

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1789 (PCB COM 04-02) w/CS Banking Regulation  
**SPONSOR(S):** Commerce  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 1624

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	16 Y, 0 N	Sheheane	Billmeier
2) State Administration	7 Y, 0 N w/CS	Williamson	Everhart
3) Finance & Tax			
4) Commerce & Local Affairs Apps. (Sub)			
5) Appropriations			

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### SUMMARY ANALYSIS

The Financial Services Commission (Commission) and its Office of Financial Regulations (the Office) administer the regulation of mortgage brokers and lenders, consumer financiers, retail installment sellers, and title loans and securities businesses. A number of provisions under each of these areas of its jurisdiction have been identified by the Office for clarification and revision to achieve more efficient governance.

This bill revises a number of regulatory provisions governing mortgage brokers and lenders. These revisions include:

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the filing fee for license transfers from \$500 to \$575;
- Approval for branch application license;
- Revised accounting standards; and
- Corrections to statutory cites.

Provisions relating to electronic filing and processing of fingerprint cards are also addressed under the chapters governing consumer finance, retail installment sales, securities transactions, and money transmitters. Further, the bill expands the Commission's rulemaking authority to include guidelines for the destruction, as well as, retention of certain records by mortgage brokers and lenders, retail installment sellers, consumer finance transactions businesses, title loans businesses, and securities businesses.

The bill also increases the fee licensees must pay to transfer licenses from \$500 to \$575. The Office estimates that this provision will result in an increase in revenue of approximately \$575 annually. The Office also estimates that the new electronic examination fee will range from \$60 to \$75 per test. The Office is authorized to use a third-party to administer the examination; therefore, the fee would be paid by the applicant to the provider rather than the Office. The impact of the change is estimated to total \$549,247 annually.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1789b.sa.doc  
**DATE:** April 14, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill increases governmental regulation by mandating that all license renewal applications be submitted electronically and authorizes the Office to allow a third party to administer the required applicant examinations, which will likely result in a new fee for the applicant.

The bill also increases the application fee for license transfers for certain licensees; however, this increase makes licensing application fees consistent for all applicants.

#### B. EFFECT OF PROPOSED CHANGES:

The Financial Services Commission (Commission) and its Office of Financial Regulation (the Office) administer the regulation of mortgage brokers and lenders, consumer finance, retail installment sales, title loans, and securities. A number of provisions have been identified by the Office as needing clarification and revision to achieve more efficient governance.

##### **Mortgage Broker and Lender Licensing**

This bill revises a number of regulatory provisions in Chapter 494, Florida Statutes, which governs mortgage brokers and lenders. These revisions include:

- Mandated electronic filing of required forms, documents, or files with exceptions for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exist if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the filing fee for license transfers from \$500 to \$575;
- Approval for branch application license;
- Revised accounting standards; and
- Corrections to statutory cites.

##### **Electronic Filing**

Currently, the Commission is authorized to adopt rules to allow the electronic submission of any forms, documents, or fees required by chapter 494, F.S., including quarterly reports, initial applications, and renewal applications. The Office currently accepts both paper filed and electronically filed license renewals from mortgage brokerage businesses and their branch offices, mortgage brokers, mortgage lenders and their branch permit holders, and correspondent mortgage lenders and their branch permit

holders. The Office reports that during the most recent business renewal period, 90 percent of the licensees chose to renew through the Internet. The Office also reports that maintaining a dual system for only 10 percent of license renewal applicants is costly.

This bill authorizes the Commission, by rule, to require that any form, document, or fee be filed electronically. However, the bill also provides that any such rules must reasonably accommodate a technological or financial hardship, and further authorizes the Commission to prescribe by rule the requirements and procedures for qualifying for a hardship exemption.

### **Clarifications**

The bill clarifies that a completed application for licensure or renewal is considered “received” when the paperwork and the appropriate fees are received. The Office indicates that this clarification will assist in the enforcement of any penalties resulting from fees negated by transmission of payment instruments backed by insufficient funds. (See “Payment with Insufficient Funds” in this analysis.)

