

STORAGE NAME: h2169.fs

DATE: April 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 2169

RELATING TO: Real Estate Brokers and Salespersons

SPONSOR(S): Representative Goodlette

COMPANION BILL(S): SB 2566 (S)

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

- (1) FINANCIAL SERVICES
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill exempts certain licensed securities dealers and certain licensed financial institutions from the registration requirements for real estate brokers if the dealers or institutions negotiate the purchase, sale, exchange or rental of a business enterprise to or by an accredited investor and such a transaction involves the purchase or sale of the businesses' stock or assets (land, buildings, fixtures, or other improvements to the land). The exemption does not apply to such purchases which are not made in connection with the sale or purchase of a business enterprise.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Regulation of real estate brokers, salespersons, and schools teaching real estate is established under part I of chapter 475, F.S. Regulation is administered by the Florida Real Estate Commission under the Department of Business and Professional Regulation.

The Florida Statutes authorize real estate licensees to enter into two types of relationships with potential buyers or sellers of real estate:

1. In a "single agent relationship," the broker represents, as a *fiduciary*, either the buyer or seller, but not both, in the same transaction. ss. 475.01(1)(l) and 475.278(3), F.S.
2. In a "transaction broker relationship," the broker provides a limited form of representation to a buyer, seller, or both, in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. However, the transaction broker must: treat the buyer and seller with honesty and fairness; account for all funds; use skill, care, and diligence in the transaction; disclose all known facts that materially affect the value of the property that are not readily observable; present all offers or counteroffers in a timely manner; and, maintain a limited confidentiality. ss. 475.01(1)(m) and 475.278(2), F.S.

Florida law requires that prior to selling or offering to sell securities in the state, securities dealers, investment advisors, associated persons and branch offices must be registered with the Department of Banking and Finance (DBF) under Chapter 517, F.S. The Federal Government provides regulation by the Securities and Exchange Commission (SEC) for securities dealers and activities under the Securities Exchange Act of 1934, as amended and the Securities Act of 1933, as amended.

The DBF also has regulatory authority over state-chartered commercial banks, credit unions, savings associations, nondeposit trust companies, international banking agencies, representative offices and administrative offices. State-chartered financial institutions are licensed, examined and regulated to ensure that private funds invested in Florida's state-chartered financial institutions are protected from potential loss due to failure or insolvency.

The DBF is charged with enforcing the Financial Institutions Codes (Codes) (Chapters 655, 657, 658, 660, 663 and 665, F.S.) for state-authorized or state-chartered financial institutions. Federal agencies have the similar responsibilities for federally-authorized or federally-chartered financial institutions.

Federally-chartered financial institutions, most of which have the words "federal" or "national" in their titles, are regulated by federal agencies (e.g., the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervisor). State-chartered institutions which are members of the FDIC may be examined by that agency. The state Division of Banking coordinates with the various federal agencies to schedule institutional exams to avoid duplication of efforts.

The increased merger and acquisition activity of securities dealers and financial institutions has put such entities in the position of trading in property which is incidental to the business merger or acquisition deal. In the event that such business transactions do involve the sale or purchase of land, buildings, fixtures, or other improvements to the land, conceivably, securities dealers and financial institutions licensed under the SEC and the banking codes would have to become licensed as real estate brokers also to be able to transact the deal.

B. EFFECT OF PROPOSED CHANGES:

This bill exempts certain licensed securities dealers and certain licensed financial institutions from the registration requirements for real estate brokers if the dealers or institutions negotiate the purchase, sale, exchange or rental of a business enterprise to or by an accredited investor and the transaction involves the sale or purchase of land, buildings, fixtures, or other improvements to the land. The exemption does not apply to such purchases which are not made in connection with the transaction conducted in relation to the business enterprise.

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.

(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?

N/A

(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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

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 would allow certain securities dealers and financial institutions to conduct the sales, exchanges or rentals of businesses which might involve the sale or purchase of the businesses' stock or assets.

- 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:

Section 475.011, F.S. (1998 Supp.)

E. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES section for details.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

N/A

2. Direct Private Sector Benefits:

Already licensed securities dealers and financial institutions will not be required to incur the expense or expend the time to become licensed real estate brokers in order to conduct certain business transactions.

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins