

By the Committee on Banking and Insurance; and Senator Lee

311-1720-99

1 A bill to be entitled
2 An act relating to mortgage brokers and
3 lenders; amending s. 494.001, F.S.; revising
4 definitions; amending s. 494.0011, F.S.;
5 authorizing the Department of Banking and
6 Finance to adopt rules; amending s. 494.0012,
7 F.S.; requiring the Department of Banking and
8 Finance to charge a fee for certain
9 examinations; deleting a limitation on
10 aggregate amount of examination fees; requiring
11 the department to conduct certain examinations
12 in this state; providing an exception; revising
13 travel expense and per diem subsistence
14 requirements for licensees; amending s.
15 494.00125, F.S.; deleting references to
16 registrations and permits; amending s.
17 494.0016, F.S.; specifying department
18 prescription by rule of certain required
19 information; creating s. 494.00165, F.S.;
20 prohibiting certain advertising activities;
21 requiring a record of certain advertisements;
22 amending s. 494.0025, F.S.; deleting certain
23 prohibited advertising activities; prohibiting
24 payment of a mortgage transaction fee or
25 commission to other than certain actively
26 licensed persons; amending s. 494.0031, F.S.;
27 providing for licensure of mortgage brokerage
28 business branches; increasing license fees;
29 deleting references to registrations and
30 permits; amending s. 494.0032, F.S.; providing
31 for renewal of branch licenses; increasing

1 license renewal fees; providing for reversion
2 of licenses to inactive status under certain
3 circumstances; providing for reactivation of
4 licenses; providing for a reactivation fee;
5 amending s. 494.0033, F.S.; specifying an
6 application fee; clarifying provisions;
7 amending s. 494.00331, F.S.; prohibiting
8 simultaneous multiple licensures; amending s.
9 494.0034, F.S.; deleting an automatic license
10 expiration provision; clarifying provisions;
11 amending s. 494.0036, F.S.; requiring a license
12 to operate a mortgage brokerage business branch
13 office; requiring display of licenses; amending
14 s. 494.0038, F.S.; clarifying the timing of
15 certain disclosures; amending s. 494.0039,
16 F.S.; revising mortgage brokerage business
17 principal place of business requirements;
18 amending s. 494.004, F.S.; including pleas of
19 nolo contendere to certain crimes within
20 certain licensee reporting requirements;
21 requiring licensees to report conviction or
22 pleas of nolo contendere to felonies; requiring
23 licensees to provide the department with
24 certain information relating to associated
25 mortgage brokers; requiring the department to
26 adopt certain rules; amending s. 494.0041,
27 F.S.; revising the list of acts constituting
28 grounds for disciplinary action; amending s.
29 494.0061, F.S.; providing for mortgage lender
30 branch office licenses; increasing a license
31 fee; clarifying provisions; amending s.

1 494.0062, F.S.; providing for correspondent
2 mortgage lender branch office licenses;
3 increasing a license fee; clarifying
4 provisions; amending s. 494.0064, F.S.;
5 providing for renewal of certain licenses;
6 increasing license renewal fees; providing for
7 reversion of licenses to inactive status;
8 deleting an automatic license expiration
9 provision; amending s. 494.0066, F.S.;
10 requiring mortgage lender and correspondent
11 mortgage lender branch office licenses;
12 increasing license fees; amending s. 494.0067,
13 F.S.; requiring display of certain licenses;
14 requiring registration of loan originators;
15 requiring certain information relating to loan
16 originators; amending s. 494.0072, F.S.;
17 revising a list of certain acts constituting
18 grounds for disciplinary action; clarifying
19 application of certain disciplinary actions;
20 amending s. 494.0073, F.S.; providing for
21 mortgage lenders or correspondent mortgage
22 lenders to act as mortgage brokerage
23 businesses; repealing s. 494.0037, F.S.,
24 relating to books, accounts, and records;
25 providing effective dates.

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

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29 Section 1. Section 494.001, Florida Statutes, is
30 amended to read:

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1 494.001 Definitions.--As used in ss. 494.001-494.0077,
2 the term:

3 (1) "Act as a correspondent mortgage lender" means to
4 make a mortgage loan.

5 (2) "Act as a loan originator" means being employed by
6 a mortgage lender or correspondent mortgage lender, for
7 compensation or gain or in the expectation of compensation or
8 gain, to negotiate or offer to negotiate the making of a
9 mortgage loan. A person whose activities are ministerial and
10 clerical, which may include quoting available interest rates
11 or loan terms and conditions, is not acting as a loan
12 originator.

13 (3)(2) "Act as a mortgage broker" means, for
14 compensation or gain, or in the expectation of compensation or
15 gain, either directly or indirectly, accepting or offering to
16 accept an application for a mortgage loan, soliciting or
17 offering to solicit a mortgage loan on behalf of a borrower,
18 negotiating or offering to negotiate the terms or conditions
19 of a mortgage loan on behalf of a lender, or negotiating or
20 offering to negotiate the sale of an existing mortgage loan to
21 a noninstitutional investor. An employee whose activities are
22 ministerial and clerical, which may include quoting available
23 interest rates or loan terms and conditions, is not acting as
24 a mortgage broker.

25 (4)(3) "Act as a mortgage lender" means to make a
26 mortgage loan or to service a mortgage loan for others or, for
27 compensation or gain, or in the expectation of compensation or
28 gain, either directly or indirectly, to sell or offer to sell
29 a mortgage loan to a noninstitutional investor.

30 (5)(4) "Associate" means ~~for the purposes of ss.~~
31 ~~494.003-494.0043 solely,~~ a person required to be licensed as a

1 mortgage broker under this chapter who is employed by or
2 acting as an independent contractor for a mortgage brokerage
3 business or a person acting as an independent contractor for a
4 mortgage lender or correspondent mortgage lender. The use of
5 the term associate, in contexts other than in the
6 administration of ss. 494.003-494.0077 ~~494.003-494.0043~~, shall
7 not be construed to impose or effect the common-law or
8 statutory liability of the employer.

