A bill to be entitled
An act relating to loan modification services;
amending s. 494.00296, F.S.; prohibiting entities
providing loan modification services from encouraging
borrowers to cease making their mortgage payments
under certain circumstances; providing a criminal
penalty and fine for violations of the loan
modification prohibitions; providing an effective
date.

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

Section 1. Section 494.00296, Florida Statutes, is amended
to read:

494.00296 Loan modification.—
(1) PROHIBITED ACTS.—When offering or providing loan
modification services, a loan originator, mortgage broker, or
mortgage lender may not:

(a) Suggest, recommend, or direct the borrower, orally or
by written agreement, to cease making payment on any loans as a
strategy for obtaining loan modifications from the lender
without fully informing the borrower of the risks and
consequences of such strategy;

(b) Engage in or initiate loan modification services
without first executing a written agreement for loan
modification services with the borrower;

(c) Execute a loan modification without the consent of
the borrower after the borrower is made aware of each modified
term; or
(d)(c) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for loan modification services before completing or performing all services included in the agreement for loan modification services. A fee may be charged only if the loan modification results in a material benefit to the borrower. The commission may adopt rules to provide guidance on what constitutes a material benefit to the borrower.

(2) LOAN MODIFICATION AGREEMENT.—
(a) The written agreement for loan modification services must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and address of the person providing loan modification services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the borrower for the services, and the date of the agreement. The date of the agreement may not be earlier than the date the borrower signed the agreement. The mortgage broker or mortgage lender must give the borrower a copy of the agreement to review at least 1 business day before the borrower is to sign the agreement.

(b) The borrower has the right to cancel the written agreement without any penalty or obligation if the borrower cancels the agreement within 3 business days after signing the agreement. The right to cancel may not be waived by the borrower or limited in any manner by the loan originator, mortgage broker, or mortgage lender. If the borrower cancels the agreement, any payments made must be returned to the borrower within 10 business days after receipt of the notice of cancellation.
(c) An agreement for loan modification services must contain, immediately above the signature line, a statement in at least 12-point uppercase type which substantially complies with the following:

BORROWER’S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR LOAN MODIFICATION SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE LOAN ORIGINATOR, MORTGAGE BROKER, OR MORTGAGE LENDER IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES HAVE BEEN COMPLETED. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU WITHIN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

PLEASE NOTE THAT ANY LOAN MODIFICATION STRATEGY THAT ENCOURAGES YOU TO NOT MAKE YOUR MORTGAGE PAYMENTS MAY RESULT IN YOUR LOSING YOUR PROPERTY AND DAMAGING YOUR CREDIT RATING.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO ...(NAME)... AT ...(ADDRESS)... NO LATER THAN MIDNIGHT OF ...(DATE)....

IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR MORTGAGE LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.
(d) The inclusion of the statement does not prohibit a loan originator, mortgage broker, or mortgage lender from giving the homeowner more time to cancel the agreement than is set forth in the statement if all other requirements of this subsection are met.

(e) The person offering or providing the loan modification services must give the borrower a copy of the signed agreement within 3 hours after the borrower signs the agreement.

(3) REMEDIES.—

(a) Any person who knowingly violates any provision of subsection (1) commits a felony of the third degree, punishable as provided under s. 775.082, s. 775.083, or s. 775.084, and is subject to a fine of up to $10,000 per violation.

(b) Without regard to any other remedy or relief to which a person is entitled, anyone aggrieved by a violation of this section may bring an action to obtain a declaratory judgment that an act or practice violates this section and to enjoin a person who has violated, is violating, or is otherwise likely to violate this section.

(c) In any action brought by a person who has suffered a loss as a result of a violation of this section, such person may recover actual damages, plus attorney’s fees and court costs, as follows:

1. In any action brought under this section, upon motion of the party against whom such action is filed alleging that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may, after hearing evidence as to the necessity therefor, require the party instituting the action to post a bond in the amount that the
court finds reasonable to indemnify the defendant for any
118 damages incurred, including reasonable attorney's fees.

2. In any civil litigation resulting from an act or
120 practice involving a violation of this section, the prevailing
121 party, after judgment in the trial court and exhaustion of all
122 appeals, if any, may receive reasonable attorney's fees
123 and costs from the nonprevailing party.

3. The attorney for the prevailing party shall submit a
125 sworn affidavit of time spent on the case and costs incurred for
126 all the motions, hearings, and appeals to the trial judge who
127 presided over the civil case.

4. The trial judge may award the prevailing party the sum
129 of reasonable costs incurred in the action plus a reasonable
130 legal fee for the hours actually spent on the case as sworn to
131 in an affidavit.

5. Any award of attorney's fees or costs becomes
133 part of the judgment and is subject to execution as the law
134 allows.

(d) The provisions of this subsection do not apply to
136 any action initiated by the enforcing authority.

Section 2. This act shall take effect July 1, 2012.