

1 renewals of mortgage lender's licenses;
2 amending s. 494.0067, F.S.; providing
3 additional requirements for mortgage lender
4 licenses; providing disclosure requirements;
5 amending s. 494.0072, F.S.; specifying
6 additional acts constituting grounds for
7 certain disciplinary actions; providing fines
8 and penalties; amending s. 494.0073, F.S.;
9 providing for application of certain provisions
10 to mortgage brokerage businesses; providing for
11 adoption of rules by the Financial Services
12 Commission; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (2) of section 494.001, Florida
17 Statutes, is amended, and subsections (32), (33), and (34) are
18 added to that section, to read:

19 494.001 Definitions.--As used in ss. 494.001-494.0077,
20 the term:

21 (2) "Act as a loan originator" means being employed by
22 a mortgage lender or correspondent mortgage lender, for
23 compensation or gain or in the expectation of compensation or
24 gain, to negotiate, ~~or~~ offer to negotiate, or assist any
25 licensed or exempt entity in negotiating the making of a
26 mortgage loan, including, but not limited to, working with a
27 licensed or exempt entity to structure a loan or discussing
28 terms and conditions necessary for the delivery of a loan
29 product. A natural person whose activities are ministerial and
30 clerical, which may include quoting available interest rates
31

1 ~~or loan terms and conditions~~, is not acting as a loan
2 originator.

3 (32) "Mortgage loan application" means a submission of
4 a borrower's financial information in anticipation of a credit
5 decision, whether written or computer-generated, relating to a
6 mortgage loan. If the submission does not state or identify a
7 specific property, the submission is an application for a
8 prequalification and not an application for a mortgage loan
9 under this part. The subsequent addition of an identified
10 property to the submission converts the submission to an
11 application for a mortgage loan.

12 (33) "Mortgage brokerage fee" means the total
13 compensation to be received by a mortgage business for acting
14 as a mortgage broker.

15 (34) "Business day" means any calendar day except
16 Sunday or a legal holiday.

17 Section 2. Section 494.0014, Florida Statutes, is
18 amended to read:

19 494.0014 Cease and desist orders; administrative
20 finer; refund orders.--

21 (1) The office has the power to issue and serve upon
22 any person an order to cease and desist and to take corrective
23 action whenever it has reason to believe the person is
24 violating, has violated, or is about to violate any provision
25 of ss. 494.001-494.0077, any rule or order issued under ss.
26 494.001-494.0077, or any written agreement between the person
27 and the office. All procedural matters relating to issuance
28 and enforcement of such a cease and desist order are governed
29 by the Administrative Procedure Act.

30 (2) The office has the power to order the refund of
31 any fee directly or indirectly assessed and charged on a

1 mortgage loan transaction which is unauthorized or exceeds the
2 maximum fee specifically authorized in ss. 494.001-494.0077.

3 (3) The office may prohibit the association by a
4 mortgage broker business, or the employment by a mortgage
5 lender or correspondent mortgage lender, of any person who has
6 engaged in a pattern of misconduct while an associate of a
7 mortgage brokerage business or an employee of a mortgage
8 lender or correspondent mortgage lender. For the purpose of
9 this subsection, the term "pattern of misconduct" means the
10 commission of three or more violations of ss. 494.001-494.0077
11 or the provisions of chapter 494 in effect prior to October 1,
12 1991, during any 1-year period or any criminal conviction for
13 violating ss. 494.001-494.0077 or the provisions of chapter
14 494 in effect prior to October 1, 1991.

15 (4) The office may impose upon any person who makes or
16 brokers a loan, or any mortgage business school, a fine for
17 violations of any provision of ss. 494.001-494.00295 or any
18 rule or order issued under ss. 494.001-494.00295 in an amount
19 not exceeding \$5,000 for each separate count or offense.

20 Section 3. Paragraph (f) is added to subsection (1)
21 and paragraphs (g) and (h) are added to subsection (2) of
22 section 494.0029, Florida Statutes, to read:

23 494.0029 Mortgage business schools.--

24 (1)

25 (f) In addition to the remedies set forth in s.
26 494.0014, the office may revoke, suspend, or place on
27 probation the permit of any mortgage business school that
28 fails to meet the requirements of this section, subject to all
29 reasonable conditions that the office specifies.

