

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2446

SPONSOR: Banking and Insurance Committee and Senator Siplin

SUBJECT: Discriminatory Lending Practices

DATE: April 25, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute requires the Office of Insurance Regulation, in consultation with the Department of Community Affairs, to study and provide a report to the Legislature on lending practices and the availability of credit to minorities in Florida. The office is required to submit the study, which includes findings and recommendations, to the Legislature by January 1, 2006.

This bill creates an undesignated section of the Florida Statutes.

**II. Present Situation:**

**Regulation of Financial Institutions and Other Lenders**

The Financial Services Commission (commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Office of Insurance Regulation and the Office of Financial Regulation are under the commission.<sup>1</sup> The Office of Financial Regulation is responsible for all activities of the commission relating to the regulation of state-chartered credit unions and other state-chartered financial institutions, finance companies, securities industries, and money transmitters.<sup>2</sup>

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks. National banks represent about 28 percent of all insured commercial banks in the United States, holding 57 percent of the total assets of the banking system. The Federal Reserve Board investigates consumer complaints received against state-chartered banks that are members of the Federal Reserve System. The Office of Thrift Supervision regulates thrifts. The National

<sup>1</sup> The Office of Insurance Regulation is responsible for the licensure and regulation of insurers and other risk bearing entities. [s. 20.121(3), F.S.]

<sup>2</sup> Section 20.121(3)(a)1., F.S.

Credit Union Administration (NCUA) is the federal agency that charters and supervises federal credit unions.

Recently, the Office of the Comptroller of Currency adopted a regulation to specify the types of state laws that do not apply to national banks' lending and deposit taking activities and the types of state laws that generally do apply to national banks. The regulation authorizes national banks to engage in real estate lending subject to such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.<sup>3</sup> However, certain types of state laws are not preempted and would apply to national banks to the extent that they do not significantly affect the real estate lending operations of the national banks or otherwise inconsistent with national banks' federal authority to engage in real estate lending. This regulation was issued in response to states enacting laws to apply state laws to national bank activities that are already subject to federal regulation, curtailing national banks' ability to conduct operations fully authorized by the Federal law.

Mortgage brokers and mortgage lenders are regulated under the provisions of ch. 494, F.S. However, banks and bank holding companies, regulated under the laws of any state or the U.S. government, are exempt from regulation under ch. 494, F.S. A person employed by a mortgage lender is exempt from the licensure requirements when acting within the scope of employment with the licensee.

### **Florida Fair Housing Act of 1992**

The purpose of the Florida Fair Housing Act of 1992 is to provide, within constitutional limitations, fair housing throughout the state. The act prohibits any person engaged in the sale, rental, or financing of housing or other real estate transactions from discriminating against a person because of race, color, religion, sex, national origin, age, handicap, or marital status. Sections 760.23 and 760.25, F.S., prohibit discrimination in the sale, rental, and financing of housing and other residential real estate transactions. The act provides rights and remedies for any person who has been injured by a discriminatory housing practice and authorizes the Florida Commission on Human Relations to investigate complaints, impose fines, and institute civil actions to enforce compliance with these provisions.

### **Federal Laws and Regulations Addressing Discriminatory Lending Practices**

There are federal laws that regulate consumer and commercial real estate transactions. State and nationally chartered financial institutions and other lenders are subject to these provisions.

#### *Fair Housing Act*

This act prohibits discrimination based on race or color, national origin, religion, sex, familial status, and disability, in all aspects of residential real estate transactions, including, but not limited to: making loans to buy, build, repair, or improve a dwelling; purchasing real estate loans; selling, brokering, or appraising residential real estate; and selling or renting a dwelling.<sup>4</sup>

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<sup>3</sup> 12 CFR 34.

<sup>4</sup> 42 U.S.C. 3601 et seq.

*The Equal Credit Opportunity Act*

This act prohibits discrimination in any aspect of a consumer or commercial credit transaction based on race or color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise in good faith.<sup>5</sup> This act applies to any transaction involving a creditor. A creditor for purposes of this act would appear to include, but not limited to, financial institutions, consumer finance, and retail installment sales. Regulation B implements the provisions of this act.<sup>6</sup>

*Regulation BB: Community Reinvestment*

This federal regulation implements the Community Reinvestment Act of 1977 (CRA) which requires that all federal regulators of banks and thrifts encourage those institutions to help meet the credit needs of the local communities in which they are chartered.<sup>7</sup> The CRA directs the regulatory agencies to assess each institution's record in the meeting the credit needs of its entire community, consistent with safe and sound operations. The CRA also requires these agencies to consider these records in evaluating the institution's applications for deposit facilities, such as mergers. Each bank is assigned a ranking based on its performance. Evidence of discriminatory practices adversely affects the evaluation of a bank's performance.

*Regulation C: Home Mortgage Disclosures*

Regulation C implements the Home Mortgage Disclosure Act (HMDA). One of the purposes of this act is to identify possible discriminatory lending patterns and enforce antidiscrimination statutes by requiring the collection and disclosure of data about applicant and borrower characteristics.

Federal banking agencies are authorized to use their enforcement authority under 12 U.S.C. to address discriminatory lending practices. This includes authority to seek:

- Enforcement actions that require both prospective and retrospective relief. Retrospective relief may include identifying customers who may have been subject to discrimination and offering to extend credit if the customers were improperly denied or requiring the financial institution to make payments to injured parties.
- Assess civil money penalties in varying amounts against the financial institution or any institution-affiliated party, depending, among other things, on the nature of the violation and the degree of the culpability.
- Removal and prohibition actions against any institution-affiliated party where statutory requirements for such actions are met.

In addition, the U.S. Department of Housing and Urban Development (HUD) administers and enforces provisions of the Fair Housing Act to ensure equal access to housing and guarantee

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<sup>5</sup> 15 U.S.C. 1691 et seq.

<sup>6</sup> 12 C.F.F. 202 et seq.

<sup>7</sup> 12 C.F.R. 228

equal opportunity in all of the HUD programs. The Fair Housing Act, discussed above, provides the following enforcement authority:

- Provides administrative enforcement mechanisms with HUD attorneys bringing actions before administrative law judges on behalf of victims of housing discrimination.
- Allows U.S. Justice Department jurisdiction to sue on behalf of victims in Federal district courts.
- Authorizes criminal penalties for violations of the Fair Housing Act.

Entities violating Regulation BB, relating to loan information and disclosures, are subject to civil monetary penalties.

Each financial institution adopts underwriting standards for lending practices to ensure that their financial institution is operating in a safe and sound manner. In evaluating the creditworthiness of a potential borrower, a creditor evaluates the capacity of the person to repay the loan, the character of the person, and the collateral for the loan. Some of the factors a financial institution may include, but are not limited to: employment history, earnings, other resources, expenses, obligations, credit history, and whether someone rents or owns a home. Inadequate income is a standard reason for denying a loan. Financial institutions are subject to compliance examinations by the applicable federal agency having jurisdiction over the entity.

### **III. Effect of Proposed Changes:**

**Section 1** requires the Office of Insurance Regulation, in consultation with the Department of Community Affairs, to study and provide a report to the Legislature on lending practices and the availability of credit to minorities in Florida. The office is required to submit the study, which would include findings and recommendations, to the Legislature by January 1, 2006.

**Section 2** provides that this act will take effect on July 1, 2005.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The study will provide relevant information and recommendations concerning current lending practices in Florida that will assist the Legislature in determining whether or not discriminatory lending practices exist in Florida and if legislative action is necessary.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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