

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Financial Entities and Transactions
SPONSOR(S): Detert
TIED BILLS: HB 627 IDEN./SIM. BILLS: CS/SB 304

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Economic Development, Trade & Banking Committee, Sheheane, Carlson.

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.

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...
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.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill gives the Commission 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.

Ensure Lower Taxes- The bill 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:

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.¹ 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.²

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).

¹ 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.

² See s. 20.121(3), F.S.

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.

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.³ The bill also states that permits issued under s. 494.0029, F.S., are not transferable or assignable. The bill requires all documents prescribed by commission rule to be submitted with the initial application or certification.

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.

³ S. 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.

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. 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 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 officer. 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.) The bill clarifies that an "applicant" may be denied licensure if the applicant has committed any violation specified in ss. 494.001-494.0077⁴ or has pending against him or her in any jurisdiction, any criminal prosecution or administrative enforcement action involving fraud or dishonest dealing.

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. 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 officers 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. 494.004, F.S., to correct a cross reference.

Section 11 amends s. 494.0041, F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails to clear, 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 12 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 13 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.

The bill provides an exemption from 24 hours of classroom instruction for a principal representative if the principal representative has continuously served in the capacity of a principle representative for a licensed entity under this chapter for a period of at least 1 year and has not had lapse in designation as a principal representative of more than 2 years prior to the date of the submission of the application or amendment in the case of a change in the principal representative.

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 14 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. 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 an exemption from 24 hours of classroom instruction for a principal representative if the principal representative has continuously served in the capacity of a principle representative for a licensed entity under this chapter for a period of at least 1 year and has not had lapse in designation as a principal representative of more than 2 years prior to the date of the submission of the application or amendment in the case of a change in the principal representative.

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 fails to clear. (See section 10 regarding checks failing to clear.)

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 any change in designation of its principal representative within 30 days and that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

Section 15 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 16 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 by rule set a fee for the exam not to exceed \$100. 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 the office of any change in the designation of a principal representative within 30 days and 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 17 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 18 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 19 amends s. 494.0072, F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails to clear, 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 20 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.

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 to clear, 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

Section 25 amends s. 517.051, 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 26 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.

Section 27 amends 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 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, investment advisor or branch office. 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. 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 fails to clear.

Section 32-37: Motor Vehicle Retail Sales Finance Act, Retail Installment Sales 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 payment fails to clear 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 fails to clear 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 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. 560.126, 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. The bill provides that registration expires on April 30 of the year in which the existing registration expires and clarifies that the renewal fee is nonrefundable. The bill provides for reinstatement of registration for a \$500 late fee that must be filed within 60 calendar days after the expiration of the existing registration.

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 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 provide for a 24 month renewal of a registration by furnishing information the commission may require by rule, together with fees required. The bill gives 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. The registration expires on December 31 on the year in which the existing registration expires, unless the registration has been renewed by that date. The office will reinstate a registration for which the application is filed within 60 calendar days and the reinstatement is effective upon receipt of required fees and any other information the commission requires by rule.

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 creates s. 626.565, F.S., relating to an insurance agent or other licensee of the department providing proper disposition of records containing personal information of a consumer; providing rule making authority for the Department of Insurance governing the disposition of records.

Section 55 provides a severability clause.

Section 56 Provides that the bill will take effect on October 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings including quarterly reports, initial applications, and renewal applications; Allowing alternate means for hardships; provides that the granting of a license must be pursuant to s. 120.60, F.S.

Section 2: Amends s. 494.0016, F.S., prescribing rules for the destruction of records; provides the Office with authority to provide for a longer retention time if a relevant criminal or civil statute of limitations warrants a longer retention period.

Section 3: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 4: Amends s. 494.00295, F.S., providing clarification relating to continuing education programs.

Section 5: Amends s. 494.003, F.S., providing exemptions from mortgage brokering provisions for certain institutions.

Section 6: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.

Section 7: Amends s. 494.0033, F.S., relating to mortgage brokerage licensing tests.

- Section 8: Amends s. 494.0034, F.S., relating to renewal of a mortgage broker's license.
- Section 9: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.
- Section 10: Amends s. 494.004, F.S., relating to requirements of licensees.
- Section 11: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.
- Section 12: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.
- Section 13: Amends s. 494.0061, F.S., providing licensing, fingerprinting, and testing requirements for mortgage lenders.
- Section 14: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.
- Section 15: Amends s. 494.0064, F.S., relating to continuing education requirements.
- Section 16: Amends s. 494.0065 F.S., relating to transfer applications.
- Section 17: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.
- Section 18: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.
- Section 19: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.
- Section 20: Amends s. 494.00721, F.S., relating to mortgage lender net worth.
- Section 21: Amends s. 516.03, F.S., relating to consumer finance loan applications.
- Section 22: Amends s. 516.05, F.S., relating to consumer finance loan licensing, removing a requirement for the Office to return fees under certain circumstances.
- Section 23: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.
- Section 24: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.
- Section 25: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.
- Section 26: Amends s. 517.061, F.S., relating to exempt securities transactions.
- Section 27: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.
- Section 28: Amends s. 517.12, F.S., relating to fingerprinting provisions and renewing branch office registrations.
- Section 29: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.

Section 30: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.

Section 31: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

Section 32: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.

Section 33: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.

Section 34: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.

Section 35: Amends s. 520.63, F.S., relating to installment sales finance licensees.

Section 36: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.

Section 37: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicants financial institution.

Section 38: Amends s. 520.997, F.S., relating to destruction of books, accounts and records retained by a retail installment sales licensee.

Section 39: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.

Section 40: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.

Section 41: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.

Section 42: Amends s. 560.118, F.S., relating to electronic forms for money transmitters.

Section 43: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.

Section 44: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.

Section 45: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.

Section 46: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.

Section 47: Amends s. 560.210, F.S., permissible investments.

Section 48: Amends s. 560.211, F.S., 560.211, F.S., relating to money transmitters' records.

Section 49: Amends s. 560.305, F.S., electronic filing for check cashers.

Section 50: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.

Section 51: Amends s.560.308, F.S., relating to registration renewal for check cashers.

Section 52: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.

Section 53: Amends s. 560.403,, F.S., relating to reinstatement of application for deferred presentment providers.

Section 54: Amends s. 626.565, F.S., relating to disposition of records for insurance representatives.

Section 55: Provides severability clause.

Section 56: Provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides a fee increase from \$500 to \$575 for mortgage lender transfers. The Office of Financial Regulation reports that it receives on average 7 applications a year.

Recurring	FY 05-06	FY 06-07	FY 07-08
Regulatory Trust Fund	\$525	\$525	\$525
Non-Recurring	None		

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Mortgage Broker Testing (cost to applicants if transferred to a third party vendor for administration):

	FY 05-06	FY 06-07	FY 07-08
	\$717,154	\$956,205	\$956,205

According to the Office, they 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 the test. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

<u>Fingerprint Analysis</u>	FY 05-06	FY 06-07	FY 07-08
	\$410,085	\$546,780	\$546,780

The proposed language allows the Office to establish a rule to charge a fee not to exceed \$30 for electronic processing of fingerprints. The fee will be established sufficient to cover the cost of a vendor to provide this service. In 2003-04, the Office processed a total of 18,226 fingerprint records. At the maximum amount of \$30, this would represent a cost to mortgage broker applicants of \$546,780 (reduced for \$410,085 for the first year based on an October 1 effective date.)

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 “onestop” filing for the industry.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A