

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 304

SPONSOR: Banking and Insurance Committee and Senator Sebesta

SUBJECT: Financial Entities and Transactions

DATE: February 9, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	<b>Favorable/CS</b>
2.	_____	_____	GO	_____
3.	_____	_____	CJ	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The Committee Substitute for Senate Bill 304 amends statutory provisions relating to mortgage brokerage and mortgage lending (ch. 494, F.S.), the Florida Consumer Finance Act (ch. 516, F.S.), the Florida Securities and Investor Protection Act (ch. 517, F.S.), the Motor Vehicle Retail Sales Finance Act (ch. 520, F.S.), the Florida Title Loan Act (ch. 537, F.S.), the Money Transmitters' Code (ch. 560 F.S), and mortgage lenders duties related to escrow funds (part I of ch. 501, F.S.).

The bill authorizes the Financial Services Commission (commission) to mandate the electronic filing of quarterly reports, initial applications, and renewal applications made pursuant to chs. 494, 516, 520, and 560, F.S., and to provide exceptions to this requirement. The Office of Financial Regulation (office) within the commission is authorized to contract with a third party or another governmental agency for the submission of fingerprint cards and fees by electronic means as part of the licensure process under chs. 494, 517, and 560, F.S. The bill clarifies that the commission has authority to charge a fee, up to \$30, for the processing of fingerprint cards pursuant to chs. 494 and 560, F.S. The office is authorized to contract with a third-party vendor for the administration of the required licensing test taken by mortgage broker applicants. The bill authorizes the commission to prescribe by rules procedures for the retention and destruction of records.

### **Regulation of Mortgage Brokers and Lenders**

The bill increases the fees to transfer a license from \$500 to \$575. The bill also provides that a permit for a mortgage broker school is nontransferable. The bill caps the examination fee for examination regarding primary and subordinate mortgage transactions at \$100.

### **Regulation of Securities Industries**

The bill requires renewal registrations for branch registrations to be processed through the Central Registration Depository once this system is operational. Procedures for filing a claim from the Securities Guaranty Fund are revised. The office may require an affidavit from a claimant setting forth their efforts to have a judgment paid by the judgment debtor as a condition of receiving compensation from the fund. The bill caps payments for claims from the fund at \$100,000, regardless of the number of claims or claimants (rather than the number of claimants only). The regulation of transactions involving Canadian securities dealers doing business with a Canadian citizen in Florida are revised by eliminating the requirement that the dealer must be registered with the office, and instead, requiring the dealer to meet a notice filing requirement.

### **Regulation of Money Transmitters**

The bill eliminates reporting requirements in the renewal process for registration to sell or issue payment instruments or act as a funds transmitter under part II of ch. 560, F.S. A written notification must be filed when changes in registration under part II or III occur for various reasons (changes in a partnership, officers, or changes in means of doing business).

### **Duties of Mortgage Lenders Related to Insurance and Tax Payments from Escrow**

The bill would hold a lender liable for the payment of attorney fees and costs incurred by a property owner for bringing an action against the lender for the reimbursement of any penalty or fees imposed by the insurer, and paid by the property owner, for purposes of reinstating an insurance policy that lapsed or the additional premium for obtaining a new policy because the lender failed to pay the insurance premium.

This bill substantially amends the following sections of the Florida Statutes: 494.0011, 494.0016, 494.0029, 494.00295, 494.003, 494.0031, 494.0033, 494.0034, 494.0036, 494.0041, 494.006, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067, 494.0072, 494.00721, 501.137, 516.03, 516.05, 516.07, 516.12, 517.051, 517.061, 517.081, 517.12, 517.131, 517.141, 517.161, 520.03, 520.32, 520.52, 520.63, 520.994, 520.995, 520.997, 537.009, 560.105, 560.118, 560.114, 560.121, 560.126, 560.205, 560.207, 560.210, 560.211, 560.305, 560.307, 560.308, 560.310, and 560.403 of the Florida Statutes.