9 (6)(5) "Branch broker" means the licensee in charge
10 of, and responsible for, the operation of a branch office of a
11 mortgage brokerage business.

12 (7) "Branch office" means a location, other than a
13 licensee's principal place of business:

14 (a) The address of which appears on business cards,
15 stationery, or advertising used by the licensee in connection
16 with business conducted under this chapter;

17 (b) At which the licensee's name, advertising or
18 promotional materials, or signage suggest that mortgage loans
19 are originated, negotiated, funded, or serviced; or

20 (c) Which, due to the actions of any employee or
21 associate of the licensee, may be construed by the public as a
22 branch office of the licensee where mortgage loans are
23 originated, negotiated, funded, or serviced.

24 (8)(6) "Department" means the Department of Banking
25 and Finance.

26 (9) "Employed" means engaged in the service of another
27 for salary or wages subject to withholding, FICA, or other
28 lawful deductions by the employer as a condition of
29 employment.

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1 (10) "Employee" means a natural person who is employed
2 and who is subject to the right of the employer to direct and
3 control the actions of the employee.

4 (11)~~(7)~~ "Good standing" means that the registrant or
5 licensee, or a subsidiary or affiliate thereof, is not, at the
6 time of application, being penalized for one or more of the
7 following disciplinary actions by a licensing authority of any
8 state, territory, or country:

9 (a) Revocation of a license or registration.

10 (b) Suspension of a license or registration.

11 (c) Probation of a license or registration for an
12 offense involving fraud, dishonest dealing, or an act of moral
13 turpitude.

14 (12)~~(8)~~ "Institutional investor" means a state or
15 national bank, state or federal savings and loan association
16 or savings bank, real estate investment trust, insurance
17 company, real estate company, accredited investor as defined
18 in 17 C.F.R. ss. 230.501 et seq., business licensed under ss.
19 494.001-494.0077, or other business entity that invests in
20 mortgage loans, including a secondary mortgage market
21 institution including, without limitation, the Federal
22 National Mortgage Association, the Federal Home Loan Mortgage
23 Corporation, and the Government National Mortgage Association,
24 conduits, investment bankers, and any subsidiary of such
25 entities.

26 (13)~~(9)~~ "Loan commitment" or "commitment" means a
27 statement by the lender setting forth the terms and conditions
28 upon which the lender is willing to make a particular mortgage
29 loan to a particular borrower.

30 (14)~~(10)~~ "Lock-in agreement" means an agreement
31 whereby the lender guarantees for a specified number of days

1 or until a specified date the availability of a specified rate
2 of interest or specified formula by which the rate of interest
3 will be determined and/or specific number of discount points,
4 if the loan is approved and closed within the stated period of
5 time.

6 (15)~~(11)~~ "Make a mortgage loan" means to close a
7 mortgage loan in a person's name or to advance funds, offer to
8 advance funds, or make a commitment to advance funds to an
9 applicant for a mortgage loan.

10 (16)~~(12)~~ "Mortgage brokerage ~~broker~~ fee" means a fee
11 received for acting as a mortgage broker.

12 (17)~~(13)~~ "Mortgage brokerage business" means a person
13 acting as a mortgage broker.

14 (18) "Mortgage loan" means any:

15 (a) Residential mortgage loan;

16 (b) Loan on commercial real property if the borrower
17 is a natural person or the lender is a noninstitutional
18 investor; or

19 (c) Loan on improved real property consisting of five
20 or more dwelling units if the borrower is a natural person or
21 the lender is a noninstitutional investor.

22 (19)~~(14)~~ "Net worth" means total assets minus total
23 liabilities pursuant to generally accepted accounting
24 principles.

25 (20)~~(15)~~ "Noninstitutional investor" means an investor
26 other than an institutional investor.

27 (21)~~(16)~~ "Nonresidential mortgage loan" means a
28 mortgage loan other than a residential mortgage loan.

29 (22)~~(17)~~ "Person" means an individual, partnership,
30 corporation, association, or other group, however organized.

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1 ~~(23)(18)~~ "Principal broker" means a licensee in charge
2 of, and responsible for, the operation of the principal place
3 of business and all branch brokers.

4 (24) "Principal place of business" means a licensee's
5 primary business office the street address or physical
6 location of which is designated on the application for
7 licensure or any amendment to such application.

8 ~~(25)(19)~~ "Residential mortgage loan" means any
9 mortgage or other security instrument secured by improved real
10 property consisting of no more than four dwelling units.

11 ~~(26)(20)~~ "Service a mortgage loan" means to receive or
12 cause to be received or transferred for another installment
13 payments of principal, interest, or other payments pursuant to
14 a mortgage loan.

15 ~~(27)(21)~~ "Substantial fault of the borrower" means
16 that the borrower:

17 (a) Failed to provide information or documentation
18 required by the lender or broker in a timely manner;

19 (b) Provided information, in the application or
20 subsequently, which upon verification proved to be
21 significantly inaccurate, causing the need for review or
22 further investigation by the lender or broker;

23 (c) Failed to produce no later than the date specified
24 by the lender all documentation specified in the commitment or
25 closing instructions as being required for closing; or

26 (d) Failed to be ready, willing, or able to close the
27 loan no later than the date specified by the lender or broker.

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29 For purposes of this definition, a borrower is considered to
30 have provided information or documentation in a timely manner
31 if such information and documentation was received by the

1 lender within 7 days after the borrower received a request for
2 same, and information is considered significantly inaccurate
3 if the correct information materially affects the eligibility
4 of the borrower for the loan for which application is made.

5 (28)~~(22)~~ "Ultimate equitable owner" means a natural
6 person who, directly or indirectly, owns or controls an
7 ownership interest in a corporation, a foreign corporation, an
8 alien business organization, or any other form of business
9 organization, regardless of whether such natural person owns
10 or controls such ownership interest through one or more
11 natural persons or one or more proxies, powers of attorney,
12 nominees, corporations, associations, partnerships, trusts,
13 joint stock companies, or other entities or devices, or any
14 combination thereof.