30 (2)

1 (g) A school permitted under this section must conduct
2 classes on the basis of a 50-minute classroom hour in
3 accordance with the requirements of this chapter and
4 commission rules.

5 (h) Each school permitted under this section is
6 responsible for developing procedures to confirm, and for
7 actually confirming, the identity of each student attending
8 any course offering.

9 Section 4. Section 494.00295, Florida Statutes, is
10 amended to read:

11 494.00295 Professional continuing education.--

12 (1) Mortgage brokers, and the principal
13 representatives and loan originators of a mortgage lender,
14 correspondent mortgage lender, or mortgage lender pursuant to
15 s. 494.0065, must successfully complete at least 14 hours of
16 professional continuing education covering primary and
17 subordinate mortgage financing transactions and the provisions
18 of this chapter during the 2-year period immediately preceding
19 the renewal deadline for a mortgage broker, mortgage lender,
20 correspondent mortgage lender, or mortgage lender pursuant to
21 s. 494.0065. A minimum of 4 hours shall cover the provisions
22 of this chapter and the rules adopted under this chapter. At
23 the time of license renewal, a licensee must certify to the
24 office that the professional continuing education requirements
25 of this section have been met. Licensees shall maintain
26 records documenting compliance with this subsection for a
27 period of 4 years. The requirements for professional
28 continuing education are waived for the license renewal of a
29 mortgage broker who has completed the 24-hour prelicensing
30 classroom education requirement of s. 494.0033(3) within 90
31 days of ~~for~~ the biennial license period immediately following

1 | the period in which the person became licensed as a mortgage
2 | broker. The requirements for professional continuing education
3 | for a principal representative are waived for the license
4 | renewal of a mortgage lender, correspondent mortgage lender,
5 | or mortgage lender pursuant to s. 494.0065 for the biennial
6 | license period immediately following the period in which the
7 | principal representative completed the 24 hours of classroom
8 | education and passed a written test in order to qualify to be
9 | a principal representative.

10 | (2) Professional continuing education programs must
11 | contribute directly to the professional competency of the
12 | participants, may only be offered by permitted mortgage
13 | business schools, the office, or entities specifically
14 | exempted from permitting as mortgage business schools, and may
15 | include electronically transmitted or distance education
16 | courses.

17 | (3)(a) All electronically transmitted courses shall
18 | require that the time spent attending electronically
19 | transmitted professional education courses is equal to the
20 | number of qualifying hours awarded to participants for course
21 | attendance. Before allowing a course participant to complete a
22 | course and receive a certificate of course completion, the
23 | course provider shall ensure that the course participant has:

24 | 1. Logged the required number of hours for the
25 | particular timed module.

26 | 2. Completed a test that comprehensively covers the
27 | course content for the particular timed module.

28 | 3. Correctly answered all test questions for the
29 | particular timed module.

30 | (b) All distance education course participants shall
31 | successfully complete a test that comprehensively covers

1 course content in order to receive a certificate of course
2 completion. Distance education providers shall not provide
3 answers to test questions to course participants and shall not
4 issue a certificate of course completion to any course
5 participant who has failed to correctly answer at least 75
6 percent of the total test questions. The test must consist of
7 at least 100 questions.

8 ~~(4)(3)~~ The commission shall adopt rules pursuant to
9 ss. 120.536(1) and 120.54 necessary to administer this
10 section, including rules governing qualifying hours for
11 professional continuing education programs and standards for
12 electronically transmitted or distance education courses,
13 including course completion requirements.

14 Section 5. Paragraphs (a) and (b) of subsection (2) of
15 section 494.0033, Florida Statutes, are amended to read:

16 494.0033 Mortgage broker's license.--

17 (2) Each initial application for a mortgage broker's
18 license must be in the form prescribed by rule of the
19 commission. The commission may require each applicant to
20 provide any information reasonably necessary to make a
21 determination of the applicant's eligibility for licensure.
22 The office shall issue an initial license to any natural
23 person who:

24 (a) Is at least 18 years of age and has a high school
25 diploma or its equivalent.

