

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7153 CS PCB EDTB 06-02 Financial Entities Licensing  
**SPONSOR(S):** Economic Development, Trade & Banking Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2744

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) State Administration Appropriations Committee	7 Y, 0 N	Rayman	Belcher
2) Commerce Council	14 Y, 0 N, w/CS	Olmedillo	Randle
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

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

The bill makes editorial changes, adjusts cross-references, reorganizes certain sections and removes superfluous language to achieve uniformity, clarification and streamline the processes.

This bill revises a number of regulatory provisions governing mortgage brokers and lenders. The bill provides for:

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the fee for a credit check of a loan applicant from \$10 to \$25;
- Elimination of the registration fee (\$30) for Canadian agents if the Canadian Dealer is registered. (Florida is following the national trend, which is not to require registration of Canadian agents.);
- Approval for branch application license;
- Revised accounting standards;
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes; and
- An award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference between a lapsed insurance policy and a new policy required by law.

The bill appropriates \$700,515 from the Regulatory Trust Fund for the Office of Financial Regulation for mortgage broker testing for Fiscal Year 2006-07 which will be funded by fees from applicants. Eliminating the registration fee for Canadian agents will result in a recurring loss of \$53,250 in General Revenue.

The bill provides an effective date of July 1, 2006.

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

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**DATE:** 4/18/2006

## 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.

Ensure Lower Taxes - The bill allows for an increase in the fee for a credit check of a loan applicant from \$10 to \$25. In addition, it grants the Office rulemaking authority to charge a fee, not to exceed \$100 for electronic testing persons seeking licensure as a mortgage broker.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The 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 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 installment loan contracts), and 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).

The Office currently licenses over 380,000 individuals and businesses in the areas of securities and finance.

Over the past five years, the number of persons seeking licensure through the Office has significantly increased. The number of staff to process applications and renewals, however, has remained constant.

The most significant increases have been in the finance area.

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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> See s. 20.121(3), F.S.

For example:

	<u>FY 2000-01</u>	<u>FY 2004-05</u>	<u>Increase</u>
Mortgage Broker Applications	4,960	19,710	297%
Active Mortgage Broker Licenses	34,128	71,729	110%
Active Finance Licenses (All types)	52,281	90,256	73%

To keep pace with demand, the Office's licensing functions need to be streamlined and technology needs to be used to a greater extent. This bill will fulfill both of these goals.

### Effects of proposed changes

## GENERAL LICENSING PROVISIONS APPLICABLE TO MULTIPLE CHAPTERS

- 1) [Electronic Filing of Forms and Fees](#). The bill grants the Office rulemaking authority to require electronic filing of forms, documents, and fees. However, it provides that the Commission must reasonably accommodate technological or financial hardship and requirements and procedures for obtaining a technological or financial hardship exemption. Without requiring the industries to use the technology the Office must maintain dual processes, one for paper filings and another for electronic filings.
- 2) [Fee](#). Provides that applications are not deemed received until all required fees are received. Authorizes disciplinary action if fees paid with bad check.

The application fees are as follows:

- Mortgage business schools \$500 (current)
  - Mortgage business \$425 (current)
  - Mortgage brokers \$200 (current)
  - Mortgage business branch offices \$225 (current)
  - Mortgage lenders \$575 (current)
  - Correspondent mortgage lenders \$500 (current)
  - Mortgage lenders' branch offices \$325 (current)
  - Transfer of lender's license \$500 (current)
  - Consumer finance loans \$625 (current)
  - Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses \$175 (current)
  - Money transmitters fee not to exceed \$1,000 (current). Renewal fee, not to exceed \$500 (current)
- 3) [Required documents and destruction of records](#). Authorizes the Commission to prescribe rules for the destruction of records maintained by licensees. There has been at least one instance of a licensee disposing of intact records by placing them in a dumpster. The Office seeks to prescribe the proper method of disposing of records to protect sensitive consumer information.

All documents required by Commission rule, including training curriculum and materials from mortgage business schools, must be submitted at the time the applicant submits the application or recertification.

- 4) [Paper Permits](#). Eliminates requirement that licensed businesses display their permits. License information is available via the Office's website. (Chapters 494, 516, and 520.)
- 5) ["Control person and controlling interest"](#). Provides a definition of "control person" and "controlling interest" as follows:

"Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person:

- (a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly has the right to vote 10 percent or more of a class of a voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

"Controlling interest" means possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.