## **II. Present Situation:**

The Financial Services Commission (commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The commission is an independent entity housed within the Department of Financial Services. The Office of Insurance

Regulation and the Office of Financial Regulation are under the commission.<sup>1</sup> The Office of Financial Regulation (office) is responsible for all activities of the commission relating to the regulation of financial institutions, finance companies, securities industries, and money transmitters.<sup>2</sup>

Mortgage brokers and mortgage lenders are regulated under the provisions of ch. 494, F.S. Chapter 516, F.S., regulates consumer finance loans, which are loans of \$25,000 or less and for which the lender charges an interest rate of 18 percent or greater. Securities transactions are regulated under ch. 517, F.S., which also includes the administration of the Securities Guaranty Fund (fund). This fund provides compensation to persons who have suffered monetary damages due to acts committed by a dealer or investment advisor and who meet the statutory requirements for compensation. The office also has regulatory authority over the following types of retail installment sales covered by ch. 520, F.S.: motor vehicle sales financing, retail installment sales (the purchase of retail goods via installment payments), sales finance companies (companies that acquire home improvement contracts), home improvement contracts (financing for home improvement through home improvement contracts).

Presently, if a mortgage lender fails to timely pay an insurance premium of a property owner, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years. There is no provision for the recovery of attorney's fees and costs by the property owner.

Chapter 537, F.S., the Florida Title Loan Act, regulates loans secured by the title to a motor vehicle. Chapter 560, F.S., the Money Transmitters' Code, regulates various money transmitters including payment instrument (check) sellers, foreign currency exchangers, check cashing, funds transmissions (via wire, electronic transfer, etc.), and deferred presentment (providing money in exchange for a person's check, which is to be held for a certain period of time).

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

#### **Sections 1-19: Mortgage Brokerage and Mortgage Lending**

**Section 1** amends s. 494.0011, F.S., to allow the Financial Services Commission (commission) to adopt rules to require, rather than allow, mortgage brokers to submit forms, documents, and fees required by ch. 494, F.S., electronically. The commission must reasonably accommodate technological or financial hardship when adopting such rules and may prescribe the requirements and procedures for obtaining a technological or financial hardship exemption. The section also clarifies that a grant or denial of a license under ch. 494, F.S., must be issued in accordance with the provisions of s. 120.60, F.S., which contains the license application procedures that generally apply to all state agencies in Florida.

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<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), F.S.

**Section 2** amends s. 494.0016, F.S., to provide the commission with rulemaking authority to prescribe the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the 3-year retention period for maintaining documents relating to expenses paid by a licensee on behalf of a borrower. Currently, the commission has authority to prescribe by rule minimum records that must be maintained. Regardless of the 3-year retention period, if the Office of Financial Regulation (office) identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 494, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

**Section 3** amends s. 494.0029, F.S., to provide that permit applications for mortgage business schools are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$500 application fee as currently required, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.<sup>3</sup> The bill also states that permits issued under s. 494.0029, F.S., are not transferable or assignable.

**Section 4** amends s. 494.00295, F.S., to clarify that the educational requirements contained in this section for mortgage brokers, mortgage lenders and correspondent mortgage lenders are for continuing education. The term “associates” is deleted from the educational requirements because associates are licensed mortgage lenders and must comply with the continuing education requirements of mortgage lenders.

**Section 5** amends s. 494.003, F.S., to provide that in order to be exempt from the mortgage brokerage requirements of ss. 494.003-494.0043, F.S., a state or federal chartered bank, trust company, savings and loan, savings bank, credit union or bank holding company must be regulated under the laws of any state or the federal government of the United States. Banks, bank holding companies, and their subsidiaries that are not regulated by the federal or state government of the United States will no longer qualify for exemptions. The section also clarifies that there is no licensing requirement under ss. 494.003-494.0043, F.S., for wholly-owned subsidiaries of “state or federal chartered” banks or savings and loans whose sole activity is to distribute the lending programs of “state or federal chartered” banks.

**Section 6** amends s. 494.0031, F.S., to clarify that each person who acts as a mortgage brokerage business must be licensed pursuant to this section unless otherwise exempt. The section authorizes the commission or office to require each applicant for a brokerage business license to provide any information reasonably necessary to make a determination of the applicant’s

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<sup>3</sup> Section 120.60(1), F.S., requires each agency to notify the applicant within 30 days of the receipt of an application of any error or omission or to supply additional information. The section requires every license application to be approved or denied within 90 days after receipt of a completed application.

eligibility for licensure. A license application is deemed received for purposes of s. 120.60, F.S., upon receipt of a completed application form as prescribed by the commission by rule, a nonrefundable \$425 application fee (current fee), and any other fee prescribed by rule or law.