15 Section 2. Subsection (2) of section 494.0011, Florida
16 Statutes, 1998 Supplement, is amended to read:

17 494.0011 Powers and duties of the department.--

18 (2) The department has authority to adopt rules
19 pursuant to ss. 120.536(1) and 120.54 to implement ss.
20 494.001-494.0077. The department may adopt rules to allow
21 electronic submission of any forms, documents, or fees
22 required by this act. The department may also adopt rules to
23 accept certification of compliance with requirements of this
24 act in lieu of requiring submission of documents.

25 Section 3. Effective September 1, 2000, subsection (3)
26 of section 494.0012, Florida Statutes, is amended to read:

27 494.0012 Investigations; complaints; examinations.--

28 (3)(a) The department may, at intermittent periods,
29 conduct examinations of any licensee or other person under the
30 provisions of ss. 494.001-494.0077. ~~The department may charge~~
31 ~~an examination fee prescribed by rule, but such fee may not~~

1 ~~exceed \$300 per 8-hour day for each examiner. Such~~
2 ~~examination fee shall be calculated on an hourly basis and~~
3 ~~shall be rounded to the nearest hour.~~

4 (b) The department shall conduct all examinations at a
5 convenient location in this state unless the department
6 determines that it is more effective or cost-efficient to
7 perform an examination at the licensee's out-of-state
8 location. For an examination performed at the licensee's
9 out-of-state location travel, the licensee shall ~~also~~ pay the
10 travel expense and per diem subsistence at the rate provided
11 by law for up to 30 8-hour days per year for each department
12 examiner who participates in such an examination. However, if
13 the examination involves or reveals possible fraudulent
14 conduct by the licensee, the licensee shall pay the travel
15 expense and per diem subsistence provided by law, without
16 limitation, for each participating examiner allowance provided
17 ~~for state employees under s. 112.061. The department may not~~
18 ~~charge more than \$500 in examination fees per biennial period~~
19 ~~to any one mortgage brokerage business, mortgage lender, or~~
20 ~~correspondent mortgage lender.~~

21 Section 4. Paragraph (a) of subsection (1) of section
22 494.00125, Florida Statutes, is amended to read:

23 494.00125 Confidentiality of information relating to
24 investigations and examinations.--

25 (1)(a) Except as otherwise provided by this section,
26 information relative to an investigation or examination by the
27 department pursuant to this chapter, including any consumer
28 complaint, is confidential and exempt from s. 119.07(1) until
29 the investigation or examination is completed or ceases to be
30 active. The information compiled by the department in such an
31 investigation or examination shall remain confidential and

1 exempt from s. 119.07(1) after the department's investigation
2 or examination is completed or ceases to be active if the
3 department submits the information to any law enforcement or
4 administrative agency for further investigation. Such
5 information shall remain confidential and exempt from s.
6 119.07(1) until that agency's investigation is completed or
7 ceases to be active. For purposes of this section, an
8 investigation or examination shall be considered "active" so
9 long as the department or any law enforcement or
10 administrative agency is proceeding with reasonable dispatch
11 and has a reasonable good faith belief that the investigation
12 or examination may lead to the filing of an administrative,
13 civil, or criminal proceeding or to the denial or conditional
14 grant of a license, ~~registration, or permit~~. This section
15 shall not be construed to prohibit disclosure of information
16 which is required by law to be filed with the department and
17 which, but for the investigation or examination, would be
18 subject to s. 119.07(1).

19 Section 5. Subsection (4) of section 494.0016, Florida
20 Statutes, is amended to read:

21 494.0016 Books, accounts, and records; maintenance;
22 examinations by the department.--

23 (4) The department may prescribe by rule the minimum
24 information to be shown in the books, accounts, records, and
25 documents of licensees so that such records will enable the
26 department to determine the licensee's compliance with ss.
27 494.001-494.0077.

28 Section 6. Section 494.00165, Florida Statutes, is
29 created to read:

30 494.00165 Prohibited advertising; record
31 requirements.--

1 (1) It is a violation of this chapter for any person
2 to:

3 (a) Advertise that an applicant will have unqualified
4 access to credit without disclosing what material limitations
5 on the availability of credit exist. Such material limitations
6 include, but are not limited to, the percentage of down
7 payment required, that a higher rate or points could be
8 required, or that restrictions as to the maximum principal
9 amount of the loan offered could apply.

10 (b) Advertise a mortgage loan at an expressed interest
11 rate unless the advertisement specifically states that the
12 expressed rate could change or not be available at commitment
13 or closing.

14 (c) Advertise mortgage loans, including rates,
15 margins, discounts, points, fees, commissions, or other
16 material information, including material limitations on such
17 loans, unless such person is able to make such mortgage loans
18 available to a reasonable number of qualified applicants.

19 (d) Falsely advertise or misuse names indicating a
20 federal agency pursuant to 18 U.S.C. s. 709.

21 (2) Each person required to be licensed under this
22 chapter shall maintain a record of samples of each of its
23 advertisements, including commercial scripts of each radio or
24 television broadcast, for examination by the department for a
25 period of 2 years after the date of publication or broadcast.