- 6) [Current Information about Licensees](#). Requires licensees to keep the application information current. (Chapters 494, 516, 520, and 560)
- 7) [Background checks](#). Provides authority to inquire into the backgrounds of applicants, officers, directors, and other persons with the power to direct the management of the licensee. (Chapters 494, 516, and 520)
- 8) [Fingerprinting](#). This bill clarifies that the Commission is authorized to prescribe, by rule, that fingerprint cards are required from each officer, director, control person, member, partner, or joint venturer of the applicant and each ultimate equitable owner of 10% or greater interest in the business. The fingerprint cards are required to be taken by an authorized law enforcement agency, not an officer. Presently, the law does not specifically authorize the Commission to prescribe by rule the fingerprint submission process. The bill provides a procedure for fingerprint card processing by the Office. It provides that fingerprint processing costs may be borne by the Office, the employer, or the person subject to the background check. It authorizes the Department of Law Enforcement to submit monthly invoices for fingerprint processing.
- 9) [Change in Control](#). The bill clarifies the procedures with regard to change in control of a business. Currently, a licensee must notify the Office of any change in the form of business or any change in the Officers or directors. The bill authorizes the Office to obtain background information from persons who have not previously undergone review by the Office. The bill also requires any person who intends to obtain a controlling interest in a licensed entity must file a new application. The Commission may prescribe by rule provisions to waive this requirement for individuals who are already licensed or have undergone review by Office. (Chapters 494, 516, 520, and 560).
- 10) [Exemptions](#).  
The bill provides that in order to be exempt from the chapter requirements, 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 bill also clarifies that there is no licensing requirement 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.

11) [Licensing requirements](#):

The bill requires permit and licensing from the Office, unless specifically exempt, for the following:

- Mortgage business schools that offer or conduct mortgage business training for the purpose of meeting professional continuing education requirements.
- Persons who act as a mortgage brokerage businesses.
- Natural person who acts as an associate for a mortgage lender or correspondent mortgage lender.
- Mortgage lender.
- Correspondent mortgage lender.
- Mortgage lender's branch offices.

- Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses
- Money transmitters.

## OVERVIEW OF FEES

1. **Mortgage Brokerage Test.** Authorizes the Office to outsource the mortgage broker test at a cost to the applicant not to exceed \$100. Currently, the cost of the test is included in the application fee and Office staff administers the test once a month at limited locations. The fee will be used to contract with a vendor to develop an electronic version of the test to be given at testing centers located throughout the state.

In 2004, the Office participated in a competitive procurement with the Department of Financial Services to secure a vendor for this test in anticipation of last year's bill passing. The three responses for the mortgage broker test were \$42, \$43 and \$53. The State of North Carolina recently entered into a contract with a vendor to provide a similar test at a cost of \$100. It is estimated the cost of the computerized test will be \$60-75 per test based on the previous bids and the experience of North Carolina.

2. **Investigation Fee – Consumer Finance.** Increases the investigation fee that consumer finance companies can charge their customers from \$10 to \$25. This fee has not been increased since it took effect on 7-1-1994.

3. **Registration Fee - Canadian Securities Agents.** Eliminates the registration fee (\$30) for Canadian agents if the Canadian Dealer is registered. Florida is following the national trend, which is not to require registration of Canadian agents. Other states:

- 19 states: no filing required/exemption self-executing/no fees collected by state
- 19 states: notice filing required for the dealer only/no fees collected by state
- 7 states: require registration of both dealer and agents/initial application and renewal fees apply
- 5 states: exemption under consideration

4. **Investment Adviser Registration through IARD.** 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). Since the IARD system came online in 2001, forty-seven (47) states have mandated electronic filing through the system. Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70, which is collected to operate and maintain the IARD system, in addition to the annual state application fee of \$200. Revenues to the State will be unchanged. Florida currently has 1,100 state-registered Investment Advisers. Six hundred and eighty (680) of these advisers have already voluntarily converted their information to the IARD and paid the initial fee. Therefore, there are only 420 licensees that will need to register with the IARD.

5. **Fingerprinting.** Currently the Office may require each Officer, director or ultimate equitable owner to submit a fingerprint card. The bill expands this requirement to include a control person, member, partner or joint venturer of the applicant. It is not possible to estimate the number of individuals that would be impacted by the requirement. The cost per person would be established at the cost charged by FDLE, which is currently \$47 each for processing criminal history checks.