The section clarifies that the commission is authorized to prescribe by rule that fingerprints submitted in paper form are required to be taken by an authorized law enforcement agency. Presently, the section does not specifically authorize the commission to prescribe by rule the fingerprint submission process. The bill authorizes the commission to prescribe by rule additional fees for processing fingerprints, rules for submitting fingerprints and fees by electronic means, to prescribe an additional fee of no more than \$30 for such processing, and to contract with a third party or another state agency for fingerprint services. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The provision allowing the commission to charge additional processing fees for fingerprints is clarifying in nature; as such fees are currently authorized pursuant to s. 215.405, F.S.

The section provides that a license for a mortgage brokerage business is not transferable or assignable. The section deletes a provision requiring the cancellation of a mortgage broker or lender license due to presenting a dishonored check for the payment of such license and deletes the reinstatement procedure for a cancellation for that reason. (See Section 10 of the bill that provides that the submission of a dishonored check for the payment of a license constitutes grounds for disciplinary action rather than mandatory cancellation.)

**Section 7** amends s. 494.0033, F.S., to require licensure for a person who acts as an associate for a mortgage lender or correspondent mortgage lender unless otherwise exempt. Currently, the section requires the licensure of each person that acts as a mortgage broker for a mortgage brokerage school. The purpose of the licensure requirement is to clarify that a mortgage broker can work for either a mortgage broker business or a mortgage lender or a correspondent mortgage lender and tracks the requirements of s. 494.00331, F.S. The licensure requirements are amended to allow a written or electronic test adopted and administered by the office, or an electronic test adopted by the office and administered by a third party approved by the office. Currently, the office administers a written test at no charge. The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The commission is authorized to prescribe by rule a fee for the examination, not to exceed \$100. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a current, non-refundable \$200 application fee, and any other fee required by law or rule.

The procedures for the submission of fingerprint cards in paper form are revised to provide that only authorized law enforcement agencies are allowed to take such fingerprints. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The commission is authorized to prescribe by rule the submission and processing of fingerprints electronically, to prescribe an additional fee for fingerprint processing not to exceed \$30, and to contract with another state agency for fingerprint services.

The section deletes a provision requiring the cancellation of a license due to presenting a check that is dishonored and deletes the reinstatement procedure for a cancellation for that reason. Section 10 in the bill provides that the presentment of a dishonored check constitutes grounds for disciplinary action.

**Section 8** amends s. 494.0034, F.S., to delete the requirement that an application must be submitted for the renewal of a mortgage broker's license, subject to rules prescribed by the commission.

**Section 9** amends s. 494.0036, F.S., to require the office to issue a mortgage brokerage business branch office license to an applicant after the office determines the applicant has submitted a complete application (rather than upon receipt) and paid the license fee. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$225 application fee, and any other fee required by law.

**Section 10** amends s. 494.0041, F.S., to state that when payment by check or electronic transmission to the office for a license or permit is dishonored, it is a ground for which disciplinary action may be taken. Currently, the office is required to cancel a mortgage broker or lender license due to the presentation of a dishonored check for the payment of such license.

**Section 11** amends s. 494.006, F.S., relating to exemptions for mortgage lenders and correspondent mortgage lenders from the requirements of ss. 494.006-494.0077, F.S. The section clarifies that banks and bank holding companies regulated under the laws of any state or the federal government of the United States are exempt from regulation. Banks, bank holding companies, and their subsidiaries that are not regulated by the U.S. federal agency will no longer qualify for exemptions. A person employed by a correspondent mortgage lender licensed under ss. 494.001-494.0077, F.S., is exempt from the licensure requirements of those sections when acting within the scope of employment with the licensee. Currently, the provision only exempts a person employed by a mortgage lender.

