

STORAGE NAME: h0455s1.sgc.doc

DATE: April 5, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 455

RELATING TO: Continuing education requirements for mortgage brokers and mortgage lenders

SPONSOR(S): The Committee on Banking and Representative Detert

TIED BILL(S):

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

- (1) BANKING YEAS 9 NAYS 0
 - (2) BUSINESS REGULATION YEAS 7 NAYS 1
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 1
 - (4)
 - (5)
-

I. SUMMARY:

The bill establishes education requirements for those seeking initial licensure under part III of chapter 494 (mortgage lending) and establishes continuing education requirements as a condition precedent to renewal of licenses under part II (mortgage broker) and part III (mortgage lending) of chapter 494.

The scope of mortgage brokerage schools is expanded to include mortgage lenders, correspondent lenders, their principal representatives and loan originators and associates, and distance learning is permitted for education requirements. A mortgage broker must have been licensed for at least one year as such, or demonstrate active engagement in mortgage broker business for a year prior to being designated as Principal Broker.

The bill requires all mortgage brokers to certify that each has completed at least 14 hours of professional education programs during the 2 years prior to an application for a license renewal. Provides the same requirement for mortgage lenders' and correspondent mortgage lenders' license renewal – the principal representative, and the lender's loan originators and associates must complete 14 hours of professional education courses. Licensees must maintain records documenting compliance with this requirement for a period of four years.

For applications submitted after October 1, 2001, mortgage lenders' and correspondent mortgage lenders' Principal Representative must complete 24 hours of professional education and must pass a written test prescribed by the department that covers primary and secondary mortgage financing transactions, provisions of chapter 494, F.S., and department rules. A lender must notify the department if a new principal representative has been designated and document that they have completed all course requirements. Effective October 1, 2002, loan originators and associates of mortgage loan licensees must complete 14 hours of professional education on a par with the principal representative.

Two technical amendments are traveling with the CS

FISCAL: According to the department the bill carries a potential negative fiscal impact of \$170,000 for FY 01-02, which is the estimated reduction in application revenue due to the requirement that a principal broker of a mortgage brokerage business have 1-year experience.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The bill establishes department oversight, and rulemaking authority to regulate and monitor education requirements for chapter 494, F.S., licensees.

2. Lower Taxes Yes No N/A

The bill requires mortgage brokerage and mortgage lending firms to incur expense for continuing education courses for themselves and employees.

3. Individual Freedom Yes No N/A

Currently there are no continuing education requirements for mortgage brokers, and no initial or continuing education requirements for mortgage lenders.

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

For any principal that received a "no" above, please explain:

B. PRESENT SITUATION:

Mortgage Brokers/Lenders

Chapter 494, F.S. governs mortgage brokerage and mortgage lending. **Part I** of Chapter 494, F.S., provides definitions and provisions that apply to the mortgage brokerage and mortgage lending industry. Part I also outlines the general powers and duties of the regulatory agency, the Department of Banking and Finance ("department"), lists prohibited practices, and provides penalties for violations of the act.

Part II of Chapter 494, F.S., provides the licensure and eligibility requirements for mortgage broker business and for mortgage brokers, individually. Section 494.003, F.S., exempts from the chapter certain financial entities (any bank, bank holding company, trust company, savings and loan association, savings bank, credit union, or consumer finance company licensed pursuant to Chapter 516, F.S.) and certain federal associations. Separate licenses are required to operate a mortgage brokerage business, and to provide services as a mortgage broker and a mortgage lender. A mortgage broker business is required to designate a "principal broker" within the business, who has responsibility for exercising operational control of the licensee's business. There is no corresponding "principal" designee for a mortgage lending business licensed pursuant to part III of Chapter 494, F.S.

Part III of Chapter 494, F.S., provides the licensure and eligibility requirements for mortgage lenders and for correspondent mortgage lenders. Section 494.006, F.S., outlines which entities are exempt from the requirements of this part and which entities are exempt from licensure under this part. Separate licenses are required to provide services as a mortgage lender and a correspondent mortgage lender. The substantive difference between a mortgage lender and a correspondent mortgage lender is that the latter cannot service loans.

Education Requirements for Licensure

Part II of Chapter 494, F.S., provides for departmental permitting and for certification of mortgage brokerage schools. Persons, schools and other institutions may apply for a permit from the department to offer mortgage brokerage training courses as a condition precedent to licensure as a mortgage broker. Accredited universities, community colleges, and technical schools that offer similar courses are exempted from the departmental permitting process. Permitted schools must comply with guidelines and rules established by the department. Currently there are 15 permitted schools and 13 colleges and universities in the state to serve the needs of mortgage broker applicants seeking licensure by the department.

