

8 **428.205 Affirmative defenses.** It is a defense to any alleged violation of this  
9 subchapter if the person alleged to have committed the violation establishes any of  
10 the following:

11 (1) That the person acted in good faith while committing the violation and that,  
12 no later than 30 days after consummation of the loan and before any investigation  
13 or other enforcement action by the department under this section, the person notified  
14 the affected customer of the violation, made appropriate restitution, and made  
15 necessary adjustments to the loan so that the loan, at the option of the customer,  
16 satisfies the requirements of this subchapter or is changed in a manner beneficial to  
17 the customer so that the loan is no longer a high-cost home loan.

18 (2) That the violation was unintentional and resulted from a clerical,  
19 calculation, computer malfunction and programming, printing, or any other bona  
20 fide error, notwithstanding the maintenance of procedures reasonably adopted to  
21 avoid such errors, and that within 60 days after the discovery of the violation and  
22 prior to the institution of any action under this subchapter or the receipt of written  
23 notice of the violation the lender notified the affected customer of the violation, made  
24 appropriate restitution, and made necessary adjustments to the loan so that the  
25 loan, at the option of the customer, satisfies the requirements of this subchapter or

**ASSEMBLY BILL 991****SECTION 9**

1 is changed in a manner beneficial to the customer so that the loan is no longer a  
2 high-cost home loan. An error of legal judgment with respect to a person's  
3 obligations under this subchapter is not a bona fide error for purposes of this  
4 subsection.

5 **SECTION 10. Initial applicability.**

6 (1) This act first applies to high-cost home loans, as defined in section 428.201  
7 (5) of the statutes, as created by this act, under subchapter II of chapter 428 of the  
8 statutes, as created by this act, made on the effective date of this subsection.

9 (END)