**Section 12** amends s. 494.0061, F.S., to clarify that person who acts as a mortgage lender must be licensed pursuant to the section. The section clarifies that an application for a license must include audited financial statements that are prepared in accordance with accounting principles generally accepted in the United States. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$575 application fee, and any other fee required by law. The bill deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

Requirements for fingerprint submissions in paper form are revised. The bill authorizes the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with a third party or another state agency for fingerprint services. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks

conducted by the Florida Department of Law Enforcement. The language that states the commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision that requires the cancellation of a license due to presenting a check that is dishonored. (See section 10 of the bill that provides that the presentment of a dishonored check for payment for a license is grounds for disciplinary actions).

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The commission is authorized to prescribe by rule a fee of no more than \$100 for the examination. The section requires a lender to notify and document to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 13** amends s. 494.0062, F.S., to clarify that each person who acts as a correspondent mortgage lender must be licensed pursuant to the section unless otherwise exempt. The office is authorized to require each applicant for a correspondent mortgage lender's license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The bill clarifies that audited financial statements must be prepared in accordance with accounting principles that are generally accepted in the United States. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$500 application fee, and any other fee required by law. The section deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

The bill provides that fingerprint submission requirements will be prescribed by rule. Requirements are revised for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with a third party or another state agency for fingerprint services. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The language that states the commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision calling for the cancellation of a license due to presenting a check that is dishonored. (See section 10 regarding dishonored checks.)

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The commission is authorized to prescribe by rule a fee of no more than \$100 for the examination. The section requires a lender to notify and document to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation. A correspondent lender is required to notify and substantiate to the

office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 14** amends s. 494.0064, F.S., by deleting the inclusion of a licensee's associates in the professional education requirements for license renewal. The term "associates" is deleted from the educational requirements because associates are licensed mortgage lenders and must comply with the continuing education requirements of mortgage lenders. Thus, the reference to associates in current law is redundant.

**Section 15** amends s. 494.0065, F.S., to clarify that a mortgage lender licensee must demonstrate net worth in accordance with financial reports that are prepared in accordance with accounting principles generally accepted in the United States. The current law permits persons who are registered pursuant to former s. 494.039, F.S., licensed pursuant to former s. 521.205, F.S., or who acted solely as mortgage servicers on September 30, 1991, to apply for a mortgage lender's license, if certain criteria are met. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the non-refundable \$575 application fee, and any other fee required by law. The current non-refundable fee is \$500. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.

As of October 1, 2005, new requirements are mandated when the ultimate equitable owner of a mortgage lender applies for a one-time transfer of at least 50 percent of the ownership, control, or power to vote any class of equity securities of the mortgage lender. The requirements are to provide proof that the applicant's principal representative has completed 24 hours of instruction in primary and subordinate financing transactions and in the provisions of ch. 494, F.S., and that the principal representative must pass a written test that covers primary and subordinate mortgage financing transactions and the provisions of ch. 494, F.S. The office or a third party approved by the office must administer the test.

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The commission is authorized to prescribe by rule a fee for the examination. The non-refundable application fee is increased from \$500 to \$575. Audited financial statements submitted as part of the application must be prepared in accordance with accounting principles that are generally accepted in the United States.

Requirements are revised for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee not to exceed \$30 for fingerprint processing, and to contract with another state agency for fingerprint services. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement pursuant to s. 215.405, F.S., which authorizes fees for fingerprint processing.

The bill mandates that each mortgage lender must designate a principal representative who exercises control over the business and maintains a form prescribed by the commission by rule that designates the principal representative. Failure to maintain the form will result in the business being deemed to be operated by each officer, director, or equitable owner of a 10 percent or greater interest in the business. The bill requires a correspondent lender to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 16** amends s. 494.0066, F.S., to require the office to issue a branch office license to a licensee licensed under s. 494.0065(1), F.S., or a transfer license upon determining the licensee has submitted (rather than upon receipt) a completed application form and the nonrefundable license fee.

**Section 17** amends s. 494.0067, F.S., to clarify that the educational requirements for the principal representative and all loan originators or associates who perform services for the licensee are for continuing education.

**Section 18** amends s. 494.0072, F.S., to state that when payment by check or electronic transmission to the office for a license or permit is dishonored, it is a violation of this chapter and disciplinary action may be taken. Currently, a dishonored check would result in the cancellation of a license.