## INDUSTRY SPECIFIC ISSUES

### Chapter 494 - Mortgage Brokerage and Lending

1. **[Disciplinary Action](#).** Provides grounds for disciplinary action in the event of a final judgment in a civil action for fraud, embezzlement, misrepresentation, or deceit. The bill also provides grounds for disciplinary action in the event of any adverse finding or decision as the result of any administrative or civil action against the applicant or licensee that relates to the financial services industry.
2. **[Continuing Education](#).** Waives continuing education requirements for the first renewal cycle immediately following licensure for mortgage brokers and principal representatives. The bill clarifies that the educational requirements contained in this section for mortgage lenders, correspondent mortgage lenders, and

mortgage lenders pursuant to a savings clause are for “continuing” education and must occur before the renewal of their respective licenses.

3. [Principal Representative](#). Allows a newly designated principal representative 90 days in which to complete classroom and testing requirements. The continuing education requirements for a principal representative are waived for the license renewal of a correspondent mortgage lender, mortgage lender, or mortgage lender pursuant to a savings clause for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.
4. [Application for waiver](#). The bill provides the Commission with rulemaking authority to adopt rules for the waiver of the application required by the relevant chapters if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the provisions of the applicable chapters with respect to the same legal entity or is currently licensed by the Office under this chapter.
5. [Mortgage Business Schools](#). Requires permitted mortgage business schools to electronically report the names of students who have successfully completed required training courses. Clarifies the renewal process by specifying the renewal cycle. The permit expires on September 30<sup>th</sup> of each year. The bill requires that the license for a branch office be renewed in conjunction with a mortgage brokerage business license.
6. [Transfer applications](#). As of October 1, 2006, new requirements are mandated for transfer applications on or after that date. The requirements are as follows: 1) To provide proof that the applicant’s principal representative qualifies for waiver; and 2) An applicant's principal representative must pass all testing requirements for lenders.

## **Chapter 516 – Consumer Finance**

1. [Liquid Assets](#). Clarifies that applicants must provide evidence of liquid assets of at least \$25,000. (See amendments to s. 516.03, F.S.) The failure to meet this requirement is currently grounds for denial of licensure and disciplinary action under s. 516.07(1)(b).

## **Chapter 517 – Securities**

1. [Branch Office](#). Amends the definition of “branch office” to conform to uniform federal standard recently adopted by the Securities and Exchange Commission.
2. [Registration](#). Amends s. 517.12, F.S., to remove the requirement that the registration form be verified under oath.
3. [Securities Guaranty Fund](#). Amends ch. 517, F.S., to authorize the Office to prescribe rules for the procedures, form of submissions and guidelines of notices and claims.
4. [Payment from the Fund](#). 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 and gives the Commission rulemaking authority to specify the procedures for complying with this section.
5. [Branch Offices - Renewal Cycle](#). Changes renewal deadline for branch offices from March 31st to December 31<sup>st</sup> to allow renewal fees to be submitted through NASD.
6. [Uniform Forms](#). Authorizes the Commission to adopt by rule uniform forms that have been approved by the Securities and Exchange Commission. A list of uniform forms is provided in the bill (e.g., Uniform Branch Office Form). These provisions are needed to address recent concerns by the Joint Administrative Procedures Committee.

7. [Canadian Dealers](#). Revises the registration process for Canadian Dealers and eliminates the registration requirements for Canadian agents under certain conditions.
8. [Investment Advisers](#). Requires filings through Investment Adviser Registration Depository (IARD) for state registered Investment Advisers.

## Chapter 560 – Money Transmitters

1. [Control of money transmitter](#). Provides that a person has control over a money transmitter if the individual, partnership, corporation, trust, or other organization: 1) possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. It also creates a presumption that a person has control of a company under certain circumstances; 2) The Office determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.
2. [Permissible investments](#). Clarifies that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States.
3. [Registration terms](#). Provides for a 24-month renewal of a registration by furnishing information and fees required by Commission rule. Currently, the section requires the Office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

## Miscellaneous

1. [Safe Deposit Boxes](#). Reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes.
2. [Escrow Accounts](#). Provides an award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay insurance premiums from an escrow account, and subsequently refuses to pay the difference between a lapsed insurance policy and a new one.
3. [Appropriation](#). Provide an appropriation amount for the Fiscal Year 2006-2007 from the Regulatory Trust Fund to the Office of Financial Regulation for the purpose of implementing the provisions of s. 494.033(2)(d), F.S., for third party administration of the mortgage broker test.

