

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281 Loan Origination

SPONSOR(S): Workman

TIED BILLS: IDEN./SIM. BILLS: SB 2548

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Barnum	Cooper
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

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, collectively known as loan originators, rather than businesses. The law provides for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

HB 1281 defines a loan processor, consistent with the S.A.F.E. Act, as an individual licensed as a loan originator but only performing clerical or support duties. If the individual wishes to work for multiple employers, (s)he must file a "declaration of intent to engage solely in loan processing" with the Office of Financial Regulation.

Because a loan processor may be employed by a company other than a mortgage broker or mortgage lender, HB 1281 provides an exception to Florida Statutes which prohibit the payment of fees or commissions in any mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or lender.

The bill provides clarifications as to disclosures provided as part of the good faith estimate process, and requires the borrower acknowledge receipt of the disclosure by signing and dating the document.

HB 1281 also 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, the federal Truth in Lending Act, or any regulations adopted under such acts, regarding mortgage transactions.

The bill has no fiscal impact.

HB 1281 provides for an October 1, 2010 effective date.

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 bill provided for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

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.^{1,2}

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.³ With one exception,⁴ 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.⁵ Those changes were effective January 16, 2009.

¹ S. 37 ch 2009-241, L.O.F.

² S. 56 ch 2009-241, L.O.F.

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

⁴ Mortgages secured by manufactured housing.

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

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.⁶

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.⁷ 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”.⁸

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.⁹ 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.¹⁰ 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.

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.

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.¹¹

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.

⁶ See *State v. J.R. M.*, 388 So.2d 1227 (Fla. 1980); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

⁷ s. 494.00255(5), F.S. effective October 1, 2010 (s.15, ch. 2009-241 L.O.F.)

⁸ H.R. 3221, Public Law 110-289, Title V, sec. 1503(4)

⁹ 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.

¹⁰ s. 494.0025(8), F.S.

¹¹ See *State v. Camil*, 279 So.2d 832 (Fla.1973); *Freimuth v. State*, 272 So.2d 473 (Fla.1972).

Section 3. 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 4. 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.

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