Those seeking licensure as a mortgage broker must complete 24 hours of classroom education on primary and subordinate financing transactions and the laws and rules of Chapter 494, F.S., as a condition precedent for licensure.

C. EFFECT OF PROPOSED CHANGES:

The bill establishes education requirements for those seeking initial licensure under part III of chapter 494, F.S., (mortgage lending) and establishes continuing education requirements as a condition precedent to renewal of licenses under part II (mortgage broker) and part III (mortgage lending) of chapter 494, F.S.

Mortgage Business Schools

The scope of mortgage brokerage schools is expanded to include mortgage lenders, correspondent lenders, their principal representatives and loan originators and associates, and distance learning is permitted for education requirements.

Mortgage Brokers

Principal brokers must have been licensed for at least one year as such, or demonstrate active engagement in mortgage broker business for a year prior to being designated as Principal Broker.

Renewal of a mortgage business license is contingent upon completing education courses.

The bill requires all mortgage brokers to certify that each has completed at least 14 hours of professional education programs during the 2 years prior to an application for a license renewal. It provides the same requirement for mortgage lenders' and correspondent mortgage lenders' license renewal – the principal representative, and the lender's loan originators and associates must complete 14 hours of professional education courses. Licensees must maintain records documenting compliance with this requirement for a period of four years.

Mortgage Lenders

For applications submitted after October 1, 2001, mortgage lenders' and correspondent mortgage lenders' Principal Representative must complete 24 hours of professional education and must pass a written test prescribed by the department that covers primary and secondary mortgage financing transactions, provisions of chapter 494, F.S., and department rules. A lender must notify the department if a new principal representative has been designated and document that they have completed all course requirements.

Effective October 1, 2002, loan originators and associates of mortgage loan licensees must complete 14 hours of professional education on a par with the principal representative.

Mortgage broker businesses must retain education compliance records, rather than the businesses and the schools filing electronic records with the department.

Fiscal

According to the department the bill carries a potential negative fiscal impact of \$170,000 for FY 01-02, which is the estimated reduction in application revenue due to the requirement that a principal broker of a mortgage brokerage business have 1-year experience.

See Part III.C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 494.001, F.S., creating a definition for "principal representative" who is an individual responsible for exercising operational control of a mortgage lender or correspondent mortgage lender.

Section 2 creates s. 494.00295, F.S., establishing a license renewal requirement that mortgage brokers, mortgage lenders, and correspondent mortgage lenders complete at least 14 hours of professional education courses in primary and subordinate mortgage financing transactions, chapter 494, and rules, during the 2 years prior to renewal. Courses may only be provided by permitted mortgage business schools (or exempted institutions) and may include Internet-based courses. The department is authorized to adopt rules governing qualifying hours for programs and standards for Internet-based courses including course completion requirements.

Section 3 renumbers s. 494.0311, F.S. as s. 494.0029, F.S., and amends that section by changing the name of the existing "mortgage brokerage school" as the "mortgage business school" throughout. Placing this section within part I of Chapter 494, F.S. (General Provisions) expands the scope of the school to apply throughout the chapter.

Section 4 amends s. 494.0034, F.S., making the receipt of certification that the licensee has complied with continuing education requirements a condition of license renewal.

Section 5 amends s. 494.0035, F.S., requiring that a mortgage broker be licensed as such for at least one year prior to being designated as a "principal broker" within the brokerage. As an alternative, the principal broker must demonstrate that he/she has been actively engaged in mortgage-related business for at least one year prior to such designation.

Section 6 amends s. 494.0061, F.S., adding subsections (8), (9), and (10), establishing additional license requirements for an initial mortgage lender license, mirroring like requirements for mortgage brokers. An applicant for an initial mortgage lender license is required to designate a "principal representative" within the mortgage lender business, which is comparable to the "principal broker" within a mortgage broker business, who has responsibility for exercising operational control of the licensee's business. Each lender license must designate a principal representative and maintain a form with that designation. If the form is not available, inaccurate or incomplete, the department will deem the business to be operated under the control of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the business.

An applicant for an initial mortgage lender license must document 24 hours of classroom or Internet-based education on primary and subordinate financing transactions. After October 1, 2001,

an applicant's principal representative must pass a written test adopted by the department to determine competency in primary and subordinate financing transactions. A lender must notify the department of the name and address of any new principal representative and must document the principal's representative's compliance with the educational and testing requirements.