26 Section 7. Subsections (6), (7), (8), (9), (10), (11),
27 and (12) of section 494.0025, Florida Statutes, are amended to
28 read:

29 494.0025 Prohibited practices.--It is unlawful for any
30 person:

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1 ~~(6) To advertise that an applicant will have~~
2 ~~unqualified access to credit without disclosing what material~~
3 ~~limitations on the availability of credit exist, such as the~~
4 ~~percentage of down payment required, that a higher rate or~~
5 ~~points could be required, or that restrictions as to the~~
6 ~~maximum principal amount of the loan offered could apply.~~

7 ~~(7) To advertise a mortgage loan where a prevailing~~
8 ~~rate is indicated in the advertisement, unless the~~
9 ~~advertisement specifically states that the expressed rate~~
10 ~~could change or not be available at commitment or closing.~~

11 ~~(8) To advertise mortgage loans, including rates,~~
12 ~~margins, discounts, points, fees, commissions, or other~~
13 ~~material information, including material limitations on such~~
14 ~~loans, unless such person is able to make such mortgage loans~~
15 ~~available to a reasonable number of qualified applicants.~~

16 ~~(6)(9)~~ To violate s. 655.922(2), subject to ss.
17 494.001-494.0077.

18 ~~(7)(10)~~ Who is required to be licensed under ss.
19 494.006-494.0077, to fail to report to the department the
20 failure to meet the net worth requirements of s. 494.0061, s.
21 494.0062, or s. 494.0065 within 48 hours after the person's
22 knowledge of such failure or within 48 hours after the person
23 should have known of such failure.

24 ~~(8)(11)~~ To pay a fee or commission in any mortgage
25 loan transaction to any person or entity other than a
26 mortgage brokerage business, mortgage lender, or correspondent
27 mortgage lender, operating under an active license, or a
28 person exempt from licensure under this chapter. ~~Who is~~
29 ~~required to be licensed under ss. 494.001-494.0077, to falsely~~
30 ~~advertise or misuse names indicating a federal agency pursuant~~
31 ~~to 18 U.S.C. s. 709.~~

1 (9)~~(12)~~ To record a mortgage brokerage agreement or
2 any other document, not rendered by a court of competent
3 jurisdiction, which purports to enforce the terms of the
4 mortgage brokerage agreement.

5 Section 8. Subsections (1), (4), and (5) of section
6 494.0031, Florida Statutes, are amended to read:

7 494.0031 Licensure as a mortgage brokerage business.--

8 (1) The department shall issue a mortgage brokerage
9 business license to each person who:

10 (a) Has submitted a completed application form and a
11 nonrefundable application fee of \$425 ~~in an amount that may~~
12 ~~not exceed \$350~~; and

13 (b) Has a qualified principal broker pursuant to s.
14 494.0035.

15 (4) A mortgage brokerage business or branch office
16 ~~license, permit, or registration~~ may be canceled if it was
17 issued through mistake or inadvertence of the department. A
18 notice of cancellation must be issued by the department within
19 90 days after the issuance of the license. A notice of
20 cancellation shall be effective upon receipt. The notice of
21 cancellation shall provide the applicant with notification of
22 the right to request a hearing within 21 days after the
23 applicant's receipt of the notice of cancellation. A license,
24 ~~permit, or registration~~ shall be reinstated if the applicant
25 can demonstrate that the requirements for obtaining the
26 ~~license, permit, or registration~~ pursuant to this chapter ~~ss.~~
27 ~~494.001-494.0077~~ have been satisfied.

28 (5) If an initial mortgage brokerage business or
29 branch office ~~license, permit, or registration~~ has been issued
30 but the check upon which the license, ~~permit, or registration~~
31 is based is returned due to insufficient funds, the license,

1 ~~permit, or registration~~ shall be deemed canceled. A license~~7~~
2 ~~permit, or registration~~ deemed canceled pursuant to this
3 subsection shall be reinstated if the department receives a
4 certified check for the appropriate amount within 30 days
5 after the date the check was returned due to insufficient
6 funds.

7 Section 9. Section 494.0032, Florida Statutes, is
8 amended to read:

9 494.0032 Renewal of mortgage brokerage business
10 license; ~~permit~~ renewal of mortgage brokerage business branch
11 office license.--

12 (1) The department shall renew a mortgage brokerage
13 business license upon receipt of a completed renewal form and
14 payment of a nonrefundable renewal fee of \$375 ~~that may not~~
15 ~~exceed \$300~~. Each licensee shall pay at the time of renewal a
16 nonrefundable renewal fee of \$225 ~~that may not exceed \$150~~ for
17 the renewal of each branch office license ~~permit~~.

18 (2) The department shall adopt rules establishing a
19 procedure for the biennial renewal of mortgage brokerage
20 business licenses and branch office licenses ~~permits~~. The
21 department may prescribe the form for renewal and may require
22 an update of all information provided in the licensee's
23 initial application.

24 (3) A mortgage brokerage business or branch office
25 license that is not renewed by the end of the biennium
26 established by the department shall revert from active to
27 inactive status. An inactive license may be reactivated
28 within 6 months after becoming inactive by filing a completed
29 reactivation form with the department, payment of the renewal
30 fee, and payment of a nonrefundable reactivation fee of \$100.

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1 ~~The department may set by rule a late renewal fee in an amount~~
2 ~~that may not exceed \$100.~~

3 ~~(4)~~ A license that is not renewed within 6 months
4 after the end of the biennial period automatically expires.

5 Section 10. Subsections (2), (6), and (7) of section
6 494.0033, Florida Statutes, are amended to read:

7 494.0033 Mortgage broker's license.--

8 (2) Each initial application for a mortgage broker's
9 license must be in the written form ~~as~~ prescribed by rule of
10 the department. The department may require each applicant to
11 provide any information reasonably necessary to make a
12 determination of the applicant's eligibility for licensure.
13 The department shall issue an initial license to any natural
14 person who:

15 (a) Is at least 18 years of age;

16 (b) Has passed a written test adopted by the
17 department which is designed to determine competency in
18 primary and subordinate mortgage financing transactions as
19 well as to test knowledge of ss. 494.001-494.0077 and the
20 rules adopted pursuant thereto;

21 (c) Has submitted a completed application and a
22 nonrefundable application fee of ~~that may not exceed~~ \$200.

23 The department may set by rule an additional fee for a retake
24 of the examination; and

25 (d) Has filed a complete set of fingerprints, taken by
26 an authorized law enforcement officer, for submission by the
27 department to the Department of Law Enforcement or the Federal
28 Bureau of Investigation for processing.