The definition for “Associate” is two tiered. An associate is identified as a person who is required to be licensed as a mortgage broker under this chapter who is employed by or acts as independent contractor for a mortgage brokerage business. The definition then continues by saying “or” and then identifies a person acting as an independent contractor for a mortgage lender or correspondent mortgage lender. In an attempt to clarify who is required to be licensed as a mortgage broker, this bill inserts references to those who act as associates for mortgage lenders or correspondence mortgage lenders<sup>1</sup>.

### **Fingerprint Card Processing**

Currently, state agencies that require fingerprints from certain persons within the entities they regulate are authorized<sup>2</sup> to collect from those regulated entities the cost of processing the fingerprints, including any processing costs imposed by the Florida Department of Law Enforcement (FDLE)<sup>3</sup>. Additionally, state agencies are authorized to, by rule, establish the amounts and methods of payment needed to collect such costs. The Office’s current authority<sup>4</sup> requires each officer, director, and owner of a 10 percent or greater interest in the mortgage brokerage or lender business to submit a set of fingerprints and to collect the processing costs as part of the general licensing fees.

This bill authorizes the Commission to adopt additional rules to authorize optical imaging of fingerprints, and to establish fees for the collection of such fingerprints. The Commission, however, may not charge a fee greater than \$30. The bill also authorizes the Office to contract with any other state agency providing such fingerprint services.

### **Educational Requirements**

Current law authorizes persons, schools, and other institutions to apply for a permit from the Office to offer mortgage brokerage training courses as a condition precedent to licensure. Accredited universities, community colleges, and technical schools that offer similar courses are exempted from the permitting process. Permitted schools must comply with guidelines and rules established by current law. Although the schools can offer the courses, there is no statutory authority for the Office to permit an outside resource to administer and charge for the requisite tests. At present, the Office administers monthly the pre-licensing mortgage brokerage and lending tests at five locations statewide. Applicants are able to take the tests up to three times without paying a testing fee.

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<sup>1</sup> See s. 494.0033(1), F.S.

<sup>2</sup> See s. 215.405, F.S.

<sup>3</sup> The Department of Education contracts with Lockheed Martin to collect and process fingerprint cards through FDLE.

<sup>4</sup> See ss. 494.0031, .0033, .0061, .0062, .0065, F.S.

This bill authorizes the Office, or a third party approved by the Office, to offer such tests in an electronic format. The Office or third party may not charge more than \$100 for the electronic version of such tests. This bill also provides that the Office may waive the test requirement for an individual who has passed a comparable test offered by a national group of state mortgage regulators or a similar federal government agency.

Current law requires lenders and correspondent lenders to designate a principal representative who will exercise control of the licensee's business. Since October 1, 2001, each principal representative is required to pass a test which covers primary and subordinate mortgage financing transactions and the rules and laws. If a lender designates a new principal representative, the lender must notify the Office of the name and address of the new representative and document that the person has completed the educational and testing requirements.

This bill allows the newly designated principal representative 90 days after being designated to complete the education and testing requirements.

### **Exemptions**

Current law exempts 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 from the licensure requirements for mortgage brokerage businesses, mortgage brokers, mortgage lenders and correspondent mortgage lenders. The Office indicates that certain financial institutions and their subsidiaries from other countries have claimed this exemption, and the Office has not been able to verify that a regulatory review of the institution has taken place.

This bill requires regulation by a state or federal regulatory agency within the United States in order to claim the exemption from licensure.

### **Payment with Insufficient Funds**

Current law provides provisions for the cancellation of an initial license if the check written for that license is returned for non-sufficient funds. The Office does not have the authority to cancel the license if the checks are returned due to closure of the licensee's account and does not have the authority to cancel the permits of mortgage brokerage schools, or renewed licenses if the checks of the permit holders or licensees are returned.

This bill removes the individual references to licensure cancellation for payment with a bad check found under the various licensing sections and provides general authority for disciplinary action, which can include licensure cancellation, for payments backed by insufficient funds.<sup>5</sup>

### **Consistency**

Current law authorizes the Office to require each applicant to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. This bill replicates that authority for the Office in relation to mortgage brokerage business license applicants.

### **Revised Accounting Standards**

Mortgage lenders and correspondent mortgage lenders are required, under current law, to maintain a minimum net worth. The licensee's compliance with this requirement must be verified by audited financial statements that are prepared according to generally accepted accounting principles.