26 (b) Has passed a written test adopted and administered
27 by the office, or has passed an electronic test adopted and
28 administered by the office or a third party approved by the
29 office, which is designed to determine competency in primary
30 and subordinate mortgage financing transactions as well as to
31 test knowledge of ss. 494.001-494.0077 and the rules adopted

1 pursuant thereto. The commission may prescribe by rule an
2 additional fee that may not exceed \$100 for the electronic
3 version of the mortgage broker test. The commission may waive
4 by rule the examination requirement for any person who has
5 passed a test approved by the Conference of State Bank
6 Supervisors, the American Association of Residential Mortgage
7 Regulators, or the United States Department of Housing and
8 Urban Development if the test covers primary and subordinate
9 mortgage financing transactions. The commission may adopt
10 rules prescribing an additional fee that may not exceed \$50
11 for an applicant to review his or her completed and graded
12 mortgage broker test. The commission may adopt rules regarding
13 the administration of the testing process, including, but not
14 limited to, procedures relating to pretest registration, test
15 security, scoring, content, result notification, retest
16 procedures and fees, postexamination review, and challenge
17 provisions.

18
19 The commission may require by rule information concerning any
20 such applicant or person, including, but not limited to, his
21 or her full name and any other names by which he or she may
22 have been known, age, social security number, qualifications
23 and educational and business history, and disciplinary and
24 criminal history.

25 Section 6. Section 494.0038, Florida Statutes, is
26 amended to read:

27 494.0038 Mortgage broker disclosures.--

28 (1)(a)1. A person may not receive a mortgage brokerage
29 ~~fee for acting as a mortgage brokerage business~~ except
30 pursuant to a written mortgage brokerage agreement between the
31

1 mortgage brokerage business and the borrower which is signed
2 and dated by the business and the borrower.

3 2. The written mortgage brokerage agreement must be
4 executed within 3 days after accepting a mortgage loan
5 application, describe the services to be provided by the
6 mortgage brokerage business, and specify the amount and terms
7 of the mortgage brokerage fee that the mortgage brokerage
8 business is to receive.

9 (b)1. If the mortgage brokerage business is to receive
10 any payment of any kind from the lender, the maximum total
11 dollar amount of the payment must be disclosed to the borrower
12 in the written mortgage brokerage agreement as described in
13 paragraph (a). The commission may prescribe by rule an
14 acceptable form for disclosure of brokerage fees received from
15 the lender. The mortgage brokerage agreement must state the
16 nature of the relationship with the lender, describe how
17 compensation is paid by the lender, and describe how the
18 mortgage interest rate affects the compensation paid to the
19 mortgage brokerage business. ~~If any of the rates, points,~~
20 ~~fees, and other terms quoted by or on behalf of the lender are~~
21 ~~to be received by the mortgage brokerage business, such fact~~
22 ~~shall be specifically disclosed to the borrower.~~

23 2. The exact amount of any payment of any kind by the
24 lender to the mortgage brokerage business must be disclosed in
25 writing to the borrower within 3 business days after the
26 mortgage brokerage business is made aware of the exact amount
27 of the payment from the lender but no later than 3 business
28 days prior to the execution of the closing or settlement
29 statement. The licensee bears the burden of proving such
30 notification was provided to the borrower. ~~If the mortgage~~
31 ~~brokerage fee is for brokering a loan for a particular program~~

1 ~~under which the brokerage fee varies according to the terms of~~
2 ~~the loan, the brokerage fee may be disclosed as a range of~~
3 ~~fees at the time of application. The mortgage broker shall, in~~
4 ~~such instance, disclose the nature of the fee arrangement to~~
5 ~~the borrower, and the exact amount of the fee must be~~
6 ~~disclosed at settlement or closing.~~

7 (c) The commission may prescribe by rule what
8 constitutes a mortgage brokerage fee and the form of
9 disclosure of brokerage fees.

10 (2) At the time a written mortgage brokerage agreement
11 is executed by the borrower or at the time the mortgage
12 brokerage business accepts an application fee, credit report
13 fee, property appraisal fee, or any other third-party fee, but
14 not fewer than 3 business days prior to execution of the
15 closing or settlement statement, the mortgage brokerage
16 business shall disclose in writing to any applicant for a
17 mortgage loan the following information:

18 (a) That such mortgage brokerage business may not make
19 mortgage loans or commitments. The mortgage brokerage business
20 may make a commitment and may furnish a lock-in of the rate
21 and program on behalf of the lender when the mortgage
22 brokerage business has obtained a written commitment or
23 lock-in for the loan from the lender on behalf of the borrower
24 for the loan. The commitment must be in the same form and
25 substance as issued by the lender.