**Section 19** amends s. 494.00721, F.S., relating to the reauthorization of a mortgage lender or correspondent mortgage lender after remedying a failure to satisfy the net worth requirements of ss. 494.0061, 494.0062, and 494.0065, F.S., to provide a technical conforming change.

### **Section 20: Mortgage Lender's Payment of Insurance Premiums from Escrow Funds**

**Section 20** amends s. 501.137, F.S., to hold the lender liable for the payment of attorney fees and costs incurred by a property owner for bringing an action against the lender for the reimbursement of any penalty or fees imposed by the insurer, and paid by the property owner, for purposes of reinstating an insurance policy that lapsed because the lender failed to pay the insurance premium. Presently, if a mortgage lender fails to timely pay an insurance premium, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years. Currently, there is no provision for the payment of attorney's fees and costs by the lender.

The bill also deletes the condition that the lender's failure to pay timely any tax or premium was "as a result of neglect." This may create a "strict liability" standard for a lender's obligation to timely pay the insurance premium. Although it may be implied, the bill does not expressly provide that the property owner must prevail in an action to be entitled to attorney's fees.

**Sections 21-24 the Florida Consumer Finance Act**

**Section 21** amends s. 516.03, F.S. to state that an application for a license to make loans under ch. 516, F.S., is deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$625 application fee (current fee), and any other fee required by law. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll and that the application fee is nonrefundable. The commission may require, rather than allow, electronic submission of any form, document, or fee required by ch. 516, F.S. The commission is authorized to prescribe by rule requirements and procedures for obtaining a technological for financial hardship exemption from such rules.

**Section 22** amends s. 516.05, F.S., relating to licensing, to provide that if any license under this chapter, other than an application for a renewal is denied, then, the license fee is non-refundable and the investigation fee is refundable. Currently, the license fee must be returned and the investigation fee is retained.

**Section 23** amends s. 516.07(1), F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails is dishonored, it is a violation of this chapter and constitutes grounds for disciplinary action.

**Section 24** amends s. 516.12, F.S., to authorize the commission to prescribe by rule the minimum records to be maintained in the books, accounts, records, and documents of licensees for purposes of enabling the office to determine the licensee's compliance with ch. 516, F.S. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (1). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 516, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

**Sections 25-31: The Florida Securities and Investor Protection Act**

**Sections 25 and 26** amend ss. 517.051 and 517.081, F.S., to clarify that financial statements are required to be prepared in accordance with United States generally accepted accounting principals. Currently, the section does not specify United States.

**Section 27** amends s. 517.061, F.S., to delete the requirement that a securities dealer located in Canada conducting business with a Canadian citizen located in Florida must be registered pursuant to s. 517.12(17), F.S. Instead, if a dealer located in Canada complies with s. 517.12(17), F.S., the dealer is exempt from the requirement of registering securities found in s. 517.07, F.S. This eliminates the need for Canadian dealers to be registered, and instead mandates compliance with the procedures detailed in s. 517.12(17), F.S. (See section 27 of the bill, below).

**Section 28** amends s. 517.12, F.S., which contains the requirements for information to be included in an application to be a registered dealer, associated person or issuer of securities. Requirements are revised for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with a third party or another state agency for fingerprint services. Currently, securities dealers and agents are subject to a \$47 fee for a state and federal fingerprint check. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement. The section eliminates the requirement that associated persons be assessed an additional fee if they do not meet fingerprint filing requirements, instead making the assessment optional.

The bill states that the registration of each dealer, investment adviser, and associated person expires on December 31 of the year registration became effective unless registration is renewed before that date. All state-registered investment advisers will be required to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Investment Advisers would be required to pay a one-time \$150 initial fee and an annual registration fee of \$100 thereafter. Currently, registration with the IARD is voluntary. Investment advisers would still be subject to the \$200 annual registration fee required under ch. 517, F.S. The registration of branch offices expires on March 31, but once the National Association of Securities Dealers develops the capacity to process branch office registration through the Central Registration Depository, the expiration date is December 31 of the year of registry unless a renewal occurs before December 31. The commission is authorized to establish by rule the initial year in which branch renewals must be processed through the Central Registration Depository of the National Association of Securities Dealers. The commission is authorized to prescribe by rule procedures for renewing branch registrations through the Central Registration Depository.