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<sup>5</sup> See s. 494.0041, F.S.

This bill amends the current auditing standards to mirror new auditing standards.

### **Branch Office Applications**

Under current law, mortgage brokerage businesses and mortgage lenders may acquire branch office licenses. The Office indicates that clarity is needed regarding the issuance of a branch office license.

This bill amends the branch office license requirements to provide that the Office is directed to issue the branch office license once it has determined that the licensee has submitted a completed application. It also requires processing of branch renewals for securities dealers through the Central Registration Depository and for process of applications of Investment Advisers through the Investment Advisor Registration Depository.

### **Grandfathering**

This bill increases the fee licensees must pay to transfer licenses from \$500 to \$575. This change makes the license transfer application fees for this section consistent with the license applications fees for mortgage brokers and lenders found in current law.

### **Miscellaneous**

This bill deletes obsolete and duplicative language. It also provides that the same exemption from licensure extended to natural persons acting within the scope of employment with a licensed mortgage lender is extended to natural persons acting within the scope of employment with licensed correspondent mortgage lenders.

### **Records Retention**

The Office has statutory authority to require several industries under its jurisdiction to keep records for specified periods of time. Many of these documents contain personal financial information on clients of the licensees. The proper disposal of records containing such information could help to curtail identity theft. However, none of these sections authorize the Office to specify how to dispose of these records once the retention period has been reached.

This bill amends current law to provide the Office with such authority.

## **C. SECTION DIRECTORY:**

### **Mortgage Brokers and Lenders**

Section 1 amends s. 494.0011, F.S., requiring electronic filing with a provision for hardship situations.

Section 2 amends s. 494.0016, F.S., expanding the Commission's rulemaking authority to include guidelines for the destruction and retention of certain records.

Section 3 amends s. 494.0029, F.S., regarding permit applications.

Section 4 amends s. 494.00295, F.S., relating to continuing education programs.

Section 5 amends s. 494.003, F.S., making a clarifying change.

Section 6 amends s. 494.0031, F.S., relating to licensure as a mortgage broker business.

Section 7 amends s. 494.0033, F.S., relating to mortgage broker's license.

Section 8 amends s. 494.0034, F.S., relating to renewal of mortgage broker's license.

Section 9 amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 10 amends s. 494.0041, F.S., relating to administrative penalties, fines, and license violations.

Section 11 amends s. 494.006, F.S., making a clarifying change.

Section 12 amends s. 494.0061, F.S., relating to mortgage lender's license requirements.

Section 13 amends s. 494.0062, F.S., relating to correspondent mortgage lender's license requirements.

Section 14 amends s. 494.0064, F.S., relating to renewal of mortgage lender licenses and branch office license renewals.

Section 15 amends s. 494.0065, F.S., relating to grandfather type requirements.

Section 16 amends s. 494.0066, F.S., relating to branch offices.

Section 17 amends s. 494.0067, F.S., relating to requirements of licensees.

Section 18 amends s. 494.0072, F.S., relating to administrative penalties and fines and license violations.

Section 19 amends s. 494.00721, F.S., relating to net worth requirements.

### **Consumer Finance**

Section 20 amends s. 516.03, F.S., relating to application for license to make loans, and fees.

Section 21 amends s. 516.07, F.S., grounds for denial of license or for disciplinary action.

Section 22 amends s. 516.12, F.S., relating to records kept by licensees.

### **Securities**

Section 23 amends s. 517.051, F.S., making a clarifying change.

Section 24 amends s. 517.061, F.S., making an editorial change.

Section 25 amends s. 517.081, F.S., making a clarifying change.

Section 26 amends s. 517.12, F.S., relating to registration of dealers, associated persons, investments advisers, and branch offices.

Section 27 amends s. 517.131, F.S., revising procedures for filing claims with the Securities Guaranty Fund.

Section 28 amends s. 517.141, F.S., relating to payment from the fund.

Section 29 amends s. 517.161, F.S., relating to registration of a securities dealer, investment advisor, or branch office.

### **Retail Sales**

Section 30 amends s. 520.03, F.S., making clarifying changes.

Section 31 amends s. 520.32, F.S., making clarifying changes.