29 (6) A mortgage broker license, ~~permit, or registration~~
30 may be canceled if it was issued through mistake or
31 inadvertence of the department. A notice of cancellation must

1 be issued by the department within 90 days after the issuance
2 of the license. A notice of cancellation shall be effective
3 upon receipt. The notice of cancellation shall provide the
4 applicant with notification of the right to request a hearing
5 within 21 days after the applicant's receipt of the notice of
6 cancellation. A license, ~~permit, or registration~~ shall be
7 reinstated if the applicant can demonstrate that the
8 requirements for obtaining the license, ~~permit, or~~
9 ~~registration~~ pursuant to this chapter ~~ss. 494.001-494.0077~~
10 have been satisfied.

11 (7) If an initial mortgage broker license, ~~permit, or~~
12 ~~registration~~ has been issued but the check upon which the
13 license, ~~permit, or registration~~ is based is returned due to
14 insufficient funds, the license, ~~permit, or registration~~ shall
15 be deemed canceled. A license, ~~permit, or registration~~ deemed
16 canceled pursuant to this subsection shall be reinstated if
17 the department receives a certified check for the appropriate
18 amount within 30 days after the date the check was returned
19 due to insufficient funds.

20 Section 11. Section 494.00331, Florida Statutes, is
21 amended to read:

22 494.00331 Mortgage broker association.--No person
23 required to be licensed ~~acting~~ as a mortgage broker under this
24 chapter shall be simultaneously an associate of more than one
25 licensed a single mortgage brokerage business, licensed
26 mortgage lender, or licensed correspondent mortgage lender.

27 Section 12. Subsections (1), (3), and (4) of section
28 494.0034, Florida Statutes, are amended to read:

29 494.0034 Renewal of mortgage broker's license.--

30 (1) The department shall renew a mortgage broker
31 ~~broker's~~ license upon receipt of the completed renewal form

1 and payment of a nonrefundable renewal fee of ~~that may not~~
2 ~~exceed~~ \$150.

3 (3) A license that is not renewed by the end of the
4 biennium prescribed by the department shall revert from active
5 ~~automatically reverts~~ to inactive status. An inactive license
6 may be reactivated within 2 years after becoming inactive by
7 ~~the filing of~~ a completed reactivation form application with
8 the department, payment of the renewal fee, and payment of a
9 nonrefundable reactivation fee of \$100.

10 ~~(4)~~ A license that is not renewed within 2 years after
11 becoming inactive automatically expires.

12 Section 13. Section 494.0036, Florida Statutes, is
13 amended to read:

14 494.0036 Mortgage brokerage business branch offices.--

15 (1) A mortgage brokerage business branch office
16 license permit is required for each branch office maintained
17 by a mortgage brokerage business licensee.

18 (2) The department shall issue a mortgage brokerage
19 business branch office license permit upon receipt of a
20 completed application in a form as prescribed by ~~the~~
21 department rule and payment of an initial nonrefundable branch
22 office license permit fee of \$225 ~~that may not exceed \$150~~.
23 Branch office licenses permits must be renewed in conjunction
24 with the renewal of the mortgage brokerage business license.
25 The branch office license permit shall be issued in the name
26 of the mortgage brokerage business that maintains the branch
27 office.

28 (3) Each branch office must prominently display the
29 license issued for such branch office. Each person licensed as
30 a mortgage broker must prominently display his or her license
31 in the office where such person acts as a mortgage broker.

1 Section 14. Subsection (2) of section 494.0038,
2 Florida Statutes, is amended to read:

3 494.0038 Mortgage broker disclosures.--

4 (2) At the time ~~Prior to entering into~~ a written
5 agreement is executed by the borrower or at the time the
6 mortgage brokerage business accepts ~~accepting an application,~~
7 an application fee, credit report fee, property appraisal fee,
8 or any other third-party fee, the ~~a~~ mortgage brokerage
9 business shall ~~must~~ disclose in writing to any applicant for a
10 mortgage loan the following information:

11 (a) That such mortgage brokerage business may not make
12 mortgage loans or commitments. The mortgage brokerage
13 business may make a commitment and may furnish a lock-in of
14 the rate and program on behalf of the lender when the mortgage
15 brokerage business has obtained a written commitment or
16 lock-in for the loan from the lender on behalf of the borrower
17 for the loan. The commitment must be in the same form and
18 substance as issued by the lender.

19 (b) That such mortgage brokerage business cannot
20 guarantee acceptance into any particular loan program or
21 promise any specific loan terms or conditions.

22 (c) A good faith estimate of the credit report fee,
23 property appraisal fee, or any other third-party fee and the
24 terms and conditions for obtaining a refund of such fees, if
25 any. Any amount collected in excess of the actual cost shall
26 be returned within 60 days after rejection, withdrawal, or
27 closing.

28 Section 15. Subsections (1) and (3) of section
29 494.0039, Florida Statutes, are amended to read:

30 494.0039 Principal place of business requirements.--

31

1 (1) Each mortgage brokerage business licensee shall
2 maintain and transact business from a principal place of
3 ~~business in the state. A principal place of business or~~
4 ~~branch office must consist of at least one enclosed room or~~
5 ~~building of stationary construction in which negotiations of~~
6 ~~mortgage loan transactions of others may be conducted and~~
7 ~~carried on in privacy and in which all of the books, records,~~
8 ~~and files pertaining to mortgage loan transactions of others~~
9 ~~are maintained, and:~~

10 ~~(a) Must be in compliance with local zoning ordinances~~
11 ~~and must have posted any occupational licenses required by~~
12 ~~local government agencies. It is the responsibility of the~~
13 ~~licensee to meet local zoning ordinances and obtain the~~
14 ~~required occupational licenses; and~~

15 ~~(b) Must maintain a sign that is publicly displayed.~~
16 ~~Such sign must contain the name of the licensee under ss.~~
17 ~~494.003-494.0043 and the words "Licensed Mortgage Brokerage~~
18 ~~Business."~~

19 (3) Each mortgage brokerage business must prominently
20 display its license at the principal place of business. ~~Each~~
21 ~~branch office must prominently display its branch office~~
22 ~~permit. Each person licensed mortgage broker pursuant to s.~~
23 ~~494.0033 must prominently display his or her license in the~~
24 office where such person acts as a mortgage broker.