A Canadian securities dealer that is conducting business with a Canadian citizen located in Florida, related to Canadian securities must meet a notice filing requirement with the office. The current registration requirement for Canadian securities dealers dealing with Canadian citizens in Florida is eliminated. The notice filing consists of necessary documents required by rule by the Financial Services Commission, consent to service of process, and the current \$200 filing fee. Canadian agents of the Canadian dealers would no longer be subject to the registration requirements and the \$30 annual fee.

**Section 29** amends s. 517.131, F.S., regarding the requirements for seeking recovery from the Securities Guaranty Fund. The office is authorized to require an affidavit from the claimant that details the reasonable searches and inquiries made into determining whether the judgment debtor possesses assets that can be used to satisfy all or part of the judgment. The person claiming payment from the fund may also request the distribution of funds from the Securities Guaranty Fund, if the office has waived compliance with paragraphs (a) or (b) of s. 517.131(3), F.S. Section 517.131(5), F.S., is created to authorize the commission to prescribe by rule the procedures for complying with subsections (2), (3), and (4) of s. 517.131, F.S. (requiring that a court judgment meeting certain criteria is necessary to recover from the fund, requiring that a reasonable search to secure compensation from other sources be made, and requiring written

notice be given the office of a claim as soon as possible), including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

**Section 30** amends s. 517.141, F.S., to provide that the \$100,000 limitation on payment from the Securities Guaranty Fund applies against any one dealer, investment adviser, or associated person regardless of the number of claims or claimants involved (rather than number of claimants only). The section requires a claimant who satisfies a judgment described in s. 517.131(3)(a), F.S., to reimburse the fund all amounts paid to the claimant on the claim. The section also creates subsection (11), which gives the commission rulemaking authority to specify the procedures for complying with this section, including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

**Section 31** amends s. 517.161, F.S., to allow registration under s. 517.12, F.S., to be denied, revoked, restricted, or suspended if payment to the office for a license or permit is dishonored.

**Section 32-37: Motor Vehicle Retail Sales Finance Act, Retail Sales Installment Act, Installment Sales Finance Act, and Home Improvement Sales and Finance Act**

**Sections 32-35** amends ss. 520.03, 520.32, 520.52, and 530.63 F.S., to provide that an application for a license to engage in the business of a motor vehicle retail installment seller, retail installment transactions, sales finance company, a home improvement finance seller, or operate a branch of such business is deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.

**Section 36** amends s. 520.994, F.S., to authorize the commission to adopt rules to require electronic submission of forms required by the chapter for the regulation of sales and finance in accordance with ch. 520, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission is authorized to prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 37** amends s. 520.995, F.S., to state that when a financial institution dishonors payment by check or electronic transfer to the office for a license or permit, this action constitutes grounds for disciplinary action.

**Section 38** amends s. 520.997(4), F.S., to give the commission rulemaking authority to prescribe the minimum information to be maintained to ensure compliance with ch. 520, F.S. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (3). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 520, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to

the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

### **Section 39: The Florida Title Loan Act**

**Section 39** amends s. 537.009, F.S., to give the commission rulemaking authority to prescribe the minimum information to be maintained to ensure compliance with ch. 537, F.S. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (3). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 537, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

### **Sections 40-50: The Money Transmitters' Code**

**Section 40** amends s. 560.105, F.S., to give the commission authority to adopt rules to require electronic submission of forms required by the chapter for the regulation of the money transmitter industry in accordance with ch. 560, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission may prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 41** amends s. 560.114, F.S., to provide that a payment by check or electronic transfer to the office for a license or permit that is dishonored by a financial institution is a violation of ch. 560, F.S., and constitutes grounds for disciplinary action.

**Section 42** amends s. 560.118, F.S., to give the commission authority to adopt rules to require electronic submission of forms required in the submission of quarterly financial reports to the office. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission may prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 43** amends s. 560.121, F.S., to authorize the commission to prescribe by rule the minimum information to be maintained in the books, accounts, records, and documents of licensees for determining compliance with ss. 560.101-560.408, F.S. The retention time of the office for records related to an examination or registration is reduced from 10 to 3 years after the examination is closed, ceases to be active, or registration ceases to be active. Records that must be maintained include examination reports, investigatory records, applications, and related information compiled by the office or photocopies of such information. The commission is authorized to adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 3-year retention period specified in

subsection (2). Notwithstanding the 3-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 560, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

**Section 44** amends s. 560.125, F.S., to require registrants to notify the office within 30 days of any changes in any information submitted on the registrant's applicant or amendment.

**Section 45** amends s. 560.205, F.S., which prescribes the eligibility requirements for a person registered to sell or issue payment instruments or act as a funds transmitter. Subsection (1) is amended to clarify that the exemptions from the fingerprint filing requirements only apply to publicly traded corporations "as defined by the commission by rule," and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt.

Requirements are revised for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with a third party or another state agency for fingerprint services. Presently, money transmitters are subject to a \$47 fee to cover the costs of a state federal background check provided by the Department of Law Enforcement. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement.

Subsection (2) is amended to give the commission rulemaking authority to establish procedures for depositing fees and filing documents related to an application for registration by electronic means. The application must contain all information the commission requires by rule. The requirements that the application is on a form and that information required is reasonable are deleted. Language is deleted that requires a list identifying the applicant's proposed vendors in this state, and the locations in this state at which the applicant and its authorized vendors propose to conduct business. Subsection (3) is amended to require that an application from a corporation must contain all information the commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (4) is amended to require that an application from an applicant that is not a corporation must contain all information the commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (6) is created and requires the reporting of changes in registration—via written amendment—caused by changes in personnel of a partnership or in the principals, members, partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

**Section 46** amends s. 560.207, F.S., to authorize the commission to prescribe by rule procedures for depositing fees and filing documents by electronic means for renewing registrations under this section.

**Section 47** amends s. 560.210, F.S., to clarify that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States. The investments would be required to have an aggregate market value of not less than the aggregate face amount of all “outstanding funds transmissions and payment instruments” issued or sold by the registrant or an authorized vendor in the U.S. Currently, the minimum aggregate market value may not be less than the aggregate face amount of “all funds transmitted and outstanding payment instruments.”

**Section 48** amends s. 560.211, F.S., to allow a registrant who sells or issues fund transfers or acts as a funds transmitter to notify the office via amendment the location of records required to be maintained by this section.

**Section 49** amends s. 560.305, F.S., to give the commission rulemaking authority to establish rules and procedures for depositing fees and filing documents related to an application for registration by electronic means. The commission is also given rulemaking authority to request information in addition to statutory requirements for contents of an application under this section.

**Section 50** amends s. 560.306, F.S., to clarify that the exemptions from the fingerprint filing requirements only apply to publicly traded corporations “as defined by the commission by rule,” and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt. Requirements are provided for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee for fingerprint processing, and to contract with another state agency for fingerprint services. Presently, money transmitters are subject to a \$47 fee to cover the costs of a state federal background check provided by the Department of Law Enforcement. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement. Therefore, the language that states the commission may charge an additional processing fee of no more than \$30 for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S.

The section, which requires a registration or renewal application to specify the applicant’s proposed principal place of business and other business locations, is amended to delete the provision that a registrant may satisfy this requirement by providing the office with a list of such locations, including all authorized vendors operating in this state, not less than annually. The section requires the reporting of changes in registration via written amendment triggered by changes in personnel of a partnership or in the principals, members, partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

**Section 51** amends s. 560.308, F.S., to give the commission rulemaking authority to establish procedures for depositing fees and filing documents by electronic means for renewing registrations and to require that the current, nonrefundable fee of \$500 must accompany each renewal of registration. Currently, the section requires the office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

**Section 52** amends s. 560.310, F.S., to require that a registrant to notify the office via amendment, as prescribed by the commission by rule, of the location of required records.

**Section 53** amends s. 560.403, relating to requirements for registration reinstatement, to require the office to grant a reinstatement if an application is filed within 60-calendar days after the expiration of the existing registration. The reinstatement is effective upon receipt of the required fees and any information that the commission requires by rule.