### C. SECTION DIRECTORY:

Section 1: Amends s. 494.001, F.S., to create a definition for "control person."

Section 2: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings; allowing alternate means for hardships; and providing that the granting of a license must be pursuant to s. 120.60, F.S.

Section 3: Amends s. 494.0016, F.S., prescribing rules for the destruction of records.

Section 4: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 5: Amends s. 494.00295, F.S., providing clarification and waiver relating to continuing education programs.

Section 6: Amends s. 494.003, F.S., providing exemptions from mortgage broker provisions for certain institutions.

Section 7: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.



Section 8: Amends s. 494.0032, F.S., relating to renewal of mortgage business license or branch office license.

Section 9: Amends s. 494.0033, F.S., relating to mortgage broker's license.

Section 10: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 11: Amends s. 494.0039, F.S., relating to mortgage brokerage business principal place of business requirement.

Section 12: Amends s. 494.004, F.S., relating to requirements of mortgage brokerage licensees.

Section 13: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.

Section 14: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.

Section 15: Amends s. 494.0061, F.S., to provide licensing, exemptions, fingerprinting, and testing requirements for mortgage lenders.

Section 16: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.

Section 17: Amends s. 494.0064, F.S., relating to educational requirements of mortgage lender's license.

Section 18: Amends s. 494.0065 F.S., relating to transfer applications.

Section 19: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.

Section 20: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.

Section 21: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.

Section 22: Amends s. 494.00721, F.S., relating to mortgage lender net worth.

Section 23: Amends s. 501.137, F.S., relating to mortgage lender's payment of insurance premiums from escrow funds.

Section 24: Amends s. 516.01, F.S., to create a definition of "control person".

Section 25: Amends s. 516.03, F.S., relating to consumer finance loan applications.

Section 26: Amends s. 516.031, F.S., increasing the fee for a credit check for a loan applicant.

Section 27: 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 28: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.

Section 29: Repeals s. 516.08, F.S., relating to posting licenses.



Section 30: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.

Section 31: Amends s. 516.19, F.S., relating to penalties.

Section 32: Amends s. 517.021, F.S., to provide a new definition of "branch office."

Section 33: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.

Section 34: Amends s. 517.061, F.S., relating to exempt securities transactions.

Section 35: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.

Section 36: Amends s. 517.12, F.S., relating to fingerprinting provisions, renewing branch office registrations, and revising requirements relating to activities of Canadian dealers.

Section 37: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.

Section 38: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.

Section 39: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

Section 40: Amends s. 520.02, F.S., to provide a definition for "control person".

Section 41: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.

Section 42: Amends s. 520.31, F.S., to provide a definition for "control person".

Section 43: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.

Section 44: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.

Section 45: Amends s. 520.61, F.S., to provide a definition for "control person."

Section 46: Amends s. 520.63, F.S., relating to applications for home improvement sales finance licensees.

Section 47: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.

Section 48: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicant's financial institution.

Section 49: Amends s. 520.997, F.S., relating to destruction of books, accounts and records retained by a retail installment sales licensee.

Section 50: Amends s. 520.999, F.S., relating to requirements of licensees, waivers, and providing a definition for "control interest."

Section 51: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.

Section 52: Amends s. 559.9232, F.S., relating to correction of cross references.

Section 53: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.

Section 54: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.

Section 55: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.

Section 56: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.

Section 57: Amends s. 560.127, F.S., relating to control of money transmitters.

Section 58: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.

Section 59: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.

Section 60: Amends s. 560.210, F.S., relating to permissible investments.

Section 61: Amends s. 560.211, F.S., relating to money transmitters' records.

Section 62: Amends s. 560.305, F.S., gives Commission rulemaking authority to require certain information from applicant.

Section 63: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.

Section 64: Amends s.560.308, F.S., relating to registration renewal for check cashers.

Section 65: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.

Section 66: Amends s. 560.403, F.S., relating to reinstatement of application for deferred presentment providers.