26 (b) That such mortgage brokerage business cannot
27 guarantee acceptance into any particular loan program or
28 promise any specific loan terms or conditions.

29 (c) A good faith estimate, signed and dated by the
30 borrower, that discloses ~~of~~ the total amount of each of the
31 fees that the borrower may reasonably expect to pay if the

1 loan is closed, including, but not limited to, fees earned by
2 the mortgage brokerage business, lender fees, third-party
3 fees, and official fees, together with ~~credit report fee,~~
4 ~~property appraisal fee, or any other third party fee~~ and the
5 terms and conditions for obtaining a refund of such fees, if
6 any. Any amount collected in excess of the actual cost shall
7 be returned within 60 days after rejection, withdrawal, or
8 closing. The good faith estimate must identify the recipient
9 of all payments charged the borrower and, except for all fees
10 to be received by the mortgage brokerage business, may be
11 disclosed in generic terms, such as, but not limited to, paid
12 to lender, appraiser, officials, title company, or any other
13 third-party service provider. This requirement does not
14 supplant or is not a substitute for the written mortgage
15 brokerage agreement described in subsection (1).

16 (3) The disclosures required by this subsection must
17 be furnished in writing at the time an adjustable rate
18 mortgage loan is offered to the borrower and whenever the
19 terms of the adjustable rate mortgage loan offered materially
20 change prior to closing. The broker shall furnish the
21 disclosures relating to adjustable rate mortgages in a format
22 prescribed by ss. 226.18 and 226.19 of Regulation Z of the
23 Board of Governors of the Federal Reserve System, as amended,
24 its commentary, as amended, and the federal Truth in Lending
25 Act, 15 U.S.C. ss. 1601 et seq., as amended, together with the
26 Consumer Handbook on Adjustable Rate Mortgages, as amended,
27 published by the Federal Reserve Board and the Federal Home
28 Loan Bank Board or a suitable substitute for such handbook.
29 The licensee bears the burden of proving such disclosures were
30 provided to the borrower. The commission may adopt rules
31

1 establishing criteria as to what constitutes a material change
2 and what constitutes a suitable substitute for the handbook.

3 ~~(4)(3)~~ If the mortgage brokerage agreement includes a
4 nonrefundable application fee, the following requirements are
5 applicable:

6 (a) The amount of the application fee, which must be
7 clearly denominated as such, shall be clearly disclosed.

8 (b) The specific services that will be performed in
9 consideration for the application fee shall be disclosed.

10 (c) The application fee must be reasonably related to
11 the services to be performed and may not be based upon a
12 percentage of the principal amount of the loan or the amount
13 financed.

14 ~~(5)(4)~~ A mortgage brokerage business may not accept
15 any fee in connection with a mortgage loan other than an
16 application fee, credit report fee, property appraisal fee, or
17 other third-party fee prior to obtaining a written commitment
18 from a qualified lender.

19 ~~(6)(5)~~ Any third-party fee entrusted to a mortgage
20 brokerage business shall immediately, upon receipt, be placed
21 into a segregated account with a financial institution located
22 in the state the accounts of which are insured by the Federal
23 Government. Such funds shall be held in trust for the payor
24 and shall be kept in the account until disbursement. Such
25 funds may be placed in one account if adequate accounting
26 measures are taken to identify the source of the funds.

27 ~~(7)(6)~~ All mortgage brokerage fees shall be paid to a
28 mortgage brokerage business licensee.

29 ~~(8)(7)~~ This section does not prohibit a mortgage
30 brokerage business from offering products and services, in
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1 addition to those offered in conjunction with the loan
2 origination process, for a fee or commission.