25 Section 16. Subsection (1) of section 494.004, Florida
26 Statutes, is amended, present subsections (2), (3), and (4) of
27 that section are renumbered as subsections (3), (4), and (5),
28 respectively, and a new subsection (2) is added to that
29 section, to read:

30 494.004 Requirements of licensees.--

1 (1) Each licensee under ss. 494.003-494.0043 shall
2 report, in writing, any conviction of, or plea of nolo
3 contendere to, regardless of adjudication, any crime or
4 administrative violation that involves fraud, dishonest
5 dealing, or any other act of moral turpitude, in any
6 jurisdiction, by the licensee or any natural person named in,
7 ~~pursuant to~~ s. 494.0031(3), not later than 30 days after the
8 date of conviction, entry of a plea of nolo contendere, or
9 final administrative action.

10 (2) Each licensee under ss. 494.003-494.0043 shall
11 report, in a form prescribed by rule of the department, any
12 conviction of, or plea of nolo contendere to, regardless of
13 whether adjudication is withheld, any felony committed by the
14 licensee or any natural person named in s. 494.0031(3), not
15 later than 30 days after the date of conviction or the date
16 the plea of nolo contendere is entered.

17 Section 17. Effective January 1, 2000, subsection (6)
18 is added to section 494.004, Florida Statutes, as amended by
19 this act, to read:

20 494.004 Requirements of licensees.--

21 (6) On or before April 30, 2000, each mortgage
22 brokerage business shall file an initial report stating the
23 name, social security number, date of birth, mortgage broker
24 license number, date of hire and, if applicable, date of
25 termination for each person who was an associate of the
26 mortgage brokerage business during the immediate preceding
27 quarter. Thereafter, a mortgage brokerage business shall file
28 a quarterly report only if a person became an associate or
29 ceased to be an associate of the mortgage brokerage business
30 during the immediate preceding quarter. Such report shall be
31 filed within 30 days after the last day of each calendar

1 quarter and shall contain the name, social security number,
2 date of birth, mortgage broker license number, date of hire
3 and, if applicable, the date of termination of each person who
4 became or ceased to be an associate of the mortgage brokerage
5 business during the immediate preceding quarter. The
6 department shall prescribe, by rule, the procedures for filing
7 reports required by this subsection.

8 Section 18. Paragraph (a) of subsection (2) of section
9 494.0041, Florida Statutes, is amended, and paragraph (r) is
10 added to that subsection, to read:

11 494.0041 Administrative penalties and fines; license
12 violations.--

13 (2) Each of the following acts constitutes a ground
14 for which the disciplinary actions specified in subsection (1)
15 may be taken:

16 (a) Pleading nolo contendere to, or having been ~~Being~~
17 convicted or found guilty of, regardless of whether
18 adjudication is withheld, of a crime involving in any
19 ~~jurisdiction which involves~~ fraud, dishonest dealing, or any
20 ~~other~~ act of moral turpitude.

21 (r) Failure to timely pay any fee, charge, or fine
22 imposed or assessed pursuant to this chapter or rules adopted
23 under this chapter.

24 Section 19. Subsections (1), (3), (6), and (7) of
25 section 494.0061, Florida Statutes, are amended to read:

26 494.0061 Mortgage lender's license requirements.--

27 (1) The department may require each applicant for a
28 mortgage lender ~~lender's~~ license to provide any information
29 reasonably necessary to make a determination of the
30 applicant's eligibility for licensure. The department shall
31

1 issue an initial mortgage lender ~~lender's~~ license to any
2 person that submits:

3 (a) A completed application form;

4 (b) A nonrefundable application fee of \$575 ~~set by~~
5 ~~rule of the department in an amount that may not exceed \$500;~~

6 (c) Audited financial statements, which documents
7 disclose that the applicant has a bona fide and verifiable net
8 worth, pursuant to generally accepted accounting principles,
9 of at least \$250,000, which must be continuously maintained as
10 a condition of licensure;

11 (d) A surety bond in the amount of \$10,000, payable to
12 the state and conditioned upon compliance with ss.
13 494.001-494.0077, which inures to the department and which
14 must be continuously maintained thereafter in full force; and

15 (e) Documentation that the applicant is duly
16 incorporated, registered, or otherwise formed as a general
17 partnership, limited partnership, limited liability company,
18 or other lawful entity under the laws of this state or another
19 state of the United States.

20 (3) Each initial application for a mortgage lender's
21 license must be in a written form prescribed by the
22 department. The division may require each applicant to
23 provide any information reasonably necessary to make a
24 determination of the applicant's eligibility for licensure.
25 The department may require that each officer, director, and
26 ultimate equitable owner of a 10-percent or greater interest
27 in the applicant submit a complete set of fingerprints taken
28 by an authorized law enforcement officer.

29 (6) A mortgage lender or branch office license,
30 ~~permit, or registration~~ may be canceled if it was issued
31 through mistake or inadvertence of the department. A notice of

1 cancellation must be issued by the department within 90 days
2 after the issuance of the license. A notice of cancellation
3 shall be effective upon receipt. The notice of cancellation
4 shall provide the applicant with notification of the right to
5 request a hearing within 21 days after the applicant's receipt
6 of the notice of cancellation. A license, ~~permit, or~~
7 ~~registration~~ shall be reinstated if the applicant can
8 demonstrate that the requirements for obtaining the license,
9 ~~permit, or registration~~ pursuant to this chapter ss.
10 ~~494.001-494.0077~~ have been satisfied.

