

STORAGE NAME: h3773.fs

DATE: March 10, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3773

RELATING TO: Mortgage Lenders

SPONSOR(S): Representative Tamargo

COMPANION BILL(S): SB 1350

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The ultimate equitable owner of a mortgage lender business “grandfathered” in under the licensure provisions of s. 494.0065, F.S. (of which there are a total of 343 in existence), may make a one-time transfer of at least 50 percent ownership, control, or power to vote any class of equity securities, to the owner’s spouse or child.

- The transfer application must be accompanied by a transfer fee.
- The license owner would be permitted to make the transfer at any time.
- Satisfaction of the amount of ownership transferred could be met in a single or in multiple transactions.
- The transferee would be permitted, in turn, to transfer the same ownership, control, or power to vote to the transferee’s spouse or child, in perpetuity.

The bill’s fiscal impact is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 494, Florida Statutes, governs Mortgage Brokerage and Mortgage Lending. Part III of chapter 494 specifically governs mortgage lender businesses and provides licensure requirements, examination of lenders, guidelines for fees and charges, administrative penalties and fines, and describes various persons and institutions that are exempted from this part.

In 1991, the Legislature extensively revised chapter 494.¹ The Legislature repealed chapter 521, F.S., relating to Mortgage Lending, and consolidated the substance of that chapter with the then-current chapter 494, F.S., relating to Mortgage Brokerage. As a result, mortgage brokerage, lending, and servicing provisions were brought within one chapter of the Florida Statutes.

The 1991 act required new mortgage lender licensees to have a net worth of at least \$250,000, and to secure a surety bond of at least \$10,000. Prior to the 1991 act, mortgage lenders licensees were required to demonstrate a net worth of \$25,000 and were not required to post a bond. These previously licensed mortgage lenders were "grandfathered" into the 1991 act through a special mortgage lender business license pursuant to a savings clause (s. 464.0065, F.S.), ratified by the Legislature. This "grandfather" license permitted the previously licensed mortgage lender licensee to maintain a net worth of \$25,000 rather than meet the new net worth requirement of \$250,000, and exempted these previously licensed mortgage lenders from having to acquire a surety bond.

As of February, 1998, there were a total of 2,812 active mortgage lender businesses licensed in the state. Of that total, 1,692 were mortgage lenders and a total of 1,120 were correspondent mortgage lenders.² Of the 2,812 licensed mortgage lenders in the state, approximately 12 percent, or 343, are licensed pursuant to the s. 464.0065 "grand- father" license.

Businesses licensed under chapter 494 -- mortgage brokerage and mortgage lenders -- must apply for a new license when the company is sold or transferred. However, subsequent to the 1991 act, the Department of Banking and Finance promulgated rules permitting the transfer or sale of these "grandfathered" licenses.³

Pursuant to a memorandum issued by the Committee on Governmental Rules and Regulations, dated February 4, 1998, agencies were directed to identify those rules that exceed rulemaking authority as defined in s. 120.536(1), F.S., in accordance to the 1996 revisions of the Administrative Procedures Act (APA). Agencies were directed to

¹See, Chapter 91-245, Laws of Florida.

² The key differences between the two lenders are net worth requirements and powers. Correspondent mortgage lenders are required to have a net worth of only \$25,000, and are permitted to generate and close loans but are not permitted to service the loans.

³ See, Rules 3D-40, 3D-40.100, and 3D-40.105, Florida Administrative Code.

consider specific legislation authorizing rules identified as exceeding rulemaking authority as described in s. 120.536, during the 1998 regular session. By January 1, 1999, agencies are directed to initiate APA proceedings to repeal those rules identified as exceeding rulemaking authority for which authorizing legislation has not been enacted. The department recognized the rules permitting the transfer of the "grandfathered" license as possibly exceeding its rulemaking authority.

B. EFFECT OF PROPOSED CHANGES:

The ultimate equitable owner of a mortgage lender business "grandfathered" in under the licensure provisions of s. 494.0065, F.S. (of which there are a total of 343 still in existence), could be permitted to make a one-time transfer of at least 50 percent ownership, control, or power to vote any class of equity securities, to the owner's spouse or child.

Satisfaction of the maximum amount of ownership transferred could be met in a single or in multiple transactions. The license owner would be permitted to make the transfer at any time. The transferee would be permitted, in turn, to transfer the same ownership, control, or power to vote any class of equity securities, to the transferee's spouse or child, in perpetuity.

Each transfer applicant would be required to provide information sufficient to prove the applicant's eligibility of licensure with the department (e.g., audited financial statements, proof of active registration with the Department of State) along with a transfer application fee of an amount not to exceed \$500. The department would have the discretion to require each person with a 10 percent or greater ownership interest in the mortgage lending business to submit a law enforcement-generated fingerprint file to the department. Under the bill the department could deny the transfer if the applicant, any principal or director, or any person holding a 10 percent or greater ownership interest committed any violation specified in s. 494.0072, F.S. These violations include, for example, a material misstatement on an application, a finding of fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction, or a conviction of a crime in any jurisdiction which involves fraud, dishonest dealing, or any act of moral turpitude.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Applicants for a transfer must submit a transfer fee to the Department of Banking and Finance in an amount not to exceed \$500.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill permits an ultimate equitable owner of a mortgage lending business which is licensed pursuant to the grandfather clause of s. 494.0065, F.S., to transfer at least 50 percent of the ownership, control, or power to vote any class of equity to a spouse or a child. The transferee may, in turn, transfer that ownership, control, or power to vote any class of equity securities to its spouse or child in perpetuity.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 494.0065, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends subsection (3) of s. 494.0065, F.S., providing that the ultimate equitable owner of a mortgage lender business "grandfathered" in under the licensure provisions of s. 494.0065, F.S., may make a one-time transfer of at least 50 percent ownership, control, or power to vote any class of equity securities, notwithstanding statutory prohibitions against transfer or assignation of licenses.

Satisfaction of the maximum amount of ownership, control, or power to vote any class of equity securities transferred could be met in a single or in multiple transactions. An ultimate owner may make the transfer at any time and the transferor is restricted by the

bill to transfer ownership to the person's spouse or child. The transferee may, in turn, transfer the same ownership, control, or power to vote to the transferee's spouse or child, in perpetuity.

Each transfer applicant would be required to provide information sufficient to prove the applicant's eligibility of licensure with the department (e.g., audited financial statements, proof of active registration with the Department of State) along with a transfer application fee of an amount not to exceed \$500. The department may require each person with a 10 percent or greater ownership interest to submit a law enforcement-generated fingerprint file to the department. The department may deny the transfer if the applicant, any principal or director, or any person holding a 10 percent or greater ownership interest committed any violation specified in s. 494.0072, F.S. Violations include, for example, a material misstatement on an application, a finding of fraud, misrepresentation, deceit, negligence, or incompetence in any mortgage financing transaction, or a conviction of a crime in any jurisdiction which involves fraud, dishonest dealing, or any act of moral turpitude.

Section 2. Provides the act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Indeterminate. License holders seeking to transfer at least 50 percent of their interest in their mortgage lending business would be required to pay a fee, not to exceed \$500, to the Department of Banking and Finance, and may make such a transfer to their spouse or child at any time. The transferee, in turn, may file an application for transfer along with the appropriate fee and transfer their business interest to their spouse or child at any time, in perpetuity. Because it is unknown how many transfers might occur, it is impossible to gauge the fiscal impact on the agency or state funds.

3. Long Run Effects Other Than Normal Growth:

See, III. A. 2., above.

4. Total Revenues and Expenditures:

See, III. A. 2., above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Eligible licensees applying for a license transfer will be required to submit a fee not to exceed \$500.

2. Direct Private Sector Benefits:

An ultimate equitable owner of a mortgage lending business "grandfathered" in under the licensure provisions of s. 494.0065, F.S., is authorized to transfer at least 50 percent of the business ownership, control, or power to vote any class of equity to a spouse or a child. The transferee may, in turn, transfer that ownership to its spouse or child in perpetuity.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminable at this time.

D. FISCAL COMMENTS:

There are currently 343 active "grandfather" licenses that would be eligible for a transfer as proposed by the bill. Pursuant to the bill as drafted, the transfers could take place at any time, after the Department approves the transfer, and the application transfer fee is an amount "not to exceed \$500."⁴ It is impossible to determine when such fees would be generated because the transfer option has no deadline. In fact, each transferee is permitted to transfer that same ownership interest to the transferee's spouse or child, in perpetuity. The bill provides that each transfer must be accompanied by a transfer fee.

⁴The bill does not define the standards (i.e., actual costs) by which the fee, "not to exceed \$500" is established.

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IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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