Section 7 amends s. 494.0062, F.S., adding paragraph (f) to subsection (1) and adding subsections (11), (12), and (13), establishing additional license requirements for a correspondent mortgage lender license, mirroring like requirements for mortgage brokers and mortgage lenders. See, Section 6, above.

Section 8 amends s. 494.0064, F.S., adding paragraph (b) to subsection (1), making the receipt of certification that each mortgage lender's and correspondent mortgage lender's principal representative, loan originators and associates have completed requisite continuing education requirements a condition of license renewal.

Section 9 amends s. 494.0067, F.S., adding subsection (10), effective October 1, 2002, establishing continuing education requirements for loan originators or associates of licensed mortgage lenders or correspondent mortgage lenders. At the time of the licensee's license renewal, loan originators or associates who perform services for the licensed entities are required to have completed 14 hours of professional education during the preceding two years. Licensees must maintain records of such training including records of the content and the hours designated for each program. Evidence of completion of such programs must be included with licensee's renewal application.

Section 10 provides an effective date of October 1, 2001, unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

	FY 01-02	FY 02-03	FY 03-04
Reduction in application revenue. ¹	(\$ 170,000)		

Total Revenues and Expenditures: (\$170,000)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

¹ The bill requires that a principal broker of a mortgage brokerage business have 1-year experience. Currently there are approximately 400 applications yearly that do not meet this requirement and this may result in a 1-year delay in filing for these mortgage brokerage business licenses.

2. Expenditures:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Permitted mortgage business schools, as well as universities and other exempted schools who provide such courses, may likely incur expense developing a continuing education curriculum for the estimated 16,000 loan originators and "principal representatives" which will need to complete the requisite course hours for 2003-2004. In addition, there exists the possibility of lost revenue for mortgage brokerage businesses due to the requirement that a designated mortgage brokerage business' "principal broker" have a year experience prior to such designation. It is estimated that as many as 30,000 mortgage brokers will need to take continuing education courses prior to license renewal in 2002-2003, and will incur expenses estimated at \$125 per person (estimated cost of a 14 hour course). An annual average of 550 new mortgage companies apply for licensure with the department. These will incur expenses for initial licensure education requirements at \$175 per person (average cost of a 24 hour course).

The department estimates private sector costs to be \$2,079,400 for FY 01-02, \$3,846,250 for FY 02-03, and \$2,079,400 for FY 03-04.

D. **FISCAL COMMENTS:**

The bill requires an applicant for an initial mortgage lender's license, or the applicant's principal representative, to pass a written test adopted by the department to determine competency in primary and subordinate financing transactions. The bill does not, however, provide a fee for the department to recoup this expense. By law the department may require each mortgage broker applicant to provide any information necessary to make a determination of the applicant's eligibility for licensure. This requirement will now extend to mortgage lenders, their loan originators and their associates, as well as, expand to continuing education for license renewal, not just initial licensure.

III. 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:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. **CONSTITUTIONAL ISSUES:**

None noted.

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B. RULE-MAKING AUTHORITY:

The bill authorizes the department to promulgate rules relating to forms, electronic filing, and reporting of educational courses completed.

C. OTHER COMMENTS:

N/A

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 14, 2001, the Committee on Banking adopted six technical amendments to a strike-all amendment, offered by the bill's sponsor, Representative Detert, and passed the bill as amended, as a Committee Substitute. Apart from the many stylistic and technical language changes made throughout the bill, the one major difference between the bill as filed and the CS version of the bill is that the CS version requires the mortgage broker businesses to document, retain and submit education compliance records at the time of license renewal, rather than require the businesses and the mortgage schools to file electronic records with the department. As a result, the department would not need to develop and enhance the necessary database, including the mainframe and the website, and would not need to hire an additional three (3) FTEs, which reduces the estimated fiscal impact from \$1.8 million to \$170,000.

On March 29, 2001, the Committee on Business Regulation adopted two technical amendments that are traveling with the CS. Amendment one inserts the term "principal representative" that had been inadvertently left out. Amendment two corrects a reference by striking "subparagraph and inserting "subsection."

VI. SIGNATURES:

COMMITTEE ON BANKING:

Prepared by:

Michael A. Kliner

Staff Director:

Susan F. Cutchins

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION:

Prepared by:

Alan W. Livingston

Staff Director:

Paul Liepshutz

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Alan W. Livingston

Staff Director:

Don Rubottom