11 (7) If an initial mortgage lender or branch office
12 ~~license, permit, or registration~~ has been issued but the check
13 upon which the license, ~~permit, or registration~~ is based is
14 returned due to insufficient funds, the license, ~~permit, or~~
15 ~~registration~~ shall be deemed canceled. A license, ~~permit, or~~
16 ~~registration~~ deemed canceled pursuant to this subsection shall
17 be reinstated if the department receives a certified check for
18 the appropriate amount within 30 days after the date the check
19 was returned due to insufficient funds.

20 Section 20. Subsections (1), (3), (9), and (10) of
21 section 494.0062, Florida Statutes, are amended to read:

22 494.0062 Correspondent mortgage lender's license
23 requirements.--

24 (1) The department shall issue an initial
25 correspondent mortgage lender ~~lender's~~ license to any person
26 who submits:

27 (a) A completed application form;

28 (b) A nonrefundable application fee of \$500 ~~set by~~
29 ~~rule of the department in an amount that may not exceed \$400;~~

30 (c) Audited financial statements, which document that
31 the application has a bona fide and verifiable net worth

1 pursuant to generally accepted accounting principles of
2 \$25,000 or more, which must be continuously maintained as a
3 condition of licensure;

4 (d) A surety bond in the amount of \$10,000, payable to
5 the State of Florida and conditioned upon compliance with ss.
6 494.001-494.0077, which inures to the department and which
7 must be continuously maintained, thereafter, in full force;
8 and

9 (e) Documentation that the applicant is duly
10 incorporated, registered, or otherwise formed as a general
11 partnership, limited partnership, limited liability company,
12 or other lawful entity under the laws of this state or another
13 state of the United States.

14 (3) Each initial application for a correspondent
15 mortgage lender's license must be in a written form prescribed
16 by the department. The division may require each applicant to
17 provide any information reasonably necessary to make a
18 determination of the applicant's eligibility for licensure.
19 The department may require that each officer, director, and
20 ultimate equitable owner of a 10-percent or greater interest
21 submit a complete set of fingerprints taken by an authorized
22 law enforcement officer.

23 (9) A correspondent mortgage lender or branch office
24 ~~license, permit, or registration~~ may be canceled if it was
25 issued through mistake or inadvertence of the department. A
26 notice of cancellation must be issued by the department within
27 90 days after the issuance of the license. A notice of
28 cancellation shall be effective upon receipt. The notice of
29 cancellation shall provide the applicant with notification of
30 the right to request a hearing within 21 days after the
31 applicant's receipt of the notice of cancellation. A license~~7~~

1 ~~permit, or registration~~ shall be reinstated if the applicant
2 can demonstrate that the requirements for obtaining the
3 license, ~~permit, or registration~~ pursuant to this chapter ss.
4 ~~494.001-494.0077~~ have been satisfied.

5 (10) If an initial correspondent mortgage lender or
6 branch office license, ~~permit, or registration~~ has been issued
7 but the check upon which the license, ~~permit, or registration~~
8 is based is returned due to insufficient funds, the license,
9 ~~permit, or registration~~ shall be deemed canceled. A license,
10 ~~permit, or registration~~ deemed canceled pursuant to this
11 subsection shall be reinstated if the department receives a
12 certified check for the appropriate amount within 30 days
13 after the date the check was returned due to insufficient
14 funds.

15 Section 21. Subsections (1), (3), and (4) of section
16 494.0064, Florida Statutes, are amended to read:

17 494.0064 Renewal of mortgage lender's license; branch
18 office license ~~permit~~ renewal.--

19 (1) The department shall renew a mortgage lender
20 ~~lender's~~ license ~~or correspondent lender's license~~ upon
21 receipt of a completed renewal form and the nonrefundable
22 renewal fee of \$575, ~~in an amount not exceeding \$500~~. The
23 department shall renew a correspondent lender license upon
24 receipt of a completed renewal form and a nonrefundable
25 renewal fee of \$475. Each licensee shall pay at the time of
26 renewal a nonrefundable fee of \$325 ~~that may not exceed \$250~~
27 for the renewal of each branch office license ~~permit~~.

28 (3) The license of a mortgage lender, correspondent
29 mortgage lender, or branch office that is not renewed by the
30 end of the biennium prescribed by the department automatically
31 reverts to inactive status. An inactive license may be

1 reactivated within 6 months after becoming inactive by filing
2 a completed reactivation form with the department, payment of
3 the appropriate renewal fee, and payment of a nonrefundable
4 reactivation fee of \$100.~~A fee of \$100 shall be charged for~~
5 ~~late renewal.~~

6 (4) A license that is not renewed within 6 months
7 after the end of the biennial period automatically expires.

8 Section 22. Subsections (1) and (2) of section
9 494.0066, Florida Statutes, are amended to read:

10 494.0066 Branch offices.--

11 (1) A branch office license permit is required for
12 each branch office maintained by a licensee under ss.
13 494.006-494.0077.

14 (2) The department shall issue a branch office license
15 permit upon receipt of a completed application form as
16 prescribed by by rule by the department and an initial
17 nonrefundable branch office license permit fee of \$325 ~~set by~~
18 ~~rule of the department in an amount that may not exceed \$250.~~
19 The branch office application must include the name and
20 license number of the licensee under ss. 494.006-494.0077, the
21 name of the licensee's employee in charge of the branch
22 office, and the address of the branch office. The branch
23 office license permit shall be issued in the name of the
24 licensee under ss. 494.006-494.0077 and must be renewed in
25 conjunction with the license renewal.

26 Section 23. Subsections (1), (2), (3), (4), (5), and
27 (9) of section 494.0067, Florida Statutes, are amended to
28 read:

29 494.0067 Requirements of licensees under ss.
30 494.006-494.0077.--

31

1 (1) Each license of a mortgage lender, correspondent
2 mortgage lender, or branch office permit shall be prominently
3 displayed in the office for which it is issued.