3 Section 7. Subsection (8) is added to section 494.004,
4 Florida Statutes, to read:

5 494.004 Requirements of licensees.--

6 (8) In every mortgage loan transaction, each licensee
7 under ss. 494.003-494.0043 shall notify a borrower of any
8 material changes in the terms of a mortgage loan previously
9 offered to the borrower within 3 business days after being
10 made aware of such changes by the lender but not less than 3
11 business days before the signing of the settlement or closing
12 statement. The licensee bears the burden of proving such
13 notification was provided and accepted by the borrower. The
14 commission may adopt rules establishing criteria as to what
15 constitutes a material change.

16 Section 8. Paragraph (v) is added to subsection (2) of
17 section 494.0041, Florida Statutes, to read:

18 494.0041 Administrative penalties and fines; license
19 violations.--

20 (2) Each of the following acts constitutes a ground
21 for which the disciplinary actions specified in subsection (1)
22 may be taken:

23 (v) In any mortgage transaction, violating any
24 provision of the federal Real Estate Settlement Procedure Act,
25 as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In
26 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any
27 regulations adopted under such acts.

28 Section 9. Subsection (1) of section 494.0064, Florida
29 Statutes, is amended to read:

30 494.0064 Renewal of mortgage lender's license; branch
31 office license renewal.--

1 (1)~~(a)~~ The office shall renew a mortgage lender
2 license upon receipt of a completed renewal form,
3 certification from the licensee that the licensee currently
4 meets the minimum net worth requirements of s. 494.0061 or s.
5 494.0065, certification from the licensee that during the
6 preceding 2 years the licensee's principal representative and
7 loan originators have completed the professional continuing
8 education requirements of s. 494.00295, and the nonrefundable
9 renewal fee of \$575. The office shall renew a correspondent
10 lender license upon receipt of a completed renewal form,
11 certification from the licensee that the licensee currently
12 meets the minimum net worth requirements of s. 494.0062,
13 certification from the licensee that during the preceding 2
14 years the licensee's principal representative and loan
15 originators have completed the professional continuing
16 education requirements of s. 494.00295, and a nonrefundable
17 renewal fee of \$475. Each licensee shall pay at the time of
18 renewal a nonrefundable fee of \$325 for the renewal of each
19 branch office license.

20 ~~(b) A licensee shall also submit, as part of the~~
21 ~~renewal form, certification that during the preceding 2 years~~
22 ~~the licensee's principal representative and loan originators~~
23 ~~have completed the professional continuing education~~
24 ~~requirements of s. 494.00295.~~

25 Section 10. Subsection (8) and paragraph (a) of
26 subsection (10) of section 494.0067, Florida Statutes, are
27 amended, and subsections (11) and (12) are added to that
28 section, to read:

29 494.0067 Requirements of licensees under ss.
30 494.006-494.0077.--
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1 (8) Each licensee under ss. 494.006-494.0077 shall
2 provide an applicant for a mortgage loan a good faith estimate
3 of the costs the applicant can reasonably expect to pay in
4 obtaining a mortgage loan. The good faith estimate of costs
5 shall be mailed or delivered to the applicant within a
6 reasonable time after the licensee receives a written loan
7 application from the applicant. The estimate of costs may be
8 provided to the applicant by a person other than the licensee
9 making the loan. The good faith estimate must identify the
10 recipient of all payments charged to the borrower and, except
11 for all fees to be received by the mortgage brokerage business
12 and the mortgage lender or correspondent mortgage lender, may
13 be disclosed in generic terms, such as, but not limited to,
14 paid to appraiser, officials, title company, or any other
15 third-party service provider. The licensee bears the burden of
16 proving such disclosures were provided to the borrower. The
17 commission may adopt rules that set forth the disclosure
18 requirements of this section.

19 (10)(a) Each mortgage lender or correspondent mortgage
20 lender licensee shall require the principal representative and
21 all loan originators, not currently licensed as mortgage
22 brokers pursuant to s. 494.0033, who perform services for the
23 licensee to complete 14 hours of professional continuing
24 education during each biennial license period. The education
25 shall cover primary and subordinate mortgage financing
26 transactions and the provisions of this chapter and the rules
27 adopted under this chapter.