**Section 54** provides that the bill will be effective on October 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:

The bill increases the filing fee from \$500 to \$575 for a mortgage lender savings clause transfer under s. 494.0065, F.S. The Office of Financial Regulation estimates this will affect approximately seven filings per year. Canadian agents of Canadian dealers would no longer be subject to the \$30 annual registration fee. Additional fees expected to be charged to licensees are described in the Private Sector Impact, below.

B. Private Sector Impact:

##### **Mortgage Broker Testing**

The Office of Financial Regulation (office) estimates that the mortgage broker testing provisions of the bill (if the commission adopts a rule allowing a third party to administer the test via computer) will cost applicants a total of \$717,154 in FY 2005-06 and \$956,205 per fiscal year for 2006-07 and 2007-08. The office estimates that the cost-per-test will be approximately \$60 to \$75. Presently, there is no cost to take the test as currently administered. Benefits to the private sector include additional testing opportunities, additional test sites, and timelier test scoring. The office states that it will conduct a pilot program of computer based testing within the industry before enacting a rule to abolish the current testing procedures.

**Fingerprint Processing Fee**

	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>
Mortgage Brokers & Lenders	\$413,122	\$550,830	\$550,830
Securities Agents	\$ 12,015	\$ 16,020	\$ 16,020
Money Transmitters	<u>\$ 14,670</u>	<u>\$ 19,560</u>	<u>\$ 19,560</u>
Total Fees	\$439,807	\$586,410	\$586,410

The proposed language allows the office to establish a rule to charge a fee not to exceed \$30 to recover the cost of electronic processing of fingerprints. The amount of the fee established will cover the cost of a vendor to provide this service. In 2003-04, the Office processed 19,547 fingerprint records (18,361 mortgage brokers, 534 securities agents, and 652 money transmitters). At the maximum amount of \$30, this would represent a cost to applicants of \$586,410 (prorated at \$439,807 for the first year based on an October 1 effective date). It is anticipated the cost initially will be less than the \$30 maximum provided.

**Registration of Investment Advisers**

The bill will require all state-registered investment advisers to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). The fee to register with the IARD is paid to NASD and will require the payment of one-time fee of \$150 initially and a \$100 annual fee thereafter. Investment advisers currently pay a \$200 annual registration fee to the office and will continue to pay this fee in addition to the IARD fees. Florida currently has 1,041 state-registered investment advisers, of which 549 have already converted their information to IARD and paid the initial fee. The remaining 492 will be required to pay the initial one-time fee (totaling \$73,800) and pay \$100 fee annually (totaling \$49,200). The office receives approximately 214 new applications for investment advisers annually, which represents an additional cost to the industry of \$32,100 for the one-time fee and \$21,400 on an annual basis for the registration fee. Filing the information with IARD allows the Office to share registration information with other states and federal authorities, and allows faster processing of applications and “one-stop” filing for the industry.

**Canadian Dealers and Agents**

The fees will remain unchanged for Canadian dealers, although the registration process will change. The Canadian agents will no longer be required to register and pay the \$30 annual fee. Currently there are 1,568 Canadian agents registered. This will represent a savings to them of \$30 each, or \$47,040.

**Recovery of Attorney’s Fees and Costs**

If a property owner brings an action under s. 501.137, F.S., against a mortgage lender that failed to pay insurance premiums or taxes from escrow funds; and as a result, the property owner incurred penalties or fees for the reinstatement of the insurance policy or

the issuance of a new policy, the property owner would also be entitled to recovering attorney fees and costs associated with bringing such action. Although it may be implied, the bill does not expressly provide that the property owner must prevail in an action to be entitled to attorney's fees.

**C. Government Sector Impact:**

The Office of Financial Regulation estimates that the filing fee increase for the Mortgage Lender Savings Clause Transfer will increase revenues by \$525 per year.

Because the Canadian agents will no longer be subject to the \$30 agent registration fee, the state will incur a reduction of \$47,040 in General Revenue on an annual basis. There are currently 1,568 Canadian dealers.

Representatives from the Office of Financial Regulation state that the office issues over 300,000 licenses each year. The office contends that the implementation of electronically filed forms and fees and the outsourcing of mortgage broker licensing tests will create a more efficient and timely licensing process.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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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## **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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