4 (2) Each licensee under ss. 494.006-494.0077 which
5 makes mortgage loans on real estate in this state shall
6 transact business from a principal place of business ~~in the~~
7 ~~state~~. Each principal place of business and each branch
8 office shall be operated under the full charge, control, and
9 supervision of the licensee under ss. 494.006-494.0077.

10 (3) A license ~~or branch office permit~~ issued under ss.
11 494.006-494.0077 is not transferable or assignable.

12 (4) The department may require each licensee under ss.
13 494.006-494.0077 to report any change of address of the
14 principal place of business, change of address of any branch
15 office, or change of principal officer, director, or ultimate
16 equitable owner of 10 percent or more of the licensed
17 corporation to the department in a form prescribed by rule of
18 the department writing not later than 30 business days after
19 the change is effective.

20 (5) Each licensee under ss. 494.006-494.0077 shall
21 report in a form prescribed by rule by the department writing
22 any indictment, information, charge, conviction, plea of nolo
23 contendere, or plea of guilty to any crime or administrative
24 violation that involves fraud, dishonest dealing, or any other
25 act of moral turpitude, in any jurisdiction, by the licensee
26 under ss. 494.006-494.0077 or any principal officer, director,
27 or ultimate equitable owner of 10 percent or more of the
28 licensed corporation, not later than 30 business days after
29 the indictment, information, charge, conviction, or final
30 administrative action.

31

1 ~~(9) Each licensee under ss. 494.006-494.0077, or~~
2 ~~person not required to be licensed under those sections, shall~~
3 ~~maintain a record of samples of each of its advertisements,~~
4 ~~including commercial scripts of each radio or television~~
5 ~~broadcast, for examination by the department for a period of 2~~
6 ~~years after the date of publication or broadcast.~~

7 Section 24. Effective January 1, 2000, subsection (10)
8 is added to section 494.0067, Florida Statutes, to read:

9 494.0067 Requirements of licensees under ss.
10 494.006-494.0077.--

11 (10) On or before April 30, 2000, each mortgage lender
12 or correspondent mortgage lender shall file an initial report
13 stating the full legal name, residential address, social
14 security number, date of birth, mortgage broker license
15 number, date of hire, and, if applicable, date of termination
16 for each person who acted as a loan originator or an associate
17 of the mortgage lender or correspondent mortgage lender during
18 the immediate preceding quarter. Thereafter, a mortgage
19 lender or correspondent mortgage lender shall file a report
20 only if a person became or ceased to be a loan originator or
21 an associate of the mortgage lender or correspondent mortgage
22 lender during the immediate preceding quarter. Such report
23 shall be filed within 30 days after the last day of each
24 calendar quarter and shall contain the full legal name,
25 residential address, social security number, date of birth,
26 date of hire and, if applicable, the mortgage broker license
27 number and date of termination of each person who became or
28 ceased to be a loan originator or an associate of the mortgage
29 lender or correspondent mortgage lender during the immediate
30 preceding quarter. The department shall prescribe, by rule,
31 the procedures for filing reports required by this subsection.

1 Section 25. Paragraph (a) of subsection (2) and
2 subsections (3) and (4) of section 494.0072, Florida Statutes,
3 are amended, and paragraph (r) is added to subsection (2), to
4 read:

5 494.0072 Administrative penalties and fines; license
6 violations.--

7 (2) Each of the following acts constitutes a ground
8 for which the disciplinary actions specified in subsection (1)
9 may be taken:

10 (a) Pleading nolo contendere to, or having been ~~Being~~
11 convicted or found guilty of, regardless of whether
12 adjudication is withheld, ~~of~~ a crime involving in any
13 ~~jurisdiction which involves~~ fraud, dishonest dealing, or any
14 ~~other~~ act of moral turpitude.

15 (r) Failure to timely pay any fee, charge, or fine
16 imposed or assessed pursuant to this chapter or rules adopted
17 under this chapter.

18 (3) A mortgage lender or correspondent mortgage lender
19 is subject to the disciplinary actions specified in subsection
20 (1) ~~if for a violation of subsection (2) by~~ any officer,
21 director, or ultimate equitable owner of a 10-percent or
22 greater interest in the mortgage lender or correspondent
23 mortgage lender, associate, or employee of the mortgage lender
24 or correspondent mortgage lender violates any provision of
25 subsection (2) licensee.

26 (4) A natural person who is an associate of or
27 employed by a mortgage lender or correspondent mortgage lender
28 is subject to the disciplinary actions specified in subsection
29 (1) if such person violates any provision ~~for a violation of~~
30 subsection (2) ~~regarding any action for which such person was~~
31 ~~involved.~~

1 Section 26. Section 494.0073, Florida Statutes, is
2 amended to read:

3 494.0073 Mortgage lender or correspondent mortgage
4 lender when acting as a mortgage brokerage business
5 ~~broker~~.--Sections 494.006-494.0077 do not prohibit a mortgage
6 lender or correspondent mortgage lender from acting as a
7 mortgage brokerage business ~~broker~~. However, in mortgage
8 transactions in which a mortgage lender or correspondent
9 mortgage lender acts as a mortgage brokerage business ~~broker~~,
10 the provisions of ss. 494.0038, 494.0042, and 494.0043(1),
11 (2), and (3) apply.

12 Section 27. Section 494.0037, Florida Statutes, is
13 repealed.

14 Section 28. Except as otherwise provided in this act,
15 this act shall take effect October 1, 1999.

16
17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 Senate Bill 1326

20 Authorizes the Department of Banking and Finance to adopt
21 rules to allow electronic submission of application forms,
documents, and fees by licensees.

22 Provides that an employee of a mortgage broker whose
23 activities are clerical is not required to obtain a license as
a mortgage broker.

24 Clarifies that license application, renewal, and reactivation
25 fees are nonrefundable.