

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

In 2009, the Legislature passed a bill which brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”. The S.A.F.E. Act provides for greater accountability and regulation of loan originators and enhances consumer protections. It establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. The Act’s definition of “residential mortgage loan” includes a loan secured by a consensual security interest on a “dwelling”, to include a mobile home or trailer if it is used as a residence.^{1,2} Therefore, in accordance with the S.A.F.E. Act, motor vehicle retail installment sellers are considered mortgage brokers or mortgage lenders. The bill provided for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

Florida licenses mobile home dealers through the Department of Highway Safety and Motor Vehicles³ and/or the Office of Financial Regulation, if the dealers are motor vehicle retail installment sellers.⁴ The dealers are not considered to be mortgage brokers or mortgage lenders. There are no licensing requirements for mobile home dealer employees performing only administrative or clerical duties.

Presently, Florida requires licensure of individual mortgage brokers, mortgage broker and mortgage lender businesses, however employees of those businesses are not separately licensed. In addition to satisfying other minimum requirements, effective October 1, 2010, Florida Statutes require state licensure and annual renewal of individual loan originators, including employees of mortgage broker and mortgage lender businesses.

The law changes definitions and creates new sections of Florida Statutes, while repealing others. Effective October 1, 2010, loan originators, mortgage brokers, and mortgage lenders will be subject to administrative penalties under ch 494 in a single statutory section. Currently, mortgage brokers and mortgage lenders are treated separately in s. 494.0041(2)(v), F.S. and s. 494.0072(2)(v), F.S., respectively. Those sections are repealed effective October 1, 2010.^{5,6}

¹ H.R. 3221, Public Law 110-289, Title V, sec. 1503(8)

² 12 CFR Part 226.2(19)

³ s. 320.77, F.S.

⁴ s. 520.03, F.S.

⁵ s. 37 ch 2009-241, L.O.F.

⁶ s. 56 ch 2009-241, L.O.F.

The law removes the requirement that mortgage brokers file a new license application upon a change of control in the business.⁷ It does not remove the same requirement for mortgage lenders.⁸

In 2008, the Board of Governors of the Federal Reserve System published its final rule amending Regulation Z of the Truth in Lending Act creating new restrictions or requirements for mortgage lending and servicing.⁹ With one exception,¹⁰ those changes were effective October 1, 2009.

Also in 2008, the United States Department of Housing and Urban Development published its final rule amending parts of Regulation X of the Real Estate Settlement Procedures Act, to include substantially revising the Good Faith Estimate and required settlement disclosures.¹¹ Those changes were effective January 16, 2009.

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.¹²

Effect of Bill:

HB 1281 makes a technical change to subsection (5) of s. 494.00255, F.S. Effective October 1, 2010, a principal loan originator of a mortgage lender is held responsible for the violations of supervised loan originators in certain situations.¹³ The bill provides for a conforming cross-reference, whereby the reference to an “associate” is replaced with the correct nomenclature of “loan originator”.

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. HB 1281 provides an exception for “loan processors,” who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies. In defining “loan processor”, the new statutory language is consistent with and borrows from the definition found in the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”.¹⁴

A loan processor will still need to be licensed as a loan originator, but in addition, have a “declaration of intent” filed with the OFR, if (s)he wishes to engage solely in loan processing and work for multiple employers.¹⁵ The bill provides that if a loan processor wishes to return to standard loan origination activities, the individual can withdraw the declaration of intent. Subsequent to withdrawal of the declaration of intent to engage solely in loan processing, the individual will again be subject to the general prohibition against working for multiple employers or contractors.

The bill provides an exception to Florida Statutes which prohibit the payment of fees or commissions in mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or mortgage lender.¹⁶ This exception is necessary because a loan processor working for multiple employers may earn fees which would be paid to the appropriate employing or contracting entity, and that organization need not be a licensed mortgage broker or mortgage lender.

Under the Office of Financial Regulation’s statutory authority, licensure requirements for mortgage brokers and mortgage lenders exceed those for mobile home dealers licensed as motor vehicle retail installment sellers under ch. 520. Since those mobile home dealers will be required to be licensed as mortgage brokers or lenders effective October 1, 2010, HB 1281 provides for an exception to the

⁷ s. 494.004, F.S.

⁸ s. 494.0067(4)(a), F.S.

⁹ 12 CFR Part 226 (Federal Register / Vol. 73, No. 147 / Wednesday, July 30, 2008)

¹⁰ Mortgages secured by manufactured housing.

¹¹ 24 CFR Part 3500 (Federal Register / Vol. 73, No. 222 / Monday, November 17, 2008)

¹² See *State v. J.R. M.*, 388 So.2d 1227 (Fla. 1980); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

¹³ s. 494.00255(5), F.S. effective October 1, 2010 (s.15, ch. 2009-241 L.O.F.)

¹⁴ H.R. 3221, Public Law 110-289, Title V, sec. 1503(4)

¹⁵ Proposed statutory language is consistent with s. 560.403, F.S., which require every licensed money services business that engages in deferred presentment transactions to file a declaration of intent with the OFR.

¹⁶ s. 494.0025(8), F.S.

licensing requirement under ch. 520 if the dealer is licensed under ch. 494 and engages only in the sale of tangible personal property dwellings. The bill also provides that employees of mobile home dealers licensed under ch. 494, who only perform administrative or clerical tasks, are not considered to be loan originators.

HB 1281 provides clarifications relating to disclosures provided as part of the good faith estimate (GFE) process. The bill provides that identification of the recipient of all payments charged the borrower must be made in writing at the time the GFE is provided. In addition, it requires that the borrower acknowledge receipt of the disclosure by signing and dating the document.

The bill removes the requirement that mortgage lenders file a new license application upon a change of control in the business. This provides for consistency with the mortgage broker requirements.

HB 1281 reenacts s 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts, regarding mortgage transactions. Reenactment of this provision is necessary for purposes of constitutionality and statutory construction.¹⁷

B. SECTION DIRECTORY:

- Section 1. Reenacts s. 494.00255(1)(m), F.S., and amends s. 494.00255(5), F.S., providing for enforcement and administrative penalties.
- Section 2. Amends s. 494.00331, F.S., as amended by ch. 2009-241, L.O.F., providing for loan processors.
- Section 3. Creates s. 494.00335, F.S., providing an exemption for mobile home dealers and employees under certain circumstances.
- Section 4. Amends s. 494.0038(3)(c), F.S., as amended by ch. 2009-241, L.O.F., providing for disclosure clarifications, plus a signed and dated good faith estimate disclosure.
- Section 5. Amends s. 494.0067(4), F.S., as amended by ch. 2009-241, L.O.F., removing a requirement to reapply for licensure.
- Section 6. Provides for an October 1, 2010 effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.

¹⁷ See *State v. Camil*, 279 So.2d 832 (Fla.1973); *Freimuth v. State*, 272 So.2d 473 (Fla.1972).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. The bill authorizes the Financial Services Commission to adopt rules relating to a loan processor's declaration of intent to engage solely in loan processing.

D. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At the March 11, 2010 meeting of the Insurance, Business and Financial Affairs Policy Committee two amendments were proposed and adopted.

Amendment 1 provides that a mobile home dealer licensed under ch. 494 is not also required to be licensed as a motor vehicle retail installment seller under ch. 520. In addition, an employee who performs only administrative or clerical tasks for a mobile home dealer licensed as a mortgage broker or lender is not required to be licensed as a "loan originator".

Amendment 2 removes the requirement that mortgage lenders file a new license application as the result of a change of control in the business.

The analysis is drafted to the committee substitute.