Section 67: Amends s. 655.935, F.S., relating to the initial opening of a safe deposit box.

Section 68: Amends s. 655.936, F.S., relating to delivery of safe deposit box contents.

Section 69: Amends s. 655.937, F.S., relating to access to a safe deposit box leased or rented in two or more names.

Section 70: Amends s. 679.705, F.S., extending the effectiveness of certain financing statements.

Section 71: Amends s. 733.6065, F.S., relating to opening of a safe deposit box.

Section 72: Appropriates \$700,515 to the Office.

Section 73: Provides an effective date of October 1, 2006, for the bill, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>FY 2006-07</u>	<u>FY 2007-08</u>
1. Revenues:		
Recurring		
Regulatory Trust Fund		
Mortgage Broker Test Fees	\$ 700,515	\$1,401,030
General Revenue		
Canadian Securities Agent		
Registration Fees	(\$ 53,250)	(\$ 53,250)
(Canadian Securities agents will no longer be required to register – 1775 x \$30 annually)		
2. Expenditures:	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Recurring		
Regulatory Trust Fund		
OPS	\$ 700,515	\$1,401,030
(Mortgage Broker Test)		
Non-Recurring	None	

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
  - None.
2. Expenditures:
  - None.

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

<u>Mortgage Broker Testing</u> (cost to applicants if transferred to a third party vendor for administration)	<u>FY 2006-07</u>	<u>FY 2007-08</u>
	\$ 700,515	\$1,401,030

It is not possible to predict the offsetting benefit to the private sector of allowing quicker entry into business due to more frequent testing and immediate scoring. However, it is estimated that each additional day to get registered costs the individual \$98.63 in income (average salary of \$36,000 divided by 365 days = \$98.63). During first quarter of fiscal year 05-06, an average of 2,339 applicants took the test each month, so each 1-day delay costs a total of \$230,696 in lost wages, or \$6,920,867 for the 30-day delay currently between tests. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

#### IARD Registration

The proposed language will require all state-registered investment advisers (IAs) to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70 which is collected to operate and maintain the IARD system, in addition to

the state application fee of \$200 annually. Revenues to the State will be unchanged. Florida currently has 1100 state-registered IAs, of which 680 have already converted their information to IARD and paid the initial fee. The remaining 420 will be required to file (total cost \$63,000) and all 1100 will be required to pay \$70 annually, a total of \$77,000. Additionally, the Office received 182 new applications for state-registered IAs last year, of which 150 were approved. This represents an additional cost to the industry of \$27,300 (182 x \$150) in their first year and \$10,500 (150 x \$70) on an on-going basis. Filing the information with IARD allows the Office to share registration information with other states and federal authorities related to state-registered IAs, 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. However, the Canadian agents currently registered with the State, will no longer be required to register. Currently there are 1775 Canadian agents registered. This will represent a savings to them of \$30 each, or \$53,250, with a resulting loss to the State General Revenue Fund.

#### Increase in Maximum Fee Permitted to Be Charged by Lender

Language is being proposed to allow an increase in the fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current \$10 to \$25 (ss. 516.03(3), F.S.). Potential volume of customers affected is not known.

#### Fee Increase for Credit Check of a Loan Applicant

The bill authorizes an increase in the fee for a credit check of a loan applicant from \$10 to \$25. The Office has not evaluated the effects of this increase.

### D. FISCAL COMMENTS:

#### Mortgage Broker Testing

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

During Fiscal Year 2004-05, a total of 20,756 applicants took the test. The possible range based on \$60 to \$75 per test is \$1,245,360 to \$1,556,700, with an average cost of \$67.50 x 20,756 equal to \$1,401,030 (reduced to \$700,515 in the first year based on a January 1 effective date). It is anticipated the fee will be established equal to the cost charged by the vendor for the test. Thus, the anticipated revenue and expenditures should offset each other. The issue will be self-funding and not produce any excess revenue.

### 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. RULEMAKING AUTHORITY:**

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.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On April 18, 2006, the Commerce Council adopted two amendments to the bill that made the following changes:

- It extends the effectiveness of a financing statement filed under the uniform commercial code through December 31, 2006, conforming to the intended 5 year effective period for such financing statements;
- It makes this provision effective upon becoming law; and
- It clarifies effective date section with the effective date of the amendment.

This analysis is drawn to the committee substitute.