Section 32 amends s. 520.52, F.S., making clarifying changes.

Section 33 amends s. 520.63, F.S., making clarifying changes.

Section 34 amends s. 520.994, F.S., requiring electronic filing with a provision for hardship situations.

Section 35 amends s. 520.995, F.S., relating to grounds for disciplinary action.

Section 36 amends s. 520.997, F.S., relating to the destruction of books, accounts, and records.

### **Title Loans**

Section 37 amends s. 537.009, F.S., relating to the destruction of books, accounts, and records.

### **Money Transmitters**

Section 38 amends s. 560.105, F.S., authorizing the Commission to adopt rules.

Section 39 amends s. 560.114, F.S., relating to disciplinary actions.

Section 40 amends s. 560.118, F.S., relating to electronic submission of forms.

Section 41 amends s. 560.121, F.S., relating to the destruction of books, accounts, records, and documents.

Section 42 amends s. 560.205, F.S., relating to qualifications of applicant for registration.

Section 43 amends s. 560.207, F.S., relating to renewal of registration and registration fees.

Section 44 amends s. 560.210, F.S., relating to permissible investments.

Section 45 amends s. 560.211, F.S., relating to maintaining records.

Section 46 amends s. 560.305, F.S., relating to applications.

Section 47 amends s. 560.306, F.S., relating to standards defined by the Commission.

Section 48 amends s. 560.308, F.S., relating to registration terms, renewal, and renewal fees.

Section 49 amends s. 560.310, F.S., authorizing notification via amendment prescribed by commission rule.

### **Insurance Representatives**

Section 50 creates s. 626.565, F.S., providing rulemaking authority for the office.

Section 51 provides an October 1, 2004, effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Office of Financial Regulation estimates that the filing fee increase for the Mortgage Lender Savings Clause Transfer will increase revenues by \$575 per year.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

According to the Office of Financial Regulation, there is a private sector impact expected due to mortgage broker testing if the test is transferred to a third party vendor for administration purposes. For fiscal year 2004/2005, the impact is expected to be \$606,184. For fiscal year 2005/2006, an impact of \$808,245 is expected, and for fiscal year 2006/2007, an impact of \$808,245 is expected.

The Office of Financial Regulation stated the following regarding the impact on the private sector:

We are unable to predict offsetting benefit to private sector of allowing quicker entry into business due to more frequent testing, immediate scoring of test and

more opportunities to take test. It is also anticipated more test sites would be available than currently, reducing the applicants travel expense to take the test. Under current statute, the Office only administers the Mortgage Broker test once a month. Under the proposed language, the Office may promulgate a rule to allow a third party to administer the test via computer. This would allow applicants to schedule a date, time and location more convenient to them. The applicant would immediately receive their score to know whether they need to retake the test. Under the proposal, the applicant could reschedule an immediate retake if necessary, rather than waiting until the following month to retake the test. This would allow them to obtain their mortgage broker license more quickly and enter business without unnecessary delays.

There will also be a fiscal impact to those persons opting to submit fingerprints electronically. The department has stated that those persons submitting fingerprints in a paper format, and requiring a state and national background check, will be charged \$47 by the Florida Department of Law Enforcement. If a person opts to submit fingerprints in an electronic format then that person will be charged an additional fee. That additional fee will vary based upon the entity contracting with the department to provide such service. The fee could range between \$5 (if contracting with the Department of Children and Family Services) and \$20 (if contracting with the Department of Education).

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

As a result of this bill, the Commission is given rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms, rulemaking authority to include guidelines for the destruction, as well as, retention of certain records, the authority to charge for the processing of fingerprint cards, and authority to utilize a third-party for the submission of fingerprint cards and fees by electronic means. This bill does not, however, provide caps for fees to be established by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 14, 2004, the Committee on State Administration adopted six amendments to HB 1789 and reported the bill favorably with CS. The amendments:

- Place a \$30 cap on fees for processing an optical image of a fingerprint;



- Remove language exempting the Office of Financial Regulation from the competitive bidding process;
- Clarify that a fee may only be charged by the Financial Services Commission for the electronic version of the mortgage broker test; and
- Place a \$100 cap on the fee for the electronic version of the mortgage broker test.