28 (11) The disclosures in this subsection must be
29 furnished in writing at the time an adjustable rate mortgage
30 loan is offered to the borrower and whenever the terms of the
31 adjustable rate mortgage loan offered have a material change

1 prior to closing. The lender shall furnish the disclosures
2 relating to adjustable rate mortgages in a format prescribed
3 by ss. 226.18 and 226.19 of Regulation Z of the Board of
4 Governors of the Federal Reserve System, as amended, its
5 commentary, as amended, and the federal Truth in Lending Act,
6 15 U.S.C. ss. 1601 et seq., as amended, together with the
7 Consumer Handbook on Adjustable Rate Mortgages, as amended,
8 published by the Federal Reserve Board and the Federal Home
9 Loan Bank Board or a suitable substitute for the handbook. The
10 licensee bears the burden of proving such disclosures were
11 provided to the borrower. The commission may adopt rules
12 establishing criteria as to what constitutes a material change
13 and what constitutes a suitable substitute for the handbook.

14 (12) In every mortgage loan transaction, each licensee
15 under ss. 494.006-494.0077 shall notify a borrower of any
16 material changes in the terms of a mortgage loan previously
17 offered to the borrower within 3 business days after being
18 made aware of such changes by the lender but not less than 3
19 business days before the signing of the settlement or closing
20 statement. The licensee bears the burden of proving such
21 notification was provided and accepted by the borrower. The
22 commission may adopt rules establishing criteria as to what
23 constitutes a material change.

24 Section 11. Paragraph (v) is added to subsection (2)
25 of section 494.0072, Florida Statutes, subsection (3) of that
26 section is amended, and subsection (5) is added to that
27 section, to read:

28 494.0072 Administrative penalties and fines; license
29 violations.--
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1 (2) Each of the following acts constitutes a ground
2 for which the disciplinary actions specified in subsection (1)
3 may be taken:

4 (v) In any mortgage transaction, violating any
5 provision of the federal Real Estate Settlement Procedure Act,
6 as amended, 12 U.S.C. ss. 2601 et seq., the federal Truth In
7 Lending Act, as amended, 15 U.S.C. ss. 1601 et seq., or any
8 regulations adopted under such acts.

9 (3) A mortgage lender or correspondent mortgage lender
10 is subject to the disciplinary actions specified in subsection
11 (1) if any officer, member, director, control person, joint
12 venturer, or ultimate equitable owner of a 10-percent or
13 greater interest in the mortgage lender or correspondent
14 mortgage lender, associate, or employee of the mortgage lender
15 or correspondent mortgage lender violates or has violated any
16 provision of subsection (2).

17 (5) A principal representative of a mortgage lender or
18 correspondent mortgage lender is subject to the disciplinary
19 actions specified in subsection (1) for violations of
20 subsection (2) by associates or employees in the course of an
21 association or employment with the correspondent mortgage
22 lender or the mortgage lender. The principal representative is
23 only subject to suspension or revocation for associate or
24 employee actions if there is a pattern of repeated violations
25 by associates or employees or if the principal broker or
26 principal representative had knowledge of the violations.

27 Section 12. Section 494.0073, Florida Statutes, is
28 amended to read:

29 494.0073 Mortgage lender or correspondent mortgage
30 lender when acting as a mortgage brokerage business.--Sections
31 494.006-494.0077 do not prohibit a mortgage lender or

1 correspondent mortgage lender from acting as a mortgage
2 brokerage business. However, in mortgage transactions in which
3 a mortgage lender or correspondent mortgage lender acts as a
4 mortgage brokerage business, the provisions of ss. 494.0038,
5 494.0042, 494.004(8), and 494.0043(1), (2), and (3) apply.

6 Section 13. This act shall take effect October 1,
7 2007.

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 Senate Bill 1824

12 The Committee Substitute provides the following changes:

- 13 1. Revises the disclosure requirements for adjustable rate
14 loans.
 - 15 2. Requires the mortgage brokerage agreement to state the
16 nature of the relationship with the lender, describe how
17 compensation is paid by the lender, and describe how the
18 interest rate affects the compensation paid to the
19 mortgage brokerage business.
 - 20 3. Revises the time frames for the requirement that lenders
21 notify a borrower of any material changes in the terms of
22 a mortgage loan previously offered to a borrower.
 - 23 4. Revises mortgage brokerage licensee requirements by
24 requiring an applicant to be at least 18 years old and to
25 have a high school diploma or its equivalent.
 - 26 5. Creates definitions for the terms, "mortgage brokerage
27 fee," and "business day."
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